matter of estate management, can it be said that an annual jaunt rises to the dignity of an illegality? It is not said, be it observed, that the jaunt any more than the other entertainment is conducted extravagantly — that would open a different chapter—the objection to the jaunt especially, but also to the other entertainments, is that such things ought not to be held at the cost of the Incorporation, and that this outlay is illegal.

I adopt the moderate and, as I think, very sensible views of the Lord Ordinary. They cover all the disputed items of entertainment, including the commemoration ball, which, although it cannot claim a high antiquity, is a very modest addition to the sober hilarity of this corporation.

As regards the costs of the Sheriff Court litigation, I do not think the pursuer can successfully challenge them as an item affecting the whole account. The Incorporation was held to be wrong in the suit, but this does not make it the less a proper debt of the Incorporation.

Lord Adam and Lord Kinnear concurred.

Lord M'Laren was absent.

The Court adhered.

Counsel for the Pursuer — H. Johnston, Q.C. — Chree. Agent — Alex. Morison, S.S.C.

Counsel for the Defenders—Balfour, Q.C. —Clyde. Agents — Auld & Mackenzie, W.S.

Friday, November 4.

FIRST DIVISION.

[Sheriff Court of Aberdeen.

BELMONT LAUNDRY COMPANY *v.* ABERDEEN STEAM LAUNDRY COMPANY.

Process—Summons--Competency--Accumulation of Defenders—Reparation—Breach of Contract by Servant.

In an action of damages raised by an employer against a servant who had left his employment in alleged breach of contract, and against another employer who it was averred had induced the servant to break his contract either directly, or by "harbouring" in the knowledge of his contract, the summons concluded against the defenders "conjunctly and severally" for a lump sum of damages. *Held* that the action was competent as laid.

An action was raised in the Sheriff Court of Aberdeen by the Belmont Laundry Company, Limited, against The Aberdeen Steam Laundry Company, Limited, and Robert Innes, manager of the last-named company, craving the Court "to grant a decree ordaining the defenders conjunctly and severally to pay to the pursuers the sum of £150."

The grounds of action as stated by the pursuers were as follows:—The pursuers engaged the defender Innes as their manager on 5th March 1896, on the footing that his salary for the first three months would be at the rate of £100 per annum, and in the event of his giving satisfaction a rearrangement on more favourable terms would be made at the end of that period. Innes commenced his engagement on 16th March, and at the end of three months—as averred by the pursuers—he was re-engaged by them as a yearly servant at the salary of £125 per year, which amount was increased to £135 in 1897.

The pursuers averred—("Cond. 5) On or about 27th August 1897 the defender Robert Innes intimated to the pursuers his resignation of his position of manager of their laundry as he had received another appointment, and his desire to leave a fortnight thereafter, and the pursuers shortly afterwards learned that he had been induced to break his engagement with them through the continued solicitations of the other defenders, who had approached him through their directors, and by their offers to give him an increased salary in the event of his leaving the pursuers and going to them. The pursuers declined to accept the resignation of the defender Innes, and intimated to him and to the defenders, the Aberdeen Steam Laundry Company, Limited, that as the defender Innes's engagement with them did not expire till 8th March 1898, they would be both held liable in damages in the event of the defender Innes failing to fulfil his engagement. Notwithstanding this, the defender Innes left the pursuers' employment on or about 27th September 1897, and entered on an engagement with the defenders, the Aberdeen Steam Laundry Company, Limited, in whose employment he presently is. The defenders, the Aberdeen Steam Laundry Company, Limited, allowed the defender Innes to leave the pursuers and to enter their service in the full knowledge of his contract, in the face of the pursuers' warning, and without taking, as they were bound to do, sufficient steps to satisfy themselves on the subject of his contract with the pursuers. In any event (assuming that the defender Innes had no fixed engagement with the pursuers) he was bound in his position as manager of the pursuers' works to give them not less than three months' notice of his intention to leave. In failing to do so he acted wrongfully and illegally. In accepting his services as they did, the defenders, the Aberdeen Steam Laundry Company, Limited, acted wrongfully and illegally and in prejudice of the pursuers' rights. (Cond. 6) The pursuers' business was much dislocated through the defender Innes leaving them as he did, and through the other defenders' illegal and unwarrantable conduct in enticing him to do so, and in accepting his services after they were warned by the pursuers of his contract with them, and the pursuers were unable to secure a suitable manager to fill his place, and they have suffered loss and damage thereby. They have also suffered loss and damage through

the defender Innes transferring his services to a rival establishment in the city of Aberdeen. The loss and damage which the pursuers have sustained cannot be estimated at less than the sum sued for."

The defenders pleaded—"(1) No relevant case. (2) The action as laid is incompetent."

The Sheriff-Substitute (DUNCAN ROBERTSON) on 17th June 1898 repelled the above pleas and allowed parties a proof.

Note.—[*After narrating the grounds of action, his Lordship proceeded*]—"In these circumstances the following points are raised by defenders at this stage. 1. The action is incompetent as laid, in respect it is laid against defenders jointly and severally. In support of this view defenders referred to *Barr* v. *Neilson*, 6 Macph. 651; and *Taylor* v. *M'Dougall*, 12 R. 1304. In my opinion these cases do not rule the present. In both these cases the ground of judgment was that the defenders were being sued conjunctly and severally for several distinct and separable wrongs, with some of which one or other of the parties had nothing to do. For example, in *Barr's* case a husband and wife were sued conjunctly and severally for damages for one sum in respect of two sets of slander by the wife, and one (a different one) by the husband, and the Court held this incompetent. This was followed in *Taylor* v. *M'Dougall*, where also there was an alleged wrong with which one of the defenders had nothing to do. Here the position seems to me quite different. There are not separable wrongs. The only wrong is the defender Innes leaving pursuers' service, and for this both defenders are said to be jointly responsible, one by wrongfully inducing, the other by listening to the inducement and breaking a contract.

"In another view of the case suggested on record, viz., that defenders, the Laundry Company, accepted and retained defender Innes' services after being told he was engaged for a year, equally it seems to me would both parties be liable jointly and severally if this was proved, and apparently there is no doubt of its being a relevant ground of damages. Though I was not referred to any case in Scotland where master and employee have been sued as here, it is noteworthy that Lord Fraser seems to assume that this is the correct method of suing (*see* Fraser, Master and Servant, p. 310, and in same page as to harbouring a servant). I therefore think that the action is competently laid against both defenders." [*His Lordship then proceeded to deal with the question of the relevancy of the action*].

The defenders, the Aberdeen Steam Laundry Company, appealed to the First Division.

Argued for appellants—The action was incompetent as laid against the defenders jointly and severally. There was no case where two separate sets of circumstances such as existed here, and where there were different grounds of liability, had been tried together. The damages would not be the same for the different delicts, but the pursuer had mixed up the whole together and concluded for a lump sum—*Taylor* v. *M'Dougal & Sons*, July 15, 1885, 12 R. 1304; *Barr* v. *Neilsons*, March 20, 1868, 6 Macph. 651. If the alleged claim was found not to lie against both the defenders, both would be entitled to go free—*Mackersy* v. *Davis & Sons*, February 16, 1895, 22 R. 368, at 370.

Argued for respondents—The wrong done, viz., Innes leaving the pursuer's service, was joint, and the damage was the same being due either to seduction or harbouring on the part of the other defenders, and accordingly separate conclusions would not be applicable. If both defenders had not been called there would have been a good answer to the action, viz., "all parties not called." The pursuer could not have recovered, first from the one, and then from the other of the defenders.

At advising—

LORD ADAM—This is an action of damages brought by the Belmont Laundry Company against the Aberdeen Steam Laundry Company, and Robert Innes, their manager.

Shortly stated, the grounds of action are that Innes was employed by the pursuers as manager of their laundry, that he was engaged as a yearly servant for the year from 9th March 1897 to 8th March 1898; that on 27th August 1897 he intimated to them his resignation of his position of manager of their laundry; that he left their employment on the 27th September 1897, and entered on an engagement with the defenders, in whose employment he still is, and has thus broken his contract with them.

As against the defenders the Aberdeen Steam Laundry Company it is averred that Innes was induced to break his engagement with the pursuers through the continued solicitations of that company, who had approached him through their directors, and by their offers to give him an increased salary in the event of his leaving the pursuers and going to them. It is further averred that the pursuers intimated to both defenders that as Innes' engagement with them did not expire till 8th March 1898 they would both be held liable in damages in the event of Innes failing to fulfil his engagement, that nevertheless the Aberdeen Laundry Company allowed Innes to leave the pursuers and to enter their service in the full knowledge of his contract in the face of the pursuers' warning, and without taking, as they were bound to do, sufficient steps to satisfy themselves on the subject of his contract with the pursuers, and that in so doing they acted wrongfully and illegally, and in prejudice of the pursuers' rights.

The conclusion of the action is that the defenders should be ordained conjunctly and severally to pay to the pursuers the sum of £150 sterling.

Two pleas were argued to us—first that the case was irrelevant, and second that it was incompetent.

With reference to the plea of incom-

petency it was founded on this—that the defenders were concluded against conjunctly and severally only, whereas the record did not disclose any case of joint and several liability against them. The Sheriff-Substitute has repelled this plea, and I think he is right.

The only wrong complained of by the pursuers is that Innes left their employment as and when he did, and the only damages they have suffered are the consequences of that wrong. But that wrong is averred to be the result of the joint acts of the defenders—that of the defenders the Aberdeen Steam Laundry Company in inducing Innes to break his contract with them either directly or by "harbouring" him in the knowledge of his contract with the pursuers —and that of Innes in breaking his contract. No doubt the ground of action against each defender is different—that against Innes being breach of contract, and that against the Aberdeen Steam Laundry Company the doing of a wrongous and illegal act—but they both contributed to produce the one wrong of which the pursuers complain, and therefore I think they are conjunctly and severally liable in the consequences. I am therefore of opinion that the plea of incompetency should be repelled.

As regards the plea of irrelevancy I am not prepared to sustain it *hoc statu*. I think it is very desirable that the actual facts should be ascertained before deciding any law in the case. I would propose, therefore, that "before answer" we should allow the parties a proof of their averments.

The Lord President and Lord Kinnear concurred.

Lord M'Laren was absent.

The Court sustained the appeal, recalled the interlocutor of the Sheriff-Substitute, found that the action as laid was competent, repelled the defenders' second plea-in-law, and allowed the parties a proof before answer.

Counsel for the Pursuers — Salvesen — Glegg. Agents—Macpherson & Mackay, S.S.C.

Counsel for the Defenders — W. Campbell, Q.C.—Cook. Agents—Henry & Scott, W.S.

Friday, November 4.

FIRST DIVISION.

M'LEAN AND OTHERS, PETITIONERS.

Charitable Trust — Ex officio Trustees — Transference of Trust to New Trustees.

The minister and session of the First United Presbyterian Congregation, Alloa, as *ex officis* trustees for the administration of an educational trust, presented a petition to the Court, in which, on the narrative that the original purpose of the trust had failed, they craved the Court for the approval of a scheme for the application of the trust funds to a kindred object. They further prayed that the administration along with the funds of the trust should be transferred from them and their successors in office to the School Board of Alloa, or alternatively that a judicial factor should be appointed. In support of this application the only reason stated was that "the petitioners desire to be relieved of their office." The Court *refused* the petition so far as regards the application for a transference of the trust to another body of trustees or to a judicial factor.

Mr Alexander Paton, of Cowden Park, Alloa, died on 18th September 1860 leaving a trust-disposition and settlement, of which the sixth purpose was as follows:—"I hereby direct and appoint my said trustees, within one year after my death, if practicable, or as soon thereafter as may be, to make payment of the sum of £5500 sterling to the Minister and Session of the First United Presbyterian Congregation, Alloa, at the time, and their successors in office, in trust for the education of such children as may be connected with the foresaid works of Kilncraigs, whom failing, or in addition to whom, if in the opinion of the said minister and session and their foresaids the funds shall admit of such addition, of poor children connected with the said congregation, whom failing, or in addition, to whom, if in the opinion of the said minister and session and their foresaids the funds shall admit of such addition, of poor children in the town of Alloa: Declaring that the said minister and session shall immediately, on receiving payment of the said sum, lend out the same on good heritable security in name of themselves and their foresaids in trust as aforesaid, and the said minister and session and their foresaids shall have full power to change or renew the loans from time to time as may be necessary, and they shall keep the said sum entire, and shall in nowise infringe or encroach upon the same, but shall apply only the free annual interest or profits of the same in payment, first of the cost of a school-house and teacher's dwelling-house to be erected on a suitable site in the vicinity of the foresaid works of Kilncraigs, and which cost shall amount to a sum between £700 and £800 sterling; secondly, of salaries to teachers, assistants, and others; and thirdly, of such relative incidental expenses as the said minister and session and their foresaids may find it necessary to incur; and further, declaring that the said minister and session and their foresaids shall have the sole right and power of making regulations as to the education to be imparted to the foresaid children, of admitting children to the benefits of such education, of electing teachers, assistants, and others, fixing the duration of their holding office, and assigning their several duties, and generally of exercising whatever management, superintendence, and control may be necessary in reference to the arrangements connected with the purposes of this bequest." This legacy, to-