am now clearly of opinion that there is no room for such deduction. The object of the testator's bounty was to give some special legacies and the income of the residue to his widow, and then to provide that if there is any residue that shall go to such charities as "my trustees shall select." I think this is not a case for making any deduction from the income and produce resulting from the trustees acting in the discharge of the duty imposed on them by the deed of carrying on the business. I think they have carried on the business properly under the direction of the deed, they being of opinion that that was the most profitable thing for those interested in the estate. Now, the interest of the widow in the estate, according to the case of *Strain*, is the whole income and produce resulting from the carrying on of the business, and I gather it was the testator's intention that nothing should be deducted from that in order really to increase the residue for charitable purposes.

LORD TRAYNER—I think with your Lordships that this case is ruled by the case of *Strain*. I see no distinction between these two cases. In this case, as in *Strain's* case, the testator authorised his trustees to carry on his business, which happened to be that of a coalmaster, and he directed that the whole income and produce of that estate should belong to his widow. It happens that in the two years in question there have been very large profits, but they might have been small if circumstances had been different. The testator meant his widow—the business being carried on by the trustees—just to get the profits as he had been getting them himself. Whether the profits of the business turned out to be much or little, it was the testator's intention that his widow should get them. With regard to the other point, viz., whether a sum should be set aside by the trustees out of the profits in order to keep up the capital of the estate to the value as at the date of the testator's death, I think the widow's right is not subject to any deduction with that view. She is no more bound to keep up the value of the estate in that way than she would be bound to make good any deterioration in value, such as might arise on a fall in the market price of stocks or shares forming part of the testator's estate.

LORD MONCREIFF — I am of the same opinion. On the first question, we must follow the case of *Strain*, which cannot be distinguished from the present. On the second point, we are told that the result of this business being carried on is that the capital value has been diminished to a certain extent, but that is a matter which the trustees had no doubt under consideration when they resolved to carry on the business. They were entitled to carry on the business if they thought fit, but the result of that was that the capital value has been diminished to a certain extent. If they did carry on the business the widow was entitled to the whole profits and interest resulting therefrom. Therefore I think there is no ground for making any deduction from those profits.

The Court answered the first alternative of the first question in the affirmative, and found it unnecessary to answer the other questions.

Counsel for the First Parties—W. Campbell, K.C. — A. M. Hamilton. Agents — Millar, Robson, & M'Lean, W.S.

Counsel for the Second Party—C. N. Johnston — Grainger Stewart. Agents — J. & A. Campbell & Lamond, C.S.

Saturday, June 22.

FIRST DIVISION.

WATSON *v.* CALEDONIAN RAILWAY COMPANY.

Expenses — Taxation — Fees to Medical Witnesses — Precognitions of Medical Witnesses.

In an action of damages for personal injury, which was settled the day before the day fixed for the trial upon condition, *inter alia*, of the defenders paying the pursuer's expenses as taxed, the Court *allowed* a fee of one guinea to each of two doctors for a report obtained before the raising of the action, and a fee of one guinea to each of the same two doctors as for a second report obtained on the eve of the trial, and also a fee of two guineas to each of two doctors who were called in for consultation shortly before the date fixed for the trial; and *disallowed* charges for drawing precognitions of medical witnesses, and sums charged for payments to medical witnesses.

On 3rd January 1901 Andrew Watson raised an action of damages for personal injury against the Caledonian Railway Company.

After the accident by which his injuries were sustained the pursuer was attended by Dr Nicoll and Dr Grant, who supplied his agents with a report as to his condition. These two doctors attended the pursuer until shortly before the date fixed for the trial of the case, when Dr Knox and Professor Glaister were called in for consultation, the latter as a specialist, on account of symptoms which revealed lesion to the spinal cord. Dr Knox made two visits and Professor Glaister made one visit to the pursuer.

The trial was fixed for 23rd March 1901, but on 22nd March the action was settled upon condition, *inter alia*, of the defenders paying the pursuer's expenses as taxed, and the pursuer's account of expenses was taxed by the Auditor. The Auditor allowed the following charges in that account, namely—(1) For a report by Dr Nicoll and Dr Grant in December 1900 as to the pursuer's injuries, £2, 2s.; (2) For drawing precognitions in March 1901, Dr Grant £3, 10s., Dr Nicoll

£1, 10s., Professor Glaister, £1, 10s., and Dr Knox £1, 4s.; (3) Paid witnesses, Professor Glaister £15, 15s., Dr Knox £21, and Dr Nicoll £21.

The defenders lodged a note of objections to the Auditor's report in so far as he had allowed the charges referred to, and argued with regard to Dr Grant and Dr Nicoll that the charges for a report in December and precognitions in March should not both be allowed, and further, with regard to the charge for drawing precognitions, that a doctor's report was his precognition; that if the case had gone to trial certificates could only have been obtained for two doctors as skilled witnesses; and that at least a large reduction should be made on the charge for payments to witnesses.

Argued for the pursuer—The obtaining of a report in December from Dr Nicoll and Dr Grant was a necessary step in taking instructions for raising the action, and it was equally necessary to take precognitions in March, by which time the pursuer's condition might have so changed as to alter the opinions expressed in the report obtained in December. With regard to the payments to witnesses, the doctors had prepared for examination, and they had not been paid at all for their visits to the pursuer.

The Court allowed a fee of one guinea each to Dr Nicoll and Dr Grant for their first visit to the pursuer and the report thereon in December, and one guinea to each of them as for a second report in March. The Court also allowed a fee of two guineas to professor Glaister and a fee of two guineas to Dr Knox, and sustained the objections to the charges for drawing precognitions of, and for sums paid to, medical witnesses.

Counsel for the Pursuer—Shaw, K.C.—R. S. Horne. Agents—Campbell & Smith, S.S.C.

Counsel for the Defenders — Clyde. Agents—Hope, Todd, & Kirk, W.S.

Saturday, June 22.

SECOND DIVISION.

[Lord Kyllachy, Ordinary.

CLARK *v.* GLASGOW, DUBLIN, AND LONDONDERRY STEAM PACKET COMPANY, LIMITED.

Reparation — Negligence — Contributory Negligence — Safety of Public — Public Place—Pier—Person Injured on Steamboat Quay by Rope attaching Steamer to Quay.

In an action of damages for personal injuries the pursuer averred that while he was standing on the steamboat quay at Greenock he was injured by a rope, which had been thrown from a steamer belonging to the defenders, and attached by the loop at the end of it to one of the posts upon the quay, and which thereafter, owing to the continued movement of the steamer, swung violently across the quay against the pursuer and knocked him down and broke his leg, and that this happened owing to the negligence in certain respects specified of those for whom the defenders were responsible.

The defenders maintained that the action ought to be dismissed in respect (1) that the defender had not averred that he had business to take him to the quay; and (2) that on his own averments he must have been standing between the edge of the quay and the row of posts to which steamers' ropes were intended to be attached; that this was obviously a place in which there was danger of being struck by the ropes which were necessarily stretched across it between the posts and the steamers, and that consequently on his own admission he had been guilty of contributory negligence.

Held (*rev.* judgment of Lord Kyllachy, *dub.* Lord Moncreiff) that the action could not be disposed of without inquiry, and that the pursuer was entitled to an issue.

Smith v. *Highland Railway Company*, November 1, 1888, 16 R. 57, *distinguished.*

Joseph Clark, ropemaker, Greenock, raised an action for £200 damages against the Glasgow, Dublin, and Londonderry Steam-Packet Company, Limited, having an office and carrying on business at 52 Robertson Street, Glasgow, the registered owners of the steamship "Olive."

The pursuer averred—"(Cond. 2) In or about the month of September 1899, the defenders advertised that the steamer 'Olive' would leave Glasgow for Dublin on Saturday 16th September 1899, and would call at the Steamboat Quay, Greenock. The steamer arrived opposite the said quay about six o'clock afternoon of the advertised date, and one of the deck hands or employees on board the boat threw a line or rope from the steamer to the quay in order that the boat might be made fast to the quay. When this line or rope was thrown the steamer was going at too great a speed. (Cond. 3) There are two rows of pillars or pawls on the said quay to which ships can be made fast. The first row is at or near the edge of the quay, and each pawl or pillar in it curves away from the sea, and is provided at the tip of the curve with two iron horns. The second row is several yards back from the edge of the quay, and each pawl or pillar in it has an iron 'bonnet' or head. The iron horns and 'bonnets' are for the purpose of preventing the loop at the end of ships' ropes from slipping off the pawls or pillars. When the line or rope was thrown from the 'Olive,' one of the employees on board directed the man to whom it was thrown to place the loop at the end over one of the iron pawls or pillars in the second row, that is, one with a 'bonnet' or head, and this was done in accordance with said directions. Owing to the light weight of the steamer and the