Accordingly it must not be assumed, in relation to petitions of this kind, that the Court will grant relief merely in reliance upon the statements made in the petition and on the explanations with regard to them given by counsel. But in the present case I do not think that there is anything in the petition to suggest the slightest doubt as to the good faith of the petitioners, and having regard to the explanations which Mr Gilchrist has given, I think it is one in which we may hold it to be just and equitable in the circumstances to grant the relief prayed for. The default which the petitioners made under the statute has already entailed a considerable penalty in the way of expense. I therefore move your Lordships to grant the prayer of the petition.

LORDS MACKENZIE, SKERRINGTON, and CULLEN concurred.

The Court granted the prayer of the petition.

Counsel for Petitioners--Gilchrist. Agents —Manson & Turner Macfarlane, W.S.

Saturday, November 5.

FIRST DIVISION.

(SINGLE BILLS.)

[Sheriff Court at Glasgow.

M'SORLEY *v.* ARCHIBALD.

Process — Removal to Court of Session for Jury Trial — Remit to Sheriff — Conclusions for (a) Damages for Rape, and (b) Decree of Affiliation—Motion to Restrict Conclusions by Abandoning Conclusion for Affiliation—Sheriff Courts (Scotland) Act 1907 (7 *Edw. VII, cap.* 51), *sec.* 30.

A Sheriff Court action concluding for (1) damages for alleged rape, and (2) decree of affiliation and aliment, having been remitted to the Court of Session for jury trial under section 30 of the Sheriff Courts (Scotland) Act 1907, the pursuer, in respect that the conclusion for paternity was unsuitable for jury trial, moved for leave to abandon the second conclusion and to limit the action by minute of restriction to the conclusion for damages. The Court without deciding the admissibility of the proposed restriction, but in respect that its admission would have the effect of exposing the defender to a double trial of the same question before two separate tribunals, *remitted* the case to the Sheriff for proof.

The Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51), sec. 30, is quoted *supra*, page 1.

Mrs Mary Rennie or M'Sorley brought an action in the Sheriff Court at Glasgow against John Archibald concluding for (1) damages for alleged rape, and (2) decree of affiliation of an illegitimate child, inlying expenses, and aliment of the child. The pursuer required the cause to be remitted to the Court of Session for jury trial.

On 5th November 1921, in Single Bills of the First Division, counsel for the pursuer, in respect that the second conclusion of the initial writ could not appropriately be made the subject of jury trial, moved for leave to abandon the said conclusion by minute of restriction, and cited the following authorities: — Judicature Act 1825 (6 Geo. IV, cap. 120), sec. 10; Court of Session Act 1868 (31 and 32 Vict. cap. 100), sec. 29; Sheriff Courts (Scotland) Act 1907, sec. 30, and Rules 79 and 81; C.A.S., 1913, B, i, 6, and D, iv, 5; Mackay's Manual of Practice, p. 251; Maclaren's Court of Session Practice, p. 458; *Paxton* v. *Brown*, 1908 S.C. 406, 45 S.L.R. 323; *Wilson* v. *Magistrates of Mussel burgh*, 1868, 6 Macph. 483; *Stewart* v. *Greenock Harbour Trustees*, 1868, 6 Macph. 954; *Duncanson* v. *Anderson*, 1908, 15 S.L.T. 684.

Argued for the defender — Even if restricted to the first conclusion, the case was unsuitable for jury trial. Partial abandonment was contrary to the practice of the Court—*Hay* v. *Earl of Morton*, 1862, 24 D. 1054, *aff. sub nomine White* v. *Lord Morton's Trustees*, 1866, 4 Macph. (H.L.) 53, at pages 54 and 59—and if admitted would in this case have the effect of exposing the defender to a double trial of the same question before two separate tribunals.

LORD PRESIDENT—The point which has been raised is attended with difficulty in reference both to the Judicature Act and to the practice of this Court in the matter of the admission of minutes of restriction. It is, however, unnecessary to come to a decision upon it, because, assuming that we had a discretion to give effect to the motion which Mr Crawford has made to us, there still remains the question whether in the circumstances of the case that discretion could be exercised with fairness or propriety in relation to the position of the defender. It is clear that all the issues of fact presented under the head of the claim of damages for seduction, would (along with others, no doubt) be involved in the issues presented under the conclusions with regard to paternity. Accordingly, to grant such a motion as Mr Crawford has submitted to us would be to put the defender to a double trial of the same question before two different tribunals. That is a hardship for which no right or interest on the part of Mr Crawford's client affords any sufficient warrant, and it seems to me therefore that the proper course is to send the case back to the Sheriff for proof.

LORDS MACKENZIE, SKERRINGTON, and CULLEN concurred.

The Court refused the motion to restrict the conclusions of the action, and remitted the cause to the Sheriff-Substitute to proceed.

Counsel for Pursuer—Crawford. Agent —R. J. Calver, S.S.C.

Counsel for Defender—Duffes. Agents— J. & A. F. Adam, W.S.

HIGH COURT OF JUSTICIARY.

Thursday, November 10.

(Before the Lord Justice-Clerk, Lord Salvesen, and Lord Ormidale.)

[Sheriff Court at Ayr.

SLOAN AND OTHERS *v.* MACMILLAN.

Justiciary Cases — Complaint — Intimidation—Riotous Mob—False Statements to Colliery Workers as to Numbers of Mob—Peaceful Persuasion — Trades Disputes Act 1906 (6 *Edw. VII, cap.* 47).

Three miners were convicted of having on the occasion of a coal strike formed part of a riotous mob which, acting of common purpose with a view to unlawfully compel those working at a colliery to stop work, invaded the colliery and by threats of violence carried out their purpose. It was proved that, accompanied by about fourteen others, they had proceeded during the night to the colliery, and having obtained admittance to the works ordered those in charge of the colliery to bring up any men who were in the pit and to extinguish the fires, informing them that there were several hundreds of desperate men outside whom there might be difficulty in restraining from violence, and that the colliery officials, believing their statement, which was untrue, and considering resistance to be hopeless, obeyed the orders. *Held*, on appeal, that the facts proved were not consistent with peaceful persuasion, and that the accused had been rightly convicted.

The Trades Disputes Act 1906 (6 Edw. VII, cap. 47) enacts—Section 2—"(1) It shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union, or of an individual employer or firm, in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working."

Alexander Sloan, James Nimmo, and Robert Sloan, miners, Rankinston, Ayrshire, *appellants*, and Henry Sloan, miner, Rankinston, were charged in the Sheriff Court at Ayr at the instance of Robert Duncan Macmillan, Procurator-Fiscal of Court, *respondent*, upon a summary complaint in the following terms:—"You are charged at the instance of the complainer that on 8th April 1921, at Houldsworth Colliery, parish of Dalrymple, Ayrshire, you formed part of a riotous mob which, acting of common purpose with a view to unlawfully compel Wallace Boyns, engineer, Cloverpark, Waterside; John Orr M'Lean, engineer, Bellmont, Dalmellington; John Hazel, stoker, 44 Truffhill Row, Waterside; George Shaw, ammonia-works manager, 7 Greenhill, Waterside; Henry Boswell, clerk, Barley Park, Waterside; William Fulton, clerk, Chapel Row, Waterside; George Richmond, clerk, Greenhill, Waterside; Alexander Watson, clerk, Waterside House, Waterside; and Benjamin Yates, clerk, Broomknowe, Dalmellington, who were then working at said colliery, to abstain from doing said work and to stop the carrying on of work at said colliery, did, in breach of the public peace and to the alarm of the lieges, invade the said colliery by night, viz., at 2·30 a.m. of said date, demand that the said Wallace Boyns, John Orr M'Lean, John Hazel, George Shaw, Henry Boswell, William Fulton, George Richmond, Alexander Watson, and Benjamin Yates should at once abstain from work, and threaten them with violence if they did not so abstain, forcibly and unlawfully take possession of the stokehole at said colliery and draw and extinguish the boiler fires therein, and did unlawfully compel the said Wallace Boyns, John Orr M'Lean, John Hazel, George Shaw, Henry Boswell, William Fulton, George Richmond, Alexander Watson, and Benjamin Yates to abstain from working, and did stop the carrying on of work at said colliery."

The appellants pleaded not guilty.

On 7th June 1921, after evidence had been led, the Sheriff (LYON MACKENZIE) found the charge proved against the appellants and sentenced them to two months, one month, and fourteen days' imprisonment respectively.

On the application of the accused a Case was stated for appeal.

The *facts* proved were as follows:—"1. In consequence of the coal strike pumping was being carried on at Houldsworth Colliery aforesaid, belonging to the Dalmellington Iron Company, Limited, by means of voluntary labour. To continue successfully to keep the pumping operations going it was necessary to have twelve furnaces connected with six boilers continuously fired. 2. On the evening of Thursday 7th and the morning of Friday 8th April 1921, on the shift to keep the pumping going, in addition to the 'voluntary workers' at Houldsworth Colliery there were two other men engaged underground. The said Wallace Boyns was in charge of the pit and control of the men working thereat. There were six boilers and twelve furnaces being kept going. 3. The appellants along with certain other persons, to the number of at least seventeen persons acting in concert with them, and in furtherance of a resolution of the local branch of the Miners' Union passed on 7th April 1921, went in the early morning of Friday, 8th April 1921, from Rankinston, about four miles distant, to Houldsworth Colliery with the object of endeavouring to stop the 'voluntary workers' then engaged in the pumping operations. 4. Neither the appellant Alexander Sloan, who was the leader of the company, nor any of the other sixteen persons associated with him, had been prior to the coal strike in the employment of the Dalmellington Iron Company, Limited, at the Houldsworth Colliery or at any other of their works, or held any position in connection therewith. 5. The appellants and the other persons asso-