

something very like nonsense, because the shareholders are the very persons who will first suffer if the company is injured in any way. I suppose the real origin of the respondents' position is, as Mr Hunter seemed to indicate in his closing remarks, that these debenture holders wished to be paid out at 105 per cent. Now I do not think that is a very legitimate object. It is in the option of the company to pay off these debentures at that figure, but I do not see why the Court should impose on the company as a whole an obligation to do so as a condition of sanctioning this scheme. As amended, it is, I think, a scheme that ought to be approved of.

LORD DUNDAS—I also think that the scheme as now amended is one that we ought to sanction, and I do not desire to say anything more.

The LORD JUSTICE-CLERK was absent.

The Court sanctioned the scheme as amended at the bar by the deletion of clause 2 thereof.

Counsel for the Petitioners—Graham Stewart, K.C.—Lord Kinross. Agents—Guild & Shepherd, W.S.

Counsel for the Respondents—Hunter, K.C.—Chree. Agents—Gordon, Falconer, & Fairweather, W.S.—Cadell, Wilson, & Morton, W.S.—Graham, Johnston, & Fleming, W.S.—Robert Lawson, W.S.

Thursday, February 4.

SECOND DIVISION.

(SINGLE BILLS.)

NORTH BRITISH RAILWAY COMPANY v. BUDHILL COAL AND SANDSTONE COMPANY.

(Reported *ante* November 24, 1908, 46 S.L.R. 178.)

Expenses—Appeal to House of Lords—Appeal Lodged but Petition not Presented or Order for Service Made—Decree Granted under Caution for Repetition.

Defenders who had been successful both in the Outer and in the Inner Houses, and found entitled to expenses, moved for approval of the Auditor's report and for decree in name of the agents disburseurs. Prior to the motion the pursuers had appealed to the House of Lords, but owing to the House being in vacation their petition of appeal had not been presented, nor had an order for service been pronounced.

The Court granted the decree craved subject to caution being found for repetition in the event of the appellants succeeding, or the House pronouncing any order disentitling them to the expenses in question.

The case is reported *ante ut supra*.

On 14th December 1906 the North British Railway Company brought an action against the Budhill Coal and Sandstone Company concluding, *inter alia*, for declarator that the defenders had no right to remove the sandstone from certain lands belonging to the pursuers. On 22nd June 1907 the Lord Ordinary (DUNDAS) dismissed the action and found the defenders entitled to expenses. The pursuers reclaimed to the Second Division, who on 24th November 1908 adhered and found the defenders entitled to additional expenses.

After the defenders' account of expenses had been remitted to the Auditor, but prior to approval of his report, the pursuers lodged a petition of appeal to the House of Lords. On 4th February 1909 the defenders moved for approval of the Auditor's report and for decree for the taxed amount of expenses in name of the agents disburseurs. At that date, owing to the House of Lords being in vacation, the petition of appeal had not been presented, nor had any order for service been pronounced. The pursuers opposed the motion.

Argued for pursuers—As the case was under appeal to the House of Lords, decree for expenses should not be granted at present. In any event such decree should only be granted on caution being found for repetition in the event of the appeal being successful.

Argued for defenders—As the case was not removed from the Court of Session, until the petition of appeal was presented and an order for service pronounced in the House of Lords, execution could not be stayed, and the defenders were entitled to the decree craved. The mere lodging of the petition did not remove the case from the Court of Session—*Edinburgh Northern Tramways Company v. Mann*, October 16, 1891, 19 K. 24, 29 S.L.R. 51.

LORD JUSTICE-CLERK—A matter of this kind is of course entirely in the discretion of the Court. The difficulty in this case arises from the fact that the petition of appeal has been lodged but has not been presented, and no order for service has been pronounced owing to the House of Lords being in vacation. Exercising our discretion, I think the right course is to give the decree asked for by the defenders, subject to caution being found for repetition in the event of the judgment being reversed, or any other order being pronounced by the House of Lords which would have the effect of disentitling the defenders to these expenses.

LORD LOW, LORD ARDWALL, and LORD DUNDAS concurred.

The Court pronounced this interlocutor—

“The Lords approve of the Auditor's report on the defenders' account of expenses: Ordain the pursuers to make payment to the defenders of the sum of nine hundred and ninety-five pounds four shillings and sixpence (£995, 4s. 6d.) sterling, the taxed amount thereof, but that only on caution being found to the

satisfaction of the Clerk of Court by the defenders for repetition in the event of the House of Lords finding them liable in repetition of the said expenses; and decern: Further, allow the decree to go out and be extracted in name of Messrs Smith & Watt, W.S., the agents disbursers thereof."

Counsel for Pursuers (Reclaimers) — Cooper, K.C.—Macmillan. Agent—James Watson, S.S.C.

Counsel for Defenders (Respondents)—C H. Brown. Agents—Smith & Watt, W.S

Friday, February 5.

SECOND DIVISION.

[Lord Salvesen, Ordinary.]

WATSON, LAIDLAW, & COMPANY,
LIMITED v. POTT, CASSELS, &
WILLIAMSON.

Patent—Process—Infringement—Validity—“Insufficient Disclosure”—“False Suggestion”—Necessity for Averment of Particulars in which Specification Insufficient or Misleading.

Held that the defender in an action of interdict against the infringement of a patent was not entitled to maintain that the patent was invalid in respect that the specification did not sufficiently describe and ascertain the nature of the invention and the manner in which it was to be performed, or that the specification was ambiguous and calculated to mislead, without stating these pleas on record and averring specifically and in detail the various respects in which the specification failed to describe sufficiently the nature of the invention and the manner in which it was to be performed, or was otherwise ambiguous or misleading.

Watson, Laidlaw, & Company, Limited, assignees of letters-patent dated 4th May 1903 and numbered 10,034 of that year, granted in favour of James Wright Macfarlane for improvements in centrifugal machines, raised an action against Pott, Cassels, & Williamson, concluding for interdict against infringement of the patent and for damages.

In the complete specification of the patent, which was left at the Patent Office on 30th January 1904, the inventor described his invention as follows—“My invention relates to centrifugal machines of the suspended or ‘Weston’ type, in which, as hitherto generally constructed, the inner stationary spindle has been suspended by either a metallic or elastic buffer or bearing; a separate elastic buffer being required to assist in controlling the oscillations of such spindle. These means of suspension have hitherto consisted of either cylindrical-shaped elastic buffers or buffers in the form of annular discs, some of which are thicker at the outer edges than at the centre, the

latter being so made and carried that the elements of their surfaces pass through the centre of oscillation of the spindle. Or the spindle has been carried by a combination of a spherical metallic bearing and an annular cylindrical rubber buffer.

“My invention has for its object to provide an improved method of supporting the inner spindle and controlling the oscillations, by the provision of a new form of combined elastic buffer-bearing, so that the machine may be run with a much greater unbalanced load than has hitherto been found possible.

“According to my invention the improved form of combined elastic buffer-bearing consists substantially of an annular conical or conoidal rubber buffer carried between a counterpart conoidal collar on the spindle and a counterpart seating in the framing of the machine. The angles of the cones of the collar and seating may be the same, in which case the interposed buffer will be of the same thickness throughout; or the angles of the collar and seating may be different and relatively inclined to any desired degree so that the thickness of the buffer tapers throughout. . . . As hereinbefore stated, I am aware that in certain machines as hitherto constructed the buffers are in the form of a pair of annular discs thicker at the outer edges than at the centre, being thus somewhat triangular in cross section. These buffers, however, are made so that the elements of their surfaces pass through the centre of oscillation of the spindle. On the other hand, the angle of the single buffer necessary to carry out this invention must have a smaller inclination from the vertical than the hitherto fixed direction of inclination permits. In other words, the buffers hitherto in use have been of the nature of comparatively flat annular discs, the elements of whose surfaces passed through the centre of oscillation, whereas the present invention consists in the employment of a cone approaching much more nearly to a cylinder, and whose elements do not pass through the centre of oscillation of the spindle. . . . In the claims the term ‘conoidal’ is used to indicate either surfaces truly conical or surfaces more or less curved but at the same time approximating the conical, or surfaces which, while in a measure irregular, yet approximate generally the conical.

“Having now particularly described and ascertained the nature of my said invention and in what manner the same is to be performed, I declare that what I claim is—1. In centrifugal machines, an elastic buffer, conoidal in form, and so carried that, while supporting the load, it is self-adjusting as to that load, and in its control of oscillation, substantially as described. 2. In centrifugal machines, a combined elastic buffer bearing for the machine spindles, consisting of a rubber buffer, in one or more pieces, having as a whole an annular conoidal form, the elements of the surfaces of which when produced do not pass through the centre of oscillation of the spindle, combined with a counterpart conoidal collar on the spindle and seating in the framing, substantially