certain receipts, during which Gilmour apparently lost his temper, and then this was followed up quite unnecessarily by his repeating the slander before a third party and again in the office of the collector. I think it possible to infer from these averments (assuming them to be true) that Gilmour had taken a spite of some sort at the pursuer, and that therefore the pursuer is entitled to lay them before a jury, leaving them to judge whether malice was present or not.

The LORD JUSTICE-CLERK and LORD DUNDAS concurred.

The Court adhered.

Counsel for Pursuer (Respondent)—Crabb Watt, K.C.—J. A. Christie. Agent—E. Rolland M'Nab, S.S.C.

Counsel for Defenders (Reclaimers)—Morison, K.C.—M. P. Fraser—A. Crawford. Agents—Campbell & Smith, S.S.C.

Tuesday, May 24.

FIRST DIVISION.
(SINGLE BILLS.)

JACOBS *v.* THE PROVINCIAL MOTOR CAB COMPANY, LIMITED.

Expenses—Tender—Amendment of Record by Defenders after Lodging of Tender—Subsequent Acceptance of Tender—Expenses Occasioned by Amendment.

Where a tender is made by a defender to a pursuer, and after a lapse of time the pursuer accepts it, the defender is entitled to the expenses incurred by him in the period between the making of the tender and its acceptance so far as these have been incurred in the natural progress of the cause.

In an action of damages for personal injury the defenders lodged a tender. Thereafter they amended the record so as to present an entirely different account of how the accident happened. The pursuer subsequently accepted the tender.

Held that the defenders were not entitled to the expenses occasioned by the amendment, these not being expenses incurred in the natural progress of the cause.

Nathan Jacobs, clothier, Trongate, Glasgow, brought an action against the Provincial Motor Cab Company, Limited, in which he sued for £2500 as damages for personal injury which he averred he had sustained through being knocked down by one of the defenders' cabs while crossing the Trongate.

On record the defenders stated—"The pursuer, when first observed by the driver of the cab, was coming from south to north. The driver, in order to make sure of avoiding the pursuer, then directed his course towards the south side of the street, which the pursuer had left. The pursuer, however, after crossing over to beyond the centre of the road, observed the motor cab approaching, and suddenly turned and ran back towards the south side of the street. The driver at once turned his cab towards the northern side of the street, but the pursuer lost his head and, becoming confused, again turned and ran towards the north side, and across the course of the cab."

The record was closed on 22nd January 1910 and an issue approved on January 29th. On 9th February 1910 the defenders lodged a tender.

On 8th March 1910 the defenders in the Inner House craved leave to amend the record by deleting, *inter alia*, the passage quoted and substituting therefor the following:—"The pursuer, when first observed by the driver of the cab, was crossing from north to south. The pursuer, however, after leaving the north pavement observed the motor cab approaching, and halted with a view to allowing the motor cab to pass him on the south, but immediately thereafter he changed his mind and ran forwards towards the south side of the street. The driver thereupon turned his cab towards the northern side of the street, when the pursuer lost his head and, becoming confused, turned and ran into the cab."

The Court allowed the amendment, the pursuer being found entitled to the expenses occasioned thereby as these might be subsequently fixed on taxation.

The case was tried before the Lord President and a jury on 22nd March 1910. In the course of the trial the pursuer accepted the tender, the jury returning a formal verdict in the pursuer's favour for the sum contained therein.

On 24th May the pursuer moved the Court to apply the verdict; to decern in favour of the pursuer for the sum of £201; to find the pursuer entitled to expenses down to 9th February 1910, being the date of the tender; and *quoad ultra* to find the defenders entitled to expenses, except in so far as these had been disposed of in favour of the pursuer by the interlocutor allowing the amendment.

Counsel for the defenders submitted that they were entitled to the expenses since the date of the tender.

LORD PRESIDENT—This point is peculiar, but not, I think, difficult. The law is settled that when a tender is made by a defender to a pursuer, and after a lapse of time the pursuer accepts it, the pursuer gets what is offered by the tender and his expenses to its date; but that, on the other hand, the defender is entitled to the expenses incurred by him in the natural progress of the cause in the period between the making of the tender and its acceptance. That is trite law, and in this case will receive proper and full application.

The peculiarity here is that after the defender had made his tender he came forward with a proposal to amend the record in such fashion as to present an entirely different account of how the

accident happened. We had the matter discussed and allowed the amendment, and found the pursuer entitled to the expenses occasioned by it.

Now, clearly, the expenses incurred by the pursuer by reason of the amendment—as, for example, the expense of going to his witnesses and asking them what they had to say to the new story presented on record—were not only not expenses incurred in the natural progress of the cause, but also were in this case thrown away. Had the defenders' case been properly written in the beginning they would not have been incurred at all. Accordingly it seems to me that in allowing the pursuer the expenses caused him by the defenders' amendment after the date of tender, we are not traversing the general rule regarding the offer and acceptance of a tender. These expenses became necessary owing to the defenders' change of attitude after his tender was in; they were not expenses incurred in the natural progress of the cause; and accordingly I think they should be allowed and an interlocutor pronounced in terms of the notice of motion.

LORD KINNEAR—I concur.

LORD JOHNSTON—I also concur.

LORD SALVESEN—I agree. I think the rule is quite clear that the pursuer must pay all the necessary expenses incurred in the case after the date of tender, but not unnecessary expenses, that is, expenses not incurred in the proper conduct of the case. Here the expense occasioned by the defenders' amendment was not a necessary expense, and it must therefore be borne by the party responsible for it.

The Court pronounced this interlocutor—

"Apply the verdict . . .: Decern against the defenders for payment to the pursuer of £201: Find the pursuer entitled to expenses down to 9th February 1910, the date of the defenders' tender. . . . *Quoad ultra*, find the defenders entitled to expenses except in so far as these have been disposed of in favour of the pursuer by interlocutor of 8th March 1910. . . ."

Counsel for Pursuer—Watt, K.C.—Hon. W. Watson. Agents—Macpherson & Mackay, S.S.C.

Counsel for Defenders—Morison, K.C.—Aitchison. Agents—Balfour & Manson, S.S.C.

Wednesday, May 25.

FIRST DIVISION.

[Sheriff Court at Hamilton.

HENDRY (SIMPSON'S EXECUTRIX) *v.* THE UNITED COLLIERIES, LIMITED.

(*Ante* July 18 1908, S.C. 1215, 45 S.L.R. 944; *aff.* June 24 1909, S.C. (H.L.) 19, 46 S.L.R. 780.)

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, c.* 58), *sec.* 1 (1)—"*Arising out of and in the course of his Employment*"—*Miner Using Improper and Dangerous Means of Exit.*

A miner who was making his way home from the pit, instead of taking the recognised exit provided by the mine-owners for the use of their men, crossed a gangway on to a dirt-bing or waste-heap, down which he proceeded by a steep and very rough, and in wet weather very slippery, track, not formed in any way but worn down into uneven steps. Near the foot of the slope, and while still on his employers' premises, he slipped and fell and was fatally injured. The use of this route was neither sanctioned nor expressly prohibited by the mine-owners, and involved, as the deceased must have known, considerable danger. On these facts the Sheriff-Substitute, acting as arbiter, found that the accident to the deceased did not arise out of and in the course of his employment.

Held that there was evidence on which the arbiter might properly find as he did.

Opinion per curiam that the deceased was not in the course of his employment at the time of the accident.

This case is reported *ante ut supra.*

Isabella Simpson or Hendry, wife of Robert Hendry, miner, Shettleston, executrix-dative of the deceased Mrs Marion Wilson or Simpson, widow, residing there, claimed compensation under the Workmen's Compensation Act 1906 from the United Collieries, Limited, Uddingston, in respect of the death of her (Mrs Simpson's) son Alexander Simpson.

The Sheriff-Substitute (THOMSON) assoilzied the defenders, and at the request of the claimant stated a case for appeal.

The Case stated:—"(1) That the deceased Alexander Simpson, who was a miner in respondents' employment, sustained on 9th July 1907 an accident on respondents' premises, from the effects of which he died four days later. (2) That he was survived by his mother Mrs Mary Wilson or Simpson (who was partially dependent upon him) for thirteen weeks, viz., till 16th October 1907, when she died without having made any claim against the respondents for compensation in respect of his death, and that the appellant now claims as her executrix what was due to Mrs Simpson under the said Act as compensation in respect of