be a strange kind of joint-adventure in which two out of three joint-adventurers contributed nothing to the capital embarked, and were not liable to contribute anything or to defray any losses which might be incurred. Further, there was here no *delectus personæ*. I allude to the fact that Robertson was to find another man. He was not to report or to bring the man whom he might select to the owners and introduce him to them. One would like at least to see the face of one's partner before entering into a contract of joint-adventure with him. These essential features of a contract of joint-adventure are awanting. Joint-adventure is just a partnership limited to a particular season, or a particular enterprise in which there is either no power in the partners to bind one another or such power is limited to the particular adventure. Only one point remains. Each of these two men, Robertson and Clark, was to receive a share of the gross earnings of the boat, not a share of the profits, for that would have implied deductions for expenses of management, repairs, stores, and perhaps bad debts. But as I read the agreement it is the gross earnings that are to be divided. Now the Partnership Act 1890, which to a large extent is an embodiment of principles of the common law familiar to lawyers, says —". . . [*His Lordship read sec.* 2 (2) *of the Act.*] . . . " The provision is different in the case of sharing profits, because the statute declares as follows—". . . [*His Lordship read sec.* 2 (3) *of the Act.*] . . ." Perhaps this latter provision innovates somewhat upon the case of *Cox* v. *Hickman* (1860), 8 H.L.C. (Clark) 268. But the statement in the leading part of the sub-section is so qualified in the subordinate paragraphs that the sub-section as a whole embodies accurately the distinctions made in the courts as to the effect of participation in profits. But we have nothing to do with sharing of profits, and as regards sharing of gross returns, with which we have to do, this under the statute is not even *prima facie* evidence of the existence of a partnership. I think the framers of the Act were well advised in so providing, because it is known that managers of departments of houses of business are often remunerated by a share of the gross returns of their departments. As sharing in the gross returns of the boat does not constitute a partnership between the persons who share the gross returns, I think this is not a case of joint-adventure. The result is what is sufficiently obvious even to one who is not a lawyer, that this is just a contract of service. That being so, the Workmen's Compensation Act applies, because the exception in section 7 (2) of that Act only applies to the fishing industry. [*His Lordship read the sub-section.*] But then as this was not a fishing boat, and consequently does not fall within the exception, the case falls within the rule which applies the Act to all kinds of service. I am therefore of opinion that we should answer the question in the affirmative and dismiss the appeal.

LORD PEARSON concurred.

LORD DUNDAS—I am of the same opinion, and do not desire to add anything to what has been said.

The Court answered the question in the affirmative and dismissed the appeal.

Counsel for the Appellants—Constable, K.C.—Mair. Agent—Alex. Mustard, S.S.C.

Counsel for the Respondents—M'Kechnie—Malcolm. Agents—Carmichael & Miller, W.S.

Friday, November 6.

EXTRA DIVISION.

[Sheriff Court at Ayr.

FERGUSSON & OTHERS (TRUSTEES OF PRESTWICK ST NICHOLAS GOLF CLUB) *v.* PRESTWICK TOWN COUNCIL.

Burgh—Water Supply — Supply at Meter Rate or at Domestic Water Rate — Golf Club-House — "House" — "Dwelling-House" — Domestic and Ordinary Purposes—Burgh Police (Scotland) Act 1892 (55 *and* 56 *Vict. c.* 55), *secs.* 4 (13), 263, 264, 265.

The Burgh Police (Scotland) Act 1892 provides that houses within a burgh shall be supplied with water for domestic and ordinary purposes on certain terms. By section 4 (13) "house" is defined as "dwelling-house." *Held* that a golf club-house was not a house within the meaning of the Act, and that the owners were not entitled to a water supply on the terms applicable to houses.

The Burgh Police (Scotland) Act 1892 (55 and 56 Vict. c. 55) enacts—Section 4, sub-section 13—"'House,' where not otherwise expressed, shall mean dwelling-house, and shall include outhouses and other erections, being pertinents of the house."

Section 263—"Where the commissioners resolve to supply the houses and tenements within the burgh with water for domestic and ordinary purposes, the owners of such houses and tenements shall be entitled to obtain such supply by connecting a service pipe with the main pipes to be laid down by the commissioners. . . ."

Section 264—"No person shall be entitled, without special agreement with the commissioners, to use the water supplied through the pipes of the commissioners, except for domestic and ordinary purposes; but where there is a supply of water more than is required for such domestic and ordinary purposes within the burgh, it shall be lawful for the commissioners to contract with any person or persons within the burgh to supply any public baths and washhouses, works, manufactories, or other premises within the burgh with

water, at such rate and upon such terms and conditions as may be agreed on; or in the event of disagreement either as to the ability of the commissioners to give the supply or as to the rate, terms, or conditions on or in respect of which the supply is to be given, the same shall be fixed by the Sheriff upon summary application by either of the parties. . . ."

Section 265 — "A supply of water for domestic and ordinary purposes shall not include a supply of water for cattle or for horses, or for washing carriages, or for steam-engines, or for railway purposes, or for warming or ventilating purposes in public buildings, or for working any machine or apparatus, or for any trade, manufacture, or business whatsoever, or for watering gardens by means of any tap, tube, pipe, or other such like apparatus, or for fountains, or for flushing sewers or drains, or for public baths or wash-houses, or for any ornamental purpose whatever."

On April 3rd 1908 David Fergusson, solicitor, Ayr, and others, the trustees of the Prestwick St Nicholas Golf Club, raised an action of interdict in the Sheriff Court at Ayr against the Provost, Magistrates, and Councillors of the Burgh of Prestwick, craving the Court to grant interdict against the defenders cutting off or otherwise interfering with the water supply to the club-house. The *facts* are given in the Sheriff-Substitute's findings (*infra*).

The pursuers pleaded — "(3) *Separatim*— The said club-house being a 'house' within the meaning of section 4 (13), and section 263, of the Burgh Police (Scotland) Act 1892, the pursuers are entitled to have it supplied with gravitation water for domestic and ordinary purposes at the usual rate chargeable therefor, and interdict should therefore be granted as craved with expenses."

The defenders pleaded—"(4) The supply being for subjects other than domestic or ordinary, and the pursuers having failed to comply with the defenders' terms, absolvitor should be granted with expenses. (5) The said club-house not falling under the definition of a house within the meaning of section 4, sub-section 13, and sections 263 and 264 of the Burgh Police (Scotland) Act 1892, absolvitor should be granted with expenses."

On 30th July 1908 the Sheriff-Substitute (SHAIRP) pronounced the following interlocutor—"Finds in fact (1) that during the year from May 1907 till May 1908 the pursuers have received at the Ladies' St Nicholas Golf Club water from defenders' water supply through a three-quarters inch pipe without being assessed for the same or making any payment therefor; . . . (3) that the use made during the year 1907 to 1908 by the pursuers of the water in question at the Ladies' St Nicholas Golf Club was as follows, viz. — For two water-closets, one urinal, three wash-hand basins, one sink, and for a certain amount of cooking and washing; (4) that by letters dated 24th February and 19th March 1908 the defenders threatened to cut off the pursuers' water supply unless they agreed to take same by meter: Finds in law that in these circumstances the water was used for domestic and ordinary purposes in the sense of secs. 263, 264, and 265 of the Burgh Police (Scotland) Act 1892, and that the Ladies' Saint Nicholas Golf Club is a 'house' within the meaning of sec. 4, sub-sec. (13) of the said Act, and that accordingly the defenders were bound to supply the said Ladies' St Nicholas Golf Club with water for their aforesaid purposes at their ordinary or domestic rate, and were not entitled to cut off the pursuers' water supply unless the same was taken by meter: Recals the interim interdict formerly granted; and further, in respect that the year to which the present dispute between pursuers and defenders relates, viz., May 1907 to May 1908, has now expired, finds it unnecessary to grant the interdict craved by the pursuers and refuses the same: Finds the defenders liable to the pursuers in expenses on scale 1: Allows an account thereof to be lodged, and remits," &c.

Note.—"The existing connection between the defenders' main pipe and the Ladies' St Nicholas Golf Club would appear to have been made in 1894, and made by a firm of plumbers of good standing, represented at the proof by the witness Mr Meikle. My view of the evidence is that it points to the connection having been made in the usual way without any concealment on the part of the pursuers. Why the Ladies' St Nicholas Golf Club has never been returned to the assessor or assessed I cannot say. If it was an oversight, surely both pursuers and defenders are in part responsible for this. The question, however, at present before the Court is as to the right of the defenders during the year 1907 and 1908 to threaten to cut off the water supply from the pursuers unless they agreed to accept it by meter. The question which I have decided in the present instance I have decided upon ascertained facts as they presently exist. I think that as things stand at present the Ladies' St Nicholas Golf Club is a 'house' within the meaning of sec. 4, sub-sec. (13), of the Burgh Police (Scotland) Act 1892, and that the present uses made of the water by the Ladies' St Nicholas Golf Club are uses for ordinary and domestic purposes within the meaning of secs. 263, 264, and 265 of the said Act. If in the future the club should erect appliances which make an excessive drain upon defenders' water supply it is possible that new questions might emerge. In the present action the payment of arrears for years previous to 1907 is not before the Court, nor shall I attempt here to decide any question as to the year 1908 and 1909, for the pursuers can be assessed for that year in the ordinary way. See *Morton* v. *Newmilns Commissioners*, reported in Muirhead on Police Government in Burghs, pages 521-525, and *Provost, Magistrates, and Councillors of the Burgh of Paisley* v. *Watson*, 27th December 1902, 19 S.L. Review 183."

The defenders appealed, and argued—The club-house could be supplied with water only under sec. 264. Section 263 was not applicable. (1) A golf club-house was not a house within the meaning of the Act, sec. 4 (13), *i.e.*, a dwelling-house. It was admitted that nobody slept in the house and that was conclusive—*Riley* v. *Read*, 1879, 4 Exch. Div. 100; *Airdrie, &c., Water Trustees* v. *Flanagan*, March 7, 1906, 8 F. 932, 43 S.L.R. 422. (2) The water was not used for domestic and ordinary purposes. In construing the word domestic regard must be had to the ordinary habits of domestic life, and that involved taking the quantity in proportion to the number of inmates into account—*Barnard Castle Urban Council* v. *Wilson*, [1902] 2 Ch. 746, *per* Romer, L.J., at p. 756; *South-West Suburban Water Company* v. *St Marylebone Union*, [1904] 2 K.B. 174; *Bristol Water-Works Company* v. *Uren*, 1885, 15 Q.B.D. 637; *Harrogate Corporation* v. *Mackay*, [1907] 2 K.B. 611; *Pidgeon* v. *Great Yarmouth Water-Works Company*, [1902] 1 K.B. 310. The character of the place to which the water was supplied must also be taken into consideration—Michael & Will, Gas and Water, 5th ed., p. 312; *Chester Water-Works Company* v. *Chester Union*, 1907, 23 T.L.R. 245. Here the water was used for what might be domestic purposes if the house were a dwelling-house, but since it was not, and in view of the quantity of water used, it was clear that the purposes were not domestic. In any event the purposes could not, looking to the ordinary standard of domestic requirements, be called ordinary.

Argued for the pursuers (respondents)—(1) The club-house could be described as a dwelling-house. Whether anyone slept in the house or not was not conclusive of the question. The case of *Airdrie, &c., Water Trustees* v. *Flanagan, cit.*, did not support the defenders' view, because there the whole question was whether "private dwelling-house" would include a public-house. The case of *Riley* v. *Read* had not been followed. In Scotland it had been held that premises might be "inhabited houses" though no one slept in them—*Douglas* v. *Young*, November 14, 1879, 7 R. 229, 17 S.L.R. 119; *Campbell* v. *Inland Revenue*, February 21, 1880, 7 R. 579, 17 S.L.R. 407; *Glasgow Corporation* v. *Inland Revenue*, October 19, 1880, 8 R. 17, 18 S.L.R. 1; *Cheape* v. *Kinmont*, November 27, 1888, 16 R. 144, 26 S.L.R. 103; *Smith* v. *Petrie*, January 27, 1892, 19 R. 405, 29 S.L.R. 342. The mere fact that no one slept in the golf club-house was not sufficient to take it out of the category "dwelling-house." Further, if the water supplied were used for domestic purposes, that was sufficient to make the house a "dwelling-house" in the sense of the Act—*Cooke* v. *New River Company*, 1886, 38 Ch. Div. 56. (2) The pursuers therefore only required to show that the purposes for which the water was used were domestic and ordinary. The character of the house could not affect the purposes—*South-West Suburban Water Company* v. *St Marylebone Union, cit., per* Buckley, J., at p. 179; *Barnard Castle Urban District Committee* v. *Wilson, cit., per* Vaughan Williams, L.J., at p. 754, and [1901] 2 Ch. 813, *per* Buckley, J., at p. 818. The uses to which the water was put here were just the uses to which it would be put in a dwelling-house and were certainly domestic, and as the words domestic and ordinary must be read together the water here was used for domestic and ordinary purposes. Further, in section 265 of the Act certain purposes which were not "domestic and ordinary" were specified, and there was nothing there to cover the present purposes. It was to be inferred that but for this specification some at least of these enumerated exceptions would have come within the terms "domestic and ordinary," and they were all further removed from that category than the purposes for which the water supplied to the club-house was used. Section 264 could not govern the supply to the club-house, because the premises there mentioned were "public."

At advising—

LORD M'LAREN—This case may have a certain general interest, because it bears on the construction of the Burgh Police (Scotland) Act 1892, otherwise it does not raise any important question of law, and does not seem to call for any very minute examination in its details.

The Burgh of Prestwick claims to assess a ladies' golf club-house at Prestwick on the basis that they are to pay by meter for the water consumed in the Club. The proprietors of the club-house maintain that they are entitled to be supplied on payment of the domestic rate, which is calculated on rental, and is applicable to houses as defined in the Act of Parliament. Now, as I read the Act, two conditions have to be fulfilled to entitle any person claiming the benefit of the domestic water rate to obtain water upon those terms. He must establish that the premises in question fulfil the definition of a house under the statute, which defines "house" to be a dwelling-house, and he must satisfy the authorities that the purposes for which the water is to be used are in the words of the Act "domestic and ordinary" purposes. To the best of my judgment a club-house is in a position to fulfil the second condition, because when I look to the admitted statement of the uses of the water and to the evidence in the case, I am unable to distinguish between the use which is taken of the water in this club-house, or for that matter in any club-house of the ordinary description, from the use that is taken of water in a private house. The only point of difference is one of quantity, because it may very well be that in a club-house belonging to a proprietary of several hundred persons a larger quantity of water will be consumed than would be consumed in a dwelling-house paying an equivalent rent. On the other hand, it may be that only a small number of the members make use of the house on one day, and the use which they make of it in connection with the recreation of golf does not involve the

consumption of such an amount of water as would be consumed in a private residence where it may be necessary to have hot-water supplies for the house and provision for baths and laundry work, and so on. But as I read the statute, we are not required to consider in connection with the domestic assessment the amount of water consumed at all. It is impossible to define that, except where the quantity of water is to be measured, and in that case naturally the payment would also be by measure.

But there is more difficulty in regard to what I have called the first condition of domestic assessment, and that is that the premises assessed should satisfy the definition of a house. The word house with a prefix is used for many different purposes, and covers a very wide description of buildings. We have school-house and public-houses, not to mention houses appropriated for animate and inanimate beings, such as cattle-houses, printing-houses, coach-houses, and so on. In fact there is no word in the language which takes on more different shades of meaning according to the prefix associated with it than this elementary word of our language. Now the purpose of the statute was to exclude buildings of the description of which I have given examples, and to confine the domestic assessment to dwelling-houses in the proper sense. All those other houses which are for human occupation have this in common, that nobody has his domicile in any of them. The most devoted scholar does not spend his days and nights in the school-house, and the most ardent supporter of the licensed trade interest does not spend twenty-four hours in a public-house, and even if he wanted to, the law would not allow him. But these are places to which people resort occasionally, while a dwelling-house is a habitation of necessity, because however poor a man may be he must have a roof over his head when he comes home from his work and to protect him when sleeping. It is really unnecessary to elaborate the distinction, but as the point is raised it is desirable that one should see exactly what the distinction is. It is sufficiently marked, because no one will apply the term dwelling-house to any of the buildings such as I have enumerated. It seems to me that a club-house, not being a domicile, cannot be called a dwelling-house; that it is distinguished from dwelling-house by the fact that nobody lives in it except the caretaker; that it is not one of the necessities of life, but is a place of recreation to which the members only occasionally resort, and this seems to me to be a sufficient distinction to take it out of the category of the statute. For these reasons I think the Magistrates are well-founded in their claim to assess St Nicholas Golf Club by meter, and it is no answer to their claim to say that the Club might be left out in the cold in case the water supply was only barely sufficient for domestic uses. I think that is just the policy of the statute, that the supply of domestic establishments comes first, and it is only when there is a surplus of water that other buildings have a claim. I am therefore of opinion that we should sustain the appeal.

LORD PEARSON—I have found this case to be attended with considerable difficulty in that part of it which deals with the question whether this club-house is a house within the meaning of the Act of 1892. The Act defines the word house as meaning a dwelling-house; and I acknowledge the force of the argument submitted on the part of the Golf Club members that in this matter of water supply the true test of whether any building is a dwelling-house is whether the water used therein is put to dwelling-house uses, or, as the statute expresses it, to "domestic and ordinary purposes," and to no other. If we apply that test, the building here in question is a dwelling-house, and I am disposed to the opinion that this result is in conformity with the leading principles which govern our water-supply legislation. We were referred to cases both in England and Scotland where this question came up, and where varying opinions were expressed on this matter, as in *Airdrie Water Trustees* v. *Flanagan* (1906, 8 F. 933); *Cooke* v. *New River Company* (1888, 38 Chan. Div. 56.) These, however, were cases turning upon the construction of water-supply statutes. Here we have to do with a general Burgh Police Act which deals with a great variety of subjects touching houses in burghs, of which the water supply is but one. The definition of a house as meaning a dwelling-house is contained in one of the general clauses, and applies not merely to the water supply clauses, but to the Act as a whole; and I have come to be of opinion that it would be unsafe to impose a wider meaning upon the general expression "dwelling-house" than it would naturally bear according to general use, merely because the water-supply clauses of the statute give some support to such an extended meaning. The ordinary and popular meaning of the expression dwelling-house is undoubtedly the restricted meaning; and I think it may be safely adopted in the present case. Apart from the water-supply clauses, I do not think it would occur to anyone to describe this club-house as a dwelling-house.

LORD DUNDAS—I agree with your Lordships in thinking that the appellants are entitled to succeed. It may be conceded—or at all events assumed—that the purposes for which water is at present used in this club-house are "domestic and ordinary" in the natural signification of these words, and within the meaning of the statute in question. But to enable the respondents (pursuers) to succeed in their contention, they must further establish that the club-house is a "house" within the meaning of section 263 of the Burgh Police (Scotland) Act 1892, and of section 4 (13) of that Act, which defines "house, where not otherwise expressed," as meaning "dwelling-house." I think this proposition cannot be affirmed. There is no need, in such a question as this, to define overmuch upon

the meaning of words. Counsel quite properly referred us to a number of cases where somewhat similar words, occurring in other Acts of Parliament passed for various purposes, have been construed by the Court in Scotland and in England. But I do not think one derives any substantial assistance from such cases, none of which, of course, can be said to be directly in point. I am not ambitious to attempt any general definition of what may or may not be held to be a "dwelling-house" within the meaning of the Act under consideration. It seems to me clear enough that this club-house was not constructed for, and is not in fact used as, a dwelling-house, and is not dwelt in, in any proper or usual or feasible sense of these words. I agree, therefore, in thinking that it does not fall within the terms of section 263 of the Act of 1892. We ought accordingly, in my opinion, to pronounce a finding to the effect indicated, recal the interlocutor of the Sheriff-Substitute, and dismiss the complaint.

The Court sustained the appeal and recalled the Sheriff's interlocutor, found in law that the club-house did not fall under the definition of a house within the meaning of section 4 (13) and sections 263 and 264 of the Act, and assoilzied the defenders.

Counsel for the Pursuers (Respondents)—Dean of Faculty (Dickson), K.C.—Hon. W. Watson. Agents—Dalgleish, Dobbie, & Company, S.S.C.

Counsel for the Defenders (Appellants)—Hunter, K.C.—D. P. Fleming. Agents—Webster, Will, & Co., S.S.C.

Saturday, November 7.

EXTRA DIVISION.

[Lord Salvesen, Ordinary.

ROONEY *v.* M'NAIRNEY.

Reparation — Slander — Verbal Slander—Innuendo—Relevancy.

A Roman Catholic clergyman, in his own house and in the presence of witnesses, said to the pursuer—"You are the cause of all this trouble; you I'll keep my eye on. You are a source of evil in the parish, and the sooner you are out of it the better." *Held* that the words used were not slanderous in themselves, and that as no specific moral evil was averred on record to which the words might refer, the innuendo proposed, viz., that "the pursuer exercised an evil moral influence on those with whom he came into contact," was irrelevant, and action *dismissed.*

Roger Rooney, holder-on, residing at 33 Clarendon Street, Partick, Glasgow, raised an action of damages for verbal slander against Michael M'Nairney, a Roman Catholic clergyman, residing at St Peters, Hyndland Street, Partick, Glasgow.

The averments of the pursuer were to the effect that in the progress of a dispute between him and the defender, the St Peter's Branch of the League of the Cross, to which the pursuer belonged, had been ejected from an unused chapel in Bridge Street, Partick, which they had for some time been permitted to occupy as a recreation room. That following thereon the League petitioned the Bishop of the Diocese on the matter, and he delegated it to two of his clergy, who, after meeting a deputation of the League, of whom the pursuer was one, decided that the chapel should be reopened to the League, and advised the deputation to go to the defender and arrange for the reopening.

In particular he averred—"(Cond. 10) . . . On the afternoon of 24th April 1907 the party waited upon the defender, who agreed to open the hall. After the interview came to an end, as the deputation was leaving the room, the defender, pointing the index finger at pursuer, said to him—'You are the cause of all this trouble; you I'll keep my eye on. You are a source of evil in the parish, and the sooner you are out of it the better,'—or words of the like meaning, import, or effect. These words addressed by the defender to the pursuer were made in the presence and hearing of the said John Heggarty, Francis M'Cart, and James O'Brien, members of the deputation. The said statement had no connection whatever with or any bearing on what had taken place at the interview, but was purely the outcome of defender's ill-will to pursuer, conceived as aforesaid, and was made for the purpose of lowering him in the esteem of his friends and others. Pursuer asked defender to withdraw his words, but defender refused to do so. The following day pursuer wrote to the defender asking him to apologise, but he received no reply to his letter. (Cond. 11) The hall in which the League was held was opened on 27th April, and on 7th May when the pursuer entered the hall he was informed by the doorkeeper that defender had left instructions not to allow him (pursuer) to enter. This he did solely in consequence of his ill-feeling towards pursuer. (Cond. 12) The said statements made by the defender as condescended on were of and concerning the pursuer, and they were false, calumnious, and malicious, and were made without probable or any cause. They were intended to represent and did represent that the pursuer exercised an evil influence on those with whom he came into contact, that he was not a fit associate for people in the parish, that he had a demoralising and corrupting influence on his associates and other people, and that he was not a person fit to live in the community, and the defender's language was so understood by those who heard it. The defender was well aware that there was no truth whatever in the said statements."

On the 29th November 1907 the Lord Ordinary (SALVESEN) pronounced the following interlocutor—"Finds that the allegations of the pursuer are not relevant and sufficient to support the conclusions of the