specification which is sufficient to make a valid complaint. It is expressly provided that the description of any offence in the words of the statute contravened shall be sufficient. I find nothing to suggest that what was one offence under the Game Act 1832 becomes two offences under the Summary Jurisdiction Act. The case of *Connel*, to which the Sheriff-Substitute refers, does not appear to me to support any such contention. I think, therefore, that the Sheriff-Substitute took a wrong view as to the form of complaint, which, in my opinion, was valid and did not require amendment.

The second question arises in this way. The complainer led evidence, the result of which is set forth in the facts which the Sheriff-Substitute found proved. The ground over which the respondent was alleged to have trespassed in pursuit of rabbits was pasture ground over which the respondent's brother had a right of pasturage—his lease as I understand giving him right to sole occupation of a certain amount of arable ground and a right of pasturage over the ground in question along with five other tenants. The respondent adduced his brother as a witness, and he testified—and the Sheriff believed him—that he had given authority to his brother to shoot rabbits. The giving of such a licence involved a claim by the tenant of a right to himself to shoot rabbits or to authorise another to do so for him. Accordingly the Sheriff-Substitute held that a question of civil right had arisen and he dismissed the complaint.

In taking the course which he did the Sheriff-Substitute appears to have proceeded mainly, if not entirely, upon the provisions of the Ground Game Act 1880. Assuming that Act to apply in the circumstances of this case—and I express no opinion upon that matter—I think that the person founding upon a right to shoot over land of which he is not occupier must produce written authority from the tenant. The Sheriff has found that the respondent had such authority, but there is no record of the production of any writing, and the complainer says that no writing was produced. This would probably lead to our having to remit the case to the Sheriff to hear further evidence, unless the course taken by him is justified upon other grounds. In my opinion, however, it was so justified.

At common law the tenant of a farm is entitled, in the absence of restriction in his lease, to kill rabbits at all events for the preservation of his crops. He is also entitled to authorise anyone to kill rabbits on his farm (see *Calder*, 4 Coup. 131; *Stewart*, 5 Coup. 526), and a person prosecuted under the Day Trespass Act may establish such authority without producing any written mandate from the tenant—*Jack*, 1 Wh. 350. I think it may be a question whether this right on the part of a tenant gives him a right to authorise shooting of rabbits over pasture ground common to several tenants. But on the respondent's establishing to the Sheriff's satisfaction, as he apparently did, that he had authority from a tenant of the ground to kill rabbits, I think the case assumed a new aspect. It then became no longer a question of trespassing in pursuit of rabbits, but a question whether the tenant had a right to give such authority as he claimed to have given. I therefore think that the third and fourth questions fall to be answered in the affirmative.

LORD DEWAR—I concur.

LORD JUSTICE-CLERK—I also concur.

In *Morrison's* case the Court answered the first question in the negative, and the third and fourth questions in the affirmative, and dismissed the appeal. In *Macdonald's* case the Court answered the second and third questions in the negative and sustained the appeal.

Counsel for the Appellant—Dean of Faculty (Dickson, K.C.)—Paton. Agents—Maxwell, Gill, & Pringle, W.S.

Counsel for the Respondent—MacRobert. Agents—Duncan Smith & Maclaren, S.S.C.

COURT OF SESSION.

Saturday, June 28.

FIRST DIVISION.

[Sheriff Court at Glasgow.

NELSON *v.* ALLAN BROTHERS & COMPANY (UNITED KINGDOM), LIMITED.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, c.* 58), *Second Schedule* (17) (*b*)—*A. S. 26th June* 1907, *sec.* 17 (*h*)—*Application for Stated Case—Refusal by Arbitrator to State as a Question of Law whether his Findings of Fact were Supported by Evidence—Finality of Arbitrator as to Findings of Fact.*

In an application under the Workmen's Compensation Act 1906 the arbitrator after a proof refused compensation. The claimant thereafter presented a note to the Court setting out certain facts which he alleged were proved, and craving an order for a stated case on the following question of law—"Whether there was evidence . . . which could competently support his" (the arbitrator's) "findings of fact." It was not averred that there was no evidence before the arbitrator upon which he could proceed, but merely a statement that the evidence did not support the facts found proved.

The Court *refused* the note, *holding* that the arbitrator's decision as to the facts found proved was final.

James Nelson, seaman, 22 James Watt Street, Glasgow, *appellant*, claimed, in the Sheriff Court at Glasgow, compensation under the Workmen's Compensation Act

1906 (6 Edw. VII, cap. 58) from Allan Brothers & Company (United Kingdom), Limited, shipowners, Glasgow, *respondents*, in respect of an accident which he alleged arose out of and in the course of his employment with the defenders.

The Sheriff-Substitute (GLEGG) refused compensation and stated a Case for appeal in the following terms:—"The Case was heard before me and proof led, when the following facts were established—(1) Appellant was in the employment of Allan Brothers & Company, Limited, on the s.s. 'Scandinavian,' at a wage of 34s. 6d. per week. (2) On 2nd April 1912, while the ship was at Halifax, appellant injured his left hand by falling on the deck. (3) In consequence thereof he was incapacitated for full work and did light work until 11th April. (4) On 11th April, while the ship was at Boston, appellant went ashore, returned under the influence of drink and engaged in a fight with Quartermaster Miller. (5) At that time his hand was recovering from the injury, and if no further injury had been received it would have been completely recovered by 22nd April 1912. (6) Appellant's hand received further injuries in the course of the fight, and next day it was swollen and stiff and incapacitated him from work. (7) Appellant was kept on and paid wages until the end of the voyage on 22nd April 1912. (8) On 12th July 1912 appellant returned to and earned full wages at his previous employment. (9) Appellant's incapacity subsequent to 22nd April 1912 was not due to the original injury sustained on the 2nd, but was due to the injury sustained in the fight on the 11th.

"I found in law that appellant's incapacity subsequent to 22nd April was not due to accident arising out of and in the course of his employment.

"I therefore assoilzied the respondents and found them entitled to expenses.

"The *question of law* for the opinion of the Court is—Whether upon the facts stated it could competently be found that the appellant's incapacity subsequent to 22nd April 1912 was not due to accident arising out of and in the course of his employment."

The Sheriff-Substitute further stated—"I certify that I have refused to include in the foregoing Stated Case the following question which the appellant proposed I should submit in addition to the question of law therein stated, viz.—'Whether there was evidence led before the Sheriff-Substitute which could competently support his findings of fact.'

"The reason for my refusal was that this question was not raised by the facts proved."

On 5th June 1913 Nelson presented a note to the First Division for an order on the Sheriff-Substitute to state a case, in which the facts as averred by him (the appellant) were as follows:—"(*b*) That on 2nd April 1912, while the appellant was assisting to moor the ship in the harbour at Halifax, he slipped and fell on the deck and sustained injuries to his left hand through the lever of the anchor compressor falling on it while he was in that position. (*c*) That thereafter the appellant was treated daily by the medical officer of the ship for contusion of the left hand—especially of the third and fourth metacarpal bones. (*d*) That as the result of the said injuries the appellant was totally incapacitated for work until 11th April 1912. (*e*) That on 11th April 1912 the appellant engaged in a trifling scuffle with a quartermaster named Miller, who had reprimanded him for being on shore. (*f*) That no report of the said scuffle was made to the master of the ship, no entry thereof was made in the official log, and the appellant received a very good discharge both as to conduct and ability at the end of the voyage. (*g*) That on the night of the 11th April 1912, after the said scuffle, the appellant's hand was in no worse condition than it had been before the scuffle took place. (*h*) That on 12th April the appellant resumed duty and worked all the way home doing light work. (*i*) That on the 13th April 1912, after the appellant had been at work for more than a day, his injured hand was dressed by the ship's doctor, who found that the swelling and stiffness had increased since he had last examined it. (*j*) That the doctor did not ask the appellant the cause of the increased stiffness, but attributed it to the scuffle which he thought had taken place on the 12th April, his information being derived from the first officer, who was informed by the fourth officer, who had received his information from a man named Moore who was not examined as a witness. (*k*) That the appellant was paid wages till the end of the voyage on 22nd April 1912. (*l*) That owing to the condition of his injured hand the appellant was totally incapacitated for work between 22nd April and 12th July 1912."

The *questions of law* proposed to be submitted to the Court were—"1. Whether upon the facts stated it could competently be found that the appellant's incapacity subsequent to 22nd April 1912 was not due to accident arising out of and in the course of his employment? 2. Whether there was evidence led before the Sheriff-Substitute which could competently support his findings of fact?"

The note further stated—"The appellant prays for an order upon the respondents, the said Allan Brothers and Company (United Kingdom), Limited, to show cause why a case should not be stated by the Sheriff for the following reasons—1. The proposed questions of law above stated were raised by the facts proved before the Sheriff. 2. Certain of the findings of fact contained in the case which the Sheriff has offered to state are contrary to the evidence led before him."

Answers were lodged by the respondents in which they, *inter alia*, submitted that the reasons for the appellant's note as stated therein could not competently be considered, and that the note should accordingly be refused.

Argued for appellant—Where, as here,

the facts as found by the arbitrator were contrary to the evidence the Court could review his decision. It was a question of law whether a finding in fact could be reasonably supported upon the evidence adduced — *Walker* v. *Murray*, 1911 S.C. 825, *per* the Lord President at 828, 48 S.L.R. 741. The arbitrator had proceeded entirely contrary to the evidence, and that being so the Court was entitled to interfere, for in these matters the position of the Court was analogous to that held by it in reviewing the verdict of a jury—*Mackinnon* v. *Miller*, 1909 S.C. 373, *per* the Lord President at 378, 46 S.L.R. 299. If the Court could not review the findings of fact the appellant had no remedy. The process therefore ought to be transmitted in order that the evidence led might be available.

Counsel for respondents were not called on.

LORD KINNEAR—I think that this is a very clear case, and that we are not entitled to ask the Sheriff-Substitute to state a case for the purpose of raising a question of fact and nothing else. The learned counsel, who has argued the point very ingeniously, says that where the Sheriff-Substitute has found fact contrary to evidence, that is a question of law, and has always been so considered. That is not, in my opinion, an exact statement of the law. I think if a Sheriff-Substitute has pronounced findings in fact which there was no evidence before him to enable him to find one way or the other, it is a question of law whether that award can stand. But that is not the kind of case which is made in this application, because the appellant begins his statement by saying that the Sheriff-Substitute allowed a proof, "in the course of which the following facts were established," and therefore he says there was evidence laid before the Sheriff-Substitute upon which it was his duty to find the facts in the appellant's favour. But if he could find one way, provided he thought it right, it was equally open to him to find the other way if that was right. The statement simply comes to this, that there was a question of fact before the Sheriff and that evidence was led, upon which he was invited to decide it. But then he had to decide it according to his own judgment, and we cannot listen to the complaint that he has decided it wrongly.

Now if we are to review the Sheriff-Substitute's judgment in these circumstances, we are simply entertaining an appeal upon a question of fact and nothing else. I do not think it would be possible to sustain this appeal without making the statutory limitation on this Court a dead letter. I am therefore for refusing the motion.

LORD JOHNSTON—In dealing with appeals under this Act I think that the Court has probably already gone further than the Legislature intended, and that certainly we should not open the door any wider to appeals from the judgments of Sheriff-Substitutes as arbitrators.

I agree with your Lordship that to accede to the demand of the appellant here would be to reduce the limitation of review to a dead letter. There are cases where it may be quite proper to remit to the Sheriff-Substitute to reconsider facts, as, for instance, where the facts stated by him are not the facts which really raise the question which he puts, or where there are allegations upon the one side or the other that there were facts in the case which were they stated would allow the Court to dispose of some additional question of law. We should then certainly remit to the Sheriff-Substitute and ask an explanation, or ask what was the state of the facts, or whether he was in agreement with the party demanding review as to the state of facts alleged by him.

But here we are not in that position. We are in an absolutely controversial position between one of the parties and the Sheriff-Substitute as to what the facts are. In that position the Sheriff-Substitute is absolute master. He has found the facts, and to accede to the demand of the appellant here would really be allowing him to appeal or reclaim against a judgment on fact where the Sheriff-Substitute holds one way and he happens to be disposed to hold another.

In a case of that sort we cannot accede to the demand, which is really that we should instruct the Sheriff-Substitute as to what facts he is to find.

LORD MACKENZIE—I am very clearly of the same opinion. I think that Mr King Murray has said everything that possibly could be said on behalf of his client. The reason why he has failed to convince us is simply because of the plain terms of the Act of Parliament. We cannot interfere with the Sheriff-Substitute on a question of fact, and the case states that proof was led and certain facts established. No statement has been made to us that no proof was led, or that there was no evidence before the Sheriff-Substitute upon which he could proceed, but merely a statement that upon the evidence that was before him he has come to a wrong conclusion. I think it is out of the question that we should take the case up under these circumstances.

The LORD PRESIDENT was absent.

The Court refused the note.

Counsel for Appellant — Watt, K.C. — King Murray. Agent—D. Maclean, Solicitor.

Counsel for Respondents—Horne, K.C.—Carmont. Agents — Boyd, Jameson, & Young, W.S.