lated in the course of the proceedings—which I assume would be successful so far as the pursuer is concerned—are heavy, there will be great difficulty in recovering them from a person who has no capital but is dependent for his subsistence upon his own labour. Accordingly I think that that is an element we are entitled to take into consideration here, and that we are entitled to follow the course which your Lordship in the chair has proposed, of remitting the case back to the Sheriff Court, where I think it will be as well tried and much more cheaply tried than it could possibly have been tried by a jury sitting in Edinburgh, to which place the witnesses from the neighbourhood of Huntly would all have to be brought.

LORD GUTHRIE—I agree. I think, as we held in the case of *Barclay*, that the Legislature did not mean to confine the Court to the one question of the amount that would probably be required, but intended that we should take the whole circumstances into consideration. In doing so I am quite clear that the course proposed by your Lordships is the right one.

LORD DUNDAS was sitting in the Extra Division.

The Court remitted the cause to the Sheriff.

Counsel for the Pursuer—Armit. Agent—William Geddes, Solicitor.

Counsel for the Defender — Mitchell. Agents—Mackay & Hay, W.S.

Saturday, November 21.

FIRST DIVISION.

[Bill Chamber.

BOARD OF AGRICULTURE *v.* CATHCART.

Process—Landlord and Tenant—Reclaiming Note—Competency—Opinion of the Lord Ordinary Obtained in an Arbitration—Small Landholders (Scotland) Act 1911 (1 *and* 2 *Geo. V, cap.* 49), *sec.* 7 (11)—*Agricultural Holdings (Scotland) Act* 1908, *Second Schedule, Art.* 9.

The Small Landholders (Scotland) Act 1911, sec. 7 (11), which allows in certain circumstances the question of compensation on the creation of small holdings to be decided by arbitration, provides—"Provided that . . . the Second Schedule to the Agricultural Holdings (Scotland) Act 1908 shall apply to any such arbitration . . . with the substitution of the Lord Ordinary for the Sheriff." . . . The Agricultural Holdings (Scotland) Act 1908, Second Schedule, Art. 9, enacts that "the arbiter may at any stage of the proceedings . . . state in the form of a special case for the opinion of the Sheriff any question of law arising in the course of the arbitration." *Held* that the opinion of the Lord Ordinary so obtained was final, and accordingly that a reclaiming note to the Inner House was incompetent.

The Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, cap. 49), sec. 7 (11), is quoted *supra in the rubric.*

The Agricultural Holdings (Scotland) Act 1908 (8 Edw. VII, cap. 64), Second Schedule, "Rules as to Arbitration," Art. 9, enacts—"The arbiter may, at any stage of the proceedings, and shall, if so directed by the Sheriff—which direction may be given on the application of either party—state in the form of a special case for the opinion of the Sheriff any question of law arising in the course of the arbitration."

In an arbitration under the Small Landholders (Scotland) Act 1911, sec. 7 (11), between Dame Emily Eliza Steele Gordon Cathcart, wife of Sir Reginald Archibald Edward Cathcart of Carlton, Bart., proprietrix of Ormiclate, Bornish, and Milton Farms, South Uist, *respondent*, and the Board of Agriculture for Scotland, *reclaimers*, for the purpose of determining the amount of compensation due in respect of the formation of small holdings and enlargements of holdings on the said farms of Ormiclate, Bornish and Milton, James Forbes, M.V.O., Eallabus, Bridgend, Islay, arbiter in the reference, at the request of the Board, stated a Special Case for the opinion of the Lord Ordinary on the Bills.

The Lord Ordinary (DUNDAS) having on 28th July 1914 answered the question of law contained in the Special Case in favour of Lady Cathcart, the Board reclaimed to the First Division of the Court of Session.

The respondent objected to the competency of the appeal, and argued—The reference to the Lord Ordinary was merely consultative. The intention was to obtain his opinion, and not his judgment, in the strict sense—*Macdougall and Others*, July 4, 1869, 7 Macph. 976, 6 S.L.R. 620. The wording in section 19 of the Arbitration Act 1889 (52 and 53 Vict., cap. 49) was similar to that in the section under consideration, and it had been held that under that section there was no appeal—*in re Knight and Tabernacle Permanent Building Society*, L.R. [1892] 2 Q.B. 613, Lord Esher (M.R.) at 617. In any event it could not have been intended to allow an appeal here, for the Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, cap. 49) stopped short of importing section 11 (3) of the Agricultural Holdings (Scotland) Act 1908 (8 Edw. VII, cap. 64) where an appeal was expressly provided for in certain circumstances, and Schedule 2 of the Act could not be held to override such provision.

Argued for reclaimers—Any interlocutor of the Lord Ordinary was appealable, the reason being that historically the Outer House was identical with the Inner House, the whole forming the Court of Session. The Lord Ordinary's judgment was merely an opinion, the judgment being given only in the Inner House—*Clippens Oil Company, Limited* v. *Edinburgh and District Water Trustees*, March 20, 1906, 8 F. 731, Lord President at p. 750,

43 S.L.R. 540, at p. 551. Section 7 (11) of the Small Landholders (Scotland) Act 1911 and section 11 (3) of the Act of 1908 contemplated the ordinary legal opinion of the Sheriff, and by the former section the Lord Ordinary was merely substituted for the Sheriff.

LORD PRESIDENT—The question we have to consider here is whether or not this reclaiming note is competent. I am of opinion that it is not competent. The decision of the question turns upon the just construction of the ninth article of the Second Schedule to the Agricultural Holdings Act 1908, which runs as follows—" . . . *quotes, v. sup.* . . ." That section does not appear to me to be doubtful in construction. It gives the arbiter the incidental power to invoke the aid of the Lord Ordinary in order to advise him upon any question of law arising in the course of the arbitration, and likewise a power to the Lord Ordinary to compel the arbiter under certain circumstances to state a question of law for his opinion. Presumably in arbitrations such as this an expert is employed who has knowledge of agricultural affairs but who probably has not any exact knowledge of law. And the object of the section is clear enough; it is to give the parties to the arbitration and the arbiter himself the advantage of the services of a legal assessor whenever that seems to be desirable. But if reclaiming notes were presented against the opinion given by the legal assessor, which, be it observed, may be given at any stage of the proceedings, and which may be given as often as is found desirable, in that case there might follow the consequences figured by the learned Judges in the Court of Appeal in the case cited—a succession of lawsuits all more or less depending upon a single arbitration, and each one of them running the gauntlet of the Court. It appears to me to be quite plain that there is a special jurisdiction here created giving the Lord Ordinary powers which hitherto he did not possess, and that in the absence of any clear indication to the contrary his opinion must be final. Whether the arbiter is bound to follow that opinion or not, I am not at present prepared to say, but at all events it is clear it may be given frequently, and it may be given at any stage. It may be compelled. I think in every instance it must be regarded as final.

LORD SKERRINGTON—I agree with your Lordship. It is quite clear, I think, that the Small Landholders Act of 1911 does not invoke the ordinary jurisdiction of the Lord Ordinary on the Bills, but creates a new and special jurisdiction. In these circumstances, it lies upon the appellant to show that the statute confers upon him a right of appeal, and he is unable to do so. *Prima facie*, in legal language, an opinion is one thing and a judgment another. A mere opinion is not a thing which can be appealed unless there is special provision to that effect, as is found in section 11, sub-section 3, of the Agricultural Holdings Act of 1908. The distinction between an opinion and a judgment was recognised by section 63 of the Court of Session Act of 1868.

LORD DEWAR concurred.

LORD JOHNSTON and LORD MACKENZIE were absent.

The Court dismissed the reclaiming note as incompetent.

Counsel for the Reclaimers—The Solicitor-General (Morison, K.C.)—T. G. Robertson. Agent—Sir Henry Cook, W.S.

Counsel for the Respondent—Macmillan, K.C. — C. H. Brown. Agents — Skene, Edwards, & Garson, W.S.

Tuesday, November 24.

FIRST DIVISION.

[Sheriff Court at Glasgow.

GREER *v.* GLASGOW CORPORATION.

Process—Sheriff—Remit for Jury Trial—Unsuitable Case — Sheriff Courts (Scotland) Act 1907 (7 *Edw. VII, cap.* 51), *sec.* 30.

In an action of damages at common law in the Sheriff Court for £250 for personal injury, viz., " sprain of the right ankle and severe bodily bruising and shock," the pursuer required the cause to be remitted to the Court of Session for jury trial. The Court *refused* the application, and remitted the cause back to the Sheriff on the ground that the averments of the pursuer did not disclose that the case was other than one in which no jury of reasonable men could award a verdict of more than £50.

Authorities reviewed by Lord Skerrington.

The Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51), sec. 30, enacts—" In cases originating in the Sheriff Court . . . where the claim is in amount or value above fifty pounds, and an order has been pronounced allowing proof . . . it shall, within six days thereafter, be competent to either of the parties who may conceive that the cause ought to be tried by jury to require the cause to be remitted to the Court of Session for that purpose, where it shall be so tried: Provided, however, that the Court of Session shall, if it thinks the case unsuitable for jury trial, have power to remit the case back to the Sheriff, or to remit it to a Lord Ordinary, or to send it for proof before a judge of the Division before which the cause depends."

Mrs Margaret Rennie or Greer, wife of James Greer, and residing at 50 Lyon Street, Garscube Road, Glasgow, with the consent of the said James Greer as her curator, *pursuer*, brought an action of damages for £250 in the Sheriff Court at Glasgow against the Corporation of the City of Glasgow, proprietors of the Glasgow and District Electric Tramways, Glasgow, *defenders*,