LORD KINNEAR—I agree entirely with your Lordship.

LORD JOHNSTON—I agree.

LORD SALVESEN—So do I.

The Court answered the question in the affirmative.

Counsel for Appellant—Dean of Faculty (Scott Dickson, K.C.)—Moncrieff. Agents—Simpson & Marwick, W.S.

Counsel for Respondents—Horne, K.C.—Carmont. Agents—W. & J. Burness, W.S.

Wednesday, May 25.

SECOND DIVISION.

(SINGLE BILLS.)

HUGHES *v.* MORGAN.

Expenses — Jury Trial — Modification — Verdict for less than £50 — Act of Sederunt, 20th March 1907, sec. 8.

In an action of damages which was founded on (1) slander and (2) wrongous arrest, an issue of wrongous arrest only was allowed. The jury awarded the pursuer £10 in name of damages.

Held that the action could not be regarded as an action for defamation, and that as the Judge who tried the cause refused to grant the necessary certificate the pursuer could not, in virtue of section 8 of the Act of Sederunt, 20th March 1907, recover more than one-half of his expenses.

The Act of Sederunt, 20th March 1907, enacts—Section 8—"Where the pursuer in any action of damages in the Court of Session, not being an action for defamation or for libel, or an action which is competent only in the Court of Session, recovers by the verdict of a jury £5, or any sum above £5 but less than £50, he shall not be entitled to charge more than one-half of the taxed amount of his expenses, unless the judge before whom the verdict is obtained shall certify that he shall be entitled to recover any larger proportion of his expenses not exceeding two-third parts thereof."

In August 1909 Bernard Hughes raised an action of damages against John Morgan. The pursuer averred that he had been slandered by the defender's servant William Greig, and that he had been wrongously arrested in consequence of statements made to the police by the said William Greig.

On 8th January 1910 the Lord Ordinary (GUTHRIE) approved of the following issue:—"Whether on or about 21st March 1909 the defender's servant William Greig, while acting within the scope of his employment by the defender at No. 9 West Scotland Street, Glasgow, maliciously and without probable cause caused the pursuer to be arrested, conveyed to Kinning Park Police Office, and there detained in custody, to the loss, injury, and damage of the pursuer. Damages laid at £500."

On 18th March 1910 the case was tried before the Lord Justice-Clerk and a jury. The jury found for the pursuer and assessed the damages at £10.

The pursuer moved the Court to apply the verdict, and maintained that the action being one of defamation the Act of Sederunt, 20th March 1907, section 8, did not preclude him from recovering his full expenses. Alternatively he asked that the Judge before whom the verdict was obtained should grant him a certificate entitling him to recover two-thirds of his expenses. He cited the following cases—*Gorman* v. *Hughes*, 1907 S.C. 405, 44 S.L.R. 309; *M'Gilp* v. *Caledonian Railway Company*, October 26, 1904, 7 F. 4, 42 S.L.R. 33; *M'Daid* v. *Coltness Iron Company, Limited*, November 4, 1904, 7 F. 33, 42 S.L.R. 50; *Ridley* v. *Kimball & Morton, Limited*, May 23, 1905, 7 F. 655, 42 S.L.R. 559; *Bonnar* v. *Roden*, June 1, 1887, 14 R. 761, 24 S.L.R. 539.

There was no appearance for the defender.

LORD JUSTICE-CLERK—I am very clearly of opinion that the case as it came before the jury was not an action for defamation. It was an action for wrongous apprehension and not for defamation. Accordingly I do not think that it falls within the exception provided in section 8 of the Act of Sederunt, 20th March 1907.

If I am asked to say—as the Judge before whom the verdict was obtained—whether I am prepared to give a certificate entitling the pursuer to recover more than one-half of his expenses, I have no difficulty in saying that I consider he is not entitled to any larger proportion than is allowed by the Act of Sederunt, and that I decline to grant any such certificate.

LORD LOW—I am of the same opinion. Where the pursuer in an action is allowed only one issue, namely, an issue of wrongous apprehension, and the case is tried upon that issue only, I think it is plain that we cannot treat the case as an action for defamation. And as the Judge who tried the cause has refused to grant the necessary certificate, the pursuer cannot recover more than one-half of the amount of his expenses.

LORD ARDWALL and LORD DUNDAS concurred.

The Court applied the verdict, and found the pursuer entitled to one-half of his expenses.

Counsel for Pursuer—Crabb Watt, K.C.—Garson. Agents—Marr & Sutherland, S.S.C.

Friday, May 27.

FIRST DIVISION.

(SINGLE BILLS.)

WATSON *v.* BURROUGHES & WATTS, LIMITED.

Process—Reclaiming Note—Failure to Intimate or Send Copies of Reclaiming Note —Judicature Act 1825 (6 *Geo. IV, c.* 120), *sec.* 18—*Expenses.*

The 18th section of the Judicature Act 1825 enacts that a reclaimer shall at the same time as he prints and boxes the reclaiming note "give notice of his application for review by delivery of six copies of the note" to his opponent's agent.

Intimation and service of a reclaiming note were not made upon the agents for the respondents until after the reclaiming note had been moved in the Single Bills and the case sent to the roll.

Circumstances in which the Court (after consultation with the Second Division) allowed the reclaiming note to be reviewed on payment of two guineas of expenses.

Opinion per curiam that section 18 of the Judicature Act was directory merely and not imperative.

On 27th May 1909 Burroughes & Watts, Limited, London, brought an action against James Watson, builder, Uddingston, in which they concluded (first) for delivery of certain billiard tables and accessories delivered by them to the defender under a hire-purchase agreement, and (second) for £500 damages in respect of the defender's refusal to make delivery. A counter action at the instance of Watson against Burroughes & Watts, in which the pursuer sought repayment of the instalments paid by him on the ground that the tables were disconform to contract, was on 20th October 1909 conjoined with the action at the instance of Burroughes & Watts. Thereafter on 13th May 1910 the Lord Ordinary assoilzied the defenders in the action at Watson's instance, and in the action at the instance of Burroughes & Watts found the pursuers entitled to damages.

The defender Watson reclaimed.

On 27th May 1910 the respondents Burroughes & Watts presented a note to the Lord President craving his Lordship to move the Court to refuse the reclaiming note in respect that intimation and service thereof had not been made upon their agents until after the reclaiming note had been moved in the Single Bills and the case sent to the roll.

Argued for respondents—*Esto* that in the cases of *Lothian* v. *Tod*, March 3, 1829, 7 S. 525, and *Campbell's Trustees* v. *Campbell*, March 7, 1868, 6 Macph. 563, 5 S.L.R. 364, the Court refused to dismiss a reclaiming note, these were cases in which the opposite agents had got copies of the reclaiming note before the case was called. Here that was not so, and the reclaiming-note therefore fell to be refused—*Bell* v. *Warden*, July 2, 1830, 8 S. 1007.

Counsel for the reclaimer stated that the printer's failure to deliver copies of the reclaiming note, which was boxed on 23rd May and sent to the roll on 25th May, was due to the 24th of May being a public holiday in Edinburgh. In these circumstances, and looking to the facts that the provisions of the statute were directory merely and not imperative, and that the respondents had suffered no prejudice, he submitted that the reclaiming note should be received. He cited *Allan's Trustee* v. *Allan & Sons*, October 23, 1891, 19 R. 15, 29 S.L.R. 28.

LORD PRESIDENT — We shall consult with the other Division of the Court before disposing of this.

At advising, the opinion of the Court was delivered by

LORD PRESIDENT — In this case we have consulted with the Second Division, and the decision of the Court is that inasmuch as we consider that section 18 of the Judicature Act is not imperative but directory, and inasmuch as the respondents have not suffered any prejudice, we shall allow the case to continue in the roll.

We are far from desiring to introduce any laxity in procedure; each case falls to be considered on its merits; and if it is a case where there is a possibility of prejudice to the respondent, the reclaimer may find that he is too late. We shall in this case allow the respondents two guineas of expenses, because we think that the failure to supply the copies was due to the fault of the reclaimer's agents.

The Court refused the prayer of the note (*i.e.*, the note for the respondents) but found them entitled to two guineas of expenses.

Counsel for Pursuers (Respondents) — Moncrieff. Agents — Campbell & Smith, S.S.C.

Counsel for Defender (Reclaimer)—J. A. Christie. Agent—E. Rolland M'Nab, S.S.C.