defender's way of making his account. In the *Househill* case, place, but no time, was specified, and if the time was prior to the letters-patent there is no reason for limiting the defender in point of time. I am for approving of the issues.

Lord Deas—The leading question here is, whether we are to follow our own or the English practice. I am of opinion that if there were any amendment necessary it would be an amendment of record; that is our practice, and I think it is the best. Then comes the question whether any amendment is necessary. That is always a question of circumstances. The extent of the inquiry thrown on the other party may be so oppressive as to call for specification, but as the case stands I agree with your Lordship.

Lord Ardmillan—I agree that the record is the proper place to give the complainer the information he asks for, but the defender's second and third statements give him as much information as he is entitled to. The difficulty has been urged arising from the number of books in one case, and of instances of use in the other. In spite of that, I do not think that the mere multiplication is an element in determining this question. If the defender is not bound to give one page or line, why should he be bound to give ten? The obligation which rests on him in regard to one is the same as that which rests on him as regards ten. I am of opinion that there is no sufficient ground for an amendment of the record.

Lord Mure—Both the points before us are substantially settled by the case of *Neilson* v. *Househill Coal Co.* As to the first—the way in which notice must be given—a note was given in, and when it was proposed to prove the places so stated the Court held that the defender was not entitled to prove them. That judgment was affirmed, and it was laid down that the proper and only way was amendment of the record. As to the second point, that case settled it also. There were there a great many books and several patents referred to, and the reference to them was simply by their year. There is also as much information given here as to places as was given in the *Househill* case. In the present instance half the places named are in Glasgow, and there are only five places mentioned altogether as against four in the *Househill* case. On both grounds I concur.

The Court pronounced the following interlocutor:—

> "Approve of the issues No. 32 and 38 of process respectively, and appoint them to be the issues for the trial of the cause: Find the pursuers liable in expenses since the Lord Ordinary's interlocutor, and remit to the Auditor to tax the amount of said expenses and report to the Lord Ordinary; and remit to the Lord Ordinary, with power to his Lordship to decern for the said expenses."

Counsel for the Complainers—Dean of Faculty (Clark), Q.C., Asher, and Mackintosh. Agents—Hamilton, Kinnear, & Beatson, W.S.

Counsel for the Respondents—Solicitor-General (Watson), Q.C., Balfour, and Campbell. Agents—Davidson & Syme, W.S.

Tuesday, November 24.

FIRST DIVISION.

ROBERT SHIELDS *v.* NORTH BRITISH RAILWAY COMPANY.

Jury trial—Bodily injury—Partial recovery—New trial.

> The pursuer of an action against a railway company obtained from a jury damages for bodily injury, producing paralysis. Before the verdict was applied he partially recovered. *Held* that this partial recovery was not a sufficient ground for a new trial.

The pursuer of this action obtained £3000 damages for bodily injuries, and the case was tried at the July Sittings, 1874. The defenders obtained a rule to show cause why a new trial should not be granted on the ground of excessive damages, and that the pursuer had, in whole or in part, recovered since the trial.

At advising—

Lord Deas—The main ground on which a new trial is asked is that the pursuer is now much recovered from the condition in which he was at the trial—in fact that he is substantially recovered I do not think it necessary to consider whether substantial recovery is a competent ground on which to ask for a new trial; if so, it would require a very strong case, and I think there is no such strong case here, for even taking it on the affidavits for the Railway Company, I should think it impossible to say that the pursuer has substantially recovered. I shall not go into details, but there is nothing in the facts spoken to that of itself would indicate that. It is worthy of remark that on the defender's side there are no medical certificates There are, on the other side, by eminent men who were examined at the trial, and there was nothing to prevent the defender from giving such evidence at the same time. Dr M'Leod is the only witness who negatives the idea that the pursuer was suffering from proper paralysis. He seems to mean that there was no organic lesion such as the doctors on the other side said there was. I do not know what he thinks of the subject now, and any opinion on the point is left wholly to the doctors who were called at the trial for the pursuer, and they are satisfied that there was and is organic lesion. That there may be and is partial recovery is beyond a doubt; we have all seen again and again that paralysed people have partially recovered. I see nothing here to show that the same thing may not be the case now. The doctors say so, and yet they adhere to the opinion that there is actual and proper paralysis. If it were proved that the pursuer had so far recovered as to be able to conduct his business, that might possibly have raised a question; but no one says so, and there is no such strong case of recovery since the trial as to raise the question. Then the only other ground is excess of damages; that is quite a different and a very ordinary ground for granting a new trial. It is quite plain from what has been said that the injury is a serious one. If I had been on the jury I do not think I should have given quite so much; but that is no reason for interference with the verdict, and I think the rule should be discharged on both grounds.

LORD ARDMILLAN—I agree with your Lordship. Under the least favourable view for him, the pursuer has suffered great pain and injury, and though I agree with your Lordship in thinking that the damages are rather too high, yet we do not interfere with a verdict unless the sum given is preposterously too large. I am of opinion that a verdict as a rule is not to be interfered with on account of emerging circumstances, and I am of opinion that nothing but an extreme case would justify us in interfering with this verdict. I see no reason to doubt the accuracy of the doctors' diagnosis.

LORD MURE—I am of the same opinion. I have some doubts on the simple question of excess of damages, which I think very high; but though I should have given less had I been on the jury, still I have no wish to disturb the verdict on that ground. I entirely concur with Lord Deas in his remarks as to the effect of the evidence, and as to the competency of such a ground for granting a new trial.

LORD PRESIDENT—If it had been my duty to give a verdict, I should not have given £3000; but I agree with your Lordships in thinking that the excess beyond what we think reasonable is not so great as to entitle us to grant a new trial; we never do so unless the damages are excessive, and I am not much surprised that the jury gave heavy damages. The other ground is peculiar, and rather novel. If the case had been tried during session, the verdict would have been applied in a few days, and there would have been no chance of applying for a new trial on such a ground, and so the defenders' opportunity can only be called a piece of luck; but still if they are so lucky as to have a long interval in which circumstances may emerge, I am not clear that under the statute they have not the right to avail themselves of it. All we have to do therefore is to see what is the state of the facts. I am assuming that £3000 was a proper award, but it is said that the medical evidence has turned out untrustworthy, that the doctors represented the case as a hopeless one, and now it turns out that the man is better. I do not think that is enough. If it turned out that the doctors had been utterly wrong in their diagnosis, there might have been something to be said, but I can find no reason in the affidavits for coming to that conclusion. I think their diagnosis is quite accurate, and that the pursuer has sustained permanent and serious organic lesion. Professor Lister's and Dr Watson's certificates seem to be a fair representation of what has happened, and they are still of the same opinion as they were at the trial—though there is abatement of the symptoms, the disease is the same. I think the circumstances do not amount to such an emergence as to make it essential to justice to grant a new trial, so I am for discharging the rule.

The Court pronounced the following interlocutor:—

"The Lords, on the motion of the pursuer, and of consent of the defenders, apply the verdict found by the jury in this cause, and in respect thereof decern against the defenders for payment to the pursuer of the sum of Three thousand pounds sterling in name of damages; find the defenders liable in the expenses incurred by him; allow an account thereof to be given in, and remit the same when lodged to the Auditor to tax and report."

Counsel for Pursuer—Solicitor-General (Watson) and Gloag. Agent—George Burn, W.S.

Counsel for Defenders—Dean of Faculty (Clark) and Balfour. Agents—Hill & Fergusson, W.S.

Friday, November 27.

FIRST DIVISION.

[Lord Shand, Ordinary.

F. GOETZE & SOHN *v.* ADERS, PREYER, & CO.

Bankrupt—Foreign Sequestration.

A foreign firm trading with this country had been sequestrated in the country of their domicile. An English creditor arrested a sum of money due to them in Scotland, and the bankrupts and their foreign assignee presented a petition for sequestration, with the view of cutting down the preference created by the arrestment. *Held* that the bankrupt's goods wherever situated were carried by the foreign sequestration, and that a second sequestration here was incompetent.

The affairs of the firm of F. Götze & Sohn, and Johann Friedrich Götze, sole partner of the firm, having become embarrassed, they found it necessary to stop payment, and to apply for concurs process or sequestration of their estates in the Court at Glauchau of the Prince and Count of Schönburg, in Saxony, which was awarded on the 2d day of January 1874; and Richard Clauss was appointed trustee on said estates by said Court on the 3d January 1874. At the time when sequestration was awarded, F. Götze & Sohn and Johann Friedrich Götze had moveable goods and effects belonging to them situated in Scotland, which were attached, on 8th December 1873, by particular arrestments used at the instance of Messrs Aders, Preyer, & Company, merchants in Bradford, England, who were creditors of F. Götze & Sohn and Johann Friedrich Götze. The bankrupts, with concurrence of Mr Clauss, on 4th February 1874 applied to the Court for sequestration, which was opposed by the arresting creditors on the ground of the existing Saxon sequestration. The Lord Ordinary pronounced the following interlocutor:—

"*Edinburgh, 4th February* 1874.—The Lord Ordinary having heard counsel for the petitioners in support of the competency of the application, and considered the Petition and productions, Refuses the same.

"*Note.*—It is not alleged that the bankrupts ever carried on business, or had a domicile or residence in this country. Messrs Bentzen & Co., yarn merchants in Glasgow, are alleged to be debtors of the bankrupts, and the debt due by them is said to have been arrested by one of the bankrupts' creditors. The schedule of arrestment *ad fundandam jurisdictionem* has been produced, and is the sole foundation for the statement in the Petition that the bankrupts 'are subject to the jurisdiction of the Supreme Courts of Scotland.' It was explained that the object of the Petition was to cut down a preference which otherwise might possibly be acquired by one of the creditors over the others.

"The application is rested on section 13th of the Bankrupt Act (1856), which provides that