

fender and Gourlay, and is not now before us. In these circumstances I think that the defender's second plea of "no relevant case" must be sustained.

The general rule that the Court will not interfere with the discretion of a Lord Ordinary in allowing parties a proof of their averments before proceeding to deal with the questions of law between them is a salutary one, and it ought not lightly to be interfered with, but in the circumstances of the present case I am disposed to concur with your Lordship in sustaining the defender's second plea-in-law, and in dismissing the action as irrelevant.

LORD ADAM—The defender here wishes the action disposed of on the question of relevancy, while the pursuer asks for a proof. Even if, however, the truth of all the pursuer's averments be assumed they do not come to much—[*His Lordship narrated the circumstances of the case to the time of lodging the sealed offers*]. When the offers were opened one was found to be higher than the other, the sale was concluded, and the higher offerer became the purchaser. Now, here the pursuer's case ends. He was not the higher offerer, but the conditions under which either the pursuer or the defender became the purchaser were identically the same.

The mere circumstance that the purchaser has raised a question with the trustee as to his liability to pay the premium cannot constitute any contract between the pursuer and the trustee; besides, such a condition would equally have applied to the pursuer if he had been the successful offerer.

The Court recalled the Lord Ordinary's interlocutor, sustained the defender's second plea-in-law, and dismissed the action.

Counsel for the Pursuer—Low—Guthrie. Agents—Millar, Robson, & Innes, S.S.C.

Counsel for the Defender Macpherson—The Lord Advocate—Shaw. Agents—J. W. & J. Mackenzie, W.S.

Counsel for the Defender Gourlay—Ure. Agents—Webster, Will, & Ritchie, S.S.C.

Thursday, November 7.

## SECOND DIVISION.

[Dean of Guild, Edinburgh.]

### MACGREGOR v. SOMERVILLE.

*Burgh—Dean of Guild—Jurisdiction—Alteration of Structure—Edinburgh Municipal and Police Act 1879 (42 and 43 Vict. c. 132).*

The Edinburgh Municipal and Police Act 1879, sec. 159, provides—"Every person who proposes to . . . alter the structure of any existing house or building . . . shall lodge with the Clerk of the Dean of Guild Court a petition for warrant so to do, and such petition shall set forth a description of the intended . . . alteration, and shall be ac-

panied by a plan of the site, showing the immediately conterminous properties, and also the position and width of any street, court, foot-pavement, or foot-path from which the property has access or upon which it abuts, and also plans, sections, and such detailed drawings as are necessary to show the mode of structure and arrangement of the intended alteration, and the lines of the intended drainage thereof, and the levels thereof relatively to the street, court, foot-pavement, or footpath, and to the sewer or drain with which the soil-pipes and drains of the property to be built or altered are intended to be connected." Section 160 "provides that the Burgh Engineer shall report to the Court whether in his opinion the plans sufficiently provide for ventilation and other sanitary objects, and the Dean of Guild Court may decline to grant warrant for . . . the alteration of the structure of any existing house or building until satisfied that the plans provide suitably for such ventilation and other sanitary objects." Section 162 provides "that every person who shall proceed to alter the structure of any existing house or building without a warrant of the Dean of Guild Court . . . shall be liable to a penalty."

The proprietor of a main-door house in Edinburgh, consisting of a street flat and basement flat, without warrant from the Dean of Guild Court, altered his property so as to fit it for the occupancy of six tenants. The street flat was made to contain 2 two-roomed houses and 1 one-roomed house. Three new sinks were introduced, for 2 of which the back wall was slapped. A new partition was erected, and a water-closet was provided in the centre of the house for the common use of the three new houses. The basement flat was made to contain 1 three-roomed and 2 one-roomed houses. Three sinks were provided, a new partition was added, and the old water-closet was left as common to the three houses.

The Dean of Guild, on the petition of the Procurator-Fiscal of Court, interdicted the proceedings until a warrant of Court should be obtained, and found that the arrangements proposed were of such an unsanitary character that a petition for warrant to make them must have been refused.

The Court, on appeal, held that the operations did not amount to an alteration of the structure of the house, and therefore did not require the warrant of the Dean of Guild.

*Opinion (per Lord Justice-Clerk)* that the interests of the public in regard to sanitation were not confided to the Dean of Guild, and that the effect of the Edinburgh Municipal and Police Act did not enlarge his jurisdiction in such matters, but only provided that the proper sanitary authorities might interfere if work which was being executed under the authority of the Dean

of Guild proved to be in breach of sanitary regulations.

George Somerville, Procurator - Fiscal, brought this petition in the Dean of Guild Court of Edinburgh, against Malcolm Macgregor, S.S.C., Edinburgh, to have the respondent interdicted from proceeding further with certain operations on his property, and to have him found liable in a penalty for proceeding with the operations without first obtaining a warrant.

The following narrative is taken from the note of the Dean of Guild—"The respondent is proprietor of the main-door house No. 24 London Street, which up till now has consisted of a street flat and basement flat, and has been occupied by one tenant. He has lately made alterations upon this property so as to fit it for the occupancy of six tenants—three in each flat. The street floor has been made to contain two two-roomed houses and one one-roomed house. The respondent has introduced three new sinks, for two of which the back wall has been slapped; he has erected a new partition and a water-closet has been provided in the centre of the house for the common use of the three new houses in this flat. The basement flat has been made to contain one three-roomed and two one-roomed houses. Three sinks have been provided, a new partition has been added, and the old water-closet has been left as common to the three houses. These alterations have all been made without notice to the Dean of Guild Court, and the present petition has been brought by the Procurator-Fiscal of Court for interdict until warrant of the Court shall be obtained, and for a penalty."

The respondent in answer averred—"(1) The houses in the east division of London Street have been for a number of years changing their character of occupation. In particular, they have been to a considerable extent altered from one to dwellings for two or more occupants, many of the area floors indeed being now occupied as small shops. It has resulted that large houses, such as the house in question, could not be let at reasonable rents. The rent of this house, though reduced during the last three years from £57, 10s. to £45, could not be let even at the smaller rent. (2) The respondent was informed by practical men that the only course was to let it to several tenants, as has already been done in some adjoining houses. Instead of letting the house in parts as it stood, it was suggested that to make it more convenient for two or more tenants some small internal improvements should be made. The following is the specification of alterations and improvements submitted by the tradesman entrusted with the work—"Curtail the internal part of the lobby by fitting up a new partition, and two old doors re-fitted with fan-lights over. The two old dirty pan W.C.'s to be substituted with new pedestal wash-out water-closets, with three gallon automatic flush cisterns. The one on street floor to be changed from dark unventilated position at room door, and re-fitted in large ventilated space above internal stair leading to basement, and

made to conform with the best sanitary regulations. One new cistern to hold 120 gallons to be fitted up above stair for the supply of pure water to all the sinks, the cistern to have a close-fitting cover, and the waste-pipe to end openly. The waste-water pipes from sinks, which at present join the drains direct, to be made to end openly over gully or disconnecting traps. The drains at front and back to be overhauled, and new surface water gully traps introduced. The garden walls and back wall and area cellar wall to be re-pointed, and the area cellar walls lime-washed, the cellars to be cleaned out and all rubbish removed." (3) These alterations did not appear to the respondent such as to require the intervention of the Dean of Guild Court, there being no alteration of the structure of the house in the sense of the Acts of 1879 or 1882. (4) It is not a fair representation to state that the erection of the partitions referred to 'form three houses on the street floor, and three houses on the basement floor.' The partitions referred to render the house available for two or more tenants, and that is all that can be fairly said. Not a single apartment in the house has been interfered with in extent, except the two lobbies on the street and area floors, and there is no slapping of the back wall, and the doors of ingress and egress are the same as before."

He pleaded—"(1) On a sound construction of the Acts referred to, the operations specified do not amount to a contravention thereof. (3) The alterations complained of being internal improvements, which do not affect the rights of conterminous proprietors or the public, the Dean of Guild Court has no jurisdiction to interfere."

The Dean of Guild on 22nd August 1889 pronounced the following interlocutor:—

"Having visited the premises, and having heard counsel for the parties, and considered the whole case, in terms of the prayer of the petition continues the interdict against the respondent until a warrant of Court be obtained for said operations: Finds the respondent liable in a penalty of ten shillings, payable to the Procurator-Fiscal of Court, for proceeding with said operations without first having obtained an extracted warrant of Court therefor: Finds the respondent liable in expenses, &c.

He added the following note:—[*After stating the circumstances as above*]—"The petition is brought on the ground that the respondent has proceeded, and is now proceeding, to alter the structure of this house.

"The question is, Has the Court jurisdiction to interfere?"

"The respondent admits the alterations as explained above. His whole objections, as explained at the debate, are summarised in his third plea-in-law—"The alterations complained of being internal improvements which do not affect the rights of the conterminous proprietors or the public, the Dean of Guild Court has no jurisdiction to interfere."

"It is probably quite true, as the respondent avers, that this house is situated in a falling locality, and that something must be

done to make the property let, but the Dean of Guild considers that he is bound by the Edinburgh Municipal and Police Act 1879 to consider sanitary conditions with respect to drainage and water-closets, and an alteration of a house which involves a consideration of such matters should be submitted for the warrant of the Dean of Guild Court.

"The clauses of the Act which concern the present question are as follows—'Section 159. Every person who proposes to erect any new house or building, or to alter the structure of any existing house or building within the burgh, shall lodge with the Clerk of the Dean of Guild Court a petition for warrant so to do, and such petition shall set forth a description of the intended house or building or alteration, and shall be accompanied by a plan of the site, showing the immediately conterminous properties, and also the position and width of any street, court, foot pavement, or footpath from which the property has access or upon which it abuts; and also plans, sections, and such detailed drawings as are necessary to show the mode of structure and arrangement of the intended house or building or alteration, and the lines of the intended drainage thereof, and the levels thereof relatively to the street, court, foot pavement, or footpath, and to the sewer or drain with which the soil-pipes and drains of the property to be built or altered are intended to be connected.' 'Section 160. The Clerk of the Dean of Guild Court shall forthwith, on receiving such petition, give notice thereof to the Burgh Engineer, who shall, before such petition is heard, report to the Court whether in his opinion the plans sufficiently provide for ventilation and other sanitary objects; and the Dean of Guild Court may decline to grant warrant for the erection of any new house or building, or the alteration of the structure of any existing house or building, until satisfied that the plans provide suitably for such ventilation and other sanitary objects.' 'Section 162. Every person who shall erect or begin to erect any house or building, or who shall alter the structure of any existing house or building, without a warrant or otherwise than in conformity with a warrant of the Dean of Guild Court, and every person who shall, in the erection of any house or building the erection of which has been sanctioned by the Dean of Guild Court, deviate from the plan or plans and section or sections so sanctioned, shall be liable to a penalty not exceeding five pounds, besides being bound, if and in so far as required by the Dean of Guild Court, to take down and remove the said house or building, or to restore it to the state it was in previously to the alterations thereon, or to alter it in such way as the Dean of Guild Court shall direct, so as to make it in conformity with the warrant of the Court; and the Dean of Guild Court may grant an interdict for the prevention of any such erection or alteration or deviation being proceeded with till the warrant of the Court shall be obtained for the same.'

"It may also be useful to cite section 165—  
'Within one month after any new house or

building, or any alteration on the structure of any existing house or building has been completed, or before such house or building or any portion thereof has been occupied, the owner or the builder shall give notice to the Clerk of the Dean of Guild Court that the house or building, or any part thereof, is ready for inspection before being occupied, and the said Clerk shall thereupon transmit such notice to the Burgh Engineer, Master of Works, or other officer appointed by the Magistrates and Council, who shall forthwith proceed to survey such house or building or alteration, and if he is satisfied that such house or building is fit for occupation, and is in accordance with the provisions of this Act, he shall grant a certificate under his hand to that effect, and all such certificates shall be entered in the register of plans and sections; and every owner or builder who shall fail to give such notice aforesaid, or shall permit such house or building to be occupied before a certificate applicable thereto has been obtained, shall be liable to a penalty not exceeding five pounds, with an additional penalty of two pounds for every day during which such occupation shall continue, which penalties shall be recoverable by the collector as a debt at common law.'

"The present alterations are materially concerned with the water-closets, drains, and sanitary conditions; they involve a change of one dwelling into six smaller dwellings, and the Dean of Guild is of opinion that this is one of the class of operations which he was intended by the Act to consider.

"In support of his third plea the respondent referred to *Colville v. Carrick*, 10 R. 1241. In that case the disponees in a street had power to erect behind their houses 'such offices as they might consider necessary for additional convenience.' It was held that a proposed hall behind two of the houses which had been used as a school was such an office, and that the Dean of Guild had no jurisdiction to inquire as to the use of the buildings if the structure was unobjectionable.

"But this was a question at common law, and the present matter falls to be decided by the terms of the Act of 1879.

"In *Speed v. Philip*, 10 R. 795, it was held that an application to the Dean of Guild of Dundee was unnecessary, as his warrant was not required for alterations within buildings which were not dangerous to the lieges. The sanction of the Police Commissioners had been obtained for the alterations.

"Besides the common law question of the Dean of Guild's powers, the Dundee Police Act was under consideration, and, as pointed out by Lord Mure, that Act gave authority to persons, with the sanction of the Police Commissioners, to engage in such operations as were objected to without the warrant of the Dean of Guild of Dundee.

"In *Gourlay v. Lang*, 14 R. (J.C.) 31, the Court construed the Glasgow Police Act 1866, which provides that an alteration of the 'exterior dimensions' of a building without the Dean of Guild's warrant is a

Guild offence. It was held that the insertion of a window which did not project beyond the plane of the wall was not an alteration affecting the exterior dimensions of a house.

“As before stated, it appears to the Dean of Guild that the present question must be determined by a construction of the Edinburgh Act of 1879. The only authority which interprets the Act of 1879 on this head is *Mitchell v. Dean of Guild of Edinburgh*, 12 R. 844.

“In that case warrant was refused where the plans did not show water-closets next to the outside walls of the proposed tenements, and on appeal the Court refused to interfere with the discretion of the Dean of Guild Court with respect to the sufficiency of ventilation and other sanitary purposes.

“The premises in question have been visited, and the Dean of Guild is of opinion that the arrangements are of a very objectionable character. If a petition for warrant to make such alterations had been presented it must have been refused on the ground that these are highly insanitary. The chief objection concerns the provision of a common water-closet for the three families of each flat. It has been the invariable experience of the Dean of Guild Court that common water-closets are a source of nuisance and of danger to the inhabitants. Even when the cleaning of such is necessary the responsibility for so doing is denied by each of the families using the place. It has been found, moreover, that common water-closets have been material in spreading disease.

“The water-closet on the street flat occupies an unventilated position in the centre of the house. The views of the Dean of Guild could be carried out without any hardship to the respondent. The one-roomed house on the main-door flat might be utilised to give not only a water-closet but also a bath-room to each of the two remaining houses on that flat, and the Dean of Guild is of opinion that no loss would ensue, as such provision would much enhance the value and desirability of these two houses, and increase their rent. In the one-roomed house as proposed there could not be a water-closet except in the old unventilated staircase leading down to the basement flat, which would be a very insanitary arrangement.

“On the basement flat no space would be sacrificed. There is already in the three-roomed house a space available for a water-closet; in the one-roomed house next the entrance door a water-closet exists lighted from the outside, and for the other one-roomed house a water closet could either be provided in the area or at the back where the respondent's drains are situated.”

The respondent appealed to the Second Division of the Court of Session, and argued—This was a question of the construction of the Edinburgh Municipal and Police Act 1879, sec. 159, and the question was whether the operations amounted to an alteration of the structure of the house. The common law powers of the Dean of Guild were these—1st, To see that no build-

ings were erected in the city which affected either the private or public rights of the citizens. 2nd, To see that no house should be erected which should be dangerous to the lieges. Here neither of these two dangers appeared. The Act of Parliament did not enlarge the powers of the Court. In the erection of a new building the Court might be entitled to control the sanitary arrangements, and might refuse a lining if these were not carried out, but in the case of old buildings they could only interfere with alterations which affected the structure of the house. That meant something more than the mere alteration of the accommodation within the house. If the petitioner's view was correct, any alteration, however slight, must receive the authority of the Dean of Guild Court. All the authorities quoted by the Dean of Guild were against his contention except the case of *Mitchell*, which was distinguished from the present, as that was an instance of the erection of a new building over which the Dean of Guild undoubtedly had authority, while this was the case of the alteration of an old building. If the Dean of Guild was of opinion that the sanitary arrangements of any house were defective the Court could send the burgh engineer to examine into these, under sec. 165, and if he was of opinion that the house was unfit for habitation in a sanitary sense, then the Court could order the necessary changes to be made. Instead of waiting for the conclusion of the operations on this house to see if sanitary requirements had been complied with or not, the Court had interdicted the respondent from improving his own property. The Court of Appeal had held that the Dean of Guild had no right to consider the use to which a building was to be put, in considering the question whether a lining was to be granted or not in the case of alleged nuisances, and allegations of the petitioner that danger would arise from the use of the buildings ought not to be considered—*Robertson v. Thomas*, June 17, 1887, 14 R. 822; *Manson v. Forrest*, June 14, 1887, 14 R. 802; *Kirkwood's Trustees v. Smith & Bremner*, December 20, 1888, 16 R. 255.

The petitioner argued—Under the Act of 1882 the Dean of Guild Court had received power to interfere where any structural alterations were made in an old house. The Act clothed him with a new sanitary jurisdiction which entitled him to interfere with objectionable operations either in an old or a new house. It was a question of degree whether alterations were structural. Here their effect made them so. They introduced a material difference in the sanitary conditions of this house. Of all the cases cited in the Dean of Guild's note the only one which applied (and that was in favour of the interdict) was *Mitchell*, because that alone was brought under the Edinburgh Police Act, and the whole question was one of construction of that statute.

At advising—

LORD JUSTICE-CLERK—In this case the Dean of Guild of Edinburgh has inflicted a

fine upon the appellant for making alterations on a house without his authority, and has refused to sanction—indeed has interdicted—these alterations, on the ground that he is not satisfied with the sanitary arrangements.

The question to be decided is, whether the alterations were such that the appellant could not make them without the sanction of the Dean of Guild Court? It is important to consider what is the position of the Dean of Guild in regard to sanitary matters. He is not the official ordinarily responsible for these. His province is to protect the public interest against encroachment, and the public safety against faulty and therefore dangerous construction. The interests of the public as regards sanitation are in the hands of other public officials, and the rules under which they must act are prescribed by Act of Parliament.

It is true that by the clauses of the Edinburgh Police Act referred to in the Dean of Guild's note, in those cases in which an application to his Court is required before works can be proceeded with, the Clerk of his Court is directed to give notice to the sanitary authority, and that if what it is proposed to do is bad from a sanitary point of view, and is therefore objected to by the sanitary authority, he is entitled to decline to authorise the work until suitable provision is made for obedience to the law in that respect.

This rule is not only beneficial in itself, but is only fair to those who propose to do work which requires the Dean of Guild's warrant. For it would be a great hardship if, after work had been done under that warrant, the sanitary authority could step in and insist upon its being undone, thus causing additional trouble and expense.

But this procedure does not come into operation except in those cases in which it is illegal to execute the work without the sanction of the Dean of Guild Court.

The Edinburgh Police Act does not enlarge the jurisdiction of that Court, and apply it to new cases to which it did not apply before. It only brings the sanitary authority in to prevent sanction being given to work being done under authority of the Dean of Guild, in the exercise of his ordinary jurisdiction, which may be in breach of sanitary regulations.

When the words of the clause in the Police Act are looked at it becomes plain that it is not intended that when any change is made of any kind in a house, whether in the sanitary arrangements or otherwise, the Dean of Guild Court must of necessity be invoked to give its sanction. The words are very express—"Every person who proposes to erect any new house or building, or to alter the structure of any existing house or building," is required to lodge a petition in the Dean of Guild Court for warrant to do so. This description, be it observed, is one of limitation. It excludes the idea of every alteration of a building requiring the Dean of Guild's warrant. The words "to alter the structure" are words requiring interpretation, and are necessarily restrictive. The natural con-

struction of such words is that they refer to alterations which affect the structure either by altering it externally as regards its size, the ground it covers, or in some similar manner, or interferes with those walls or other parts of the building, whether external or internal, on which the stability and safety of the whole structure may depend. It is not a natural construction to make it apply to every internal fitting, such as lath and standard partitions, or the like, which are not part of the structure, but only conveniences in its use, which may vary according to the particular use to which the building may from time to time be put, or the family or business exigencies of the occupants, which also may vary. And it appears to me that where enactments are passed to restrict private liberty, although that restriction may be intended, as it is here, for the general good, the enactments must be strictly construed. To give to them what is called a liberal construction would be to subject the citizen to the risk of public censure whenever his action within his own house did not accord with the ideas—most probably varying from time to time—of public officials. The statutory provisions being in restraint of individual freedom must, in my opinion, not be extended beyond the lines of strict interpretation. In saying this I in no way desire to minimise the importance of the duties of the Dean of Guild. His jurisdiction is most important and valuable, both to the public and to the individual owners of property. All I desire to express is that any extension of the powers of the Dean of Guild cannot be based on grounds of expediency or public benefit. Such extension can only be made by the Legislature.

Applying these principles to the present case, I am unable to find grounds for subjecting the appellant to a penalty for having proceeded to do what he has done to his house without obtaining the authority of the Dean of Guild Court. The actual work which he has done consists in putting up some lath and standard partitions, putting in an additional water-closet, and some sinks. None of these alterations in my opinion are alterations on the structure of the existing building. Whether they are objectionable from a sanitary point of view is a totally different question. If they are illegal under the Public Health Act the sanitary authority does not require the aid of the Dean of Guild Court in dealing with them. If they are not illegal under that Act, then I am unable to see how they can be interfered with by invoking the intervention of the Dean of Guild on the ground that they are alterations of the structure.

It was argued on behalf of the Dean of Guild Court officials—although I think the argument was afterwards abandoned—that alterations made upon a house might, though not in themselves such as to require the Dean of Guild's sanction, be brought within his jurisdiction if the alterations were made for one purpose as distinguished from another, and that the fact that the appellant in this case intended to let his house to several families instead of to one gave to

the alterations the character of a structural alteration which they might otherwise not have. Apart from the fact that it has already been decided in the case of *Colville v. Carrick* that the Dean of Guild has no jurisdiction to deal with the use to which a building is to be put apart from the fitness of the structure as regards strength, &c., for the use intended, I am unable to understand this reasoning. How the question whether an alteration on a house is an alteration of the structure can depend upon the use to be made of the house in its altered state I am quite unable to see. What the appellant is doing to his house is either a structural alteration or not according to the way in which it affects the building as a structure, and so reading the statute, I must hold that the judgment of the Dean of Guild Court must be altered.

LORD YOUNG, LORD RUTHERFURD CLARK,  
and LORD LEE concurred.

The Court sustained the appeal, recalled the interlocutor of 28th June 1889 and all succeeding interlocutors, and found the appellant entitled to expenses.

Counsel for the Appellant—Gloag—Goudy. Agents—M. MacGregor & Co., W.S.

Counsel for the Respondent—J. C. Thomson—Shaw. Agent—Party.

Tuesday, November 12.

## SECOND DIVISION.

[Sheriff of Lanarkshire.

WILSON v. BOYLE.

*Reparation—Known Danger—Carter Injured by Unmanageable Horse—Employers Liability Act 1880 (43 and 44 Vict. cap. 42)—Process—Bill of Exceptions.*

A carter who was ordered by his employer to take a horse and cart to a particular destination, objected on the ground that the route would bring the horse into the immediate neighbourhood of steam-engines, at sight of which he became unmanageable. The employer promised him assistance, and sent a man along with him, but in spite of his help the horse, on meeting a steam-engine, became unmanageable, and inflicted severe injuries on the carter. The latter raised an action, alleging that his employer was in fault in using the horse for carting in the neighbourhood of steam-engines, and for sending to the help of the pursuer an inexperienced and incompetent man. The defender alleged that the pursuer had accepted the known risk of the service.

At the trial the presiding Judge directed the jury to consider “(1) Whether, having regard to the condition of and character of the horse in question, the defender was to blame for its being used in carting as it was in the place and at the time of the accident? (2)

Whether the defender was to blame for sending Patrick Laden to assist the pursuer in managing the horse, in respect he (Laden) was an inexperienced and incompetent carter, and so unfit for the duty? (3) Whether the pursuer knew the condition and character of the horse, and did, with that knowledge, and of the danger to which he was exposed, undertake the charge of it? He requested the jury, in the event of their being of opinion that there was fault, to specify in what respect.” The jury stated in answer “that they found, by a majority of nine to three, that the defender was blameworthy in having the horse in his possession, for use by his carters, not being broke to steam-engines; and found unanimously that the pursuer knew of the horse’s condition and character, and the risk he ran in taking charge of it.” The Judge told the jury that these findings amounted to a verdict for the defender, and directed them to return that verdict accordingly.”

Held that although the jury had not in terms returned a finding on the second question, their answer to the first question implied an answer to the second, and a bill of exceptions *disallowed*.

This was an action of damages for personal injury by Andrew Wilson, carter, against his employer Adam H. Boyle, contractor, Glasgow.

The pursuer sued under the Employers Liability Act 1880 and at common law. He alleged that on 31st October 1888 he was ordered by James Duncan, the defender’s superintendent, to take a horse, of which the pursuer was in charge, to the docks at Cessnock. The route lay along Govan Road, which was used by steam tramcars. The pursuer objected to go as ordered, because the horse was afraid of steam-engines, and was incapable of control when in sight of them. Duncan promised the pursuer the assistance of another man, and finally sent him to his destination with the horse and cart, accompanied by Patrick Laden, who was in charge of another horse and cart.

The pursuer alleged that Laden was a labourer and not an experienced carter. On the way they encountered a steam tramcar. The pursuer’s horse became unmanageable, and knocked down the pursuer, who sustained severe injuries. He averred—“The said horse had previously bolted in Rutherglen when frightened by steam, and was known to the defender or his superintendents to be afraid of steam. It was not a safe horse to employ in the town, where it would be liable to meet steam-engines, and the defender was guilty of gross and culpable negligence in permitting the said horse to be employed in town, where it was liable to be frightened and bolt at the sight of steam. The defender’s superintendent, the said James Duncan, was guilty of gross and culpable negligence in sending the said Patrick Laden, an inexperienced carter, and not providing the pursuer with competent assistance in the