against her which if she had been appointed by her husband would have caused the Court to remove her from office. Whoever was appointed to wind up the deceased's estate would require to call in professional aid.

At advising—

Lord President—The Court are of opinion that in the present case someone ought to be appointed to act along with the widow as tutor to the pupil. They desire if possible to adopt some nominee of the petitioners, and had it not been for what has taken place no more suitable person than Mr Young could have been found. It has, however, been explained that Mr Young has an interest somewhat adverse to that of the pupil, and in that state of matters his appointment would not be desirable. If the respondent is prepared to name any suitable person, the Court would be inclined to receive favourably her nomination.

The Court appointed Mr Ferguson, farmer and manure merchant, Perth (above mentioned), to act as tutor along with Mrs Stewart.

Counsel for the Petitioners—Vary Campbell—W. Campbell. Agent—Thomas Hart, Solicitor.

Counsel for the Respondents—D.-F. Mackintosh—M'Lennan. Agent—P. H. Cameron, S.S.C.

Saturday, December 1.

FIRST DIVISION.

AITKEN AND OTHERS, PETITIONERS.

Company—Liquidation — Supervision Order in Voluntary Winding-up—Companies Act 1862 (25 *and* 26 *Vict. c.* 89), *sec.* 147.

By this section it is enacted that "when a resolution has been passed by a company to wind up voluntary, the Court may make an order directing that the voluntary winding-up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others to apply to the Court, and generally upon such terms and subject to such conditions as the Court thinks just."

A petition was presented for the winding-up of a company by the Court, and was duly intimated, served, and advertised in terms of an interlocutor, by which also a provisional appointment of a liquidator was made. Thereafter at an extraordinary meeting of the company an extraordinary resolution was passed for winding-up the company voluntarily, and a liquidator was nominated. He thereupon presented a note in the process under the petition, craving that the voluntary winding-up of the company might be continued subject to the supervision of the Court, that the appointment of the provisional liquidator might be recalled, and his own appointment as liquidator confirmed. The Court *granted* the prayer of the note.

On the 15th November 1888 a petition was presented to the Court by Thomas Aitken and others, creditors, directors, and shareholders of the Leith Heritages Company (Limited), praying for the winding-up of the said company by the Court. On 16th November the Court ordered intimation service, and advertisement, and appointed Mr Molleson, C.A., provisionally official liquidator of the estate and effects of the company. The petition was thereafter intimated, served, and advertised in terms of the interlocutor.

On 29th November an extraordinary general meeting of the company was held, at which the following extraordinary resolutions were passed: —"(1) That it has been proved to the satisfaction of the Leith Heritages Company (Limited) that the company cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same. (2) That the Leith Heritages Company (Limited) be wound up voluntarily." Further resolutions were also passed as follows—"(1) That the meeting proceed to appoint a liquidator for the purpose of winding-up the affairs of the company, and distributing the property thereof in terms of the Companies Act 1862, and the Acts amending and extending the same. (2) That John Frederick Moffatt, chartered accountant, Edinburgh, be and is hereby appointed liquidator of the said company. (3) That it be an instruction to the liquidator to apply or concur in applying to the Court of Session to have the voluntary liquidation of the said company continued subject to the supervision of the Court. (4) That a committee of shareholders be appointed to advise with the liquidator in relation to all matters or questions arising in the liquidation, and that the following gentlemen be and are hereby appointed a committee accordingly, viz., Thomas Aitken, Esquire, residing at No. 5 Grosvenor Crescent, Edinburgh; Robert Clark, Esquire, printer, Edinburgh; and James Macdonald, Esquire, Solicitor in the Supreme Courts of Scotland, Edinburgh."

Following on these resolutions Mr Moffat, the liquidator appointed at the meeting on 29th November, presented a note in the process under the petition, in which, after setting forth the facts above narrated, he craved the Court, *inter alia*, to order the voluntary winding-up to be continued subject to the supervision of the Court, to recall the appointment of Mr Molleson, and to confirm his appointment as liquidator.

By section 147 of the Companies Acts 1862 it is provided—"When a resolution has been passed by a company to wind up voluntarily, the Court may make an order directing that the voluntary winding-up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others to apply to the Court, and generally upon such terms and subject to such conditions as the Court thinks just."

In support of the application the following authorities were cited—Buckley on the Companies Acts (5th edition), 316; *Owen's Patent Wheel Company*, 29 L.T. 672, 22 W.R. 151; *Simons' Reef Company*, 31 W.R. 328.

The Court, without further proceeding or intimation, on 1st December 1888 pronounced the following interlocutor:—

"Direct and ordain that the voluntary winding-up of the Leith Heritages Company (Limited), resolved on by the extraordinary resolutions passed at the extraordinary

general meeting of the company held on 29th November 1888, be continued, but subject to the supervision of the Court, in terms and with the powers conferred by the Companies Acts 1862 to 1886: Recal the appointment of James Alexander Molleson as provisional official liquidator of the estate and effects of the said company: Of consent confirm the appointment of the petitioner, the said John Frederick Moffatt, as liquidator of the said company, in terms of and with all the powers conferred by the said Acts: Also confirm the appointment of Thomas Aitken, 5 Grosvenor Crescent, Edinburgh, Robert, Clark, printer, Edinburgh, and James Macdonald, S.S.C. there, as a committee to advise with the liquidator in relation to all matters or questions arising in the liquidation: Declare that any of the proceedings under the said voluntary winding-up may be adopted as the Court may think fit: And declare that the creditors, contributories, and liquidator of the said company, and all other persons interested are to be at liberty to apply to the Court as there may be just occasion: Further, direct and ordain that unless and until it shall be otherwise directed and ordained by the Court, the liquidator shall not effect any compromise with any contributory except with the special leave of the Court: Find the said Thomas Aitken and Robert Clark and William Halden Beattie and David M'Gibbon, the petitioners, entitled to the expenses of the petition, and direct the same to be expenses in the liquidation, and remit to Lord Kinnear, Ordinary, in terms of the 6th section of the Companies Act 1886, to proceed in the subsequent proceedings in the winding-up; and decern."

Counsel for the Petitioners and for Mr J. F. Moffatt, C.A. — Graham Murray. Agents — Davidson & Syme, W.S.

Saturday, December 1.

FIRST DIVISION.

[Sheriff of Lanarkshire.

GUDGEON *v.* OUTRAM.

Reparation—Slander—Issue—Innuendo.

The following article appeared in a newspaper—"Fire at Ayr Farina Mills. Singular conduct of the manager. . . . It appears that the proceedings at the fire were somewhat unusual. The alarm was given, and the fire brigade turned out, but on their arrival at the gate of the establishment they were refused admittance by the manager Mr Gudgeon, who said they could manage the fire themselves. Superintendent M'Kay, the chief of the police, and some of his men were also refused admittance, although the fire was breaking through the roof of the buildings. Superintendent M'Kay and his men eventually got into the premises by climbing over the wall, and the fire brigade seem to have got in by forcing open the gate. . . . Mr Gudgeon ordered Superintendent M'Kay to take away the hose, but the Superintendent said he had no power to do so, and the fire brigade commenced to play on the flames, which were soon got under."

In an action of damages by the manager against the proprietors and publishers of the paper for alleged slander through the publication of the above article, *held* that the pursuer was entitled to an issue, but that an innuendo was necessary, to the effect that in so acting the manager had endeavoured to prevent the fire from being subdued, so as to cause the destruction of the works and stock therein.

Robert Gudgeon, manager of the Ayr Farina Mills, sued Messrs George Outram & Company, printers, publishers, and proprietors of the *Glasgow Evening Times* and the *Glasgow Weekly Herald*, for £2000 as damages for alleged slander.

On 17th September 1888 a fire occurred at the Farina Mills, Ayr, and the defenders published articles commenting on the occurrence in both their papers. The articles were in practically identical terms, and the following is the article which appeared in the *Glasgow Weekly Herald*:—"Fire at Ayr Farina Mills. Singular conduct of the manager. A fire occurred on Monday in Messrs Hyland & Company's Farina Mills, Ayr, and before the flames were got under, damage to the extent of £150 was done. It appears that the proceedings at the fire were somewhat unusual. The alarm was given, and the fire brigade turned out, but on their arrival at the gate of the establishment they were refused admittance by the manager Mr Gudgeon, who said they could manage the fire themselves. Superintendent M'Kay, the chief of the police, and some of his men were also refused admittance, although the fire was breaking through the roof of the buildings. Superintendent M'Kay and his men eventually got into the premises by climbing over the wall, and the fire brigade seem to have got in by forcing open the gate. They were followed by the crowd. Mr Gudgeon ordered Superintendent M'Kay to take away the hose, but the Superintendent said he had no power to do so, and the fire brigade commenced to play on the flames, which were soon got under. The Farina Mill is rather isolated, and is situated on the banks of the Ayr. The fire originated in the drying stove, in which a high temperature is kept up."

The pursuer averred, *inter alia*—"(Cond. 6) The said articles, immediately above quoted, are false, and are slanders and libels of, against, and concerning the pursuer, and falsely, calumniously and injuriously represented and represent to the public that the pursuer had endeavoured to cause destruction of the said works and stock by fire, or at all events had endeavoured to prevent the fire being subdued and so cause destruction of the premises and stock, and had committed or endeavoured to commit the crime of fire-raising, and the crime of causing further destruction by fire to said works and stock as aforesaid and so defraud the insurance companies with whom the same were insured, or one or more of said crimes or offences. In any event, the pursuer is falsely and calumniously represented thereby as culpably acting in violation of his duty as manager in connection with