malice in it. The pursuer's counsel on being pressed to explain to us what there is to show malice on the part of the defender on that occasion, pointed to two circumstances, one of which is that the defender was so confident in his opinion on the matter, that even at the trial before the Lord Ordinary he spoke of the pursuer as the boy who presented the cheque. I cannot say that I see any evidence of malice in that. There was no malice in his suspecting, if he conscientiously thought that he was the boy, and I see no evidence to show that he did not really think so. The only other circumstance alleged in proof of malice is, that the defender paid a £5 cheque in cash, when he ought to have passed it to his customer's credit. I think it would be contrary to all human experience to say that a person such as the defender would in consequence of some trifling circumstance as that turn round upon a boy like the pursuer, of whom he says he always thought well, and deliberately accuse him of stealing the proceeds of the cheque in order to cover his own irregularities. An ingenious counsel may put that skilfully to a jury, but I for my part reject it at once as contrary to all human experience. Indeed, this matter of the crossed cheques seems to be rather in the defender's favour than against him in the question of the *bona fides* of his belief, for a banker will not pay a crossed cheque in cash to an utter stranger. That circumstance therefore seems to support the defender in concluding that he had all the more reason for being certain as to the boy who presented the cheque.

As to the second issue, I think that a fundamental error has been made in it. It is made to bear on what took place on the 15th August, while the first issue refers to the events of the 11th August. It appears from the evidence that what took place on the 15th was certainly not the preferring of a charge such as can give rise to an action of this kind, but that it comes to this, that as the defender could not give any sufficient information on the 11th, and felt that he must clear up the matter, he went to Holtum & Welsh, and from them to the Post Office, and thereafter I do not see that he had any alternative but to go to the police. The pursuer's counsel says that he ought to have made investigation as to the boy and seen whether his denial that he was the person who presented the cheque was true. That is a fair enough suggestion, but I do not think he was called on to do so in the least, and more particularly he was not called upon to do so when one thing which he wished to discover was how the cheque got out of the hands of Holtum and Welsh. Then at the Police Office he did exactly as he had done when he saw the boy's master; he told what he believed and that the boy denied it. From that time he was no longer in the position of one making a charge. What occured subsequently was that the police moved in the matter, made investigation, saw the pursuer, confronted him with the defender, while the defender leaves matters just as he had done from the 11th August. He is rather confirmed, indeed, in his belief by hearing the boy Farquharson say in presence of the police that he knew the pursuer by sight and had once spoken to him in Princes Street Gardens. The charge, however, was made on the 11th, and what took place on the 15th were proceedings more of the nature of precognition by the police than anything else.

On these grounds I think there was no evidence for the jury either of malice in defender's statements or of want of probable cause for them.

Lord Adam—I tried this cause and I am dissatisfied with the verdict. No one is more unwilling than I to disturb the verdict of a jury if there is really evidence for them, and I would never disturb a verdict unless on the ground that it was without evidence or against the preponderating weight of evidence. But I have thought all along not merely that this verdict was against the weight of evidence but that there was no evidence at all of malice or want of probable cause. I think it is an important case, for nothing could be worse for the administration of justice than that such a verdict should stand. Nothing would go further to prevent a man from doing his duty in giving information as to the commission of crime than that it should be felt that it must be done with the terror of an action of damages for making a false accusation hanging over him. I concur with your Lordships in the grounds which have been stated for the judgment.

The Court made the rule absolute.

Counsel for Pursuer—Scott—Watt. Agent—Andrew Clark, S.S.C.

Counsel for Defender—J. P. B. Robertson—Dickson. Agents—J. & F. Anderson, W.S.

Thursday, June 15.

SECOND DIVISION.

[Sheriff of Aberdeenshire.

WALKER *v.* OLSEN.

Reparation—Master and Servant—Defective Tackle—Damages.

A stevedore raised an action of damages in the Sheriff Court at Aberdeen against the master, on behalf of the owners, of a vessel on board of which he had been employed, in the following circumstances:—He was engaged in the hold along with another man in filling buckets or tubs with bones, which formed the cargo. These buckets were hauled up on deck and let down again when empty by means of a winch and gin or pulley, with a hook which passed through an iron thimble in a stock which was made fast to the trysail-gaff at the height of twelve feet above the deck. A chain passed from the winch through the gin, but for about nineteen or twenty feet at the end which went down into the hold the communication was of rope. At the close of the day's work, when the last bucket had descended, to remain there till work was resumed next day, the rope became unhooked from the tub—it was alleged, by the violence with which it was let down and bumped against the bottom of the hold—and before the pursuer's fellow-workman could seize it, or give notice to the mate above, whose duty it then was to have it secured to the deck, ran violently through the gin, which, in some way not satisfactorily explained, came loose,

with the result that the whole gearing fell into the hold and struck the pursuer, who was then in the act of ascending the ladder to the deck, inflicting serious injuries. *Held*—*reversing* the judgment of the Sheriff (GUTHRIE SMITH), and *reverting* to that of the Sheriff-Substitute (COMBIE THOMSON)—that in respect it was not shown that there had been any unusual or abnormal strain on the tackle, and no satisfactory explanation was forthcoming of how it came to give way, the fact of the accident occurring raised a *prima facie* presumption, which the defender's evidence had not displaced, that the tackle was insufficient and defective, and that the pursuer was entitled to damages.

Counsel for Pursuer (Appellant)—Rhind—Young. Agents—Begg & Murray, Solicitors.

Counsel for Defender (Respondent)—Mackintosh—Shaw. Agent—R. C. Gray, S.S.C.

Thursday, June 15.

FIRST DIVISION.

(Before Lord President Inglis, Lords Mure and Shand.)

SPECIAL CASE—PATON & OTHERS (ARCHIBALD'S TRUSTEES) AND ARCHIBALD & OTHERS.

Succession — Vesting — Period of Payment of Residue—Where Residue has Vested under a Will, and there is no Reason for Deferring Payment except that Payment is to be made "not sooner" than the Expiry of a Certain Period.

A testator directed his trustees, with regard to the residue of his estate and effects, including any accumulation thereof remaining after payment and satisfaction of certain legacies, to pay and convey such residue to certain persons named as residuary legatees on the expiry of a tack in his favour, "in or about the year 1892, as I think, but whenever that may be, but not sooner." No reason for thus postponing the period of payment was apparent, and the result of postponing payment till the year 1892, at which date the tack did expire, would have been that the trustees would have had to hold a sum of £11,000 for no other purpose than to secure the expenses of administering the trust while the beneficiaries were in narrow circumstances. *Held* that the residue having vested in the beneficiaries, and there being no reason in the circumstances for postponement of the period of payment, the trustees were entitled to make a division of residue, reserving only so much as would be sufficient for the expense of carrying on the trust till the expiry of the lease, and for keeping the trustees protected from any personal responsibility.

Andrew Archibald, manufacturer in Alloa, died on 1st June 1880. He was unmarried. His estate consisted of—First, a tack of mills and machinery, with ground appertaining thereto, at Strude of Alva, known as the Strude Mills, and to which he had acquired right, and which tack was to expire at Martinmas 1892. These subjects were of the value of £3500 or thereby, and at the time of the truster's death they were set by him under a sub-tack, which also expired in 1892, and yielded a rental of £281, 15s. 6d. Secondly, the estate also consisted of a sum of £10,963, 14s. 6d., a part of which was contained in a bond and disposition in security, while the remainder was almost entirely in the form of deposit-receipts for large sums in various banks. Mr Archibald left a trust-disposition and settlement by which he bequeathed a number of legacies to various persons, including his nephews and nieces. The sixth purpose of this deed, on which the present questions turned, was as follows:—*In the sixth place*, with regard to the residue of my estate and effects above conveyed, including any accumulation thereof remaining after payment and satisfaction of the provisions above written, my said trustees shall, on the expiry of the lease or tack by James Johnstone Esquire of Alva, in my favour, of the Strude Mill, Alva, *in or about the year Eighteen hundred and ninety-two, as I think, or whenever that may be, but not sooner*, pay and convey the same as follows, viz., to the saids William Archibald, my nephew, Mary Archibald or Wilson, Margaret Archibald or Simpson, and Bella Glen Archibald or Simpson, my nieces, and their heirs, equally among them, share and share alike, one third thereof: *Item*, to the said John Archibald, my brother, Carry Archibald and Sabina Archibald, my nieces, and their heirs, equally among them, share and share alike, one third thereof: and *Item*, to the said Mrs Graham Haig Lambert or Thomson Paton, Margaret Fraser Lambert, and Mary Ann Archibald Lambert, my nieces, and their heirs, equally among them, share and share alike, the remaining one third thereof."

The truster's brother and his nephews and nieces mentioned in this purpose of the settlement survived him. Some of them, and particularly the truster's brother, and his niece Mrs Mary Archibald or Wilson, were in necessitous circumstances at the date of this Special Case, and they were desirous of having payment of their shares of residue, which they maintained to be vested in them without awaiting the expiry of the lease of Strude Mill in 1892.

In these circumstances the trustees, as first parties, and the brother, nephews, and nieces of the truster, being the persons to whom the residue was bequeathed under the sixth purpose of the deed, as second parties, presented this Case for the opinion of the Court.

The questions of law were—"(1) Did the residue of the trust-estate vest in the residuary legatees at the death of the testator? (2) Are the first parties bound to retain the portion of the residue of the trust-estate other than the said Strude Mills and machinery, and to accumulate the income thereof until the expiry of the foresaid tack and sub-tack?. (3) Assuming the second query is answered in the negative, are the first parties entitled to make a division of the said portion of the residue of the trust-estate among the residuary legatees, parties hereto, according to their respective rights and interests? (4) Are the first parties bound to retain the rents of the said Strude Mills and machinery, and to accumulate the said rents until the expiry of the said tack and sub-tack? (5) Assuming the fourth query answered in the negative, are the first