

under the new conclusion of the summons.

I add that I agree with Lord M'Laren's observation in regard to relief. I agree with it, but I understand Mr Craigie to say that the pursuers assent to the Lord Ordinary's view that the defender is entitled to operate his relief and undertake to see that it is given effect to.

The Court affirmed the interlocutor of the Lord Ordinary.

Counsel for the Pursuers and Respondents—Craigie, K.C.—Ingليس. Agent—James F. Mackay, W.S.

Counsel for the Defender and Reclaimer—M'Lennan, K.C.—A. M. Anderson. Agent—W. R. Mackersy, W.S.

Friday, May 26.

FIRST DIVISION.

[Lord Johnston, Ordinary
on the Bills.]

FREE CHURCH OF SCOTLAND v. MACRAE AND OTHERS.

Administration of Justice—Judge—Declinature—Bill Chamber—Court of Session Act 1821 (1 and 2 Geo. IV, cap. 38), sec. 4.

A cause was enrolled in the Bill Chamber Hearing Roll before a Lord Ordinary who had acted in his capacity of counsel as adviser to one of the parties in a series of kindred litigations, though not in this particular case. His Lordship appeared in the Division and proposed his declinature, referring to the provisions of the Court of Session Act 1821, sec. 4. The Court *sustained* the declinature and remitted the cause to another Lord Ordinary.

Lord Johnston, who before his elevation to the Bench had acted as counsel for the Free Church of Scotland in a series of litigations regarding its property, was Lord Ordinary on the Bills. In his Lordship's Bill Chamber Hearing Roll was set down a note of suspension and interdict at the instance of the Free Church of Scotland against Macrae and others. This was not a case in which he had acted as counsel, but was one of the series of litigations. His Lordship appeared in the First Division and proposed his declinature, saying—"I have to ask your Lordships to deal with certain cases that have appeared in the Bill Chamber Hearing Roll to-day, the first of which is the *Free Church of Scotland v. Macrae*, from Aberfeldy. This is not a case in which as counsel I have taken part, but it is in connection with a series of litigations in which I have acted throughout as counsel for the Free Church of Scotland and for the local parties connected with it. Under these circumstances I thought it proper to decline. But looking to the fact that they are Bill Chamber cases I cannot do so without your Lordships' assistance under the statute."

The Court of Session Act 1821 (1 and 2 Geo. IV, cap. 38), sec. 4, provides—"That in case of the death, sickness, necessary absence, or legal declinature of the Lord Ordinary on the Bills during the period of the Session, but at a time when the Court is not actually sitting, any one of the permanent Ordinaries, on a due statement by any of the Clerks of the Bills of such fact and of some urgency in the case, shall and may pronounce on any Bill which may in such case be laid before him such interlocutor as circumstances may require without prejudice *quoad ultra* to the provisions of the aforesaid, and also without prejudice to the power of either Division, upon legal declinature of the Lord Ordinary on the Bills when represented to them in any case, to remit the same to another Ordinary in his stead."

The Court (LORD ADAM, LORD M'LAREN, and LORD KINNEAR) pronounced the following interlocutor:—

"The Lords having heard the verbal report made in Court by Lord Johnston of the reasons for his declinature to act as Lord Ordinary on the Bills in disposing of the cause in the Bill Chamber, in respect of said verbal report sustain the said declinature, and remit the present note of suspension and interdict to Lord Pearson, Ordinary, for disposal, and authorise the Clerk of the Bills to lay the process before Lord Pearson accordingly, and to act as Clerk of Court before him during its discussion and advising."

Counsel for the Complainers—J. R. Christie—Fenton. Agents—Simpson & Marwick, W.S.

Friday, June 16.

FIRST DIVISION.

[Lord Kincairney, Ordinary.]

ROBERTSON v. HENDERSON & SONS, LIMITED.

Minority—Lesion—Discharge of Claims under the Workmen's Compensation Act 1897 (60 and 61 Vict. c. 37)—Reduction—Enorm Lesion—Circumstances in which Held that Enorm Lesion had not been Proved.

A minor employed by a firm of biscuit makers was injured while engaged in his work. The injury involved the loss to a great extent of his right hand. The accident was not in any way due to the fault of his employers, or those for whom they were responsible, so that apart from the provisions of the Workmen's Compensation Act 1897 he would have had no claim against them. For some time after the accident his employers paid him compensation at the rate of half his weekly wage prior to the accident,