junior and Newton & Blair to make payment of that sum to the pursuer: Find them liable to the pursuer in the expenses incurred by him in the Inferior Court and in this Court: Remit to the Auditor to tax the same and to report: Assoilzie the defender George Ward senior from the conclusions of the action, and decern."

Counsel for Pursuer and Appellant—Shaw—P. Smith. Agent—A. B. Cartwright Wood, W.S.

Counsel for Defenders and Respondents—A. J. Young—Orr. Agents—Winchester & Nicolson, S.S.C.

Wednesday, June 15.

FIRST DIVISION.

[Sheriff-Substitute at Dundee.

THE BRITISH LEGAL LIFE ASSURANCE AND LOAN COMPANY (LIMITED) *v.* THE PEARL LIFE ASSURANCE COMPANY (LIMITED).

Interdict—Slander—Liability of Company for Agent—Negligence.

An action was raised against an assurance company, and one of its agents, at the instance of a rival company, to have the defenders interdicted from circulating a hand-bill containing slanderous statements upon the pursuers. The bill in question was extensively published by officials of the company, including the agent called as defender, and it was admitted that interdict should be granted against him. As regarded the company, it was proved that the preparation and uttering of the bill in question before the action was raised was not the act of the company, or carried out with their knowledge or assent; but that since the action was raised, and after the fact of the circulation of the hand-bill had been brought to the knowledge of the company's directors, the bill continued to be published. The Court found that the continued publication was caused by the negligence of the directors, and *granted* interdict.

The British Legal Life Assurance and Loan Company (Limited), carrying on business in Glasgow and Dundee, raised an action of interdict in the Sheriff Court of Forfarshire at Dundee in December 1885 against the Pearl Assurance Company (Limited), London, which carried on business in Dundee, and also against John Dewars, residing there, the agent of the said company for that district.

The petitioner prayed the Court to interdict the defenders from printing, publishing, or circulating, or causing to be printed, published, or circulated, in Dundee and neighbourhood certain handbills and circulars containing matter calculated to injuriously affect the pursuers' business. Ultimately, in consequence of amendments, interdict was only asked against a bill entitled "Scandalous Revelations."

The pursuers averred that for twelve months prior to the raising of action the defenders had circulated among their (the pursuers') policy-holders, as well as among the general public of Dundee, hand-bills and circulars containing false and slanderous statements about them, and especially that they had published and circulated a bill termed "Scandalous Revelations." They alleged that the circulation of this print had induced a large number of policy-holders to transfer their policies from the pursuers' to the defenders' office, and that they (the pursuers) had thus suffered great loss to their business in Dundee and the neighbourhood.

The defenders did not attempt to justify the statements in the hand-bill, but averred that in issuing hand-bills and circulars they merely acted as the pursuers had been doing, and that they (the pursuers) had printed and circulated libellous and injurious statements concerning them with a view to injuring their business and misleading the public. They also averred as follows—"Explained that the defenders' company do all in their power to prevent their superintendents, agents, collectors, and others from illegally interfering in any way with the business of other companies. Before his appointment, every superintendent, agent, and collector of the defenders' company is required to sign the rules and instructions laid down by the company for his conduct, and he likewise receives a full copy of these printed in his collection-book, which he is also required to sign, and must always carry about with him. These rules and instructions are referred to for their terms, and a printed copy is lodged herewith and founded on. One of these instructions which requires to be signed, and which forms an essential part of his appointment, is the following:—'No. 2. Some unprincipled collectors make a practice of abusing and libelling the character of all other assurance companies but the one by which they are engaged. It is our wish that our collectors will avoid any approach to this disreputable conduct, as it only tends to destroy the confidence of the public in all offices alike, and prevents collectors from taking proposals where they would find no difficulty had not the above destructive course been pursued. Any interference on the part of a collector of any other company or society with the business of this company should be at once reported, with full particulars, to the manager, that the directors of the company whose collector has committed himself may be communicated with.'

The pursuers pleaded, *inter alia*—"(1) The proceedings of the defenders complained of being illegal and unwarrantable, and highly injurious to the pursuers' business, and the pursuers having good reason to believe that the defenders will continue to commit the said illegal acts, they are entitled to the interdict craved."

The defenders pleaded, *inter alia*—"(2) The proceedings alleged against the defenders' company being *ultra vires* of the officials of the said company, the said action is incompetent against the defenders as a limited company incorporated under the Companies Acts. (6) The pursuers having themselves acted towards the defenders in a manner similar to that now complained of by them, they have thereby deprived themselves of the remedies sought for in this action, even if these were to any extent competent; or other-

wise, there arises *compensatio injuriarum.*"

After sundry procedure in the Sheriff Court and in the Court of Session a proof was taken in the Sheriff Court, the import of which appears from the opinions *infra.*

On 8th December 1886 the Sheriff-Substitute (CAMPBELL SMITH) pronounced this interlocutor:—"Finds that the handbill entitled 'Scandalous Revelations' was prepared and printed in Dundee, and extensively published in and about Dundee by officials of the defenders' company, including the district superintendent John Dewars, who is called as a defender; but finds that the preparation and uttering of the said slanderous document was not directly effected by the Pearl Insurance Company, or expressly authorised by them, or carried out with their knowledge or assent: Further, finds that the composition and printing of said handbill was executed on the employment of one or more officials of the defenders' company, and that the uttering of it was effected by canvassers and other officials of said company, including the defender Dewars, on purpose to improve its business through inflicting injury on pursuers' business: Further, finds in fact that the defenders, as a company, authorised (1) canvassing and transference of the contributors of the British Legal; (2) canvassing by means of handbills, though not of the handbill complained of; and (3) that the defenders' business derived benefit from said conduct of the officials: Finds in law that the defender Dewars is liable to answer as an individual for the utterance of said handbill, and further, that the defenders are liable for the illegal acts of their officials in respect that they acted in the defenders' interest and within the scope of their implied mandate: Therefore decerns and grants interdict against uttering or publishing said handbill headed 'Scandalous Revelations:' Finds the pursuers entitled to expenses on Scale II., subject to deduction of two-fifths of the taxed amount, including the fees of counsel, &c.

"*Note.*—The main question arising on the proof is whether the corporate defenders fabricated and uttered the said handbill entitled 'Scandalous Revelations,' either directly or by agents for whom they are responsible. . . . . .

"There is no proof whatever that any direct or leading official of the defenders' company composed this handbill, or uttered it, or knew of its existence until the raising of this action had forced it upon their attention. Two representatives of defenders from London, Mr P. J. Foley and Mr James Roll—the former managing director, the other an ordinary director who appears to take special interest in the Scotch department of the business—both swear that they had nothing to do with the publication of this bill. A minute of directors is the proper evidence of a resolution binding a large company, but of the pursuers' allegations there is neither written nor oral evidence. But although a company may not be the direct authors of a legal wrong—the express instructors to print and publish slander—they may be the indirect but nevertheless responsible authors because of the acts of their agents or servants. . . Here what the defenders gave their servants to do was canvassing—that is, puffing their own company, disparaging rivals, and, when possible, 'transferring' to themselves the *contributories* of rivals with all their obligations, but no part of the premiums they had been paying, it may be for years. They taught their servants by precept and example to canvass by means of handbills, the gist of the handbills being the disparagement of rivals. The servants were imitative rather than intelligent, and the zeal with which they set about doing their masters' work in their masters' own way has carried them over the bounds permitted by the law of libel. If a master enlists the zeal of a servant for purposes of aggression or aggressive business competition, and if he has not selected a servant with the proper knowledge or discretion or has not instructed him sufficiently, and if the uninstructed zeal serves the master's ends, why should he not be responsible?

"There are, in my opinion, four material elements of fact established against the defenders. *First*, They authorised an attack to be made upon the business of the pursuers' company by directing or encouraging their canvassers to persuade the contributories of the pursuers' company to desert the pursuers and go over to the defenders. *Second*, They prepared and printed handbills in London, and placed them in the hands of their canvassers for distribution in Dundee, thus by implication authorising this *mode* of canvassing by handbills as a mode *fit to be adopted* and used by their canvassers. *Third*, Their canvassers and collectors being so led to believe that canvassing by handbill was within the sphere of their mandate, prepared, printed, and uttered handbills, and, *inter alia*, the slanderous handbill complained of. *Fourth*, That said bill was an effective although illegal instrument for canvassing purposes, and was used to the benefit of the defenders, and to the prejudice of the pursuers.

Now, are these elements of fact in their combination sufficient to involve the defenders as a company in liability? The difficulty lies in the fact rather than in the law, and it lurks in the uncertainty that is left to exist about the exact scope of the employment given to the defenders' servants. They for certain thought they were doing well both for themselves and for their masters when they were using this offensive handbill. It is asserted that the master is not liable for the servant's crime, and generally speaking he is not, because crime is for the most part personal. But the railway company is often liable for the railway servant's culpable homicide; and the master is often liable for the offence of the servant against laws applicable to the manufacture and sale of spirituous liquor. The legal quality of the servant's wrong scarcely affords any available test of the master's liability. The true test lies in what the servant was employed to do; if he does it right, all well for his master; if he does it ill, and to the injury of some extraneous person, his master is liable for his wrong-doing, just as much as if he had done it himself." . . . .

The defenders appealed to the Court of Session, and argued—Dewars had admittedly done what was wrong. Interdict, however, was not the proper remedy against the company, as there was no evidence that they knew anything about the actings of their servants in circulating this bill. By their regulations no bills were allowed to be distributed except such as were issued by the head office. The remedy asked was novel, and to warrant interdict being granted guilt must be

brought home to the company. The company did not issue this bill, and it was in direct opposition to their rules. Damages and not interdict was the proper remedy—*Houldsworth* v. *City of Glasgow Bank*, July 4, 1879, 6 R. 1164.

Replied for the respondents—The libel was uttered by the defender's servants, and to some extent in the knowledge of the London officials. No doubt the rule referred to was issued to the defenders' agents, but it was never enforced, and long after the action was raised this libellous handbill was being freely circulated. The London officials acted all along with great indifference, and they must be held as knowing and as being responsible for the actings of their servant in this matter. Interdict was the appropriate remedy for such actings. A company whose business was being undermined was not obliged to wait and raise an action of damages, but could obtain interdict against the wrongdoer, whether an individual or a company. Sufficient had been shown in the present case to warrant the interdict craved—*Wardrope* v. *Duke of Hamilton*, June 24, 1876, 3 R. 876; *M'Kay* v. *Bank of New Brunswick*, 5 P. C. App. 394; *Quartz Hill Gold Company*, 20 Ch. D. 501; *Loog* v. *Bean*, 26 Ch. D. 306; *Thorley's Cattle Food Company*, 14 Ch. D. 763.

At advising—

LORD PRESIDENT—In this action in the Sheriff Court there were originally several publications complained of by the pursuers as being libellous attacks upon their company, but the question is now confined to the publication of one paper only which is called "Scandalous Revelations."

An action was raised on 14th December 1885, and the paper "Scandalous Revelations" is proved to have been very extensively circulated by servants of the defenders' company in the months of November and December preceding. There can be little doubt that these statements contained in the paper are libellous, but the question comes to be, whether the pursuers are entitled to have an interdict against the company continuing to publish the libel complained of?

Interdict has been granted against the individual defender Mr Dewars, who is described as the superintendent of the Pearl Company for Dundee and district. There is no doubt that he most actively promoted the publication and circulation of this paper, and therefore interdict has very properly gone out against him; but it is contended for the appellants that they as a company are not shown to have authorised this publication in any way, and two of the directors who are examined as witnesses deny that the directors had anything to do with it.

In their answers on record the defenders also make the following averment and explanation—[*His Lordship here read the answer to Cond.* 4 *quoted above*]. Now, this is not a very stringent regulation, for though it denounces a certain line of conduct on the part of the company's servants, it does not attach any serious penalty such as dismissal to the infringement of the rule; and we see that the mere existence of such a provision has done nothing to check the very evil which it was intended to prevent. On turning to the evidence we find that Mr Foley in cross-examination says—"When was the yellow bill ('Scandalous Revelations') first brought under your notice?—(A) I heard when these proceedings were being taken that some bills had been distributed by our people, and that an action was brought against us for it. I then wrote our representative here to place the matter in the hands of a solicitor in Dundee. I cannot say that I saw the yellow bill till yesterday." Now, this examination took place in October 1886, and the action was raised in December 1885, yet this director who so loudly protests his innocence alleges that he never saw the libellous bill till the day before his examination. But he goes on to say—"I do not know who issued it. I heard yesterday who did so, but not till then. (Q) When proceedings were raised against your company, did you take any steps to ascertain who issued that bill?—(A) No. I instructed our representative to call upon Mr Wark, Glasgow, and give him all the information in regard to it. (Q) You made no inquiry?—(A) We made no inquiry further than to ascertain that our representative had no hand in it. (Q) Since the raising of the action did you stop issuing the bill?—(A) Decidedly. We cautioned our representatives against issuing any bills; instructions were sent down to Mr Mackay to caution anyone against issuing bills. At the time we heard of the action being raised we stopped the bill that we printed ourselves, and, as I have said, we also cautioned all our representatives against having anything to do with any other bills." Now, the position which Mr Foley here takes up is a very curious one; he says that he cautioned the company's representatives against issuing the bill upon the raising of this action, but he adds that he never saw the bill till nearly a year thereafter. Mr Roll in cross-examination says—"I knew nothing of the yellow bill headed 'Scandalous Revelations' until these proceedings were raised. It is contrary to our rules to use bills not authorised by the company, and we endeavour to enforce those rules. (Q) Have you made inquiry since you heard of that bill whether it was circulated by yourselves?—(A) We have made inquiry at our superintendent here and at Mr Mackay. That is all the inquiry I have made. (Q) Have you ascertained whether it was circulated by your servants? (Question objected to; objection sustained.) (Q) Have you ever punished any of your servants for circulating unauthorised bills?—(A) I think not. (Q) Am I right, that the only effort you have made to ascertain the conduct of your servants in this matter has been the inquiries at your superintendent in Glasgow and in Dundee.—(A) Yes. (Q) Have you done anything else in the way of enforcing the rule against the circulating of such handbills?—(A) The superintendent was written to to instruct the men not to issue the bills. I believe he was written to from the office to that effect. That was after the raising of this action." The result of the evidence of these two witnesses is that they do not appear to have been cognisant of the existence of this bill until it had been for some time in issue, therefore they and the company are not shown thus far at least, to be responsible for what had been done. But a further examination of the evidence throws a good deal of light upon the transaction and makes it clear. I think that the preparation and publication of this handbill was done so

openly that the company must have been aware of what was going on.

Thus, Burnett, who is now a collector in the pursuers' company, says—"(Q) Had Mackie charge of these bills?—(A) He had the most of the bills of any I ever saw. He gave me instructions to the effect that the bills were to be delivered. (Q) To whom?—(A) To the members of the British Legal, and he remarked that 'that would very soon kill the British Legal.' I remember hearing of this action being raised. (Q) Did that make any difference as to the matter of the circulation of the bill?—(A) On the day after there was a notice posted up on the wall of the Pearl office to the effect that no printed matter was allowed to be delivered outside the office. It was Mr Dewars who posted up that notice. I asked him what we were to do with the bills. He said 'to use them but not to abuse them.' I do not know what he meant by that. We did not use them so frequently after that time, but we used them cautiously. I took care not to leave them in anybody's house; I just read them. It was Mr Dewars who gave the instruction not to leave them in anybody's house. Mr Dewars on one occasion supplied me with bills, and Mr Mackie supplied me on one occasion too; I never required any more." . . . "I know William Smith, one of the defenders' collectors. I saw him going about the Carse of Gowrie district in the month of January last, when I was still in the employment of the defenders. I left the defenders' employment on the 24th April. When I saw William Smith in the Carse district, as I have just mentioned, he had yellow bills with him. The yellow bills continued to be circulated during all the time that I was with the defenders." But what I wish especially to direct your Lordships' attention to in this last sentence is, that this distribution of handbills was going on as late as April 1886, so that the effect of the raising of the action in 1885 had not been to stop the circulation of the handbills. This appears also from the evidence of other witnesses.

Thus Duncan (Assistant Superintendent to the Pearl Company) says—"After the present action was raised, I remember that a bill was stuck up in the office of the Pearl Company stating that no canvasser or collector was to distribute bills, and that any who failed to observe this rule was liable to instant dismissal. The notice simply referred to bills, but if I remember rightly, the only bills in circulation were the yellow bills. That notice was signed by Mr Dewars, but I do not know who wrote it. Notwithstanding the sticking up of that notice in the office, the yellow bills still continued to be used by the canvassers. It was well known among ourselves that it was used; we just read it, but did not distribute copies of it. We did not leave a copy of the bill with anybody after that notice was put up. (Q) Was Mr Dewars aware that you were carrying about those bills, using them, and reading them to people?—(A) I could not say he was aware." And then on re-examination, being shown a blank form of transfer of the Pearl Insurance Company, he says—"When I went to the Pearl Office as assistant superintendent they had these forms in use. I never saw any such forms used by any company but the Pearl. That was the form used in transferring members of the British Legal to the Pearl. My attention may possibly have been called to rule No. 2 of the collectors' instructions, but I do not remember. (Q) Was your attention called to it when employed first?—(A) My attention was never called to it, and I cannot say that I ever read it until to-day. So far as I know, nobody in the employment of the defenders ever paid the smallest attention to that rule or ever obeyed it. I knew that the collectors and canvassers were busy engaged in circulating printed matter about the British Legal. We did so because we thought the bills would suit the purpose, which was to get the British Legal business, because that was the only company we were allowed to transfer members from."

Then Gordon says—"I am at present a collector in the employment of the pursuers. I had been with them before, but left them in March 1886, when I entered the employment of the defenders. The reason I did so was that the defenders had been wanting me—they promised to pay me better terms than what I was getting from the pursuers. When I entered their employment I did not see a bill headed 'Scandalous Revelations,' but after that, in April, I saw it in the hands of the company's collectors."

And Smith says—"I remember in March last of travelling from Dundee to Thornton Junction with Mr Mackay. I was then on my way to Leven. Mr Mackay is the general superintendent for Scotland of the Pearl Company. I heard him say so before all the collectors. In the railway carriage I spoke to him about the yellow bill headed 'Scandalous Revelations.' (Q) What did he say? (Question objected to; objection repelled.) (A) I said I had come away with rather few of these bills for Leven, and he said I would get a supply from the collector there, and that he would have a good supply. He further remarked, 'I never carry many with me,' and, taking some from his inside coat-pocket, he said, 'I have just a few to use to see what I can lift from the British Legal."

Now, this evidence proves that after the issuing of the bill had been complained of, and an action raised to have it stopped, its publication by the servants of the company went on just as before, and that this state of matters was known to Mackay, the general superintendent for Scotland of the Pearl Company. It appears to me that when this libel was brought to the notice of the company and its directors by the raising of the present action, and when they became fully aware, as they must have been, to what an extraordinary extent this libel had been circulated in and about Dundee, there was a very serious duty imposed upon these gentlemen to put a stop to its further circulation. I do not think they seem to have taken any care about it all, judging by the answers given by the two London directors. They seem to have treated the matter with very considerable indifference, and I think it must be held that it was owing very much to their indifference and negligence that the circulation was continued after the action was brought into Court.

That being so, I am of opinion that this interdict ought to go out against the company just as it has against Mr Dewars, for though it is quite true that the company has denied through its directors all participation in the acts of its agents, yet if, when any act of its agents is complained

of, and brought fairly under the notice of a company by means of legal proceedings, it does not take instant and energetic steps to put a stop to the evil complained of, it subjects itself to the liability of being placed under interdict so as to make it liable for anything which may happen afterwards.

I am therefore for adopting substantially what the Sheriff has done, though I think the terms of our interlocutor ought to be somewhat different. I think we ought to recal that interlocutor in whole or in part, and pronounce a judgment which will place the case upon the basis that this company has by its acts since the action was raised subjected itself to a liability to interdict.

Lord Mure concurred.

Lord Shand—In the course of the discussion a number of nice legal questions appear to have been raised, and the Sheriff in his note has discussed them at some length, and proceeded upon a certain view of them. I do not think it is necessary for us to enter into a consideration of any of these questions, as your Lordship has pointed out a simple and more satisfactory manner in which this case can be determined.

This publication—"Scandalous Revelations"—is admittedly a libel, and interdict has been granted against Mr Dewars, the superintendent of the defenders' company for the Dundee district, but the question which we have now to determine is, whether the company also is to be interdicted from issuing this bill to the detriment and loss of the pursuers' company? It was urged at the bar that the whole proceedings in connection with the preparation and issue of this bill were conducted by subordinates, and that when the head officials of the company came to be aware of what was going on they immediately put a stop to the grievance complained of. I can find no reference on record to anything of the kind. On the contrary, the defenders plead that owing to the acts of the pursuers they were justified in what they did.

As to the actings of the London officials, it does not appear to me that they were clear in the matter. No doubt a rule was issued, which was to be appended to each collector's book, prohibiting the circulation by servants of the company of any publications but such as emanated from the head office, and could it have been shown that in direct violation of this regulation these libels had been uttered, then an interdict against the company would most likely have been refused. But from beginning to end the officials of the defenders' company seem to have treated this whole matter with indifference, for when the action was raised all that they appear to have done was to send down this notice against issuing unauthorised publications, while the distribution of these very publications went on just as freely as before. As the London officials of this company took no steps to stop the publication of this libel after its existence was made known to them, I think that the pursuers are entitled to have interdict against the defenders' company.

Lord Adam—I entirely concur.

The Court pronounced this interlocutor:—

"Find that the handbill entitled 'Scandalous Revelations' was prepared and printed in Dundee, and was in the months of November and December 1885 extensively published in and about Dundee by officials of the defenders' company, including the district superintendent John Dewars, who is called as a defender; but find that the preparation and uttering of the said slanderous document before the present action was raised was not directly effected by the defenders' company, or expressly authorised by them, or carried out with their knowledge or assent: But find that since the present action was raised, and the facts above found were brought to the knowledge of the directors of the defenders' company, the said handbill continued to be published and circulated in Dundee and its neighbourhood by the officials of the defenders' company, and that such continued publication was caused by the negligence of the said company and its directors in not sufficiently superintending and controlling their officials in and about Dundee, and preventing them from continuing said publication: Therefore refuse the appeal, and decern."

Counsel for Pursuers — M'Kechnie — C. N. Johnston. Agents—T. & W. A. M'Laren, W.S.

Counsel for Defenders—D.-F. Mackintosh, Q.C. —W. Campbell. Agents—J. & J. Galletly, S.S.C.

Thursday, June 16.

FIRST DIVISION.

DICKSON AND OTHERS *v.* LANG AND OTHERS.

Succession — Legacy — Legacy Exempted from Legacy-Duty.

By trust-disposition and settlement a testator directed his trustees to pay to certain persons "the sum of £2000, to be held by them in trust" for providing and securing certain bursaries, "all in terms of a codicil and deed of foundation, which for purposes of convenience has been separately prepared, and is to be executed by me of equal date herewith, and to which reference is here made." By the said codicil, after reciting the gift in terms of the trust-disposition, he provided a scheme of administration. The codicil contained this clause — "Further, declaring that it shall not be held, from the provision for said bursaries being included both in said trust-disposition and settlement and herein, that any double provision is intended by me, but only one free sum of £2000 shall be applied for said purpose, this deed being intended in supplement of said trust-disposition and settlement, and to aid in carrying out the trust objects." In other parts of his trust-disposition, and in a previous holograph trust-disposition which had been impliedly revoked by the later settlement, the truster had directed his trustees to pay certain legacies "free of legacy-duty." *Held* that the legacy of £2000 fell to be paid under deduction of legacy-duty.

Per the Lord President—that it was competent to refer to the revoked holograph deed in order to discover whether the testator used