section 4 of the Special Act of 1892, providing for the application of the deposit-fund, one of these modes being "or be applied in the discretion of the Court as part of the assets of the company for the benefit of the creditors thereof, and, subject to such application, shall be repaid or retransferred to the depositors." I think that the reclaimers might have a claim under this provision if they could establish that Mr Mason possessed the character of a proper creditor of the company in respect of the agreement upon which they rely. But I have already given my reasons for thinking that the claim did not become a debt of the company by virtue of the provision of section 71 of the Act of 1884, under which the company was constituted, and it does not appear to me to have become possessed of that character in any other way.

If the standard of being "meritorious," which was at one time applied to claims made upon such deposited funds, was still in force, I should be quite unable to affirm that the present claim is "meritorious."

If I be right in thinking that it was *ultra vires* of the persons who made the agreement with Mr Mason to do so to the effect of binding the company, or any person interested in its assets (or *quasi* assets), it, in my judgment, follows that it was equally *ultra vires* of them to submit to a decree in absence in an action at his instance, to the effect of binding anyone interested in the assets of the company, or in funds like the present, which are for the purposes of questions like the present assimilated to its assets.

It was argued by the counsel for the reclaimers that the decree in absence was converted into a decree *in foro* by a charge having been given upon it, but I do not think that this would protect the decree from being examined and objected to upon the grounds now pleaded against it.

For these reasons I am of opinion that the judgment of the Lord Ordinary should be adhered to.

LORD ADAM and LORD KINNEAR concurred.

The LORD PRESIDENT intimated that LORD M'LAREN, who was absent at advising, concurred.

The Court adhered.

Counsel for the Reclaimers (Mason's Trustees)—The Solicitor-General (Dickson, K.C.)—Dewar—Horne. Agents—Drummond & Reid, W.S.

Counsel for the Respondents—Cooper—Gordon. Agents—Macrae, Flett, & Rennie, W.S.

Saturday, May 30.

SECOND DIVISION.

[Lord Stormonth Darling, Ordinary.

FULTON *v.* STUBBS, LIMITED.

Reparation — Wrongful Publication of Private and Confidential Matter—Newspaper—Meeting of Creditors.

In an action of damages against the publishers of a *Gazette* for wrongful publication of private and confidential matter, the pursuer averred that, having found himself in embarrassed circumstances in consequence of serious illness, he called a meeting of his creditors, at which he offered a composition of 5s. per £, and that the meeting unanimously accepted that offer; that a representative of the defenders was present at the meeting on behalf of a creditor; that, notwithstanding a statement made at the meeting that the pursuer objected to any publication of the state of his affairs, the defenders published an account of what passed at the meeting under the heading, "Lists of Principal Creditors;" and that in consequence of the publication he had suffered serious loss and damage. *Held* (*aff.* judgment of Lord Stormonth Darling) that the pursuer's averments were irrelevant.

Gregan Fulton, architect, 12 Castle Street, Edinburgh, raised an action of damages for wrongful publication of a private and confidential matter against Stubbs, Limited, 72 Princes Street, Edinburgh, the proprietors and publishers of *Stubbs' Weekly Gazette*.

The pursuer averred—"(Cond. 1) . . . The said *Stubbs' Weekly Gazette* is published every Thursday. It professes to give lists of protested bills of exchange and decrees in absence obtained in the Debts Recovery and Small Debt Courts in Scotland, and also proceedings under sequestrations and cessios. It is circulated largely among the trading class of the community. (Cond. 2) About the month of September 1902 the pursuer found himself in embarrassed circumstances as the result of serious illness and in consequence of a house which he had taken at North Berwick for a period of two years at a rent of £40 a-year, and furnished with valuable furniture, remaining unlet for the whole of the said period. He accordingly consulted his agents with a view of coming to a private arrangement with his creditors. . . . The pursuer thereafter instructed his agents to call a meeting of his creditors to submit to them a state of affairs, and to make to them an offer of a composition of 5s. per £. The said agents accordingly called a meeting for Tuesday, 14th October 1902. (Cond. 3) On 14th October 1902 seven creditors or representatives of creditors assembled in the chambers of the pursuer's agents at 50 George Street, Edinburgh. The pursuer was represented by Mr R. Galbraith Stewart, S.S.C., a partner of his law-agents' firm, at said meeting.

Mr Stewart read to the meeting a state of affairs which he had prepared, and gave explanations relative thereto. After some discussion Mr Stewart made, as authorised by the pursuer, an offer of 5s. per £ payable within one week. . . . The meeting thereupon unanimously accepted the said offer. Before the termination of the meeting Mr Stewart stated that he knew the defenders were in the habit of publishing states of affairs submitted at meetings of creditors, and that he objected to any such publication in this case, as it would ruin the pursuer's prospects."

A representative of the defenders was present at the meeting, and in Answer 3 it was explained that one of the defenders' subscribers was a creditor of pursuer's, and he instructed the defenders to attend the meeting on his behalf.

The pursuer further averred—"(Cond. 4) Notwithstanding the injunction aforesaid, however, the defenders in their issue of 16th October 1902, under the heading of 'Lists of Principal Creditors,' published the following:—'Gregan Fulton, Architect, Edinburgh. (Private Meeting, see * Note.) [*Then followed a list of twenty-six creditors of the pursuer specifying the sum due to each.*] At a meeting held on 14th inst. it was unanimously agreed to accept an offer of 5s. per £, to be paid within a week.'"

The pursuer also averred that in consequence of the publication an arrangement for a partnership between him and another gentleman named had fallen through.

The pursuer further averred as follows:—"(Cond. 6) In consequence of the publication of the said state of affairs by the defenders the pursuer has suffered serious loss and damage. He has been prevented from effecting an arrangement whereby his creditors could have been settled with, and also from embarking on what promised to be a successful business career with his partner in terms of the proposed partnership. His financial reputation has been ruined and his business destroyed. (Cond. 7) For the loss, injury, and damage aforesaid which the pursuer has sustained the defenders are responsible. They acted illegally and wrongfully in publishing in their paper the contents of a state of affairs submitted to a private meeting of the pursuer's creditors and the offer then made on behalf of the pursuer. The said state of affairs was intended for the limited purpose of informing the creditors of the pursuer who might attend the said meeting what his financial position was. The offer made by the pursuer was made at a private meeting, and was intended only for the consideration of his creditors and their representatives who were present. All this the defenders well knew, and in point of fact the pursuer's agent Mr Stewart as aforesaid informed the defenders' representative, who it is believed and averred attended the meeting, not to publish the said statement, and warned him of the consequences of doing so. In breach of said injunction and of their duty in the matter the defenders wrongfully made public the contents of a document intended only for the pursuer's creditors who attended the meeting aforesaid, and also the offer made at the said meeting by the pursuer."

The pursuer pleaded—"(1) The defenders having wrongfully and illegally published in their *Gazette* the state of affairs condescended upon, which was of a private and confidential nature, and also the offer made by the pursuer at a private meeting of his creditors, they are liable to the pursuer for the loss, injury, and damage thereby sustained by the pursuer."

The defenders pleaded—"(1) No relevant case. (2) The publication of the particulars mentioned being a lawful act on the part of the defenders, . . . the defenders ought to be assoilzied with expenses. (3) The publication complained of being privileged, and the defenders having acted without malice, they are entitled to absolvitor."

The pursuer proposed an issue for the trial of the cause.

On 30th January 1903 the Lord Ordinary (STORMONTH DARLING) pronounced an interlocutor in the following terms:—"Finds that this summons does not disclose any issuable matter: Therefore disallows the issue proposed by the pursuer, sustains the defence, dismisses the action, and decerns," &c.

Opinion.—"I think there is here no issuable matter. The pursuer does not complain of having been slandered, because all that the defenders published appears to have been a perfectly true account of what passed at the meeting of the pursuer's creditors which he called on 14th October, and at which he submitted an offer of 5s. per £ on his debts, which was accepted. The action accordingly is laid, not on slander, but on the wrongful publication of private and confidential matter. What is said to have taken place is that one of the pursuer's creditors, who had a right to be present at the meeting, selected as his representative a member of the staff of the defenders, and that this representative communicated to the defenders what passed at the meeting. I agree that the fact of this information having been published in a newspaper, the purpose of which is to give information regarding the solvency of traders, confers no privilege on the defenders. They are precisely in the position of private persons getting information and communicating it to outsiders, and I test the case in this way—I take the case of a creditor or the representative of a creditor having been present at this meeting and having joined the other creditors in accepting the composition offered. He then goes into the street and tells a friend of what has passed. Has he any legal duty to refrain from doing so? Such conduct may be shabby, and may result in injurious consequences to the insolvent, but I know no law against his doing so. The person to whom the information has thus been communicated may equally pass it on to another. It may be no better than gossip—malevolent gossip if you will—but such action is not illegal, for the persons I have been figuring are under no sort of obligation towards the insolvent to keep silent;

there is no relation of confidentiality between them. The case would have been entirely different had these persons been in the employment of the insolvent, or had they obtained the information through having had access to private papers for a limited purpose. That was the case in *Brown's Trustees* v. *Hay*. I do not think that decision has any application here."

The pursuer reclaimed, and argued—No one who was present at the meeting of creditors had any right to communicate what passed for purposes of publication. All record of what passed at the meeting was the private property of the pursuer—*Brown's Trustees* v. *Hay*, July 12, 1898, 25 R. 1112, 35 S.L.R. 877; *Caird* v. *Sime*, June 13, 1887, 14 R. (H.L.) 37, 24 S.L.R. 569.

Counsel for the respondents were not called upon.

LORD JUSTICE-CLERK — I have no difficulty in holding that the Lord Ordinary's judgment is right. All the cases referred to by Mr Guthrie are of a different kind. Where what is published belongs to an individual to whom it would be lost if published, the publication by another is an actionable wrong, because it deprives the owner of his private property. Here there was a meeting of creditors where a composition of 5s. in the £ was offered and accepted. That the fact of that offer and acceptance was the private property of the debtor I cannot hold. Mr Guthrie was unable to draw a distinction between the case of one of the creditors after the meeting telling everyone he met what happened and the publication by the defenders, and how the communication of what happened by a creditor could be held to be an actionable wrong I cannot conceive.

LORD YOUNG and LORD TRAYNER concurred.

LORD MONCREIFF—I am of the same opinion. I do not need to say what I think of the action of the defenders in publishing the information which they received. The only question is whether they committed a legal wrong in so doing. I think they did not. There were seven creditors or representatives of creditors at the meeting, and it is impossible to hold that not one of these could have communicated what happened there to any person outside without laying himself open to an action at the instance of the debtor. In point of principle there is no distinction between such a case and the circumstances in which the pursuer now seeks to recover damages from the defenders, and I therefore think that there is no relevant case.

The Court adhered.

Counsel for the Pursuer and Reclaimer—Guthrie, K.C.—Munro. Agents — Macdonald & Stewart, S.S.C.

Counsel for the Defenders and Respondents — Salvesen, K.C. — T. B. Morison. Agent—George F. Welsh, Solicitor.

Tuesday, May 26.

SECOND DIVISION.

BRENNAN *v.* DUNDEE AND ARBROATH JOINT RAILWAY.

Expenses—Jury Trial—Appeal for Jury Trial — Modification — Small Amount Awarded by Jury.

In this case, which is reported *ante*, p. 383, on the motion for approval of the Auditor's report on the pursuer's account of expenses, which was taxed at £146, 16s. 5d., the Court *modified* the same to the sum of £100.

Wednesday, June 3.

SECOND DIVISION.

[Sheriff Court at Glasgow.

LAFFERTY *v.* WATSON, GOW, & COMPANY, LIMITED.

Expenses—Jury Trial—Appeal for Jury Trial — Modification — Small Amount Awarded by Jury.

In an action of damages for personal injury, brought in the Sheriff Court, the pursuer concluded for £187, 4s. as compensation under the Employers Liability Act 1880. The Sheriff-Substitute having allowed a proof, the pursuer appealed for jury trial. The jury returned a verdict for the pursuer, and assessed the damages at £30. The pursuer having moved for expenses, the Court, on the motion of the defenders (*diss.* Lord Young), *found* the pursuer entitled only to modified expenses, on the ground that the case in itself and as tested by the award of damages ought to have been tried in the Sheriff Court.

Shearer v. *Malcolm*, February 16, 1899, 1 F. 574, 36 S.L.R. 419, and *Brennan* v. *Dundee and Arbroath Joint Railway*, February 20, 1903, 40 S.L.R. 383, *followed*.

Daniel Lafferty junior, labourer, Glasgow, with consent of his father Daniel Lafferty senior, as his curator and administrator-in-law, raised an action in the Sheriff Court at Glasgow against Watson, Gow, & Company, Limited, Etna Foundry, Glasgow, concluding for £300 as damages at common law, or otherwise for £187, 4s. as compensation under the Employers Liability Act 1880. The sums sued for were claimed in respect of injury to the pursuer's left foot, which was burned by some molten metal falling upon it while he was employed in the defenders' works on 20th August 1902.

On 17th December 1902 the Sheriff-Substitute (BOYD) dismissed the action so far as laid at common law, and *quoad ultra* allowed a proof.

The pursuer appealed for jury trial, and an issue in common form under the Employers Liability Act 1880 was adjusted for the trial of the cause.