or by suffering the public for time immemorial to use the street. Slight evidence of dedication might be sufficient in the case of a street in a town which was open without restriction to every one, and which had no gates or marks of private property annexed to it. But in the absence of any such dedication, and in the absence of prescriptive use by the public—or as I should say, "immemorial" use—then the proprietor retains the property of the street. He may pull down the adjacent buildings, and cover the area of the street with buildings upon a new design. It would therefore seem to be proper that before a private street is declared public the matter should be brought under the cognisance of some judicial authority, the Dean of Guild being obviously a very suitable judge in a question of that kind. It does not appear to me that in such a case one would expect either the consent of both parties or a reference to a local judge. But again, a private owner may attach very little importance to the right which he has in the *solum* of a street, and which he perhaps never intends to alter; and it may be an object to him to throw the burden of maintaining the street upon the public. Therefore it seems quite proper that the assent of the representatives of the community should also be required, or failing joint-consent, that the matter should be determined by some neutral authority. Now, I am unable to sustain the view that under section 290 we are to read into the section by implication an interference with the powers of the Corporation in regard to the streets, or an authority to the Dean of Guild to compel them to maintain a given street as a public street independently of agreement. That might be done by Act of Parliament without shocking our sense of propriety; but unless the power were expressly given, I should not assume it from the mere fact that, in the authority to present an application for a different purpose, it is said that the petition shall state whether the street is intended to be a public or a private street. I think those words are satisfied, as your Lordship has pointed out, by the necessity of stating the proprietor's intention in regard to the future, so that the Dean of Guild shall see that the street was properly made, and the drains properly arranged, and everything done upon the system which had been established for the regulation of public streets. It by no means follows that a street is to be declared a public street in such an application. On the contrary, we are referred to a different section, 286, where that may be done with different safeguards and under different conditions.

I agree with your Lordships who have spoken, in holding that the Dean of Guild was in error in sustaining the application by a proprietor not assented to by the Master of Works on the part of the Corporation.

LORD KINNEAR concurred.

The Court recalled the interlocutor of the Dean of Guild and dismissed the petition.

Counsel for the Petitioners—Macphail—Mackenzie. Agents—Melville & Lindesay, W.S.

Counsel for the Respondent — Lees — Maclaren. Agents — Campbell & Smith, S.S.C.

Thursday, March 4.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

BRITISH WORKMAN'S AND GENERAL ASSURANCE COMPANY *v.* STEWART AND OTHERS.

Slander—Veritas—Issue—Counter-Issue—Whether Counter-Issue Covered Alleged Slander.

The pursuers in an action of damages for slander obtained an issue "whether the said statements" made by the defender "falsely and calumniously represent that the accounts issued by the pursuers had been falsified, and that their financial position was at the date of the speech unsound."

The defender pleaded *veritas* and proposed as counter-issues "(1) Whether the pursuers knowingly deposited with the Board of Trade accounts and valuations which were calculated and intended to mislead the public; (2) Whether the pursuers' financial position is unsound."

The Court *disallowed* the counter-issues on the ground that they did not meet the issue of the pursuers.

Process—Jury Trial—Motion for Abandonment of Notice of Trial—Whether Sufficient Grounds.

An action of damages for slander was raised by an insurance company in May 1896. The alleged slander consisted of an attack on the financial soundness of the company. On 5th February 1897 the Court fixed the trial for March 5th. On 4th March the pursuers moved for a discharge of the notice of trial on the grounds that their expert witnesses had not had time to examine their books, and that their manager was ill and could not attend the trial.

The Court *held* that no sufficient grounds had been adduced for postponing the trial, and *refused* the motion.

The British Workman's and General Assurance Company, Limited, Birmingham, raised an action against James Stewart, managing treasurer of the City of Glasgow Friendly Society, 6 and 8 Richmond Street, Glasgow, concluding for £2000 as damages for slander. They also raised an action against Dr Robert Perry and others, the trustees of the City of Glasgow Friendly Society, concluding for £10,000 as damages for slander. The slanders which were

alleged to have been uttered by the defenders in the two actions were of a similar character, reflecting upon the stability and financial soundness of the pursuers' company. In the action against Stewart the pursuers' averments, as they stood after amendments had been made, the nature of which it is unnecessary to describe, were to the following effect — That the pursuers and the City of Glasgow Friendly Society were competitors in business; that they, the latter society, had, in pursuance of a scheme for filching away the pursuers' business, published a circular, and had also through its agents circulated verbally slanderous statements to policyholders and others regarding the pursuers, which wrongful acts formed the basis of the action of damages against the society.

They further averred — "(Cond. 4) On 7th March 1896 a meeting of members of said society resident in Kilsyth and neighbourhood was held in the New Masons' Lodge, Market Place, Kilsyth. This meeting was addressed by the defender, who, after giving statistics as to his own society, went on to attack pursuers in the following terms—'Personally, I am satisfied that if the rival institutions which are represented in your town were subjected to the severe test which, of our own accord, we determined should be applied to the City of Glasgow Friendly Society, the majority would show as large if not a larger sum as deficiencies than we show as surpluses. I fear that with many of these institutions the determination arrived at before the work of valuation is fairly begun is that by hook or crook a surplus must be brought out. Such a result may have on the surface a satisfactory look, but if the methods are known by which the surplus is obtained, would the public feel satisfied in putting their trust in such offices? Better far to have a deficiency wrought out on honest lines than a surplus obtained by calculations which no actuary worthy of the name would justify. I have heard that rather peculiar means were resorted to by one of these institutions to obtain a surplus and so to quiet the poor policyholder. The actuary of the British Workman Company in a circular states that by special resolution of the directors he was authorised to make a valuation assuming the rate of interest at 3½ per cent., but the results of this valuation were of so unpleasing a character that the manager instructed the valuer to take the 4 per cent. tables. After doing so, a deficiency of £69,360 was shown. Thereafter, the directors decided to deposit accounts with the Board of Trade, setting forth a surplus of £21,577 instead of the actual deficiency of £69,360, and the valuer was instructed to prepare those accounts. The valuer, with commendable honesty, refused to have anything to do with the making up and publication of valuation accounts calculated to deceive anyone not acquainted with the subjects. The directors thereafter wrote their valuer that as he had declined to act upon the instructions of the board, his services were no longer required. The public will not, I feel sure, consider that a valuation with a surplus obtained by the mere demand of the directors is worth the paper it is written on. It is to be hoped that few institutions are in such a pitiable plight as that to which I have just referred, but it must be admitted on the other hand that the City of Glasgow stands well in the forefront in the matter of industrial insurance, and with the growing intelligence of the working classes of the community I am sure that its superiority will be increasingly appreciated.' The said speech was delivered by defender in the presence and hearing of, *inter alios*, James Good, chairman of the said City of Glasgow Friendly Society, William Fyfe, secretary of said society, Russell, of the board of management of said society, and A. Breton, the agent for the said society at Kilsyth. The statements in said speech of and concerning the pursuers were false and calumnious. Said speech represents, and was intended to represent, that the accounts of pursuers had been deliberately and dishonestly falsified or manipulated, and that their financial position was, at the date of the speech, unsound. The said speech is of and concerning pursuers, and is false and calumnious, and is to the loss, injury, and damage of the pursuers in their legitimate business as an insurance company, and was maliciously made by the defender for the purpose of injuring the pursuers' business."

The pursuers averred further, that a report of this speech had been inserted in the *Kilsyth Chronicle* of 14th March 1896, with the approval and authority and at the instigation of the defender. There were also averments as to another speech made by the defender attacking the pursuers' company. The defender pleaded *veritas*. After various procedure, the following issues, *inter alia*, were in the Inner House adjusted for the trial of the case:—"(1) Whether on or about the 7th day of March 1896, at a meeting of members of the City of Glasgow Friendly Society, held in the New Masons' Lodge, Market Place, Kilsyth, the defender, in the presence and hearing of James Good, chairman, William Fyfe, secretary, Russell, one of the board of management, and A. Breton, agent, all of said society, and of others, falsely and calumniously made the statements set forth in the first schedule appended hereto, or statements of similar import and effect, of and concerning the pursuers, and whether the said statements falsely and calumniously represent that the accounts issued by the pursuers had been falsified, and that their financial position was at the date of the speech unsound, to the loss, injury, and damage of pursuers? Damages laid at £400. (2) Whether the defender caused a report containing the statements set forth in the first schedule appended hereto to be published in the issue of the *Kilsyth Chronicle* of 14th March 1896, and whether the said statements are of and concerning pursuers, and falsely and calumniously represent that the accounts issued by the pursuers had been falsified, and that their financial position was at the

date of their publication unsound, to the loss, injury, and damage of pursuers? Damages laid at £400." The schedule referred to contained the speech set out above. The following counter-issues were proposed by the defenders.—"(1) Whether the pursuers knowingly deposited with the Board of Trade accounts and valuations which were calculated and intended to mislead the public? (2) Whether the pursuers' financial position is unsound?" To these counter-issues, when the case was before the First Division, the pursuers objected.

Argued for pursuers—The counter-issues did not meet any of the issues; they did not come up to the charge of "falsifying" contained in the first issue.

Argued for defenders—They were entitled to take a material part of the averments and justify it, and here they did deal with the substantive part—*M'Neil* v. *Rorison*, November 12, 1847, 10 D. 15, at p. 25.

LORD PRESIDENT—It seems to me to be perfectly impossible to grant these counter issues as they stand. The theory of them seems to be that as an answer to the first issue they would be entitled to prove as a separate proposition their first counter-issue, and then try their hand at the second counter-issue. Now, it is quite plain that at the very best they could only get counter-issues of this kind if the two were consolidated, that is to say, they would require to prove both the intention to mislead the public and also the fact of financial unsoundness before they could succeed. But it seems to me that the first counter-issue does not come up to the issue to which it is opposed.

It has been said that there is authority for holding that a part of a libel may be justified, but that is quite a different question from what arises once the issues are adjusted for the pursuer, because nobody ever heard of a counter-issue being lodged which only justified part of the issue to which it is an answer. I am for refusing the counter-issues.

LORD M'LAREN—I am of the same opinion. I think the negative of the charge made in the principal issue would be that the company, knowing their financial position to be unsound, had represented that they were solvent. But it is not proposed that we should grant an issue in these terms.

LORD ADAM and LORD KINNEAR concurred.

The Court refused the counter-issues.

The date of this interlocutor was January 19th. On February 5th the Court pronounced a further interlocutor appointing the trial of the cause to take place on March 5th, and a similar interlocutor fixing the trial for the same day was pronounced in the action against Perry and others. In that case a counter-issue had been adjusted on January 19th. On March 4th counsel for the pursuers applied for postponement of the trial. The following were the grounds of their application:—It was only on the 19th January that averments were put in by the defenders to the effect that they would found on the financial position of the pursuers subsequent to the decennial examination of their accounts made in 1892 in accordance with Board of Trade regulations. Accordingly, the experts who had been called in to report on their books, had not had time to do so. Moreover, their managing director was ill and unable to attend, and it was impossible for their case to be fairly conducted without his evidence. No harm would be done to the defenders by discharging the notice of trial, while the pursuers' case would be greatly prejudiced by going on. The defenders objected to the postponement on the ground that delay was of materiality to them, because the parties were rival competitors for business, and while the action was hanging over the defenders they lost business. The action had been raised on 25th April 1896, and there had been ample time for the pursuers to prepare their evidence. The defenders' remedy was to abandon their action and raise another.

LORD PRESIDENT—This application has been made at a very late stage of the proceedings, and it is necessary to scrutinise carefully the grounds upon which it is made. Now, the counter-issue which ultimately determined what were the questions between the parties was adjusted and settled on 19th January 1897, and that allowed to the 5th March, an interval of more than six weeks. The parties proceeded apparently in preparation for the trials on the issue so settled, and on the 19th February, that is, some time ago, the pursuers having apparently considered what the nature of the case was, proposed that a special jury should be summoned, and I should take that as evidence that they had seen the nature of the material which they were to place before the jury, and on that ground preferred a special jury. That, I think, is important as showing to the other party that the trial was to go on. Then there comes next, and there passed, what in a case like this was a very critical stage, viz., the time (eight days before the day of trial) when documents had to be produced. The defenders duly tabled their states. Now, this is a case where manifestly, on the statement of the Dean of Faculty, a great deal might turn upon an examination of states and figures, and I own to a very strong reluctance to postpone the trial—a trial of this nature—when the pursuers of the action having taken their precautionary measures for having a proper trial, allow the defenders to put in what is really a sketch of their case. The pursuers now apparently take fright at the defenders' case, and consider that they have underestimated the difficulties of their own case. Now, I think it would be barely fair to the defenders, after the pursuers have drawn their hand as it were, now to give them some indefinite delay for the purpose of building up the case which I think ought to

have been prepared long ago, and therefore I feel constrained to say that I think an insufficient case has been made for this application. It really comes to no more than this, that the pursuers having originally appreciated the nature of their case, and the time it would take to prepare, now that they see the defenders' case more fully developed, think better of it. I cannot say that I think the question is of very great importance, for this reason, that the alternative is between postponing the trial and abandonment, but at the same time I think we are bound to regard the duties of litigants in relation to one another at the various stages of a jury trial, and for my part I cannot bring myself to think that sufficient ground has been given under the first head of the application.

As regards the second, the Dean of Faculty was very frank in saying that it was of subsidiary importance in their view, and I do not think it would have afforded adequate ground for this application if it had stood by itself. It does not fit in with any precision as affording any corroboration of the first ground. On the whole matter I think the motion should be refused.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court refused the motion.

Counsel for the Pursuers—D.-F. Asher, Q.C.—Sol.-Gen. Dickson, Q.C.—Christie. Agents—Clark & Macdonald, S.S.C.

Counsel for the Defenders—Balfour, Q.C.—Guthrie—W. Campbell. Agents—Simpson & Marwick, W.S.

Friday, March 5.

SECOND DIVISION.

HEDDLE *v.* MAGISTRATES AND COUNCIL OF LEITH.

Burgh—Assessments—Appeal by Ratepayer against Resolution to Apply Funds Raised by Assessment to Certain Purposes—Competency—Burgh Police (Scotland) Act 1892 (55 *and* 56 *Vict. c.* 55), *sec.* 339.

The magistrates and town council of a burgh passed a resolution to apply funds out of (1) the burgh general assessment, and (2) the public health assessment, in payment of expenses incurred by them in opposing three private bills in Parliament. An individual ratepayer lodged an appeal against both assessments with the magistrates. This appeal was dismissed. The ratepayer then appealed to the Court of Session against the resolution and deliverance "in virtue of section 339 of the Burgh Police (Scotland) Act 1892, the Public Health (Scotland) Act 1867, and to the extent, if any, that the said appeal may be found to be justified at common law."

Held that the appeal was incompetent, the proper mode of bringing such a resolution under the review of the Court being by declarator and interdict or one or other of them.

Part IV. of the Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55) deals with "police administration." By section 339 of the Act, which is one of the sections under Part IV., it is enacted—"Any person liable to pay or to contribute towards the expense of any work ordered or required by the commissioners under the Act, and any person whose property may be affected or who thinks himself aggrieved by any order or resolution or deliverance or act of the commissioners made or done under any of the provisions herein contained, may, unless otherwise in this Act specially provided, appeal either to the Sheriff or to the Court of Session by lodging a note of appeal within fourteen days after intimation of the order or deliverance of the commissioners complained of, or within fourteen days after the commission of the act complained of, with the sheriff-clerk of the county in which the burgh is situated if the appeal is made to the sheriff, or with any principal clerk of session at Edinburgh if the appeal is made to the Court of Session, which note of appeal shall state the grounds of such appeal and be signed by the appellant or by his counsel or agent, and the sheriff or Court shall order a copy of the appeal to be served on the clerk to the commissioners and appoint him within six days after such service to lodge answers thereto, and shall thereafter hear further and determine the matter of the appeal, and shall make such order thereon either confirming, quashing, varying, or redressing the order, resolution, deliverance, or act appealed against, and shall award such costs to either of the parties as the sheriff or Court shall think fit."

At a meeting of the Magistrates and Council of Leith, as Commissioners for the burgh, held on 6th October 1896, they resolved to charge (1) the expenses incurred by them in their opposition to the Edinburgh Extension Bill, which had for its object the annexation of Leith to Edinburgh, to the Public Health Assessment, and (2) the expenses incurred by them in their opposition to the Edinburgh Improvement and Tramways Bill and the Edinburgh Street Tramway Company's Bill, to the Burgh General Assessment, the expenses to be spread over a period of five years.

An appeal under section 340 of the Burgh Police (Scotland) Act 1892 to the Magistrates and Council of Leith was lodged against the assessments by James Heddle, a tenant householder in Leith, and as such subject to both of the foresaid assessments. This appeal was unanimously dismissed.

Thereupon Mr Heddle presented an appeal to the Court of Session, in which he averred—"The appellant considers himself aggrieved by the aforesaid resolutions of 6th October 1896 to charge to any assessment or rate as condescended on by the