veyor showing that the laying of this drain was a necessary proceeding; and, in the second place, I think it seems that the statutory notice was given. At all events, this is clear, that Mr Bruce knew all about the laying of the drain; that is the state of the evidence. So far from the pursuer rebutting the presumption referred to, I think the proof tends all the other way, and it certainly goes to show that whatever formalities were carried out, or whether they were carried out or not, Mr Bruce agreed to this drain being laid where it now is. It is said, however, that that will not do, that though he may have waived those formalities and allowed the construction of this sewer, the burgh cannot found upon his waiver in a question with the pursuer. I cannot agree with that at all. I think the local authority laid this sewer there under statutory sanction, and that whether before they laid it down they went through all the formalities prescribed by the Act of Parliament, or whether they laid it down merely after agreement with and consent of the then proprietor, it must remain where it is as a drain or sewer constructed under statutory powers. The learned Sheriffs, I think, have through the whole proceedings taken the view that the *onus* of proof in this case lay upon the burgh. They seem to hold that if a public sewer is found on a private party's land he may remove it unless the town council or other authority to whom the sewer belongs can show a written title constituting a servitude, or can go back to the time the sewer was laid there and prove affirmatively that all the statutory formalities were gone through at the time when the sewer was constructed some thirty years ago. I need hardly point out that if that were the law burgh authorities might be disturbed every day by private persons insisting on removal of public drains or sewers unless evidence were procured as to what happened years and years before. I think accordingly that the view which the Sheriffs took to the effect that the *onus* of proof lay upon the defenders was entirely wrong. The law as to private servitudes of drainage or wayleave has in my opinion no application to public drains or sewers within burgh. I therefore agree with your Lordships that the defenders should be assoilzied.

The Court pronounced this interlocutor—

"Sustain the appeal and recal the interlocutor appealed against, as also all the interlocutors since 8th July 1908: Find in fact (1) that the defenders' predecessors duly laid the sewer in dispute through the grounds of the pursuer in virtue of the powers conferred upon them by section 73 of the Public Health Act 1867; (2) that the said sewer is now vested in the defenders in virtue of the Burgh Police Act 1892, and the Town Councils (Scotland) Act 1900: Find in law that the pursuers are not entitled to interfere in any way with said sewer, or to interdict the defenders from using said sewer as hitherto as a public drain or sewer: Therefore assoilzie the defenders from the conclusions of the actions, and decern."

Counsel for Pursuer (Respondent) — Cooper, K.C. — Lippe. Agent — James Purves, S.S.C.

Counsel for Defenders (Appellants) — Blackburn, K.C.—Spens. Agents—Alex. Campbell & Son, S.S.C.

Wednesday, June 2.

SECOND DIVISION.

[Lord Salvesen, Ordinary.

BRYANT *v.* EDGAR.

Reparation—Slander—Relevancy—Charge of Unpunctuality, Lack of Interest, and Inattention Made by Master against Servant in Circular Letter Addressed to Other Servants—Innuendo.

E, a wholesale jeweller who had some fifty shops in different parts of the United Kingdom, dismissed B, the manager of one shop. He thereafter addressed to the managers of all his other shops, a circular letter in the following terms—"(Personally dictated by Mr E.), The Manager. Dear Sir—I recently visited Glasgow, and on inspecting one of my branch shops there I was disappointed to find that it had a very neglected appearance, and that business had consequently fallen off. On inquiry I ascertained that the manager, Mr B, in whom great confidence has been placed, and who has been well remunerated, had not been punctual in his attendance at the shop, and that instead of being there at 9 a.m. prompt, he had been in the habit of arriving at 11 a.m. I was greatly pained to find that a manager who had always been well treated was causing me loss by his inattention and lack of interest, and I was reluctantly compelled in the interests of my business to dismiss him. I am writing this as a warning to all my managers, so that when I visit their branches I may not have any cause to complain of want of punctuality or other inattention on their part, or any fault to find with the appearance of their shops and windows."

B brought an action of damages for slander making averments of malice.

Held (*rev.* Lord Salvesen, Ordinary) that in the special circumstances of the case B was entitled to an issue whether the circular falsely, calumniously, and maliciously represented that he had been guilty of such inattention and neglect of the defender's interests as manager of the defender's shop that the defender had been compelled to dismiss him.

Jesse Harold Bryant, 20 Cranworth Street, Glasgow, brought an action of damages

for slander against Edgar Samuel Edgar, dealer in watches and jewellery, Artillery Mansions, Hyde Park, London. The defender was a wholesale jeweller with about 50 shops in different parts of the United Kingdom. The pursuer had entered his service in 1899 and remained till April 1908.

The averments of the pursuer were, *inter alia*, as follows:—"(Cond. 2) . . . About three and a half years ago the pursuer became manager for the defender of the shop belonging to him in Buchanan Street, Glasgow, and he continued in defender's employment there until his engagement was terminated as after mentioned. The pursuer was very successful in managing defender's shops, and during the period that he was in charge of the shop in Buchanan Street the business there was improved to the extent of about £2000 per annum. The pursuer's salary as manager of the Glasgow shop was £4 per week for the first year, and afterwards £5 per week, with a commission on sales amounting on an average to £2 per week. (Cond. 3) Towards the end of January, and in the months of February and March 1908, after the pressure of the Christmas and New Year business, the sales in the Glasgow shop fell off to a considerable extent. This caused annoyance to the defender, and although the falling off was due to the dull state of trade and employment in and about Glasgow, the defender professed to attribute the decrease as in some way due to the pursuer's management, and on or about 19th March 1908 sent one of his inspectors to assist the pursuer in arranging the shop windows in the most advantageous way. This inspector attended at the Glasgow shop for a fortnight. . . . . At the end of the fortnight the defender came to Glasgow to inspect the shop personally, with the heads of three of his departments. When he arrived he immediately began to find fault with the pursuer with regard to the condition of two or three trifling articles in the window, and blamed the pursuer as the cause of the recently decreasing returns from the business. He became very excited, and while in the street examining and making remarks with regard to the window, he seized hold of the pursuer and violently assaulted him in the presence of two of his other employees. (Cond. 4) The pursuer, who felt very much aggrieved at the defender's unjustifiable treatment and violent conduct, went to a hotel and informed the defender by telephone that unless he received an apology for the assault he would not return to the shop. . . . . The pursuer then had a visit from the defender's solicitor, with whom he had a discussion, and it was arranged that the pursuer should return to business on the conditions that he should receive a written apology from the defender, which was forthwith to be destroyed, and that the pursuer's position as manager should not be prejudiced on account of his having insisted on the apology. On the afternoon of the same day the defender's written apology was handed to the pursuer, who destroyed it after perusal, and thereafter returned to the shop. (Cond. 5) On or about 1st April 1908, being the morning following the incident referred to in the preceding article, the defender on his arrival at the shop instructed the pursuer to have the stock taken. On the succeeding day the pursuer received a message requesting him to call at the office of the defender's solicitor, and on attending there a notice was handed to him terminating his engagement, with a tender of one month's salary. The pursuer believes and avers that the defender came to Glasgow with the object of dismissing him as trade was dull and pursuer was in receipt of a considerable salary and commission, and the defender's efforts to get him to return to business and the apology which he granted, referred to in the preceding article, were made and given solely for the purpose of relieving the defender of any claim at the pursuer's instance in respect of the said assault. The said notice was a breach of the arrangement come to between the parties. The pursuer had a claim for commission, which he at once intimated, and he declined the sum offered, and had subsequently to raise an action in Court against the defender for both salary and commission, and for recovery of an address book containing the names and addresses of various makers whom defender dealt with, and which defender had wrongously taken away. This action was settled by the defender within a few days of the proof by paying pursuer a substantial sum and returning the book of addresses. The pursuer left defender's service on 2nd April 1908. (Cond. 6) In consequence of the pursuer having demanded an apology from the defender for said assault, and of his having made a claim against defender for wages and commission, the defender became actuated by feelings of malice towards the pursuer. With the view of gratifying these feelings, and in order to injure the pursuer in his character and reputation as a business man, and make it difficult for him to get employment elsewhere, the defender on or about 8th April 1908 wrote and dispatched to each manager of his various shops in the United Kingdom—in all about 50—a letter in the following terms:—

'Manchester, April 8th 1908.

'(Personally dictated by Mr Edgar.)

'The Manager,— . . . [*The letter is quoted supra in rubric*] . . . Yours faithfully,

'E. S. EDGAR.'

(Cond. 7) The statements in said letter of and concerning the pursuer are false, calumnious, and malicious, and contained serious imputations on his character and reputation as a shop manager. They falsely, calumniously, and maliciously represented and were intended to represent that the pursuer had betrayed the confidence which the defender had reposed in him as manager of the said shop in Glasgow; that he was an incompetent manager of said business; that he had been guilty of such inattention and neglect of the defender's interests, which it was his duty to promote, that the defender had been compelled to dismiss him, and that such dis-

missal was justified by the pursuer's conduct. The said statements have been extensively circulated and have become widely known in the trade and amongst the public, and have caused great suffering to the pursuer's feelings and damage to his character and business prospects. . . ."

The pursuer proposed the following issue:—"Whether on or about 8th April 1908 the defender wrote or caused to be written to the managers of the shops in the United Kingdom belonging to him a letter in the terms contained in the schedule hereto annexed; and whether the said letter or part thereof was of and concerning the pursuer, and falsely and calumniously represented that the pursuer had betrayed the confidence which the defender had reposed in him as manager of the defender's shop in Glasgow, and that he had been guilty of such inattention and neglect of defender's interests that the defender had been compelled to dismiss him, to the pursuer's loss, injury, and damage?"

On 30th December 1908 the Lord Ordinary (SALVESEN) found that the pursuer's averments were irrelevant to support the issue proposed by him, therefore disallowed the said issue and dismissed the action.

Opinion.—"The pursuer in this case was for many years in the employment of the defender, who carries on business as a jeweller in a large number of towns in England and Scotland. He has in all about fifty shops for the sale of his goods. In 1905 the pursuer became manager of one of these shops situated in Buchanan Street, Glasgow. As such he had latterly a salary of £5 per week with a commission on sales.

"In the end of March the defender came to Glasgow along with the heads of three of his departments to inspect the branch shop there. The pursuer says that he came with the object of finding fault with his management owing to the sales in the Glasgow shop having fallen off to a considerable extent; that he at once took exception to the condition of two or three trifling articles in the window; and that in the course of his complaints he assaulted the pursuer. The pursuer at once left the shop, and informed the defender by telephone that unless he received an apology he would not return. He was, however, induced to do so later in the day on receiving a written apology which was handed to him on the footing that it would be at once destroyed. Two days later pursuer received a letter from the defender's solicitors terminating his engagement.

"On 8th April the defender addressed a circular letter to each of the managers of his fifty shops, which is quoted at length in Cond. 6. It is this letter which forms the foundation of the present action of slander.

"The pursuer innuendoes the letter as representing that he had betrayed the confidence which the defender had reposed in him as manager of the shop in Glasgow; that he was an incompetent manager of said business; that he had been guilty of such inattention to the defender's interests, which it was his duty to promote, that the defender had been compelled to dismiss him, and that such dismissal was justified by the pursuer's conduct. In my opinion the letter will not bear the two former innuendoes, which are the most serious. The letter states that on the occasion of the defender's visit to Glasgow the shop of which the pursuer was manager had a very neglected appearance, which no doubt implied that the pursuer had failed to look after it properly. It also charges the pursuer with unpunctuality, with inattention to business, and lack of interest, and states that in consequence the defender had been reluctantly compelled in the interests of his business to dismiss the pursuer. There is no suggestion of incompetency nor of betrayal of confidence, except in the sense that the pursuer had fallen short of the standard of duty that the defender required of him; and the first and most important question which I have to consider is, whether such statements are actionable with or without an innuendo such as that proposed—in other words, whether if a person says of a servant who had ceased to be in his employment that he had dismissed him for inattention, unpunctuality, and lack of interest he must satisfy a jury of the truth of his statement or have to pay damages for slander.

"Counsel for the pursuer were unable to quote a single case in which an issue had been allowed at the instance of a dismissed servant against a former master in respect of statements analogous to those contained in the letter complained of. In two cases which approximate the present in their circumstances the averments were held to be irrelevant. The first is the case of *Vallance*, 10 S.L.T. 555—a decision of Lord Low in the Outer House. There it was held that to say of a lady's skirt cutter that a particular skirt which she had made was so badly cut as to show that she could not cut a skirt, and that she was therefore unfit for the post which she occupied, was not actionable, although it was observed that if the statements could be construed as reflecting upon her general competence a different conclusion might have been reached. The other case is that of *M'Donald*, 1907 S.C. 203, but the decision there is not helpful, because it proceeded on the view that the statement complained of was quite consistent with there having been no breach of duty on the part of the pursuer. The absence of authority, however, in favour of the pursuer's case affords a strong presumption against the view that the language complained of here is actionable according to the law of Scotland, for it is difficult to figure a more common case than one in which a master complains of his servant's neglect of the duties entrusted to him. My own view of the law has always been that it is not actionable to criticise adversely a person's conduct where the criticism does not imply an imputation upon his character or his general competence; and I find dicta throughout the opinions delivered by Judges in slander actions which support

this view. I refer, in the first instance, to the dictum of Lord President Inglis in the case of *Cockburn* v. *Reekie*, 17 R. 568, where he said that there was nothing slanderous or actionable in a managing clerk charging another with being incompetent for the duties of his office or with neglect of duty; and to that of Lord M'Laren in the same case, where he says—'We only give compensation for defamatory language, that is to say, language which conveys some definite imputation as to the character or conduct of the pursuer.' It may be that the Lord President's dictum goes too far, because it is well recognised that it may be actionable to assail a man's general competency for the occupation or profession by which he makes his living; but I think it may be implied from the issue proposed in the case of *Cockburn* that the pursuer's advisers recognised that a charge against him of having neglected his duties was not *per se* actionable.

"An even more instructive case is that of *Dun* v. *Bain*, 4 R. 317, where an article in a newspaper, attacking a tenant for his conduct of the farm, was held actionable only in so far as it contained an imputation on his honesty. Lord Shand, who gave the only reported opinion, said—'The imputation is one of indolent, slovenly, and reckless farming. It may possibly be said that there is also a charge against the tenant that he has violated or failed to fulfil the stipulations contained in his contract with the landlord. It has not been seriously maintained that these imputations will support an issue.' Now if a charge of indolence, slovenliness, and recklessness in the conduct of a farm is not actionable, I fail to see how a charge of unpunctuality, inattention, and lack of interest in the conduct of a shop can possibly be.

"I am accordingly prepared to dismiss the action as irrelevant. But in case a different view might be taken elsewhere, I think it right to express my opinion as to the other matters argued. In the first place, I think it clear that the letter was a privileged communication. It was addressed by the defender only to the managers of his other branch establishments, and not to members of the outside public. To these managers the dismissal of the pursuer might be a useful object lesson, and an incentive to their maintaining a high standard of efficiency. Being confined to them it could not affect the pursuer's prospects of obtaining employment elsewhere; and it is obvious that if some other jeweller had proposed to employ the pursuer, and had written to the defender for his character, the latter would have been privileged if he had addressed the same kind of communication to such inquirer. The case of *Hunt*, 1891, 2 Q.B. 189, is a strong authority in favour of the view now expressed. Lord Esher there said—'Can anyone doubt that a railway company, if they are of opinion that some of their servants have been doing things which, if they were done by their other servants would seriously damage their business, have an interest in stating this to their servants; and how can it be said that the servants to whom that statement is made have no interest in hearing that certain things are being treated by the company as misconduct, and that if any of them should be guilty of such misconduct, the consequence would be dismissal from the company's service—I cannot imagine a case in which the reciprocal interest could be more clear.' I need not say that that case is very much *a fortiori* of the present.

"If an issue were to be allowed in the present case it would therefore require to be one which contained malice; and the defender argued that there were no facts and circumstances here from which malice could reasonably be inferred. On this point I am against the defender. There had been undoubtedly an unpleasant altercation between the parties prior to the letter being written, in the course of which the pursuer had ultimately forced the defender to give him a written apology. The pursuer offers to prove that his attitude on this matter caused the defender to entertain feelings of malice against him, and that he wrote the letter to gratify these feelings. I think this is by no means improbable; and indeed it would be attributing a magnanimity to the defender which is not often met with if he did not feel resentful against the person who had only a few days before compelled him to 'eat humble pie.' Be this as it may, I am of opinion that the pursuer, if he is entitled to an issue at all, should not be non-suited on the ground that he does not aver facts and circumstances from which malice might reasonably be inferred.

"'The defender argued that want of probable cause ought also to go into the issue. I cannot assent. The privilege here was not of a high order, and certainly not comparable to the privilege of a person who gives information to the public authorities — the typical case in which an issue requires to be qualified by want of probable cause. On this matter I need only refer to the opinion of Lord M'Laren in *Milne* v. *Smith*, 20 R. 95, at p. 100, in which he says that 'the defence of probable cause would never be competent to a master in an action against him by a servant, or in any case where there was anything of a private relation of duty between the person said to have committed the slander and the person to whom it was addressed.'"

The pursuer reclaimed, and argued—The letter did not consist of criticism, but was a disparagement of the pursuer's business reputation calculated to injure him in that capacity, and was therefore actionable—*M'Iver* v. *M'Neill*, June 28, 1873, 11 Macph. 777; Odger's Libel and Slander (4th ed.), pp. 16, 30, 37, 49 and 62. When it was said of a man in trade that he was guilty of inattention and that his dismissal was necessary, it was an accusation that he was unfit for his job, which was well settled to be a slander—*M'Kerchar* v. *Cameron*, January 19, 1892, 19 R. 383, 29 S.L.R. 320; *Sturrock* v. *Greig*, July 3, 1849, 11 D. 1220; *M'Bride* v. *Williams*, January 28, 1869, 7 Macph. 427, 6 S.L.R. 273; *Oliver* v. *Barnett*,

November 19, 1895, 3 S.L.T. 163 (*per* Lord Kincairney in the Outer House). Moreover, it was a worse thing to say that a man was deliberately idle, than that he was not very able for his work. *Broomfield* v. *Greig*, March 10, 1868, 6 Macph. 563, 5 S.L.R. 367, was a different case from the present. There the alleged slander founded on by the pursuer was merely a strong statement of an opinion that the defender was entitled to hold. There was no authority for the proposition that words had to be judged according to whom they were written or spoken. If the words were clearly slanderous, an action lay entirely independently of the party to whom the letter was sent. The question had to be considered altogether apart from the question of privilege. At the same time it was admitted that the question of whether an innuendo was extractable from words depended upon who the party speaking or writing was, or the party to whom the words were addressed. In *Dun* v. *Bain*, January 24, 1877, 4 R. 317, 14 S.L.R. 248, there was nothing more than the use of highly coloured language. No distinction whatever existed between the case of public officials and private individuals. It was to be observed that the recipients of this circular letter were not people who were being found fault with by the defender. It was sent indiscriminately to the whole of his fifty managers. The report was thereby spread, with the result that the pursuer could not get employment. [Counsel also referred to *Foulger* v. *Newcomb*, June 17, 1867, L.R., 2 Ex. 327, and *Gallagher* v. *Murton*, February 8, 1888, 4 T.L.R. 304.] In conclusion, if the words used here were reasonably calculated to injure the pursuer in business, and if, as the letter was admittedly a privileged communication, malice was averred, the pursuer was entitled to have the verdict of a jury.

The defender argued—An issue was allowed only in the three following cases—(1) if a man's moral character was attacked; (2) if his business character was attacked; (3) where a special skill was necessary in a business, then a denial of that special skill was actionable. (1) and (3) were out of the present case. Accordingly the pursuer tried to make this out a trade libel. There was nothing else on record than a master's criticism of the conduct of his servant. Absolutely no question was raised as to the competency of the pursuer for his work. There was not a single case where accusations of inattention or unpunctuality had led to an issue. A master was entitled to say that his servant was negligent, unpunctual, and indolent. To say that did not involve an imputation on the ability of a man to do his business. It merely meant that the master considered that the servant's conduct was not up to his standard. The pursuer's counsel admitted that the innuendo that could be put on words was totally different when it was other employees and not the public who were written to. A statement was not necessarily slanderous because it might have the result of injuring a man in his business—Odger's Libel and Slander (4th ed.), p. 50; *Capital and Counties Bank* v. *Henty*, 1882, 7 A.C. 741; *Broomfield* v. *Greig* (*sup. cit.*); *Dun* v. *Bain* (*sup. cit.*). This case was *a fortiori* of these. A man was entitled to call his servant to account and criticise his work—*Agnew* v. *British Legal Life Assurance Company, Limited*, January 24, 1906, 8 F. 422, 43 S.L.R. 284. Though it was very injurious to say that a man had been dismissed, it involved no injury to his character.

LORD LOW—This is a very narrow case, but the opinion I have formed is that the pursuer is entitled to have the judgment of a jury as to whether this letter is a slander or not. I think that in ordinary circumstances the language of the letter would not have been actionable, but we must take into consideration that, as the letter itself shows, it was deliberately sent to some fifty managers of other shops. Now I think that that shows that the defender intended that that with which he charged the pursuer in the letter should be regarded as a very serious matter. Further, I think it is plain that if what he said in the letter was true, the pursuer would have very little chance of getting another position as manager of a jeweller's business such as he had occupied in the past. Proceeding entirely upon the special circumstances in this case, I think the pursuer must have an issue. As, however, it is not disputed that this is a case of privilege, malice must go into the issue.

LORD ARDWALL—This is a very narrow case indeed. I think as a rule that masters or employers may express opinions about persons employed by them whether they be servants, clerks, tradesmen, or others, without exposing themselves to actions of damages, unless in doing so they either, first, attack a person's moral character, or, second, attack his competency for the work or trade in which he is engaged. Further, I should say that if this were an ordinary case the words complained of here would not *per se* be held to be slanderous. But it was stated on both sides of the Bar—and I think it is a sound observation—that the innuendo that may be placed upon certain expressions depends to a greater or less degree upon the relation in which the person who is said to have uttered the slander stands to the person who is said to be slandered, and also to the person to whom the alleged slanders are uttered. Now here we have this peculiarity that this alleged slander was contained in a carefully written letter, bearing to have been personally dictated by the defender and sent to some fifty managers of branch shops all over the country—facts which, taken along with the language of the letter, assist the pursuer in maintaining that he is entitled to have an issue, because it is a very peculiar thing that such a letter should be sent to fifty managers about none of whom is it suggested that there was any complaint made as to their conduct.

I therefore think these circumstances

make it right that the pursuer should have an opportunity of submitting the letter to a jury and putting the question to them whether in the whole circumstances these words convey a calumnious meaning or not. Of course the pursuer will require to put malice in the issue, as the letter complained of was admittedly a privileged communication.

LORD JUSTICE-CLERK—I concur in what your Lordships have said. I think it must be kept in view that when you read the words of the letter contained in the schedule they must be treated as if they were in the body of the issue. It is merely for convenience that the letter is put into the schedule, and therefore in reading the issue you must read it as containing the whole of the letter, and in particular the words, "I was greatly pained to find that a manager who had always been well treated was causing me loss by his inattention and lack of interest, and I was reluctantly compelled in the interests of my business to dismiss him." Now taking it at the best for the defender, the fact that he sent this letter to his managers can only be explained by his having considered the conduct of the pursuer so serious that he must issue a warning to a large number of persons in the same position as the pursuer that they would be similarly treated if they were found acting as the pursuer was said to have done. I think that is a case that ought to be investigated and cannot be set aside on the ground of relevancy. I therefore think the pursuer must have an issue, and that it should read thus—"Whether on or about 8th April 1908 the defender wrote or caused to be written to the managers of the shops in the United Kingdom belonging to him a letter in the terms contained in the schedule hereto annexed; and whether the said letter or part thereof was of and concerning the pursuer, and falsely, calumniously, and maliciously represented that the pursuer had been guilty of such inattention and neglect of defender's interests, as manager of the defender's shop in Glasgow, that the defender had been compelled to dismiss him—to the pursuer's loss, injury, and damage?"

LORD DUNDAS was absent.

The Court recalled the interlocutor of the Lord Ordinary, and approved the following issue:—"Whether on or about 8th April 1908 the defender wrote or caused to be written to the managers of the shops in the United Kingdom belonging to him a letter in the terms contained in the schedule hereto annexed; and whether the said letter or part thereof was of and concerning the pursuer, and falsely, calumniously, and maliciously represented that the pursuer had been guilty of such inattention and neglect of defender's interests as manager of the defender's shop in Glasgow that the defender had been compelled to dismiss him—to the pursuer's loss, injury, and damage?"

Counsel for Pursuer (Reclaimer)—G. Watt, K.C.—Munro. Agents—Alex. Morison & Co., W.S.

Counsel for Defender (Respondent)—Morison, K.C.—Horne. Agents—J. & J. Ross, W.S.

Friday, June 4.

FIRST DIVISION.

CARMICHAEL'S EXECUTORS *v.* CARMICHAELS.

Writ — Testament — Holograph — Will Partly Printed, Partly Holograph — Validity.

After the death of A there was found a document signed by him but not adopted as holograph, which was partly printed and partly holograph. In it he appointed executors and purported to deal with his estate after his death. The holograph portion, taken by itself, and leaving out all printed matter, was intelligible.

Held that the holograph portion of the document was a valid testamentary writing.

Macdonald v. *Cuthbertson*, November 14, 1890, 18 R. 101, 28 S.L.R. 92, *applied.*

Succession—Bequest—Validity—Construction—Holograph Writings—Liferent or Fee.

In a holograph testamentary writing which named executors, following the name of the testator's widow, but without a governing verb, there came these words—"so long as she remains a faithful and dutiful wife, all my houses, lands, all money . . . musical instruments, except the piano, which is to become the property of I. my daughter. I desire, after the decease of my wife and myself, that the whole of the estate be divided as follows . . ." There followed a list of different amounts, or shares of remainder, "to be invested for" his six children. "My house . . . to be the equal property of all the six children . . . . anyone may sell his or her share only to a brother or sister, and only by consent of the other members of the family . . . . In the event of any one dying without issue, their money and property which they may receive from my estate must return and be equally divided amongst the brothers and sisters or the children of their families."

Held (1) that a trust had been constituted to be administered by the executors; (2) that a liferent of the estate had been given to the widow, which liferent was not to be forfeited on re-marriage; and (3) that the rights and interests of the children vested *a morte testatoris*, the restrictions on the sale of the shares of the house, and the provision as to the return of the