of opinion that the objection ought to be repelled. The accused is charged by the Crown with having on the 8th of October last addressed a letter to a gentleman in Amsterdam, a neutral, requesting that gentleman to write and ask five firms or business persons all resident in Germany whether his firm—the accused's firm—in Hawick could deliver to these enemies, through the intervention of the neutral, any goods for summer orders. That letter is said by the Crown to import a proposal to supply goods to the enemy, and thus to constitute a contravention of the Trading with the Enemy Act 1914, particularly section 1 thereof, the Trading with the Enemy Amendment Act 1914, particularly section 10 thereof, and the Trading with the Enemy Proclamation No. 2, dated 9th September 1914, particularly paragraph 5 (7) thereof. Now, in the first place, it is objected that inasmuch as the letter was not addressed to an enemy, or to anyone who is said to have acted in a representative capacity on behalf of an enemy, it does not constitute the crime set out in the statutes and the Royal Proclamation. I am of opinion that that objection is not well founded. A trader in this country who desires, or has an intention, or proposes, to trade with the enemy may well select as an intermediary any person resident in a neutral country, even although that person is not at the time when the communication is addressed to him a representative either of the proposed buyer or the proposed seller. The statutory crime is that of indirectly supplying goods or procuring the supply of goods, or trading with the enemy, and one of the ways in which a man may indirectly effect his purpose is by selecting an intermediary through whose intervention he will secure his aim, and it does not appear to me to be necessary to say that that intermediary is at the moment when he is selected the active agent or representative of the intending purchaser or the intending seller. But, second, it is contended that, even although that is so, this indictment does not disclose anything more than preparation to commit the offence. I am of opinion that although the writing of the letter would merely have been preparation, the posting of the letter is an overt act by which the proposal, or the attempt, to supply goods may have been made, and accordingly, although it may be open to the accused to show that that was not the intention of the posting of the letter, and that it indicated no more than mere preparation, the jury will have to consider that upon the facts of the case. All I at present determine is that the posting of the letter may be the overt act which is essential to the committal of the crime. Third, it was said that it was only during the period when war prevailed that it was criminal to propose to effect a contract with the enemy or to deal with the enemy, and that war only suspended the proposed contracts. That is quite true, and it will be a question for the jury, under suitable directions, on consideration of the letter, and of the facts proved in relation to it, to say whether or no it contravenes the proclamation. I have not read the letter, and it has not been read by counsel on either side, but I presume there will be expressions in the letter from which it will not be difficult to infer whether or no the offence is thereby committed. It is said that the Crown is committed here to the interpretation of the letter which is placed upon it in the indictment, that it indicates a proposal to supply goods to the enemy, which is struck at by the 10th section of the amending Act. I do not think so. It may be that the letter when justly construed may indicate an attempt to supply goods to the enemy, and I can conceive many cases in which a proposal to supply goods may be precisely equivalent to an attempt to supply goods to the enemy. That again will be for the consideration of the jury when the terms of the letter and the evidence in relation to it are considered. It has been already held in the case of *H.M. Advocate* v. *Mitchell*, *sup.* p. 273, that the offence explicitly dealt with in the Trading with the Enemy Act of trading with the enemy —of directly or indirectly supplying goods to the enemy—covers also an attempt to commit these crimes, because the Statute of 1887 must of course be read along with all statutes which create indictable offences. I therefore repel the objections.

A jury was then empannelled, who, after hearing evidence, found the accused not guilty, and he was accordingly discharged.

Counsel for the Panel—Clyde, K.C.—T. G. Robertson. Agents—Pringle & Clay, W.S.

Counsel for the Crown—Solicitor-General (Morison, K.C.).—Morton, A.-D. Agent—Sir W. S. Haldane, W.S., Crown Agent.

COURT OF SESSION.

Thursday, January 7.

EXTRA DIVISION.

[Lord Anderson, Ordinary.

MURRAY *v.* FRASER.

Reparation—Crime—Criminal Law Amendment Act 1885 (48 *and* 49 *Vict. cap.* 69), *sec.* 5 (1)—*Carnal Knowledge of Girl between Thirteen and Sixteen Years of Age—Civil Action for Damages.*

The Criminal Law Amendment Act 1885, sec. 5 (1), enacts—"Any person who (1) unlawfully and carnally knows or attempts to have unlawful carnal knowledge of any girl being of or above the age of thirteen years and under the age of sixteen years . . . shall be guilty of a misdemeanour."

Opinion that an issue whether the defender had, contrary to the provisions of the Criminal Law Amendment Act 1885, sec. 5 (1), wrongfully had carnal connection with the pursuer, to her loss, injury, and damage, was not allowable

as a separate and substantive issue in an action of damages.

Process—Reclaiming Note—Early Hearing —Action Reflecting on Defender's Character—Court of Session (Scotland) Act 1868 (31 *and* 32 *Vict. cap.* 100), *sec.* 28—*Codifying Act of Sederunt* 1913, *c. ii*, 5.

The Lord Ordinary having dismissed an action for damages for seduction, the pursuer reclaimed, and the case being sent to the short roll came up for hearing eleven months later. *Observed* by the Court that, inasmuch as, had the Lord Ordinary allowed an issue or a proof, the defender might have reclaimed within six days in terms of the Court of Session Act 1868, sec. 28, and the Codifying Act of Sederunt 1913, c. ii, 5, and got a hearing on the summar roll, the proper course for the defender would have been to have explained the circumstances to the Court, in which case an early hearing would probably have been granted.

The Court of Session (Scotland) Act 1868 (31 and 32 Vict. cap. 100), sec. 28, enacts—"Any interlocutor pronounced by the Lord Ordinary as provided for in the preceding section, except under sub-division (1), shall be final, unless within six days from its date the parties, or either of them, shall present a reclaiming note against it to one of the Divisions of the Court, by whom the cause shall be heard summarily; . . ." The Codifying Act of Sederunt 1913, c. ii, 5, provides —"*Review of Lord Ordinary's Interlocutors.* —The provisions of the 28th section of the Court of Session Act 1868 shall apply to all the interlocutors of the Lord Ordinary referred to in the foregoing section, so far as these import an appointment of proof or a refusal or postponement of the same."

The Criminal Law Amendment Act 1885 (48 and 49 Vict. cap. 69), sec. 5, is quoted *supra in rubric.*

Miss Kate Murray, daughter of and residing with Alexander Murray, schoolmaster, The Schoolhouse, Birnie, near Elgin, *pursuer*, with consent and concurrence of the said Alexander Murray as her curator and administrator-in-law, brought an action for damages in the Court of Session for £750 against David Fraser, farmer, Bardonside, Birnie, near Elgin, *defender*, on two alternative grounds, and lodged two issues, the first based on seduction, the second in the following terms:—"2. Whether in or about the month of December 1912 the defender, contrary to the provisions of the Criminal Law Amendment Act 1885, sec. 5, sub-sec. 1, wrongfully had carnal connection with the pursuer, to her loss, injury, and damage?"

The defender, *inter alia*, pleaded—"The pursuer's averments being irrelevant and insufficient to support the conclusions of the summons, the action should be dismissed."

On 7th February 1914 the Lord Ordinary (ANDERSON) sustained the defender's first plea-in-law and dismissed the action.

Opinion.—" . . . 1. I shall consider first the claim made under the first issue, which is the familiar case of a claim for damages for seduction. . . . . .

"I therefore hold, on the first branch of the pursuer's action, that she has not stated a relevant case entitling her to the first proposed issue.

"2. I have now to consider the second issue which has been proposed.

"This issue is based on the provisions of section 5 (1) of the Criminal Law Amendment Act 1885 (48 and 49 Vict. c. 69).

"This Act has now been in operation for nearly thirty years, during which period there must have occurred numerous cases like the present, and yet no one has till now thought of bringing an action on this ground.

"The proposition of the pursuer is that the mere fact of the connection having taken place will, if the woman is under sixteen, make the man liable to her in damages as for a personal wrong to her. However precocious in vice the woman may be, whatever temptations she may have held out to her paramour to induce him to possess her, she will nevertheless, according to the pursuer's contention, if under sixteen, be entitled to mulct him in damages as for a wrong. This anomaly may also present itself that the man may free himself from criminal responsibility under the proviso of section 5, and nevertheless be compelled to pay damages in a civil action.

"The pursuer's counsel emphasised the point that the girl is not punished by the statute as a wrongdoer, and that this must be because she is made by the statute incapable of consenting to the act of connection. Certainly the consent of the female will not free the man from the penal consequence of the statute, but it does not follow that such consent will not free him from civil liability. The latter point must be determined by the rules of the common law, which have not been altered by the statute. The Act of Parliament must be held to have been passed in the public interest, although indirectly it has doubtless benefitted the female sex. But where an Act of Parliament creates new statutory offences one expects to find a full statement in the measure of all the penal consequences which follow from the breach of its provisions. It is not stated expressly that one of those consequences is that an offender is to be liable civilly for damages in addition to being subject to the statutory penalties, and I am of opinion that this civil responsibility cannot be read into the Act by implication.

"I therefore disallow the second issue."

The pursuer reclaimed, and, after an interval of eleven months, the case was heard by the Extra Division.

The question of issues was not argued, but in view of certain amendments made by the pursuer on record, the case was of consent remitted back to the Lord Ordinary for proof before answer.

At advising—

LORD DUNDAS—The Lord Ordinary was, I think, clearly right in refusing the second issue proposed in the Outer House as a separate and substantive issue. For the

rest we think the safer and better course will be to remit the case back to the Lord Ordinary for a proof before answer. [*His Lordship then stated that an amendment of the record proposed by the pursuer would be allowed, and continued*]—It only occurs to me to make one other remark, and it is this—that the case affords an instance of a very unfortunate state of affairs which sometimes results in our practice. I mean that if the Lord Ordinary had thought fit to allow an issue or to allow a proof, the case might have been reclaimed in six days and disposed of in all probability in the summar roll within a very short period of time. But the Lord Ordinary having taken the other view, the case was sent to the short roll in ordinary course, and has been depending since the middle of February last, and now, inasmuch as a proof is to be taken, the ten or eleven months which have elapsed have been wasted. For my part I cannot help thinking that if when a case like this appears in the Single Bills the circumstances were explained, the Court would probably send the case to the summar roll, or at all events secure for it the early hearing which would have naturally followed had the Lord Ordinary taken an opposite view from that which he took. There is, so far as I know, nothing to prevent the course I have suggested being adopted.

LORD MACKENZIE—I entirely agree. In regard to the observations just made by your Lordship I think this is a case of peculiar hardship to the defender. We are bound at this stage of the case to assume that he is innocent of the charge which has been made against him. He says he is, and yet for a period of eleven months nothing has been done in his case. I cannot help thinking that if there is any rule of practice which would prevent a case of this kind from getting an early hearing the sooner that rule of practice is altered the better.

LORD CULLEN—I concur in thinking that the reclaiming note should be disposed of in the manner which your Lordships propose.

The Court recalled the interlocutor of the Lord Ordinary and remitted the case back to him for a proof before answer.

Counsel for the Pursuer (Reclaimer)—Watt, K.C. — Dallas. Agents — Forbes, Dallas, & Company, W.S.

Counsel for the Defender (Respondent)—The Solicitor-General (Morison, K.C.)—Paton. Agents—Inglis, Orr, & Bruce, W.S.

Friday, January 8.

FIRST DIVISION.

[Sheriff Court at Hamilton.

GLANCY *v.* JOHN WATSON LIMITED.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 8 (2)—*Industrial Disease—Presumption—"Deemed to have been Due to the Nature of that Employment."*

The Workmen's Compensation Act 1906, section 8 (2), enacts—"If the workman, at or immediately before the date of the disablement or suspension, was employed in any process mentioned in the second column of the Third Schedule to this Act, and the disease contracted is the disease in the first column of that Schedule set opposite the description of the process, the disease, except where the certifying surgeon certifies that in his opinion the disease was not due to the nature of the employment, shall be deemed to have been due to the nature of that employment, unless the employer proves the contrary."

Observations per Lord Skerrington on the meaning and effect of the above section of the Workmen's Compensation Act 1906. *Cf. M'Taggart* v. *William Barr & Sons, Limited*, December 15, 1914, 52 S.L.R. 125.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), sec. 8 (2), is *quoted supra in the rubric.*

John Glancy, 7 Eddlewood Buildings, Hamilton, *appellant*, presented an application in the Sheriff Court at Hamilton for an arbitration under the Workmen's Compensation Act 1906 to recover compensation from Messrs John Watson Limited, coalmasters, Neilsland Colliery, Hamilton, *respondents*, in respect of miner's nystagmus contracted by him while in the respondents' employment at Neilsland Colliery.

On 16th October 1914 the Sheriff-Substitute (HAY SHENNAN) refused compensation, and at the request of the appellant stated a case for the opinion of the Court of Session.

The Case, *inter alia*, stated—". . . The following *facts* were admitted or proved—1. On 23rd September 1913 the appellant was injured in his own house through a detonator exploding in the coal in his fire. He received injuries in his eyes and sustained a nervous shock. He was then in the respondent's employment as a miner, and the coal had been supplied by them. . . . 3. By 1st November 1913 both eyes were quiescent and there was no ground for fearing further mischief so far as the direct injuries were concerned. But he was found at that date to be suffering from miner's nystagmus. 4. For some months prior to July 1913 the appellant had suffered from unsteadiness of his eyes in the course of his work, but he was not incapacitated for work, and he did not know until 1st November 1913 that this complaint was miner's nystagmus. 5. The nervous disturbance