the name of anyone upon whom they proposed to lay the blame of the accident, and the defenders' averment was intended to meet the contingency of the pursuers proving fault against someone who was in fact a fellow-servant. If the averment was somewhat vague, that was due to the fact that the pursuers' averment to which it was an answer was very vague indeed. The case should be remitted to the Sheriff Court with instructions to allow the parties a proof of their respective averments. It had been held competent to do so, and in this case it was the most expedient course —*Bethune* v. *Denham*, March 20, 1886, 13 R. 882; *Cochrane* v. *Ewing*, July 20, 1883, 10 R. 1279.

Argued for the pursuers—The pursuers had only averred fault against the defenders' manager or oversman, and they would not be allowed to prove fault against anyone else. On the other hand, if the defenders' averment of common employment were remitted to probation, they might make out a case under it to the effect that the accident was caused by the fault of some-one about whom the pursuers had no notice whatever, and that this person was their fellow-servant. No pursuer would be allowed a proof of such an averment, and if the defenders' case was of the nature just indicated, they were bound to give the same notice in their pleadings as a pursuer would be bound to give of the case which he proposed to prove. This was the proper stage at which to state objections on the ground of want of notice, and later on it would be too late to do so—*Barr* v. *Bain*, July 17, 1896, 23 R. 1090. If this averment were not made with a view to proving some such substantive defence as was suggested, then it was a mere vague random allegation without any foundation or definite purpose, and if that were its character, it should not be remitted to probation. See *Stewart* v. *Coltness Iron Company and Dewar*, June 23, 1877, 4 R. 952, at page 954.

LORD JUSTICE-CLERK — This case, as stated, is stated in the ordinary way. I could understand an objection by the pursuer if the defenders were, at the proof, to set up as a defence that the accident was due to the fault of some-one else than any person specified by the pursuer in his record; but that the defender should be excluded from proving that any of the persons named by the pursuer in his statement was a fellow-workman of the pursuer is a proposition which I cannot assent to.

LORD YOUNG—It appears to me that to exclude evidence on the part of the defenders that anyone to whom blame was attributed was a person for whom they are not responsible is out of the question. The point was never, so far as I know, thought of till this moment, or till this case. I am therefore of opinion that the interlocutor ought to be recalled, and the case remitted back to the Sheriff to take the proof in the ordinary way, and that the pursuer should be found liable in the expenses of this appeal.

LORD TRAYNER—I see no reason why in this case the proof should not proceed in the ordinary form—a proof to both parties of their respective averments.

LORD MONCREIFF—I quite agree. If the defender at the trial tried to make out a substantive case showing that the accident was due to the fault of some person not hitherto named by the pursuer, or about whom no evidence was led, it would be open to the pursuer to take objection. I do not say whether it would be sustained or not.

The Court sustained the appeal and recalled the interlocutor appealed against, except in so far as it conjoined the actions and closed the record, and remitted the conjoined actions back to the Sheriff-Substitute with instructions to allow the parties a proof of their respective averments, and to proceed therein as accords, and found the pursuers in the conjoined actions liable in the expenses of this appeal.

Counsel for the Pursuers — A. S. D. Thomson — Munro. Agents — St Clair Swanson & Manson, W.S.

Counsel for the Defenders—Balfour, Q.C. — C. K. Mackenzie. Agents — Gill & Pringle, W.S.

Wednesday, June 8.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

MILLER *v.* MILLER.

Master and Servant—Wages—Presumption as to Wages—Employment of Son by Father—Implied Contract as to Wages.

A son claimed wages from his father, with whom he had lived for twelve years after attaining majority, on a small sheep farm tenanted by the father, and receiving his board, lodging, and clothing, and also any pocket-money he required, in return for his work as a farm servant, but not receiving any wages. The son had never asked for wages while he remained with his father, and left without hinting at such a claim. *Held*, after a proof (*aff.* the Lord Ordinary, Kincairney), that no agreement or undertaking for payment of wages was to be implied from the circumstances of the case, and that consequently the father was entitled to absolvitor.

Triennial Prescription—Act 1579, *cap.* 83.

Held by the Lord Ordinary (Kincairney) that the Act 1579, cap. 83, applies, notwithstanding that the defence to the claim of debt is of such a nature as to exclude any presumption of payment—*Smellie* v. *Cochrane*, February 25, 1835, 13 S. 544; *Smellie* v. *Miller*, November 17, 1835, 14 S. 12; *Alcock* v. *Easson*,

December 20, 1842, 5 D. 356; and *Cullen* v. *Smeal*, July 12, 1853, 15 D. 868, *followed*.

Observations on *Anderson* v. *Halley*, June 11, 1847, 9 D. 1222, and *Thomson* v. *Thomson's Trustees*, January 12, 1889, 16 R. 333.

This was an action at the instance of Robert Miller junior, Greenhill Farm, near Dunning, against his father Robert Miller, farmer, Little Rigg, near Dunning, in which the pursuer concluded for payment of £360 as wages for services rendered during a period of twelve years, lasting from the year in which the pursuer attained majority down to 18th July 1896, when he left the defender's house and took service with a neighbouring farmer.

The defence was that no wages were due, in respect that the pursuer had lived and was alimented in the defender's house as one of his family, and that there was no contract, express or implied, to pay him wages. The defender also pleaded—"(3) The pursuer's claim for wages prior to July 1893 is barred by prescription."

By interlocutor dated 9th November 1897 the Lord Ordinary (KINCAIRNEY) sustained the third plea-in-law for the defender, to the effect of finding that the pursuer's claim for wages prior to July 1893 could only be proved by the defender's writ or oath; allowed the pursuer a proof by writ in support of said claim; and further allowed the pursuer a proof of his averments in support of his claim for wages subsequent to 1st July 1893, and to the defender a conjunct probation,

Opinion.—. . . "The defender did not dispute the relevancy of the averments, and admitted that there must be a proof, and that question was therefore not debated. But he contended that the proof could not go back before July 1893, and that the claim for the prior years was prescribed. I do not know why he did not carry his plea down to 12th April 1894, which is three years before this action was raised. But taking the plea as he has stated it, I have no doubt that it must be sustained, not indeed to the effect of barring the action, but only of limiting the proof. The pursuer maintained that as any presumption for payment was excluded by the defence that nothing ever was due, the plea of prescription was inapplicable. I was somewhat surprised by this argument, because however plausible it may at one time have been, I had understood that the application of the plea of prescription to such a case was conclusively settled by the cases of *Smellie* v. *Cochrane*, February 25, 1835, 13 S. 544; *Smellie* v. *Miller*, November 17, 1835, 14 S. 12; and *Alcock* v. *Easson*, December 20, 1842, 5 D. 356, quoted by the defender; and by the highly authoritative case of *Cullen* v. *Smeal*, July 12, 1853, 15 D. 868, decided unanimously by the whole Court, in which I consider that the principle of these cases is re-affirmed. These cases settled the law so conclusively that I doubt whether the contention for the pursuer has been heard of since, so that it is possible that these decisions, having served their purpose, may have gone a little out of recollection. But I think they are quite conclusive.

"The pursuer referred to *Anderson* v. *Halley*, June 11, 1847, 9 D. 1222, in which it is true that there were expressions used on the Bench by Lord President Boyle and Lord Jeffrey favourable to the pursuer's contention. How these remarks came to be made I can hardly say, for I think there was at that date no ground for them. They were *obiter*, and, I must think, somewhat inadvertent. The previous cases do not seem to have been quoted. The pursuer referred also to *Thomson* v. *Thomson's Trustees*, January 12, 1889, 16 R. 333, when a proof was allowed without any limitation of a claim of wages for eight years. But the triennial prescription is not mentioned in the report, and was apparently not pleaded, and it was not for the Court to suggest that plea."

This interlocutor was not reclaimed against, and on 25th January 1898 a minute was sustained whereby the pursuer referred his claim for the first part of the twelve years to the defender's oath.

On 27th January 1898 proof was led in support of the claim for the period since 1st July 1893, and after that proof was closed, the defender was examined under the reference to his oath in support of the claim for the earlier period.

The facts established may be summarised as follows:—The defender, who was 70 years of age, was tenant of the farm of Little Rigg, about 400 acres in extent, consisting chiefly of an Ochil grazing. The farm carried about 400 sheep, and there were about 20 acres of arable land attached to it. The defender had occupied the farm for many years, with a break of three years from 1890, when his lease ran out, until 1893, when he returned. The defender had three sons (the pursuer being the youngest), and one daughter. The two elder sons left the farm and took situations. The precise time when they left, and their ages then, were not very clearly proved, but the pursuer said that they left more than twelve years before the date of the proof in this action, and were then between twenty and thirty years of age. After they left, the household consisted of the defender and his wife, his son (the pursuer), and his daughter. Mrs Miller died on 13th June 1895. After her death the defender and his son, the pursuer, managed the farm, and Janet Miller, his daughter, took charge of the house. Apparently there was no servant.

In 1897 disagreements upon trivial grounds arose between the pursuer and the defender, who appeared up to that year to have been quite satisfied with his son's work and conduct, and on 18th July the pursuer left his father's house, as he alleged, in accordance with his father's orders, and took service with a neighbouring farmer as a shepherd. In this place he got £30 a-year as wages in addition to his board, lodgings, and washing. It appeared from the evidence of the pursuer's master and other farmers that this was the usual

remuneration in the district for a man doing such work as the pursuer was able to do and was now doing. The pursuer's master also deponed that he considered this was a moderate wage for a man with the pursuer's qualifications, and that the pursuer was a splendid servant. The pursuer led evidence to show that the defender would have required a man at some such wage to assist him in working the farm if he had not had the pursuer living with him. The defender, on the other hand, maintained that the farm was so small that such assistance was not necessary, and that the defender could work it himself with a little temporary assistance. In support of this contention he founded upon the fact that since the pursuer left him he had worked the farm himself without having any permanent farm-servant under him. He had paid for temporary assistance in 1896 £2 and in 1897 £6, but it appeared that he also got a little help from other farmers. The Lord Ordinary held it proved that the pursuer did the full work which any farm-servant on a farm of that kind would have done.

While the pursuer lived in the defender's house he was treated as one of the family, and was provided with food and clothing, and small sums of pocket-money when he went to market. His father and he never spoke of wages, and it would rather appear that he was conscious, or at least supposed, that if he asked for wages they would be refused. Neither of his brothers, while they lived at the farm and assisted in the management of it, received wages, and his sister, who managed the house, did not receive wages.

During the period when the defender was away from Little Rigg he lived with his wife and his daughter and the pursuer in the village of Muckhart. He had no farm at that time, but he took a few grass parks and kept some stock upon them. There was a parkman paid by the landlord to look after this stock, and it appeared that during this time there was not much work, and at anyrate not full work, for the pursuer to do under his father. Notwithstanding this, however, he was maintained in his father's house just in the same way as during all the other years that he stayed with him.

It appeared that the circumstances above detailed as to the pursuer's position while he lived with his father after he was twenty-one years of age were not at all unusual, but were such as occur in numerous farms of the like size and character throughout the country.

The pursuer, in answer to the Court, deponed as follows:—"Between 1893 and 1896 I never spoke to my father about wages. That was on account of his temper. (Q) Why did you think it would affect his temper if you spoke to him about wages?—(A) I would get nothing but a swearing from him for mentioning such a thing. (Q) Do you consider that he thought you were working for wages?—(A) I would think so. (Q) Why should he be angry on account of your speaking about that?—(A) Owing to his vindictive temper. (Q) Do you think if you had spoken about wages he would have refused them?—(A) I would have got a swearing I am sure. (Q) And a refusal?—(A) Yes."

The pursuer left the defender's house without ever having made any claim for wages, and his first claim of that kind was put forward some months after he left.

On 8th February 1898 the Lord Ordinary (KINCAIRNEY) pronounced the following interlocutor:—"Finds that it has not been proved that there was any agreement or understanding, express or implied, between the pursuer and the defender that the pursuer should be paid wages for the services rendered by him to his father, the defender, and that there are no sufficient grounds in law to support a claim for such wages: Finds further that the oath of the defender on reference is negative of the reference: Therefore assoilzies the defender from the conclusions of the summons, and decerns," &c.

Opinion.—"It is very distressing to find a father and son in the position of the pursuer and defender, throwing away their money in ruinous litigation, and I must hope that this action was not brought without the most anxious endeavours by the agents of both parties to prevent it, as was certainly their duty. A little more patience and dutifulness on the part of the pursuer, a little more kindness and liberality on the side of the defender, would easily have prevented what both will find to be a serious misfortune — [*His Lordship then narrated the course of the action as above detailed*].

"I take, in the first place, the claim for the last three years which was remitted to proof, and I apprehend that I have to decide that issue on the proof led and closed without regard to the oath on reference—[*His Lordship then stated the facts*].

"It is doubtless hard that an able-bodied man like the pursuer, trained to farm work, and perfectly capable of making a good farm servant, should reach the age of thirty-three without earning a wage, and I think it would have been not unreasonable had the defender volunteered to pay a wage. The pursuer has got a good place now, and no doubt he might have done so many years ago, but he did not choose. For reasons which seemed sufficient to himself, he stayed on where he was for many years, and the question is whether he can now make an accumulated claim for wages on the ground that although nothing was said about it there was a tacit understanding that he was earning a yearly wage during all these years.

"I have come to the conclusion, not altogether without regret, that this claim is not sustainable in law having regard to the special facts.

"Lord Fraser says, in reference to analagous cases, that 'the question of remuneration seems rather to depend, not on any general presumption, but upon a consideration of the whole circumstances under which the services were performed — a

statement of the law endorsed by Lord Shand in *Thomson* v. *Thomson's Trustees*, January 12, 1889, 16 R. 333; and the law being so indeterminate and undefined, it is no great wonder that there is an appearance—although perhaps only an appearance—of inconsistency in some of the decisions. The pursuer quoted the earlier cases of *Shepherd* v. *Meldrum*, January 23, 1812, Hume 394; and *Macnaughton* v. *Macnaughton*, Hume 396, in each of which a girl living with a near relative, and acting as a servant, was found entitled to wages for a series of years although there was no bargain on the subject. These cases are not without importance; but the pursuer, I think, relied chiefly on the doctrine enunciated by Lord President Boyle in *Anderson* v. *Halley*, June 11, 1847, 9 D. 1222, which was, he maintained, adopted by Lord President Inglis in *Thomson* v. *Thomson's Trustees*, *supra*.

"*Anderson* v. *Halley* was the case of an old woman who lived with a distant relative and acted as his servant without any bargain, and was held entitled to wages, overruling the defence that she had been received into and entertained in the defender's house from motives of charity. The Lord President Boyle said—'In all cases of this description where there is clear proof of services rendered and no wages paid, wages are due, unless it be made out that there is an agreement that the service is gratuitous.' In *Thomson* v. *Thomson's Trustees* Lord President Inglis said—'I assume that the law applicable to a case of this kind is correctly stated by the Lord President in the case of *Anderson* v. *Halley*.' His Lordship's language is somewhat noticeable, for he says that he assumes the law as stated by Lord President Boyle, but can hardly be said to lend the additional weight of his own authority. *Thomson* v. *Thomson's Trustees* was the case of a father against his son, to whom the father had acted as vanman, and the judgment his Lordship was pronouncing was on relevancy, not after proof.

"The case of a father claiming wages from his son strikes me as not the same as that of a son claiming wages from his father. The cases of *Shepherd* and *Macnaughton* are more in point than *Anderson* v. *Halley*, which appears to belong to a different class of cases altogether, and I cannot think that the dictum of Lord President Boyle can be applicable. It seems impossible to say that wherever a son or a daughter renders services to his or her parent—a state of things occurring in the majority of houses in Scotland—there is silently running up a claim for wages against the unsuspecting parent. In *Ritchie* v. *Ferguson*, November 16, 1849, 12 D. 119, quoted for the defender, a claim for wages was rejected for services rendered to a neighbour, because there was no agreement to pay wages. There, however, the pursuer had not lived in the house of the person to whom services were rendered, and there was no relationship. I do not think that case affords much assistance.

"So far as I am aware there are only two cases reported about a parent's obligation for wages to a child, and both are too special to be of much value—*Jones* v. *Jones' Trustees*, January 25, 1888, 15 R. 328; and *Dawson* v. *Thorburn*, July 12, 1888, 15 R. 891. They each arose in the form of a question whether a conveyance by a parent on the eve of bankruptcy to a daughter was for true, just, and necessary cause, the alleged cause being the daughter's claim for wages, and each was decided against the daughter. I do not see that the latter would have been decided as it was had the burden of proof not been thrown on the daughter.

"Lord Fraser expresses the opinion that in a claim for wages by a child against a father the presumption is rather against the claim, and I refer to the opinion of Lord Shand in *Thomson* v. *Thomson's Trustees* as pointing out the circumstances in which the presumption in favour of a pursuer in such a case will be rebutted. I do not think his Lordship means to express the opinion contrary to that of Lord Fraser that there would be such a presumption in a case of father and child.

"I understand that in England and in America no claim for wages is admitted unless there is a contract to pay them—Manley Smith on Master and Servant, 4th ed., p. 197.

"In this case I think that the special circumstances are against the claim. The pursuer's brothers had left the farm without being paid wages. They were somewhat younger than he is now when they left, but they seem to have rendered the same kind of assistance. It is not easy to suppose that the pursuer believed that he was working on a different footing. His sister, so far as appears, had no wages. I think it would be very difficult to hold that she has a good claim for wages for keeping her father's house, and yet it would not be easy to differentiate her claim, if she made it, from the pursuer's. He never asked for wages, and left without hinting at such a claim. He says that he did not ask for wages, because his father would have sworn at him if he had. That is as much as to say that he did not think that there was any mutual understanding that he should have wages, and I confess that I find it impossible to think that a son living in a farmer's house and rendering services about his farm is all the time running up a claim for wages year by year against his father, which may at the end be enough to ruin him. If there were more sons than one living on a farm and keeping it going, they would on the same principle be entitled to wages, and so would a daughter who attended to the cattle and poultry, and a daughter who looks after the house. Such family arrangments are very common, but I am satisfied that such claims would be regarded as altogether novel, and that they would be quite against the general understanding as to the footing on which such services are rendered and received.

"For these reasons I am of opinion that the claim of the pursuer for wages since 1st July 1893 must be disallowed. As I

have indicated, while I think the pursuer's case fails in law, it is a hard case, and might reasonably receive his father's favourable consideration." [*His Lordship then dealt with the oath on reference.*]

The pursuer reclaimed, but only as regards the claim for the last three years. He acquiesced in the Lord Ordinary's judgment with regard to the earlier period.

Argued for the pursuer and reclaimer—In the absence of an agreement to the contrary there was a presumption that a competent adult was working only upon condition of wages being payable, and all that the pursuer had to establish here was that he had rendered services and that no wages had been paid—*Shepherd* v. *Meldrum & Duncan*, January 23, 1812, Hume's Decisions, 394; *M'Naughton* v. *M'Naughton*, July 1, 1813, Hume's Decisions, 396; *Anderson* v. *Halley*, June 11, 1847, 9 D. 1222; *Jones' Trustee* v. *Jones*, January 25, 1888, 15 R. 328; *Dawson* v. *Thorburn*, July 12, 1888, 15 R. 891; *Thomson* v. *Thomson's Trustee*, January 12, 1889, 16 R. 333. No agreement to the effect that the pursuer should work for nothing beyond his board, lodging, and pocket-money was proved, and as admittedly services had been rendered he was entitled to decree for the wages due for such work as he had done.

Argued for the defender and respondent—The foundation of the pursuer's case must be a contract either express or implied—*Alcock* v. *Easson*, December 20, 1842, 5 D. 356; *Ritchie* v. *Ferguson*, November 16, 1849, 12 D. 119. No express contract was alleged here. The question whether a contract was to be implied or not depended upon a consideration of the whole circumstances of the case rather than upon any presumption—Fraser on Master and Servant (3rd ed.) 44; *Thomson* v. *Thomson's Trustee, cit., per* Lord Shand at page 335—*Anderson* v. *Halley, cit.*, did not appear to have been a very well-considered decision, and the cases of *Alcock* v. *Easson* and three other cases there cited were not brought under the notice of the Court. Here the circumstances were adverse to the pursuer's claim. The evidence showed that there was not full work on this small farm for an able-bodied man in addition to the defender himself. What the pursuer received in board, lodging, and pocket-money was full remuneration for all that he had to do. This was the father's position throughout, and the son was aware of his views. Notwithstanding this he stayed on without raising the question of wages, and he was consequently barred by acquiescence from maintaining that any additional remuneration was now due. The fact was that the pursuer remained on with the defender not so much because his services were necessary as because he hoped to succeed his father in the holding. The true nature of the relations between the parties was illustrated by what occurred when the defender was away from the farm altogether, and it could not be maintained that the pursuer's assistance was required. In this connection that period was of great importance. The case of a son suing his father with whom he had lived and by whom he had been supported since his birth, was not a favourable one for the application of any presumption as to services not being gratuitous. No such case had ever been brought before. In England and America such a claim must be founded upon contract express or implied from circumstances—Manley Smith on Master and Servant (4th ed.), 197.

At advising—

LORD JUSTICE-CLERK—In this case the facts are that for many years the pursuer after he became major continued to reside with his father and work on his farm, receiving his keep and clothing and such money as he needed in the way of pocket-money from time to time, that during the whole time nothing was said by either party about wages, and that the pursuer upon his own statement never mooted the subject, being sure that if he did so it would be very angrily received.

In these circumstances a claim for past-due wages is made. I am of opinion that the Lord Ordinary has rightly decided, that there having been no agreement or understanding, express or implied, between the father and the son that wages for service should be paid, the pursuer has no claim in law for wages.

I only wish to add that I do not hold that in such a case a pursuer's claim would be excluded unless he could prove an express and detailed bargain. If a son in such circumstances brought the matter up in a distinct form, and the father did not in terms refuse, but induced the son to go on by general assurances that he would get wages, then although nothing definite had been arranged, I think there might be a claim based on the ascertained value of services. But on the other hand I cannot hold that a son who remains on his father's farm for many years without any attempt to raise the question of employment as distinguished from family work, can come forward and claim a large *cumulo* sum under name of arrears of wages.

It is to be regretted that such a case should have come before the Court, and so much money have been expended in litigation. We were told that the defender was willing to give the pursuer a considerable sum without prejudice. I think the pursuer was ill-advised in refusing the offer, he has insisted on a decision, and I have no doubt in holding that his case must fail.

LORD YOUNG—I am of the same opinion, and it is not necessary for me to add anything. I was glad to hear that this was the first instance of a son suing his father in an action of this kind. I hope it will be the last.

With regard to expenses, I think the best course will be not to interfere with the Lord Ordinary's decision as to the expenses in the Outer House, but I do not think we should go further than that, and I see no reason why the respondent should not get the expenses of the reclaiming-note.

LORD MONCREIFF—I am of opinion that the Lord Ordinary's judgment should be affirmed, on the ground, as stated by him, that the special circumstances of the case are against the pursuer's claim. It may be conceded that where there is clear proof of services rendered and no wages paid, there is a presumption, even as between parent and child, that wages are due. But that presumption, especially as between parent and child, is but slight, and will be readily overcome if the fair inference from the evidence be that the services were rendered gratuitously. The mere fact that there was no agreement between parent and child that wages should be paid would not, in my opinion, be sufficient to overcome the presumption. If, for instance, it were proved that a grown-up son had often asked for wages and been put off by the father from time to time with assurances that the demand would be considered, I should be disposed to sustain a claim made by the son within the years of prescription. But in the present case I see no evidence that the pursuer mentioned the subject of wages to his father before he left him, or even that he thought of claiming wages till then.

The Lord Ordinary says (and he is supported by the evidence) "he" (the pursuer) "never asked for wages, and left without hinting at such a claim."

The conclusion at which I arrive is that the claim for wages is an afterthought, and that the pursuer, till he quarrelled with his father, was content to give his services for his board, clothing, and pocket-money, such as it was.

LORD TRAYNER—This may, in one view of it, be a hard case for the pursuer, but I see no sufficient ground for interfering with the interlocutor of the Lord Ordinary.

The Court pronounced the following interlocutor:—

"Refuse the reclaiming-note: Adhere to the interlocutor reclaimed against, and decern: Find the pursuer liable in expenses since 8th February 1898, and remit," &c.

Counsel for the Pursuer — R. L. Orr. Agents—George Inglis & Orr, S.S.C.

Counsel for the Defender — Aitken. Agents—J. & J. Milligan, W.S.

Friday, June 10.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

CALEDONIAN RAILWAY COMPANY *v.* MORRISON.

Railway—Compulsory Acquisition of Lands—Double Claims—Compensation—Lands Clauses Consolidation Act 1845 (8 *and* 9 *Vict. cap.* 19), *sec.* 143.

A agreed to purchase from N certain subjects for a price payable partly by money borrowed on the security of the subjects, and partly by cash instalments to be spread over a number of years. The purchaser was not entitled to claim a conveyance of the subjects until the last instalment was paid, and the seller retained power to call for payment at any moment of the balance of the price unpaid, and in default to sell the subjects or resume possession.

Under this agreement A entered into possession of the subjects which he occupied, along with adjoining premises held under a verbal lease, as an hotel, and on his death in 1891, M, his widow, continued in possession for several years, during which several instalments of the price were paid. Before the last instalment had been paid, or a conveyance of the subjects obtained, a railway company constructed a tunnel under one of the streets on which the hotel abutted. A notice of claim was lodged by M "as tenant and occupier" of the premises for compensation for the injurious affection of her interests as such, and on being called upon to state the nature of her occupancy, she referred to the agreement above mentioned. Arbiters were nominated by M and the railway company, and a proof was ordered. Two days after M's notice of claim had been lodged, a notice of claim was lodged by N (the undivested sellers) as "proprietors" of the subjects "with the consent and concurrence of M" for structural damage, injurious affection, "and all other loss arising to us" in consequence of the operations. In this case also arbiters were nominated, and a proof was fixed.

The company presented a note of suspension and interdict against M and the arbiters, craving the Court to interdict them from proceeding with the reference upon the claim made by M, on the ground (1) that M was merely a tenant at will, and that her claim, in terms of sec. 114 of the Lands Clauses Act, could only competently be made before the Sheriff, and that in any event as regards part of the premises she was in this position; and (2) that by assenting to the claim made by N. she had barred herself from making a separate claim *qua* proprietor. The Court *refused* to grant interdict.

By the Glasgow Central Railway Act 1888 the company was authorised to make a railway in Glasgow passing along and under Argyle Street in a tunnel. The Caledonian Railway Company by their Act of 1889 became vested in the powers of the Glasgow Central Railway Company, and constructed the railway, which passed underneath Argyle Street, *inter alia*, opposite the property known as Steel's Hotel, consisting of parts of No 78 to 96 Argyle Street and 1 to 9 Queen Street. On 31st August 1896 a notice of claim was served on the Caledonian Railway Company by Mrs Catherine Morrison, and her husband Mr Angus Morrison. The notice bore that, "I, Mrs Catherine Forbes or Morrison, hotel-keeper, Steel's Hotel, Queen Street,