a difficulty here in point of form. The provisions of the Employers Liability Act 1880, sec. 6, appear to be applicable primarily, if not exclusively, to actions for compensation "under this Act." But it would be contrary to the professed object of the statute to read it as excluding the possibility of bringing such an action as the present into the Court of Session as a whole without the double procedure of praying for removal in terms of the 9th section of the Act of 1877, and of appealing under the Sheriff Court Acts applicable to causes within the ordinary jurisdiction of the Sheriff. I think that the statute must be construed consistently with its object, and so construing it, I hold that it enables either party to remove to the Court of Session any action for compensation under the law as amended by the statute, in the manner provided by the 9th section of the Act of 1877, although the action may also conclude for damages at common law.

I have the less hesitation in arriving at this conclusion in the present case, seeing that if an objection were to be taken to the competency of removing the action as a whole in this way, that objection might have been stated, and ought to have been stated, at an earlier stage. I think that it should have been stated before the question of procedure recently before the Court was decided.

2. But it was also contended that if there is to be an issue for the trial of the cause as at common law, the pursuers must take a separate issue for the trial of the question of liability under the statute. It was urged that a verdict which did not distinguish the one ground of liability from the other would be liable to the objection of ambiguity, particularly as the conclusion of the petition is in an alternative form. And it was pointed out that the damages claimed, being different in the one alternative (as the action originally stood) from what was claimed in the other, it was necessary to distinguish the ground of liability upon which the verdict was returned, to enable the Court to decide, if called upon so to do, whether the verdict was contrary to evidence.

The pursuers, in order to avoid the possibility of the jury returning a verdict upon any of the statutory grounds for a larger sum of damages than that which is claimed under the alternative conclusion of the action, asked leave to restrict the sum demanded in the first branch of his claim, and to schedule the damages accordingly at £300 in either view. This does not solve the question as to the proper form of the issue or issues, although it obviates or may obviate one of the risks involved in the form proposed by the pursuers. It is still to be decided whether an action founded on the statute as well as on the common law requires to be tried under two issues? In deciding this question I feel bound to apply to the best of my ability, the judgment recently pronounced in the question of procedure. I gather from that judgment that the statute is to be regarded as merely amending the law to the effect of excluding a defence which had formerly been sustained as sufficient to protect the employer against a claim on the part of his servant. The first section of the statute is consistent with that view, although there are expressions in other parts of it which seem to distinguish compensation under the Act from compensation at common law. I think it possible to apply the statute without a separate issue, and that is the better form for carrying out the purpose of the Act and the discussion which has already been given upon it in this case.

There are cases in which two issues are required in order to determine the character of the right, as where a right-of-way is claimed or defended on the alternative ground of public use, or private title fortified by possession. But it is not desirable to adopt a double issue without necessity.

This issue was then adjusted for the trial of the cause:—"Whether, on or about 9th April 1881, the said James M'Avoy, while in the employment of the defenders as a miner in a pit at Addiewell belonging to them, was through the fault of the defenders struck by a hutch, or piece or pieces of wood projecting from a hutch, and thereby sustained injuries from the effect of which he died on or about 23d April following, to the loss, injury, and damage of the pursuers. —Damages laid at £300."

Counsel for Pursuers—J. H. A. Macdonald, Q.C.—G. Burnet. Agent—John Macpherson, W.S.

Counsel for Defender—Lord Advocate (Balfour, Q.C.)—Strachan. Agent—T. F. Weir, S.S.C.

Friday, November 25.

FIRST DIVISION.

[Lord Fraser, Ordinary.

RANKIN *v.* CAMPBELL.

Process—Court of Session Act 1850 (13 *and* 14 *Vict. c.* 36), *sec.* 40—*A.S., 24th February* 1846—*Fixing Date and Place of Jury Trial.*

In an action for slander issues were adjusted before the Lord Ordinary on 1st November. On 19th November, being more than ten days thereafter, the pursuer enrolled the case to fix a diet for trial before the Lord Ordinary. On the 21st the defender, in exercise of his right under the A.S., February 24, 1846, gave notice of motion to have the trial at the Spring Circuit at Inverary. The Lord Ordinary reported the case verbally to the First Division of the Court, in terms of sec. 40 of the Court of Session Act 1850. The pursuer quoted *Moffat* v. *Lamont*, January 7, 1859, 21 D. 212; *Hutchison & Co.* v. *West of Scotland Fishery Company*, May 15, 1860, 22 D. 1068; and urged that the action being one of slander, ought to be disposed of as soon as possible. The defender argued that it would be more convenient and less expensive to have the trial at Inverary, and cited *North British Railway Company* v. *Leadburn, &c., Railway Company*, January 12, 1865, 3 Macph. 340. The Lords (*dub.* Lord Shand) *ordered* the trial to proceed before the Lord Ordinary, on a day to be fixed by him.

Counsel for Pursuer — Rhind. Agent—W. Officer, S.S.C.

Counsel for Defender—Keir. Agent—John Gill, S.S.C.

Saturday, November 26.

FIRST DIVISION.

[Sheriff of Renfrewshire.

CLAVERING *v.* M'CUNN.

(Before the Lord President, Lord Mure, and Lord Adam.)

Proof—Parole—Writ—Receipt—Bankruptcy—Voucher.

In the sequestration of a firm and its partners a creditor lodged as a voucher in support of his claim two receipts for the amount of his claim granted to him in name of the firm. He also, as required by the Bankruptcy Act (19 and 20 Vict. cap. 79, sec. 22), lodged a heritable security granted in his favour by an individual partner over subjects belonging to that partner. The security was for the same amount as the claim, but it was a second security, and was practically worthless except as giving a personal obligation against the individual partner. The trustee having ranked the creditor to the full amount of his claim, another creditor objected, on the ground that the receipts, though in name of the firm, did not truly represent a loan to the firm, but to the individual partner, and that the vouchers being *ex facie* for a larger sum than the claim, parole evidence was competent to instruct the whole circumstances of the case. *Held* that parole was incompetent; but that the claimant having founded on part of a correspondence to show that the receipts were truly for firm debts, the objecting creditor was entitled to recover the remainder of the correspondence.

The firm of J. Clark & Company, thread manufacturers, Paisley, consisted of John Clark, John Morgan, John Morgan junior, and E. A. Morgan. John Morgan was also the sole partner of John Morgan & Company, shawl manufacturers, Paisley. The estates of these two firms and the individual partners thereof were sequestrated, and D. G. Hoey, C.A., Glasgow, was appointed trustee. The present dispute related to the following deliverance by the trustee:—

"2. *Thos. Clavering, St Vincent Place, Glasgow.*

"Cash advanced, per receipts produced	£10,000 0 0	
"Interest thereon, as per statement .	873 0 0	
		£10,873 0 0

"The claimant has now produced in addition to the vouchers formerly lodged, a bond and disposition in security for £1800 sterling over property in Gordon's Loan, Paisley, belonging to the bankrupts J. Clark & Co., and having valued the same at £1800, the trustee admits the claim on the company's estate, under deduction of the above £1800, and of interest, as follows:—

"Sum claimed .	£10,000 0 0	
"Less valuation of security . . .	1,800 0 0	
		£8,200 0 0

"In respect the interest has been paid or accounted for to the claimant up to the date of sequestration, the trustee rejects the claim of £873 for interest.

"The claimant has also lodged a bond and disposition in security in his favour by the bankrupt John Morgan, for the sum of over the lands of Easter and Wester Greenlaw, but said bond being a second bond, and the property having been sold for a sum less than sufficient to pay the amount of the first bond, this security is worthless, except as giving the personal obligation of the bankrupt John Morgan for the principal sum and interest due thereon. The trustee accordingly admits this claim to rank on John Morgan's estate for the said principal sum of £10,000.

"But in respect that interest has been paid and accounted for to the claimant up to the date of sequestration, the trustee rejects the claim of £873 for interest, and in ranking the claimant on the estates of J. Clark, John Morgan junior, and Edward Aikman Morgan the trustee values the claim against the company at 8s. per £, and admits claimant to a ranking on each of the three estates above mentioned for £4920.

"Claimant's affidavit on John Morgan's estate was lodged too late for adjudication at this period."

The receipts produced were for £8000 and £2000, and were dated respectively 10th May 1878 and 10th July 1878. They were in the following terms:— "*Paisley, 10th May* 1878.

"Received from Thomas Clavering, Esq., the sum of Eight [*or* Two] thousand pounds stg.

"£8000 stg. J. CLARK & Co."

M'Cunn, another creditor, objected to the foregoing deliverance, and appealed to the Sheriff on the following grounds:—"First, The two receipts produced, the one dated 10th May 1878 for £8000, and the other dated 10th July 1878 for £2000, are not legal evidence of loans to or debts due by the company. It is not alleged in the claim itself, or state of debt annexed thereto, that these sums were advanced in loan to the company, and no further evidence in support of the claim as against the company estate was called for by the trustee. Second, If any cash passed upon the delivery of these receipts, or either of them, which is not admitted, it is believed and averred that it was advanced in loan to the bankrupt John Morgan as an individual, and formed the sum contained in and acknowledged by him to be due under bond and disposition in security for £10,000 over his lands of Wester and Easter Greenlaw, Paisley, in favour of the said Thomas Clavering, dated 8th, and recorded in the Division of the General Register of Sasines applicable to the county of Renfrew on 11th May 1878, which bond and disposition in security was delivered, and the transaction fixed for settlement at Glasgow on or about 10th May 1878. . . . Third, The said receipts were *per incuriam* granted by the bankrupt John Morgan junior in name of the said firm of J. Clark & Company, or were obtained from him by the said Thomas Clavering for what was not a company debt. Fourth, In any case, the said sums of £8000 and £2000 were not advanced in loan by the said Thomas Clavering to the said company, and the said John Morgan junior was not authorised or entitled to grant or