or her wages, and have it brought here for jury trial, the question in each case being whether he or she had done their duty properly or not. I do not think that is a proper question for a jury trial. It is said that the sum here is a large one, but I do not think the case is made exceptional because the pursuer had £5 a-week. It is a larger sum than usual, but it does not make me change what would be my opinion if the sum were smaller. The only question in the case is whether the pursuer had performed his duty in such a manner as to entitle his master to dismiss him?

LORD TRAYNER—It having been now determined, contrary I admit to what was my opinion, that the Court has a discretion whether to send a case to jury trial or to refuse to do so, I cannot doubt that this is a case which we should refuse to send to a jury. This is not properly an action to assess damages at all; it is really a question of resting-owing as I pointed out during the discussion. The pursuer says he was engaged for a certain time at a certain wage, that his services have been dispensed with, and that his wages are due. The answer is that he was not engaged for that time, and that his wages are not due. That is simply a question whether any money is due to the pursuer. In reading this case I do not see what is the question in it appropriate for jury trial—in fact I see no question that would not be more appropriately tried by the Sheriff.

LORD JUSTICE-CLERK—I concur in holding that we have the discretion to send this case to jury trial or to proof before the Sheriff. My only doubt is whether we should exercise that discretion by sending this case back to the Sheriff. There may be a very considerable sum found due in certain supposable circumstances, amounting to more than £200, and I have doubts whether such a case should be withheld from a jury, but as your Lordships have a clear view that the case ought to be sent back to the Sheriff I do not dissent.

LORD RUTHERFURD CLARK was absent.

The Court remitted the case to the Sheriff Court for proof.

Counsel for the Appellant—Sym—Gunn. Agent—Robert Stewart, S.S.C.

Counsel for the Respondents—W. Campbell. Agents—Carmichael & Miller, W.S.

Thursday, July 6.

SECOND DIVISION.

PETERS *v.* MAGISTRATES OF GREENOCK.

Process — Superfluous Procedure — Petition to Apply Judgment of House of Lords Affirming Interlocutory Judgment.

The defender of an action reclaimed against an interlocutor of the Lord Ordinary which was not final. The Inner House adhered. The defender appealed to the House of Lords, who affirmed the judgment appealed against, and ordered the defender to pay the costs of the appeal. The costs of the reclaiming-note and of the appeal were paid by the defender. Thereafter a petition presented by the pursuer, praying the Court to apply the judgment of the House of Lords, to find the defender liable in the expenses of the application, and to remit to the Lord Ordinary to proceed further in the cause, *dismissed* as unnecessary without expenses to either party—*diss.* Lord Young, who was of opinion that the defender should be found entitled to the expenses incurred by them in appearing to oppose the petition.

This case is reported *ante*, vol. xxix. p. 507, and 19 R. 643, and *ante*, vol. xxx. p. 937.

This was an action raised by the Rev. David Smith Peters against the Magistrates of Greenock to have it found and declared that the defenders were bound to furnish him with a competent and legal stipend, and to have the defenders decerned and ordained to make payment to him of a certain sum as arrears of stipend prior to Martinmas 1890, and also of the sum of £400 per annum, or such other sum as should appear to the Court as competent and legal stipend from and after the said term.

On 23rd June 1891 the Lord Ordinary (KYLLACHY) pronounced the following interlocutor—"Finds, declares, and decerns in terms of the first declaratory conclusion of the summons: *Quoad ultra* appoints the cause to be enrolled that parties may be heard as to the petitory conclusion, and reserves all questions of expenses: Grants leave to reclaim."

Against this interlocutor the defenders reclaimed, and on 16th March 1892 their Lordships of the Second Division pronounced the following interlocutor—"Refuse the reclaiming-note and adhere to the interlocutor reclaimed against: Find the pursuer entitled to expenses from the date of said interlocutor: Remit to the Auditor to tax the same and to report: *Quoad ultra* remit the cause to the Lord Ordinary to proceed therein as accords, with power to decern for the taxed amount of the expenses now found due."

The expenses found due to the pursuer were taxed at £68, 10s. 1d., for which sum the Lord Ordinary pronounced decree by interlocutor dated 28th May 1892.

Against these three interlocutors the defenders appealed to the House of Lords, but on 18th May 1893 their Lordships affirmed the interlocutors appealed against, dismissed the appeal, and ordered the defenders to pay to the pursuer the costs of the appeal.

The costs of the appeal and the expenses of the reclaiming-note decerned for by the Lord Ordinary's interlocutor of 28th May 1892 were paid to the pursuer by the defenders.

Thereafter the pursuer presented a petition to the Court, stating—"The said interlocutors of 23rd June 1891, 16th March 1892, and 28th May 1892 were not final, and did not exhaust the cause, which now falls to be remitted by your Lordships to the Lord Ordinary to proceed therein, as accords," and praying the Court "to apply the said judgment of the House of Lords; to find the respondents the Provost, Magistrates, and Councillors of Greenock liable in the expenses of this application and procedure to follow hereon; to remit to the Lord Ordinary to proceed further in the cause as may be just."

The defenders objected to their being found liable in the expenses of the application, and submitted that the petition was unnecessary.

At advising—

LORD YOUNG—My own opinion is that this petition is quite unnecessary. I do not say that it is incompetent, but I think it is unnecessary and superfluous. The proper course in a case like this—for it is the simplest and the least expensive—is for the party who has succeeded in the House of Lords to enrol the case before the Lord Ordinary to proceed. My opinion further is, that as this petition with its prayer for expenses against the respondents has been unnecessarily presented, the respondents, who have been forced to discuss the application, should be found entitled to expenses. It is a familiar rule that a party appearing to oppose an unnecessary application is found entitled to expenses.

LORD RUTHERFURD CLARK—I think the petition is unnecessary, but I am not prepared to award expenses to either party.

LORD TRAYNER—I agree with Lord Rutherfurd Clark.

The LORD JUSTICE-CLERK was absent.

The Court dismissed the petition without expenses to either party.

Counsel for Petitioner — M'Lennan. Agents—Miller & Murray, S.S.C.

Counsel for Respondents—Sym. Agents—Cumming & Duff, S.S.C.

Wednesday, July 19.

SECOND DIVISION.

TAYLOR'S TRUSTEES *v.* BARNETT.

Trust-Disposition — Construction — Meaning of "Predeceasing."

A testator directed his trustees to hold a share of his estate for behoof of his married daughter in liferent and her issue in fee, but declared that in the event of his daughter's husband "predeceasing" her, the trustees were to make payment to her of her share absolutely.

Held (*diss.* Lord Young) that the daughter on obtaining a decree of divorce against her husband did not thereby become entitled to payment of her share of her father's estate as if her husband had died before her.

William Taylor died on 24th February 1890, leaving a trust-disposition and settlement dated 7th December 1888.

By the said trust-disposition and settlement William Taylor conveyed his whole means and estate, heritable and moveable, to trustees for the purposes, in the first first place, of payment of his debts and the expenses of the trust; in the second and third places, for payment of certain allowances in name of mournings and interim aliment, and of one-third of his estate to his wife; and in the last place, to hold the remainder of his estate for behoof of his children, equally among them, and to pay their shares to them on their attaining majority, except in the case of his daughter Marion Kennedy Taylor or Barnett.

As regards the share of his said daughter Mrs Barnett, the testator directed his trustees to hold and invest it in their own names, "for behoof of my said daughter in liferent for her alimentary liferent use allenarly, and of her lawful issue, equally among them, share and share alike, in fee, payable said shares upon the youngest of the children of my said daughter attaining majority, until which time my said trustees shall, after the death of my said daughter, apply the income of said share or proportion of shares for behoof of her said children, equally among them. But notwithstanding the provisions hereinbefore made in favour of my said daughter Marion Kennedy Taylor or Barnett and her children, I hereby provide and declare that in the event of her husband Frank Nutter Barnett predeceasing my said daughter, the provisions of liferent and of fee hereinbefore made in favour of my said daughter and her children shall cease and determine, and I direct my trustees thereupon to make payment to her of her whole share and interest in my estate absolutely." The testator further declared that the provisions in favour of his wife and children were to be in full satisfaction of all claims, legal or conventional, and so far as they were in favour of or should descend upon females, that they should be exclusive of the *jus*