damage. It is impossible to hold that there is on record a proper allegation of loss and damage sustained by Mace and Hurst. In the second place, there is no allegation that the pursuer is the assignee of Mace and Hurst to any claim they might have had. All that is said is that the pursuer has a claim of damages. It is true that it is set forth that in consideration of an assignation by Mace and Hurst the pursuer had settled the claim he had against them. That is something more like an implication that he has an assignation than anything which could be found on record relative to the damage sustained by Mace and Hurst. But the averment, such as it is, is quite insufficient for the purpose for which it is required. Now, with regard to the proposal to amend, it appears to me to be out of the question, after a record has been closed and the pursuer has proposed an issue for the trial of the cause, to allow an amendment for the purpose of introducing a new ground of action. Such a proposal was never heard of. There are instances of the Court allowing amendments to a record for the purpose of the correction of clerical errors, and where greater specification has been ordered or allowed for the purpose of a more satisfactory determination of questions of relevancy. The reference which has been made to Inglis *v.* the Western Bank is quite unavailing. In that case a considerable part of a complicated action has been abandoned, and the record, which had been closed before the abandonment, was cumbrous and unsuited to the portions of the case which remained. It was therefore a case where the Court, in the interest of the parties, and for the more satisfactory determination of the suit without opposition on the part of the defenders, ordered a new record. I think this action should be dismissed as irrelevant.

The other Judges concurred; and the action was dismissed with expenses.

Agent for Pursuer—W. R. Skinner, S.S.C.
Agent for Defenders—Hope & Mackay, W.S.

JURY TRIAL.

(Before Lord Ormidale.)

CRAIG *v.* TAYLOR AND MANDATORY.

Jury Trial—Reparation—Written Slander. Verdict for a pursuer—damages, one farthing.

In this case, in which William Blackburn Craig, merchant in Glasgow, is pursuer, and William Taylor, junior, oil merchant and colour manufacturer in Liverpool, and William Ritchie Buchan, writer in Glasgow, his mandatory, are defenders, the following issue was sent to the jury:—

"It being admitted that on or about the 14th day of March 1866, the defender, William Taylor, junior, wrote and transmitted to the pursuer a letter in the following terms:—'Liverpool, March 13, 1866. Sir, Yours of the 13th inst. to hand. Just as I expected, *your orders plentiful*, yr. money *nowhere*, but there are too many of this class in your town particularly—please try elsewhere, but friends in my way of business in this town will have the opportunity of reading yr. communications. I cannot say I wish you better fortune elsewhere, because I believe yr. system shd. be put a stop to. Yours, &c.,

(Signed) 'W. TAYLOR, jr.

'Mr Craig, Glasgow.'

"Whether the said letter is of and concerning the pursuer, and falsely and calumniously represents the pursuer as a dishonest person who had sought to obtain goods from the defender, William Taylor, junior, without having the means of paying the price thereof, and without intending to pay the price thereof, and as one of a class who conducted business on the system of buying and obtaining goods without having the means of paying, and without intending to pay the price thereof—to the loss, injury, and damage of the pursuer?"

Damages claimed £500.

The jury found for the pursuer—damages one farthing.

Counsel for Pursuer—The Solicitor-General and Mr Shand. Agents—J. W. & J. Mackenzie, W.S.

Counsel for Defender—The Dean of Faculty and Mr Rhind. Agent—R. P. Stevenson, S.S.C.

Wednesday, July 18.

FIRST DIVISION.

LATHAM *v.* EDIN. AND GLAS. RAILWAY CO.

Master and Servant—Recompense—Extra Services. An action by a salaried manager of a railway company for remuneration of extra services alleged to have been rendered by him during a period of 18 years, dismissed as irrelevant, there being no specific averment of an agreement that these services should be remunerated.

In 1847 the pursuer was appointed manager of the Edinburgh and Glasgow Railway Company, and in the following year he was also appointed their secretary. His salary was at first £1000; in 1854 it was increased to £1200; and in 1863 it was again increased to £1600.

In 1865 the Edinburgh and Glasgow Railway Company was dissolved, and amalgamated with the North British Railway Company by Act of Parliament. The Board of Directors thereafter recommended to the shareholders that before dividing the assets of the company, they should "provide proper compensation for some of the company's servants who, after long and faithful service, have lost their situations from the extinction of this as a separate company;" and it was recommended that a sum of £5400 should be set apart for the pursuer. The Court, however, interdicted the directors from carrying out this scheme, on the ground that it was *ultra vires* (Clouston, *ante*, vol. 1. p. 73).

Thereupon the pursuer raised this action, in which he concludes for payment of £5400. He averred:—

Cond. 9. Throughout the period from the first engagement and appointment in 1847, till the dissolution of the defenders' company on 1st August 1865, the pursuer, besides performing the ordinary, customary, and agreed-on duties of the successive offices to which as aforesaid he was engaged and appointed by the defenders, performed on their employment, and for their behoof, various onerous, laborious, and responsible extra services on their behalf, which were entirely over and above the said ordinary, customary, and agreed-on duties.

Cond. 10. These extra services involved an amount of extra labour, anxiety, responsibility, and skill, not required for the ordinary, customary, and agreed-on duties of the successive offices to which, as aforesaid, the pursuer was engaged and appointed by the defenders.

Cond. 11. Throughout the same period, viz., from 1847 to 1865, the pursuer had various more

advantageous offers made to him of other employment, all of which he declined, at the urgent solicitation of the defenders. He also during said period frequently resigned his situation in consequence of the very great amount of extra services which he was called upon to perform for the defenders; but he was on every occasion induced by the defenders to withdraw his resignation on the faith and assurances held out by them that he would be duly recompensed for these services.

Cond. 12. Throughout the same period, viz., from 1847 to 1865, the pursuer received only the salary appertaining to the ordinary, customary, and agreed-on duties of the successive offices to which, as aforesaid, he was engaged and appointed by the defenders, but he received no remuneration for the extra services rendered by him as aforesaid on the employment and for behoof of the defenders.

Cond. 13. The defenders recognised these extra services as entitled to extra remuneration, and promised and engaged in respect thereof, and of the pursuer refusing, as aforesaid, other more advantageous offers, to pay the pursuer remuneration for such extra services. This remuneration was to be in the form either of a permanent engagement of long duration as manager of the company at an adequate salary, or should that become impracticable, or should the pursuer prefer it, in the shape of an annuity for life, or for a considerable term of years, or in the form of an adequate slump sum of money.

The defenders pleaded that the action was irrelevant.

The pursuer proposed the following issues :—

"1. Whether, in the year 1865, the defenders, through their directors, resolved and agreed to pay to the pursuer the sum of £5400, as remuneration for extra services rendered by the pursuer to the defenders, over and above the ordinary, customary, and agreed-on duties of the successive offices of manager, manager and secretary, and manager of the defenders' company, held by him between the years 1847 and 1865 inclusive; and whether the defenders are resting-owing to the pursuer the said sum of £5400, or any part thereof, with interest from 1st August 1865?

"2. Whether, between the years 1847 and 1865 the pursuer, on the employment and for behoof of the defenders, performed extra services for the defenders over and above the ordinary, customary, and agreed-on duties of the successive offices of manager, manager and secretary, and manager of the defenders' company, held by him during said period; and whether, in respect of such extra services, the defenders are resting-owing to the pursuer the sum of £5400, or any part thereof, with interest from 1st August 1865?"

These issues were reported by the Lord Ordinary (Kinloch) with the following

Note.—The present action seeks to enforce an alleged claim by the pursuer for remuneration for extra services rendered to the defenders over and above those falling on him in the salaried office held by him under the defenders. There are two issues proposed, the one laying the claim on the special ground of contract; the other on the general ground of recompense to be wrought out by applying the consideration *quantum meruit*.

1. The defenders object that no case of contract is relevantly set forth in the record. It appeared to the Lord Ordinary that this was a serious objection. In a matter ike that in question, implying something apart from the ordinary administration of the company, it is difficult to say that a resolution of the directors, laid before a general meeting of shareholders, but as to which the meeting came admittedly to no conclusions, is sufficient to constitute a legal agreement with the company.

2. It was further objected by the defenders, that no statement of extra services was set forth in the record sufficient to raise a case of recompense apart from contract. It was said that the services alleged were just those which a functionary like the pursuer would naturally and reasonably give in connection with his office without extra remuneration. On this branch of it the case is substantially one of degree; and the Lord Ordinary would hesitate to turn the pursuer out of Court without an opportunity of inquiry, whatever results might ultimately ensue on the inquiry. W. P.

DEAN of FACULTY, CLARK, and JOHNSTONE, appeared for the pursuer.

YOUNG and SHAND for the defenders.

In the course of the discussion, the pursuer proposed the following issue instead of the two issues at first proposed :—

"Whether, between the years 1847 and 1865, the pursuer, on the employment and for behoof of the defenders, performed *extra services* for the defenders, over and above the duties of the successive offices of manager, manager and secretary, and manager of the defenders' company held by him during said period? Whether the defenders agreed to remunerate the pursuer for such extra services? and Whether, in respect of such extra services, the defenders are resting-owing to the pursuer the sum of £5400, or any part thereof, with interest from 1st August 1865?"

At advising—

The LORD PRESIDENT—This is a peculiar case, and the claims made by the pursuer are of a peculiar kind. He was the manager of a company which is now wound up, and he had been in the company's services for a length of time. As manager he was paid a salary, and now he makes a claim against the funds of the dissolved company for payment of a reasonable amount in respect of extra services rendered during the whole period of his employment as manager. That is a very peculiar case. I do not remember to have seen one of the same character. The nature of the pursuer's office involved the employment by him in the defenders' service of his whole time. It appears also that in the course of his employment, from a consideration of the nature of his services, his salary was more than once increased. But it is said that this was done in reference to his proper duties as manager. It is now said that he performed a number of extra services, and for these he demands remuneration in this action. It appears to me, in reference to a retrospective claim of this kind, that we would require to have a very clear statement of the services which the pursuer was engaged to perform, and what the extra services were which he gave, and also what the remuneration was that it was agreed to pay him for these. We have not got such a statement here. We have a specimen given of the services which were rendered, but we have no specific agreement alleged; and, on the contrary, it rather appears from the statements made that there was no specific contract. There was a resolution come to by the directors in 1865, in consequence of which they reported to the shareholders that justice and liberality required them (the shareholders) to pro-

vide proper compensation for some of the company's servants who after long and faithful services had lost their situations from the extinction of the defenders as a separate company, and the sum which the directors proposed should be paid to the pursuer is stated; and in the 17th article of the condescendence various instances are given of other companies having acted in a similar way to their old servants. But all that is quite different from the present demand, which is not a claim for deprivation of offices, but for extra services for which the pursuer says he always expected to be paid. Without a more specific statement of the contract, and a statement to show how the extra services rendered by the pursuer stood out from his ordinary duties, this case could not be sent to trial. I think we must dismiss the action.

Lord CURRIEHILL concurred.

Lord DEAS—I am entirely of the same opinion. I think, at the same time, that if the resolution of the directors had been carried into effect it would have been a very fair and equitable thing. The only issue which could have been allowed would have been such as was suggested by the Dean of Faculty, but the averments of the pursuer do not lay a foundation for any issue with regard to the extra services for which the pursuer claims. To entitle the pursuer of such a case to an issue, there would require to be a specification of three things—(1) of the duties of the office for which the servant was originally engaged; (2) of the extra duties performed by him; and (3) of the agreement to give remuneration for the extra duties. Now, there is an absence of specific statement with regard to all of these things. With respect to the resolution of the directors to remunerate the pursuer for extra work, there is no very distinct averment about this. If there had been such, the question would have arisen, had they the power to bind the company? It only appears, however, that they recommended that the pursuer and others should have extra remuneration, but this recommendation was not adopted; on the contrary, it was rejected by the shareholders. I can't help regretting that this pursuer should have no compensation for his extra work; but at the same time, I think it quite impossible to sustain this action.

Lord ARDMILLAN concurred.

The Court therefore dismissed the action upon the ground that the pursuer had not set forth a relevant case, and found the pursuer liable in expenses.

Agents for Pursuer—Gibson-Craig, Dalziel, & Brodies, W.S.

Agents for Defenders—Webster & Sprott, S.S.C.

JAMIESON *v.* THE E. AND G. RAILWAY CO.

The Court pronounced the same judgment in this case, which was raised against the defenders under similar circumstances.

Thursday, July 19.

FIRST DIVISION.

LATHAM *v.* EDIN. AND GLAS. RAILWAY CO.

Arrestment on Dependence—Recal—Personal Diligence Act. Held that the Lord Ordinary cannot entertain an application for recal of arrestments used on the dependence after the merits of the action have been disposed of by the Inner House. *Question* whether he can do so at any time after he has decided the cause?

This case was dismissed yesterday as irrelevant. The pursuer had used arrestments on the dependence, and the defenders applied to-day, by petition in the Outer House, to have the arrestments recalled on caution, the pursuer having intimated his intention to appeal the judgment of yesterday to the House of Lords. The petition was presented under section 20 of the Personal Diligence Act (1 and 2 Vict. c. 114), which enacts that "it shall be competent to the Lord Ordinary in the Court of Session before whom any summons containing warrant of arrestment shall be enrolled as Judge therein, or before whom any action on the dependence whereof letters of arrestment have been executed has been or shall be enrolled as Judge therein, and to the Lord Ordinary on the Bills in time of vacation, on the application of the debtor or defender by petition duly intimated to the creditor or pursuer, to which answers may be ordered, to recal or to restrict such arrestment on caution, or without caution, and dispose of the question of expenses as shall appear just."

The Lord Ordinary (Kinloch) reported the application. He had difficulty in holding that he had power to entertain it, seeing that the action was no longer in dependence, having been dismissed, or at least was no longer in dependence before him.

SHAND appeared for the defenders, and

JOHNSTONE for the pursuer.

The Court, after some discussion, were of opinion that the Lord Ordinary had no power to entertain the application, and directed him, in respect of the dismissal of the action, to refuse it. The Lord President expressed great doubts whether a Lord Ordinary had power to deal with such an application after the case has gone to the Inner House. It appeared to him that section 20 of the Personal Diligence Act gave the Lord Ordinary power to deal with arrestments only while the case remained before him.

The Lord Ordinary accordingly dismissed the application, and found the defenders liable in two guineas of expenses.

Agents for Pursuer—Gibson-Craig, Dalziel, & Brodies, W.S.

Agents for Defenders—Webster & Sprott, S.S.C.

JAMIESON *v.* THE E. AND G. RAILWAY CO.

The same procedure took place in this case.

NOTE—CARMENT, IN PETITION HEPBURN.

Tutor ad litem—*Powers.* A tutor *ad litem*, appointed by the Court to a minor in a petition for disentail, having applied to the Court for advice as to how he should act, the Court refused to interfere.

This was an application to the Court by a tutor *ad litem* for advice under the following circumstances:—The applicant had been appointed tutor *ad litem* to one of the three nearest heirs called in a petition for the disentail of the estate of Riccarton. In the course of the correspondence between him and the petitioner in regard to the amount of consideration money to be paid by the latter for a consent by him on behalf of his ward, it was stated by the petitioner that he had been advised by counsel that the entail was defective. This being so, it came to be a question whether, in fixing the consideration-money for the consent, the alleged invalidity of the entall should be taken into account as an element, and upon that question the tutor *ad litem* now sought the opinion of the Court.

The Court declined to interfere, holding that