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

and sworn to; and that having been done, (2) *refused* to grant warrant for the citation of the doctors, on the ground that they were witnesses to matters of opinion and not to facts, but *quoad ultra* granted the prayer of the note.

Counsel for the Pursuer—Shaw. Agents—Curror, Cowper, & Curror, W.S.

Counsel for the Defenders—Macphail. Agents—J. K. & W. P. Lindsay, W.S.

Tuesday, December 20.

FIRST DIVISION.

[Lord Low, Ordinary.

BREWER & COMPANY *v.* DUNCAN & COMPANY, LIMITED.

Ship—Delivery—Risk—Agreement.

A ship was built under an agreement by which the price was to be paid in four instalments, the last being paid when the ship was delivered and the builders' certificate handed over. The vessel, as she was constructed, was to become the property of the purchasers; she was to be delivered ready for sea, and when delivered a model and certain certificates were to be furnished; but she was to remain at the builders' risk until handed over, and they were to keep her insured.

When the vessel was nearly but not quite completed, one of the purchasers, acting for the others, asked to have her moved to a particular berth, and upon the builders declining to take the risk of this being done, agreed to take delivery and have her removed at the purchasers' risk. The last instalment of the price was paid, the vessel was insured by the purchasers in their names, and the builders' certifiate was handed over to them, but the model, &c., were not supplied, and before the removal took place the ship was capsized by a sudden squall.

Held that delivery had been taken so as to transfer the risk to the purchasers, although the ship had not actually been moved, and was not ready for sea.

In December 1891 Charles Brewer & Company, shipowners, Boston, U.S.A., and Captain Newell, Ardgowan, Port Bannatyne, Bute, part owner of the ship aftermentioned, raised an action against Robert Duncan & Company, shipbuilders, Port-Glasgow, for the purpose, *inter alia*, of having it found and declared that "the ship or vessel called the 'Helen Brewer,' recently built and constructed, or in the course of construction by the defenders, and recently launched, and now or lately lying in or near the harbour of Port-Glasgow, was on the 13th day of October 1891," when she was blown from her moorings at Port-Glasgow and capsized, "undelivered by the defenders to the pursuers."

The pursuers pleaded—"The ship in question having been undelivered, and having been at the risk of the defenders at the date of the casualty, the pursuers are entitled to decree in terms of the declaratory conclusions of the summons."

The defenders pleaded—"(3) The defenders should be assoilzied, in respect that the vessed was at the time of the accident delivered to the pursuers; *et separatim*, was at their risk."

Upon 26th January 1892 the Lord Ordinary (Low) allowed a proof, which brought out the following facts:—The ship was built under an agreement between the defenders and Charles Brewer & Company, dated 13th March 1891, which contained the following articles:—"Secondly, The vessel shall be built under the superintendence of the purchasers and of any person for the time being appointed by them, and shall be delivered afloat in Port-Glasgow Harbour, in regular rotation with the other ships under construction. . . . Thirdly, The purchasers shall pay for the vessel the sum of £17,600, . . . payments to be made as follows:—£4400 in cash when the vessel is framed; £4400 in cash when the vessel is plated; £4400 in cash when the vessel is launched; and £4400 in cash when the vessel is delivered and builders' certificate handed over. Fourthly, The vessel, as she is constructed, and all materials from time to time intended for her or them, whether in the building-yard, workshop, river, or elsewhere, shall immediately, as the same proceeds, become the property of the purchasers, but the builders shall at all times have a lien thereon for their unpaid purchase money. . . . Sixthly, The vessel shall be at the risk of the builders until handed over to the purchasers, and until then the builders shall keep her insured in an amount exceeding by £500 the purchase money then paid. The policies for such insurance to be lodged with the purchasers." The specification further provided—"Builders to take all risk until delivered to owners. . . . 7. *Models, Plans, &c.*—Model with lines and body plan, rigging and sail plan, general arrangement and deck and cabin plan, profile plan, midship section plan, as submitted to Lloyds, with scantlings, &c., marked and displacement scale to approval of owner, and, except model, left with his surveyor before the work is begun. Approval of model by purchaser is not to relieve builders of their responsibility under the clauses referring to tonnage, carrying capacity and stability, nor is the supplying of ballast by purchaser to relieve builders of their responsibilities. Finished model showing houses, position of masts, mouldings, &c., testing certificate of chains and anchors, London Lloyds' certificate of classifications, also test certificates of steel hawsers, to be supplied to purchaser, when vessel is handed over, together with duplicate set in tracing cloth of the above-mentioned plans, of the vessel as completed with details shown and stability curves."

The ship was launched on 17th September 1891, and her further construction was proceeded with first at the crane berth in the