

rights of the parties were to be fixed as at the date when the action for divorce was raised—*Auld v. Auld*, October 31, 1884, 12 R. 36.

LORD PRESIDENT—I take the action of separation first, and the question is not whether the conduct averred in the new article constitutes a case of cruel maltreatment falling under the terms of this summons. If that were the question, I confess that my opinion would be that it should be decided in the reclaimers' favour, because I cannot see how a case of suffering from the misconduct of the defender, which is the essential quality of cruelty, can be made out when the pursuer was unconscious of the misconduct in question. But that is not the question. The question is whether this alleged conduct on the defender's part cannot have any bearing on the case of cruel maltreatment alleged on record. The suggestion is that the *animus* of the defender is necessarily in controversy, and in the question of how he treated his wife it may be material to know that he really was diverting his affection from his wife and had been tampering with this other woman. Accordingly, I do not think that the averment in question is so manifestly irrelevant that we should interfere with the manner in which the Lord Ordinary has exercised his discretion.

As regards the divorce case, it is clear that the same reasoning applies. The allegation against the husband is in that case made by way of defence, but its relevancy rests on substantially the same grounds, as the cruelty of the husband is the subject of investigation. Accordingly, I think we should refuse the reclaiming note.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court adhered.

Counsel for the Reclaimer — Dundas. Agents—Smith & Watt, W.S.

Counsel for the Respondent—A. Jameson—Cook. Agents — Kinmont & Maxwell, W.S.

Thursday, March 12.

FIRST DIVISION.

[Sheriff Court of Lanarkshire.

SIMPSON AND OTHERS v. BURRELL & SON AND PATON.

*Reparation—Master and Servant—Defect in Plant—Whether Stevedore Liable for Shipowner's Plant.*

A workman brought an action to recover compensation against his employer, a stevedore, for personal injuries caused by the defective condition of the hatchway of a ship upon which the stevedore's men were engaged. The pursuer averred that it was usual and

necessary in a ship of the class in question for the stevedore to see that the ways and plant were sufficient before setting his men to work. *Held* (following *Nelson v. Scott Croall & Sons*, January 30, 1892, 19 R. 425, and *Robinson v. John Watson, Limited*, November 30, 1892, 20 R. 144) that the action was irrelevant.

This was an action raised in the Sheriff Court of Lanarkshire at the instance of the representatives of the deceased William Simpson against Messrs Burrell & Son, shipowners, Glasgow, and John Paton, stevedore, Glasgow, for damages in respect of the death of William Simpson. The summons concluded for payment by the defenders "jointly and severally, or severally, of the sum of £1000."

The pursuer averred that William Simpson while in the employment of John Paton was engaged in working on board the s.s. "Strathavon," which was the property of the other defenders, who had employed John Paton to do certain work thereon; that he was ordered by Paton to remove the hatch-covers from the hold, and that while doing so the supports gave way and he fell to the bottom of the hold, receiving injuries which caused his death. She averred that the accident was caused by the weakness and insufficiency of one of the beams supporting the hatch in question. She averred further—" (Cond 5) The said accident was also caused through the fault of the other defender Paton, in culpably failing to see (as was his duty before setting his men to work) that the ways and plant used by the deceased in the course of his employment were sufficient and in good order, in so far as the said thwart-ship beam was weak and bent, the said hatch-covers were off the square and had not sufficient hold, and there was only one defective 'fore and after,' in place of four strong 'fore and afters.' It is usual, necessary, and safe in ships of the class in question for the stevedore to see that the ways and plant are in sufficient order before setting his men to work, to have the thwart-ship beam straight and of sufficient strength and length to support the 'fore and afters,' and the covers in their places, to have the hatch-covers fitted evenly and with sufficient hold of the supports, and to have four strong 'fore and afters' supporting the covers. The said accident was also caused through defender Paton culpably ordering the deceased to remove the hatch-covers. It was his duty as stevedore to remove said hatch covers, as is usual, necessary, and safe in vessels of this description at the Queen's Dock, Glasgow."

The pursuers pleaded—" (1) The said William Simpson, while a workman in the service of the defender Paton, having been killed through the fault of the said defender, the pursuers are entitled to reparation from the said defender, with interest and expenses, as craved."

The defender Paton pleaded—"The action is irrelevant."

The Sheriff-Substitute on 7th February 1896 allowed parties a proof before answer.

The pursuer appealed to the Court of Session for jury trial, and proposed issues against the defender Paton at common law and under the Employers Liability Act.

Argued for respondent Paton—There was no relevant ground of action against this respondent. A stevedore was not responsible for the defects of the tackle in a ship belonging to another person. It was no part of his duty to warrant the condition of such tackle, there being no special circumstances alleged which would impose such a duty upon him. Accordingly no liability attached to him. This had been clearly laid down in the cases of *Nelson v. Scott Croall & Sons*, January 30, 1892, 19 R. 425; *Robinson v. John Watson, Limited*, November 30, 1892, 20 R. 144.

Argued for reclaimers—There was a sufficient allegation of fault on the part of the stevedore. It was his duty to see that the parts of the ship which he and his men were going to use were in proper order. The defects were not latent, and might easily have been discovered, and accordingly he was liable to his servants for an accident caused by these defects.

LORD PRESIDENT—It seems to be clear that there is no case against the stevedore, there being no particular circumstances alleged such as to impose on him the wide duty of examining the ship on which he was employed, and an entire absence of any grounds to constitute liability against him.

LORD M'LAREN—I agree, and after the two cases which have been referred to, I should have thought it hopeless, or at least unnecessary, to bring an action against a stevedore in respect of the insufficiency of the ship in which he is employed.

LORD ADAM and LORD KINNEAR concurred.

The Court dismissed the action as against the defender Paton.

Counsel for Pursuers—Baxter—Guy.  
Agent—Henry Robertson, S.S.C.

Counsel for Defender—Constable. Agents—Mill, Bonar, & Hunter, W.S.

Thursday, March 12.

#### FIRST DIVISION.

#### THE SCOTTISH ACCIDENT INSURANCE COMPANY, LIMITED, PETITIONERS.

*Company—Resolution to Alter Memorandum of Association—Confirmation by Court—Companies (Memorandum of Association) Act 1890 (53 and 54 Vict. cap. 52), sec. 1—Change of Name.*

A petition presented by an Accident Insurance Company for confirmation of a resolution to alter its memorandum

of association to the effect of enabling it to undertake life, fidelity, and certain other classes of insurance business, granted on condition that the name of the company should be altered in such a manner as should be approved of by the Court, so as to indicate the change which was being effected in the character of its business.

The Scottish Accident Insurance Company Limited, incorporated and registered under the Companies Acts, presented a petition for confirmation of an alteration of its memorandum of association under the Companies (Memorandum of Association) Act 1890, sec. 1.

The company was established under its memorandum of association for the purpose of carrying on the business of insurance against or upon accidental injuries to human life, and against injury to and destruction of property from any accidental cause other than fire. The alterations proposed to be made in the memorandum of association were designed to enable the company to extend the scope of its operations by transacting life, employers' liability, fidelity, and sickness insurance business, and to abandon the power of insuring property against loss caused by accident other than that of fire.

Two extraordinary general meetings of the company adopted and confirmed a special resolution giving effect to these alterations, but a second special resolution "that the name of the company be changed to 'The Scottish Accident and Life Insurance Company, Limited,'" was not confirmed.

The Companies (Memorandum of Association) Act 1890 (53 and 54 Vict. cap. 62), sec. 1, empowers companies to alter the provisions of their memorandum of association subject to confirmation by the Court. Sub-sec. 5 provides—"The Court may confirm, either wholly or in part, any such alteration as aforesaid with respect to the objects of the company, if it appears that the alteration is required to enable the company (a) to carry on its business more economically or more efficiently; or (b) to attain its main purpose by new or improved means; or (c) to enlarge or change the local area of its operations; or (d) to carry on some business or businesses which under existing circumstances may conveniently or advantageously be combined with the business of the company; or (e) to restrict or abandon any of the subjects specified in the memorandum of association or deed of settlement."

Mr C. B. Logan, W.S., to whom the Court remitted to inquire and report on the petition, reported that the proceedings had been regular. On the reasons for the proposed alteration he said—"Your Lordships have in a previous case sanctioned, under the Act of 1890, the extension of the business of a Life Assurance Company so as to include accident insurance, and have also permitted an Accident Insurance Company to obtain powers to transact fidelity and guarantee business, and I have not been able to ascertain that there have been any cases, either in Scotland or in