it to us, control in the matter of service rendered. There are many cases where there is a proper control of service, and yet when you come to the details of how that service is carried out, there is no practical control, because there may be skill in the servant which the master does not possess, but nevertheless in the general direction of what the servant is or is not to do the master is supreme.

Now if the business of the Infirmary managers was to treat the patients, then there might be control; but that is not the business of the Infirmary managers, as is pointed out in the case of *Hillyer* v. *Governors of St Bartholomew's Hospital* ([1909] 2 K.B. 820), which was quoted to us. The managers of an hospital do not go to the public with a profession of themselves operating on or nursing or treating patients. They only hold out themselves as providing an institution where patients will be able to meet with skilled persons who will do those things. And that is the real distinction between this case and the case of *Walker* v. *Crystal Palace Football Club* ([1910] 1 K.B. 87), because the latter case I think is only supportable upon the view that the profession of the company there was to provide a game of football, and as they could not do this themselves they could only do it through employees, whom they accordingly hired for the purpose of doing that which they could not do themselves but which was their business. Here the treatment of the patients is not the business of the Infirmary managers. All the managers do is to provide the infirmary; when it comes to the treatment that is done by the skilled persons who give their services gratuitously or upon very inadequate terms.

Accordingly I am of opinion that we should answer the question by saying that these persons, one and all of them, do not fall within the expression "contract of service," and consequently are not employed within the meaning of the Act.

LORD KINNEAR—I am of the same opinion, and for the reasons your Lordship has given. I think that the relation of master and servant has not been established between the governors of the Infirmary and the resident physicians and surgeons. These gentlemen are not employed by the Infirmary, as I understand it, under a contract of service, and the governors of the Infirmary have accordingly no power to regulate their treatment of patients or even to interfere with their treatment in any way whatever. They are subject to the orders and at the disposal of the non-resident honorary physicians and surgeons but not of the governors of the Infirmary. I think that any apparent difficulty which might arise at first sight upon the statement of this question is completely removed by a correct definition of the contract of service, because the relation of master and servant exists only between persons of whom one has the order and control of the work done by the other, not only as regards its object but also as regards the method of execution. It is satisfactory that the view which your Lordship has taken has the authority both of the Court of Appeal in England and of the Chief-Justice in America, whose judgment is cited by that Court.

LORD JOHNSTON—I concur with your Lordships, and I have nothing to add.

The Court found and declared that the classes of employment in question were not employments within the meaning of Part I of the National Insurance Act 1911.

Counsel for the Petitioners—The Solicitor-General (Anderson, K.C.)—A. R. Brown. Agent—James Watt, W.S.

Counsel for the Respondents—M'Millan, K.C.—Hon. William Watson. Agents—Hope, Todd, & Kirk, W.S.

Friday, March 7.

FIRST DIVISION.

[Lord President and a Jury.

THOMS *v.* CALEDONIAN RAILWAY COMPANY.

Reparation—Process—Damages for Personal Injury—Excess of Damages—New Trial.

In an action of damages at the instance of a farmer for personal injury, involving the possibility of permanent disablement, the jury assessed the damages at £4000. *Circumstances* in which the Court *refused* to disturb the verdict on the ground of excessive damages, although in the opinion of the majority of the Court the sum given was considerably larger than they themselves would have awarded.

William Lawson Thoms, farmer, Benvie, near Dundee, *pursuer*, brought an action against the Caledonian Railway Company, *defenders*, in which he sued for the sum of £5000 as damages for injuries received while travelling on the defenders' railway.

An issue having been allowed, the case was tried before the Lord President and a jury on 10th December 1912, when a verdict was returned for the pursuer awarding him £4000 damages.

On the motion of the defenders the Court on 28th January 1913 granted a rule to show cause why the verdict should not be set aside and a new trial granted in respect that the damages awarded were excessive, and on 7th March 1913 the case was heard on the rule.

The following narrative of the *facts* is taken from the opinion of Lord Johnston:—"The pursuer in this case met with an accident due to careless shunting at Invergowrie station of a couple of horse-boxes, in one of which he was seated in attendance on valuable horses belonging to him which were being conveyed to a show at Perth. The pursuer is a man of thirty-six, and when a boy he suffered from

tuberculous disease of the spine, which occasioned curvature of the spine in the lower dorsal region and the consequent ossification of three of the vertebræ, but from which he had completely recovered and become an exceptionally athletic, active, and hard-working man in his vocation of farming. Unfortunately the blow which he received by being thrown back in his seat involved the spot in the spine where the stiffening from the old ailment existed, and re-started the tubercular condition, and in the course of a very few days it became manifest that his condition was serious. The Railway Company candidly admit liability, and the only question in dispute is the measure of damages. A jury has brought in a verdict for £4000 damages, and we are asked to set aside this verdict and order a new trial solely on the ground of excess of damages. The case presents features which are too seldom met with in questions of compensation. On the unanimous and unqualified testimony of the very eminent surgeons examined on both sides the pursuer has presented his case without exaggeration in regard to his injuries, his suffering, or his present condition. It must be added that, as was to be expected from the character and position of the professional witnesses, there is no trace of exaggeration in the scientific evidence on either side. If I may respectfully say so, the perusal of the medical evidence leaves one with the satisfaction of feeling that the aim of the medical witnesses was not to advocate a cause but genuinely to assist the Court with the best opinion they could individually give. Moreover, in the matter of pecuniary loss sustained the evidence of the pursuer himself and of the accountants engaged on both sides is conspicuously fair and honest. But while it is eminently satisfactory to have a case so presented, it does not make it any the easier for the Court to determine whether a jury has been swayed beyond reason by their natural sympathies. The date of the accident was 5th August 1911. From 12th August 1911 to January 1912 the pursuer was kept in a recumbent position and did not leave his bed. From January to March 1912, as there was apparent improvement, he was allowed to be up for a time each day, and from March to May 1912 he was sent to Crieff Hydropathic for change. He was under the charge of Dr Dalgetty of Liff, his family doctor, in consultation with Professor M'Ewan of Dundee. But the apparent improvement of the early part of 1912 did not continue. He was accordingly in June 1912, on the advice of Professor M'Ewan and of Dr Chalmers Watson of Edinburgh, again obliged to resume the recumbent position. In November, satisfactory progress not being made, he was brought over to Edinburgh and placed in a nursing home, to be more immediately under Dr Chalmers Watson. The trial took place on 30th December 1912, and I need hardly say that the pursuer was not present. There is a consensus of the doctors on both sides that he must on returning home after a couple of months under Dr Chalmers Watson in Edinburgh, remain on his back for the whole of the current year 1913 if he is to be restored to health. The crucial question is, What are the prospects of such restoration? Dr Chalmers Watson thus describes the nature and result of the pursuer's former affection of the spine, and its relation to his present condition. The affection had presumably been of a tubercular nature—"When tubercular disease attacks the periosteum, which is the sheath round about the bone, two processes take place side by side, one breaking down and the other making up. The process of breaking down, which is the attacking of the tubercle, and the process of making up, go on side by side, and the whole question is which is to get the better in the long run? When you recover, however, and when nature has got the better, you do not get back your spine just entirely as you had it before, because nature cannot replace the original structure of the spine, but fills in a kind of cement or material which takes the place of the original vertebræ, and takes the place of it, unfortunately, in a rigid form. Accordingly, the pursuer had a certain amount of displacement involving two or three of the vertebræ of his spine. When the blow took place on his back the effect of that was to lower the vitality at the point of impact of the blow, and the result was to give the tubercle its chance again. In a popular way, that is a recrudescence of a disease; it was the same thing which had broken out again, and got its chance just in consequence of the blow. That accurately describes the beginning of the trouble." Sir Hector Cameron, who saw the pursuer at Crieff in the spring of 1912 and again in Edinburgh shortly before the trial, says that at the first examination he had a little difficulty "in determining what the exact state of matters was. The first idea that occurred to one was what one has seen before, and what one knows very well, namely, that a recrudescence had occurred. The disease is a disease due to germs, and these germs often go to sleep for a great many years, and the disease becomes re-aroused, sometimes without any gross injury or without any knowledge of accident on the part of the individual; very readily from a severe injury. . . . I think there is evidence now that tuberculous disease has been re-aroused, but at that time I did not feel sure of it." The points of agreement between the doctors examined were—that the pursuer was an excellent subject and an excellent patient—a man in good general health, which was well maintained throughout the long confinement to bed, and of equable temper, who bore that confinement with exemplary patience; that there was no symptom of the spinal cord being affected; that what was affected was the bony matter of the vertebræ and the adjoining tissues, in which there was inflammation, causing pressure on, or otherwise affecting, the sensory and not

the motor nerves; and that absolute quiescence and open-air treatment for a long continuance, not less than a year, were essential to recovery. The points of difference between the doctors were that the pursuer's advisers found marked extension of the pain both downward and upward from the seat of the old affection, and from this and other symptoms deduced the conclusion that more vertebræ had been attacked, and consequently, though taking a hopeful, took a more doubtful view of ultimate recovery. While the doctors examined by the defenders were of opinion that the tubercular disease had not spread, accounting for a wide area of the pain in other ways, they took a decidedly hopeful view of recovery. I have read the medical evidence with great care, and I am glad to say that it has left on my mind the impression that the pursuer's prospect of recovery is very hopeful. But its certainty no one can predict. And that is, I think, the situation which the jury had to regard. I think that the position is well illustrated by the evidence of Sir Hector Cameron. Asked, near the beginning of his examination-in-chief—"Were there any other features of the case from which, when you examined the pursuer in December, you could have been hopeful?" he replied, "Well, there are no symptoms that made me take a very hopeless view of his case." Whereas at the end of his examination-in-chief, asked—"Accordingly, from your examination of the case do you think with good reasonable treatment and proper rest the case is one which ought to make a good and satisfactory recovery?" he replied, "That is consistent with all my experience. I don't think that there will be any such complications as have been suggested." Now, I do not attribute to Sir Hector Cameron that, having given a very guarded opinion at first, he was led by the course taken by the examining counsel to throw off his guard and to commit himself to a broad and positive statement. As I read his evidence he will not commit himself at once to a general affirmance of recovery. But having given the data of his diagnosis, he concludes with a favourable prognosis. But it is a guarded opinion after all, and I think the jury were bound to regard the case as one the final result of which no reliable surgeon would predicate. And I think that they were bound to keep in view the unquestioned statement of Dr Chalmers Watson—"Even assuming that we take a hopeful view, and that the pursuer does make a recovery, he will never in my opinion be the same man that he was; the chances of a vigorous recovery are extremely remote." The state of the evidence therefore leaves to the jury recovery to a satisfactory extent, hopeful but not assured, and the degree of recovery unlikely in the best event to amount to restoration. In performing their duty of assessing damages the jury had these data before them. The pursuer was tenant of the farm of Benvie on the estate of Gray, with the small additional farm in the neighbourhood called Graystanes. The area was 300 acres, and the rent, under a lease having still twelve years to run, £565. The land was good, and less than six miles from the centre of the town of Dundee. It was worked mainly as a dairy farm of forty cows, but otherwise for general cropping. This farm the pursuer personally carried on, superintending everything, and doing most of the important work himself. He was also a successful breeder and skilful breaker of Clydesdales. His average profit on this farm was put at £300, or even £350 a-year, and though we may not accept either figure, must, in any view, be admitted to be substantial. There was, then, in the first place an accepted expenditure in connection with medical treatment, from the date of the accident to the end of 1913, when that treatment was assumed to cease, of £420. There was also a realised loss during same period arising from the necessity of employing others to carry on the farm, which was reckoned at £597. I think that I should myself have estimated it at probably £100 less. But there was evidence, which it was quite open to the jury to accept, for the larger figure. These two sums together make £1017."

Argued for the pursuer—The damages awarded were not excessive. To justify the Court in saying they were excessive it was necessary to show not merely that the sum awarded was in excess of what the Court would have awarded, but that it was in excess of what any set of reasonable men would have given—*Landell* v. *Landell*, March 6, 1841, 3 D. 819; *Young* v. *Glasgow Tramway and Omnibus Company, Limited*, November 29, 1882, 10 R. 242, 20 S.L.R. 169. In other words, the defenders must satisfy the Court that the verdict was perverse—*Reid* v. *Morton*, January 18, 1902, 4 F. 438, *per* Lord Kinnear at p. 441, 39 S.L.R. 313; *Casey* v. *United Collieries, Limited*, 1907 S.C. 690, *per* Lord President at 692, Lord Pearson at 694, 44 S.L.R. 522. According to the medical evidence for both sides the pursuer would be laid up for another year. In that view the expenses of medical treatment already incurred, and which would be incurred in the future, would amount to about £420, while the loss, past and prospective, in carrying on the farm would amount to about £600, making in all about £1020. From the medical evidence the jury could reasonably take the view that the pursuer would never work again, and might reasonably estimate the damage under this head at £1500. As reparation for the pursuer's sufferings, especially looking to the possibility of future sufferings, the jury might reasonably allow £1000. The balance, amounting to about £300, was a reasonable sum to give as *solatium*. Assuming total disablement for life, the damages were on a lower scale than in *M'Kechnie* v. *Henderson*, February 12, 1858, 20 D. 551, where the Court awarded fifteen times the total yearly earnings. In *Duthie* v. *Caledonian Railway Company*, June 3, 1898, 25 R. 934, 35 S.L.R. 726, the Court awarded ten times

the total yearly earnings. In the present case £350 did not represent the pursuer's total income, as that amount was arrived at after paying insurance premiums amounting to £40, and after meeting the expenses of the house, which might reasonably be taken at £200 a-year. The pursuer's true income would therefore be about £600. Six times that sum with the addition of the £420 would exceed the sum awarded. It was not for the pursuer to justify the result at which the jury had arrived, but for the defenders to show that no reasonable jury could have given the sum awarded. It was impossible for the defenders to do this, looking to the fact that the jury had not only to estimate losses, but had to forecast the future course of the pursuer's illness. Reference was also made to *Shields* v. *North British Railway Company*, November 24, 1874, 2 R. 126, 12 S.L.R. 120.

Argued for the defenders — Evaluation of damages was no doubt a jury question, but the Court retained control. The question always was whether there was a reasonable proportion between the amount awarded and the loss sustained—*Taff Vale Railway* v. *Jenkins*, 1913 A.C. 1, *per* Lord Atkinson at p. 7. In *Wallace* v. *West-Calder Co-operative Society, Limited*, January 13, 1888, 15 R. 307, 25 S.L.R. 458, the Court held that £800 was about twice what should have been awarded for the death of a husband whose income was £150. The defenders admitted £420 for past and future medical treatment. The other heads of damage were (1) the depreciation of the pursuer's life as a business man, and (2) his sufferings. In regard to (1) the Court would not put the pursuer permanently in the position he occupied prior to the accident. For £3600 the pursuer could buy an annuity of £220 for life, which was better than a business income of £350. There was no case in which £3500 had been given where the pursuer's income was only £350.

At advising—

LORD KINNEAR—I see no reason for disturbing the verdict of the jury in this case. The ground upon which it is challenged is that the damages are excessive, and I think we must keep in view what is the true position of the Court upon an application of that kind. I think that is established by the judgment of the Whole Court in *Landell* v. *Landell* (1841 3 D. 819), and we must take it that the law laid down by the majority of the consulted judges there is sound. What Lord Fullerton, Lord Mackenzie, Lord Jeffrey, and other judges say is this (at p. 825)—it is not enough "to bring the damages within the description of excessive, that they are more, and even a great deal more, than the amount at which the injury sustained might have been estimated in the opinion of the individual members of the Court to whom the application is made. Indeed, if that were enough, the Court would just be called upon to review the verdict of the jury in a matter peculiarly within their province, and that upon a comparatively imperfect view of the evidence. It is clear that, in order to warrant the application of the term excessive the damages must be held to exceed, not what the Court might think enough, but even that latitude which, in a question of amount so very vague, any set of reasonable men could be permitted to indulge. The excess must be such as to raise on the part of the Court the moral conviction that the jury, whether from wrong intention, or incapacity, or some mistake, have committed gross injustice, and have given higher damages than any jury of ordinary men fairly and without gross mistake exercising their functions could have awarded."

Now if that be the rule upon which we are to proceed, I must say I come to the conclusion that there is nothing in the award of the jury in this case so excessive as to justify its being said that they have gone beyond what any reasonable men fairly exercising their function would have done.

It is not the province of this Court to estimate damages, and therefore when I come to be of opinion that the award of the jury is not excessive in the sense explained in *Landell* v. *Landell*, I do not, for myself, consider it to be within my province to estimate what the true amount of damage might be if the jury's amount were wrong. I accept their award. But then I think it is nevertheless quite reasonable to consider what were the elements upon which the award of damage was properly to be estimated, because one can hardly say that a particular sum is not excessive without having some idea of what a reasonable award would be.

Now I do not think it at all desirable to examine the evidence in any detail so as to enable one to fix the precise sum which should be due for each particular item of injury and then arrive at the conclusion by summing up the whole. I think it is enough for the present purpose to see generally what the elements were upon which damage should be awarded. In the first place, there was a certain amount of pecuniary loss which the jury necessarily took into account; and then, in the second place, there was the prospect of the pursuer being unable to carry on his business as he had hitherto done and earning the income or anything like the amount of income which he had earned when in sound health. These are items of damage or injury which the jury might reasonably find proper matter for more or less accurate calculation in money. But then I think in this case there was an element of much greater difficulty to deal with—I mean the probable effects upon the man's future life of the injury he has sustained. That is a question of some difficulty in itself, but it is also a matter upon which there can be no precise data for estimating damages. In addition to that, I think there is a still more troublesome element, and that is the damage which the pursuer is entitled to have taken into account for personal pain and suffering and loss of health which he has endured.

Now it is impossible to read the account of this man's history and his present posi-

tion without seeing that no amount of damages could ever be considered as real compensation for the personal injury he has suffered. It is obvious that that is not a consideration which can be pressed to any logical conclusion, because the result of it would be that the defender in a case of personal injury might be ruined and yet the pursuer not compensated. And therefore that cannot be treated as a ground for any exact or logical estimate of damage; but I think it is a consideration which may fairly lead us to think that upon a question of this kind a larger latitude, within the bounds of reason, is to be allowed to a jury than upon matters which are capable of anything like exact calculation.

In this particular case I think the jury had all the advantage which the skill and the experience of medical men could give them for arriving at a reasonable and just view of the extent of the bodily injuries of the pursuer and his prospects of total recovery, because not only is the pursuer's own evidence altogether moderate and reasonable, but the evidence of the medical witnesses on both sides is entirely free from anything like a taint of partisansbip or excess of opinion one way or another. The questions could not be presented to the jury in a more moderate or in a clearer or more lucid form.

I am therefore of opinion that there is no ground for saying that this jury has gone beyond what any jury of reasonable men properly informed as to the question which they were to decide could have reached. On the whole, therefore, I am of opinion there is no ground for disturbing the verdict.

LORD JOHNSTON—[*After the narrative of the facts quoted supra*]—There is left of the sum which the jury found as damages to be accounted for £3000. This is an exceptionally large sum. I do not think that I should have myself given so much by one thousand pounds. But I cannot say that it is so extravagant that no reasonable jury would repeat it, or that the Court cannot find any reasonable proportion between the amount awarded and the loss sustained. I think that the jury had a very difficult task to perform. They had to consider what would be due in event of recovery, what in the event of non-recovery, and then to strike a mean between these two on weighing the probability of one or other of these events. I do not mean to say that they actually went through these three mental operations. But when the question is looked at as we have to look at it, it is really that mean which the jury had to fix. Now their difficulty was threefold. First—there was a certainty that the pursuer had endured much, and there was the uncertainty whether he might not have to endure more and longer, and particularly to endure the hard fate to an active man of finding himself reduced from activity to decrepitude. Second—there was the problem of the pursuer's recovery and of the degree of his recovery, both uncertain, however hopeful most skilled opinions might be, and the bearing of this problem upon the pursuer's patrimonial interests. And third, there was the peculiarity of the pursuer's occupation. He was involved in the lease of a farm which he could not get rid of except by the grace of the proprietor, and which, if he had to get rid of it, would leave him without means of livelihood, for it was being carried on on borrowed capital. He was under obligation for a rent of £565 a-year, which is no light matter even for a farmer in full vigour and able to attend to everything himself. While there was evidence, already alluded to, which the jury might fairly accept, that the pursuer was making a fair return off his farm, the continuance of that rate of profit clearly depended upon his substantial recovery; whereas if he became entirely incapacitated the loss would conceivably be more disastrous than can be measured by loss of profit. There is, then, in the present case so much of contingency in the question which the jury had to face that, a substantial sum being justified, I do not think that it would be in accordance with the practice of the Court to disturb the award of the jury in a matter which is peculiarly their function except on a very clear manifestation of extravagance leading to the conclusion that they were guided not by consideration of facts but by sentiment. Such manifestation I cannot say that I have found here after the best consideration I can give to the evidence. I agree with the view expressed by Lord Shand in *Young* v. *Glasgow Tramway Company* (10 R. at p. 244) that the way in which compensation should be estimated is by the jury taking into their consideration the whole circumstances of the case. The circumstances which they had here to consider were complex, and because they have given as much as £1000 more than I would have given myself I cannot confidently say that my verdict would meet precisely the justice of the case and that theirs is therefore unreasonable, far less extravagant.

I therefore agree with your Lordship that the rule should be discharged.

LORD PRESIDENT—I confess that when I heard the award at the trial the impression I formed at the time was that it was too large, and indeed was so excessive that it would have to be reviewed. So far as the inclination of my own mind was concerned that impression was not removed by the speeches we heard upon the rule, but in view of the opinions that your Lordships, coming with fresh minds to the consideration of the whole circumstances, have both expressed, I do not feel justified in pressing my own inclination to a dissent. I only add one word—that my difficulties arise entirely upon the question of figures. I myself think not only that the jury was entitled to take the very gravest view of the ultimate results of this accident, but I can go further and say that if I myself had been a juryman, that is the view I would have taken. Upon the actual

amount of money awarded, however, my own impression was that it was too large. We shall discharge the rule and apply the verdict.

The Court discharged the rule and refused to grant a new trial.

Counsel for the Pursuer—Morison, K.C.—W. T. Watson. Agents—Macpherson & Mackay, S.S.C.

Counsel for the Defenders—Macmillan, K.C—Wark. Agents—Hope, Todd, & Kirk, W.S.

Saturday, March 8.

FIRST DIVISION.

(SINGLE BILLS.)

CAMPBELL *v.* OSBORNE & HUNTER.

Process—Jury Trial—Transmission of Cause for Trial at Sittings—Act of Sederunt, November 19, 1910, *sec.* 3—*Note Appended to Rolls of Court Appointing Time for Lodging Papers.*

The rolls of Court issued on 28th February 1913 contained notice of the ensuing sittings for jury trial, the following note being appended to the notice:—"*Note.*—With regard to the transmission of causes for trial at these sittings, agents are referred to the Act of Sederunt, dated 19th November 1910. A copy of the Lord Ordinary's interlocutor allowing the trial to proceed at the sittings, along with a print of the closed record and of the adjusted issue or issues, must be handed to the keeper of the rolls of the Division in which the cause is to be tried, and that not later than 12 o'clock noon on Wednesday, the 5th day of March, otherwise the cause will not be taken at the sittings." Section 3 of the Act of Sederunt November 19, 1910, provides—"If the cause is to be tried at the sittings the process shall forthwith be transmitted . . . to the clerk of the Division. . . . A copy of the Lord Ordinary's interlocutor allowing the trial to proceed at the sittings, along with a print of the closed record and of the adjusted issues, shall also be handed to the keeper of the rolls of such Division." The agent for the pursuer in an action of damages which the Lord Ordinary, on 20th February 1913, had appointed to be tried at the sittings, tendered the necessary copy interlocutor and prints to the Keeper of the Rolls on 5th March 1913 within office hours, but after twelve o'clock. The case not having been included in the list of causes for trial at the sittings, and the pursuer having thereupon presented a note to the Lord President for authority to the Keeper of the Rolls to receive the copy interlocutor and prints and include the cause in the said list, the Court *discharged* the order for trial and *remitted* the cause to the Lord Ordinary.

Henry Campbell, 4 Mary Street, Port-Dundas, Glasgow, *pursuer*, brought an action of damages against Osborne & Hunter, electrical engineers, 99 Douglas Street, Glasgow, *defenders*. On 18th February 1913 the Lord Ordinary (SKERRINGTON) approved of an issue and fixed a diet for the trial of the cause. On 20th February, on the motion of the pursuer, the Lord Ordinary discharged the diet, and appointed the cause to be tried at the sittings in the ensuing vacation.

No. 109 of the rolls of the Court of Session for the Winter Session 1912-13, issued on 28th February 1913, contained notice of the sittings of the Court for the trial of civil causes by jury in the ensuing vacation. Annexed to the notice was the note which is *quoted* in the *rubric.* The Act of Sederunt November 19, 1910, referred to in the note, so far as pertinent to the present question, is also *quoted* in the *rubric.*

The pursuer's agent, in terms of the Act of Sederunt, transmitted the process to the Clerk of the Division. On 5th March 1913, within office hours, but after twelve o'clock noon, he tendered to the Keeper of the Rolls a copy of the Lord Ordinary's interlocutor of 20th February, and prints of the closed record and of the adjusted issue. The said copy interlocutor and prints were refused by the Keeper of the Rolls upon the authority of the note already referred to. Thereafter the rolls of Court containing the list of causes for trial at the sittings was issued and the case was not included in the list.

The pursuer presented a note to the Lord President, praying him "to move the Court to grant authority to the Keeper of the Rolls to receive the said copy interlocutor and print, and thereafter to include the present cause in the list of causes for trial at the forthcoming sittings, . . . and to publish the name of the same in the appropriate rolls of Court, or otherwise to postpone the hearing in the present cause from the forthcoming sittings for jury trials till a date to be afterwards fixed, and to remit the cause to the Lord Ordinary with power to fix of new a diet for the trial of the cause."

On 8th March counsel for the pursuer, in Single Bills, moved the Court to grant the first branch of the prayer, and argued—On a sound construction of section 3 of the Act of Sederunt November 19, 1910, "forthwith" appearing in the first part of the section did not fall to be read into the latter part thereof. So far as regarded the Act of Sederunt, the papers were therefore lodged timeously, and the note in the rolls of Court could not add a condition to their reception which was not in the Act.

The Court, without giving opinions, pronounced this interlocutor:—

"The Lords . . . discharge the order for the trial of the cause at the sittings