means of subsistence and credit, and that being so he is entitled to an issue.

The Court adhered.

Counsel for the Pursuer and Respondent —Shaw, K.C.—J. R. Christie. Agents — Macpherson & Mackay, S.S.C.

Counsel for the Defender and Reclaimer —Jameson, K.C. — Scott Brown. Agents —Lister Shand & Lindsay, S.S.C.

Thursday, November 3.

FIRST DIVISION.

[Sheriff Court of Renfrew and Bute at Paisley.

DUFFY *v.* YOUNG.

Process—Appeal for Jury Trial—Action of Damages for Personal Injuries—Motion to Remit Case Appealed for Jury Trial Back to Sheriff for Proof—Judicature Act 1825 (6 *Geo. IV. cap.* 120), *sec.* 40.

An action at common law for £500 as damages for serious personal injuries having been appealed to the Court of Session for jury trial, the Court *refused* a motion by the defender to remit the case to the Sheriff for proof, *holding* that there was nothing to show that there did not exist a genuine claim for an amount exceeding £40.

Michael Duffy, labourer, Paisley, brought an action at common law against William Young, job and post-master there, in the Sheriff Court of Renfrew and Bute at Paisley, for £500 as damages for personal injuries alleged to have been sustained by the pursuer through the fault and negligence of the defender or of those for whom the defender was responsible.

The pursuer averred, *inter alia*, that on 13th June 1904, while he was crossing from the east to the west side of Sunnyside, Paisley, he was knocked down and run over by three horses and a bus belonging to the defender, and in charge of a servant of the defender.

The pursuer further averred—"(Cond. 3) At the time of the accident the horses to which the said bus was attached were being driven in a furious and reckless manner by defender's said servant. The driver had no proper control over the animals and failed to keep a proper outlook or give any warning to the pursuer of the approach of said bus. (Cond. 5) In consequence of said accident the pursuer sustained serious injuries to his chest, ribs, and over his body generally. He also sustained a severe shock to his nervous system. It is believed and averred that it will be a considerable time before he is able to resume work."

The Sheriff-Substitute (LYELL) allowed a proof.

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

In the Single Bills the defender moved that the case should be sent back to the Sheriff Court for proof, and referred to *M'Nab* v. *Fyfe*, July 7, 1904, 41 S.L.R. 736.

The pursuer argued that having regard to the nature of the accident and the serious character of the injuries, the sum of £500 claimed as damages was a genuine claim, and accordingly that he should not be deprived of his right to a trial by jury. He moved that the issue be approved.

LORD PRESIDENT—No doubt we have sent cases back to the Sheriff Court when it appeared upon the face of the record that the pursuer could only recover a very small sum. Although the averments in this case are somewhat narrow I cannot say that sufficient cause has been shown for sending it back to the Sheriff Court. The pursuer avers that he was knocked down and run over by three horses and an omnibus, that he sustained serious injuries to his chest, ribs, and to his body generally, and that he also suffered a severe shock to his nervous system. At this stage we must assume that the pursuer may prove his averments, and though they are somewhat vague they contain allegations which show that serious injuries might be proved. It appears to me, therefore, that the pursuer is entitled to have the case tried before a jury here.

LORD ADAM—I have more than once expressed my opinion in this kind of case. The Legislature has laid it down that when the claim is above £40 the pursuer has a right to appeal for jury trial. No doubt we have sent cases back to the Sheriff for proof, but in my opinion we would only do so when it appears upon the face of the pleadings that the pursuer cannot possibly recover £40. In this case the pursuer claims £500, and on reading the record I cannot say that it is of the character to which I have referred. That being so, I am of opinion that we are not entitled to send the case back to the Sheriff.

LORD M'LAREN—I concur. I do not think that the argument for sending these cases back to the Sheriff Court has much strength or substance in it. My impression is that the 40th section of the Judicature Act, with its analogue in the Court of Session Act, was intended for the benefit of defenders. It was quite unnecessary for the protection of a pursuer, who might raise his action in the Court of Session if he pleased. Where a trivial sum of damages is awarded in an action which has been removed from the Sheriff Court to the Court of Session, the true remedy would be arrived at by applying a proper scale of expenses in the Court of Session. The difficulty which exists in dealing with this class of cases has arisen, not from a difference of opinion as to the desirability of dealing with expenses, but from a difference of construction of our powers on the part of the two Divisions of the Court.

LORD KINNEAR—I agree with Lord Adam. I think the pursuer has a right by statute to bring his case before a jury in this Court,

provided his claim exceeds £40; and we cannot deprive him of that right unless it appears from his own statement that his true claim is for less than £40. I can recall a case where the pursuer's counsel summing up the items of his claim to the jury brought out a sum considerably less than £40 as the full amount of his demand, and made it clear enough that he had never expected to get more. That appeared to me to be an abuse of process, because it showed that the pursuer was making a claim which he knew he could not sustain in order to obtain a benefit which the statute would not have given him if he had made an honest statement. In the present case there is nothing to show that there is not a perfectly genuine claim for £40, and therefore the pursuer is entitled to exercise his right to appeal for jury trial.

The Court refused the defender's motion and approved the issue.

Counsel for the Pursuer and Appellant—J. B. Young. Agents—M'Nab & M'Hardy, S.S.C.

Counsel for the Defender and Respondent—Orr. Agents—Inglis, Orr, & Bruce, W.S.

Thursday, November 3.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

HAMILTON OGILVY *v.* ELLIOT.

Lease—Agricultural Lease—Improvements—Compensation—Arbitration—Statutory Arbitration by Two Arbiters—Competency of Tribunal—Consent in Writing—Statutory Excluded by Conventional Arbitration—Agricultural Holdings Act 1900 (63 *and* 64 *Vict. c.* 50), *sec.* 2, *subsecs.* 1, 3, 5, *Second Schedule, Part II, secs.* 1, 4.

The Agricultural Holdings Act 1900, section 2, provides that where differences arise between landlord and tenant as to compensation for certain enumerated improvements claimed by a tenant, such differences are to be settled in default of agreement by arbitration under the statute, and (sub-section 5) "an arbitration shall, unless the parties otherwise agree, be before a single arbitrator." The Second Schedule, Part II, enacts (1)—"If the parties agree in writing that there be not a single arbitrator, each of them shall appoint an arbitrator. . . . (4) If for fourteen days after notice by one party to the other to appoint an arbitrator . . . the other party fails to do so, then, on the application of the party giving notice, the Board of Agriculture shall appoint a person to be an arbitrator."

It was provided in the lease of a farm that with regard to certain specified improvements the tenant should receive, in lieu of the compensation provided by statute, compensation according to a schedule annexed to the lease, the amount, failing agreement, to be ascertained by two arbiters, one to be chosen by each party, or by an oversman to be named by the arbiters before entering on the reference, in case of their differing in opinion.

On the termination of the lease the tenant served on the landlord a notice of claim for compensation under the Agricultural Holdings Acts, setting forth five separate heads of improvements, all of these being improvements for which a tenant was entitled to receive compensation under the Act of 1900, while heads 1 to 3 belonged to the class of specified improvements for which compensation was to be given according to the schedule annexed to the lease. The tenant having named an arbitrator, and the landlord having refused to name another, the Board of Agriculture, upon an application from the tenant, nominated a second to act on behalf of the landlord.

In an action of suspension and interdict brought by the landlord against the tenant and arbitrators, *held* (1) (*aff.* judgment of Lord Kincairney) that with respect to improvements under heads 1 to 3 statutory arbitration was incompetent, having been excluded by the agreement in the lease; (2) (*rev.* judgment of Lord Kincairney) that with respect to improvements under heads 4 and 5 the statutory tribunal set up by the Board was an incompetent one, as there had been no agreement in writing that there should be more than one arbitrator, the provision for two arbiters in the lease only dealing with improvements under heads 1 to 3; and (3) that until the constitution of a competent statutory tribunal it was premature to consider questions raised by the landlord as to the relevancy or competency of the claims falling to be decided by statutory arbitration.

The Agricultural Holdings Act 1900 enacts—Section 2, sub-section 1—"If a tenant claims to be entitled to compensation, whether under the principal Act or this Act, or under custom, agreement, or otherwise, in respect of any improvement comprised in the First Schedule to this Act, and if the landlord and tenant fail to agree as to the amount and time and mode of payment of such compensation, the difference shall be settled by arbitration in accordance with the provisions, if any, on that behalf in any agreement between landlord and tenant, and in default of and subject to any such provisions by arbitration under the Act in accordance with the provisions set out in the Second Schedule to this Act." Sub-section 3—"Where any claim by a tenant for compensation in respect of any improvement comprised in the First Schedule to this Act is referred to arbitration, and any sum is claimed to be due to the tenant from the landlord in respect of any breach of contract or otherwise in respect of the holding, or to the landlord from the tenant in respect of any