opinion at the time that this was a serious statement to make about your traveller? (A) I never gave the subject a thought at all; Bernhardt was in our employment, and we were quite capable of looking after our travellers without other people interfering. (Q) Did you understand from the letter that it practically accused Bernhardt of giving false evidence?" There again the question relates to something which is not innuendoed. "(A) I really cannot remember what was in the letter." In other words, he finished his evidence without a single question as to the innuendo being put to him.

I think that ends the case on the second issue.

In what I am saying now I am not going back on what I said in a charge to a jury in the *Tarbert School Board* case (8 F. at p. 695, 43 S.L.R. at p. 490), where I told the jury that upon the question whether a certain series of articles in a newspaper were fair comment upon members of a public body or were slanderous, I thought they would be much more influenced as men of the world who read newspapers than they would be by what certain witnesses told them of the impression that the articles made upon them. I think that is quite good law, and I find that the same thing was said long ago by a higher authority than I am in the case of *Broome* v. *Gosden* (1 C.B. 728, at 732), which is cited in all the English books as a leading authority upon the matter. The question there was as to the true meaning of the word "hocussed." Certain witnesses having given their views as to the meaning of the word, the jury found for the defendant —that is to say, they found, contrary to the view of these witnesses, that the innuendo was not made out. And the Court, which was presided over by Chief-Justice Tindal, say the jury were not bound to adopt the opinion of the witnesses. I think that is so. I do not think that because a witness comes and says to you that the meaning of a statement is so and so, the jury are necessarily bound to adopt that view. They are bound to look at it as men of common sense themselves. But that is a different proposition from saying that you are entitled to prove an innuendo in (as I say here) a case in which the slander never went beyond three people at the most, without asking a single one of those people whether when they read the letter they took the detrimental meaning out of it which the pursuer puts in the innuendo.

Accordingly, upon the whole matter, I think that the verdict upon both issues cannot be supported on the evidence, and that there must be a new trial.

LORD KINNEAR, LORD JOHNSTON, LORD MACKENZIE, and LORD DEWAR concurred.

The Court made the rule absolute, set aside the verdict, and granted a new trial.

Counsel for Pursuer and Respondent—Watt, K.C.—Ingram. Agents—Mackenzie & Fortune, S.S.C.

Counsel for Defender and Appellant—M. P. Fraser—Armit. Agents—Clark & Macdonald, S.S.C.

Wednesday, March 20.

FIRST DIVISION.

SLAVIN *v.* TRAIN & TAYLOR.

(*Ante*, p. 93.)

Expenses — Master and Servant — Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (4) — *Unsuccessful Action against Employers — Motion for Assessment of Compensation — Expense of Obtaining Award.*

A workman raised an action of damages against his employers, in which the defenders obtained the verdict and a bill of exceptions was refused. On the defenders moving the Court to apply the verdict the workman moved the Court to assess the compensation to which he was entitled under the Workmen's Compensation Act 1906. Thereafter the parties adjusted the amount of compensation, and the workman accordingly moved the Court to assess the compensation at the adjusted rate.

The Court made an award of compensation at the adjusted figure, under deduction always of the defenders' account of expenses, and *found* the pursuer entitled to the expense of obtaining the award, modified at £5, 5s.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), sec. 1 (4), is quoted in the previous report.

Peter Slavin, Trongate, Glasgow, *pursuer*, raised an action against Train & Taylor, contractors, Rutherglen, *defenders*, for payment of £500 as damages for personal injury sustained by him while in their employment.

The *facts* of the case, and the *procedure* therein up to the advising of 24th November 1911, appear in the previous report of the case (see page 93).

Thereafter the pursuer presented to the Lord President a note, which, after narrating the procedure up to the advising of 24th November, proceeded — "Thereafter certain negotiations took place between the parties on the basis of the medical and other evidence led in the principal case and of the pursuer's earnings, as the result of which the compensation payable to him has now been arranged and a joint-minute has been prepared and lodged, and parties desire your Lordship without further remit to assess such compensation at the rate of 10s. per week, dating such compensation from 6th August 1910.

"May it therefore please your Lordships to pronounce an interlocutor assessing the compensation due to the pursuer under the Workmen's Compensation Act 1906 at the rate of 10s. per week from 6th August 1910, the date of the accident to the pursuer, under deduction always of the amount

of the defenders' account of expenses in the action as taxed, and further, to grant a certificate of the compensation so awarded, and of the Court's directions as to deduction of expenses in accordance with the terms of the said Act, and to do further or otherwise in the premises as to your Lordships may seem necessary."

On 20th March the Court (LORD PRESIDENT, LORD KINNEAR, LORD JOHNSTON, and LORD MACKENZIE) pronounced this interlocutor—

> "The Lords, including the Lord President, who presided at the trial, having heard counsel for the parties on the bill of exceptions, disallow the exceptions; of consent apply the verdict of the jury, and in respect thereof dismiss the action and decern: Find the defenders entitled to expenses, and remit the account thereof to the Auditor to tax and to report: Further, having heard counsel for the parties, on the motion for the pursuer for a finding and award under the Workmen's Compensation Act 1906, find that the pursuer is entitled to compensation under said Act, interpone authority to the joint-minute for the parties . . . and in terms thereof make an award of compensation in favour of the pursuer for the sum of 10s. per week from 6th August 1910, under deduction always of the amount of the defenders' account of expenses above found due, as the same shall be taxed: Appoint a certified copy of this interlocutor to be issued as a certificate of the above award within the meaning and intent of section 1 (4) of the said Act: Find the pursuer entitled to the expense of obtaining the above award, and decern against the defenders for the sum of £5, 5s. as the modified amount thereof."

Counsel for the Pursuer—Munro, K.C.—A. M. Mackay. Agents—St Clair Swanson & Manson, W.S.

Counsel for the Defenders—Crabb Watt, K.C.—C. H. Brown. Agents—Inglis, Orr, & Bruce, W.S.

Wednesday, March 20.

FIRST DIVISION.

[Lord Skerrington, Ordinary.

MORRISON *v.* MORRISON'S EXECUTRIX AND OTHERS.

Expenses—Title to Sue—Executor—Beneficiary Suing in Executor's Name—Caution for Expenses — Consignation — Amendment—A.S., 20th March 1907, *sec.* 2 (*a*).

The executor of a deceased intestate having declined to raise an action to establish a partnership, of which A, one of the next-of-kin, alleged that the deceased was a member, A raised the action in his own name. The Lord Ordinary having held that A had no title to sue, A reclaimed, but in the Inner House craved leave to amend, and to sue in the executor's name on consignation of a sum of £200 in lieu of caution for expenses.

Circumstances in which the Court *held* that A was entitled to proceed on consignation of the sum named, but with leave to the executor to apply at any stage for further indemnification should such appear to be necessary.

The Act of Sederunt, 20th March 1907, section 2 (*a*), enacts—"Where an action or other proceeding has been commenced in the name of the wrong person as pursuer, or where it has been commenced without a person whose conjunction may be deemed necessary to make a good instance, or where it is doubtful whether it has been commenced in the name of the right person, the Court or Lord Ordinary, if satisfied that it has been so commenced through *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, may allow any other person to be sisted as pursuer in substitution for, or in addition to, the original party, on such terms as to expenses as to the Court or Lord Ordinary shall seem proper."

On 3rd June 1911 Robert Morrison, leather merchant, Blackness, *pursuer*, brought an action against Mrs Margaret M'Killop or Morrison, Hampton Villa, Linlithgow, widow and executrix of Alexander Morrison junior, leather merchant, Linlithgow, and others, *defenders*, in which he sought declarator that his (the pursuer's) brother, the late William Morrison, was at the time of his death a partner of the firm of Alexander Morrison & Sons, leather merchants, Linlithgow, and entitled to an equal one-third share of the capital thereof. Conclusions for accounting and for payment to George Steel Morrison as William's executor followed.

The *facts* are given in the opinion (*infra*) of the Lord Ordinary (SKERRINGTON)—[*vide* also the opinion of the Lord President]—who on 24th January 1912 sustained the defenders' plea of no title to sue and dismissed the action.

Opinion.—"The pursuer is a brother and one of the five next-of-kin and heirs *in mobilibus* of William Morrison, who died on 18th May 1905, unmarried and intestate. The pursuer was resident in Johannesburg at the time of the intestate's death, and two other brothers of the intestate, viz., Alexander Morrison junior, and George Steel Morrison, were appointed executors. The former died in January 1906, and the latter is the sole surviving executor of the intestate. He is cited, but only for any interest he may have as executor or as an individual. His sister Mrs Brockley is also called for her interest. The defenders are (1) the widow and executrix of the said Alexander Morrison junior, and (2) the trustees of the deceased James Morrison, who was also a brother of the intestate, and who died on 26th August 1910. The first conclusion of the action is for declara-