not "scaffolding" within the meaning of the Workmen's Compensation Act 1897. I agree in that decision, and that view being adopted disposes of the case before us. I do not say that ladders, with something added, may not form a scaffolding, for ladders may very well form a part of scaffolding. But a ladder *per se* is not scaffolding.

I am not disposed to send this case back to the Sheriff on the statement now made at the bar, for the first time, that the deceased was using something more than a ladder at the time when he received his injuries. That statement was not made to the Sheriff, and the inquiry which it would have involved has consequently not been made. I think this case should be determined on the facts as there stated.

LORD MONCREIFF — I agree with the majority of your Lordships that we ought to answer the question now, and not send the case back to the Sheriff for amendment on the lines indicated.

The question put to us is raised on facts which the parties asked to have stated, and I do not think that we should be justified (even if we had the power, which I think we have not) in remitting the case to get other facts stated, not to enable us the better to decide the question put, but in order to raise another question of law which has not been put to us.

I am not sure that it is necessary to decide that under no circumstances should a ladder be held to be a scaffolding in terms of the Act. I can conceive circumstances in which it might be possible so to hold. But in the present case, in the circumstances stated, I have no doubt that the ladder used by the appellant at the time of the accident was not a scaffolding within the meaning of the Act.

The Court answered the question in the negative.

Counsel for the Appellant—Shaw, Q.C.—Morton. Agents — Robertson, Dods, & Rhind, W.S.

Counsel for the Respondents — Watt. Agents—Cuthbert & Marchbank, S.S.C.

Tuesday, October 17.

SECOND DIVISION.

WOOD *v.* NORTH BRITISH RAILWAY COMPANY.

(*Ante*, February 14, 1899, 36 S.L.R. 407.)

Trespass—Railway—Brevi manu—Removal by Force of Cabman from Railway Station.

Where a cabman in a railway station has concluded the business which brought him there and refuses to leave, and persists in refusing to leave, he becomes a trespasser, and the railway servants are at common law entitled to remove him by force if necessary.

Remarks *per* Lord Trayner on the law of trespass in Scotland.

Process—Proof—Jury Trial—Direction to Jury—Discretion of Judge to Give Direction Asked.

Where a judge is asked to give a direction to the jury he is entitled to exercise his discretion, looking to the circumstances of the case before him, and is not bound to give the direction simply because as an abstract proposition it is correct in law.

This action of damages was tried before the Lord Justice-Clerk and a jury on 19th June 1899, and the jury returned a verdict for the defenders.

In the course of his charge to the jury the Lord Justice-Clerk directed them as follows, viz.—"That when a cabman in a railway station has concluded the business which brought him there and refuses to leave, and persists in refusing to leave, he becomes a trespasser, and the railway servants are, at common law, entitled to remove him by force if necessary." The pursuer's counsel excepted to the direction, and asked the Lord Justice-Clerk to give the following direction, viz.—"That the pursuer, if lawfully in the station premises with his cab, did not wilfully trespass within the meaning of the 16th section of the Railways Regulation Act 1840 by accepting an engagement from a passenger to drive the passenger and his luggage from the station." This direction his Lordship refused to give, whereupon counsel for the pursuer excepted, and a bill of exceptions was signed by the Lord Justice-Clerk.

Argued for pursuer:—*On First Exception*—The direction was erroneous in law. There was no authority entitling one man to use force to eject another from private property. [LORD TRAYNER—There appears to be a notion that there is no law of trespass in Scotland, and that if a man trespasses on private property he cannot be ejected by force under any circumstances. I think that is erroneous. It is absurd to contend that if a stranger enters one's dining-room and refuses to leave when requested he cannot be removed by force. Of course in such a case one is not entitled to use more force than is necessary, or one might make himself liable for damages for assault.] *On Second Exception*—The direction desired being sound in law the Judge had no right to refuse to give it. [LORD YOUNG—A judge at a jury trial is not bound to give every direction asked which is legally sound—he is entitled to use his discretion, looking to the circumstances of the case before him.]

Counsel for defenders was not called upon.

LORD YOUNG—I thought from the first, and I have heard nothing to affect the impression, that this bill of exceptions is quite unfounded. With reference to the second exception, I have already observed in the course of the discussion that where a learned Judge at a jury trial is asked to lay down a certain proposition in point of law, he has not merely to consider the soundness of it as an abstract proposition but also whether it is right and proper that such a

direction should be given to the jury in the particular case before them. It might be a proper direction to give, qualified by a great number of explanations which it is inconvenient to give, and might lead to undesirable results. I think myself that the learned Judge was quite right in refusing to give the direction asked.

As regards the first exception, which is an exception to a direction which he has given, I am of opinion that the objection cannot be sustained. I think it is a perfectly sound direction. A cabman, or indeed any other person, but especially a cabman who was there not only bodily but with a carriage and horse, must obey the orders of the railway company's authorised servants as to leaving the station. When he is ordered to leave it he must leave it, and if he refuses and persists in refusing he may be turned out. He is not to remain there until it has been settled by some disinterested tribunal whether he has a right to remain and whether the servants of the railway company were wrong in ordering him out. If the railway servants are wrong in ordering him out, the duty of the cabman is to obey, and he will afterwards have his remedy for any injury which had been sustained on account of his having been turned out by their order in circumstances in which he ought not. I am therefore of opinion upon the bill of exceptions that it must be disallowed.

LORD TRAYNER, LORD MONCREIFF, and the LORD JUSTICE-CLERK concurred.

The Court disallowed the bill of exceptions.

Counsel for the Pursuer — Kennedy — A. M. Anderson. Agent—W. R. Mackersy, W.S.

Counsel for the Defenders—Balfour, Q.C. —Grierson. Agent—James Watson, S.S.C.

Thursday, October 18.

FIRST DIVISION.

MARSHALL *v.* CALEDONIAN RAILWAY COMPANY.

(*Ante*, July 5, 1899, 36 S.L.R. 845.)

Process — Interlocutor — Rectification of Error.

An appeal was taken by the defenders in a Sheriff Court action against an interlocutor of the Sheriff-Substitute, pronounced on 11th July 1898, whereby he decerned against the defenders for payment of the sum of £300. The First Division on 5th July 1899 pronounced an interlocutor whereby they adhered to the interlocutor appealed against, and "of new decern for payment by the defenders to the pursuer of the sum of £300 sterling."

The pursuer on 18th October 1899 craved the Court to alter this interlocutor by adding to the words quoted above the words "with interest thereon from said 11th July 1898." He founded upon the case of *Harvey* v. *Lindsay*, July 20, 1875, 2 R. 980.

The Court *altered* the interlocutor as craved.

Counsel for Pursuer—M'Clure. Agents—J. W. & J. Mackenzie, W.S.

Thursday, October 19.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

INNES *v.* M'DONALD.

Administration of Justice—Law-Agent—"Duly Qualified" Law Agent—Certificate—Right to Recover Expenses—Law-Agents and Notaries Public (Scotland) Act 1891 (54 *and* 55 *Vict. c.* 30), *secs.* 2 *and* 3—*Stamp Act* 1891 (54 *and* 55 *Vict.* 39), *sec.* 43.

Section 3 of the Law-Agents Act 1891 provides that "no expenses on account of any act done by any person who acts as a law-agent . . . without being duly qualified so to act . . . shall be recoverable in any action . . . by any person or persons whomsoever."

Section 2 provides for the prosecution of any person who, "being neither a law-agent nor a notary-public, falsely pretends to be or takes or uses any name, title, or description implying that he is duly qualified to act as such."

Section 43 of the Stamp Act of 1891 provides for a penalty against persons acting as law-agents without having a duly stamped certificate.

Held that a person who had acted as a law-agent in a case without possessing a duly stamped certificate was not "duly qualified" so to act in the sense of section 3 of the Law-Agents Act, and that accordingly his expenses were not recoverable in an action at the instance of any person whomsoever.

Section 2 of the Law-Agents and Notaries Public (Scotland) Act 1891 (54 and 55 Vict. c. 30) provides that "Any person being neither a law-agent nor a notary-public, who either by himself or in conjunction with others, wilfully and falsely pretends to be, or takes or uses any name, title, addition, or description implying that he is duly qualified to act either as a law-agent or as a notary-public, or that he is recognised by law as so qualified, shall be guilty of an offence under this Act, and shall be liable to a penalty not exceeding the sum of ten pounds for the first offence, together with the costs of prosecution and conviction: and any such person who shall be guilty of a second or subsequent offence or offences under this section shall be liable to a penalty not exceeding twenty pounds." . . . Section 3 provides that "No costs, fee, reward, or disbursement on account of or in relation to any act or proceeding done or