and copies of the said report of the first company for the year ending 31st December 1912, and of the actuarial report dated 16th April 1913 on the proposed transfer by Mr Gordon Douglas as independent actuary as aforesaid, all as hereinbefore referred to, fall to be transmitted to the policyholders of the second company unless the Court otherwise directs. As it is provided by said provisional agreement that the Life Assurance and Annuity Fund of the first company shall be kept separate and distinct, and as the Life Assurance and Annuity Funds of the second company cannot in any way become liable for nor be affected by the sums due or to become due under the policies of the first company, and as the transmission of the foresaid documents to the policyholders of the second company, about 30,000 in number, would cause considerable trouble and expense, it is humbly submitted that your Lordships should direct that the said transmission may be dispensed with.

"That the petitioners having otherwise complied with the requirements of the statute, are desirous of having the proposed transfer sanctioned and confirmed by your Lordships in terms of the Assurance Companies Act 1909.

"That it is the intention of the first company to proceed by way of voluntary liquidation and a sale under the Companies (Consolidation) Act 1908."

In the petition the petitioners craved, *inter alia*, "to direct that any transmission to the policyholders of the Scottish Union and National Insurance Company foresaid of a statement of the nature of the transfer, together with an abstract containing the material facts embodied in the said provisional agreement and addendum thereto, and copies of said reports, may be dispensed with."

On the petition appearing in the Single Bills on 25th June 1903, counsel for the petitioners moved the Court to dispense with the transmission of the documents mentioned in the prayer of the petition, and referred to *Empire Guarantee and Insurance Corporation, Limited, Petitioners*, 1911 S.C. 1296, 48 S.L.R. 1038.

The Court (consisting of LORDS DUNDAS, SALVESEN and GUTHRIE, the LORD JUSTICE-CLERK being absent) without delivering opinions pronounced an interlocutor appointing the petition to be intimated and advertised, dispensing with the transmission of the documents mentioned in the prayer of the petition, and allowing all persons having interest to lodge answers within eight days after such intimation and advertisement.

Counsel for the Petitioners — Black. Agent—John Cowan, W.S.

Friday, June 27.

SECOND DIVISION.

[Sheriff Court at Falkirk.

NIMMO & COMPANY, LIMITED, *v.* REID.

Expenses — Sheriff Court—Jury Trial — Appeal—New Trial—Expenses of Appeal.

Where a new trial was granted on the grounds that the verdict had been erroneously applied and contrary to the evidence, *held—following Bond* v. *Dalmeny Oil Company, Limited*, July 15, 1909, 46 S.L.R. 920—that the pursuer was liable in the expenses of the appeal.

Peter Reid, pit bottomer, Standburn, by Avonbridge, *pursuer*, brought an action in the Sheriff Court at Falkirk against James Nimmo & Company, Limited, coalmasters, Glasgow, *defenders*, for £260 compensation under the Employers' Liability Act 1880 (43 and 44 Vict. cap. 42).

The cause was tried before a jury, who assessed the damages at £246, 7s., and the Sheriff-Substitute (MOFFATT) applied the verdict on behalf of the pursuer.

The defenders appealed to the Second Division of the Court of Session, on the grounds, *inter alia*, that (1) the verdict had been erroneously applied, as the finding of the jury did not warrant it, and (2) was contrary to the evidence.

On 27th June 1913 the Court set aside the verdict on the above grounds and allowed a new trial, whereupon the appellants moved for the expenses of the appeal, and argued—Where the Court granted a new trial on the grounds that the verdict had been erroneously applied and was contrary to the evidence, the pursuer was liable for the expenses of the appeal—*Bond* v. *Dalmeny Oil Company, Limited*, July 15, 1909, 46 S.L.R. 920.

Argued for the respondent—Where a new trial was granted the expenses should be reserved—*Macdonald* v. *Wyllie & Son*, December 22, 1898, 1 F. 339, 36 S.L.R. 262, followed in *Canavan* v. *John Green & Company*, December 16, 1905, 8 F. 275, 43 S.L.R. 200.

The Court (which consisted of LORD DUNDAS, LORD SALVESEN, and LORD GUTHRIE, the LORD JUSTICE-CLERK being absent), without delivering opinions on the question of expenses, pronounced this interlocutor—

"... Sustain the appeal: Recal the said interlocutor: Set aside the verdict, and remit the cause to the Sheriff to allow the parties a new trial, and to proceed as accords: Find the pursuer liable in expenses in this Court, and remit the same to the Auditor to tax and to report to the Sheriff, to whom grant power to decern for the taxed amount thereof, and the expenses of the first trial to be expenses in the cause and to be disposed of by the Sheriff."

Counsel for the Appellants (Defenders)—Morison, K.C.—Carmont. Agents—W. & J. Burness, W.S.

Counsel for the Respondent (Pursuer)—Constable, K.C.—Gilchrist. Agent—D. C. Oliver, Solicitor.

Friday, June 6.

FIRST DIVISION.

[Sheriff Court at Glasgow.

BABCOCK & WILCOX, LIMITED *v.* PEARSON.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *Second Schedule* (9)—*Memorandum of Agreement—Recording of Agreement in Terms not Coinciding with what Arbitrator Found to be the Agreement.*

Held (1) that a workman's own evidence and the terms of a series of receipts were sufficient to entitle an arbitrator to find it proved that his employers agreed to pay him 15s. 1d. per week in terms of the Workmen's Compensation Act 1906, being 50 per cent. of his average weekly earnings, the payments to begin as from a certain date, and (2) that such a finding entitled the workman to record a memorandum that his employers agreed to pay compensation under the Act at the rate of 15s. 1d. per week, being 50 per cent. of his average weekly earnings, beginning the payment as from said date, and "continuing the payment thereof until the same is ended, diminished, redeemed, or suspended in terms of the above-mentioned Act."

James Pearson, engine-driver, Glasgow, *respondent*, applied in the Sheriff Court at Glasgow for warrant to record a memorandum of agreement, under paragraph (9) of the Second Schedule to the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), with his employers, Messrs Babcock & Wilcox, Limited, engineers, Glasgow, *appellants*.

The Sheriff-Substitute (GLEGG) granted warrant to record the memorandum, and at the request of the employers stated a Case for appeal.

The Case stated—"The Sheriff was asked to grant warrant to the sheriff-clerk to record in the Special Register kept at Glasgow in terms of said Act a memorandum purporting to set forth an agreement between the respondent and the appellants, said memorandum being in the following terms, viz.—'The claimant claimed compensation from the respondents in respect of personal injuries to his right hand and wrist, caused by accident in the employment of the respondents at their works at Renfrew on the 28th day of February 1912. The question in dispute, which was the amount of compensation, was determined by agreement. The agreement was made on the 17th day of June 1912, and was as follows:—The respondents agreed to pay to the claimant compensation under the Workmen's Compensation Act 1906 at the rate of 15s. 1d. sterling per week, being 50 per cent. of his average weekly earnings, beginning the first payment as at the 6th day of March 1912, and continuing the payment thereof until the same is ended, diminished, redeemed, or suspended in terms of the above-mentioned Act. It is requested that this memorandum be recorded in the Special Register of the Sheriff Court of Lanarkshire at Glasgow.'

"On said memorandum being intimated to the appellants they lodged a minute of objections in the following terms, viz.—'The said Babcock & Wilcox, Limited, object to the recording of the said memorandum of alleged agreement on the ground that the memorandum is not genuine, the respondents not having made the agreement set forth in the memorandum. The claimant met with the accident as averred, and has been paid compensation since the date of the accident under the Workmen's Compensation Act 1906 at the rate of 15s. 1d. per week. No agreement, however, was made for payment of compensation except an agreement to make the weekly payments which the claimant actually received, and in particular no agreement was made to continue payments of compensation until the same should be ended, diminished, redeemed, or suspended in terms of the Workmen's Compensation Act 1906.'

"Proof was led before me on this date, the only evidence in the case being that of respondent himself, and the receipts hereafter referred to which were recovered under diligence, when the following *facts* were established:—(1) The respondent, aged forty-three, sustained severe injury to his right hand and wrist on 28th February 1912. (2) On 17th June 1912 respondent called for compensation, which was agreed upon at the rate of 15s. 1d. per week, and on 18th June 1912 he signed a receipt for payments down to that date in the following terms, viz.—'Received this 18th day of June 1912, from Babcock & Wilcox, Limited, the sum of £11, 13s. 10d., being weekly compensation to date under the Workmen's Compensation Act 1906, under which Act I elect to claim for personal injury by accident sustained by me on or about the 28th day of February 1912.

'*Signature.*—JAMES His X Mark PEARSON.

'*Occupation*—Engine Driver.

1d. STAMP

'*Address.*—6 Cavendish Street, Glasgow.

'(Signed) H. MACKINTOSH, *1st Witness.*

,, J. H. ROGER, *2nd Witness.*

'*Weekly.*'

"And on the following subsequent dates, viz.—29th July, 19th August, 2nd, 9th, 16th, and 23rd September, 8th, 14th, 21st, and 28th October, 4th, 11th, 18th, and 25th November, and 2nd, 10th, 16th, and 23rd December, all 1912, and 6th, 13th, and 20th January 1913—he signed receipts, the terms of said receipts being similar to those in