Act was passed justice could have been obtained in another suit. The meaning of the Act is to do justice in this case, and not in another case. If the question now before us were whether the facts set forth in the proposed amendment would prove the defender's case, I might hesitate as to my judgment. But no proof has been allowed in the case, and we cannot enter on an inquiry whether the defence can be made out. I am sorry that, taking this view of the case, I cannot agree in the opinions which your Lordships have delivered. I think the Sheriff's interlocutor should be recalled and the amendment allowed.

Lord Rutherfurd Clark—I agree with your Lordship and with Lord Young.

The Court refused to allow the amendment, and dismissed the appeal.

Counsel for Pursuers (Respondents)—Rhind. Agent—William Officer, S.S.C.

Counsel for Defenders (Appellants)—Thorburn. Agent—James Reid, W.S.

Friday, November 14.

SECOND DIVISION.

[Sheriff of Lothians.

THOMSON *v.* JOHN B. ROBERTSON & COMPANY.

Master and Servant — Reparation — The Employers Liability Act 1880 (43 *and* 44 *Vict. cap.* 42), *secs.* 6 *and* 7—*Notice—Omission to State Cause of Injury.*

A workman was injured at his employer's works and taken to an infirmary. Within six weeks thereafter his wife addressed to the employer a letter asking him for money. In it she gave her husband's Christian name and ordinary address, and the date and nature of his injury, but she did not give the cause of the injury. *Held* that the letter was a sufficient notice of injury under sections 4 and 7 of the Employers Liability Act 1880.

By the Act 43 and 44 Vict. cap 42, section 4 (The Employers Liability Act 1880) it is enacted—"An action for the recovery under this Act of compensation for an injury shall not be maintainable unless notice that injury has been sustained is given within six weeks . . . from the occurrence of the accident causing the injury."

By section 7 it is enacted—"Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or if there is more than one employer, upon one of such employers. . . . A notice under this section shall not be deemed invalid by reason of any defect or inaccuracy therein, unless the judge who tries the action arising from the injury mentioned in the notice shall be of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy, and that the defect or inaccuracy was for the purpose of misleading."

On 31st October 1883, Adam Thomson, while in the employment of the defenders, John B. Robertson & Company, manufacturing chemists and artificial manure manufacturers at Dunbar, fell from a wooden platform on which he was standing for the purpose of making some repairs on the pipes connected with some tar tubes at the defenders' works, and fractured his lower jaw in two places. He was taken to the Edinburgh Royal Infirmary, where he remained for eight weeks. On the 5th December 1883 his wife sent the following letter to Mr Robertson, the sole partner of the defenders' firm :—

"*Bone Mills, Dunbar, 5th December* 1883.

Dear Sir,—I find I will need some more money, and will you please oblidge me with ten shillings. It is now five weeks since Adam got his accident. His jaw is so badly smashed that he will never be the same man agin. Adam has been advised to get damages from you. James Hill got some money when he got hurt, and as the Insuarence Company paid him, I do not see why Adam, who has been so badly hurt, should not get some too.—Yours respectfully, Janet Thomson."

Thereafter Thomson raised this action of damages under the Employers Liability Act 1880 for the sum of £100 as compensation for his injuries. He relied on the letter just quoted as a notice.

The defenders, *inter alia*, pleaded—"(1) The pursuer not having given the requisite notice under the Employers Liability Act, the action is incompetent under said Act, and ought to be dismissed."

The Sheriff-Substitute (Sherriff) sustained this plea and dismissed the action.

"*Note.*—This is an action founded only on the Employers Liability Act, and under the fourth section it is provided that such an action 'shall not be maintainable unless notice that injury has been sustained is given within six "weeks" from the occurrence of the accident causing the injury.' By section seventh it is provided that the 'notice' shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained. It appears that the notice must be in writing, and there are special provisions as to the manner of serving it and as to the party on whom it may be served.

"The letter of date 5th December 1883, addressed by the pursuer's wife to the defender, is put into process as the notice given in terms of the statute, but what is required in a 'notice' is not contained in that letter. It may be that the date of a letter written by the pursuer's wife may be held to be the address of the pursuer, but the Sheriff-Substitute is inclined to think that what should be given is a statement of where the injured person is to be found, in order that the party sought to be made liable in damages may have an opportunity of procuring evidence as to the condition of the injured person. In this case, as it appears from the condescendence, the pursuer was at the date of the notice an inmate in the Royal Infirmary in Edinburgh. The pursuer's name is not stated. No doubt the defender would quite well understand who is referred to as 'Adam,' but that is only a part of the pursuer's name. Further, the cause of the injury is not stated. The result of the injury is very well stated, viz., that the poor man's jaw was so badly smashed 'that he will never be the same man again,' but that is not a statement of the cause of the injury. The letter goes on to state that 'Adam' has been advised to claim damages, but

there is no statement of any intention or resolution to do so. The date of the injury may be held to be sufficiently given in the statement that at the date of the letter (5th Dec. 1883), 'It is now five weeks since Adam got his accident' (31st Oct.).

"By the last subsection of section 7 of the statute there are provisions that a notice shall not be deemed invalid by reason of any defect or inaccuracy therein. That is a wise and fair provision for the protection of illiterate people, but though any defect or inaccuracy, so long as there does not appear to be any fraudulent intention, will not render a notice invalid, the Sheriff-Substitute is humbly of opinion that the writing founded on as notice must show that it was written with the view of giving notice of an injury and of an action. Now, the letter No. 6 of process is certainly not a letter written for that purpose. It is an intelligible and well-written letter. The object is to crave a payment of ten shillings; that is clearly all the writer had in view, and it cannot be fairly said to be a notice under the statute.

"Taking that view of the letter, the Sheriff-Substitute must sustain the first plea-in-law stated for the defender."

The pursuer appealed to the Court of Session, and argued—(1) The notice need not necessarily be in writing. The reference to written notice in the Employers Liability Act is not imperative but merely directory. (2) The notice contained in the letter of 5th December was quite sufficient to satisfy the terms of the Act. This was an Act to enable illiterate people to obtain equitable compensation for injuries received in the course of their work, and must be construed in a liberal spirit. The English cases on the subject did not invalidate a notice when the date or cause of accident were amissing. The only object of the notice was to give notice of injury, and that was amply done in the letter. (3) In any view, the Sheriff should not have sustained the objection at this stage; he should have allowed a proof, as was contemplated by the last clause of section 7 (*supra cit.*).

The defenders, in supporting the interlocutor of the Sheriff-Substitute, cited *Moyle* v. *Jenkins*, December 6, 1881, L.R., 8 Q.B. Div. 116; *Keen* v. *The Millwall Dock Company*, March 15, 1882, L.R., 8 Q.B. Div. 482.

At advising—

The Lord Justice-Clerk delivered the opinion of the Court as follows:—It appears to me that the writing referred to is a sufficient notice that Adam Thomson had been hurt in the employment of the defenders, and hurt badly, by the fracture of his jaw, and that he had been advised to sue for damages. The question which has been raised is, whether the letter is a sufficient notice in terms of the Employers Liability Act? I am of opinion that it is. The only real objection to it is, that the cause of injury, required by the 7th section of the Act to be in the notice, is not given here. I think that is a very critical objection, and I am not in the least disposed to sustain it, nor do I think that courts of law are well employed in discovering unsubstantial obstructions to the provisions of an Act meant to benefit workingmen. The 7th section provides as follows—"A notice under this section shall not be deemed invalid by reason of any defect or inaccuracy therein, unless the judge who tries the action arising from the injury mentioned in the notice shall be of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy, and that the defect or inaccuracy was for the purpose of misleading." Therefore by itself, and so stated, I am not prepared to sustain the objection. If at the time of proof the Judge thinks prejudice has been done, and that there was a purpose to mislead, then the statute gives a remedy. In the meantime I am not disposed to throw the action out.

The Court sustained the appeal, recalled the judgment, and remitted to the Sheriff-Substitute.

Counsel for Pursuer (Appellant)—Law. Agent—James Reid, W.S.

Counsel for Defenders (Respondents)—MacWatt. Agents—H. & H. Tod, W.S.

Saturday, November 15.

FIRST DIVISION.

[Sheriff of the Lothians and Peebles.

THE DOUGLAS SCHOOL TRUSTEES *v.* MILNE.

Master and Servant—School—Dismissal of Teacher—Retention of Dwelling-House by Teacher after Dismissal—Warrant of Ejection.

Trustees of a school acting under a private deed of mortification appointed a schoolmistress, whose engagement was to be "terminable by either party on three months' written notice on either side," a residence being part of the remuneration. The trustees subsequently gave her three months' notice to leave their service, but at the end of that time she refused, on the ground that under the deed of mortification the teacher was to hold office *ad vitam aut culpam*, to give up possession of the house. *Held* that the trustees were entitled to a warrant of ejection against her, because (1) her engagement had been terminated in conformity with the conditions of her agreement with them, and (2) assuming the dismissal to be wrongful, refusal to quit possession was not the appropriate remedy.

In 1819 a school was established in Linlithgow for the purpose of training female servants. It was called Mrs Douglas' Cottage School, and in the deed of mortification various persons were named as trustees. The deed provided—"*Eighth*, The committee shall have full power to dismiss the schoolmistress at any time for non-compliance with the rules as laid down in this deed, and also for immoral, irreligious, or other conduct at variance with the best interests of the institution."

In 1880 the then trustees entered into an arrangement with Miss Eliza Milne whereby they appointed her teacher of the Douglas Trust School upon the conditions contained in the following agreement, which Miss Milne signed:—"Miss Milne to begin her duties on the current, and her engagement to be terminable by either party on three months' written notice on either side. The salary to be at the rate of £60 per annum, with free house, coal and gas. Miss