

was doing what, according to the evidence, it was the ordinary course of business for him to do in unloading similar goods. Is it necessary in order that the sub-section may apply that an order should be verbally given to a man to do what it is the ordinary course of his duty to do every day in the week?" To that question, when applied to the present case, I answer "no"; and it is because I fear that your Lordships' judgment in holding that the order must be as your Lordship has put it "particular" will be taken as meaning that the order must be express and precise, and the scope of the sub-section may thus be restricted within narrower bounds than the Legislature intended, that I venture to think that this verdict should stand.

I would only add that cases falling under this sub-section of the Employers' Liability Act must now be considered as involving too much metaphysical refinement to make them suitable for jury trial.

Counsel for the defenders, while admitting that following the general rule the expenses of the previous trial and the discussion on the motion for a new trial should be reserved, moved for the expenses of the discussion on the bill of exceptions. He referred to *Macdonald v. Wyllie & Son*, December 22, 1898, 1 F. 339, 36 S.L.R. 262; and *Henderson v. Russell*, October 22, 1895, 23 R. 25, 33 S.L.R. 14.

The LORD PRESIDENT stated that the Court would consider the point, and subsequently, the case having been put out in the single bills, intimated that after consultation with the Judges of the Second Division, the opinion of the Court was that there appeared no reason to depart from the practice of the Court as established by the Second Division in *Macdonald v. Wyllie & Son*, that there was no distinction to be drawn between cases where a new trial was allowed on the ground that the verdict was contrary to evidence and cases where a new trial was allowed on a bill of exceptions, and that the expenses of the discussion on the bill of exceptions would accordingly also be reserved.

The Court allowed the exceptions, made the rule absolute, set aside the verdict, and granted a new trial, reserving all questions of expenses.

Counsel for the Pursuer—J. C. Watt, K.C.—J. A. Christie. Agents—St Clair Swanson & Manson, W.S.

Counsel for Defenders—G. Watt, K.C.—Constable. Agents—Simpson & Marwick, W.S.

Thursday, November 23.

## FIRST DIVISION.

[Lord Ardwall, Ordinary.]

### TURNER v. SELKIRK'S TRUSTEE.

*Process—Reclaiming Note—Assignment of Decree—Assignee Sisted as Pursuer along with Original Pursuer—Interlocutor Pronounced on Withdrawal of Reclaiming Note.*

The pursuer in an action for payment having obtained decree in the Outer House, the defender lodged a reclaiming note. Subsequently the pursuer assigned his right under the decree, and his assignee was sisted as pursuer along with the original pursuer.

The defender, desiring to withdraw his reclaiming note, moved the Court to refuse the reclaiming note. The original pursuer thereupon moved the Court to recal the interlocutor of the Lord Ordinary, and of new grant decree in similar terms in favour of his assignee.

The Court refused the reclaiming note.

In an action at the instance of James William Turner, writer, Greenock, against Thomas Landells Selkirk, chartered accountant, Glasgow, sole accepting trustee acting under the trust-disposition and settlement of the deceased James Landells Selkirk, concluding for payment of a sum of money, the Lord Ordinary (ARDWALL), on 2nd March 1905, decerned against the defender in terms of the conclusions of the summons, and found the pursuer entitled to expenses.

On the same date the defender lodged a reclaiming note against this interlocutor.

Subsequently the pursuer assigned his right under the decree to one Farmer, and on 25th October 1905 Farmer was sisted as pursuer in the action along with the original pursuer.

On 23rd November, in the Single Bills, counsel for the defender stated that the defender desired to withdraw his reclaiming note, and moved the Court to refuse the reclaiming note and adhere to the interlocutor of the Lord Ordinary.

Counsel for the pursuer Turner moved the Court to recal the interlocutor of the Lord Ordinary, and of new grant decree in terms of the conclusions of the summons in favour of the pursuer Farmer.

The Court pronounced this interlocutor—

"The Lords, on the motion of counsel for the defender and claimer, refuse the reclaiming note for him, and decern: Find the pursuers entitled to additional expenses since the date of the interlocutor reclaimed against, and remit," &c.

Counsel for the Pursuer Turner—D. Anderson. Agent—A. C. D. Vert, S.S.C.

Counsel for the Pursuer Farmer—J. A. Christie. Agent—A. C. D. Vert, S.S.C.

Counsel for the Defender—Findlay. Agents—Gill & Pringle, S.S.C.