SHERIFFDOM OF LOTHIAN AND BORDERS AT EDINBURGH

IN THE ALL-SCOTLAND SHERIFF PERSONAL INJURY COURT

[2021] SC EDIN 53

PIC-PN2612/18

JUDGMENT OF SHERIFF K J CAMPBELL QC

in the cause

THOMAS WARD

Pursuer

against

(FIRST) WM. MORRISON SUPERMARKETS PLC
and
(SECOND) PPF LIMITED

Defender

Pursuer: Hofford QC; Thompsons, solicitors, Glasgow
Defender: G Clarke QC; Kennedys, solicitors, Glasgow

Edinburgh 3 September 2021

Introduction

1. This action arises out of an accident in which the pursuer was injured in the course of his employment on 16 October 2015. At the material time he was employed by the second defender as an HGV driver in vehicles operated by the first defender. The second defender was responsible for paying the pursuer, in other respects control of the pursuer's working conditions was by the first defenders. The present action was raised on 4 October 2018. All parties attended a Pre-Trial Meeting held on 12 December 2019, and in the course of the meeting terms of settlement were agreed as between the pursuer and the first defender.

2. The question which arises for decision now is whether that settlement was of the entirety of the action (as the second defender contends), or merely insofar as the action was directed against the first defender (as the pursuer contends).

3. The matter called before me for proof before answer on 3 August 2021. The proof took place by webex videoconferencing. The second defender has lodged a Minute (29 of Process) contending that the case settled by way of compromise between the first defender and the pursuer, and seeking declarator to that effect, together with expenses. In his Answers (31 of Process), the pursuer asserts the direct negative.

The agreed facts

4. At the outset of the proof, a Joint Minute for the pursuer and second defender was tendered, and parties' respective senior counsel indicated that as a consequence of the agreement in the Joint Minute, neither party would be leading oral evidence. Since the Joint Minute is the evidential basis of the debate which followed, it is convenient to set it out *ad longum*.

> "Clarke QC for the Second Defenders and Hofford QC for the Pursuer stated and hereby state to the Court that the following facts are agreed on behalf of the parties:-
>
> 1. The Pursuer was injured in the course of his employment on 16 October 2015. At the material time he was employed by the Second Defenders as an HGV driver in vehicles operated by the First Defenders. The Second Defenders were responsible for pay. In other respects control of the Pursuer's working conditions was by the First Defenders.
>
> 2. The present action was raised on 4 October 2018.
>
> 3. The basis of the action against each Defender is set out in the Record.
>
> 4. All parties attended a PTM held on 12th December 2019, the First Defenders settled the action brought against them by the Pursuer.

5. The terms of settlement were that the First Defenders would pay £110,000 net of CRU.

6. Deductible CRU was £12550.37.

7. There was no agreement between the Pursuer and the First Defenders that there would be a deduction for contributory negligence although the question of an appropriate reduction in respect of contributory negligence was raised in discussions.

8. Subsequent to the PTM it was agreed by the Pursuer at the request of the First Defenders that, for the purpose of reducing the First Defenders' liability to the CRU the Pursuer would ~~not oppose~~ agree to a deduction of 30%. This did not affect the terms of settlement agreed with the Pursuer nor the amount which the Pursuer was to receive in damages from the First Defender

9. At an early stage in the PTM Counsel for the Pursuer indicated at the PTM that, in his opinion, the full value of the Pursuer's claim was above £360,000. Counsel for the Pursuer also observed to Senior Counsel for the Second Defenders that the Second Defenders' defence to the action was skeletal and included no plea of contributory negligence. Senior Counsel for the Second Defenders indicated his clients were not prepared to contribute to any settlement and then left the Pursuer and First Defenders to continue their discussion alone. The Pursuer's claim against the First Defenders was settled. Thereafter, Counsel for the Pursuer advised Senior Counsel for the Second Defenders that the case would be proceeding against the Second Defenders for the remaining portion of the claim. He offered settlement on the basis of no expenses due to or by for the process.

10. A draft Minute for the PTM was signed by Counsel for the Pursuer advising the Court that the 4 day Proof was still required. Senior Counsel for the Second Defenders declined to sign it.

In respect whereof"

5. Also referred to in the course of submissions was the Joint Minute between the pursuer and the first defender (No 33 of Process), which is in the following terms:

"Axelsson for the pursuer and McEwan for the first defender have concurred and do hereby concur in stating to the court that the action as directed against the first defender has settled extra-judicially and they therefore craved and do hereby crave the Court to:

1. Find the first defender liable to the pursuer in the expenses of process as taxed. [to certify a number of skilled witnesses, and to grant sanction for the employment of junior counsel.]

7. Quoad ultra, to assoilzie the first defender from the craves of the Initial Writ."

Submissions

Submissions for second defender

6. Making a motion on behalf of the second defender for declarator in terms of his Minute that the case has settled by way of compromise between the pursuer and first defender, senior counsel for the second defender accepted the onus was on the second defender and he therefore made his submissions first. He explained that the second defender supplied the labour of drivers, including the pursuer, to the first defender, who controlled and directed the manner in which the drivers would work. *Prima facie* the main common law and statutory cases were directed against the first defender as having control and the power to exercise it appropriately. Labour-only supply is quite common in modern industry and is widespread in the oil industry. The employers providing the labour make a profit on it but have responsibilities for pay, pensions and employment of the workers engaged.

7. Although, as in this case, they typically have no control over the workplace, such labour contractors are not absolved of the duty to take reasonable care for the safety of their employees. Such duties have been described as "non- delegable". That can provide a vital lifeline in cases where the de facto employer has gone bust or is a man of straw. But where that is not the case, senior counsel submitted, the duties upon the employer providing the labour are wholly subsumed by the duties upon the de facto employer. After all, only the latter has the power actually to take reasonable care. In reality, the labour-only provider relies upon the de facto employer to take care of his non-delegable duties. If the de facto

employer fails so to do then the labour-only employer, just like the pursuer, relies on the de facto employer to make good in a claim of damages.

8. In senior counsel's submission, that took the case into the realm addressed by Lord Hope in *Jameson* v *CEGB* [2000] 1AC 45, at 471H-474H. That case was, he submitted, the leading authority relevant to the issues. In contrast to the situation in *Jameson*, here both defenders were called in the same action. One would expect that in the settlement of such action there would either be agreement of all parties and the case settled or that it had not settled at all. Here the pursuer settled with one wrongdoer, the de facto employer, without discussion with the other alleged wrongdoer, and appeared to be saying "Well, the damages I agreed with the first defender do not exhaust my claim so I will simply proceed against you."

9. In the context of this case, the pursuer must be taken to have prosecuted his case to the full against the first defender as the primary wrongdoer. Things might be different if that wrongdoer had insufficient funds to meet all the damages but there is no question of that here. Although he had not been party to the discussions which led to settlement at the net figure of £110,000 senior counsel was, he said, entitled to assume, as Lord Hope suggests, that both parties made compromises. No doubt they involved questions of quantum, questions of risk and questions of contributory negligence (as touched on in the Joint Minute.) It was perfectly normal for each of these questions to be unresolved and for parties simply to agree on a figure for damages which is acceptable to both. In other words this is identical to the situation CEGB found themselves in in *Jameson*.

10. No doubt the settlement reached by the pursuer and first defender was intended to be in full satisfaction of the delictual act. Claims against both defenders were raised in the same action; the heads of loss were the same. The claim against the first defender covered

all aspects of the claim against the second defender. Accordingly, senior counsel submitted, the claim against the second defender was extinguished by the compromise agreed with the first defender. In his submission, this case is afortiori of *Jameson*, because there had been separate harmful exposure during separate periods of employment in that case. Here there was a single indivisible loss.

11. Senior counsel turned next to *Heaton v AXA Equity & Law* [2002] 2AC 329, on which the pursuer relied. The circumstances there were very different, and the case could be distinguished from *Jameson*: there were overlapping claims for successive breaches of contract against separate defendants, and the claimants had entered a compromise agreement with one defendant "in final settlement". The question was whether that precluded continuing with the claim against the other defendant.

12. Senior counsel turned finally to *Kidd* v *Lime Rock Management* 2021 SLT 35, which he said contained detailed scrutiny of the prior authorities. He referred in particular to paragraph 41 of Lord Clark's opinion. As in *Kidd*, there was no indication in the present case that the payment agreed was not to be regarded as anything other than full satisfaction of the pursuer's claim, and he renewed his motion for declarator.

Submissions for pursuer

13. For the pursuer, Mr Hofford QC moved the Court to refuse the second defender's Minute for declarator; and moved me to allow the case directed against the second defender to proceed. The facts were as set out in the Joint Minute and were in his submission uncontroversial. Senior counsel submitted there were a number of inferences and conclusions which the court should draw from those:

(a) The settlement represented a compromise of the claim against first defender only.

(b) The settlement represented a proportion of overall damages; consequently a proportion of the damages remained.

(c) There was no agreement between the pursuer and the first or second defenders that the pursuer had received full satisfaction of his whole claim; nor was there any agreement at any time that the second defenders should be assoilzied from the crave of the Initial Writ.

14. Senior counsel turned to consider the authorities. Before looking at the two major cases on this issue, the earlier Scottish case of *McNair* v *Dunfermline Corporation* 1953 SC 183 pointed the direction of travel, where a pursuer fell on a pavement and first sued the local authority and brought in Scottish Gas which had been carrying out work. The pursuer accepted a tender from Scottish Gas but continued against the local authority who wanted their expenses. It was there held the pursuer was not precluded by acceptance of tender from continuing action against the local authority.

15. Senior counsel submitted *Jameson* v *Central Electricity Generating Board* must now be seen in the light of *Heaton* v *AXA Equity & Law* because it subjects the *Jameson* case to analysis and review. In particular, it was important to note the agreement expressly stated settlement was to be in full and final settlement *and satisfaction of all his causes of action* in the statement of claim. Lord Hope considered that the terms of settlement extinguished his subsequent claim. *Jameson* was correct on its own facts, but entirely distinguishable from this case. By contrast, the agreement between the pursuer and first defender in this action in the Joint Minute clearly confined the settlement to the claim against the first defender; there was no mention of satisfaction of all his causes.

16. Turning to *Heaton* v *Axa Equity and Law Life Assurance Society plc*, senior counsel referred in particular to Lord Bingham's speech at paragraphs 1, 3, 4, 6, 7, 8, and 9. He submitted there was a recurring theme in both *Jameson* and *Heaton* namely, look at the agreement as the primary focus in order to discover whether the compromise represents the full measure of the pursuer's loss. In paragraph 9, Lord Bingham identified the five principal points to be borne in mind when so doing. Further support for that approach was found in Lord Rodger's speech at paragraphs 79 and 81.

17. Senior counsel submitted a number of propositions emerged from the authorities.

(a) Full and final settlement against one tortfeasor does not constitute full and final settlement against all concurrent tortfeasors.

(b) The question is whether the compromise was "in full satisfaction" of the pursuer's overall claim or in "final settlement" of the claim against one tortfeasor only.

(c) If the settlement is not "in full satisfaction" of the overall claim, then the remaining portion of the loss may be recovered from a concurrent tortfeasor.

(d) In order to assess whether a compromise is "in final settlement" or "in full satisfaction" primary reference must be made to the terms of the agreement set in the context of the factual circumstances.

(e) In construing the meaning of the agreement, there are factors to consider, as identified by Lord Bingham of Cornhill in the case of *Heaton*, namely:

(i) Release of one concurrent tortfeasor does not in law release another concurrent tortfeasor;

(ii) An agreement between A and B will not affect A's rights against C;

(iii) Clear language precluding the pursuit of other claims has little bearing on whether the agreement represents the full measure of A's loss; and

(iv) The absence of an express preservation of rights against a concurrent tortfeasor is not significant (ie no need to reserve a right he already has).

18. Senior counsel submitted that in short, the question for the court was: did the pursuer obtain full satisfaction of his claim from the first defender, thereby precluding further proceedings? There were a number of matters to consider.

(a) The Joint Minute clearly and expressly stated that it was a settlement only with the first defender - it does not include the second defender.

(b) Could it be inferred from the agreement that the claimant, having settled with the first defender, intends further proceedings against the second defender? If only by inference, it is clear that the pursuer is not precluded from continuing against the second defender.

(c) The wording of the Joint Minute here is very different from *Jameson,* where it was a full and final settlement and satisfaction of all claims and causes of action: that kind of express wording is not present in the present case.

(d) The compromise agreement was achieved in the context of the same proceedings against both defenders, this is a point to be construed in favour of the pursuer.

(e) It was argued that the absence of an express reservation of rights against the second defenders is neither here nor there - why reserve rights you already have?

(f) In any event, it was agreed in the Joint Minute (paragraph 9): after the settlement had been agreed, Counsel for the pursuer advised senior counsel for the second defender that proceedings would continue against the second defenders for

the remaining portion of the claim. That is agreed evidence. The Second Defender cannot properly say they were not aware that the pursuer saw them as liable for the remaining portion.

(g) Indeed, that was confirmed (in paragraph 10 of the Joint Minute) when Senior Counsel refused to sign the Minute of the PTM which advised the court that a 4 day proof was still required - despite the settlement with the first defender.

(h) It is always dangerous to rely too much on the figures that were actually agreed. This was a compromise, so there would be give and take; however,

(i) the factual background is that the Initial Writ concluded for payment of £360,000;

(ii) there is agreement (paragraph 9 of the Joint Minute) that counsel for the pursuer at the PTM had given the case a full value of £360,000;

(iii) Even assuming a deduction of contributory negligence at 30% this would have given a value of £252,000;

(iv) The compromise agreement was £110,000 net of CRU (£12,550 per para 6 of Joint Minute);

(v) Therefore, there is a clear shortfall between the valuation and the compromise ie the remaining portion is substantial.

19. Drawing the argument together, senior counsel submitted that on a proper construction of the Compromise agreement and the factual context, it is clear that there was full and final settlement with the first defenders but there was not "full satisfaction" of the pursuer's claim. In these circumstances, the pursuer is not precluded from continuing proceedings against the second defenders. If that led to proof, any damages awarded would take into account the damages already paid to the pursuer.

Analysis and decision

20. It is convenient to start with the authorities to which I was referred. There was broad agreement that *Jameson* and *Heaton* are now the leading cases. As they contain consideration of a number of earlier decisions, accordingly it is not necessary for me to go further back.

Proper scope of the court's inquiry

21. It is instructive first of all to consider Lord Hope's observations in *Jameson* about the limits of inquiry a judge might undertake in a subsequent action against a concurrent wrongdoer:

> "He may examine the statement of claim in the first action and the terms of the settlement in order to identify the subject matter of the claim and the extent to which the causes of action which were comprised in it have been included within the settlement. The purpose of doing so will be to see that all the plaintiff's claims were included in the settlement and that nothing was excluded from it which could properly form the basis for a further claim for damages against the other tortfeasors. The intention of the parties is to be found in the words of the settlement. The question is one as to the objective meaning of the words used by them in the context of what has been claimed.
>
> What the judge may not do is allow the plaintiff to open up the question whether the amount which he has agreed to accept from the first concurrent tortfeasor under the settlement represents full value for what has been claimed. That kind of inquiry, if it were to be permitted, could lead to endless litigation as one concurrent tortfeasor after another was sued on the basis that the sums received by the plaintiff in his settlements with those previously sued were open to review by a judge in order to see whether or not the plaintiff had yet received full satisfaction for his loss. Different judges might arrive at different assessments of the amount of the damages. The court would then have to decide which of them was to be preferred as the basis for the apportionment between the various tortfeasors. I do not think that this can be regarded as acceptable. The principle of finality requires that there must be an end to litigation.
>
> The question therefore is, as Mr. McLaren for the C.E.G.B. put it, not whether the plaintiff has received the full value of his claim but whether the sum which he has received in settlement of it was intended to be in full satisfaction of the tort. In this case the words used cannot be construed as meaning that the sum which the

> deceased agreed to accept was in partial satisfaction only of his claim of damages. It was expressly accepted in full and final settlement and satisfaction of all his causes of action in the statement of claim. I would hold that the terms of his settlement with Babcock extinguished his claim of damages against the other tortfeasors." (476A-F)

22. Of course, in this case, the concurrent wrongdoer is sued in the same action rather than in a subsequent action as was the case in *Jameson*, but the general thrust of the Lord Hope's observations seem to me just as apt, because the issue of principle is that of the liability of the concurrent wrongdoer, where the pursuer has reached terms with the other wrongdoer. The principle of finality in litigation is of course long-established, but it is useful to be reminded of it in a context where the court is explicitly being asked to scrutinise the compromise of a claim. As parties were agreed that *Jameson* and *Heaton* are the leading authorities, it is convenient to set out what appear to me to be the key principles, and also to address whether there is in truth any significant disparity in the respective analyses.

Jameson v *CIGB*

23. *Jameson* concerned a mesothelioma claim. Mr Jameson raised an action against a former employer and settled that action for a sum significantly less than full liability value a short time before he died. That payment was expressed to be "in full and final settlement of all the causes of action in respect of which the plaintiff claimed in the statement of claim." His executors subsequently raised an action on behalf of his widow against another former employer, and the question arose as to whether this was barred by the settlement of the first claim. The executor succeeded at first instance and in the Court of Appeal. The employer successfully appealed to the House of Lords.

24. From Lord Hope's characterisation of the issue in *Jameson* (469B-C), it is clear the present case is closer on its facts to the situation in *Jameson* than *Heaton*, namely concurrent

rather than overlapping claims. At 470D-E, Lord Hope characterised the issue in *Jameson* as "whether liability of concurrent tortfeasors for the same harm is discharged by a settlement which has been entered into with one of them." In addressing "the critical question" of whether a claim has been satisfied, "the answer… will be found by examining the terms of the agreement and comparing it with what has been claimed." (473C).

25. It is beyond argument that when a claim is adjudicated upon by the court, the decree fixes the amount of damages for the full loss. However as the House of Lords recognised, very many cases, particularly claims for damages for personal injuries, are compromised by negotiation and agreement, rather than decree of the court. There may be many reasons why a claimant accepts a compromise to settle. At 474D-E, Lord Hope set out a number of considerations which are relevant to the task of assessing such a compromise.

- Each side will have made concessions of one kind or another to reflect its assessment of the prospects of success.

- Claimants very frequently settle at a discount to the full valuation.

- Some elements of a claim may be withdrawn or compromised in order to secure an overall settlement.

26. In a passage which was the subject of clarification by Lord Bingham in *Heaton*, [paragraph 6] Lord Hope went on to hold that:

> "If the claim was for the whole amount of the loss for which the defendant as one of the concurrent tortfeasors is liable to [the claimant] in damage, satisfaction of the claim against him will have the effect of extinguishing the claim against the other concurrent tortfeasors." (474F-G)

Applying those principles to the wording of the settlement with the first employer, Lord Hope concluded that

> "the words used cannot be construed as meaning that the sum which the deceased agreed to accept was in partial satisfaction only of his claim for damages. It was

> expressly accepted in full and final settlement and satisfaction of all his causes of action." (476E-F).

Heaton v *AXA Equity & Law*

27. *Heaton* concerned overlapping claims for successive breaches of contract against two defendants. The claimant entered into a compromise "in final settlement" with one, and the House of Lords held the proper approach to the question of whether he could pursue an action against the other defendant was to ascertain the intended effect of the compromise agreement by interpreting the words used in the context of the particular circumstances, and where the agreement had not fixed the full measure of the claimant's loss, his action would not be precluded.

28. Echoing Lord Hope in *Jameson*, Lord Bingham pointed to the difference between a judgment and a compromise vis a vis the measure of damage: a judgment is conclusive, whereas in a compromise there is a further question about whether it was accepted as the full measure of loss (335F-H, para 5). The court held that *Jameson* did not lay down a rule that A accepting a sum in full and final settlement from B is thereafter precluded from suing C (Lord Bingham 335H-336A, para 6). Lord Bingham went on to set out a number of points to be taken into account in assessing a compromise agreement:

> "In considering whether a sum accepted under a compromise agreement should be taken to fix the full measure of A's loss, so as to preclude action against C in tort in respect of the same damage … the terms of the settlement agreement between A and B must be the primary focus of attention, and the agreement must be construed in its appropriate factual context. In construing it various significant points must in my opinion be borne clearly in mind:
>
> (1) The release of one concurrent tortfeasor does not have the effect in law of releasing another concurrent tortfeasor …
>
> (2) An agreement made between A and B will not affect A's rights against C unless either (a) A agrees to forgo or waive rights which he would otherwise enjoy against C, in which case his agreement is enforceable by B, or (b) the agreement falls within

that limited class of contracts which either at common law or by virtue of the Contracts (Rights of Third Parties) Act 1999 is enforceable by C as a third party.

(3) The use of clear and comprehensive language to preclude the pursuit of claims and cross-claims as between A and B has little bearing on the question whether the agreement represents the full measure of A's loss. The more inadequate the compensation agreed to be paid by B, the greater the need for B to protect himself against any possibility of further action by A to obtain a full measure of redress.

(4) While an express reservation by A of his right to sue C will fortify the inference that A is not treating the sum recovered from B as representing the full measure of his loss, the absence of such a reservation is of lesser and perhaps of no significance, since there is no need for A to reserve a right to do that which A is in the ordinary way fully entitled to do without any such reservation.

(5) If B, on compromising A's claim, wishes to protect himself against any claim against him by C claiming contribution, he may achieve that end either (a) by obtaining an enforceable undertaking by A not to pursue any claim against C relating to the subject matter of the compromise, or (b) by obtaining an indemnity from A against any liability to which B may become subject relating to the subject matter of the compromise." (337C-G, para 9)

29. Lord Mackay gave a helpful succinct analysis of ratio in *Jameson*:

"I read the majority decision as authority for the proposition that where an action is founded on specified damage suffered by the claimant and the existence of that damage is essential to the success of the action, if the claimant has entered into an agreement under which he accepts a sum as full compensation for that damage, the action cannot proceed. Whether a particular agreement has that effect is a question of construction of the words, in light of all the relevant facts surrounding it." (344D, para 41)

30. Lord Rodger concurred in the result, though perhaps with some hesitation (see at 356 para 86). However, he was in full agreement with the approach to be adopted, and at paragraph 79, he put the general principle thus:

"whether a sum accepted in settlement of a claim is intended to fix the full measure of a claimant's loss so as to preclude any further proceedings depends on the proper construction of the particular compromise agreement in the light of all the relevant facts surrounding it."

31. His approach to construction is similar to and perhaps more succinct than that set out by Lord Bingham:

> "In considering whether a settlement agreement has this effect, the proper question is whether, when construed against the appropriate matrix of fact, the terms of settlement show that the parties intended that the agreed sum should be in full satisfaction of the wrong done to the claimant." (354E-F, para 81)

32. Further, an indication whether express or implied that the claimant envisages the possibility of further proceedings against the wrongdoer may be significant, but only as a pointer to the conclusion that parties did not intend the agreed sum should be in full satisfaction of the harm suffered by the claimant. Equally an indication in the agreement to the opposite effect will be a pointer that the parties intended that the agreed sum should constitute full satisfaction. (354F-G, para 81)

33. I do not consider that *Heaton* represents a departure from *Jameson*, as appeared to be implicit in the pursuer's submissions to me. Rather, it seems to me that the court, particularly Lord Bingham, was at pains to correct a misunderstanding about one point in the case, namely the point discussed in paragraph 6 of Lord Bingham's speech. Otherwise, it seems to me, the court in each case was describing the same rationale and broadly the same methodology.

The key facts

34. Turning then to the terms of settlement between the pursuer and the first defender. These are contained in the Joint Minute (No 33) narrated above. Several points may be noted.

35. First, the preamble notes that "the action as directed against the First Defender has settled extra-judicially". Secondly the Joint Minute contains agreement that the first defender is liable to the pursuer in the expenses of process as taxed. Thirdly, parties consent to decree of absolvitor against the first defender, the effect of which, of course, is that

pursuer may not raise a further claim against the first defender arising from the same ground(s) of action. Fourthly, the Joint Minute is silent about the position of the second defender. There is neither waiver nor reservation of rights against the second defender. In a Joint Minute between the pursuer and the first defender, that is perhaps not entirely surprising.

36. It is necessary then to consider what Lord Rodger called the appropriate matrix of fact in order to analyse the effect of the settlement narrated in the Joint Minute between the pursuer and first defender. That matrix of fact is, in my view, contained in the parties' averments on record, and the Joint Minute between the pursuer and second defender, set out above, supplemented by the Joint Minute between the pursuer and first defender already discussed.

37. In my view, the following are key facts:

(a) This is a case where the pursuer pleads that the first and second defenders are concurrent wrongdoers.

(b) All parties attended the pre-trial meeting on 12 December 2019, at which the claim vis a vis the first defender was settled.

(c) The second defender's position at the meeting was explicitly that it would not contribute to any settlement.

(d) Settlement on the basis of no expenses to or by parties was offered by the pursuer to the second defender, albeit it was not accepted.

(e) The settlement sum was £110,000, net of CRU (which amounted to £12550.37). That figure represented approximately one third of the pursuer's full valuation.

(f) The Joint Minute contains agreement that the first defender will pay the expenses of process.

(g) Contributory negligence was discussed at the pre-trial meeting. While no agreement was reached for the purpose of settlement, the pursuer agreed a figure of one third in the context of CRU.

Parsing the factual matrix

38. How then is the factual matrix to be parsed?

39. Because the defenders are very clearly sued on the same legal basis (see paragraph 9 of the Statement of Claim) and in respect of the same heads of damage (see paragraph 8 of the Statement of Claim), there is therefore no question of new or different heads complicating the picture. The question is whether the sum agreed represents satisfaction of the pursuer's claim as pled on record, and accordingly this case falls squarely within the scope of *Jameson*.

40. The Joint Minute between the pursuer and first defender is unequivocal about settlement between those parties. It is silent about the position of the second defender, so in that sense it is a neutral fact. On the other hand, I take the paragraph dealing with expenses to be a clear agreement to pay the whole expenses of the action, as taxed, not simply the expenses quoad the first defender. That might be thought to be significant in the context of resolving an action; I consider that it is. The more so where the pursuer offered a no expenses to or by basis to the second defender in discussion at the same pre-trial meeting.

41. Turning next to the sum agreed as a compromise. As Lord Hope made clear in *Jameson*, a claimant is not permitted "to open up the question of whether the amount he has agreed to accept from the first concurrent tortfeasor under the settlement represents full value for what has been claimed." (476C) That is a statement of legal policy to avoid relitigating earlier compromise settlements. It follows that the "actual" value of a claim is

not a consideration for a court invited to consider whether a compromise amounts to satisfaction of a claim. In addition to the finality principle just mentioned, in the nature of settling a claim by compromise there are many reasons why a party may agree to accept a particular sum from a wrongdoer. Lord Hope identified a number of these in *Jameson* (see 474D-F), and that is not an exhaustive list. It is not for a court in the position of the House of Lords in *Jameson* or *Heaton*, nor a first-instance court, to speculate about which, if any, of such reasons were in play in a given case.

42. Even without assessing the "actual" value of the pursuer's claim, it is within the experience of the court that cases frequently settle for less than the sum claimed, and fairly often at a discount to the figure in the pursuer's Statement of Valuation. It follows, in my view, that the fact the pursuer accepted a figure of approximately one third of his valuation at the pre-trial meeting (taking the settlement figure together with the CRU), does not of itself provide an answer.

43. Nor in my opinion does the sequence of events about parties' communications regarding contributory negligence. Sometimes parties will agree a percentage modification; sometimes that will be the subject of compromise whereby a discounted figure is offered without ascribing a percentage. It is not for me to go beyond what is in the Joint Minute.

44. In short, a sum was offered and accepted in a context where the first and second defenders were sued in the same action, on the same grounds of action, and with the same heads of damage. Further, contributory negligence was discussed, but not agreed at the pre-trial meeting, though it was agreed subsequently for a related purpose. In addition, the whole expenses of the action were agreed to be paid by the first defender, and the second defender was offered a no expenses settlement. For all of these reasons, I consider that the

pursuer has received satisfaction of his claim. Settlement with the first defender has exhausted the common grounds of action and heads of damage.

Conclusion

45. Accordingly, I will grant declarator that the action has settled by way of the compromise between the pursuer and the first defender. I will fix a hearing on all questions of expenses as between the pursuer and second defender.