charge was quite entitled to go to the Bill Chamber and have it suspended in so far as it threatened him with imprisonment.

In these circumstances, and it being a matter of diligence where we all know the law is particularly strict, I am clearly of opinion that the complainer is entitled to have the question tried without finding caution. I express no opinion on the merits of the case. All I propose to say is that the complainer has stated a case which he is entitled to have tried, and I think that in a case of this kind he should not be compelled to find caution. I am therefore for recalling the interlocutor reclaimed against.

LORD M'LAREN, LORD KINNEAR, and the LORD PRESIDENT concurred.

The Court recalled the interlocutor of the Lord Ordinary, and remitted to his Lordship to pass the note without caution.

Counsel for the Complainer — Munro. Agents—Ross, Smith, & Findlay, S.S.C.

Counsel for the Respondents — Chree. Agents—John C. Brodie & Sons, W.S.

Tuesday, February 14.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

WOOD *v.* NORTH BRITISH RAILWAY COMPANY.

Reparation—Liability for Wrongful Act of Servant—Assault and Illegal Arrest by Railway Company's Servants—Railway—Railway Regulation Act 1840 (3 *and* 4 *Vict. c.* 40), *sec.* 16.

In an action of damages brought by a cabman against a railway company for assault and illegal arrest, the pursuer averred that he was driving a hire to the defender's station; that while still in the approach he was blocked by other cabs in front, and that his hire consequently got out; that he was ordered to move on by one of the railway constables in the defenders' employment, who told him that only certain cabs were allowed to ply for hire in the station; that he moved off accordingly, but that when he was passing round to the exit lane from the station he was hailed for a hire; that he accepted the hire, and got down to put on a box; that thereupon one of the railway constables knocked the trunk out of pursuer's hands; that while the pursuer was remonstrating with the railway constable for doing this, the hire who had hailed the pursuer got into another cab, and that then the pursuer got on to his box and was driving off, when he was seized by two railway constables, dragged violently to the ground, and without a warrant taken in custody to the police office, and charged by them with committing a breach of the peace, upon which charge he was subsequently tried and convicted. The pursuer averred that the railway constables "in acting as they did were acting in the course of their employment, although they grossly exceeded what was necessary or proper." The defenders pleaded that the pursuer's averments were irrelevant, on the ground that the acts complained of, as alleged by the pursuer, were not within the scope of the railway constables' employment, but also pleaded that they were justified in what they actually did by the conduct of the pursuer, and by the terms of the Railway Regulation Act 1840, section 16. *Held* that the pursuer's averments were relevant.

Res judicata — Conviction on Summary Prosecution not a Bar to Court of Session Action of Damages.

Held that a conviction for breach of the peace, although not submitted to review, and still standing, did not bar the person so convicted from bringing an action of damages for assault and illegal arrest, founded upon the conduct of the persons who made the charge on which he was convicted, when arresting him for that offence.

Gilchrist v. *Anderson*, Nov. 17, 1838, 1 D. 37, *commented on.*

Issues—Assault and Illegal Arrest by Railway Constables.

Form of issue *approved* in an action of damages against a railway company for assault and illegal arrest by railway constables in the employment of the company.

This was an action at the instance of David Wood, cabman, Edinburgh, against the North British Railway Company, in which the pursuer concluded for payment of the sum of £100 as damages for being assaulted and illegally arrested by the servants of the defenders while acting in the course of their employment.

The pursuer averred that on the evening of Saturday, 10th September 1898, he was engaged to drive a hire to the Waverley Station, of which the defenders were proprietors; that when the pursuer was driving down the approach to the station he found he could not get into it because of some cabs in front; that the hire thereupon left the pursuer's cab; that cabs were bound by the rules regulating vehicular traffic entering and leaving the station to leave by an exit lane parallel to and to the south of the entrance approach; that in terms of the Edinburgh Hackney Carriage Bye-laws 1887, sec. 55 (20) the north side of the entrance approach was a public cab stance; that when the hire left him the pursuer's cab was at this stance, and there were other cabs in front of and behind him; that it is usual for cabmen who have driven a hire to the station to take up a position on the stance in hope of getting a hire; that immediately after the pursuer's hire had left him "a person named Walter Wilson, in the service of the defenders in the capa-

city of what the defenders call a railway constable, and employed in and about the said railway station, appeared and ordered the pursuer and some other cabmen to drive off from said stance, alleging that cabs other than those belonging to Croall & Sons, Limited, had no right to be there; that the cabmen drove off towards the exit lane, and that when driving towards the exit lane the pursuer was hailed for a hire, which the pursuer accepted, as he was bound to do, being then disengaged, and jumped off his box for the purpose of placing thereon a trunk, part of the luggage of those whom he was to carry. He denied that he was plying for hire when ordered to move off.

The pursuer further averred as follows:— "(Cond. 5) . . . While he was in the act of placing said trunk on his cab, the said Walter Wilson came alongside and knocked the trunk out of the pursuer's hands, it falling heavily to the ground. While the pursuer was remonstrating with the said Walter Wilson for doing this, the parties who had wished to use pursuer's cab, lifted the trunk, and hailed the cabman immediately behind the pursuer, who drove them off from said railway station. . . . (Cond. 6) The pursuer then mounted his box with the intention of driving off from said railway station, when the said Walter Wilson and another servant of the defenders, also employed as what defenders call a railway constable, named Thomas Hulse, also in the service of the defenders, and employed in and about said railway station, jumped up on pursuer's cab, seized him, and dragged him heavily to the ground, a third person named George Wallace, also in the service of the defenders, and employed in and about said railway station in the same capacity, taking hold of the horse's reins at its head. The two first-mentioned persons without any warrant, seized pursuer and marched him in their custody to the Waverley Market Police Station, and there charged him with committing a breach of the peace. On 20th September 1898 the pursuer was convicted in Edinburgh Police Court of said charge and was fined 7s. 6d. with the alternative of 48 hours' imprisonment. . . . The pursuer had not in fact committed any breach of the peace. (Cond. 7) The pursuer was assaulted by the said Walter Wilson and Thomas Hulse by being seized by them, and dragged from his cab to the ground. He was also injured in his feelings and reputation by being conducted by said persons to said police office. If they wished to bring a charge of breach of the peace against pursuer, it was their duty to have taken his name and cab number, after which he ought to have been proceeded against in ordinary legal form, by citing him to appear to answer to the charge. Their acts on said occasion towards pursuer were malicious and without probable cause. They acted towards pursuer on said occasion illegally, wrongously, and oppressively, and with gross excess of what was necessary or proper, even assuming that a breach of the peace had been committed by pursuer, in assaulting the pursuer, taking into custody, and in marching him in their custody to the police office. (Cond. 8) The said persons were and are the servants of the defenders, who define their duties, and on whose instructions they act. They were on the occasion in question, and are employed at and about the Waverley Railway Station in carrying out the duties of constables or policemen. In acting as they did towards the pursuer they were acting in the course of their employment, although they grossly exceeded what was necessary or proper."

The pursuer pleaded—"(1) The pursuer having been assaulted by the servants of the defenders, while acting in the course of their employment, the defenders are liable in reparation therefor. (2) The pursuer having been illegally, wrongously, and oppressively seized and marched in custody of the defenders' servants, while acting in the course of their employment, from Waverley Railway Station to Waverley Market Police Office, the defenders are liable in damages."

The defenders pleaded—"(1) The pursuer's statements are not relevant, or sufficient in law to sustain the conclusions of the summons. (2) The pursuer not having been assaulted by the servants of the defenders while acting in the scope of their employment, the defenders are entitled to absolvitor, with expenses."

On the merits the defenders alleged that the Hackney Carriage Bye-Law, 1887, No. 55, had been repealed by a bye-law made in 1896; that in terms of the new bye-law, which was in force on 10th September 1898, the cab stance at the Waverley Station was "the south and north platforms inside station, as may be arranged by the North British Railway Company;" that the stance, as arranged by the Railway Company, was wholly situated on their private property, and had been let to Messrs John Croall & Son, and that other cabs were not allowed to ply for hire there; that the pursuer was not entitled, and knew that he was not entitled, to ply for hire in the approach to the station, but that when ordered to leave the station he refused to do so and created a disturbance; that in consequence of his conduct it became necessary for the constables Wilson and Hulse to arrest him and convey him to the police office, and that they only used such force as was necessary. They admitted that the persons named by the pursuer were employed as constables at the Waverley Station.

On the merits the defenders pleaded—(3) that the arrest of the pursuer, and his conveyance to the police office were rendered necessary by his conduct; and *separatim*, (4) that the defenders' servants were acting in virtue of the powers conferred upon them by the Act 3 and 4 Vict. c. 97, sec. 16.

By interlocutor dated 24th January 1899 the Lord Ordinary (KINCAIRNEY) approved of the following issues, and appointed them to be the issues for the trial of the cause:— "1. Whether, on or about 10th September 1898, the pursuer, at or near the Waverley Railway Station, Edinburgh, was assaulted

by Walter Wilson and Thomas Hulse, while acting in the course of their employment by the defenders at said Railway Station, to the loss, injury, and damage of the pursuer? Damages laid at £50 sterling. 2. Whether, on or about 10th September 1898, the pursuer was illegally, wrongfully, and oppressively taken into custody and marched from said railway station to Waverley Market Police Office in custody, by Walter Wilson and Thomas Hulse, while acting in the course of their employment by the defenders at said railway station, to the loss, injury, and damage of the pursuer? Damages laid at £50 sterling."

Opinion.—"This case has appeared to me to be difficult, and it may be that the pursuer may not find it easy to get a verdict. Still I am unable to say that his averments do not warrant the issues which he proposes. He certainly avers assault. The defenders say that he was trespassing on the company's premises, and that their servants, the railway constables, did no more than use the justifiable force required to remove him. It may be so; but I think that cannot be taken for granted. Then it was argued that they cannot be held to have authorised their servants to commit an assault, and therefore cannot be liable for it, although their servants might be; but this again raises a question for a jury. If it be shown that the constables were acting wholly outwith their authority, the Railway Company may not be liable; but if the jury take the view that they were merely chargeable with excess in the performance of their duty, then it is possible that the Railway Company may be liable, although the act of the servants may amount in law to an assault. On this point the cases of *Maxwell* v. *Caledonian Railway Company*, 5th February 1898, 25 R. 550; *Gillespie* v. *Hunter*, 28th May 1898, 35 S.L.R. 714; and *Dyer*, 1895, 1 Q.B. 712, were referred to. I think that on this record, in which the defenders appear to justify the act of their servants, it is not possible to hold at this stage that they were not liable for them.

"The second issue is the averment that the constables seized the pursuer without a warrant and marched him to the police office, where they charged him with a breach of the peace, of which he was convicted. It is pleaded in defence that the constables' proceedings were warranted by section 16 of the Act for Regulating Railways (3 and 4 Vict. cap. 97). That section, however, refers to trespass and obstruction of the officers of the railway company, not to breach of the peace, and it does not expressly authorise the railway officers to apprehend the offender without a warrant, on which point the pursuer quoted *Peggie* v. *Clark*, 10th November 1868, 7 Macph. 89, and *Leask* v. *Burt*, 28th October 1893, 21 R. 32. The pursuer urged that this course was peculiarly unjustifiable in his case, because as a cabman wearing a cabman's badge he was necessarily or presumably a law-abiding person who could be distinguished and reached at any time. It seems to me that it will be for the jury to say whether what the railway constables did was justifiable in the circumstances. The defenders maintained that the conviction of the pursuer of breach of the peace proved without more inquiry that the police constables had acted justifiably. But I do not think that necessarily follows. The conviction can only show that the pursuer was guilty of breach of the peace, if it shows conclusively even that; but it does not follow of necessity that the manner in which the railway constables treated him was unobjectionable. The defenders founded strongly on the case of *Gilchrist* v. *Anderson*, 17th November 1838, 1 D. 37; but I think that case was very different. There a party who had been convicted of assault raised an action against the party whom he was convicted of having assaulted, concluding for damages on the ground that he had truly been the assaulted person and had been wrongously convicted. But that action was held incompetent because he had not endeavoured to set aside or otherwise challenged the conviction.

"Lastly, the defenders maintained that there had been only one connected act by the constables, and that there ought not to be two issues. But the pursuer has stated two distinguishable acts of a somewhat different character, although the one followed the other immediately, and I think he is entitled to put them in separate issues. The defenders did not suggest a single issue, and I do not think it would be very easy to frame one. On the whole, I think the case may be tried by the issues proposed."

The defenders reclaimed, and also gave notice of a motion to substitute the following issue for the issues approved by the Lord Ordinary:—"Whether, on or about 10th September 1898, the pursuer, at or near the Waverley Railway Station, Edinburgh, was assaulted, taken into custody, and marched to Waverley Market Police Office in custody by Walter Wilson and Thomas Hulse, while acting in the course of their employment by the defenders, at said railway station, to the loss, injury, and damage of the pursuer? Damages laid at £100 sterling."

Argued for the defenders — (1) The pursuer's averments were irrelevant. (*a*) According to his account there was an interval of time between the order to drive off and the assault and arrest. The pursuer alleged that when he was quietly driving off from the station he was gratuitously assaulted and unjustifiably arrested by the constables. If that were so the constables were clearly not acting within the scope of their employment—*Walker* v. *South-Eastern Railway Company* (1870), L.R., 5 C.P. 640. (*b*) There was no relevant averment that the defender's servants were acting within the scope of their employment. A bare statement to that effect was not sufficient. It must appear from facts and circumstances averred that it was so—*Gillespie* v. *Hunter*, May 28, 1898, 25 R. 916. The case of *Maxwell* v. *Caledonian Railway Company*, February 5, 1898, 25 R. 550, had no bearing upon the present. (2) *Alternatively.*—The pursuer, on his own

showing, was refusing to leave the station when ordered, and the constables were justified in arresting him in virtue of their powers under the Railway Regulation Act, 1840, sec. 16. (3) This action was barred in respect of the conviction in the Police Court, which was still standing against the pursuer, and which he had not submitted to the review of the superior Criminal Court—*Gilchrist* v. *Anderson*, November 17, 1838, 1 D. 37; *Kennedy* v. *Wise*, June 21, 1890, 17 R. 1036. (4) The alleged assault and arrest were not separate acts, the alleged assault being merely incidental to the arrest, and there should therefore only be one issue—*Ferguson* v. *Colquhoun*, July 19, 1862, 24 D. 1428.

Counsel for the pursuer was not called upon except as to points (3) and (4) in the above argument.

Argued for the pursuer—(1) As to the argument founded upon the case of *Gilchrist*, *cit.*, in the first place there was no plea stated, but apart from that the case of *Gilchrist* was distinguished from the present. There the pursuers attempted to get this Court to review the decision of a criminal court, which was plainly incompetent. Here the complaints which the pursuer put forward in the present action had never been investigated by any Court. The pursuer did not complain of being convicted of breach of the peace. He complained of being assaulted and arrested illegally. Whether he had been guilty of breach of the peace or not, the defenders' servants had no right to assault him and arrest him. The railway constables had no right to arrest for breach of the peace under the Railway Regulation Act 1840, section 16. (2) The assault was a separate wrong, and two issues should be allowed. At least if only the second were allowed the words "wrongfully and forcibly" must be inserted before the words "taken into custody" in the issue proposed by the defenders.

Lord Justice-Clerk—This case looks very like the ordinary case of a person having been ordered to leave a railway station, being violent, using strong language, collecting a crowd, and causing a breach of the peace; but with that we have nothing to do. The question which the pursuer wishes to raise before a jury is whether or not he was wrongfully seized, taken into custody, and removed to the police station. Now, the facts which he wishes to prove are, that being apprehended he was brought before a magistrate and convicted of breach of the peace on that occasion. The question really which we have to decide is whether that absolutely precludes him from having a remedy if the police officers who took him up behaved in an unwarrantable manner. I am speaking now on the first question—I shall speak on the question of the scope of employment afterwards. Now, it appears to me that it cannot be said that it would be a safe thing to exclude inquiry on a matter of that kind merely because there was a conviction. No doubt in the case of *Gilchrist* v. *Anderson* that was made one of the grounds for refusing to allow the case which was raised to proceed further. That case was in certain respects different from the present, but it is not easy to distinguish it absolutely from this case. It must, however, be kept in view that whatever was the law then as regards what the person could do in order to get rid of the conviction of which he complained, as being a conviction contrary to the facts, in that case no review which was open to the party had been invoked. Now, according to our law as it at present exists in summary procedure there is no review. There may be an appeal upon the facts stated by the magistrate on a question of law which these facts may raise, or there may be a suspension if anything illegal and oppressive has been done by the magistrate; but appeal upon the facts is shut out unless by special statute appeal upon the facts is given. Now, what is the result of that? The result of that would plainly be, if the contention of the defenders here was sound, that if police constables found themselves in the position of having exceeded their duty there would be very strong temptation to exceed it a little more—carry the man off to the police station, and endeavour to get him convicted, because if they could get a conviction at all against him, that would shut him out from complaining of what they had illegally done before. I do not think that it would be wise to encourage any such thing. I see no ground so far as the facts of this case are concerned for excluding it from investigation.

But then the defenders say that the case is irrelevant, because if the police constables did what they are alleged to have done, it was plainly not within the scope of their employment. To begin with, that of course is a matter of fact depending upon the exact circumstances of the case. But further, I think it can hardly be suggested with any show of reason, that if constables are in a railway station, and somebody commits what they think is a breach of the peace, it is not their province to stop the breach of the peace, and if they cannot do so otherwise, to take into custody the person who commits it and bring him before a magistrate. That is what is done every day in other places than railway stations, and one does not see why it should not be done now in a railway station. It might be over-zeal in particular cases to take a person to the police station if the person is known to be respectable and quite law-abiding and could easily be summoned; but it cannot be said not to be within the scope of the constables' duty to arrest a person and take him to the police station if the constables think that the proper course in the circumstances. Therefore on that objection to the relevancy I think the defenders have no case.

The only remaining question is as regards the issue. I do not see the ground which the Lord Ordinary seems to see for holding that two issues are necessary in this case. The whole matter is involved in one single

proceeding so far as what the constables did was concerned. That was that they took this man when he was on the box, pulled him down off the box, and then it is grandiloquently said that they marched him to the police station forcibly and against his will. I do not mean forcibly in the sense that there was a struggle in taking him to the police station. They took him upon the footing that if he did not go quietly they would take him forcibly. I think Lord Young made some suggestion upon the second issue, which if given effect to would make it quite sufficient and suitable for the trial of this case. [*His Lordship read the second issue as amended, infra*]. I would propose that we should approve of that form of issue.

Lord Young—That is the conclusion at which I have arrived also. But I think it right to say that I have difficulty in distinguishing the case of *Gilchrist* from the present case, unless in 1838 the law was, which I rather think it was, that the judgment of a police magistrate might always be brought under review even upon a matter of fact. I think that was the law in 1838, when there was an appeal to the Quarter Sessions, and more generally an appeal in regard to a great many convictions which are now final. I think there used to be a rule that where an action was brought upon the ground that a party had been improperly accused and convicted of an offence, the party giving the information, even to the public prosecutor, was liable to an action for wrongful prosecution. In England he prosecutes himself, and therefore the action against him is for wrongful prosecution. But we, following the doctrine of the English law upon that matter, and requiring the want of probable cause to be a ground of action and to be put into the issue, have held that although the defender in such an action was not the prosecutor, but had only given information to the public prosecutor, he is liable to an action in the same way. And I think we also followed what was a rule of the English law, that with regard to an action of that sort for wrongful prosecution—false and without probable cause—it is a necessary preliminary that the conviction should be challenged and set aside, and where that is possible—where the conviction can be challenged upon the ground of its being erroneous in point of fact—I think it is a good rule to require as a preliminary of any action for a wrongful prosecution which resulted in a conviction, that the resulting conviction should in the first place be set aside. But there is no possibility of applying that rule to a conviction in the Edinburgh Police Court, resulting in a fine of 7s. 6d., or even a larger or a smaller punishment. It is not assailable on the ground of error in fact at all. The judgment of the Bailie in the matter of fact, is conclusive. If there is an error in law, which it was not alleged there was in the case of *Gilchrist*, it might be different. What was alleged was only an error in fact, that the wrong man had been convicted. There had been a row between one man and another, and the allegation was that the Bailie had convicted the wrong man, and held that he was the wrongdoing party, and not the other. That was all that was alleged, and as the Lord Ordinary, in stating the result of the decision in *Gilchrist*, says—"The action was held to be incompetent because he had not endeavoured to set aside or otherwise challenged the conviction." And it is so put by Lord Moncreiff in the judgment which is quoted. The interlocutor states the ground of his judgment, and it therefore proceeds upon the assumption, which as I have said I think was true at that time, that the conviction was assailable as erroneous in point of fact. It was not alleged to be erroneous otherwise. Now, that cannot be said here, and therefore the rule is not applicable here or in any case of a conviction by an Edinburgh bailie, or indeed by a magistrate in the police court anywhere. The rule is not applicable. It would be a very strong thing if we should hold that an unappealable judgment of a magistrate in the police court was conclusive as to which of two parties was in the right upon a matter of the very greatest importance to both of them, and which might lead to a civil action in the Supreme Court with very large conclusions at the instance of either party against the other, the party bringing the action averring and undertaking to prove that the other was so grossly in the wrong as to lead to very serious damage. To say that a 7s. 6d. fine in a police court which was not subject to review settled the whole dispute between them would be an extravagant proposition. I do not think any decision of the character to which I have referred requires that as antecedent to an action of damages for a prosecution, wrongful and without probable cause, a conviction in which that prosecution resulted must be set aside antecedently in the first instance. I am therefore of opinion, although I think it is an interesting question and worthy of all the attention it has had, that the conviction, which is not the subject of any distinct plea-in-law, is no bar to the action. That being done, the case is really reduced to this, whether the pursuer shall or shall not have an opportunity of proving what he alleges. What he alleges is improbable on the face of it, but the question is, whether we can legitimately refuse him the opportunity of proving his allegations as he undertakes to do, these allegations being to the effect that certain specified servants of the Railway Company in a really violent and wrongful and unwarrantable manner took him into custody and removed him from the railway station in a manner which any man who had been behaving with propriety was entitled to complain of, and even, it might be, although his conduct was not altogether what it should have been, I say the question is, whether we can justifiably refuse him an opportunity of proving his allegations that he was so treated—not with gross but with certainly quite notable violence, and removed with great indignity from the station when he had done nothing

to deserve it. Now, I do not think we have any ground upon which we can refuse him the opportunity of proving these allegations, and I agree that the case should be tried with one issue in the terms your Lordship has indicated.

LORD MONCREIFF—I agree with both your Lordships. The only difficulty which I have felt in this case is upon the application of the decision of *Gilchrist* v. *Anderson* mentioned by the Lord Ordinary. I confess that on the circumstances of the two cases I am unable to see the distinction which the Lord Ordinary sees between that case and the present. In the case of *Gilchrist* the pursuer brought an action against the defender on the ground of assault. The preliminary defence stated that the pursuer of the action had been convicted by a competent court of having assaulted the defender upon that very same occasion. And the court held that that conviction standing, the action of damages was incompetent. Now, in the present case the pursuer brings an action of damages against the Railway Company on the ground that he was assaulted by the Railway Company's servants. The defence is that they used force in consequence of his having committed a breach of the peace at the station, and they produce the conviction for breach of the peace upon that occasion by a competent court. Therefore, upon the facts, I am unable to see any distinction between the two cases. But the decision in *Gilchrist* v. *Anderson* appears from the report to have proceeeded partly on the assumption that there were at the date of the judgment means of reviewing on the merits the judgments of magistrates in inferior courts which do not now exist. In the present case the conviction for breach of the peace turned entirely on the facts, and there is no way in which that conviction can be set aside by way of appeal or suspension. And the condition-precedent to the institution of a civil action of damages which was indicated in *Gilchrist* v. *Anderson* was that the witnesses on whose evidence the conviction proceeded should be prosecuted criminally for perjury and convicted. But we know the great difficulty that exists in establishing perjury, and I think it would be to attach undue weight to the decision of a police magistrate to hold that a sentence inflicted upon summary conviction, as in the present case, is to be virtually a final bar to an action of damages like the present where the pursuer alleges that he has sustained substantial and serious injury. On that point I have had a good deal of difficulty, but only owing to the decision in *Gilchrist's* case; but on the whole I am satisfied, on the ground I have just stated, namely, the impossibility of getting this sentence of the Police Court set aside, that it should not be a fatal obstacle to the present action proceeding. On the rest of the case I entirely concur. I think a relevant case has been set forth, and I also agree that a single issue should be granted.

LORD TRAYNER was absent.

The Court pronounced this interlocutor—

"Recal the interlocutor reclaimed against: Disallow the first issue: Approve of the second as amended, and appoint it to be the issue for the trial of the cause: Find the pursuer entitled to expenses since the said 24th January: Remit," &c.

The second issue, as finally amended and approved, was as follows—"Whether, on or about 10th September 1898, the pursuer was wrongfully and forcibly taken into custody, and removed from said railway station to Waverley Market Police Office in custody by Walter Wilson and Thomas Hulse, while acting in the course of their employment by the defenders at said railway station, to the loss, injury, and damage of the pursuer. Damages laid at £100 sterling."

Counsel for the Pursuer—Kennedy—A. M. Anderson. Agent—W. R. Mackersy, W.S.

Counsel for the Defenders—Balfour, Q.C.—Grierson. Agent—James Watson, S.S.C.

Tuesday, February 14.

SECOND DIVISION.

[Sheriff of Lanarkshire.

HANLON *v.* GLASGOW AND SOUTH-WESTERN RAILWAY COMPANY.

Reparation—Liability for Wrongful Act of Servant—Assault Committed by Railway Company's Servant—Issues.

In an action of damages against a railway company for the death of his son, the pursuer averred that the deceased and two other passengers, A and B, were about to enter one of the defenders' trains; that B got in just as the train was starting; that the defenders' servants prevented A from getting in; that thereupon the deceased "did not attempt to enter but remained on the platform," but that a servant of the defenders seized him, pushed him violently, causing him to fall forward, and suddenly let go his hold, and that the deceased consequently fell between the platform and the train, and sustained injuries from which he died. The pursuer averred that "the said accident happened through the fault and negligence" of the defenders' servant "while acting in the scope of his employment." *Held* that these averments were relevant.

Form of issue *approved* for the trial of the cause.

This was an action brought in the Sheriff Court at Glasgow by Patrick Hanlon, residing at 47 Clyde Street, Newton, Cambuslang, against the Glasgow and South-Western Railway Company, in which the pursuer craved decree for £250 as damages for the death of his son, which