

expenses. The only expenses worth considering are those incurred in relation to the declarator of marriage. It was explained to me that the trustees, while willing to act with all consideration to the pursuer in view of Mr Macadam's expressed wish to make some further provision for the pursuer, do not feel themselves at liberty to give up their claim to expenses. They have already obtained decrees for the expenses of the discussions in the Inner House on the reclaiming-note on the merits of the declarator. I think that in all the circumstances that decree sufficiently satisfies the rule that the successful party is entitled to an award of expenses. This action was brought in the name of the mother and children, and the legitimacy of the children was in question. If it had been brought in name of the children alone a decree for expenses would have been of no value to the defenders, and as in this case the *status* of the children was in issue, I think that the proceedings before the Lord Ordinary may be regarded as necessary procedure in which each party should be allowed to bear his own costs. I should have been very glad to go further, and to allow the children the costs of trying the question of their legitimacy out of the father's estate, but my impression is that in questions of *status* we have never gone so far as to give costs out of the estate to the unsuccessful party."

Counsel for Pursuer—J. P. B. Robertson—Goudy. Agent—J. Young Guthrie, S.S.C.

Counsel for Defender—Mackintosh—A. J. Young. Agent—John Macmillan, S.S.C.

Wednesday, July 1.

## FIRST DIVISION.

[Sheriff of the Lothians.

SHAW v. CROALL & SONS.

*Reparation — Hackney Carriage — Accident through Horse Bolting — Culpa — Edinburgh Municipal and Police Act 1879 (42 and 43 Vict. c. 132).*

By the bye-laws applying to cabmen in Edinburgh it is provided that a cabman shall when at a stance either sit on the box or stand at the head of his horse. The driver of a cab, which was drawn up at a stance, was standing about three yards from his horse, which was feeding from a nose-bag, when the animal took fright and bolted. In an action by the representatives of a person who was alleged to have been knocked down and killed in consequence, held that (assuming the deceased to have been injured in the manner alleged) the provisions of the bye-law could not at all times be literally complied with, and that there had been a failure to make out such negligence on the part of the driver as would render his employer responsible.

Section 304 of the Edinburgh Municipal and Police Act 1879 (42 and 43 Vict. cap. 132) provides—"For regulating the hackney carriages . . . and the owners and drivers thereof, the Magistrates may . . . make bye-laws." . . .

Bye-law 37, enacted by authority of this sec-

tion, requires that when at a stance the driver of a hackney carriage shall "either sit on the box or stand at the head of his horse."

On the morning of the 1st January 1884, John Page, cabdriver, in the employment of Messrs John Croall & Sons, left his employer's stable with a horse and hansom in his charge, in time to be at the Caledonian Station stance to meet the south train due at a quarter to seven o'clock.

The horse which Page was driving had been fed before it left the stables, and on reaching the stance he drew up his hansom in a line with three other cabs which were there. Page's hansom was first in the row of cabs, the Royal Mail van being in front. The horses were drawn up in a line with their heads looking west. As the train was late Page put on the nose-bag in order to give the horse a feed. He also took out the bit that the horse might feed more freely. There were two bags—a large bag called the feeding-bag, and a smaller called the nose-bag, which was filled from the feeding bag, and contained the allowance the horse was to receive at the time. Page had brought the feeding-bag from the box in which it was kept and had filled the nose-bag, and was in the act of restoring the feeding-bag to the place where it was kept, under a fixed seat, and was at the moment about ten feet from his horse's head, when, from some cause unascertained, the horse started, turned round, and proceeded to leave the station, passing safely through the gates. After reaching the gates it increased its speed to a gallop, and proceeded at this pace along Princes Street and down Leith Street to Albert Street, Leith Walk, where it was caught. When the horse bolted Page started to try and catch it but failed.

Somewhere about the time that the horse bolted, the late David Shaw, a porter, was, while crossing the west end of Princes Street, at a point which the horse passed, knocked down and run over by a horse and vehicle of some description. He was so severely injured that he died upon the following day.

An action was raised by the representatives of Shaw against Messrs Croall & Sons, in which it was alleged that the horse and vehicle by which Shaw met his death was the horse and hansom, the property of Messrs Croall, which bolted from the Caledonian Station about the time that Shaw met with the injuries which resulted in his death. The defenders denied that it was their horse and hansom which caused Shaw's death.

The Sheriff-Substitute, after a proof, found for the pursuers.

On the question of Page's fault the Sheriff-Substitute found—"The said horse and cab were without a driver, and wholly uncontrolled, the horse having been allowed through the negligence of John Page, a servant of the defenders, to move away unattended from the stance within the enclosure of said station, after which it seems to have taken fright, and bolting out of the station gates, galloped furiously along Princes Street."

"*Note.*— . . . It is enough to point out that at the moment when Page's mare wheeled off the stance, which she did quite quietly, not breaking into a gallop until she reached the station gates, Page was not at her head, as he ought to have been, but at the distance of about 10 feet, and with his back turned towards her. That he was

then engaged in an innocent act (putting away his meat-bag, from which he had just given the mare a feed) is immaterial. The driver of a hackney carriage is bound to attend to the regulations issued by the Magistrates, one of which (the 37th) requires that when at a stance he shall 'either sit on the box or stand at the head of his horse;' and, apart from the regulations, he is bound to take every precaution against his horse bolting. If he fails to do so, he, and through him his master, is responsible for the consequences of his neglect."

The defenders appealed to the Court of Session.

The following portions of the evidence related to the rules observed by cab proprietors, and the manner in which these were carried out by their men with reference to the 37th regulation made by the Magistrates.

Mr David Croall, sole partner of defender's firm, said—"Being referred to rule 37—that has not been the practice ever since I had anything to do with the business. I did not know it was a rule that the man was to sit on his box, or stand at his horse's head all day. I instruct my men to keep as near their horses as possible, and when a man is absent for any purpose that one shall watch for two. . . . I think rule 37 is sufficiently carried out if the man is within two or three yards of his horse. The object of having a man at the horse's head, I suppose, is that he may be able to grip the horse if it tries to start. I think a man standing three yards from the horse's head could do so easily enough. I could easily catch a horse unless it was very quick. I think that a man standing four yards away from his horse has sufficient control over it. (Q) Do you think he would have sufficient control over it with the bit out of its mouth?—(A) No; but he has the nose band and the bridle, and it acts like a head collar. (Q) Suppose the man to be four yards away from the horse's head, and the horse shows signs of bolting, how is he to control it?—(A) By the rein still attached to the bridle. (Q) With the bit out of its mouth?—Yes; by catching the band attached to its nose. Of course he could not have the same control over the horse as if the bit were in its mouth."

Page in his evidence narrated the circumstances from which the narrative given above has been taken. He explained that in taking the bit out of his horse's mouth preparatory to feeding it he was following the ordinary custom, that the horse in question was a very quiet animal; and the cause of the animal starting, in his opinion, was that it had got a fright from something being thrown over the wall of St Cuthbert's Lane and either striking it or falling beside it.

This evidence was corroborated by another cabman who was on the stand at the time.

George Binnie, cab proprietor, Edinburgh, deponed—"With regard to the management of horses and cabs upon the stance, I know the bye-law to the effect that the driver should be at the horse's head or upon the box. When they are on the box they sometimes don't have the reins in their hands, but they are within grasp, so that if the horse should start they can be grasped at once. In regard to the other part of the bye-law, the driver is supposed to be at the horse's head so as to be able to grip him if he should want to leave, and also to be ready for a

call. In my opinion, the driver or somebody on his behalf should always be close to his horse, so that he can grip it if it attempts to leave. (Q) If a cabman happened to be three or four yards away from his horse, would you think that that was complying with the bye-law?—(A) Well, they are often enough away from the horse, but that is not according to the bye-law, and it is not according to the way we want our business conducted. I think that for practical purposes the driver is too far away from the horse's head when he is three or four yards away. He would lose all that ground if the horse should happen to bolt. Of course the first wrench upon a horse's mouth is the best, and if a horse is really away it is very difficult to hold him. In the case of old seasoned cab-horses it is the custom to take the bit out of the mouth when the meat bag is put on their heads. Young horses are the better of having the bit in their mouth till you are satisfied that they are quiet. With the bit out of the horse's mouth the driver cannot have control over it. He has more control over it by the tongue than by the rein if the bit is out, because if the horse is used to the driver the driver can roar back to the horse, and the chance is that it will stop more readily than by pulling the bit. Even though the driver were at the horse's head, if the bit were out of the mouth he would not have control over it if the horse was willing to go. Horses feel rather free with the bit out of their mouth. If they do not see anybody in attendance they are more apt to get frightened. Of course if the man is there he speaks to the horse, and that stops the horse at once. It has been the habit for a long time to feed horses with the bit out of their mouth, but I remember years ago when they did not do that so much. The old-fashioned practice was to keep the bit in, more especially if the horses were new ones."

John Johnston, a cab proprietor in Edinburgh for over thirty years, deponed:—"I know it is the rule that when a horse is on the stance the driver should be at its head or on the box. In carrying out that rule what we do is to try to be within catch of the horse if possible so as to grip it if it bolts. That is what I understand to be the rule. If on the box, the driver has hold of the reins, or they are in such a position that he can grasp them. (Q) Does not being at the horse's head mean that he is so near as to be able to grasp the reins if occasion requires?—(A) Yes; but you cannot always be at the horse's head. In feeding horses on the stance the bit is generally taken out of the mouth. You have not so much control over the horse in that way as when the bit is in, but it is always taken out. (Q) Do you think that with the bit out you have control over the horse?—(A) Yes, if you are near hand, because he will not go away so long as the bag is on his head. Even if he has been fed before leaving the stable, I think the meat bag is sufficient to keep him from bolting. (Q) Don't you think the man should be close at hand to get hold of the reins if necessary?—(A) Yes, with a wild horse it would be necessary, but with a regular horse on the stance it is not so necessary. I cannot say whether if a horse bolts the driver can stop him when the bit is out of his mouth. I don't think he could keep him from bolting if he was determined to go away, even supposing the bit were in. I think you could catch him if

he was a quiet horse with the bit out, if you were attending to him. Supposing a man to be three or four yards away from the horse, and his back to it, that would not be sufficient control over it. If he is three or four yards or any distance away, he should be keeping his eye upon the horse. (Q) If he is at that distance with his eye upon the horse, is it possible for the driver to get hold of it before it is away?—(A) It would depend upon how he went away; if he went away quick he would not catch him. To prevent that, the driver should be as near to the horse as possible. They are mostly always within three or four yards of the horse. In the case of a cab at a station waiting for a train there is no occasion for the driver to be away from his horse's head, and I consider it his duty to be there. I don't think that the fact of the stance being at a railway station makes it more necessary for the man to be at his horse's head than if it were on an ordinary stance; the danger is much about the same. *Cross.*—If the driver in this case had been feeding his horse, and went three or four yards off to put away the feeding bag, I think that would be reasonably within control of his horse."

Edward Moir, a servant of defenders, deponed:—"I had cabs of my own for twelve years. It is usual to feed horses on the stance. The bit is always taken out, because the horse would not feed without that being done. A horse is not likely to run away when he has a nose-bag on with corn in it. I have known restive horses being so dealt with on the stance to keep them quiet. I have known the mare in question for about three years. We jobbed her first of all, and she has been in a hansom for upwards of two years. She was a perfectly quiet animal; there was none quieter in the whole yard."

At advising—

**LORD PRESIDENT**—[*After dealing with the facts of the case, and holding that the pursuers had failed to prove that Shaw had been run over by the cab in question*].—It has been said by the Sheriff-Substitute that the driver of this hansom was at the time his horse bolted neglecting his duty, and one of the regulations issued by the Magistrates with reference to the management of hackney carriages is referred to, which provides that when at a stance the driver is either to sit upon the box of his cab or to stand at the head of his horse.

It was observed, and I think fairly, in the course of the discussion that the enforcement of this regulation in its literal sense was an absurdity, for there are many occasions in which the driver of a cab may be legitimately employed when he can neither be on his box nor at his horse's head—as, for example, when he is assisting to load and unload luggage. The question here, therefore, comes to be this—Whether in the occupation in which he was engaged at the time when his horse bolted this driver was to blame? He was in the act of giving his horse a feed. He had removed the bit, filled the nose-bag from the food bag, put the nose-bag on the horse's head, and was in the act of restoring the food bag to the place where it was kept, when the horse, alarmed from some unexplained cause, bolted.

Now, I cannot see in all this any such blame

as would make Page, the driver, responsible supposing that he were being tried upon a charge of culpable homicide, and although something less in the way of *culpa* will suffice in a question involving civil liability, I cannot say, looking to the evidence in this case, that the driver was so neglectful of his duty as to render the defenders liable for anything which occurred through the bolting of this horse.

**LORDS MURE, SHAND, and ADAM** concurred.

The Court recalled the interlocutor of the Sheriff-Substitute, and assoilzied the defenders from the conclusions of the action.

Counsel for Pursuer—Young—Orr. Agents—Adam & Winchester, S.S.C.

Counsel for Defenders—Pearson—Kennedy. Agent—James M'Cauley, S.S.C.

Thursday, July 2.

## SECOND DIVISION.

**DOLAN v. ANDERSON & LYALL.**

(*Supra*, p. 529).

*Process—Auditor's Report of Account of Expenses—Act of Sederunt 10th March 1870, sec. 3, sub.-sec. 1.*

Sub-sec. 1 of sec. 3 of the Act of Sederunt of 10th March 1870 enacts—"That if printing has been in whole dispensed with, the appellant shall lodge with the Clerk of Court a manuscript copy of the note of appeal, furnishing another copy to the Clerk of the Lord President of the Division."

An appellant who had obtained a dispensation from printing, and had been ultimately successful in his appeal, and been found entitled to expenses in the Inferior Court and in the Court of Session, charged in his account of expenses in the Inferior Court, one copy of the record, proof, and other proceedings for the use of his agent, and in his account of expenses in the Court of Session (founding on sub-sec. 1 of sec. 3 of the Act of Sederunt of 10th March 1870) he charged three other copies of the same paper, which included a copy for the process, and one other for the Lord President of the Division, and the third for the use of his counsel. *Held* that he was only entitled to charge for one copy for use in the Court of Session, in addition to that used in the Inferior Court.

*Opinion (per Lord Justice-Clerk)* that the term "Note of Appeal" in the Act of Sederunt did not include the whole proceedings in the Inferior Court, but simply the note of appeal, and the interlocutors on which it proceeds.

In this case (decided 7th March 1885, and reported *supra*, p. 529) the Court dispensed wholly with printing, on the motion of the pursuer and appellant, who was successful in his appeal, and was found entitled to expenses in the Inferior Court and in the Court of Session.