belonged could on petition regulate the *interim* possession. The Division should regulate the possession pending the appeal, and should recall the interdict as craved. Reference was made to secs. 69 and 79 of the Court of Session Act 1868 (31 and 32 Vict. c. 100).

Counsel for respondent stated that the appellant had largely contributed to the delay by appealing to the Sheriff, and that in these circumstances the note should be refused.

LORD PRESIDENT—This application raises a point which it is surprising to find is novel. One would have supposed that the point would have arisen before, but counsel have not been able to produce any authority. The matter arises in this way. The Upper District Committee of the County Council of Renfrew have had an action raised against them in the Sheriff Court at Renfrew seeking to interdict them from discharging sewage into a certain burn from their irrigation works. Now these sewage works are part of a sewage scheme of the defenders, and it is clear that to prevent the operation of their sewage works is a very serious thing. The pursuer asserts that the defenders are doing an illegal act, and the Sheriff-Substitute has so found, and has, *causa cognita*, granted interdict.

I assume of course at present that that interlocutor is right, but at the same time it is a judgment against which the defenders are entitled to appeal, and they have appealed. They have also lodged this note to the Lord President, pointing out the serious consequences which the enforcement of the interdict would involve, and craving that, pending the decision of the appeal, the interdict granted by the Sheriff-Substitute should be recalled.

I have come to be of opinion that the course asked by the defenders is incompetent, but that the defenders are not without remedy. The matter is regulated by two sections of the Court of Session Act 1868, viz., secs. 69 and 79. Section 69 is the section which determines the effect of appeals from the Sheriff Court to this Court, and it provides—" . . . [*His Lordship quoted the section*] . . . " The matter is more particularly dealt with in sec. 79. It provides—" . . . [*His Lordship quoted the section*] . . . " It seems to me that section 79 covers the case, and that it is perfectly possible for the defenders to make a motion before the Sheriff-Substitute asking him to suspend the operation of the interdict until the appeal shall have been decided in this case. It will not affect the decree, and in truth will not be an ordinary interlocutor in the cause. I say this that the Sheriff-Substitute may not be hampered by the fact that the process is here. It will not, as I have said, be strictly speaking an interlocutor in the cause, but will be an independent interlocutor written on a separate interlocutor sheet, though of course the interlocutor will be subject to review in terms of the 79th section.

I have no doubt that what I have said will be before the Sheriff-Substitute when he comes to consider the suggested application, and that he will have it in mind that it is a very serious thing to stop the operation of a drainage scheme when perhaps—I don't say probably but perhaps—the judgment may be reversed.

LORD KINNEAR and LORD DUNDAS concurred.

LORD M'LAREN and LORD PEARSON were not present.

The Court refused the note.

Counsel for Appellants—M'Clure, K.C.—Macmillan. Agent—F. J. Martin, W.S.

Counsel for Respondent — MacRobert. Agent—J. A. Kessen, S.S.C.

Saturday, July 6.

EXTRA DIVISION.

[Lord Salvesen, Ordinary.

BOAL *v.* SCOTTISH CATHOLIC PRINTING COMPANY, LIMITED.

Reparation—Slander—Newspaper — Innuendo.

A newspaper published an article containing the following passages:—"We have received a printed note appealing for donations of money or gifts of material for the fitting and furnishing of a 'Home' at 11 Old Govan Road, Paisley Road, Glasgow, S.W. 'The Rev. G. Thompson Diver' is stated to be the General Superintendent, and somebody called Boal appears to have scribbled a note saying—'We will be pleased to receive a small donation.' Of that we have not the least doubt. In the public interest we beg to inquire—When was this home started? What has been the number of inmates sheltered in it since then? Is there a balance-sheet? and what guarantee is there that the money subscribed does not go to the private profit of the Rev. G. Thomson Diver or the scribbling Boal?"

In an action of damages for slander by Boal against the proprietors of the newspaper the pursuer innuendoed the article to mean that he was a person capable of appropriating funds collected for charity to his own purposes.

Held (*aff.* Lord Ordinary, Salvesen) that the innuendo sought to be put on the words used was possible, and an issue *allowed*.

On February 19th 1907 Samuel Boal, lecturer and journalist, Glasgow, brought an action of damages for slander against the Scottish Catholic Printing Company, Limited, the proprietors of the *Glasgow Observer*.

In the condescendence the pursuer averred that he, generally known as Pastor Boal,

had taken a prominent part in the support of Protestantism as opposed to Roman Catholicism, and that the paper in question, "the recognised organ of the Catholic faith in Scotland," owned by the defenders, had assumed a hostile attitude towards him and his views, and had printed in its issue of 1st December 1906 the following statements—. . . (quoted *supra* in rubric) . . . "(Cond. 5) The said statements of and concerning the pursuer are false and calumnious. They were printed and published, or caused to be printed and published, by the defenders without probable cause, and in order to gratify feelings of ill-will and hatred towards pursuer, who holds contrary views on religious topics to those advocated by the defenders' said newspaper. (Cond. 6) The said statements complained of mean and imply, and were intended to mean and imply, that the pursuer was an untrustworthy person, or a person not worthy of public trust or confidence in the administration of charitable funds, and was capable of appropriating funds collected for charity to his own uses and purposes."

In answer 4 the defenders averred that they had received a printed note with regard to the home mentioned in the statements complained of, having at the top in a scribbling form of handwriting this appeal, "We will be pleased to receive a small donation—S. BOAL," and that they believed and averred the handwriting of this appeal to be the pursuer's.

On 13th June 1907 the Lord Ordinary (SALVESEN) approved of the following issue:—"(1) Whether the defenders were at December 1st 1906 the owners of, and printed or caused to be printed and published, the *Glasgow Observer*, dated December 1st 1906, containing the article printed in the schedule attached hereto, and whether said article is of and concerning the pursuer, and falsely and calumniously represents the pursuer as a person capable of appropriating funds collected for charity to his own purposes, to the loss, injury, and damage of the pursuer. Damages laid at £1000 sterling." The schedule set forth the statements complained of (*v. sup.* in rubric).

Opinion.—"This is an action of damages for slander said to be contained in a paragraph published in the *Glasgow Observer* on 1st December 1906. . . . The pursuer proposes two issues—one the ordinary issue of slander, and the other an issue in which he propounds the question whether the statements complained of were false, and exposed the pursuer to public hatred and contempt. The latter issue has very rarely been allowed in Scotland, and only under exceptional circumstances, none of which exist here. I shall accordingly disallow it.

"The innuendo proposed in the first issue is whether the article falsely and calumniously represented the pursuer as a person unworthy of public confidence in the administration of charitable funds, and capable of appropriating funds to his own uses and purposes. The defenders say that the article is not capable of having this meaning attached to it; that all that they did was to comment on a matter of public interest; and that the article amounts only to an inquiry with regard to an unknown charitable institution as to what guarantees there were that it was efficiently and properly managed. It is open to the defenders to convince the jury that that is the true meaning of the article, and that it contains no imputation on the pursuer's character. But in my opinion the meaning which the pursuer says the article was calculated to convey is not so plainly unreasonable as to warrant me in refusing him an issue. There is no doubt that the article is intended to disparage the pursuer in public estimation. It talks of him as 'the scribbling Boal,' and amongst the inquiries which it makes with regard to the charity for which he is said to have solicited subscriptions, it asks 'what guarantee is there that the money subscribed does not go to the private profit of the Scribbling Boal?' This inquiry follows a series of questions which were probably quite legitimate, but which suggest a doubt as to the existence of the 'home,' or at least of its usefulness as a charitable institution. When the writer goes on to suggest that the money subscribed may go to the private profit of the pursuer, he does not appear to me to be in the region of legitimate comment on a matter of public interest, but to have exposed himself to the charge of attacking private character. If the article meant that under the guise of collecting money for a charitable object the pursuer was really seeking to obtain profit for himself, I cannot doubt that it is actionable. I shall therefore allow the pursuer an issue, although I think the innuendo might be better expressed, for I do not find any suggestion in the article that the pursuer was connected with the administration of the society. The proper innuendo seems to me to be that the article represents the pursuer as a person capable of appropriating funds collected for charity to his own purposes. . . ."

The defenders reclaimed, and argued—The article read as a whole would not bear the innuendo and was not slanderous. It did not attack the pursuer's character, but merely criticised the administration of the home, and pointed out that the method of administration involved the risk of fraud upon the public. It was no more than fair criticism on a matter of great public importance—the collection of money for charitable purposes. It followed that the pursuer was not entitled to an issue—*Archer* v. *Ritchie*, March 19, 1891, 18 R. 719, 28 S.L.R. 547; *Falconer* v. *Docherty*, June 6, 1893, 20 R. 765, 30 S.L.R. 688. The pursuer had not denied the defender's averment that the appeal for a subscription was in his handwriting. Possibly this appeal was not an attack on the defenders sufficient to justify a counter attack—*Gray* v. *Society for Prevention of Cruelty to Animals*, July 18, 1890, 17 R. 1185, 27 S.L.R. 906; but the action of the pursuer in sending to a Roman Catholic newspaper an appeal for

a subscription to a Protestant charity was at least a proceeding calculated to provoke criticism. The article should therefore be construed more favourably to the defenders than if this element had not been present.

Counsel for the pursuer was not called on.

LORD M'LAREN—I am not surprised that the defenders should have raised the question of the relevancy of this record as they have done, because in such cases one has not implicit confidence in the view that may be taken by a jury, especially where the elements of political or religious prejudice come into play. But what we as a Court have to consider is whether the words published regarding the pursuer are capable of bearing the interpretation or innuendo which is sought to be put upon them. Now the Lord Ordinary has held that they are capable of being put in issue with the innuendo which he accepts as a possible meaning, and I cannot say that I entertain any doubt upon the subject. I adhere to all that I said in my judgment in the First Division in the case of *Archer* v. *Ritchie & Company*, 18 R. 719, and whenever a critique, however severe it may be in its terms, is in the opinion of any fair-minded reader nothing but criticism of public conduct I should be against sending such a case to a jury. But I am unable to say that the paragraph complained of here is of that character. I therefore agree with the Lord Ordinary, and I concur in everything he has said in his opinion, with one slight reservation as to the passage where he says—"When the writer goes on to suggest that the money subscribed may go to the private profit of the pursuer, he does not appear to me to be in the region of legitimate comment on a matter of public interest, but to have exposed himself to the charge of attacking private character." It is only necessary for me to say that I think that the observation with regard to subscriptions going to the private profit of the pursuer is not so clearly within the region of legitimate comment that the case should be withheld from the jury. I think it is for the jury to say whether the intention was to point out that the public were in danger of being defrauded by a system of appeals for subscriptions without the publication of accounts or any other guarantee as to the proper application of the funds subscribed, or whether the intention was to say that Mr Diver and Mr Boal were persons who sought for money for the purpose of converting it to their private profit. Even if the writer had not named any person, but, having taken the appeal for subscriptions as his text, had gone on to ask what guarantee was given that money so subscribed did not go to the private profit of those appealing for it, I think he would have come perilously near to the region of attacking private character. Here, however, the defenders do not even give themselves the chance of escaping on the ground that they have made no attack on anyone, for the names of the two gentlemen, to whom they suggest that their criticism is applicable, are given. I have no doubt therefore that this case must go to a jury.

LORD PEARSON—I also think that the Lord Ordinary is right in the decision he has come to, and I agree with all that the Lord Ordinary has said, subject to the qualifications which your Lordship has pointed out.

LORD ARDWALL—I also agree with the Lord Ordinary, subject to your Lordship's remarks on his opinion. I think it cannot be said that the article in question might not be interpreted as suggesting that the persons therein referred to are persons capable of putting money subscribed for a charity into their own pockets. It is indeed true that the sentence complained of takes the form of an interrogation and not of an assertion, but I cannot think that that makes any real difference. It is no better than if it had consisted of an assertion that there was no guarantee that the money subscribed did not go into the pockets of Diver and Boal. The pursuer is in my opinion entitled to lay such a statement before a jury and ask them if it can bear the innuendo suggested by him. I therefore agree with your Lordships that this case must go to trial.

The Court adhered.

Counsel for the Pursuer (Respondent)—Crabb Watt, K.C.—Trotter. Agents—Bryson & Grant, S.S.C.

Counsel for the Defenders (Reclaimers)—Morison, K.C.—Munro. Agent—E. Rolland M'Nab, S.S.C.

Wednesday, July 10.

FIRST DIVISION.

KNOX'S TRUSTEES *v.* KNOX AND OTHERS.

Succession — Trust — Will — Revocation — Conditio si testator sine liberis decesserit.

A man who died in 1905 unexpectedly, after a short illness, had executed in 1896 a universal trust-disposition and settlement making provision, *inter alia*, for his two children and none for children *nascituri*, but in 1897 a third child had been born and all three survived. In 1901 the father had instructed a law agent, other than that who had prepared the trust-disposition of 1896, to redraft a trust-disposition originally drafted in 1894, gave instructions as to its tenor, and received it when prepared. In 1904 he had returned this draft to the agent requesting suggestions thereon and had received it back again. In his jottings for the trust-disposition of 1896 he apparently had had in view the possibility of his having more children. On his death the trust-disposition of 1896 and the draft trust-disposition of 1901 were found together in his repositories.