negligently and wrongfully, and with reckless disregard for the safety of the public."

Both defenders pleaded that the action was irrelevant.

After hearing parties in the debate roll, the Sheriff-Substitute (ERSKINE MURRAY), by interlocutor dated 18th May 1897, before answer allowed a proof.

Both defenders appealed to the Sheriff (BERRY), who, by interlocutor dated 18th June 1897, adhered to the interlocutor appealed against, and remitted to the Sheriff-Substitute for further procedure.

The pursuer appealed to the Court of Session for jury trial, and proposed the following issue for the trial of the cause:— "Whether on or about the 5th day of August 1896, while upon or near the public footpath along the north or right bank of the river Clyde at Dalmarnock, and near the defenders' works, the pursuer's pupil son Robert Caughie was injured in his person through the fault of the defenders, or one or other and which of them, to the loss, injury, and damage of the pursuer's said son? Damages laid at £200."

The defenders John Robertson & Company objected to the approval of the issue, and argued—Decree was sought against the defenders jointly and severally, whereas their liability was necessarily several. There was no case made here of joint wrong-doing. The defenders were not said to have been associated in any way in making the heap of ashes. The acts complained of were quite independent. The action was therefore irrelevant in respect that the facts averred in the condescendence could not justify the decree craved in the petition. The issue proposed, in which the jury were asked whether the pursuer's son was injured "through the fault of the defenders, or one or other and which of them," was not a proper form of issue to try a case in which decree was craved against two defenders jointly and severally.

Argued for the pursuer and appellant—The pursuer knew and averred that both the defenders deposited ashes at the place in question. The wrongful acts complained of might be separate, but the result of them was a joint wrong towards any member of the public who was injured by the existence and position of this heap, which, as averred, was wrongously placed where it was by both defenders. The pursuer did not and could not be expected to know which of the defenders deposited the ashes which injured the boy on the particular occasion in question.

There was no appearance for the defenders James Orr & Company.

LORD JUSTICE-CLERK—I think this issue must be allowed to go to trial. The allegation is that the defenders tipped live ashes at the side of the path, and that the pursuer in consequence was injured. Two persons or firms may be found both to have committed a wrong at the same place, so that they may both be liable for an injury caused to a member of the public.

LORD YOUNG concurred.

LORD TRAYNER—I have some doubt as to whether this issue should be allowed. I think it is a bad precedent to allow a pursuer to say as this pursuer practically does here—"I don't know which of you did the wrong I complain of, but I know that one or other of you did it." I rather think a pursuer is bound to state specifically who it was that did him the wrong, and doubt whether he is entitled to an issue unless he does so. But if your Lordships all think this issue should be allowed I am not prepared formally to dissent.

LORD MONCREIFF—I quite see that difficulties may arise in determining whether the pursuer has proved the case which he makes upon record. But the averment is that both the defenders were concerned in doing the act of which the pursuer complains and which he says caused him injury. I therefore think that the issue must go to trial as it stands.

The Court approved of the issue and appointed it to be the issue for the trial of the cause, and found the defenders John Robertson & Company liable to the pursuer in the sum of £5, 5s. of modified expenses.

Counsel for the Pursuer—R. Scott Brown. Agent—A. C. D. Vert, S.S.C.

Counsel for the Defenders, John Robertson & Company — M'Clure. Agents — Cumming & Duff, S.S.C.

Saturday, October 16.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

CALLENDER-BRODIE *v.* ANDERSON & COMPANY.

Process — Reclaiming-Note — Competency — Failure to Present Timeously — Judicature Act 1825 (6 *Geo. IV. cap.* 120), *sec.* 18.

The agent of a party who proposed to reclaim against a judgment of the Lord Ordinary instructed his clerk to lodge the reclaiming-note on the first box-day during vacation. Unknown to his employer, the clerk failed to lodge the note, and absconded. The note was thus not lodged until the second box-day, outwith the statutory period.

Held that the reclaiming-note was incompetent.

Section 18 of the Judicature Act enacts—"That when any interlocutor shall have been pronounced by the Lord Ordinary, either of the parties, if dissatisfied therewith, shall be entitled to apply for a review of it . . . provided that such party shall, within twenty-one days from the date of the interlocutor, print and put into the boxes appointed for receiving the papers to be perused by the Judges a note reciting the Lord Ordinary's interlocutor and praying the Court to alter the same in whole or in part . . . and . . . the party so applying

shall, along with his note as above directed, put into the box printed copies of the record authenticated as above." . . .

It is provided by Act of Sederunt, July 11, 1828, section 79, that where the reclaiming-days expire after the close of session, they continue open till the first box-day in the vacation.

Mrs Anne Catharine Brodie or Callender-Brodie, of Idvies, Forfarshire, raised an action of suspension and interdict against Messrs William Anderson & Company to interdict them from entering upon certain woods on her property and cutting or removing trees thereon.

On 26th February 1897 the Lord Ordinary (STORMONTH DARLING) granted interim interdict, and on 13th July he pronounced an interlocutor declaring the interdict perpetual.

The defenders lodged a reclaiming-note on September 30th, being the second box-day in vacation.

The pursuer objected to the reclaiming-note as incompetent in respect that it had not been lodged within the statutory period as provided by section 18 of the Judicature Act—*Watt's Trustees* v. *More*, January 16, 1890, 17 R. 318; *Ross* v. *Herd*, March 9, 1882, 9 R. 710.

The defenders explained that the reclaiming-note was printed and ready for boxing and lodging on the first box-day, and that a clerk in the employment of their agents had been sent up to box the note, and had been given the fee fund dues for lodging it in the Process Office of the Register House, but that it was discovered in his desk in September, the clerk having in the meantime left the office without informing his employers that he had not lodged the note.

The note was lodged on the second box-day.

Argued for reclaimers—They had done all in their power to comply with the statute, and it was through no fault of theirs that the note had not been boxed in time. Their case was therefore stronger than that of *Watt's Trustees* v. *More, ante*, where no attempt was made to box the note within the statutory period. This was not a case of "mistake or inadvertency," so if this reclaiming-note were held incompetent they would have no means of bringing the judgment under review as provided in section 16 of the Act of 1808 (48 Geo. III. cap. 151).

LORD PRESIDENT — The only question before us is whether the reclaiming-note is competent. No reclaiming-note was presented within the statutory period, and therefore, unless facts are pointed out to show that the party did all that he was required to do, we must hold that the reclaiming-note is incompetent. Now, in this case there is nothing of that kind. All that is said is that the party and his agent were minded to reclaim, but then the agent or the agent's clerk (it matters not which) did not present any note. I am therefore of opinion that the reclaiming-note is incompetent.

LORD ADAM and LORD KINNEAR concurred.

LORD M'LAREN was absent.

The Court refused the reclaiming-note.

Counsel for the Complainer — Chree. Agents—John C. Brodie & Sons, W.S.

Counsel for the Respondents—Hunter. Agent—John Baird, Solicitor.

HIGH COURT OF JUSTICIARY.

Thursday, July 15.

(Before the Lord Justice-Clerk, Lord Adam, and Lord Low.)

HER MAJESTY'S ADVOCATE *v.* DICKIE.

Justiciary Cases—Proof—Rape—Admissibility of Evidence.

In a trial for rape or assault with intent to ravish, it is incompetent to lead evidence to prove individual acts of unchastity by the principal witness with men other than the panel, unless such acts are so closely connected in time with the alleged crime as to form part of the *res gestæ*.

William Dickie, brickworker, St Leonard Street, Lanark, was tried on 7th May 1897 before the Sheriff-Substitute for Lanarkshire (FYFE), on an indictment in which he was charged (1) with having attempted to ravish or otherwise; (2) with having indecently assaulted Elizabeth Craig Brown, daughter of John Brown, residing at Cleghorn, Lanark. Prior to the trial Dickie gave in a notice in the following terms:—"The accused hereby gives notice that it is his intention, on the trial of the said indictment within the Sheriff Court at Lanark, on 7th May 1897, to impeach the chastity of the said Elizabeth Craig Brown, and to prove that she is a person of loose and immoral character, and that she has been on terms of improper familiarity with various men; that in particular, in the months of June, July, or August 1895, Thomas Dick, miner, Carluke, had connection with her at Gill Row, Carluke; that in the summer and autumn of 1896 the said Elizabeth Craig Brown was on terms of undue intimacy with Alexander Jack, bricklayer, Garscube, Glasgow, and that the said Alexander Jack had carnal connection with her during said period in a field on Colliclaw Farm, Cleghorn; that during the years 1896 and 1897 the said Elizabeth Craig Brown was improperly familiar in her father's house at Terra Cotta Cottages foresaid with William Sneddon, bricklayer, Kirkhall Cottage, Cambusnethan."

At the trial an agent for Dickie proposed to ask a witness, Mrs Elizabeth Collier or Hastie, the following question—"Did you