hand, retained the whole of the rest of the copartnery property, and as matter of form, to make it complete, got it transferred to him by the deed mentioned in the case. Now, that, I agree with your Lordship, is not a conveyance on sale, but is a transfer of a different kind altogether from a conveyance on sale, and in that view I think the duty payable must be fixed accordingly.

Lord Shand—I am of the same opinion as your Lordships. The deed in question narrates that the parties have agreed to a dissolution of the firm. If it had further gone on to say that in view of that dissolution it had been arranged between the parties that the partnership property should be divided, and if I may further suppose that the amount of the estate was precisely £16,000, and it was also so stated, and that £8000 of the partnership property consisted of a sum lent upon a heritable property, for which a bond and disposition in security had been granted, and it had been arranged that that bond should be given to one of the partners, while the remaining estates of the firm should go to the other—I cannot doubt that in that state of circumstances the case would obviously have been one of partition or division of the company's estates, and not a sale by one partner to another of his share of the company's property. Now, although this case is not precisely what I have figured, it is certainly so in substance. The company's property does not happen to amount precisely to the double of the heritable estate, £16,000; it amounts to about £17,800; but the difference which requires that one partner shall, besides the bond over a heritable estate for £8000, receive £931 in cash, does not appear to me to make any difference on the result. As your Lordship has observed, it is scarcely conceivable that in the division of company assets there will not be a money payment to some extent by one partner to another. And accordingly it appears that besides the heritable property amounting to £8000, £931 is paid in cash out of the company's assets to one of the partners, the other partner remaining in possession of the other half. It appears to me that that is in substance nothing else but a division of partnership property, and I think it may be tested in this way quite distinctly, that there is a clear withdrawal from the partnership of that which was partnership property. The company while it was going on was possessed of the bond for £8000, and a number of other assets, but the bond which was company property no longer remains so in the person of the remaining partner. It is taken out of the assets by a division of the copartnership property. And so I have no difficulty in holding this to be a case of division of partnership property, and not a case in which one partner is purchasing the other partner's interest in the concern. The English cases to which reference has been made are clearly distinguishable in that respect. In these cases the remaining partner who continued to carry on the business practically retained the whole assets of the company, and if you have a case in which a partner is to go on with the business, retains the whole assets of the company, and merely gives an obligation to the outgoing partner to pay him a certain sum by instalments upon the footing that he is to go out, or merely gives a mortgage or bond over part of the company's estates, the result of that plainly is, that the company's estates remaining the same, the partner remaining in the business is buying out the partner who goes out of it, and it may fairly be represented that that is the case of one partner purchasing the interest of the other. As was said in the case of *Christie*, I think that may be represented as practically the same thing as if a third party, altogether unconnected with the firm had purchased the outgoing partner's interest by undertaking to pay him so much for that interest, leaving the assets of the company the same as they had been before. The present is not a case in which the assets of the company are so left. The assets are divided, and it appears to me, therefore, that this is clearly a case of partition, and that it is quite distinguishable from the English authorities which have been referred to.

Lord Adam—I concur, and have nothing to add.

The determination of the Court was:—

"Having heard counsel for the parties, Reverse the determination of the Commissioners: Assess the duty of ten shillings on the assignation mentioned in the foregoing Case, being the duty chargeable on a conveyance or transfer other than a conveyance or transfer on a sale, and ordain the Commissioners of Inland Revenue to repay to the appellant the sum of £44, 5s.: Find them liable in expenses," &c.

Counsel for MacLeod—Rhind. Agent—R. P. Stevenson, S.S.C.

Counsel for Inland Revenue—Sol.-Gen. Asher, Q.C. — Moncreiff — Lorimer. Agent — David Crole, Solicitor of Inland Revenue.

Tuesday, June 2.

FIRST DIVISION.

[Sheriff of Lanarkshire.

JACK *v.* NORTH BRITISH RAILWAY COMPANY.

Jurisdiction — Sheriff — Railway Company — Sheriff Courts (Scotland) Act 1876 (39 *and* 40 *Vict. cap.* 70), *sec.* 46—*Carrying on Business in Sheriffdom.*

Held that under the provisions of the 46th section of the Sheriff Courts (Scotland) Act 1876, a railway company is subject to the jurisdiction of the Sheriff of a county in which they have one of their principal places of business, though not the county in which they have their domicile, or in which the cause of action has arisen.

This was an action at the instance of Mrs Mary Gray Wilson or Jack, 13 Royal Buildings, Uddingston, widow of the deceased John Jack, commercial traveller, Drymen, against the North British Railway Company, concluding for damages for the death of her husband who had been killed at the defenders' station at Balloch through the alleged fault of the defenders.

The action was raised in the Sheriff Court of Lanarkshire at Glasgow, where the defenders have an important but not their chief office.

The station at Balloch is in the county of Dumbarton.

The defenders pleaded no jurisdiction.

The Sheriff Substitute (ERSKINE MURRAY) repelled the plea of no jurisdiction, and allowed a proof.

The pursuer appealed to the Court of Session under the 40th section of the Judicature Act for jury trial.

Before the case was argued the appellant made the following addition to the condescendence—"The North British Railway Company is incorporated by Act of Parliament, and carries on business, and has a place of business, at No. 14 West George Street, Glasgow. The said place of business is one of the defenders' principal offices, and they were duly cited thereat." She also added the following plea-in-law—"(3) The defenders' plea of no jurisdiction ought to be repelled, in respect of the provisions of sections 3 and 46 of the Sheriff Court Act 1876 (39 and 40 Vict. cap. 70)."

The appellant admitted that the action would have been incompetent for want of jurisdiction at common law. She argued that it was competent under the 46th section of the Sheriff Court (Scotland) Act 1876, (quoted in the opinion of the Lord President, *infra*). There was nothing in the terms of the section to make it inapplicable to a railway company. Personal citation on the secretary of a railway company is good—*Stewart* v. *Scottish Midland Junction Railway Company*, March 3, 1825, 14 D. 594. Although it was conceded that the domicile of the defenders was not in Glasgow, yet the defenders had there one of their principal places of business.

The respondents argued—The section founded on could not have been intended to affect the common law. It was admitted that at common law there was jurisdiction either in the county in which was the *locus delicti*, or where the company had its domicile, but neither of these was the county of Lanark, and the result of the appellant's argument would be to give jurisdiction in respect of every place of business along the whole line. From the terms of the section it was evident that it was not intended to apply to an incorporation like a railway company. Such an incorporation could not be personally cited.

Authorities—*Aberdeen Railway Company* v. *Ferrier*, January 28, 1854, 16 D. 422; *Edward* v. *Inverness and Aberdeen Junction Railway Company*, 4 Irv. 185.

At advising—

LORD PRESIDENT—This is an action of damages at the instance of the widow of a man who was killed at or near Balloch Station in the county of Dumbarton, and the action is brought in the Sheriff Court of Lanarkshire at Glasgow. An objection has been taken by the defenders that the Sheriff there has no jurisdiction to try this question, as the *locus* of the delict or *quasi* delict is not within his jurisdiction, and it is also conceded that the principal domicile of the defenders is not within the county of Lanark.

The question has been narrowed by the concession of the appellant to a consideration of the 46th section of The Sheriff Courts (Scotland) Act 1876, which she maintains confers jurisdiction on the Sheriff.

Now, keeping in view that under the statute (sec. 3) the term "person" includes not only individual, but also company, corporation, and firm, the provision of section 46 is this—"A person carrying on a trade or business, and having a place of business within a county, shall be subject to the jurisdiction of the Sheriff thereof in any action, notwithstanding that he has his domicile in another county, provided he shall be cited to appear in such action either personally or at his place of business." I understand it to be conceded that the railway company has a place of business within Lanarkshire, and that it is one of their principal places where they carry on business. It appears to me very difficult to say that the words of the statute do not precisely apply to such a case as we have here. The railway company are carrying on business, and have a place of business in Lanarkshire, and all that is necessary in order to bring the company before the Sheriff is that they shall be cited personally or at their place of business.

It has been contended by the company that if the 46th section receives this full and extensive effect an action might be brought against them in almost every county in Scotland, though the cause of action has arisen in another county. But I think that when the statute speaks of a corporation having its place of business in a county, that provision must be read in a reasonable way, and in order to ascertain the purpose of the statute we may look to other statutes dealing with the subject. We have various statutes regulating the way in which railway companies must be cited; for example, section 137 of the Companies Clauses (Scotland) Act 1845 provides that "Any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the company, may be served by the same being left at, or transmitted through the post directed to, the principal office of the company, or one of their principal offices where there shall be more than one, or being given personally to the secretary, or in case there be no secretary, then by being given to any one director of the company." Again, the Railway Clauses (Scotland) Act 1845, sec. 130, provides that "Any summons or order, or any writ or other proceeding at law requiring to be served upon the company, may be served by the same being left at, or transmitted through the post directed to, the principal office of the company, or one of their principal offices where there shall be more than one, or being given personally to the secretary, or in case there shall be no secretary, then by being given to any one director of the company." It appears to me that these provisions throw a good deal of light on the question with which we are here concerned. When it is affirmed that a company like this shall be subject to the jurisdiction of the Sheriff of a county if they have a place of business in the county, I do not think that can be read as meaning that they shall be subject to the jurisdiction if they have a roadside station in the county, or even have a station in a larger sense. Therefore I think that in order to there being jurisdiction because the defenders have a station in the county, the station must be one in which an important part of the business of the company

is carried on, and that it was not the intention of the Legislature that the meaning of the expression should be further extended. If the section is so confined in its application, I think it may be very useful and convenient.

As for the contention that by the term "person" the framers of section 46 had in contemplation merely persons who are capable of being personally served, I do not think that the section is to be so limited. Therefore, in my view, either personal service or service at the place of business would be sufficient compliance with the terms of the section. But even if there were more in the argument, I think it admits of another answer, for I do not doubt that an incorporated company is capable of being personally cited. That was decided in the case of *Stewart* v. *Scottish Midland Junction Railway Company*, 14 D. 594. In that case the only warrant was to cite the defenders personally or at their dwelling-house, and the citation was by delivery to the secretary personally, which is just the mode recognised by the Companies Clauses Act and the Railway Clauses Act, and the citation was held to be good. Therefore I come to the conclusion that if this company has a principal place of business in Lanarkshire then they can be personally served in Lanarkshire.

Any little inconvenience which might arise is sufficiently met, I think, by the last part of section 46, which allows the Sheriff, "upon sufficient cause shown, to remit any such action to the Court of the defenders' domicile in another sheriffdom."

Lord Shand—I am of the same opinion, and in the present instance I think that the case admits of very easy decision.

It is conceded that the defenders have a principal place of business in Lanarkshire, and I have no doubt that in such a case the 46th section of the statute clearly applies. Possibly we may hereafter have to decide a case as to a place of business of less importance, and with regard to that I should wish to reserve my opinion, for one can see that there is room for maintaining that the section applies to stations of less importance where the company is carrying on business.

But there can be no doubt that it was the intention of the Legislature that the statute should apply to this case. I do not think there is any difficulty with regard to the provision that the defender shall be cited personally. That just means that if you are dealing with a person, then the citation is to be personal, and if you are dealing with a company, then the citation is to be at the company's place of business, or personally on their secretary, or one of the directors. No doubt "personal" citation is more directly applicable to persons, but it does not follow that companies are to be struck out of the section, because when one turns to the interpretation it is seen that the term "person" includes "company, corporation, and firm."

Lord Mure and Lord Adam concurred.

The Court repelled the objection to the jurisdiction of the Sheriff, and ordered issues.

Counsel for Pursuer (Appellant)—Ure. Agents—Dove & Lockhart, S.S.C.

Counsel for Defenders (Respondents)—Lord Advocate Balfour, Q.C.—Graham Murray. Agents—Millar, Robson, & Innes, S.S.C.

Tuesday, June 2.

FIRST DIVISION.

[Lord Kinnear, Ordinary.

BROWN *v.* THE NATIONAL FIRE INSURANCE COMPANY.

Insurance—Defence of Fraud—Relevancy—Specification—Issue.

Averments of fraud on the part of a person assured, which, in an action by him on his policy, were *held* relevant to support a counter-issue of fraud on the part of the assurance company. Forms of issues *adjusted* for the trial of the cause.

William G. Brown, hotel-keeper, Uddingston, Lanarkshire, raised this action against the National Fire Insurance Corporation, Limited, concluding for payment of £1602, 18s., or otherwise that it ought and should be found that under the policy of insurance over his furniture and other effects the defenders were bound to concur in referring to arbitration the amount of damage occasioned thereto by a fire in his hotel at Baillieston in July 1884.

The pursuer averred (Cond. 2)—"On or about the 3rd day of May 1882 the defenders granted to pursuer a policy of insurance against loss by fire to the amount of £1850 over the following property, then situated in the premises occupied by pursuer in Baillieston as a hotel, &c., viz.—

1. On household goods, linen, wearing apparel, printed books, plate-glass, and earthenware, including looking-glasses, jewels, watches, and trinkets, musical instruments and printed music, pictures, prints, and drawings, no one picture, print, or drawing, in case of loss, to be valued at more than £10 in the insured's hotel, situated as above . . £1000 0 0
2. On stock-in-trade therein, including a cellar in sunk flat . . 450 0 0
3. On upfittings and utensils, the property of the insured therein . 150 0 0
4. On horses (no one of which to be valued at more than £35 in case of loss), harness, stable utensils, and fodder in stable, situated in yard at rear of hotel 125 0 0
5. On carriages in the coach-house situated in said yard . . . 125 0 0

Amounting in all to the sum of . £1850 0 0"

He alleged that the premiums were duly paid, and that the policy was in force on 15th July 1884; that a fire occurred in the premises on that date, by which the buildings and their contents were entirely destroyed, two horses and the carriages and some harness being alone saved; that the value of the furniture, &c., was greatly in excess of the amount insured under the policy, but that the sums claimed were restricted to the amount insured.

The sum sued for was thus made up:—

On household goods . .	£1000	0	0
On stock-in-trade . . .	450	0	0
On upfittings and utensils .	150	0	0
On harness	2	18	0
	£1602	18	0