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'Caul, 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.

In his account of his expenses in the Inferior Court the appellant charged one copy of the record, proof, and other proceedings for the use of his agents, the cost being £8, 5s. In his account of expenses in the Court of Session he further charged—"Two copies appeal to lodge, 220 sh." at £16, 10s., founding on the Act of Sederunt, 10th March 1870 (anent Probation and Appeals from Inferior Courts), sec. 3, and also a "copy for counsel," at £8, 5s. Each of these copies included a copy of the note of appeal, record, interlocutor, and proof. The above Act of Sederunt enacts—"The appellant shall during session, within fourteen days after the process has been received by the Clerk of Court, print and box *the note of appeal, record, interlocutors, and proof*, if any, unless within eight days after the process has been received by the clerk he shall have obtained an interlocutor of the Court dispensing with printing in whole or in part, in which case the appellant shall only print and box as aforesaid those papers the printing whereof has not been dispensed with, and if *printing has been in whole dispensed with, 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." The Auditor allowed the cost of the copy of the proceedings charged in the Sheriff Court account, but disallowed the charge for two of the copies in the Court of Session account, and in allowing the charge for the third, reserved for the determination of the Court the question of the liability of the defenders for it.

In a note to his report the Auditor stated that he "very much doubted whether, if the Act of Sederunt was to be literally construed, the cost of the copy he had allowed could be sustained. A distinction is here made between what is to be printed where printing has not been dispensed with, and what is to be lodged in manuscript with the Clerk of Court and the Clerk of the Lord President of the Division where printing has been wholly dispensed with. Where printing is not dispensed with, the papers to be boxed are 'the note of appeal, record, interlocutors, and proof, if any.' Where printing is wholly dispensed with, the only paper to be lodged with the Clerk of Court is a 'manuscript copy of the note of appeal.' In the present case the appellant's agent appears to have read the Act of Sederunt as if the words 'note of appeal' were a short mode of describing the whole papers referred to in the previous portion of the section. According to practice, the note of appeal is not now a separate paper, and in the present case is thus entered in the interlocutor sheets of the Inferior Court process—'*Glasgow*, 26th *December* 1884. — The pursuer appeals to the Second Division of the Court of Session.' This is the usual form, and it is difficult to imagine any practical purpose which can be served by the delivery of copies of such a note to the Lord President and Clerk of the Division of the Court. On the other hand, it seems not unreasonable that (while the Court are willing to submit to some inconvenience for the sake of reducing expense in the conduct of certain cases) one full copy of the Inferior Court proceedings should be furnished for the use of the bench, the counsel on either side making use of the copies prepared by the agents in the course of conducting the case in the Inferior Court. I may perhaps be permitted to take this opportunity of directing attention to the expense likely to be incurred when printing is dispensed with. That course is adopted for the purpose of economy, but while it may diminish the costs incurred by the party appealing, it does not, I am satisfied, diminish expense when the costs of both parties are considered. The table of fees provides that where more than three copies of papers are required printing must be resorted to, on the assumption that the cost of a larger number of manuscript copies exceeds the cost of printing. I am satisfied that cases of any importance coming into the Court by appeal from inferior courts cannot be conducted satisfactorily without a larger number of copies than three.

"Where an appellant comes into Court *in forma pauperis* it may be proper to dispense with printing, having regard to the burden laid on the agents for the poor, who must themselves pay the expense of printing, if incurred, without any certainty of being reimbursed, but it is, I think, for consideration how far a party who is not on the poor's-roll is entitled to this consideration at the cost of increased expense to the respondent and inconvenience to the agents and counsel on both sides, and also to the Court."

Both parties objected to the Auditor's report.

The pursuer argued—That he was entitled to charge one copy of the whole proceedings for the use of his counsel, and also under the Act of Sederunt to charge for two other copies, one for the process, and the other for the Lord President of the Division.

The defenders argued—That the Act of Sederunt did not make them liable for anything more than two copies of the bare note of appeal without the record and proof. The Court had the original copy in process for their use, and counsel had the Sheriff Court copy, and that was all that was necessary.

At advising—

Lord Justice-Clerk—I am quite clearly of opinion that the Act of Sederunt in using the term note of appeal does not include the whole proceedings in the Inferior Court, but simply the note of appeal, and probably the interlocutors on which it proceeds. In regard to the rest there is some discretion in the Auditor, and also in this Court, and I am inclined to adhere to the view taken by the Auditor in his note, and to allow one copy only of the whole proceedings.

Lord Young—That also is my opinion, and I think the Act of Sederunt does not apply. It is an Act on the competency of appeal, and has no reference to the question of costs. Where printing is dispensed with the appellant is directed to lodge with the Clerk of Court within a specified time a manuscript copy of the note of appeal, and if he does not he is held to have fallen from his appeal. Now, I am quite clearly of opinion that if he lodge a manuscript copy of the note of appeal, but not of the proof as well, he cannot be held to have fallen from his application because of his failure to lodge the latter. That disposes of the Act of Sederunt. As to the question of costs between the successful and unsuccessful parties, I think it entirely turns on the reasonableness of the costs in question, and I think it

is costs reasonably incurred to allow one manuscript copy for the use of the Court. There is some inconvenience in four Judges having to make use of one and the same copy, but then we agree to submit to that when we dispense with printing. But it is useful to have one copy rather than the Sheriff's notes. One of the Judges may read it, and if he thinks necessary hand it on for perusal to the others. We only then require one copy. I regard it, then, as a matter reasonable, and not touched by the Act of Sederunt.

Lords Craighill and Rutherfurd Clark concurred.

The Court approved of the Auditor's report.

Counsel for Pursuer—Ure. Agents—Dove & Lockhart, S.S.C.

Counsel for Respondents—James Reid. Agents—Webster, Will, & Ritchie, S.S.C.

Thursday, July 2.

SECOND DIVISION.

GILLON *v.* RAMAGE & FERGUSON.

Process—Issue—Reparation—Master and Servant. Form of issue *adjusted* in an action of damages for personal injuries (laid at common law and under the Employers Liability Act 1880, 43 and 44 Vict. cap. 42) where the pursuer averred that he had been injured at defenders' works through their fault while in the employment either of the defenders, or of certain contractors who were carrying on their work in the defenders' works.

This was an action of damages for personal injuries. The pursuer averred that while in the employment of the defenders, within their shipbuilding-yard at Leith, or in the service of two parties named who had contracted with the defenders for the rivetting of a ship in process of construction, he was injured by the fall of certain iron plates, which took place in consequence of either the defective condition of the barrel of the winch by which they were lowered into the hold of the vessel, and which was supplied by the defenders, or of an improper mode of carrying on the work. The defenders denied that the pursuer was in their employment, that the winch was defective, or that their mode of work was improper, and averred that the pursuer was in the employment of independent contractors, the parties named.

The action was laid alternatively at common law and under the Employers Liability Act 1880, was raised in the Sheriff Court at Edinburgh, and was appealed by the pursuer to the Court of Session for trial by jury.

The pursuer proposed this issue—"Whether the pursuer while working in the defenders' works, Leith Docks, was on or about the 10th day of February 1885 injured by the fall of certain plates through the fault of the defender, to the loss, injury, and damage of the pursuer."

The defenders objected to this issue, and contended that it should read—"Whether the pursuer, while working *in the employment of the defenders*, in their works at Leith Docks," &c. They cited *Morrison* v. *Baird & Co.*, Dec. 2, 1882, 10 R. 271.

The Court, in respect of the alternative averments by the pursuer of his having been in the employment of the defenders, or of the alleged independent contractors, approved of the issue as proposed.

Counsel for Pursuer—Guthrie Smith—A. S. Thomson. Agent—Walter R. Patrick, Solicitor.

Counsel for Defenders—A. T. Young—Orr. Agents—Adam & Winchester, S.S.C.

Friday, July 3.

FIRST DIVISION.

[Lord Lee, Ordinary.

AITKEN *v.* ASSOCIATED CARPENTERS AND JOINERS OF SCOTLAND.

Statute 34 and 35 Vict. cap. 31 (Trade Union Act 1871).

Section 4 of the Trade Union Act 1871 provides:—"Nothing in this Act shall enable any court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for the breach of any of the following agreements, namely, ... any agreement for the application of the funds of a trade union . . . . to provide benefits to members."

An action was brought against a society of the nature of a trade union, concluding for reduction of a resolution of the society by which the pursuer was expelled, for decree of declarator that he was still a member and entitled to all the rights, benefits, and privileges of membership, and that he had been unlawfully expelled, and that the defenders were liable in damages, and concluding for £500 as damages. The Court *dismissed* the action on the ground that under section 4 of the statute it could not be maintained in a court of law.

This action was raised by Thomas Aitken, joiner, Maxwelltown, Kirkcudbright, against the Associated Carpenters and Joiners of Scotland, of which society he was a member, and against James Beveridge, 263 Argyle Street, Glasgow, the general secretary of the society, as representing and acting for and on behalf of the society. The pursuer sought to reduce (1) a minute or resolution alleged to have been made and passed by the Edinburgh (United) Branch of the Associated Carpenters and Joiners of Scotland, declaring a previous proposition to be carried, whereby a fine of £5 sterling was imposed on the pursuer for an alleged contravention of the rules of the society; and (2) a minute or resolution alleged to have been made and passed by a vote of the said Associated Carpenters and Joiners of Scotland, by which the pursuer was deprived of membership of the society. The summons further