the consignation in the hands of the Sheriff-Clerk was, as here, voluntary, this was regarded as of no materiality, and the arrestability was so fully recognised that in the first discussion the point was not debated in the Inner House, and it was only because the case was sent on another question to the whole Court that on the suggestion of Lord Fullerton the question of the arrestability in the hands of the Sheriff-Clerk was embraced in the reference. Two only of the Judges entertained any doubt on the point—Lord Moncreiff and Lord Jeffrey—and even they, though doubting the principle, held themselves bound by the authority of *Lockwood's* case *supra*. The case of *Pollock* is of the greater importance for my present purpose, that what was arrested was the interest of the consignor, which could only be an interest on a balance in account, or in reversion. Lord Wood expresses, I think, the opinion of the Court when he says "arrestment in the hands of the Clerk of Court is competent, subject to the limitation that the object of the consignation shall not be thereby interfered with." And Lord Fullerton explains the principle on which the arrestability of the fund rested, thus—"It rests on this, that it is held to be a conditional debt. It is what may be due to one or any given number of the parties in the process in which it was consigned. It is arrestable, therefore, by the creditors of any one of the claimants in the process, subject to the result of the process. It is a conditional debt, which becomes payable either to one of the claimants, or to the consignor, in the event of none of the claimants being found entitled to it. This last is the case here." These words of Lord Fullerton are expressly applicable to the circumstances of the case before him, which was a multiplepoinding. But they are equally applicable to the circumstances of the present case, and recognise that the consignee is in the position of debtor, and though he may be debtor to the consignor in reversion, is necessarily debtor primarily to the person for whose security and satisfaction the consignation has been made, whose claim, as it happens in this case, is admitted as the basis of the consignation, though I do not think that that is essential, and who must be satisfied out of the consigned money before there can be any reversion for the consignor.

I have pointed out that the validity of the arrestment must be decided as at 5th December 1910. What happened on 21st December 1911 does not affect that question. As the arrestment to found jurisdiction laid no nexus on the subject, the parties concerned were entitled to transact about the arrested subject as they pleased. But be it noted that the common debtor got full value for the sum consigned in the comprehensive settlement of claims arising in the action in which the consignation was made, and also outside that action.

I therefore conclude with the learned Sheriff-Depute that the arrestment to found jurisdiction in this case was good.

LORD MACKENZIE was absent.

The Court pronounced this interlocutor—

"Sustain the appeal: Recal the interlocutor of the Sheriff, dated 2nd August 1911: Revert to and affirm the interlocutor of the Sheriff-Substitute, dated 13th March 1911: Of new dismiss the action, and decern. . . ."

Counsel for the Pursuers and Respondents — Graham Stewart, K.C. — T. G. Robertson. Agents—Whigham & Macleod, S.S.C.

Counsel for the Defender and Appellant —Sandeman, K.C.—W. T. Watson. Agents —Gordon, Falconer, & Fairweather, W.S.

Tuesday, March 19.

FIRST DIVISION.

[Lord Dewar and a Jury.

BERNHARDT *v.* ABRAHAMS.

Reparation — Slander — Proof — Foreign Words—Innuendo.

Where words, alleged to be slanderous, are spoken in a foreign language, not only must they be set forth in the record as having been spoken in that language, but the English equivalent must be set forth in the same way as an innuendo is set forth; they cannot be proved to have been spoken in a different language from that set forth in the record and in the issue.

Martin v. *M'Lean*, March 7, 1844, 6 D. 981, *followed*. *Anderson* v. *Hunter*, January 30, 1891, 18 R. 467, 28 S.L.R. 324, *distinguished*.

Proof — Slander — Innuendo — Innuendo not Spoken to by Witnesses.

A letter which a pursuer innuendoed as meaning that he was a dishonest servant was not at most shown by the defender to more than three persons. To none of these was the innuendo put at the trial, nor did any of them say he took that meaning from the letter. The pursuer obtained a verdict.

The Court *set aside* the verdict and granted a new trial.

William Bernhardt, commercial traveller, Govanhill, Glasgow, *pursuer*, raised an action of damages for slander against Benjamin Abrahams, carrying on business under the firm name and style of P. Abrahams & Company, tobacco and cigar merchants, Gorbals, Glasgow, *defender*.

Two issues were allowed. The first—"Whether, on or about 5th June 1910, and in the defender's warehouse in Main Street, Gorbals, Glasgow, the defender falsely and calumniously stated to Solomon Crivan, tobacco and cigar merchant, 13 Robson Street, Govanhill, Glasgow, that he, the defender, had lost an action which the firm of P. Abrahams & Company had raised in or about May 1910 in the Sheriff

(Small Debt) Court of Lanarkshire at Hamilton, against Mrs Angelina Verrechia, confectioner, Motherwell, owing to the pursuer having given false evidence upon oath in said action, or used words of like import and effect concerning the pursuer?" The second — "Whether, on or about 8th or 9th June 1910, and at the said Solomon Crivan's shop in Argyll Street, Glasgow, the defender exhibited to the said Solomon Crivan, and whether the said Solomon Crivan, at the defender's request, read a letter which he, the defender, had received from his solicitor, Mr Wilson, solicitor, Motherwell, dated 3rd June 1910, and whether the said letter is, in whole or in part, of and concerning the pursuer, and falsely and calumniously represents that the pursuer, in his position of trust as defender's traveller, had betrayed such trust, and was a dishonest servant to the defender?"

It appeared that the statement complained of in the first issue, if made, was made in Yiddish not in English, and at the trial the innuendo sought to be taken out of the letter mentioned in the second issue was not spoken to by any witness [*v.* opinion of Lord President *infra*].

The case having been tried on 14th and 15th November 1911 before Lord Dewar and a jury, and the jury having returned a verdict for the pursuer and assessed the damages at £100 for the first issue and £200 for the second issue, on 5th December the Court (with the addition of Lord Dewar, who presided at the trial) granted a rule to show cause why the verdict should not be set aside.

The hearing on the rule took place on 5th March 1912.

Argued for the pursuer and respondent — The verdict was not contrary to the evidence. The English words were a correct translation of the Yiddish. In *Anderson* v. *Hunter*, January 30, 1891, 18 R. 467, 28 S.L.R. 324, words spoken in Gaelic were allowed in English in the issue. In any case the objection came too late now; the defender should have asked for a ruling that there was no evidence to go to the jury and taken exception to the ruling if the case were not withdrawn, as was done in *Martin* v. *M'Lean*, March 17, 1844, 6 D. 981. (2) As to the second issue the jury were entitled to draw their own conclusions as to whether the letter was slanderous and would bear the innuendo. [The pursuer also argued that the damages were not excessive, with which matter the Court did not find it necessary to deal.]

Argued for the defender and appellant—There was no evidence to support the verdict on either issue. As to the first issue, it was true that they might have asked the Judge to direct the jury that there was no evidence, or to withdraw that issue from the jury, and then have, if necessary, excepted, as was done in *Martin* v. *M'Lean* (*cit. sup.*), but it was still open to them to object that there was no evidence that the English words in the issue were ever spoken. [The LORD PRESIDENT referred to *Zenobio* v. *Axtell*, 1795, 6 T.R. 162.] In *Anderson* v. *Hunter* (*cit. sup.*) the Gaelic words were apparently omitted from the issue by consent, but they appeared on record. In any case there was really no evidence of such words, English or foreign, being spoken. The evidence did not come up to what was regarded as the low water-mark of what was sufficient—*Friend* v. *Skelton*, March 2, 1855, 17 D. 548. (2) As to the second issue, it was necessary in private letters to prove that the persons who read them drew the slanderous inference from them contained in the innuendo. That was not proved here.

At advising—

LORD PRESIDENT—In this case two issues were sent before the jury, and I shall deal with them separately. The first issue is—"Whether, on or about 5th June 1910, and in the defender's warehouse in Main Street, Gorbals, Glasgow, the defender falsely and calumniously stated to Solomon Crivan, tobacco and cigar merchant, 13 Robson Street, Govanhill, Glasgow, that he, the defender, had lost an action which the firm of P. Abrahams & Co. had raised in or about May 1910 in the Sheriff (Small Debt) Court of Lanarkshire at Hamilton against Mrs Angelina Verrechia, confectioner, Motherwell, owing to the pursuer having given false evidence upon oath in said action, or used words of like import and effect concerning the pursuer?"

Now that issue asks whether the defender had used certain defamatory words, which defamatory words are set forth in the English language. It appears from the evidence that the words which were used were not spoken in the English language at all, but that they were spoken in Yiddish, and the English which is given in the issue, according to what one of the witnesses said, is the equivalent of the Yiddish words which were used.

I think it is settled by the case of *Martin* v. *M'Lean*, 6 D. 981, that where words are spoken in a foreign language, not only must they be set forth in the record as having been spoken in that language but the English equivalent must be set forth in the same way as an innuendo is set forth, that is to say, you must aver that the proper meaning of the foreign words spoken was in English so and so. And in order to prevail you must prove two things—you must prove, first of all, that the words actually were spoken; and secondly, you must prove that the English meaning of the words so actually spoken was what you aver the meaning is; and you cannot in an action of slander substantiate the issue in which words are given in the English language by proving that certain words were spoken in a foreign language.

And accordingly upon that matter I think it quite evident that the case failed altogether and that the jury ought to have been directed by the Lord Ordinary to find for the defender on that issue. The pursuer argued before us that inasmuch as in

Martin's case the matter was dealt with by a bill of exceptions, and inasmuch as here no exception was taken at the time, the matter was foreclosed. I do not think that argument can prevail. I think objection might have been taken to any more evidence being led upon that branch of the case. I think the Lord Ordinary might have been asked, when it came out that the words were spoken in Yiddish, to stop the case upon that branch, and if he had refused to stop it I think an exception might have been taken to his ruling, and that exception might have been upheld. I do not assume that he would have refused to give such a direction, but rather that he would have followed the case of *Martin* if his attention had been called to it and stopped the trial as regards the further prosecution of the first issue. But although that was not done, the question simply remains, Has the pursuer proved the first issue? Proof there is none, because the words set forth in the first issue never were used. Nobody said these words in English. And consequently the first consideration in a slander action being that it is necessary to show that the defender used the words imputed to him, that first necessity has here not been complied with and the case perishes.

I ought, I think, to say that in the case of *Anderson* v. *Hunter*, 18 R. 467, where an issue was allowed in English, it was only allowed, first, because the words in Gaelic, which was the language used, were set forth in the record, whereas the words in Yiddish in this case are not; and secondly, words in Gaelic being averred, and there being, I take it, no question as to the translation, the issue was put in English of consent of both parties, and therefore that case does not form a precedent. And I can only say that I am still further confirmed in my view by finding that the English practice is well settled in that matter, namely, that foreign words must be proved to be spoken, and that the English meaning has to be proved exactly as the innuendo is proved.

That disposes of the case so far as rested upon the first issue.

Now the second issue is whether at a particular date and at a certain place the defender exhibited to Solomon Crivan a certain letter, "and whether the said letter is in whole or in part of and concerning the pursuer, and falsely and calumniously represents that the pursuer, in his position of trust as the defender's traveller, had betrayed such trust, and was a dishonest servant to the defender?" Now the fact that the letter was handed to Solomon Crivan was proved. There is no question about that. The whole point therefore rested upon whether the innuendo was proved or not.

Now when a document is, as here, what may be called a more or less private communication—that is to say, not like an article in the newspapers which is published to all the world—I have never heard of an action for slander in which it was sought to prove the innuendo without putting the innuendo to the persons who received the letter and upon whose mind necessarily—if any damages were to be proved at all—the injurious and slanderous meaning of the letter must be held to have been operative. But when we come to the evidence in this case we find that the innuendo is never put to the witnesses and never proved by the witnesses at all.

There are three places in which the matter is mentioned in the evidence. First of all Solomon Crivan is asked about it. He says—"I read the letter. I thought it was not a very nice one. I thought it looked as if Bernhardt had committed perjury." Well, that would be good evidence if the innuendo as tabled by the pursuer had been that the letter represented him as committing perjury. But that is not the innuendo tabled by the pursuer. The innuendo is that the letter "falsely and calumniously represents that the pursuer, in his position of trust as the defender's traveller, had betrayed such trust and was a dishonest servant to the defender"—a very different kind of accusation from the accusation of having committed perjury in the witness-box.

Well, then, the next person who is asked about the letter is a man named Harris, to whom Solomon Crivan showed it, and he says—"I remember Crivan calling on me in the month of June while the pursuer was still with us. He said he had a letter in his pocket which he would like me to read. He said it was a letter in connection with a case which had been raised by Bernhardt against Abrahams. When he mentioned that, I told him I was not to have anything to do with it. My son had not told me of the letter. He pressed me to read it. He pulled the letter out of his pocket, and I read a portion of it and handed it back, saying, I did not want to go any further. I said, 'That letter is of no interest to me.' (Q) Did you say anything to him about Bernhardt?—(A) The only remark I made was that, so far as I could understand the action, the case which had been raised against Abrahams would have no effect so far as I was concerned. I said, 'If he pays me he will stay with me, and if he fails he will go.' In point of fact it made absolutely no difference whatever. (Q) Bernhardt says that you insisted upon him clearing himself of the charges made against him. Did you ever suggest such a thing? (A) I emphatically deny it." No attempt is made there to put the innuendo to the witness. In fact it is left extremely doubtful whether he ever read far enough in the letter to come to the portion of it which is supposed to bear the innuendo.

The only other person to whom anybody says this letter was shown is Joseph Harris, the son of the last witness. He says—"He (that is, Crivan) showed me the letter, and asked me to read it. I handed it back to him. After he showed me the letter, which I was not prepared to read, I asked him what the letter had to do with me, and he gave me an explanation." And then in cross the question is put—"Was it your

opinion at the time that this was a serious statement to make about your traveller? (A) I never gave the subject a thought at all; Bernhardt was in our employment, and we were quite capable of looking after our travellers without other people interfering. (Q) Did you understand from the letter that it practically accused Bernhardt of giving false evidence?" There again the question relates to something which is not innuendoed. "(A) I really cannot remember what was in the letter." In other words, he finished his evidence without a single question as to the innuendo being put to him.

I think that ends the case on the second issue.

In what I am saying now I am not going back on what I said in a charge to a jury in the *Tarbert School Board* case (8 F. at p. 695, 43 S.L.R. at p. 490), where I told the jury that upon the question whether a certain series of articles in a newspaper were fair comment upon members of a public body or were slanderous, I thought they would be much more influenced as men of the world who read newspapers than they would be by what certain witnesses told them of the impression that the articles made upon them. I think that is quite good law, and I find that the same thing was said long ago by a higher authority than I am in the case of *Broome* v. *Gosden* (1 C.B. 728, at 732), which is cited in all the English books as a leading authority upon the matter. The question there was as to the true meaning of the word "hocussed." Certain witnesses having given their views as to the meaning of the word, the jury found for the defendant —that is to say, they found, contrary to the view of these witnesses, that the innuendo was not made out. And the Court, which was presided over by Chief-Justice Tindal, say the jury were not bound to adopt the opinion of the witnesses. I think that is so. I do not think that because a witness comes and says to you that the meaning of a statement is so and so, the jury are necessarily bound to adopt that view. They are bound to look at it as men of common sense themselves. But that is a different proposition from saying that you are entitled to prove an innuendo in (as I say here) a case in which the slander never went beyond three people at the most, without asking a single one of those people whether when they read the letter they took the detrimental meaning out of it which the pursuer puts in the innuendo.

Accordingly, upon the whole matter, I think that the verdict upon both issues cannot be supported on the evidence, and that there must be a new trial.

LORD KINNEAR, LORD JOHNSTON, LORD MACKENZIE, and LORD DEWAR concurred.

The Court made the rule absolute, set aside the verdict, and granted a new trial.

Counsel for Pursuer and Respondent—Watt, K.C.—Ingram. Agents—Mackenzie & Fortune, S.S.C.

Counsel for Defender and Appellant—M. P. Fraser—Armit. Agents—Clark & Macdonald, S.S.C.

Wednesday, March 20.

FIRST DIVISION.

SLAVIN *v.* TRAIN & TAYLOR.

(*Ante*, p. 93.)

Expenses — Master and Servant — Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (4) — *Unsuccessful Action against Employers — Motion for Assessment of Compensation — Expense of Obtaining Award.*

A workman raised an action of damages against his employers, in which the defenders obtained the verdict and a bill of exceptions was refused. On the defenders moving the Court to apply the verdict the workman moved the Court to assess the compensation to which he was entitled under the Workmen's Compensation Act 1906. Thereafter the parties adjusted the amount of compensation, and the workman accordingly moved the Court to assess the compensation at the adjusted rate.

The Court made an award of compensation at the adjusted figure, under deduction always of the defenders' account of expenses, and *found* the pursuer entitled to the expense of obtaining the award, modified at £5, 5s.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), sec. 1 (4), is quoted in the previous report.

Peter Slavin, Trongate, Glasgow, *pursuer*, raised an action against Train & Taylor, contractors, Rutherglen, *defenders*, for payment of £500 as damages for personal injury sustained by him while in their employment.

The *facts* of the case, and the *procedure* therein up to the advising of 24th November 1911, appear in the previous report of the case (see page 93).

Thereafter the pursuer presented to the Lord President a note, which, after narrating the procedure up to the advising of 24th November, proceeded — "Thereafter certain negotiations took place between the parties on the basis of the medical and other evidence led in the principal case and of the pursuer's earnings, as the result of which the compensation payable to him has now been arranged and a joint-minute has been prepared and lodged, and parties desire your Lordship without further remit to assess such compensation at the rate of 10s. per week, dating such compensation from 6th August 1910.

"May it therefore please your Lordships to pronounce an interlocutor assessing the compensation due to the pursuer under the Workmen's Compensation Act 1906 at the rate of 10s. per week from 6th August 1910, the date of the accident to the pursuer, under deduction always of the amount