LORD TRAYNER and LORD MONCREIFF concurred.

The Court pronounced the following interlocutor:—

"Dismiss the appeal: Find in fact and in law in terms of the findings in fact and in law in the interlocutor appealed against: Therefore of new recal the interim interdict, and interdict the defenders from entering upon the pursuers' property called the Trench Point lying within the burgh of Campbeltown and county of Argyll, and which is bounded on the north by an intended new road through the Trench field, and on the south and east and west by the sea, so far as said property extends above the line of high-water mark of ordinary spring tide, and injuring, destroying, and removing any pillars, posts, fences, and buildings, and foundations of any of the same erected or to be erected by the pursuers on said subjects above said line, or in any other way disturbing the pursuers in the possession of the same or any part thereof, and decern."

Counsel for Pursuers — Guthrie, Q.C.—Cullen. Agent—F. J. Martin, W.S.

Counsel for Defenders — Craigie—T. B. Morison. Agent—Marcus J. Brown, S.S.C.

Friday, June 3.

SECOND DIVISION.

KARRMAN *v.* CROSBIE.

Expenses—Reparation—Expenses of Separate Actions against Same Defenders—Joint Defence—Fees to Jury.

Four pursuers raised separate actions of damages for injury against the same four defenders. The defenders concurred in a joint defence to each action. After the adjustment of issues the cases went to trial together, with the result that two of the defenders obtained a verdict in their favour, and were assoilzied and found entitled to expenses as against the pursuer, while as against the other two defenders verdicts were returned for the pursuers with varying sums of damages, and these defenders were found liable to the pursuers in expenses.

Held (1) that the two successful defenders were entitled as against the pursuers (*a*) to one-half of the expense of the joint defence, but (*b*) not to one-half of the fees paid to the jury, as this charge fell upon the unsuccessful defenders only; and (2) that all the pursuers were entitled as against the unsuccessful defenders to their separate expenses from the raising of their actions down to the time when the cases went to trial.

The question in this case arose on objections to the Auditor's reports on the taxation of the accounts of expenses in four separate actions brought by Mrs Rachel M'Masters or Karrman, Miss Elizabeth Macfarlane, Miss Jeanie Walker with consent of her father, and Miss Lizzie Walker, against Hugh Talbot Crosbie, James M'Glashan, John Swinton Woodburn, and William L. Dick, for injuries caused to the pursuers by their having been run down by the defenders while cycling.

The facts of the case and the arguments of parties so far as they are concerned with the points in question are fully set forth in the following opinion:—

LORD TRAYNER — The questions now before us arise under the following circumstances. There are four actions at the instance of different pursuers, each directed against the same four defenders, and claiming damages in each case for injury done to each pursuer through the fault of the defenders. One of the actions —the first—was raised on 19th March 1897, and the other three on 8th June thereafter. The whole defenders concurred in a joint defence to each action. After the adjustment of issues the cases went to trial together, with the result that two of the defenders obtained a verdict in their favour, and were assoilzied and found entitled to expenses against the pursuers, while as against the other two defenders verdicts were returned for the pursuers with varying sums of damages. For these damages decree was given, and the defenders found liable therein were also found liable to the pursuers in expenses. The accounts of the expenses thus severally allowed have been taxed by the Auditor, and objections to his reports are now stated by the parties for our determination.

1. The whole four pursuers object to the mode in which the Auditor has proceeded in reference to the account of expenses found due to the two successful defenders, who were assoilzied. The manner in which these defenders have stated their accounts against the pursuer in each case is as follows:—They set forth (1) those items of expense incurred in each case exclusively for their individual behoof (and to this no objection was taken), and (2) the items incurred in the joint defence of which they claim one-half, which the Auditor has allowed. The pursuers object to the successful defenders being allowed so large a proportion of the expense incurred by the joint defence, but I cannot say that I heard any very distinct ground stated in support of the objection, nor any suggestion as to what proportion of these expenses should be allowed to these defenders, if a half was disallowed. It was stated that two of the pursuers, to whom comparatively small sums of damages had been awarded, would suffer pecuniarily if the Auditor's view was supported, that one of them would scarcely receive anything in name of damages at all, while the other would be out of pocket. But that consideration is altogether irrelevant. If the pursuers raised actions against persons against whom they had no claim, they

must bear the consequences, and one of the most natural, as well as one of the most frequent results of such a proceeding is, that the unsuccessful litigant is out of pocket. But I have no doubt that the course taken by the Auditor in this matter is right, and is warranted by the decision in the case of *Robertson* v. *Steuart*, July 15, 1875, 2 R. 970. The joint defence has certainly not increased the burden laid upon the pursuers by their bringing actions against persons against whom, according to the verdict returned in the case, they had no claim. This objection by the pursuers to the Auditor's report must therefore, in my opinion, be repelled.

2. The next matter in controversy relates to the expenses of the four actions claimed by the pursuers. The Auditor has allowed the full expenses of the action first raised and also of one of the actions raised in the month of June last, but as regards the other two actions raised in June he has practically disallowed all the expenses except those incurred with reference to the adjustment of the issues. The view, as explained to us, on which the Auditor proceeded, is that the three actions raised in June might and should have been combined by the pursuers; he accordingly allows the expenses of one action, and one action only, against the defenders. The defenders object to this in so far as the full expenses of one of the actions raised in June is concerned on the ground that the whole four claims of the four pursuers might and should have been stated in the action brought in March, and that no more than the expenses of one action should be allowed. The pursuers object on the other hand to the disallowance of the expenses of (what I may call) the third and fourth actions, on the ground that each pursuer was entitled to bring her action separately, and that the expenses as for one appearance should only commence when the pursuers did combine for the trial. If the Auditor's view is right, I can scarcely see on what principle he allows the full expenses to the pursuer of the second action and disallows them to the pursuers of the third and fourth actions. Applying his principle strictly, the Auditor should have allowed to each of the three pursuers who brought their actions in June a proportion, probably one-third, of the full expenses, and not have given the full expenses to the one pursuer and none to the other two. But I think the view of the Auditor on this matter is wrong. Each pursuer was entitled to bring her own action. The whole pursuers ought perhaps to have combined their claims in one summons, but they were not bound to do so. They were as much entitled to have separate actions as separate issues. I think therefore the pursuers of the third and fourth action (I mean the pursuers Jeanie Walker and Elizabeth Macfarlane) are entitled to have their expenses from the raising of their actions down to the time when the cases went to trial. The objection by the defenders on this head falls in my opinion to be dismissed, and the objections by Jeanie Walker and Elizabeth Macfarlane sustained.

3. The only other objection is stated by the successful defenders to the disallowance of the charge made by them for one-half of the fees paid to the jury, one-half of the expenses of the refreshment for the jury, and the fee fund dues of the account of expenses. These objections, I think, should be repelled. The defenders cannot charge the pursuers with the fee paid to the jury, as these charges fell upon the unsuccessful defenders only and were not, or should not, have been paid in whole or in part by these defenders. The expense of the refreshments provided for the jury may stand in a different position, although I do not know that it does. It is, however, so small a matter that I would not interfere with what the Auditor has done, who must know the prevailing practice and has doubtedly given effect to it. The reduction of the defenders' account by taxation, reduced the fee funds exigible on the defenders' account, and this is what the Auditor has given effect to.

The result is that the objections taken by the pursuers Jeanie Walker and Elizabeth Macfarlane should be sustained and the accounts in their actions be sent back to the Auditor to give effect to this opinion. *Quoad ultra* I think all the objections should be repelled.

The LORD JUSTICE-CLERK, LORD YOUNG, and LORD MONCREIFF concurred.

Interlocutors in accordance with Lord Trayner's opinion were pronounced in the four actions.

Counsel for all the Pursuers—Dundas, Q.C.—Watt. Agents—Simpson & Marwick, W.S.

Counsel for the Defenders—Ure, Q.C.—Deas. Agents—Dove, Lockhart, & Smart, S.S.C.

Friday, June 3.

SECOND DIVISION.

[Sheriff of Aberdeen.

DUTHIE *v.* CALEDONIAN RAILWAY COMPANY.

Reparation—Liability to Servants—Effect of Special Rules Issued for Conduct of Work—Neglect of Duty by Foreman—Employers Liability Act 1880 (43 *and* 44 *Vict. cap.* 42), *sec.* 1, *sub-sec.* 2.

By rule 347 of the Caledonian Railway Company's rules issued to employees it is provided with reference to the work of platelayers—"In busy yards the foreman ganger or leading man must at his discretion appoint look-out men placed at such a distance as circumstances may require."

Where a platelayer was run down by a train in consequence of the ganger neglecting to provide a proper look-out in terms of this rule, but no allegation was made that the ganger was unfit for the duty with which he was charged,