

The Court adhered.

Counsel for Reclaimer—J. P. B. Robertson—Wallace. Agents—J. & A. Hastie, S.S.C.

Counsel for Respondents—Mackintosh—Baxter. Agent—F. J. Martin, W.S.

Monday, February 18.

OUTER HOUSE.

[Lord Adam.

MARX v. NORTH BRITISH RAILWAY COMPANY.

Process—Reparation—Jury Trial—Amount of Damages—Expenses.

This was an action for damages for personal injury, in which the damages were laid at £5400. No tender was made by the defenders, who admitted liability, but maintained that the sum sued for was excessive. The jury awarded to the pursuer £800 as damages. On a motion by the pursuer to apply the verdict and find him entitled to expenses, the defenders maintained that the expenses should be modified, in respect the pursuer had obtained so small a sum in proportion to that sued for. The Lord Ordinary, on the ground that the jury had given a substantial sum to the pursuer, found him entitled to full expenses.

Counsel for Pursuer—J. P. B. Robertson—Darling. Agents—J. & J. Ross, W.S.

Counsel for Defenders—Sol.-Gen. Asher, Q.C.—Comrie Thomson. Agents—Millar, Robson, & Innes, S.S.C.

Thursday, February 21.

FIRST DIVISION.

HOEY v. HOEY.

Process—Proof—Husband and Wife—Divorce—Recall of Witness—Evidence Act 1852 (15 Vict. cap. 27), sec. 3.

In an action of divorce on the ground of adultery, counsel for the defender at the close of the proof moved the Lord Ordinary, in terms of sec. 3 of The Evidence Act 1852, to be allowed to recal G, a witness for the pursuer, who had deposed that she was eye-witness to one of the alleged acts of adultery, on the ground that information had since her examination been received that she had given to other parties a totally different account of what she alleged she had seen. It was proposed to question G as to these different accounts, with the view of leading evidence of the parties to whom defender alleged these different statements had been made. The Lord Ordinary refused the motion, being of opinion, looking to the whole circumstances, that no sufficient reason had been adduced in support of it. The case came before the Inner House on a reclaiming note, when the defender renewed his motion to be allowed further to examine G in the

manner and to the effect proposed to the Lord Ordinary. The Court, following *Robertson v. Stewart*, February 27, 1874, 1 R. 532, granted the motion, and pronounced this interlocutor:—"Having heard counsel on the motion of the defender to be allowed further to examine the witness" G "in the manner and to the effect proposed in the course of leading the defender's proof, allows the said witness to be recalled and examined as proposed, and also allows the defender to examine other witnesses for the purpose of and in the terms of the 3d section of the statute 15 Vict. c. 27," and appointed the evidence to be taken before Lord Shand.

Counsel for Pursuer—Party. Agents—Stewart-Gellatly, & Campbell, S.S.C.

Counsel for Defender—R. Johnstone—Ure. Agents—Ronald & Ritchie, S.S.C.

Thursday, February 21.

SECOND DIVISION.

[Sheriff of Lanarkshire,

OAKES v. MONKLAND IRON COMPANY.

Master and Servant—Reparation—Employers Liability Act 1880 (43 and 44 Vict. c. 42), sec. 8—Employers and Workmen Act 1875 (38 and 39 Vict. c. 90), secs. 10 and 13—Merchant Seamen (Payment of Wages and Rating) Act 1880 (43 and 44 Vict. c. 16), sec. 11—"Workman"—"Seaman."

Held that a fireman on board a barge propelled by steam, which plied exclusively on a canal, was not a "seaman" but a "workman" in the sense of the 10th and 13th sections of the Employers and Workmen Act 1875, and therefore entitled to the benefits of the Employers Liability Act 1880.

Section 10 of the Employers Liability Act provides—"The expression 'workman' means a railway servant and any person to whom the Employers and Workmen Act 1875 applies."

Section 10 of the Employers and Workmen Act provides—"In this Act the expression 'workman' does not include a domestic or menial servant, but, save as aforesaid, means any person who, being a labourer, servant in husbandry, journeyman artificer, handicraftsman, miner, or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract be made before or after the passing of this Act, be express or implied, oral or in writing, and be a contract of service or a contract personally to execute any work or labour."

Section 13 provides—. . . "This Act shall not apply to seamen or apprentices to the sea-service."

Section 11 of the Merchant Seamen (Payment of Wages and Rating) Act 1880 provides—"The thirteenth section of the Employers and Workmen Act 1875 shall be repealed in so far as it operates to exclude seamen and apprentices to the sea-service from the said Act; and the said Act shall apply to seamen and apprentices to the sea-service accordingly; but such repeal shall not, in the