

are to receive the same profit out of it. But it might equally have been occasioned by many causes. If the expense of working the coal had become greater, or the expense of carriage from the pit to the port of shipment had been increased, the result would have been to reduce the pursuers' profit or raise the pursuers' price. Yet in these circumstances a price previously contracted for would not be subject to any increase. Your Lordship in the chair, I think, suggested as illustrative a case which I thought quite apposite. A man who had contracted to cart goods from one point and deliver them at another at 1s. per ton found when carrying out his contract that he had to pass a bridge or toll bar, where in order to pass he had to pay a penny per ton. Would that entitle him to charge 1s. 1d. for cartage and delivery? I think clearly not, and yet that is what the pursuers propose to do. They are bound to deliver the coals free on board for 10s. a ton, but because they cannot put the goods on board and so earn the price without paying a toll of 1s. they propose to charge the defender 11s. a ton. I think this clearly in excess of their right.

LORD MONCREIFF was absent.

The Court adhered.

Counsel for the Pursuers and Reclaimers—Clyde, K.C.—T. B. Morison. Agents—P. Morison & Son, S.S.C.

Counsel for the Defender and Respondent—Younger. Agents—Boyd, Jameson, & Young, W.S.

Thursday, December 18.

## FIRST DIVISION.

[Lord Kincairney, Ordinary.]

### DOUGLAS v. M'KINLAY.

*Process—Caution for Expenses—Bankrupt Father as Curator of Minor Pursuer.*

Circumstances in which an undischarged bankrupt, appearing in an action as the curator and administrator-in-law of his minor son, was ordained to find caution for expenses.

*Process—Caution for Expenses—Past or only Future Expenses Included.*

A claimer was ordained "to find caution for expenses." Held that this meant caution for future expenses, not for those already incurred in the Outer House.

George Dickie Rutherford Douglas, a minor aged sixteen, with the special advice and consent of his father William Douglas, 33 Partickhill Road, Glasgow, as his curator and administrator-in-law, brought an action against Alexander M'Kinlay, horse-dealer, 130 London Road, Glasgow, concluding for payment of damages for breach of a contract for the purchase of a patent fishing-net, for which a provisional patent had been taken in the pursuer's name.

A proof was taken, and on 22nd August 1902 the Lord Ordinary (KINCAIRNEY) assoiled the defender from the conclusions of the action, and found him entitled to expenses against the pursuer and consenting pursuer.

The pursuer reclaimed, and on 25th October 1902 the defender and respondent lodged the following minute:—"The proof has declared, and it is the fact, that the pursuer of this action is a lad of seventeen years of age; that he has no interest in the subject-matter of the action; that the whole interest therein is in his father William Douglas, who has had the sole charge of and has conducted for his own interest all negotiations in connection with the said fishing-net and the said contract. The pursuer has no interest in the action, and any damage recoverable will go to the said William Douglas and not to the pursuer. In these circumstances the pursuer ought to be ordained to find caution for expenses."

On this minute counsel for the respondent moved alternatively that G. D. R. Douglas, the pursuer, and William Douglas, the consenting pursuer, should be ordained to find caution. It was stated at the bar and admitted that William Douglas was an undischarged bankrupt.

The following interlocutor was pronounced:—"Appoint William Douglas, 33 Partickhill Road, Glasgow, curator and administrator-in-law of G. D. R. Douglas, the pursuer, to find caution for expenses within fourteen days from this date."

Thereafter William Douglas lodged a bond of caution for future expenses.

The respondent presented a note wherein, after stating that the bond was not in terms of the interlocutor of 23rd October in respect that it bound the cautioner for future expenses only, he prayed the Court, in respect of the failure of the pursuer's father to find caution in terms of the said interlocutor, to dismiss the reclaiming-note and decern."

Counsel for the reclaimers argued that he had implemented the interlocutor by the bond of caution which he had lodged. "Caution for expenses" in an interlocutor meant caution for future expenses only—*Maxwell v. Maxwell*, March 3, 1847, 9 D. 797.

Counsel for the respondent argued that expenses were a *unum quid*, and that an order to find caution for expenses must therefore mean caution for the whole expenses of the action.

LORD PRESIDENT—All we can do now is to construe the interlocutor pronounced on 25th October, by which William Douglas the pursuer's father was ordained "to find caution for expenses within fourteen days." Reading that interlocutor by itself, I think that the expenses to which it relates are future expenses, and future expenses only. It may be a question whether we should have required caution for past as well as for future expenses if the point had been brought under our notice at the time when the interlocutor was pronounced. It is

quite possible that we might have required caution for all expenses seeing the allegations made amounted to something like a charge of fraud on the part of the father in litigating under cover of his son's name. But upon a true construction of the previous interlocutor I think that caution for future expenses is sufficient.

LORD ADAM—I am of the same opinion. I think the only question we have to consider is, What is the meaning of the previous interlocutor? I agree with your Lordship that, *prima facie*, the interlocutor which ordains William Douglas to find caution for expenses means that he is to find caution for future expenses. It seems to me that the case of *Maxwell v. Maxwell*, 9 D. 797, is a judgment in that direction, and I also agree that if the question had been brought to our notice previously the interlocutor might have been different, because the Lord Ordinary seems to have found that William Douglas is the *dominus litis* in a case which is carried on in his son's name. If that is so—I do not say it is—he would have the whole benefit of the litigation if successful, and should be responsible for the expenses. But that is not the present case; we have merely to construe an interlocutor whereby a party who is litigating in his own name is ordained to find caution for expenses in general terms.

LORD M'LAREN—We cannot review the previous interlocutor whereby caution was ordered, and it is not said that there has been any change of circumstances which would entitle the defender to ask for new and more stringent conditions. The real question is, whether the bond of caution, which binds the cautioner for future expenses only, is a fulfilment of the interlocutor pronounced in October. I think it is a fulfilment, because when an interlocutor orders caution for expenses without specifying the particular expenses, I should interpret it as an order for caution for future expenses only. I do not think that the Court would, as a matter of course, order caution to be found for expenses already incurred. That would not be done unless the attention of the Court was specially directed to the matter and a motion for such caution expressly made.

LORD KINNEAR concurred.

The Court refused the prayer of the note.

Counsel for the Pursuers and Reclaimers—Guy—A. M. Anderson. Agent—John Veitch, Solicitor.

Counsel for the Defender and Respondent—A. S. D. Thomson. Agent—W. A. Hislop, W.S.

Friday, December 19.

## FIRST DIVISION.

[Sheriff-Substitute at Paisley.

DOWDS v. BENNIE & SON.

*Master and Servant—Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), Sched. II., sec. 13, and Statutory Rules 1898, No. 407, sec. 2—Review of Award—Continued Incapacity due to Want of Treatment—Medical Referee—Finality.*

A workman who had sustained an injury to his ankle made an agreement with his employers whereby they undertook to pay him 10s. a-week so long as he remained, incapacitated for work owing to the accident. A memorandum of this agreement was recorded in the Sheriff Court Books. Three years afterwards the employers lodged a minute asking for an order ending or diminishing the weekly payment, which they supported by a medical report to the effect that the continued incapacity of the workman was due to his having failed to adopt the proper means for the cure of the injury to his ankle. The Sheriff allowed a proof, and thereafter, finding the medical evidence conflicting, remitted to a medical referee, under section 13 of Schedule II. of the Workmen's Compensation Act 1897, and clause 2 of the Statutory Rules, No. 407, to consider the question whether the workman's continued incapacity for work was due to the accident or to his own neglect. On the referee lodging a report to the effect that the incapacity was due to the workman's neglect, the Sheriff issued an order bringing the weekly payments to an end.

In a case stated for appeal the Court answered the question whether the report of the medical referee was final in the negative, but held that in the circumstances of the case the order pronounced by the Sheriff was right.

The Workmen's Compensation Act enacts (Schedule I., sec. 11)—“Any workman receiving weekly payments under this Act shall, if so required by the employer, . . . from time to time submit himself for examination by a duly qualified medical practitioner provided and paid for by the employer . . . but if the workman objects to an examination by that medical practitioner, or is dissatisfied by the certificate of such practitioner upon his condition when communicated to him, he may submit himself for examination to one of the medical practitioners appointed for the purposes of this Act . . . and the certificate of that medical practitioner as to the condition of the workman at the time of the examination shall be given to the employer and workman, and shall be conclusive evidence of that condition.”

Section 12—“Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such