if one figures a car properly equipped with brakes, which are not being applied during the descent of a steep hill, in one sense doubtless that car is in a defective condition at the moment. It is a car descending a steep hill without the protection of an applied brake. But if that car came into collision nobody would attribute the accident to a defect in the condition of the car.

On considering the statutory provisions as a whole, I have come, however, to be of opinion that the construction relied upon by the appellants, which I have above indicated, is too narrow. It seems to me that though the appliances are sufficient and in perfect order, if a static condition of danger in connection with the ways and works has arisen and has not been detected or remedied through carelessness in inspection, the defence of common employment is not open to the employer. I say static conditions, for I exclude the case where the source of danger in the ways or works is a careless manner of working by an employee which it is the duty of a fellow employee to observe and check. If a way were perfectly constructed but some casual water had frozen upon it, which the person charged with the duty of inspecting it had failed to observe, I think that this would be a defect in the condition of the ways or works within the meaning of the Act, and a source of danger in the atmosphere seems to be on a similar footing.

I am accordingly of opinion that on the facts stated by the learned Sheriff he was warranted in his finding that the accumulation of gas which ought to have been discovered and remedied constituted a defect in the condition of the ways and works. I am further of opinion that though the record is not altogether satisfactory, there is sufficient to warrant this ground of judgment.

The appellants desired a remit to the Sheriff with instructions to state another question, viz. : — Whether, on the facts proved, the injury to the workman was caused by the defective condition of the ways and works? As it seems to me, the cause of the accident is sufficiently brought out by the facts stated, and a remit would be idle, as the matter is really covered by the questions submitted. In most cases of accident connected with a defect in the condition in the ways, works, machinery, or plant, there is some other fortuitous concomitant. Here the concomitant was a spark. But when there are two simultaneous mischances the coincidence of which causes an accident, there is, in my view, a direct causal relation between each of them and the accident occasioned.

I accordingly concur in the proposal of your Lordship in the chair as to the manner in which the questions stated in the case should be answered.

The Court answered both questions in law in the affirmative.

Counsel for the Appellants — Dean of Faculty (Sandeman, K.C.) — Carmont. Agents—W. B. Rankin & Nimmo, W.S.

Counsel for the Respondent — Morton, K.C. — Fenton, K.C. — G. R. Thomson. Agents—Simpson & Marwick, W.S.

Friday, May 25.

FIRST DIVISION.

ANDERSON AND ANOTHER *v.* STODDART AND OTHERS.

Process—Interdict—Breach—Petition and Complaint—Designation of Respondents —Misnomer — Incorrect Address — Misdescription.

In a petition and complaint against three respondents for breach of interdict, which had been obtained in absence, objections were taken on the grounds (1) that one of the respondents was incorrectly named "Stodart" instead of "Stoddart"; (2) that the address of another respondent was wrongly stated; and (3) that each of the three respondents was incorrectly described as respectively "merchant," "crofter," and "small holder." The respondents did not deny that they knew they were the persons referred to in the interdict proceedings, or that they had deliberately done what the Court had prohibited. *Held* that the objections fell to be repelled—the first, in respect that there was no averment that confusion or injustice had been caused; the second, in respect that there was no averment that the place where the respondent in question lived had not been sufficiently identified; and the third, in respect that there was no averment that any doubt had been caused as to who the parties called as respondents were.

On 11th January 1923 Neil Stodart junior, merchant, residing at 16 Torrin, Broadford, Isle of Skye, Neil M'Innes, crofter, 14 Torrin, Broadford, and Donald Grant, smallholder, Uilead, Kilbride, Broadford, were interdicted in absence at the instance of John Anderson and Roderick Anderson, joint tenants of the farm of Kilbride and Kilchrist, Broadford, Isle of Skye, from trespassing upon the complainers' farm, and from molesting or interfering with the complainers in the peaceable enjoyment and possession thereof.

On 23rd April 1923 the complainers brought a petition and complaint against the said Neil Stodart, Neil M'Innes, and Donald Grant alleging breach of interdict. The petition narrated the presentation of the note of suspension and interdict and the statement of facts contained therein, the interlocutor granting the interdict, and the intimation thereof to the respondents by letter under registered cover, to which, it was alleged, no answer had been made, and specified a number of acts committed by the respondents, and alleged to be in breach of the interdict.

The respondents lodged answers, in which they stated, *inter alia*—"The respondent

first called in the petition and complaint is incorrectly named and designed. His name is Neil Stoddart, and he is not a merchant in Torrin or elsewhere. He lives along with his family of four in his father's house at 16 Torrin, where his father has a small shop and half a croft. His father is also named Neil Stoddart. Before the War this respondent emigrated to Canada, but in 1914 he returned at his own expense to this country along with his brother, and enlisted in the Black Watch. He lost a leg at the battle of the Somme. Since his discharge from the army he has assisted his father in the latter's shop. The respondent Neil M'Innes is incorrectly designed. He is not a crofter, and holds no land whatsoever. He at present lives with his brother Alexander M'Innes, who has a quarter of a croft at 14 Torrin. To the same address belonged a Neil M'Innes, who is at present in Australia. This respondent served in the Seaforth Highlanders for nineteen years, and during the War was severely wounded in France. The respondent Donald Grant is incorrectly designed, and his address is wrongly stated. He is not a smallholder and has no land whatsoever, nor does he reside at Uilead, Kilbride, Broadford. He lives with his widowed mother, who is a cottar at Uilead, Corry Farm, Skye. Kilbride and Corry are different farms. He joined the army at the age of eighteen, and served with the Argyll and Sutherland Highlanders." They admitted that the note of suspension and interdict had been presented, but denied that it was directed against them, in respect that their designations were not the same as those of the respondents called in the note. They also admitted that interdict had been obtained as stated in the petition and complaint, and that intimation thereof had been sent to them by letters under registered cover, and that no answer had been made thereto. They did not deny having committed the acts alleged by the complainers to have been committed by them in breach of the interdict, but denied that the said acts were in breach of the interdict, in respect that it was not directed against them.

When the case came before the Court counsel for the complainers moved that the respondents should be ordained to appear at the bar, and contended that the answers were irrelevant, the objections being merely technical, and there being no real controversy as to the identity of the respondents with the persons who had been interdicted and who had committed the acts complained of. Where the error was technical it must be shown to have been material. *Cruikshank* v. *Gow & Sons*, 1888, 15 R. 326, 25 S.L.R. 292.

Argued for the respondents—There was no breach of interdict, because the respondents had not been so described in the interdict as to make it apply to them. This was not a case of incomplete designation, but of designations altogether inapplicable. *Joel* v. *Gill*, 1859, 22 D. 6, *per* Lord Justice-Clerk, at pp. 12 and 13; *Brown* v. *Rodger*, 1884, 12 R. 340, 22 S.L.R. 225.

At advising—

LORD SKERRINGTON—This is a petition and complaint for breach of interdict. The interdict passed in absence against the three persons who were called as respondents in the action, and who now appear as respondents in the petition and complaint. A preliminary objection to the petition and complaint was stated upon the ground that one of the respondents had been incorrectly named and designed in the interdict proceedings, and also in the present petition and complaint, and that the two remaining respondents had been inaccurately designed in both proceedings, with the legal consequence, as I understood the argument, that there was no valid interdict against the respondents which it was possible for them to contravene. The alleged error in the name of one of the respondents is that his surname is spelled "Stodart" instead of "Stoddart." While there may conceivably be cases where a mistake in the spelling of a name may lead to confusion and injustice, nothing of the kind is suggested by the respondent, and in the circumstances the objection must be repelled. If authority is necessary in such a clear case I may refer to the decision in *Cruickshank* v. *Gow & Sons*, 15 R. 326.

As regards the designations of the respondents, their addresses are admittedly correctly stated in the proceedings, subject to the criticism that one of the respondents, Donald Grant, is alleged not to reside (as stated) at "Uilead, Kilbride, Broadford," but it is averred that "he lives with his widowed mother, who is a cottar at Uilead, Corry Farm, Skye. Kilbride and Corry are different farms." The respondent does not aver that the addition of the words "Kilbride, Broadford," is not sufficient to identify "Uilead," which is the house or place where he lives. Accordingly the objection is of no practical importance, and must be repelled.

Having reached this point, we find that there are three respondents whose names and addresses are correctly set forth in the proceedings. It remains to consider whether certain alleged mistakes which the respondents point out in their designations as set forth in the proceedings are, in the circumstances, material. One of them, who is designed as "Neil Stodart junior, merchant, residing at 16 Torrin, Broadford, Isle of Skye," alleges that he is not a merchant, but only an assistant to his father Neil Stoddart, who is a merchant at 16 Torrin; but he does not state that the description did or could lead to any doubt as to his being the person called as a respondent. In like manner the respondent who was designed as "Neil M'Innes, crofter, 14 Torrin, Broadford," explains that he is not a crofter, but "lives with his brother Alexander M'Innes, who has a quarter of a croft at 14 Torrin." It is not stated that his identity as a respondent in these proceedings depended in any way upon his being the tenant of the croft where he resided, and the misdescription is not alleged to have been of any practical importance

either to himself or to any other person. There is a similar objection by the respondent Donald Grant, who avers that he is incorrectly designed as a smallholder, although he has no land whatsoever. There being no doubt as to the persons intended to be made respondents in the action of interdict, no satisfactory reason was stated and no authority was cited which required us to treat the interdict as a nullity, with the result of bringing about a plain miscarriage of justice. The respondents do not deny that they knew that they were the persons referred to in the interdict proceedings, and they do not deny that they deliberately and systematically did the things which the Court had prohibited. I therefore suggest to your Lordships that the objections should be repelled.

LORD CULLEN—I concur.

LORD SANDS—I concur.

LORD PRESIDENT—I concur in Lord Skerrington's opinion.

The Court ordained the respondents to appear at the bar.

Counsel for the Petitioners—Macmillan, K.C.—Scott. Agents—Aitken, Methuen, & Aikman, W.S.

Counsel for the Respondents—N. M. L. Walker. Agent—Donald Shaw, S.S.C.

Friday, May 25.

FIRST DIVISION.

(SINGLE BILLS.)

YOUNG AND OTHERS *v.* BURGH OF DARVEL.

(Reported *ante*, 60 S.L.R. 48.)

Expenses—Joint and Several Liability—Finding for Expenses in General Terms—Motion for Joint and Several Decree Conjoined with Motion for Approval of Auditor's Report—Whether Motion for Joint and Several Liability Timeously Made.

The successful defenders in an action moved for and obtained a finding for expenses generally against several pursuers without mention of joint and several liability among them. When moving for approval of the Auditor's report they craved decree against the pursuers jointly and severally. *Held* that where a joint and several award of expenses against a group of pursuers is desired, it must be moved for when the motion for expenses is made; that it is too late to make good the omission when the Auditor's report comes up for approval; and motion *refused*.

Thomas Young, Turf Hotel, Darvel, and other licence-holders, brought an action against the Provost, Magistrates, and Council of Darvel. The Lord Ordinary's judgment dismissing the action was affirmed by the First Division and by the House of Lords. The successful defenders having moved for expenses without applying for a finding of joint and several liability, the finding was made in ordinary course against the pursuers simply. Thereafter, on the motion for approval of the Auditor's report and for decree for payment of the taxed amount of the expenses, the defenders moved for decree "against the pursuers jointly and severally."

Counsel for pursuers argued that as the defenders had moved for and obtained a finding for expenses, simple and unqualified in its terms, it was too late to ask for the insertion of the words "jointly and severally."

The following authorities were cited:—Bell's Prin., section 59; *Countess of Sutherland* v. *Cuthbert*, 1776, 5 Br. Supp. 439; *Warrand* v. *Watson*, 1907, S.C. 432, 44 S.L.R. 311; *Glas* v. *Stewart*, 1832, 10 S. 351; *Macgown* v. *Cramb*, 25 R. 634, 35 S.L.R. 494.

LORD PRESIDENT—This action was raised at the instance of a group of licence-holders who sought to reduce a resolution under the Temperance (Scotland) Act 1913. So far as at present appears each member of the group had an identical interest with all the others in the action. The pursuers were unsuccessful and expenses were found against them. No application was made at the time with regard to the form of the finding, which was therefore in ordinary course made against the pursuers simply and without any express reference to joint and several liability among them. On the motion for approval of the Auditor's report and for decree for payment of the taxed amount of the expenses, the defenders moved for decree for payment of the taxed amount "against the pursuers jointly and severally." The pursuers object that this motion comes too late, and maintain that in view of the simple and unqualified form in which the defenders moved for and obtained the finding of expenses, it is now too late to ask for the insertion of the words "joint and severally" in this decree.

So long ago as 1776, in the case of the *Countess of Sutherland* v. *Cuthbert* (5 Br. Supp. 439) it was held that "where two persons concur in bringing an action upon the same *medium*, and with the same conclusion, they are liable in expenses *in solidum*, even although the words conjunctly and severally are not added." It appears from an examination of the session papers in the Advocates' Library (Campbell's Collection, vol. 28, No. 33) that the point was raised and debated before decision. In reliance upon this precedent Professor Bell enunciates in his Principles (section 59) the general proposition that "even joint pursuers in an action in which expenses are found due to the defender are each *in solidum* bound for the whole." The difficulty and inconvenience of executing *in solidum* a decree which is not in terms joint and several are obvious. But the soundness of the rule laid down in the *Countess of Sutherland* is not impugned in the present case. If it be sound (and I must not be