The motion was not opposed, and the Court granted the leave asked.

Agent for Pursuer—W. C. Murray, W.S.

SECOND DIVISION.

LEVETT *v.* LONDON AND NORTH-WESTERN RAILWAY COMPANY.

Reparation — Breach of Contract — Cedent and Assignee—Relevancy. Held that an action by an assignee based on a breach of contract with his cedent must contain a statement (1) of loss incurred by the cedent; and (2) of the assignee's title to pursue. Action dismissed as not containing such statements.

Process—Amendment. A pursuer refused leave to amend a closed record in order to introduce a new ground of action.

The pursuer in this case is a commission agent in Edinburgh, and sues the defenders for damages to the extent of £200 sterling in the following circumstances:—It is part of the pursuer's business to organise concerts and exhibitions, and he had arranged that a concert should be given in Falkirk on 14th December 1865, at which he had engaged that Jem Mace, the champion prize-fighter of England, and Sam Hurst, "the Staleybridge Infant," should appear and display their trophies. The concert and exhibition were duly announced by bills and circulars in Falkirk and the surrounding districts. The pursuer states that about one o'clock A.M. on the 14th December, Mace and Hurst went to the station of the defenders' railway in Liverpool and requested tickets to Falkirk, and that they were informed by the booking-clerk that they could not be booked to Falkirk, but that tickets would be furnished which would carry them to the nearest station to Falkirk to which the defenders could book. The clerk thereupon supplied Mace and Hurst with tickets to Kirkcudbright, representing, as it is alleged, that that was the nearest station to Falkirk to which he could book them; while in point of fact, the nearest station to Falkirk to which they might have been booked was Larbert Junction. In consequence of being taken to Kirkcudbright instead of to Larbert, Mace and Hurst found it impossible to reach Falkirk in time for the concert, and having telegraphed to that effect, the entertainment was put off, at considerable expense to the pursuer. The ground of action, as stated by the pursuer upon record, was that the defenders contracted to carry Mace and Hurst to the nearest station to Falkirk, and that they wrongfully failed to do so. The pursuer then averred—

Cond. 13. By and through the gross negligence, default, or carelessness of the defenders, or of their clerks or servants, for whom they are responsible, in proffering and selling tickets to the said Jem Mace and Sam Hurst to Kirkcudbright, instead of to Larbert, or to Larbert Junction, and so misleading the said Jem Mace and Sam Hurst, by telling them that Kirkcudbright was the nearest station to Falkirk to which their company could book or sell tickets, in consequence of which the said Jem Mace and Sam Hurst were carried to Kirkcudbright, and the concert and exhibition could not take place at Falkirk, as advertised, the pursuer has suffered loss and damage to the amount of not less than £200 sterling.

Cond. 14. The pursuer had a legal claim of damage against the said Jem Mace and Sam Hurst for their breach of contract with him. He has settled his claim against them, in consideration of an assignation by them to him of their right to recover damages from the defenders, who were the authors of the wrong. The pursuer had made a claim upon the defenders, but they, by their manager, have written in reply, refusing to recognise the claim, or to admit liability on the part of the defenders, and the present action has become necessary.

The defenders denied the pursuer's averments as to what took place at the issuing of the tickets, and also pleaded that it was no part of their servants' duties to guide the public as to their routes, and that they were not responsible for any error committed in the circumstances stated. They also objected to the pursuer's title to sue, and to his statements as irrelevant.

The case came before the Court to-day upon issues (reported by Lord Jerviswoode), the defenders objecting to the pursuer being allowed any issue.

J. C. SMITH, for the pursuers, contended that the case was relevantly laid, and contained a good ground of action, but at the same time proposed to amend the record, should the Court be of opinion that that was required. The amendment proposed was to the effect of condescending upon loss as sustained by Mace and Hurst, and to narrate and produce the assignation previously referred to. With regard to the first of these matters, the pursuer proposed to say that "Mace and Hurst sustained loss and damage through the fault of the defenders. They lost the hire promised them by the pursuer, and were besides put to much loss and expense." With regard to the second, it was proposed to say that by virtue of the assignation (which was to be produced), the pursuer was entitled to recover all sums of damages which Mace and Hurst were entitled to recover before granting it. The cases of Inglis *v.* the Western Bank (22 D. 505) and Skae (19 D. 958) were referred to.

A. R. CLARK and JOHNSTON appeared for the defenders.

The Court dismissed the action as irrelevant.

The LORD JUSTICE-CLERK—This is a very clear case indeed. It is an action brought against the London and North-Western Railway Company for breach of a contract of carriage said to have been entered into between them and two persons of the names of Mace and Hurst. The contract, as alleged, was that the defenders undertook to carry Mace and Hurst from Liverpool to Larbert, and the statement is that by a mistake of the booking-clerk they were taken out of their way and carried to Kirkcudbright in place of Larbert. It is plain from this that the only ground of action on which the pursuer can insist is as assignee of Mace and Hurst to any claim of damage they had. To make a relevant case, two things were therefore necessary to have been alleged—(1) That damage was sustained by Mace and Hurst in consequence of the defenders' breach of contract; and (2) that the pursuer had by assignation obtained right to their claim for that damage. Now, as I understand the record, neither the one of these things nor the other has been set forth. It is said to be implied in the statement which has been made. I hope we shall never get the length of holding that it is enough that such things be matter of implication. All that the pursuer has stated upon record goes to show only that Mace and Hurst might have sustained loss and damage. It does not state that actual loss was sustained; and Art. 13 contains an allegation — not that Mace and Hurst suffered damage, but that the pursuer suffered loss and

damage. It is impossible to hold that there is on record a proper allegation of loss and damage sustained by Mace and Hurst. In the second place, there is no allegation that the pursuer is the assignee of Mace and Hurst to any claim they might have had. All that is said is that the pursuer has a claim of damages. It is true that it is set forth that in consideration of an assignation by Mace and Hurst the pursuer had settled the claim he had against them. That is something more like an implication that he has an assignation than anything which could be found on record relative to the damage sustained by Mace and Hurst. But the averment, such as it is, is quite insufficient for the purpose for which it is required. Now, with regard to the proposal to amend, it appears to me to be out of the question, after a record has been closed and the pursuer has proposed an issue for the trial of the cause, to allow an amendment for the purpose of introducing a new ground of action. Such a proposal was never heard of. There are instances of the Court allowing amendments to a record for the purpose of the correction of clerical errors, and where greater specification has been ordered or allowed for the purpose of a more satisfactory determination of questions of relevancy. The reference which has been made to Inglis *v.* the Western Bank is quite unavailing. In that case a considerable part of a complicated action has been abandoned, and the record, which had been closed before the abandonment, was cumbrous and unsuited to the portions of the case which remained. It was therefore a case where the Court, in the interest of the parties, and for the more satisfactory determination of the suit without opposition on the part of the defenders, ordered a new record. I think this action should be dismissed as irrelevant.

The other Judges concurred; and the action was dismissed with expenses.

Agent for Pursuer—W. R. Skinner, S.S.C.
Agent for Defenders—Hope & Mackay, W.S.

JURY TRIAL.

(Before Lord Ormidale.)

CRAIG *v.* TAYLOR AND MANDATORY.

Jury Trial—Reparation—Written Slander. Verdict for a pursuer—damages, one farthing.

In this case, in which William Blackburn Craig, merchant in Glasgow, is pursuer, and William Taylor, junior, oil merchant and colour manufacturer in Liverpool, and William Ritchie Buchan, writer in Glasgow, his mandatory, are defenders, the following issue was sent to the jury:—

"It being admitted that on or about the 14th day of March 1866, the defender, William Taylor, junior, wrote and transmitted to the pursuer a letter in the following terms:—'Liverpool, March 13, 1866. Sir, Yours of the 13th inst. to hand. Just as I expected, *your orders plentiful*, yr. money *nowhere*, but there are too many of this class in your town particularly—please try elsewhere, but friends in my way of business in this town will have the opportunity of reading yr. communications. I cannot say I wish you better fortune elsewhere, because I believe yr. system shd. be put a stop to. Yours, &c.,

(Signed) 'W. TAYLOR, jr.

'Mr Craig, Glasgow.'

"Whether the said letter is of and concerning the pursuer, and falsely and calumniously represents the pursuer as a dishonest person who had sought to obtain goods from the defender, William Taylor, junior, without having the means of paying the price thereof, and without intending to pay the price thereof, and as one of a class who conducted business on the system of buying and obtaining goods without having the means of paying, and without intending to pay the price thereof—to the loss, injury, and damage of the pursuer?"

Damages claimed £500.

The jury found for the pursuer—damages one farthing.

Counsel for Pursuer—The Solicitor-General and Mr Shand. Agents—J. W. & J. Mackenzie, W.S.

Counsel for Defender—The Dean of Faculty and Mr Rhind. Agent—R. P. Stevenson, S.S.C.

Wednesday, July 18.

FIRST DIVISION.

LATHAM *v.* EDIN. AND GLAS. RAILWAY CO.

Master and Servant—Recompense—Extra Services. An action by a salaried manager of a railway company for remuneration of extra services alleged to have been rendered by him during a period of 18 years, dismissed as irrelevant, there being no specific averment of an agreement that these services should be remunerated.

In 1847 the pursuer was appointed manager of the Edinburgh and Glasgow Railway Company, and in the following year he was also appointed their secretary. His salary was at first £1000; in 1854 it was increased to £1200; and in 1863 it was again increased to £1600.

In 1865 the Edinburgh and Glasgow Railway Company was dissolved, and amalgamated with the North British Railway Company by Act of Parliament. The Board of Directors thereafter recommended to the shareholders that before dividing the assets of the company, they should "provide proper compensation for some of the company's servants who, after long and faithful service, have lost their situations from the extinction of this as a separate company;" and it was recommended that a sum of £5400 should be set apart for the pursuer. The Court, however, interdicted the directors from carrying out this scheme, on the ground that it was *ultra vires* (Clouston, *ante*, vol. 1. p. 73).

Thereupon the pursuer raised this action, in which he concludes for payment of £5400. He averred:—

Cond. 9. Throughout the period from the first engagement and appointment in 1847, till the dissolution of the defenders' company on 1st August 1865, the pursuer, besides performing the ordinary, customary, and agreed-on duties of the successive offices to which as aforesaid he was engaged and appointed by the defenders, performed on their employment, and for their behoof, various onerous, laborious, and responsible extra services on their behalf, which were entirely over and above the said ordinary, customary, and agreed-on duties.

Cond. 10. These extra services involved an amount of extra labour, anxiety, responsibility, and skill, not required for the ordinary, customary, and agreed-on duties of the successive offices to which, as aforesaid, the pursuer was engaged and appointed by the defenders.

Cond. 11. Throughout the same period, viz., from 1847 to 1865, the pursuer had various more