a banker's clerk, who is not resident in that part of the country, and has no domicile in Scotland. The slander complained of is said to have been uttered upon two occasions—First, upon 31st August, and second, upon 2d September 1870. Six days after the second case of alleged slander the summons was raised, and two days thereafter was served upon the defender personally. It being admitted that, *ratione domicilii*, the defender was not subject to any jurisdiction in Scotland, the question is whether there were sufficient other circumstances in the case to sustain the Sheriff's jurisdiction in this matter? There were two circumstances particularly relied upon as grounds of jurisdiction—(1) that the slander complained of was uttered in Forfarshire; and (2) that the service of the summons was made upon the defender personally. The question is one of great nicety as well as of general importance. But there are some questions of a similar kind which have already been determined in our courts, which advance us a certain length both in principle and authority towards the decision of this case. There is no doubt that a court has power to enforce a contract either made within its territory, or having its place of performance there, if to the action the defender has been lawfully summoned within the territory of the Court. This has been long settled as to the supreme courts, and the same rule was affirmed, as to the inferior courts, by the case of *Pirie & Co.* of Aberdeen against *Warden*, in which the Court refused to recognise any distinction between the superior and inferior courts as regards this ground of jurisdiction—I mean the *locus contractus* combined with due service within the limits of the Court's territory. But then this is not a case of contract, and therefore *Pirie* v. *Warden* does not apply. No doubt, if the slander complained of is established, the defender is under an obligation to make reparation to the pursuer. But it is not a contract obligation—it is an obediential obligation; and without anything like subtlety or over refinement of technicality, but simply as a matter of common sense, it may be affirmed that that obligation arose within the limits of the territory of the Forfarshire Sheriff-court. There is therefore a strong analogy to be found in the case of *Pirie* v. *Warden*. But the real difficulty in dealing with a case of this kind is to keep in view the distinction that exists between criminal and civil jurisdiction. Criminal jurisdiction rests upon the *locus delicti*. Where the crime has been committed, there, and there only, as a general rule, can a proceeding be entertained *ad vindictam publicam*. It is otherwise, however, in civil cases. Even in an action of damages for loss occasioned by the same crime, the civil court would not have jurisdiction merely on the ground of *locus delicti*. But if the delict or *quasi* delict, out of which the obligation of reparation arises, be committed within the territory, and the summons be personally served upon the defender within the territory, although the ground of jurisdiction be quite different from that in the criminal court, it has some resemblance, for it is the *locus delicti* combined with another element. I cannot help thinking that there are some *quasi* delicts for which I think it is clear that redress must be competently had at the place, if the offender can be found. Suppose, for instance, that a man commits a spulzie of goods within a judge's territory, it would be a most strange result to hold that one could not go to the judge for redress if the offender happened to be a foreigner. Again, suppose a persistent trespass be committed upon my lands by a person who is a foreigner, am I not entitled to go to the judge of the bounds and protect myself by an interdict? If this would hold good in an invasion of property, which I think there is hardly room to doubt, it is no great stretch to say that if a foreigner slander my good name, thereby probably doing me irreparable injury amongst my neighbours and those with whom I live, I am entitled to bring him before the Judge in whose territory I live, if I find him within its limits. Now that is the very case we have here to deal with; and after giving it my fullest consideration, and referring to principle and analogy of other cases, I think the sound conclusion is that the Sheriff had jurisdiction to entertain this action.

The other Judges concurred.

The Court accordingly recalled the Sheriff's interlocutor, and remitted to the Sheriff to sustain his jurisdiction, and proceed in the case as shall be just.

Agent for Pursuer and Appellant—J. Knox Crawford, S.S.C.

Agent for Defender and Respondent—W. M. Johnstone, S.S.C.

Friday, July 7.

ADAM MURRAY, WILLIAM MURRAY, AND OTHERS *v.* ADAM MURRAY AND OTHERS (CHILDREN OF JOHN E. MURRAY).

Succession—Heir and Executor—Relief. *Held* that, in the absence of clear and distinct implication of a testator's intention, the disponee under a trust-settlement of a particular estate is not entitled to call upon the trustees to relieve the estate of a heritable burden upon it out of the general residue.

Agreement — Clause. Construction of a special family agreement, in which *held* that the payment of a certain sum was contingent upon a party succeeding to the actual enjoyment of a liferent.

This was a competition arising out of a multiplepoinding, raised by the trustees of the late Robert Murray, Esq. of Dollarbeg, to determine certain questions which had arisen among the beneficiaries under the trust-settlement. Mr Murray died in 1861, leaving a trust-settlement, dated July 1859. By this deed he directed his trustees to pay over to his two sisters Elizabeth and Isabella, the free produce of his estates during their joint lives, and afterwards to the survivor during her life. After the death of his two sisters, the trustees are directed to hold the estate of Dollarbeg for his nephew John Murray (son of his deceased brother Adam) in liferent, and his children in fee, to be divided in certain proportions; the estate to be sold if a majority of the children expressed a wish to that effect. Legacies of £1000 are provided to his two nieces, the sisters of John Murray; and the free residue of his means and estate to his nephews Adam and William, the younger brothers of John Murray. Miss Elizabeth Murray died 12th February 1864, and Miss Isabella Murray 6th April 1868. John Murray died 20th March 1865, so that he never enjoyed the liferent of Dollarbeg provided to him by the truster.

The claimants in this competition were—(1) the brothers and sisters of John Murray; (2) the children of John Murray.

The lands of Dollarbeg were burdened with a debt of £6000, contained in a bond and disposition in security, granted by the truster in favour of his two sisters Elizabeth and Isabella, dated May 1852. In September 1864 the trustees, at the request of the whole beneficiaries, advanced £6000 from the executry of the deceased, of which one-half was paid to the representatives of Miss Elizabeth Murray, and the other half to Miss Isabella Murray, the original bond and disposition in security being at the same time transferred to the trustees.

The children of John Murray, who were now in right of the estate of Dollarbeg, claimed that the debt of £6000 should be discharged by the trustees out of the general estate of the truster.

It was stated at the bar that the gross rental of Dollarbeg was about £550, and that the remaining estate of the truster, which consisted chiefly of heritable securities, amounted to £17,000. As the amount of the trust-funds was a matter of dispute, this statement was merely a rough estimate to form some guide to the Court.

Another question, which arose out of certain agreements between John Murray and his brothers and sisters, is stated by the Lord Ordinary (MACKENZIE) as follows:—"By the trust-disposition and settlement of Robert Murray, the estate of Dollarbeg was left to his nephew John Murray in liferent, and his children in fee. The testator died on 9th July 1861. Adam Murray, brother of Robert Murray, and father of John Murray, and also of Adam and William Murray, to whom the residue of Robert Murray's trust-estate was directed to be conveyed, died on 9th August 1851, leaving a will, by which he divided the remainder of his property among his children, in the proportion of one-fourth to his eldest son John Murray, and the remaining three-fourths to his four younger children. By this will Adam Murray, the testator's brother, made the following provision. 'I also wish it to be understood, that should my brother Robert Murray of Dollarbeg, Scotland, die intestate, or his will become disputed, so that my eldest son or any other of my children should become his heir-at-law, or otherwise get possessed of the greater portion of his property in Scotland, to exceed what he may inherit from me, then in that case my eldest son, or any other of my children, shall not receive, or if received, shall refund to the rest of my children his share of my property as mentioned in this my will.'

"After the death of Adam Murray, brother of Robert Murray, and some years before the death of Robert Murray, John Murray and the four younger children of the said Adam Murray, entered into an agreement, by which they agreed that whatever property, real or personal, they or any of them should become entitled to under the will of their uncle Robert Murray, or by reason of his intestacy should belong to them, 'in the same shares and proportions in which they are entitled respectively to the residuary estate and effects' of their father Adam Murray.

"On the 25th February 1864, after the death of their uncle Robert Murray, and during the life of his sister Isabella Murray, who had right by his trust-disposition and settlement to the liferent of his whole trust-estate and effects, including Dollarbeg, John Murray and the four younger children of Adam Murray entered into another deed of agreement, which proceeded on the narrative of the foresaid deed of agreement of 1852, and of the trust-disposition and settlement of Robert Murray, whereby the liferent of the lands of Dollarbeg was bequeathed to John Murray, and on the narrative that by that first agreement John Murray was bound to communicate to his four younger brothers and sisters 'annually a proportion of the rents and produce of the said lands during my lifetime from and after the death of the said Isabella Murray,' and on the further narrative 'that this would be a very inconvenient arrangement, and might give rise to various questions, and to a troublesome and complicated system of accounting, without any countervailing benefit.' On this narrative John Murray and the four younger children of Adam Murray agreed that John Murray should enjoy the liferent of Dollarbeg in terms of the trust-settlement of Robert Murray, and they renounced and assigned the same to him and in consideration thereof John Murray agreed 'that as soon as my liferent right to the said lands of Dollarbeg shall open to me by the death of our aunt Miss Isabella Murray, the sum of £5000 sterling, being the stipulated, covenanted, and agreed on value of my said liferent right to the said lands of Dollarbeg, shall then be placed to my debit, and shall be held and imputed as a part payment made to account of the share or shares falling due to me from the estate and effects of the said deceased John Murray my father, or of the said deceased Robert Murray, my uncle.'

"John Murray died on 20th March 1865, before his aunt Isabella Murray, who died on 6th April 1868. The liferent right of Dollarbeg therefore never opened to him, and his children are now in right of the fee thereof under the express directions of Robert Murray's trust-settlement. These children claim under the agreement of 1852 one-fourth part of the free residue and remainder of Robert Murray's trust-estate, which by the trust-settlement was left to Adam and William Murray; and, on the other hand, the said Adam Murray and William Murray, and the other younger children of Adam Murray, brother of the testator, claim, under the agreement of 1864, that the sum of £5000, mentioned in that agreement, shall be placed to the debit of John Murray's children, and imputed as a part-payment made to account of their said one-fourth part or share of the residue of Robert Murray's trust-estate."

LORD MACKENZIE pronounced the following interlocutor:—"Repels the claim for Adam Murray and Others, the children of the deceased John Edward Murray, that the real raisers and pursuers, the trustees of the deceased Robert Murray of Dollarbeg, shall pay out of his general estate the debt of £6000 at present charged upon the estate of Dollarbeg, and clear the said estate of that debt: Repels the claim of Adam Murray, William Vaughan Murray, Barbara Isabella Murray, Elizabeth Martha Murray or Donovan, and Patrick Donovan, in so far as regards the sum of £5000 mentioned in the deed of agreement, dated 25th February 1864, and interest thereon from 6th April 1868, and decerns; and appoints the cause to be put to the roll, in order that it may be proceeded with in accordance with these findings."

In regard to the first branch of the case his Lordship observed—"The general rule of law is, in such circumstances, that in the absence of express directions by the testator that the heritable security is to be paid out of the general residue, or of

provisions in the settlement of the testator, which necessarily imply that this was his intention, the party to whom the property is left, over which the heritable security exists, must take that estate with its heritable burden, and that there is no obligation upon the residuary legatees to pay that heritable debt out of the residue of the estate. In the present case there is no mention in Robert Murray's trust-disposition and settlement of the heritable debt; and there are, the Lord Ordinary considers, no expressions used therein which, by clear and necessary implication, shew that it was the intention of the testator that the heritable security over Dollarbeg for £6000 should be paid out of the residue of his estate, and that his nephew John Murray and his children should get the estate of Dollarbeg free of that burden. The clause in the trust-settlement directing payment of any just and lawful debts that might be due by the testator at the time of his death, including deathbed and funeral expenses, has not that effect; and the other expressions in the trust-settlement founded on by the children of John Murray are, the Lord Ordinary is of opinion, insufficient to prevent the application of the general rule of law. *Fraser* v. *Fraser*, November 13, 1804; Dict. "Heir and Executor," No. 3; *Bain* v. *Reeves*, January 29, 1861, 23 D. 416; *Douglas's Trustees* v. *Douglas*, January 17, 1868, 6 Macph., 223."

In regard to the second branch, the "argument for the younger children of Adam Murray was that, according to a sound construction of the agreement of 1864, the said sum of £5000 was to be put to the debit of John Murray, and imputed as a part-payment made to account of his share under the agreement of 1852 of the residue of Robert Murray's estate, upon the death of their aunt, Isabella Murray, whether John Murray survived her and succeeded to the liferent or not. The Lord Ordinary cannot adopt that construction of the agreement of 1864. John Murray did not, he thinks, by that agreement purchase as at its date, for a price then paid, the contingent right of liferent, the proceeds of which were, by the agreement of 1852, to be divided between him and the younger children. There was no price then paid, and that was not its object. The object of the agreement was, as it expressly bears, to avoid the inconvenience, trouble, and risk of dispute, which an annual accounting for the rents during the subsistence of John Murray's liferent would occasion. Under the agreement of 1852 John Murray was only bound to communicate to the younger children of Adam Murray a share of the proceeds of the liferent of Dollarbeg when he should succeed to, and during the time that he should enjoy, that liferent. His right thereto was contingent upon his surviving his aunt Isabella Murray, and if he did not survive her neither he nor the younger children of Adam Murray would get any part of the rents of Dollarbeg. By the agreement of 1864 the younger children of Adam Murray surrendered their contingent right to a share of the proceeds of the liferent which they had acquired under the agreement of 1852, and, in consideration of the surrender of that contingent right, John Murray agreed that £5000 should be placed to his debit, not absolutely but conditionally, the condition being, to use the words of the agreement of 1864, 'as soon as my liferent right to the said lands of Dollarbeg shall open to me by the death of our aunt Miss Isabella Murray.' But that liferent right to Dollarbeg never opened to John Murray, as he predeceased his aunt Isabella; and just as under the agreement of 1852 the younger chidren would have derived no benefit from his obligation therein contained to communicate that liferent during his lifetime, 'from and after the death of the said Isabella Murray,' so, the Lord Ordinary conceives, they can, under the agreement of 1864, derive no benefit from his obligation therein contained, that as soon as the liferent of Dollarbeg shall open to him, 'by the death of our aunt Miss Isabella Murray,' the sum of £5000 should be placed to his debit in the division of the residue of Robert Murray's trust-estate. In short, the Lord Ordinary considers that, by the agreement of 1864, the younger children renounced their interest under the deed of 1852 in a conditional right of liferent for and in consideration of a conditional lump payment of £5000, the condition in both cases being the opening of the liferent to John Murray. That condition never having been purified, the obligation as to the £5000 has, he is of opinion, no force."

Adam Murray, William Murray, and Others, reclaimed.

Each party brought under review the part of the Lord Ordinary's interlocutor adverse to them.

WATSON and BALFOUR for John Murray's children.

ASHER for Adam Murray and others.

Besides the cases referred to by the Lord Ordinary, the recent case of *Macleod's Trustees*, June 28, 1871 (*ante*, p. 597), was mentioned.

At advising—

LORD PRESIDENT—I have no doubt that the Lord Ordinary is right in both branches of the case. In order to relieve the disponee of a particular estate of a heritable debt attached to it, out of the general estate of the truster, clear and distinct implication of such intention on the part of the truster is necessary. There is certainly no such implication here.

As to the second branch we are now informed that at the date of agreement (1864) John Murray was forty-two, and his aunt Isabella, the liferenter of Dollarbeg, seventy. The free income of Dollarbeg cannot exceed £260. The younger children of Adam Murray represent John Murray as paying £5000 for this contingent liferent of £260. He could not have dreamed of such a thing. But I entirely agree with the Lord Ordinary, that on the mere construction of the deed of agreement the succession to the liferent and its actual enjoyment by John Murray was a condition precedent to the deduction of the £5000.

LORD DEAS—I concur. As regards the first branch this is a much clearer case than *Macleod's Trustees*.

LORDS ARDMILLAN and KINLOCH concurred.

The Court adhered. No expenses.

Agent for Adam Murray and Others—James Webster, S.S.C.

Agents for the Children of John Murray—Maclachlan & Rodger, W.S.

Saturday, July 7.

CORBETT *v.* ROBERTSON.

Contract of Sale—Conditions—Disposition. A, by a minute of sale bound himself to sell a piece of ground to B under certain conditions. In an action at the instance of B to compel A to grant a disposition, A averred that B had