and were susceptible of only one meaning to a reasonable man.

LORD JUSTICE-GENERAL—Certain objections have been taken and argued to the form of the complaint and conviction in this case. I am bound to say that I was not affected by the argument to the effect that there was a want of specification as regards *locus* and time in the complaint, and I think the *locus* and time which are set forth at the beginning of the complaint must be read through the other parts of it.

In the same way I think there is no good objection upon the form of the conviction. I am aware that there are authorities in which a malignant construction in such matters has been applied. I think the correct view is that which has been repeatedly given effect to in the House of Lords, viz., that construction shall be neither malignant nor favourable, but that the proper construction of a document is to find the true meaning of it.

I am aware that in criminal matters such questions must be very carefully dealt with, and that if it can be shown that any possible prejudice is likely to arise, the objection must be given effect to. But then this is not one of these cases, and therefore I do not feel precluded from reading the language of this conviction as it is written, and, *applicando singula singulis*, it is plain that the conviction relates in each case to the specific charge. Accordingly, none of the objections which have been stated to the form of the complaint and conviction appear to me to be good.

One objection has, however, been stated which amounts to an averment of denial of justice in the conduct of the trial, because it is said that the Magistrate refused to hear evidence for the defence. The answers which have been put in contain a specific denial of the facts averred. This allegation is of so open a nature that I think it is in the interest of all those who are concerned in the administration of justice that the matter should not be disposed of without being put to the test. Mr Cooper was therefore quite right in not pressing his objection to inquiry.

It would of course be out of the question to have anything like a proof at large, but we shall remit to the Sheriff to report on the specific averment which has been made.

LORD JUSTICE-CLERK—I concur. I only desire to say that as regards the question of construction the Court, in my opinion, ought not to interfere with a sentence unless it appears that a practice of such looseness has arisen that if continued it might lead to injustice.

As regards the complaint, I see no ground for holding that it is otherwise than clear and unambiguous. It is obvious that the charges all relate to one incident and one time and place.

The averments as to the conduct of the trial are, however, as grave as I have ever seen made, and I think that in the interest of all parties there should be investigation.

LORD KINNEAR, LORD KYLLACHY, and LORD KINCAIRNEY concurred.

The Court pronounced this interlocutor:—

"Remit to the Sheriff of Lanarkshire to inquire into and report upon the averment of the complainers in statement 2 of the bill of suspension that the complainers tendered the four witnesses therein named and that the Magistrate who presided declined to allow the said witnesses to give evidence."

Counsel for the Complainers—Trotter. Agent—James G. Bryson, Solicitor.

Counsel for the Respondent—Cooper, K.C.—Fraser. Agents—Campbell & Smith, S.S.C.

COURT OF SESSION.

Saturday, March 18.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

LAING *v.* HAY.

Process—Jury Trial—Time and Place of Trial—Trial at Circuit—Notice for Trial at Circuit when Likelihood of No Criminal Business—Criminal Procedure (Scotland) Act 1887 (50 *and* 51 *Vict. cap.* 35), *sec.* 48.

The pursuer in an action of damages for defamation not having given notice for the trial of the action within ten days from the time the issues were lodged, the defender gave notice for the trial at the ensuing Circuit Court at Aberdeen. The pursuer, on the ground that there was a likelihood of there being no criminal business to require a Circuit Court at Aberdeen, moved the Divison to fix a day for the trial at the sittings for jury trials in the ensuing vacation. The Court *refused* the motion *in hoc statu*, but, on the last day of session, it being then known that there was no criminal business requiring a Circuit Court at Aberdeen, *fixed* a day for the trial of the action in Edinburgh early in the next session.

The Criminal Procedure (Scotland) Act 1887 (50 and 51 Vict. cap. 35), sec. 48, enacts—"It shall not be necessary for the High Court of Justiciary to proceed to any town for the purpose of holding any court in use to be held in such town when there are no cases indicted for the sitting of the court in such town, or when so many of the persons indicted thereto have pleaded guilty before the sheriff at the first diet as to make the holding of a special court inexpedient, and in that event such cases as remain for trial may be ordered to be brought up at another court in manner hereinafter provided, and any appeal which may have been taken to such court shall" . . .

The Act 55 Geo. III. cap. 42, which extended trial by jury to civil causes, by section 15 provided for the trial of such causes in time of vacation at Edinburgh

or at circuit towns, and, by section 20, provided for the summoning of jurors for the hearing of such causes.

The Act of Sederunt of 16th February 1841, sec. 12, provides—"That to entitle a party to go to trial, . . . if the trial is to be on the circuit, he must give notice on or before the second last day of the session immediately preceding the circuit at which the cause is to be tried." Section 13—"That when a party gives notice that the cause is to be tried in Edinburgh or on the circuit, the opposite party, if he wishes to have the place of trial changed, must within four days from the receipt of such notice make a motion in the Division to which the cause belongs for that purpose."

The Court of Session Act 1850 (13 and 14 Vict. cap. 36), sec. 40, makes provision for the Lord Ordinary in the cause appointing a time and place for the trial of an issue which has been approved, and enacts—"and such trial shall proceed at the time and place so appointed, unless at the time of such appointment one or other of the parties shall intimate to the Lord Ordinary that he objects thereto, in which case the Lord Ordinary shall report the matter to the Court, by whom it shall be fixed when and where the trial shall proceed."

In an action at the instance of James Laing, Bellevue, Keith, in which he sought to recover £5000 damages for defamation from Thomas Abercromby Petrie Hay, wholesale merchant, Keith, issues were adjusted by the Lord Ordinary (KINCAIRNEY) on 7th December 1904, and a reclaiming note taken by the defender was abandoned on 17th December 1905. On the 28th January the pursuer intimated to the defender that on the 31st January he would move the Lord Ordinary to fix a day for trial, but on the 30th January the defender's agent, in respect that the pursuer had not given notice of trial within ten days from the time the issues were lodged, as provided by the Act of Sederunt 24th February 1824, served on the pursuer's agent a notice that the cause would be tried at the ensuing Circuit Court at Aberdeen. On the 1st February the Lord Ordinary, in respect that it was inconvenient for him to fix a diet for the trial (he was on the point of going into the Division), refused the motion of the pursuer, who thereupon intimated to the defender that the cause would be tried at the sitting of the Court for jury trials in the ensuing vacation. The pursuer presented a note to the Division on 2nd February, in which, after narrating the facts, he moved the Court to fix the trial of the cause at the sittings for jury trials at Edinburgh in the ensuing Spring vacation, or at such other time as the Court should think proper.

Counsel for the pursuer, on Friday, February 3, explained at the bar that the Lord Ordinary had not reported the cause in terms of the Court of Session Act 1850, section 40, because that Act only provided for the case where the Lord Ordinary had fixed a diet, and that it had been necessary under the provisions of the Act of Sederunt of 16th February 1841 to present the note at once. The reason why a change was desired in the diet was that it was probable there would be no Spring Circuit at Aberdeen, there being no sufficient criminal business to necessitate the Court of Justiciary going there. There was no provision in the Criminal Procedure (Scotland) Act 1887 for trying a civil cause where there was no criminal business.

Counsel for the defender objected to any change, on the ground that the cause was particularly suitable for trial on circuit, looking to its probable length, the residence of the parties and witnesses, and the delicate state of health of the defender. The defender was within his right in giving notice for trial at the Circuit Court—*Faulkes* v. *Park*, June 17, 1854, 16 D. 963—and it was for the pursuer to show a good reason for a change—*Mackin* v. *North British Railway Company*, June 25, 1885, 22 S.L.R. 775; *Macpherson* v. *Caledonian Railway Company*, July 6, 1881, 8 R. 901, 18 S.L.R. 658; *Willox* v. *Bell*, July 20, 1847, 19 Jur. 692. It was premature to say that there was a likelihood of there being no Circuit Court for want of criminal business.

The Court (LORD ADAM, LORD M'LAREN, and LORD KINNEAR) refused the motion *in hoc statu.*

On Wednesday 8th March the pursuer renewed his motion. Counsel for the defender repeated his objection to any change, and pointed out that provision was made by Act 55 Geo. III, c. 42, for the summoning of jurors to try an issue at a circuit town.

LORD PRESIDENT—We shall make no order in this case till 18th March, which is the last day the Court will sit this Session. If it then appears that there is to be a Circuit Court at Aberdeen for criminal business this case will go to the circuit, but we cannot have a Circuit Court for this case only, and if so far as appears on 18th March there is to be no Circuit Court for criminal business we shall then fix a date for the trial of the case here.

LORD ADAM and LORD KINNEAR concurred.

On Saturday, March 18, the cause again appeared in the Single Bills, and the Court (LORD M'LAREN, LORD KINNEAR, and LORD STORMONTH DARLING), it then being known that there was to be no Circuit Court for criminal business at Aberdeen in the ensuing vacation, fixed the 22nd May as the date for the trial in Edinburgh.

Counsel for the Pursuer—D. Anderson. Agent—R. Stewart, S.S.C.

Counsel for the Defender—George Watt, K.C.—W. Mitchell. Agent—C. George, S.S.C.