Saturday, January 13.

FIRST DIVISION.

[Sheriff Court at Lerwick.

MITCHELL AND ANOTHER *v.* GRIERSON.

Reparation—Slander—Process—Action for Damages by Two Pursuers for Alleged Slander contained in Same Statement—Competency.

Two pursuers sued for damages in the same summons on account of an alleged calumnious statement made by the defender, which they averred referred to both and each of them. The pursuers were Justices of the Peace for the County of Zetland and bank agents at Lerwick, and the alleged slander was contained in the following statement made by the defender at a public meeting at Lerwick:—"The Licensing Court had always been very amusing to him. He had appeared before that Court both for and against licenses; and they used to size up the bench and say, 'Oh yes! This will be a day for licenses, or it will be a day when none will be granted;' or they would say, 'Oh! you are right enough, you are a customer at Mr So-and-so's bank, and he's on the bench,' or 'So-and-so has two clients on the bench, his license is quite sure.'" The summons concluded for payment of a separate sum to each pursuer.

Held (*following Harkes* v. *Mowat*, March 4, 1862, 24 D. 701) that the action was competent, and a separate issue *approved* for each pursuer.

This was an action of damages for alleged slander brought in the Sheriff Court at Lerwick by Alexander Mitchell and Charles Duncan Laurenson against James Cullen Grierson. The petition concluded for payment of the sum of £500 to Mitchell, and a like sum to Laurenson.

The pursuers were both bank agents at Lerwick, and were also Justices of the Peace for the county of Zetland, and the alleged slander was contained in the following statement made by the defender at a public meeting in Lerwick called for the purpose of supporting the Liquor Traffic (Local Control) Bill:—"The Licensing Court had always been very amusing to him. He had appeared before that Court both for and against licenses; and they used to size up the bench and say, 'Oh yes! This will be a day for licenses, or it will be a day when none will be granted;' or they would say, 'Oh! you are right enough, you are a customer at Mr So-and-so's bank, and he's on the bench,' or 'So-and-so has two clients on the bench, his license is quite sure.'"

The pursuers averred that the said statement was made of and concerning both and each of them, and falsely, calumniously, and maliciously represented each "as a person of unjust and dishonourable character, who had been unfaithful to the public trust reposed in him as a Justice of the Peace for the county of Zetland, and who had in his official capacity acted corruptly for his personal benefit and that of his customers by granting licenses to persons who were his customers with the object of securing their business to his bank."

The defender pleaded—"(1) The pursuers' averments are irrelevant."

On 6th November 1893 the Sheriff-Substitute (SHENNAN) repelled the first plea-in-law for the defender and allowed a proof.

The defender appealed to the First Division, and the Court having allowed parties to lodge issues, an issue was lodged for each pursuer.

At the hearing the defender was allowed to amend his record on payment of the expenses of the discussion by adding the plea that the action was incompetent.

Argued for the defender—The words complained of referred only to a single person, and there was no community of interest entitling the pursuers to sue together. The two cases were independent. The jury might hold that the slander applied only to one. There might be a conflict of interest between them; one might gain because the other lost—*Gibson* v. *Macqueen*, December 5, 1866, 5 Macph. 113. In the cases of *Revey* and *Harkes* there was an undoubted community of interest which did not exist here.

Argued for the pursuers—The words complained were capable of applying to both pursuers, and they were entitled to sue in one action—*Harkes* v. *Mowat*, March 4, 1862, 24 D. 701; *Revey & Bell* v. *Murdock*, March 11, 1841, 3 D. 888; *Smith* v. *Muir*, Nov. 13, 1891, 29 S.L.R. 94. In *Harkes* the statement complained of might have been proved to apply to one or to both pursuers, and *veritas* might have been pleaded in the case of one and not of the other. In *Gibson's* case the action was rendered incompetent by the pursuers suing for a lump sum of damages.

At advising—

LORD PRESIDENT—At the previous hearing of this case the opinion was indicated that the plea to relevancy could not be sustained.

We pass now to the consideration of the new point of the incompetency; and no doubt if matters were open, there is a good deal to be said as to the proper shape and the most convenient shape in which claims for injuries arising to two persons out of the same wrong may be tried, but I do not see how we could get over *Harkes* v. *Mowat*. In that case the words alleged to be slanderous were plural words. Two persons came forward together who said—"These words apply to us or at all events to one or other of us," and the Court allowed an issue affirming either that both were hit by the slander or one only. Turning to the present case we find that the alleged slander purports to be a reflection on one person, but it is a common figure of speech to use the singular instead of the plural, when the intention really is to hold a plurality of persons up to censure, just as it is not

uncommon to have words used in the plural which are intended to be interpreted in the singular, where the speaker is willing to wound but afraid to strike. Accordingly I think the course taken by the pursuer is competent, and we shall follow the decision in *Harkes* v. *Mowat* by giving each pursuer an issue applying the slander to himself. They come here affirming that the slander is common to both, but also that it applies to each.

As to the issue, I must say that I think the pursuers are ill-advised to put in the issues that the words complained of represent them to be "persons of unjust and dishonourable character," for this is an innuendo and not reasonably involved in what is said of them, and it would put upon them an unneccessary *onus*. As regards the remaining words, it is proposed that they should be as follows—"Whether the said statement is in whole or in part of and concerning the pursuer," and "falsely and calumniously represents the pursuer as a person who had been unfaithful to the trust reposed in him as a Justice of the Peace."

Now, I think that a charge of infidelity on the part of a Justice of the Peace to the public trust is slanderous. But then these are very vague and general words, and the pursuer has very properly stated on record the kind of infidelity with which he supposes himself to be charged. He says he is accused of having preferred the interests of the customers of his bank to those of the public. The words of the issue as now proposed are so wide that if they stood alone there might be a danger of the jury returning a verdict on too general grounds. We are bound to put to them, or at any rate it is highly convenient that there should be kept before them, the question whether the speech ascribes to the pursuers the conduct specified on the record, viz., whether it represents that the pursuers, when on the bench, kept before them the interests of their customers and served them rather than the public. Accordingly, I think the issues should run as follows—"Whether on or about 21st June 1893, in the Town Hall, Lerwick, and in the presence and hearing of . . . or one or more of them, the defender uttered the following words, or words of like import and effect—'The Licensing Court had always been very amusing to him. He had appeared before that Court both for and against licences; and they used to size up the bench and say—"Oh yes; this will be a day for licenses—or it will be a day when none will be granted"; or they would say—"Oh; you are right enough. You are a customer at Mr So-and-So's bank, and he's on the Bench;" or "So-and-so has two clients on the Bench, his license is quite sure"'; and whether the said statement is, in whole or in part, of and concerning the pursuer, . . . and falsely and calumniously represents the pursuer as a person who had been unfaithful to the public trust reposed in him as a Justice of the Peace, and had in his official position acted corruptly for the personal benefit of the customers of his bank, to the pursuer's loss, injury, and damage. Damages laid at £500."

LORD ADAM—As regards the competency I cannot distinguish this case from that of *Harkes* v. *Mowat*, and I agree with your Lordship as regards the issue.

LORD M'LAREN—I think the question of competency was a very fair one for argument, for undoubtedly in actions founded on delict, delicate questions may arise as to the competency of different pursuers who claim each for his own interest, combining their claims in one action. If it had been shown that the defender could sustain any prejudice by the combination, that would probably have been a reason for dismissing the action unless one of the pursuers should agree to withdraw his instance. But I agree that the defender will be put to no disadvantage in this case, and that *Harkes* v. *Mowat* is a direct authority in favour of the competency.

In that case certain limitations were laid down which I think are very accurately expressed by Lord Kinnear, who says in *Smyth* v. *Muir*—"It has been held in *Harkes* v. *Mowat*, 24 D. 701, that where two persons have sustained injuries by one and the same wrong, they may insist for damages in the same action, provided the summons contains conclusions applicable separately to each pursuer, and that each takes a separate issue."

I also agree that the issue ought to be altered so as to make the innuendo agree with the statement on record.

LORD KINNEAR—I am of the same opinion. I think that we could not without serious consideration go farther than *Harkes* v. *Mowat* in sustaining an action at the instance of two pursuers combining together to recover damages for injuries arising out of the same wrong, but I think that case is an authority which we are bound to follow, and I think it undistinguishable from the present.

The Court approved of a separate issue in the case of each pursuer in the terms quoted at the end of the Lord President's opinion.

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Counsel for the Defender—Ure—Peddie. Agents—J. & A. Peddie & Ivory, W.S.