

the valve of the heart. Now that information might very well convey a different impression to different people, according as they were or were not instructed in physiology, and the statement itself was not sufficiently specific, I think, to make it perfectly clear to the man what his course ought to be, or whether he ought to consider himself so seriously injured as to be unable for work. But then the Sheriff goes on to say that the doctor told him to stop work and rest, but that no particular time was specified. Now that is somewhat vague. I by no means intend to suggest, that as a question of medical treatment Dr Leslie may not have done perfectly right, but I think it somewhat vague information on which to ground a judgment against a man's conduct in trying to go to work as soon as he did. The doctor told him to rest, he did not tell him how long to rest, and as a matter of fact he rested three days. I have no doubt it was far too short a time, and that in his own interests he ought to have rested for a longer time. But if he did not take sufficient time to rest, as he was instructed to do, I think he made a mistake in supposing that he would rapidly recover and would therefore have no serious claim for compensation. But I think that that mistake sufficiently accounts for his delay to give notice, and I cannot find on the Sheriff's statement that his delay was caused by anything but mistake. I come, therefore, to the conclusion that the bar arising from want of notice is displaced by the proof that the failure to give notice was occasioned by a reasonable mistake on the part of the workman, and that he is entitled to obtain his compensation.

As to the question of amount of compensation, I agree with your Lordship that there is nothing before us to enable us to disturb the Sheriff's decision, and that the amount ought to be £1 a-week. There is nothing to show that the amount exceeds the statutory limit, and nothing to show that the Sheriff in awarding that amount took into account considerations which he ought not to have taken into account, or omitted any consideration he was bound to take into account. We have nothing before us except the fact that he arrived at a conclusion as to the award of compensation, and that that is within the statute. I therefore see no ground on which we can interfere with the judgment on that question.

The LORD PRESIDENT was absent.

The Court answered the second question in the affirmative, and remitted the case to the Sheriff to award compensation.

Counsel for the Appellant—G. Watt, K.C.—Wilton. Agent—P. R. McLaren, Solicitor.

Counsel for the Respondents—Campbell, K.C.—Hunter. Agents—W. & J. Burness, W.S.

Wednesday, February 17.

FIRST DIVISION.

[Lord Kyllachy for Lord Stormonth Darling, Ordinary.]

THE STAR FIRE AND BURGLARY INSURANCE COMPANY, LIMITED, AND LIQUIDATOR v. JAMES OGILVIE & COMPANY.

*Process—Reclaiming-Note—Competency—Order for Payment within Definite Time.*

A, an alleged contributory in the winding-up of a company, was found entitled to the expenses incurred by him in certain proceedings he had taken for the removal of his name from the register, and decree for the taxed amount thereof was pronounced against the company and the liquidator. By a subsequent interlocutor the Lord Ordinary, without prejudice to the decerniture against the liquidator personally, ordained him "to hand and pay over out of the assets of the company" to the agents of A "within one week from the date hereof, the expenses decerned for in the preceding interlocutor." The liquidator reclaimed. *Held* that the reclaiming-note was competent.

*Stirling Maxwell's Trustees v. Kirkintilloch Police Commissioners*, October 16, 1883, 11 R. 1, 21 S.L.R. 1, distinguished.

On the 8th February 1902 Messrs James Ogilvy & Company, oil and colour manufacturers, Clayhills, Aberdeen, received a notice from Charles Gale, Accountant, Glasgow, the liquidator of the Star Fire and Burglary Insurance Company, Limited, a company incorporated under the Companies Acts 1862-1893, having its registered office at 248 West George Street, Glasgow, and in course of being wound up under the supervision of the Court. The notice called upon them to pay a call of £1 said to be due by them as members of the company. They denied that they were members of the company, and repudiated all liability. After prolonged negotiations, in the course of which it was considered necessary to prepare and print a petition for the rectification of the register, leave to proceed therewith being obtained from the Lord Ordinary (Stormonth Darling) upon the 21st February 1903, the law-agents for the liquidator wrote to the law-agents for Messrs Ogilvy & Company that the liquidator had removed their name from the register of members of the company, that he was to take no proceedings whatever against them, and that when a note was being presented about some other matter a conclusion would be added asking the Lord Ordinary's approval of the deletion of their name.

Messrs Ogilvy & Company presented a note to the Lord Ordinary in which they asked him to find "the said Star Fire and Burglary Insurance Company, Limited,

and the said Charles Gale, liable to the compearers in the expenses incurred by them in consequence of the said Charles Gale having settled their name on the list of contributories of the said company."

Answers were lodged to this note by the company and the liquidator, but on 3rd June 1903 they were found liable in such expenses.

The interlocutor giving decree, of date 29th January 1904, was as follows:—"Approves of the Auditor's report dated 21st October 1903, on the account of expenses for the compearers James Ogilvie & Company, and decerns against the company the Star Fire and Burglary Insurance Company, Limited, and the liquidator, for payment to the said compearers of the sum of £43, 3s. 3d., the taxed amount thereof; Finds the said compearers entitled to the expenses of the objections to the Auditor's first report: Modifies the same to the sum of £2s. 2s., for which sum also decerns against the said company and the liquidator: On the compearers' motion that the liquidator should forthwith pay the sum above decerned for out of the assets of the company, appoints the liquidator within one week from the date hereof to state what assets of the company he has recovered and has in his hands."

And on 5th February the Lord Ordinary pronounced this interlocutor—"Having heard counsel on the motion of the liquidator that the time allowed him to state what assets of the company he has recovered and has in his hands be extended, Refuses the said motion, and without prejudice to the decerniture against the liquidator personally, Ordains the liquidator to hand and pay over out of the assets of the company to the agents of Messrs Ogilvie, within one week from the date hereof, the expenses decerned for in the preceding interlocutor, and interest thereon, and decerns."

The company and liquidator reclaimed. On the reclaiming-note appearing in the Single Bills objection was taken to its competency.

Counsel for the respondents argued that the interlocutor reclaimed was in its nature executorial, and fell under the rule established by the case of *Stirling Maxwell's Trustees*, 11 R. 1, 21 S.L.R. 1.

Counsel for the reclaimers argued that the interlocutor reclaimed against was not executorial but substantive, and did not fall under the rule of *Stirling Maxwell's Trustees*. It was not a mere finding of expenses, but a decree *ad factum prestandum*.

LORD ADAM—No doubt the Lord Ordinary has made an order on the defender to hand and pay over a certain sum to the respondents' agents within a certain time. But that is not an ordinary executorial decree. This case is not like *Maxwell* at all. I think the reclaiming-note is competent, and that the case should go to the summar roll.

LORD M'LAREN and LORD KINNEAR concurred.

The LORD PRESIDENT was absent.

The Court sent the case to the summar roll.

Counsel for the Reclaimers—Cooper. Agents—Clark & Macdonald, S.S.C.

Counsel for the Respondents—Younger. Agents—Cameron & Orr, S.S.C.

Saturday, February 20.

OUTER HOUSE.

[Lord Low.]

WILSON v. HORN.

*Husband and Wife—Nullity of Marriage—Misrepresentation—Personation.*

A racing tipster, who resided at Brighton, the son of a postilion, but at the time was an absconding bankrupt passing under an assumed name and representing himself to be a landed proprietor and the son of a landed proprietor in Ireland with means and prospects, induced a lady to contract an irregular marriage with him at Aberdeen. The marriage was subsequently registered.

In an undefended action of declarator of nullity of marriage at the instance of the lady, decree *granted* on the ground of false and fraudulent representations and personation by the defender.

Madeline Kate Elizabeth Daisy Wilson, Blingery, Caithness-shire, raised an action of declarator of nullity of marriage against Walter Edward Horn, at the time of the raising of the action a prisoner in the prison of Aberdeen, on the ground that she was circumvented and induced to contract a pretended marriage with him by means and in consequence of false and fraudulent representations and personation used by him towards her, and in particular by his falsely pretending to be Walter Erby Hamilton of Foxhall Park, near Letterkenny, County Donegal, Ireland.

The action was undefended, and the following facts were proved:—The pursuer was twenty-one years of age and resided with her mother at Blingery. She had considerable pecuniary interest in the estate of an aunt of her mother. In December 1902 she saw the following advertisement in a newspaper:—"Young English gentleman (30), with large country estate and mansion thereon in England, wishes to meet young lady, fond of country life and sport generally. Must have at least £5000 or a fair income. Replies, with few particulars, treated in strict confidence." She replied to the advertisement, and in February 1903 went by arrangement with the advertiser to Aberdeen, where she met him. He called himself W. Erby Hamilton; said he owned a small property in the north of Ireland, and that in addition his mother made him