or that she failed to keep it shut while the pursuer was engaged in her work.

But there is a further allegation of the pursuer's which must be noticed, and it is to this effect—"The pursuer has thus been injured through the fault of the defender in allowing a trap of a dangerous construction to be used as the usual and ordinary means of communication between the two apartments aforesaid, and also through her failure to have it so constructed that it would shut automatically. The defender was also at fault in failing to have a guard of some description provided, which would have prevented the pursuer or any of her fellow-workers from falling down the trap-door as above described. The defender's forewoman was also guilty of negligence in failing to see that the trap-door was kept shut while pursuer was hanging up clothes within a few feet of it." Now, these are the only averments of fault on record, and it appears from them that the fault alleged is of two kinds. First, there is an averment that the fault lay in, to use the words of the Employers Liability Act, some defect in the machinery or plant, but in cases of this kind a question must constantly arise, what, looking to the nature of the building, is to be deemed a reasonable mode of constructing an apparatus like this trap-door. It is alleged that it was constructed upon a dangerous principle, but it is to be kept in view that a trap-door in a building of this kind must always be attended with more or less danger, and it was not to be expected that the upper flat of a structure like this would be reached by a broad staircase. I think therefore that up to this point the pursuer has failed to make any relevant averment of fault against the defender. But it is further averred that this trap-door ought to have been so constructed as to shut automatically, and also that it should have been fenced or railed in. It is, however, clear from the pursuer's own description of these premises that anything of the nature of a rail in such a confined space was impossible, and further, that she was well aware of the care which was necessary when engaged in her work, and also of the risks which she ran from the existence of this trap-door. Upon these grounds, I am of opinion that the pursuer has not relevantly averred any such defect in the construction of this trap-door as would render the defender liable. But the pursuer further alleges that while in the discharge of her duty she was entitled to rely on this trap-door being kept shut by the defender's forewoman. This is quite a separate ground of action, but from the pursuer's averments upon the matter it would appear that if there was any negligence at all it was that of a fellow-servant of the pursuer. In order to have made out a relevant case under this head the pursuer would have required to have averred that the forewoman whose negligence she complained of was a "superintendent" in the sense in which that word is used in the Employers Liability Act, and this she has not done. I am therefore of opinion, for the reasons which I have stated, that this action is irrelevant.

LORD M'LAREN—I concur upon both points. I do not consider the pursuer's averments sufficient to support either her first or her second and third pleas.

With regard to her first plea, I see no statement on record that the forewoman who was said to be in fault on the occasion in question was a "superintendent" in the sense of the statute, and even if she had been, I cannot find any relevant averment of fault.

With regard to the pursuer's second and third pleas, I cannot see in the averments anything to suggest that the construction of this trap-staircase was defective. This mode of communication between various flats in manufactories is very common, and convenient for the storage and removal of goods, and it is not suggested that there was anything special in the construction of this trap-door. In these circumstances I am not disposed to send such a case as this to jury trial.

There was something said in the course of the discussion about the pursuer here working in the face of a known danger, and that in consequence thereof any right of compensation which she might otherwise have had was excluded. Without laying down any hard and fast rule I think it is clear that the master may in certain cases incur liability; while, on the other hand, as in the present case, when the servant could by care avoid the danger, then the law says that no liability is to attach to the master.

As regards the present case I do not think that there is any room here for inquiry.

LORD TRAYNER concurred.

The LORD PRESIDENT and LORD SHAND were absent.

The Court sustained the appeal, recalled the interlocutor appealed against, and sustained the first plea-in-law for the defender.

Counsel for the Pursuer—Salvesen. Agent—W. A. Hyslop, W.S.

Counsel for the Defender—Asher—M'Laren. Agents—Macpherson & Mackay, W.S.

Saturday, May 24.

FIRST DIVISION.

[Sheriff of the Lothians.

CLARK *v.* THE NATIONAL BANK AND OTHERS.

Process — Arrestments — Furthcoming — Competency

A deposit-receipt bore that a bank had "received from the trustees of the deceased William Sawers" certain trust funds by the hands of the law-agent of the trust, payable on the joint-order of the law-agent and John Sawers, a beneficiary.

A creditor of John Sawers who held

an extract-decree against him arrested in the hands of the bank the sum "due and addebted by them to the said John Sawers," and thereafter brought an action of furthcoming.

Held that the creditor had not attached the sum in the deposit-receipt, as arrestments had not been used in the hands of the "trustees of the deceased William Sawers," in whose name the sum was deposited in bank, and the action *dismissed.*

The late William Sawers of Willeslea died on 5th May 1877. He left a trust-deed and settlement in which he nominated certain parties his trustees for the purposes specified therein, and, *inter alia*, that the free annual proceeds of his estate should be paid to his brother John Sawers of Parkfoot during his (John Sawers) life.

The trustees entered on the management of the estate, and as funds accumulated in their hands they deposited them from time to time in the bank by the hand of Mr Alexander Wylie, W.S., who was agent for the truster, and who continued to act for the trustees.

On 15th September 1886 a deposit was made of £269, the receipt for which was in the following terms:—"Received from the trustees of the late William Sawers of Willeslea, Shotts, by the hands of Alexander Wylie, W.S., Edinburgh, payable on the joint-order of the said Alexander Wylie, and John Sawers of Parkfoot, Shotts, the sum of Two hundred and sixty-nine pounds and sevenpence sterling to their credit in deposit-receipt with the National Bank of Scotland, Limited."

A dispute having arisen between John Sawers (the liferenter) and William Sawers' trustees, the amount due to John Sawers was, pending the dispute, consigned in bank.

John Sawers being dissatisfied with the accounts of the trustees, on 18th February 1889 raised an action in the Sheriff Court at Hamilton of count, reckoning, and payment, and obtained a decree in his favour for £269, 0s. 7d. (the amount contained in the deposit-receipt above referred to), which decree became final on 11th July 1889.

Andrew Clark, solicitor, Leith, had acted for several years as agent for John Sawers, and had done law business for him, and incurred expense on his behalf. He rendered his account to Sawers on 20th September 1888.

The account was taxed by order of the late Lord Fraser, who on 20th March 1889 pronounced decree in Clark's favour for £202, 17s. 4½d.

Clark extracted his decree, and on 8th April 1889 he executed an arrestment in the hands of the National Bank of Scotland of the funds contained in the deposit-receipt above referred to.

Clark thereafter raised a furthcoming in the Sheriff Court at Edinburgh, and prayed that the National Bank should be ordained to pay to him £202, 17s. 4d., being part of the sum of £269, 0s. 7d. contained in the deposit-receipt of 15th September 1886 already referred to, and which he had arrested in their hands.

He pleaded that the amount due to him by Sawers having been judicially ascertained and contained in the said extract decree in his favour, he was entitled to payment thereof out of the sum contained in the said deposit-receipt.

The action was defended both by John Sawers and Alexander Wylie, W.S., on behalf of Sawers' trustees.

John Sawers pleaded—(3) That as the pursuer had not arrested funds which belonged to him, the action was incompetent.

Alexander Wylie pleaded—(1) All parties not called, and (2) that the action was irrelevant.

On 20th January 1890 the Sheriff-Substitute (HAMILTON) sustained the first and second pleas-in-law for Wylie, and the third plea for the defender Sawers, and dismissed the action.

"*Note.* — The Sheriff-Substitute is of opinion that the pursuer has not effectively attached the sum contained in the deposit-receipt mentioned on record, in respect he did not arrest in the hands of the 'trustees of the deceased Wm. Sawers,' in whose name the said sum was deposited in bank. In any case the pursuer should have called the said trustees as parties to the present action.

"The second statement for the defender Wylie points to the necessity of a multiplepoinding being raised with reference to said sum."

The pursuer appealed to the Sheriff (CRICHTON), who on 17th February 1890 dismissed the appeal, and adhered to the interlocutor appealed against.

"*Note.*—The Sheriff concurs with the Sheriff-Substitute in thinking that the pursuer ought to have arrested in the hands of the 'trustees of the deceased William Sawers.'"

The pursuer appealed to the Court of Session, and argued—That the arrestments were good; that by the decree of 18th February 1889 the sum in the said deposit-receipt was declared to belong to the defender John Sawers; and that the pursuer, by the extract-decree of the Court of Session in his favour, was entitled to £202, 17s. 4d. of the sum in the deposit-receipt.

Counsel for the defenders were not called upon.

At advising—

LORD ADAM—This is an action of furthcoming brought by Andrew Clark, solicitor, Leith, against the National Bank of Scotland. The ground of the furthcoming is an arrestment on a decree obtained by the pursuer against John Sawers, in which it was found that Sawers was indebted to Clark in the sum of £202, 17s. 4½d. The pursuer arrested in the hands of the National Bank the sum of £269, 0s. 7d. contained in a deposit-receipt by the National Bank dated 15th September 1886, due to John Sawers, and payable to him on his own order along with that of Alexander Wylie, W.S.

Now, this deposit-receipt is in these

terms—"Received from the trustees of the late William Sawers of Willeslea, Shotts, by the hands of Alexander Wylie, W.S., Edinburgh, payable on the joint-order of the said Alexander Wylie and John Sawers of Parkfoot, Shotts, the sum of Two hundred and sixty-nine pounds and seven pence sterling to their credit in deposit-receipt with the National Bank of Scotland, Limited." It is clear by the terms of this deposit-receipt that the parties to whom the National Bank are owing this money are the trustees of the late William Sawers. It was deposited in the bank by their agent, and it was to be payable on his order along with that of John Sawers of Parkfoot.

In these circumstances the money contained in this deposit-receipt was not due by the National Bank to John Sawers at all, and therefore the arrestments upon which this action of furthcoming was founded are bad, and the action itself accordingly falls to be dismissed.

LORD M'LAREN—I assume, for the purposes of this case, that the pursuer here had a good claim against the common debtor Sawers, and I also assume that Sawers was entitled to rank as a creditor on the trust-estate of the late Williams Sawers.

The pursuer as a creditor of Sawers, holds a decree against him for the sum of £202, 17s. 4d., and there was nothing to have prevented him, if he had chosen, from using arrestments in the lands of William Sawers' trustees, and indeed nothing that has taken place up to this time can in any way affect that right.

The sum contained in the deposit-receipt in question was paid into the National Bank on the joint-receipt of Alexander Wylie, and John Sawers; and the mistake which the pursuer has made is in thinking that the mere depositing of this sum transferred the right to it from the trustees to John Sawers. That was clearly not so, and nothing of the nature of a transfer to John Sawers ever took place. To hold anything else would, in circumstances like the present, result in gross injustice. In illustration of this one need only call to mind a very ordinary case. Suppose in the course of the transfer of a heritable estate that for some reason or other the sale is not carried through at the ordinary time, and that, pending some small dispute, the price is deposited in bank in the joint names of the purchaser and the seller. The mere circumstance that the seller's name was in the deposit-receipt would give his creditors no right to arrest the money in the hands of the bank, otherwise the purchaser's money might be carried off, and yet from some cause he might never obtain a title to the lands. This illustration shows, I think, the fallacy of the pursuer's argument, and makes it clear that the right to this fund remains untransferred in the trustees of the late William Sawers.

LORD TRAYNER—The Sheriff-Substitute and Sheriff dismissed this action because they considered the arrestments used to be inept. I think the record shows this only too plainly, as well as establishing the fact that the trustees had not intended to part with the money contained in this deposit-receipt in consequence of John Sawers not having granted to them a satisfactory discharge. The money therefore belonged to the trustees, and it does so still. I think that the Sheriff-Substitute acted quite rightly in finding the action incompetent, both on this and upon many other grounds which might easily be pointed out.

The LORD PRESIDENT and LORD SHAND were absent.

The Court dismissed the appeal.

Counsel for the Pursuer—J. Brodie Innes. Agent—Andrew Clark, Solicitor.

Counsel for the Common Debtor — J. Guthrie Smith. Agent—Alexander Gordon, S.S.C.

Counsel for the Defenders Sawers' Trustees—R. V. Campbell. Agents — Wylie, Robertson, & Rankin, W.S.

VALUATION APPEAL COURT.

Wednesday, February 19.

(Before Lord Trayner and Lord Wellwood.)

ALEXANDER AND ANOTHER *v.* ASSESSOR OF STEWARTRY OF KIRKCUDBRIGHT.

Valuation Roll—Consideration other than Rent—Relationship, Uncle and Nephew—Proof that the Rent is Inadequate.

Where the rent of a farm let by a proprietor to his nephew was fixed by the lease—*held* (1) that the relationship between the landlord and the tenant did not *per se* constitute a consideration other than rent; (2) that the rent in the lease must enter the valuation roll unless, in addition to the fact of relationship, substantial evidence of its inadequacy were adduced; and (3) that the opinion of a valuator appointed by the Valuation Committee was not sufficient evidence that the rent in the lease was inadequate.

This was an appeal by James Alexander, Esq. of Mackilston, and James M'Turk, Esq. of Stranfasket, the proprietor and tenant respectively of the farm of Mains of Barnbachle, against a decision of the Valuation Committee of the Commissioners of Supply of the Stewartry of Kirkcudbright valuing the farm at £270.

The case set forth, *inter alia*—That the farm was let under a lease for ten years from Whitsunday 1884. That the rent of the farm prior to Whitsunday 1888 had been £270. That the rent was reduced as from Whitsunday 1888 to £200 by the following minute endorsed on the lease—"I,