advocate against an action for anything which he may say in the course of his exercise of that function. Nothing can put the matter higher than the passages I have referred to—the passage which the Lord President, 17 R. at p. 911, quotes from Lord Penzance, and the passage from the opinion of the Master of the Rolls in *Munster*, 11 Q.B.D. 588—because it is said, "Be it ever so plainly impertinent, be it ever so clear that the words were uttered from a malicious motive, action is denied." The principle of the rule so laid down is not that the law will deliberately protect a wrong of that kind, but that the expediency of protecting an advocate in the exercise of his function is so high that the Court will not entertain any question as to whether what he has said was irrelevant or impertinent and malicious. It seems to me that this case is clearly within the rule, and so far as I am concerned I most willingly affirm the principle of the rule.

LORD ADAM and LORD M'LAREN concurred.

LORD KINNEAR was absent.

The Court adhered.

Counsel for the Pursuer—A. J. Young—Kemp. Agent—A. C. D. Vert, S.S.C.

Counsel for the Defender—Jameson, Q.C.—Chree. Agent—J. Knox Crawford, S.S.C.

Thursday, March 10.

SECOND DIVISION.

[Sheriff of Lanarkshire.

CHADWICK *v.* ELDERSLIE STEAMSHIP COMPANY, LIMITED.

Reparation—Ship—Liability of Shipowner to Servant of Stevedore for Defect in Ship's Appliances—Defective Means of Descending into Hold.

In an action of damages against the owners of a ship, the pursuer averred that her son, who was a stevedore's labourer, while engaged in discharging the defenders' vessel, was descending into the hold when he fell and was killed; that the shipowners had failed to provide a continuous ladder or other suitable means for getting down the hold, the top of the ladder being 6 feet 6 inches below the combings of the hatchway, and the only means of getting to it being a slot about 3 feet below the combings; that the ladder was about an arm's length nearer the side of the vessel, and was so situated that it was not possible to catch hold of it without leaving hold of the slot; that it was while letting himself down in this manner that the pursuer's son, failing to get hold of the top of the ladder, fell into the hold; and that the accident was due to the fault of the defenders in failing to provide a proper means of descent, and also that other accidents had happened before owing to this defect, which had been remedied since the death of the pursuer's son. *Held* (*diss.* Lord Trayner) that these averments were relevant.

This was an action brought in the Sheriff Court at Glasgow by Mrs Charlotte Buckley or Chadwick, 4 Wightman Street, Victoria Dock Road, London, against the Elderslie Steamship Company, Limited, Glasgow, as registered owners of the steamship 'Buteshire.'

The pursuer craved decree for the sum of £500 as damages for the death of her son, who was a dock labourer, and upon whom she alleged she was dependent.

The pursuer averred that on 7th January 1897 the 'Buteshire' was discharging a cargo at the Victoria Dock, London, that the Port of London Stevedore Company were employed by the defenders for the purpose of discharging the vessel, and that amongst the labourers engaged by the Stevedore Company and sent on board the 'Buteshire' for the purpose of the contract was the pursuer's son Thomas Chadwick.

The pursuer further averred, *inter alia*—"(Cond. 4) On said 7th January 1897 the said Thomas Chadwick, while in the act of descending the forward hold No. 1, where he was engaged shifting cargo, fell to the bottom of the hold, a distance of about 32 feet, and sustained a fracture of the skull, owing to which he died about an hour thereafter in the Seaman's Hospital, Victoria Docks, to which he was carried. (Cond. 5) There was no continuous ladder or other suitable means for getting down the hold. To descend into the hold it was necessary for the labourers employed on board this vessel to let themselves over the edge of the combings from the deck, and, holding on with one hand to the top of the combings, to search underneath for a narrow slot (2 or 3 inches deep) about 3 feet further down. Into this slot the person wishing to descend had to insert the four fingers of his other hand; then, leaving hold of the combings with the hand which held on to them, he had to reach with it towards the top of a fixed iron ladder about 3 feet 6 inches lower down, and about an arm's length nearer one side of the vessel. It was not possible to catch hold of this ladder without leaving hold of the slot. (Cond. 6) The said Thomas Chadwick was at that point of the descent where it was necessary to let go the slot and grip the ladder. He failed to get hold of the ladder, and in consequence fell down the hold and was killed, as stated in article 4 hereof. (Cond. 7) The accident was altogether due to the gross fault and negligence of the defenders, or of their servants on board of said steamship, in failing to provide for all who had to work in the hold a safe and proper means of descent thereto, such as a ladder from the deck to the bottom of the hold. In any case it was their duty to provide means of descent of a safer and more suitable construction than the arrangements described, which were thoroughly unfit for the purpose, and involved great danger to those

using them. The pursuer believes and avers that prior to the accident to her son there had been other accidents on board the 'Buteshire' traceable to the same cause, and also that since the accident to the deceased the arrangements for descent into the hold have been improved."

The defenders averred, *inter alia*—"(Ans. 5) Explained that the vessel was designed and constructed for the defenders by well-known shipbuilders, and was furnished with the customary means of ascending and descending to the hold, and that her construction was supervised and approved by the surveyor of Lloyds' Registry."

The defenders did not object to the relevancy of the action in the Sheriff Court (there being no plea to the relevancy stated in their defences), and the Sheriff-Substitute (GUTHRIE), by interlocutor dated 11th January 1898, allowed a proof.

The pursuer appealed to the Court of Session for jury trial, and an issue was lodged for the trial of the cause.

Counsel for the defenders having intimated that he proposed to object to the relevancy of the action, the case was sent to the summar roll, and upon its being called counsel for the defenders stated that he was prepared to amend the defences by adding a plea to the effect that the pursuer's averments were irrelevant. The Court allowed the amendment, and a plea to the relevancy was accordingly added to the pleas-in-law for the defenders.

Argued for the defenders—This accident occurred on board a ship, and the man who was killed was accustomed to work on board ships. It was not incumbent upon the owners to provide the same easy means for getting about a ship as might be thought necessary and customary on land—*Forsyth* v. *Ramage & Ferguson*, October 25, 1890, 18 R. 21, and *Jamieson* v. *Russell & Company*, June 18, 1892, 19 R. 898, *per* Lord Adam, at page 900. Nothing more was alleged here than that it was difficult and required agility to get down into the hold by the means provided. That was not a relevant averment of fault against the shipowners. It was not alleged that the means provided for descending were other than what was usual and proper in ships. The owners were not bound to provide anything more than what was usual—*Edwards* v. *Hutcheon*, May 31, 1889, 16 R. 694. It was not averred that the deceased went where he did in obedience to any order. If there was any danger it must have been quite obvious to the deceased, and he went at his own risk. He was bound to look out for his own safety.

Argued for the pursuer—An issue should be allowed. The averments in article 5 sufficiently set forth that no proper means of descending into the hold were provided. It was also averred in article 7 that accidents had occurred before in consequence of the defect complained of, and that since the accident to the pursuer's son the defect had been remedied. The owners were not entitled to get rid of their responsibility by saying that the ship had been constructed by well-known shipbuilders, with the usual appliances, under the supervision and with the approval of Lloyd's surveyor—*M'Killop* v. *North British Railway Company*, May 29, 1896, 23 R. 768. Mere knowledge of the danger on the part of the deceased was not sufficient to relieve the defenders from liability, and it was always a jury question in the circumstances of each case whether the person injured must be taken to have agreed to take the risk—*Smith* v. *Baker & Sons*, 1891, A.C. 325. The cases cited had no bearing upon the present. *Edwards* v. *Hutcheon, cit.*, was decided after inquiry and in favour of the pursuer. *Forsyth* v. *Ramage & Ferguson, cit.*, and *Jamieson* v. *Russell & Company, cit.*, were cases relating to ships in course of construction, and, moreover, the former decision proceeded partly upon the ground that the pursuer's averments disclosed carelessness on his own part, while in the latter, where this was not the case, an issue was allowed.

At advising—

LORD JUSTICE-CLERK — In this case I confess I have had some difficulty as to whether the case should be allowed to go to trial or not, but having considered it, I have come to the conclusion that it ought to go to trial.

The allegation of the pursuer is that the ladder in the hold was so placed that there was danger in reaching to it from the only place where a hold could be got for the purpose of getting at it—a slot in the side of the hatch—and that owing to the dangerous position in which that ladder was placed, there was danger of the person slipping off, and that the accident was caused by this man failing to get hold of the ladder and losing hold of the slot.

I think it is a case which depends very much upon the facts, and as it is averred here that this particular arrangement was provided for those who had to be on the ship—on the decks or in the hold—and as it is averred that upon previous occasions accidents have happened on board the ship from the same cause, I think the case is one which should go to trial.

LORD YOUNG—I see no difficulty in regard to the relevancy of this case whatever. None occurred to those charged with the interest of the defenders in the Sheriff Court, and accordingly there would not be before the jury any plea against the relevancy. I confess it would not occur to me any more than to the defenders' advisers that there was any ground for such a plea; and after hearing the argument stated here by Mr Clyde, I remain of the same opinion, and think it is clearly a relevant case.

LORD TRAYNER—The pursuer's son was engaged in the discharge of the defenders' vessel, and while descending one of the holds, fell to the bottom and was killed. The pursuer claims damages from the defenders for the death of her son. I am of opinion that the pursuer has not averred any fault on the part of the defenders in

respect of which they are liable for the claim now made.

The deceased was not the servant of the defenders. He was in the employment of the London Stevedore Company, who were employed by the defenders to discharge the vessel. There is no averment that the defenders were bound to supply whatever appliances were requisite for the discharge of the ship, and in the absence of such averment I must suppose that the London Stevedore Company were bound to give their own servants all the appliances necessary for performing this work. It is said that the defenders failed to provide a safe and proper means of descent into the hold of their ship, but there could be no actionable failure in providing unless there was a duty to provide. Such a duty, as I have said, is not averred. There were means provided for the descent into the hold of the vessel, but these are said to have been dangerous and unsuitable. The deceased must have seen this, but it is not suggested that he complained of the existing means of descent, or asked them to be supplemented or replaced by others. If the deceased accepted without objection or complaint the existing means, and proceeded to use them, it must be held that he regarded them as sufficient.

The real ground of action is that the construction of the ship was faulty in not providing some means of descent other than those which existed. But there is no averment that the construction of the "Buteshire" was in any respect unusual. If it was of a usual and ordinary construction, in so far as the means of descent into the hold was concerned, the defenders were not guilty of fault in adopting it.

The averments as to previous accidents and subsequent improvements have no bearing upon the relevancy of this particular case.

LORD MONCREIFF was absent.

The Court approved of the issue as the issue for the trial of the cause.

Counsel for the Pursuer — Younger. Agent—Walter C. B. Christie, W.S.

Counsel for the Defenders — Clyde. Agents—Webster, Will, & Co., S.S.C.

Thursday, March 10.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

WEIR *v.* GRACE.

Process — Proof — Proof or Jury Trial — Reduction of Will in Favour of Testator's Law-Agent—Court of Session Act 1825 (6 *Geo. IV. cap.* 120), *sec.* 28—*Court of Session Act* 1850 (13 *and* 14 *Vict. cap.* 36) *sec.* 49—*Evidence (Scotland) Act* 1866 (29 *and* 30 *Vict. cap.* 112) *sec.* 1—*Court of Session Act* 1868 (31 *and* 32 *Vict. cap.* 100), *sec.* 27.

Even in the case of the "enumerated causes" under the Court of Session Act 1825, section 28, the Lord Ordinary before whom the case depends has now a wide discretion as to whether proof or jury trial should be allowed, and though his decision is subject to review, the Court will not interfere with it except upon very special grounds.

Question — Whether an action for reduction of a will on the ground of undue influence alone, there being no averments of fraud or circumvention or facility, came within the provision as to the "enumerated causes" in the Court of Session Act 1825, section 28.

In an action for the reduction of a will on the ground of undue influence alone, there being no allegations of fraud or circumvention or facility, the pursuer averred that the defender, in whose favour the will had been made, had for many years acted as law-agent, factor, and banker to the testatrix, an elderly maiden lady, that though the will had been drawn in the office of another law-agent, he had acted on the instructions of the defender, and that the result of the course adopted in regard to the preparation of the will was that it was in no way differently situated in this respect than if "it had been actually prepared by" the defender himself. *Observed* that in such a case proof was more expedient than jury trial.

This was an action of reduction at the instance of Alexander Weir, Melbourne, Australia, and Mrs Ann Weir or Key, St Andrews, against Stuart Grace, banker and solicitor, St Andrews, C. S. Grace, W.S., St Andrews, and certain other persons, legatees under the will, which was one of the documents sought to be reduced.

The summons concluded for reduction in so far as regards any right which the defender Stuart Grace or the defender C. S. Grace could claim under them—(1) of a letter dated 5th March 1881 purporting to embody the testamentary directions of Miss Margaret Brown and Miss Ann Brown, who resided at New Grange House, St Andrews; (2) a deed of settlement by Miss Margaret Brown dated 1st April 1881, with relative codicils dated respectively 15th June 1886 and 6th April 1893, whereby she