The Court adhered.

Counsel for the Reclaimers—Jameson—Salvesen. Agents—Emslie & Guthrie, S.S.C.

Counsel for the Respondent—Shaw—W. Campbell. Agents—Carmichael & Miller, W.S.

Tuesday, December 19.

FIRST DIVISION.

[Sheriff of Dumbarton.

MAIN *v.* LANARKSHIRE AND DUMBARTONSHIRE RAILWAY COMPANY.

Process—Competency of Appeal—Sheriff—Railway Accommodation Works—Railway Clauses Consolidation (Scotland) Act 1845, *sec.* 61.

The 61st section of the Railway Clauses Consolidation (Scotland) Act 1845 provides that "if any difference arise respecting the kind or number of any such accommodation works" as the railway company is bound to make, "the same shall be determined by the Sheriff." . . .

Held that it is incompetent to appeal to the Court of Session against an order pronounced by a sheriff or sheriff-substitute under this section.

The Railway Clauses Consolidation (Scotland) Act 1845 (8 and 9 Vict. c. 33), by sec. 61 provides—"If any difference arise respecting the kind or number of any such accommodation works" (as the railway company are bound under section 60 to make for the accommodation of the owners and occupiers of lands adjoining the railway) "or the dimensions or sufficiency thereof, or, respecting the maintaining thereof, the same shall be determined by the sheriff or two justices, and such sheriff or justices shall also appoint the time within which such works shall be commenced and executed by the company.

Section 150 provides—"In all cases which may come before any sheriff-substitute under this or the Special Act, or any Act incorporated therewith in which written pleadings shall have been allowed, and a written record shall have been made up, and where the evidence which has been led by the parties shall have been reduced to writing, but in no other case whatever, it shall be competent for any of the parties thereto, within seven days after a final judgment shall have been pronounced by such sheriff-substitute, to appeal against the same to the sheriff of the county by lodging a minute of appeal with the sheriff-clerk of such county or his depute, and the said sheriff shall thereupon review the proceedings of the said sheriff-substitute, and whole process, and, if he thinks proper, hear the parties *viva voce* thereon, and pronounce judgment, and such judgment shall in no case be subject to review by suspension or advocation, or to reduction on any ground whatever."

Thomas Main, market gardener, Milton, near Bowling, and the Lanarkshire and Dumbartonshire Railway Company having differed as to the accommodation works to be provided for Main's flower and fruit garden, Main presented a petition to the Sheriff at Dumbarton praying him to determine the matter.

The railway company lodged answers, but no record was made up.

The Sheriff-Substitute (GEBBIE) visited the ground accompanied by a civil engineer, and there heard explanations of parties, but no evidence was taken in writing.

Thereafter on 9th August 1893 he issued an order determining the accommodation works which the railway company were bound to make, and ordaining the same to be begun within thirty days and executed within nine months.

Against this order the Railway Company appealed to the Court of Session.

When the case came on for hearing the petitioner and respondent submitted that the appeal was incompetent, and argued—The Sheriff was invoked *qua* local administrator and not *qua* judge—*Glasgow District Subway Company* v. *Corporation of Glasgow*, November 8, 1893, 31 S.L.R. 70; and *Strain* v. *Strain*, June 26, 1886, 13 R. 1029; Deas on Railways, Appendix, p. cx., says the jurisdiction is exclusive, and certainly no appeal has been brought since the passing of the Act nearly fifty years ago. See also Browne & Theobald on Railways (2nd ed.) p. 278, and case of *Hood* v. *North-Eastern Railway Company*, 11 Eq. 116, 40 L.J., Ch. 17, there cited.

Argued for the appellants—(1) The Sheriff was here appointed to act *qua* judge in order to settle differences. If the Legislature had intended arbitration they would have appointed a man of skill. In the *Glasgow Subway* case the Court held the Sheriff was in fact appointed to act as an arbiter, and in *Strain's* case appeal was found incompetent because of the summary nature of the proceedings. (2) Where new jurisdiction was conferred on the sheriff it was with all the usual rights of appeal unless otherwise provided—*Magistrates of Portobello* v. *Magistrates of Edinburgh*, November 9, 1882, 10 R. 130; Ersk. Inst. i. 2, 7; and i. 3, 20; *Tennent* v. *Crawford*, January 12, 1878, 5 R. 433; and *Marr & Sons* v. *Lindsay*, June 4, 1881, 8 R. 748 (Bankruptcy Cases). (3) *Brown* v. *Edinburgh & Glasgow Railway Company*, March 15, 1864, 2 Macph. 875, showed that the Court of Session entertained such questions as the present by advocation, and therefore now by appeal. [LORD PRESIDENT—Suppose the order had been pronounced by two justices?]—It would have been subject to review by the Court of Session under the old method of procedure by suspension or advocation—*Buchanan* v. *Towert*, March 10, 1754, Mor. 7347; *Guthrie* v. *Cowan*, December 10, 1807, F.C.; *Anderson* v. *Campbell*, February 28, 1811, F.C.; and

might therefore be appealed against. Even the words "finally determine" in a statute did not exclude review.

At advising—

LORD ADAM—The question is whether this appeal is competent. I may point out in the first place, that the proceedings in question are entirely statutory, with regard to which the Court of Session has no original jurisdiction at all. The parties could not possibly have come to us in the first instance to have the matter of these accommodation works determined between them, and that fact at once distinguishes this case from the case of *Marr*, 8 R. 874, and the other bankruptcy cases to which we were referred. The Lord President in the case of *Marr* clearly points out the distinction. "The general rule," he says, "is that the right of appeal from an inferior to a superior court cannot be taken away except by express words. But that is a rule which may be said to be subject to some qualification, because if the jurisdiction exercised by the sheriff is a jurisdiction specially given to him by statute, and in which the Court has not previously had jurisdiction, it may be much more easily implied that the sheriff's jurisdiction is not only privative but final, and not subject to review;" and that must be so, because it appears to me that in such a case the primary question is, not whether an existing jurisdiction of the Court is to be taken away, but whether a new jurisdiction is impliedly conferred on this Court. As I understand it, the principle is that this is implied on the ground that the Court of Session has jurisdiction over all inferior courts in all civil matters, and therefore that when jurisdiction in a civil matter is conferred by statute on an inferior court, it is presumed to be conferred subject to the usual powers of review and otherwise of the Superior Court. The principle is thus stated by the Lord Justice-Clerk in the case of the *Magistrates of Portobello*, 10 R. 131—"Where," he says, "a well-known and recognised jurisdiction is invoked by the Legislature for the purpose of carrying out a series of provisions which are important for the public without any specific form of process being prescribed, the presumption is that the ordinary forms of that Court are to be observed in carrying out the provisions, and indeed generally that the Court has been adopted and chosen and selected because it is seen to be advisable that the ordinary rules of such court and the forms of its procedure shall be applied to give effect to the provisions of the Legislature Act."

The question therefore in this case is, whether, when the Legislature provided that if any difference should arise concerning the kind or nature of accommodation works, it should be determined by the sheriff or two justices, it was intended to invoke the jurisdiction of the Sheriff Court or the Justice of Peace Court with all their ordinary methods of procedure, and including the right of review by the Court of Session.

Now, although it was not brought under our notice by the parties, the Railway Clauses Act contains provisions regulating the matter of appeal in cases like the present.—[*His Lordship read the section quoted above.*]

The 151st and 152nd sections of the Act provide in like manner for appeals in the case of matters brought before the justices.

Now, it will be observed that in this there was no written record made up, there was no proof led by the parties, and therefore that there could have been no appeal even to the Sheriff. That being so, it appears to me to be difficult to come to the conclusion that, nevertheless, a right of appeal to the Court of Session was intended to be conferred. I think the clear intention of the statute was that there should be a limited appeal within the Sheriff Court itself on a certain definite class of cases, and presumably the more important, but no other appeal whatever.

It is impossible to say that the Sheriff Court is here invoked by the Legislature with its well-known and recognised jurisdiction and its ordinary rules and forms of procedure.

I think the proceedings in question are entirely statutory, and that no appeal lies to the Court of Session. I think therefore the appeal should be dismissed as incompetent.

The LORD PRESIDENT and LORD KINNEAR concurred.

LORD M'LAREN was absent.

The Court dismissed the appeal as incompetent.

Counsel for the Petitioner and Respondent — Vary Campbell — W. Thomson. Agents—W. & J. Burness, W.S.

Counsel for the Defenders and Appellants — Dickson — Ure. Agents — Clark & Macdonald, S.S.C.

Tuesday, December 19.

FIRST DIVISION.

[Lord Low, Ordinary.

ANDERSON *v.* GLASGOW TRAMWAY AND OMNIBUS COMPANY, LIMITED.

Reparation — Personal Injury — Hired Vehicle — Responsibility of Hirer for Fault of Driver of Hired Vehicle.

A woman who was entering the Glasgow Central Railway Station was injured by a hamper which fell off a passing lorry. She sued the Tramway Company, who were the owners of the lorry, for damages, on the ground that the accident had been caused by the fault of their servant, the driver. The jury returned a verdict for the pursuer. It appeared that at the time of the accident the driver of the lorry was conveying a Post Office official and a