due have not been taxed, modified, or decerned for." . . .

In an action of multiplepoinding involving the distribution of a trust-estate among a number of claimants, the Lord Ordinary pronounced an interlocutor in which he made various findings construing the trust-deed, but without any finding as to expenses, and without ranking and preferring any of the claimants, and appointed the cause to be enrolled in order that these findings might be applied.

A reclaiming-note at the instance of one of the claimants presented without the leave of the Lord Ordinary was refused as incompetent, on the ground that the interlocutor reclaimed against was not a final interlocutor in terms of sec. 53 of Court of Session Act 1868.

Tuesday, December 17.

SECOND DIVISION.

PILLANS *v.* REID & COMPANY, *et e contra.*

Contract — Construction of Agreement — Requirements.

A rivet manufacturer contracted to supply a firm of shipbuilders with their "requirements of iron rivets during the year 1888." *Held* that he had sufficiently implemented the contract by supplying the rivets required for use during 1888, and was not bound to supply rivets for work to be done by the shipbuilders after 1888 on ships contracted for during 1888.

Upon 1st December 1887 Alexander Pillans, bolt, nut, and rivet manufacturer, Caledonian Works, Motherwell, entered into a verbal agreement with Messrs John Reid & Company, shipbuilders, Port-Glasgow, to supply them with iron rivets for their requirements during the year 1888 at so much per ton. Upon the same day the following letter was written by Reid & Company to Pillans, and subsequently acknowledged by him as correctly setting forth the agreement —"We have pleasure in confirming our verbal arrangement with you to-day, viz., that we have bought from you about 80 tons best iron ship rivets (all to be equal to Lloyds' requirements) required for our Nos. 8/D and 8/E at the rate of £5, 13s. 9d. per ton, $\frac{1}{16}$ and up, usual extras; also that you supply us with our further requirements of iron rivets during the year 1888 at the rate of £5, 16s. per ton." . . .

Between 9th August and 12th November 1888 Reid & Company ordered 426 tons 12 cwts. of rivets to be supplied under this contract. Of this amount Pillans supplied for the year 1888 320 tons, which he alleged were quite sufficient for Reid & Company's requirements during that year.

In the beginning of 1889 Pillans brought an action in the Sheriff Court at Glasgow against Reid & Company for £132, 15s. 10d., being the balance of his account due for rivets supplied under the contract. Reid & Company admitted that the sum sued for was due, but explained that the pursuer had failed to implement the contract, and in particular that he had only supplied a portion of their August-November order. The remainder, or 278 tons 14 cwts. 2 qrs. 3 lbs., they had to get from other manufacturers at a cost which, after deducting the contract price for the same amount, and the sums due to the pursuer, left them with a loss of £334, 8s. 5d. For this loss they brought a counter action in the same Sheriff Court against Pillans. The actions were conjoined.

In the leading action Reid & Company pleaded in defence—"(2) The defenders are entitled to set off against the sum sued for the loss and damage sustained by them through the pursuer's failure to implement his part of said contract, and the amount of the loss and damage being greater than the sum sued for, they are entitled to absolvitor." And in the counter action Pillans pleaded in defence—"(3) The defender having supplied pursuers with rivets sufficient for their requirements for the year 1888 in terms of the contract, should be assoilzied with costs."

After a proof the Sheriff-Substitute (LEES) pronounced the following interlocutor:—"Finds that in December 1887 the pursuer entered into a contract with the defenders, under which he sold to them about 80 tons of iron rivets, and also undertook to supply them with their further requirements of iron rivets during the year 1888, of the qualities and at the prices specified in the letters passing between the parties on 1st and 5th December 1887: Finds that the defenders are resting-owing to the pursuer the sum of £132, 15s. 10d. for rivets supplied under said contract: Finds that the defenders have failed to show that the pursuer is indebted to them in any sum through failure to supply their requirements of iron rivets during the year 1888: Therefore repels the claim made for the defenders in the counter action, and assoilzies the party Pillans from the conclusions thereof, and in the leading action decerns against the defenders in terms of the prayer of the petition, &c.

"*Note.*—At the request of parties a proof was allowed them of their averments, but I entertain considerable doubt whether a court of law ought to look to evidence for the interpretation of the word 'requirements' occurring in the contract between the parties. It is not a technical trade term, and the fact that hardly any two witnesses of those examined assign the same meaning to the word makes it the more doubtful whether it is not more properly the function of the Court to consider the word.

"The defenders take the word as equivalent to 'orders,' and they say that if they can show that they gave orders for the 278 tons in dispute, and that they had contracts in hand on which these rivets would be used they are entitled to decree. It is no doubt true that the word 'require' is in

many instances—in the common prayer-book for example—used as equivalent to order or command. But I am not sure that 'requirement' is synonymous with order or command. The defenders are the parties who framed the contract and used the word, and it is for them to show that it has the signification they put upon it. Now, the preponderance of the evidence is distinctly against them. Even their own witnesses seem as a rule not to take the view the defenders contend for. The word 'requirement' occurs, oddly enough, twice in the defenders' letter. They say the rivets are to be equal to Lloyds' requirements, and they are to be supplied to the extent of their requirements. Now, in both instances the word seems to have something of the nature of essentiality about it. Lloyds have fixed a certain standard, and the rivets must come up to it. The defenders have ships to build, and the rivets they require for these ships are their requirements in the meaning of the contract. In a somewhat similar case—*The North British Oil and Candle Company* v. *Swann*, 6 Macph. 835, it was held that where coal was to be supplied for what a company require, that meant require for the purposes of their business. And in a case closely analagous to the present one the late Lord Fraser, when Sheriff of Renfrewshire, held that the rivets required during the year were those that were to be used during that year — *Simpson & Company* v. *Simons & Company*, July 29, 1872.

"The unfairness of the defenders' argument may be shown in this way—If they had a contract for a supply of rivets for a year, and in the latter half of the year the market price was above the contract price, then they say they could order all the rivets they were to use for the ships they had contracted to build; but if, on the contrary, the market price was tending below the contract price, then they were entitled to do with as few rivets as possible till the year had elapsed, and thereafter order rivets elsewhere at the lower price of the day. But if the defenders had this right surely it cannot in fairness be said that they required the rivets in the sense that it was needful for them to have them. In other words, their reading of the bargain would make requirement depend not on actual need, but on their volition. In fact, however, their own line of pleading is unavoidably against them, because what they did and contend they had a right to do was, to buy in against the pursuer to the extent that he had failed to fulfil their orders . . . I am quite prepared to believe that the defenders did reasonably require some rivets which the pursuer ought to have supplied under the contract, and if they had taken this line a court of law would not have lightly interfered with their opinion as to what they required and what they did not require. But then this is not the position the defenders have taken. Instead of seeking to show what rivets they *bona fide* required, and were therefore entitled to demand under the contract, they have devoted their whole attention to establishing the plea that they were entitled to demand from the pursuer all the rivets that they could use at any time on vessels they had contracted to build prior to 31st December 1888. On the success of this plea they have elected to peril their case, and as I think they have failed to establish this plea, the only result I can come to is to decide against them altogether, and I may add that if their plea were sound it might be carried further still, for if they were entitled to order from the pursuer all the rivets they chose with a view to subsequent use, there seems no sufficient reason why, as prudent shipbuilders, and keeping in view the state of the market, they should not have provided themselves with rivets at the pursuer's expense, not only for all the ships they had on hand, but those they might expect to get orders for whilst the price of rivets continued high. I therefore decide against the defenders."

Reid & Company appealed to the Court of Session, and argued—They had never contended that Pillans was bound to supply all the rivets they chose to demand in 1888. The orders given, which he had failed to supply, were given fairly in accordance with their usual method of executing contracts, and were necessary for their requirements during 1888. To argue that they must have every rivet supplied under the contract in its place before the end of 1888 would be unreasonable. The number of rivets ordered might not have been used owing to unavoidable delays for which they were responsible. Whenever they got a contract to build a ship, they at once estimate the rivets they would require and give orders accordingly. The contract was not for rivets but for requirements of rivets. All rivets required for contracts entered into during 1888, or at least for such of these contracts as were begun to be executed before the end of that year, were part of their "requirements of iron rivets during the year 1888," and as such fell to be supplied under the contract. The case, relied upon by the Sheriff-Substitute, of *The North British Oil and Candle Company* v. *Swann*, May 27, 1868, 6 Macph. 835, was really in their favour. It had only determined that "require" was not equivalent to "demand," and that had here all along been admitted. The rivets ordered were all required for their ships, and these ships had all been contracted for and actually begun (although this was not necessary) during 1888.

Counsel for the respondent (Pillans) were not called upon.

At advising—

LORD JUSTICE-CLERK—The contract here in question is to be found in certain letters which passed between the parties in the beginning of December 1887. These letters confirmed a previous verbal arrangement. That from the appellants to Pillans on 1st December 1887 is, so far as material, to this effect—"We have pleasure in confirming our verbal arrangement with you to-day, viz., that we have bought from you about 80 tons best iron ship rivets, all to be equal to

Lloyds' requirements, required for our Nos. 8/D and 8/E, at the rate of £5, 13s. 9d. per ton, $\frac{1}{16}$ and up, usual extras; also that you supply us with our further requirements of iron rivets during the year 1888 at the rate of £5, 16s. per ton." . . .

It appears to me that reading these words according to their natural interpretation they have the meaning which the Sheriff-Substitute has put upon them. That meaning is that "requirements of iron rivets during the year 1888," is equivelent to "the iron rivets which the appellants required for actual use during that year," and not the rivets which would in that year or in following years be required for ships contracted for during that year. I think the latter meaning which is contended for by the appellants is a strained one, and that there is nothing in the rest of the correspondence which makes it necessary to adopt it. The only remaining question is, whether the course of dealing between the parties under the contract indicates any special interpretation of its terms adopted by both inconsistent with its meaning *prima facie*. On a careful examination of the evidence I am of opinion that the question must be answered in the negative.

I move your Lordships, therefore, to affirm the judgment of the Sheriff.

LORD YOUNG—I am of the same opinion and substantially upon the same grounds. Mr Ure has stated his case as distinctly as it was capable of being stated as a question of construction of contract. If he cannot succeed upon his construction of the contract he cannot succeed at all.

He stated the alternative constructions thus—whether the pursuer contracted to supply the defenders with iron rivets required by them for contracts entered into by them in 1888, or at least, as he afterwards limited his contention, for contracts entered and actually begun to be executed in 1888, or whether the pursuer only contracted to supply the rivets actually required by the defenders in their business of the year 1888.

I agree with your Lordship and with the Sheriff-Substitute that the latter construction is the true one, and I would only add that I think it almost approaches the extravagant to say that under the contract before us the pursuer was bound to supply as much as the defenders chose to demand if only the contracts leading to these requirements were made in 1888. For example, I should have doubted its occurring to anyone except for argument that rivets could be demanded under this contract for contracts entered into towards the end of the year which would clearly not be required until the following year.

I think the pursuer is entitled to decree for his account, and that the defenders are not entitled to damages.

LORD LEE—I agree that the words in the letters "our further requirements of iron rivets during the year 1888" cannot reasonably be construed as meaning all the rivets which the pursuer might during the year come to require for use beyond the year in connection with contracts made during that year. I think that on a sound construction of the contract the obligation is limited to the actual requirements of that year.

No question has arisen as to the application of the contract to a case of rivets having been required for an additional building yard acquired during the year. It may be that in such a case the pursuer might have been able to prove actual requirements for use during the year of all the rivets thus demanded. But that is not the kind of case we have before us.

LORD RUTHERFURD CLARK was absent.

The Court pronounced the following interlocutor:—

"Find that in December 1887 Alexander Pillans, pursuer in the action against John Reid & Company, entered into a contract with them whereby he sold to them a quantity of iron rivets for the building of two ships specified in the contract, and undertook to supply them with the iron rivets required by them in their works during the year 1888: Find in law that said contract did not bind said Alexander Pillans to supply rivets for the execution of work to be done by Reid & Company subsequent to 1888, although such was to be done under contracts for the building of ships made by said company in 1888, but applied only to work to be done in 1888: Find in fact that the said contract was fulfilled by the said Alexander Pillans: Therefore dismiss the appeal and affirm the judgment of the Sheriff-Substitute appealed against: Of new decern against the defenders in said action in terms of the conclusions of the petition, and of new assoilzie the said Alexander Pillans from the conclusions of the action against him at the instance of the said John Reid & Company: Find them liable to him in expenses in the Inferior Court in each of the said actions till conjoined, and also in expenses in the conjoined actions in the Inferior Court and in this Court," &c.

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

Counsel for the Respondents—Asher, Q.C. —Shaw. Agent—Peter Morison, S.S.C.