

words were qualified by the words which followed. A direction to trustees to hold for behoof of anyone as in *Muir's Trustees*, was equivalent, apart from qualification, to direct words of gift in that person's favour—*Greenlees' Trustees v. Greenlees*, December 4, 1894, 22 R. 136. 2. The fee of the share liferented by Mrs Sprot fell into residue. As she died after attaining the age of twenty-one, the accrescing clause did not apply. The presumption was against intestacy. Everything which was not required to satisfy special bequests fell to the residuary legatee, who indeed took the whole estate under burden of the special bequests—*Storie's Trustees v. Gray*, May 29, 1874, 1 R. 953; *Wallace's Executors v. Wallace*, November 21, 1895, 23 R. 142.

Counsel for the third parties adopted the argument for the second party upon the question of fee and liferent, and the question with the representative of the residuary legatee.

LORD JUSTICE-CLERK—The testator here bequeathed to the children of his sister Margaret a sum of money on their attaining majority or being married and leaving issue, and the question is, whether certain words coming after the words "as follows," which succeed the words of gift, prevent the daughters having a fee, and restrict them to a liferent. I think that the provision as to the daughters having merely a liferent only applied in the event of their being married and leaving issue, and as this never occurred in this case, the provision has no application.

LORD YOUNG concurred.

LORD TRAYNER—I think this clause may fairly be read as conferring a fee on Mrs Sprot. There are words of direct gift to her as one of Mrs Buchanan's children. It is, however, conditional that if any of Mrs Buchanan's daughters should marry and leave issue, the daughter's right should be one of liferent only, and the issue take the fee. In the case of Mrs Sprot, this condition did not take effect; she had no issue. Mrs Sprot's right therefore was that of fee.

LORD MONCREIFF—I am of the same opinion.

The Court pronounced this interlocutor:—

"Answer the first question therein stated by declaring that the fee of the one-third of the £10,000, the income and revenue of which was paid to Mrs Sprot during her life, now belongs to the second party: Find it unnecessary to answer the other questions therein stated: Find and declare accordingly, and decern."

Counsel for the First Parties—Clyde. Agents—Cowan & Dalmahoy, W.S.

Counsel for the Second Party—Dundas, Q.C.—Clyde. Agents—Cowan & Dalmahoy, W.S.

Counsel for the Third Parties—R. S. Horne. Agents—Cowan & Dalmahoy, W.S.

Counsel for the Fourth Party—Craigie—D. Anderson. Agents—Campbell & Smith, S.S.C.

Thursday, March 9.

SECOND DIVISION.

[Lord Stormonth Darling,
Ordinary.

A v. B.

Reparation—Slander—Innuendo—Justification—“Lay Behind the Hedge and Shot his Poisonous Darts”—Issue—Counter-Issue.

In an action of damages for slander, the pursuer complained of a certain article in a newspaper owned and published by the defender. The article in question stated, with regard to a certain other newspaper—"It said some things in such offensive terms about so many people in the town that it is well to bear it in mind. . . . We knew all the while the particular gentleman in whose interest the paper was run, and who wrote its most offensive articles, although that gentleman took every opportunity to deny all knowledge and connection with" it. "Little wonder that he did; the articles written by the editor and financier of the concern were such that any man holding a respectable, not to say responsible position might well be ashamed of. We are in possession of the whole story from start to finish, and may publish it all some day, revealing the name of the gentleman who lay behind the hedge and shot his poisonous darts at well-known public men in this town." The defender admitted that this article in part referred to the pursuer, and averred that the newspaper alluded to was under the pursuer's control, and was financed by him; that certain articles specified by date and title which appeared in it were of an offensive character and were written by the pursuer, and that on various specified occasions the pursuer had denied all connection with it. The Court (1) *allowed* an issue whether the article complained of represented that the pursuer was editor and financier of the newspaper in question; that he wrote for that paper offensive articles of such a disreputable character that any respectable man would be ashamed of having written them; that he used the said paper as a means of anonymously defaming public men, and that notwithstanding he took opportunity falsely to deny all knowledge of and connection on his part with the said paper; and (2) *allowed* a counter-issue whether the pursuer wrote the articles specified by the defender, and specifically referred to (but not set forth *ad longum*) in the schedule to the counter issue; whether they or some of them were offensive to well known men in the town where they were published, and of such a character that a man in the pursuer's position ought to have been ashamed of having written them; and whether on several occasions he

nevertheless denied any connection with that newspaper.

Process — Record — Answers to Defender's Statement of Facts.

The defender in an action of damages for slander contained in a newspaper article having put in a separate statement of facts containing specific allegations in justification of the slander complained of, which the pursuer only answered by means of a general denial in the last article of his condescendence, the Court, of its own motion, before further answer on a reclaiming-note, appointed the pursuer to lodge specific answers to the defender's statement of facts.

This was an action at the instance of A, a solicitor in P., against B, residing in P., printer, publisher, and proprietor of the X newspaper. The pursuer concluded for payment of the sum of £1000 as damages for slander.

The pursuer averred (Cond. 1) that he had practised for upwards of thirteen years in P., where he was a bank agent, clerk to the School Board, and Depute-Clerk of the Peace; that the defender was proprietor and publisher of the X newspaper, which was published weekly, and had a wide circulation in P. and the district of which it was the centre, and that it was now the only newspaper published in P.; (Cond. 2) that the defender owing to various causes stated had conceived a persistent and violent ill-will towards the pursuer, and had evinced this animus by publishing in his said newspaper articles and letters, and by inserting therein frequent allusions to the pursuer of a scornful, hostile, and defamatory character, and that many of these articles were grossly and openly abusive and defamatory; and (Cond. 3) that "in the issue of said paper of 22nd April 1898 the following article was written by the defender and inserted in large type in the most prominent part of his paper:—

'THE Y' NEWSPAPER.

"Who was the editor and financier of the paper? The man who lay behind the hedge and fired poisoned darts is well known. This little print which existed for some months in P. will not soon be forgotten. It said some things in such offensive terms about so many people in this town that it is as well to bear it in mind. To some persons there was an air of mystery as to how it was carried on, who wrote its articles, and who paid for its upkeep. To us there was no mystery about it. We knew all the while the particular gentleman in whose interest the paper was run, and who wrote its most offensive articles, although that gentleman took every opportunity to deny all knowledge and connection with the 'Y' [a newspaper.] Little wonder that he did; the articles written by the editor and financier of the concern were such that any man holding a respectable, not to say responsible position, might well be ashamed of. We are in possession of the whole story from start to finish, and may publish it all some day, revealing the

name of the gentleman who lay behind the hedge and shot his poisonous darts at well-known public men in this town. Meanwhile he has the tidy little bill of about £300 to look after. So he did not have all his fun for nothing—'sufficient unto the day is the evil thereof.' P has a right to know, and we promise they shall know, who their 'fierce accuser' was. One regrettable feature to us in the affair is that the publication, through its disrepute, has brought an esteemed fellow-in-trade to the wall. Mr C., prior to this, had many friends in the town, and a good business connection, but carrying out other people's dirty work has lost him that connection.' (Cond. 4) The Y newspaper alluded to in said article was published in Port-Glasgow for some time, and during its existence the defender, in his said paper, frequently pointed at the pursuer as the editor, and attributed to him articles which he had not written. It ceased to exist about three years ago, and has been forgotten by the public. The article above quoted is of and concerning the pursuer, and it was written and published, or caused to be written and published, by the defender in his said paper, falsely, maliciously, and calumniously, and for the purpose of gratifying the defender's enmity towards the pursuer. The said article falsely, maliciously, and calumniously represents that the pursuer was the editor and financier of the Y newspaper, and that the pursuer is not respectable, and is a liar, and that he used the said newspaper in a cowardly and dastardly manner as the means of defaming well-known public men, attacking them in articles written and published, or caused to be written and published, by him anonymously in said Y newspaper, which articles were of such a low and disreputable character that no respectable man would write or acknowledge them, and that on account of their offensive and disreputable nature the defender frequently and gratuitously lied about them. The said article also falsely, maliciously, and calumniously represented that through the disreputable character which the pursuer had given to the said paper it had brought an esteemed tradesman to bankruptcy. (Cond. 5) The publication of the said article was not called for or occasioned by any event or circumstance which has occurred. The said article was published by the defender merely for the gratification of his private malice towards the pursuer. The controversies in which the Y newspaper took part are all things of the past. Several of the persons concerned in these controversies are on friendly terms with the pursuer, and have business relations with him. The said article is of a most injurious character, and has injured the pursuer deeply in his feelings and reputation. It is calculated, and was intended by the defender, to injure the pursuer in his business relations with a number of people, and in the estimation of the public, and to expose him to public hatred and contempt. The pursuer cannot, with a due regard to his reputation and standing in the com-

munity, allow the defender any longer to defame him in his said paper, and he is now compelled to raise the present action for the vindication of his character."

The defender admitted that the article quoted in part referred to the pursuer. In a separate statement of facts he averred that, dissensions having arisen in the School Board of P, the pursuer on 4th June 1891 was dismissed by the majority of the then existing Board from his position as clerk and treasurer. "(Stat. 5) In 1891 the *Y* newspaper had been started in P by a Mr C, printer. In or about June 1892 the pursuer became connected with the said paper. He wanted to use it in support of his crusade against the then existing School Board. It passed, to all intents and purposes, completely into his control. He wrote almost all the articles in it relating to the School Board, he had control over what should be inserted in the paper, he advanced money to finance it, and he directed and advised what machinery and other fittings should be got for the paper. (Stat. 6) During the period of his control the *Y* indulged in personalities against various public men in P. A number of the members of the School Board were designed by nicknames, and the *Y* thus attained to great notoriety in the burgh. In particular, articles and paragraphs of an offensive character, under the title of 'On the Wing,' were published in the *Y*. These articles were written by the pursuer, and were inserted with his approval, and were such as any man in the pursuer's position might be ashamed of. The public of the town were very anxious to know who was the controller of the newspaper. The pursuer was frequently taxed with it, and denied his connection with the paper." [Here followed a list of paragraphs and articles specified by their dates and titles.]

The defender then specified various dates and places on and at which the pursuer had denied connection with the *Y* newspaper to certain persons named, and also averred that on one occasion in 1894, in answer to a letter accusing him of having written a certain article in the *Y*, he had written a letter to a councillor of P, in which he not only denied his authorship of that particular article, but also repudiated having any connection with the *Y*.

The defender also stated that in consequence of the election of a new School Board in 1894 the pursuer was reinstated as clerk and treasurer, and after that date took less interest in the *Y* newspaper, which finally went out of existence about November 1895; that in 1897 Mr C's affairs became embarrassed, and that at a meeting of his creditors a statement of his affairs was produced in which the pursuer was entered as a creditor for £200, that Mr C stated that he regarded the pursuer as liable for this sum equally with himself, as the money had been advanced on a bill to enable him to carry on the *Y*, that the bitter feelings aroused by the articles in the *Y* had not died out in P, and that when the fact that the pursuer was claiming as a

creditor of Mr C, and Mr C's statements on the subject became known in P, a general desire was felt to know what were the precise facts with regard to the publication of the *Y* and those who were concerned in it.

No answers to the defender's statement of facts were lodged when the record was made up in the Outer House. The pursuer merely added the following statement to his condescendence—" (Cond. 5) The statement of facts for defender, in so far as inconsistent with or not coinciding with the condescendence, is denied.

The pursuer pleaded—" (1) The defender having slandered the pursuer as condescended on, is liable in damages therefor, and decree should be pronounced against him accordingly, in terms of the conclusions of the summons."

The defender pleaded—" (1) The pursuer's averments are irrelevant and insufficient to support the conclusions of the summons."

By interlocutor dated 16th July 1898 the Lord Ordinary (STORMONTH DARLING) approved of the following issue and counter-issue, and appointed them to be the issue and counter-issue for the trial of the cause:—

Issue.—"It being admitted that the defender published in the *X* newspaper of 22nd April 1898 the article set forth in the schedule hereto—Whether the said article is in whole or in part of and concerning the pursuer, and falsely and calumniously represents that the pursuer was the editor and financier of the *Y* paper; that he wrote for that paper offensive articles of such a disreputable character that any respectable man would be ashamed of having written them; that he used the said paper as a means of anonymously defaming well-known men in P; and that notwithstanding he took opportunity falsely to deny all knowledge of and connection on his part with the said paper; or contains similar false and calumnious misrepresentations of and concerning the pursuer? Damages claimed, £1000." The schedule consisted of the article quoted *supra*.

Counter-Issue.—"Whether the pursuer wrote in the *Y* newspaper the articles and paragraphs mentioned in the schedule appended hereto; whether the said articles and paragraphs, or some of them, were offensive to well-known men in P, and of such a character that a man in the pursuer's position ought to have been ashamed of having written them; and whether on several occasions he nevertheless denied having any connection with that newspaper?" The schedule consisted of the list of paragraphs and articles referred to in the defender's statement of facts.

Opinion.— . . . "I concede, as a general rule, that a counter-issue must meet the innuendo in the issue for the pursuer. But it need not echo every word in the innuendo (*M'Iver*, 11 Macph. 777), and I think the rule is satisfied if it meets a part of the innuendo so substantial that without it the jury could not return a verdict for the pursuer. To hold otherwise would, in my view, be giving an unjust advantage to a pursuer who chose to accumulate separate charges

in one issue. Here the counter-issue does not assert that the pursuer used the paper as a means of anonymously defaming well-known public men in Port-Glasgow; but, if the jury were to find that he wrote articles about such people, of which a man in his position ought to have been ashamed, and that he nevertheless denied all connection with the paper, they would knock a hole in the leading issue which would make it impossible for them to return a verdict for the pursuer."

The pursuer reclaimed.

After counsel for the pursuer had been heard in the Second Division, the Court on 10th January 1899 pronounced the following interlocutor:—"The Lords recal the interlocutor of Lord Stormonth Darling, dated 16th July 1898, *hoc statu*, and before further answer appoint the pursuer to lodge specific answers to the defender's statement of facts within fourteen days from this date."

In the answers lodged by the pursuer in obedience to this interlocutor he averred:—" (Ans. 5) Not known and not admitted as to the origin of the *Y* newspaper. *Quoad ultra* denied. The statements here made are absolutely unfounded. (Ans. 6) Believed to be true that pursuer did write certain of the 'On the Wing' paragraphs, but explained that as he kept no note of them and depends on his recollection, he is unable at this distance of time to say which of the paragraphs he wrote. Many of the paragraphs referred to he neither wrote nor saw. None of the paragraphs written by the pursuer are of an offensive character or defamatory of public men. With reference to the articles attributed to him, pursuer believes that he did write a portion of the latter part of the article of 5th August 1892, or supplied the figures for it, but he had no connection with the rest of the article. With regard to all the other articles, pursuer denies having written them." With reference to the correspondence with the town councillor of P, referred to in the defender's statement of facts, the pursuer stated that his reply was as follows:—"I have your extraordinary note. At this moment I have not seen *The Y*. I have not written a line for it. I have not, either directly or indirectly, supplied any information for any article or paragraph in it, and I am entirely ignorant of the contents of the article you refer to. Your note is the first intimation I have that there is anything in that paper about you." In answer 8 the pursuer denied the allegations contained in defender's statement, stated that no meeting of Mr C's creditors took place, and that when the pursuer, upon seeing the defender's averments upon this matter, asked Mr C's law-agent as to the alleged meeting, the law-agent stated that no meeting had taken place, and declined to give the pursuer any information as to Mr C's affairs.

These answers having been lodged, the Court, by interlocutor dated 26th January 1899, allowed them to be added to the record, of new closed the record, and restored the cause to the summar roll.

Argued for the pursuer—1. The counter-issue should not be allowed. It did not offer to prove the truth of the accusation contained in the issue. To accuse a man of writing offensive anonymous articles was not slanderous. What the defender was accused of doing was saying that the pursuer anonymously defamed people, and nevertheless denied the authorship of his defamations. Once an issue was allowed, no counter-issue could be allowed which did not meet the whole of the issue—*British Workman's and General Assurance Company v. Stewart*, March 4, 1897, 24 R. 624, *per* Lord President Robertson at page 626; *Bertram v. Pace*, March 7, 1885, 12 R. 798; *Macleod v. Marshall*, March 20, 1891, 18 R. 811, *per* Lord Young, at page 816; *Blasquez v. Lothians Racing Club*, June 29, 1889, 16 R. 893; *Harkes v. Mowat*, March 4, 1862, 24 D. 701, *per* L.J.-C. Inglis, at page 703; *M'Rostie v. Ironside*, November 14, 1849, 12 D. 74; *Milne v. Bauchope*, July 19, 1867, 5 Macph. 1114; *Powell v. Long*, February 25, 1896, 23 R. 534. [LORD MONCREIFF—The want of the words "anonymously defamed" is all that you can complain of in the counter-issue]. If these words were added, then the objection would be that they were not supported by the defender's averments. 2. The issue should be allowed. As innuendoed, the statements made with regard to the pursuer were slanderous. The innuendo was not extravagant. The gist of the accusation was that the pursuer was guilty of "anonymously defaming." To say that of anyone was slanderous.

Argued for the defender—1. The pursuer was not entitled to an issue. There was nothing in the article scheduled which was in itself libellous, or which could be reasonably innuendoed as libellous. Taking the article as a whole, it could not be reasonably read as amounting to an accusation of "defaming." "Fired poisonous darts" was a vague and figurative expression, and from the rest of the article it appeared that nothing more was meant here than that the pursuer wrote offensive anonymous articles. It was now admitted that the pursuer wrote anonymous articles. It was not slanderous to say that a person wrote offensive articles, and that was all that the defender had said here. But even if the pursuer was accused of "defaming," that was not actionable. If A said of B that B made a particular slanderous statement specified with regard to C, then B had an action against A, but if A only said generally that B defamed C, without specifying any particular statement made by B, then B had no action against A—*Milne v. Smiths*, November 23, 1892, 20 R. 95; *Heriot v. Stuart* (1796), 1 Esp. 437. 2. If the issue were allowed, the counter-issue should be allowed also.

LORD JUSTICE-CLERK—I see no reason for interfering with what the Lord Ordinary has done. We have heard an elaborate argument from Mr Cooper to the effect that the pursuer is not entitled to an issue at all. But it seems to me that the pursuer has so innuendoed the charges made in the

article complained of that if he succeeds in proving his innuendo he must succeed in his action.

LORD YOUNG—I am of the same opinion. The pursuer here does not allege anything against the newspaper in which the articles appeared which were said to be offensive. On the contrary, he says there was nothing to be ashamed of in it. But he says that in another newspaper it was said that discreditable and offensive articles appeared in a newspaper which was alleged to be run in his interest, and that he himself wrote the most offensive of these articles, although he denied all connection with the newspaper in which they appeared. The pursuer says this is false and calumnious.

I never heard before that it is not actionable to say of a man that he was the editor and financier of a newspaper in which discreditable and offensive articles appeared, the most offensive of which were written by himself, although he denied all connection with the newspaper, if all this is false. I never heard that it was not. Suppose such a thing was said of a minister—suppose it was said of a minister who was just about to be chosen as Moderator of the General Assembly. To say that such a statement is not slanderous and actionable is a proposition to which I cannot accede.

I have already said that I think the parties would be well advised to settle the differences between them without affording the public, and particularly the public of the town in which they live, the entertainment of having them discussed at a jury trial. But that is not their view, and taking the case as it stands I think the issue should be allowed.

LORD TRAYNER—I am of the same opinion. On the matter of the counter-issue I think the defender has averred matter which is sufficient to entitle him to it.

With regard to the issue allowed to the pursuer, I can see no reason why it should not be allowed.

The Court refused the reclaiming-note, adhered to the interlocutor reclaimed against, and remitted the cause to the Lord Ordinary to proceed therein as accords, finding no expenses due to or by either party.

Counsel for the Pursuer—Salvesen—A. S. D. Thomson. Agents—Morton, Smart, & Macdonald, W.S.

Counsel for the Defender—F. T. Cooper. Agent—James G. Bryson, Solicitor.

Thursday, March 9.

SECOND DIVISION.

[Sheriff of Lanarkshire.

SOMERVILLE v. JOHNSTON.

Process—Mails and Duties—Competency of Action of Mails and Duties by Holder of Ground-Annual.

An action of mails and duties was raised by the holder of a ground-annual constituted by a contract in which the lands themselves were conveyed and the rents assigned in security of the the ground-annual.

Held that the action was competent.

By contract of ground annual dated 11th and recorded 15th November 1875, Andrew Crawford, with consent of John Somerville, for his own right and interest, assigned and disposed in favour of Mathew Gemmell and his heirs and assignees whomsoever, heritably and irredeemably, two steadings of ground in Hutchesontown, Glasgow. The subjects were disposed under, *inter alia*, the real lien and burden of a yearly ground-annual or ground rent of £35, payable half-yearly, together with a duplication thereof every nineteenth year to be paid to and taken and uplifted by the said John Somerville and his heirs or assignees or disponees whomsoever, furth of and from the subjects disposed, and the buildings to be erected thereon, and readiest rents, mails, and duties of the same. By the contract Mathew Gemmell bound and obliged himself and his successors in the said subjects to pay to John Somerville and his foresaids the yearly ground-annual and duplication thereof, and disposed to John Somerville and his foresaids, not only the ground-annual and the duplication foresaid, but also the subjects themselves and the buildings to be erected thereon, in security of payment of the ground-annual. The contract also contained an assignation of the rents in favour of John Somerville.

By disposition dated 24th October and recorded 9th November 1876 Mathew Gemmell disposed the two steadings of ground to Alexander Johnston under burden of the ground-annual.

The ground-annual was not paid from Whitsunday 1881 to Martinmas 1897, and in April 1898 John Somerville raised, in the Sheriff Court at Glasgow, an action of mails and duties against Alexander Johnston and the tenants of the subjects for payment of (1) £612, 10s., being the arrears due; (2) £236, 5s., being interest on the arrears; (3) the yearly ground-annual of £35 and duplication thereof thereafter to become due.

Alexander Johnston defended and pleaded—(1) The action is irrelevant and incompetent.

On 27th July 1898 the Sheriff-Substitute (BALFOUR) repelled the defences and decerned in the mails and duties as craved in the petition.

“*Note.*— . . . With reference to the first