But it it said that employee and employer must be read in a sense different from the ordinary because of the earlier legislation, especially sections 13 and 14 of the Act of 1906.

I think, however, though with considerable doubt, that it would be straining language to hold that "where a workman raises an action against his employer" in section 14 of the Act of 1906 the words used include an action such as the present, and although the term "workman" may, according to the 13th section, include other persons where the context does not otherwise require, I am unable to read the 14th section as using the term in its wider signification. It looks to me as if the interpretation clause, section 13, had not been introduced with reference to the special provisions as to Scotland in clause 14.

However this may be, I think that the express provisions of the Act of 1907 remove any difficulty or doubt, and I agree with the views on this point expressed by the Lord President.

It seems to me that when the 14th section of the Act of 1906 and the Act of 1907 were passed, it must have escaped attention that claims could be made otherwise than by an employee, but whatever may have been the intention I do not see how the express terms of the Act of 1907 can be overcome.

In my opinion the decision of the First Division should be affirmed.

LORD SHAW—I agree with the Lord Chancellor, and I largely share the views just expressed by my noble and learned friend Lord Atkinson.

If the range of vision be narrowed to the meaning of the word "employee," the conclusion is inevitable; and I agree that in the interpretation of this Act it must be so narrowed. The words of the Legislature not being ambiguous, the duty of the judiciary is not doubtful.

The results may be unfortunate, unexpected; it may be, as was argued, that a scandal continues. If so, Parliament will note these things. But with regard to them it is beyond the function of a court of interpretation to give relief, and perhaps even beyond its province to express views or to proffer opinions.

Their Lordships dismissed the appeal with expenses.

Counsel for the Pursuer (Respondent)—Munro, K.C.—Mackenzie Stuart. Agents—Fleming & Buchanan, Stirling—Macpherson & Mackay, S.S.C., Edinburgh—R. S. Taylor, Son, & Humbert, London.

Counsel for Defenders (Appellants)—D.-F. Scott Dickson, K.C.—Beveridge. Agents—W. T. Craig, Glasgow—W. & J. Furness, W.S., Edinburgh—Beveridge, Greig, & Company, London.

COURT OF SESSION.

Thursday, November 23.

FIRST DIVISION.

[Lord Cullen, Ordinary.

HENDERSON *v.* D. & W. HENDERSON, *et e contra.*

Process—Reclaiming Note—Competency—Omission to Box Record—The Court of Session Act 1825 (*Judicature Act*) (6 *Geo. IV, cap.* 120), *sec.* 18—*Act of Sederunt, 11th July* 1828, *sec.* 77.

A raised an action against B & C, and B & C raised an action against A. The Lord Ordinary conjoined the actions, and thereafter pronounced an interlocutor whereby in the action at the instance of A he assoilzied B & C, and in the action at the instance of B & C granted decree against A. A reclaimed, but when boxing the reclaiming note failed to append copies of the record in the action against him, though he did append the record in the action at his instance.

The Court (after consultation with the Second Division) *repelled* an objection to the competency of the reclaiming note, *holding* that it was within their power to permit prints to be lodged if they thought, as they did here, that there was an excusable cause for not lodging them at the proper time.

Authorities reconsidered.

The Court of Session Act (Judicature Act) 1825 (6 Geo. IV, cap. 120), sec. 18, enacts—"When any interlocutor shall have been pronounced by the Lord Ordinary either of the parties dissatisfied therewith shall be entitled to apply for a review of it to the Inner House . . ., provided that such party shall, within twenty-one days from the date of the interlocutor, print and put into the boxes . . . a note reciting the Lord Ordinary's interlocutor . . ., and if the interlocutor has been pronounced without cases the party so applying shall, along with his note as above directed, put into the boxes printed copies of the record authenticated as before."

The Act of Sederunt of 11th July 1828 provides—section 77—"That reclaiming notes . . . shall at first be moved merely as Single Bills, and immediately ordered to the roll . . .: Provided always that such notes, if reclaiming against an Outer House interlocutor, shall not be received unless there be appended thereto copies of the mutual cases, if any, and of the papers authenticated as the record, in terms of the statute, if the record has been closed. . . ."

Lawrence David Henderson raised an action against the then dissolved firm of D. & W. Henderson, merchants and shipowners, Glasgow, and the individual partners of the firm, and D. & W. Henderson raised an action against Lawrence David Henderson.

On 21st February 1911 the Lord Ordinary (CULLEN) conjoined the action at the instance of D. & W. Henderson with that at the instance of Lawrence David Henderson, and on 10th June 1911 pronounced this interlocutor—"In the action at the instance of the pursuer Lawrence David Henderson against the defenders D. & W. Henderson and others, assoilzies the said defenders from the conclusions of the action, and decerns: In the action at the instance of the pursuers D. & W. Henderson and others against the said defender Lawrence David Henderson, decerns against the said defender Lawrence David Henderson, in terms of the conclusions of the action at the instance of the said pursuers D. & W. Henderson and others."

L. D. Henderson presented a reclaiming note against this interlocutor, but in boxing the reclaiming note he only appended prints of the closed record in the action at his instance, and did not append prints of the closed record in the action at the instance of D. & W. Henderson.

When the cause appeared in Single Bills, on the motion of counsel for L. D. Henderson, that it be sent to the roll, counsel for D. & W. Henderson objected to the competency of the reclaiming note.

Argued for the respondents—The reclaiming note was incompetent, for the provisions of the Court of Session Act 1825 (Judicature Act) (6 Geo. IV, cap. 120), sec. 18, and of the Act of Sederunt of 11th July 1828, had not been complied with, and these provisions, or at least those of the statute, were not directory but imperative—*M'Evoy* v. *Braes' Trustees*, January 16, 1891, 18 R. 417, 28 S.L.R. 276; *Wallace* v. *Braid*, February 16, 1899, 1 F. 575, 36 S.L.R. 419; *Blackwood* v. *Summers, Oxenford, & Co.*, May 19, 1899, 1 F. 868, 36 S.L.R. 651; *M'Lachlan* v. *Nelson & Company, Limited*, January 12, 1904, 6 F. 338, 41 S.L.R. 213.

Argued for the reclaimer—Section 18 of the Court of Session Act 1825 was merely directory and not imperative—*Hutchison* v. *Hutchison*, 1908 S.C. 1001, 45 S.L.R. 783; *Burroughes & Watts, Limited* v. *Watson*, 1910 S.C. 727, 47 S.L.R. 638. The mistake was excusable in the circumstances. Alternatively the reclaimer should be allowed to reclaim under the Administration of Justice and Appeals (Scotland) Act 1808 (48 Geo. III, cap. 151), sec. 16—*Tough* v. *Macdonald*, November 24, 1904, 7 F. 324, 42 S.L.R. 180.

At advising—

LORD PRESIDENT—In this case the decisions quoted to us were indubitably conflicting, and accordingly we have reconsidered the whole matter along with the Second Division.

The decision of the Court is that it is within our power to permit prints to be lodged if in our view it was for some excusable cause that they were not lodged at the proper time. We think that in this case there was an excusable cause, looking to the confusion between the two records brought about by the conjoining of the actions, and accordingly we shall send the note to the roll, but we wish it to be distinctly understood that this does not mean that there is to be any relaxation of the rules as to printing and lodging and boxing and so on, and that persons must not think they will be allowed to get their cases to the roll unless there is really a very good cause shown.

LORD JOHNSTON and LORD MACKENZIE concurred.

LORD KINNEAR was absent.

The Court repelled the objection to the competency and appointed the cause to be put on the roll.

Counsel for the Reclaimer—D. P. Fleming. Agents—Hume, M'Gregor, & Company, S.S.C.

Counsel for the Respondents—C. H. Brown. Agents—Webster, Will, & Company, W.S.

Friday, November 24.

SECOND DIVISION.

[Sheriff Court at Edinburgh.

BARR *v.* THE MUSSELBURGH MERCHANTS' ASSOCIATION.

Reparation—Slander—Privilege—Trade Slander—Trade Association—Black List.

A trade association circulated among its members a list which had no heading, and which contained only the names and addresses of certain persons in its district. In an action of damages for slander against the association, at the instance of a person entered on the list, the pursuer averred that it was understood by members of the association that the list was composed of the names of persons who were unworthy of business credit, and that it was known as the "black list." *Held* (1) that the case was relevant, but (2) that the defenders were privileged.

Mackintosh v. *Dun*, [1908] A.C. 390, *distinguished.*

John Barr, china merchant, Musselburgh, *pursuer*, brought an action against the Musselburgh Merchants' Association and the members of committee thereof as representing the association, *defenders*, for payment of £100 as damages for slander contained in a leaflet issued by the association to their members.

The pursuer averred—"(Cond. 2) The defenders' association has for a considerable number of years annually printed, published, and circulated, or caused to be printed, published, and circulated, to and among the traders in Musselburgh and district a list of names and addresses of persons in Musselburgh and district. *The said list is prepared and published by the defenders for the purpose of setting forth the names of persons who* are unworthy