

Court (The LORD PRESIDENT and LORDS ADAM, M'LAREN, and KINNEAR) granted approval.

Counsel for the Petitioners—Hon. H. D. Gordon. Agents—Carment, Wedderburn, & Watson, W.S.

Friday, May 26.

FIRST DIVISION.

[Lord Stormonth Darling,
Ordinary.

RUTHVEN AND OTHERS v.
RUTHVEN.

*Process—Reclaiming Note—Competency—
Interlocutor of Lord Ordinary Inoperative—
Reclaiming Note with a View to
Correct Interlocutor.*

A pursuer reclaimed against an interlocutor pronounced by the Lord Ordinary on the pursuer's own motion, on the ground that the interlocutor as pronounced did not give effect to the pursuer's motion, and was unworkable. The Court recalled the interlocutor reclaimed against.

In November 1903 The Hon. Walter Patrick Ruthven, Master of Ruthven, and others, his trustees acting under an agreement entered into between the Right Hon. Walter James Hore Ruthven, Baron Ruthven, his father, as represented by his attorney George Auldjo Jamieson, C.A., with consents therein mentioned, of the first part, and himself the said Hon. Walter Patrick Ruthven, dated 30th March and 11th April, and registered in the Books of Council and Session 7th June 1892, raised an action against the said Lord Ruthven for implementation of the obligations under said agreement, concluding, *inter alia*, for execution and delivery to the pursuers as trustees foresaid of a valid and sufficient conveyance of the estate of Harperstown, County Wexford, Ireland, in terms of the form produced.

On 27th March 1905 the Lord Ordinary (STORMONTH DARLING) pronounced an interlocutor finding that the defender was bound, in implement of the agreement mentioned in the summons, to execute and deliver to the pursuers, as trustees acting under the said agreement, a valid and sufficient conveyance of the estate of Harperstown; and continued the cause that the terms of the said conveyance might be adjusted and approved of.

A conveyance was subsequently prepared for signature, and on 16th May 1905 the Lord Ordinary pronounced the following interlocutor on the pursuers' motion:—"The Lord Ordinary, in respect of the finding contained in the interlocutor of 27th March last, and of the letter No. 19 of process, decerns and ordains the defender to execute and deliver to the pursuers Charles James George Paterson and Archibald Robert Craufurd Pitman, as trustees

under the agreement mentioned in the summons, the conveyance No. 6 of process, and that within fourteen days from this date."

The letter No. 19 of process, referred to in this interlocutor, was a letter written by the defender's agents to the pursuers' agents stating that the defender declined to sign any conveyance, and that they had no instructions to adjust the conveyance with the pursuers' agents.

On 19th May the Lord Ordinary granted leave to the pursuers to reclaim against the interlocutor of 16th May.

In the Single Bills counsel for the defender objected to the competency of the reclaiming note, and argued—The reclaiming note was incompetent in respect that the interlocutor reclaimed against had been pronounced on the motion of the reclaimers themselves—*Watson v. Russell*, January 30, 1894, 21 R. 433, *sub. nom. Watson v. Morrison and Others*, 31 S.L.R. 352. The present case was even stronger, since the defender was not represented by counsel when the interlocutor was pronounced.

Argued for the pursuers and reclaimers—The interlocutor as it stood was unworkable. Though pronounced on pursuers' motion the interlocutor was not in terms of the motion. The fourteen days within which the conveyance was ordained to be executed should have been made to run from the date of charge and not from the date of the interlocutor. Also expenses were not dealt with, for which the pursuers had moved. These were in effect clerical errors and should be corrected. Moreover, Irish procedure demanded the signing of a memorial corresponding to the Scots warrant for registration, and if this reclaiming note were sustained it was proposed to move for a decree ordaining the defender to sign this memorial.

The Court recalled the interlocutor reclaimed against and remitted the case to the Lord Ordinary.

Counsel for the Pursuers and Reclaimers—Fleming, K.C.—Pitman. Agents—J. & F. Anderson, W.S.

Counsel for the Defender and Respondent—Hon. W. Watson. Agents—Hope, Todd, & Kirk, W.S.

Tuesday, May 30.

FIRST DIVISION.

[Sheriff Court at Dundee.

COOPER & GREIG v. ADAM.

Master and Servant—Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), sec. 7, sub-secs. (1) and (2)—Factory—Undertakers—Temporary Employment in Factory not Belonging to the Undertakers—Engineering Work.

A workman in the employment of a firm of boilermakers was sent by them to repair a boiler in a spinning-mill