spectively chargeable with different rates of duty. If the same policy were to insure a ship against the perils of the sea, and also to insure the fidelity of the master or the supercargo, I should not doubt that these two obligations were separately stampable; but there are in almost every deed collateral obligations incidental to the main purpose of the deed, which, if one could conceive of them standing alone, might fall under some other denomination of liability to stamp duty. Now it follows, therefore, that what we have to consider here is whether there is a separate and independent contract of life insurance, or whether we have merely a provision which may benefit the party during his life but which is truly incidental. I agree with your Lordship that the latter is the true view of this instrument, and for the reasons which your Lordship has stated. I was specially influenced by this, that the provision upon which the Board of Inland Revenue found is a provision for return of a proportion of the premiums at a definite age, provided that no claim has previously been made against the company in respect of death, sickness, or accident. That condition could have no meaning apart from the main purpose, and therefore I must hold that it is collateral to that purpose, and that it is not intended as a separate and independent obligation.

LORD KINNEAR—I concur.

LORD PEARSON was not present.

The Court pronounced this interlocutor:—

"Find that the instrument referred to in the case is liable to be assessed and charged with the Accident Assurance Policy Duty of 1d. only, and is not liable to be assessed and charged with the Life Assurance Policy Duty of 3d., and therefore order the sum of 3d., being the excess of duty paid by the appellants, to be repaid to them by the Commissioners of Inland Revenue, and decern."

Counsel for the Appellants—Guthrie, K.C.—Constable. Agents—Simpson & Marwick, W.S.

Counsel for the Respondents—The Solicitor-General (Clyde, K.C.)—A. J. Young. Agent—P. J. Hamilton Grierson, Solicitor of Inland Revenue.

Friday, February 9.

FIRST DIVISION.

[Lord Ardwall, Ordinary.

GUTHRIE *v.* GUTHRIE.

(Case reported by Lord Ordinary to Inner House.)

Parent and Child — Custody of Child — Failure of Divorced Spouse to Deliver Child—Application for Warrant to Officers of Law to Take Child into Custody — Warrant to be Granted by Inner House—Administration of Justice.

In an action of divorce at the instance of a husband against his wife, the Lord Ordinary granted decree and found the pursuer entitled to the custody of a female pupil child, the only child of the marriage. The defender having left the house where she had been residing, taking the child with her, and no information as to her whereabouts being obtainable by the pursuer, he applied to the Lord Ordinary to grant warrant to officers of law to take the child into custody and deliver her to him.

The Lord Ordinary being of opinion that the order craved could not competently be pronounced in the Outer House, reported the case to the First Division.

The Court, in the circumstances stated by the Lord Ordinary, pronounced the interlocutor craved, but was of opinion that it could not competently have been pronounced in the Outer House. *Leys* v. *Leys*, July 20, 1886, 13 R. 1223, 23 S.L.R. 834, *followed*.

In an action of divorce for adultery at the instance of Alexander Hunter Guthrie, grocer's assistant, 13 Tolbooth Wynd, Leith, against Mrs Margaret Little or Guthrie his wife, then residing with her mother at 50 West Bowling Green Street, Leith, the Lord Ordinary (ARDWALL) on 27th January 1906 pronounced decree of divorce, and found the pursuer entitled to the custody of Agnes Little Guthrie, the only child of the marriage. At the date of the decree the said child was nearly four years of age.

The defender having failed to deliver the child the pursuer applied to the Lord Ordinary for a warrant to officers of law to take the child into custody wherever it might be found and to hand it over to him.

On 9th February 1906 the Lord Ordinary reported the case to the First Division.

His Lordship stated that since the date of the decree complaint had been made by the pursuer that he had been unable to obtain the custody of his child; that for reasons stated by the defender's counsel he (his Lordship) had twice continued the case and appointed a place and date at and on which the child should be handed over to the pursuer; that the pursuer went on the date specified to the place appointed for delivery, but the defender failed to appear or to hand over the child; that on

31st January the defender left her mother's house taking the child with her; that continued inquiries as to her whereabouts had been made without success; that neither her father nor her mother knew anything of her movements; that no information about her could be obtained from her law-agent, her neighbours, or the police; and that in these circumstance he had reported the case as, in his opinion, a mere order *ad factum præstandum* would not be sufficient. His Lordship also stated that he thought the course followed in the case of *Leys* v. *Leys*, July 20, 1886, 13 R. 1223, 23 S.L.R. 834, might be suitably followed here, but that, in his opinion, the interlocutor there pronounced could not competently be pronounced in the Outer House.

[In answer to the Lord President, counsel for the pursuer stated that the defender's counsel and agent had both retired from the case.]

LORD PRESIDENT—I have no doubt that the interlocutor suggested by Lord Ardwall is one which could scarcely be pronounced by the Lord Ordinary but only by the Inner House.

The precedent for it is in the case of *Leys* v. *Leys*, 13 R. 1223. The only question is as to the expediency of granting it at this stage. I am clearly of opinion that it is expedient to do so. This seems to be a deliberate attempt to evade the orders of the Court. It would only be to make the evasion of these orders more easy and to cause further delay if we were to compel the pursuer to wait till he could obtain extract of the interlocutor pronounced by the Lord Ordinary and then charge.

I am therefore of opinion that the interlocutor which Lord Ardwall has suggested should be pronounced.

LORD M'LAREN and LORD PEARSON concurred.

LORD KINNEAR was absent,

The Court pronounced this interlocutor:—

"The Lords in respect that it is reported by the Lord Ordinary in the cause that the defender had left her father's house, where she had been formerly residing, on Wednesday, 31st January 1906, taking with her the pupil child of the marriage, to the custody of which the pursuer was found entitled by the Lord Ordinary's interlocutor of 27th January 1906; that continued inquiries have been made to discover her whereabouts without success; that her father and mother state that she left their house on said 31st January 1906 and that they know nothing of her movements since, and that her law-agent, the police, and neighbours in the district can give no information concerning her since that date: Grant warrant to messengers-at-arms and other officers of law to take into their custody the person of the pupil child, Agnes Little Guthrie, wherever she may be found and deliver her into the custody of the pursuer; and authorise and require all Judges Ordinary in Scotland and their procurators-fiscal to grant their aid in the execution of this warrant, and recommend to all magistrates elsewhere to give their aid and concurrence in carrying this warrant into effect; and authorise execution to pass on a copy of this deliverance and warrant herein contained, certified by the Clerk of Court; and decern *ad interim*."

Counsel for the Pursuer—J. G. Jameson. Agent—P. F. Dawson, W.S.

Saturday, February 10.

SECOND DIVISION.

[Sheriff Court of Lanarkshire at Glasgow.

LUNNIE *v.* GLASGOW AND SOUTH-WESTERN RAILWAY COMPANY.

Reparation—Negligence—Master and Servant—Common Employment—Negligence of Fellow-Servant—Accident to Boy Assisting Servant but not in Employment.

The father of a boy ten years of age brought an action against a railway company for damages for personal injury to his son. He averred that A, a carter in defenders' employment, and acting in the ordinary course of his employment, negligently, in view of the boy's age, requested his son's assistance and left him in charge of his horse and lorry within the entrance to a goods station of defenders', where the boy was injured through B, another carter in defenders' employment, negligently running his lorry into A's lorry. The defenders denied liability.

Held that the action must be dismissed, inasmuch as the boy, whether assisting A voluntarily or at his request, could be in no better position as regards claims against A's master than A himself, and that the principle of common employment therefore applied. *Potter* v. *Faulkner*, (1861) 1 B. and S. 800, *approved*.

This was an action raised in the Sheriff Court at Glasgow by Patrick Lunnie, 96 Richard Street, Anderston, Glasgow, as administrator-at-law for his pupil son William Lunnie, against the Glasgow and South-Western Railway Company, concluding for £200 damages for personal injuries received by the son.

The pursuer averred—"(Cond. 1) Pursuer's son William Lunnie is ten years of age, and resides with his father, who is a labourer. (Cond. 2) On or about the 7th day of March 1905 pursuer's son was requested by a carter in the employment of the defenders to hold a horse while he was, in the course of his ordinary employment with the defenders, delivering goods in a factory in Richard Street, Glasgow. (Cond. 3) Pursuer's son did so, and thereafter was requested by defenders' carter to accompany him to College Street Goods Station,