invasion of any legal right. Nobody has a right which he can enforce at law to compel other people to play a game of football with him. If there be an agreement between them to play a game together, that is not an agreement which the law will enforce. The general rule is that such agreements are personal. Agreements to associate for purposes of recreation, or agreements to associate for scientific or philanthropical or social or religious purposes are not agreements which courts of law can enforce. They are entirely personal. Therefore in order to establish a civil wrong from the refusal to carry out such an agreement, if it can be inferred that any such agreement was made, it is necessary to see that the pursuer has suffered some practical injury, either in his reputation or in his property. No averment of that kind is made. As to the first kind of injury, as I have already stated, the pursuer disclaims the idea of putting an issue upon that ground of charge.

The Lord Ordinary has referred to the case of *Blasquez* v. *The Lothians Racing Club* as an authority for the issue which he thought it right to grant in this case. That appears to me to be a case entirely distinct, because what was complained of there was that the pursuer had been expelled from a public place, that is, a place to which presumably he would have been entitled to resort unless he had been wrongfully turned out of it by the persons of whom he complained. The complaint was that he had been wrongfully expelled from the ring of the Lothians Racing Club's Edinburgh Meeting at Musselburgh to his loss, injury, and damage. Now, that is a totally different kind of complaint from that which the pursuer makes here. It appears to me, therefore, that upon this ground there is no cause of action which can be sustained, and I should be disposed to suggest to your Lordships that we ought to recal the Lord Ordinary's interlocutor and dismiss the action as against the defenders first called, and also against the defender third called, and to allow the one issue which I referred to, amended in the manner I have suggested, against the defenders second called, and against them only. Supposing that issue is allowed, I do not understand that the defenders make any motion that they should be allowed a counter issue.

The Lord President, Lord Adam, and Lord M'Laren concurred.

The Court dismissed the action as against the first and third defenders, and allowed an issue against the second defenders in the following terms:—"Whether, on or about 9th November 1894, the defenders, or one or more and which of them, made a finding, and passed a resolution in the following terms, videlicet—'That T. Murdison used offensive language to the referee,' meaning thereby James Dick, the referee at a football match played at Galashiels on 27th October 1894; 'that T. Murdison be severely censured and be ordered to apologise to the referee,' that is, to the said James Dick; and whether the defenders, or one or more and which of them, sent or caused to be sent a copy of the said finding and resolution to Mr William Wintrup, honorary secretary of the Gala Football Club, on or about 10th November 1894, and published the said resolution or caused it to be published in the following newspapers, videlicet, the *Edinburgh Evening Dispatch* of 10th November 1894, and the *Glasgow Herald* of 12th November 1894: Whether the said finding and resolution are of and concerning the pursuer, and are false and calumnious, to the pursuer's loss, injury, and damage. Damages laid at £1000."

Counsel for Pursuer — Dickson — M'Lennan — Cooper. Agent — Richard Lees, Solicitor.

Counsel for Defenders — Ure — Cullen. Agents—Strathern & Blair, W.S.

Wednesday, February 5.

SECOND DIVISION.

[Sheriff-Substitute of Lanarkshire.

BROWN *v.* FURNIVAL & COMPANY.

Reparation—Negligence—Master and Servant—Employers Liability Act 1880 (43 *and* 44 *Vict. cap.* 42), *sec.* 1, *sub-sec.* 3.

A workman was injured while engaged along with three fellowworkmen in lifting into an upright position part of a printer's guillotine, which was being removed in sections, and which, previous to the attempt to place it upright, was lying on its side on a lorry. It had been contemplated that, as on previous occasions, the part in question, which consisted of the body of the machine, would weigh 6 cwt. or 7 cwt., but owing to a breakage, rendering it impossible to detach the knife block, its weight upon this occasion was 9 cwt. The order was given by one of the men who was directing the operation, and who himself assisted in the manual labour. It was represented to him by pursuer and the others that it would be dangerous to attempt to lift the machine with only four men available, but notwithstanding this he ordered the operation to be proceeded with.

Held that there was no actionable negligence, within the meaning of sec. 1, sub-sec. 3, of the Employers Liability Act 1880, on the part of the workman in charge in giving the order.

Question—Whether a workman assisting in and directing such an operation is a person "to whose orders or directions the workman at the time of the injury was bound to conform," within the meaning of the same subsection.

The pursuer of this action was a workman in the employment of the defenders, who were printers' engineers carrying on business in Glasgow. On 25th June 1895 he was sent with two other men, Alfred Patrick and John Findlay, to remove a printers' guillotine from the premises of Messrs Adshead, printers, in Melville Lane, Glasgow, to the defender's own premises in Bothwell Street. Patrick was a fitter in defenders' employment, and it was his duty on this occasion to see that the operation was properly conducted. The guillotine lay on the third storey of Messrs Adshead's premises, and it had to be removed therefrom to a court where a lorry was to receive it. The guillotine weighed at least 17 cwt., and the defenders' regular practice was to take it to pieces, which would have reduced the weight of the body of the machine to about 6 or 7 cwt. In this instance, however, the guillotine was only partly taken to pieces, and the knife blocks and certain wheels weighing 2 or 3 cwt. were not removed, in consequence of a stud having got broken, which it would have required drilling operations to remove. After the machine had been partly taken to pieces, the main part still weighed about 9 cwt. The removal of the machine from the third storey of Messrs Adshead's premises to the lorry was comparatively easy, as it was taken from the third storey to the ground by the hoist, and on the level it was possible to slide it along. When it was brought alongside the lorry the three men were not able to lift it on to the lorry; but with the aid of the carter and three porters from a neighbouring warehouse, by sliding and lifting, they got it on to the lorry, and turned it lengthways inside of the "cape," a wooden projection with an iron beading which stands two or three inches above the floor of the lorry. Patrick then insisted (contrary to the remonstrances of the pursuer, and of Carrick the carter) that the guillotine should be raised from its side to stand upright on the lorry. Meantime the three porters who had assisted to raise the guillotine from the ground to the lorry had left, and the pursuer, Findlay, Patrick, and the carter proceeded to raise the guillotine on to its feet. They were hampered in the operation owing to the guillotine being top heavy and not being equally balanced. Two of the men, Patrick and Findlay, stood on the lorry, and two of them, the pursuer and the carter, stood on the ground. In order to enable the two men on the ground to raise their end of the guillotine, the corner of it was projected about eighteen inches over the side of the lorry. After it had been raised about three feet, the guillotine fell and struck the pursuer's foot, which was seriously injured.

The pursuer thereupon raised an action of damages in the Sheriff Court at Glasgow against the defenders.

He averred—(Cond. 4) The pursuer Findlay and the carter were ordered to put the guillotine upright on the lorry. (Cond. 5) "The said order was an exceedingly dangerous one, in consequence of the great weight of the guillotine and of the insufficient number of men, namely, four in number including pursuer, to do the said work, but as the said Alfred Patrick was a person in the employment of the defenders, to whose orders the pursuer and other workmen were bound to conform, and as they relied on the greater skill and experience of the said Alfred Patrick, they proceeded to obey his order and endeavoured to put the said guillotine upright on the said lorry."

He pleaded—"(2) The pursuer having been injured while a workman in the employment of the defenders, through the fault and negligence of the defenders, or of those for whom they are responsible under the Employers Liability Act 1880, he is entitled to reparation in terms of section 1, sub-sections 1, 2, and 3, of said Act."

Section 1, sub-section 3, of that Act provides that when personal injury is caused to a workman "by reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, where such injury resulted from his having so conformed," the workman or his representatives shall have the same right of compensation as if there had been no common employment.

After a proof the Sheriff-Substitute (BALFOUR) issued an interlocutor by which, in addition to the facts above stated, he found in fact that the pursuer "was acting under the orders of Alfred Patrick the defenders' foreman, who was in charge of the job," "that the accident was caused by the guillotine being removed without being wholly taken to pieces," "that the defenders supplied a sufficient number of men to remove the guillotine if it had been wholly taken to pieces and that it was the fault of Patrick, the foreman, that the machine was not wholly taken to pieces, and the defenders had no knowledge that he was not going to comply with their usual practice in taking the guillotine to pieces," and found in law "that the defenders were not liable under the third sub-section of the first section of the statute" and "therefore assoilzied them from the conclusions of theaction with expenses."

The pursuer appealed to the Second Division of the Court of Session, and argued—The pursuer was entitled to prevail in virtue of the Employers Liability Act 1880, section 1, sub-section 3. The Sheriff-Substitute has not given proper effect to article 5 of pursuer's condescendence. Pursuer's injuries were the result of his obedience, rendered only after remonstrance, to the order of a person whom he was bound to obey. The order was a reckless and negligent order. When it was found to be impossible to take the machine wholly to pieces, Patrick ought not to have proceeded with only four men available for the work.

Argued for defenders—In order to prevail under sub-sec. 3 of sec. 1 of the statute, it must be shown that the order given was negligent. Here there was no negligence; there was at most indiscretion and error

of judgment. For that the employer was not liable under the sub-section. This case was ruled by *M'Manus* v. *Hay*, 9 R. 425, January 17, 1882.

At advising—

LORD JUSTICE-CLERK—In this case there is not much difficulty as to the facts. We know the weight of the machine. We know that it was actually lifted on to a lorry by seven men after being brought down stairs by four. What then remained to be done was to raise the machine by tilting into an upright position on the lorry. This was an operation requiring care, but not much skill. Similar work is done every day by ordinary workmen all over the country. It is nothing more than tilting a thing up so as to set it on end. The only difficulty, if it can be called a difficulty, consists in this, that when it has been tilted up it must be so steadied or balanced as to come down gently on its new base. Now, this is a very ordinary operation, which working men do every day under the direction of a man who is simply there to see that the operation is correctly carried through. If no foreman is present, one workman probably takes the lead, and sees to the operation being duly performed. But it is not, as I think, an operation requiring the presence of a superior workman at all. Even apart from authority I should have been inclined to hold that this was just one of those accidents which happen without any fault being attributable to anyone. But I think the case of *M'Manus* which was quoted to us is in point. There a somewhat similar operation was being carried on. An engine was being lifted at one end in order that it might be slewed round and moved forward by a succession of lifts, and to facilitate the operation the foreman put in a brick below the engine, I presume to make sure that when the men, after resting, came to make a second lift, they would be able to get their hands under the engine and get a good hold of it. It so happened that in letting the engine down on to the brick a man's hand was injured. I think this accident may be fairly considered to be of the same description as that which happened to the person injured in that case, and I am glad that the opinion at which I should have arrived independently is fortified by the fact that it coincides with the opinion delivered by Lord Young in a case so like the present.

LORD YOUNG—I reach the same result as your Lordship, although I must say that I think the case is not unattended with difficulty.

I think it proper to say, although it is an observation entirely in favour of the defenders, that I am doubtful whether Patrick was a man whose orders the pursuer was bound to obey, in the sense of the 3rd subsection of section 1 of the Employers Liability Act 1880.

He was a fitter in the defenders' employment, and was engaged with three labourers in what was ordinary labourers' work, they assisting him and he them. With the help of three other men they raised the machine on to a lorry. It may be that it would have been safer to have taken the machine to pieces first, but then this precaution cannot be said to have been absolutely necessary because the operation was safely performed without adopting it, and I think the consideration of the alleged negligence begins after the machine was placed upon the lorry. When the machine was in this position, Patrick, the fitter, thought that it would be proper to set it up on its end, and asked the three labourers in common employment with him to help him, and they did so, and through their failure the accident happened.

Now, I doubt whether Patrick was a man whose orders they were bound to obey, or that there was negligence on his part in asking them to assist him in this manual operation.

I rather think that the true meaning of the section is that where a master is not in charge of his own work, but puts someone else to be obeyed as master in his place, and that person is negligent or careless, and gives an order without attending to it at all, with the result that serious injury occurs to those who are bound to obey him, then the master shall be responsible for him as he would have been for himself.

But I am very doubtful whether that applies here, where a man does labourer's work and asks other labourers to help him, he assisting them and doing his best and attending to the job. The question of his liability is akin to the question of a master's own liability for his own conduct where he asks his servants to help him, say, in moving a heavy box or table which falls on one of the servant's toes. I should doubt whether that was a case within the region of actionable wrong at all.

But I think it is sufficient to indicate my doubts and to say here that there is no negligence in any sense. There may have been an error of judgment. I am not sure that the most careful man would not have concluded that four men could with reasonable safety have raised the machine to its feet.

I therefore come to the same conclusion as your Lordships, and generally upon the same grounds as the Court did in the case of *M'Manus*, that the pursuer had failed to prove that the injury sustained by him was caused by the negligence of any man to whose orders he was bound to conform.

LORD TRAYNER concurred.

LORD RUTHERFURD CLARK was absent.

The Court accordingly found in law that the defenders were not liable under the third sub-section of the first section of the statute, and assoilzied them from the conclusions of the action.

Counsel for the Pursuer—Salvesen—T. B. Morison. Agents—Macpherson & Mackay, S.S.C.

Counsel for the Defenders — Dundas — Clyde. Agent—Alexander Morison, S.S.C.