speaks of Mr Melville's "attempts to throw over his subordinates," of "not being very successful in his explanations," of "the very specious persuasion of Mr Melville," and, in short, language is used in the judgment which by any man with a regard for his own reputation as an engineer or character as a man must be regarded as most serious. I content myself with saying that not one of these expressions appears to me to have been justified by the testimony or the conduct of Mr Melville. Of the charge of fraud preferred against him by the pursuers it is not for me to pronounce whether it was unscrupulously made; it is sufficient that it is unfounded in fact. I think that the attempt to bring Mr Melville's conduct into the same range as to be equal to fraud also fails; that the plea of fraud is as entirely devoid of legal as it is of ethical warrant.

LORD CHANCELLOR—I agree. The question is one of fraud which imports dishonesty, and that has not been established.

I concur also with my noble and learned friend Lord Atkinson in not expressing any opinion upon other matters that may or may not be open for litigation and decision between the parties.

Their Lordships allowed the appeal.

Counsel for the Pursuers (Respondents)—Clyde, K.C.—MacRobert. Agents—MacRobert, Son, & Hutcheson, Glasgow—Pringle & Clay, W.S., Edinburgh—Balfour, Allan, & North, London.

Counsel for the Defenders (Appellants)—Buckmaster, K.C.—H. P. Macmillan, K.C. Agents—John C. Brodie & Sons, W.S., Edinburgh—Sherwood & Company, Westminster.

COURT OF SESSION.

Friday, May 17.

FIRST DIVISION.

(SINGLE BILLS.)

HAY (SHARP'S TRUSTEE) *v.* PATERSON & COMPANY, LIMITED.

Process—Reclaiming Note—Competency—Failure to Print Amendments—The Court of Session Act 1825 (*Judicature Act*) (6 *Geo. IV, c.* 120), *sec.* 18—*A.S.*, 11*th July* 1828, *sec.* 77.

The Judicature Act 1825, sec. 18, enacts that a party reclaiming against an interlocutor "shall along with his note . . . put into the boxes printed copies of the record authenticated" by the Lord Ordinary.

The Act of Sederunt, 11th July 1828, sec. 77, provides that reclaiming notes "shall not be received unless there be appended thereto copies of the mutual cases, if any, and of the papers authenticated as the record, in terms of the statute, if the record has been closed. . . ."

In an action by the trustee on a sequestrated estate for reduction of an alleged illegal transaction and for repayment of a sum of money to the trust estate, the summons contained certain declaratory conclusions leading up to a petitory conclusion. On 7th March, the last day of the proof, the Lord Ordinary allowed the pursuer to amend the record by adding to the summons certain alternative conclusions and by making certain additions to the condescendence. The case was afterwards taken to *avizandum* and judgment pronounced in vacation. It was admitted that the alternative conclusions were of no practical utility in the event which happened of the pursuer obtaining a petitory decree. The defenders having reclaimed, the pursuer objected to the competency of the reclaiming note on the ground that the record appended thereto did not contain his (the pursuer's) amendments.

The Court *repelled* the objection, *holding* that in the circumstances the omission to print was excusable.

David Allan Hay, C.A., Glasgow, trustee on the sequestrated estate of Mrs Flora Graham Ritchie or Sharp, sole trustee of her deceased husband William Sharp, wine and spirit merchant, Glasgow, *pursuer*, brought an action against J. Y. Paterson & Company, Limited, brewers, Edinburgh, and others, *defenders*, for (*first*) reduction of a certain transaction whereby Mrs Sharp sold and transferred the licensed business, the only asset of the trust estate, to her son David Sharp for the sum of £2438 odd, that sum being provided by the defenders in return for bills granted by David Sharp, and (*second*) for repayment of the said sum which had been handed over by her to the defenders in discharge of their claims.

The defenders pleaded, *inter alia*—"(4) The transaction complained of having been entered into by the defenders in *bona fide*, and in the ordinary course of business, they should be assoilzied."

A proof was led.

On 7th March 1912, the last day of the proof, the Lord Ordinary (CULLEN) opened up the record and allowed the pursuer to amend by adding to the summons certain alternative conclusions and by making certain additions to the condescendence.

Thereafter on 25th April 1912 his Lordship granted decree for repayment of the price, and found it unnecessary to dispose of the remaining conclusions of the summons. In a note his Lordship stated—". . . The pursuer has a series of declaratory conclusions by way of an avenue to his petitory conclusions. It was conceded that they are of no practical utility if the pursuer obtains a petitory decree. Following the views which I have expressed, I shall grant decree against the defenders respectively for the sums paid to them by Mrs Sharp out of the price of the business which she received from her son; and on this footing I think it unnecessary to deal with the other conclusions."

The defenders reclaimed, but in boxing

the case to the Inner House printed the record as it originally stood, *i.e.*, without the amendments.

On the case appearing in the Single Bills counsel for the pursuer objected to the competency of the reclaiming note, on the ground that the amendments allowed in the Outer House had not been printed.

Argued for pursuer—The provisions of the Act of Parliament and of the Act of Sederunt were imperative—*Williamson* v. *Howard*, May 18, 1899, 1 F. 864, 36 S.L.R. 645. The note was therefore incompetent.

Argued for defenders—*Esto* that the amendments were on the record when the reclaiming note was taken, they were the pursuer's own amendments, and he was therefore fully aware of them. That being so, the objection was purely technical. The omission to print them was excusable, for they had only been put on on the last day of the proof. The case was then taken to avizandum, and judgment was pronounced in vacation. The rule laid down in *Williamson* (*cit.*) had been departed from in the later cases of *Burroughes & Watts, Limited* v. *Watson*, 1910 S.C. 727, 47 S.L.R. 638, and *Henderson* v. *D. & W. Henderson*, 1912 S.C. 171, 49 S.L.R. 101, for these cases decided that section 18 of the Judicature Act was not imperative but directory. That being so, the Court had power—where, as here, the omission to print was excusable—to allow the reclaiming note to be received.

The opinion of the Court (the LORD PRESIDENT, LORD JOHNSTON, and LORD SKERRINGTON) was delivered by

LORD PRESIDENT—We shall allow the reclaiming note, and of course the reprinting must be done in order to put the matter in proper form. We shall find Mr Constable's client entitled to the expenses of this discussion, modified to five guineas.

The Court repelled the objection.

Counsel for Pursuer (Respondent)—Constable, K.C.—Wilton. Agent—C. Clarke Webster, Solicitor.

Counsel for Defenders (Reclaimers)—Morison, K.C.—Hon. W. Watson. Agents—Auld & Macdonald, W.S.

Tuesday, May 21.

FIRST DIVISION.

[Lord Cullen, Ordinary.

TAYLOR *v.* WYLIE & LOCHHEAD, LIMITED.

Contract — Construction — Hire-Purchase Agreement—Clause Permitting Hirer to Become Purchaser of Article Hired.

A hire-purchase agreement between A and B provided that A should let to B certain articles of furniture enumerated in an inventory annexed thereto. On this inventory the cash prices of the articles were endorsed, the summation of these prices being £7543 odd. In return for the use of the furniture B agreed to pay certain yearly instalments down to 15th May 1913, these instalments being so calculated as to provide for interest on so much of the principal as remained unpaid. The sum of these instalments was £8649 odd. The agreement contained a clause providing that the hirer might at any time become purchaser of the furniture "by payment in cash of the hereon endorsed price under deduction of the whole sums previously paid by the hirer to the owners." After paying instalments up to and inclusive of 15th May 1910, amounting to £4966 odd, B claimed right to purchase the furniture on payment of £2577, 4s. 6d., being the difference between the sums paid by him and £7543 16s., the price endorsed on the inventory.

Held that on a fair construction of the agreement the words "whole sums" meant sums previously paid towards capital, exclusive of interest, and that accordingly B was not entitled to become the purchaser of the furniture on the terms proposed by him.

William Smart Taylor, hotel-keeper, Glasgow, *pursuer*, brought an action against Wylie & Lochhead, Limited, furniture dealers, Glasgow, *defenders*, in which he sought declarator that certain articles of furniture enumerated in an inventory annexed to a hire-purchase agreement between him and the defenders were his absolute property. He also craved interdict against the defenders interfering with his possession thereof.

The agreement provided, *inter alia*:—"*First*—The hirer agrees to pay the owners an advance hire of the sum of One thousand pounds sterling on fifteenth May Nineteen hundred and six, notwithstanding the date hereof, and thereafter to pay the owners as follows:—(First) the sum of Six hundred and fifty pounds at fifteenth May Nineteen hundred and seven; (Second) the sum of One thousand and forty-four pounds, thirteen shillings and tenpence at fifteenth May Nineteen hundred and eight; (Third) the sum of Eleven hundred and seven pounds, three shillings and tenpence at fifteenth May Nineteen hundred and nine; (Fourth) the sum of Eleven hundred and sixty-four pounds, thirteen shillings and tenpence at fifteenth May Nineteen hundred and ten; (Fifth) the sum of Twelve hundred and seventeen pounds, three shillings and tenpence at fifteenth May Nineteen hundred and eleven; (Sixth) the sum of Twelve hundred and sixty-four pounds, thirteen shillings and tenpence at fifteenth May Nineteen hundred and twelve; (Seventh) the sum of Twelve hundred and one pounds, and fourpence at fifteenth May Nineteen hundred and thirteen. . . . *Seventh*—The owners agree that the hirer may terminate the hiring by delivering up to the owners the furniture and plenishings, and that