LORD M'LAREN was not present.

The Court disallowed the issues, dismissed the action, and decerned.

Counsel for Pursuer and Appellant—M. P. Fraser. Agent—D. Hill Murray, S.S.C.

Counsel for Defenders and Respondents—Guthrie, K.C.—W. Thomson. Agents—Ross, Smith, & Dykes, S.S.C.

Saturday, December 23.

SECOND DIVISION.

[Sheriff Court at Aberdeen.

KEITH *v.* LAUDER.

Reparation—Slander—Slander with respect to Trade—Privilege—Malice—Probable Cause—Ship—"Register of Defaulting Crews"—Member of Association which Kept Register Reporting Seaman as Defaulter.

A was chief engineer of a steam trawler belonging to a fishing company of which B was manager. The fishing company was a member of an association of owners of fishing vessels. The members of the Owners' Association had resolved that a "Register of Defaulting Crews" should be kept, and that if a member of the crew of a steam trawler belonging to a member of the association, after engaging to go to sea in such trawler, should absent himself or refuse to go to sea, or should come on board in a state of intoxication, the member of the association should report to its secretary the name of the member of the crew, and the offence committed by him, for insertion in the register. A register accordingly was so kept. A, without due notice, left the said steam trawler when she was ready to go to sea, and so delayed her departure. B reported to the secretary of the Owners' Association that A had been drunk and had refused to go to sea, and accordingly A's name and the said alleged offences were entered in the register. The Court after proof were of opinion that in making the report B was not actuated by malice, and that he had reasonable grounds for believing that the statements of and concerning A contained in the report were true.

Held (1) that B was privileged in making the report, and in respect that he did not make the report maliciously was not liable in damages to A for slander, and (2) that the circumstances did not disclose any other ground upon which A was entitled to claim damages from B.

The pursuer in this action, which was raised in the Sheriff Court at Aberdeen, was George Keith, an engineer, who had for some time been employed on board fish-trawling vessels. Thomas Lauder, the defender, was the manager of the Aberdeen Icelandic Steam Fishing Company, Limited. For about a fortnight prior to 30th September 1904 the pursuer had been employed as chief engineer on board the steam trawler "Princess Melton," which belonged to the said Steam Fishing Company, but on that date he left the "Princess Melton" and refused to go to sea, in consequence of which she was delayed in harbour for more than a day.

The Icelandic Steam Fishing Company, Limited, was a member of the Aberdeen Steam Fishing Vessels Owners' Association, Limited, which company was formed in 1902 for the purpose, *inter alia*, of "collecting and circulating statistics and other information relating to the fishing or shipping industries or any trade or business connected therewith." The Association, in November 1903, had resolved that its members should report men who being engaged to go to sea should absent themselves or refuse to go to sea or come on board in a state of intoxication, and that a list of the men so reported should be kept for the information of all its members ; the list so kept was called the "Register of Defaulting Crews." On these reports the secretary of the Association, if he did not think the matter too trivial, sent out circular letters to its members, about 15 or 20 in number, informing them of those reported to it, but no penalty attached to an owner choosing to employ a seaman so reported, and sometimes he did so.

The pursuer admitted that on 30th September 1904 he left the "Princess Melton" when she was about to sail for the fishing ground, but maintained that he was justified in so doing because certain defects in the machinery of which he had previously complained had not been put right. But it appeared from the evidence that these repairs were not serious and could have easily been repaired temporarily. It further appeared that although the pursuer knew at 11 o'clock in the forenoon that the repairs were not to be made until another trip, he had remained about the ship until the afternoon, when he went on shore for a pint of beer, and that it was only on his return on board after being sent for that he refused to go to sea. (For a fuller account of the evidence on this matter *vide* Lord Low's opinion, *infra*.) The pursuer further himself admitted he was under the influence of drink at the time but denied that he was drunk.

On Monday, 3rd October, the defender met the secretary of the Owners' Association, Paul, and a Mr Doeg, a member of the Association, and told them about the pursuer's conduct of 30th September. Doeg expressed the opinion that the matter should be reported. The defender then asked his superintendent engineer Walker to report the matter to the superintendent porter at the fish market, Smith, who, subject to the secretary's instructions, kept the register of defaulters. Walker however forgot to do so.

On 6th October the pursuer raised an action in the Small Debt Court for arrears of wages against the Aberdeen Icelandic

Steam Fishing Company, Limited, in which action he was successful. On 10th October the defender learnt that the report had not been made by Walker, and on that day went along with him to Smith, and made a verbal report, in consequence of which the following entry was put in the Register of Defaulting Crews.

Date.	Name of Owner.	Boat.	Name of Accused.	Charge and Nature of
1904 Oct. 10	Thomas Lauder	"Princess Melton"	G. Keith, I. Engineer	Drunk and refusing to proceed to sea.

The same day the Secretary of the Owners' Association sent the following circular letter to the members.

"*Private.*

"ABERDEEN STEAM FISHING VESSELS "OWNERS' ASSOCIATION LIMITED.

"Fish Market Buildings,
"Aberdeen, 10*th October* 1904.

"Dear Sir,—Please note that the undermentioned have been reported to this Association, and you are requested to refrain from shipping them meantime. — Yours truly, GEO. F. PAUL.

Name.	Occupation.	Last Vessel.
George Keith.	1st Engineer.	'Princess Melton.'

. . . ."

The pursuer averred that in consequence of the report which caused said entry to be made and said letter to be sent, he had lost a situation which he had obtained as engineer on board the steam trawler "Craiggowan," a vessel belonging to the Aberdeen Steam Trawling and Fishing Company, Limited. He also averred that as a consequence of the report he had been prevented from obtaining other employment.

The defender denied that it was in consequence of the report, or even of the said entry and said letter, that pursuer had lost his situation, and explained that it was because the trip for which he had been engaged was finished, and because the superintendent of that company had discovered pursuer had been previously dismissed from one of said company's ships, and so did not choose to re-engage him. He also denied the averments that in consequence of the report the pursuer had been prevented from obtaining other employment.

The pursuer pleaded—"(1) The defender having wrongfully and maliciously procured the pursuer's discharge from employment and prevented him from obtaining employment, is liable to the pursuer in reparation as craved."

On 5th April 1905 the Sheriff-Substitute (HENDERSON BEGG), after a proof, made, *inter alia*, the following findings in fact—"(5) That on the said 30th September 1904, about four o'clock in the afternoon, the pursuer refused to go to sea with the said steam trawler, on the ground that certain repairs, which he had mentioned to Mr W. Walker, the superintendent engineer of the said company, about 8 a.m. of the said day, and which he deemed necessary, had not been made to the engines. . . . (11) That the defender reported to Mr G. F. Paul, the secretary of the foresaid Owners' Association, that the pursuer had been drunk and had refused to go to sea on the said 30th September 1904, and thereby procured the said secretary, without making inquiries on both sides, to send the circular letter on 10th October 1904 to each member of the said Owners' Association, stating that the pursuer had been reported to the Association, and requesting each member to refrain from shipping the pursuer meantime; (12) That on 17th October 1904 the pursuer, who had obtained employment on board the steam trawler 'Craiggowan,' belonging to the Aberdeen Steam Trawling Company, Limited, a member of the said Owners' Association, was dismissed without notice by Mr Joseph Lamb, the superintendent engineer of the said company. . . . (15) That it is not sufficiently proved that the said dismissal was caused by the actings of the defender mentioned in the eleventh finding hereof; but (16) That the failure of the pursuer to find employment since 17th October 1904 has been caused mainly, if not wholly, by the said actings of the defender; and (17) That the defender has thus caused pecuniary loss and damage to the pursuer."

The Sheriff-Substitute held that the whole system of the Register of Defaulting Crews was illegal, on the ground that "it establishes a secret tribunal, consisting practically of only one person—the secretary of the Association—with power to punish a man unheard for an alleged offence by taking the means whereby he lives." But that even if the system were not illegal, that the defender must prove that he was justified in acting as he did, which he had failed to do, and that the charge of drunkenness was unfounded, that the actings of the defender were wrongful, not justified, and not privileged, and that he was liable in damages to the pursuer, which he assessed at £50.

The defender appealed to the Court of Session.

During the debate upon the appeal the pursuer was allowed to amend his record by adding the following condescendence—"(Cond. 7) On or about 10th October 1904 the defender falsely, maliciously, and calumniously caused the name of the pursuer to be reported to the said Association, and to be inserted in a register kept on behalf of the members of the said Association by John Smith, fish porters' superintendent, Fishmarket, Aberdeen, as a person accused of being drunk and refusing to proceed with his said vessel. The defender in so reporting the pursuer and in getting his name inserted in the said register as a person so accused, knew that his said accusation was false and groundless. The insertion of the pursuer's name in the said register was intended by the defender to represent, and did represent, that the pursuer was an unreliable and untrustworthy engineer, unfit to be employed as such owing to his drunken habits, and to his habitually detaining vessels on which he had been engaged, by deliberately refusing to proceed with them to sea without good cause or on

false pretexts. The defender knew that the pursuer by being so reported and entered in the said register would be treated as he represented him by members of the said Association, and by employers of men in the position of the pursuer. The defender acted with that object in view, and for the sole purpose of having the pursuer prevented from getting employment as an engineer." The defender's answer to this was "Denied."

The pursuer was also allowed to add the following plea-in-law—"The defender having falsely, maliciously, and calumniously slandered the pursuer, as condescended on, and the pursuer by such means having been prevented from getting employment, the pursuer is entitled to damages as concluded for."

The defender (appellant) argued—(1) The system of the Register of Defaulting Crews was not illegal, and the Sheriff had erred —*Mogul Steamship Company, Limited* v. *M'Gregor, Son, & Company*, [1892] A.C. 25, Lord Watson at p. 41; *Scottish Co-operative Wholesale Society, Limited* v. *Glasgow Fleshers' Trade Defence Association and Others*, January 14, 1898, 35 S.L.R. 645; and *Quinn* v. *Leathem*, [1901] A.C. 495, which expressly approved of the last-named case. (The respondent here admitted the legality of the register.) The defender here argued that in *Allen* v. *Flood*, [1898] A.C. 1, Lord Watson had summed up the law on this subject when he said at p. 96—"There are in my opinion two grounds only upon which a person procuring the act of another can be made legally responsible for its consequences. In the first place, he will incur liability if he knowingly, and for his own ends, induces that other person to commit an actionable wrong. In the second place, when the act induced is within the right of the immediate actor, and is therefore not wrongful in so far as he is concerned, it may yet be to the detriment of a third party, and in that case . . . the inducer may be held liable if he can be shown to have procured his object by the use of illegal means directed against that third party." The first ground had been relevantly set out on record, and the Sheriff had proceeded on it; it was now, however, given up. The second ground figured by Lord Watson, of which the most recent example was *South Wales Miners' Federation* v. *Glamorgan Coal Company, Limited*, [1905] A.C. 239, was not relevantly set out on record. If pursuer's case now were that the defender by illegal means induced trawl owners to deny employment to the pursuer, or that damages were due for a slander which had had the result of stopping his employment, the pursuer would require to amend his record, for there was no averment of the falsehood of the statements made. [*The pursuer was allowed to amend his record as set forth above.*] (2) The said Owners' Association and its objects being legal, the *bona fide* statements of members for the use of other members were privileged because of the conjunction of interest between the giver and receivers of information—*Waller* v. *Loch*, 1881, L.R., 7 Q.B.D. 619. Even if the information was given unasked, there was privilege if there was a right to give it—*Farquhar* v. *Neish*, March 19, 1890, 17 R. 716, 27 S.L.R. 549. It was true that doubts were cast on this in the case of *Reid* v. *Moore*, May 18, 1893, 20 R. 712, by Lord Trayner, at p. 717, 30 S.L.R. 628, but in the present case the statements complained of were not ultroneous, because such information was an object of the Owners' Association, and accordingly from the fact of membership of the Association there arose a duty or obligation to make the communication a duty self-imposed no doubt by the members of the Association, but still a duty. Where there was a duty to make a statement there was privilege—*Pattison* v. *Jones* (1828), 8 B. & C. 578; even if the duty was only a moral or social duty —*Toogood* v. *Spyring*, (1834) 1 C. M. & R. 181; *Davies* v *Snead*, (1870) L.R. 5 Q.B. 608. The furnishing of such information being an object of the Association there existed really a continuing request from each of its members to the others for such information, and consequently such information was privileged—*Bayne & Thomson* v. *Stubbs, Limited*, January 29, 1901, 3 F. 408, 38 S.L.R. 308. The statement accordingly was privileged, and the onus was on the pursuer to show actual malice, or that statements were made without probable cause—in fact were so destitute of foundation as to exclude *bona fides*. But none of the witnesses—not even the pursuer himself– said that he was sober. (3) Even if there was no privilege, and the onus was on the defender to show the truth of his statement, the evidence was sufficient to show that the man was drunk. (4) Even if there was an actionable wrong the damage shown must be direct. Here the pursuer only at most applied to two people for work (one of them denied it), but at any rate neither had work to give him; this distinguished the case from *Giblan* v. *Labourers' Union of Great Britain and Ireland*, [1903] 2 K.B. 600.

The pursuer (respondent) argued—(1) Even admitting, as the pursuer was now willing to do, that in itself the system of the Register of Defaulting Crews was legal, the pursuer was now out of employment and had failed to get employment owing to the illegal actings of the defender, namely, his misrepresentation or slander; and this constituted an actionable wrong—*Mogul Steamship Company; Allen* v. *Flood; Parlane* v. *Templeton and Others*, November 14, 1896, 34 S.L.R. 234. (2) The pursuer was not to blame that no allegation of misrepresentation and slander was in the record, for the terms of the report embodied in the entry had only been recovered by diligence after the record was closed; the whole facts were before the Court, and though the pleadings were bad the record should be allowed to be amended—*Muirhead & Turnbull* v. *Dickson*, June 1, 1905, 7 F. 686, at 692, 42 S.L.R. at 581. [*The amendments as above set forth were allowed to be made.*] (3) The evidence

showed that reports were only to be made in the case of habitual offenders, which the pursuer was not. There was therefore no duty on the defender to report him, and the report was not privileged. In any case privilege was a question of degree —*Macdonald* v. *M'Coll*, July 18, 1901, 3 F. 1082, 38 S.L.R. 781, which approved of *Sheriff* v. *Denholm*, December 18, 1897, 5 S.L.T. No. 309. *Farquhar, supra*, was to be explained because of the right of keepers of registers to know their client's disabilities. (4) In any event malice was shown in the evidence, for the pursuer's whole actings were consistent with the view that the reason he refused to go to sea was because the necessary repairs had not been made, and the evidence showed that the charge of drunkenness was unfounded. An unfounded charge of drunkenness showed malice—*Anderson* v. *Wishart*, 13th July, 1818, 1 Mur. 429, at 441. The report was made after the summons in the small debt action was served. The very fact that *veritas* was still put forward was in itself an *indicium* of malice —*Praed* v. *Graham*, 1889, 24 Q.B.D. 53. The defence of "probable cause" was inapplicable to the present case—*Milne* v. *Smiths*, November 23, 1892, 20 R. 95, Lord M'Laren at p. 100, 30 S.L.R. 105. (5) Even if the report were true, *veritas* was no defence to an accusation used for the purpose of preventing a person obtaining employment—*Giblan, supra*, [1903] 2 K.B. 600, at 624.

At advising—

LORD KYLLACHY—In this case I do not consider that we are at all required to enter upon the controversies which have arisen out of certain recent decisions—I mean the decisions of the House of Lords in the cases of *Allen* v. *Flood* and *Quinn* v. *Leathem*, and other cases of that description. The pursuer has certainly tried by the form of his action to draw us into that somewhat difficult region, and, so far as the Sheriff is concerned, he seems to have partly succeeded. But it became, I think, evident at an early stage of the argument that we have here really to deal with a much more commonplace, and indeed fairly familiar kind of question—a question, namely, of alleged slander—slander of a person with respect to his trade or employment—slander of which the only peculiarity is that it is said to have caused to the pursuer loss and damage of a somewhat special and very serious kind.

The Sheriff no doubt founds mainly on what he appears to consider the illegal character of a certain association to which the defender belongs, and through whose machinery he is said to have perpetrated the alleged slander. But the pursuer's counsel frankly conceded that he did not impugn either the legality of the original objects of that Association, or even the legality of the additional object lately added, viz., the protection of members, by mutual conference and interchange of information, against the employment on their ships of undesirable persons. Carried out by legal means, such an object was, properly I think, conceded to be quite lawful; at all events, I see no reason to doubt that it is so.

Accordingly, what is really contended is only this, that in the present case the protective machinery thus lawfully instituted was set in motion by the defender to the pursuer's detriment in an illegal way, viz., by communicating to the society, and through the society to the defender's fellow-members, false allegations as to the pursuer's habits and conduct, allegations not only false but known to the defender to be so.

The case is therefore, as I have said, really and in substance a case of slander—slander resulting in a particular kind of injury. That is the simplest and, I think, most favourable view of the pursuer's case, and in that view I am quite prepared to consider it.

But so taking it, I am unable upon the evidence to hold that the pursuer has proved his case. I do not say what might have been the result if the position had been free from all element of privilege. On that assumption and the statements made being plainly defamatory, the onus would have rested on the defender to prove the truth of his statements as under an ordinary counter issue of *veritas*. And I am by no means sure, if that had been the position of matters, that I should have differed from the Sheriff, who saw the witnesses, and to whose judgment, even apart from that circumstance, I should have been disposed to give great weight. But upon repeated consideration I find it impossible to doubt that the defender was here in a privileged position. He was a member of this association of shipowners—an association lawful and having lawful objects; and if in pursuance of those objects in which he had himself, as a member and shipowner, a material and quite legitimate interest, he made the statements in question honestly and in good faith, I am unable to hold otherwise than that he was in a privileged position. *Prima facie* he must be held to have been acting, if not strictly in performance of a duty, at all events in the exercise of a right. And that being so, he only acted illegally if he was actuated by malice—the onus of proving malice being upon the pursuer, and involving at least this requirement, that the statements complained of should be shown to be either destitute of foundation or so grossly exaggerated as to exclude honesty and good faith.

Now, that being the issue, I am afraid the pursuer has failed to establish it. My impression, I must own, was at the outset the other way, and I approached the evidence of the defender with some distrust. But I have found it impossible to resist the conclusion that the pursuer, contrary to his contract, refused to proceed to sea, if not on a mere pretext, at all events on insufficient grounds, and further, that he was, on the afternoon in question, if not "drunk," at least more or less intoxicated —visibly not sober—and indeed visibly the worse of drink. I think, in short, his conduct and his condition furnished reasonable

grounds for the defender reporting him as drunk and refusing to proceed to sea; and that being so, I fail to find in the other parts of the case any evidence of malice. The defender's delay in making the report until the pursuer raised his small debt action was certainly suspicious and somewhat suggestive. But I have come to think that the defender's explanation is on the whole satisfactory.

LORD STORMONTH DARLING — I have thought from the first that the right way to deal with this case was to treat it as an action for slander, although the pursuer, both in raising and conducting it, endeavoured to refer it to a much more difficult and contentious chapter of law. So treating it, I own that at one time I had some doubts whether the occasion when the defender made the report to the Secretary of the Trawl-Owners' Association, on which the action is founded, was a privileged occasion, and also whether, if it was, the defender did not exceed, and thereby lose, his privilege by authorising the secretary (if he did authorise him) to send out the circular to the members of the Association, requesting them to refrain from shipping the pursuer and the other reported persons in the "meantime." I still think that the secretary in so doing went dangerously near the line where the privilege of a master giving information as to the conduct of a servant ceases to protect him.

But having had the advantage of conferring with both of your Lordships, and having carefully reconsidered the proof, I have come to think that the occasion was a privileged one, notwithstanding the volunteered character of the communication, because of the legitimate interest which the defender and the other members of the Association had in knowing what the experience of each of them had been with respect to the conduct of their respective crews; and, as regards the other matter, that, in leaving the secretary free to express the circular as he did, the members of the Association (including the pursuer) intended to do, and did no more than to lay the facts before their fellow-members and leave each of them to judge for himself. For there was no penalty or compulsitor of any kind on any member who chose to disregard these reports.

I therefore concur with your Lordships (1) that there was nothing illegal in the system by which this Register of Defaulting Crews was established and carried out; (2) that the defender was privileged in making the report for which he is sought to be made liable; and (3) that the pursuer has failed to prove that in making it the defender was actuated either by actual malevolence or by that kind of recklessness or exaggeration which the law regards as equivalent to malice.

LORD LOW—I cannot agree with the views expressed by the learned Sheriff-Substitute in regard to the illegality of the course adopted by the Aberdeen Steam Fishing Vessels Owners' Association in regard to defaulting seamen. It appears that not only owners of steam trawlers, but also members of the crews who shared in the profits, suffered considerable loss by men who were engaged to sail in vessels absenting themselves, or returning to the ship in a state of intoxication. The Association therefore resolved that, when an incident of that kind happened, the owner of the vessel should report the defaulter to the Association, and that a list of the men so reported should be kept. I can see nothing illegal in that. All the members of the Association drew their crews from the same body of men, and every member had an interest to know what men had proved to be untrustworthy by reason of desertion or drunkenness.

I rather gather, however, that what the Sheriff-Substitute founds upon is not so much the resolution as the way in which it was carried out. He complains that everything was left to the secretary of the Association, who, although he made some inquiry as to the circumstances which led to a man being reported a defaulter, never communicated with the alleged defaulter himself. That, says the Sheriff-Substitute, was to establish "a secret tribunal consisting practically of only one person, with power to punish a man unheard for an alleged offence 'by taking the means whereby he lives.'"

I cannot accept that view. There was no secret tribunal established, or, indeed, any tribunal at all. What the Association resolved was that the members should report men who were in default, and that a list of the men so reported should be kept for the information of all the members of the Association. I cannot find that the secretary was bound to do more than record the facts, namely, that a certain man had been reported by a certain owner for a certain offence. If that and nothing more had been done, there would have been nothing illegal in it, and it can make no difference that the secretary was at the trouble to make some inquiry, and took upon himself not to enter in the list the name of a man who had been reported if he was satisfied that the offence had been trivial.

I am therefore of opinion that the ground upon which the Sheriff-Substitute puts his judgment cannot be sustained—the ground, namely, that "the whole system referred to is illegal," and "that the defenders by putting it into operation against the pursuer committed a wrongful act."

It seems to me that if the pursuer has a claim against the defender at all, it must be upon the ground of slander. There is, of course, no doubt, as to the slanderous nature of the statements made by the defender when he reported the pursuer, and I think that there are two questions—1st, whether the occasion was privileged, and 2nd, whether the report was made maliciously.

I am of the opinion, for the reasons given by Lord Kyllachy, that the occasion was clearly privileged, and that the only question in regard to which there is any difficulty is whether the defender was actuated by malice.

Now, in a case of this sort, there can, I

imagine, be no better evidence of malice than that the statement complained of was untrue, and was made without reasonable grounds for believing that it was true. It is therefore necessary to consider how the matter stands upon the evidence.

The statement made by the defender concerning the pursuer was that upon a certain occasion he was drunk and refused to go to sea. In regard to the first of these charges, no one says that the pursuer was sober, and he himself admits that he was under the influence of drink. It was said that the pursuer could not have been drunk, because he worked the engines while the ship was being taken across the harbour to another berth. I agree that that shows that he was not rendered totally incapable by drink, but it is a matter of common experience that a man may be able to perform efficiently enough a more or less mechanical duty to which he is accustomed, although he is so much under the influence of drink that it would not be an abuse of language to say that he was drunk. There are two witnesses who may, I think, be regarded as giving a reliable account of the pursuer's condition. The one is an altogether independent witness, Napier, a working engineer, who went on board the ship to fit in a new plug in the water-gauge. He says—"The man appeared to me to have a good drink in him. I would not say the man was incapable." The other witness is Barron, the mate of the ship, who, when asked what condition the pursuer was in, said—"I would say under the influence of drink, but not too drunk—capable of getting about without any assistance." In the face of such evidence it seems to me to be impossible to say that the defender had not reasonable grounds for reporting that the pursuer was drunk.

In regard to the charge of deserting the ship, it is admitted that the pursuer left the ship when she was on the point of sailing for the fishing ground, and that, in consequence, she was unable to get away until the second day afterwards. The pursuer, however, maintains that he was justified in leaving the ship, because certain defects in the machinery of which he had previously complained had not been remedied. It is the case that the pursuer had complained of the condition of some parts of the machinery, and it is also the case that the engine and boiler and other appliances were in need of being overhauled, having been several months in use without the ship being laid up for repairs. The ship was, in fact, laid up for repairs a few days after the pursuer left her, having made only one fishing trip in the interval, but the evidence of Mr Barter, the Board of Trade Surveyor, shows that, although the machinery required to be overhauled, the ship was in no way unseaworthy, and that there was no reason why she should not make another trip before being laid up.

What the pursuer complained of was that the feed-pump and the bilge-pump were out of order. Mr Barter says that he found nothing wrong with the feed-pump, and that although the bilge-pump was somewhat defective, the defects were not serious, and could have been temporarily repaired by very simple means. He further says that, notwithstanding the defects, the bilge-pump discharged water quite satisfactorily. It therefore seems to me that the condition of the pumps did not justify the pursuer in leaving the ship at the last moment, when it was impossible to supply his place.

Further, the conclusion which I draw from the evidence is that the condition of the pumps was not truly the reason why the pursuer refused to go to sea. The pursuer, as I have said, did complain of the condition of the pumps, and asked that they should be put right. That was in the morning, when the ship came in with her cargo of fish. It appears to have been arranged that if the catch was sold for £100, the ship would at once be laid up for repairs, but that if that sum was not realised she would make another trip before being laid up. The catch did not realise £100, and, accordingly, another trip was resolved upon. The pursuer says that he knew that the repairs were not to be made, at 11 o'clock in the forenoon. If he had resolved not to sail again unless the repairs were made, he should then have intimated his intention to leave the ship, and another engineer might probably have been engaged to take his place before the vessel was ready to proceed to sea. The pursuer, however, did nothing of the sort, but appears to have remained on or about the ship during the day. In the afternoon, when the plug was being fitted into the water-gauge, the pursuer told the skipper that he was going for a pint, and left the ship. When the work upon the water-gauge had been completed, the pursuer was still absent, and the mate was sent to find him. The mate found the pursuer in a hotel, and told him that the vessel was waiting for him, and the pursuer said that he would come directly. The mate then went back to the ship, and the pursuer followed him soon afterwards. The pursuer, of course, knew that the reason why he was sent for was that the ship was ready to go to sea, and up to this stage he does not appear to have said or done anything to suggest that he did not intend to sail with her. When he went on board, however, and the superintendent engineer told him to get the ship away to sea, he said he would not go to sea, and after assisting in taking the ship to another berth, he left her, along with the second engineer and fireman, who apparently left because the pursuer did so. These being the circumstances, I cannot take it from the pursuer that his reason for leaving the ship was that the pump had not been repaired. He knew early in the day that the repairs were not to be made until after another trip, and the only inference I can draw from his conduct is that notwithstanding that knowledge he intended to sail with the ship, and went on board for the purpose of doing so, but that at the last moment, for what reason I do not know, he suddenly made up his mind to leave. It therefore cannot, in my opinion, be said that the defender had not reasonable grounds for reporting

that the pursuer had refused to go to sea.

It was argued, however, that the course adopted by the defender showed that he did not report the pursuer to the Owners' Association because he thought that it was a case which it was his duty to report, but that he did so only because the pursuer brought an action in the Small Debt Court for wages. That argument is founded upon the facts that while the pursuer left the ship upon Friday the 30th of September, and brought his action in the Small Debt Court on the 6th October, the defender did not report the pursuer as a defaulter until the 10th of October. If the defender's delay in reporting the pursuer's conduct had not been satisfactorily explained, the inference might very well have been drawn, that if the pursuer had not brought the small debt action the defender would not have reported him. But it seems to me that the delay has been satisfactorily explained. On the morning of Monday the 3rd of October the defender met Mr Paul, the secretary, and Mr Doeg, a member of the Association, and told them about the pursuer's conduct upon the previous Friday, and Mr Doeg expressed the opinion that the case was one which ought to be reported. The defender then asked Mr Walker, his superintendent engineer, to report the matter to Mr Smith, the superintendent porter at the fish market, who, subject to the secretary's instructions, kept the register of defaulters. Mr Walker, however, forgot to do so, but the defender did not learn that the report had not been made until the 10th of October, when he himself went to Smith, along with Walker, and had the pursuer's name entered in the register. These facts seem to me to leave no room for the inference that, in reporting the pursuer's conduct the defender was actuated by malice against him for having brought an action for his wages.

On these grounds I am of opinion that the Sheriff-Substitute's interlocutor should be recalled, and the defender assoilzied.

The LORD JUSTICE-CLERK was absent.

The Court pronounced this interlocutor—

"Sustain the appeal and recal the said interlocutor appealed against: Find in fact (1) that for about a fortnight prior to 30th September 1904 the pursuer was in the employment of the Icelandic Steam Fishing Company, Limited, of which company the defender is manager, as chief engineer on board their steam trawler 'Princess Melton': (2) that on the said 30th September 1904 the pursuer, without due notice, left the' said trawler when she was ready to go to sea, in consequence of which she was detained in harbour for more than a day; (3) that the said Icelandic Steam Fishing Company, Limited, is a member of the Aberdeen Steam Fishing Vessels Owners' Association, Limited; (4) that in or about the month of November 1903 the members of the last-mentioned Association resolved that a 'Register of Defaulting Crews' should be kept, and that if a member of the crew of a steam trawler belonging to a member of the said Association, who was engaged to go to sea in such trawler, should absent himself, or refuse to go to sea, or should come on board in a state of intoxication, the said member of the Association should report to the secretary the name of the said member of the crew, and the offence committed by him, for insertion in the said register; (5) that the defender reported to Mr G. F. Paul, the secretary of the said Association, that on said 30th September 1904 the pursuer had been drunk and had refused to go to sea, and that accordingly the pursuer's name and the said alleged offences were entered in the said register; and (6) that in making the said report the defender was not actuated by malice, and that he had reasonable grounds for believing that the statements of and concerning the pursuer contained in said report were true: In these circumstances finds in law (1) that the defender was privileged in making said report, and in respect that he did not make the report maliciously is not liable in damages to the pursuer for slander; and (2) that the circumstances do not disclose any other ground upon which the pursuer is entitled to claim damages from the defender: Therefore assoilzies the defender from the conclusions of the action, and decern: Find him entitled to expenses in this and in the Inferior Court, and remit," &c.

Counsel for the Pursuer (Respondent)—Hunter, K.C.—Wilton. Agents—Henderson & Mackenzie, S.S.C.

Counsel for the Defendant (Appellant)—Ure, K.C.—A. R. Brown. Agents—Alex. Morison & Co., W.S.

Thursday, December 14.

FIRST DIVISION.

(Before the Lord President, Lord M'Laren, and Lord Mackenzie.)

[Sheriff Court at Glasgow.

BRYSON *v.* J. DUNN & STEPHEN, LIMITED.

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *First Sched., secs.* (1) *and* (2)—*Amount of Compensation—Partial Incapacity—Discretion of Arbitrator—All the Circumstances to be Considered which Arbitrator Thinks Relevant—Interlocutor.*

In considering an application under the Workmen's Compensation Act 1897 to vary the weekly payment during partial incapacity, the arbitrator is to have regard to all circumstances which he thinks relevant, as well as to the difference in the wage-earning capacity