guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years, with or without hard labour; provided that it shall be a sufficient defence to any charge under sub-section 1 of this section if it shall be made to appear to the Court or jury before whom the charge shall be brought that the person so charged had reasonable cause to believe that the girl was of or above the age of sixteen years."

The libel was ultimately restricted to the statutory charge.

At the diet before the High Court of Justiciary at Aberdeen, on 14th June 1900, it was pleaded in defence that the accused had reasonable cause to believe that the girl was of or above the age of sixteen years.

The Advocate-Depute referred to *H. M. Advocate* v. *Hoggan*, April 14, 1893, 1 Adam 1.

Counsel for the prisoner maintained, *inter alia*, that the statutory defence had been made out if the jury were of opinion that the prisoner had reasonable cause, from the appearance of the girl, for thinking that she was above sixteen years of age.

LORD M'LAREN in charging the jury said:—The question has been very properly brought before the jury by counsel as to whether the accused had reasonable ground for believing that this young girl was above the age of sixteen. The exact words of the statute are that it shall be a sufficient defence "if it shall be made to appear to the court or jury before whom the charge shall be brought that the person so charged had reasonable cause to believe that the girl was of or above the age of sixteen years." It is not enough to establish this defence that from the appearance of the girl she might be believed to be above sixteen. No defence can be founded upon impressions formed from the appearance of the girl; if such a defence could be entertained, it would nullify the statute altogether, because the accused would only have to say that while the girl's age might be only fourteen, he believed, and had grounds from her appearance for believing, that she was over sixteen. That would never do. It must not be mere supposition on the part of the accused; it must be that he formed the opinion upon information or other intelligible and reasonable grounds of belief. That is the legal meaning of the statute as explained in the judicial opinion of the present Lord Justice-Clerk, and you may take it from me that this is the true interpretation of the statute.

The jury found the panel guilty of the statutory charge, and sentence of twelve months' imprisonment was pronounced.

Counsel for the Crown—A. L. M'Clure, A.-D., Cowan. Agent—W. T. M'Tavish, Solicitor, Tain, Procurator-Fiscal of Ross and Cromarty.

Counsel for Panel—MacMillan. Agent—Donald Sinclair, Solicitor, Aberdeen.

COURT OF SESSION.

Tuesday, June 12.

FIRST DIVISION.

COOK *v.* BARNTON HOTEL COMPANY, LIMITED, AND OTHERS.

Process — Summons — Amendment—Court of Session Act 1868 (31 *and* 32 *Vict. cap.* 100), *sec.* 29.

In an action directed against a company and three individuals who had acted as its promoters, the pursuer claimed from the defenders, "jointly and severally" the sum of £70 for services rendered in the promotion of the company, and £1992 for services rendered to the company. The defenders pleaded that they were all entitled to absolvitor, because the company was not liable for services rendered to the individual defenders as promoters, and the individual defenders were not liable for services rendered to the company. After the record was closed the pursuer proposed to amend his summons under sec. 29 of the Court of Session Act 1868, by adding the words "or severally" to each conclusion. *Held* (*aff.* judgment of Lord Stormonth-Darling) that the amendment was competent.

John Macfarlane Cook, accountant, Edinburgh, brought an action against (1) the Barnton Hotel Company, Limited, (2) Daniel Macdonald, wine and spirit merchant, (3) William Ritchie Rodger, S.S.C., and (4) John Patterson, merchant, Edinburgh.

The conclusions of the summons were in the following terms:—"Therefore the said defenders, The Barnton Hotel Company, Limited, Daniel M'Donald, William Ritchie Rodger, and John Patterson, ought and should be decerned and ordained, by decree of the Lords of our Council and Session, jointly and severally, to make payment to the pursuer of the sum of £70 sterling, with interest thereon at the rate of £5 per centum per annum, from the date of citation hereon until payment: Further, the said defenders, The Barnton Hotel Company, Limited, Daniel M'Donald, William Ritchie Rodger, and John Patterson, ought and should be decerned and ordained, by decree of the said Lords of our Council and Session, all jointly and severally, to make payment to the pursuer of the sum of £1992, 15s. sterling, with the interest thereof, at the rate of £5 per centum per annum from the date of citation hereon until payment."

There were also two other conclusions for smaller sums, one directed against all the defenders "jointly and severally," and the other directed against the defenders The Barnton Hotel Company, Limited; and also a conclusion for expenses directed against all the defenders "conjunctly and severally."

In support of these conclusions Cook averred that M'Donald, Rodger, and Patterson were the promoters of the Barnton Hotel Company, which was formed in 1896, and that they had since its formation been the only directors. In support of the conclusion for £70, he averred that he had performed certain services in connection with the promotion of the company prior to its incorporation; and in support of the conclusion for £1992, 15s. he averred that that sum was due to him in respect of services performed for the company since its incorporation.

Joint defences were lodged, in which the pursuer's material averments were denied. The defenders pleaded, *inter alia*—"(4)The defenders Mr Patterson and The Barnton Hotel Company not having employed the pursuer in connection with the formation of said company, they and the other defenders are entitled to absolvitor. (5) Any claim competent to the pursuer for remuneration being a claim only against the Barnton Hotel Company, the whole defenders ought to be assoilzied from the other conclusions of the summons."

After the record was closed the pursuer lodged a minute by which he craved leave to amend the summons by inserting the words "or severally" after the words "jointly or severally" or "conjunctly and severally" in each of the four conclusions of the summons (including the conclusion for expenses), which were directed both against The Barnton Hotel Company, Limited, and the three individual defenders. The defenders objected to this amendment being allowed.

The Court of Session Act 1868 (31 and 32 Vict. cap. 100), section 29, enacts as follows:—"The Court or the Lord Ordinary may at any time amend any error or defect in the record or issues in any action or proceeding in the Court of Session upon such terms as to expenses and otherwise as to the Court or Lord Ordinary shall seem proper; and all such amendments as may be necessary for the purpose of determining in the existing action or proceeding the real question in controversy between the parties shall be so made: Provided always, that it shall not be competent by amendment of the record or issues under this Act to subject to the adjudication of the Court any larger sum, or any other fund or property than such as are specified in the summons or other original pleading, unless all the parties interested shall consent to such amendment."

On 7th March 1900 the Lord Ordinary (Stormonth Darling) pronounced the following interlocutor:—"Allows the summons to be amended as proposed in the minute for the pursuer: Finds that the pursuer has not stated any relevant case against the defenders The Barnton Hotel Company, Limited, in support of the conclusion for £70, and that he has not stated any relevant case against the individual defenders Daniel M'Donald, William Ritchie Rodger, and John Patterson, in support of the conclusion for £1992, 15s. sterling: *Quoad ultra* repels the preliminary pleas for the defenders, and grants leave to reclaim."

The defenders reclaimed, and argued—The action as laid was incompetent, in respect that it concluded for conjunct and several decree and had no averment of conjunct and several liability—*Barr* v. *Neilsons*, March 20, 1868, 6 Macph. 651; *Neilson* v. *Wilson*, March 12, 1890, 17 R. 608. Therefore what it was proposed to do was to make an incompetent action competent—in effect to make a new action. That was going beyond the powers of amendment allowed by section 29 of the 1868 Act (quoted *supra*). It might be true that no larger sum was embraced by the amendment than by the original summons, but the individual liability of the different defenders was very gravely affected. If decree passed under the original summons, any one defender, if called upon to pay, might have relief from his co-defenders, whereas if decree passed under the amended summons against one defender severally he could have no relief. Suppose a summons concluded for £1000 against A and £100 against B, to reverse these proportions would not subject any larger sum to the adjudication of the Court, but would entirely alter the character of the action. The Court had a discretion in allowing an amendment, and would not allow it in cases like the present, where the proposed amendment might be within the words of the section but against its spirit—*Leny* v. *Magistrates of Dunfermline*, March 20, 1894, 21 R. 749; *Russell, Hope, & Company* v. *Pillans*, December 7, 1895, 23 R. 256. The proper use of an amendment was not to save the action when the pursuer, as here, had mistaken his remedy, but to cure defects of form, as in a case where in an action for a sum due under a bill of exchange the pursuer had omitted to set forth the bill in the summons—*Bank of Scotland* v. *W. & G. Fergusson*, November 24, 1898, 1 F. 96.

Argued for the respondent—The amendment was competent. The tests of competency were laid down in the section, and they were (1) Is the amendment necessary to determine the controversy between the parties? and (2), as a negative test, Does it subject any larger sum to the adjudication of the Court. This was exactly the kind of case which satisfied these tests. There was a controversy between the parties which could not be tried if the amendment were not allowed, and the sum at issue was the same as before. It was quite permissible to make an incompetent action competent by amendment—that was the object of section 29—*Rottenburg* v. *Duncan*, October 23, 1896, 24 R. 35; *Bank of Scotland* v. *W. & G. Fergusson, cit. supra.* The amendment obviously did not enlarge the fund submitted to the Court, nor did it really enlarge the liability of the individual defenders. If they had rights of relief *inter se*, these would not be affected, and the interlocutor could be framed so as to reserve all questions regarding such rights. If the Court had a discretion in allowing an amendment, this was eminently a case in which it should be allowed.

At advising—

LORD PRESIDENT—The interlocutor of the Lord Ordinary is not challenged except in so far as by it his Lordship has allowed the summons to be amended by introducing the words "or severally" after the words "jointly and severally" or "conjunctly and severally," in each of the four conclusions of the summons (including the conclusion for expenses), which are directed both against The Barnton Hotel Company, Limited, and the three individual defenders. The amendment allowed by the Lord Ordinary appears to me to satisfy the requirements of section 29 of the Court of Session Act 1868, inasmuch as (1) it is necessary for the purpose of determining in the present action the real question in controversy between the parties, and (2) it does not subject to the adjudication of the Court any larger sum, or any other fund or property than that which is specified in the summons. It was, however, maintained by the defenders that in a case of proper conjunct and several liability each of the parties has a right of rateable relief against the others, and that this right of relief would or might be prejudiced by the amendment, which (they say) would warrant a several decree being pronounced against any of them without relief. It appears to me, however, that the present case is not one in which any such right of relief would be prejudiced or affected by the amendment, and if the Lord Ordinary considers that decree should be pronounced against the defenders, or any of them, he will doubtless express his interlocutor so as to reserve any right of relief, if such right is found to exist. I therefore think that this contention of the defenders does not afford any reason for declining to allow the amendment.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court adhered.

Counsel for the Pursuer and Respondent — Kennedy — M'Lennan. Agent — John Baird, Solicitor.

Counsel for the Defenders and Reclaimers — W. Campbell, Q.C. — T. B. Morison. Agents—Ritchie Rodger & Wallace S.S.C.

Tuesday, June 12.

FIRST DIVISION.

[Sheriff Court of Stirling.

PARISH COUNCIL OF FALKIRK *v.* PARISH COUNCILS OF STIRLING AND GOVAN.

Poor—Settlement—Derivative Settlement—Residential Settlement — Acquisition — Poor Law Amendment (Scotland) Act 1845 (8 *and* 9 *Vict. cap.* 83), *sec.* 76—*Poor Law (Scotland) Act* 1898 (61 *and* 62 *Vict. cap.* 26), *sec.* 1—"*Chargeable to Parish.*"

The 76th section of the Poor Law Act of 1845 provided that "no person shall be held to have acquired a settlement in any parish by residence therein unless such person shall have resided for five years continuously in such parish."

Section 1 of the Poor Law Act of 1898 repeals the above section "and in lieu thereof" enacts that "from and after the commencement of this Act no person shall be held to have acquired a settlement in any parish . . . unless such person shall either before or after, or partly before and partly after, the commencement of this Act have resided for three years continuously in such parish." The section contains a proviso to the effect that nothing in the Act shall—until the expiration of four years from its commencement—affect any persons who at the commencement of the Act "are chargeable to any parish in Scotland."

Section 10 of the Act of 1898 provides that the Act is to come into operation on October 1st 1898.

P., who was born in the parish of Stirling, resided from Whitsunday 1895 to September 23rd 1898 in the parish of Govan, and died on the last-named date. His wife resided with him during this period. After the death of her husband, Mrs P. on 27th September 1898 applied to the inspector of the parish of Govan for relief. On 5th October 1898 she was certified by the parochial doctor to be a proper object of parochial relief, and on the same day relief was granted to her, and notice was given to the parish of Stirling that she had "as a pauper become chargeable on the parish." The pauper thereafter applied for and was granted relief in the parish of Falkirk. In an action at the instance of Falkirk parish against the parishes of Stirling and Govan, *held* (1) (*diss.* Lord M'Laren) that the effect of section 1 of the Act of 1898 was to substitute three years for five as the period requisite for the acquisition of a residential settlement, and that consequently as the husband had resided in Govan for more than three years before his death, the derivative settlement of his wife was in the parish of Govan; and (2) that Mrs P. was not "chargeable" to any parish