The control of the water supply is vested by Act of Parliament in the District Committee of the Middle Ward, and the County Council furnish the police of the burgh. As regards drainage, the effect of the extension would be to vest the control of the drainage in a joint committee. This may be very proper if it be assumed that revision of boundaries is necessary, but it is not in itself an argument in favour of revision. For these reasons I suggest to your Lordships that the order of the Sheriff appealed from should be reversed, and that the existing boundaries of the burgh should be found to be the proper boundaries for the purposes of the Burgh Police Act 1892.

While we are under the disadvantage of not having the same knowledge of the locality as is possessed by the Sheriff of the county, it is satisfactory to know that our judgment gives effect to the impression of the Sheriff as to the merits of the application, although in the Sheriff's view of his duties under the statute he had not felt free to give effect to that impression.

Counsel for the petitioners moved for expenses in both Courts (*Clydebank* case, *cit. sup.*)

Counsel for the respondents opposed this motion (*White* v. *Magistrates of Rutherglen*, January 18, 1897, 24 R. 446, 34 S.L.R. 387).

The Court recalled the order of the Sheriff and found the petitioners entitled to the expenses of the appeal.

Counsel for the Petitioners — Clyde, K.C.—Blackburn. Agents—Ross Smith & Dykes, S.S.C.

Counsel for the Respondents—Wilson, K.C.—Wm. Thomson. Agents — Bruce, Kerr, & Burns, W.S.

Thursday, July 7.

FIRST DIVISION.

[Sheriff Court of Lanarkshire at Glasgow.

M'NAB *v.* FYFE.

Process—Appeal for Jury Trial—Proof or Jury Trial.

An action under the Employers Liability Act 1880 having been appealed from the Sheriff Court to the Court of Session for jury trial, the Court *refused* the appeal and *remitted* the case to the Sheriff for proof, upon the ground that on the face of the record the case was a small one and more suitable for proof in the Sheriff Court than for jury trial in the Court of Session.

Neil M'Nab, painter, 30 Hinshaw Street, Glasgow, brought an action against Robert Fyfe, painter, 61 St George's Road, Glasgow, in the Sheriff Court of Lanarkshire at Glasgow, under the Employers Liability Act 1880, concluding for payment of £300.

The pursuer was a journeyman painter in the employment of the defender, and averred that he was sent by the defender along with some other men to paint certain pillars in New City Road, Glasgow, and that to do so he had to go to the top of a 26-foot ladder.

The pursuer further averred—"(Cond. 2) Defender's foreman, following the usual custom in the trade in similar circumstances, posted another man below at the foot of the ladder to steady it. This was absolutely necessary for the safety of the man above, as the pillar was a round one, and afforded no firm or sufficient grip to the ladder, which required to be kept steady by a man below. (Cond. 3) While pursuer was painting said pillar as aforesaid his foreman ordered away the man at the foot of the ladder and replaced him by a young boy, who was not able to hold the ladder steady, with the result that it slipped from the pillar and fell to the ground, a distance of 26 feet, bringing the pursuer violently to the ground also, and severely injuring him. (Cond. 4) The said foreman or superintendent (whose name is unknown to the pursuer) is a person whose sole or principal duties are those of superintendence, and who is not ordinarily engaged in manual labour, and is also a person whose orders the pursuer and his fellow-labourers were bound to conform to. Said foreman was negligent in removing the man who was steadying the ladder, and replacing him by a young boy, who was manifestly unable to steady such a long and heavy ladder with a painter at the top, and it was in consequence of his negligent orders that the accident to the pursuer occurred. Pursuer was not aware of any alteration having been made, and continued at his work till the accident happened . . . . (Cond. 7) Pursuer sustained severe and extensive bruising of his right side, which has since totally incapacitated him from work of any kind. He has also sustained a very severe shock to his system, and has since the date of the said accident been under medical treatment, and it is likely that he will be incapacitated for work for a considerable time to come."

The defender denied the material averments of the pursuer, and pleaded that the action was irrelevant.

The Sheriff-Substitute (STRACHAN) allowed a proof.

The pursuer appealed to the Court of Session for jury trial.

In the Single Bills the defender objected to the cause being tried by a jury, upon the ground that the averments of fault on the part of an unknown servant alleged to be a foreman were vague; that the injuries condescended on were trifling, and that in the whole circumstances it was not right that the defender should be subjected to the expense of a jury trial.

LORD PRESIDENT—On the face of the record this is a small case, and more suitable for proof in the Sheriff Court than for

jury trial in the Court of Session. Proceeding upon that view we have remitted other similar cases to the Sheriff Court for proof, and I am of opinion that this would be the proper course to follow in the present case.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court refused the appeal and remitted the case to the Sheriff for proof.

Counsel for the Pursuer and Appellant—Crabb Watt, K.C.—H. A. Young. Agents—Oliphant & Murray, W.S.

Counsel for the Defender and Respondent—George Watt, K.C.—Leadbetter. Agent—Andrew H. Hogg, S.S.C.

Thursday, July 7.

FIRST DIVISION.

[Lord Low, Ordinary.

DUKE OF ARGYLL *v.* BULLOUGH.

Superior and Vassal—Casualty—Composition—Year's Rent or Annual Value of Subjects—Valuation Roll not a Measure of Annual Value as between Superior and Vassal.

The annual value appearing in the valuation roll is not binding on a superior and vassal as the measure for determining the amount of a casualty, and where the parties differ as to the annual value the sum due to the superior as composition must be fixed by proof.

The Duke of Argyll, immediate lawful superior of the island of Rum, in the parish of The Small Isles and county of Inverness, brought this action against Sir George Bullough, proprietor of the said island of Rum, for declarator that by the death of the Marquis of Salisbury, who was the last expressly entered vassal in the said island of Rum, a casualty, being one year's rent or annual value of the lands, became due to him as superior of the lands, and that the said casualty was still unpaid, and concluding for payment of £2000 as one year's rent or annual value of the said lands.

The Marquis of Salisbury, the last expressly entered vassal, sold the lands to Captain Farquhard Campbell of Aros in 1869. The said Captain Farquhard Campbell sold the lands to the defender's father the deceased John Bullough in 1888. The defender succeeded to the lands on the death of his father, and was a singular successor of the Marquis of Salisbury, the vassal last expressly entered in the said lands.

The pursuer averred—"(Cond. 6) The said Marquis of Salisbury died on 22nd August 1903, and the entry of singular successors in the said lands and others being untaxed, the defender, as a singular successor in room of his said father of the said Marquis of Salisbury, thereupon became liable to pay to the pursuer as superior a composition, being one year's rent or annual value of the said lands and others under the usual deductions. The said lands, which constitute the whole island of Rum, are unlet and in the defender's own hands. The said island naturally forms a very valuable and attractive sporting estate. Very large sums, moreover, have been expended by the defender and his father in erecting a mansion-house and other buildings and in laying out policies and other pleasure-grounds, and generally in improving the amenity of the estate. The pursuer believes and avers that if the defender were to let the said island he could easily obtain a yearly rent of £3000 therefor. The pursuer, however, is willing to accept the sum of £2000 as in full of said composition. The defender, however, has refused to pay more than the sum of £337, 7s. 7d."

The defender admitted that the Marquis of Salisbury was the last-entered vassal in the lands and that he was a singular successor of the said Marquis. He averred that he had all along been and still was ready and willing to pay whatever casualty might be legally due by him to the pursuer.

He further averred—"(Ans. 6) The defender, prior to the raising of the action, furnished to the pursuer statements of the rental of the said lands for the year in question, and of the taxes and repairs, and is most willing to supply to the pursuer all further information. The pursuer has refused to state or even consider what deductions he is bound or willing to allow from the rental of the said lands. The pursuer has all along maintained that he is not bound to recognise the rent of the island as set forth in the valuation roll, or to consider the actual sums which have been expended on repairs. The pursuer maintains that the lettable value of the island is £3000, and that he is bound only to grant a deduction of a percentage in name of repairs without reference to the actual sums expended on them. The defender specially denies that he is only willing to pay the sum of £337, 7s. 7d. in name of casualty. The rent of the island of Rum as it appears in the valuation roll is £1466, which is the full lettable value of the subjects."

The pursuer pleaded—"The defender being liable to the pursuer in payment of a casualty or composition of a year's rent or annual value of the said lands and others, as condescended on, decree should be pronounced as concluded for."

The defender pleaded—"(1) The pursuer's averments are neither relevant nor sufficient to support the conclusions of the summons. (2) The pursuer's averments, so far as material, being unfounded in fact, the defender is entitled to decree of absolvitor."

On 4th June 1904 the Lord Ordinary (LOW) allowed a proof.

Opinion.—"I took time to consider what is the proper procedure in this case, because