The LORD PRESIDENT was absent at the hearing.

The Court dismissed the action as against both defenders with expenses, those due to the Magistrates being to be taxed as between agent and client.

Counsel for the Pursuer and Respondent—Crabb Watt, K.C.—R. S. Brown. Agent—John Robertson, Solicitor.

Counsel for the Defenders (The Magistrates of Edinburgh)—Cooper, K.C.—W. J. Robertson. Agent—Thomas Hunter, W.S.

Counsel for the Defender and Reclaimer (Ross)—Scott Dickson, K.C.—Wm. Thomson. Agent—Norman M. Macpherson, S.S.C.

Friday, December 21.

FIRST DIVISION.

[Lord Ardwall, Ordinary.

AIRD v. TARBERT SCHOOL BOARD.

(See *ante*, February 17, 1905, 42 S.L.R. 373, and November 1, 1906, 44 S.L.R. 26.)

Reparation — Interdict — School — Board School—Teacher—Irregular Dismissal of Teacher Followed by Interdict Subsequently Recalled—Wrongous Interdict—Damages—Relevancy.

The headmaster of a Board school appointed in 1893 was irregularly dismissed by the School Board, who subsequently applied for interdict against him and obtained interim interdict. The interim interdict having been recalled on the ground that the dismissal was irregular, the schoolmaster raised an action of damages for wrongous interdict. No question of salary was involved.

Held that the action was irrelevant inasmuch as though the interdict ought not to have been applied for and the Board was responsible therefor, the schoolmaster's legal rights had not been injuriously affected, since under the Education (Scotland) Act 1872 he held his office at the pleasure of the Board, and under the Education (Scotland) Act 1882 he could be summarily suspended by them.

Process—Sist of Deceased Pursuer's Representatives as Executors and as Individuals—Effect of Sist—Scope of Action—Claim by Representatives of Deceased Pursuer as Individuals for Damages in respect of his Death Caused by Wrongous Interdict—Competency.

The representatives of a schoolmaster, who had raised against his School Board an action of damages for wrongous interdict, obtained interim by the Board to prevent him officiating and subsequently recalled on the ground that his dismissal had been irregular, were on his death sisted as executors and as individuals as pursuers in the cause in his room and place. The representatives, one of whom was his mother, proposed to claim in the action damages for the schoolmaster's death, alleged to have been brought about by the interdict.

Held that the claim was incompetent since it enlarged the scope of the original action.

Expenses—Offer by Pursuers to Stop Litigation on Condition of Expenses not being Found Due by Either Party—Effect of Offer on Expenses where Defenders Prevailed—Abandonment of Action.

A pursuer in an action to recover damages for wrongous interdict, who was also involved in other actions with the same defenders, died. His representatives offered to stop all litigation on condition that no expenses were held due to or by either party. This offer was refused and the defenders prevailed. *Held* that the defenders were entitled to expenses, the pursuers' proper course having been abandonment on payment of expenses in statutory form.

Expenses—Public Authorities Protection Act 1893 (56 and 57 Vict. cap. 61), sec. 1, (b)—Expenses of Reclaiming Note—Scale of Taxation.

Held (after consulting their Lordships of the Second Division) that a defender, a public authority, who had successfully reclaimed against the interlocutor of a Lord Ordinary, was entitled to have his expenses both in the Inner and Outer House taxed as between agent and client.

Opinions, per the Lord President and Lord Kinnear, that the complete discretion possessed by the Court as to expenses was unimpaired by the Public Authorities Protection Act 1893.

Bostock v. *Romsey Urban Council*, [1900], 2 Q.B. 616, *approved.*

The Public Authorities Protection Act 1893 (56 and 57 Vict. cap. 61), section 1, enacts—"Where after the commencement of this Act any action, prosecution, or other proceeding is commenced in the United Kingdom against any person for an act done in pursuance, or execution, or intended execution, of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, duty, or authority, the following provisions shall have effect— . . . (b) Wherever in any such action a judgment is obtained by the defendant it shall carry costs, to be taxed as between solicitor and client."

On July 8, 1905, Robert Aird, headmaster of Tarbert Public School by appointment in 1893, residing at Bank Buildings, Tarbert, Lochfyne, raised an action to recover five hundred pounds as damages against the School Board of the parish or district of Tarbert, Lochfyne. He died on 29th September, 1905, and his executors, his mother Mrs Margaret Aird, and his brother John Aird, were on 2nd March 1906 sisted "as executors foresaid and as individuals as pursuers in the cause, in room and place of the said Robert Aird."

The pursuers pleaded—"(1) The defenders having wrongfully or illegally interdicted the late Mr Aird from his office as headmaster, are liable in damages to the pursuers as his executors and for their own interest as individuals. (2) The late Mr Aird, and the pursuers as executors and individuals foresaid, having suffered loss, injury, and damage to the extent of the sum sued for, by the illegal interdict obtained by the defenders, they are entitled to decree in terms of the conclusion of the summons, with expenses."

On 24th December 1904 the School Board had dismissed Aird, but the dismissal was disregarded by him as being illegal, as in fact it was afterwards found to be, and the Board applied for interdict against him. On 11th January 1905 interim interdict was granted but was recalled on 27th January, and the interlocutor recalling it was affirmed on 17th February 1905. [See also 42 S.L.R. 373.]

The pursuers averred—"(Cond. 4) . . . The said interim interdict was obtained by the defenders wrongfully and in face of protests which were duly and timeously intimated to them, and the defenders recklessly, without regard to Mr Aird's interests, and from the malicious motive of depriving him of the lawful rights and privileges which he held as said master, and injuring his status and reputation, persisted with their said application. They well knew that no motion dismissing Mr Aird had ever been put to the meeting of the School Board or passed by the said Board, and that their pretended dismissal of Mr Aird was illegal, unjustifiable, and calculated to damage him seriously in the eyes of the public. (Cond. 5) In consequence of the said illegal suspension and interdict, which lasted from 12th January until 17th February 1905, both inclusive, the late Mr Aird suffered very keenly in his feelings and his professional reputation was very severely damaged. By said interdict Mr Aird was wrongfully and illegally prevented from discharging his duties as headmaster in accordance with the subsisting engagement then current between him and the defenders. Mr Aird was devoted to his position as headmaster of the said school, and the fact of his being displaced from this office by the said illegal interdict preyed so much on his mind and affected his nervous system to such an extent that he died on 29th September 1905. . . . (Cond. 6) By and through the said illegal interdict the late Mr Aird sustained loss, injury, and damage through his being displaced from his position as headmaster, which the pursuers as executors foresaid are now entitled to recover from the defenders. Further, the pursuer Mrs Aird was entirely dependent upon her said son for her livelihood, and has as an individual sustained a serious loss through her said son's death, which was directly due to the illegal interdict complained of. Altogether the sum due to the pursuers as executors and as individuals is not less than the sum of £500. . . ."

The defenders pleaded—"(1) No title to sue. (2) The action is irrelevant. (3) In respect that the deceased received his salary down to 26th April 1905, he has suffered no damage, and the defenders are entitled to absolvitor."

On January 3, 1906 the pursuers' agents wrote to the defenders' agents Messrs J. Douglas Gardiner & Mill, S.S.C., submitting for their client's consideration a proposal made verbally before, to the effect that the principal reason for proceeding with this action, and two others also pending, having been removed by Mr Aird's death, his executors were willing in the circumstances to withdraw their claims and allow the litigation to be ended on condition that each side should pay its own expenses. This offer was declined by the defenders' agents on January 8th 1906.

On June 20th 1906 the Lord Ordinary (ARDWALL) pronounced the following interlocutor:—"Finds that the pursuers are entitled, as executors of the deceased Robert Aird, to sue for such damages as he would have been entitled to sue for, but that both or either of them are not entitled to sue for damages except in their representative character as executors: Further, finds that the averments of loss suffered by the pursuer Mrs Aird as an individual cannot competently be remitted to probation, and to this extent sustains the first and second pleas-in-law for the defenders: *Quoad ultra* repels the said pleas, and appoints the pursuers to lodge within ten days such issues as they propose for the trial of the cause: Reserves meantime all questions of expenses."

Opinion.—"In this case I am of opinion that the action cannot be allowed to proceed except in so far as it concludes for damages that Robert Aird might himself have concluded for and recovered. Undoubtedly the minute which was put in, and which was repeated so far in the interlocutor of 2nd March 1906, bears that the parties asked to be sisted as executors and as individuals, and undoubtedly that might be held (if it was not limited in any way) to have the effect of sisting the parties as new pursuers altogether. But I need hardly say that it is a most difficult proceeding to sist new pursuers to an action, and that it is prohibited altogether except with the consent of all parties to the cause. We have not got such consent here, and such consent can hardly be assumed to be given by the defender's failure to object at the bar to the pursuers' minute of sist. I do not think I need dwell upon this any more, because I hold it clear that the sist of the new pursuers as parties to the action is expressly limited by these words which follow in the interlocutor, namely, 'in room and place of the said Robert Aird.' Now, with that limitation it is incompetent for the pursuers to insist in a claim which did not arise till Robert Aird's death. I accordingly hold that the averments in the condescendence, so far as they support a claim on behalf of the pursuer Mrs Aird as an individual for the death of her son, are irrelevant, and cannot be remitted to probation. Subject to this, the plea of no title to sue must be repelled, as was settled by

the case of *Campbell*, 3 Macph. 360, the interlocutors sisting the pursuers being conclusive of their title to sue. With regard to the plea of relevancy, I hold, though not without some difficulty, that a relevant case has been stated for the pursuers as representing the deceased Robert Aird. What is complained of is an illegal interdict, and it is trite law that interdicts are applied for and are granted *periculo petentis*, and accordingly if an interdict turns out to have been wrongously applied for and granted, damages are due for the presentation and obtaining of such interdict, and it is sufficiently averred that damage was suffered by the deceased Robert Aird. The amount, of course, must be settled hereafter. I shall accordingly appoint the pursuers to lodge such issues as they think fit for the trial of the cause, and reserve all questions of expenses."

The defenders reclaimed, and argued—(1) The action was irrelevant. There was no relevant averment of injury sustained or damage suffered. The defenders were within their rights in suspending the deceased pursuer Aird—*Robson* v. *School Board of Hawick*, January 19, 1900, 2 F. 411, 37 S.L.R. 306—and a mere irregularity in form, or the obtaining of an interdict against him, did not render them liable in damages—*Robson* v. *School Board of Gordon*, December 1888; Graham's Education Acts, p. 287. Further, the act complained of having been done by a public body in good faith, an averment of malice was necessary to ground a claim of damages — *Macaulay* v. *North Uist School Board*, November 26, 1887, 15 R. 99, 25 S.L.R. 91. Here there was no averment of actual loss, and without that an action would not lie—*Arnot* v. *Dowie*, November 20, 1863, 2 Macph. 119—such actual loss being all for which the defenders would be liable —*Miller* v. *Hunter*, March 23, 1865, 3 Macph. 740, Lord Justice-Clerk Inglis, 746, 1 S.L.R. 39. The mere fact that an interdict granted was subsequently recalled did not *ipso facto* base a claim for damages against those who had obtained it; whether such a claim emerged depended on the circumstances of each case—*Mudie* v. *Miln*, June 12, 1828, 6 S. 967; *Moir* v. *Hunter*, November 16, 1832, 11 S. 32; *Buchanan* v. *Douglas*, February 3, 1853, 15 D. 365; *Jack* v. *Begg*, *&c.*, October 26, 1875, 3 R. 35, 13 S.L.R. 17. The interdict complained of had not been obtained by statements unjustifiable or unfounded in fact; consequently the defenders, acting *bona fide*, were not liable for damage under the rule set forth by Lord Justice-Clerk Inglis in *Wolthekker* v. *Northern Agricultural Company*, December 20, 1862, 1 Macph. 211, at p. 213. (2) The claim by Mrs Aird as an individual which had now been added to the case was incompetent, and in any event the alleged cause of damage was too remote. This portion of the case must therefore be disallowed as irrelevant. The case of *Auld* v. *Sharp*, December 16, 1874, 2 R. 191, and July 14, 1875, 2 R. 940, 12 S.L.R. 177 and 611, was referred to.

Argued for the respondents and pursuers —The Lord Ordinary was right. (1) There was a relevant claim for damages on record. The defenders might have been entitled to suspend Aird, but they were not entitled to resort to an illegal interdict. The interdict had been obtained in the face of the opposition of certain members of the Board, maliciously and unjustifiably, and constituted an actionable wrong—*Miller* v. *Hunter*, *ut supra*, Lord Justice-Clerk Inglis at 3 Macph. p. 745; *Wolthekker* v. *Northern Agricultural Company*, *ut supra*, Lord Justice-Clerk Inglis at 1 Macph. p. 213. Indeed the present case was *a fortiori* since the interdict was obtained by unfounded statements, the misrepresentation being that Aird had been dismissed by a resolution of the Board, and it was averred on record that this the defenders knew to be false. The pursuers should be allowed an issue since diligence had been wrongly obtained and employed to their loss, injury, and damage—*Meikle* v. *Sneddon*, March 5, 1862, 24 D. 720. The case of *Robson* v. *Hawick School Board*, *ut supra*, was distinguishable, as the teacher there was merely appointed *ad interim*. (2) The claim transmitted to the executors of the deceased pursuer, as litiscontestation had taken place—*Green* v. *Borthwick*, December 8, 1896, 24 R. 211, Lord Young at p. 214, 34 S.L.R. 164—and Mrs Aird was entitled to sue for the loss she had sustained through the death of her son. But even if that were not so, the interlocutor sisting the defenders was final on their title to insist in the action—*Campbell* v. *Campbell*, January 14, 1865, 3 Macph. 360. The case of *Neilson* v. *Rodger*, December 24, 1853, 16 D. 325, was referred to.

At advising—

Lord Kinnear—This is one (I hope the last) of several not very well-advised litigations which have arisen out of one unfortunate controversy between the late Mr Robert Aird, who was at one time teacher in the Tarbert School, and the School Board of Tarbert. The present action is for damages for wrongous interdict. Before the case had proceeded very far the pursuer died, and his executors have been sisted in his place. We are not called upon to consider whether this is an action which will survive to the executors after the death of the person complaining of a wrong, because the defenders concede that the executors who have now been sisted have a title to pursue the action in the same way as the pursuer himself had, and therefore invite us to dispose of the question in the same way as if he were still alive and maintaining his own action.

The question therefore is, whether there is a relevant case in support of the conclusion for damages, taking the case before us as if it were still to be considered as at the instance of Mr Aird. His complaint is that the School Board presented a note of suspension and interdict against him on 11th January 1905, and obtained an interim interdict by which he was interdicted, prohibited, and discharged from acting as headmaster of the Public School of Tarbert, and from entering the school for the pur-

pose of teaching therein or interfering in the management and affairs of it. Interim interdict to that effect was granted on 11th January on the application of the School Board and on their statement alone. On 27th January the Lord Ordinary, having now had an opportunity for considering answers for Mr Aird, recalled the interim interdict and refused the note with expenses. We were referred to the proceedings so far as they appear from the record and reclaiming note to that interlocutor, and therefore we can see the ground on which the interim interdict was recalled. The application for interdict was rested on the statement that Mr Aird had been regularly removed from his office as headmaster of the school, and if that had been so I assume that the School Board would have been entitled to their interdict. But the proceedings said to establish the dismissal really established nothing of the kind, because they were incomplete, consisting of motions and counter-motions followed up by no resolution to dismiss, and upon that ground the Lord Ordinary held that there was no dismissal and recalled the interdict.

Now it is said by the present pursuer that that recall is conclusive of the question whether the interdict was wrongous or not, and in one sense that is perfectly correct. The recall of the interdict shows conclusively that it ought not to have been asked for or granted, and, as it was granted *periculo petentis* like all interim interdicts before answers have been put in, the complainers were responsible for obtaining an interdict which *ex hypothesi* they ought not to have asked for. But the question whether it is a wrongous interdict, in the sense of operating as a civil wrong which will support an action of damages, does not depend on the procedure at all, but depends on what the effect of the interdict was, and whether the prohibition contained in the interdict was really an invasion of the pursuer's right or not. The mere fact that the defenders have obtained interim interdict, which afterwards turns out to be ill-founded, will not of itself support an action of damages, because it will not of itself show that any real wrong was done to the pursuer.

We must therefore consider what the interdict really did. Now I do not think that it can be denied that an interdict of this kind is a very harsh and even offensive mode of removing a schoolmaster, and nobody could doubt that the late schoolmaster was much aggrieved by these proceedings of the School Board. But the question still remains whether there was any invasion of Mr Aird's legal rights by the operation of the interdict. Now in order to determine that I think we must consider what was the subsequent procedure. I have stated that the interdict was granted on 11th January, and recalled by the Lord Ordinary on 27th January 1905. His Lordship's interlocutor was affirmed on 7th February 1905. But then the Board's proceedings already taken for dismissing Mr Aird and terminating his exercise of duties as schoolmaster having thus failed, the School Board proceeded on the 28th of January, that is, the day after the interim interdict had been recalled, to suspend the pursuer from acting as schoolmaster; and they again presented an interdict for preventing his continuing to act. That interdict was granted, and there is no complaint in this action as to that interdict, or of the conduct of the School Board in applying for it. Then on the 15th March they again dismissed the pursuer; and this time they did so formally and conclusively, following the procedure required by the Public Schools (Scotland) Teachers Act of 1882 (45 and 46 Vict. cap. 18). Now there again there is no complaint, at all events no complaint before us raised in this action. And therefore the result of the whole proceedings is this, that by reason of the interim interdict the pursuer was prevented from acting as headmaster or interfering with the management of the school for the period between 11th and 28th January, and that thereafter he was effectually forbidden to interfere with the management of the school or to exercise the duties of schoolmaster, and was finally dismissed.

Now the pursuer makes no claim—indeed he could make no claim—for wrongous dismissal; he makes no claim for any pecuniary loss in respect of anything. It is said—and I suppose we may take it as true, although it is not stated by the pursuer himself—that the School Board, though dismissing him, paid his salary from January to 26th April 1905. Whether that is a correct statement, or whether that payment was full payment, I do not think we need to inquire, for no case is made by the pursuer to establish any right to any portion of salary which has not been already paid. Therefore the only complaint is that he was kept out of the school between 11th and 28th January by interdict, which ought not to have been granted. Now I am of opinion that that averment establishes no case of any legal wrong and no case for damages. The pursuer held his office by the Statute of 1872—Education (Scotland) Act 1872 (35 and 36 Vict. cap. 62)—which so far is still in force, at the pleasure of the School Board, and though it has been found that that does not enable a school board to dismiss a schoolmaster without notice, so as to affect his right to emoluments, but that they must either give him notice or pay him a portion of his salary in lieu of notice, still, subject to that, a schoolmaster —whatever claim he might have for salary or compensation in respect of want of notice—is not entitled, against the will of the school board, to remain in exercise of his duty in the school; for the purpose of the Act was that a school board should appoint a schoolmaster at pleasure, and it follows that they must have power to put a stop to the exercise of the duties of schoolmaster by a person whom they thought inefficient or for any reason unfit to exercise these duties. Accordingly it was held in *Morison* v. *The School Board of Abernethy*, that although a schoolmaster summarily dismissed might be entitled to

compensation in lieu of notice, he had no action of damages for wrongous dismissal.

But whatever might have been said as to the right of a school board under the original Act to put an end to a schoolmaster's occupation of the school, irrespective of the fact of his dismissal—I mean to put an end to his management of the school summarily—I do not think any question can be raised under the Act of 1882 (45 and 46 Vict. cap. 18), because that statute made a material alteration on the position of the relative rights of school boards and schoolmasters in respect to the matter of dismissal. It left the schoolmaster still appointed to hold office at pleasure, but it provided that a resolution of the school board for dismissal of a certificated master should not be followed out except on certain conditions. One of these was that it should be adopted only at a meeting called not less than three months previous to dismissal, and that there should be a notice of motion sent to the schoolmaster himself not less than three months before the meeting at which his dismissal was to be considered. But then, when imposing this qualification of the school board's powers of dismissal, the statute went on to provide that—"Notwithstanding anything contained in this Act it shall be lawful for a school board summarily to suspend any teacher from the exercise of his duties, but such suspension shall not affect the teacher's right to the salary or other emoluments attached to his office." The result of all that is, that though they possibly took an irregular way of doing it, the School Board here was quite entitled, with notice or without notice, summarily to exclude the schoolmaster from the exercise of his duties, though they were not entitled by so doing to affect his emoluments. As I have said, we have no concern in this case with any question of emoluments being affected at all; we have only to consider the effect of the effort to keep the pursuer out of the school from 11th to 27th January. I do not think that these proceedings did in fact affect injuriously the deceased pursuer's legal right, since he had no title to remain in the school against the will of the School Board. There was therefore no invasion of any legal right of the late pursuer, and there was no damage done. I am therefore of opinion that the action must be dismissed.

But another question, which the Lord Ordinary has I think decided rightly, was raised by the new pursuers—the executors, who had been sisted as pursuers in place of the deceased—desiring to add to the scope of the action by claiming damages for loss suffered by the mother in consequence of her son's death, on the averment that the effect of the School Board's proceedings upon the late Mr Aird's mind was such that his health became affected and he died. Now if that question were competently raised the pursuers would have to face a very formidable plea—that the calamity which they allege is too remote and indirect a consequence of an interim interdict to support an action for damages. But I do not think we are called upon to consider that question at all, for I agree with the Lord Ordinary that it is quite incompetent so to enlarge the scope of the original action. The present pursuers have been sisted in room and place of the original pursuer to carry out an action at his instance for wrongous interdict, and they cannot bring into that action a totally different claim in consequence of his death. It appears to me therefore that this is an incompetent claim.

I am therefore for recalling the interlocutor of the Lord Ordinary in so far as he repels the pleas of the defenders and allows the pursuer to lodge an issue. I think we should find that there is no issuable matter. I should also adhere to the Lord Ordinary's interlocutor as regards the limitation of the title of the executors to sue for such damages as deceased would be entitled to sue for, and there also we should find there is no issuable matter, and dismiss the action.

LORD M'LAREN and LORD PEARSON concurred.

The reclaimers (defenders) moved for *expenses* in both Inner and Outer House, taxed as between agent and client.

The respondents objected, and argued—(1) The defenders (reclaimers) should not be given their expenses at all, in respect that on Mr Aird's death the pursuers had offered to stop litigating, both parties paying their own expenses. That offer was refused, and the Court should exercise the discretion which it had always had, and still had, to withhold expenses. The Public Authorities Protection Act 1893 had not altered that discretion—*Bostock* v. *Ramsey Urban Council*, [1900] 2 Q.B. 616. (2) In any event expenses taxed as between agent and client should be given in the Outer House only. In terms of the statute—Public Authorities Protection Act 1893, sec. 1 (6)—that scale applied only to a "judgment," and a "judgment" meant a decision in the Court of first instance—*Fielding* v. *Morley Corporation*, [1899] 1 Ch. 1, Lindley (M.R.) at p. 4.; [1900] A.C. 133—*i.e.*, a decision in the Outer House, not in the Inner House, which was a Court of Appeal.

Argued for the reclaimers—(1) The offer by the pursuers to settle the action did not lessen their liability for expenses. The course which they ought to have taken was to have abandoned the action, and that could only be on payment of expenses. The Public Authorities Protection Act 1893 was peremptory in giving to a successful defending public authority its expenses—*Christie* v. *Glasgow Corporation*, May 31, 1899, 36 S.L.R. 694. (2) Taxation as between agent and client applied to the expenses in the Inner House as well as in the Outer—*Spittal* v. *Glasgow Corporation*, June 17, 1904, 6 F. 828, 41 S.L.R. 629. "Judgment" in the sense contended for by the pursuers was a term of art peculiar to English law and inappropriate to that of Scotland, and consequently when it occurred in an imperial statute

fell to be construed according to its ordinary meaning. In Scotland it was as applicable to a decision in the Inner as in the Outer House—*The Lord Advocate* v. *The Earl of Moray's Trustees*, August 4, 1905, 7 F. 117, 42 S.L.R. 839. *Bostock* v. *Ramsey Urban Council, ut supra*, was not in point, having been decided on the circumstances of the case, which were special.

LORD PRESIDENT—A question has been raised in this case under section 1 (*b*) of the Public Authorities Act 1893. The successful defenders move that as they are a public authority they should have their expenses, both here and in the Outer House, taxed as between agent and client. The pursuers object, in the first place, that the defenders should not get expenses at all, for the reason that at an earlier stage of the case, when the present pursuers were sisted in place of Mr Aird, they intimated to the defenders that they were willing to let the action drop if nothing were said as to expenses. But it seems to me that this was not the proper course for the pursuers to take if they desired the action to come to an end. They could have abandoned the action on payment of expenses. They knew that, and if they did not take that course they can only be held to have gone on with the action with the view of winning it and getting their own expenses. So I see no good reason for departing from the ordinary rule of allowing expenses to the successful party. That being so, I am of opinion that the Public Authorities Act leaves us no option, and that the expenses must be taxed as between agent and client.

In the view of the facts which I have taken, it is unnecessary to decide whether or not the Public Authorities Act has taken away the discretion which the Court has as a rule to award or to withhold expenses. But I may say that I entirely agree with the decision in the case of *Bostock*, [1900] 2 Q.B. 616. I do not read the Act as taking away from the Court the discretion which it formerly had to deprive the successful defender of expenses for good cause. Further, I do not think that it interferes with the power of the Court to modify expenses if it chooses. All that the Act does is to provide that if expenses are awarded they must be taxed on a certain scale.

The point was also raised whether the Act applied to expenses in the Inner House. We shall delay our judgment on this point until we have an opportunity of consulting the other Division.

LORD KINNEAR—I agree. In the first place, the defenders must have their expenses, because if the pursuers chose to go on with the action rather than abandon it on the statutory terms, they put the defenders to an additional expense in resisting an unfounded action.

LORD PEARSON concurred.

On December 21st, after consulting the Judges of the Second Division—

LORD PRESIDENT—The point to be decided now is, whether or not the Public Authorities Act applies to expenses in the Inner House as well as to expenses in the Outer House. On this point we have consulted the Judges of the other Division. We consider that the English decisions which were quoted to us turn upon specialties of practice. This is a statute which applies to all parts of the United Kingdom, and its terms are not to be construed according to the technical meaning which they may have in any one country. Accordingly, the term "judgment" must be taken in its ordinary and popular sense, and in this sense it certainly applies to a decision given in the Inner House. Even if it be taken in a technical sense, I think an interlocutor pronounced in the Inner House is a judgment within the meaning of the Act. I would refer to the remarks made on the relation of the Inner to the Outer House in the case of *Clippens* (43 S.L.R. 540 at p. 550). It follows that where a defender is entitled under the Act to have expenses taxed as between agent and client, that applies to expenses both in the Inner and in the Outer House.

LORD KINNEAR—I am of the same opinion. The decisions in England appear to depend upon the technical meaning of the word "judgment," with reference to the relation between the Court of first instance and the Court of Appeal there. The relation between the Inner and the Outer Houses of the Court of Session is different. But following the judgment of the House of Lords in *Lord Saltoun's* case (3 Macq. 659 at p. 671) we must construe the language of the statute in its ordinary sense irrespective of the technicalities of either system. So construing it I think that a decision of this Court is a "judgment" within the meaning of section 1 (*b*) of the Act.

LORD PEARSON concurred.

The Court pronounced this interlocutor—

"The Lords having considered the reclaiming-note for the defenders against the interlocutor of Lord Ardwall dated June 20th 1906, and heard counsel for the parties, Adhere to said interlocutor in so far as it 'Finds that the pursuers are entitled, as executors of the deceased Robert Aird, to sue for such damages as he would have been entitled to sue for, but that both or either of them are not entitled to sue for damages except in their representative character as executors,' and in so far as it 'Finds that the averments of loss suffered by the pursuer Mrs Aird as an individual cannot competently be remitted to probation, and to this extent sustains the first and second pleas-in-law for the defenders:' *Quoad ultra* recal said interlocutor, dismiss the action, and decern: Find the defenders entitled to expenses as between agent and client, and remit the account," &c.

Counsel for the Defenders and Reclaimers —Guthrie, K.C.—W. Thomson. Agents—J. Douglas Gardiner & Mill, S.S.C.

Counsel for the Pursuers and Respondents—Morison, K.C.—Jameson. Agents—Kirk Mackie & Elliot, S.S.C.

Thursday, December 20.

FIRST DIVISION.

[Lord Dundas, Ordinary.

GLASGOW CORPORATION *v.* WOOD (COLLECTOR FOR THE PARISH OF GLASGOW).

Poor—Poor Rates—Telephone Undertaking—Deductions from Annual Value—Repairs on Switchboards, on Subscribers' Instruments, and on Roofs to which Telephone Fixtures Attached—Poor Law Amendment (*Scotland*) *Act* 1845 (8 *and* 9 *Vict. c.* 83), *sec.* 37.

The owners of a telephone undertaking are entitled under section 37 of the Poor Law (Scotland) Act 1845 to have deducted from its annual value, as appearing in the valuation roll, prior to assessment for poor law purposes, the probable annual average cost of (1) repairs on switchboards, and (2) repairs on roofs belonging to third parties used for telephone fixtures, but only so far as the repairs on such roofs have been rendered necessary by the renewal of such fixtures, but (*dub.* Lord Pearson and *rev.* Lord Ordinary Dundas) the owners are not entitled to a deduction for (3) repairs on the instruments in the subscribers' premises, such instruments not being part of the heritable subject assessed.

The Poor Law Amendment (Scotland) Act 1845 (8 and 9 Vict. cap. 83), section 37, enacts—"In estimating the annual value of lands and heritages, the same shall be taken to be the rent at which one year with another such lands and heritages might in their actual state be reasonably expected to let from year to year, under deduction of the probable annual average cost of the repairs, insurance, and other expenses, if any, necessary to maintain such lands and heritages in their actual state. . . ."

On 8th February 1904 the Corporation of the City of Glasgow brought a note of suspension and interdict against William James Wood, collector of assessments for the parish of Glasgow, in which they craved suspension of a threatened charge to make payment of certain assessments levied upon them in respect of their telephone undertaking within that parish.

In virtue of section 37 of 8 and 9 Vict. c. 83, the complainers claimed a deduction of at least 70 per cent. from the annual value of the subjects in determining the amount on which they were liable to pay assessments. The Parish Council had refused to allow a larger deduction than 20 per cent.

On 23rd February the note was passed without caution, and on 15th March 1904 the Lord Ordinary (Low) closed the record, and before answer remitted to J. H. Buchanan, C.A., Edinburgh, to report as to the probable annual average cost of the repairs, insurance, and other expenses, if any, necessary to maintain the subjects assessed in their actual state, and the rates, taxes, and public burdens payable in respect thereof and upon any other matter which either party might consider material to the question at issue.

On 5th April 1905 Mr Buchanan reported—"... (1st) That the probable annual average cost of the repairs, insurance, and other expenses necessary to maintain the complainers' subjects assessed in their actual state, amounts to £1656, 3s. 10d., and that the rates, taxes, and public burdens payable in respect of the same amount to £244, 1s. 4d., making together a total deduction of £1900, 5s. 2d. applicable to the whole subjects assessed in the several assessable areas in which they are situated. (2nd) That the actual value at which the subjects assessed, of which the complainers are owners, appear in the valuation rolls for the year 1903-04 of the various assessable areas in which said undertaking is situated, is £5202, 12s., that the value at which the portion of said undertaking within the parish of Glasgow (for which the respondent is collector) appears in the valuation roll for 1903-04 for said parish, is £3472, and that the proportion of the total deductions as above of £1900, 5s. 2d., applicable to said value of £3472, is £1267, 5s., said deductions representing 36½ per cent. of the respective annual values as above."

In his note the reporter, *inter alia*, stated—". . . In the statements as lodged by the complainers the expenditure for the year ending 31st May 1903, on which their claim is based, is stated as follows:—

"1. Repairs—			
On Underground Cables -	£462	1	1
On Overhead Wires, &c. -	1027	7	3
On Subscribers' Instruments	1187	2	0
On Switchboards - - -	932	4	7
On Tools - - - - -	104	1	6
On premises (occupied by complainers as tenants) -	22	16	5
On Roofs - - - - -	636	1	11
	£4371	14	9
"2. Insurance - - - -	149	3	9
	£4520	18	6
"3. Owners' Rates - - -	244	1	4
	£4764	19	10

"The total deduction of £1900, 5s. 2d., as brought out by the reporter in the first head of the preceding report, is made up as follows:—

"1. Repairs—			
Underground - - - -	£436	16	1
Overhead - - - - -	1002	17	0
Tools - - - - - -	104	1	6
Roofs - - - - - -	112	9	3
	£1656	3	10
"2. Owners' Rates - - -	244	1	4
	£1900	5	2

"The reporter has, in reaching the above results, eliminated all items which in his