to the contract under which this beer was delivered. I do not think its terms can possibly affect this case. I suppose the pursuer and the other men never dreamt of inquiring as to the nature of that contract, and I further think that any such inquiry on their part would have been ridiculous.

The case is simply this. The pursuer was a cellarman. He had been in the employment of these brewers, storing beer for them in cellars, since February 1875. It did not appear how long before that he had been similarly employed, but even during the time he has been with the defenders he must have had ample experience for learning the proper modes and the risks incident to his employment. The defenders had to send beer to this place for the convenience of the Exhibition. However dark it may have been, it is not unlawful to put beer into a dark cellar. It could be seen by the cellarman, and the defenders who put the beer in were not to do it with their own hands but by perfectly qualified men. They had put beer into this cellar for months. What was the fault? That there was no window, no gas, and no machinery in the cellar, and that it was too small for the use of skeggs? I am of opinion there was no *culpa* at common law at all, and my opinion is not altered by the judgment of twelve jurymen who thought there was fault. I do not think it was a jury question at all. If it was a jury question it was fully laid before them, and we have no case for interfering with their judgment. We are interfering with the verdict because it was not a question for a jury at all.

I desire to say further that I distinguish cases of this sort altogether from cases where you have got machinery, or where workmen have to work underground. There the Legislature has interfered on behalf of human safety, and even the common law has interfered in protection of workmen, because in such cases they cannot judge for themselves. But where wine is being stored in a cellar, or boxes are being hoisted on to a cab, I incur no liability for accidents if I employ experienced men to do the work, who undertake it with its risks.

Lord Rutherfurd Clark concurred.

Lord Lee—If the cellar had been hired by the defenders it would have been a jury question whether there was or was not failure on their part to provide proper appliances, but as the cellar did not belong to the defenders, I agree with your Lordships that the verdict cannot stand.

Lord M'Laren—I would just like to say a word upon the question of whether there is here any issuable matter. Though that question is not strictly before the Court and was not argued before us, it has been made matter of observation from the bench by one of your Lordships. As it happened, when I allowed an issue I was quite ignorant, both theoretically and practically, as to the customary manner of storing beer, and it seemed to me that lifting barrels of beer might be a dangerous method, and that it was a jury question whether the defenders had or had not failed to furnish the proper appliances, and if they had, whether they were not responsible for the accident. I therefore do not concur in Lord Young's observation to the effect that the case was not one for a jury, and further, I have a strong impression that if I had held that there was no issuable matter, this Division would probably have sent the case back to me for proof. Upon the case as it now comes before us, I may say I think it would have been a question for a jury if the premises had belonged to the defenders. In the general case, where operations are performed in the employer's own premises, he must provide the customary appliances for the safety of his workmen. If the operations are performed in premises which do not belong to him, I think it is a question of circumstances whether he shall be held bound to inform himself personally on the subject. For example, if it had been the case of building a bridge or of fitting up engines in a vessel, it might not have been sufficient for the employer to stay at home and to plead that he had sent out proper workmen and the usual tools. But these cases are entirely different from the present, where we have delivery of goods with the ordinary appliances. In such a case it was the duty of the men to go and complain to their employer if they wanted more help. Wherever skeggs can be used they ought to be used. Where they cannot be used barrels are hoisted on the shoulders of four men, or a block-and-tackle may be used, but the latter method is exceptional and not a usual or necessary one.

It therefore appears to me that upon the weight of the evidence that the jury were wrong in their view that other mechanical appliances ought to have been provided, and I think we must order a new trial.

The Court set aside the verdict and granted a new trial.

Counsel for the Pursuers—Rhind—Salvesen. Agent—D. Howard Smith, Solicitor.

Counsel for the Defenders—Jameson—Shaw. Agents—Watt & Anderson, S.S.C.

Thursday, May 30.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

CROUCHER *v* INGLIS.

Process—Issue—Interlocutor Approving and Fixing Day of Trial—Motion to Vary Issue—Court of Session Act 1850 (13 *and* 14 *Vict. cap.* 36), *sec.* 40—*Court of Session Act* 1868 (31 *and* 32 *Vict. cap.* 100), *sec.* 28.

An interlocutor approved of issues as adjusted, and fixed a day for the trial of the cause. *Held* that the defender was not thereby precluded from moving the Court to vary the terms of the said issues, and an objection that the motion was made too late *repelled.*

Craig v. *Jex Blake*, 9 Macph. 715, *distinguished.*

In January 1889 Charles Croucher, residing at Kirkton of Auchterhouse, Forfarshire, sued the Rev. William Inglis, minister of the parish of Auchterhouse, for £500 in name of reparation and *solatium.*

Issues were adjusted for the trial of the cause, and on 23rd May 1889 the Lord Ordinary (KYLLACHY) pronounced the following interlocutor:—"Approves of the issues as adjusted and settled for the trial of the cause, and appoints the same to be tried by a jury . . . on Tuesday the 2nd day of July next."

On 29th May the defender moved the Court to vary the issues.

The pursuer objected to the competency of the motion, and argued that it came too late, in respect that the Lord Ordinary had not only approved of the issues, but had fixed a day for trial, which had not been opposed by the defender—*Craig* v. *Jex Blake*, March 16, 1871, 9 Macph. 715; Court of Session Act 1850 (13 and 14 Vict. cap. 36), sec. 40; Court of Session Act 1868 (31 and 32 Vict. cap. 100), sec. 28.

Counsel for the defender was not called upon.

At advising—

LORD PRESIDENT—The interlocutor of the Lord Ordinary consists of two parts, one approving of the proposed issue, and the other fixing a day for the trial of the cause. For obvious reasons, and in order to allow the party objecting to the terms of the proposed issue an opportunity of appealing, these interlocutors ought to be kept separate, and an interval of six days ought to be allowed to elapse between the two interlocutors. I can quite understand, however, why in the present case the Lord Ordinary approved of the issue and fixed the day for trial in the same interlocutor. It was for the convenience of both parties, and in order that the 2nd of July, which the Lord Ordinary had offered the parties as the day of trial, might not be lost. As the Lord Ordinary had not many available days of trial, if the six days had been allowed to elapse between the approving of the issues and the fixing of the day of trial, then before the parties could again have come before the Lord Ordinary, not only might they have lost the 2nd of July as the day of trial, but the Lord Ordinary might not have been in a position to offer the parties another day this session.

On the other hand, the right of a party, who is dissatisfied with an issue which has been approved by a Lord Ordinary, to move the Inner House to have the terms of such an issue varied, is a very valuable one, and one which must not in any way be interfered with.

The case of *Craig* v. *Jex Blake*, to which we were referred, differs materially from that now before us. There one day elapsed between the approving of the issue and the fixing of the day of trial, and it was the defender who moved the Lord Ordinary to fix a day for the trial of the cause. No objection was then taken by her to the proposed issue, and it was reasonable to suppose upon that account that she was satisfied with its terms. Six days thereafter the defender moved the Court to vary the issue, but the Court in these circumstances held the motion to be incompetent. That, however, as I have already explained, was a very different state of facts from what we have here to deal with, and I am therefore for repelling the objection which has been taken to the present motion.

LORD SHAND—In the case of *Craig* v. *Jex Blake* an issue was lodged for the pursuer, to which no objection was stated by the defender, who on the following day moved the Lord Ordinary to fix a day for trial. To this motion the pursuer objected, and six days after the defender moved the Court to vary the issue which had been approved of by the Lord Ordinary, but the defender in the circumstances was held to be personally barred from stating any objection to the terms of the issue. It does not appear to me therefore that much assistance can be obtained from the case of *Craig* v. *Jex Blake*, as the circumstances were materially different.

As to the Outer House practice in such cases, I would not object to the course which the Lord Ordinary has adopted provided both parties consented to this being done. It might be desirable in such cases that a minute should be framed intimating that the parties consented to the Lord Ordinary approving of the issue and fixing a day for the trial of the cause in the same interlocutor. In the present case, however, I agree with your Lordship that the objection to the competency of this motion cannot be sustained.

LORD ADAM—I am of the same opinion. I think that if the parties are agreed there can be no objection to the Lord Ordinary approving of the issue and fixing the day for trial in one interlocutor, but if the parties are not at one, and if it is to be held on the authority of *Craig* v. *Jex Blake* that by consenting to the Lord Ordinary fixing a day for the trial of the cause all right of objecting to the terms of the issue is removed, then where any difficulty arises as to the terms of an issue, I think that the Lord Ordinary should not fix the day of trial in the same interlocutor in which he approves of the terms of the issue.

LORD MURE was absent.

The Court repelled the objections to the defender's motion to vary issues, and sent the case to the Summar Roll for discussion.

Counsel for the Pursuer—Hay. Agent—James Skinner, S.S.C.

Counsel for the Defender—C. S. Dickson. Agents—Guild & Shepherd, W.S.

Saturday, June 1.

FIRST DIVISION.

TAYLOR *v.* THE UNION HERITABLE SECURITIES COMPANY, LIMITED.

Public Company—Bankruptcy of a Shareholder—Rectification of Register—Companies Act 1862 (25 *and* 26 *Vict. cap.* 89), *secs.* 35, 36, 62.

A shareholder in a public company which had a large uncalled capital was sequestrated, and after payment of a composition he was re-invested in his estates. *Held* that the amount unpaid on his shares did not form part of his debts and obligations from which he was discharged in the sequestration proceedings, and an application by him to have the register of the company rectified by the deletion of his name therefrom *refused.*