

time of the slander by telling you not only that it was on 3d October 1867, and within or near the Council Chambers of the burgh of South Queensferry, but that it was at a time when Charles Moir was there and heard it,"—when he goes to trial, in place of proving what was said when Charles Moir was present, to prove something said when Charles Moir must be assumed not to have been there, that is not the same occasion. That is not the occasion on which he undertook in his issues to prove the slander. Therefore I think the Lord Ordinary did quite right in reserving this point, and the verdict must be entered up for the defender.

In practice I have seen a miscarriage to the pursuer from such slight cause; sometimes from mistake of a day. But even if that arose from the purest mistake,—and there is no doubt that the witnesses mean the same thing,—yet if the 5th of the month, for example, is put for the 6th, the verdict must go for nothing. Another case occurred where a slander in Leith was described as having been uttered in the counting-house of a gentleman named in the issue. It turned out that the particular room in which the slander was uttered, although within the premises, was not part of what was occupied by him as a counting-house, and that prevented the pursuer from getting a verdict. These cases I mention as illustrations of the necessity of specifying in the issue the precise occasion on which the slander was uttered, and the necessity of proving at the trial that precise occasion, and not any other.

LORD CURRIEHILL absent.

LORD DEAS—I confess that but for the able argument we have listened to I should have had no doubt. So long as we have issues for the trial of a cause they must be framed with strict accuracy and definiteness. In an issue of this kind, three things must be specified:—(1) The date of the alleged slander; (2) the place; and (3) at least one party must be named who shall be proved to have heard it. As to the date, sometimes considerable latitude is necessary, and the party taking an issue takes care to have that latitude given him. Here, for example, the date is said to be *on or about* 3d October 1857. But the pursuer is not allowed any latitude which is not within the issue.

As to the place, it may be reasonable that the party may not be tied down to a precise spot, and there is an instance of it here, for it is said the slander was uttered *in or near* the council chambers, so that if the slander had been uttered outside the room, or on the stair, it would be within the issue. But that must be put in issue.

As to who heard the slander, nothing could be more distinct. If it is not proved that Charles Moir heard it, then the issue is not proved in its terms. It is not slander if no one heard it. Slander must be public, else it is not slander at all. I think if there is any difference as to the necessity of proving the three things I have enumerated, it is more necessary to have the third clear than the other two, for there is a certain latitude as to place and date; but if you do not prove that Charles Moir heard the slander, you prove nothing at all. The object of that precision is to enable a defender to protect himself. Suppose a witness is going to perjure himself it is necessary that the defender should be able to meet his evidence. As to the date, it is clear that if this issue put the slander as uttered on the 3d October, and it was proved not to have been uttered on the 3d, a verdict for the pursuer would be a bad verdict. And as to the

place, if the slander was not uttered in or near the council chambers, could it be said that the pursuer was entitled to a verdict? I remember a case where a slander was said to have been uttered in a certain house in Melville Street, but it was proved that it was uttered in another house. There was another case where the slander was said to have been uttered in Canongate churchyard. I was counsel for the defender, and I noticed that the uttering took place, not in the churchyard, but in the semicircular space just outside the churchyard. I pressed that point in my address to the jury, and urged it as fatal to the pursuer's case, and the presiding judge (Boyle) gave a direction to the jury in my favour, and I got a verdict. I do not think the cases cited by the defender tell any way in his favour, except the peculiar case about the beehive. The other cases tell against him. *Robertson* and *Douglas* were cases in which the names of parties were mentioned who heard the slander. In all my experience I never saw an issue of slander adjusted which there was not some one named who heard the slander, and I never doubted that it was essential to prove that. I have sometimes seen parties warned not to put in the words *and others* unless they were prepared to prove that also.

LORD ARDMILLAN concurred.

The verdict was accordingly entered up for the defender, and it became unnecessary to consider a motion by the defender for a rule on the ground that the verdict was against evidence.

Agent for Pursuer—D. Curror, S.S.C.

Agents for Defender—Hill, Reid, & Drummond, W.S.

Wednesday, July 8.

ROYAL BANK OF SCOTLAND v. DIXON AND OTHERS.

Diligence—Poining of the Ground—Rent—Citation—Mails and Duties. Held that citation of the proprietor of a house and his tenant, in an action of poining the ground at the instance of a creditor under a bond and disposition in security granted over the house by the proprietor, was not such an intimation of an assignation of rents contained in said bond as to interpel the tenant from paying the rents thereafter becoming due to his landlord.

This was a suspension of a decree of poining of the ground obtained in the Sheriff-court of Renfrewshire, by the late Robert Irvine of Levensgrove, a heritable creditor of Mr and Mrs J. F. Anstruther, the owners of the premises in which the Royal Bank has its office at Port-Glasgow, and of an executed poining proceeding thereon of 170 gold half-sovereigns in the bank office. The ground of suspension was, that the whole rent due by the bank had been *bona fide* paid to Mr Anstruther, or on his account, before the poining was executed. The decree of poining the ground was obtained in June 1863, and an action of multiplepoining as to the rents then due was raised by the bank, in consequence of diligence being used by other heritable creditors. This action was terminated in August 1865 by a decree in favour of Mr Dixon's son and heir, Robert Dixon, and his tutors and curators, the present respondents, who then intimated for the first time a claim for the three years' rent due subsequently to those which formed the fund *in medio* in the multiplepoining, and which, they said, were

also attached by their decree of poiding the ground.

The Lord Ordinary found "that, neither service of the actions of poiding the ground referred to by the respondents, nor the decrees obtained in said actions had the effect in law of interpellating the complainers from paying to the landlord the *rents* thereafter becoming due by them"; and, accordingly, repelled the respondents' Pleas in Law and sustained the reasons of suspension.

His Lordship added the following note to his interlocutor:—

"The only question now between the parties is as to the effect of the citations given or decrees obtained in the successive actions of poiding the ground at the instance of the late Mr Dixon and his son and heir, the present respondent. The respondents rely upon the decision in the case of *Lang v. Hislop*, 16 D. 908, as establishing that citation in an action of poiding the ground is such an intimation, to the extent of an assignation of rents contained in the deed under which the poiding is brought, as to interpellate him from thereafter paying rent to his landlord. The Lord Ordinary thinks that decision does not affirm any such general proposition. On the contrary, it was, as he understands the judgment of the Court delivered by Lord Wood, rested upon the special terms in which the summons of poiding the ground was libelled in that case, in so far as it expressly set forth that the bond and disposition in security on which it proceeded contained an assignation to the rents, maills, and duties of the lands. In the present case, it appears from the extract decrees of poiding which are produced, that the summonses contained no such statement. In this respect they are in the ordinary style of a summons of poiding the ground, as given in the Juridical Styles. That such should be the style is quite consistent with principle, as poiding of the ground does not at all proceed upon the assignation to rents, which can only be given effect to by an action of maills and duties. Poiding the ground is competent to any party having a *debitum fundi*, whether he holds an assignation to the rents or not.

"Infetment on the security completes the assignation of the rents, to the effect of securing the creditor's preference in a competition. But intimation to the tenant personally is necessary to interpellate him from paying to his landlord. In reference to his right to the rents, the creditor, though infet, is merely in the position of an assignee, who *quoad* the tenant has not interpellated him by intimation. To complete his right in this respect, he must give intimation, or do something which the law will hold to be equivalent. The Lord Ordinary does not think that he can be held to have done either, by merely serving a summons necessary for another and quite different purpose, and which does not mention the assignation, or imply that the pursuer has any such right. Poiding the ground is not, in any correct sense, the assertion of a claim to the rents, or a diligence to attach them. It is an attachment for payment of a *debitum fundi* of the moveables on the ground, whether belonging to the proprietor or to the tenant,—but limited, in the latter case, to the amount of the rent. The use of such a diligence does not necessarily import the creditor's intention to put in force his right to the rents if he has it, nor does it import that he has that right. On these grounds, the Lord Ordinary cannot sustain

the general proposition contended for by the respondents in regard to the effect of citation in a poiding of the ground; and he thinks that the decision in *Lang v. Hislop* gives no support to that proposition, and does not apply to the present case.

"The respondents referred to a joint minute of admissions in a Sheriff-court process of multiple-poiding regarding previous rents, No. 49 of process, as containing a consent to hold the citations and decreet in the actions of poiding the ground as completed poidings. The Lord Ordinary should have doubted whether an admission given for the purposes of that process could have been imported into this case. But it does not appear that the tenants, the present complainers, who were raisers of the multiplepoiding, were parties to the minute, and, of course, no agreement among the claimants can affect their rights."

The respondents reclaimed.

SHAND and M'LEAN for them.

CLARK and GUTHRIE for suspenders.

At advising—

LORD PRESIDENT—The argument of the respondents seems to proceed on a failure to distinguish between the effect of a poiding of the ground, which is a warrant for diligence to attach the moveables on the ground, and a summons of maills and duties to attach the rents. The proceedings in the multiplepoiding, in which it was urged by the reclaimers (and respondents) that the suspenders, the real raisers of that process, had been certiorated of the assignation to the rents in the respondent's bond, are not pleaded in this record, and are entirely irrelevant.

LORD ARDMILLAN concurred.

LORD DEAS declined.

LORD CURRIEHILL absent.

Agents for Reclaimer—J. & R. D. Ross, S.S.C.

Agents for Suspenders—Dundas & Wilson, C.S.

Thursday, July 9.

BEAUMONT & OTHERS (BROOK'S TRUSTEES)
v. GREAT NORTH OF SCOTLAND RAILWAY
CO. AND OTHERS.

Railway Company—Shareholders—Dividends—Great North of Scotland Railway Consolidation Act 1859. Under an Act of Parliament, a railway company created certain four-and-a-half per cent. preference shares, the dividends on which were, by a special provision in the Act, to rank *pari passu* with the dividends on certain five per cent. preference shares which had been created previous to the Act. There was also a special clause to the effect that no part of the deficiency in any year of the full amount of the dividend on the four-and-a-half per cent. preference shares was to be made good out of the profits of any subsequent year. No similar express provision was made regarding a deficiency of dividend on the five per cent. preference shares. Held (1) that the *pari passu* ranking contemplated by the Act meant that the holders of the two classes of shares should receive dividends rateable and in proportion to the amount of their preferential dividends of five or four-and-a-half per cent. effecting to the shares held by each of them respectively; and (2) that no deduction from the profits of the company in any year should be made on account of alleged deficiencies in any previous