has any *jus in re*. The argument cannot be assented to consistently with what was said in the case of *Tait's Trustees*.

LORD CULLEN—I agree. As regards the second question, I think the argument for the second party cannot be sustained consistently with the decision in *Tait's Trustees*.

The Court answered branch (*a*) of the second question of law in the negative, and branch (*b*) in the affirmative.

Counsel for the First and Fourth Parties—Chree, K.C.—Macquisten. Agents—Sharpe & Young, W.S.

Counsel for the Second Party—Blackburn, K.C.—Maconochie. Agents—Alex. Morison & Co., W.S.

Counsel for the Third Parties—D. M. Wilson. Agents—Burns & Waugh, W.S.

Friday, March 16.

FIRST DIVISION.

[Lord Dewar, Ordinary.

MANDELSTON *v.* NORTH BRITISH RAILWAY COMPANY.

Reparation—Slander—Master and Servant—Company—Verbal Slander by Servants of Company—Liability of Master.

In an action of damages against a railway company the pursuer averred that a police inspector in the service of the company, sent by the defenders' chief inspector and in accordance with a custom of the defenders, had visited his house and said—"We are to take up matters seriously against you now, as there are letters complaining about your using tickets which are not purchased by you for Craigendoran, and regarding your travelling with old tickets"—and, threatening to search the pursuer's house, further said—"If this matter comes before the court you will be severely punished." The pursuer, secondly, averred that he was accosted on the platform at Arrochar by a ticket collector in the defenders' service and acting on their instructions, who said, "I have received a wire from Craigendoran to look particularly at your ticket," and who demanded an explanation from the pursuer as to where he got his ticket, and said—"From the wire there seems to be something wrong with it." The pursuer attached a slanderous innuendo to the statements made on both occasions. *Held* (*sus.* Lord Dewar, Ordinary) that the servants of the defenders if they made the statements complained of were not acting in the course of their employment, and accordingly if the statements complained of were slanderous the defenders were not liable therefor.

Abraham Mandelston, traveller, Glasgow, *pursuer*, brought an action against the North British Railway Company, *defenders*, concluding for £300 damages for slander.

The *averments* of the parties were—"(Cond. 4) On 26th May 1915 [a railway] police inspector, on the express instructions of Chief Inspector Dunbar, called at the pursuer's house in Glasgow. The chief inspector is entrusted by the defenders with the duty of directing the actings of police inspectors, including the said police inspector, and he issued the said instructions in the course of that duty. It is the custom of the defenders through their chief inspector and police inspectors to make investigations at the homes of passengers and elsewhere outside the defenders' premises, and to authorise their police inspectors to obtain information on the defenders' behalf outwith defenders' premises in such way as the police inspectors acting as detectives may from time to time find available, and this custom was known to and authorised by the defenders. The said call and the proceedings after mentioned were in accordance with said custom and in pursuance of said authority. After explaining that he had again called on the pursuer about the tickets he used when travelling on the defenders' railway he stated to the pursuer, in the presence and hearing of the pursuer's wife and daughter—'We are to take up matters seriously against you now, as there are letters complaining about your using tickets which are not purchased by you for Craigendoran, and regarding your travelling with old tickets.' He threatened to search the pursuer's house, and said—'If this matter comes before the court you will be severely punished.' He had no warrant entitling him to make any such search. In making the said statements the defenders' said servant meant, and was taken by the pursuer to mean, that pursuer had defrauded the defenders by travelling with tickets for which he had not paid the defenders and that he had no right to use, and that he had been guilty of a crime. *Quoad ultra* the answer so far as not coinciding herewith is denied. (*Ans.* 4) Admitted that on a date in May 1915 an inspector, on the express instructions of District Inspector Dunbar, called at the pursuer's house in Glasgow. *Quoad ultra* denied. Explained that the said district inspector and police inspector were appointed and employed by the defenders under the 48th section of the North British Railway Act 1901 (1 Edw. VII, cap. clxxxviii), which is to the following effect—"48. The company may, subject to the condition herein set forth, appoint such persons as they shall think fit for that purpose to be special constables. . . . (2) Every person so appointed shall make oath in due form of law before any sheriff having jurisdiction in any county, city, or burgh in which any part of the railways or stations of the company is situated, duly to execute the office of a constable. (3) Every person so appointed and sworn as aforesaid shall have power to act as a constable in connection with any matter or business in which the company are interested, upon the railways belonging or leased to or worked or run over by the company, and upon and within the stations

and works connected therewith, and shall in connection with said matter or business have all the powers, protection, and privileges of a constable. (4) The powers so conferred shall only be exercised upon the said railways, and upon and within the said stations and works subject to the proviso that any constable, acting as aforesaid, may follow and arrest any person who has departed from any of the said railways, stations, or works after committing therein or thereon any offence for which he might have been arrested while within or upon the said railways, stations, or works. . . . (6) The Police (Scotland) Act 1890 shall not apply to any constable so appointed and sworn as aforesaid. . . . (9) A constable appointed as aforesaid shall not act as such under the authority of this Act unless he be in uniform or provided with an authority to act as a constable, which authority any foresaid sheriff is hereby empowered to grant, and if the constable be not in uniform he shall show such authority whenever called upon to do so.' . . . (Cond. 5) On or about 7th June 1915 the pursuer was travelling on the defenders' railway to Arrochar and Tarbet *via* Craigendoran. The pursuer's ticket was checked at Craigendoran, and he proceeded to Arrochar. At the latter station he was accosted on the public platform by a ticket collector acting on the defenders' instructions, who said—'I have received a wire from Craigendoran to look particularly at your ticket.' He demanded an explanation from the pursuer as to where he got his ticket, and added—'From the wire there seems to be something wrong with it.' There was in fact nothing wrong with the ticket. It was valid for the journey, and it had been issued by the defenders to the pursuer and paid for by him to them. Further, on or about the 15th July 1915 the defenders' stationmaster at Craigendoran, in presence of a ticket inspector, in conversation with the pursuer on the platform at Craigendoran, accused him of using tickets not honestly obtained by him, and stated, 'You are too fly to be caught. Many another would have been caught long ago. You are too clever for them'—or used words of the like import and effect. This he said acting in the course of his employment, it being part of his duty to see that passengers have tickets entitling them to travel by rail. In sending the wire and in causing the said inquiry, and by the accusation and statement by the stationmaster at Craigendoran, the defenders were persisting in their accusation against the pursuer that he was obtaining and using tickets for which he had not paid the defenders and that he had no right to use, and was thus defrauding them. The answer, so far as not coinciding herewith, is denied. (*Ans.* 5) Admitted that on a date in June 1915 the pursuer travelled on the defenders' railway to Arrochar and Tarbet, that his ticket was checked at Craigendoran, and that it was valid for the journey. Not known and not admitted that it had been issued by the defenders to the pursuer and paid for by him to them. With reference to the alleged incident on 15th July 1915, introduced for the first time at adjustment, the pursuer's averments with regard thereto are denied. Explained that on 14th July 1915 the pursuer accosted the defenders' stationmaster at Craigendoran Station, and in presence of a ticket collector unfoundedly accused him of blackmailing his character, and that the stationmaster denied having ever made any accusation against the pursuer. *Quoad ultra* denied. (Cond. 6) These repeated statements against the pursuer's character were the result of instructions issued to the said servants by the defenders, or on their behalf, that they suspected the pursuer, when travelling on their railway, of fraudulently obtaining and using tickets for the journeys which had not been issued by the company, and for which the pursuer had not paid the company. In pursuance of these instructions, in the course of their employment and for the supposed benefit of the defenders, the said servants of the defenders, on the said occasions wrongfully accused the pursuer of defrauding the defenders by using for the purpose of travelling on their railway tickets which had not been honestly obtained from them in the ordinary way of purchase from them. The said statements were false and calumnious, and were of and concerning the pursuer. On no occasion has the pursuer travelled on the defenders' railway without having a ticket valid for the journey, and one duly issued to him by the defenders, and paid for by him to them. (Cond. 7) Further, the said accusations were made maliciously. The defenders had no reasons for making the said allegations, and in the course of their inquiries found no such reasons. The defenders' ticket collectors on no occasion found anything wrong with the pursuer's tickets, and knew that no irregularity whatever had taken place. Further, the defenders obtained full explanations in March 1915, and knew there was no ground for making any accusation against the pursuer. They, nevertheless, persisted in making their accusations against him. Defenders' servants, in pursuance of their said instructions and in the supposed furtherance of the defenders' interests, persisted in molesting the pursuer while travelling, and in repeating their allegations against his honesty. On the foresaid occasion of 26th May 1915 the defenders' police inspector threatened the pursuer with criminal proceedings and said that his punishment would be severe. The defenders have been asked to withdraw their said allegations, but they have declined to do so. The answer is denied. (*Ans.* 6 and 7) Admitted that the defenders have declined to make any withdrawal. *Quoad ultra* denied. Explained that the defenders' servants have never made any accusation against the pursuer, nor molested him in any way when travelling. The circumstance that the pursuer made habitual and abnormal use of the return halves of tickets of old issue called in ordinary course for investigation by the defenders, and was a legitimate subject of inquiry by them for the protection of their interests, as several cases had occurred in which employees of the defenders had been found to be disposing of

return halves of tickets to members of the public. Anything done by the defenders in inquiring into the matter was done by them without in any way impugning the pursuer's *bona fides* or making any accusation against him. In any event the statements alleged to have been made by the defenders' servants and complained of by the pursuer, if made by the defenders' servants, which is denied, were not made by them while acting within the scope of their employment, or with the authority of the defenders, and the defenders are not responsible for the said statements."

The defenders *pleaded*—"1. The pursuer's averments being irrelevant and insufficient to support the conclusions of the summons, the action should be dismissed. 3. The alleged statements by the defenders' servants not being slanderous, *et separatim*, not having been made within the scope of their employment, or with the authority of the defenders, the defenders are entitled to absolvitor. 6. The defenders not being liable for the actings complained of in condescendence 4 in respect of the provisions of the Act 1 Edw. VII, cap. clxxxviii, are entitled to absolvitor."

The *issues* proposed were—"1. Whether on or about 26th May 1915, and in or about 28 Abbotsford Place, Glasgow, and in presence and hearing of pursuer and Mrs Fanny Cowan or Mandelston, wife of the pursuer, and Rachel Mandelston his daughter, or one or other of them, the defenders by an inspector in their employment falsely and calumniously said of and concerning the pursuer—'We are to take up matters seriously against you now, as there are letters complaining about your using tickets which are not purchased by you for Craigendoran, and regarding your travelling with old tickets. If this matter comes before the court you will be severely punished'—meaning thereby that the pursuer had defrauded the defenders by fraudulently obtaining and travelling with tickets for which he had not paid the defenders and which he had no right to use, and that he had been guilty of a crime, or did use words of the like import and effect, to his loss, injury, and damage? 2. Whether on or about 7th June 1915, and in or about the defenders' railway station at Arrochar, the defenders falsely and calumniously stated of and concerning the pursuer by their ticket collector there—'I have received a wire from Craigendoran to look particularly at your ticket. From the wire there seems something wrong with it'—meaning thereby that the pursuer had obtained and used a ticket for travelling on the defenders' railway for which he had not paid the defenders and which he had no right to use, and was thus defrauding them, or did use words of the like import and effect, to his loss, injury, and damage? 3. Whether on or about 15th July 1915 the defenders by their stationmaster at Craigendoran, on the platform there, falsely and calumniously accused the pursuer of using tickets not honestly obtained by him, and said—'You are too fly to be caught. Many another would have been caught long ago, but you are too clever for them'—or used words of the like import and effect, to the loss, injury, and damage of the pursuer?"

On 1st March 1916 the Lord Ordinary (DEWAR) disallowed the issues and assoilzied the defenders.

Opinion.—"In this action Abraham Mandelston, traveller, Glasgow, sues the North British Railway Company for damages for defamation. His case is that the defenders suspected him of travelling on their railway with tickets which he had obtained fraudulently and instructed their servants to watch him, and that in carrying out these instructions the said servants wrongfully accused him of defrauding the company by travelling with tickets which he had not honestly obtained.

"The first issue is founded on certain statements made by a railway police inspector in the employment of the defenders on 26th May 1915. The pursuer says that this inspector, who was instructed by the defenders to make investigations and to obtain information on their behalf, called at pursuer's house on the date in question and stated, in presence of pursuer's wife and daughter, that 'We are to take up matters seriously against you now, as there are letters complaining about your using tickets which are not purchased by you for Craigendoran, and regarding your travelling with old tickets. If this matter comes before the court you will be severely punished.' The pursuer says that the meaning which the inspector intended to convey and did convey by this statement was that the pursuer had 'defrauded the defenders by fraudulently obtaining and travelling with tickets for which he had not paid the defenders and which he had no right to use, and that he had been guilty of a crime,' and he asks for an issue containing that innuendo.

"The defenders do not dispute that the words alleged to have been used are reasonably capable of bearing the meaning attributed to them, but they maintain that it is clear from the pursuer's averments on record that the statements were not made with their authority or in their interests, and that they are accordingly not responsible. I think they are right.

"The general rule is that the person who utters the slander is alone responsible for it, and it is only in very exceptional circumstances that a principal is liable for the language used by his agent. If an agent has authority, either express or clearly implied, to make a defamatory statement on behalf of and for the benefit of his principal, the principal will of course be liable. But the authorities show that the Court takes a very strict view of what has been called the 'doctrine of vicarious liability for slander,' and will not allow an issue unless the pursuer sets forth on record, clearly and specifically, facts from which it can be inferred that the slander was one for which the principal can fairly be held responsible, and 'averments' in such cases are examined very critically. There have been a considerable number of cases brought in the Scotch Courts, but so far as I am aware only in one of these has an issue been allowed. That is the well-known case of *Finburgh* v. *Moss'*

Empires, Limited, 1908 S.C. 928, 45 S.L.R. 792, where the circumstances were very special and the alleged slander very gross.

"When the pursuer's averments are examined in the light of these authorities it appears to me that they fall far short of what the law requires. He says (condescendence 4)—'It is the custom of the defenders, through their chief inspector and police inspectors, *to make investigations* at the homes of passengers and elsewhere outside the defenders' premises, and to authorise their police inspectors *to obtain information* on the defenders' behalf. . . .' That is to say, the defenders authorised the police inspector to 'make investigations' and 'obtain information' on their behalf. But it is not said, and I do not think it can be implied, that he had any authority to make a statement of a slanderous character, nor do I see how such a statement could possibly benefit the defenders. A master is not liable for what his servant may say unless it is said on instructions or is necessary for the proper discharge of his duty. It was the duty of the inspector to investigate and obtain information, and that duty did not, in my opinion, involve the making of the statement complained of. In the case of *Lorimer or Riddell* v. *Corporation of Glasgow*, 1911 A.C. 209, 48 S.L.R. 399, where a tax collector in the employment of the defenders accused a ratepayer of having altered a receipt for the purpose of defrauding the defenders, and threatened to lodge information with the police which would result in the pursuer being put in gaol for three months for forgery, it was held that there was no ground of action against the defenders as there was nothing in the pursuer's averments to show expressly or impliedly that the tax collector's expression of opinion was within the scope of his employment. It was his duty to collect police assessments and to grant receipts therefor, but it was not part of his duty to express his own opinion on the genuineness of such documents. Lord Shaw said—'If it were to be held that persons in the ordinary and comparatively humble position of this officer were within the scope of their employment in expressing opinions as to the conduct of those with whom they have dealings in the course of doing their work the consequences might be of the most serious character, and the essential justice which underlies the maxim *qui facit per alium facit per se* would disappear.' I think that rule applies here. The police inspector was employed to obtain information and it did not fall within the scope of his employment to make the statement complained of. I am therefore of opinion that the issue should be disallowed.

"The defenders founded on section 28 of the North British Railway Act 1901, which provides that a railway police inspector shall only have power to act as a constable on the railways and within the stations and works of the company, and they argued that if the management authorised the said inspector to go to the pursuer's house as is alleged, it was *ultra vires* of their statutory powers, and the defenders were accordingly not liable. But in view of the opinion I have already expressed I do not require to consider that question.

"The second issue is founded on a statement alleged to have been made by a ticket-collector at Arrochar railway station on 7th June 1915, who said to the pursuer on the public platform—'I have received a wire from Craigendoran to look particularly at your ticket. From the wire there seems to be something wrong with it.' And the innuendo which the pursuer proposes to place upon that statement is that 'he had obtained and used a ticket for travelling on the defenders' railway for which he had not paid the defenders, and which he had no right to use, and was defrauding them.' I do not think that the words are reasonably capable of bearing that meaning. To say that there seems to be 'something wrong' with a ticket does not naturally or necessarily mean that it has been obtained by fraud. It appears to me only to suggest doubt as to whether the ticket was available for that particular journey. But if I am wrong in that view, and if the ticket collector did in fact intend to accuse the pursuer of defrauding the defenders, as is alleged, then, like the police inspector, he appears to have been acting outwith the scope of his employment. His instructions were to examine the ticket, but he had no authority, express or implied, to make the statement, and accordingly the defenders are not in my opinion liable.

"The third and last issue is whether the defenders, by their stationmaster at Craigendoran, falsely accused the pursuer of using tickets not properly obtained, by saying 'You are too fly to be caught. Many another one would have been caught long ago. You are too clever for them.' This issue is open to the same criticism as the other two, and ought in my opinion to be disallowed also. The pursuer does not aver that the defenders authorised their stationmaster to make this statement, nor does he explain how it came to be made, or what interest of the defenders it was intended to serve. All he says is that it was part of the stationmaster's duty 'to see that passengers have tickets entitling them to travel by rail.' But that duty I presume is common to all stationmasters, and can and ought to be discharged without giving offence to passengers. It can certainly be discharged without telling a passenger that he is 'too fly to be caught.' That may have been the stationmaster's opinion, but there is nothing to show that it was the opinion of the defenders or that they authorised him to express it on their behalf.

"On the whole matter I am of opinion that the defenders ought to be assoilzied with expenses."

The pursuer reclaimed, and argued—If a servant acting in the course and scope of his employment perpetrated a wrong the master was liable therefor though he gave no special instructions to the servant, provided that the authority delegated to the servant was wide enough to bring the act done within its ambit—*Citizens Life Assurance Company* v. *Brown*, [1904] A.C. 423, *per*

Lord Lindley at p. 427; *Barwick* v. *English Joint Stock Bank*, 1867, L.R., 2 Exch. 259, *per* Willes, J., at p. 265; *Ellis* v. *National Free Labour Association*, 1905, 7 F. 629, 42 S.L.R. 495, which related to a written slander, but the same principle was applied to a verbal slander in *Finburgh* v. *Moss' Empires, Limited*, 1908 S.C. 928, *per* Lord Mackenzie (Ordinary) at p. 932, and Lord Ardwall at p. 938, 45 S.L.R. 792. *Riddell* v. *Glasgow Corporation*, 1911 S.C. (H.L.) 35, 48 S.L.R. 399, was decided on the ground that the authority delegated to the servant was so narrow that the slander could not be held to have been uttered in the course of his employment. *Nicklas* v. *The New Popular Cafe Company, Limited*, 1908, 15 S.L.T. 735, was decided on the same ground; so was *Eprile* v. *Caledonian Railway Company*, 1898, 6 S.L.T. 65. Here as regards the first slander the inspector had a wide discretion, and the slander founded on was made within the scope of the authority given, especially looking to the averments which disclosed extreme suspicion of the pursuer in all the grades of the defenders' servants—a result which could only be attributed to actual instructions of the defenders themselves. The second statement, if slanderous, was averred to have been made upon the defenders' instructions. If, as here, there were sufficient averments to the effect that the act complained of was authorised, the question of the scope of the employment was for the jury—*Mackenzie* v. *Cluny Hill Hydropathic Company, Limited*, 1908 S.C. 200, 45 S.L.R. 139; *Beaton* v. *Glasgow Corporation*, 1908 S.C. 1010, *per* Lord President Dunedin at p. 1013, 45 S.L.R. 780. It was sufficient if the act was for the benefit or supposed benefit of the master — *Limpus* v. *London General Omnibus Company*, 1862, 1 H. & C. 526; *Dyer* v. *Munday*, 1895, 1 Q.B. 742, *per* Lopes, L.J., at p. 747. Here it was alleged that the acts complained of were for the supposed benefit of the defenders, and they were certainly done to put an end to what the defenders thought was a fraud on themselves. But even if the acts were not to be held to be for the supposed benefit of the defenders it was enough to aver that they were within the course of the employment of the servants—*Lloyd* v. *Grace Smith & Company*, [1912] A.C. 716. Further, assuming that as a result of the provisions of the North British Railway Act 1901 (1 Edw. VII, c. clxxxviii), sec. 48, the act of the inspector could not be authorised by the defenders, because they would have been acting *ultra vires* if they had attempted to authorise his actings outside a station; that was no defence in an action upon the delict of the servant—*Doolan* v. *Midland Railway Company*, 1877, 2 A.C. 792, *per* Lord Blackburn at p. 806; *Central Railroad and Banking Company* v. *Smith*, 52 Am. Rep. 353. The innuendo upon the second statement could reasonably be placed upon the words, as the averments of what led up to the second statement could be looked at for that purpose and they showed that the innuendo was reasonable. The third issue was not pressed.

Counsel for the defenders was not called upon.

LORD PRESIDENT—Undeniably the limits within which an action for damages for verbal slander is admitted against an employer for calumnious expressions used by his servant are very circumscribed. It appears to me that this case lies entirely outside these limits.

The pursuer was a frequent traveller on the defenders' line of railway, and during the period covered by the averments he used an unusual number of return halves of tickets of somewhat antique appearance. The unusual number of these tickets proffered by the pursuer to the Railway Company's servants not unnaturally aroused suspicions. The first occasion on which slander is said to have been uttered was when an inspector in the employment of the company was sent to the pursuer's house, as the pursuer expressly says, to make an investigation and obtain information on their behalf. That was his sole duty, and for anything which he did in pursuance of that duty the defenders are undoubtedly responsible. But if he took advantage of his presence in the pursuer's house (which was solely for the purpose of making investigations and securing information) in order to slander the pursuer, it appears to me that that lay entirely outside the scope of his employment and that the defenders are not responsible for any slander which he so uttered. I therefore think that the first issue should be disallowed. On the second occasion, at Arrochar Station, what happened was as follows:—The ticket collector there apparently had received from Craigendoran a telegram instructing him to examine the pursuer's ticket, and acting in conformity with these instructions he accosted the pursuer on the station platform and told him he had received instructions to look particularly at his ticket, and added, quite naturally in view of the telegram, "There seems to be something wrong with it."

I think the second issue should also be disallowed for the reason that it was not within the scope of the ticket collector's duty, when he was merely asked to examine the ticket, to slander the pursuer. But there is a further ground which, it appears to me, is quite sufficient for our decision on the second issue, namely, that the words are not susceptible of bearing the innuendo that is sought to be put upon them. They appear to me to be quite innocent words, and when the instruction had been given to him I cannot see how the ticket collector could intimate to the pursuer in any other way that he wished to examine his ticket. These were the only two issues insisted in on behalf of the pursuer. I think neither of them should be allowed.

I am very well satisfied not only with the conclusion at which the Lord Ordinary has arrived but the reasoning which has led him to that conclusion. I take exception to only one part of the Lord Ordinary's opinion, where he says—"A master is not liable for what his servant may say unless it is said on instructions, or is necessary for the proper discharge of his duty." That does

not appear to me by any means to exhaust the cases in which a master may be held liable for slander uttered by his servant. But in the sentence which follows I think the Lord Ordinary has placed his ground of judgment upon the proper basis. "It was," he says, "the duty of the inspector to investigate and obtain information, and that duty did not, in my opinion, involve the making of the statement complained of." I add that it was also the duty of the ticket collector merely to investigate and obtain information, and that both are therefore exactly in the same position.

I am therefore for adhering to the interlocutor of the Lord Ordinary.

LORD MACKENZIE — I am of the same opinion. It was pointed out in the case of *Finburgh* v. *Moss' Empires*, 1908 S.C. 928, 45 S.L.R. 792, that in a case such as the present it was necessary to scrutinise very closely the averments of the pursuer. The duty on the pursuer is to set forth a *prima facie* case that the act complained of was the act of the company. In the present case I am unable to hold that the averments are of that character. They are in marked contrast to the averments in *Finburgh* (*cit.*) which were very strong. For my own part I should be slow to extend the doctrine of vicarious responsibility of a company for verbal slanders said to have been uttered by an employee. The duty of a person whose instructions are to make investigations and to obtain information appears to me to be limited to ascertaining facts and reporting to his superior. It is not within the scope of his employment to venture opinions reflecting upon the conduct or character of the person whom he is interrogating, and upon that ground I am unable to hold that the defenders are responsible for what the police inspector is alleged to have said on 26th May 1915, which is the subject of the first issue. For the same reason I am unable to hold the company responsible for what is complained of as regards the second issue. There is the further point that it seems to me impossible to extract from what was said on 7th June the innuendo which the pursuer seeks to draw.

LORD SKERRINGTON—I agree, and for the reasons explained by your Lordships.

LORD JOHNSTON was absent.

The Court adhered.

Counsel for the Pursuer—D. Anderson, K.C.—Burnet. Agent—A. W. Lowe, Solicitor.

Counsel for the Defenders — Sandeman, K.C.—Macmillan, K.C.—E. O. Inglis. Agent —James Watson, S.S.C.

Saturday, March 17.

FIRST DIVISION.

[Sheriff Court at Aberdeen.

OFFICER *v.* CHARLES R. DAVIDSON & COMPANY.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (1)—"*Arising Out of the Employment*"—*Ship's Engineer Returning from Shore Drowned in Dock under Admiralty Control where his Ship was.*

A ship was lying beside a quay in docks which were under the control of the naval and military authorities. The docks though normally open to the public were during the war closed to all except, *inter alios*, those who had business in the docks and held a pass which enabled them to pass the guard at the gates. The ship was chartered to the Admiralty. Her engineer, who held a pass, having gone ashore with leave for purposes of his own, on his return passed the guard about 10·30 p.m. on a very dark night in February. Stringent lighting restrictions prevailed. To reach the ship the engineer had to traverse the quay. He did not return, and his body was subsequently found in the water about seventy yards from the actual place of access to the ship from the quay. *Held* that the accident rose out of the employment, in respect that but for his employment the workman could not have been upon the quay.

Mrs Marjory M'Robb or Officer, widow of Charles Officer, *appellant*, being dissatisfied with an award of the Sheriff-Substitute (YOUNG) at Aberdeen in an arbitration by her for herself and as tutrix of her pupil children, against Charles R. Davidson & Company, shipowners, Aberdeen, *respondents*, craving decree against the respondents of £300 as compensation under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) in respect of the death of her husband, appealed by Stated Case.

The Case stated—"The following are the *facts* admitted or proved:—(1) That the appellant is the widow of the deceased, and she and her pupil children were wholly dependent on his earnings; (2) that at the time of the accident in question, and for some time previously, the deceased was in the employment of the respondents as chief engineer of their steamship 'Ferryhill'; (3) that on or about Friday, 25th February 1916, the 'Ferryhill,' then under charter to the Admiralty, and engaged for the coaling of patrol boats, was moored in the inner basin of Ramsgate Harbour alongside a hulk which was berthed between the 'Ferryhill' and what is known as the Cross Wall Quay, as shown on the plan produced; (4) that access from the quay to the 'Ferryhill' was obtained in the first place by a rope ladder on the hulk at the point marked C on the plan, and next by an ordinary ladder from the hulk to the 'Ferryhill' at the point marked D; (5) that on the evening of the