represent his indebtedness to Wright & Greig as a mere matter of account.

What we have to decide is whether the verdict of the jury upon the issue submitted to them was against the weight of the evidence, and that question depends on whether this was an impartial and accurate report, or a calumnious report not justified by the fact that it was an impartial report of what took place before the Registrar. I hold it to be settled that a defamatory statement contained in a report, or what professes to be a report, of proceedings in a court of justice is not protected by privilege unless it be impartial and fairly accurate, and the question whether it is impartial and accurate is in my opinion a question for the jury. I think there was evidence for the consideration of the jury on that question, and I concur with your Lordship in thinking the conclusion the jury arrived at was supported by the evidence.

As to the *onus probandi* in the question of accuracy and impartiality, it must be observed that no misdirection on that subject is alleged. The pursuer appears to have accepted the burden of proving that the report was partial and inaccurate, especially in omitting matters which would have made an appreciable difference in his favour, and would have counteracted the objectionable statements which were fully set forth. My opinion is that the pursuer was right in undertaking this burden. He has satisfied the jury on the subject, and I cannot say that the verdict of the jury is against the evidence. It seems to me that the omissions pointed out were very material. The answer made to the bankrupt's statement is not given, nor is the bankrupt's admission as to the account, although that admission was said to have been sufficient of itself to contradict the defamatory statements complained of.

With regard to the amount of damages, although it is larger than I should have awarded as sufficient, I consider that the amount of damages, especially damages for slander affecting the credit of a person engaged in commerce, is peculiarly within the province of the jury, and I should have thought it doubtful whether the amount is so excessive as to justify the interference of the Court. But as your Lordships think it is excessive, I agree that the verdict can only stand if the pursuers agree to a reduction as suggested.

Subject to the question about the amount of damages, I think this rule ought to be discharged.

The pursuers having agreed that the damages should be reduced to £250, the Court discharged the rule and applied the verdict.

Counsel for the Pursuers—Graham Murray—Ure. Agents—Smith & Ritchie, S.S.C.

Counsel for the *Glasgow Herald*—Asher, Q.C.—Dickson. Agents—Webster, Will, & Ritchie, S.S.C.

Wednesday, March 12.

FIRST DIVISION.

PIRIE *v.* THE CALEDONIAN RAILWAY COMPANY.

Process—Jury Trial—Citation of English Witnesses—Affidavit—Witnesses Out of Jurisdiction Act 1854 (17 *and* 18 *Vict. cap.* 34), *sec.* 1.

The Witnesses Out of Jurisdiction Act 1854, section. 1, provides that "If in any action . . . depending . . . in the Court of Session . . . it shall appear to the Court . . . that it is proper to compel the personal attendance at any trial, of any witness who may not be within the jurisdiction of the Court in which such action is pending, it shall be lawful for such Court . . . if in . . . their discretion it shall so seem fit, to order that a . . . warrant of citation shall issue in special form commanding such witness to attend such trial wherever he shall be within the United Kingdom." . . .

A party applying under this statute, presented a note to the Court, which consisted of a signed statement by the agent, that the witnesses designed would not attend without special citation, and concluded with a prayer for warrant to cite, signed by counsel.

Held that this was a proper form of application, and that an affidavit was unnecessary.

Counsel for Petitioner—Wallace. Agent—A. Morison, S.S.C.

Friday, March 14.

FIRST DIVISION.

[Lord Kinnear, Ordinary.

CROSKERY AND OTHERS *v.* HENDRIE AND ANOTHER (BOYD GILMOUR'S TRUSTEES).

Trust—Loan—Powers and Duties of Trustees—Ultra Vires—Delict—Reparation.

In an action by beneficiaries under a trust against one of the trustees for alleged losses to the trust estate, arising from loans thereof by the trustees to certain of their own number—*held* that as the action was founded on delict, the trustees were all liable *in solidum* and conjunctly and severally, and a plea of "all parties not called" *repelled.*

Western Bank v. *Douglas*, 22 D. 447, and *Perston* v. *Perston's Trustees*, 1 Macph. 245, *followed.*

Mrs Mary Gilmour or Croskery and Mrs Jeanie Logan Sinclair, two of the beneficiaries under their father's trust, sued John Hendrie junior and others, the trustees, for an account of the trust estate, and for payment of their shares, and John Hendrie junior, as an individual and as factor for