

stance is enough for me, and consequently upon the whole matter I agree with the Lord Ordinary's interlocutor.

LORD KINNEAR—I am of the same opinion. I agree with an observation which has been made more than once by Lord M'Laren in cases of this kind, that an extension to moveable rights, and especially to such documents as stock certificates, of the doctrine of special destinations in heritage, and of the restricted methods by which such destinations may be evacuated, is, as his Lordship said, a very artificial creation of modern law, and is perhaps founded upon questionable reasons; but I think with your Lordship that the law is so settled that we are bound by it. But then it is settled only to this effect, that such special destinations must be treated in the same way as special legacies which are held to be outside the general words of bequest by which a testator gives his whole estate, heritable and moveable, to particular persons. If that be so, it is, of course, always a mere question of intention in the particular case whether, when the two documents are compared and construed with reference to the circumstances in which they were taken or executed by the testator, he did or did not intend a special legacy to one person, or that the directions of his general will should receive effect. Upon the reasoning that your Lordship has given, I think in this case we must hold the testator's intention to be to dispose of these investments by the mutual settlement to which he and his wife were parties. Therefore I concur.

LORD GUTHRIE—I concur. I think we must, as your Lordships have said, find the evidence of Mr Paterson's intention under his own hand. At the same time, I cannot resist the conviction that what Mrs Paterson did after her husband's death points very strongly to it being the intention both of herself and her husband that the whole estate should be dealt with under the mutual settlement. But apart from that ground, I agree in thinking that sufficient is found under Mr Paterson's own hand, in the codicil, to show that such was his intention—a codicil to which his wife was a party.

LORD M'LAREN and LORD PEARSON were absent.

The Court adhered.

Counsel for the Pursuer (Reclaimer)—Cullen, K.C.—Umpherston. Agent—P. J. Hamilton Grierson, Solicitor of Inland Revenue.

Counsel for the Defenders (Respondents)—Chree—Hamilton. Agents—W. & J. Burness, W.S.

Wednesday, July 14.

FIRST DIVISION.

[Lord Salvesen, Ordinary.]

GOODALL v. FORBES AND OTHERS.

Process—Summons—Competency—Reparation—Slander—Issue—Accumulation of Defenders—Action against Different Defenders Concluding for Lump Sum of Damages.

In an action of damages for slander at the instance of a licence-holder against certain defenders, in respect of statements said to have been uttered by one of them, K, on their behalf, the pursuer craved decree for a lump sum against the defenders "conjunctly and severally, or otherwise severally, or according as their several liabilities shall be determined." The defenders pleaded that the action as laid was incompetent, on the ground that it concluded for a lump sum in respect of separate and distinct wrongs.

Held that the action was competent, inasmuch as the joint responsibility of the defenders for K's statements—which the pursuer averred—might be satisfactorily tried on an issue putting to the jury "whether the defenders, or one or other, and which of them, stated or caused to be stated" the statements complained of.

Slander—Issue—Counter Issue—Veritas—Averments—Sufficiency—Allegation that Public-House Frequented by Dissolute Men and Women.

In an action of damages for slander at the instance of a licence-holder, the pursuer obtained an issue whether the defenders stated that he was not conducting his business in a satisfactory manner in respect that dissolute men and loose women were allowed to frequent the premises. The defenders pleaded *veritas*.

Averments held sufficient to entitle the defenders to an issue of veritas.

On 11th April 1907 Alexander Goodall, wine and spirit merchant, Glasgow, brought an action against Andrew Forbes, J.P., Alexander Sinclair, J.P., John Battersby, J.P., J. Paton Maclay, J.P., all of Glasgow, and Robert Kyle, writer, 45 West Nile Street, Glasgow, in which he sought to have the defenders ordained, "conjunctly and severally, or otherwise severally, or according as their several liabilities shall be determined," to make payment of £3000 as damages for slander.

The following narrative is taken from the opinion (*infra*) of the Lord Ordinary (SALVESEN):—"This is an action of damages for slander of a somewhat unusual kind. The pursuer is the tenant of premises at 68 M'Alpine Street, Glasgow, in which he carried on business under a public-house licence from May 1903 to May 1907. He paid £1000 for the business, and expended £3000 in improving the shop. While carrying on the business the pursuer was also

employed as traveller by a firm of distillers in Fife.

"The pursuer in due course presented an application for the renewal of his licence to the Licensing Court held on 9th April 1907. Before the Court met there was served upon him a note of objections to the renewal of his licence, signed by Mr Robert Kyle, a writer in Glasgow. It bore to be on behalf of certain objectors named who were occupiers or owners of property in the neighbourhood of the pursuer's premises. The objectors asked the Court to refuse a renewal of the pursuer's certificate, for the following among other reasons—'The applicant is not a fit and proper person to hold a public-house licence;' 'the present holder is not conducting the business in a satisfactory manner, in respect that dissolute men and women of loose habits and easy virtue are allowed to frequent the premises.' A copy of the note of objections was lodged with the clerk to the Licensing Court.

"The pursuer appeared at the Licensing Court on 9th April, when Mr Kyle consented to the Magistrates granting his application for renewal under reservation of his right to appeal against their decision to the Licensing Appeal Court.

"On 19th April Mr Kyle lodged, in the names of the original objectors, a note of appeal to the Licensing Appeal Court against the decision granting a renewal of the pursuer's licence, and asking the Court to refuse the renewal. On 7th May—the date of the meeting of the Appeal Court—the pursuer attended with his agent, when the appeal lodged by Mr Kyle was called. Mr Kyle addressed the Court in support of the appeal, and repeated the statements contained in the objections. The hearing of the appeal was continued till the following day, when the appeal was sustained by a majority and the renewal of the pursuer's licence refused.

"It is admitted that certain of the parties for whom Mr Kyle professed to act were entitled to lodge objections to the renewal of the pursuer's licence; and had the pursuer's case been directed against them no action could have been founded on the statements made in the note and repeated before the Appeal Court, except on the footing that they were made maliciously. The pursuer's case, however, is that the objections were not really made by these parties, but by the defenders, who were office-bearers or prominent members of an association in Glasgow known as the Citizens' Vigilance Association, in pursuance of a systematic attack which they were conducting against members of the licensed trade. Mr Kyle was the salaried law agent of the Association, and although it is admitted that he obtained a mandate in his favour from certain persons, who were owners or occupiers of property in the neighbourhood, authorising him to sign and lodge objections to the granting of a renewal of the pursuer's licence, it is averred that none of these parties knew that any statement was being put forward on their behalf which contained any reflec-

tions on the pursuer's personal character or his method of conducting his business. It is said that on obtaining this mandate the defenders acted entirely on their own initiative, and never at any stage of the proceedings consulted with the nominal objectors; that the latter never knew what objections had been lodged in their names, and gave no authority for an appeal being presented to the Licensing Appeal Court. In short, the case is that the real parties who initiated and conducted the proceedings against the pursuer were the defenders, and that they used the names of the parties for whom they professed to act merely as a cloak under which they might pursue their policy of endeavouring to reduce the number of licensed premises. As none of the defenders were owners or occupiers of property in the district, it was contended that they had no privilege in making the statements complained of."

The following averments and answers, *inter alia*, appeared on record—"(*Cond. 4*) The statements quoted with regard to the pursuer were false, calumnious, and malicious, and were made without probable cause, and contained most serious charges against the pursuer's character and reputation, and against his conduct as a licence-holder. He was very greatly injured in his feelings by such charges being made against him, and was wholly at a loss to account for their origin. The statements in answer are denied. (*Answer 4 for Andrew Forbes, Alexander Sinclair junior, and John Battersby*)—These defenders did not authorise or lodge the said objections. (*Answer 4 for Joseph Paton Maclay*)—Admitted that the said statements contained a charge against the pursuer in respect of the manner in which he was conducting his business, as set forth in the said objections. This defender believes that the said statements were true. *Quoad ultra* denied. (*Answer 4 for Robert Kyle*)—Admitted that the said statements contained a charge against the pursuer in respect of the manner in which he was conducting his business, as set forth in said objections, and explained, under reference to Answer 11 for this defender, that the said statements were true. [Explained and averred that during the year immediately prior to the lodging of said note of objections in April 1907, dissolute men and women of loose habits who were living in the farmed-out houses in the tenement in which the pursuer's premises were situated, and in the back tenement immediately behind the pursuer's licensed premises, and in other adjoining tenements, were allowed to and did frequent the said public-house, and that during the months of January, February, March, and April 1907, prior to the lodging of said note of objections, and during the four months immediately preceding, and particularly on Saturdays and Mondays of each week during the said period, many of the said women who lived by prostitution and the men who consorted with them were allowed to and did habitually frequent the pursuer's said public-house, and were served with drink

there. The said women were in the habit of accosting men both inside the pursuer's said premises and on the street immediately opposite the premises. This happened to Samuel Walker, West George Street, Glasgow, and to other men whose names and addresses are not known to this defender. The said women, or most of them, lived under assumed names, and were known to their associates and in the district only by nick-names or their Christian names. Since the refusal of the pursuer's licence on 8th May 1908, many of them have disappeared or have left the district, and cannot now be traced. The character of the said women and of their male associates, and the frequenting the pursuer's public-house by them, as above stated, were well known to the pursuer.] *Quoad ultra denied.*" (The words within square brackets were added on amendment in the Inner House.) — "... (Cond. 8) Immediately prior to the meeting of the Licensing Court and Licensing Appeal Court of Glasgow in April and May 1907, the defenders were members of the said Citizens' Vigilance Association, and were also members of the Licensing Laws Executive Committee of said association, and of a sub-committee of said association, or of one or other of said committees. The said association, and the said committees and the defenders as members of said association, were opposed to the renewal of pursuer's licence, and in stating the objections complained of the defender Kyle was representing himself and the other defenders; and he put forward said objections on their behalf, acting under their employment and on their instructions and with their full knowledge and consent. The said Robert Kyle was at the time the salaried law agent of the said association. The said Andrew Forbes was president; the said Alexander Sinclair junior was honorary secretary; the said John Battersby was paid organising secretary, and a member of the Licensing Appeal Court. The said J. P. Maclay had been the first president, and was one of the executive committee of and the principal subscriber to the association, and he took a prominent part in formulating the said false and slanderous statements, and presenting the same in the Licensing Court and Licensing Appeal Court. The said Robert Kyle, with the knowledge and approval of the other defenders, obtained by means of emissaries of the said association a pretended mandate in his favour, professing to authorise him to sign and lodge on behalf of the nominal objectors objections to the granting of a renewal of pursuer's licence. Some of the signatories to the said mandate had no qualification under the statute to object to pursuer's licence, and in the case of at least one of them, the said Sarah Cairnduff, her signature was adhibited by one of the emissaries of the said association. None of the parties whose names appeared on the said mandate knew that any statement was being put forward on their behalf which contained any reflection on the pursuer's personal character or his method of conducting his business. In

point of fact, the majority of said parties^s had no knowledge whatever with regard to the pursuer. None of the said nominal objectors had any definite idea as to what was intended to follow on the mandate. Having obtained the said mandate, the said Robert Kyle and the other defenders thereafter acted entirely on their own initiative, and never at any stage of the subsequent proceedings consulted with the nominal objectors. The whole expenses of and connected with the opposition to pursuer's licence were defrayed from the funds of the said Vigilance Association. The said Robert Kyle, authorised and instructed by the other defenders, and acting in concert with them, attended at the said Licensing Court and pretended to the members of the Court that he represented the said nominal objectors, although he and the other defenders well knew that the real objectors were the defenders. The decision of the said Licensing Court to grant a renewal of the pursuer's licence was not communicated by the said Robert Kyle, or by any of the other defenders, to the nominal objectors, who remained in entire ignorance of the same; but notwithstanding this the defenders, immediately on said decision being pronounced, resolved, without the slightest authority from the persons whose names they were using, to lodge the said appeal to the Licensing Appeal Court, which they lodged and presented accordingly in their own interests. ... (Answer II for Robert Kyle)—Admitted that the statements contained in said objections were made concerning the pursuer, and represent that the pursuer had failed to conduct his business in a satisfactory manner, in respect that he allowed dissolute men and loose women to frequent his premises. *Quoad ultra denied.* Explained that the pursuer was at the date of his application for renewal of said licence employed as a commercial traveller for a firm of distillers, and that as his time and attention were occupied in the performance of his duties as said traveller he was unable to give proper attention to the said public-house business, and was in that respect in the opinion of the objectors not a fit and proper person to hold a public-house licence. Said objections did not represent that the pursuer was a person of bad character. The pursuer obtained a renewal of his licence at the Licensing Court for the City and Royal Burgh of Glasgow, held in or about April 1908."

The defenders pleaded, *inter alia*—“(1) The conclusions of the summons are incompetent, in respect they conclude against the defenders for a lump sum as damages in respect of separate and distinct wrongs.”

[This plea was added on amendment in the Inner House.]

The defender Kyle also pleaded—“*Veritas.*”

The pursuer proposed certain issues and the defenders a counter-issue.

On 27th June 1908 the Lord Ordinary (SALVESEN) approved of three of the pursuer's issues as proposed, with amendment, and disallowed the counter-issue.

Opinion.—“... [After the narrative *ut supra*] . . . The first question I have to decide is whether the statements complained of are defamatory. The pursuer proposes an issue which innuendoes the statement that ‘the applicant is not a fit and proper person to hold a public-house licence,’ as meaning that the pursuer was a person of such bad character that he was unfit to hold a public-house licence. In my opinion the statement is not reasonably capable of being so construed. Unfitness to hold a public-house licence may be due to various causes, and does not necessarily imply any imputation on character. On the other hand, that such a statement may be injurious to a person who is already conducting a licensed business is, I think, plain, and still more so to say of such a person that he conducts his business in an unsatisfactory manner in respect that dissolute men and women of loose habits and easy virtue are allowed to frequent the premises. The very object of the objectors in making these statements was to induce the Appeal Court to refuse the renewal of the licence; and it is vain for the defenders to contend that the statements are not capable of a defamatory meaning. It is sufficient, I think, to make the statements actionable, if they were false, that they were calculated to injure the pursuer’s business, and there can be no better proof that injury resulted than that the licence was withdrawn as the direct result, according to the pursuer, of these slanders.

“The next question is whether the statements were privileged, and on this head I must in the meantime assume the truth of the pursuer’s averments. If the objections were really, as he says, the objections of persons who had no title to lodge objections or to appear at the Court at all, then I think there was no privilege; and the mere fact that they had induced certain persons to give them a general mandate to lodge objections in their name would not necessarily protect them. Much would depend on the terms of the mandate, which is not properly before me, and on the authority which was thereby or otherwise conferred upon them by the persons truly interested. Certainly as regards the statements made in the note of appeal and at the Appeal Court, if it be true that the appeal was taken without the knowledge or consent of any of the nominal objectors the defenders cannot successfully plead privilege; and of course the statements there made are really those that involve the serious question in the case.

“A distinction was attempted to be drawn between Mr Kyle and the other defenders, because the pursuer avers that Kyle was acting on behalf of the other defenders and on their instructions; and a law agent who makes statements in judicial or *quasi* judicial proceedings, on behalf of third parties, is undoubtedly in a privileged position. At the same time it was said that Mr Kyle was an official of the Association, and was thus acting not merely as a law agent, but on his own behalf; and if this be so, no privilege attaches to his

actings. It is interesting in this connection to note that the defenders deny that Mr Kyle acted on their behalf. If this be the case, and he did not act on behalf of the objectors, he would have no privilege at all *qua* law agent; and I think it is better that this question should be kept open so that the Judge who presides at the trial may direct the jury in accordance with the evidence.

“The issues which I accordingly propose to allow are the second, fourth, and sixth issues (*v. infra*). But, at the request of the pursuer, I shall allow him to insert in each of these issues the statement as to his not being a fit and proper person to hold a public-house licence. As the two statements separately, and at all events together, seem to me to be a clear slander of the pursuer’s business as a trader, I think it is unnecessary that they should be innuendoes.

“The defenders propose the following *counter issue*:—‘Whether the pursuer, at and prior to April 1907, failed to conduct his public-house business at 68 M’Alpine Street, Glasgow, in a satisfactory manner, in respect that dissolute men and loose women were allowed to frequent said premises.’ This counter issue precisely meets at least a substantial part of the pursuer’s issues; but it is open to the objection that there is no specification upon record of any facts upon which it is based. If the slanderous statements were made in good faith the defenders ought to know the grounds upon which they were made, and to give the pursuer such notice as to enable him to meet the charges made against him. They are really pursuers of this proposed counter issue, and, as it is absolutely unsupported by specific averments, I have no option but to disallow it.”

The *issues allowed* were—“(1) Whether in or about the month of April 1907 the defenders, or one or other, and which of them, wrote or caused to be written and sent to the pursuer, and lodged with the Clerk to the Licensing Court of the City and Royal Burgh of Glasgow, objections to the renewal of a public-house licence held by the pursuer for premises at 68 M’Alpine Street, Glasgow, in the following terms, namely, ‘The applicant is not a fit and proper person to hold a public-house licence,’ and ‘the present holder is not conducting the business in a satisfactory manner, in respect that dissolute men and women of loose habits and easy virtue are allowed to frequent the premises’? Whether the statements in said objections, or part thereof, were of and concerning the pursuer, and were false and calumnious, to the pursuer’s loss, injury, and damage? (2) Whether at the Licensing Court of the City and Royal Burgh of Glasgow, held on or about 9th April 1907, the defenders, or one or other, and which of them, stated or caused to be stated objections to the renewal of a public-house licence held by the pursuer for premises at 68 M’Alpine Street, Glasgow, in the following terms, namely, ‘The applicant is not a fit and proper person to hold a public-house licence,’ and

'the present holder is not conducting the business in a satisfactory manner, in respect that dissolute men and women of loose habits and easy virtue are allowed to frequent the premises'? Whether the statements in said objections, or part thereof, were of and concerning the pursuer, and were false and calumnious, to the pursuer's loss, injury, and damage? (3) Whether at the Court of Appeal from the Licensing Court of the City and Royal Burgh of Glasgow, held on or about the 7th and 8th days of May 1907, the defenders, or one or other, and which of them, stated, or caused to be stated, objections to the renewal of a public-house licence held by the pursuer for premises at 68 M'Alpine Street, Glasgow, in the following terms, namely, 'The applicant is not a fit and proper person to hold a public-house licence,' and 'the present holder is not conducting the business in a satisfactory manner, in respect that dissolute men and women of loose habits and easy virtue are allowed to frequent the premises'? Whether the statements in said objections, or part thereof, were of and concerning the pursuer, and were false and calumnious, to the pursuer's loss, injury, and damage? Damages laid at £3000."

The defenders reclaimed, and argued on the record as amended—(1) The action as laid was incompetent in respect that it concluded for a lump sum against different defenders in respect of separate wrongs—*Taylor v. M'Dougall & Sons*, July 15, 1885, 12 R. 1304, 22 S.L.R. 869; *Barr v. Neilsons*, March 20, 1868, 6 Macph. 651, 5 S.L.R. 391; *Hook v. M'Callum*, February 25, 1905, 7 F. 528, 42 S.L.R. 399; *Flemings v. Gemmill*, 1908 S.C. 340, 45 S.L.R. 281; *Ellerman Lines, Limited v. Clyde Navigation Trustees*, 1909 S.C. 690, 46 S.L.R. 472. The respondent's contention that this was a joint slander was not supported by the averments on record, for no case of combined action was averred. Neither the record nor the issues disclosed such a case, which was now put forward for the first time to meet the plea of competency. In taking these appeals Kyle was acting for different parties—he was their "salaried law agent"—that was not combination. The form of issue negated any idea of conspiracy or combination, for it put to the jury "whether the defenders, or one or other, and which of them," made the statements complained of. (2) The record as amended contained averments sufficiently specific to support the plea of *veritas* and the counter issue—*Mason v. Tait*, July 10, 1851, 13 D. 1347; *Carmichael v. Cowan*, December 19, 1862, 1 Macph. 204.

Argued for respondent—(1) The action was competently laid, for the slander complained of was jointly invented and uttered. In making the statements in question at the Appeal Court, Kyle was acting as the reclaimers' agent—he was their mouth-piece. [Counsel for respondent stated that he abandoned the first two issues and asked merely for the third, viz., that relating to the Appeal Court.] (2) The Lord Ordinary

had rightly refused the counter issue. The reclaimers' averments were not sufficiently specific to support it, or to enable the respondent to procure evidence to rebut it. The counter issue ought therefore to be disallowed—*M'Neill v. Rorison*, July 15, 1847, 10 D. 15, at p. 32; *M'Roosie v. Ironside*, November 14, 1849, 12 D. 74, at p. 75 (foot); *Hunter v. Macnaughton*, June 5, 1894, 21 R. 850, 31 S.L.R. 713.

At advising—

LORD PRESIDENT—The question raised was what were to be the issues in an action where certain persons in Glasgow are sued for slanderous statements alleged to have been made in connection with the pursuer's licence at the Licensing Court and the Court of Appeal. A great deal of the difficulty of the case has been removed by the pursuer, in the argument before your Lordships, not insisting on the first two issues, which had to do with statements made at the Licensing Court. Your Lordships are familiar with the circumstances which bear upon the case, inasmuch as they were fully inquired into in the recent case which was decided by your Lordships in connection with the reduction of the determination of the Appeal Court in refusing this very licence, and undoubtedly there would have been questions of difficulty if these issues had been insisted upon; but, as it is, the only issue for the pursuer that your Lordships have to deal with is the third issue. Now that third issue as approved by the Lord Ordinary runs thus—
". . . (quotes third issue allowed, v. sup.)
. . . ."

It seems to me that under that issue the matter will be satisfactorily tried. It is of course admitted by both parties that the statements as made were only actually made by Kyle, but it is said that the other defenders were responsible for him. I think the question of the responsibility of the other defenders for these statements made by Kyle will be quite satisfactorily tried upon this issue. If the pursuer cannot show that the other defenders were truly responsible, and if it appears that Kyle made the statements on his own initiative and responsibility, and not in respect of what the defenders had, in one sense or another, told him to do, then of course he would fail. I think it necessary to say that I am not using these words with a view to any accuracy of statement. There may be rather delicate questions arising at the trial as to whether, if the particular statements were not authorised by any particular defender, they were made by Kyle within the scope of the authority committed to him by that defender, and I am not giving any indication upon those matters at all. All that will be for the Judge at the trial in charging the jury. All I need say at present is that the matter can be quite satisfactorily tried on this issue.

The only other matter is the matter of the counter-issue which is proposed for the defender Kyle—
". . . (quotes proposed counter-issue, v. Lord Ordinary's opinion,

last paragraph). . .” The Lord Ordinary disallowed that issue upon the ground that there was not sufficient specification of facts to support it. I have come to the conclusion that the specification given by the defender is all that can be fairly asked to be given. He has given such names as he could. He has certainly not given many, but at the same time I do not think that this is a class of statement where it could be expected that he should be able to give names. After all, these matters really depend upon the particular kind of facts with which you are dealing, and I think that accounts for what may be called the seeming divergency between the cases that were quoted to us. There was, for instance, the case where a clergyman had been slandered by being called a drunkard (*Hunter v. MacNaughton*, 21 R. 850) and the reply was that he was a drunkard. There it was quite evident that if you were going to say that a clergyman was a drunkard, you must be in the position of being able to prove several times and occasions on which he was drunk, and it was held that he would not have been entitled to an issue without averring them. On the other hand, the Queensferry Street case (*Mason v. Tait*, 13 D. 1347) is almost exactly on all fours with this, where the same class of imputation about a public-house was made, and there a counter-issue in general terms was given. Accordingly, I think we may approve of this counter-issue.

There was only one other matter mooted in respect to this, which I mention just to dispose of it. It was said that the counter-issue would complicate the matter, because it was only asked for by Kyle and not asked for by the other defenders. I do not think it complicates the matter at all. The other defenders have chosen not to take a counter-issue. Well, the only result of that is that they cannot prove the facts that the counter-issue raises. They have chosen to risk their case upon the belief that they can show that the pursuer will fail upon the primary issue, and that is their affair. After all, these trials, although they are all to be tried together, are separate trials in the sense that the case of each defender is raised separately upon the leading issue, and a verdict upon the leading issue will have to specify each and all of the defenders and say whether the verdict applies to him, and therefore there will be no difficulty in keeping the counter-issue appropriate to the only person who has raised it.

LORD KINNEAR—I agree upon all the points. The question whether those of the defenders who made no actual statement themselves on the subject complained of to the Court of Appeal did or did not cause the agent Kyle to make such statements, is a question of fact which must go to the jury. It is a question, no doubt, which may be to a greater or less degree determined by considerations of law, but it will be for the judge who presides at the trial to explain such considerations to the jury, and there is really no difficulty raised by

the form of issue in distinguishing the functions of the judge and jury on that matter. I think that the difficulties that are supposed to arise upon the counter-issue must also be disposed of, so far as any such may exist, by the presiding judge. I therefore agree that the third issue proposed by the pursuer and the counter-issue proposed by Mr Kyle should be allowed.

LORD PEARSON—I also agree.

LORD M'LAREN was absent.

The Court recalled the Lord Ordinary's interlocutor, approved of the third of the issues proposed for the pursuer, approved of the counter-issue proposed for the defender Robert Kyle, and appointed the said issue and counter-issue to be the issues for the trial of the cause.

Counsel for Pursuer (Respondent)—Watt, K.C.—R. S. Horne. Agents—Alex. Morison & Company, W.S.

Counsel for Defenders (Reclaimers)—Morison, K.C.—Duncan Millar. Agents—Clark & Macdonald, S.S.C.

Thursday, July 15.

FIRST DIVISION

[Lord Guthrie, Ordinary.

KEMP & DOUGALL v. THE DARN-GAVIL COAL COMPANY, LIMITED.

Master and Servant—Reparation—Workmen's Compensation Act 1906 (6 Edw. VII, c. 58), sec. 6—Relief—Negligence—Defective Plant—Liability of Colliery Company for Injury Caused to an Employee of Parties not under Contract to them through their Defective Waggon when Beyond their Premises.

A colliery company contracted with a railway company for the carriage of coals to a vessel at G., to be delivered alongside the vessel. The coals were conveyed in waggons hired for the purposes of the colliery from a firm of waggon builders. At the docks, which belonged to the railway company, the waggons were taken over by a firm of stevedores for the purpose of loading the ship, under a contract between them and the railway company. To load the ship the waggons had to be run up a gradient on to a platform and there tipped. One of the stevedores' workmen, who was engaged in running a waggon down again to the railway lines, was injured through a defect in the brake of the waggon. The workman having recovered compensation under the Workmen's Compensation Act 1906 from his employers, they claimed relief from the colliery company on the ground that it was in fault in supplying a defective waggon. *Held (diss. Lord Johnston, and rev. judgment of Lord Guthrie, Ordinary)*