could not have the retroactive effect of validating it. Reference was made to the Act anent the Confirmation of Testaments, 1690, cap. 26, to M'Laren, sec. 1602, and to Ersk. iii, 9, 30.

LORD PRESIDENT—I think this interlocutor cannot be supported. The Lord Ordinary, it appears to me, has proceeded too fast in sustaining the plea of no title to sue. The law of the case is completely covered by authority.

The pursuer seeks here decree of count and reckoning in respect of the infringement of an alleged copyright, or alternatively for damages, and the title on which he founds is an assignation, dated in March 1903, granted by the testamentary trustees of a certain Alexander Mackenzie who was the proprietor of the copyright.

Now the defenders meet that case by an averment in the following terms—"It is believed and averred that the said trustees never confirmed the copyright of the article, and that they were not *in titulo* to grant the said assignation," and on that averment their first plea is founded. It is true that the testamentary trustees of Alexander Mackenzie were not confirmed at the date when they granted the assignation in favour of the pursuer, but I think it clear that, by virtue of the general conveyance contained in his trust-disposition and settlement, dated the 8th of January 1898, the trustees had a beneficial interest in the copyright vested in them and transmissible by them. No doubt confirmation was required in order that they might secure an active title to intromit with and administer the estate, but it seems to me to be perfectly clear that if they subsequently obtained confirmation the defect in their title could be effectively cured, and the cure would draw back to the date of the assignation.

So much seems to have been conceded by the pursuer before the Lord Ordinary, for I find from his note that he says that the pursuer maintained that confirmation was not necessary to support his title to raise the action, although it would require to be expede before any decree for payment could be extracted. Now the contention on the part of the pursuer is, I think, well founded in law, for by virtue of the assignation which he had received from the testamentary trustees I consider that he was vested with the right to demand that the trustees should complete their title by expeding confirmation. That was his right, and he was in a position to exercise that right, and he stood before the Lord Ordinary bound to exercise that right before seeking decree in this action.

The Lord Ordinary appears to me, in the reasoning contained in his note, to have stated with perfect accuracy the whole law of the case. He says distinctly that actual confirmation is not a requisite to instruct a title to sue, and that it cannot be contended that a general disposition unconfirmed is not a good title to sue. But he goes on to make this observation—I read the Lord Ordinary's note as corrected—"Assuming that if the trustees were to expede confirmation now, the confirmation would . . . retroact so as to cure the defect in the assignation, the pursuer is not himself in a position to expede confirmation, and that consideration of itself in a question between him and the defender appears to me to warrant my sustaining the plea of 'no title to sue.'"

I am of opinion that that did not warrant the Lord Ordinary in sustaining the plea of no title to sue, and that although no doubt the pursuer himself was not in a position to expede confirmation, he was by virtue of the assignation (which I assume was granted for valuable consideration) entitled to demand that the trustees should complete their title by expeding confirmation. In these circumstances I think the pursuer was well entitled to maintain that his title was a good one to sue this action, although no doubt before he obtained extract he would be bound to have the title of his authors completed so as to make it effective in any question with the defender.

I am therefore for recalling the Lord Ordinary's interlocutor and remitting to him to proceed with the case.

LORD JOHNSTON—Since this case was opened to us I have never been able to understand how an assignation granted by executors unconfirmed cannot be validated by the retroactive effect of confirmation subsequently obtained, but must be treated as an entirely invalid and null deed which would necessitate the execution of a new assignation after confirmation. On these grounds I think the Lord Ordinary should have proceeded with the case.

LORD MACKENZIE and LORD SKERRINGTON concurred.

The Court recalled the interlocutor reclaimed against, repelled the first plea-in-law for the defender, and remitted to the Lord Ordinary to proceed with the cause.

Counsel for the Pursuer—Chree, K.C.—Wark. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Counsel for the Defender—Mitchell. Agents—Fyfe, Ireland, & Company, W.S.

Saturday, January 10, 1914.

SECOND DIVISION.

[Lord Dewar, Ordinary.

GRANT *v.* CHISHOLM.

Reparation—Slander—Issue—Innuendo—"Quack"—Medical Qualification.

The superintendent of a lunatic asylum brought an action of damages for slander in which he averred that the defender had said of him, "What does that mannie (the pursuer) know about treating lunatics? He is just a quack. We will sack him yet"—thereby representing "that the pursuer was unfit for his duties as superintendent of the asylum, that he did not know his work, and was not properly qualified for the work in

which he was engaged, and ought to be dismissed from his post." The pursuer did not aver that he was a qualified medical practitioner.

The Court *allowed* an issue with that innuendo.

John Chisholm, superintendent of the Banff District Lunatic Asylum, Ladysbridge, Banff, *pursuer*, brought an action of damages for £2000 for slander against James Grant, solicitor and town-clerk, Banff, *defender*.

The pursuer averred, *inter alia*—"(Cond. 13) On or about 16th December 1912 the defender, at Ladysbridge Railway Station, shouted in a loud voice, 'What does that mannie Chisholm know about treating lunatics? He is just a quack. We will sack him yet.' The said statement was made in the hearing of, among others, Mr F. G. Watt, stationmaster at the said station, and Dr Ledingham, Medical Officer of Health, Banff, and was addressed to Mr Alexander Murray, bank agent, Banff, and a former member of the District Lunacy Board. These statements are false and calumnious, and the defender, when making them, deliberately and maliciously raised his voice in order to make himself heard by everyone about the station. The said statement was of and concerning the pursuer, and was false and calumnious. It represented, and was intended to represent, that the pursuer was unfit for his duties as superintendent of the asylum, that he did not know his work, and was not properly qualified for the work in which he was engaged, and ought to be dismissed from his post. The said false and calumnious statements were so understood by the said persons who heard them. (Cond. 14) The . . . slanderous statements above narrated were made maliciously and in order to gratify the ill-feeling which the defender had conceived against the pursuer." [*Here followed specific averments of malice on the part of the pursuer.*] "The defender's said actings and statements were all part of a course of conduct the intention of which was maliciously to cause injury to the pursuer's position as superintendent of the asylum. . . ."

The pursuer proposed, *inter alia*, the following issue for the trial of the cause—"Whether, on or about 16th December 1912, at Ladysbridge Railway Station, in the presence and hearing of Mr F. G. Watt, stationmaster at the said station, Dr Ledingham, Medical Officer of Health, Banff, and Mr Alexander Murray, bank agent, Banff, and others, the defender did falsely and calumniously say of and concerning the pursuer, 'What does that mannie Chisholm know about treating lunatics? He is just a quack. We will sack him yet"—or words of a like import and effect, meaning thereby that the pursuer was unfit for his duties as superintendent of the asylum, that he did not know his work, was not properly qualified for the work in which he was engaged, and ought to be dismissed from his post—to the pursuer's loss, injury, and damage?"

On 21st November 1913 the Lord Ordinary (DEWAR) allowed the issue.

Opinion.—[*After discussing three other issues which he disallowed, and which are not dealt with in this report*]—"The fourth issue is in a different position, and I am of opinion that it ought to be approved. I think the expressions 'What does that mannie Chisholm know about treating lunatics? He is just a quack. We will sack him yet,' will reasonably bear the meaning which the pursuer seeks to attach to them, in view of the facts and circumstances averred on record. The defender argued that the meaning which he intended to convey, and did convey, was that the pursuer was not a duly qualified medical practitioner. That may be so. I express no opinion on that matter. All that I decide is that they are reasonably susceptible of the meaning which the pursuer suggests. It will be for the jury to decide, after hearing evidence, which contention is correct. I accordingly allow this issue."

The defender reclaimed, and argued—The statements complained of were fair criticism of a man who held a public office, and could not reasonably bear the innuendo which the pursuer sought to put upon them. The word "quack," when used in the circumstances condescended on, was not slanderous. It only meant that the pursuer was not a duly qualified medical man, and the pursuer did not aver that he had a medical qualification—*Long* v. *Chubb*, 1831, 5 Car. & P. 55; *Collins* v. *Carnegie*, 1834, 1 A. & E. 695; *Wakley* v. *Healey*, 1849, 7 C.B. 591; *Dakhyl* v. *Labouchere*, [1908] 2 K.B. 325.

Counsel for the pursuer were not called upon to reply on the question of allowance of the issue dealt with in this report.

LORD DUNDAS—[*After dealing with an issue with which this report is not concerned*]—As regards the fourth issue also I think the Lord Ordinary is right. That issue proposes to ask the jury whether the defender said about the pursuer "'What does that mannie Chisholm know about treating lunatics? He is just a quack. We will sack him yet,' or words of like import and effect, meaning thereby that the pursuer was unfit for his duties as superintendent of the asylum, that he did not know his work, was not properly qualified for the work in which he was engaged, and ought to be dismissed from his post." The defender says that issue should not be allowed because it is quite clear that these words can only mean, and did only mean, that the pursuer, not being a duly qualified medical man (which is admitted), was in that sense a quack, and in that sense a person not duly qualified to treat insane people; and this the defender says is no slander. I agree with the Lord Ordinary that this may have been the meaning, but (like him) I offer no opinion on whether it was so or not. "'Quack" seems to me to be a stupid and vulgar word. I am not sure that anybody knows exactly what they mean when they use it. But I cannot say what the defender asks me to say—that the meaning which he puts upon the word is the only one that can reasonably be put upon it. I think the case of *Dakhyl* v. *Labouchere*, [1908] 2 K.B. 325, to which we were referred, is a sufficient authority for

saying that the word may have more than one meaning. I am not prepared to hold that the meaning put upon it by the pursuer is not one which may be reasonably put upon it; and if that meaning is put upon it, I think it would involve damages. The question is—are we entitled to withhold the case from a jury? I think we are not; and accordingly I move your Lordships to adhere to the interlocutor of the Lord Ordinary.

LORD SALVESEN and LORD ORMIDALE concurred.

The LORD JUSTICE-CLERK and LORD GUTHRIE were absent.

The Court adhered.

Counsel for the Reclaimer (Defender)—George Watt, K.C.—Macquisten. Agents—Alex. Morison & Company, W.S.

Counsel for the Respondent (Pursuer)—The Lord Advocate (Munro, K.C.)—Mackenzie Stuart. Agent J. Ferguson Reekie, S.S.C.

Tuesday, January 13.

FIRST DIVISION.

COLVILLE'S TRUSTEES *v.* COLVILLE.

Trust — Administration — Appropriation of Investments to Legacy—Depreciation of Investments—Incidence of Loss.

A testator directed his trustees to pay his daughter on her attaining twenty-five or being married, whichever should first happen, a legacy of £5000, the legacy to vest as at the term of payment. At the time of the testator's death his daughter was fifteen years of age. The trustees invested that sum in specific trust securities, which by the time she attained twenty-five had considerably depreciated. In so investing it the trustees were not influenced by any necessity for immediate distribution of the estate, but did so because they considered it expedient to set aside and secure a sum to meet the legacy.

Held that as there was no direction, express or implied, to make the appropriation in question, the trustees were not entitled to set aside and invest the sum mentioned, and that accordingly the daughter was entitled to payment of her legacy in full.

On 25th October 1913 Mrs C. M. Downie or Colville, widow of John Colville of Cleland, Lanarkshire, and others, Mr Colville's testamentary trusteees, *first parties*, Miss C. H. Colville, the testator's daughter, *second party*, and David J. Colville, his son, *third party*, presented a Special Case for the determination of certain questions as to the second party's rights in her father's estate.

By his settlement Mr Colville, who died in 1901, directed his trustees to pay a legacy of £5000 to his daughter, the second party, the legacy to be payable on her attaining twenty-five years of age or being married, whichever should first happen, and to vest as at the term of payment.

He further empowered his trustees to carry on any business in which he was engaged at the time of his death and to continue all or any part of the trust estate in the state or investment in or upon which the same should be at the time of his death, and that for such time as they might in their absolute discretion think proper.

The trustees having entered upon the administration of the trust estate, resolved in 1902 to apply £5000 in making investments to meet the legacy of £5000 to the second party. They accordingly made the following investments at the following expenditure:—

(1) £1200 3 per cent. debenture stock of the London and North-Western Railway Company	£1,216	14	4
(2) £1500 2½ per cent. debenture stock of the Midland Railway Company	1,260	18	3
(3) £950 4 per cent. debenture stock of the Caledonian Railway Company	1,269	0	2
(4) £1250 3 per cent. debenture stock of the North British Railway Company	1,239	9	2
	£4,986	1	11

At the date when the trustees came to said resolution the second party was under fifteen years of age, and the legacy of £5000 had not vested in her. In arriving at the said resolution the trustees were not constrained thereto by any necessity for immediate distribution of the trust estate, or any part thereof, and they came to it merely because they considered it expedient so to set aside and secure in such investments a sum to meet the legacy.

The second party having attained twenty-five, and considerable depreciation having occurred in the capital value of the investments set apart to meet the legacy, *inter alia questions* arose as to the right of the trustees to make the appropriation in question, and as to the incidence of loss on the investments so appropriated.

The *contentions* of parties as stated in the Case were:—"The first parties maintain that they were bound, or at any rate entitled, to set apart and appropriate the investments in question to the second party's legacy of £5000, and that the depreciation on said investments falls to be borne exclusively by said legacy. The third party concurs in these contentions. The second party maintains that in the absence of any direction to the trustees to set aside investments and appropriate them to the said legacy, and of any necessity requiring them so to do, the first parties were not entitled to appropriate the investments in question to her legacy. She therefore further maintains that she is entitled to payment of her legacy of £5000 in full, and that any depreciation which may have arisen on said investments does not fall to be borne by her."

The *questions of law* were—"1. Were the trustees entitled to set aside and appropriate said investments to the second party's