danger, and must take the consequences. It is the duty of a tenant who discovers a serious defect in the condition of the house when he enters into possession immediately to give notice of the defect to the landlord, and insist on its being repaired, and if the landlord fails to repair the defect within a reasonable time the tenant may leave the house. If, however, the tenant does not do so, but continues notwithstanding the defect to occupy the house the tenant must just take the consequences.

The Court dismissed the action as irrelevant.

Counsel for Pursuer—Younger. Agents—Simpson & Marwick, W.S.

Counsel for Defender—Sym. Agent—Alexander Wylie, S.S.C.

Thursday, May 12.

FIRST DIVISION.

[Sheriff of Roxburgh, Berwick, and Selkirk.

PAROCHIAL BOARD OF GALASHIELS *v.* PAROCHIAL BOARD OF MELROSE.

Poor—Relief—Settlement—Jurisdiction—Alteration of Boundaries of Parish—Local Government (Scotland) Act 1889 (52 *and* 53 *Vict. cap.* 50), *secs.* 49 *and* 50.

Section 49 of the Local Government Act empowers the Boundary Commissioners appointed under the Act to alter the boundaries of parishes. Section 50 authorises the local authorities affected by any such order to adjust their debts and liabilities by agreement, so far as affected by the order, and provides that failing such agreement the adjustment may be made by the Commissioners.

The Boundary Commissioners pronounced an order detaching a piece of land from the parish of Melrose and annexing it to the parish of Galashiels. Shortly after the order had come into effect two persons resident within the transferred area applied for and received relief from the parish of Galashiels. One of these paupers had resided in the transferred area continuously for more than five years prior to the date of the order, and the other had been born there prior to the date of the order.

In an action of relief at the instance of the Parochial Board of Galashiels, *held* (1) — *distinguishing Parochial Board of Borthwick* v. *Parochial Board of Temple*, July 17, 1891, 18 R. 1190—that the jurisdiction of the Court was not excluded by the provision empowering the Commissioners to adjust the liabilities of parishes; and (2) that Melrose Parish was bound to relieve the parish of Galashiels of the expenses of the paupers' maintenance, in respect that the order of the Commissioners altering the boundaries of the parishes did not affect the settlements which the paupers had acquired in the parish of Melrose prior to its date.

Prior to the passing of the Local Government Act of 1889 a part of the town of Galashiels and the adjacent land was included in the parish of Melrose. On 13th December 1890 the Boundary Commissioners appointed under that Act, and in the exercise of the powers conferred upon them by the 49th section thereof, issued an order in the following terms:—"*Parishes of Galashiels and Melrose.*—Whereas each of the parishes of Galashiels and Melrose is situated partly in the county of Roxburgh and partly in the county of Selkirk: And whereas it appears to us, after communicating with the authorities and others interested, and considering all objections made to the terms of our draft order thereanent, to be expedient to alter and adjust the boundaries of the said counties and parishes in manner hereinafter provided: Now, therefore, we, the Boundary Commissioners for Scotland, do hereby, in pursuance of the powers conferred upon us by the Local Government (Scotland) Act 1889, determine and order as follows—(1) Subject to the provisions of the said Act, so much of the parish of Melrose as is situated in the county of Selkirk shall cease to be part of that parish, and shall form part of the parish of Galashiels." This order came into force on 11th June 1891.

On 26th August, Catherine Hay, who resided in the town of Galashiels and within the area of land which had been detached from Melrose and joined to Galashiels Parish, made application for relief to the inspector of poor of Galashiels Parish, and being a proper object of relief, she received relief from that parish. The inspector of poor of Galashiels Parish thereafter applied to the Parochial Board of Melrose to relieve him of the expense of the said pauper's maintenance, and the the Parochial Board of Melrose having refused to do so, the inspector of poor of Galashiels Parish raised an action against the inspector of poor of Melrose Parish, as representing the Parochial Board of that parish, concluding for decree ordaining him to refund to the pursuer the sums already expended on the pauper's maintenance, and to free and relieve him in all time coming of all further advances which the pursuer might make on her account.

The pursuer averred in substance that Catherine Hay had resided for a continuous period of five years prior to 11th June 1891 in a house situated within the area of ground which had been transferred from Melrose to Galashiels Parish.

The defender admitted that to be true, but made the following statements of fact—"(Stat. 5) After the transference on 11th June 1891 certain claims between the parishes of Galashiels and Melrose fell, as provided by the Local Government (Scotland) Act 1889, to be adjusted. The rates

of the transferred area fell to be and are now imposed and uplifted by the parish of Galashiels, while the parish of Melrose continued to and still relieves the poor of the transferred area who were on the roll at 11th June 1891, and had acquired their settlement in respect of birth or residence within the area transferred. (Stat. 6) As the transference of the area was made for all purposes, whether county council, justices, sheriff, militia, parochial board, school board, local authority, and as the parish of Galashiels levies the poor-rates in said area, it is liable in the relief and management not only of the poor who had their settlements in respect of birth or residence in it, and who were on the roll at 11th June 1891, the date of the transfer, but also of the poor who shall become paupers, or be or have been placed on the roll after 11th June 1891, and whether in respect of settlement acquired before or after that date, and accordingly the parish of Melrose has refused to acknowledge all liability in respect of them. (Stat. 7) A claim on the part of the parish of Melrose based on this view was on the 16th day of November 1891 sent to the chairman of the Galashiels Board, a copy of which is lodged herewith. . . . Failing a settlement therefor between the two parishes, the questions of liability and compensation which have arisen should have been referred to the Boundary Commissioners as authorised and empowered to deal therewith."

The pursuer in answer admitted the statements made in statement 5, and that his Board had received the claim referred to in statement 7, but explained that the parish of Galashiels not only did not admit the soundness of that claim, but averred that the parish of Melrose was liable to the parish of Galashiels for compensation in respect of the "income, debts, liabilities, and expenses" transferred to it in virtue of the Commissioners' order, "and their claim against Melrose Parish is at present being prepared."

The pursuer pleaded—"(1) In respect the said Catherine Hay has a residential settlement in the parish of Melrose, the pursuer is entitled to decree as craved. (2) The law regulating the settlement of paupers not having been altered by the Local Government Act, and the same being still in force, the pursuer is entitled to decree as craved."

The defender pleaded—"(1) In respect that the questions raised fall to be determined by the Boundary Commissioners under the Local Government (Scotland) Act, this action is incompetent, and it ought therefore to be dismissed, with expenses. (3) The said Catherine Morrison or Hay's residential settlement being within the area transferred to the parish of Galashiels, and the relief and management of the poor in or belonging to the transferred area being now administered by that parish, the defender's parish is not now responsible for her relief, and he should therefore be assoilzied, with expenses."

There was another action at the instance of the pursuer against the defender for relief of the sums expended and to be expended in the maintenance of a pauper, John Austin, who had applied for relief to the pursuer on November 5, 1891, and being a proper object of relief had since that date been alimented in Galashiels Poorhouse. It appeared from the pleadings that the said John Austin had been born on 9th July 1860 in a house in the town of Galashiels, which prior to 11th June 1891 was situated within the parish of Melrose, being within that area of ground which was transferred by the Commissioners' order from the parish of Melrose to the parish of Galashiels. The averments and pleas in this action were *mutatis mutandis* similar to the averments made and pleas stated in the action already referred to.

The 49th section of the Local Government (Scotland) Act 1889 provides, *inter alia*—"(1) The Boundary Commissioners shall proceed as soon as may be after such commencement, as in this part of this Act mentioned, to inquire into the circumstances of the counties, burghs, and parishes, and detached parts of counties or parishes, and shall frame orders for dealing with such counties, burghs, parishes, and detached parts, so that each burgh and parish, if the Commissioners shall in the whole circumstances of the case deem it necessary or expedient, may be within a single county, and that no part of a county or parish be detached therefrom, and such orders may provide for such alteration of boundaries, whether of the county or of any other area, as may seem necessary for the said purpose, and such alteration shall have effect for all purposes, whether county council, justices, sheriff, militia, parochial board, school board, local authority, or other, save as hereinafter provided. . . . (6) An order of the Boundary Commissioners, as in this section mentioned, may provide for all or any of the following matters—that is to say, (*a*) may provide for the abolition, restriction, establishment, or extension of the jurisdiction of any authority in or over any part of the area affected by the order, or for the adjustment or alteration of the boundaries of such area, and for the constitution of the authorities therein, and may deal with the powers and rights of authorities therein, and with any offices therein, and may determine the status of any such area as a component part of any larger part, and for the election of representatives in such area. . . . When an order under this Act has taken effect, the Boundary Commissioners may provide for the adjustment and disposal of the property, debts, and liabilities of the various authorities affected by the order, and for the settlement of differences arising out of the order."

Section 50 provides, *inter alia*—"(1) Any councils and other authorities affected by this Act, or by any order or other thing made or done in pursuance of this Act, may from time to time make agreements for the purpose of adjusting any property, income, debts, liabilities, and expenses of the parties to the agreement so far as affected by this Act, or such order or thing, and the agreements and any other agreement authorised by this Act to be made for the purpose of

the adjustment of any property, debts, liabilities, or financial relations, may provide for the transfer or retention of any property, debts, and liabilities, with or without any conditions, and for the joint use of any property, and for the transfer of any duties, and for payment by either party to the agreement in respect of property, debts, duties, and liabilities so transferred or retained, or of such joint use, and in respect of the salary, remuneration, or compensation payable to any officer or person, and that either by way of a capital sum or of an annual payment. (2) In default of an agreement as to any matter requiring adjustment for the purposes of this Act, then, if no other mode of making such an adjustment is provided by this Act, such adjustment may be made or determined by the Commissioners."

On 21st January 1892 the Sheriff-Substitute (SPEIRS) dismissed both cases as incompetent, finding the pursuer liable in expenses.

The pursuer appealed, but the Sheriff (HOPE) on 19th February dismissed the appeal, and affirmed the interlocutor appealed against with additional expenses.

"*Note.*—I find it impossible in the face of the decision of the Court of Session in the case of *Temple* v. *Borthwick*, 17th July 1891, 18 R., to do otherwise than affirm the interlocutor appealed against. It was there decided that the Boundary Commissioners are the proper parties to decide the question which was raised, and which is the same as that raised in the present case. I am unable to understand the reasoning of the learned Judges by which their decision was supported, but it would not be becoming in me to say more on that point than that I read the provisions of the Local Government Act to mean that when the debts, liabilities, &c., of parishes have been fixed, the Commissioners have power to make such financial adjustments as may seem equitable in view of the altered circumstances brought about by the transference of a district from one parish to another.

"If it had been open to me to enter into the question of where the settlement of the pauper is, I should have held, as I did in another case before the decision referred to was reported, that the law of settlement has not been in any way altered by the statute, and that the pauper's settlement continues to be in the parish of Melrose.

"It appears from a memorandum issued in October last, which was referred to at the debate, that the Boundary Commissioners take the same view of the law, and so does the Board of Supervision, as evidenced by the circular No. 11 of process.

"There is little doubt that when the parties go before the Boundary Commissioners some pecuniary adjustment will be made whereby the anomaly of one parish receiving the poor-rates leviable from a certain district, while the burden of maintaining certain paupers in it is laid upon another parish, will be done away with."

The pursuer reclaimed, and argued—(1) *On the question of jurisdiction*—This was an ordinary action of relief involving a money claim between two parishes. The question raised was one of law, and could only be decided by a legal tribunal. It might have been raised by the pauper himself, or by another parish than Galashiels, had the relief been given elsewhere, and could not be disposed of by the Boundary Commissioners, whose powers were administrative and not judicial. Further, the Commissioners might in their discretion make no financial adjustment between the disputing parishes, and leave the law to decide any questions which might arise. There was no doubt that the Court had jurisdiction, and there was no reason to justify the Court in declining to do justice between the parties. The contrary view was not supported by the case of *The Parochial Board of Borthwick* v. *The Parochial Board of Temple*, relied on by the Sheriff. That was a special case presented by the Boundary Commissioners under the 50th section of the Local Government Act. The Commissioners had detached a portion of one parish and joined it to another, and were proceeding to adjust the rights and liabilities of the two parishes, and the case was presented in order to obtain advice from the Court to guide the Commissioners in the exercise of their statutory duties. In those circumstances the Court declined to give the advice asked, but the decision had no bearing on the present case. (2) *On the merits*—The paupers in question had not lost the settlements in the parish of Melrose acquired by them prior to the date of the order. The crucial question was, what was the nature of a settlement? A settlement, whether derived from birth or residence, was a personal status conferring a right to be relieved and a liability to grant relief. In the case of residential settlement the theory of the law was, that a person was entitled to relief from a parish to the rates of which he had contributed for five years. In the case of the pauper Hay, Melrose was the parish which had been so benefited. With regard to a birth settlement, it was not necessary to prove in what particular place in the parish a pauper had been born, but only that his birth had taken place within the limits of the parish. Unless the law of settlement was altered by the Local Government Act the defender's parish was liable for the maintenance of both paupers under the previous statute law, and there was nothing in the 49th section of the Local Government Act which could be read as making any alteration on the law of settlement. The order of the Commissioners no doubt effected a territorial alteration on the boundaries of the parishes which would affect the settlements of parties who resided or were born within the transferred area after the date of the order, but there was the strongest presumption against the order being retroactive in its effect. If it were, intricate questions of accounting might be raised between the parishes affected.

Argued for the defender—(1) *On the*

question of jurisdiction—There was here no case for the decision of the Court. It lay with the Commissioners to adjust any questions of liability between parishes arising in consequence of the order pronounced by them, and the action was therefore incompetent—*Parochial Board of Borthwick* v. *Parochial Board of Temple*, July 17, 1891, 18 R. 1190. Assuming that the action was not incompetent, it should be dismissed as unnecessary, in respect both parties were ready to go before the Commissioners in order to have their rights and liabilities adjusted. (2) *On the merits*—The effect of the Commissioners' order was to transfer the area of ground in question for all purposes, with all the rights and liabilities attaching thereto—Local Government Act 1889, sec. 49. As all right of assessment was transferred, and no liability emerged until after the transference, the liability attached to the new parish.

At advising—

LORD PRESIDENT—These actions are brought by the Parochial Board of Galashiels against the Parochial Board of Melrose for the recovery of certain monies disbursed by them for the maintenance of two paupers, one of whom was born within a portion of the parish of Melrose, which has since been disjoined from that parish by order of the Boundary Commissioners and attached to the parish of Galashiels, and the other of whom had acquired an industrial settlement in the parish of Melrose by five years' residence in the detached portion prior to the order of the Commissioners. The Sheriffs have dismissed the actions as incompetent, and the first question is whether that is a sound judgment.

The view taken by the Sheriff-Principal is that the decision of this Court in the case of *The Parochial Board of Borthwick* v. *The Parochial Board of Temple*, 18 R. 1190, necessitated his dismissing the actions. He entertained the opinion that the Court had there laid it down that a question of the kind here raised was not for the Court but the Commissioners to decide. That seems to me to be an erroneous view of that case. In my opinion the ordinary jurisdiction of this Court and the Sheriff Court is not excluded by any provision of the Local Government Act, and as it is not excluded we must proceed to exercise it.

Now, the case stands thus. The Local Government Act appointed certain Commissioners for the purpose of squaring and redding up the boundaries of parishes and counties throughout Scotland. The procedure in fixing the boundaries involves the Commissioners examining the lie of the land, and considering the interests of the several rating authorities in the portions which are proposed to be detached from one parish or county and attached to another, and generally having regard to the social and economic conveniences of the parishes and counties concerned in the land which caused an anomalous boundary. The Commissioners have authority under the Act to pronounce orders for the rectification of boundaries, and these alterations of boundaries, it is declared by the 49th section, shall have effect "for all purposes, whether county council, justices, sheriff, militia, parochial board, school board, local authority, or others," save as thereinafter provided, the exception not bearing on the present question. It was obvious that such changes must make some financial adjustments between the two parishes necessary, the one of which was losing and the other acquiring the portion of land transferred, and accordingly the parochial boards of the parishes concerned are authorised—being statutory boards it was necessary that they should obtain statutory authority—to make these adjustments for themselves if they can, but authority is also given to the Commissioners after they have pronounced an order altering the boundaries of two parishes to follow it up by another order adjusting the liabilities of the authorities affected, as may be appropriate in each particular case. Now, all that is a comparatively simple method of procedure in point of principle, for it relates only to details, and it does not involve that the parties or the Commissioners are authorised to determine what are the rights of the two parishes apart from such adjustment. Indeed, it is difficult to discover that when the Act of Parliament says that the order of the Commissioners shall have effect for all purposes, including parochial board purposes, it means that the question of the legal effect of the transfer is also handed over to the arbitrary decision of the Commissioners. It is said that the case of *Borthwick* v. *Temple* has decided that such a question as the present is excluded from the jurisdiction of the courts of law, but when I turn to that case I find that it was a decision under the very special provision of the 50th section of the Local Government Act which imposed upon the Court the peculiar duty of answering any questions of law arising in the course of the work of the Boundary Commissioners which the Boundary Commissioners bring before the Court. But here we are not considering a special case, and determining whether this is a predicament in which the Court are authorised and bound to advise the Commissioners, but we are dealing with two disputants, one asserting his right to a sum of money as a consequence of an alteration of the boundaries between two parishes, and the other denying it. Accordingly, I regard the case of *Borthwick* as a decision solely on the limits of the new jurisdiction conferred on the Court by section 50, and I do not accept it as applicable to a totally different case.

The case of the pursuers is very simple. They say—"We have got a piece of the parish of Melrose. One result of this change is that we now look after the administration of the poor law on this piece of ground, and we have given relief to two paupers living there, but we find that these paupers have no settlement in the parish of Galashiels, because the one was born in Melrose and has acquired no settlement in Galashiels, and the other has

acquired an industrial settlement in that parish and not in Galashiels." The answer is a very singular one. It is said that the words which I have quoted from section 49, which purport to be words dealing with the future, carry with them this peculiar result, that you must distort historical facts to this extent, that in place of recognising the fact that a person has lived for five years prior to the order of the Commissioners in a place which until the date of that order undoubtedly was in the parish of Melrose, you must now hold that all the time, long before the Act was passed or the Commissioners came into existence, he was living in the parish of Galashiels. That would be a very startling result, but it seems to me unnecessary in order to satisfy the requirements of the language of the section to reach it. The good sense of the thing points to what I think is the result of the enactment. The Act changes the poor law authority for the detached district, but it carries over the district with its existing liabilities against the old parish which the individual history of the pauper has created against it.

When the nature of the case is looked at it seems to me that two things become clear. In the first place, this is a purely legal question as to the effect of the Local Government Act on the previous statute law of the country. The fact that the Local Government Act leaves previous rights as they were, does not prevent this from being a question of law to be settled between two disputants, and I am of opinion that the case of *Temple* is not applicable to a case of this kind. That was a decision on a special case submitted by the Boundary Commissioners under section 50, and it by no means precludes us from doing justice in the matter now before us. On the merits I confess the case seems to me to be very clear. I read the Act as affecting settlement to this extent, that from and after the date of any order by the Commissioners dealing with the boundaries of parishes, the effect of residence in a particular place will be determined, so far as poor law rights are concerned, by the boundaries so fixed, but I find nothing in the Act which ascribes a retrospective effect to the changes so as to alter the liability in the case of individuals otherwise than it would have been altered had they migrated to the new parish at the date of the order. I am therefore for recalling the interlocutors pronounced in the Sheriff Court, and giving decree in both cases.

LORD ADAM—We have here to deal with two actions, the most prominent being that of Mrs Hay, who resided in the parish of Melrose for a continuous period of five years prior to 11th June 1891. On that date an order was issued by the Boundary Commissioners, which separated that part of Melrose in which Mrs Hay lived from the rest of that parish, and adjudged it to belong in future to Galashiels. On 26th August 1891 Mrs Hay became a proper object of relief in the parish of Galashiels, and that parish as in duty bound gave her relief. The object of the present action is to obtain a return of the money so expended. The action is of a most ordinary kind, and is one of which we have constant experience, and I can see no reason why we should not decide a question of the kind raised between two parochial boards. It is said that we are precluded from entertaining the question by the decision in the case of *Borthwick* v. *Temple*. I agree with your Lordship that that is not so. That case was a very peculiar one, which was not brought by two competing parochial boards, but at the instance of the Boundary Commissioners, in the form of a special case inviting the opinion of the Court under the 50th section of the Local Government Act. Whether the Court was right or wrong in the view which was taken in that case, I do not think it has any bearing upon the present. Here there are two litigants, each with a patrimonial interest in the result of the action, and accordingly the present action is clearly differentiated from the decision in the case of *Temple*.

Upon the merits the question is, whether the inspector of Galashiels Parish is right in his contention that Melrose is the parish of the pauper's settlement? It is not disputed that prior to 11th June 1891 the pauper had acquired a settlement in Melrose by a residence of upwards of five years. Has she been deprived of the benefit of that settlement, or has she done anything to lose the residential settlement so acquired? All that has happened is that by the order to which I have referred a portion of the parish of Melrose has been detached from that parish, and is for the future to be treated as part of the parish of Galashiels. The circumstances are not different from what they would have been if this pauper had voluntarily left the parish, and had gone to live in another. It was said by Mr Jameson that it is the particular piece of ground on which the pauper lived which must be looked at, and that being so, that it must be held to be part of the parish of Galashiels for all purposes. This is not so. The simple question which we have to consider is, where was the residential settlement acquired, and upon the merits of that question I think the inspector of Galashiels is right. I am therefore of the same opinion with your Lordship.

In the other case, where the settlement is a birth settlement, I think the same result must follow.

LORD M'LAREN—These two actions are of the nature of claims of relief by the inspector of poor of one parish against the inspector of another. The actions are in a form with which we are familiar, and of which there are abundant examples in the reports. The question comes before us for decision in precisely the same way as if the paupers were themselves suing for relief, because it is in right of the paupers' claim that the parish which afforded temporary relief comes to the Court to have the

incidence of the relief shifted to the parish of settlement.

I am not surprised that the Sheriff should have been embarrassed by the opinions in the case of *Borthwick* v. *Temple*, but I agree with your Lordship that apart altogether from that case, we must decide the question of right when brought before us in a competent form. At the same time I also think that the case of *Borthwick*, when rightly understood, is in no way inconsistent with the decision which we are going to pronounce. The case of *Borthwick* was brought under the 50th section of the Local Government Act, which conferred what may be called a consultative jurisdiction upon the Court, and, as we understood the statute, that jurisdiction was confined to questions of law in which the Boundary Commissioners had an interest. The present is a question of fact, not of law, although no doubt, as in many questions of fact, there is law underlying it. The question of fact is, where have these paupers their settlements? There are perhaps some expressions in the opinions of the Judges in the case of *Borthwick* which go beyond what was necessary for the immediate decision of the case, and I take my full share of responsibility for these. But plainly what was decided there was only this, that in the exercise of that special statutory jurisdiction we did not see our way to deal with a claim relating to the liability for the maintenance of an individual pauper, and still less with the possible consequences which were the subjects of the second and third questions of the case.

Coming to the merits of the two actions which we are here considering, I think it is possible to arrive at a satisfactory determination without taking any account of the cognate question where a pauper has resided for the necessary period, partly in a detached portion of a parish, and partly elsewhere in the parish. Taking first the case of the residential settlement, as the point presents itself to my mind, the woman had acquired an industrial settlement by residing for five years in the parish of Melrose, and consequently she has a claim of relief against that parish. It is of no consequence, so far as that claim of relief is concerned, at what spot within the parish she resided, because the parish is an indivisible area in all questions of settlement, and it is by no means necessary to prove all the various places where the pauper has resided if only the general fact of an industrial residence within the parish is made out. The law is clear that an industrial settlement once acquired will continue until it is lost by non-residence, or until, as in the case of marriage or forisfamiliation, a new settlement has been obtained. Prior, then, to the disjunction of a part of Melrose Parish the pauper had acquired a settlement in that parish, and such a settlement, according to settled principles, must remain until it is lost in the ordinary way. I quite grant that it may be lost by carrying away that part of the parish in which she is living, just as it would be lost by migration to another parish. But time is the important element, and the settlement will not be lost by migration, or by the disjunction of the pauper's abode from the parish except by non-residence for the necessary legal period. The cases which have been figured of residence in various parts of the parish do not therefore appear to me to affect the case, and I think the birth settlement is really identical with the residential, because it will continue until another settlement has been acquired, and none has been acquired here.

On these grounds I am of opinion that the claim of the inspector of Galashiels is well founded.

LORD KINNEAR was absent.

The Court recalled the interlocutor of 21st January 1892, and the subsequent interlocutor; repelled the defences, and decerned in terms of the prayer of the petition; found the appellant entitled to expenses, &c.

Counsel for the Pursuer—D.-F. Balfour, Q.C.—Dundas. Agents—Bruce & Kerr, W.S.

Counsel for the Defender—Jameson—C. N. Johnston. Agents—Romanes & Simson, W.S.

Thursday, May 12.

SECOND DIVISION.

[Sheriff of Lanarkshire.

REID *v.* COYLE.

Reparation — Slander — Privilege — Statement by Physician Called in to See Patient.

A midwife brought against a physician an action of damages for slander in which she averred that the defender was called in to see a patient whom the pursuer had attended, and that on hearing that the pursuer had given the patient a drug to soothe her pains, the defender, conceiving that it would be a favourable opportunity for indulging his hostile and malicious feeling towards the pursuer, falsely, wickedly, calumniously, and maliciously stated to the patient's husband that the pursuer had poisoned his wife.

An issue not containing malice and want of probable cause proposed by the pursuer for the trial of the cause *approved*, the Court holding that although *prima facie* a case of privilege was stated on record, yet it was not absolutely clear at that stage that the case was one of privilege, and that if the evidence at the trial raised such a case, it was the duty of the judge to direct the jury that malice on the part of the defender must be proved before they could find for the pursuer.

Mrs Elizabeth M'Connon or Reid, midwife