

LORD YOUNG—I am of the same opinion. I am not greatly surprised that the Sheriff-Substitute should have fallen into what, speaking for myself, I conceive to be an error in supposing that the pursuer had a claim upon the defender under the Employers Liability Act 1882. That Act is as confused as any Act can well be, and the terms in which it is drawn are very apt to lead to misapprehension. But I agree with your Lordship that the Act can be of no use to us here as it has no application to the case of an accident happening when the employer is conducting and superintending his own business. Such was the case here, and the fault that is said to have led to the accident is a fault imputed to the employer.

I am not, however, prepared to sanction the view taken by the Sheriff-Substitute in his note, that the want of a guy rope such as he mentions is such a want as to make the machinery defective in the meaning of the statute. The question is an uninteresting one in this case, because if there was anything blameworthy in the way that the operations were conducted that blameworthiness was the fault of the defender himself. The fault of having defective machinery, alluded to in the Act, is not the fault of the employer at all, who may reside a long way away from his place of business, but of the person whom he has put in superintendence of his works, and in whom he has trusted to see everything properly carried out.

The question then comes to be, if there was no fault attaching to the employer under the statute, was there any fault for which he was liable at common law? I think there was not. The work that had to be done was to break up a wreck, and to do it in the most convenient way possible, and the defender resorted to the use of a traction engine which he possessed, and which he thought would suit his purpose. He used this traction engine in the same way as he would have used a steam capstan if there had been one available. I cannot say that the idea was a blameworthy one, and the men who were to do the work along with him, and who were all as competent as he was to judge of the danger of this extemporised use of the traction engine, found no fault with it.

Now, on that evidence I am not prepared to find that this defender was guilty of a breach of duty in his conduct to his workmen rendering him liable to them in damages if any accident occurred. I therefore think that we should recal the Sheriff-Substitute's interlocutor and assoilzie the defender.

LORD RUTHERFURD CLARK and LORD LEE concurred.

The Court pronounced this interlocutor:—

“Find in fact that the death of Alexander Bruce, husband of the pursuer, is not attributable to any fault on the part of the defender: Therefore sustain the appeal, recal the judgment of the Sheriff-Substitute appealed against, as-

soilzie the defender from the conclusions of the action, and decern.”

Counsel for the Appellant—Ure. Agents—Macpherson & Mackay, W.S.

Counsel for the Respondent—Comrie Thomson—Don Wauchope. Agents—Tods, Murray, & Jamieson, W.S.

Friday, May 30.

FIRST DIVISION.

HAMILTON v. HAMILTON'S TRUSTEES.

(Ante, vol. xxvi., p. 679; and 16 R. 1001.)

Process—Jury Trial—Remit to Lord Ordinary.

A cause brought into the Inner House on a notice for trial, and set down for trial at the summer sittings, was settled on the day of trial, and the jury who had been empanelled were, on the joint motion of the parties, discharged by the presiding Judge.

Held that the case was not thereby remitted to the Lord Ordinary for further procedure.

This was a case of reduction of a trust-disposition and settlement. It was brought into the Inner House on a notice for trial, and was set down for trial before the First Division at the July sittings in 1889. The parties settled the case on the day of trial, after the jury had been empanelled, and on the joint motion of the parties the presiding Judge discharged the jury. On 30th May 1890 the parties put in a joint-minute to the effect that decree of absolvitor should be pronounced and neither parties be found entitled to expenses, and moved the Court for decree in terms thereof.

Authority—*Harvie v. Clark*, June 19, 1861, 33 Scot. Jur. 578.

The Court granted decree as craved, holding that the case was not remitted to the Lord Ordinary when the jury was discharged, but continued in the Inner House for the purpose of the further procedure therein.

Counsel for the Pursuer—Shaw. Agents—Carmichael & Miller, W.S.

Counsel for the Defenders—C. S. Dickson. Agents—Webster, Will, & Ritchie, S.S.C.