

v. *Jeck Blake*; and this necessarily must be held, when the defender in order to obtain mitigation of damages means to prove one-half of the alleged slander to be true, but cannot do so without a counter issue. Now the defender did propose a counter issue in this case; but it was in such terms of vagueness in regard to time and place that it gave no proper notice to the pursuer of what was intended to be proved against him. The month and the day of the month were not stated. It was "Whether, in or about the months of May or June 1883," the pursuer used threats against the defender. Nor was the place where the threats were uttered mentioned. Two places are specified thus—"In or at his yard at Dalry, Edinburgh, or in or at his yard in West Canonmills Meadow;" and the threats which are said to have been used were not the threats of murder charged against the pursuer in the letters. This issue was disallowed because of its vagueness, and as justifying no part of the charge against the pursuer.

When therefore at the trial the defender offered to prove the averments in answer to condescendences 2 and 3 of the record, and particularly the threats that are stated in these answers, he simply proposed to prove the *veritas* without a counter issue. I cannot read the passage in the record proposed to be proved as being anything else than a charge against the pursuer of threatening to murder the defender. There was no proposal to prove a part of these answers. The threats to murder (as shown by the second exception) were the matter which the defender sought to establish. He adds at the end of these answers the words that "the defender was told of the said threats." But the threats themselves he maintained to be true, by his offer to prove them, and his plea upon the record is that "the pursuer having used the threats complained of by the defender, he is not entitled to damages." How far an offer to prove, in mitigation of damages and without a counter issue, that a slander had been reported to a defender, can be allowed, must depend very much upon circumstances. There are not many persons who would slander their neighbour without having been stirred up by some suggestion of a malignant or thoughtless gossip who carried it to their ears. The different rulings given upon this point, as shown by the decisions from *Scott v. M'Gavin* (where an offer to prove that the slander had been specially reported to the pursuer was refused) downwards, indicate that no general rule can be laid down upon the point, and that it must be a question for the discretion of the Judge at the trial. But the present case is not one which raises this point at all—first, because the ruling which was excepted to had no reference to the statement that the defender had been told of the threats; and secondly, because even if it had been sought to be proved, it was upon the footing that what was told was true. The case which comes nearest to the present is that of *Brodie v. Blair*, July 17, 1884, 12 S. 941, reported also upon a bill of exceptions, January 20, 1886, 14 S. 267. At the trial before Lord President Hope it was offered to be proved that the alleged slander had been commonly reported in the neighbourhood, and the question was disallowed by the presiding Judge, whose ruling was, on the hearing of a bill of exceptions, upheld by the Court. Lord Gillies

stated the point thus—and I conceive the remark applicable to the present case—"Undoubtedly the addition is made that a proof of the currency of the report was also offered, but still that was on the footing that the fact of the accusation having been made was true, and that the report was well founded. I conceive, therefore, that the offer of proof was rightly repelled,"—and in this opinion the other Judges concurred. I am of opinion in the present case that the bill of exceptions should be disallowed.

The Court disallowed the exceptions.

Counsel for Pursuer—Rhind—W. Campbell.
Agent—D. Howard Smith, Solicitor.

Counsel for Defender—Sol.-Gen. Asher, Q.C.
—M'Lennan. Agents—Liddle & Lawson, S.S.C.

Wednesday, January 23.

FIRST DIVISION.

BRODIE AND ANOTHER, PETITIONERS.

Nobile Officium — Casus improvisus — *Salmon Fisheries (Scotland) Act 1862 (25 and 26 Vict. cap. 97), secs. 18 and 24—Reconstitution of Lapsed District Board.*

A district board had been constituted under the provisions and in terms of the *Salmon Fisheries (Scotland) Act 1862* for the preservation of the fisheries in a district, but had subsequently lapsed upon the expiry of the three years' term of office of the persons first elected without a new board having been elected. The Court granted the prayer of a petition by two of the proprietors qualified under the 18th section of the Act, asking a remit to the Sheriff to reconstitute the board according to the forms enacted by the section in the case of a first election.

By a bye-law dated 24th December 1862, and in terms of the 6th and 15th sections of the *Salmon Fisheries (Scotland) Act 1862 (25 and 26 Vict. cap. 97)*, the Commissioners appointed under that Act fixed the limits of the district of the river Nairn, and the point of division between the upper and lower proprietors.

The 18th section of the said Act provides—"Within three months after any bye-law constituting the district shall have been published, the sheriff shall direct the sheriff-clerk to make up a roll of the upper proprietors, and also a roll of the lower proprietors in each district; . . . and the sheriff shall thereafter direct the sheriff-clerk to call a meeting of the upper proprietors, and also a meeting of the lower proprietors, at such times and such places as he shall direct; . . . and the upper proprietors and lower proprietors present at such separate meetings respectively shall elect not more than three of their number to be members of the district board; . . . and the members so elected, with the proprietor having the largest amount entered in the valuation roll as the yearly rent or yearly value of fisheries in such district, shall constitute the district board; and the last-mentioned proprietor shall be the chairman of the board, and have a deliberative

as well as a casting vote; and the election of such board shall be notified by the chairman of such respective meetings to the sheriff-clerk within seven days from the date of the same, and the sheriff shall thereafter summon the first meeting of such board for such day and such place as he may fix."

By the 24th section of said Act it is provided—"Each district board shall continue in office for three years, and members thereof shall be eligible for re-election, and vacancies occurring during such period shall be filled up by the board until the next meeting of proprietors, who shall then fill up the same; and the meetings of the upper and lower proprietors respectively for the purpose of each triennial election of not more than three upper proprietors and three lower proprietors respectively shall be called by the clerk."

By the 2d section of the Act 26 and 27 Vict. cap. 50, it was provided that the first meeting of the district board should be held at any time within twenty-one days after the first election of the district board under the last-quoted section.

The district of the river Nairn having been defined and constituted by the bye-law before-mentioned, approved on 30th January, and taking effect on 10th February 1863, the Sheriffs of the counties of Inverness and Nairn thereupon, in terms of the 18th section of said Act, directed the Sheriff-Clerks of these counties to make up a roll of the upper proprietors, and also a roll of the lower proprietors, in the district. This having been done, meetings of these proprietors were held at Nairn on 25th August 1863, when three upper and two lower proprietors were elected members of the district board.

The district board having been duly constituted, met at Nairn on 17th September 1863, and thereafter continued to meet from time to time down to 3d March 1873. It was the duty of the clerk to the board to have called meetings of the upper and lower proprietors respectively, within the statutory period, for the purpose of electing a district board for the next three years, all in terms of the said 24th section of the Salmon Fisheries (Scotland) Act 1862. This, however, was not done, and the district was without a board since 1877.

There was no statutory provision for the case of the lapsing of a board through failure to call a meeting within the three years, and Hugh Fife Ashley Brodie of Brodie and Duncan Forbes of Culloden, two of the proprietors in the district qualified under the 18th section of the Act, with consent and concurrence of the whole other upper and lower proprietors so qualified, now made this application to the Court to have the board reconstituted.

It was stated that "having regard to the importance of the salmon-fishings in the district, to the increasing prevalence of illegal fishing, and the greatly increased facilities for disposing of the fish so caught, the proprietors of salmon-fishings in the district deem it of the utmost importance to their interests that the district board should be reconstituted as soon as possible."

Authority—*Campbells, Petitioners*, March 17, 1883, 10 R. 819.

The Court pronounced this interlocutor:—

"The Lords having considered the petition, Remit to the Sheriffs of the counties of

Inverness and Nairn to direct the Sheriff-Clerks of the said counties to make up a roll of the upper proprietors, and also a roll of the lower proprietors, in the district of the river Nairn, in terms of the 18th section of the Salmon Fisheries (Scotland) Act 1862, and Acts amending the same; direct the Sheriff-Clerks to call a meeting of the upper proprietors, and also a meeting of the lower proprietors, at such times and places as the said Sheriffs shall direct, notice of such meeting being given as provided by the Salmon Fisheries (Scotland) Act 1862; grant warrant to and authorise the upper proprietors and lower proprietors present at such separate meetings respectively to elect not more than three of their number to be members of the district board of said district, all in terms of the said 18th section: Find and declare that the members so elected, with the proprietor having the largest amount entered on the valuation roll as the yearly rent or yearly value of fisheries in the said district, shall constitute the district board of the said district, and that the last-mentioned proprietor shall be chairman of the board, and shall have a deliberative as well as a casting vote; grant warrant to and authorise the Sheriff of said county, the Sheriff-Clerk, and the chairman and the respective meetings foresaid respectively to do the acts set forth in the 18th and 22d sections of the said Salmon Fisheries (Scotland) Act 1862, and the 2d section of the Act 26 and 27 Vict. cap. 50, relative to calling and holding the first meeting of a district board, and decern."

Counsel for Petitioners—Forbes. Agents—Skene, Edwards, & Bilton, W.S.

Friday, January 25.

SECOND DIVISION.

(Before Seven Judges.)

[Lord Lee, Ordinary.

WAUCHOPE v. WAUCHOPE.

Entail—Fetters—Resolutive Clause—Rutherford Act (11 and 12 Vict. c. 36), sec. 43.

An old entail contained clauses prohibiting the heirs of entail from altering the order of succession, selling, or contracting debt. Then followed a sentence containing both an irritant and a resolutive clause, declaring that not only should any deed in contravention of the provisions of the entail be null, "but also the contraveeners and descendants of the contraveeners' bodies, if they be not descended of my body, shall forfeit and tyne their right to the said estate." An heir of entail in possession, descended from the entailor's body, brought a declarator that the entail was invalid because this clause did not forfeit the right of a contravener who was descended from the entailor's body. *Held* (by a majority of Seven Judges—*dis.* Lord Justice-Clerk, Lord Deas, and Lord Young, and *rev.* judgment of Lord Lee) that this construction of the clause was right and the entail invalid.