rental for it for a number of years there can be no high expediency in its being sold. There is the further consideration that so far as can be ascertained at present the retention and repair of the property will not lead to loss, and it will probably lead to gain, as the value of property situated in this busy locality is certain to rise. On the whole matter, I think no case is made out for authorising the sale of the pupil's heritable property.

LORD YOUNG—I think so also. I am very much disinclined in these cases to go against any view which has been expressed by the factor and the Accountant of Court. But in this case neither the factor nor the Accountant of Court expresses a very strong or clear opinion. They rather leave the matter to the decision of the Court, indicating the inclination of their own opinion. I think, therefore, that it will not be any violation of the general rule, which is to follow the opinion of the Accountant of Court, if we refuse in this case to grant leave to sell.

I should only like to add that as it seems to be necessary that there should be repairs it would be desirable if to save expense the factor could be authorised to make these repairs without presenting a new petition to the Court.

LORD TRAYNER—I agree. It was a proper course for the factor to bring this application before the Court upon the advice which he had. But now that the matter has been further inquired into I think it appears that here there is neither a case of "urgent necessity" nor of "high expediency" for granting leave to sell, and unless one or other of these is made out the rule is that leave should not be granted. On the contrary, it rather appears that the better course will be to retain and repair the property. The ward is not in necessitous circumstances, and there will be no difficulty in finding money for the repairs without encroaching upon what is required for the ward herself.

With reference to Lord Young's observation as to saving expense, I think it might be sufficient if the factor put in a minute in this process stating that in view of the decision of the Court he desired powers to make the necessary expenditure for the repairs out of the ward's funds.

LORD MONCREIFF — I am of the same opinion.

The Court pronounced the following interlocutor:—

"Recal the said interlocutor [of 9th March 1898] except in so far as it relates to the factor *loco tutoris* completing the ward's title to the whole heritable subjects, and to expenses: Find the parties entitled to additional expenses," &c.

Counsel for the Petitioner — A. S. D. Thomson. Agent — Marcus J. Brown, S.S.C.

Counsel for the Respondent — Sym. Agents—Sibbald & Mackenzie, W.S.

Tuesday, May 17.

FIRST DIVISION.

[Sheriff-Substitute at Dunfermline.

WARDLAW *v.* DRYSDALE.

Slander — Issues — Innuendo — Slander against Individuals as Members of a Class.

Terms of a letter, published in a burgh newspaper, and directed against a magistrate and the Dean of Guild of the burgh, which *held* not actionable, in respect that although it alluded to individuals, it alluded to them as members of a class (viz., those connected with the liquor traffic), no one of whom the writer represented was capable of acting honestly or with a proper regard to the public interest as a magistrate.

Expenses—Action of Slander.

Circumstances in which expenses were not allowed to the defender of an action for slander although the action was dismissed as irrelevant.

William Wallace Drysdale, law clerk, Dunfermline, wrote the following letter to the editor of the *Dunfermline Journal* — "Dunfermline, 18th November 1897.— Sir,—Where is the temperance party, and what is it doing, is a question which must needs arise in the mind of every thinking and thoughtful person. Is the party extinct, or is it asleep, or is it lying awake and shirking its duty? If not altogether extinct, the temperance party must, I think, be neglecting its duty with its eyes open. Surely at the present juncture, and in present circumstances, it has shown itself to be in a rather nerveless and comatose state. Publicans have of late been exulting and raising a shout of triumph over what rather appears to be a 'publican cabinet' in connection with our Town Council. For instance, we have a publican as a magistrate, which, I consider, is an insult to Dunfermline. Publicans as the manufacturers of criminals are not wanted, and should not be allowed to occupy a seat on our magisterial bench. We want there not vice but virtue, and the last place where virtue will be found is the drink shop. Strong drink has ever been the curse of our country. There is certainly, then, a nauseous touch of inconsistency in the fact that one who is manufacturing criminals at the one end, should be appointed to punish them at the other. In fact, the incompatibility of such an appointment with reason and common sense is only too apparent. Then, again, we have had a publican recently elected as Dean of Guild. What is the reason for this? Is it intended that he should bring grist to the publicans' mill? A flood of applications for extension of premises may now be expected. It is both disgraceful and deplorable that licensed poisoners, along with their allies, should be allowed

to compose what may practically be said to be 'Publican Officialism' in our Town Council. No publican should be allowed even to hold a seat as a councillor. It is impossible for him to act in the interests of the community. The temperance party then, if they wish to reflect credit on their own organisation must, at the earliest and most opportune moment, take up the cudgels and aim at supplanting those in authority over us, whose purpose it is not to work in the interests of the community, but in the interests of crime and ruin.—Yours, &c., WM. WALLACE DRYSDALE." The letter was published in the issue of the newspaper of 20th November 1897.

Thereafter David Wardlaw, grocer and wine merchant, Dunfermline, the only one of the magistrates of that town who held a licence for the sale of exciseable liquors, and Thomas Stewart, grocer and wine merchant, Dunfermline, Dean of Guild of the burgh, raised separate actions for £50 as damages for slander against Drysdale in the Dunfermline Sheriff Court.

In Wardlaw's action the pursuers averred —"Said letter is in whole or in part of and concerning the pursuer, and falsely, maliciously, and calumniously, or falsely and calumniously, represents that pursuer is a man of vicious and degraded character, who for pecuniary profit in his business knowingly conducts it so as to produce crime and ruin among his customers; that he knowingly sells to his customers drink of inferior and poisonous quality; that he is incapable of acting disinterestedly in his public capacity, and has assumed the office of magistrate for the purpose of using it corruptly in the publican interest, while promoting crime and ruin among others. (Cond. 4) The said newspaper is published in Dunfermline, and is widely circulated in Dunfermline and the West of Fife, and the said letter, and the false, slanderous, and malicious statements of the defender regarding the pursuer therein contained, have thereby obtained great publicity. The defender has by the writing and by the publication of said letter exposed the pursuer to public hatred, contempt, and obloquy. The pursuer has been much injured in his feelings and reputation by defender's actings. (Cond. 5) The defender has been requested to withdraw and apologise for the writing and publication of the said slanderous letter, but he refuses to do so, and hence the necessity of the present action."

Similar averments were made in Stewart's action.

In both actions the defender stated that he had no personal acquaintance with the pursuer and did not intend to make any allegations against his character or reputation as an individual apart from his occupation as one of a class engaged in the traffic of intoxicating liquors. He pleaded—"(1) The action is irrelevant. (2) The defender not having slandered the pursuer he is entitled to be assoilzied, with expenses. (3) The allegations in the letter complained of not being directed against the pursuer personally but against the business in which he is engaged, and said business being the subject of a universally recognised controversy between the publican party on the one hand and the temperance party on the other, the language used is not actionable, and the action ought to be dismissed, with expenses."

On 1st February 1898 the Sheriff-Substitute (GILLESPIE) pronounced the following interlocutor in Wardlaw's action—"Allows to the pursuer a proof of his averments that the said letter falsely and calumniously represents that pursuer has assumed the office of magistrate for the purpose of using it corruptly in the publican interest, while promoting crime and ruin among others, and that the pursuer has thereby been injured in his feelings and reputation; and to the defender a conjunct probation, including the averments stated in the defences."

A similar interlocutor was pronounced in Stewart's action.

The pursuers in both actions appealed to the Court of Session for jury trial. The issue proposed by the pursuer Wardlaw was as follows—"Whether the defender wrote to the *Dunfermline Journal* newspaper, for publication therein, a letter in the terms contained in the schedule hereto annexed, and published in said newspaper on 20th November 1897, and whether said letter, in whole or in part, is of and concerning the pursuer, and falsely and calumniously represents (1) that the pursuer is a man of vicious character, and a licensed poisoner, or an ally of such, and, for personal profit and regardless of the public interest, so retails exciseable liquors in Dunfermline as to produce crime and ruin there; and (2) that the pursuer has assumed the office of magistrate for the purpose of acting therein corruptly in the publican interest, to the pursuer's loss, injury, and damage? Damages laid at £50." A similar issue was proposed in Stewart's case.

The defender took advantage of the appeal and moved that the actions should be dismissed as irrelevant. He argued—He was a member of the temperance party, who held that the trade of a seller of strong drink was by reason of its own qualities one which manufactured criminals and increased the amount of misery and vice in the country, and that strong drink was in itself poisonous. The letter was only a comment on the pursuer's occupation, not a slander upon him as an individual.

Argued for pursuers—The actions were relevant. The letter contained charges of corruption and infidelity to the public trust against the pursuers, and intimated that they would act corruptly in their public offices. Such charges were slanderous—*Mitchell* v. *Grierson*, January 13, 1894, 21 R. 367. It might be said that the letter contained charges against all publicans, but their application to all publicans did not lessen the stain of the charge in the pursuers' individual cases. If the meaning which they put upon the letter was able to

be put upon it, they were entitled to go before a jury—*Waddell* v. *Roxburgh*, June 9, 1894, 21 R. 883.

LORD JUSTICE-CLERK—I am very clearly of opinion that this is not a case in which an issue should be allowed. The case brings out very strongly that it is possible to be very intemperate indeed without drinking any alcohol. A more improper letter I never read than that issued by the defender, and it amazes me that any respectable journal in this country should have inserted such a discreditable production. One is glad to know from the proceedings in the case that the person who wrote it is still very young, and the hope may be cherished that by the time he comes to have a little more experience of life he will be ashamed of ever having written it at all. His general views may or may not be sound, and he may continue to hold that they are sound, but that any person holding such general views is entitled to make a gross and utterly unchristian attack on a large class of the community is what no sensible or right-thinking man will for a moment say.

But then we have to consider whether this is a case which ought to be sent to a jury in order that a jury may have before them an issue on the question whether particular individuals have been slandered or not. The letter is of the most general kind, and its allusions to persons are what the writer thought might be expected from the general class to which the letter relates. I think that the greatest triumph which the writer had as the result of his writing the letter was that it had induced more than one respectable man to take him seriously. These gentlemen would have acted with more common-sense and with greater regard for their own self-respect if they had taken no notice whatever of the letter. The letter certainly does allude to individuals, but it alludes to them only as belonging to a class, no member of which class is capable of acting properly. That is not the subject of an issue of this kind for the purpose of obtaining damages for injury inflicted. I should be very much astonished if any respectable jury ever came to the conclusion that any individuals had been injured by this silly letter. I therefore am of opinion that no issue should be allowed, If your Lordships agree with me in dismissing the action, I think we ought not to give expenses to the defender.

LORD YOUNG—I concur in thinking that the action is not maintainable. I agree with your Lordship that this is a very silly letter, but in saying that I am not to be understood as indicating any impression that it is not the view of a great many sensible people that the consumption of strong drink in this country is excessive, that it does a great deal of harm, and that it would be in the interests of the community if the demand for it, the consumption of it, and consequently the supply of it, were a great deal diminished. I am satisfied, and I think that most people are, that a great deal of harm is done, but a silly letter like this will not contribute in any way in reducing it. But then when such a letter has been written I sympathise with your Lordship's observations, and am surprised that any sensible man in the position of a magistrate, and in the position of a Dean of Guild, should have thought of bringing an action upon it. The action therefore, I think, ought to be dismissed. Your Lordship proposes that no expenses should be allowed to the defender. This is an exceptional course, but I do not differ from your Lordship in taking it in this case, for I think that the writer of the letter ought to suffer something for having put such a letter into the newspaper. If it were in my power, I should be disposed to subject the newspaper in expenses for having been so thoughtless as to put such a letter into print.

LORD TRAYNER—I agree in thinking that the letter was extremely foolish. The defender was foolish in writing it, and I cannot help thinking that the pursuers were just as foolish in taking the least notice of it.

LORD MONCREIFF was absent.

The Court pronounced the following interlocutor in both actions:—

"Recal the interlocutor appealed against: Dismiss the action and decern: Find no expenses due to or by either party."

Counsel for the Pursuer—The Solicitor-General—Glegg. Agent—James Purves, S.S.C.

Counsel for the Defenders — Guthrie, Q.C. — Sym. Agent — David Campbell, S.S.C.

Thursday, May 19.

FIRST DIVISION.

MACKELLAR *v.* MACKELLAR.

(*Ante*, p. 483.)

Expenses—Taxation—Power of Court to Modify after Remit to Auditor.

In support of a note of objections to the Auditor's report taxing a successful litigant's account, the party found liable in expenses took exception to a number of items allowed by the Auditor, and at the same time suggested that the Court, instead of reviewing the account in detail, should modify a lump sum as reasonably representing the amount of the successful party's expenses, The Court, holding that there was no precedent for the course suggested, *sustained* the note of objections *quoad* certain of the specific charges objected to.

Expenses—Taxation—Fees to Counsel.

A fee of eight guineas and four guineas to senior counsel for a debate in the summar roll on the relevancy of a summary petition—the debate