later statutes. It seems to me that there is nothing to prevent us answering that question now. It may be that in consequence of our judgment the second party may apply to the Registrar-General to have the question of his salary reconsidered; but with that I think we have nothing to do.

On the merits of the questions put to us, I am of opinion (1) that the fees paid to the second party under the statutes enumerated in the first question of law are, in the sense of his contract with the first parties, fees received by him as registrar of births, deaths, and marriages; he so understood and acted on the contract for a year; and (2) that under section 51 of the Act of 1854 the first parties were entitled to place the second party upon an annual salary upon the condition, *inter alia*, that those fees, in addition to others, should be accounted for by him to them. The duties which the registrar discharges under the statutes in question are all duties imposed upon him by the Legislature as registrar; and he is bound in virtue of his office to discharge them. They are all cognate to the duties imposed upon the registrar under the original Act of 1854, and they were all, except one, incumbent upon the registrar at the date of the second party's appointment.

The argument for the second party seems to me to be grounded upon a false analogy. Public officials, if the conditions of their appointment permit it, are often selected and remunerated for work done, not in their official capacity or in connection with their official duties, but entrusted to them because from their official experience they are considered best qualified to do the work or give the advice desired. Fees received in return for such services do not form part of their official remuneration, and therefore are in quite a different position from fees paid in return for the discharge of duties laid upon an existing official by statute.

The primary mode of remunerating the registrar under all the statutes referred to in the case is by fees. By the original statute of 1854 the parochial board was empowered to substitute a salary for all the fees then exigible. In my opinion this power extends to all the fees authorised to be paid to the registrar in respect of the duties discharged by him as registrar under the subsequent statutes mentioned in the case.

I am therefore prepared to answer the questions in the manner above mentioned.

The Court answered the first question in the negative, and the second in the affirmative.

Counsel for First Parties—Balfour, Q.C.—Salvesen. Agents—J. & D. Smith Clark, W.S.

Counsel for Second Party—The Solicitor-General — M'Lennan. Agent — D. Hill Murray, S.S.C.

Saturday, May 28.

SECOND DIVISION.

[Sheriff of Lanarkshire.

GILLESPIE *v.* HUNTER.

Reparation—Master and Servant—Liability for Act of Servant to Strangers—Scope of Servant's Employment.

In an action of damages against the landlord of a public-house for injuries sustained by the pursuer through being forcibly ejected from the premises by the defender's servant, the pursuer averred that the assault had been committed in consequence of an altercation on the subject of religion and politics, as to which he and the defender's servant differed. He averred generally that in ejecting him the defender's servant had acted within the scope of his employment as manager of the public-house.

Held that such a general averment was not sufficient, and that the specific statements of the pursuer disclosed that the quarrel in which the assault originated was a private quarrel between the pursuer and the defender's servant. Action accordingly *dismissed* as irrelevant.

This was an action brought in the Sheriff Court at Glasgow by James Gillespie, quay labourer, Glasgow, against Robert Hunter, spirit merchant, carrying on business at 1 Dumbarton Road there, in which the pursuer craved decree for £100 as damages sustained by him through being ejected from the public-house occupied by the defender.

The pursuer averred—"(Cond. 2) The pursuer has frequented said shop for several years, having an odd refreshment therein, and the defender knows the pursuer. The defender's said shop is under the control and management of Hector M'Kechnie, who is and has been a servant of defender for about three years, and the said Hector M'Kechnie also knows the pursuer by frequenting the said shop, as above mentioned. (Cond. 3) On the afternoon of Saturday 10th July 1897 the pursuer, along with men named Robert Allan and Mr Coleman, was in the defender's said shop having a refreshment, which was served to the pursuer and the said Robert Allan and Coleman by the said Hector M'Kechnie. While the pursuer was standing at the counter of said shop in the act of partaking of said refreshment, pursuer, in the course of conversation with Allan and Coleman, remarked that he, the pursuer, although a Roman Catholic, was a good Conservative, when the said Hector M'Kechnie, for whom defender is responsible, stated that he objected to such conversation in the defender's shop, and that if the pursuer repeated the remark, he, the said Hector M'Kechnie, would pitch him out of the shop. The pursuer simply replied that he had been

going about defender's premises before M'Kechnie came, and that he might be there after him; whereupon the said Hector M'Kechnie, without any provocation, and before the pursuer had finished said refreshment, got hold of pursuer, dragged him to the door of defender's shop, and gave him a violent push from him, and knocked him to the ground, the pursuer falling heavily on his back. [*Then followed a statement of the injuries sustained by the pursuer*]. With reference to defender's answer (which, so far as inconsistent with pursuer's statements, is denied), explained that pursuer and defender's shopman have often, prior to the date libelled, spoken in a friendly way on politics, pursuer being a Conservative and the shopman being a Liberal; that on the date mentioned the Orange procession was taking place; and that in course of conversation with Allan and Coleman, all in a friendly way, pursuer frankly admitted, although a Roman Catholic, he was a Conservative, when defender's shopman insisted on putting pursuer out of the shop, and used the violence to and injured the pursuer as condescended on. (Cond. 4) The pursuer's said injuries are due to the fault and recklessness of the said Hector M'Kechnie, for whom the defender is responsible, in illegally and and unwarrantably ejecting the pursuer from the defender's said shop, and in throwing him violently to the ground, as above mentioned. The said shop and its management was entrusted by the defender to the said Hector M'Kechnie, and the latter, in injuring the pursuer as he did, was acting within the scope of his authority as the defender's manager, and the defender is therefore responsible to the pursuer in damages for the said injuries."

The defender (Answer 3) averred as follows:—"Explained that defender's shopman declined to supply the pursuer with any refreshment, as he had apparently got enough, whereupon the pursuer stated that he was a good Conservative although no Orangeman. Defender's said shopman resented this conversation in the shop, as the same was rather crowded at the time, it being Saturday afternoon, and asked pursuer to go out, which he declined to do. Defender's shopman caught hold of pursuer and put him out."

The pursuer pleaded—"(1) The said Hector M'Kechnie having in the course of his management of defender's said premises recklessly and unwarrantably injured the pursuer, the defender is answerable to the pursuer in reparation in respect of said injuries. (2) The pursuer having been injured through the recklessness and fault of defender's servant, the pursuer is entitled to reparation from the defender."

The defender pleaded, *inter alia*—"(1) The action is incompetent and irrelevant. (2) If the pursuer was injured in the manner stated, such injury was not caused by the defender's servant acting within the scope of his authority, and defender is therefore entitled to absolvitor."

By interlocutor dated 5th November 1897 the Sheriff-Substitute (BALFOUR) before answer allowed a proof.

Note.—"This is an action of damages arising out of an alleged assault committed upon the pursuer by the defender's servant (Hector M'Kechnie) in the defender's shop, which the servant managed.

"It is stated that after some angry words regarding religion and politics, the defender's servant dragged the pursuer to the door of the shop, and gave him a push and knocked him down, and that in so doing he was acting within the scope of his authority as the defender's manager. The defender admits that the management of the shop was entrusted to M'Kechnie, but he denies the assault, and at the same time pleads that he is not liable for his servant's unlawful act.

"According to the authorities quoted in Glegg on Reparation, page 454, an employer may be responsible for an unlawful act of his servant if it is done in furtherance of the employer's interests. According to the defender's own statement, the manager resented the pursuer's conversation, as the shop was rather crowded at the time, and he put him out. The inference is that he was furthering his employer's interests by keeping the shop quiet and free from angry discussions on a busy occasion. See *Limpus* v. *Omnibus Company*, 1 H. and C. 526, and *Ward* v. *Omnibus Company*, 42 L.J., C.P. 265. See also Beven on Negligence, p. 295."

The defender appealed to the Sheriff (BERRY), who by interlocutor dated 27th January 1898 adhered to the interlocutor appealed against.

Note.—"The question whether the alleged assault was committed in the course of the servant's employment is one of fact, which must be the subject of proof. In addition to the authorities mentioned by the Sheriff-Substitute, I may refer to *Dyer* v. *Munday*, (1895), 1 Q.B. 742, and particularly to the language of Lord Esher."

The pursuer appealed to the Court of Session for jury trial, and lodged the following issue for the trial of the cause—"Whether, on or about Saturday, 10th July 1897, the pursuer James Gillespie was wrongfully and forcibly ejected from the defender's shop, No. 1 Dumbarton Road, by the defender's servant Hector M'Kechnie, to the loss, injury, and damage of the pursuer?

The defender objected to an issue being allowed, and argued—It was neither relevantly averred nor put in issue that the assault complained of was committed in the course of the master's business. Indeed, it rather appeared from the narrative in the condescendence that the assault was the culmination of a private and personal dispute between the pursuer and the defender's shopman. A mere averment that the assault was committed by the shopman while acting within the scope of his authority as defender's manager was not sufficient—*Wardrope* v. *Duke of Hamilton*, June 24, 1876, 3 R. 876. Still less was this the case where the details given contradicted such a vague general averment.

Everything proposed to be put in issue might be proved without inferring any liability upon the defender. In the case of *Dyer* v. *Munday* (1895), 1 Q.B. 742, the jury had found that the assault was committed by the employees in the course of their employment. Counsel for the defender also referred to the following authorities—*M'Laren* v. *Rae*, December 10, 1827, 4 Murray 381; *Richards* v. *West Middlesex Waterworks Company* (1885), 15 Q.B.D. 660.

Argued for the pursuer—The averment that the assault was committed by the shopman while acting within the scope of his authority as defender's shopman was sufficient. The question whether the circumstances justified that statement was one of fact for a jury. But further, it appeared from the details given that the shopman acted as he did with a view to preventing the pursuer raising a political disturbance in the shop. [Counsel was proceeding in support of this argument to found on the defender's averment quoted above, and referred to by the Sheriff-Substitute, but the Court intimated that they did not desire further argument on this point]. Authorities referred to—*Limpus* v. *London General Omnibus Company* (1862), 1 H. & C. 526; *Ward* v. *The General Omnibus Company* (1873), 42 L.J., C.P. 265; *Dyer* v. *Munday* (1895), 1 Q.B. 742; *Harris* v. *North British Railway Company*, June 30, 1891, 18 R. 1009.

LORD JUSTICE-CLERK—It is quite clear that as it is stated this case is not relevant. It is vain to say that because the wrongous act complained of is said to have been done by the servant while "acting within the scope of his authority," that a right of action is disclosed against the master, no matter what the servant is said to have done, and under whatever circumstances it appears that he did it. Such a general statement is more of the nature of a plea-in-law than an averment of fact, and it requires to be supported by averments showing that in what he did the servant was acting within the scope of his employment. There are no such averments here. On the contrary, it appears that the pursuer and the defender's shopman got into a dispute about politics, and the shopman took upon himself to eject the pursuer from the shop, and in so doing injured him. I do not see how the master is to be liable for that, and accordingly this action must be dismissed.

LORD YOUNG—I concur, and the case seems to me so clear that I do not know whether it is advisable that I should add anything to what your Lordship has said. If there is any truth in the pursuer's averments, he will have a good action against Hector M'Kechnie. But he has not brought his action against him but against his master, and the question is whether the master in the circumstances disclosed in the record is responsible or not. The pursuer says that the shop was under the control and management of Hector M'Kechnie, and that he and M'Kechnie had often spoken in a friendly way about politics, but upon this occasion they ceased to be friendly and M'Kechnie ejected the pursuer and injured him. It appears to me extravagant to suggest that a master could be made liable for this. Suppose two butlers are friends, and one is a Conservative, and the other a Liberal, the one a Roman Catholic and the other a U.P. or a Plymouth Brother, and the one comes on a message for his master to the house where the other is in service, and after the message is delivered they get talking about politics or religion, and they quarrel and one of them ejects the other and injures him, will that give the butler who has been ejected and injured a good ground of action against the other butler's master, if it is averred that the butler who did the injury was acting within the scope of his employment. Such a suggestion is ridiculous. I think this action should be dismissed.

LORD TRAYNER—I agree. The pursuer's case is broadly distinguished from those quoted by the Sheriffs.

LORD MONCREIFF—I am of the same opinion. The pursuer's averments disclose nothing except a private quarrel between him and M'Kechnie.

The Court dismissed the appeal, with expenses.

Counsel for the Pursuer—A. J. Young—Munro. Agents—St Clair Swanson & Manson, W.S.

Counsel for the Defender—Salvesen—T. B. Morison. Agents—Macpherson & Mackay, S.S.C.

Saturday, May 28.

SECOND DIVISION.

[Dean of Guild, Perth.

R. CLARK & SONS *v.* SCHOOL BOARD OF PERTH.

Servitude—De non ædificando—Construction of Special Terms.

The proprietor of ground within burgh was debarred by a grant of servitude from "making any erections, buildings, or other impediments within 14 feet of the west gavel of" a certain house "so as not to interrupt the lights thereof," the granter reserving liberty "to erect a paling at the distance of 3½ feet from the west gavel of the said dwelling-house 5 feet in height." *Held* (*aff.* the Dean of Guild, Perth) that this stipulation did not prevent buildings from being erected on any ground not directly *ex adverso* of the west gavel of the house in question, and in particular did not prevent buildings from being erected up to the southern end of the west gavel on a line running west from that point.

R. Clark & Sons, undertakers, Perth, presented a petition to the Magistrates of