

tion, then I think the case is one upon which it is legitimate for the Court to entertain an appeal for reconsideration of the sentence if it thinks the public interest has been sufficiently vindicated. These prisoners have served sentence of imprisonment for ten days. It is easy to be lenient, while it is always difficult to be just, but in my view of the circumstances of this case—and each case must depend upon its own circumstances—they are such that the Court may exercise the clemency for which Mr Morton appeals, and pronounce an order similar to that which was pronounced in the case to which I have referred.

LORD SKERRINGTON, LORD CULLEN, and LORD SANDS concurred.

The Court pronounced this interlocutor—

“The Lords having considered the note for the respondents John Grant, Alexander Mackinnon, Donald Mackinnon, Alick Robertson, John Nicolson, and Alexander Mackinnon, and heard counsel for the parties (the complainer not opposing), order the immediate liberation of the said respondents presently incarcerated in the prison of Edinburgh, and grant warrant to the Governor of the prison accordingly.”

Counsel for Petitioner and Complainer—Black. Agent—Chas. J. Penn, W.S.

Counsel for Respondents—Morton, K.C.—Walker. Agent—Donald Shaw, S.S.C.

Friday, June 8.

FIRST DIVISION.

(SINGLE BILLS.)

M'CORQUODALE, PETITIONER.

Process—Proof—Commission—Evidence for Indian Court—Appointment of Commissioner—Application by Attorney of Indian Litigant for Appointment of Sheriff or Sheriff-Substitute as Commissioner—Evidence by Commission Act 1859 (22 Vict. cap. 20).

The attorney of a party to proceedings in an Indian tribunal presented a petition under the Evidence by Commission Act 1859 craving the Court to order the examination of a witness before the Sheriff of the county in which the witness resided or his Substitute. *Held* that the application did not differ in principle from an application under the Foreign Tribunals Evidence Act 1856 (19 and 20 Vict. cap. 113), and commission granted to a member of the Bar.

Baron de Bildt, Petitioner, 7 F. 899, 42 S.L.R. 690, *followed*.

The Evidence by Commission Act 1859 enacts—Section 1—“Where upon an application for this purpose it is made to appear to any court or judge having authority under this Act that any court or tribunal of competent jurisdiction in Her Majesty’s

Dominions has duly authorised by commission, order, or other process the obtaining the testimony in or in relation to any action, suit, or proceeding pending in or before such court or tribunal of any witness or witnesses out of the jurisdiction of such court or tribunal and within the jurisdiction of such first-mentioned court, or of the court to which such judge belongs, or of such judge, it shall be lawful for such court or judge to order the examination before the person or persons appointed, and in manner or form directed by such commission, order, or other process as aforesaid of such witness or witnesses accordingly. . . . Section 5.—Her Majesty’s Superior Courts of Common Law at Westminster and in Dublin respectively, the Court of Session in Scotland . . . and any judge of any such Court . . . shall respectively be courts and judges having authority under this Act.”

Alexander Croal M'Corquodale, solicitor, Carnoustie, attorney for the Comptoir National d'Escompte de Paris, Bombay, India, presented a petition craving the Court to order the examination of a certain witness in Scotland before the Sheriff of Forfarshire or his Substitute at Dundee.

The petition set forth, *inter alia*—“That on 25th April 1923 a note was addressed by the additional subordinate Judge, Agra, United Provinces, India, to “the Senior Master of the Supreme Court of Judicature, Edinburgh, Scotland,” forwarding a letter of request issued by the said additional subordinate Judge desiring that certain evidence be obtained from the managing director of the Anderson-Grice Company, Limited, Carnoustie, Scotland, in connection with a suit pending in the Court of the said additional subordinate Judge at Agra aforesaid at the instance of Messrs R. G. Bansal & Company, Agra, against the Comptoir National d'Escompte de Paris, Bombay, and setting forth that the petitioner had been appointed by the party applying for the commission as their attorney for the purpose thereof. That the said letter of request along with the interrogatories and relative documents accompanying the same is produced herewith as evidence that the said Court of the additional subordinate Judge at Agra has duly authorised the obtaining of the testimony of the witness above mentioned. That in these circumstances it appears to the petitioner to be proper that he should make this application to your Lordships to obtain the examination of the said witness as desired by the said additional subordinate Judge, and the petitioner respectfully suggests that in view of the nature of the case as disclosed in the said letter of request and relative documents your Lordships should appoint the Sheriff of Forfarshire or his Substitute at Dundee as the person before whom the said witness shall be examined.”

No answers were lodged.

Counsel was heard on the petition, when the following authorities were cited—The Foreign Tribunals Evidence Act 1856 (19 and 20 Vict. cap. 113); *Baron de Bildt, Petitioner*, 7 F. 899, 42 S.L.R. 690; *Lord Advocate, Petitioner*, 1909 S.C. 199, 46 S.L.R. 159.

LORD PRESIDENT—This application is presented under section 1 of the Evidence by Commission Act 1859 (22 Vict. cap. 20), with reference to proceedings before an Indian Court for an order to examine a witness in Scotland. It is presented by the attorney appointed by the Comptoir National d'Escompte de Paris, Bombay, a party to the proceedings in question, on whose behalf the examination of the witness is desired. The application proceeds on a note and letter of request issued by the Indian Court and addressed to this Court. The applicant specially craves that the Sheriff or Sheriff-Substitute of the jurisdiction within which the witness is resident should be appointed by this Court to take the evidence. In moving for the order counsel for the applicant very properly referred us to the cases of *Baron de Bildt*, 1905, 7 F. 899, and the *Lord Advocate*, 1909 S.C. 199.

Those cases dealt with the analogous case of an application for an order to examine a witness under the Foreign Tribunals Evidence Act 1856 (19 and 20 Vict. cap. 113). The provisions of that Act (dealing with orders for the examination of witnesses in Scotland with reference to proceedings in foreign courts) closely resemble those of the Evidence by Commission Act 1859 (dealing with similar orders in connection with proceedings pending in courts in His Majesty's Dominions). The Foreign Tribunals Evidence Act 1856 (section 1) provides for the granting by this Court of an order for the examination of the witnesses by a "person or persons" named in such order—that is to say, for a commission of the usual kind in favour of a commissioner or commissioners named by this Court, not for a remit to a court either of superior or inferior jurisdiction. Accordingly in *Baron de Bildt's* case the crave for an order on the Sheriff or Sheriff-Substitute was necessarily regarded as no more than a suggestion and the commission was granted to a member of the legal profession in the usual way. In the *Lord Advocate's* case the request of the foreign Court for an order on the Sheriff or Sheriff-Substitute was conveyed through the Foreign Office, and the application was made by the Lord Advocate. The request being presented in the King's name was granted by this Court.

The Evidence by Commission Act 1859 (differing in this particular from the Foreign Tribunals Evidence Act 1856) contemplates in section 1 that the Dominion Court may itself appoint a "person or persons" to take the evidence required, but the Court did not in the case before us purport to exercise this power. I accordingly express no opinion as to what would have been the position if the Indian Court had appointed the witness to be examined before the Sheriff or Sheriff-Substitute of the place where he resided. In point of fact the request for a remit to the Sheriff or Sheriff-Substitute comes, not from the Indian Court, but from the party who desires the evidence. Seeing that we are free to deal with the matter as we think proper I see no reason why we should impose this duty upon a Sheriff. On

the contrary I think that we should proceed in the ordinary way and grant a commission to a member of the Bar.

LORD SKERRINGTON, LORD CULLEN, and LORD SANDS concurred.

The Court granted commission to Lord Kinross, Advocate, to take the evidence of the witness named in the petition.

Counsel for Petitioner—Mackintosh.
Agent—Herbert Mellor, S.S.C.

Friday, June 29.

SECOND DIVISION.

[Sheriff Court at Greenock.

CARR v. BURGH OF PORT GLASGOW.

Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), sec. 1 (1)—Injury by "Accident"—Bursting of Blisters on Hand—Subsequent Septic Poisoning Causing Incapacity—No Proof that Septic Poisoning Took Place during Working Hours—Whether Incapacity Due to the Original Injury or to a Novus actus interveniens—Onus of Proof.

A labourer while working with pick and shovel blistered his left hand. He continued to work without protecting his hand by bandage or otherwise, with the result that the blisters burst. His hand having subsequently suppurated in consequence of dirt getting into it he became temporarily incapacitated for work. There was no evidence as to whether the dirt had entered his hand during working hours or not. The arbitrator refused compensation. *Held (diss. Lord Hunter)* that the arbitrator was not entitled to hold that the workman had not sustained injury by accident within the meaning of the Act.

In an arbitration under the Workmen's Compensation Act 1906 between Thomas Carr, labourer, Port Glasgow, *appellant*, and the Provost, Magistrates, and Councillors of the Burgh of Port Glasgow, *respondents*, the Sheriff-Substitute (MERCER) refused compensation and at the request of the claimant stated a Case for appeal.

The facts admitted or proved were as follows—(1) That the appellant entered the employment of the respondents as a labourer under their scheme of relief work for unemployed persons on 26th April 1922; (2) that when he started work his hands were in a soft condition owing to his having been previously unemployed for a considerable time; (3) that by 2nd May the friction of the pick and shovel which he was using caused blisters to form on his left hand; (4) that notwithstanding said blisters he continued to work without protecting his hand by bandage or otherwise; (5) that prior to 11th May, in the course of his work, the blisters burst; (6) that he continued to work with the respondents until 11th May; (7) that on that date he ceased work owing to suppuration of his hand through dirt having