The Court pronounced this interlocutor:—

"Recal the interlocutor of the Lord Ordinary: Ordain the defenders to make payment to the pursuer of the sum of One hundred pounds stg., with interest thereon at the rate of five pounds per centum per annum from the 2nd day of October 1888 until payment: Find the pursuer entitled to expenses," &c.

Counsel for the Pursuer—Shaw—Forsyth. Agent—A. C. D. Vert, S.S.C.

Counsel for the Defenders—W. Campbell. Agent—Robert C. Gray, S.S.C.

Wednesday, July 17.

SECOND DIVISION.

WRIGHT & GREIG *v.* GEORGE OUTRAM & COMPANY AND GUNN & CAMERON.

Slander—Issues—Newspaper Report of Judicial Proceedings—Counter Issue as to Fairness and Accuracy of the Report.

A firm of merchants brought an action of damages against the proprietors of two newspapers for slander contained in the reports of proceedings in the London Bankruptcy Court during which a former agent of the pursuers was reported to have said "that they were very hard up, and he had financed them from time to time" by means of accommodation bills. They proposed as an issue . . . "whether the statements therein set forth are of and concerning the pursuers, and falsely and calumniously represent that the pursuers had been or were in financial difficulties, and had been or were being financed by accommodation bills . . . to the loss, injury, and damage of the pursuers."

The defenders averred on record that the report was a fair and accurate one of judicial proceedings, and as such privileged, and that the pursuers were bound to raise the question of its fairness in their issue; or alternatively, that they were entitled to raise that question before the jury by means of a counter issue.

The Court (*aff.* Lord Kyllachy) approved of the issue and disallowed the counter issue, holding that the question sought to be raised by it was a matter for the direction of the Judge at the trial.

Messrs Wright & Greig, wholesale wine and spirit merchants in Glasgow, brought actions for slander in the Court of Session against George Outram & Company, proprietors and publishers of the *Glasgow Herald* newspaper, Glasgow, and against Gunn & Cameron, proprietors and publishers of the *North British Daily Mail* newspaper, Glasgow, respectively, concluding in each case for £3000 as damages.

The pursuers had had in their employment as a traveller, and also as their London agent, a person named Smyth, whom they had dismissed on the ground of misconduct, and against whom they had obtained decree for £630 in consequence of which he became bankrupt. He afterwards applied in the London Bankruptcy Court for his discharge, and this application was opposed by Wright & Greig.

The reports in these newspapers of the proceedings in the Bankruptcy Court were the occasion of the present actions of damages. They contained, *inter alia*, the following passages —"In examination by Mr Wilde, the bankrupt stated that he came to London in 1884 as traveller for Messrs Wright & Greig of Glasgow. He remembered giving them a bill for £619. He did not know that that represented moneys received by him and not handed over. All he knew was that they were very hard up, and he had financed them from time to time. It was not right for Mr Wilde to make the wide allegations he had done against him." . . . "The bankrupt, in addressing the Court, said that there was not the slightest truth in the allegations made by the petitioning creditors. It was a matter of account, he having made advances to them from time to time to enable the business to be carried on, being repaid when the accounts came in."

The pursuers averred—"The said paragraph gives a false and misleading account of the proceedings which took place in the London Court of Bankruptcy on the occasion in question. The bankrupt did not say, as is represented in the said paragraph, that the pursuers 'were very hard up, and he had financed them from time to time.' Nor did he say, as is represented in the said paragraph, that he had made advances to the pursuers from time to time to enable their business to be carried on. These statements were utterly false and calumnious, and in point of fact were not made by the bankrupt." They also averred that the report in certain specified particulars was false, misleading, and calumnious, and that it was not fair and impartial, but incorrect and one-sided, and they pleaded—"(1) The defenders having slandered the pursuers by printing the said false and calumnious statements, are liable in reparation and damages as concluded for. (2) The defenders having slandered the pursuers by the publication of a garbled, partial, and one-sided report of the said proceedings in the London Bankruptcy Court as condescended on, are liable in reparation and damages, as concluded for. (3) In respect that the paragraph complained of does not contain a fair and accurate report of the proceeding referred to, the defenders are not entitled to plead privilege."

The defenders explained that they published the reports in good faith in the ordinary course of business, knowing nothing of the persons or matters referred to beyond what the report itself disclosed, and believing it to be a fair and accurate report of the proceedings in question.

They pleaded, *inter alia*, that the notice being a fair summary of the proceedings in a public Court, and having been published without malice was privileged.

The pursuers proposed the following issue—"Whether, on or about the 23rd January 1889, the defenders published in the *Glasgow Herald* an article or paragraph in the terms of the schedule hereunto annexed: Whether the statements therein set forth are of and concerning the pursuers, and falsely and calumniously represent that the pursuers had been or were in financial difficulties, and had been or were being financed by means of accommodation bills and

advances of money by a person named Smyth, to the loss, injury, and damage of the pursuers?"

The defenders proposed as a counter issue the following—"Whether the statement printed in the schedule hereto is a fair abridgment of the proceedings in the Court of Bankruptcy in London on 22nd January 1889?"

The Lord Ordinary (KYLLACHY) allowed the issue but disallowed the counter issue.

"*Opinion.*—In these cases of Wright & Greig against the *Glasgow Herald* and the *North British Daily Mail,* I have considered the argument which was submitted to me the other day, and I have come to the conclusion that the pursuers' issue may stand as proposed; and further, that no counter issue is necessary.

"I think it clear that the innuendo in the issue is relevant—the innuendo being that the reports in question represented 'that the pursuers were in financial difficulties, and were being financed by means of accommodation bills and advances of money by a person named Smyth.' I cannot doubt that it is defamatory to make and publish such a statement with respect to a commercial firm, and I do not consider that the case of *Robertson,* upon which the defenders relied, raised any question at all analogous to the present. I further think it is not doubtful that the innuendo is borne out by the reports complained of. In point of fact, the innuendo is almost a literal echo of certain expressions in the report. And with respect to the defenders' criticism upon the pursuers' record, it may be true that the record should, as matter of pleading, have not only set out the report complained of, but should have also set out in terms the proposed innuendo. But I do not consider that that is matter of substance. The record might easily be amended to make it square with the issue, but I cannot see that that is necessary. I therefore think that the action lies, and that an issue must be granted; and, moreover, that this issue sets out quite a relevant and proper innuendo.

"But then comes the question whether the terms of the issue otherwise are such as are suitable to a case of this description. The defenders contended that upon the pursuers' statement it sufficiently appears that this was a newspaper report of a public proceeding—that it was therefore *prima facie* privileged—and, that being so, that the pursuers were bound to put in issue and to prove that the report was not fair and accurate. Now, I am not of that opinion. I do not consider that any privilege attaches to a newspaper report as such; neither am I aware of any presumption either in law or in fact that a newspaper report is fair and accurate. The privilege attaching to a newspaper report only, I think, arises where the report is fair and accurate, and the fairness and accuracy of the report must be proved, and cannot be assumed; although no doubt when the fairness and accuracy of the report is proved, the privilege becomes an absolute privilege, and is a complete defence ~~to an~~ action. I am therefore of opinion that the pursuers are not bound to take any other issue than the ordinary issue, putting the question whether the report contains false and calumnious statements to their damage.

"That leaves only the question of the necessity of the counter issue, and I do not think that either party pressed seriously for such an issue; and I am very unwilling to introduce into this department of practice a complication for which it is admitted there is no precedent. For my own part, I do not consider that a counter issue is in a case of this kind appropriate. In the general case where a slander is published or circulated the person who publishes or circulates the slander is held to adopt it, and is constructively in the same position as the slanderer. But the case of a fair and accurate newspaper report is different. There the newspaper is neither actually nor constructively the slanderer, and the newspaper's defence, I think, quite fairly arises by way of denial of the pursuers' issue. In that view no counter issue is necessary. The Judge who tries the case will be bound to tell the jury that, if it appears that the report is a fair and accurate report of a public proceeding, the pursuers have failed to prove their issue, and the defenders are entitled to a verdict. I shall therefore approve of the issue in each case as proposed. I understand that the case of the *Scotsman* has been settled, so that I have only to deal with the two Glasgow newspapers."

The defenders reclaimed.

The Court ordered the pursuers to put the innuendo into the record. For this purpose they proposed to alter the last line of condescendence 4 to read as follows:—"These statements were utterly false and calumnious, and falsely and calumniously represented the pursuers to be persons who were in financial difficulties, and had been or were being financed by means of accommodation bills and advances of money by the said Smyth."

This amendment having been allowed, the reclaimers argued—There was no fair case to set before a jury. (1) The words did not bear the innuendo sought to be put upon them by the pursuers. The report must be read as a whole, and when so read it did not mean that the pursuers had been financed by accommodation bills as alleged by them. The words were clearly those of a discredited man. (2) The words were not libellous. It was not libellous to say that at some past time a firm had been in financial difficulties—*M'Laren* v. *Robertson,* January 4, 1859, 21 D. 183. (3) There was no libel here, because the report complained of was a fair report of proceedings in a court of justice, and as such privileged—*Richardson* v. *Wilson,* November 18, 1879, 7 R. 237 (Lord President, 241); *Riddell, &c.* v. *Clydesdale Horse Society,* May 27, 1885, 12 R. 976. (4) The pursuers were bound to raise the question in their issue whether the report was a fair and accurate one or not, and if their issue was allowed as it stood, the defenders should be allowed their counter issue so as to put the matter clearly and sharply before the jury.

Argued for pursuers and respondents—(1) It was a question for the jury to say whether the words would bear the innuendo put upon them. (2) If they would they were plainly libellous, for nothing could be more injurious to a business firm than to say of it that they were in straits, and required to be financed from time to time by accommodation bills. (3) A counter issue was entirely out of place. What the defenders sought to accomplish by it ought to be left to the direction of the Judge at the trial.

At advising—

Lord Justice-Clerk—In this case I agree with the Lord Ordinary that there is no need for a counter issue, and I am of opinion that the issue adjusted by the Lord Ordinary is a sufficient issue for the trial of this case.

I am decidedly against putting into any issue what is not necessary—pressing in points to which the jury's attention is desired to be drawn. All such matters are more properly left to the direction of the Judge.

Lord Rutherfurd Clark—I also think that there is no necessity for a counter issue.

Of course if the notice complained of is only a true report of the proceedings the defenders must necessarily prevail. It would be impossible to hold in that case that the publication is false or calumnious, but that I agree is a matter of direction for the Judge at the trial, and not for the issue.

Lord Lee—I do not differ at all. With regard to not putting anything unnecessary in the issue I entirely concur, but I think we may decide there should be no counter issue, on this ground alone, that the issue for the pursuers, as now framed is sufficient to raise the question whether the words were falsely and calumniously reported, not merely that they were false and calumnious in themselves. But on the understanding that that question is raised by the issue, it is unnecessary to put in anything more.

The Court approved of the issue and disallowed the counter issue.

Counsel for the Pursuers—Graham Murray—Ure. Agents—Smith & Mason, S.S.C.

Counsel for the Defenders Outram & Company—Dickson. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for the Defenders Gunn & Cameron—Comrie Thomson—Wm. Campbell. Agents—J. & J. Galletly, S.S.C.

Wednesday, July 17.

SECOND DIVISION.

DUTHIE'S TRUSTEES *v.* FORLONG.

Succession—Trust—Direction to Hold or Invest—Right of Beneficiary to Immediate Payment.

A lady in her trust-disposition and settlement left the residue of her estate to certain persons, named equally—"The said shares of residue to vest at my death; declaring that the share falling to any of the said residuary legatees who are females, and may be married at the time of my death, shall be held by my said trustees, or invested for their behoof, exclusive of the *jus mariti* of their then or any other husband they may afterwards marry, and the annual produce of said share of residue paid to said legatee during her life, and at her death the principal sum shall be paid to her heirs or executors."

Held that the shares of female married residuary legatees vested in them, and that the trustees were not entitled to retain such shares, the declaration above quoted being void for repugnancy.

Miss Elizabeth Crombie Duthie died on 30th March 1885, leaving a trust-deed of settlement dated 7th July 1877 with several codicils thereto. By one of these codicils of 27th September 1877 Miss Duthie, after directing her trustees to pay certain legacies, bequeathed the residue of her estate to a number of individuals named equally, the said shares of residue to vest at the death of the testatrix, "declaring that the share falling to any of the said residuary legatees who are females and may be married at the time of my death shall be held by my said trustees, or invested for their behoof, exclusive of the *jus mariti* of their then or any other husband they may afterwards marry, and the annual produce of said share of residue paid to said legatee during her life, and at her death the principal sum shall be paid to her heirs or executors."

In winding up the estate a question arose as to the effect of this declaration regarding the shares of the residue falling to the females who were married at the time of the death of the testatrix, and a special case was accordingly presented.

The second party, who was one of such female residuary legatees, maintained that it imported an absolute right of fee, which became vested in her, exclusive of the *jus mariti* of her husband, as at the death of the testatrix, and that she was consequently entitled to have the capital sum falling to her at once paid over in cash.

The trustees, who were the first parties, considered that they were not in safety to comply with the demand of the second party, but that they were bound to hold or invest the shares of residue bequeathed to female married legatees for their behoof, and to pay over to them only the annual produce of such shares respectively during the lifetime of the party entitled thereto.

The following were the questions—"(1) Are the parties of the first part entitled or bound to make immediate payment in cash to the party of the second part of the share of residue bequeathed to her under the said trust-deed of settlement and codicils? Or (2) Are the parties of the first part bound to hold the capital of the said share of residue until the death of the second party, paying to her in the meantime the annual proceeds, and on her death to make over the capital to her heirs or executors?"

Argued for the first parties—The case was ruled by the recent case of *Christie's Trustees*, July 3, 1889, *supra* p. 611. It was true that there was here an alternative given to the trustees, either of holding or of investing the shares of married female residuary legatees, but the alternative of investing was ruled adversely to the second party by the former case of *Duthie's Trustees* v. *Kinloch*, June 5, 1878, 5 R. 858. There was here no direction to pay, nor anything that could be construed into a direction to pay, and consequently the case was not within the rule of *Allan* v. *Allan's Trustees*, December 12, 1872, 11 Macph. 216, and the recent case of *Jamieson* v. *Lesslie's Trustees*, May 28, 1889 *supra* p. 538.

The second party was not called on.

At advising—