apprentice. If we were driven to the common law we would be driven to say that by the common law you could proceed either way; and then a nice question would remain whether the provisions of the section take the case out of the common law. But I am relieved from that by holding that it is a mere error of punctuation, that the comma should be placed after the word "absconded," and not after the word "apprentice," and that the provisions of the section apply to either case.

The other Judges concurred.

Agent for Suspender—Michael Lawson, S.S.C.

Agent for Respondent—John Martin, W.S.

LAIDLAW *v.* SHARKEY.

Summary Procedure Act, Sec. 24. A conviction by justices upon a complaint under the Summary Procedure Act, instituted beyond six months from the time when the matter of complaint arose, *suspended*, in respect of the limitation in Sec. 24 of the Act.

This was a suspension of a convictoni obtained on 13th September 1866, against the suspender, Adam Laidlaw, glassman, in the service of Borron & Co., bottle manufacturers, Glasgow, by the respondent John Sharkey, manager for the said company, before two of the Justices of the Peace for the county of Lanark. The proceedings commenced with a petition and complaint at the instance of the respondent, presented under the Summary Procedure Act (27 and 28 Vict., c. 53), charging the suspender with a contravention of sec. 3 of 4 Geo. IV., c. 34, in so far as the suspender having engaged to serve the said firm of Borron & Co., for the space of one year from and after the 18th February 1865, and having entered upon his service, did on or about the 21st August 1865 absent himself from the said service, and has ever since continued absent therefrom, in places in Ireland and elsewhere furth of Scotland unknown to the respondent. Upon the warrant issued under this complaint the suspender was apprehended in Ireland, and having been taken before two of the Justices of the Peace for Lanarkshire, was by them convicted of the offence charged against him, and on 13th September 1866 adjudged to suffer three months' imprisonment with hard labour, and abatement of wages for the time during which he was sentenced to remain in prison.

In support of the suspension, FINLAYSON (with him MAIR) argued—The complaint was not instituted within the time limited by sec. 24 of the Summary Procedure Act, which enacts that every such complaint shall be instituted within six months from the time "when the matter of such complaint arose." The matter of the complaint arose when the suspender left his employment on the 21st August 1865, which is the only *terminus a quo* mentioned in the complaint. But even though it should be said that the matter of complaint arose only on the 17th February 1866, when the contract expired, the complaint was not brought till 17th August 1866, six months and one day thereafter, allowing thirty days to each month.

WATSON (with him YOUNG) replied—The matter of complaint is the non-fulfilment of the contract of service. The continued absence of the suspender from 21st August 1865 to 18th February 1866, the date on which the contract expired, was one offence, and that offence was therefore within six months from the date of the complaint. The complaint would have been brought sooner, but that the suspender was absent in Ireland and other places furth of Scotland to the respondent unknown.

The LORD JUSTICE-CLERK—Immediately upon the suspender's absenting himself the respondent could have got a warrant for his apprehension, and held it over him to make use of when he came back. That would have done away with the question of limitation.

The Court unanimously passed the bill of suspension.

The LORD JUSTICE-CLERK—This is a question of great importance, and it is necessary to attend to the precise facts before us. The Master and Workman Act, 4 Geo. IV., c. 34, by sec. 3, makes it an offence among other things if a person, having entered into a contract of service, shall absent himself or herself from the said service before the time of expiry of his or her contract. That appears to be the nature of the charge against the workman here. The complaint alleges that he (the workman) had entered the employment of Borron & Co. under a written contract, which bound him to serve them for twelve months from 18th February 1865; and that having done so, the said Adam Laidlaw, on 21st August 1865, absented himself from his service, and has ever since continued absent therefrom. That we consider to be a charge under that part of the statute to which I have referred. Now the complaint is presented upon 17th August 1866, and the objection is taken that that is more than six months after the time when the matter of complaint arose; and if that be so, it is said that the complaint cannot be entertained because it has been instituted beyond the period limited for bringing the complaint under the Summary Procedure Act. Now, this complaint is presented under the Summary Procedure Act, and so of course the Act applies to it whatever may be the case with regard to other complaints not instituted under the Summary Procedure Act. Now, there is no time limited for bringing complaints by 4 Geo. IV., c. 34; but the clause in the Summary Procedure Act that a complaint must be brought under that Act within six months from the time "when the matter of the complaint arose" applies. Now, we have to consider when the matter of the complaint arose. I am of opinion, and I understand the Court are also, that the matter of this complaint arose when the workman absented himself from his work; and therefore that we must give effect to sec. 24 of the Summary Procedure Act.

MAIR having moved for expenses,

YOUNG submitted that this was not a case for expenses, inasmuch as the Court had sustained an objection not stated in the inferior Court.

The Court modified the expenses to £7, 7s.

The following interlocutor was pronounced:—"In respect that the complaint was not instituted within the time limited by sec. 24 of the Summary Procedure Act, pass the bill."

Agent for Suspender—Michael Lawson, S.S.C.

Agents for Respondent—Gibson-Craig, Dalziel, & Brodies, W.S.

COURT OF SESSION.

FIRST DIVISION.

Tuesday, Nov. 27.

THOMSON *v.* MACLEAN'S TRUSTEES.

(*ante*, vol. ii. p. 245).

Expenses. A pursuer who sued for £34, 16s. 6d., and obtained a verdict from a jury for £30,

16s., held to have been substantially successful, and allowed full expenses.

This case was tried at the July sittings. The pursuer claimed £34, 16s. 6d. as due to him by the late Mr Maclean. The jury found for the pursuer except in regard to two items of £3, 10s. and 10s. 6d. This verdict was to-day applied.

The pursuer having moved for expenses, the defenders objected on the ground that if the explanations made by the pursuer in giving his evidence had been made before the action was raised, the sum found due would have been paid. The Court, however, allowed expenses.

The LORD PRESIDENT—It is said that this action would not have been resisted if the pursuer had at first made the explanations which he ultimately made at the trial in the witness-box. But the defence was not abandoned even when the explanations were made. On the contrary, the defenders led evidence, and the trial was extended into a second day after the explanations were made. Then the pursuer says that in point of fact he did at the beginning communicate to the defenders the explanations which he gave afterwards; and although this is denied by the defenders, it did appear in the course of the evidence that there was an attempt at making explanations at a meeting in a public-house, which were not considered satisfactory. The great question betwixt the parties had reference to a piano and a mirror, and it was as to them that these explanations were given. I think, therefore, that as the pursuer has substantially succeeded in his case, expenses must follow.

Counsel for Pursuer—Mr Orphoot. Agents—Stewart & Wilson, W.S.

Counsel for Defenders—Mr Inglis. Agents—H. & A. Inglis, W.S.

CUMMING *v.* BAILEY AND TROTTER.

Bankruptcy—Recal of Sequestration—Objection to Concurring Creditor's Debt. Petition for recal of a sequestration on the ground that the concurring creditor's debt was constituted by a bill which was antedated, and that no debt was truly due, *refused*. *Observed* that in such an application the objection to the debt must be one capable of instant verification, and the objector cannot enter into a count and reckoning to show that no debt is due.

This was a petition by John Cumming, photographer, Hanover Street, Edinburgh, for recal of the sequestration of the estates of Joseph Bailey Cartlidge, formerly a photographer in Edinburgh, which was awarded on 31st May 1866, on the application of the bankrupt himself, with the concurrence of William Bailey, china merchant, Edinburgh. The petition for recal was opposed by the concurring creditor, and also by Mr Samuel Edgar Trotter, accountant, the trustee.

The Lord Ordinary (Kinloch) refused the petition. His note, which is subjoined, explains the grounds on which the recal was asked, as well as those on which his Lordship thought it should be refused :—

"It appears to the Lord Ordinary that the petitioner, who for a certain period concurred in the sequestration, and took part in its proceedings, has not set forth sufficient grounds for a recal of the sequestration. The documents on which sequestration was awarded are *ex facie* regular. It is objected that the bill produced by the concurring creditor must have been antedated, because, while the bill is dated 17th August 1865, the mark on the Government stamp shows that the stamp was not issued till November thereafter. But that a bill is antedated—that is to say, has a date put on it anterior to that on which it was made up—appears to the Lord Ordinary to afford no objection to the document, nor to raise the slightest implication of fraud. Such antedating occurs in everyday practice, as where goods are sold or money advanced on a particular day, but the bill granted for the debt is not made up till some time after, and then is made to bear the true date of the transaction, and that from which the course of credit was to run. It is a well known circumstance that, in making up bills for discount, they are frequently dated a month or two back, so as to give them the appearance of a shorter currency, and make them take more readily at the bank. But this was never held to nullify or disparage a true or genuine bill. Irrespective of this objection to the bill, there is nothing alleged sufficient to set aside the debt of the concurring petitioner considered as the ground of the sequestration. To do this effectually, there must be stated an objection to the debt capable of immediate verification. When the documents are *ex facie* correct, it is not open to an objector to offer to enter into a count and reckoning, and show that no debt is due. This is no answer to a petition for sequestration founded on *ex facie* valid documents, and as little is it a ground for recal. There is no anomaly in supposing that, in discussing the claims of ranking, there may be found no debt due to the petitioning creditor, and yet in holding that this would not vitiate the sequestration if issued on documents *ex facie* unexceptionable."

The Court to-day adhered. The abstract ground for recal founded on was held not to be a good one; and although various other matters had been referred to in the discussion, no inquiry into them had been asked for. In regard to the allegation that no debt was truly due, it was said that although the debt might ultimately be found unavailing, that would not affect the validity of the sequestration. It was also observed by the Lord President that it was a pity to see so much litigation in so small an estate, but that if the parties preferred litigation to dividends, the Court could not help it.

Counsel for Petitioner—Mr Young and Mr W. N. M'Laren. Agent—James Barton, S.S.C.

Counsel for Respondents—Mr Cook and Mr F. W. Clark. Agent—L. Mackersy, W.S.

KIELLAR *v.* MAILLER.

Reparation—Slander—Justification—Counter Issue. A defender proposed to take a counter issue in justification of a portion of an alleged libel, having averred that the statement made by him was well founded. Counter issue disallowed.

This was an action of damages for slander at the instance of James Kiellar, teacher of the Woodside Institution, in the parish of Cargill, Perthshire, against James Mailler, farmer, Links, in said parish. The alleged slander was uttered in a letter published in the *Perthshire Courier* in September 1863, and signed with the initials "J. M." The letter had reference to the well-known Burrelltown School case, and was said to be written by the defender concerning the pursuer, and to represent him "as a man guilty of wilful and deliberate falsehood, and famous for slander, falsehood, and mischief-making." One passage in the letter contained these words—"But this personage is