liable to the defenders the Parish Council of the Parish of Stirling in the expenses of the appeal," &c.

Council for the Parish Council of Govan—C. K. Mackenzie—Cook. Agents—Gill & Pringle, S.S.C.

Council for the Parish Council of Stirling — W. Campbell, Q.C. — Deas. Agents — Fraser, Stoddart, & Ballingall, W.S.

Tuesday, June 12.

SECOND DIVISION.

[Lord Low, Ordinary.

CRAWFORD *v.* ADAMS.

CRAWFORD *v.* DUNLOP.

Reparation — Slander — Architect said to have Condemned Work on Building to Gratify Personal Spite—Innuendo.

Reparation — Slander — Letter Written by Law-Agent on Client's Instructions — Adoption by Agent of Client's Statements —Personal Liability of Agent—Privilege —Issue—Malice in Issue.

A raised two actions, each concluding for £500 damages, the one against B and the other against C, B's law-agent.

In the action against B, A averred that he was employed by D as his architect in the erection of a factory, that he was called on to report on the work of B, who was doing the joiner-work in connection with the factory, that he wrote asking B to remove some of the joisting with which he was not satisfied and replace it with sound joisting, that thereafter he received the following letter from C—"B has called with reference to your note of yesterday. I have asked him to get an independent tradesman to see the joists you object to, and if any are not right they will be removed. I understand that you are attempting to annoy B for some old grudge you have against him. That he is not prepared to accept at your hands. He will complete the contract in terms thereof, and if you attempt to put any person on the job they will be interdicted. I am sending a copy of this note to D"; that on the same date C wrote to D a letter stating—"My client B has called upon me about A's spleen towards him. I have instructed a complete examination of the joists objected to. Any complaint that can be reasonably made will be removed. He shall complete the work according to contract. This is not the first time I have met with your architect's imperious conduct";—that these letters were written on B's instructions, that the statements in them were false and slanderous, that they were made recklessly, maliciously, and without probable cause by the defender, and represented that A had condemned B's work, not because he conscientiously believed it to be disconform to contract, but because of personal spite he entertained towards B. B admitted that the statements in these letters were made upon his instructions.

Similar averments were made in the action against C, with the additional averment that C knew the statements in the letters to be false, and had made them with the deliberate intention of injuring A in his profession.

The Lord Ordinary (Low) having in both actions approved of issues based upon the letters as innuendoed malice being inserted in the issue allowed in the action against C, the defenders reclaimed.

The Court (*diss.* Lord Young) *adhered* upon the ground (1) that the statements complained of were *prima facie* defamatory as innuendoed, and (2) that the pursuer was entitled to the issues allowed both against B and C, B having admittedly instructed the statements to be made, and C having personally adopted them, and being alleged to have made them knowing them to be false and with the intention of injuring the pursuer in his profession.

Question (*per* Lord Trayner and Lord Moncreiff) whether C was privileged in making the statements in question.

Opinion (*per* the Lord Justice-Clerk) that he was.

Andrew Rennie Crawford, architect, Glasgow, raised two actions, each concluding for £500 damages, one against John K. Adams, joiner, and the other against R. Murray Dunlop, writer, Glasgow. Both summonses were signeted on 10th October 1899.

In the action against Adams the pursuer averred—"(Cond. 2) In the summer of 1899 the pursuer was employed by Messrs A. G. Barr & Company, aerated water manufacturers, Parkhead, Glasgow, as their architect in the erection of a new factory at Parkhead. The defender was employed to do the joiner and wright work, said work to be executed in the manner and conditions specified in the contract. Under the contract the pursuer was appointed sole arbiter to settle disputes. (Cond. 3) In the course of the work being carried out a dispute arose between Messrs Barr and defender over the latter's workmanship, in regard to which the pursuer was called in as architect and arbiter to examine and report. In the pursuer's opinion the defender's work did not comply with the conditions of the contract. Thereafter the pursuer put on an inspector named Hogg, who reported that the joists were not in conformity with the specification. The pursuer, as architect and arbiter under the contract, then reported that he was not satisfied with the joists, and instructed certain joisting, which he marked with a 'B,' to be removed and replaced by sound joisting. The pursuer wrote defender drawing his attention to his report, and requested him to proceed in terms of it. The defender failed to do so, and on 17th August pursuer wrote defender intimating that unless the joists which had been condemned were removed

by the following day he would take instructions from Messrs Barr as to the appointment of another tradesman to complete the wright-work contract. In reply to this the pursuer received a letter in the following terms from the defender's agent:—'18*th August* 1899. A. R. Crawford, Esq., Architect, 101 W. Nile Street. *Barr, Gt. Eastern Road.* Dear Sir,—Mr J. K. Adams has called with reference to your note of yesterday. I have asked him to get an independent tradesman to see the joists you object to, and if any are not right they will be removed. I understand that you are attempting to annoy Mr Adam for some old grudge you have against him. That he is not prepared to accept at your hands. He will complete the contract in terms thereof, and if you attempt to put any person on the job they will be interdicted. I am sending a copy of this note to Mr Barr. —Yours truly, R. MURRAY DUNLOP.' On the same date defender's agent wrote the following letter to Messrs Barr & Company:—'18*th August* 1899. Messrs A. G. Barr & Co. Dear Sirs, — My client Mr John K. Adam, has called upon me about Mr Crawford, architect's, spleen towards him. I have instructed a complete examination of the joists objected to. Any complaint that can be reasonably made will be removed. He shall complete the work according to contract. This is not the first time I have met with your architect's imperious conduct.—Yours truly, R. MURRAY DUNLOP.' Annexed to this letter is a copy of the foregoing letter to pursuer . . . After receipt of the above letters the pursuer consented, without prejudice to his position as arbiter under the contract, to allow Mr Henderson to examine the joists. . . . Mr Henderson's report confirmed the pursuer's opinion as arbiter. (Cond. 4) The statements of and concerning the pursuer contained in the said two letters were made on the defender's instructions. They are false and slanderous, and were made recklessly, maliciously, and without probable cause. Said statements impute dishonourable conduct to the pursuer. They represent that he, acting in the judicial capacity of arbiter, or as architect under the contract, was unfair and biassed in his views, and that he condemned the defender's work not because he conscientiously believed it to be disconform to contract but because of personal spite he entertained towards the defender. (Cond. 5) In consequence of said letters and the slanderous statements contained in them the pursuer has suffered severely in his feelings and reputation. The letter written to the pursuer's employers was sent with the object of injuring, and was calculated to injure, the pursuer in his profession. He has found it necessary to bring the present action with the object of vindicating his character against such imputations. In the circumstances set forth the amount sued for is only reasonable reparation for the loss, injury, and damage which he has sustained and will sustain."

Similar averments were made by the pursuer in his action against Dunlop, with the following additions:—"The defender knew said statements he was making were false. At all events, had he made any inquiry before making the allegations he would have found them to be untrue. Instead, however, of doing so, he wrote to pursuer's employers in terms suggesting the pursuer had, within the defender's own knowledge, been guilty on several occasions of similar dishonourable conduct. Said statement, which the defender knew to be untrue, was made with the deliberate intention of injuring the pursuer in his profession."

The defender Adams in the action against him admitted that the statements in the two letters was made on his instructions, but averred—"The said letters will not bear the construction or innuendo which the pursuer seeks to put upon them. They do not and were not intended to cast any imputation or reflection upon the pursuer or his actings, or his character or his capacity." The defender Dunlop in the action against him made a similar statement.

The defenders in both actions pleaded, *inter alia*—". . . No relevant case." The defender Dunlop also pleaded, "The action is incompetent," and "Privilege."

On 27th January 1900 the Lord Ordinary (LOW) approved of issues for the trial of both actions.

The issue approved in the action against Adams was as follows — "It being admitted that the defender caused the letters printed in the Appendix Nos. 1 and 2, to be written and sent to the pursuer and Messrs A. G. Barr & Company respectively, whether said letters falsely and calumniously represent that the pursuer, as architect under a contract between the defender and said Messrs A. G. Barr & Company, had condemned the defender's work, not because he conscientiously believed it to be disconform to contract, but because of personal spite he entertained towards the defender, to the loss, injury, and damage of the pursuer? Damages laid at £500."

The issue approved in the action against Dunlop was in similar terms, except that the words "and maliciously" were inserted after "falsely and calumniously."

Note.—"The first question raised upon the proposed issues in these cases is, whether it is competent to bring an action both against Adams, who instructed the letters complained of to be written, and against Dunlop, by whom the letters were written?

"The usual course would have been to have brought only one action calling both Adams and Dunlop as defenders, but I know of no authority for saying that it is incompetent to bring at the same time separate actions. The actions must, it is conceded, be tried together by the same jury, and if that is done I do not think that either of the defenders can be prejudiced by separate actions having been brought instead of one action only.

"The next question is, whether there is issuable matter in the letters? I think that there is, because the pursuer is accused

of acting as he did, not from a sense of duty but on account of an old grudge which he had against Adams, and to gratify his spleen.

"In regard to the action against Dunlop, I am of opinion that malice must be put in issue. It is admitted that the letters were written by the instructions of Adams, and that being so, and Dunlop having written the letters as Adams' law-agent, I think that malice must be proved in order to entitle the pursuer to recover damages.

"The case of *Wilson* v. *Purves*, 18 R. 72, was referred to. That was an action against a law-agent for damages for a slander alleged to be contained in a letter which he had written to the pursuer in his capacity as law-agent. An issue was allowed without the word malicious, but that was only because it was clear that the part of the letter complained of had been written without instructions. I therefore regard the case of *Wilson* as an authority for putting malice in the issue in this case."

The defenders in both actions reclaimed.

Argued for defender Adams—The action was irrelevant. There was no issuable matter in the letters complained of. There was no charge of wilful falsehood, nothing but a mere expression of opinion—it might be intemperate. All that was attributed to pursuer was that he had not acted wholly from a sense of duty. There was nothing slanderous in this, especially when the letter was written in the course of a correspondence to the party himself. In any event, the statement was privileged, and malice should be inserted in the issue.

Argued for defender Dunlop—He adopted the argument of the defender Adams that there was no issuable matter in the letters. Even assuming that the action against Adams was relevant, there was no case against the law-agent. He had acted on the instructions of his client in writing the letters, and an agent was not personally responsible for being the medium through which his client's statements were made if the client positively instructed him to make the statement—*Ramsay* v. *Nairne*, Aug. 21, 1833, 11 S. 1033, opinion of Lord President Boyle 1045. Further, the action against him was incompetent. The pursuer might have sued Adams and himself jointly and severally in one action. But he had chosen to raise an action against Adams alone, in which he stated that the wrong done to him had caused him damage to the extent of £500. He therefore could not raise another action against the present defender, and ask another £500 for the same wrong.

Argued for pursuer—The Lord Ordinary's interlocutor was well founded in both cases. The letters contained slanderous matter. The slander was that the pursuer condemned the joists, not because they were unsound, but in order to gratify an old grudge he had against Mr Adams. This was a direct attack on the pursuer's character as an architect, and it might reasonably be held that an injury would result therefrom to the pursuer in his profession of architect. The letters disclosed a case of defamation. Adams admitted the statements were made on his authority. He was therefore liable and was not privileged. The pursuer assented to the Lord Ordinary's view that there was privilege in the case of Dunlop. But while admitting that he maintained that there was also a clearly relevant case against Dunlop. In his letter he adopted the views of his client, and backed them up by statements of his own. The pursuer had also averred as regards Dunlop that when he wrote the statements he knew them to be false. As regards the matter of form, it was quite competent to sue two separate persons in separate actions.

At advising—

Lord Justice-Clerk — The defender Adams admittedly caused the letter of the defender Dunlop to Messrs Barr & Company to be sent to them, and also caused a copy of the letter sent to the pursuer by Dunlop to be sent to Messrs Barr & Company. He therefore accepts responsibility for these letters. It does not appear to me that in these circumstances any substantial question as to privilege arises in the case of the defender Adams. It is quite true that any communication he made to his agent Mr Dunlop was a privileged cemmunication, but when he instructed Dunlop to make the charges that were made against the pursuer in the letters, and Dunlop did so, Adams was himself making the charges to Barr & Company through Dunlop, and I do not see how he can be held to be privileged in doing that. That the charge is libellous seems to me clear. It is practically that the pursuer, in condemning certain material that was being put into a building where the work was to be done to his satisfaction, was not exercising an honest judgment, but gratifying his own spite against the builder.

I think the Lord Ordinary rightly allowed the issue against Adams.

As regards the defender Dunlop, the pursuer has been required to put malice in his issue, and I think rightly so. The defender Dunlop did not merely write what his client instructed, but in his letter personally identified himself with the allegations made. The pursuer avers and undertakes to prove that Dunlop, in writing as he did to Barr & Company, knew them to be untrue, and made them with the deliberate intention of injuring the pursuer. What he wrote he wrote on the instructions of Adams, although some of the expressions might be read as being his own. But the pursuer states that what was written was so written by instructions of the defender Adams. That being so, the pursuer, has, I think, properly been required to prove malice in order to obtain a verdict. This he undertakes to do, and accordingly I think he is entitled to an issue to try the case against Dunlop.

Lord Young—The pursuer of the actions before us complains in each action of the same letters as slanderous, and concludes against the defender in each for £500 damages.

In the action against Adams, who is a wright and joiner, responsibility for the letters is imputed to him on the ground that "the statements of and concerning the pursuer contained in the said two letters were made on the defender's instructions" by "the defender's agent" Mr Murray Dunlop, a writer in Glasgow.

In the action against Mr Murray Dunlop responsibility for the letters is imputed to him on the ground that he acted on his client's instructions and wrote the letters, although he "knew said statements he was making were false. At all events, had he made any inquiry before making the allegations he would have found them to be untrue." To take the action against Adams first, the most important thing to notice is that the defender admits the pursuer's averments that Mr Dunlop was employed by him as his agent, and that the statements in the letters were made on his instructions. He thus necessarily accepts responsibility therefor. Accordingly in the action against him the only questions are, first, Are the letters libellous? and, if so, second, Was the occasion privileged? On both questions we ought, I think, to take account of the fact that the matter on which the defender resorted to his agent for advice and assistance was distinctly a matter of business relating to a contract by him, as a wright and joiner, for work on a building in course of erection, and a threat by the pursuer to take steps with a view to have the contract cancelled for what he thought was the bad work of the defender. He may have been wrong in declining to accept the pursuer's condemnation of the work, and to obey his order to remove it, but was certainly within his right in intimating his declinature to the pursuers, and also to their common employers Barr & Company. Nor was it reprehensible on his part to consult a solicitor and take his advice and aid in answering the pursuer's letter of 17th August (referred to in Cond. 3) which certainly as a matter of business required an immediate answer announcing submission or resistance by the defender. The letter of 18th August, written and sent to the pursuer, is one of the letters complained of, and that, of the same date written and sent to Barr & Company, is the other.

Taking the letter to the pursuer first, the only words in it alleged to be slanderous are these—"I understand that you are attempting to annoy Mr Adams for some old grudge you have against him." The apparent meaning of them is that the defender gave his agent so to understand. Admitting that he did, and is therefore responsible as if he had himself written to the pursuer, or in conversation given him to understand that such was his belief, is the language actionable and libellous? The pursuer avers that under the contract he was appointed sole arbiter to settle disputes between the parties to it, and that the letter represents that he acting in the judicial capacity of arbiter or as architect under the contract, was unfair and biassed in his views and condemned the defender's work, not because he conscientiously believed it to be disconform to contract, but because of personal spite towards the defender (Cond. 4). It is true that by the contract either party, that is, either Burns & Co. or Adams, was entitled to insist that the other should concur in submitting any dispute arising between them under it to the pursuer as architect. But the architect had no power to act as arbiter in any matter until required by the parties to do so, which he was not, with respect to Adam's work, either before or after the date of the letters. On the contrary, the question regarding that work was referred by the contracting parties to a valuator in Glasgow, who decided it. (The reference and the award upon it are produced.) I am therefore unable to regard the pursuer's letter of 17th August as judicial in any sense, although I see no reason to think it was ultroneous or improper. If Adams on receipt of the pursuer's letter of 17th August had gone to him personally, and said, I cannot accept what you say in your letter; you are attempting to annoy me for some old grudge you have against me,—would that have been actionable slander? In my opinion it would not, whether their common employer was present or absent when the charge of breach of contract by bad work, and the threat of consequent dismissal made in the letter, was thus answered and resisted. Nor is there in my opinion any room for innuendo. Slander by innuendo is slander by sign or gesture, or words in their ordinary and familiar sense inoffensive, but used and understood by the hearers (or readers) to be used as signifying a known defamatory imputation.

Taking now the letter which was addressed and sent to Barr & Company, who were the common employers of the pursuer and the defender, it was obviously proper that they should be informed of the dispute which had arisen between them. In that letter the words alleged to be slanderous are "spleen" and "your architect's imperious conduct." In my opinion they are not slanderous, although I do not think it was judicious, or could serve any good purpose to use them.

I am therefore of opinion that the action against Adams is irrelevant. Had I thought otherwise I should have held that the occasion was such as to repel the presumption of falsehood and malice, and so was what is technically termed privileged. In order to do this it is not necessary that the communication *prima facie* libellous should have been made in the discharge of a duty public or private. Such a communication made by anyone in the conduct of his own affairs and with a reasonable hope of protecting his own interest in a matter where it is concerned, will be regarded as privileged in the only sense in which the expression is used, viz., excluding the presumption of malice and putting it on the pursuer to give evidence of actual malice.

Coming now to the action against Mr Dunlop, I have already stated the ground on which the pursuer imputes to him responsibility for the letters. It is in

substance that he ought not to have acted on his client's employment and instructions to write and send them, because he knew that what his client gave him to understand was false, or "at all events" had he made inquiry he would have found it to be untrue. The letters bear to be written by him as acting for his client, and they were so received. In Cond. 3 the pursuer says—"In reply to this (his letter to Adams of 17th August) the pursuer received the following letter from the defender" (Dunlop)—then quoting Dunlop's letter to him of 18th August. The letter of 17th August required an answer, and if Dunlop's letter of the 18th was not an answer, it was never answered. The suggestion made, to my surprise, in the course of the debate that the action against Dunlop ought to be sustained on the ground that it might appear at the trial that he had no employment or instructions from Adams, and wrote and sent the letters only to gratify some malignity of his own, and that the pursuer's averments and Adams' admissions in the other action are false, is, I think, too extravagant to be seriously dealt with. It would come to this, that with respect to these letters the relation between Adams and Dunlop was not that of agent and client, but of conspirators to defame the pursuer by making imputations arranged between them and known by both to be false.

Assuming the relation of agent and client, and the client's instructions to write and send the letters, what is the ground of liability against the agent? It is of familiar occurrence that a law-agent has, on his client's employment and instructions, to make communications, by letter or otherwise, to people with whom his client has dealings and comes into conflict in business or other matters, imputing serious misconduct to them—sometimes demanding reparation to his client therefor, and sometimes intimating resistance by his client to demands because of the misconduct imputed to the party making them. Is the agent responsible for imputations so made? If he had no authority to make them, he is of course responsible, and his client not, but if he had authority, and the client admits it, and accepts the consequent responsibility, I repeat the question, how is the agent also responsible?

It is said (article 4) "The defender knew said statements he was making were false." We ought to be distinctly informed what is meant by this. What is meant? The only statement he made or "was making" is this—"I understand that you are attempting to annoy Mr Adams for some old grudge you have against him." Adams admits, and in the action against him the pursuer avers, that he (Adams) gave the defender (Dunlop) so to understand, and instructed him to say so in the letter. I repeat the question—What is the statement which the pursuer means to aver that Dunlop made knowing it was false? If the meaning of the averment is only this, that Dunlop might by inquiry before writing the letters have found that what his client gave him to understand was untrue, I have no hesitation in rejecting the averment as irrelevant.

The pursuer's counsel, in explanation of the two actions and the same amount of damages (£500) claimed in each for the defamation contained in the same letters, informed us that the damage done to the pursuer was estimated at £1000 and that the liability for this was meant to be equally divided between the client who instructed the letters to be written and sent and the solicitor who received and acted on the instructions. This is a new idea and for my part I can give no countenance to it. No other explanation was offered of the two actions and the apportionment of liability between client and agent.

LORD TRAYNER—The pursuer complains of the terms of the letters written of and concerning him by the defender Adams' law-agent. These letters were written and the statements in them made admittedly on the defender's instructions; he is therefore responsible for the letters, and any claim to which they may give rise. Are these letters actionable? I think they are, if they will bear the interpretation which the pursuer puts upon them; and that interpretation seems to me a reasonable and natural one. I am therefore of opinion that the pursuer is entitled to the issue which the Lord Ordinary has approved.

If the defender Dunlop had confined himself, in the letters complained of, to a communication of facts or opinions which his client instructed him to communicate, I should have had great hesitation in allowing the issue which the Lord Ordinary has approved. My present opinion is, that in such circumstances I should have refused any issue, on the ground that the letters and all that they contained were the letters and statements of the client, for which the agent, as the mere channel of communication, was not responsible. But the defender (Dunlop) here has done more than merely communicate the views of his client. He introduces knowledge and experience of his own in support of his client's views. In doing so he went beyond the mere character of agent, and made, or may have made, himself personally responsible for what he wrote. He has, I think, been amply protected by the insertion of malice, in regard to which I shall only say that I think it very arguable whether he was entitled to such protection. That, however, was not disputed by the pursuer, who is content with the issue as approved.

LORD MONCREIFF—I agree with the majority of your Lordships that both these cases should go to trial on the issues as adjusted by the Lord Ordinary. To deal first with the case of the client, the defender Adams—he accepts responsibility for his agent's letters. He advisedly does not plead privilege on record; and he does not undertake to justify the charge made against the pursuer. His defence is contained in his fourth answer—"The said letters will not bear the construction or innuendo which the pursuer seeks to put

upon them. They do not, and were not intended to cast any imputation or reflection upon the pursuer or his actings, or his character or capacity."

In my opinion, the words complained of (if indeed they require to be innuendoed), will bear the innuendo put upon them by the pursuer, and are *prima facie* defamatory. They suggest that the pursuer condemned the defender's work, not because he believed it to be disconform to contract, but simply in order to annoy the defender and gratify an old grudge against him. If this is the true meaning of the words, they are undoubtedly defamatory, and calculated to injure the pursuer personally and in his profession of architect.

Even if privilege had been pleaded I should have been of opinion that the writings complained of were deprived of any privilege which they might otherwise have possessed by the palpable excess of the language used, and the deliberate imputation to the pursuer of dishonest motives.

The case against the agent, Mr Murray Dunlop, is somewhat different. He pleads privilege, and the Lord Ordinary has allowed an issue on the footing that the agent acted on the instructions of his client, and that accordingly the letters *prima facie* were privileged. The word "maliciously" has therefore been inserted in the issue.

We were told by counsel that the pursuer is content with the issue as it stands. Had it not been so, I should have doubted whether the agent's letters were privileged. The privilege of a law-agent depends upon his acting strictly on the instructions, and as the mouthpiece, of his client. As long as he confines himself to doing this, any pertinent statements which he may make in his client's interest will, I assume, be held to be privileged; and in general he will not be held responsible for their truth or accuracy.

But this privilege may be lost, and I think it is lost when the agent, not content with speaking or writing in the name of his client, personally adopts and corroborates the charge which he is instructed by his client to make. Now, the defender Dunlop does that in the present case. In writing to the pursuer's employers he says, "This is not the first time I have met with your client's imperious conduct, and it clearly appears from other expressions in the letters that by "imperious conduct" the defender means that the pursuer was in the habit of gratifying his "spleen" or an "old grudge" against a contractor by condemning his work without cause.

But dealing with the letters as privileged (as the pursuer accepts the burden), I think that malice is sufficiently averred. The pursuer may not succeed in establishing malice to the satisfaction of a jury, but I think that he is entitled to have an opportunity of doing so.

The Court adhered in both actions.

Counsel for Pursuer in both actions—Ure, Q.C.—Hunter. Agent—Henry Robertson, S.S.C.

Counsel for Defenders in both actions—Salvesen, Q.C.—Guy. Agent—John Veitch, Solicitor.

Tuesday, June 12.

SECOND DIVISION.

STEWART'S TRUSTEE *v.* J. T. SALVESEN & COMPANY.

Bankruptcy—Constitution of Bankruptcy—Notour Bankruptcy—Insolvency—Company—Expiry of Charge without Payment—Bankruptcy (Scotland) Act 1856 (19 *and* 20 *Vict. cap.* 79), *secs.* 7 *and* 8—*Debtors (Scotland) Act* 1880 (43 *and* 44 *Vict. cap.* 34), *sec.* 6—*Diligence.*

The mode of constituting notour bankruptcy introduced by section 6 of the Debtors (Scotland) Act 1880 only applies to cases in which imprisonment was rendered incompetent by the provisions of that Act; and consequently, as it was never at any time competent to imprison a firm, a firm cannot be rendered notour bankrupt merely by insolvency concurring with the expiry without payment of a charge given to the firm as a firm only.

On 24th May 1899 the estates of John Malcolm Stewart, timber merchant, Eglinton Saw Mills, Glasgow, sole partner of and carrying on business as James T. Ferguson & Company, timber merchants and saw millers, Glasgow, were sequestrated by the Sheriff of Lanarkshire, and on 5th June 1899 Mr James R. Hodge, chartered accountant, Glasgow, was elected trustee, and was duly confirmed on 8th June 1899. The firm of James T. Ferguson & Company for some years prior to 16th January 1899 consisted of the bankrupt John Malcolm Stewart and James T. Ferguson, timber merchant, Glasgow. The latter retired from the firm on 16th January 1899, and subsequently died on or about 6th April 1899. On Mr Ferguson's retiral from the firm a minute of dissolution was entered into between Mr Stewart and Mr Ferguson under which Mr Stewart undertook all the liabilities and took over all the assets of the firm. The dissolution was not advertised or intimated to creditors. On 15th October 1898 the firm of James T. Ferguson & Company accepted a bill for £335, 3s. 4d., payable at six months' date, to Messrs Cant & Kemp, timber merchants, Glasgow. This bill having been dishonoured at maturity, was protested by Messrs Cant & Kemp against James T. Ferguson & Company, and upon 22nd April 1899, by virtue of an extract registered protest and warrant thereon by the Sheriff of Lanarkshire of same date, James T. Ferguson & Company, as a company, were charged to make payment to Messrs Cant & Kemp of the amount of the said bill within six days after the date of the said charge, under the pain of poinding. The charge expired on