they were broken. I have alluded to these points as illustrating the general vague and unsatisfactory nature of the averments upon which I have no doubt in holding the pursuer is not entitled to an issue. Subject to the qualification indicated at the commencement of my opinion I agree with the Lord Ordinary.

LORD KYLLACHY—I concur. I am not prepared to affirm the proposition suggested in the last paragraph of the Lord Ordinary's opinion, namely, that in no circumstances could a horse hirer be liable to members of the public for injuries caused by horses let out by him. Cases I think might well be figured in which it would be very difficult to affirm that proposition. But the position here is that we have no averments raising any question of that nature—no averments of circumstances involving any such responsibility. On the contrary, there is nothing in the pursuer's averments inconsistent with the supposition that the horses were safe and free from vice, and that, as indeed some of the pursuer's averments seem to suggest, the true and proximate cause of the accident was the fact that the persons to whom the horses were let placed them under the charge of young and inexperienced drivers.

LORD KINCAIRNEY—I am entirely of the same opinion. I quite assent to all that has been said, and do not find it necessary to add anything.

LORD STORMONTH DARLING concurred.

The Court adhered.

Counsel for the Pursuer and Reclaimer — Dunbar. Agent — R. S. Rutherford, Solicitor.

Counsel for the Defenders and Respondents—G. Watt, K.C.—Horne. Agents — Connell & Campbell, S.S.C.

Wednesday, July 12.

FIRST DIVISION.

[Lord Low, Ordinary.

CATHCART *v.* BROWN.

Reparation—Seduction—Issues—Form of Issue Approved.

In an action of damages for breach of promise and seduction, *held* that the pursuer was not entitled to a simple issue of seduction, but must specify in the issue the method of seduction which was alleged. Form of issue *approved—Forbes* v. *Wilson*, May 16, 1868, 6 Macph. 770, 5 S.L.R. 501, *followed.*

This was a motion by the defender to vary the second of two issues approved by the Lord Ordinary (LOW) in an action of damages for breach of promise and seduction at the instance of Jeanie Cathcart, domestic servant, 40 Linthouse Buildings, Govan, with consent and concurrence of William Cathcart, pit-fireman, Hamilton, her father, as her curator and administrator-in-law, pursuer, against Alexander Brown, warehouseman, Lawmuir, East Kilbride, Lanarkshire, defender.

The first of the issues which had been allowed dealt with the alleged breach of promise, and as to it no question arose. The second dealt with the alleged seduction.

The pursuer made on record averments to the effect that when she was a domestic servant in his father's house the defender, after paying her attention, courting her, and professing affection for her during some months, had in or about the month of April 1904 made her a present of articles of dress and then and there asked her to marry him. "The defender having succeeded in winning the affection and confidence of the pursuer, she agreed. The defender thereupon urged the pursuer to allow him to have carnal connection with her. The pursuer was at first unwilling but was at last overcome, partly by the masterful ascendency he had acquired over her in virtue of his position as the son of her employer, and partly by his solicitations and professions of love, and by his promise to marry her. The pursuer was then seduced by the defender."

The pursuer pleaded—"(2) The defender having seduced the pursuer is liable in reparation therefor."

The defender pleaded—"(1) The averments of the pursuer are irrelevant. (3) The only act of connection which took place between the pursuer and the defender having proceeded on the invitation of the pursuer, and without promise of marriage or proffer of affection, the defender should be assoilzied."

The second issue (being the issue sought to be varied) was as follows:—"(2) Whether, between the month of April and 20th May 1904, the defender seduced the pursuer and prevailed upon her to permit him to have carnal connection with her, to her loss, injury, and damage. Damages laid at £300."

The defender proposed to vary the issue so as to make it read thus—"Whether between the month of April and 20th May 1904 the defender *courted the pursuer and proposed honourable intentions towards her, and promised to marry her, and whether by means of such courtship, and professions, and promise, he seduced the pursuer*," *&c.*

Argued for the defender—A bare issue of mere seduction was not sufficient. The arts employed must be stated. The issue as approved contained no *modus*. The pursuer was bound to specify the means adopted by the defender, *e.g.*, courting, professing honourable intentions, and promising to marry her—these must be put to the jury and ought to be put in issue—Fraser, H. & W. i, 501; *Linning* v. *Hamilton* (1748), M. 13,909; *Stewart* v. *Menzies*, June 27, 1837, 15 S. 1198; *Gray* v. *Miller*, December 17, 1901, 39 S.L.R. 256; *Gray* v. *Brown*, June 19, 1878, 5 R. 971, 15 S.L.R. 639; *Forbes* v. *Wilson*, May 16, 1868, 6 Macph. 770, 5 S.L.R. 501. The popular meaning of the term seduction was different from the legal

meaning, and unless the means used were put in issue the jury would be mislead—*Walker* v. *M'Isaac*, January 29, 1857, 19 D. 340; Jurid. Styles, iii, 811.

Argued for the pursuer—The pursuer was entitled to an issue of seduction merely—Macfarlane on Issues, pp. 378, 381. The case of *Gray* v. *Brown*, *ut supra*, was before the Lord Ordinary, and was considered by him.

LORD PRESIDENT—In this case the pursuer, who is a domestic servant, sues the son of her employer for damages on two grounds. No question arises as to the first ground, which is for breach of promise of marriage, and the first issue sets forth that breach in the usual form and no objection is taken to it.

But she also sues for damages in respect of her alleged seduction, and the issue which the Lord Ordinary has allowed only uses the word "seduced"—whether "the defender seduced the pursuer and prevailed upon her to permit him to have carnal connection with her, to her loss, injury, and damage." The defender has tabled a motion to vary this issue on the ground that it should have contained some specification of the method of seduction which is alleged to have been employed; the mere use of the word "seduced" being in itself misleading. I think the defender is right that the use of this word alone may be misleading, for the popular use of the word "seduce" is not the same as the legal significance, the popular use would include a case where there is the most complete consent on the part of the woman and no acts or deceit have been employed in inducing that consent. But I do not think it necessary to go into this question in detail, for it has been already carefully considered in both Divisions of the Court—in the Second Division in the case of *Gray* v. *Brown*, and in this Division in the case of *Forbes* v. *Wilson*. The issues approved in the case of *Forbes* had been carefully considered, and I do not think they could be bettered. That was a similar action to this, an action for breach of promise and seduction, and I think the issues approved in that case ought to be strictly followed here, only making the necessary alteration of dates. I especially approve of the form of issue allowed in *Forbes*, because the second issue does not set forth an actual promise to marry, but only a professed intention to marry as the inducing cause of the seduction. I think, therefore, that we should not approve the second issue allowed by the Lord Ordinary, nor adopt the variations suggested by the defender, but that it would be better here to follow the exact form of issue approved in the case of *Forbes*.

LORD ADAM—I concur.

LORD M'LAREN—I am of the same opinion. I think it was settled so far back as the case of *Linning* that an action of damages for seduction will only lie where some species of fraud or deceit has been practised; and while the practice has varied as to the form of issue to be allowed, I think it has settled down to this, that there must be some specification of the kind of deceit that is alleged to have been practised. That is the principle that I think will be found to underlie the decisions in the cases that have been quoted to us. I think that here we ought to follow the form of issue that was approved in the case of *Forbes*, but in so doing we are not deciding that that is the only form of issue to be employed; the form must in general depend upon the special circumstances of the case to which it is to be applied.

LORD KINNEAR—I also think that we ought to follow the form of issue that was approved in the case of *Forbes*. We have been told that a practice has grown up in the Outer House of preferring the simpler form of issue that has been allowed by the Lord Ordinary, and of withholding from the jury any indication of the specific method of seduction that is set forth on the record. If that be so, it is a practice which has grown up in disregard of a decision which is binding upon the Court.

The Court pronounced this interlocutor—

"The Lords having considered the notice of motion to vary issues by the defender, . . . Vary the issues in terms as adjusted at the bar: Approve of the same as now authenticated, and appoint them to be the issues for the trial of the cause: Find the expenses of the discussion on the motion to vary issues to be expenses in the cause, and remit to the Lord Ordinary to proceed."

The issue approved was as follows:—"Whether between the months of January and May 1904 the defender *courted the pursuer and professed intention to marry her, and whether by means of these professions the defender, in or about the month of April* 1904, *seduced the pursuer, and prevailed upon her to permit him to have carnal connection with her, to her loss, injury and damage. Damages laid at* £300."

Counsel for the Pursuer—Orr, K.C.—M'Robert. Agents—Ross, Smith, & Dykes, S.S.C.

Counsel for the Defender—M'Clure, K.C. A. Moncrieff. Agents—Simpson & Marwick, W.S.