

cannot be called upon to accept immediate payment, and to discharge his debt and his security over the pursuer's lands. It follows, I think, that the pursuer cannot succeed in the action for compelling the defender to denude of the trust and reconvey the estate. I by no means intend to indicate any opinion that the defender is entitled to withhold a reconveyance of this estate until November 1901. We are not called upon to consider upon what conditions he may be compelled to reconvey other than those which are set forth in the present action. All that I should propose to decide is that the defender cannot be compelled to reconvey upon the grounds libelled, namely, that his debt has been fully paid and discharged, and that in consequence of that discharge the trust in his person and that of his co-trustees has come to an end.

On the whole matter I am therefore of opinion that the Lord Ordinary's interlocutor ought to be recalled, and that the defender ought to be assoilzied from the conclusions of the action, but that the defender's pleas as to title and jurisdiction ought to be repelled.

LORD ADAM, LORD M'LAREN, and the LORD PRESIDENT concurred.

The Court recalled the interlocutor of the Lord Ordinary, repelled the preliminary pleas for the defender Escombe, and assoilzied the defenders from the conclusions of the action.

Counsel for the Pursuers—Lord Adv. Balfour, Q.C.—W. Campbell. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for the Defender Escombe—Sol. Gen. Asher, Q.C.—Dundas. Agent—David Turnbull, W.S.

Counsel for the Defender Begg—C. S. Dickson. Agents—A. P. Purves & Aitken, W.S.

Thursday, December 15.

FIRST DIVISION.

[Sheriff of Lanarkshire.

DONNACHIE v. THOM.

Process—Appeal—Jury Trial—Judicature Act 1825 (6 Geo. IV. cap. 120), sec. 40.

The pursuer in an action of damages for personal injury having appealed under the 40th section of the Judicature Act for jury trial, the Court refused, on the motion of the defender, to remit the cause back to the Sheriff for proof, and ordered issues to be lodged, although the amount in dispute between the parties was trifling.

James Donnachie sued James Thom in the Sheriff Court at Glasgow for payment of £50 as damages for injuries sustained by his pupil child Elizabeth, who had been run over by a horse and gig driven by the defender.

The defender admitted liability for the injuries sustained by the child, and tendered £15, with the expenses of process, in reparation thereof, subject to the pursuer proving that the child in question was his lawful issue.

Prior to the raising of the action the pursuer had offered to take £25, besides medical and legal expenses.

The Sheriff-Substitute having allowed a proof on the question of damages, the pursuer appealed to the First Division, and moved the Court to order issues to be lodged.

The defender objected that, looking to the smallness of the sum in dispute, the case was unfitted for jury trial, and moved the Court to remit back to the Sheriff for proof.

The pursuer submitted that the course proposed by the defender was not in accordance with the practice of the Court in the case of actions of damages for personal injuries.

The Court, in respect of the nature of the action, refused the defender's motion and ordered issues.

Counsel for the Pursuer—Christie. Agents—Simpson & Marwick, W.S.

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

Saturday, December 17.

FIRST DIVISION.

MACDONALD v. HIGHLAND RAILWAY COMPANY.

Process—Warrant to Cite Witnesses in England—Affidavit—17 and 18 Vict. c. 34—Skilled Witnesses.

Mrs Macdonald raised an action against the Highland Railway Company for payment of £3000 as damages for injuries alleged to have been sustained by her in an accident at Ballinluig on 17th July 1891. The defenders admitted the fact of the accident, and their liability for injuries caused thereby, but denied that the pursuer's ill-health, if it existed, was due thereto. The case having been set down for trial at the Winter Sittings, the defenders presented a note to the Court, wherein they stated that in November 1892 the pursuer, who resided at Wimbledon, had been medically examined on their behalf by two English doctors, and craved the Court to grant a warrant under the Act 17 and 18 Vict. c. 34, to cite the pursuer, the said doctors, and two nurses, also resident in England, said to have attended on the pursuer. No affidavit was lodged in support of the note.

The Court held (1) that an affidavit by the defenders' agent to the effect that the witnesses mentioned were necessary and material must be lodged