and their legal effect would not form a relevant defence to a suit for penalties.

This, however, is by no means conclusive against the pursuers. The sub-section, sec. 1 (3), of the Employers Liability Act of 1880, upon which their only claim now insisted in is founded, deals with the case of a negligent or improper order given by a person to whose orders the workman is bound to conform. It is not an answer to the workman's claim that the order to which he conformed was one not authorised or approved of by the employer. An employer who delegates authority does not intend or contemplate that the person to whom it is delegated shall give negligent or improper orders; but that is the very case in which the statute provides that the workman shall be entitled to reparation. No doubt if the orders given are palpably beyond the scope of the foreman's or oversman's authority—if they are plainly criminal or illegal or unconnected with the work in hand—the workman will not be entitled to recover from his employer if he obeys and is injured. But if they are given in connection with the work, and are not plainly, to the knowledge of the person to whom they are given, illegal or improper, and injuries result to the workman in consequence of his obeying, it is not in my opinion a good answer to the workman's claim against his employer that the order was improper or even that it was prohibited by statute.

I find this view of the statute very clearly stated by Mr Justice Cave in a case to which we were not referred—*Marley* v. *Osborn* (Q. B. Div.), April 5, 1894, 10 Times Law Rep. p. 388:—"Then the object of the Employers Liability Act was to alter that state of the law so far as persons having the superintendence over the plaintiff were concerned, and the Act was undoubtedly meant to make the master responsible for the negligence of a person in his employ in a position of superiority and superintendence, when his negligence had caused an injury to a person bound to comply with his orders. The Legislature did not intend to leave it to the workman to go into the question whether the order given was right, if it was an order he was bound to obey, but that in every case in which a superior had given an order which the inferior would be bound to obey the master would be liable for the consequences to the workman."

The earlier case of *Bunker* v. *Midland Railway Company*, 1882, 47 Law Times 476, to which Mr Wilson referred, is I think distinguishable, because it was shewn that the boy who was injured was quite aware that he was not bound to obey the foreman's order. In the present case the pursuers were not aware that the order given by Gunn was contrary to statute or any rules of the pit. They were quite new to the work and were obliged to trust to Gunn's superior knowledge as to what was required. I therefore think that the pursuers are not on that ground deprived of a claim under the statute.

The only remaining question is, whether, holding as I do that the order given by Gunn was a negligent and improper order calculated to lead to danger, the pursuers' claim is barred in consequence of their having by their own negligence materially contributed to the accident. This is a somewhat narrow question on the proof; but in order to support a plea of contributory negligence the evidence must be at least as clear and conclusive as that which establishes fault on the part of the defenders. I am not satisfied that this is made out. It is not proved that the explosion was caused by a spark from the pursuers' lamps; but assume that it was. On the one hand it seems a dangerous thing to place a naked lamp between the ventilation and the powder, and only 6 feet from the powder; but on the other hand the operation which Gunn ordered the pursuers to perform could not well be done without some light. The pursuers exhibited caution in removing the naked lamps from their caps and placing them some distance from the powder; and I am not prepared to say that the error in judgment, if it was one, in placing one of the lamps to windward of the powder was so gross as to support this plea.

On these grounds I agree with the result at which the Sheriffs have arrived.

The Court pronounced the following interlocutor:—

"Dismiss the appeal: Find in fact and law in terms of the findings in fact and in law in the said interlocutor of 1st June 1897: Therefore of new, in the action at the instance of Thomas Campbell, decern against the defenders for £25; and in the action at the instance of James Hind, decern against the defenders for £25; and decern."

Counsel for Pursuers—A. S. D. Thomson—Hunter. Agent—David Dougal, W.S.

Counsel for Defenders—Sol.-Gen. Dickson, Q.C.—J. Wilson. Agents—Gill & Pringle, W.S.

Tuesday, March 15.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

LORD ADVOCATE *v.* YOUNG.

Game—Revenue—Gun Licence Act 1870 (33 *and* 34 *Vict. cap.* 57), *sec.* 7 (4)—"*Vermin*"—*Rabbits.*

Held that rabbits are not "vermin" within the meaning of sec. 7, sub-sec. (4), of the Gun Licence Act 1870.

Gosling v. *Brown*, March 9, 1878, 5 R. 755, *distinguished.*

Opinions of Lord Justice-Clerk Moncreiff and Lord Gifford in *Gosling* v. *Brown*, *ut sup.*, *disapproved.*

This was a special case submitted for the opinion and judgment of the Court under

the Court of Exchequer (Scotland) Act 1856 (19 and 20 Vict. cap. 56), sec. 8. The parties were the Lord Advocate for the Inland Revenue, pursuer, and William Young, farmer, Drumskelly, Kirkcudbright, defender.

The case stated that on 24th November 1897 Mr Young, the tenant of Drumskelly farm, in a field on the said farm carried and used a gun without having a licence under the Gun Licence Act 1870. The case further stated that on the said date Mr Young "killed a rabbit on a field on his said farm, and was carrying and using said gun for the purpose only of killing rabbits on his farm."

The questions of law for decision were the following:—"(1) Whether rabbits are vermin within the meaning of the proviso numbered four in the seventh section of The Gun Licence Act, 1870? (2) Whether, upon the facts above stated, the defender incurred the penalty of £10 imposed by the seventh section of the said Act?"

The Gun Licence Act 1870 (33 and 34 Vict. cap. 57), sec. 7, enacts:—That "every person who shall use or carry a gun elsewhere than in a dwelling-house or the curtilage thereof without having in force a licence duly granted to him under this Act shall forfeit the sum of ten pounds: Provided always that the said penalty shall not be incurred by the following persons, namely: . . . . . (4) By the occupier of any lands using or carrying a gun for the purpose only of scaring birds or of killing vermin on such lands, or by any person using or carrying a gun for the purpose only of scaring birds or of killing vermin on any lands by order of the occupier thereof, who shall have in force a licence or certificate to kill game or a licence under this Act."

On 19th February 1898 the Lord Ordinary (STORMONTH DARLING) answered the first question in the affirmative and the second in the negative.

Opinion.—"The question here is, whether rabbits are vermin within the meaning of sec. 7 of The Gun Licence Act 1870?

"If I were free to act on my own opinion, I should have no hesitation in answering that question in the negative. I should hold that 'vermin' is an ordinary popular term, with no special legal signification, and that it means noxious wild animals which everybody is agreed to destroy, not for the sake of any value which their carcases possess, but in order to get rid of them. I should reject altogether the notion that the meaning of the term ought to vary according to the interest of the person who uses it, and that, therefore every animal is to be considered vermin to a farmer which is destructive to his crops; for this, as it seems to me, would lead to a number of animals being included under the term which nobody except a farmer would think of so describing. I should indeed be prepared to hold that no animal can properly be described as vermin which is extensively used as food for man.

"Moreover, I should hold as a matter of statutory construction that the Legislature, which had for centuries dealt with rabbits under their proper name, was not to be presumed as including them, in one solitary case, under the generic term of 'vermin.' In some statutes they are expressly referred to as 'game'; in others they are placed along with deer, woodcock, snipe, and other animals in the same category as game; and in the most recent of all they are described as 'ground game.' In legislative phraseology, therefore, I should hold that they had uniformly been treated in an entirely different category from vermin.

"But I am not free to act on my own opinion. I am bound by the case of *Gosling* v. *Brown*, 5 R. 755, in which the late Lord Moncreiff and Lord Gifford (Lord Ormidale dissenting) held that the word 'vermin,' in section 7 of the Gun Licence Act, included rabbits. I must therefore answer the first question in the affirmative, and the second in the negative."

The pursuer appealed, and argued—1. The Lord Ordinary's opinion was sound, though his interlocutor was wrong. Rabbits had never been treated by the Legislature as vermin. A long train of statutes had placed them on quite a different footing. The Act 1457, cap. 88, anent the slayers of hares in snow time and destruction of cuninges, declared that to be a point of dittay; the Act 1551, cap. 12, in fixing the price of wild meats, enumerated the cunning among them; the Act 1567, cap. 16, classed cunninges with the doe, roe, hart, hind, dove, heron, and river fowl; and the Act 1587, cap. 59, included cunnings along with hart, hind, doe, roe, and hares among the wild beasts to slay which was theft. In more recent times the Night Poaching Act 1828 (9 Geo. IV. cap. 69), the Day Trespass Act 1832 (2 and 3 Will. IV. cap. 68), and the Night Poaching Act 1844 (7 and 8 Vict. cap. 29), all concurred in ranking the rabbit with game. The Prevention of Poaching Act 1862 (25 and 26 Vict. cap. 114), sec. 1, enacted that for the purposes of the Act the word game should include rabbits. The Game Laws (Scotland) Amendment Act 1877 (40 and 41 Vict. cap. 28), sec. 3, repeated that enactment. Finally, the Ground Game Act 1880 (43 and 44 Vict. cap. 47), which defined ground game to mean hares and rabbits, and conferred a right to kill ground game upon the occupier of land, fixed a close time in the case of lands not arable (sec. 1(3)), and expressly provided that nothing in the Act should exempt any person from the provisions of the Gun Licence Act 1870 (sec. 4). Against this long series of legislation nothing could be set up but the case of *Gosling* v. *Brown*, March 9, 1878, 5 R. 755. Whether the decision in that case was sound or not, its date was prior to the Ground Game Act of 1880, which was the last word of the Legislature on the subject. If the defender's contention were well-founded, the exemption under the Gun Licence Act would cover a much larger class than tenant-farmers, *e.g.*, sporting tenants, and even proprietors themselves. But that could surely not be the intention of the statute. 2. If *Gosling* v. *Brown*, *ut sup.*, were wrong decided, it

was not binding on the Court in the present case. A single decision by one Division on an important question did not make the law of Scotland—*Shanks* v. *United Operative Masons Association*, March 11, 1874, 1 R. 823, *per* L.P. Inglis, at p. 825. The same view was expressed by Lord Young in *Earl of Wemyss* v. *Earl of March*, November 18, 1890, 18 R. 126, at p. 130. [LORD KINNEAR referred to an observation of Lord Rutherfurd's to the effect that not even one judgment of the House of Lords would fix the law of Scotland—*Dickson* v. *Halbert*, Feb. 17, 1854, 16 D. 586, at p. 599.]

Argued for the defender—The Lord Ordinary's interlocutor was well-founded. The section of the Act of 1870 must be construed according to its context. The purpose of the Act was plainly to tax a luxury; the purpose of the exemption was to enable a farmer to protect his crops. There was no statutory definition of vermin, but the dictionaries concurred in ascribing wildness, noxiousness, and destructiveness to vermin. These qualities were possessed by the rabbit in a very high degree from the farmer's point of view, and the exemption in the Act was manifestly designed to benefit the farmer. *Moncrieff* v. *Arnot*, February 13, 1828, 6 S. 530, and *Inglis* v. *Moir's Tutors*, December 7, 1871, 10 Macph. 204, distinctly settled the point that rabbits were not game. But if they were not game they must be vermin. There was no recognised intermediate class in which they could be put. (2) In any event, *Gosling*, *ut sup.*, decided the very question here at issue. It would not be in accordance with practice for the Division to overrule that decision without calling in a larger Court. In *Shanks*, *ut sup.*, L. P. Inglis distinctly stated that there would be consultation with the other judges.

At advising—

LORD PRESIDENT—The Lord Ordinary has decided this case contrary to his own clearly expressed opinion, and has done so in deference to a decision of the Second Division of this Court, pronounced in 1878. I shall first consider the controversy on its merits and apart from the case of *Gosling* v. *Brown*.

I agree entirely with the views expressed by the Lord Ordinary on this question. But as the matter is important, and as those views are opposed to the opinions of two distinguished Judges of this Court, now deceased, it is right that I should discuss the question in detail.

We are concerned with the meaning of words occurring in a particular section of an Act of Parliament; and the more closely those words are examined in relation to their place and purpose, the more am I convinced as to the result. But as the word "vermin" is undefined by statute and is to be construed in its ordinary and proper sense, the superficial view—the view of first impression—is not to be disregarded. Now, apart from the secondary use of the word vermin as a term of vituperation, in which sense it may, according to the disposition of the speaker, be equally applicable to everything living, without distinction of genus or species, I think that anyone out of a law court who was asked whether rabbits were vermin would be rather surprised to hear the question put and would certainly say "No." The rabbit is so well-known and vermin are so well-known that the person whom I suppose to be interrogated, *quilibet e populo*, would probably, if asked for his reasons, be unable to give them, or at least to give them so clearly as the Lord Ordinary. But the idea of noxiousness is the dominant idea implied in the word vermin, extinguishing the thought of any small value which such animals when captured may possess in their skins or otherwise, and most vermin have, roughly speaking, no value at all. The primary idea about the rabbit, on the other hand, is that of value both for food and for sport. A rabbit is worth a considerable sum of money, and rabbits, as an article of food, constitute a substantial item in the wealth of the country. It is superfluous to say that they are also prized and preserved for sport.

It is true that the rabbit is graminivorous, and in gratifying this appetite does not distinguish between *meum* and *tuum*; and when the present question is sifted this will be found to be the real ground upon which the defender proposes to class him with vermin. It is said that to the farmer the rabbit is vermin. Now, in the first place, this is not true in fact. When the farmer shoots a rabbit he does not throw him away, as he does the vermin which are enemies of his farmyard or of his crop, but, on the contrary, eats him for dinner or sells him to the poulterer. Even if the gain thus made be less than the damage done, this does not prove that the rabbit is vermin, although it might show that (as a consumer of crops) he is as bad as vermin. If, on the other hand, it be said that to the farmer the rabbit is vermin while to other people he is not, then it becomes apparent that the word is being used in the secondary sense as a term of vituperation, and not in its primary sense as descriptive of certain animals. The angry farmer, or for that matter the angry gardener, does not mince matters in speaking of rabbits, and very likely calls them vermin, while, on the other hand, the gamekeeper not only calls certain domestic animals belonging to the farmer or the gardener vermin, but sometimes acts up to his opinions. This, however, is not the spirit nor the vocabulary of legislation.

The argument which justifies the inclusion of rabbits in vermin by the fact that they eat crops proves a great deal too much; for it would also include all the other birds and beasts which eat crops, and notably hares and pheasants. The answer made is that these are game; but this is really no answer at all, except in a sense destructive of the defender's argument. If it be meant that, as the Legislature has dealt specifically and in a particular way with game, it cannot be supposed to have intended to include game in the word vermin, then exactly the same argument

applies to rabbits. If, on the other hand, it be meant that there is in the nature of things a relation and antithesis between the terms game and vermin, and that those two categories exhaust the wild animals of the country, then it must be said that the only relation between the two is that some kinds of vermin prey on some kinds of game. Accordingly, I do not see how the hare or the pheasant can escape the opprobrium of being vermin if the rabbit is justly exposed to it on the grounds advanced. Yet I suppose it is not going too far to say that the inclusion of the hare or of the pheasant among vermin would be a *reductio ad absurdum* of the defender's argument.

I have spoken hitherto of the question as one of popular language about rabbits; now let us look at the language and the acts of the Legislature.

On the statute immediately under consideration there is one not unimportant point to remark. The sub-section in question sets forth an exemption. From its nature and from the context one would suppose that the reason of the exemption is that this particular use of the gun is not of itself remunerative. Certainly this is so in the case of what are admittedly vermin, and also in the case of scaring birds. But the war against the rabbit is at least self-supporting and could afford a gun licence; while, if the exemption applies, it franks all rabbit shooting by occupiers, whether the purpose be sport or gain or mere protection, for there is nothing in the section to draw a distinction.

Passing to a more general view, I find it to be clear that the Legislature has systematically recognised rabbits by name and made special provisions about them; has protected them; has constantly assimilated them to game, alike when protecting them as when protecting farmers against them; and this body of legislation is, in my judgment, irreconcileable with the theory that in the Act now under consideration Parliament meant to include rabbits in the general class vermin, which is wholly alien and external to what, for shortness, I shall call the Game Acts. The circumstance that those statutes generally class rabbits not within but along with game does not in the slightest degree affect the cogency of the argument any more than do the decisions of *Moncreiff* v. *Arnot* or *Inglis* v. *Moir*.

I need not do more than refer to the old Scots Statutes which protect rabbits; but a glance at the Day Poaching and the Night Poaching Acts shows that the protection given in those comparatively modern statutes expressly applies to rabbits as well as to the other animals which are sometimes specifically enumerated and sometimes described as game. In this rapid review, however, it is well to pause at the Act 7 and 8 Vict. cap. 29, and to observe that the preamble sets forth the failure of the existing law to prevent the destruction of game and rabbits, as well as its failure to prevent serious crime, as a moving cause of further legislation, although to the latter is naturally accorded the greater emphasis.

I am now to notice two other statutes which stand in a different position, for two reasons. The first reason is, that whereas the previous Acts have been purely protective to rabbits and game, those now to be considered are protective to the farmer against the depredations of rabbits and game. The second reason is that both statutes are subsequent to the Gun Licence Act, and therefore give rise to the question with which of the two theories of the Gun Licence Act now before us are they the more consistent.

I take first the Game Law (Scotland) Amendment Act 1877. We are now in the region of compensating the farmer for injury to his crops; and it is a remarkable fact that so completely does the Legislature assimilate rabbits to the other protected animals in this relation, that it makes the term "game" apply to rabbits for the purposes of the Act. It is superfluous to point out that this is a theory of the rabbit's place in rural economy irreconcileable with its having in 1870 been consigned to the class of *capita lupina*.

The other Act is the Ground Game Act of 1880; and the title tells its own story. This is the darkest hour in the legislative history of the rabbit; but his fortunes are still linked with those of the hare. Every provision in the Act applies to both animals, and both incidentally gain a close time on moorlands, although it must be confessed that they appear to owe this privilege less to favour for either of themselves than to a regard to the safety of the grouse. Still I own to finding it inconceivable that the Legislature should have shown all this ceremony towards the rabbit in 1880 if he had already in 1870 been cast out among the vermin.

The result of this examination of the Acts relating to rabbits is, in my judgment, to show that the theory that rabbits are vermin is as repugnant to the methods of the Legislature as to popular thought and language. In what I have said I have met on its own ground the argument on which the defender's case rests, that the relation of the farmer to the rabbit is alone to be considered in ascertaining the meaning of the word vermin. But for complete accuracy it is as well to remember that the word "occupier" includes an occupying proprietor and that the word "lands" is not confined to arable ground; and the sense of the word "vermin" must be one common to all the persons on whom the exemption is concerned, as well as to the rest of the world. Accordingly, a proprietor who takes a farm into his own hands and cultivates rabbits is within the exemption, whatever it means.

Apart from authority, then, it seems to me that the Crown are entitled to prevail; and the question is, whether the case of *Gosling* stands in the way of effect being given to this opinion. Now, even if that case were a decision of this question, we are not bound by one decision on the construction of a statute. But further, the question in *Gosling* was whether the

magistrates were right in their decision; their decision purported to be rested on a view of the facts of the case before them, and not on the view that rabbits are vermin; and Lord Moncreiff, after primarily dealing with the question decided by the magistrates, introduces his remarks on the question now before us with the significant words — "I am, however, quite prepared to deal with the case on the broader ground, were that necessary." Weighty, therefore, as the opinions expressed on the broader grounds must be regarded, they were not, in the judgment of his Lordship himself, necessary for the decision of the cause. It is further to be observed that the question is now presented to us with the light of a more recent and even more authoritative exposition of the law than the case of *Gosling*—I mean the Act of 1880, which, as already explained, is inconsistent with the theory which that decision represents.

In these circumstances I hold that we are entitled to give effect to our own judgment on the question before us, and that the Lord Ordinary's interlocutor must be recalled, the first question in law answered in the negative, and the second in the affirmative.

LORD ADAM concurred.

LORD M'LAREN — It is satisfactory to know that there is no real difference of opinion amongst the Judges who have considered this case. The Lord Ordinary explains in his judgment that he felt bound by the opinions delivered in the case of *Gosling* v. *Brown*, but that his individual opinion was against the exemption claimed by the defender.

I think that the decision given in the case of *Gosling* may be held to be supported by the facts of that case as set forth in the statement by the justices on which the appeal was taken. In any view of the case it must be acknowledged that one decision, and especially a decision depending on the opinions of two Judges against one, is not final and conclusive on the interpretation of a statute. As we are informed that the present action is instituted by the Lord Advocate for the purpose of obtaining a rehearing on a question of considerable importance to the Revenue, I think that the Court of Exchequer ought to consider the case on its merits, and to decide the question in conformity with the opinion of the Court on the merits of the case.

If the question were now raised for the first time I confess I should come without hesitation to the conclusion to which the Lord Ordinary has given expression, that when an exemption from licence-duty is declared in favour of the occupier of land using a gun for the purpose of scaring birds or killing vermin, the word vermin ought to be interpreted according to the ordinary use of language, and ought not to be extended so as to include animals which are usually shot for sport or for the value of their carcases. It is not to my mind a satisfactory answer to say that a farmer may wish to kill rabbits because they are destructive to his crops. That may be a very good reason for giving him the right to kill them, but it does not follow that he is to use his right without obtaining the necessary licence to carry a gun. I must also say that I think the argument proves too much; because if it was a good argument it would equally entitle the occupier of land to kill hares without a gun-licence, on the ground that they commit depredations on his turnip fields, and are therefore vermin from the point of view of the farmer.

But it was not contended that animals falling within the description of game could be treated as vermin in the sense of this Licensing Act, and the distinction was taken that rabbits are not technically game, and therefore that by a liberal construction of the word they might be classed as vermin. The distinction appears to be a very thin one. Rabbits, although not game, have, in common with roe-deer and various species of birds, been considered as having a certain value to the owners of the land; and in the various statutes giving protection to landowners against trespass in pursuit of game, rabbits are specially named, and their pursuit by trespassers is made a punishable offence. But this is not all. In the Ground Game Act of 1880, which was passed for the purpose of enabling the occupiers of land to protect themselves against injury by ground game, the right given by the statute is a right to kill hares and rabbits. Now, if rabbits were vermin, I do not suppose that it would be necessary to go to Parliament for authority to kill them. It is a little difficult to treat this part of the case seriously. What I mean to point out is, that it is just because rabbits are not vermin in the proper and primary meaning of the word that the occupier of the land was not entitled to interfere with them until Parliament for reasons of public policy (which took no account of the distinction between game and not game) gave the right of killing them as a right inalienable and inseparable from the occupation of land.

In reference to what I have said on the subject of the Ground Game Act, I must guard myself against being supposed to refer to the language of the Act for the purpose of construing an Act of Parliament of earlier date. I only refer to it in common with the series of Acts relating to game and animals, *ejusdem generis*, for the purpose of showing that rabbits have been uniformly treated as having a certain economic value to the owner of the land, and not as vermin which a tenant was entitled to destroy in virtue of his occupation, and by a right which is independent of agreement or statutory privilege. I think that the questions should be answered in conformity with the argument for the Crown.

The LORD PRESIDENT intimated that LORD KINNEAR, who was absent, concurred.

The Court answered the first question in

the negative, and the second in the affirmative.

Counsel for the Pursuer — Sol.-Gen. Dickson, Q.C.—A. J. Young. Agent—P. J. Hamilton Grierson, Solicitor of Inland Revenue.

Counsel for the Defender—Dundas, Q.C. —Constable. Agents—Purves & Barbour, S.S.C.

Tuesday, March 15.

SECOND DIVISION.

[Lord Kyllachy, Ordinary.

WILSON *v.* WILSON.

Husband and Wife—Divorce—Divorce for Adultery—Proof—Single Witnesses to Different Acts—Corroboration.

In an action of divorce for adultery the pursuer, in corroboration of the evidence of a single witness as to a particular incident, founded on the evidence of another single witness as to another incident of a similar kind.

Held (*diss.* Lord Young) that adultery was not proved, in respect (1) that even if the separate incidents were proved they did not necessarily infer adultery, and (2) (*per* Lord Trayner) that the separate incidents were not so connected as to afford corroboration of each other.

This was an action of divorce for adultery at the instance of Mrs Sara Louise Pollock or Wilson against her husband James Wilson, milk van driver, Glasgow.

The pursuer alleged (1 and 2) that the defender had, upon two occasions libelled, committed adultery with a young woman whose name was stated, (3) that he had committed adultery on a night in the end of March or beginning of April 1896 in the close which led to the house in which he was then living, with a woman believed to be a prostitute, but whose name the pursuer stated she had not been able to discover, and (4) that he had committed adultery on another occasion about the end of April or beginning of May 1896 with a woman whose name the pursuer stated she had been unable to discover, on the stair leading to the same house.

The pursuer entirely failed to establish the first and second charges, and she did not ultimately persist in any of them except the fourth. But she relied upon the evidence brought to prove the third charge as corroborating the direct evidence led with a view of establishing the fourth.

From the proof it appeared that the pursuer had a considerable amount of money of her own, that the defender before marriage had got substantial sums of money from her, that the married life of the parties was not happy, and that the pursuer ultimately left the defender in the end of August 1893 upon the ground, as she deponed, of his cruelty and threats of violence, and that since that date the parties had not lived together.

It further appeared that after the pursuer left the defender he became bankrupt and had to give up his business as a cattle-dealer, that ultimately, about February 1895, he entered the service of a dairyman named Hamilton as a milk van driver, since which date he had been living in a bothy where the male employees of the dairyman resided. A considerable amount of evidence was led with a view of showing that this bothy bore a bad reputation in the neighbourhood, and that prostitutes had been seen going into it. More particularly, it appeared that on 21st April 1896 the police, having been called in by the neighbours, two women were found in the house; that thereupon a disturbance arose, in which the defender took part, and that he was consequently charged at a police court held on 28th April 1896 and convicted of cursing, swearing, shouting, and using abusive, obscene, and threatening language to a residenter in the tenement of which the dairyman's house formed part. It was not proved, however, that the defender had anything to do with introducing prostitutes into the house, and it appeared that on the occasion of the disturbance he was in bed asleep at the time when it began, and that his anger was roused owing to his sleep being disturbed. The defender and a milkman, who also lived in the bothy, denied the allegations as to the character of the house, and deponed that prostitutes were never brought into it to their knowledge. The latter also deponed that he never saw a woman in the house except on the night of the disturbance, and that on that occasion the women were brought in by a man who was the worse of drink at the time and had since been dismissed from the employment. Certain other incidental facts in the case are stated by Lord Young.

With reference to the third act of adultery charged, Arthur Stewart, lamplighter, Glasgow, deponed—"In 1896 I resided in a house entering by No. 6 Love Loan. The house in which Hamilton's dairymen lived was in the same stair, and above me . . . I knew Wilson by seeing him in Love Loan. I remember seeing him one night in April or May 1896, between ten and eleven o'clock, in a recess about two yards into the close of the stair going up to the bothy. I was going through to the back court, and when I came to the recess a man stepped out into the close, and I looked at him and saw it was Wilson. There was a woman in the recess. Wilson stepped out from where the woman was. The woman did not have her dress up. Wilson's trousers were not disarranged that I saw. I formed no opinion as to what they had been doing; I just passed on. I don't know whether the woman in the recess was a prostitute. I had not seen Wilson in the company of prostitutes at other times. . . . (Q) With regard to the woman you saw in the recess, had you ever seen her before?—(A) I thought she looked like a woman I saw in Love Loan, who accosted me as a prostitute."

With reference to the fourth act of