Then follow certain other restrictions, and it is said on behalf of Mr Lee, the reclaimer, that these reservations and restrictions are such as to entitle him to refuse to go on with his bargain.

Now, the effect of conditions of this kind is always a question of the circumstances of the estate, as, for example, such a reservation in a mineral estate would undoubtedly be a good reason for repudiating a sale; but I am of opinion that such a reservation does not apply to properly urban tenements. I agree with the Lord Ordinary that in this case the reservation does not entitle Mr Lee to disavow the bargain. In the case of a property consisting of a small piece of ground with a villa upon it which covers the most of the ground, a reservation of minerals is not unusual, and here the reservation is particularly harmless, for the superior cannot touch the minerals under the ground without the consent of the vassal. The Lord Ordinary lays down the law very fairly, and unless Mr Lee can show that the working of the minerals was ever thought of between the parties, I am of opinion that he cannot now repudiate the bargain. The ground was feued for the purpose of building a villa upon it, and the superior says—"I shall not touch anything under the villa without your consent." Surely this is quite usual in the feuing of such tenements, and I therefore think that the reservation of minerals, though perhaps unfortunately expressed, will not entitle the purchaser to repudiate the bargain, and therefore I think the Lord Ordinary's view the safer. I agree as to the applicability of the case of *Robertson* v. *Rutherford* to a certain extent, but the circumstances of the cases are different.

Lord Justice-Clerk—I agree as to the first question. With reluctance I concur with Lord Ormidale on the last point, and I do not very well see how a good answer is to be made to the defender's case on this point. I think a purchaser is bound to take a property with the restrictions on it, but that is a totally different thing from not receiving the property bargained for. I cannot hold that when a man sells a heritable subject he does not sell the minerals under it. If a man sells a superficial area, there can be no question at all that if he could not give something on the surface the sale would not be good, and is there any difference when he cannot give something under the ground? This would be a most dangerous principle to affirm, and so it was recognised in the case of *Robertson* v. *Rutherford*, where in very similar circumstances the same principles were applied as we propose to apply here.

It was said that the minerals could be of no value, but I cannot hold that, for the superior reserves them, and we cannot go into their value. I only know this, that not far off from the position of this villa the railway company have driven a tunnel, and we cannot say whether they may not want to drive another tunnel through this property, which might in that event come to be valuable.

Therefore, on the whole matter, and in the end with no difficulty, I think the sale cannot go on, because the seller cannot give possession of part of the subject which he sold.

The Court recalled the interlocutor complained of, sustained the defences, and found the pursuer liable in expenses, subject to modification.

Counsel for Pursuer (Respondent)—Kinnear—A. J. Young. Agent—G. M. Wood, S.S.C.

Counsel for Defender (Reclaimer)—Campbell Smith—Brand. Agent—J. B. W. Lee, S.S.C.

Saturday, February 22.

SECOND DIVISION.

[Sheriff of Lanarkshire.

COUPER & SONS *v.* MACFARLANE.

Reparation—Master and Servant—Liability of Third Party who procures Breach of Contract.

He who wrongfully procures breach of contract between master and servant is liable in damages to the party so injured—the injury being the necessary and natural consequence of the act complained of.

Master and Servant—Reparation—Civil Liability for Intimidation and Coercion of Workmen from Master's Service.

A firm of flint-glass cutters in Glasgow brought some men from England for their works on the occasion of a lock-out. Shortly afterwards these men deserted their work and returned to England, in breach of their contract. The employers sued an old hand, who was also a member of a "glass cutters association," in damages for having seduced and assisted the workmen to desert their master's service by means of threats, promises, and misrepresentations. Circumstances in which *held* (*diss.* Lord Justice-Clerk Moncreiff) that the pursuers had failed to prove their case, the defenders sole object having been shown to be not that of breaking the contract, but of bringing it to a legitimate close.

Observations (*per* Lord Ormidale) as to what is necessary to constitute a relevant allegation of a conspiracy or illegal combination.

Messrs James Couper & Sons were flint-glass manufacturers in Glasgow, and in the summer of 1876 a dispute having arisen between them and their employees as to the rate of wages paid, the bulk of the workmen received notice to leave the works. The defender Macfarlane, who was one of their men at the time, was not dismissed, but after giving the pursuers the fortnight's notice stipulated by the rules of their works, he also left their employment. To fill the places of the men who had been locked-out, the pursuers engaged and brought from various parts of England a number of workmen to serve them in the capacity of glass cutters. These men, very shortly after their arrival, and during the subsistence of their engagement, deserted their employers, and the pursuers averred that they were induced to leave by means of threats, promises, payments of money, and misrepresentations on the part of the defender or others along with him. An action was accordingly raised at the pursuers' instance against Macfarlane in the Sheriff Court of Lanarkshire, concluding for £100 of damages, in respect that he had procured the breach of contract, and so caused material loss and inconvenience to the pursuers.

In the first nine articles of the condescendence the pursuers stated that arrangements had been made by them some time before the action was raised, under which several workmen came to them from England in order to supply the place of the defender and others who had previously been in their employment. In articles 10 and 11 they stated that George Lee and Thomas Whelan, two of the workmen brought from England, had bound themselves to serve the pursuers for seven years. And in article 12 they averred that—"The defender, and the old workmen generally, were desirous of forcing the pursuers to receive them back. They well knew the terms of engagement of the various workmen before mentioned. But to secure the object they had in view they determined to take steps, by threats, promises, payments of money, and misrepresentations, to get said workmen to leave pursuers. The present defender took an active part in the proceedings taken in pursuance of this resolution, and was cognisant of and a party to them all." In the remaining articles of their condescendence the pursuers specified the acts and conduct which they alleged were resorted to by the defender in reference to some of the workmen, who were specially named, and who were brought from England, which resulted, it is said, in these workmen breaking their engagements and deserting their service with the pursuers. It was stated that they had been threatened with death; and, further, had been promised money if they would leave, and that these statements were made at meetings held with the men in Glasgow. Further, the defender, it was stated, had paid the railway fares of Henry and Thomas Elwell back to England, and had given each of them £2. In article 17 it was averred that in like manner George Lee, John Manders, Robert Edwards, and Thomas Whelan, other workmen who had been brought from England, had deserted their service; and in articles 21 and 25 they make a similar averment in relation to George Garvey, John Lewis, and Richard Godfrey. Article 23 was as follows:—"By these means (*i.e.*, by threats and promises) said men were seduced and assisted to desert from pursuers' service, *inter alios*, by defender. Defender, or those acting along with him, paid Garvey's railway ticket to Stourbridge, and Lewis' railway ticket to Manchester, and gave them £2, 10s. each." Article 27 was in similar terms in regard to Richard Godfrey.

The defence consisted in a preliminary plea of the irrelevancy of the action as against the defender, and on the merits of a denial of the alleged seduction of the workmen.

The Sheriff-Substitute (GALBRAITH) allowed a proof, which was led at great length, the evidence showing that at the time of the lock-out the defender and the other men who left the pursuers' employment were members of a society in Glasgow known as the United Flint Glass Cutters Mutual Protective Association; that shortly after the arrival of the new hands from England several meetings took place between them and the locked-out men; and that as the result of these meetings several of the new hands left the pursuers' employment, had their railway fares paid to England, and in addition received sums of money, varying in some cases from £2 to £3, 10s., this money being paid out of the funds of the society referred to. Evidence was also led to show that the new hands were met, talked to, and even molested and obstructed by the locked-out men, and that the pursuers were obliged to house and keep them within the works, and engage policemen specially for their protection. The further facts of the case, so far as material, appear from the opinions of the Court.

The Sheriff-Substitute (GALBRAITH) pronounced an interlocutor, of date 29th December 1877, in which, *inter alia*, he "Finds in fact that the several workmen mentioned in the petition were seduced and assisted to leave the pursuers' employment by an unlawful combination: Finds it proved that the defender was a member of that combination, and that he was a party to and assisted in the removal of these men from the pursuers' works: Therefore finds the defender liable to the pursuers in damages; assess the same at the sum of £50 sterling." In his note the Sheriff-Substitute, *inter alia*, stated that the defender and his confederates made many attempts in the course of the proof to blind him as to the real nature of their combination, but that the witnesses "were so plainly lying" that he regretted the Sheriff would not see them in person.

The Sheriff (CLARK) adhered on appeal, and added to his interlocutor of 27th July 1878 the following note:—

"*Note.*—In this case the parties are at issue with each other in matter of fact and law. The averments in fact made by the pursuers on record amount to this, that the defender along with others entered into a combination to induce workmen, who to his knowledge were under contracts of service with the pursuers, to desert their service, and that he, the defender, along with others, succeeded in doing this by means of misrepresentations, threats, promises, and payments of money, to the loss, injury, and damage of the pursuers. These allegations the defender meets on record by a simple denial—he makes no separate case of his own—he gives no explanation whatever of his conduct. The only proof therefore competent was that allowed, viz., a proof to the pursuers, and a conjunct probation to the defender. It is of importance to keep this in view, because at debate the defender endeavoured to put a construction on the proof that in reality amounted to a new line of defence. When he found it was impossible to get the better of a large part of the evidence led for the pursuers, he endeavoured to betake himself to this new position, that although he had in some sense aided the pursuers' workmen in returning to England, he had not induced them to leave their service, but that they had made up their minds to do so before his interference. The proof led is very voluminous. I have perused and reperused it many times, and have found myself unable to arrive at any other conclusion than that of the Sheriff-Substitute, viz., that the pursuers' averments in fact, as above recited, are substantially made out.

"The defender, however, maintained in point of law, as he had done from the outset, that even if the pursuers' averments were established, they did not amount to what by the law of Scotland was relevant to infer damages against him, who was not one of the pursuers' employees. Here, again, I find myself compelled to agree with the Sheriff-Substitute. Mr Fraser in his exhaustive

work on Master and Servant, p. 194, states the law of Scotland thus—'A master is entitled to damages from anyone who by a wrongous act deprives him of his servant's services. This right arises out of the property which the master acquires by his contract of hiring in the labour of his servant.' This doctrine commends itself to common sense and legal principle, and has in numerous cases been recognised in the law of Scotland. See the cases quoted by Mr Fraser at pp. 194, 195, and 196. Unless such were the law, it is very obvious that a serious wrong would be left without an adequate remedy. Masters would in general have no recourse of any value against their servants, and yet the actual wrongdoer, the man who was the *origo mali*, and who was responsible for all the damage that accrued, would escape from all liability. These matters were very fully considered in the recent case of *Lumley* v. *Gye*, 3d June 1853, 22 L.J. Q.B. 463. In that case, which in its subject-matter bears a close analogy to the present, though certainly the acts charged and proved against the defendant were not nearly so strong and conclusive, judgment was given on demurrer for the plaintiff, in conformity with the opinions of three judges out of a bench of four. These judges state the law in terms similar to those employed by Mr Fraser, and are at pains to show that, apart altogether from the provisions of the Act 23 Edward III. cap. 1, the action could be maintained at common law, on the general principle that 'he who maliciously procures a damage to another by violation of his right ought to be made to indemnify, and that whether he procures an actionable wrong or a breach of contract,' and again, that 'it is clear that the procurement of the violation of a right is a cause of action in all instances where the violation is an actionable wrong.' That this has always been the law of Scotland is plain from the case of *Dickson* v. *Taylor*, Nov. 1, 1816, 1 Murray 141.

"In applying this principle some things must be proved. In the first place, the mere attempt to entice away the servant will not found action. There must therefore be proved actual loss of service and damage arising therefrom. It is also necessary to prove that the loss of service was the natural and necessary consequence of the act of the defender, and that the defender knew that the parties whom he procured to leave their service were *de facto* under an engagement of service with the pursuer. Now, it seems to me that all these requisites are established by the proof in the present case. The defender knew that the persons whom he was instrumental in removing were in the service of the pursuers. The means that he employed were effectual for the purpose, and these means in themselves were unjustifiable. The pursuers suffered direct damage as a consequence of the defender's interferences and actions. Upon the whole, therefore, I am of opinion that both on the facts and the law the defender is answerable to the pursuers, and that the amount of damages awarded is in itself reasonable."

The defender appealed, and argued—On the evidence no more had been shown than that Macfarlane was cognisant of and approved of the departure of the new hands. He was simply an interested onlooker, and did nothing to promote the seduction, if any such there were. Combinations and strikes were now legal, and no undue influence or coercion on the defender's part had been proved. But even assuming that he did assist in procuring the desertion of the men, there was really no authority to the effect that any save a contracting party was liable in damages for the contract being broken. For the decision in *Dickson* v. *Taylor* (November 1, 1816, 1 Murray 141) would not now be repeated, while the English case of *Lumley* v. *Gye* (*infra cit.*) could not be said to be final, and even there there was the important judgment of Coleridge J. in the defender's favour. The old idea of "property" in a servant was a delusion, and the tendency of Scotch law had always been towards the greatest possible freedom in the relations of master and servant.

Authorities—Opinion of Coleridge J. in *Lumley* v. *Gye*, 2 Ellis and Blackburn 217; *Taylor* v. *Neri*, July 6, 1795, 1 Espinasse 385; *Winterbottom* v. *Wright*, June 6, 1842, 10 Meeson and Welsby 109; *Playford* v. *United Kingdom E. T. Co., Limited*, July 3, 1869, L.R., 4 Q.B. 706; *Alton* v. *Midland Railway Co.*, June 1, 1865, 34 L.J., C.P. n.s. *Wallace* v. *Cunningham*, 1708, M. 2349; *Lockhart* v. *Peck*, 1725, M. 2350; *Raeburn* v. *Reid*, June 4, 1824, 3 S. 104; *Lees* v. *Grangemouth Colliery Co.*, Feb. 26, 1846, 18 Ju. 273; Smith's Leading Cases, vol. i., p. 304, 7th ed.; Trades Unions Acts, &c., 34 and 35 Vict. c. 31 (1871); 38 and 39 Vict. c. 86 (1875); 39 and 40 Vict. c. 22 (1876); and the cases of *M'Kernan*, Feb. 6, 1874, 1 R. 453; and *Shanks*, March 11, 1874, 1 R. 823.

Argued for the respondents—The evidence showed sufficiently that Macfarlane was "art and part" in the seduction of the new hands, and his complicity was such as fairly to subject him in damages to the respondents. This was not a question of the legality of trades unions, but of individual liberty. It was settled law that he who procured breach of contract was liable in damages to the suffering party.

Authorities—*Lumley* v. *Gye*, *supra cit.*; *Dickson* v. *Taylor*, November 1, 1816, 1 Murray 141; *Hart* v. *Aldridge*, May 3, 1774, 1 Cowper 54; *Bluke* v. *Lanyon*, April 25, 1795, 6 Durnford and East 221; *Ashcroft* v. *Berttas*, April 29, 1796, *ib.* 652; *Green* v. *Button*, 1835, 2 C. M. and R. 707; *Evans* v. *Walton*, June 11, 1867, L.R., 2 C.P. 615; *Gunter* v. *Astor*, Nov. 10, 1869, 4 Moore 12; *Kerr* v. *D. of Roxburgh*, July 18, 1822, 3 Murray 126; *Roxburgh* v. *M'Arthur*, Feb. 13, 1841, 3 D. 556; *Rutherfoord* v. *Boak*, March 19, 1836, 14 S. 732; Manley Smith on Master and Servant, 3d ed., pp. 125-6; Fraser on Master and Servant, p. 194, and cases quoted there.

At advising—

Lord Ormidale—In this case the pursuers conclude against the defender for damages, and in support of this conclusion they have set out in no less than twenty-nine articles of their condescendence a variety of facts and circumstances. —[*His Lordship here quoted the averments stated on record*].

Although according to a strict reading of the pursuers' condescendence as now referred to, it might be held that they required, in order to succeed, to establish force or compulsion against

the defender, I am not unwilling to hold, having regard especially to their averments in articles 23 and 27, that it would be sufficient for them to prove that the workmen referred to were enticed or seduced to break their engagements and desert their service by promises or payments of money, independently altogether of violence or threats of violence. It would, indeed, be of little avail to adopt any other view, seeing that a very few words of alteration or amendment by the pursuers of their averments on record—which they might, if they thought it necessary, be entitled to make—would at once remove all doubt on the subject.

Taking it then, that it is sufficient for the pursuers to show that they have established that their workmen have been enticed or seduced to break their engagements and desert their service, to their (the pursuers') loss or damage, the only remaining question would be, whether the pursuers have proved their case against the defender in point of fact?

Both of the learned Sheriffs have, by their interlocutors now appealed against, answered these questions of law and fact in the affirmative; and in regard to the law of the case I have no difficulty in concurring with them. It would indeed be matter for much regret if the law were otherwise. Workmen are entitled, either individually or in association, to engage or to decline to engage in any service or employment as they please. But the defender was not entitled, either by himself or in combination, by violence or intimidation to compel the English workmen in question to break their engagements and desert their service with the pursuers. It would be illegal for the defender or anyone, workman or not, to do so. Not only would the defender or anyone else against whom such a charge was established be answerable for the consequences civilly, but he would also be amenable to criminal punishment. And with reference to civil reparation, which is alone now in question, it is enough to say that every master has a legal right and interest in the services of the workmen whom he has under engagement in his employment, and that every person who knowingly and designedly entices or seduces such workmen to break their engagements and desert their employment, to the injury of the master, commits a wrongful act, for which he is answerable in damages—it being always understood that the injury for which reparation is asked must be the natural and necessary consequence of the wrongful act complained of, and not merely remotely connected with it. This, I take it, is the principle of liability in point of law which must be shown to be applicable to the defender in the present case before he can be subjected in damages to the pursuers. And were it necessary to appeal to authority on the subject, I think it is to be found most amply in the series of cases, English as well as Scotch, which were cited at the debate.

Assuming then, as I do, that there is no room for doubt as to the law of the case, with regard to the remaining question—the only one about which, as it has appeared to me from the first, that any difficulty could be entertained—there may be room for different opinions. The question, however, being essentially a jury one, depending upon the testimony of witnesses examined before the Sheriff-Substitute, I should certainly, in ordinary circumstances, and were it not for the special considerations now to be adverted to, have not been disposed to dissent from his judgment, affirmed as it has been by the Sheriff Principal. But to begin with, I cannot help thinking that the learned Sheriffs must have misapprehended in some degree the nature of the pursuers' grounds of action, and considering the manner in which their averments are made on record, this is not much to be wondered at. I observe that the Sheriff Principal in a note to his interlocutor of 13th September 1877, altering one by his Substitute in regard to a specification of writings which the pursuers sought to recover, remarked—"that the allegations made by the pursuers amount to averments of conspiracy;" and the Sheriff-Substitute's judgment upon the proof appears to proceed upon the same assumption. Accordingly he expressly finds by his interlocutor or judgment of 29th December 1877 that "the several workmen mentioned in the petition were seduced and assisted to leave the pursuers' employment by an unlawful combination; and he also, by the same interlocutor, finds it proved that "the defender was a member of that combination." And in a note to the interlocutor containing these findings the Sheriff-Substitute states that "he is clearly of opinion that a combination existed for the express purpose of emptying the pursuers' works, and that such a combination was clearly illegal;" while the Sheriff Principal, "for the reasons assigned by the Sheriff-Substitute," and with reference to his own note, adhered. Now, I have been unable to find in the record any relevant allegation on the part of the pursuers, or in the proof any sufficient evidence, of a conspiracy or illegal combination. The only indication or trace of such a thing is to be found, if anywhere, in the 12th article of the pursuers' condescendence, where they say that "the defender and their old workmen generally" were desirous of forcing the pursuers to receive them back, and to secure this object they determined to take steps by threats and other means to get the workmen brought from England to leave the pursuers. But this is not a relevant averment of a conspiracy. And, what is perhaps of still more importance, nowhere is it said that the particular acts averred against the defender were in pursuance of the determination which had been arrived at as referred to in article 12. It is scarcely necessary therefore to remark that the pursuers' action as laid wants some, if not all, of the essential elements of a conspiracy or illegal combination. For example, it is not said when, where, or how the alleged conspiracy or illegal combination was entered into; and except the vague allegation that the parties to it were the defender and the pursuers' old workmen generally, it is not mentioned who the individuals were who constituted the conspiracy or combination—no names being given except the defender's, either in the 12th or any other article of the pursuer's condescendence. It appears to me, therefore, that the rule or principle, that where the necessary foundation is first laid to establish the fact of a conspiracy or combination between certain individuals, the acts of each in pursuance of the concerted plan, and with reference to the common object, are in law the acts of all, can have no application to the present case. The pursuers themselves do not seem indeed to have contemplated a case of that description, for in the articles of the conde-

scendence following the 12th, which are specially directed against the defender, and in which they set out the particular acts on his part of which they complain, it is not said that these acts were in pursuance of any design concerted with others, or in pursuance of any common object. All of the pursuers' allegations relating to the defender are, as I read them, directed against him solely, and independently of any conspiracy or combination with others. I rather think that the learned Sheriffs in coming to the conclusion at which they have arrived have overlooked this feature of the case, and have proceeded upon the assumption that proof of misconduct by any of the pursuers' old hands was equally proof of misconduct by the defender.

But whether the learned Sheriffs have committed a mistake or not in regard to the true nature of the pursuers' action, I must, for myself, say that in no view that I can take of the proof am I able to find in it any case sufficiently established against the defender. The Sheriffs have found the defender liable to the pursuer in £50 of damages "in consequence of his having, in the manner and at the times set forth in the condescendence, by threats, promises, payments of money, and misrepresentations, seduced, and assisted several of the pursuers' workmen to desert their service while under engagements to them." I am unable, however, to see any sufficient evidence to support all this, or any material part of it. Take, for example, the "threats" of death referred to in the condescendence which have thus been found by the Sheriff to be proved, not only have they not, in my opinion, been proved, but that they were made by the defender was not even attempted to be shown on the part of the pursuers at the debate.

What the pursuers at the debate confined themselves to, and I think judiciously, as their only plausible case against the defender, was that their workmen, or some of them, were enticed or seduced by him to break their engagements and desert their service, and that this is in law a sufficient ground of liability if established in full I can, as I have already stated, entertain no doubt. But after repeated perusals of the proof I must own my inability to come to the conclusion that it is sufficient to inculpate the defender. That it discloses a case pregnant with suspicion against him appears to me to be very clear, but more than that, in my opinion, it does not amount to. In particular, I think it fails to show, or to put it differently, it leaves it uncertain—First, Whether it was the English workmen who solicited the defender and others to assist them to return home to England after they had, of their own free will, deserted or given up their service with the pursuers, or that it was he, by himself or in combination with others, who first enticed or seduced them to do so; and second, whether the defender, supposing it to be proved that it was he who enticed or seduced them to leave their service with the pursuers, then knew that they could only do so by breaking their engagements. It is enough that these essential matters are left in doubt and uncertainty, in place of being made clear and certain. In regard, indeed, to several, if not all, of the workmen in question, it is obvious, on their own showing, not only that the defender did not apply to them to break their engagements, but that he took no part in the measures resorted to for that purpose. Godfrey, for example, entirely exculpates the defender, and even goes the length of saying, and several times repeating, that the defender was not to his knowledge at any of the meetings with others to which he refers. He states, indeed, that "he never saw Macfarlane (the defender) at all." And in like manner do all the other workmen who are said to have been induced to break their engagements with the pursuer fail to inculpate the defender, although they vary in their evidence, and refer to circumstances more or less suspicious against him. Now, it is to be altogether thrown out of view that the defender himself as well as his witnesses—especially Spiers, Price, Hawthorn, and Donaldson—negatives, as might have been expected, the case of the pursuers. In place of establishing that the defender or his alleged associates enticed or induced the English workmen to break and desert their engagements with the pursuers, it establishes that it was they who enticed and induced, not the defender individually, but some of the old workmen, of whom he was one, to give them money to enable them to return to England.

It may be that the witnesses who have been examined have not given true and reliable testimony, or possibly that they may have given their testimony under fear of consequences; but I cannot upon considerations such as these hold the proof to be different in its import and effect from what it bears to be. In other words, I cannot hold the proof to be affirmative of the pursuers' case merely because I believe it to be untrustworthy. All I could do in that view would be to disregard it, but that would only lead me to the result that the pursuers had failed to prove their case, and this is the conclusion I have come to.

Lord Gifford—I regard this as a very important case, and as involving questions of great interest both to workmen and to employers of labour. It appears to me also that the present action raises some of these questions in a new form, and I cannot help feeling that the form in which the action is brought considerably enhances the difficulty which is always felt in determining what are the true limits of the rights of masters and of workmen respectively in the trade struggles in which from time to time they are engaged.

The action is a simple action of damages at the instance of James Couper & Sons, flint-glass manufacturers, Glasgow, against a single defender, Robert Macfarlane, a glass-cutter, who was formerly in the pursuers' employment as one of their workmen, but who voluntarily left their employment in June 1876. The action concludes for damages against the defender Macfarlane on the ground that he "seduced and assisted certain workmen," nine in number, "to desert the pursuers' service in August and November 1876." The defender is alleged to have acted along with certain other persons who had also been in the pursuers' employment, but who had been locked out by the pursuers in consequence of a trade dispute, and the averment is that the defender Macfarlane, by false statements to the nine workmen named, by misrepresentations, by threats, and by money payments, induced the nine workmen named to desert the pursuers'

service in breach of current engagements, and to return to England, from which place the pursuers had originally brought them on the occurrence of the lock-out. The pursuers claim damages from the defender for having, by the means libelled, seduced or induced the nine workmen named to leave or desert the pursuers' employment.

The action is laid at common law. It is not founded on the provisions of any of the statutes which have been passed relative to masters and workmen. It assumes the entire liberty which both workmen and masters have, since the abolition of the Combination Laws, to meet and combine for the purpose of agreeing and determining upon what terms and for what wages masters will employ workmen, and upon what terms and for what wages workmen will accept employment. In short, it assumes entire freedom of contract between workmen and their employers, and entire freedom of combination—that is, freedom to the masters on the one hand, and to the workmen on the other, to act in concert for their common interest. But assuming all this, the action proceeds solely upon the ground that the defender by illegal means has seduced or induced the nine workmen named to desert the pursuers' employment while they were under contract to the pursuers. The illegal means charged are threats, false misrepresentations, promises, and payments of money.

Now, I do not doubt the general relevancy of the action as laid. I think it is quite fixed by decisions both in Scotland and in England that a civil action will lie against anyone who by illegal means induces a workman under contract to desert his employment, or who induces by illegal means a master to dismiss his workmen, for the law is exactly the same whether the wrong is committed by inducing the master to dismiss his workmen, or by inducing the workmen to desert his master's service. If the means used be illegal and wrongful, an action of damages will lie against the wrongdoer either at the instance of the master who has been deprived of service, or at the instance of the workmen who has been deprived of employment, and in both cases upon exactly the same principles. I think the authorities cited at the bar established this; and although in the case of *Lumley* v. *Gye*, 2 Ellis and Blackburn 216, where it was held that an action lay for seducing a dramatic performer from the plaintiff's theatre, Lord Coleridge in a very weighty opinion dissented from the judgment, it was not doubted that in the general case an action of damages was always competent for wrongously seducing servants from their employment.

But, then, in all such cases the seduction must be by illegal means, and in most cases there is added the element that in inducing the servant to desert his employment the defendant acted maliciously and with intent to injure the employer. In the present case I think the pursuers have sufficiently alleged on record the use of illegal means by the defender Macfarlane. They allege in general terms the use of threats, and they particularise on several occasions (cond. 14) that the defender threatened Henry and Thomas Elwell, and (cond. 26) that the defender threatened Richard Godfrey with death. Mere payment of money, especially if it was restricted to the mere expenses of the men returning to England, being railway fares and incidental expenses, would be more doubtful, and to this I shall advert immediately, but I think that the averments of false statements, misrepresentations, and threats of personal violence, were sufficient to make the action relevant. I am of the opinion, therefore, that the action was properly remitted to proof, and the whole question then comes to be, Have the pursuers established their case upon the evidence?—that is, Have the pursuers by sufficient evidence established that the defender Robert Macfarlane did by illegal means, by threats of violence, by false representations, or by other wrongful acts, induce the nine workmen named, or any of them, to desert the pursuers' service while they were under contract with the pursuers, and known by the defender to be so?

Now, I have carefully and repeatedly considered the evidence in the case, and I am of opinion that the pursuers have failed in their proof, and that there is no sufficient evidence on which I could safely rely in finding the defender guilty of the illegal conduct libelled. I am therefore constrained to come to the conclusion that the defender should be assoilzied from the action.

The nine workmen whom the defender is said to have illegally seduced to desert their service are the following:—Henry and Thomas Elwell, who are said to have deserted the service on 8th August 1876, George Lee, John Manders, Robert Edwards, and Thomas Whelan, who are said to have deserted service on 4th November 1876, George Garvie and John Lewis, who deserted on 5th November 1876, and Richard Godfrey, who deserted service on 27th November 1876. Of these nine men five have been examined, for I am willing to assume that the James Garvie who was examined as a witness is the same person who is erroneously called George Garvie on record, although this error, if it is one, should have been formally corrected. Now, none of these five witnesses, all of whom have returned to the pursuers' employment, and were actually in the pursuers' employment at the time of the examination, I say none of these five workmen in the slightest degree establish the pursuers' case against Macfarlane. On the contrary, they all of them expressly negative the pursuers' case. They all deny that Macfarlane induced them to go away—they all deny that Macfarlane used any threats of any kind—they all deny that he either promised or paid them money—and although Lee says that on one occasion Macfarlane was one of three men who put money on the table to pay railway expenses, it appears plain enough that the money so applied came not from Macfarlane but from the funds of the United Flint Glass Cutters Society. Then all these five witnesses concur in saying that they went away of their own accord. They went away voluntarily, apparently on the representation that had been made to them that their remaining in Glasgow would be injurious to the interests of the glass-cutters in that city, who were making a stand to obtain what they considered fair play from their employers. The other four men alleged to have been illegally seduced or induced to desert are not examined.

This is rather an unfortunate commencement for the pursuers. Not one of the nine men whom they say were illegally induced to leave their

service by threats and misrepresentations by the defender can be got to say anything of the kind. Instead of this, all of them who are examined negative the pursuers' case, and although very severely pressed both in cross-examination and by the Court, they adhere to their story that no false statements were made to them, that no threats of any kind were used towards them, and that they went away voluntarily accepting payment of the expenses necessary to carry them home.

It may no doubt be true that these men were unwilling witnesses against the defender, that they were averse to involve the defender in responsibility or loss, and it was even urged that if not guilty of perjury, they were at least chargeable with prevarication. But I see no evidence of this; they had no motive to abstain from speaking the truth. It is not alleged that they were under any fear or intimidation at the time of giving their evidence. They were then, and I suppose are still, in the pursuers' own employment, to which they had voluntarily returned, and if they had really been improperly induced to desert their employment some months before the examination, there was no reason whatever why they should not frankly say so. But even if their evidence is set aside as unworthy of credit, this would not set up the pursuers' case. The pursuers must prove their case by positive and credible evidence, and not by merely discrediting their own witnesses, and although the mode in which these men have given their evidence may excite suspicion and distrust, such suspicion and distrust will never supply the place of positive proof.

I do not need to go over the remainder of the evidence in the case. When the workmen who are said to have been illegally induced to leave directly negative this averment it would be very difficult to substantiate it by others, and I think I may say that there is no evidence bringing home to the defender either misrepresentations or false statements, or directly or indirectly the use of threats or violence. The only two witnesses who were relied on by the pursuer as proving the use of threats or violence are Henry Stephens and John Haddon, the pursuers' gatemen, but they do not bring home any threat or violence to the defender Macfarlane. No doubt Stephens says that Macfarlane seemed to take the supervision over things, but he cannot give any reason excepting that clubs appoint some men to take the lead over the others. He says that Macfarlane "was a kind of—I don't know what you might term him—he made the bullets and the other men had to fire them;" and although he repeats this and says that obstruction came through Macfarlane's instrumentality, he can give no details and can specify no grounds for such a conclusion. The gatekeeper's evidence does not affect the defender at all. It was not the defender but William Macfarlane that was with Docherty when Docherty assaulted the gatekeeper Haddon; and Docherty, who admits that he was fined for assault, states that Robert Macfarlane was not there; and nobody says he was. I need not further examine the evidence, for I think that none of it brings home any illegal act to the defender Macfarlane, and although there may be suspicions against him that he strongly disapproved of workmen having been brought from England by the pursuers to replace the men they had locked out, and that he entirely concurred in these workmen receiving money to carry them home again—in short, that he was on the side of the Glasgow workmen and against the pursuers employing strangers from England to defeat them—this is not enough to warrant a verdict of damages against him in the present action.

The only point on which I have felt some difficulty is that relating to the payment of the railway fares and expenses of the workmen who returned to England. I think it sufficiently appears that the railway fares of the workmen, and certain small sums not exceeding the expenses of their return home, were paid to the workmen from the funds of the United Flint Glass Cutters Mutual Protective Association, of which the defender is or was a member. It seems also to be proved that the defender knew and approved of these payments being made from the Association funds, and saw the men or some of them off to England or at the railway station. Now, it is said that this was an illegal payment. I do not think so. The expediency or policy of such a payment may be a question, but I cannot say that it is illegal. It is not an illegitimate thing for workmen to enable a certain number of their class to emigrate or go to a distance in order to diminish excessive competition in any particular place. If the men who left had given due and timeous notice to the pursuers that they were to leave, there would have been nothing wrong in their accepting payment of their expenses in going home from the Glasgow Association, and there would have been nothing wrong in the Glasgow Association paying these expenses, assuming it to be within the purposes of the Association to do so. The object of the payment in such a case was, not to break a contract, but to bring the contract to a legitimate close, and just as the masters lawfully paid the expenses of the stranger workmen in coming to Glasgow, it was just as lawful for the Association to pay their expenses home again. It could not have mattered much to any party whether the departure of the workmen to England was postponed till the termination of their fortnight's notice or not. The essential point is that the money was paid, or may have been paid for aught that the proof discloses, not to induce the workmen to commit a breach of contract, but simply to induce them legally to terminate the contract and go home again to where they had been before. Apart from any breach of contract, it was just as legal for the Association to pay the workmen's expenses home as it was for the pursuers to pay their expenses in coming to Glasgow. In truth the payment seems to have been made without any reference to whether the English workmen had or had not given notice to leave. That seems to have been left, and not unnaturally so, to the workmen themselves, and at all events I think there is not sufficient evidence to enable me to hold that the defender made or concurred in the payments as inducements to the workmen to commit a breach of contract. The workmen themselves may be liable, and no doubt will be liable in damages if they left without notice, but I do not think I can hold the present defender answerable for this.

Of course I do not enter in the slightest into the merits of the dispute between the employers and workmen in the glass cutting manufacture in 1876. I do not know which party was right, and I do not

care. I am only anxious strictly and impartially to preserve entire freedom of contract between masters and men. It was quite lawful on the part of Messrs Couper to lock out the workmen with whom they were dissatisfied, just as it would have been for the workmen to combine and strike. The defender was quite entitled to sympathise as he did with the locked out men, and although he was not dismissed, he was quite entitled to leave the pursuers' employment, as he actually did. On the other hand, the pursuers were quite entitled to endeavour to procure workmen elsewhere on whatever terms they pleased, and to pay their expenses from England or from the Continent. In like manner, the defender and the locked-out workmen were quite entitled to persuade stranger or foreign workmen not to come to Glasgow, or even after they had come to induce them by all fair means to terminate their engagement lawfully and go away again. The men must have the same entire freedom as the masters. The masters may combine with other masters in England or elsewhere, and arrange the terms on which they will offer work. The workmen in Glasgow, in precisely the same way, may combine or arrange with English or foreign workmen on what terms they will accept employment, and the only limitation is that neither masters nor men shall by threats, intimidation, violence, or obstruction force others to adopt their views, and also that neither masters nor men shall break the engagements into which they have entered, and that nobody by unlawful means shall induce or compel such breach of engagements. If there had been brought home to the defender in the present case any violence or threats of violence, any intimidation, molestation, or obstruction, anything forcing or calculated to force his fellow-workman either to make or to break a contract, or to prevent that fellow-workman from enjoying a free market for his labour anywhere, no one more willingly than I would have applied the whole resources of the law to repress and put down such conduct. Indeed such conduct would have been criminal, and would have been struck at by the provisions of the statutes.

In the present case no criminal proceedings have been adopted except against Docherty, who has been convicted of assault. I think it was almost conceded in argument—and I do not myself see how the concession could have been withheld—that the proof before us in the present case would not warrant a criminal conviction against the present defender. I do not think that that proof warrants the civil remedy of an award of damages against him in the present action.

I have only a word to add as to the alleged illegal combination. This is the ground upon which the Sheriffs appear to have proceeded—The Sheriff-Substitute finds, and the Sheriff affirms the judgment, "that the several workmen were seduced and assisted to leave the pursuers' employment by an unlawful combination;" and finds it "proved that the defender was a member of that combination." And this seems the sole ground of judgment. I can only say that I can find no evidence whatever of any such unlawful combination, and no proof that the defender was a member of such unlawful combination. I think it the law of Scotland under the recent statute (38 and 39 Vict. cap. 86) and at common law that where an Act would not be unlawful if done by one person, it does not become unlawful or criminal when two or more persons combine to do it, and I find no sufficient proof that the present defender, either by himself or in combination with anybody else, resolved to do or actually did any illegal act.

Lord Justice-Clerk—This is a question on the evidence, and we have here to answer as a jury as well as to decide upon the point of law. There seems to be no difference of opinion amongst us on the question of law, but there is, I am sorry to say, the widest difference as to certain elements of the case in point of fact between my own views and those of your Lordships. I should not have thought it necessary formally to state my dissent from your Lordships had it not been that I agree entirely with the judgment of both Sheriffs, and that the result of the evidence upon my mind has been diametrically the reverse of that at which your Lordships have arrived. I shall not go at any length into the matter; the defender is entitled to our judgment, and no good purpose will be served by my stating my views otherwise than very briefly. The record charges a very distinct and clear ground of action, which is just this—inducing servants to breach their contract and desert the service of their masters by means of threats, promises of money, obstructions, misrepresentations, intimidations, and so forth. We are told that there was a strike, that certain old hands took measures to seduce the new hands from their work, and that Macfarlane, the defender, was one of those who did so. This is a very relevant ground of civil action, and it is idle and unnecessary to say that it is not a ground of criminal action, for that is not the nature of the present proceedings. This action does not depend on any question of the freedom of either masters or men to combine amongst themselves for any legitimate purpose, and it might just as well have been raised against a man who did not belong to a trade's union, or against one who belonged to a masonic lodge, or to a temperance association, or to no association at all. In fact, I greatly regret that this topic was brought before us at all. The right of both masters and men to combine is undoubted, but we have nothing to do with this here. The sole question for us is—Did the defender, or did he not, seduce certain men from the service of the pursuers? The question, however, may be brought under two heads—First, Did any one seduce these men away? second, Was Macfarlane one of those who did so?

On the *first* point, your Lordships have said that no one seduced anyone away; and we are invited to believe that there was nothing but friendly advice, and merely benevolent and charitable assistance of needy fellow-workmen. If it were possible for me to believe that such was the fact, I should not have troubled your Lordships with this statement of dissent; but I am satisfied on the evidence that these conclusions are diametrically the reverse of the truth. These things are clear, that from first to last the new hands were molested, obstructed, met, talked to, and waylaid, if not intimidated (into that it is not necessary to go) perpetually, and in such a way that the fact remains that the masters housed them, kept them, and engaged policemen for their protection. As to representing all this as merely good advice or charitable assistance, it is out of the question. Donaldson frankly admits that the

object of it all was to keep the masters short-handed, and whether that object were a legitimate one or not, the means taken to its attainment were clearly bad. As to the *second* point—the grounds of suspicion against Macfarlane—I think the term "conspiracy," which is used by both the learned Sheriffs, is an unfortunate one. The real charge against him is that of having been "art and part" in a course of action which led to such and such results. In a question before a jury both principal and those "art and part" with him are liable to be found guilty. And if a set of men waylay and obstruct certain others, and if Macfarlane be found in concert with these men, the question for a jury would be as to the proof of their acting together or not. I shall say no more. Your Lordships have said that there is no evidence to implicate Macfarlane, and it is unnecessary and would be obviously inexpedient for me to say hard things of him. I merely indicate my general views, and I think that if Macfarlane has so much influence over his fellow-workmen as appears, he will do well to use it otherwise than towards persuading them to desert contracts which they have formed with their employers.

The Court therefore recalled the Sheriff's interlocutor, and assoilzied the defender from the conclusions of the summons.

Counsel for Pursuers (Respondents)—Asher—Jameson. Agents—J. & J. Ross, W.S.

Counsel for Defender (Appellant)—Dean of Faculty (Fraser)—Rhind. Agent—Robert Menzies, S.S.C.

Wednesday, February 26.

SECOND DIVISION.

[Lord Curriehill, Ordinary.

LAMONT *v.* RANKIN AND OTHERS (RANKIN'S TRUSTEES).

Superior and Vassal—Entry by Trustees—Whether Casualty Payable as Singular Successor—Conveyancing Act 1874 (37 *and* 38 *Vict. cap.* 94, *secs.* 4 *and* 5).

Trustees became infeft in certain heritable property in terms of a trust-disposition and settlement in their favour, under which they were, *inter alia*, to entail the property, it might be upon a party who was not the heir-at-law of the truster. There was a power of sale and excambion. Upon the superior demanding payment of a casualty in terms of the 5th section of the Conveyancing Act 1874, *held* (*diss.* Lord Young) that he was entitled to the composition of a singular successor, it being held (1) that under the decisions in the cases of *Ferrier's Trustees* v. *Bayley*, May 26, 1877, 4 R. 738, and *Rossmore's Trustees* v. *Brownlie*, Nov. 23, 1877, 5 R. 201, the heir of the last entered vassal could not now be tendered for an entry; and (2), that it could not be maintained that the trustees held for the truster's heir, and so were exempted.

Question (*per* Lord Curriehill) Whether the same result would follow where there was no power of sale in the trust-deed.

Opinion contra on both points *per* Lord Young, and review by his Lordship of the cases of *Grindlay* v. *Hill*, Jan. 19, 1810, F.C., and *Ferrier Trustees* v. *Bayley*, and *Rossmore's Trustees* v. *Brownlie*, *supra*.

This was an action of declarator and for payment of casualty raised by John Henry Lamont of Lamont against Patrick Rankin and others, trustees under the trust-disposition of the deceased Patrick Rankin of Auchingray, Cleddans, and Otter, which was dated 12th October 1869. The summons concluded for declarator that in consequence of Mr Rankin's death, who had been the last vassal vested and seised in the lands in question, a casualty of one year's rent of the four pound or six merk land of old extent of Achagoyle, in the parish of Kilfinan, lordship of Cowal, and sheriffdom of Argyle, which had belonged to the deceased, became due to the pursuer as superior on 5th March 1873, the date of Mr Rankin's death; and the other conclusion was for decree for £141, 6s., the alleged amount of the rent in question.

The deceased Patrick Rankin had been entered in the lands in question by charter of confirmation in his favour, granted by the pursuer's father, and dated June 16, 1857. He had left a trust-disposition and settlement dated 12th October 1869, by which, *inter alia*, he conveyed his heritable estate to certain trustees for certain uses and purposes therein mentioned. They were to hold the estate until certain debts were paid off, and upon that being done the testator's grandson, who was his heir-at-law, was to be entitled to a conveyance of the lands. The trustees were duly infeft in the lands on 27th March 1874, and, according to the pursuer's view, they in consequence became liable, in virtue of "The Conveyancing (Scotland) Act 1874" (37 and 38 Victoria, cap. 94), to pay to the superior of the lands a composition as singular successors.

The lands in question were held of Mr Lamont as heir-of-entail in possession of the estate of Ardlamont in feu-farm for payment of the sums specified in the reddendo of the charter of confirmation. The feu-duty payable was six merks usual Scotch money; that sum to be doubled at the first year of entry by heirs. The composition on the entry of a singular successor was untaxed.

The defenders stated that Patrick Rankin, the heir of the investiture, had offered to take from the pursuer a writ of *clare constat* to enter with the superior and pay relief-duty, and they renewed that offer upon record.

The pursuer pleaded *inter alia*—"(1) The defenders, as singular successors infeft in the lands and others described in the summons, are, in consequence of the death of the said deceased Patrick Rankin, and of their implied entry under the 4th section of 'The Conveyancing (Scotland) Act 1874,' liable to the pursuer as superior of said lands and others in payment of composition."

The defender pleaded—"(1) The averments of the pursuer are not relevant or sufficient to support the conclusions of the summons: (2) The heir of the last entered vassal being willing to enter and pay relief-duty accordingly, the action cannot be maintained."

The Lord Ordinary (CURRIEHILL) pronounced an interlocutor finding the casualty due, and appended thereto the following note:—

"*Note.*—The late Patrick Rankin of Auchin-