use of those from whom the dues are levied, although there should be nothing left to pay interest—an insufficient sum, or nothing at all to pay interest.

I am therefore of opinion that there is here in point of fact a harbour, with a revenue in the hands of the defender as the owner of the harbour, available for the purpose of maintaining that harbour, and that the providing of lights is included in the maintenance of the harbour,—the harbour not being, in the absence of such lights, available as a harbour at night.

It appears that the Commissioners of Northern Lighthouses approved and ordered the continuance of the four existing leading lights, and I apprehend, therefore, that these are proper lights. But I should not propose to your Lordships that we should at present conclusively determine what lights are to be provided and maintained. Indeed, it is a matter subject to change, for the Commissioners of Northern Lighthouses have authority conferred upon them by statute in that matter. Under that authority they might interfere at any time to order an alteration on the position or order of those lights, and I therefore think that we cannot with propriety or safety, or usefully to the parties, do more at present than declare the general obligation which is upon the defender as the owner of the harbour. It is evident that the wording of the declarator would require consideration; but his obligation, in a general way, is to provide and maintain at all proper times suitable harbour lights at his own expense. I think it is a somewhat unfortunate expression that occurs in the conclusions of the summons, and it is noticed by the Lord Ordinary. I mean the expression, "at his own expense;" but I think it must have been intended to mean out of the revenue which he derives from the harbour, although there should be no surplus left to pay interest, or to serve any personal purposes of his own. That is simply saying, in other words, "although there may not be anything to recoup him for his advances, or to keep him free from the payment of interest, for which he is otherwise liable." But in the sense that he is bound to apply these dues — the revenue of the harbour—so far as they will go, to the maintenance of the harbour, including the provision of lights, there is no doubt about his obligation. He is bound to provide and uphold, at all proper times, suitable lights, in order that this harbour may be made available by those who pay the dues which he exacts. I think the pursuers are entitled to declarator to that effect—I think declarator to that effect would be sufficient for the purpose.

That is the opinion at which I have arrived after full consideration of the record, evidence, statutes, and the Provisional Order.

The Court pronounced this judgment:—

"The Lords having heard counsel for the parties on the reclaiming-note for the defender against Lord Trayner's interlocutor of 14th July last, Recal the said interlocutor and the interlocutor of his Lordship of 12th March preceding: Find and declare that the defender as proprietor of the harbour of Boddam is bound out of the revenue of the harbour to provide and maintain, at all proper times, suitable lights for the harbour; and decern; and *quoad ultra* continue the cause: Find the defender liable to the pursuers in expenses to this date," &c.

Counsel for Pursuers (Reclaimers)—Comrie Thomson—Low. Agent—Alex. Morison, S.S.C.

Counsel for Defender (Respondent)—Pearson—Dickson. Agents—Hamilton, Kinnear, & Beatson, W.S.

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*Wednesday, December* 16.

## FIRST DIVISION.

### WILSON (LIQUIDATOR OF THE NORTH BRITISH LACTINA MANUFACTURING COMPANY, LIMITED), PETITIONER.

*Process—Certificate by Apprentices of Enrolled Law-Agent—Citation Amendment (Scotland) Act* 1882 (45 *and* 46 *Vict. cap.* 77, *secs.* 3 *and* 4).

In a note by the liquidator in the winding-up of the North British Lactina Manufacturing Company, Limited, the certificate of intimation bore that the intimation had been made to the parties named in the interlocutor of Court by two apprentices to a writer in Glasgow, by posting, on certain dates named, in the Glasgow Post Office, a print of the note with a copy of the interlocutor endorsed thereon, in registered letters, and the certificate was signed by the apprentices. The Court, on their attention being directed to this fact by the Clerk of Court when the petitioner appeared to move in the Single Bills that the prayer of the note should be granted, *declined* to sustain an intimation so signed as complying with the 3d and 4th sections of the Citation Amendment (Scotland) Act 1882.

Counsel for Petitioner—Lang. Agents—W. & J. Burness, W.S.

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*Wednesday, December* 16.

## SECOND DIVISION.

[Sheriff of Lanarkshire.

### ANDERSON *v.* BLACKWOOD.

*Reparation—Carriage—Man Run Over in Street—Duty of Drivers.*

A man walking in daylight on the carriageway of a street was knocked down by a van which came up from behind. *Held* that the owner of the van was liable in damages, because it was the driver's duty to avoid knocking the man down either by pulling up or changing his course, and it was no defence that he called out to warn him to get out of the way.

This action was raised by Thomas Anderson, miner, against John Blackwood, farmer, for reparation for personal injuries sustained by the pursuer by being knocked down in Bank Street, Coatbridge, by a van driven by the defender's servant. When the accident occurred the pursuer was walking in the roadway a few feet from the pavement. The van came up behind him

and struck him with the step on the right thigh, and on the right shoulder with the wheel, and knocked him down, causing bodily injury. The driver was in the act of pulling up when the van came in contact with the man, and the van did not pass over him. The evidence conflicted as to the pace at which the van was being driven, and as to whether the driver called out to warn the man before the van struck him. The time of day was in the forenoon.

The Sheriff-Substitute (BIRNIE) assoilzied the defender, and the Sheriff (CLARK) on appeal adhered.

The pursuer appealed to the Court of Session.

The following cases were cited at the debate—*Clark* v. *Petrie*, June 19, 1879, 6 R. 1076; *Grant* v. *Glasgow Dairy Co.*, December 1, 1881, 9 R. 182.

At advising—

LORD YOUNG—This is an action of damages, the pursuer alleging as his ground of action that he was run over and severely injured by a van belonging to the defender and in charge of his servant, and that this was owing to the fault of the defender's servant, for whom he is admittedly responsible if he was in fault. The Sheriff-Substitute and Sheriff have assoilzied the defender on the ground that the van-driver was not in fault, the immediate view apparently of the former being that it is proved that he called out, and not proved that he was driving furiously or too fast, or indeed at any other than a moderate pace. The evidence was fully brought before the Court in the argument, and was fully commented on, although the appellant, being a poor man, the Court indulged him by dispensing with printing. Since the debate I have read the whole proof carefully and continuously, and I have come to the result that the driver was in fault. There is conflicting evidence as to the pace, and also as to whether the driver called out to the appellant, who was certainly knocked down. I think the pursuer's witnesses say that the pace was faster than it really was, and that the defender's witnesses say that it was slower than it really was. My opinion is not founded on the pace. The driver was going at such a pace that he could without difficulty have pulled up in time; if not, that itself would have been fault. The appellant was walking along the road where he was entitled to be, and he was knocked down and hurt. The driver was not entitled to knock him down; it was his duty to avoid him. He could quite well have done so; and that he could, but did not, seems to have been because he thought that the man must get out of his way. There is *prima facie* fault leading to liability if a driver of a carriage so knocks up against a passenger. It is his duty to be able to pull up, and to do it, and not just to run over one who even from stupidity does not get out of the way. A man may stupidly get into the way of a carriage. I express no opinion on such a case as that, for each case of that kind must be judged by its own circumstances, and it may be that a driver, having a clear road before him, may count on an intelligent and even an unintelligent being not getting in before his horse, and might not be responsible for his doing so. But here the man was walking steadily along the road, and the van came up behind him and knocked him down. And my verdict is that the driver was to blame for not pulling up or turning to a side, but going straight on, leaving it to the appellant to get out of the way or take the consequences. I think we should recal the judgment, and find that the pursuer was knocked down and injured by the fault of the defender's servant, for whom he is responsible. The Sheriff-Substitute has given his opinion on the amount of damages, if any, which ought to be awarded, and he fixed £25—£10 for loss of wages and £15 for medical expenses and *solatium*. Nothing was said against that, and I propose that we should allow that sum.

The LORD JUSTICE-CLERK, LORD CRAIGHILL, and LORD RUTHERFURD CLARK concurred.

The Court found that the pursuer was knocked down and injured by the fault of defender's servant, for which he was responsible, and awarded £25 damages.

Counsel for Pursuer (Appellant)—Chisholm. Agent—W. J. Cullen, W.S.

Counsel for Defender (Respondent)—Moncreiff—Maconochie. Agents—Maconochie & Hare, W.S.

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*Wednesday, December* 16.

## FIRST DIVISION.

[Lord Trayner, Ordinary.

## NEWLANDS *v.* M'KINLAY.

*Proof — Loan — Writ — Reference to Oath — Intrinsic or Extrinsic.*

In an action for payment of the balance of an account one of the entries in the account sued upon was a cash advance of £300. The pursuer recovered from the defender, under a diligence against havers, a cash-book kept by him while manager of his father's business (to which he had succeeded at the date of the action), containing this entry, "13th July 1874. To Alexander M'Kinlay, per W. H. R., £300." The pursuer then referred the constitution of the debt of £300 to the defender's oath. The defender deponed that the entry in the cash-book was made for the purpose of recording the receipt by him of £300 from Newlands, the pursuer, on that day, and that the original entry had been "per W. N." over which he had superinduced the letters "W. H. R." The defender further deponed that the money had been repaid. *Held* (1) that the debt had not been proved *scripto;* (2) that the qualification of repayment was intrinsic of the defender's oath. Defender *assoilzied.*

This was an action at the instance of William Newlands, horsedealer, Watson Street, Glasgow, against Alexander M'Kinlay, horsedealer, London Street, Glasgow, for payment of £1968, 7s. 6d. as the balance due upon an account for horses sold and delivered, and for cash advanced by the pursuer to the defender, commencing 1st January 1872 and ending 28th November 1881. The action was raised on 5th November 1884.