to the late Alexander Boswell, which the pursuer says is not true, and an inaccurate statement, calculated to mislead the public to the prejudice of Mr Boswell's successor in business; and the second ground is that she has the name of "Boswell" so painted on her window-blinds, and that the latter may be so manipulated, that the name of "Boswell" appears upon them as if it were the name of the shopkeeper there, and her business being the same as that of Boswell the public are apt to be misled into taking her shop for his, and the business thereby suffer prejudice.

Mr Brand, on appeal being made to him to that effect from the Bench, very properly declined to defend the respondent's conduct with respect to the blinds. We think it clearly indefensible, and that any attempt to defend it was prudently abandoned, whether she put upon them "from A. Boswell" or anything else, as long as they stood as they are at present, so that they can be drawn up so as to exhibit "Boswell" and nothing else. The respondent's counsel has undertaken that these blinds shall be removed, and that will satisfy the claim of the complainer in regard to the window-blinds.

In regard to the bills Mr Brand also undertakes that the present ones in use shall be withdrawn and others substituted—something like "with" or "from A. Boswell"—omitting any such word as "manager;" and Mr Murray conceded that it is indisputable that she is entitled to announce the fact that she was formerly a servant of his, taking such benefit as might be got from it. That will remove the complainer's other ground of complaint.

Then comes the important question of expenses. There is no doubt—and it is conceded—that with respect to the window blinds the respondent has been altogether wrong, and therefore the complainer must have the cost of obtaining the remedy to which she is undoubtedly entitled. With regard to the other point, of the respondent's calling herself "manager," I am, after anxious consideration, not prepared to say that that statement is an injurious falsehood; nor am I, on the other hand, prepared to affirm that she was accurate in styling herself manager. It is not always easy to define the term "manager." From the evidence as to her position there might be different opinions as to whether she held that position or not, or whether she did so, if at all, only in the absence of the master himself. So much at least is certain, that she was the chief employee in the business; she had the biggest wages, she acted as cashier, she priced goods, and she sometimes dismissed other employees, all of which are duties appropriate to a manager. Yet I should hesitate to say she was manager, just as much as to say that she was guilty of an untrue statement when she so describes herself. I regret extremely that the respondent should have been so ill-advised as she was in keeping the name of Boswell on the window-blinds in the way she did, but she must bear the consequences of doing so. I must suggest, in view of the undertakings of the respondent's counsel, that the complainer should have the expenses of the action, which I think was necessary in order to obtain the justice to which she was entitled, but in respect of the considerable amount of expense incurred in the proof in connection with the critical question, which has never been raised before, as to the import of the expression manager, I would suggest that the expenses be modified to the effect of disallowing one-half of the expenses of the proof.

Lord Rutherfurd Clark and Lord Kinnear concurred.

The Lord Justice-Clerk and Lord Craighill were absent.

The Court pronounced this interlocutor:—

"In respect the respondent undertakes by her counsel at the bar no longer to design herself as 'late manager to Mr A. Boswell,' Find it unnecessary to determine any question under the first part of the prayer of the note of suspension, being the part which relates to her so designing herself, and to that extent and effect vary the interlocutor of the Lord Ordinary of 19th March 1884; also vary the said interlocutor with respect to expenses, by disallowing the half of the expense of the proof; in other respects affirm the said interlocutor: Find the complainer entitled to expenses since the date thereof," &c.

Counsel for Pursuer (Respondent)—Mackintosh — Graham Murray. Agents—Gordon, Pringle, Dallas & Co., W.S.

Counsel for Defender (Reclaimer)—Brand—Shaw. Agent—David Barclay, Solicitor.

Thursday, July 10.

SECOND DIVISION.

[Sheriff of Perthshire.

FORFAR COUNTY ROAD TRUSTEES *v.* PERTH COUNTY ROAD TRUSTEES.

Road—Repair of Public Road—Roads and Bridges (Scotland) Act 1878 (41 *and* 42 *Vict. c.* 51), *secs.* 3 *and* 57—*Extraordinary Expenses in respect of Excessive Traffic—County Road Trustees.*

By the Roads and Bridges (Scotland) Act 1878 the authorities liable to repair a highway are entitled to recover from any person by whose order excessive weight has been passed over the highway the expense occasioned by the extraordinary repairs thereby rendered necessary. "Person" is defined in the Act so as to exclude county road trustees. The road trustees of one county having sued the road trustees of another to recover the cost of extraordinary repairs under the Act—*held* that the defenders were not liable.

The Roads and Bridges (Scotland) Act 1878 provides by section 57—"Where by the certificate of their surveyor or district surveyor it appears to the authority which is liable to repair any highway, that, having regard to the average expense of repairing highways in the neighbourhood, extraordinary expenses have been incurred by such authority in repairing such highway by reason of the damage caused by excessive weight passing along the same, or by extraordinary

traffic thereon, such authority may recover in a summary manner, before the Sheriff (whose decision shall be final), from any person by whose order the excessive weight has been passed, or the extraordinary traffic has been conducted, the amount of such extraordinary expenses, as may be proved to the satisfaction of the Sheriff to have been incurred by such authority by reason of the damage arising from such excessive weight or traffic as aforesaid."

The interpretation clause of the Act (sec. 3) provides—"'Person' shall include corporation, incorporated company, commissioners, or trustees (not being county road trustees)."

The County Road Trustees of the county of Forfar presented this petition in the Sheriff Court of Perthshire in order to have the County Road Trustees of the county of Perth ordained to pay them the sum of £33, 8s. 1d., being the amount of extraordinary expenses, certified by the district surveyor, incurred in repairing that part of the highway from Dundee to Coupar-Angus which extends from Tullybaccart Quarry, in the county of Forfar, northwards to the march of the county of Forfar with the county of Perth at Stoneye Bridge. The action was laid on section 57 of the Roads and Bridges (Scotland) Act 1878.

The pursuers averred that the repairs had been rendered necessary by reason of the damage caused to their roads by the excessive weight of the waggons and traction-engine employed by the defenders in conveying stones from Tullybaccart Quarry into Perthshire for the repairs of the roads in the eastern district of that county.

They pleaded—"The extraordinary expenses incurred by the pursuers in repair of said highway having been incurred by reason of the excessive weight passed along said highway by the defenders, the pursuers are entitled to recover the same from the defenders, in terms of the statute."

The defenders in answer founded on the fact they were county road trustees, and on the interpretation clause of the Act above quoted as exempting them from liability for the expenses sued for.

They pleaded—"The defenders being county road trustees, the pursuers are not entitled under the statute to recover from them the alleged extraordinary expenses, and the action should be dismissed, with costs to defenders."

The Sheriff-Substitute (GRAHAME) found that by the interpretation clause of the Act, the word "person" which is therein used to denote the party liable for such extraordinary expense, expressly excluded county road trustees, and that the pursuers were therefore not entitled to recover from the defenders payment of the extraordinary expenses now sued for, and therefore assoilzied them from the conclusions of the action.

"*Note.*—Whatever may have been the intentions of the framers of The Roads and Bridges (Scotland) Act 1878, I do not think that the interpretation clause can be construed as including county road trustees among the persons whom it makes liable for the payment of such extraordinary expenses as are alleged to have been caused by the defenders' excessive traffic over the pursuers' road. The plain meaning of the interpretation clause is that county road trustees are thereby expressly excluded from any such liability. The exception expressed in the clause parenthetically ('not being county road trustees') is otherwise of no signification. If this exception is taken as applicable only to the trustees of the road on which the excessive traffic has been carried on, the exception has no meaning, for the trustees are thus only made liable to themselves for the excessive traffic which they themselves have occasioned. In the present case the pursuers may reasonably complain that there is a hardship in their not being able to recover from the defenders the expenses occasioned by their excessive traffic, but unless the excluding parentheses be held to be *pro non scripto*, which view I do not feel justified in taking, there seems to be no means of affording a remedy to them."

The pursuers appealed.

They argued—There was no community of purse or interest between the two counties, and the spirit of the Act would be best complied with by making the ratepayers of one county contribute to the expenses of damage caused by their operations to the other. The exception contained in the interpretation clause was meant only to apply to the trustees of the particular county on whose road the excessive traffic was carried on.

The defenders replied—To give effect to the pursuers' contention led to the result that the Act made the trustees liable to themselves for the excessive traffic which they themselves had occasioned. The plain meaning of the interpretation clause was that county road trustees were thereby expressly excluded from liability. The Legislature was only following out what it had provided for before under the 37th section of the Turnpike Roads (Scotland) Act (1 and 2 Will. IV., cap. 43), which exempted them from toll.

At advising—

LORD YOUNG—This is a puzzling question, and has the aspect of a very general question, but is in truth one the interest of which is limited to this individual case, and to a comparatively small sum of money. It appears that the Perthshire Road Trustees in getting stones for the repair of their roads, resort to a quarry in Forfarshire, and make use of a Forfarshire road for the purpose of their traffic, putting the Forfarshire Trustees to some extra expense in upholding it; and the latter accordingly sue them under clause 57 of the Roads and Bridges Act of 1878 before the Sheriff, to recover in a summary manner the extra cost of keeping the road so used in repair, in respect of their extra use of it. If the use had been by anybody else, whether inside or outside the county of Forfar, there is no doubt the action would have been a good action, successful or not according to whether the evidence had established or not that the extraordinary use alleged had occasioned the extraordinary cost of repairing and upholding the road; and it seems a reasonable, and certainly a very intelligible, provision of the Act which abolished tolls, so that the users of the road within a county do not pay anything for keeping them in repair, they being maintained and repaired by the proprietors and occupiers within the county by the assessments imposed on them—that any extraordinary use should be paid for in this extraordinary manner. I was not, therefore, prepared at first sight to expect an exemption of the road trustees of the adjoining county

from liability for what all others were bound to pay for. But undoubtedly the interpretation clause of the statute exempts county road trustees, according to the ordinary meaning of the words, so that if the persons taking an extraordinary use, occasioning an extra cost, are county road trustees, they are not liable to be assessed as other people are. But Mr Gloag has pointed out that county road trustees were formerly exempt from all contributions for roads not only within their own county but from payment of tolls elsewhere; they had not to pay tolls without their own county when bringing materials to make their roads. Matters were changed in 1878, and after that no tolls were payable by anybody, the roads being maintained by assessments; but undoubtedly the policy of the Legislature had been to enable them to use for such a purpose the roads of another county without contributing to the cost of them by paying tolls like other people; and that does prepare one to expect an exemption in their favour in this Act. Therefore I am not prepared to dissent from the view taken by the Sheriff-Substitute, that these county road trustees are exempted from the provision on which the action was rested. I am of opinion that the appeal ought to be dismissed.

Lord Rutherfurd Clark and Lord M'Laren concurred.

The Lord Justice-Clerk and Lord Craighill were absent.

The Court dismissed the appeal and affirmed the judgment.

Counsel for Pursuers (Appellants)—J. P. B. Robertson—Hay. Agents—J. & A. Peddie & Ivory, W.S.

Counsel for Defenders (Respondents)—Gloag—Graham Murray. Agents—Watt & Anderson, S.S C.

Friday, July 11.

FIRST DIVISION

[Lord M'Laren, Ordinary.

CAMPBELL AND OTHERS (CAMPBELL'S TRUSTEES) *v.* WHYTE AND OTHERS.

Assignation—Marriage-Contract — Onerous Assignee—Intimation.

A wife by her antenuptial contract of marriage conveyed her whole funds *acquisita et acquirenda* to trustees who were directed *inter alia* to pay the liferent thereof to her as an alimentary fund. The trustees did not at the time accept office or act. Having succeeded to funds after her marriage, she conveyed them to trustees under a new trust, the purposes of which were *inter alia* to pay her a liferent thereof which was not to be declared alimentary. Subsequently she assigned her liferent interest therein in security of a debt of her husband's, and the creditor intimated the assignation to the trustees of the postnuptial deed. A competition having arisen between the creditor and the marriage-contract trustees, who never acted till after the intimation of the assignation, the Court *preferred* the creditor, on the ground that her assignation was duly intimated prior to any claim to the funds being put forward under the latent contract of marriage.

Alexander Campbell, merchant in Greenock, and Helen Turner or Campbell, in contemplation of their marriage, on 29th April 1861 executed an antenuptial contract of marriage whereby *inter alia* Helen Turner or Campbell, with her intended husband's consent, conveyed to six trustees her whole estates then belonging to her, or that should pertain and be owing to her during the subsistence of the marriage, for the purposes set forth in the deed, which were to pay the free yearly interest of the estate to her as an alimentary provision during her life and the fee to the child or children of the marriage, if any, and failing any in such manner as she should direct.

Mrs Campbell had an uncle, Alexander Turner, who by his trust-disposition and settlement, recorded 6th June 1868, left to her a legacy of £2000 along with a share of the residue of his estate, which were to be exclusive of her husband's *jus mariti* and right of administration. On 12th November 1868 Mrs Campbell, on the narrative of her uncle's settlement, of her desire to secure the sums therein left her to her own use and benefit, and of her love and affection for her children, executed a postnuptial trust conveyance by which she conveyed to three of the six trustees appointed under the antenuptial contract, as trustees, the legacy of £2000 and the share of the residue of Alexander Turner's estate. The purposes were for payment to her of £200 if the trustees deemed proper (which was done), seclusive of the *jus mariti* and of the income of the remainder for her liferent allenarly exclusive of the *jus mariti*, and to the children in fee. The liferent to Mrs Campbell under this deed was not declared to be alimentary. The trustees accepted office and acted in the trust.

In May 1871 Alexander Campbell borrowed from Mrs Ann Morris or Whyte, widow of Robert Whyte, the sum of £400. In security of the loan, and without prejudice to Mr Campbell's personal obligation, a bond and assignation in security was granted by Mr and Mrs Campbell, which assigned to Mrs Whyte (1) the liferent right and interest which Mrs Campbell had in the sums of money conveyed to trustees by her by the trust-conveyance of 1868; and (2) a policy of insurance on Mrs Campbell's life. This bond and assignation was duly intimated to the trustees acting under the postnuptial trust conveyance of 1868 on 30th May 1871.

Mr Campbell's estates were sequestrated in January 1878.

Mrs Whyte applied to the trustees acting under the trust conveyance of 1868 for payment of the capital sum of £400 with interest due thereon, and for the amounts paid by her for premiums on the said policy since Mr Campbell's bankruptcy, amounting in all to £507, 11s. 3d. A claim, however, was also put forward by the trustees nominated under Mr and Mrs Campbell's antenuptial contract of marriage. Mrs Whyte then, in order to have the question determined, raised, in the name of the trustees under the trust-disposition of 1868, this action of multiplepoinding,