unless there has been something of the nature of fault on their part in holding up the capital. Nothing of that kind is alleged in the present case, and I think it would be fair that the rate of interest should be not more than the average rate earned by the trustees upon the funds in their hands. Possibly the parties may be able to adjust the rate."

On 17th December 1901 the Lord Ordinary pronounced an interlocutor finding, *inter alia*—(1) that the claimants who were legatees were entitled to the unpaid balances of the capital sums of their respective legacies, with interest thereon from 14th June 1896; (2) that the claimants who were annuitants were entitled to the unpaid balances of all termly payments falling due to them respectively prior to 14th June 1896, with interest thereon from said date, and to the unpaid balance of each termly payment falling due after said date, with interest thereon from the date when said payments respectively fell due; (3) that the rate of interest payable was the average rate of interest yielded by the trust estate during the period since 14th June 1896.

This case was subsequently reclaimed and settled by joint-minute of February 4, 1904.

Counsel for James Ewing's Trustees and Others—Craigie. Agents—Webster, Will, & Company, S.S.C.

Counsel for Cameron's Trustees—Neish. Agents—Webster, Will, & Company, S.S.C.

Counsel for the Free Church of Scotland, and Others — Orr. Agents — Cowan & Dalmahoy, W.S.

Counsel for the Trustees of John Crum and Others — Kippen. Agents — Bell & Bannerman, W.S.

Thursday, June 2.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

ROBERTSON *v.* S. HENDERSON & SONS, LIMITED.

Minor—Reduction of Contract on Ground of Lesion—Competency—Agreement Discharging Claim under Workmen's Compensation Act 1897—*Workmen's Compensation Act* 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 1 (3), *Second Schedule*, 12 *and* 14 (*d*).

A minor who was in right of compensation under the Workmen's Compensation Act in respect of injuries suffered in the course of his employment, granted a discharge signed by him and his father (who was his curator) acknowledging receipt of a sum of money paid to him by his employers as "in full payment and satisfaction of all claims" at his instance against them in respect of his injuries, and with the consent of his father discharging all such claims. The discharge was granted in pursuance of a settlement arranged by letters between the law-agent of the minor's father and the law-agent of the employers.

In an action by the minor to have the settlement and discharge reduced on the ground of minority and lesion, he averred that he and his father were under the belief induced by the employers that the employers had agreed as part of the settlement to retain him in their employment; that but for this belief they would not have signed the discharge; that nevertheless the employers had dismissed him from their employment without fault on his part, and that he having ascertained that the employers had not by the settlement as concluded undertaken an obligation to retain him in their service, the sum paid under the settlement and discharge was grossly insufficient compensation. *Held* (1) that the settlement and discharge were voidable at common law on the ground of minority and lesion, and (2) that the averments of minority and lesion were relevant to go to proof.

James Robertson, ovensman, Inverleith Mains, Edinburgh, brought this action against S. Henderson & Sons, Limited, biscuit makers, Edinburgh, concluding for the reduction of (1) a letter of offer dated March 23rd 1900, addressed by the agent of the pursuer's father, who as such was the pursuer's curator and administrator-in-law, to the agent of the defenders, and a letter of acceptance of the same date addressed by the agent of the defenders to the agent of the pursuer's father as aforesaid; and (2) a receipt and discharge dated March 30th 1900 granted by the pursuer and his father as his curator and administrator-in-law in favour of the defenders.

Prior to October 2nd 1903 the pursuer was an ovensman in the employment of the defenders at their biscuit works.

On 2nd November 1899, when the pursuer was attending to a dough-breaking machine in the said biscuit-making premises, and in the defenders' employment, his right hand was caught between the rollers of the said machine and seriously injured. It was found necessary to amputate the third and fourth fingers, and although the two remaining fingers were saved they became contorted and fixed in a flexed position, and will remain so permanently. The pursuer has thus to a great extent lost the use of his right hand through said accident, and was otherwise injured. At the time of the accident the pursuer was in receipt of an average weekly wage of 29s. 9d., which nominally included 4s. 9d. as for overtime, which, however, he regularly had in his said employment. The defenders agreed to pay him compensation under the Workmen's Compensation Act at the rate of 12s. 6d. weekly, and they made said weekly payments accordingly from the date of the accident down to the date of the receipt and discharge under reduction in this action. In or about the month of March 1900 the pursuer was so far

recovered as to be able to work, and he inquired of the defenders whether they would take him back into their employment. They agreed to do so, but refused to give him more than £1 per week of wages to begin with.

The pursuers averred that proposals were made for a settlement of the compensation due to the pursuer by the defenders, and that the defenders agreed, as he understood, to pay pursuer the sum of £25, and a sum of £5, 5s. of expenses, and to keep him in their employment, and he stated that he now ascertained that there was no such obligation undertaken by the defenders.

The terms of the settlement were expressed in the letter of Mr Charles Irvine, S.S.C., the agent of Alexander Robertson, pursuer's father and curator and administrator-in-law, to Mr R. S. Rutherford, Solicitor, agent for defenders, dated 23rd March 1900, in the following terms:—"With reference to your call yesterday, I have now seen my clients, and have got them to agree to settle on the lines you indicated to me, viz., £25 to the lad, and £5, 5s. of expenses. If, therefore, you will kindly send me your cheque and a receipt, I will undertake to get the letter signed by the lad and his father. I accept your assurance that while your clients cannot guarantee a permanent situation, they will do all in their power to keep him in their employment." And in the letter of the same date from Mr Rutherford, the defenders' agent to Mr Irvine, in the following terms:—"I have your letter of 23rd inst., in which you state that your clients are prepared to accept £25 and five guineas of expenses in discharge of all claims against Messrs Henderson & Sons, Limited, which offer I now accept on behalf of Messrs Henderson & Sons, Limited. I shall send you the discharge to-morrow to be signed by your client and his father. I shall send a copy of your letter to Messrs Henderson & Sons, Limited, and draw their attention specially to the latter part of the letter."

These letters were the documents *first* sought to be reduced.

Thereafter a receipt and discharge for the sum above mentioned was prepared by the defenders' agent and signed by the pursuer's father as his curator or administrator-in-law, and the pursuer also, at his father's request, signed the receipt and discharge on 30th March.

The receipt and discharge, which was the document *second* sought to be reduced, was in the following terms:—"I, James Robertson, residing at ten Wardlaw Place, Gorgie Road, Edinburgh, with consent and concurrence of my father, Alexander Robertson, residing there, as my curator and administrator-in-law, do hereby acknowledge to have received now and formerly from Simon Henderson & Sons, Limited, Grove Biscuit Factory, Edinburgh, the sum of thirty-eight pounds, two shillings and sixpence sterling, together with the further sum of five pounds, five shillings sterling in settlement of my agent's fee, making in all the sum of forty-three pounds, seven shillings and sixpence sterling, in full payment and satisfaction of all claims at my instance against the said company in respect of injuries sustained by me, the said James Robertson, to my right hand in their factory on or about the third day of October Eighteen hundred and ninety-nine, and in particular of all claims for compensation competent to us against the said Simon Henderson & Sons, Limited, at common law, under the Employers Liability Act 1880 and the Workmen's Compensation Act 1897, all of which claims are, with the consent and concurrence of the said Alexander Robertson, hereby discharged: And I, the said Alexander Robertson, warrant the above discharge at all hands."—[*Here followed testing clause with signatures of pursuer and his father, and the witnesses*].

This discharge and receipt was sent to the defenders' agent and payment of the sum above mentioned was received.

The pursuer further averred as follows:—"(Cond 5) Prior to the said pretended settlement the defenders' manager stated to pursuer's father, referring to pursuer, that 'his work was there for him,' and that he would get back his old situation. The pursuer's father when he signed the said receipt and discharge was under the belief, induced by the defenders, that the defenders could not dismiss pursuer, and had agreed to keep him in their service so long as he wished to work there. But for that he would never have signed the said discharge. . . . (Cond. 6) Upon said payment of £25 being made, the pursuer returned to the defenders' employment at the wage of £1 weekly for the period of one year. Thereafter he was instructed to resume the work of an ovensman, and his weekly wage was increased to 22s. Owing to the crippled state of his hand he was unable to work with his former skill and was also slower at his work, but he continued to discharge his duties faithfully and to the best of his ability and performed the full work of an ovensman until 2nd October 1903, when the defenders, in breach of the undertaking come to before condescended on, and without any true cause or any reason assigned, dismissed him from their employment on a week's notice. . . . (Cond. 7) The pursuer was at the date of signing said receipt and discharge a minor. He was born on 10th December 1880. The said pretended agreement and receipt and discharge were executed and granted to his great hurt and lesion. At their date he was entitled in perpetuity, or until commuted, in terms of the Workman's Compensation Act 1897, to such weekly compensation up to the half of his weekly wage prior to the accident as would bring his present earnings up to the amount of his former earnings. After his injury it would have been impossible for him to obtain employment in the open market at his former work. The crippled condition of his right hand has greatly restricted the classes of employment open to him, and

such work as he could do is very difficult to obtain. . . . (Cond. 8) By the said pretended settlement and discharge the pursuer has suffered great loss and lesion. The sum paid in respect of it is grossly insufficient compensation for the loss of wages which the pursuer has suffered and would continue to suffer under employment at the rate of wages paid him by the defenders from the time of his resuming work after his injury until his dismissal."

The pursuer pleaded—"The said arrangement embodied in the letters of offer and acceptance and the said pretended receipt and discharge having been made and executed by or on behalf of the pursuer while in minority, and to his great hurt, prejudice, and lesion, decree of reduction should be pronounced as concluded for, with expenses."

The defenders pleaded, *inter alia*, as follows:—"1. No relevant case. 4. The defenders are entitled to absolvitor, in respect (*a*) that the documents challenged concluded a fair and reasonable settlement of a doubtful claim at the pursuer's instance; (*b*) that said documents were acted upon as binding upon pursuer and defenders both prior and subsequent to the pursuer's majority; (*c*) that the pursuer is barred *personali exceptione* from now challenging them; and (*d*) that *restitutio in integrum* is now impossible.

On 10th March 1904 the Lord Ordinary (KINCAIRNEY), before answer, allowed the pursuer a proof of his averments on record and to the defenders a conjunct probation.

Opinion.—"I am of opinion that this case is relevant and must go to proof. I do not appreciate the argument that the plea of minority and lesion does not apply because the settlement was of an alimentary claim. I do not see why it should be said to be of an alimentary claim; and I have not been able to see the application of the cases quoted. I think that lesion is relevantly averred. Whether it will be proved is a different matter; and as to that there may be difficulties. There need be no difficulty about restitution, which will only consist in repayment of the sum paid with interest; and decree of reduction will not be pronounced unless restitution is provided for."

The defenders reclaimed, and argued—The settlement and discharge were carried out in accordance with the provisions of the Workmen's Compensation Act 1897, which expressly brought the parties into the position of making an agreement as a competent mode of determining the amount of compensation (sec. 1 (3)), and besides giving full effect to any agreement entered into (Second Schedule, 14 (*b*)), provided that any sum awarded as compensation shall be paid on the receipt of the person to whom it is payable under any agreement . . . (Second Schedule, 12). The agreement and receipt of the person to whom the money is paid are thus made final, and this action was incompetent as being a device to get behind the means provided by the Act for effecting a settlement. The doctrine of minority and lesion did not apply in cases when the minor and the person with whom he contracted were put by statute into the position of being compelled to contract with one another. The averments of lesion were necessarily irrelevant, since the fact of the existence of lesion was ascertainable only by the award of an arbiter, and the Court were not in a position to speculate as to what amount of compensation an arbiter might have awarded. The question of whether there was lesion was a question of fact which could not now be ascertained, and further, it was a ground for refusing reduction that *restitutio in integrum* was now impossible—Bell's Com. (M'L. ed.), i. 129, 130, 131; *Galbraith* v. *Lesly*, 1676, M. 9027; *Heddel* v. *Duncan*, June 5, 1810, F.C.; *Jack* v. *North British Railway Company*, December 17, 1886, 14 R. 263, 24 S.L.R. 211; *Cooper* v. *Cooper's Trustees*, January 9, 1885, 12 R. 473; February 24, 1888, 15 R. (H.L.) 21, 22 S.L.R. 314, 25 S.L.R. 400.

Argued for the pursuer and respondent—This was not a mere agreement of discharge of claims under the Workmen's Compensation Act; it included much else. But even regarded as an agreement under that Act there was no incompetency in reducing the settlement and discharge on the ground of minority and lesion, as the provisions of the Act referred to by the reclaimers assumed the existence of an agreement valid at common law, and the pursuer averred that there was here no such valid agreement. In order to ground an action of reduction on the ground of minority and lesion, it was unnecessary to show the exact amount of lesion. It was enough to show enorm lesion, namely, substantial prejudice. In this case there clearly had been substantial prejudice, for it was to be presumed that an arbiter would act reasonably in fixing compensation—Ersk. i, 7, 34; Bell's Princ., sec. 2100; *Dennistoun* v. *Mudie*, January 31, 1850, 12 D. 613; *Cochrane* v. *Trail & Sons*, November 1, 1900, 3 F. 27, 38 S.L.R. 18.

At advising—

LORD PRESIDENT—The question which we have to decide is whether the pursuer has stated a case relevant to be remitted to probation, or whether the action should, as the defenders maintain, be dismissed as irrelevant.

The following are the material allegations of facts:— On 2nd November 1899, when the pursuer was attending to a dough-breaking machine in the defenders' premises, and in their employment, his right hand was caught between the rollers of the machine and seriously injured. It was found necessary to amputate the third and fourth fingers, and although the two remaining fingers were saved, they became contorted and fixed in a bent position, and are likely to remain in that position permanently.

At the time of the accident the pursuer was in receipt of an average weekly wage

of 29s. 9d., the defenders agreed to pay him compensation under the Workmen's Compensation Act at the rate of 12s. 6d. weekly, and they made this payment to him from the date of the accident down to the date of the receipt and discharge now sought to be reduced.

In the month of March 1900 the pursuer had so far recovered as to be able to work, and he inquired of the defenders whether they would receive him back into their employment. They agreed to do so, but refused to give him more than £1 per week of wages. Proposals were afterwards made for a final settlement of the compensation which should be paid to the pursuer by the defenders, and the defenders agreed, as the pursuer says he understood, to pay him the sum of £25, with £5, 5s. for expenses, and to keep him in their employment. He states that he has now ascertained that no obligation to do this was undertaken by the defenders. The terms of the settlement were expressed in a letter by the agent of the pursuer's father and curator or administrator-in-law to the agent of the defenders, and a written reply by the latter, both dated 23rd March 1900. Afterwards a receipt and discharge for the sum above mentioned was prepared by the defenders' agent, and signed by the pursuer's father as his curator or administrator-in-law, and the pursuer also, at his father's request, signed the receipt and discharge on 30th March 1900. This document was afterwards sent to the defenders' agents and payment of the sum above mentioned was made.

It is alleged by the pursuer that his father, when he signed the receipt and discharge, was under the belief, induced by the defenders, that they could not dismiss the pursuer, but that they had agreed to retain him in their service as long as he desired to remain in it, and that but for this belief, he would not have signed the receipt and discharge.

Upon the payment of £25 being made the pursuer returned to the employment of the defenders at a weekly wage of £1, and remained in that employment for a year. His wages were afterwards increased to 22s., and he states that he performed his work to the best of his ability until 2nd October 1903, when the defenders dismissed him from their employment on a week's notice without reason assigned. He alleges that no fault was found with him.

At the date when the receipt and discharge was signed the pursuer was in minority, and he avers that the granting of this document was to his great hurt and lesion, that at its date he was entitled in perpetuity or until commuted in terms of the Workmen's Compensation Act to such weekly compensation up to the half of his weekly wage prior to the accident as would bring his present earnings up to the amount of his former earnings, and that it is now impossible for him to obtain employment in the open market at his former work or wages.

I concur with the Lord Ordinary in thinking that the pursuer's statements are relevant and that a proof of his averments before answer should be allowed.

The defenders' counsel maintained (1) that there cannot be a relevant averment of lesion where the amount of the compensation to which the claimant is entitled depends upon the award of an arbiter; (2) that the plea of minority and lesion does not apply to cases which like the present relate to what the defenders describe as an alimentary payment; and (3) that a proof should not be allowed to the pursuer because he cannot give restitution. But it appears to me that none of these arguments are well founded.

(1) As to the first, it is to be presumed that an arbiter will fix the amount of compensation justly and intelligently, and to prevent an injured person from having the amount due to him so fixed appears to me to be to his lesion. As to the defenders' second argument, I am unable to see any ground for holding that the plea of minority and lesion should not apply, even if this was to be regarded as an alimentary claim. It is a claim for money, and there does not seem to be any good reason for distinguishing it in this matter from any other money claim. In like manner I consider that this is not a case to which the plea of inability to give restitution applies, as what is sought is simply an adjustment of money claims.

For these reasons I am of opinion that the interlocutor of the Lord Ordinary should be adhered to.

LORD ADAM concurred.

LORD KINNEAR—I agree. It was argued by the defenders' counsel that the whole question of minority and lesion was excluded by the Act of Parliament, because the Act of Parliament brings the employer and the injured workman necessarily into the position of bargaining with one another, and this implies that once that bargain is made it must be carried out and receive full effect. I think this is quite an unsound view of the statute. The Act of Parliament gives compensation in certain circumstances, and allows it to be fixed either by agreement or by arbitration. But when it allows the compensation to be fixed by agreement it assumes that the agreement is valid and binding according to law. It does not purport to lay down the conditions on which agreements may be held as valid in law, but assumes that the agreement has been made in such a way as to be valid and binding. If the agreement is invalid or voidable upon any of the grounds recognised by the common law, there is nothing in the statute to prevent its being set aside. It is true there is a provision that "any sum awarded as compensation shall be paid on the receipt of the person to whom it is payable under any agreement or award." It is said that the receipt of the person to whom the money is paid is conclusive whether he was in majority or minority. I do not say whether this contention is sound or not. However that may be, nobody disputes that the receipt is valid and binding. Nobody

disputes that the money was paid. The question is, whether the agreement on which the payment proceeded is voidable on the ground of minority and lesion. For the reasons already stated I think that question is left by the statute to be decided upon the ordinary rules of the common law.

The second point is that it is impossible for this Court to determine whether the pursuer was prejudiced or not, because we cannot tell what compensation an arbiter would have awarded or might now award. I agree with your Lordship that this contention is not sound. It may be possible to find that a sum fixed by agreement is less than a reasonable arbiter could have awarded, although the precise sum to be given by such an arbiter cannot be ascertained. But apart from the question of amount, the pursuer avers a special ground of prejudice from the terms of the contract. He says he assented to the agreement on the footing that he was to be kept on in the defenders' employment, and the argument accordingly is that if he had known what he was about, he would not have accepted a small sum down in full of his claims. It is admitted that the agreement as concluded gives the pursuer no right to future employment, and also that his averment of his understanding of the agreement would not be sufficient to support an action on the ground of error or misrepresentation. But these are just the conditions which give him a remedy on the ground of minority and lesion if he was in fact a minor and has in fact been prejudiced.

The Lord Ordinary may very probably be right in thinking that the pursuer may have some difficulty in proving his averments, but I agree that he has made relevant averments which he should be allowed to prove if he can.

LORD M'LAREN was absent.

The Court adhered.

Counsel for the Pursuer and Respondent —George Watt, K.C.—Mercer. Agent— John A. Tweedie, Solicitor.

Counsel for the Defenders and Reclaimers —Campbell, K.C.—T. B. Morison. Agent —R. S. Rutherford, Solicitor.

Saturday, June 4.

SECOND DIVISION.

[Lord Kyllachy, Ordinary.

FERGUSON *v.* WILSON.

Contract—Contract Induced by Misrepresentation—Reduction—Esssential Error —Innocent Misrepresentation —Fraud—Partnership.

In December 1902, A, an engine manufacturer, advertised for a partner. B replied to the advertisement, and at an interview with A in January 1903 the latter informed him that his business was "booming and bursting to get out," and supplied him with the balance sheets for 1899, 1900, and 1901. After examination of these, B's father, who was advising B, pointed out to A that the balance sheet for 1901 showed a falling off in profits. A in answer explained to B and his father that this was accounted for by a branch of the business having been given up during that year, but that the business was progressive, that 1902 was the best year he ever had, and would show the largest profit which the business had ever produced. On the faith of this statement B signed an agreement to enter into partnership and initialled a draft contract of partnership.

When the balance sheet for 1902 was made up it showed not a profit but a loss.

In an action for the reduction of the agreement and draft contract brought by B against A, *held*, after a proof, (1) that B could not reduce the contract on the ground that, in signing the agreement, he was under the impression that it was only provisional, there being no proof that this impression was due to any representation made by A, but (2) that B entered into the contract under essential error induced by A's misrepresentation as to the profits of 1902, and was therefore entitled to reduce the contract without proof of fraud on the part of A.

In December 1902 Charles Fyfe Wilson, a gas-engine and oil-engine manufacturer in Aberdeen, carrying on business under the firm name of C. F. Wilson & Company, advertised for a partner, specifying in the advertisement the amount of capital which the new partner would require to bring into the business, viz., about £2500. James Lewis Ferguson replied to the advertisement, and after negotiations between Mr Ferguson and his father on the one side and Mr Wilson on the other a minute of agreement between the parties was signed and a draft contract initialled on 27th January 1903.

In June 1903 Mr Ferguson raised an action against Mr Wilson concluding for the reduction of the minute of agreement and the draft contract.

The pursuer pleaded—"The pursuer having been induced to sign the said minute of agreement and initial the said draft contract of copartnery—(1) Under essential error; (2) Under essential error induced by the defender; (3) Under essential error induced by the false and fraudulent representations of the defender—is entitled to have the same reduced."

The defender pleaded—"(1) No relevant case. (2) The averments of the pursuer, so far as material, being unfounded in fact, the defender is entitled to absolvitor with expenses."

A proof was led.

The facts leading up to the contract are stated in detail in the opinion of the Lord Ordinary (KYLLACHY).