there is no relation of confidentiality between them. The case would have been entirely different had these persons been in the employment of the insolvent, or had they obtained the information through having had access to private papers for a limited purpose. That was the case in *Brown's Trustees* v. *Hay*. I do not think that decision has any application here."

The pursuer reclaimed, and argued—No one who was present at the meeting of creditors had any right to communicate what passed for purposes of publication. All record of what passed at the meeting was the private property of the pursuer—*Brown's Trustees* v. *Hay*, July 12, 1898, 25 R. 1112, 35 S.L.R. 877; *Caird* v. *Sime*, June 13, 1887, 14 R. (H.L.) 37, 24 S.L.R. 569.

Counsel for the respondents were not called upon.

LORD JUSTICE-CLERK — I have no difficulty in holding that the Lord Ordinary's judgment is right. All the cases referred to by Mr Guthrie are of a different kind. Where what is published belongs to an individual to whom it would be lost if published, the publication by another is an actionable wrong, because it deprives the owner of his private property. Here there was a meeting of creditors where a composition of 5s. in the £ was offered and accepted. That the fact of that offer and acceptance was the private property of the debtor I cannot hold. Mr Guthrie was unable to draw a distinction between the case of one of the creditors after the meeting telling everyone he met what happened and the publication by the defenders, and how the communication of what happened by a creditor could be held to be an actionable wrong I cannot conceive.

LORD YOUNG and LORD TRAYNER concurred.

LORD MONCREIFF—I am of the same opinion. I do not need to say what I think of the action of the defenders in publishing the information which they received. The only question is whether they committed a legal wrong in so doing. I think they did not. There were seven creditors or representatives of creditors at the meeting, and it is impossible to hold that not one of these could have communicated what happened there to any person outside without laying himself open to an action at the instance of the debtor. In point of principle there is no distinction between such a case and the circumstances in which the pursuer now seeks to recover damages from the defenders, and I therefore think that there is no relevant case.

The Court adhered.

Counsel for the Pursuer and Reclaimer—Guthrie, K.C.—Munro. Agents — Macdonald & Stewart, S.S.C.

Counsel for the Defenders and Respondents — Salvesen, K.C. — T. B. Morison. Agent—George F. Welsh, Solicitor.

*Tuesday, May* 26.

## SECOND DIVISION.

## BRENNAN *v.* DUNDEE AND ARBROATH JOINT RAILWAY.

*Expenses—Jury Trial—Appeal for Jury Trial — Modification — Small Amount Awarded by Jury.*

In this case, which is reported *ante*, p. 383, on the motion for approval of the Auditor's report on the pursuer's account of expenses, which was taxed at £146, 16s. 5d., the Court *modified* the same to the sum of £100.

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*Wednesday, June* 3.

## SECOND DIVISION.

[Sheriff Court at Glasgow.

## LAFFERTY *v.* WATSON, GOW, & COMPANY, LIMITED.

*Expenses—Jury Trial—Appeal for Jury Trial — Modification — Small Amount Awarded by Jury.*

In an action of damages for personal injury, brought in the Sheriff Court, the pursuer concluded for £187, 4s. as compensation under the Employers Liability Act 1880. The Sheriff-Substitute having allowed a proof, the pursuer appealed for jury trial. The jury returned a verdict for the pursuer, and assessed the damages at £30. The pursuer having moved for expenses, the Court, on the motion of the defenders (*diss.* Lord Young), *found* the pursuer entitled only to modified expenses, on the ground that the case in itself and as tested by the award of damages ought to have been tried in the Sheriff Court.

*Shearer* v. *Malcolm*, February 16, 1899, 1 F. 574, 36 S.L.R. 419, and *Brennan* v. *Dundee and Arbroath Joint Railway*, February 20, 1903, 40 S.L.R. 383, *followed*.

Daniel Lafferty junior, labourer, Glasgow, with consent of his father Daniel Lafferty senior, as his curator and administrator-in-law, raised an action in the Sheriff Court at Glasgow against Watson, Gow, & Company, Limited, Etna Foundry, Glasgow, concluding for £300 as damages at common law, or otherwise for £187, 4s. as compensation under the Employers Liability Act 1880. The sums sued for were claimed in respect of injury to the pursuer's left foot, which was burned by some molten metal falling upon it while he was employed in the defenders' works on 20th August 1902.

On 17th December 1902 the Sheriff-Substitute (BOYD) dismissed the action so far as laid at common law, and *quoad ultra* allowed a proof.

The pursuer appealed for jury trial, and an issue in common form under the Employers Liability Act 1880 was adjusted for the trial of the cause.

The case was tried before the Lord Justice-Clerk and a jury. The jury returned a verdict for the pursuer, and assessed the damages at £30.

The pursuer moved the Court to apply the verdict, and to find him entitled to expenses.

The defender moved the Court to allow expenses only subject to modification, on the ground that the action was one which ought to have been tried in the Sheriff Court. He cited *Shearer* v. *Malcolm*, February 16, 1899, 1 F. 574, 36 S.L.R. 419, and *Brennan* v. *Dundee and Arbroath Joint Railway*, February 20, 1903, 40 S.L.R. 383 and 622.

Argued for the pursuer and appellant—He was entitled to full expenses taxed in the ordinary way. The defenders had made no objection to the case going to trial by jury, and had not suggested that it should be remitted to the Sheriff Court, and had never made any tender. The course adopted in *Casey* v. *Magistrates of Govan*, May 24, 1902, 39 S.L.R. 635, 4 F. 811, and *Fraser* v. *Caledonian Railway Company*, February 20, 1903, 40 S.L.R. 373, should be followed in this case and full expenses granted without modification.

At advising—

LORD JUSTICE-CLERK—In applying the verdict in this case I am of opinion that the award of expenses to the pursuer should be subject to modification. The case in my view falls within the category of several cases recently decided, in which the Court has held that it is a ground for modification that the case in itself and as tested by the award of damages was one suitable to be dealt with by a court in which the procedure is not so expensive as it is in this Court. I refer to the cases of *Shearer* v. *Malcolm*, and of *Brennan* v. *The Dundee and Arbroath Joint Railway*, the latter of which was decided a few days ago. I therefore propose that decree for expenses should be pronounced subject to modification, the amount of the modification to be considered when the taxed account is before the Court.

LORD YOUNG—I have not, at least until lately, heard the idea suggested, when a case has been tried according to law in this Court, that expenses properly incurred in this Court ought to be modified—that is to say, a portion of them disallowed—because the case might have been properly tried in another court; and that is an idea which I am not at all prepared to assent to now. On the countrary, I think it to be my duty to express, as distinctly as I can, my entire dissent from it. I am very much disposed to favour any proceedings which will lessen the expenses in this Court or in any court, for I think the expense of litigation is, generally speaking, excessive, and I have done what I could in observations which I have had occasion to make in objections to the Auditor's report, to favour the view that expenses ought to be reduced as much as it is possible to do so. I have not generally had the support of my learned brethren in that view. On the contrary, in many cases where the Auditor has reduced—taking the most recent illustrations—the fees of counsel, the report of that reduction has been disapproved of. I am also very much disposed in any legitimate way to stop what we have some reason to think has been done only too frequently, namely, writers—men of business, whose conduct we should not approve of—taking up cases as a speculation for their own behoof; not, as the most respectable agents may do and have done, giving their aid to poor people who in their judgment had a reasonable claim, a good claim in fact and in law, but who could not afford the immediate outlay which was necessary in order to get them the legal assistance which the assertion of their rights required. Where that is done nobody can censure the conduct of the man of business; but if unsound cases which have no good foundation in fact or law or justice are taken up by the agent apparently with a view only to his own profit and with the expectation that his profit will be satisfied by the party against whom the claim is made preferring rather to pay down a sum than to go to law with a poor opponent—if anything can be legitimately done in order to stop the proceedings of such discreditable and censurable men of business as these, I should give it any aid I could. There is no reason whatever in the case now before us for imagining such a case, or that the man of business who took up the case originally, I suppose in Glasgow, was a mean pettifogging man of business who proceeded discreditably and with a view merely to his own profit to take up an unsound case. We have no such case to deal with here, seeing that the action has been determined to be a good action in fact and in law, and that it was properly brought and properly conducted. I say so because the case was fairly and properly tried, and has resulted in the success of the pursuer. It was sent to trial on the issue that is put before us here and the record which raises it—whether on the date mentioned, the pursuer, while in the employment of the defenders at their works, was injured in his person through the fault of the defenders, to his loss, injury, and damage. I have read the record here carefully and it raises that issue, and that was not disputed. But the defenders denied all liability—denied that there was any fault on their part or any injury to the pursuer except what was caused by his own conduct. At the trial the jury affirmed that issue—affirming the ground of action and negativing the defence; and I suppose we must consider the case on the footing that that verdict is right. No reason is suggested for interfering with it, and we could not interfere with it even if any reason was suggested, except on a motion for a new trial, which we could only grant or reject. No such motion was made, and we cannot now interfere with the verdict. It must be held to be sound and right and just, and it follows that the action was properly brought.

Is there anything in the record which is

censurable or upon which we could disallow the proper expenses of preparing that record? No suggestion of that kind was made. The action was brought in the Sheriff Court, no doubt, and I think properly brought in the Sheriff Court; but the question of modification of expenses—that is, modification in the sense of striking off a part of the expenses properly incurred on account of the misconduct of the pursuer or of his man of business—would have been the same had the action been brought in this Court. Now let me put it so, that the summons, instead of being brought in the Sheriff Court and the record prepared there, had been brought in this Court and the record prepared here. There is no objection to the issue, and it goes to trial before a jury and results in a verdict for the pursuer—damages £30. Has there been a suggestion in any case that the expenses should not follow the event? For that is the rule in this country and in England, and so far as I have any reason to believe in every civilised country in the world. And if there is a verdict for £30 in an action of this sort, is there any case in this Court to suggest the idea that the expenses properly incurred according to the rule of this Court as to expenses—the Court fees, counsel's fees, the agent's charges—should not be allowed? If the Judge at the trial was of opinion that the trial had been improperly conducted, a host of witnesses, many of whom were superfluous and unnecessary, examined, and the case therefore prolonged so as to incur unnecessary expense, that would be an excellent reason for reducing the amount of the account, and would afford an excellent reason to the Auditor for striking out the items of expense improperly incurred. The Judge at the trial could make the observations which were necessary, and say in the remit to the Auditor that in his opinion a superfluous number of witnesses had been examined. The Auditor may consider that for himself, even without instructions from the Judge at the trial, but such instructions might offer an excellent reason for reducing the amount of the account which was given in. Now, I have made inquiry since I came in here as to how long the trial lasted. I do not know when it began, but the pursuer examined five witnesses, and the jury retired to consider their verdict a little after two o'clock, so that it was not a long trial, and they gave a verdict on their return—a verdict which we must accept as right, and the amount of which we cannot reduce, as we should in effect be doing by taking off any part of it, not off the verdict or the sum to be decerned for under the verdict, but by taking the amount which we thought was in excess off the expenses of the successful party.

Now, what difference does it make that the action was raised in the Sheriff Court? I rather think that the expense of the summons and record is less in the Sheriff Court than it would have been here. And that is not disapproved of by the law as we are familiar with it, for provision is made by statute for any case which is so raised being brought into this Court with a view to jury trial. The pursuer's agent is authorised to advise that in his judgment it is a proper case for a jury trial, and there being no such thing as jury trial in the Sheriff Court, as there is in the County Courts of England, the only way of having cases proper for a jury trial brought in the least expensive manner—appeal with a view to jury trial—is provided by statute, and it is a presumed right of the pursuer to follow it out. We have held that when a case is so brought here under the Act of Parliament we may express an opinion that it is not a suitable case for jury trial, but more properly a case for trial without a jury, and act on that opinion. I do not know that the Court ever expressed such an opinion except at the instance of the defender, but when the present case came here—I state this, for the point was prominently brought forward when the case was argued on the motion for modification—no objection was taken to the case being sent to trial by jury—that is to say, both parties were of opinion that it should be so tried, and this Court indicated nothing to the contrary. And when both parties are agreed the Court never do indicate anything to the contrary—at least I never saw such a thing.

Now, what part of the expenses was improperly incurred? The appeal for jury trial? That is statutory and a matter of right. No expense was improperly incurred in that. Was any expense improperly incurred at the trial? There is not a suggestion of that kind. There were five witnesses for the pursuer. Your Lordship has suggested nothing to the effect that any one of the five witnesses was a superfluous witness. Then what reason is there for taking anything off the expenses of the trial? None that I can see. Observation has been made—I never assented to it, but I take notice of it now—that a trial in Glasgow might have saved the expense of bringing these witnesses from Glasgow to Edinburgh. What is the expense of five return tickets, I suppose third class, from Glasgow to Edinburgh? Twenty shillings I should suppose. That will be the difference of expense here. The defender has witnesses. He was unsuccessful in the proof: he had more witnesses than the pursuer—I am told he had nine witnesses. Even if he had nine return tickets from Glasgow, what would that amount to? In my early days at the bar, with a view to saving the expense of bringing witnesses here, no inconsiderable matter before the days of cheap railway fares and return tickets, and also with a view to putting the duty of the trial of the case upon gentlemen in the locality from which the case came, we used constantly to give notice of trial at the circuit in Glasgow, Aberdeen, and Perth or elsewhere. I have myself been present as counsel, and also in my early days on the Bench as judge, at jury trials at every circuit town in Scotland. Well, the Court did not approve of sending cases for trial on circuit rather than bringing them for trial here, and gave

such indications as it could of its disapproval, on the ground that counsel would have to attend, and that it was generally cheaper to bring the witnesses here than to send the counsel to the circuit town. These trials at circuit have accordingly ceased.

In these circumstances I can see no ground for any modification at all. It cannot be on the ground that the agent here acted discreditably in taking up a case which he should not have taken up, and which he took up with a view to his own interest, for there is no suggestion that the agent here was censurable in any respect or that he acted otherwise than in a proper, creditable, and praiseworthy discharge of duty. He took up a case which on trial by a jury has been determined to be a proper and sound case, and which has so resulted as I have pointed out. I must therefore tender my protest against announcing in such a case as the present that something is to be taken off the expenses properly incurred in this Court, because if the party had been rightly advised he would not have brought it here—would not have brought it to jury trial at all—but would have had it tried in the inferior court. I cannot assent to that, and I repeat my most express and distinct dissent from it, and therefore say that there is no ground suggested to us here for putting into our interlocutor any words which would import that when we come to examine the Auditor's report we will strike off part of the pursuer's account as a punishment to him for acting on the advice of his man of business and bringing the case here for jury trial, the case having been sent to jury trial with the consent of both parties.

LORD TRAYNER—I am of opinion with your Lordship in the chair that expenses should be given to the pursuer, subject to modification, and that for the reasons which I stated in the case of *Brennan*, and which it would only be wearisome to repeat.

LORD MONCREIFF — I agree with the majority of your Lordships.

The Court pronounced this interlocutor:—

"Apply the verdict: Decern against the defenders for payment of the sum of thirty pounds sterling: Find the pursuer entitled to expenses, but subject to modification," &c.

Counsel for the Pursuer and Appellant—M'Clure — Grainger Stewart. Agents — Oliphant & Murray, W.S.

Counsel for the Defenders and Respondents—Watt, K.C.—C. D. Murray. Agents —Morton, Smart, Macdonald, & Prosser, W.S.

*Tuesday, May 26.*

## FIRST DIVISION.

## CLARK (BARR'S *CURATOR BONIS*) *v.* BARR'S TRUSTEES.

*Process—Summary Petition—Reclaiming—Interlocutor on Merits—Reclaiming-Note Presented in order to Bring under Review Interlocutor not Reclaimed against—Distribution of Business Act* 1857 (20 *and* 21 *Vict. cap.* 56), *sec.* 6.

In a petition by a *curator bonis* for discharge, the Lord Ordinary, on 21st August, pronounced an interlocutor determining certain questions of accounting between the curator and the curatory estate raised by a report of the Accountant of Court, and also a question, in dispute between the curator and the representatives of the deceased ward, as to the curator's right of retention in certain shares. This interlocutor was not reclaimed against. On 26th November the Lord Ordinary pronounced a further interlocutor finding that on payment by the curator of a balance due to the ward's representatives he was entitled to discharge. The petitioner presented a reclaiming-note against the latter interlocutor, and stated that he did so for the purpose of submitting the former interlocutor to review.

*Held* (1) (following *Macqueen* v. *Tod*, May 18, 1899, 1 F. 859, 36 S.L.R. 649) that the right to reclaim against interlocutors pronounced under the petition was wholly regulated by section 6 of the Distribution of Business Act 1857, and (2) that the interlocutor of 21st August was a judgment pronounced by the Lord Ordinary upon the merits in the sense of section 6, and accordingly (3) that the reclaiming-note against the interlocutor of 26th December was an incompetent method by which to bring under review the interlocutor of 21st August.

The Distribution of Business Act 1857 (20 and 21 Vict. cap. 56), sec. 6, enacts:—"It shall not be competent to bring under review of the Court any interlocutor pronounced by the Lord Ordinary upon any such petition, application, or report as aforesaid" [including a petition for the discharge of a judicial factor] "with a view to investigation and inquiry merely, and which does not finally dispose thereof on the merits; but any judgment pronounced by the Lord Ordinary on the merits, unless where the same shall have been pronounced in terms of instructions by the Court on report as hereinbefore mentioned, may be reclaimed against by any party having lawful interest to reclaim to the Court, provided that a reclaiming-note shall be boxed within eight days, after which the judgment of the Lord Ordinary, if not so reclaimed against, shall be final."

On 14th May 1901 a petition was presented