

of pursuer, and of the said Mrs King and others, 'Yes, Mrs King, I say it was that girl that took it,' or used words to the like effect, meaning thereby that pursuer stole whisky and claret belonging to defender, to the pursuer's loss, injury, and damage? Damages laid at £100."

The Court allowed the amendments and approved of the issues for the trial of the cause.

Counsel for the Pursuer and Respondent—Jameson—Glegg. Agents—W. & J. L. Officer, W.S.

Counsel for the Defender and Appellant—Orr—W. Thomson. Agents—Galloway & Davidson, S.S.C.

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Saturday, May 20.

FIRST DIVISION.

[Sheriff of Lanarkshire.

M'SORLEY v. STEEL COMPANY OF SCOTLAND.

*Reparation—Personal Injury—Master and Servant—Process—Issue.*

In an action laid at common law and under the Employers Liability Act, the pursuer averred that he had received injuries while in the employment of the defenders, a steel company, through their fault. The defenders denied fault, and further averred that at the time of the accident the pursuer was in the employment of a third party, who had a contract with them for heating the steel at their works.

The Court approved of a single issue for trial of the cause, under which the pursuer might claim damages, whether or not it was proved that at the date of the accident the relation of master and servant existed between him and the defenders.

Michael M'Sorley raised an action of damages in the Sheriff Court at Glasgow against the Steel Company of Scotland, in respect of injuries sustained while in their employment. The action was laid at common law, or alternatively under the Employers Liability Act.

The pursuer averred that on 6th December 1892 he was assisting in charging the furnaces at the defenders' work at Newton under the superintendence of John Elliot, a foreman in their employment, and that in the course of his work he was directed to take a cobble or lump of red-hot steel to the furnace; that in consequence of the unevenness of the mill floor the cobble was thrown off the bogie on which he had placed it, and fell on him, burning him severely; that it was the duty of the defenders, their managers, and their said foreman to have seen that the floor-plates were perfectly level, and that their failure to fulfil this duty led to the accident.

The defenders denied that the pursuer was in their employment at the time of the accident, and averred that "he was employed by John Elliot, who had a contract for heating steel with the defenders." They also denied that the mill floor was defective.

The Sheriff-Substitute having allowed a proof, the pursuer appealed to the Court of Session for jury trial, and proposed an issue in the following terms—"Whether on or about 6th December 1892, the pursuer, while employed at the defenders' works at Newton, was injured in his person by a red-hot cobble falling upon him, through the fault of the defenders, to the loss, injury, and damage of the pursuer."

The defenders objected to the issue proposed, on the ground that the action as laid was directed against the defenders entirely as the employers of the pursuer, and proposed that the issue should read—"Whether the pursuer . . . while in the employment of the defenders at their works at Newton." . . .

At advising—

LORD PRESIDENT—I think that it is not necessary to have two issues in order to enable the pursuer to claim a verdict alternatively at common law and under the statute. If it be unnecessary, then it is undesirable to have more than one issue, and under the issue originally proposed by the pursuer all the questions raised on this record can be satisfactorily tried. It may be convenient that, as is very often done, the damages claimed under the statute should be stated on the face of the issue paper as well as the damages claimed at common law.

LORD ADAM concurred.

LORD M'LAREN—I agree, and on this ground, that the Employers Liability Act gives no new right of action to anyone, but only limits and restricts the application of the well-known defence of common employment. It therefore appears to me to be unnecessary, where doubts exist as to the fact of employment, to make that question the subject of a separate issue.

LORD KINNEAR was absent.

The pursuer having added to the issue proposed by him a statement of the damages he claimed at common law and under the statute, the Court approved of said issue.

Counsel for the Pursuer—Watt. Agent—John Veitch, Solicitor.

Counsel for the Defenders—Fleming. Agents—Drummond & Reid, W.S.

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