just to make this observation, that I think that sometimes too strong and too general observations have been made in some of the cases about the necessity for the pursuer stating the grounds upon which he imputes the malice which is the ground of his action. There are cases, no doubt, in which the Court, in the exercise of its judicial discretion, may throw out a case because there is nothing to indicate that there could have been malice. If the case, looking to the circumstances disclosed, is such that the pursuer might be expected to state some grounds, if there were any, they should be stated. But, on the other hand, there are many cases —and in fact there certainly may be any number of cases—in which one man acts maliciously towards another, who has no idea what has made him malicious, what his malice is founded upon, or what has stirred up his malicious feeling. He may say, with perfect truth and honesty, "I cannot conceive why he should have any malice against me, but his conduct shows that he has; he has made a false statement; I can prove that he knew it to be false, and I aver that; I will prove it out of his own mouth; and if he did that then he must have acted maliciously, although I cannot conceive what has stirred his malice." There is rather a striking remark by somebody—I forget who it was—who said, "I cannot conceive what has set that man up against me—what has stirred his ill-will against me—I never did him a good turn in my life," as if people were very often malicious towards those to whom they were indebted for some favour. But the cases, I repeat, must be common, where a man says that another has conceived an ill-will against him, and has shown a malignant feeling towards him, but that he cannot for the life of him discover what the other's grounds for it are. Therefore I am disposed to qualify the generality and the strength of the observations made in some of the cases about the necessity for a pursuer setting out his grounds or the facts upon which he can prove that there was malice as the motive for the action or conduct of which he complains. What I have just said is more regarding your Lordship's observation than at all applicable to the particular case in hand, because I think that even those Judges who have made those remarks—the most strong remarks—would not have thought them applicable to this particular case with which we are dealing.

LORD TRAYNER—When I read the interlocutor of the Lord Ordinary I formed the opinion that it was well founded, and I have not heard anything in the course of the discussion to shake that view.

LORD MONCREIFF concurred.

The Court pronounced the following interlocutor:—

"Refuse the reclaiming note: Adhere to the interlocutor reclaimed against: Find the pursuer entitled to expenses since the date of said interlocutor, and remit to the Auditor to tax the same and to report to the said Lord Ordinary, to whom remit the cause to proceed therein as accords, with power to him to decern for the taxed amount of the expenses hereby found due."

Counsel for the Pursuer — Younger — Peddie. Agent—James M'William, S.S.C.

Counsel for the Defenders—Shaw, Q.C.—Lees—Deas. Agents—Campbell & Smith, S.S.C.

Wednesday, December 21.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

BRUCE *v.* J. M. SMITH, LIMITED.

Reparation—Slander of Property—Special Damage—Issue—Innuendo—Malice.

The following paragraph appeared in a newspaper:—"People in the north-western district of the city have discovered a new distraction in watching the rents which are appearing in the frontage of a new property still unoccupied. A year or so ago the building collapsed owing to an insecure foundation, but it has been run up again. Signs of fresh weakness are already evident, and there is much speculation as to the future on the part of small crowds which gather in the evening and gaze blankly at the building. The Master of Works may hear that his services are required—when the tenement comes down with a run for the second time."

An action of damages was raised by the proprietor of the building referred to against the publishers of the newspaper, for loss, injury, and damage caused to him by reason of the publication of this paragraph. The pursuer averred that he did a considerable trade in the erection of dwelling-houses and shops for sale and lease, but made no statement of special damage.

Held (*aff.* judgment of Lord Ordinary) (1) that the action was relevant, and (2) that the pursuer was entitled to an issue in which there was no innuendo and in which malice was not inserted.

Form of issue approved.

On 15th November 1897 John Wilson Bruce, accountant in Glasgow, raised an action for £2000 damages against J. M. Smith, Limited, proprietors and publishers of the *Glasgow Evening News*, and having their registered office at No. 67 Hope Street, Glasgow.

The pursuer averred that he was a large holder of property throughout the city, and that he did a considerable trade in the erection of dwelling-houses and shops for sale and lease. "(Cond 2) About two years ago the pursuer purchased a steading of ground in New City Road, Glasgow, for the purpose of erecting a large block of shops and dwelling-houses of a superior class.

He proceeded with the erection, and after considerable progress had been made, a portion of the buildings collapsed owing to defective foundations. Subsequently, after the usual inquiry by the Dean of Guild Court, new foundations were put in, and the portion that had collapsed was rebuilt. Various precautions were also taken as regarded the rest of the buildings, and the work was executed subject to regular inspection by an experienced and independent man of skill. (Cond. 4) On or about Monday 18th October 1897 there appeared in the defenders' newspaper, the *Glasgow Evening News*, a paragraph in the following terms:—'People in the north-western district of the city have discovered a new distraction in watching the rents which are appearing in the frontage of a new property still unoccupied. A year or so ago the building collapsed owing to an insecure foundation, but it has been run up again. Signs of fresh weakness are already evident, and there is much speculation as to the future on the part of small crowds which gather in the evening and gaze blankly at the building. The Master of Works may hear that his services are required—when the tenement comes down with a run for the second time.' (Cond. 5) The paragraph had reference to the pursuer's said building in New City Road, and was false, calumnious, and malicious. It was intended to represent, and did falsely, calumniously, and maliciously represent, that the buildings had been hastily, carelessly, and improperly erected, that evidences of fresh weakness were apparent and notorious, and that there was reason to apprehend the danger of a second collapse. The statements in the said paragraph were not only untrue and libellous, but made without any occasion and without any good ground or excuse. They were extremely pernicious to the reputation of the pursuer's property, and were calculated to produce, and did produce, serious injury and damage to the pursuer. The defenders must have known that the statements were mischievous and likely to do harm, and were of such a nature that they could not but depreciate the value of the property and seriously prejudice the pursuer. (Cond. 7) As might have been anticipated, the reputation of the property has suffered by reason of the malicious paragraph which appeared in the defenders' newspaper, and the pursuer has thus been a heavy loser. The tenement specially referred to is one of several all adjoining each other, and all built by and belonging to the pursuer, and the whole block has been seriously affected by said paragraph. It has hindered and prevented the letting of the premises, and the pursuer, in endeavouring to obtain tenants for portions of the premises, has been again and again met with the allegation that the building has been reported by the defenders' newspaper to be insecure and unsafe. In consequence, too, of the evil influence of the said paragraph, the value of the property in the selling market has been hurt, and were it put up for sale it would scarcely sell at all, or only at a greatly depreciated price. The defenders' newspaper has a large circulation, especially in Glasgow and the West of Scotland, and the slander complained of thus obtained a very extensive and injurious publicity. (Cond. 8) The defenders refuse any reparation for the loss and injury which the pursuer has sustained, and therefore this action has been raised."

The pursuer pleaded—"(1) The statements made in the said paragraph with regard to the pursuer's property being false, calumnious, and malicious, the pursuer is entitled to reparation. (2) The pursuer having suffered serious loss in consequence of the defamatory statements complained of, is entitled to damages as concluded for, with expenses."

The defenders admitted that they had published the paragraph in question and that it had reference to the building in New City Road. They, however, pleaded, *inter alia*—"(1) The pursuer's statements are irrelevant and insufficient to support the conclusions of the action. (4) *Separatim*, the defenders being only liable for special damage caused by the said paragraph, and the pursuer not having suffered any such damage, the defenders should be assoilzied, with expenses."

On 2nd July 1898 the Lord Ordinary (KINCAIRNEY) pronounced the following interlocutor:—"Repels the first plea-in-law for the defenders: Appoints pursuer to lodge the issues proposed for the trial of the cause."

Note.—"The defenders are proprietors and publishers of the *Glasgow Evening News*, and the pursuer alleges that they published in their newspaper a paragraph in reference to certain buildings which the pursuer was erecting in Glasgow, which represented that the buildings had been hastily, carelessly, and improperly erected, that evidences of fresh weaknesses were apparent and notorious, and that there was reason to apprehend a second collapse—buildings erected on the same site having shortly before given way. That is the interpretation which the pursuer puts by way of innuendo on the paragraph complained of. The pursuer alleges that the paragraph was false and malicious, and tended to depreciate, and had in public estimation depreciated, the value of his property and prevented the letting of it. He has raised this action of damages for the injury which has thus been done to him, and the defenders have maintained that the action is irrelevant. No argument was submitted in reference to the pursuer's interpretation of the passage. The plea that the action was irrelevant was supported on the general ground that no action for slander to property is recognised in the law of Scotland, that is to say, that although false statements were made about a party's property which had the effect of seriously reducing its value in the market the owner of the property could have no redress. I am not prepared to sustain that contention. It was rested on the case of *Broomfield* v. *Greig*, March 10, 1868, 6 Macph. 563, and, I think, on that authority only. I do not

think that that case establishes that proposition. In that case the pursuer, who was a baker, alleged, *inter alia*, that the defender had asserted that the bread which he sold was poisonous and unfit for human food, and an issue founded on that statement was refused. Malice was averred but was not put in the issue. The defender was a medical man, and it might have been contended that he was in a position of privilege. But it is no doubt true that the judgment did not proceed on the position of the defender, but on the general ground that it was not actionable to assert of a baker that the article of merchandise in which he dealt was unfit for human food. That was a decision to the effect that remarks disparaging to the goods which a tradesman placed before the public for sale, and thereby submitted to public criticism, would not afford ground for an action of damages unless they involved an imputation on character. But that does not rule a case as to statements derogatory to property not in that position. If the precise question which was decided in the case of *Broomfield*, or a question nearly the same, were raised, I suppose that the judgment in that case would be followed, although I venture to think that it is open to question and hardly consistent with other decisions. It is easy to imagine cases in which false assertions about goods or property may cause as much pecuniary damage and do as great a wrong as an attack on character, although of a different kind, and it is not easy to come to the conclusion that a wrong of that kind is without a remedy. Nor is it the case that there are no illustrations in our books of such cases. As far back as 1750 (in *Hamilton*, June 9, 1750, M. 13,923) a party was found liable in damages because he said of a merchant advertising a sale that the goods were an imposition, and rotten and mildewed trash —a decision not easily reconcileable with *Broomfield* v. *Greig*. In *MacRae* v. *Wicks*, March 6, 1886, 13 R. 732, where the lessee of a hotel raised an action against the printer and publisher of a newspaper founded on a paragraph to the effect that a guest had been overcharged for an ill-made omelette, an issue was allowed without either malice or innuendo. That case did not raise precisely the same question as was raised in *Broomfield* v. *Greig*, though it was similar. Certainly the ground for a claim of damage seems to have been slight, and it is difficult to doubt that the pursuer in *Broomfield's* case suffered an infinitely greater wrong, if it was wrong at all, than the pursuer in *MacRae* v. *Wicks*.

"The case of *M'Lean* v. *Adam*, November 30, 1888, 16 R. 175, is probably more in point. That was an action of damages for an assertion that typhoid fever had broken out in the pursuer's dairy. The case was raised in the Sheriff Court, and came up to the Court of Session on appeal after a proof. The defender was assoilzied on the ground that he was privileged, and had spoken without malice, but the relevancy of the action was not questioned, and I think could not have been questioned.

"It is easy to imagine cases of an analogous kind. For example, if it were falsely and maliciously asserted that some highly contagious disease had affected one or several of the employees in a shop, and if the effect were to deprive the shop of custom, it would be highly unjust to deny the shopkeeper an action.

"Actions of slander of title are of a similar character. The same principle was recognised in different circumstances in the recent case of *Paterson* v. *Welch*, May 31, 1893, 20 R. 744, in which an issue was granted in respect of words which were injurious although not slanderous.

"This kind of action is, I believe, familiar in England, and various cases were referred to in the argument—in particular, *Western Counties Manure Co.* v. *Chemical Manure Co.*, 1874, 9 L.R., Ex. 218; *Radcliffe* v. *Evans* 1892, 2 L.R., Q.B. 524; and *White* v. *Mellin*, [1895], App. Cas. 154. In *Western Counties Manure Co.* the law was thus stated by Lord Bramwell. When a plaintiff says, 'You have, without lawful cause, made a false statement about my goods, and to their comparative disparagement, which false statement has caused me to lose customers,' an action will lie; and in *Radcliffe* v. *Evans* Lord Bowen uses similar language. I do not know of any established rule in the law of Scotland inconsistent with these apparently equitable opinions.

"I am therefore of opinion that it cannot be affirmed that our law denies a right of action in the case of slander of property—that is, where a defender disparages the pursuer's property to the pursuer's loss. I by no means assert that a party will have an action in all cases where his property is so disparaged, and I think that probably there will be more difficulty in allowing such an action where the party challenges criticism of his property or goods, as in the case of *Broomfield*. I am not prepared to express any general rule on the point. I think each case must be judged of on its own circumstances. Of course, in all cases the statement complained of must be alleged to be false, and I rather think must be proved to be false, for I see no reason for adopting that presumption for falsehood, which is by rooted practice, with or without reason, recognised in actions of slander of character.

"I do not consider this case a very strong or clear one, but it seems to me that the pursuer has alleged a wrong and damage which might naturally result from that wrong, and is alleged to have resulted from it, and that if he proves that wrong and damage he is entitled to a remedy. He has averred malice. I have not heard any debate on the question whether that averment is relevant, and that was not questioned. Neither have I heard argument as to the pursuer's obligation to put malice in the issue which he may propose. All the length I go is to say that the argument has not satisfied me that the action is irrelevant. I shall repel the defenders' first plea, and appoint the pursuer to lodge issues."

The following issue was proposed by the pursuer:—"Whether, in the *Glasgow Even-*

ing News of 18th October 1897, the defenders falsely and calumniously printed and published a paragraph of and concerning a building in New City Road, Glasgow, belonging to the pursuer, in the terms set forth in the schedule hereto annexed, to the loss, injury, and damage of the pursuer. Damages laid at £2000." SCHEDULE (The paragraph as already narrated).

On 26th July 1898 the Lord Ordinary approved of the issue and appointed it to be the issue for the trial of the cause.

Note.—"On 2nd July I pronounced an interlocutor by which I repelled the defenders' plea that the pursuer's statements were irrelevant. The pursuer on record averred malice, and made statements of the nature of an innuendo. But he has submitted an issue in which malice is not inserted, and in which there is no innuendo. The issue merely asks the question whether the defenders published the article complained of to the loss of the pursuer. I have, with some hesitation, come to think that the issue may be allowed. Its form is unusual. But an issue in that form was adjusted in the case of *Macrae* v. *Wicks*, 6th March 1886, 13 R. 732, on which the pursuer founded. That is, I think, a sufficient authority for the form, to which indeed I do not see any substantial objection. The pursuer has not put any innuendo in the issue, and if I had thought that the issue without an innuendo could not be supported, I would probably have simply disallowed it. I doubt whether it is my duty to supplement an issue by the insertion of an innuendo. I certainly could insert no innuendo, except what is covered by the pursuer's averments, and I do not think these averments should be adopted. The first branch of the innuendo is that the paragraph represented that the buildings had been hastily, carelessly, and improperly erected. These words import, not a criticism on the building, or at least not that only, but a charge against some-one, defamatory if false, but whether against the pursuer, the owner, or the builder, is not clear. If the charge be made against the builder, which is the natural meaning of the words, the averment is totally irrelevant; at the best the words are ambiguous; and I could not have allowed them in the issue had it been proposed to insert them. The other words of innuendo on the record involve no charge against builder or owner, and express no more than the paragraph expresses. The paragraph is not a slander on the pursuer, but is a statement disparaging to his property, and tending to lower its value in the market. The pursuer says that it has had that effect, and I am of opinion that he is entitled to lay his case before a jury. It is said that he must prove special damage. Perhaps he must. I express no opinion on that point. But any question as to special damage will arise at the trial, and can only arise then.

"The pursuer avers malice, and I have felt much difficulty as to whether in this particular case it is not necessary for the pursuer to undertake the burden of proving malice or recklessness. But to insist on the insertion of malice or recklessness would be a novelty for which there is no precedent. According to our practice, the question as to the insertion of malice has always been held to depend solely on the position of the defender, and here it is clear that the defenders have no privilege. But it is also in accordance with our practice to allow and to insist on proof of malice by a pursuer, although malice is not in the issue, where the proof discloses privilege, and in this case I think the question may be left for discussion at the trial. It has been very often said, whether with absolute accuracy or not, that in ordinary actions for defamation malice is always presumed except where there is privilege. It is not quite clear whether there is such a presumption in a case of slander of property or whether such a presumption is necessary.

"On the whole, I think the case may be tried on the issue proposed. I do not know that there is any exact precedent for this precise issue, but I think it would be unjust to refuse it. For my general views on the case I take leave to refer to my opinion expressed when deciding as to relevancy."

The defenders reclaimed, and argued—(1) This, if a slander at all, was not an actionable slander. An action of slander of property *per se* was not recognised by the law of Scotland. In order to sustain an action of slander there must be an imputation either against character or against the mode of conducting a business. The case of *Broomfield*, *supra*, had decided that there could be no slander in pronouncing an opinion on the quality of goods. In the cases quoted by the Lord Ordinary in support of his decision on this point, the pursuer's method of conducting business had been slandered by the paragraphs or statements complained of. To permit remarks or statements concerning the condition of property to be held as slanderous would open the door to a vast number of actions which at present found no place in Scottish courts. Besides, in the present case no special damage to the pursuer arising from the paragraph in question was averred in the condescendence, and the action was therefore irrelevant — *White* v. *Mellin* [1895], App. Cas. 154. (2) If an issue was to be allowed, they moved to vary the issue by deleting therefrom the words "falsely and calumniously," and substituting therefor the words "maliciously and without probable cause." In such circumstances as the present it was clearly necessary for the pursuer to undertake the burden of proving malice or recklessness.

Argued for pursuer—On both points the Lord Ordinary had arrived at a sound conclusion, and the authorities had been fully dealt with by him.

At the direction of the Court the issue approved of was altered to the following:—"It being admitted that the defenders printed and published in the

Glasgow Evening News of 18th October 1897 a paragraph in the terms set forth in the schedule hereto annexed of and concerning a building in New City Road, Glasgow, belonging to the pursuer, whether the said paragraph was false and calumnious, to the loss, injury, and damage of the pursuer. Damages laid at £2000."

At advising—

LORD JUSTICE-CLERK—Undoubtedly this case is a peculiar one. It is not often that one sees an action raised on such grounds as we have here. It is difficult to see how these statements denouncing the buildings in such terms can be held not to be injurious to the pursuers if they are not true. If these statements are not true, in my opinion it is impossible to treat them as not entitling the pursuer to an issue.

On the whole matter I think that the judgment of the Lord Ordinary is right, and that an issue ought to be allowed.

LORD YOUNG concurred.

LORD TRAYNER—I am not sure that the case is quite so clear, but I have read with care the Lord Ordinary's judgment, and I have heard nothing to induce me to think that he has not arrived at a right conclusion.

LORD MONCREIFF—I am also of opinion that an issue should be allowed. I should like to add that I think that we have here not merely slander of property, but slander of the pursuer himself in connection with his trade, if one may use that term, as describing one of his means of making a livelihood, viz., the erection of dwelling-houses to sell or let. The remarks in the paragraph could scarcely fail to affect the pursuer injuriously.

The Court refused the reclaiming-note, adhered to the Lord Ordinary's interlocutor, and approved of the issue as amended.

Counsel for the Pursuer — Young — Younger. Agent—L. M'Intosh, S.S.C.

Counsel for the Defender—Ure, Q.C.—Hunter. Agent—J. Gordon Mason, S.S.C.

Friday, December 23.

SECOND DIVISION.

[Lord Low, Ordinary.

MILLAR *v.* MELVILLE.

Parent and Child—Illegitimate Child—Aliment—Effect of Bona fide Offer of Father to Receive and Support Male Child of Seven Years.

Held (*aff.* judgment of Lord Ordinary; *diss.* Lord Young) that the father of an illegitimate male child who, when the child had attained the age of seven years, made a *bona fide* offer to receive and bring up the child, was not thereafter liable in aliment to the mother, although the latter, after the birth of the child, had obtained a decree in absence against the father for aliment for the child for thirteen years.

On 3rd October 1883 Margaret Mair Watson, yarn reeler, Dundee, obtained a decree in absence in the Sheriff Court at Dundee against Robert Millar, flesher, Dundee, for aliment for an illegitimate child at the rate of £7, 16s. per annum for thirteen years. Robert Millar paid aliment for seven years, after the expiry of which he was desirous of taking the child into his own custody, and accordingly arranged with his mother, who carried on business as a butcher in Carnoustie, that she should take and bring up the child in her own house. Millar's mother had a comfortable home, and was a proper person to take charge of the child. Millar also made provisional arrangements for the child being educated and taught a trade. Accordingly, in August and September 1890, he, through his agents, Messrs Dickie & Paul, Dundee, asked Watson for delivery of the child, and intimated that arrangements had been made for the proper upbringing and education of the child. On 10th September William Nixon, Watson's agent, wrote to Messrs Dickie & Paul as follows:—"I submitted your last letter to my client, who, however, cannot approve of your client's mother, as she is not a fit guardian for the child. This my client is prepared to prove. If your client still declines to pay, then I must just put the decree into the hands of an officer." On 16th September Messrs Dickie & Paul replied—"We have your letter of 10th inst. Our client is clearly entitled to make his own arrangements in regard to the child, and we are not aware what objections your client can take to our client's mother upbringing the child. Our client will resist any measures which your client may adopt to obtain further aliment from him." Thereafter the child continued to live with and was educated by its mother, she making no demand for aliment from Millar, and Millar paying no further aliment.

On 25th January 1897 Millar was charged by Watson, who had in the meantime married James Melville, labourer, Dundee, to make payment of the arrears of aliment under the decree, which practically amounted to the aliment of the child from 29th August 1890, the date it attained seven years of age, down to 29th August 1896.

Thereupon Millar presented to the Court a note of suspension of the charge, and pleaded—"(1) The complainer having been entitled on his said child attaining the age of seven years, and having offered by the arrangement stated to fulfil the obligation to aliment said child constituted against him, was thereby relieved from further liability, and the charge, in so far as complained of, should be suspended, with expenses."

The respondent Mrs Melville pleaded—"(1) The prayer of the note should be refused, with expenses, because (1) the note is incompetent; (2) the complainer's averments are irrelevant; (3) the sum charged for is due under the decree; (4) the offer made was not a *bona fide* offer; (5) the complainer's averments are unfounded in