which was done upon the footing that the conveyance should contain the reservation which was inserted in it. The narrative clause of the disposition I observe narrates that the oversman decreed that the conveyance should be one "excepting . . . all freestone, coal, ironstone, limestone, slate or other mines or minerals under the said lands." It is difficult, I think, to see any reasonable objection to this declarator of that right which was so expressly reserved. The one word used in the declaratory conclusion which is not in the decree-arbitral or the reservations in the conveyance itself is "shale." We know that in the *Torbanehill* case there was much litigation as to whether shale could be accounted coal in the sense of a lease, but there was even then no dispute that shale was a mineral. But if there be any question on that head it was not argued to the Lord Ordinary nor mentioned on record, and I deal with the case on the footing that the declarator is a declarator of what is contained in the decree arbitral and the reservation clause of the disposition.

Now, I observe that the clause of reservation is, as the defenders argue, to be interpreted with reference to the special Act. But the only clause said to be inconsistent with the reservation is the 28th. I see in that clause nothing inconsistent with the declarator asked or the reservation on which that declarator proceeds. Notwithstanding the declarator the railway company would still be entitled to remove minerals if that was necessary for the construction of their line, either handing them over to the Earl, or paying their price as provided in the Act of Parliament.

I think that the pursuer is entitled to the declarator which he seeks.

LORD RUTHERFURD CLARK—I concur. We must determine the question by referring to the date on which the defenders granted the disposition. I therefore set aside the case of *Nisbet Hamilton* as having no bearing on this case. I am satisfied on looking into the conveyance that it contains an express reservation of minerals, and the disponee gets no title whatever to them under the conveyance. This, so far as I can see, is his only title, and I think it is consistent with the terms of the statute. I think that we should give decree of declarator, and that we can properly include shale in the decree, as I think shale is included in the expression minerals.

LORD TRAYNER—I agree with the conclusion arrived at. The Earl of Hopetoun was in 1838 proprietor of the land and the minerals, and he gave part of his property to the defenders' predecessors by disposition. They obtained no more than he gave them by that disposition, and it was subject to an express reservation of minerals. The defenders' predecessors therefore took nothing by the disposition; under their title they have no right to the minerals whatever. They were, and still are, the property of Lord Hopetoun, the pursuer, unless they were conveyed from him by some other authority than that conveyance, which did not convey them. The defenders say that they became their property in consequence of Act of Parliament—being section 28 of the special Act. I agree with your Lordships that that section does not give them any such right or impinge in any way on Lord Hopetoun's right to the minerals. Therefore, on the ground that the Earl of Hopetoun is proprietor of the minerals, and that his rights thereto are not trenched on by the disposition, I think he is entitled to the decree of declarator which he asks for.

The Court recalled the interlocutor of the Lord Ordinary, and granted decree in terms of the conclusions of the summons.

Counsel for the Pursuer—Dickson—C. K. Mackenzie. Agent—James Hope, W.S.

Counsel for the Defenders—Rankine—Jameson. Agent—James Watson, S.S.C.

Wednesday, May 17.

FIRST DIVISION.

R. & C. ROBERTSON, PETITIONERS.

Diligence — Bill — Messenger-at-Arms—Sheriff-Officer.

The petitioners were holders of a bill which the acceptor had failed to meet when it fell due. The bill had been protested, the protest had been recorded and extracted, and a charge given to the acceptor. The petitioners stated that the acceptor was possessed of property and effects in Shetland, and that there was no messenger-at-arms resident in Orkney or Shetland, and they craved the Court "to grant warrant to any sheriff-officer in Shetland or Orkney to carry into execution the said extract registered protest by arrestment, poinding, and sale, and other competent diligence." The Court *granted* the application.

Counsel for the Petitioners—Galloway. Agents—Carmichael & Miller, W.S.

Thursday, May 18.

SECOND DIVISION.

[Sheriff of Inverness, Elgin, and Nairn.

MOORE *v.* REID.

Reparation — Slander — Charge of Dishonesty against Servant in Inn by Resident therein—Malice—Privilege.

A maidservant in a hotel raised an action for damages for slander against a resident in the hotel. The pursuer averred that while she was cleaning

out the defender's bedroom he accused her of having stolen a quantity of liquor from bottles in his room during his absence at breakfast, and that thereafter he followed her downstairs and repeated the accusation to the landlady in presence of the pursuer and of another servant.

Held (*diss.* Lord Young) that the pursuer's averments did not *prima facie* disclose a case of privilege, and that therefore the pursuer did not require to aver on record facts and circumstances from which malice could be inferred, or to put in issue that the statement complained of was made maliciously, and that if a case of privilege was revealed at the trial, the judge could direct the jury that malice on the part of the defender must be proved before the pursuer was entitled to a verdict.

Reparation—Slander—Relevancy—Addition of Innuendo Necessary to make Averments Relevant.

Where the pursuer in an action of damages for slander averred on record that the defender had accused her of "having removed" a quantity of liquor belonging to him, and had repeated the accusation to another by saying that it was the pursuer who "took it"—*held* (*dub.* Lord Young) that as the record stood, the pursuer had failed to set forth a relevant case, and that in order to make her averments relevant she must add to her former statements, "meaning thereby to represent and representing that the pursuer had stolen a quantity of liquor belonging to him."

Maggie Reid raised an action in the Sheriff Court at Nairn against John William Moore for £100 as damages for slander.

The pursuer averred — "(Cond. 1) The pursuer was housemaid in King's Royal Hotel, Nairn, for the period from 26th November 1890 to the 7th day of September 1892. The defender resides in said hotel. (Cond. 2) On the morning of the 7th day of September 1892 the pursuer, in the course of her duties as housemaid in said hotel, was in the bedroom in the said hotel occupied by the defender for the purpose of making the bed and cleaning out the bedroom, when the defender made his appearance, and then and there accused the pursuer of having removed a quantity of whisky and claret from bottles belonging to him, and which were lying in his bedroom, during his absence at breakfast. (Cond. 3) The pursuer on being accused of having taken said whisky and claret denied having done so, and thereupon went to her mistress Mrs King, wife of David King, the proprietor and tenant and occupant of said hotel, and complained to her that Mr Moore had accused her of having taken his whisky and claret. (Cond. 4) The defender followed the pursuer downstairs, and at the foot of the stairs, in the entrance lobby, did, in the presence and hearing of Mrs King and another servant in said hotel, and in the presence and hearing of the pursuer, on the pursuer's saying to Mrs King, 'The idea of Mr Moore accusing me of taking his whisky and claret!' say, 'Yes, Mrs King, I say it was that girl that took it,' meaning the pursuer, or used words to the like effect. (Cond. 5) The said statements made by the defender of and concerning the pursuer were false, malicious, calumnious, and slanderous, and the pursuer has been greatly injured thereby in her feelings and reputation and character. The accusations publicly made by the defender in the manner before mentioned have been the subject of much talk and comment throughout the town of Nairn, and has lowered the pursuer in the estimation of the public and her friends and acquaintances, and of parties requiring her services, and she has been thrown out of her situation through the action and conduct of the defender. She has always been in good situations, and the injury and loss sustained by her is moderately stated at the sum concluded for."

The defender lodged defences to the action, and pleaded, *inter alia*—"(2) Privilege. (3) The alleged slanderous statements being privileged, the action is irrelevant, in respect the pursuer has not averred facts and circumstances from which malice can be inferred, and should be dismissed, with expenses."

On 4th November 1892 the Sheriff-Substitute (RAMPINI) pronounced an interlocutor finding that the statement averred by the pursuer to have been made by the defender "was defamatory, but that it was privileged under the circumstances: Finds in fact and in law that no relevant averments of malice have been made by the pursuer in her condescendence: Therefore sustains the defender's second and third pleas-in-law: Dismisses the action, &c.

"*Note.* — The Sheriff-Substitute is of opinion that this case is ruled by that of *Farquhar* v. *Neish*, March 19, 1890, 17 R. 716; that the pursuer's allegations disclose a case of privileged communications; that a general statement that the defender had acted falsely, maliciously, and calumniously is not a sufficient averment of malice in a case like the present; and that for these reasons the action must be dismissed. It appears to the Sheriff-Substitute that the defender was within his rights when he challenged the pursuer in his bedroom about taking his whisky and claret, and equally within his rights when, in answer to the pursuer's remark, he repeated this statement to her mistress."

The pursuer appealed to the Sheriff (IVORY), and on 25th January 1893 the latter pronounced the following interlocutor:—"Recals the interlocutor appealed against: Before answer, allows to both parties a proof of their respective averments, and to the pursuer a conjunct probation."

"*Note.*—The Sheriff is of opinion that the question of privilege will be best determined after the true state of the facts are ascertained . . . If the pursuer's statement is true—and it must be assumed

to be so at the present stage—the Sheriff entertains the greatest doubt whether it discloses a case of privilege. To hold that it did would virtually be to hold that any resident in a hotel was privileged if on missing from his bedroom any article belonging to him, he, without making any inquiry or investigation, at once accused the housemaid of taking it, although the charge was entirely destitute of foundation. The Sheriff is not aware of any authority supporting such a startling proposition. Certainly the case of *Farquhar* v. *Neish*, 17 R. 716 (which is said to rule this case), lends no support to such a view. In the whole circumstances therefore the Sheriff has thought it right to allow a proof before answer."

The defender appealed to the Court of Session for jury trial, and argued—(1) There was no issuable matter on record. The words said to be used, viz.,—"having removed" and "taking" were not actionable, and there was no innuendo on record. (2) The statements of the defender were privileged. The statement to the mistress was privileged because it was a statement made by the defender to the proper authority in discharge of a duty on his part. The statement to the girl was also privileged because she was in the position of servant for the time being to the person making it. No proper averment of malice having been set forth on record, the action should be dismissed as irrelevant—*Watson* v. *Dunlop*, February 8, 1862, 24 D. 494; *Innes* v. *Anderson*, October 25, 1889, 17 R. 11; *Farquhar* v. *Neish*, March 19, 1890, 17 R. 716; *M'Fadyan* v. *Spencer & Company*, January 7, 1892, 19 R. 350; *Hill* v. *Thomson*, January 16, 1892, 19 R. 377; *Stewart* v. *Bell*, May 5, 1891, L.R., 2 Q.B. 341.

Argued for the pursuer—The case was relevant. (1) The words used were in the circumstances actionable. This was the first time that the contrary was argued; no objection had been taken to these words as not being actionable in the Sheriff Court. (2) The statements of the defender were not privileged. The charge of having stolen whisky and claret was made directly to the pursuer by the defender. He had no right or duty to make such a charge. If he had gone to the pursuer's mistress and said that he had missed liquor from his room, and that he thought the pursuer, being the only person going about the room besides himself, must have taken it, that statement might have been privileged. But the statement made here to the mistress was in presence of others and was a direct reiteration of the former accusation. The case should be sent to a jury in the ordinary form—*Rankine* v. *Roberts*, November 26, 1873, 1 R. 225; *Laidlaw* v. *Gunn*, January 31, 1890, 17 R. 394.

At advising—

Lord Justice-Clerk—In this case the pursuer was accused by the defender, in very distinct terms, of having taken whisky and claret from his room. The question for our decision arises in this way, that the Sheriff-Substitute on considering the case held that a case of privilege was disclosed, and that there must be set forth, on the record, facts from which malice might be inferred. The Sheriff however took a different view. A number of cases have been referred to on the point, and undoubtedly having regard to these decisions the question before us is one of some difficulty and requires anxious consideration. Perhaps the strongest case in favour of the defender is *Farquhar* v. *Neish*. In that case a servant who had been dismissed as unsatisfactory complained of defamatory statements in a letter written by her mistress to the registry office from whom she had engaged the servant. It was held in that case that the defender was in the position of having a duty to make the statements, and Lord Lee, who delivered the judgment of the Court, proceeded on the case of *Innes* v. *Adamson*, in which statements made by a superior officer of police to an inferior in presence of others were held to be privileged. Both of these were cases in which it was held that the person making the statement had a duty to do so, and that unless it was proved to have been made maliciously, the pursuer could not prevail, and consequently that it was necessary that a proper averment of malice should be placed by the defender on record before an issue could be allowed. The case here is, that the pursuer being a servant in a hotel, the defender, a guest in that hotel, without making any inquiry, accused her to her face of taking liquor from the bottles in his room. I do not think it can be contended that there was any duty on his part to proceed in this way. He not only made the statement to herself, but he followed it up by repeating it to the mistress, to whom the servant was complaining of his words. I think this is a case in which the ordinary rule should be followed of sending the case to a jury in ordinary course. Sometimes in these cases a case of privilege emerges during the hearing of the evidence, and when this occurs it is the duty of the judge to direct the jury that malice on the part of the defender must be proved before the pursuer is entitled to a verdict. It seems to me that the Sheriff has come to a right conclusion, and that the pursuer is entitled to an issue in ordinary form.

Another point must be dealt with which it appears was overlooked both here and in the Court below, and which was brought under our notice by Mr Glegg. It is this, that the accusation stated on record does not disclose any actionable allegation at all. Therefore before going to trial the pursuer's accusation must be so innuendoed both on the record and in the issue as to bring it within the range of actionable allegations.

Lord Young—I should not myself have thought it doubtful that defamatory language was used here by the defender. When in such circumstances as we have here, an accusation is made of "having removed" or "taken" whisky and claret, I should not have thought it doubtful that

such language is defamatory. But that may be made clear enough by amendment if anything turns on it.

But I think the important question in the case is—whether on the face of the record this is a case of privilege. The Sheriff-Substitute is of opinion that it is a case of privilege, not a case where privilege may emerge, as your Lordship has termed it, at the trial, but a case of privilege on the face of the record. The Sheriff was of another opinion, and he altered the Sheriff-Substitute's judgment. What we therefore have to determine is whether the statements on record disclose a case of privilege. If we are doubtful on the subject, we can send the case for trial without prejudice to the defender, for we have now got our law into such a condition that when a case of privilege emerges at the trial, the judge may give such directions as will do justice between the parties without any amendment or new trial.

I am of opinion that a case of privilege is disclosed on the face of the record. What are the circumstances set forth here? A customer living in an inn accuses the servant appointed to wait on him, of having stolen whisky and claret belonging to him, and he makes this complaint, not only to herself, but also to the landlady. Is that a case of privilege or not? I would have thought it a typical case of privilege. Not that a man is ever privileged under any circumstances to defame another by false or malicious statements. A police-officer will not be privileged to defame his inferior falsely and maliciously. A judge of the Court is not privileged to state malicious falsehoods. No one is privileged to act maliciously or make false statements against another. The law of privilege is no more than this, that while the common law presumes malice and falsehood where a person who has no legitimate occasion to do so speaks of a neighbour in defamatory language, the same common law lays down that if, the circumstances being looked at, there is legitimate occasion to make defamatory statements, then there shall be no presumption of falsehood and malice, but that in this latter case the falsehood of the statement and the malice of the defender must be proved by the pursuer in order that he may be successful in an action for damages.

If a man makes a charge against his servant, "I have missed wine, and as you alone have access to my room you must have taken it," that is a defamatory charge, and if he dismisses his servant for such conduct repeated, nothing can be more defamatory. But does the law assume that the master is stating a falsehood and acting maliciously if he does not prove the truth of his statement? I can only say that during all my time the law has been considered otherwise.

Here, according to the view of the Sheriff-Principal and your Lordship, no case of privilege is disclosed on record, and if the pursuer proved that the defender was a guest in the hotel, and that she was a servant waiting upon him, and that he accused her of taking his whisky and claret, her case would be made out, and she would be entitled to damages, unless he could prove the truth of his statement. The view was indicated that there might be a difference between a servant in an inn and a man's own servant. I suppose it would be the same if the servant was a servant in a club. But is there any difference in principle between the case of a servant in a hotel or an inn and one's own servant. I think there is a duty alike on masters and mistresses, guests in inns, and members of clubs, to point out the delinquencies of servants if they honestly believe the servants are committing such. It is surely a very proper thing to tell the servant himself if the person employing him believes that he is committing a fault. A man gives the character of his servant who is leaving his service to another person applying for it, and that has been held to be privileged. Can it be said that his stating a charge of theft or falsehood which has come under his own observation, and which he believes to be true, to his servant is not privileged also? Just look at the common sense view of the case. A dweller in an inn makes an accusation against the servant appointed to wait on him, and tells the landlady that he has done so. Is there in such a case to be a presumption that the dweller in the inn is telling a falsehood knowingly? If there is to be no such presumption, then it is a case of privilege. I perfectly understand that if the case goes to a jury, the matter may be discussed before the judge trying the cause, but I think such a course in a case like the present is contrary to our practice. Numerous cases of this sort have been dismissed on the record because the record did not disclose a case of privilege, and because the Court thought it only right and fair that the pursuer should specify circumstances which would make the charge of malice *prima facie* reasonable. We disposed of the case of *Farquhar* v. *Neish* on that ground, and what difference is there between that case and this? I see none. I am clearly of opinion that a case of privilege is here disclosed upon the record, and that a charge of malice must be supported by facts stated on record. I think the case of *Innes* v. *Adamson* supports this view, and in *M'Fadyen* v. *Spence & Company* we applied it in this Division. Although I do not think the judgment in that case can be referred to as deciding the point raised here, yet it expresses the opinions of two judges on the matter, and may be almost considered a judgment directly bearing on the present case.

For these reasons I think a presumption of malice is excluded in this case, and that as there are no facts stated on record which support a charge of malice against the defender, the action ought to be dismissed as irrelevant.

Lord Rutherfurd Clark—I think we should allow the trial to proceed, and should leave it to the Judge to give the directions which are appropriate to the case.

So far as I know, the defender may have

missed no wine or spirits. It is not admitted by the pursuer that he did miss any. If he did not, I have difficulty in seeing how he could have any privilege, or in other words, how he could have any legitimate occasion for saying what he did.

LORD TRAYNER—As the record at present stands, I think the pursuer has failed to set forth a relevant case. She avers that on an occasion specified, the defender accused her of having "removed a quantity of whisky and claret" belonging to him from bottles lying in his bed-room, and that upon her subsequently complaining to her mistress that she had been so accused, the defender repeated the accusation by saying that it was the pursuer who "took it." Neither of these expressions used by the defender is necessarily calumnious—they may mean something far short of an imputation of dishonesty. The pursuer, therefore, to make her averments relevant, must put upon the defender's words the meaning or innuendo which will make them calumnious, if used by the defender for the purpose of conveying that meaning, and aver that they were used by the defender with that intent. The relevancy of the action was challenged upon this ground before us, but no objection of that kind seems to have been raised in the Court below. The Sheriff-Substitute finds that the statement complained of was defamatory, and it appears to have been taken for granted that the statement complained of was intended and understood to charge the pursuer with dishonesty. I would allow the pursuer to amend his record in reference to this. Assuming that to be done, the important questions remain (1) whether the defender's statements are privileged, so as to make it incumbent on the pursuer to aver and prove that the statements complained of were made maliciously; and (2) whether a general averment of malice is sufficient, without any averment of facts and circumstances from which malice may be inferred.

Now, in my opinion, a pursuer in an action of this kind, does not require to allege and put in issue that the statement complained of was made maliciously, unless the pursuer's own averments declare a *prima facie* case of privilege, as, for example (although examples are probably unnecessary), where the pursuer's averment showed that the statement complained of was made in the discharge of a duty or exercise of a right. The present case does not appear to me to fall within this category. If the defender had gone to the pursuer's mistress and stated that whisky or anything else belonging to him had been abstracted or removed from his room, that the pursuer was the only person going about his room who could in his opinion have taken it, and that he thought or believed that she had taken it, such a statement, if true, would have been privileged *prima facie*. But if the defender, having missed or lost something belonging to him, directly charged the pursuer with having taken, that is, stolen, his property, and repeated that accusation to the pursuer's mistress when the pursuer complained that it had been made (as is the case averred here), then I see no case of privilege disclosed at all. It is simply the case of one person charging another with theft without any duty or right to make the charge. I should not therefore require the pursuer to allege or prove malice in the first instance, although it may turn out at the trial that the defender had such justification for the charge which he made as would necessitate the pursuer proving malice to entitle her to a verdict. According to our later practice the question of privilege, and consequent necessity for proving malice, has been left for determination at the trial under the direction of the presiding judge, unless in the cases I have alluded to where the pursuer's averments disclose a case of privilege *prima facie*. I would adopt that course here. Taking this view of the case, it follows that the pursuer cannot here be required to aver facts and circumstances from which malice may be inferred. I agree with what the Lord President said in the case of *Innes* v. *Anderson*, that there are "two classes of cases, in one of which a general allegation of malice is sufficient, while in the other, more particular averments of malice, &c., are required." But the rule requiring such special averments is only applicable to a very limited class of cases—a class to which the present case, in my opinion, does not belong, and a class the limits of which I am not disposed to extend. I regard this case as broadly distinguishable from the case of *M'Fadyen* v. *Spencer*, and with regard to the case of *Farquhar* v. *Neish* I should like to say, with the greatest deference, that I am not prepared to concur in the decision there pronounced.

The pursuer put in a minute asking to be allowed to amend her record by inserting after condescendence 2, "intending thereby to represent and representing that pursuer had stolen a quantity of whisky and claret from such bottles," and after condescendence 4, "intending to represent and representing that pursuer stole whisky and claret belonging to defender."

She also lodged the following issues for the trial of the cause—"1. Whether on or about 7th September 1892, in or near King's Royal Hotel, Nairn, the defender falsely and calumniously accused the pursuer of having removed a quantity of whisky and claret from bottles belonging to him lying in his bedroom, during his absence at breakfast, or used words to the like effect, meaning thereby that pursuer had stolen a quantity of whisky and claret from said bottles, to pursuer's loss, injury, and damage? 2. Whether on or about 7th September 1892, in or near King's Royal Hotel, Nairn, on pursuer stating to Mrs King, residing at King's Royal Hotel aforesaid, 'The idea of Mr Moore accusing me of taking his whisky and claret,' or words to the like effect, the defender falsely and calumniously said, in the presence and hearing

of pursuer, and of the said Mrs King and others, 'Yes, Mrs King, I say it was that girl that took it,' or used words to the like effect, meaning thereby that pursuer stole whisky and claret belonging to defender, to the pursuer's loss, injury, and damage? Damages laid at £100."

The Court allowed the amendments and approved of the issues for the trial of the cause.

Counsel for the Pursuer and Respondent—Jameson—Glegg. Agents—W. & J. L. Officer, W.S.

Counsel for the Defender and Appellant—Orr—W. Thomson. Agents—Galloway & Davidson, S.S.C.

Saturday, May 20.

FIRST DIVISION.

[Sheriff of Lanarkshire.

M'SORLEY *v.* STEEL COMPANY OF SCOTLAND.

Reparation—Personal Injury—Master and Servant—Process—Issue.

In an action laid at common law and under the Employers Liability Act, the pursuer averred that he had received injuries while in the employment of the defenders, a steel company, through their fault. The defenders denied fault, and further averred that at the time of the accident the pursuer was in the employment of a third party, who had a contract with them for heating the steel at their works.

The Court *approved* of a single issue for trial of the cause, under which the pursuer might claim damages, whether or not it was proved that at the date of the accident the relation of master and servant existed between him and the defenders.

Michael M'Sorley raised an action of damages in the Sheriff Court at Glasgow against the Steel Company of Scotland, in respect of injuries sustained while in their employment. The action was laid at common law, or alternatively under the Employers Liability Act.

The pursuer averred that on 6th December 1892 he was assisting in charging the furnaces at the defenders' work at Newton under the superintendence of John Elliot, a foreman in their employment, and that in the course of his work he was directed to take a cobble or lump of red-hot steel to the furnace; that in consequence of the unevenness of the mill floor the cobble was thrown off the bogie on which he had placed it, and fell on him, burning him severely; that it was the duty of the defenders, their managers, and their said foreman to have seen that the floor-plates were perfectly level, and that their failure to fulfil this duty led to the accident.

The defenders denied that the pursuer was in their employment at the time of the accident, and averred that "he was employed by John Elliot, who had a contract for heating steel with the defenders." They also denied that the mill floor was defective.

The Sheriff-Substitute having allowed a proof, the pursuer appealed to the Court of Session for jury trial, and proposed an issue in the following terms—"Whether on or about 6th December 1892, the pursuer, while employed at the defenders' works at Newton, was injured in his person by a red-hot cobble falling upon him, through the fault of the defenders, to the loss, injury, and damage of the pursuer."

The defenders objected to the issue proposed, on the ground that the action as laid was directed against the defenders entirely as the employers of the pursuer, and proposed that the issue should read—"Whether the pursuer . . . while in the employment of the defenders at their works at Newton." . . .

At advising—

LORD PRESIDENT—I think that it is not necessary to have two issues in order to enable the pursuer to claim a verdict alternatively at common law and under the statute. If it be unnecessary, then it is undesirable to have more than one issue, and under the issue originally proposed by the pursuer all the questions raised on this record can be satisfactorily tried. It may be convenient that, as is very often done, the damages claimed under the statute should be stated on the face of the issue paper as well as the damages claimed at common law.

LORD ADAM concurred.

LORD M'LAREN—I agree, and on this ground, that the Employers Liability Act gives no new right of action to anyone, but only limits and restricts the application of the well-known defence of common employment. It therefore appears to me to be unnecessary, where doubts exist as to the fact of employment, to make that question the subject of a separate issue.

LORD KINNEAR was absent.

The pursuer having added to the issue proposed by him a statement of the damages he claimed at common law and under the statute, the Court approved of said issue.

Counsel for the Pursuer—Watt. Agent—John Veitch, Solicitor.

Counsel for the Defenders—Fleming. Agents—Drummond & Reid, W.S.
