negligence as one thing and wilful misconduct as something entirely different is, I think, to look at the matter in the wrong light.

There was in the Roman law a distinction between various degrees of fault—*lata, levis,* and *levissima.* I think that it has been authoritatively held that these distinctions do not exist in our law, not at any rate for the purpose of making a distinction in the liability of a defender where an action is based upon fault—that is to say, upon a dereliction of duty. It does not matter whether that fault is what, in the Roman system, would have been called *lata, levis,* or *levissima.* But that distinction of the Roman law can be introduced by contract, and I think that is precisely the effect of the class of special contract we are dealing with in this case. Where a special contract says, as this one does, that the Railway Company is only to be liable for wilful misconduct, it does make a gradation. The question then comes to be, not whether you have negligence on the one hand, or something different from negligence on the other, but what degree of negligence is proved against the Railway Company. Upon that matter I agree with, and need not repeat, what has been said by my brethren.

I think here there was that degree of negligence which comes under the description of wilful misconduct. Looking at it in that light, I avoid the sort of puzzle which I cannot help thinking leads to the judgment to the opposite effect, which may be thus expressed—"How am I to say that this is wilful misconduct when as a matter of fact the man was negligent in what he did? Negligence is one thing and wilful misconduct is another, and therefore, to my mind, if I say he is negligent I must say he is not guilty of wilful misconduct." That does not seem to me a proper way to look at it. I think he is guilty of negligence, and the question is whether he is guilty of gross negligence, which comes to be wilful misconduct. I think he was, and therefore I agree with your Lordships.

The Court pronounced this interlocutor—

"Sustain the appeal: Recal the interlocutor of the Sheriff-Substitute dated 27th December 1910: Repeat the first twelve findings in fact in said interlocutor with the exception of Nos. 3 and 4, in lieu whereof find in fact (3) that the rules and regulations of the defenders' company provide as follows—'*Dimensions of Loads*—These must not exceed those given in the railway clearing house classification book for the line or lines over which they have to pass, and all loads must be gauged when there is any reason to doubt that they are not within the dimensions'; (4) that there was reason to doubt whether said load was within said dimensions; (4a) that there was in these circumstances a duty on the defenders' station-master at Alva to pass the load under the gauge, which duty he wilfully neglected: Find in fact and in law that there is proof of wilful misconduct on the part of the defenders' station-master at Alva: Find in law that the defenders are liable in reparation to the pursuer: Therefore decern against the defenders for payment to the pursuer of the sum of one hundred pounds sterling in name of damages: Find the defenders liable to pursuer in expenses, and remit," &c.

Counsel for Pursuer (Appellant)—Constable, K.C.—J. B. Young. Agent—D. C. Oliver, Solicitor.

Counsel for Defenders (Respondents)—Cooper, K.C.—E. O. Inglis. Agent—James Watson, S.S.C.

Friday, February 23.

FIRST DIVISION.

DUNNETT AND OTHERS (MITCHELL'S TRUSTEES).

Succession — Testamentary Writings — Writ — Holograph Writing on Paper Wrapped Round I O Us—Identification of Documents Referred to in Writing—Legatum liberationis.

On a lady's death there were found in her repositories four I O Us granted by her stepdaughter and stepdaughter's husband for loans of money by the deceased to them, which had not been repaid. The I O Us were lying pinned together, along with a letter, which had been sent in connection with one of them, serving as a wrapper, and on the back of the letter the words, "I don't want this paid up. J. Mitchell" (deceased's signature), were written in ink and holograph of the deceased.

Held that the holograph writing was a valid testamentary bequest of the loans vouched by the I O Us, which were sufficiently identified with the word "this" by the circumstances in which they were found.

On 11th July 1912 a Special Case was presented to the Court by the Rev. William Dunnett and others, the trustees of the late Mrs Jessie Finnie or Mitchell (*first parties*), and Mrs Marion Mitchell or Pride, wife of William Pride, engineer, Lincoln, and William Pride for his own interest (*second parties*).

The Special Case stated—"1. Mrs Jessie Finnie or Mitchell, widow of Mr William Mitchell, tobacco manufacturer, Kilmarnock, who resided at Ann Bank, Kilmarnock, died there on 6th January 1911. No children were born of the marriage. Her husband, the said William Mitchell, had been previously married, and he left one daughter, Mrs Marion Mitchell or Pride, one of the parties of the second part.

"2. On four occasions between the years 1895 and 1898 the said Mrs Mitchell advanced sums on loan to her stepdaughter, the said

Mrs Pride, and her husband William Pride, engineer, Lincoln, receiving in return on each occasion an I O U signed by the said Mr and Mrs Pride. The dates and amounts of the said I O Us are as set forth below, *videlicet*:—

1. 4th November 1895 . .	£100
2. 22nd October 1896 . .	100
3. 19th March 1897 . . .	100
4. 23rd April 1898 . . .	60
	£360

Said loans have not been repaid. Repayment thereof was never asked by Mrs Mitchell, nor was any interest in respect thereof asked for or paid."

[Statement 3 of the Special Case mentioned that Mrs Mitchell had left a will under which Mrs and Mr Pride were beneficiaries. The will contained no reference to the loans.]

"6. After the death of the said Mrs Mitchell there were found in a cash box in the safe in her dwelling-house, among other papers relating to her investments, the I O Us above mentioned and certain other writings hereinafter described. . . . Her trust-disposition and settlement was in the custody of her law agents at her death. The I O Us were found pinned together, with (at the back) a letter dated 19th March 1897 (being the date of the I O U third above mentioned), addressed by the said William Pride to Mr Matthew Arbuckle, . . . acknowledging a letter from him with a cheque for £100 from Mrs Mitchell. The said I O Us and letter were folded so that the back of the letter was outermost, and on it was written in ink, in the handwriting of the said Mrs Mitchell, the words— 'I don't want this money paid up. J. MITCHELL.' The I O Us and letter pinned together, folded and endorsed as above mentioned, were contained in an envelope addressed by the said Mrs Pride to the said Mrs Mitchell, bearing the Lincoln postmark of 24th April 1898 (being a day later than the date of the fourth and last I O U).

"7. The other papers relating to the matter found in said cash box, but unattached and unenclosed, were (1) an empty envelope bearing a Lincoln postmark of date October 23, 1896 (being a day later than the date of the second I O U), addressed to the testatrix's brother-in-law the said Mr Matthew Arbuckle, but with his name and part of his address scored out, and the words written thereon, partly in ink and partly in pencil, in the handwriting of the said testatrix—'Mrs Mitchell from Mrs and Mr Pride.' On the back of said envelope, written in pencil in the handwriting of the testatrix, were the words—'I don't want this money paid up. J. M.'; (2) jotting or memo of the loans of 1895, 1896, and 1897, the jotting regarding each loan being initialled by the testatrix, and the whole being in her handwriting; and (3) a letter from the said Mrs Pride to the testatrix acknowledging receipt of the cheque for the fourth and last loan of 1898, and returning the I O U of that date.

"8. There is no extrinsic evidence as to the time when or the circumstances under which the foresaid jottings were made by the deceased Mrs Mitchell. . . . . .

"10. The first parties *maintain* that said writings are not testamentary in their character, and that they do not, in the circumstances above set forth, constitute a valid bequest or bequests by the said Mrs Mitchell in favour of the second parties of any of the sums contained in the four I O Us in question; alternatively, they maintain that in any event said writings can only be held as constituting a valid bequest (1) *quoad* the sum contained in the I O U dated 19th March 1897; or (2) *quoad* the sums obtained in the I O Us dated respectively 23rd October 1896 and 19th March 1897; or (3) *quoad* the sums contained in the I O Us dated respectively 4th November 1895, 23rd October 1896, and 19th March 1897.

"The second parties, on the other hand, maintain that the said holograph writings constitute a valid bequest to the second parties of the sums contained in all four I O Us, or otherwise a cancellation of the debts thereby constituted, which is binding on the first parties." . . .

The *question of law* was—"Do the said holograph writings . . . constitute a valid testamentary bequest or bequests in favour of the second parties of the sums contained in, or a cancellation of the debts constituted by, the said I O Us dated (*a*) 4th November 1895, (*b*) 22nd October 1896, (*c*) 19th March 1897, and (*d*) 23rd April 1898, or any of them?"

Argued for the second parties—The holograph writing was a valid testamentary bequest and *legatum liberationis* of the loans vouched by the I O Us. No special words of gift were necessary—*Colvin* v. *Hutchison*, May 20, 1885, 12 R. 947, 22 S.L.R. 632, and the words here were appropriate to a *legatum liberationis*. The writing was intended to have a testamentary effect, for it was addressed to the person who would find it on the deceased's death. In *Russell's Trustees* v. *Henderson*, December 11, 1883, 11 R. 283, 21 S.L.R. 204, a writing was held to be testamentary, although the signature was on a separate piece of paper, and here the I O Us being wrapped up in the letter were sufficiently identified with the writing on it. If it were said that the will by making no reference to the loans revoked the bequest, the *onus* of proving it to be revoked was on those who asserted the revocation—*Stoddart* v. *Grant and Others*, June 28, 1852, 1 Macq. 163.

Argued for the first parties—The writing was not testamentary. It was capable of the interpretation that the deceased was merely expressing an intention to cancel the debt without actually so doing.

At advising—

LORD PRESIDENT—The question raised in this case is whether there was a bequest of sums contained in certain I O Us granted by the step-daughter of the testatrix for sums advanced to her and her husband. The testatrix left a trust-disposition and settlement in which she made certain pro-

visions for her step-daughter who had borrowed various sums from her, and the position is that when the testatrix died there were found in her repositories four I O U s granted by her step-daughter lying pinned together, with a letter which had been sent in connection with one of them serving as a wrapper, and on the back of that wrapping letter the words, "I don't want this money paid up. J. Mitchell." I have no doubt that in the circumstances disclosed that is a perfectly good bequest. It is holograph; it is signed; and therefore I think it is a good direction to the executors—"I don't want this money paid up. J. Mitchell," being equivalent to "I grant a discharge of this money."

Now the only other matter is, what is the identification of "this." I think the identification of "this" is provided by the way in which the four documents of debt are discovered, presumably intentionally put there by the testatrix. I have therefore no doubt that the question ought to be answered in the affirmative.

LORD KINNEAR, LORD JOHNSTON, and LORD MACKENZIE concurred.

The Court answered the question in the affirmative.

Counsel for the First Parties—J. A. T. Robertson. Agents—Laing & Motherwell, W.S.

Counsel for the Second Parties—Hon. W. Watson. Agents—Campbell & Smith, S.S.C.

HIGH COURT OF JUSTICIARY.

Saturday, February 24.

(Before the Lord Justice-Clerk, Lord Dundas, Lord Salvesen, and Lord Guthrie.)

COWIE AND OTHERS, PETITIONERS.

Justiciary Cases—Administration of Justice—Contempt of Court—Newspaper—Publication of Letter Prejudicial to Accused Person Awaiting Trial.

Certain persons were committed for trial on a charge of rioting in connection with a trade strike. While their case was *sub judice* a letter was published in a newspaper which criticised the actions of the authorities in dealing with the strike disturbances, and incidentally mentioned that a number of men had been arrested. The accused presented a petition craving the Court to prohibit the editor of the newspaper from publishing anything relative to the acts of violence or other deeds with which they were charged, or anything of a nature prejudicial to their case, until the proceedings against them should be concluded.

The Court *refused* the prayer of the petition.

This was a petition presented by William Cowie and ten others, dock labourers at Glasgow Harbour, who, on 9th February 1912, were arrested in connection with riots at Glasgow docks during a labour dispute.

The petitioners were committed for trial and liberated on bail.

The petitioners averred as follows:—"Notwithstanding the apprehension, committal foresaid, the said *Glasgow Herald* continued to publish articles or correspondence dealing with the said dockers' strike and with alleged acts of violence, which it represented to have taken place in the course thereof. These articles and correspondence are in their nature and tendency calculated to seriously prejudice the defence of the petitioners. In particular, on or about Thursday, 15th December 1912, a letter over the *nom de plume* of 'Civis' was published in the correspondence column of said newspaper in the following terms:—'*Glasgow Harbour Dispute.* Sir,—I am sorry to see that our local labour troubles at the harbour are not yet at an end, and that a stoppage of work is again threatened. In common with all lawabiding citizens, I hope that the scenes of riot which disgraced our harbour and city last week will not be allowed to be repeated, and that the Magistrates will see that the law is not again openly set at defiance. Might I also express my surprise that the men who publicly incited their ignorant followers to personal violence should be allowed to be at large? These men were directly responsible for the open resistance of the police, for the utter lawlessness which we saw last week. While I am pleased to see that a considerable number of rioters were promptly laid by the heels, and hope they will receive exemplary punishment, I ask why the chief offenders should be allowed to go scot free. I sincerely trust that should we have any further direct incitements to violence and intimidation our Magistrates will resolutely do their obvious duty. I am, &c., Civis.' The said letter in its terms clearly refers to the petitioners, and was so understood by the readers of the said newspaper, and it assumes the petitioners' guilt of the said crimes with which they stand charged. On or about Thursday the 15th February 1912 the agents for the petitioners, Messrs St Clair Swanson & Manson, wrote to the proprietor and publishers and to the editor of the said 'Glasgow Herald' a letter setting forth that the said letter was in its terms calculated to seriously prejudice the petitioners' defence, and asking them to give an undertaking that no further matters of similar import would be published in the *Glasgow Herald* pending the trial, failing which an application to your Lordships would be presented. In reply to said letter, a reply addressed to the petitioners' Glasgow agent, Mr W. G. Leechman, writer, Glasgow, was received from the editor of the said newspaper in the following terms:—'Glasgow, Feb. 15/12—Dear Sir,—With reference to a letter received by me from Messrs St Clair Swanson & Manson on the subject of