against a dog or kitten going on it. If the pursuer wishes to exclude these things he must get the means himself, and not apply to Her Majesty's Judges for interdict against them. I am therefore entirely prepared to affirm the findings in point of fact of the Sheriff-Substitute's judgment on the 15th January last, "that at Whitsunday 1882 the pursuer became tenant, under a twenty-one years' lease, of the estate of Kintail, comprehending the grazing or pasture farm and lands of Morvich, and that the defender occupies a cottage on the said lands of Morvich: Finds that the pursuer has failed to prove that the defender trespassed on said lands by putting a lamb to graze thereon in June or July last, or that he threatened to put more sheep or cattle thereon: Therefore refuses the interdict craved on 30th July last, and assoilzies the defender." I think that is altogether right. But it is also right to take notice of the fact that when the officer was sent to serve the interim interdict upon this cottar, the defender took it for an order of the Court, or it had been explained to him that he should remove his pet lamb, the pet of his children, and he did remove it. It was removed on 3d August. The sheep therefore complained of, or rather I should say not complained of—because it is merely said that they were there in April, and these proceedings were not instituted till the end of July—had been removed. The lamb was removed in August. Nothing remained but all these proceedings, and an immense amount of expense was incurred after that, not even a pet lamb existing to justify them. That may be sufficient for judgment in itself, but I prefer rather to take it, as the circumstances showed, that there was here no appreciable wrong apprehended, or reason to apprehend any appreciable wrong at the hands of this cottar, and that the Sheriff-Substitute's judgment is right in point of fact. I therefore entirely concur with your Lordship that we should revert to the judgment of the Sheriff-Substitute.

Lord Craighill—I think the second ground of judgment proposed by Lord Young sufficient to decide this case.

Lord Rutherfurd Clark—I agree with the Sheriff-Substitute in thinking that the facts as proved do not entitle the pursuer to the remedy asked.

The Court pronounced this interlocutor:—

"Find that at Whitsunday 1882 the pursuer became tenant under a twenty-one years' lease of the estate of Kintail, comprehending the grazing or pasture farm and lands of Morvich, and that the defender occupied a cottage on the said lands of Morvich: Find that it is admitted by the defender that he has no right to graze sheep or cattle on the said grazing lands: Find that the pursuer has failed to prove that the defender trespassed on said lands by putting a lamb to graze thereon in June or July last, or that he threatened to put more sheep or cattle thereon: Therefore sustain the appeal; recal the interlocutor of the Sheriff of 7th February last; affirm the interlocutor of the Sheriff-Substitute of 15th January last; of new assoilzie the defender from the conclusions of the action: Find him entitled to expenses in the Inferior Court and in this Court," &c.

Counsel for Pursuer (Respondent)—Comrie Thomson—Pearson. Agents—Hagart & Burn Murdoch, W.S.

Counsel for Defender (Appellant)—Graham Murray—Kennedy. Agents—Gordon, Pringle, Dallas, & Co., W.S.

Friday, June 5.

FIRST DIVISION.

[Sheriff of Lanarkshire.

JOHNSON *v.* MITCHELL & COMPANY.

Reparation—Personal Injury—Employers Liability Act 1880 (43 *and* 44 *Vict. cap.* 42).

In an action at the instance of an employé in a match-work against his employers to recover damages for injuries which his hand had sustained in shutting a sliding door on the occasion of an alarm of fire, it was proved that the door in question was for the purpose of preventing fire communicating from one room to another, and that it was regularly closed at meal-times and at night; that it was not usually the duty of the pursuer to shut the door, and that he had never done so until the day of the accident, when he did so in obedience to an order from the foreman; that the door was moved by means of a handle, but that there was no check in the wall to stop the door, which in consequence ran on until brought up by the handle; and that a very small alteration would have made the door safe. *Held* in these circumstances that there was fault on the part of the defenders, and that the pursuer was entitled to damages.

This was an action of damages for personal injuries at the instance of Charles Johnson against Mitchell & Company, the Clydesdale Match Works, Govan, brought under the Employers Liability Act 1880 in the Sheriff Court at Glasgow.

The pursuer was in the employment of the defenders, and the following facts were proved:—There were in the match-works, on account of the great risk of fire, iron sliding doors running along on wheels or pulleys for the purpose of preventing a fire which had broken out from communicating to the drying-room or stores where the matches were stored. At the time of the accident these doors were pulled backwards and forwards by a handle, but there was no post or casework at the point where the door should have stopped. These doors were regularly closed at meal-times and at night by one of the girls in the work. On the occasion of an alarm of fire it appeared from the evidence of the foreman that it was the duty of all concerned to see to the closing of the doors. The pursuer never had occasion to close any of these doors until the day of the accident. On that day an alarm of fire was given and the foreman called to the pursuer to shut one of these doors which was between the slab and drying-rooms. The pursuer rushed

forward and pulled the door to with considerable force, and not knowing that the door would run on until brought up by the handle, one of the fingers of his left hand, with which he held the handle, was jammed between the handle and the side of the doorway, and severely crushed.

After the accident the defenders put up pieces of angle iron, which were sufficient to prevent such an occurrence in future.

The Sheriff-Substitute (ERSKINE MURRAY) gave decree for £30.

The defenders appealed, and argued that the defender was in fault, as the evidence showed that the door was quite safe if carefully handled.

At advising—

LORD PRESIDENT—One satisfactory feature of this case—and it is the only satisfactory feature—is that there is no dispute about the facts. We know exactly what happened, and the question is whether the facts are sufficient to impose liability on the defenders—that is to say, whether the defenders used reasonable caution in providing safe machinery and plant in their works.

The door in question was of a construction particularly suited to prevent fire communicating from one room to another, and the occasion on which the door was intended to be used—that of fire breaking out—was a serious one, for if the fire communicated with the room where the matches were stored the consequences would have been alarming. Now, this door, if shut quietly and deliberately, could hurt no one, and if the man had looked to see how the door shut there would have been no chance of danger. But then the door was intended to be used on the occasion of a sudden fire, and on such occasions people act very hurriedly in order to prevent the evil. Therefore the defenders were bound to see and believe that the door could be safely shut in a great hurry without looking to see what the consequences of shutting would be.

There is this further fact, that a very slight alteration would have made the door secure, and therefore I am compelled to the conclusion that the defenders did not use all reasonable precautions for making the door safe, looking to the circumstances that people would require to shut this door in a state of hurry and alarm. I am, therefore, for affirming the judgment of the Sheriff-Substitute.

LORD MURE, LORD SHAND, and LORD ADAM concurred.

The Court affirmed the interlocutor appealed against.

Counsel for Pursuer (Respondent)—Rhind—Watt. Agent—Andrew Urquhart, S.S.C.

Counsel for Defenders (Appellants)—J. P. B. Robertson—Ure. Agent—Lindsay Mackersy, W.S.

Friday, June 5.

SECOND DIVISION.

[Sheriff of Inverness, Elgin, and Nairn.

FORBES *v.* CAMPBELL.

Sale—Contract Silent as to Time of Payment—Ship—Reasonable Delay in Giving Bill of Sale.

A person who had agreed to buy and had taken delivery of a vessel from the owner, repudiated the bargain on being told by the latter that the bill of sale could not be given till he had made up his title as executor to his deceased father, who was the last registered owner. The bill of sale was tendered within a month. The Court (*dub.* Lord Justice-Clerk) *awarded* damages for the breach of agreement, on the ground that the owner had acted honestly and with no reasonable delay.

Donald Forbes, master-mariner, Stornoway, brought this action against John Campbell, shipmaster, Inverness, for £60 as damages sustained through the defender's alleged failure to implement an agreement to buy from him a schooner called the "Conquest," and which was made under the following circumstances. The pursuer's father Donald Forbes died on 29th December 1878, and was at the time of his death the registered owner of the schooner. The pursuer continued to sail the vessel in the coasting trade for behoof of himself, his mother Mrs A. M. Forbes, and the rest of the family, the name of his father still standing in the register. On 8th June 1883 he agreed to sell the vessel to John Campbell, conform to the following letter of agreement:— "*Stornoway, June 8th*, 1883.

"Dear Sir,—We hereby offer you the schr. 'Conquest,' of Stornoway, as she now lies at the quay of Stornoway, for the sum of £375 sterling, less five pounds discount. The said sum to be paid us for and in exchange of bill of sale.—We are, yours truly, DONALD FORBES, A. M. FORBES" [the widow].

Campbell accepted the offer the same day. Before the offer and acceptance was written out Campbell was made aware that the ship still was registered in the name of the pursuer's father; and the pursuer averred "(Cond. 6) . . . . The defender was made aware of the state of the title to the 'Conquest,' and he, defender, was distinctly informed that a bill of sale could not be granted until confirmation should be obtained, but that he could obtain immediate delivery of the ship on consigning the purchase price in bank either in name of a third party or in the joint names of pursuer and defender, to await completion of pursuer's title and delivery of bill of sale." "(Cond. 7) It was thereafter arranged that the defender should proceed to Inverness and return to Stornoway during the following week for the purpose of paying the said purchase price and taking possession of the schooner. The pursuer therefore discharged the crew and abandoned the contemplated voyage to Larne, and instructed an agent to apply for and procure him confirmed as executor-dative to his deceased father, with the view of granting a bill of sale of the vessel to the defender." "(Cond. 8) On or about 11th June 1883 the defender