statute in reference to adjournments make it clear that the true construction of the section is to dispense with the actings of two justices.

Section 11 provides, that "any respondent brought before the Court by a warrant of apprehension under the authority of the Act, shall be entitled to require," &c., "and any interlocutor adjourning the diet may be in the form No. 6 in the Schedule (H) to this Act annexed."

And Schedule (H) has this form—"The Justice (*or* Sheriff *or* Magistrate) adjourns the diet to the day of , and appoints the said J.K. to appear personally on that day at o'clock noon.

"*Signature of Judge.*"

This schedule, which is to be signed by "the judge," is exactly conformable to the form of Schedules C, D, E, and F, where one justice suffices, and stands in contradistinction to the form of the schedules under K, where the Act of Conviction is subscribed. There the subscription may be that of a single justice, where a single justice may convict, but must be subscribed by "judges" where more than one is competent.

I come to the conclusion that under this statute a valid act of adjournment may be competently effected by a single judge.

There is another objection in point of form on the ground of the absence of the names of the justices, and, I presume, their designations in the conviction.

The subscription of the justices in their character of Justice of Peace for the county removes any substantial ground for such an objection. The filling up of the blank in the schedules referred to, contrasted with blanks occurring in other schedules where the word "designation" appears, is conclusive as to the absence of its necessity where not required. Further, the blank is plainly intended to point to numbers. If names and designations had been required, the numbering of the justices would have been unnecessary. The word "of" plainly points to the filling up of the blank by the *number*.

The remaining reasons really go to the merits of the question decided by the justices.

The numerous pleas directed to the facts, as they are stated to have been disclosed in evidence, involve of necessity a consideration of the evidence in the cause.

The case put in the 7th plea, and which is put under various aspects in the others, goes upon this —that they were, in exercise of their lawful calling, fishing for white fish, using instruments adapted for that fishing, having no intention thereby to catch salmon. The salmon are found taken or killed on the sand they say in the 10th reason of appeal.

There can be no question of the sufficiency of such a case to exempt from conviction if the facts are so. If, in the exercise of their legal calling as fishers of white fish, a salmon accidentally finds its way into their nets—which, it may be, is relieved when captured—if they had really no intention to capture salmon at all—there would be no case for a conviction under the Act. The pleas upon the facts, as stated, raise the issue of not guilty. The justices have given a verdict upon that issue against them. The finding is, they had the intention, they were fishing for salmon. If the justices arrived upon the evidence before them at a wrong conclusion, we have no power to set them right, because we have no materials in the shape of the evidence, or notes of it, upon which we can review their proceedings. The Salmon Fishing Act, by an express enactment, wisely or unwisely, prohibits a record of evidence.

Lord Cowan concurred. The first of the objections seemed to be in terms met by the 21st section of the Act, which provided that any warrant or proceeding prior or subsequent to the conviction on judgment, should be subscribed by one justice; and the second objection was met by the 34th section, for it was an objection not to substance, but in point of form. The names of the justices were supplied by their subscription of the conviction. As to the merits, he would only say that the express provision of the statute in the 11th section was, that fishing in close time, in any way except by rod and line, is illegal, and that obviated the necessity of any argument as to poke nets or other nets.

The other Judges concurred.

Appeal dismissed.

Agent for Appellants—R. Finlay, S.S.C.

Agent for Respondent—James Steuart, W.S.

Saturday, June 1.

JACKSON *v.* JONES.

Appeal—Complaint—Amendment of Libel—Summary Procedure Act. Amendment of libel, not going to alter character of offence charged, sustained.

This was another appeal against a conviction obtained for a similar offence. The complaint had charged a contravention of the Salmon Fisheries Act on 11th October 1866. At the trial the prosecutor obtained leave to alter the date to the 12th October. To this alteration the appellant objected as illegal.

Lord Justice-Clerk—The act of amendment seems to be justified by the express provisions of the 5th section. The variance between the charge as made and the charge as allowed to be proved is of a nature affecting, not "the character of the offence charged," but the precise period of time at which that precise offence took place, a variance which might come to be one of a few minutes, and could not affect the question materially; at all events, nothing was averred as to the party being misled, and no adjournment was moved, and the objection therefore is merely formal. The amendment allowed is authenticated by the Clerk of Court, as required. It is said that this was admissible only after the trial had begun. It is more for the interest of the party complained against that it should be stated before the proof began, and an amendment not varying the character of the offence may be made, according to the Act, "at any stage of the proceedings."

Agent for Appellant—R. Finlay, S.S.C.

Agent for Respondent—James Steuart, W.S.

COURT OF SESSION.

Saturday, June 1.

SECOND DIVISION.

FINLAYSON *v.* GIBB.

Suspension—Charge on Bill—Fraud. Circumstances in which (affirming judgment of Lord Barcaple) suspension of a charge on a bill refused.

An innkeeper in Motherwell inserted an advertisement in the *Glasgow Herald* in the following terms:—"Spirit shop for sale in the stirring burgh of Motherwell, convenient to the Cross; a rare opening to a person of enterprise. It is seldom such an opportunity occurs. Utensils and fittings at a sum. Stock, &c., at valuation. Parted with solely as the present tenant is retiring from the trade. Has always done a large business. For particulars, apply personally to D. Crichton, auctioneer, Coatbridge, who only can conclude a bargain." One of the complainers, being anxious to get the other complainer, his son, into business, negotiated for the purchase from the advertiser of the stock, fixtures, &c., of the house. The nett amount of the purchase was £99, 18s. 0½d., of which £50 was paid in cash, and a bill was granted by the complainers for the balance of £49, 18s. 0½d. The respondent, at the time of the purchase, was a creditor of the advertiser for sums advanced to him, and acquired right in partial liquidation of these advances to the said bill, in virtue of a special indorsation by the advertiser to "pay Mrs Janet Laird or Gibb or her order." The present action is a suspension of a charge upon this bill, and is rested on the allegation by the complainers that the purchase was made on the strength of statements as to the flourishing nature of the business, which were not true, but, on the contrary, were fraudulent, and were made with the object of entrapping the complainer into a purchase. It was further said that the respondent was not an onerous holder of the bill, that she was a conjunct and confident person with the advertiser, that one of the complainers was a minor at the date of granting the bill (being then only twenty years of age) and that the respondent had become possessed of the bill after it fell due.

The complainers consigned the amount of the bill. It was not disputed by them that they had been in possession of the premises with the stock and fixtures purchased, from the date of the granting of the bill (a period of six months) and that they were still in possession. And further, it was admitted that they had made no attempt to set aside this transaction by a process of reduction.

Lord Barcaple had refused the note of suspension with expenses, and to-day the Court unanimously adhered. Their Lordships were of opinion that the complainers' statements, even though taken to be true, were not relevant to warrant the suspension of the charge on the bill, whatever effect they might have had in a process of reduction.

Agent for Complainer—W. Officer, S.S.C.
Agent for Respondent—John Leishman, W.S.

Tuesday, June 4.

FIRST DIVISION.

HOEY *v.* M'EWAN & AULD.

Obligation—Contract of Service—Partnership—Death of Partner—Specific Implement—Damages. H. contracted with the firm of M'E. & A., accountants, to serve them as clerk for five years for an annual salary and a per centage on profits. One of the partners of the firm died during the currency of the contract. The remaining partner refused to act any longer on the agreement. Held that the contract was one of personal service, terminated by dissolution of the firm consequent on the death of the partner; that there was no breach of contract by death of the partner; and that H. could neither get specific implement nor damages, but only the balance of annual salary due for the period between the partner's death, and the end of the year of service, under deduction of his earnings in other ways during that time.

This was an action brought by David George Hoey, accountant in Glasgow, against M'Ewan & Auld, accountants in Glasgow, and William Auld, the surviving partner of that firm, and the representatives of Andrew M'Ewan, the other and deceased partner; and the object of the action was to enforce implement, or obtain damages for breach of an agreement between the pursuer and the firm of M'Ewan & Auld. The pursuer averred that when he first entered the service of the firm, he was given to understand by Mr M'Ewan, the senior partner, that, if he worked for it, he might expect, at a future period, to become a partner; that in May 1865 some negotiations took place between the partners and him resulting in a minute of agreement "that Mr Hoey shall continue to have his salary, at the rate of £300 per annum, up to and including the 30th day of September next; that from the 1st day of October next, and thereafter during the space of five years from that date, Mr Hoey shall be paid annually, in addition to his salary of £300 per annum, an allowance of 10 per cent. on the profits arising from the business of Messrs M'Ewan & Auld; that in consideration of the salary and allowance above provided for, Mr Hoey shall devote his whole time and attention to and in promoting the interest of the business of the said firm of M'Ewan & Auld." This agreement was signed by the pursuer, and by M'Ewan & Auld, and Andrew M'Ewan. The pursuer continued in the employment of the firm. He averred that when the agreement was entered into, M'Ewan was in bad health, and that this was partly the reason why the firm determined to raise the pursuer at once into a more important and responsible position. Owing to M'Ewan's bad health, the pursuer had to do a great deal of the accounting work of the firm, and his position and duties resembled more those of a partner than a clerk.

Mr M'Ewan died on 11th June 1866. Thereafter the defenders refused, after that date, to fulfil the agreement. Mr Auld carried on the business of the firm until 18th June 1866. He then assumed Mr J. Wylie Guild, accountant in Glasgow, as partner. The combined business was now carried on by the firm of Auld & Guild.

The defenders' averments were to the effect that in May 1865 Mr M'Ewan mentioned to Mr Auld that the pursuer had signified a desire to be admitted a partner; that Mr Auld was strongly opposed to this, and it was ultimately arranged merely to allow the pursuer a per centage over and above his salary; that Mr M'Ewan carried out the arrangement by concluding with the pursuer the agreement founded on, Mr Auld not being aware at the time of any written agreement having been entered into. After M'Ewan's death, in June 1866, Mr Auld intimated to the pursuer that from that date his service was terminated by the dissolution of the firm consequent on M'Ewan's death. The defender, Mr Auld, farther averred that since the date of the said agreement the pursuer had on several occasions represented himself as a partner of the firm, which he was not authorised to do, and also that he had, in violation of the provisions