I may say that the fourth and fifth statements of facts by the defenders state, in my opinion concisely and accurately, all that is known or can now be known in regard to these shares.

It is also to be observed that Mr Cameron, the liquidator, was manager of the Assets Company, Limited, for one or two years, about 1885 or 1886. He was on the spot and had the means of knowledge both about the affairs of the Shipping Company and Alexander Phillips; and we know that discharges were not given by the liquidators without the surrendering contributory being subjected to a close examination as to the completeness of his statement.

The only other observation which I have to make is, that I see no conceivable reason for Phillips concealing the existence of the shares and imperilling his discharge, as the shares at the time and in the then condition of the Shipping Company seemed to be worthless.

It might, as the Lord Ordinary observes, have been more prudent for Mr Phillips to enter the shares in the statement as worth a nominal sum or nothing; but I agree with the Lord Ordinary in being unable to construe as a fraud the omission to do so.

I am therefore of opinion that the defenders should be assoilzied.

The Court pronounced this interlocutor:—

"The Lords of this Division, along with the three consulted Judges of the First Division, having heard counsel for the parties on the reclaiming-note for the pursuers against the interlocutor of Lord Kyllachy dated 13th June 1903, in conformity with the opinions of the majority of the said Judges, recal the interlocutor reclaimed against, reduce, decern, and declare in terms of the reductive conclusions of the summons." . .

Counsel for the Pursuers and Reclaimers—Salvesen, K.C.—Clyde, K.C.—F. C. Thomson. Agents—J. & D. Smith Clark, W.S.

Counsel for the Defenders and Respondents—Ure, K.C.—Hunter. Agents—J. & J. Ross, W.S.

Tuesday, May 17.

FIRST DIVISION.

[Lord Low, Ordinary.

VAN LAUN & COMPANY *v.* NEILSON, REID, & COMPANY AND OTHERS.

Agent and Principal—Amalgamation of Businesses — Commission — Quantum meruit.

In 1899, A, a merchant and agent in London, entered into communication with three engineering firms in Scotland (which were already acquainted with each other), suggesting that the firms should amalgamate, and offering his services as intermediary. Certain negotiations followed, and a contract providing, *inter alia*, for A's remuneration, was proposed but never executed. Early in 1900 the firms concerned intimated to A that they did not propose to proceed with the amalgamation. In 1903 the three firms were amalgamated as a limited company, but in this amalgamation A was not employed.

A brought an action against the three firms, concluding for payment of commission, and based, alternatively, on contract and on the principle of *quantum meruit*. In support of the latter plea he averred that the amalgamation was the direct result of his services, and that, but for these, the defenders, who were jealous of each other, would never have proposed it.

Held that these averments were irrelevant.

This was an action at the instance of H. T. Van Laun & Company, merchants and freight contractors, 1 St Helen's Place, Bishopsgate Within, London, of which firm Henry Theodore Van Laun was the sole partner, against Messrs Neilson, Reid, & Company, Messrs Dubs & Company, and Messrs Sharpe, Stewart, & Company, Limited, all engineers in Glasgow, concluding for payment of £34,207 in name of commission for services rendered in connection with the amalgamation of these firms.

The pursuers averred that in November 1899 they wrote to each of the defenders asking if they would be disposed to considera proposal for amalgamation of their business with a firm whose business was analogous in character, and pointing out the advantages of such amalgamation. Letters passed between the parties, and some meetings took place, and Messrs Van Laun & Company and the partner of that firm averred that they were instructed by each of the said three firms to arrange for an amalgamation of their different businesses, and they undertook the work. The terms upon which "they" were employed by the said firms were contained in a memorandum of agreement, copy of which was handed to and approved by each of the said firms. Said agreement is as follows:—"The undersigned firms agree that they will enter into a proper legal contract, when prepared, with Messrs H. T. Van Laun & Company for the purpose of placing in their hands the conduct of the amalgamation of their businesses, the basis of the amalgamation being— . . . '(3) That the undersigned firms undertake, in the event of the amalgamation being carried out, that Messrs H. T. Van Laun & Company shall be paid 2½ per cent. on the total amount paid to the vendors for their services in the matter, subject to deduction of the reasonable costs of advertising the new company. (4) Any capital which is necessary to be found shall be left to Messrs Van Laun & Company to negotiate, underwrite, or find subscribers for, it being understood that any commission which may have to be paid on this capital will have to be paid out of the capital of the amalgamated company, and not from the 2½ per cent. commission above referred to. (5) The payment of the com-

mission of 2½ per cent. is only payable in the event of the amalgamation going through.'" They and the three firms "acted upon this agreement, which was treated by all parties as binding upon them."

This memorandum of agreement was not signed and no formal contract as stipulated for by it was ever prepared. In January 1900 the three firms intimated that they did not see their way to amalgamate.

On 12th February 1903 the North British Locomotive Company, Limited, was incorporated, and acquired the businesses of the three firms, who were paid £1,368,311.

The defenders pleaded that the pursuers' averments were irrelevant, and upon 19th November 1903 the Lord Ordinary (Low) issued an interlocutor sustaining this plea and dismissing the action.

The pursuers reclaimed, and before the hearing made amendments upon their record. They averred—"(4) Prior to said agreement [*v. sup.*] the pursuer Van Laun had brought the different firms together through their representatives. . . . In or about January 1900 the defenders, the said firms, intimated to the pursuers that they did not see their way to amalgamate. . . . Notwithstanding the said intimation to the pursuers, the defenders availed themselves of the services rendered by the pursuers, and have now effected an amalgamation. . . . (6) The amalgamation of the defenders' firms is the direct result of the efforts of the pursuer Mr Van Laun. It has been carried out on the lines suggested by him. But for the pursuer's intervention, the said firms, which were extremely jealous of each other, would not have proposed amalgamation. The said pursuer has always been ready and willing to give any further services required of him in terms of the agreement founded upon, but the defenders did not require from him such services. On the contrary, they did not even communicate to him the fact that his services had been successful in bringing about an amalgamation, and so endeavoured to deprive him of his commission. The defenders refrained from communicating with the pursuers with a view to benefiting by the services already rendered and avoiding paying the commission agreed upon. The defenders knew that the pursuers were willing, if called upon, to render any further services that might be required of them under the agreement. The pursuers have called on the defenders to pay the commission earned, but as they refuse to do so the present action has been rendered necessary. Alternatively, . . . In any event, the pursuers are entitled to a *quantum meruit* in respect of the services rendered by them to the defenders. Looking to the fact that the pursuers' services initiated and ultimately led to the successful amalgamation of the defenders, the sum sued for is reasonable. The services so rendered were on the employment of the defenders."

They also added the following plea-in-law:—"(5) In any event the pursuers are entitled to *quantum meruit.*"

Argued for the reclaimers—The services rendered to the defenders were alleged to have been very valuable. It was averred they had brought about the amalgamation and that it was only owing to the bad faith of the defenders that the transaction had not followed its natural course leading to the earning of the commission. In such circumstances the Court would allow inquiry—*Walker, Donald, & Company* v. *Birrell, Stenhouse, & Company,* December 21, 1883, 11 R. 369, 21 S.L.R. 252; *Kennedy* v. *Glass,* July 31, 1890, 17 R. 1085, 27 S.L.R. 838; *Menzies, Bruce-Low, & Thomson* v. *M'Lennan,* January 25, 1895, 22 R. 299, 32 S.L.R. 231.

Argued for the respondents—The action was irrelevant. *Quantum meruit* was only known (*a*) where there had been an express contract and employment had followed it, but as the terms of the contract did not meet the circumstances which had arisen, it failed; or then (*b*) where there had been employment upon an implied contract, when the employment must be in some recognised business, *e.g.*, that of a broker—*Harrison* v. *James,* 1862, 7 Hurlstone & Norman, 804; Smith's Leading Cases, 11th ed., vol. 2, p. 23; and cases *cit. sup.* Here there was no contract, express or implied, and no employment, for the pursuers' actings were at his own instance.

LORD PRESIDENT—[*After stating his opinion that there was no relevant averment of any binding agreement*]—The case made by the pursuers is that the amalgamation ultimately effected was the result of the efforts of the pursuers, and that but for their intervention there would not have been any amalgamation. But this does not seem to me to meet the points that the only liability undertaken was a very guarded one, and that if the conditions of the pactional claim for commission have not been fulfilled there are no averments of anything that would create liability for payment. I therefore think that the Lord Ordinary is right in the result at which he has arrived, and that his interlocutor should be adhered to.

LORD ADAM—[*On the question of quantum meruit*]—The third head, and at first I thought there was something in it, was the claim of *quantum meruit.* I thought there was something in this on the authority of the cases before us, but it appears to me there is an essential distinction between the cases of *Kennedy* and *Walker* and so on. The party claiming introduces a party, from which introduction business follows, and it is the consequence of the benefit to the party against whom commission is claimed, derived from the introduction, that makes him liable. But here it is just the other way. There was no introduction by the pursuer of these companies to each other. All of them knew each other perfectly well before, but the pursuers seemed to think that if they had made some suggestion that they would be better to amalgamate their businesses they would do it.

But that is not the case of a person being entitled to remuneration because he was a

party who introduced one individual to another, and as a consequence, and as a result of that introduction, business was done. As I understand, a party who introduces another is entitled in such circumstances to remuneration; but that is not the case here. These pursuers in pursuit of their own business make a certain suggestion to these three defenders—"It would be a good thing for you if we put our heads together and tried to amalagamate the businesses," and if they thought it was they would carry it through. That is the case here, and the whole case, and I do not see any ground for a claim here for *quantum meruit*. Therefore I agree with your Lordship.

LORD KINNEAR—[*On the question of quantum meruit*]—The second alternative is a claim for remuneration *quantum meruit* for specific services rendered by the pursuer to the defenders; but then there can be no claim for *quantum meruit* any more than for specific stipulated remuneration unless upon a contract of employment distinctly expressed or implied, upon which services were rendered. And that just sends us back to the original question, whether there is any relevant averment of employment on record or not, and on the ground stated it appears to me there is not; and therefore the whole ground for a claim *quantum meruit* falls, just as the ground for a claim of stipulated commission falls. A claim for *quantum meruit* might possibly remain if there was a contract for service, but no specific stipulation as to what the remuneration for service was to be. But the specific contract set forth by the pursuer excludes in my opinion a claim of *quantum meruit*, just as it excludes the original claim, because primarily the stipulation or arrangement between the parties was that there should be no liability by either party to the other until the formal written contract was executed. I quite agree with what your Lordships have said with reference to such cases as *Walker, Donald, & Company*, and others that have been referred to. I think the Lord President in the case of *Walker, Donald, & Company* v. *Birrell*, puts his ground of judgment at the close of his decision very distinctly when he says—"Notwithstanding the fact that there has not been actual employment beforehand by the shipbuilder of the broker, yet, if the broker brings a customer to a shipbuilder and the shipbuilder accepts the employment, that entitles the broker to a commission." No doubt it does; but on a distinct statement of employment. If a man whose business it is to conduct certain business on commission comes to another and undertakes to introduce him to a third person who will stand towards him in the position of principal in the agreement, that is just accepting an offer to do business for the principal. It is no great matter whether the shipbroker expressly stated that it was business of any kind—it is an offer to do the business of a broker. If that offer is accepted there is a completed contract of employment, and there can be no doubt as to the liability of the person who has given such employment; but there is no room for the application of that principle in the present case at all, because there was no undertaking according to the pursuer's own statement to employ him to make any agreement between the one set of defenders and the other set of defenders; except that they might enter into such an arrangement, but on the condition that a written contract should be entered into before they undertook that obligation.

I therefore agree with your Lordships in thinking that the judgment is right, and that we should adhere to it.

LORD M'LAREN was absent.

The Court adhered.

Counsel for the Reclaimers — Salvesen, K.C.—Hunter. Agents—John C. Brodie & Sons, W.S.

Counsel for the Respondents Neilson Reid, & Company—The Dean of Faculty (Asher, K.C.)—M'Clure. Agents—Hamilton, Kinnear, & Beatson, W.S.

Counsel for the Respondents Dubs & Company—A. Moncrieff. Agents—Webster, Will, & Company, S.S.C.

Counsel for the Respondents Sharpe, Stewart, & Company, Limited—Younger. Agents — Webster, Will, & Company, S.S.C.

Saturday, May 21.

SECOND DIVISION.

[Sheriff Court of Lanark at Glasgow.

KANE *v.* SINGER MANUFACTURING COMPANY.

Process — Appeal — Removal of Cause to Court of Session — Competency — Employers Liability Act 1880 (43 *and* 44 *Vict. cap.* 42), *sec.* 6, *sub-sec.* 3.

The Employers Liability Act 1880 enacts—Section 6 (3) . . . "In Scotland any action under this Act may be removed to the Court of Session at the instance of either party, in the manner provided by, and subject to the conditions prescribed by, section 9 of the Sheriff Courts (Scotland) Act 1877."

The Sheriff Courts (Scotland) Act 1877 (40 and 41 Vict. cap. 50), enacts, with regard to actions removed from the Sheriff Court to the Court of Session, section 9 (2) — "The Court of Session, or either Division thereof, or any Lord Ordinary therein, may, if of opinion that the action might have been properly tried in the Sheriff Court, allow the defender who removed the action to the Court of Session, in the event of his being successful therein, such expenses only as they may con-