since. In these circumstances, I am prepared to decide (following Lord Shand) that the appellants' undertaking falls properly within the jurisdiction of the Assessor of Railways and Canals. Certain English cases were referred to by counsel, but I need not deal with them, as they did not appear to me to have any direct bearing upon the question now before me, involving as it does the construction of a particular section in an Act of Parliament applicable to Scotland.

This point being determined, there is little or nothing more that requires to be decided. Counsel agreed (very sensibly, I think) that if I should come to the conclusion I have reached the valuation should stand for this year at £258,838; and I shall find and declare accordingly. I may observe, however, that while the mode in which the Assessor has been in use to ascertain the amount of the deduction authorised by the statute seems quite a reasonable one, it is not in strict conformity with that prescribed by section 3 of the Act of 1867. If in any future year the Assessor considers that it would be advisable in the public interest to follow closely the letter of the statute, he will, in my opinion, be fully entitled to do so.

The Lord Ordinary pronounced the following interlocutor:—

> "Having considered the appeal, finds and declares the valuation of the appellants' undertaking to be £258,838, and to that extent and effect, but no further, sustains the appeal: Appoints the valuation to be altered and amended accordingly."

Counsel for the Appellants—Clyde, K.C. —Spens — Russell. Agents — Simpson & Marwick, W.S.

Counsel for the Respondent — Wilson, K.C.—Gentles. Agents— Tait & Johnston, S.S.C.

Thursday, June 23.

OUTER HOUSE.

[Lord Guthrie.

GREGSON *v.* GRANT.

Process—Retention of Documents by Party —Contempt of Court—Documents not in Process Exhibited and Handed to Party during Proof—Application after Final Interlocutor for Order to Deliver Documents.

Certain plans which had been called for, under a diligence, by the pursuer in an action, were not found until too late to lodge them in process, but during the proof they were handed to the pursuer by the defender. After a final interlocutor had been pronounced in the cause the defender applied to the Court to ordain the pursuer to return to him the plans in question, the pursuer having previously declined to do so. The Court *pronounced* an order for delivery of the plans to the defender within seven days.

An action of declarator was brought by Francis Robert Gregson against Sir Arthur Henry Grant, Bart. of Monymusk, with regard to the possession of certain lands adjacent to their respective properties. Proof was led, and on 24th February 1910 a final interlocutor was pronounced which was not reclaimed against.

On 2nd June 1910 the defender presented a minute in the following terms—"Millar for the defender stated that on or about 8th July 1909, in the course of the proof in the above action, a roll of estate plans dated 1846 was brought into Court by the defender's agents and exhibited to your Lordship and to the pursuer's counsel and agents; that said roll of plans had been discovered only a short time previously to be in defender's possession, and for this reason it had not been produced at an earlier stage in accordance with the diligence granted by your Lordship in terms of the specification of documents for the pursuer; that on the production of the said roll of plans in Court the defender's counsel offered to put it in process, but neither your Lordship nor the pursuer's counsel asked that this should be done; that the pursuer, or his agents Messrs Somerville & Watson, S.S.C., Edinburgh, after being allowed to examine the said roll of plans in Court, retained possession of the same, and although his agents have been repeatedly requested to return them to the defender they decline to do so; that the defender is not aware whether the said roll is in the actual custody of the pursuer or of his said agents; and he accordingly craved the Court to order intimation hereof to be made to the pursuer through his said agents, and to his said agents, and to allow the pursuer and his said agents to answer the same if so advised within eight days after intimation, and thereafter, either with or without answers, to ordain the pursuer and his agents forthwith to deliver the said roll of plans to the defender's agents on his behalf."

Answers were lodged by the pursuer, who therein stated "that the minute was incompetent, in respect that (1) the Lord Ordinary was *functus*, except *quoad* expenses, in the case of *Gregson* v. *Grant*, as a final interlocutor had been issued on 24th February 1910, and had not been reclaimed against by either party: (2) The document in question was not a number of process, and the competent and appropriate remedy to Sir Arthur Henry Grant was an action of delivery: (3) The minute craved a decree *ad factum præstandum*, involving imprisonment if not implemented, against a firm of agents and not against the partner or partners thereof; and therefore moved that the minute should be refused: Further, while maintaining the incompetency of the minute and that he was not bound to answer same, stated out of deference to the Court that the said Francis Robert Gregson, while unwilling to surrender unconditionally to Sir Arthur Henry

Grant a book of plans, great part of which is his own property, had repeatedly offered, and again offers, to hand over said book of plans to the neutral custody of any third party either agreed upon by the parties or nominated by your Lordship, in order that all plans the property of the said Francis Robert Gregson be excerpted from said book at sight of said third party."

LORD GUTHRIE—The facts averred in the minute are not denied in the answers. It follows that Mr Gregson would have no answer to an action for delivery by Sir Arthur Grant. I think the matter can be dealt with in this process. The roll of plans in question was brought into and handed over in open Court to Mr Gregson and his agents in connection with the Court proceedings, and it was a mere accident that it was not delivered with other documents in obedience to the diligence granted in terms of the specification. If a witness in the witness-box were shown a letter which had not been put into process, and were to claim it as his own property and refuse to hand it back, his action would be dealt with as contempt of Court. I cannot distinguish the present from such a case. The cause is still before me, and I accordingly order Mr Gregson to deliver the documents in question. The offer contained in his minute is irrelevant to the present question. His legal duty is not disputed. His obligation as a matter of honour and even of common honesty is equally obvious, in the absence of any suggestion that Sir Arthur Grant himself obtained possession of the plans illegitimately.

The Lord Ordinary appointed the pursuer to deliver to the defender's agents the roll of plans within seven days.

Counsel for the Pursuer—W. J. Robertson. Agents—Somerville & Watson, S.S.C.

Counsel for the Defender—J. H. Millar. Agents—Mackenzie & Kermack, W.S.

Monday, July 18.

JURY TRIAL.

(Before the Lord Justice-Clerk.)

COOK *v.* PAXTON.

Reparation—Actionable Wrong—Assault—Removal of Objectionable Person from Hotel Premises — Violence — Necessary Violence—Degree of Violence Allowable.

Opinion (*per* the Lord Justice-Clerk) that violence used by a hotelkeeper or his servants in removing from the premises a person who was misbehaving was not an assault, or contrary to law, unless used in a degree which was excessive or unnecessary.

Process—Reparation—Jury Trial—Withdrawal of Case from Jury—Insufficiency of Evidence for Pursuer.

In the course of a trial by jury of an action of damages for assault, where the pursuer failed to adduce corroborative evidence of the assault, the presiding Judge, at the close of the pursuer's proof, and on the motion of the defender's counsel, withdrew the case from the jury, and directed them to return a formal verdict for the defender.

This was an action, raised in the Sheriff Court at Glasgow, at the instance of Angus Cook, traveller, against Thomas Paxton, lodging-house proprietor, Glasgow, concluding for £250 damages in respect of bodily injuries sustained by the pursuer as the result of an alleged assault committed by two employees of the defender in the New Century Hotel, Glasgow, belonging to the defender.

The cause was remitted to the Court of Session, and the following issue was adjusted for trial by jury:—"Whether, on or about 26th August 1909, and in or about the New Century Hotel, Holm Street, Glasgow, the pursuer was assaulted by John Paterson and another servant of the defender whose name is unknown to the pursuer, while acting in the course of their employment by the defender, to the loss, injury, and damage of the pursuer?"

At the trial on July 18th 1910, evidence having been led for the pursuer, and counsel for the pursuer having closed his proof, counsel for the defender moved the Court to withdraw the case from the jury on the ground that no legal evidence had been tendered on the part of the pursuer to prove that he had been assaulted by the defender's servants.

After hearing counsel the LORD JUSTICE-CLERK said — I think there is a tendency nowadays to deal with these cases with more courage upon the part of the Judge than is usually allowable to him. I think it is right that it should be so. It is very advisable that the law should be clear and distinct in the matter, and I think it is becoming more clear and distinct. Our practice for a long time was to allow anything to go to the jury, whether it was sufficient or not, and that led often to great additional expense to parties. Now in this particular case I think I must deal with it as I find it, and therefore, gentlemen, you will take this direction from me, and your verdict must be a formal one, for which I alone am responsible. It is our law very clearly that, except in certain statutory cases where it is thought proper to make a reversal of the rule, the evidence of one witness will not prove a case. A pursuer who comes into Court is bound to prove his case. If he cannot prove it, it is his misfortune, but the law requires that he shall prove his case. Now, gentlemen, it does not of course mean, you will quite understand, that it is necessary that there should be two witnesses to prove every fact in the case. That is not necessary, because there may be facts and circumstances brought out in a case which so confirm what has been said by the one witness that it is sufficiently corroborated by these