Thursday, March 13.

SECOND DIVISION.

SINGLE BILLS.)

M'EWEN AND OTHERS *v.* STEEDMAN & M'ALISTER.

(Reported *ante*, 1912 S.C. 156, 49 S.L.R. 136.)

Expenses—Interdict—Nuisance—Remedial Measures—Remit to Ascertain Effect—Expenses of Remit.

In an action of interdict against the continuance of a nuisance caused by the working of a gas engine which was alleged to affect injuriously an adjoining tenement, the Court held that the nuisance was proved, but allowed the defenders an opportunity of executing remedial works. The defenders lodged a note stating that they had executed remedial works which had resulted in the removal of the nuisance. The pursuers, although they were advised by an expert of their own that the nuisance was removed, maintained that it had in no way abated, in respect of a statement to that effect made to them by the factor and tenants of the tenement, and the Court remitted to a man of skill who reported that the nuisance had been removed.

The Court in *dismissing* the petition for interdict found the defenders entitled to the expenses of the remit.

Mrs Mary Gibb or M'Ewen, wife of Charles M'Ewen, hosier, Hillhead, Glasgow, and others, *pursuers*, brought an action of interdict against Steedman & M'Alister, cork manufacturers, Glasgow, *defenders*, with regard to a nuisance resulting from vibration caused by the working of a gas engine belonging to the defenders which the pursuers alleged injuriously affected an adjoining tenement belonging to them.

On 22nd November 1911 the Second Division of the Court found in fact that the nuisance was proved, and found in law that the pursuers were entitled to be protected against its continuance, but allowed the defenders an opportunity of taking such remedial steps as they might be advised for its removal. Thereupon the defenders executed remedial works, and the pursuers' law agents entered into correspondence with the defenders' law agents thereanent, in the course of which, on 30th January 1912, the pursuers' law agents wrote to the defenders' law agents admitting that an expert who had visited the tenement on the pursuers' behalf had "found little or nothing to complain of," but stating that the factor of the tenement had informed them that "the vibration continues just as before," and stating further that all the tenants of the tenement had signed a memorandum to the effect that "the vibration is in no way abated." On February 15, 1911, the defenders presented a note to the Court in which they averred that they had executed remedial works which had resulted in the removal of the vibration, and moved the Court to find that the remedial works were satisfactory, and that in respect thereof it was unnecessary to grant interdict. The pursuers' counsel opposed the motion and maintained that the nuisance had in no way abated. On February 21, 1912, the Court remitted to Professor Hudson Beare, Edinburgh, to examine the remedial works and to report.

On March 12, 1913, Professor Hudson Beare reported that the remedial works were effectual, and on the same date the defenders lodged a note to the Lord Justice-Clerk craving his Lordship to move the Court to hold the defenders' remedial works satisfactory, and in respect thereof and of Professor Hudson Beare's report thereon to find it unnecessary to grant interdict, and to find the defenders entitled to the expenses of the remit, and of the procedure in regard thereto incurred by them since 22nd November 1911.

On March 13, 1913, the Court, which consisted of the LORD JUSTICE-CLERK, LORDS DUNDAS, SALVESEN, and GUTHRIE, after hearing counsel in the Single Bills on the question of expenses, when counsel for the pursuers referred to *Dodd v. Hilson*, February 25, 1874, 1 R. 527, without delivering opinions pronounced this interlocutor—

"Hold the defenders' remedial works satisfactory in terms of the report by Professor Hudson Beare: Find it unnecessary to grant interdict: Dismiss the crave of the petition, and decern: Find the pursuers entitled to additional expenses up to 21st February 1912, and the defenders entitled to expenses since that date, including the expense of and incident to the said report, and remit the accounts," &c.

Counsel for the Pursuers—Sandeman, K.C.—Hon. W. Watson. Agents—Cumming & Duff, S.S.C.

Counsel for the Defenders—Wilson, K.C. —Paton. Agents—Graham, Miller, & Brodie, W.S.

Friday, March 14.

SECOND DIVISION.

[Lord Ormidale, Ordinary.

M'FEETRIDGE *v.* STEWARTS & LLOYDS, LIMITED.

Foreign—Contract—Minor—Capacity to Contract—Lex loci contractus or Lex domicilii.

An Irishman under twenty-one years of age, whose father was in Ireland, took a situation as a labourer in Scotland, and having been injured in the course of his employment, agreed, without his father's consent, to accept compensation. *Held* that his capacity to enter into the contract fell to be determined by the *lex loci contractus*.

Parent and Child — Minor — Contract — Minor in Scotland with Father Resident in Ireland—Enorm Lesion.

A minor whose father was resident in Ireland, and who while employed as a labourer in Scotland had been injured by an accident arising out of and in the course of his employment, agreed, without consulting his father, to accept compensation in ignorance of the fact that he had a ground of action for damages at common law against his employers. *Held* (1) (*rev.* judgment of Lord Ormidale, Ordinary) that the minor, being forisfamiliated and with his father resident abroad, was entitled to enter into the agreement to accept compensation, but (2) that he was entitled to reduce the agreement on the ground of enorm lesion.

Opinion (*per* Lord Salvesen) that even if contracts made by a minor which were incident to his employment might be good, the agreement in question was not incident to his employment.

Res judicata—Decree in Arbitration under Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58)*—Claim for Damages at Common Law—Capacity to Contract.*

In an arbitration under the Workmen's Compensation Act 1906 the arbitrator held that the workman had agreed to accept compensation. The workman subsequently brought an action against his employers for damages at common law, and sought to have the agreement as thus affirmed by the arbitrator set aside on the ground of minority and lesion. *Held* that the agreement to accept compensation as affirmed by the arbitrator was not *res judicata.*

Process—Proof or Jury Trial—Action of Damages at Common Law by Workman against Employers for Personal Injury—Reduction of Agreement to Take Compensation under Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58).

In an action of damages at common law by a workman against his employers for personal injury, where the workman sought to set aside on the ground of minority and lesion an agreement to take compensation under the Workmen's Compensation Act 1906 as affirmed by the Sheriff-Substitute acting as arbitrator, the Court *allowed* a proof before answer.

Gilbert M'Feetridge, labourer, Whifflet, with the consent and concurrence of his father Benjamin M'Feetridge, as his curator and administrator-in-law, *pursuer,* brought an action against Stewarts & Lloyds, Limited, Glasgow, *defenders,* for payment of the sum of £500 damages in respect of personal injury sustained by the pursuer through the fault of the defenders, and for reduction, if necessary, of a decree dated 13th November 1911 pronounced by the Sheriff-Substitute at Glasgow (GLEGG) acting as arbitrator in an arbitration under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) between the pursuer and the defenders in which the arbitrator found that the pursuer had agreed to accept compensation under the Act at the rate of 10s. 3d. per week.

The pursuer averred — "(Cond. 1) The pursuer is a labourer, and is at present residing at 33 Miller Street, Whifflet. He is a domiciled Irishman, and is 16 years of age. By the law of Ireland minors have not capacity to enter into binding contracts. . . . (Cond. 2) The pursuer was for some time employed as a labourer by the defenders at their said iron works at Coatbridge. On or about 19th April 1911, while the pursuer was working at a part of defenders' works near a heavy turning lathe, his right hand was caught in the pinion wheels of the said lathe, and his little finger and part of his thumb were severely crushed and had to be amputated. (3) . . . Immediately below the pinions, and close to where the pursuer was standing before the accident, there was a sunk hole in the floor, about 3 feet long by 18 inches broad by 8 deep. . . . The pursuer, who was unaware of the existence of the said hole, put his foot into it, which caused him to stumble, and on reaching out to save himself from falling his hand came into contact with the gearing of the said machine. . . . (Cond. 4) The said injuries to the pursuer were caused solely by the fault of the defenders in failing to fence the wheels of the said turning lathe, and in permitting the said hole in the floor to remain uncovered while the machine was at work. The said machine was of a highly dangerous nature, and such as is usually fenced or guarded for the protection of persons working in the vicinity. The defenders' works are a factory within the meaning of the Factory and Workshops Act 1901 (1 Edw. VII, cap. 22), and it was the duty of the defenders, in terms of section 10 of the said Act, to fence the said machine and to maintain the fencing in an efficient state, but they entirely neglected that duty. . . . (Cond. 6) On or about 8th May 1911 an agent who represented the defenders called upon the pursuer and informed him that he was entitled to compensation. The pursuer's wages at the time of the accident were £1, 0s. 6d. per week, and the said agent stated to him that he was entitled to receive 10s. 3d. per week from his employers while he was disabled, and discussed with the pursuer whether he would accept a lump sum in full of the said weekly payment. The said agent did not inform the pursuer, and the pursuer was entirely ignorant of the fact, that he had any rights at common law, or that he could possibly have any claim in respect of his injuries except what was offered by the said agent. The pursuer had no legal advice, and the said agent did not suggest to him that he should take any. At said interview the pursuer stated that he would consult with his brother who was coming from Ireland as to whether he should take a weekly payment or compound same for the lump sum. He accordingly consulted with his brother, a boy of about 18 years