

any voyage by her own power. On the argument that as she made it along with the tug she was efficient, I do not find any provision as to hire going on for that time in the agreement between the parties. I therefore concur in your Lordship's opinion that hire cannot be claimed for that time.

But that leaves another question for decision as to her position as a wage-earning vessel in the port of Harburg. She was efficient for the only purpose for which the defenders needed her, viz., the discharge of the cargo, and in my opinion something ought to be allowed for that time. I think we have evidence to enable us to fix what should be given. I refer to the letter of the pursuers' of 7th November 1887, in which they complain that the stevedore had taken a "whole week, or at least double the time that should have been spent." I therefore think that four days may be allowed as the time necessary for discharging the cargo, and that hire ought to be allowed for that time.

The Court recalled the Lord Ordinary's interlocutor, found "the defenders liable to the pursuers in the sum of £60 sterling, ordained them to make payment thereof, and *quoad ultra* assailed them with expenses."

Counsel for the Pursuer—Dickson—Ure. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for the Defenders—Sol.-Gen. Darling, Q.C.—Graham Murray. Agent—David Turnbull, W.S.

Friday, March 15.

FIRST DIVISION.

THE STEEL COMPANY OF SCOTLAND
(LIMITED) v. TANCRED, ARROL, &
COMPANY.

(*Supra*, p. 305.)

Process—Appeal to House of Lords—Execution pending Appeal—Caution.

In a petition for execution pending appeal to the House of Lords, the respondents argued that the appeal would shortly be heard; the amount decreed for was unusually large, and could only be raised and transferred at great expense, which would be lost if the judgment was reversed on appeal. *Held* that as the application was only granted on caution being found for repetition, in the event of the judgment appealed against being reversed, no sufficient reason had been assigned for departing from the ordinary rule.

In the action at the instance of the *Steel Company of Scotland v. Tancred, Arrol, & Company*, reported *supra*, p. 305, the Lord Ordinary (TRAYNER), after sundry procedure, pronounced an interlocutor on 13th June 1888 in these terms—"Interpones authority to the joint minute No. 516 of process, and in respect thereof decerns against the defenders for £14,850 sterling; finds the defenders liable to the pursuers in expenses."

Tancred, Arrol, & Company reclaimed against

this interlocutor, and their Lordships of the First Division on 1st February 1889, *inter alia*, recalled the interlocutor of 13th June 1888, in so far as it found the defenders liable in expenses, and in place thereof found the defenders liable in expenses with the exception of the expenses of the proof, and remitted the account to the Auditor to tax and report.

The Auditor taxed the account of the said expenses at £241, 10s. 1d. Tancred, Arrol, & Company presented a petition of appeal to the House of Lords against the various judgments in the cause.

On March 13th 1889 the Steel Company of Scotland presented the present petition for interim execution pending appeal in terms of 48 Geo. III. cap. 151, sec. 17, and praying the Court to approve of the Auditor's report on their account of expenses, and to decern therefor; and further, to allow decree for the taxed amount of the said expenses, and also decree in terms of the various interlocutors in their favour, to go out and be extracted, and execution to proceed thereupon, notwithstanding the appeal, to the effect of enabling the petitioners to recover payment of the sums of principal, interest, and expenses due to them, in terms of the said decrees, with the expenses of extract and of this petition, and that upon caution in common form, to repeat the same, in the event of the interlocutors above recited being reversed in the House of Lords.

The Act 48 Geo. III. cap. 151, sec. 17, declares—"That when any appeal is lodged in the House of Lords, a copy of the petition of appeal shall be laid by the respondent or respondents before the Judges of the Division to which the cause belongs; and the said Division, or any four of the Judges thereof, shall have power to regulate all matters relative to interim possession or execution, and payment of costs and expenses already incurred, according to their sound discretion; having a just regard to the interests of the parties as they may be affected by the affirmation or reversal of the judgment or decree appealed from."

Argued for Tancred, Arrol, & Company that the appeal to the House of Lords would shortly be heard and disposed of; that the amount carried by the decrees was very large, and that the expenses of raising and transferring the money would be great; and in the event of the judgment of the Court being reversed by the House of Lords this expense would all be thrown away, as there would then require to be a re-transfer; that as the Court had the amplest discretion as to the regulation of all matters relative to interim possession, it was not in the circumstances desirable that execution should pass.

At advising—

LORD PRESIDENT—I do not think that Mr Jamieson has suggested any good reason why we should depart from the rule which we ordinarily follow in cases like the present.

If execution pending appeal is granted, this of course is only done upon caution being found that in the event of our judgment being reversed the money thus handed over will be repaid; whereas if we refuse the present motion, the petitioners have no security that the money to which we have found them entitled will be forthcoming in

the event of our judgment being affirmed.

I am therefore for granting the application.

LORD RUTHERFURD CLARK and LORD ADAM concurred.

LORD MURE and LORD SHAND were absent from illness.

The Court granted the application, but refused the petitioners expenses.

Counsel for the Steel Company—Salvesen. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for Tancred, Arrol, & Company—Jameson. Agents—Millar, Robson, & Innes, S.S.C.

Friday, March 15.

FIRST DIVISION.

[Lord Lee, Ordinary.]

LANG V. LATTA AND OTHERS (LANG'S TRUSTEES) AND OTHERS.

Husband and Wife—Antenuptial Contract—Reduction—Agent of One Party Signing as Notary for the Other—Marriage—Rei interventus.

In an action by a widow to reduce an antenuptial contract as invalid, inasmuch as the agent for her husband had signed as notary for her, the Court, without deciding the question whether the contract had or had not been validly executed, held that if any informality in execution had existed, it had been cured *rei interventus* by the marriage having followed upon it.

This action was raised by Mrs Lang, widow of Walter Lang of Chapelton, near Dumbarton, against Robert Latta and others, the trustees and executors of the deceased Walter Lang, for the purpose of reducing an antenuptial contract of marriage dated 30th September 1878 entered into between the pursuer and her deceased husband.

The pursuer had been taken into the service of Walter Lang as housekeeper and general servant in 1868. She thereafter became his mistress, and she lived with him in that relation down to the year 1878, during which period she bore him three children in 1869, 1871, and 1874 respectively. In 1878 Walter Lang became seriously ill, and was urged by his friends to marry the pursuer, which he consented to do. The banns were published in the Parish Church of Dumbarton on 29th September 1878. On the 30th September the marriage-contract sought to be reduced was executed. It was signed by Walter Lang, and bore to be executed notarially for the pursuer by Robert M'Farlan, writer and notary public, Dumbarton. Later on the same day the parties were married, and they subsequently lived together as husband and wife down to Lang's death in 1887. By the above contract Walter Lang bound himself to secure to the pursuer the liferent of a cottage and garden at Townend, Dumbarton, belonging to him, and the liferent of the field opposite acquired by him from Mrs Findlay. He also gave the pursuer, if she

should survive him, the whole household furniture and plenishings and general household goods that should belong to him at his death, and bound himself to make payment within three months after his death of the sum of £20 sterling as an allowance for mournings, and a sum of £100 within six months after his death, and the deed provided that the pursuer thereby accepted the said provisions in her favour as in full satisfaction of terce of lands, legal share of moveables, and every other thing that she, *jure relictae* or otherwise, could claim from him or his heirs by and through his death.

The pursuer averred the following grounds of reduction. The contract was not read over by or to the pursuer, nor were its contents explained to her before it was executed. The pursuer gave no instructions for the execution of the deed on her behalf, and had no knowledge of its execution, but it bore to have been executed notarially for her by Robert M'Farlan as notary. She had no knowledge of its contents or effect. The notary who was said to have executed it on the pursuer's behalf was the private agent of Walter Lang, and as such prepared the marriage-contract upon his instructions, and was in attendance at the execution thereof as his agent. It was unlawful for him to occupy the position of agent for the husband and to act as notary for the wife in the execution of the said contract, under which they had conflicting interests. The interests of the pursuer were not protected by the said notary, but, on the other hand, he acted in the interests of the said Walter Lang, and both he and the said Walter Lang fraudulently concealed from the pursuer the provisions and effect of the contract, and also the amount and value of Walter Lang's means and estate, and the legal rights which would accrue to her as his wife. The provisions made in favour of the pursuer by the deed were totally disproportionate to the means and estate which then belonged to Walter Lang, and which were left by him at the time of his death.

The defenders pleaded—“(1) The pursuer's averments being irrelevant, the action ought to be dismissed. (2) The pursuer having suffered no lesion, is not entitled to have the contract reduced.”

On 23d December 1887 the Lord Ordinary (LEE) approved of certain issues for the trial of the cause. On the 24th January 1888 the Inner House of consent dispensed with the adjustment of issues, and remitted to the Lord Ordinary to allow a proof before answer.

The result of the proof which was taken before the Lord Ordinary on 29th May 1888 was as follows:—At the date of the marriage Mr Lang derived £110 a-year from rents, £49 a-year from feu-duties, and about £127 a-year from the interest on a bond of £2600. He had also about two or three hundred pounds in bank, and was the owner of the estate of Chapelton, the letting value of which after his death, when it had increased in value, was £130 a-year. At the date of his death his estate had much increased in value, his personalty having increased to £6452, and the amount he received from feu-duties to £102 a-year. He appeared to have been unwilling to marry the pursuer, but was urged to do so by his friends. Mr M'Farlan deponed that when he was called in about the marriage-