pensive machines, instruments, etc., are needed, which, simply because they require special attachments, are heritable. They are all "perishable plant" which a tenant would be presumed to have to keep in running order. From the evidence no other arrangement could be possible, and therefore the annual average of these repairs should be allowed. The tenant's capital allowances as stated by the respondents is the lowest sum possible. As no tenant could work an electrical station of this nature without a Provisional Order, the cost of this must necessarily be provided for out of his capital. Although the rent brought out by respondents is only £340, they have submitted to a rental of £800 on account of the subjects being new and not fully tested as to output."

The arguments sufficiently appear from the contentions stated by the parties.

At advising—

LORD LOW—The principle of valuation adopted by the Magistrates is what is known as the profits principle, and that principle has been repeatedly recognised as the best method of ascertaining the yearly value of uudertakings such as the one now under consideration. I am not sure that I altogether agree with what the Magistrates say in regard to the tenant's obligation to keep up machinery and plant which are of a heritable nature. But after careful consideration I have come to be of opinion that the amount fixed by the Magistrates is a fair estimate of the rent at which the subjects might reasonably be expected to let from year to year, and accordingly I think we should hold that their determination is right.

LORD DUNDAS—I agree. I think the Magistrates have arrived at a just decision.

The Court dismissed the appeal.

Counsel for Appellants—Hunter, K.C.—C. D. Murray. Agent—F. M. H. Young, S.S.C.

Counsel for Respondents—Cooper, K.C.—Steedman. Agents—Steedman, Ramage, & Bruce, W.S.

COURT OF SESSION

Thursday, March 8.

SECOND DIVISION.

[Lord Salvesen, Ordinary.

HUNTER *v.* FERGUSON & COMPANY.

Reparation — Slander — Innuendo — Newspaper Articles.

In an action of damages for slander brought by a town councillor against the proprietors of a newspaper which had published certain articles commenting on his conduct while a member of the town council, *held* that the pursuer was entitled to an issue —"It being admitted that the defenders in the issues of 18th and 21st July 1905 of the *Ayr Observer and Galloway Chronicle* printed and published the articles contained in the schedule hereto annexed, Whether the statements contained in the said articles are of and concerning the pursuer, and falsely and calumniously represent that the pursuer took advantage of his position as a member of the Town Council of Ayr and convener of the Roads and Footpaths Committees thereof to throw the burden of taking over and repairing the footpaths of property belonging to himself upon the burgh, while he caused footpaths of a like character and in a like position belonging to other proprietors to be reconstructed at their expense; that he was thus unfaithful to the public trust reposed in him as a member of the Town Council of Ayr and committees thereof, and that in his municipal position he acted corruptly for his personal benefit, to the loss, injury and damage of the pursuer,"— that being a meaning which the ordinary reader might reasonably extract from the articles.

This was an action of damages for slander brought by Hugh Hunter against Messrs Ferguson & Company in respect of three articles published in the issues of the 18th and 21st July 1905 of the *Ayr Observer and Galloway Chronicle*, of which the defenders were the proprietors and publishers. The pursuer was from November 1903 until November 1905 a member of the Town Council of the burgh of Ayr, and also from December 1903 until November 1905 convener of the Roads and Footpaths Committee thereof. Damages were laid at £500.

The articles complained of were as follows:—"*Ayr Observer and Galloway Chronicle*, 18th July 1905.—'*Notes on Current Topics—Town Council Vagaries.*—One of the most disgraceful jobs I have seen perpetrated in Ayr for a long time is just now being carried out in Fort Street. A footpath in better condition than three-fourths of the best footpaths in Ayr, is presently being broken up at the instigation of one or two would-be important members of council, and is to be relaid at the cost of the proprietors. Several councillors know nothing about it, and the burgh surveyor is from home on holiday, so no information can be got from him, though I understand he disapproves of the action now being taken. Of course this means an action before the Sheriff, which doubtless will go against the town, and we poor ratepayers will have to pay for our representatives' blunder and ill-nature. The matter is made all the worse from the fact that a similar pavement in the same street was actually repaired at the expense of the town a short time ago, the only difference being that this favoured pavement belonged to a town councillor, and I am anxious to know if this is one of the perquisites of his office. This one-sided management must cease, and inquiry must be made into all

properties possessed by councillors which are so favoured, and also whether there are any other interests being served in the same way. I know of other good footpaths which are to be condemned also, and I know of several which should have been relaid long ago but have not been relaid. Inquiry is wanted here also. Let us have at least the Sheriff's opinion, and let those who are perpetrating the job pay for it. I will return to this subject on Friday.'

"*Ayr Observer and Galloway Chronicle*, 21st July 1905.—'*Roads and Footpaths.*—The piece of bungling in Fort Street, to which I drew attention on Tuesday, has induced me to probe the matter still further. I regret to find the matter does not improve on acquaintance. The footpath now so unwarrantably condemned was sanctioned by the council some years ago, and to go before the Sheriff with such a trivial case, when pavements in the same street and of the same material belonging to the councillor who is the instigator of this action were paid for by the council, will place that council in a lamentable position. I do not envy Councillor Hugh Hunter when he is put into the witness-box to justify his action in this matter of tar macadam. The saving of his own footpath and his condemnation of another quite as good is not the least of the subjects on which he will have to give evidence. The virtue of tar on a roadway such as the Midton Road, where there is such heavy traffic, and the want of it in a pavement where there is so little traffic, is truly difficult to understand. It is, however, still more difficult to make it out, when we find the author of the tarring in Midton Road—the greatest blunder committed by amateur road-makers in our experience—is at the same time convener of the committee which has condemned an excellent footpath, regarding which no complaint was made, and burdening the proprietor with an expense which in the same circumstances have not been incurred by himself. This conduct is freely spoken of, possibly it is exaggerated, possibly it is altogether untrue, but it is not made without very good authority. I mention it, and I ask Councillor Hugh Hunter to contradict or explain it away, without waiting till November, when it will have a public inquiry, adding somewhat to its unpleasantness. . . . I do not expect town councillors to be infallible, but some even of little importance, riding on their commission and with a little brief authority, require some attention paid to them, as even in small things they can do a great deal of mischief.'

"*Ayr Observer and Galloway Chronicle*, 21st July 1905.—'*Roadmaking Craze.*—Town councillors, no matter how important they may be in their own estimation, have no right to throw away public money recklessly to satisfy a fad or a grudge. What can be thought of a councillor who at a ward meeting stated that tar macadam footpaths would soon add 1d. per pound to the rates, when he might have known it had not added that 1d. for a dozen years; and yet he wantonly sanctioned a throwing away of tar on roads which had the effect of spoiling them, and if persevered in would make the roads in Ayr intolerable as well as expensive. . . . The folly of the whole matter lies in a grandmotherly municipal rule which now seems to aim at everything being done for us at our own expense. Every obstacle is thrown in the way of architects, builders, and people who purpose building by rules and regulations which hampers every step taken to provide comfortable dwellings. Much expense has to be incurred even to be allowed to submit a plan, fees are enforced, as if officials were only paid by fees and not by an ample salary, and people sit in judgment on these plans who have fads and interests of their own, as if it were their duty, after their own ends were served, to prevent any improvement whatever being carried out. No one now will build a house within the burgh when a site can be got in proximity to the burgh boundaries. One reason is undoubtedly to escape the burgh taxation, but another is to escape the meddling and muddling of those from whom it should not be expected. In some places parties wishing to build houses receive every encouragement to do so; in Ayr, it is otherwise. I am glad to hear there will probably be some exposures soon of what this is likely to lead to.'"

The pursuer innuendoed these articles as subsequently set forth in the issue for the trial of the cause (*v. sup. in rubric*).

On 27th January 1906 the Lord Ordinary (SALVESEN) approved of an amended issue (*quoted supra in rubric*), and appointed it to be the issue for the trial of the cause.

Opinion—"This is an action of damages for defamation in respect of three articles published in the newspaper of which the defenders are proprietors. The pursuer, who was at that time a town councillor of the burgh of Ayr and convener of the Roads and Footpaths Committees thereof, says that the articles represent that he had taken advantage of his position to serve his own pecuniary interests, and had thus acted corruptly and in breach of the public trust reposed in him. On the assumption that the articles justify this innuendo, it was not maintained by the defenders that they were not actionable, but they contend that the articles do not go beyond fair criticism of the pursuer's conduct as a public man, and made no imputation on his character of a defamatory kind.

"It seems now settled that the Court will not withhold such a case as this from a jury unless it is satisfied that the words complained of are not reasonably capable of bearing the innuendo put upon them by the pursuer. Applying that rule to the present case, I am of opinion that the pursuer is entitled to an issue. There can be no doubt that the articles refer to the pursuer, who is mentioned by name. So far as complained of, they relate to a footpath opposite certain properties in Fort Street which had been directed by the town council to be relaid at the cost of the proprietors. The writer of the articles predicts that the result of this order will be an action

before the Sheriff, which would doubtless go against the town, and that the ratepayers would have to pay for their representatives' blunder and ill-nature. The article then proceeds:—'The matter is made all the worse from the fact that a similar pavement in the same street was actually repaired at the expense of the town a short time ago, the only difference being that this foot-pavement belonged to a town councillor, and I am anxious to know if this is one of the perquisites of his office.'

"The second article speaks of the pursuer as the instigator of the action which the writer condemns and says—'I do not envy Councillor Hugh Hunter when he is put into the witness-box to justify his action in this matter of tar macadam. The saving of his own footpath and his condemnation of another quite as good is not the least of the subjects on which he will have to give evidence.' The third article relates chiefly to a criticism of the methods of paving adopted by the council and the pursuer's alleged inconsistencies in dealing with the paving of the footpaths and streets. It refers, however, to people 'who have fads and interests of their own, as if it were their duty, after their own ends were served, to prevent any improvement whatever being carried out.' Taking the articles as a whole, especially in view of the passages I have quoted, I am unable to affirm that they are not reasonably capable of being innuendoed as a charge against the pursuer of taking advantage of his position to throw the burden of taking over and repairing footpaths of property belonging to himself upon the burgh, while he caused footpaths of a like character and in a like position belonging to other proprietors to be reconstructed at their expense, which is equivalent to saying that in his municipal position the pursuer acted corruptly for his personal benefit. It is not necessary to affirm that the articles complained of can only bear this meaning or are not susceptible of another and non-defamatory construction. This is the question which the jury will have to decide if the case goes to trial.

"I may add that I thought it only fair to the defenders that the particular charge which the pursuer says they made against him in these articles should be formulated in the issue, and the pursuer has now altered the issue in accordance with my suggestion. I think there would be more risk of a miscarriage if the jury were asked simply to say whether the articles represented that the pursuer had been unfaithful to his public trust or had acted corruptly for his personal benefit, as diverse meanings might be put by the individual jurymen on these general words. I shall accordingly approve of the issue as now amended as the issue for the trial of the cause."

The defenders reclaimed, and argued—They did not maintain that the innuendo was not slanderous, but they maintained that it was not justified from the articles. These attacked the Town Council's illogical method of dealing with paving in the burgh. They were not directed against the pursuer's private character. The articles did not complain of the way pursuer's paving had been dealt with, but that the pavement of others had not been dealt with in the same way—the former was right, the latter wrong.

Argued for the pursuer (respondent)—If the articles could reasonably be read by an ordinary man as meaning the innuendo, that was sufficient to justify the issue, even if another non-slanderous meaning might also be possible—*Ritchie & Company* v. *Sexton*, March 19, 1891, 18 R. (H.L.) 20, 28 S.L.R. 945. Reference was also made to *Brims* v. *Reid & Sons*, May 28, 1885, 12 R. 1016, 22 S.L.R. 670.

LORD JUSTICE-CLERK—The case has been put upon the right footing by the pursuer. The question is not what is the meaning of these articles as derived from a critical reading of them, but what the words used would convey to an ordinary reader reading the articles as articles in newspapers are usually read. So reading them, I cannot help thinking that they convey the suggestion that something corrupt had been done by a member of the town council, who was convener of the committee charged with looking after streets and footpaths, and that he had obtained a favour improperly with regard to his own pavement. What the writer of the article wishes to know is whether this was a perquisite of the convener's office, and whether any others had been favoured in the same way. The first article would be enough by itself to justify the innuendo in the issue, but the other articles quoted give point to what has been said in the first. I think we should adhere to the interlocutor reclaimed against.

LORD KYLLACHY—I agree. I indicate no opinion as to whether a jury would be right or wrong in affirming the innuendo put upon the articles by the pursuer. On the question now before us I have had considerable difficulty, but I am not prepared to differ from the Lord Ordinary and your Lordships.

LORD STORMONTH DARLING—The innuendo in the issue proposed by the pursuer and approved by the Lord Ordinary throws a heavy onus on the pursuer, because, before he can get a verdict he must show that the articles mean that he acted corruptly for his personal benefit. The sting of the allegation as interpreted by the pursuer is that he aided and abetted in throwing upon the public funds the expense of repairing his pavement. The question at the trial will not be whether in fact he did so act, for in the absence of an issue of *veritas* the presumption will be that he did not. The question will be whether the articles fairly read alleged that he did. The pursuer may have difficulty in getting a verdict on this issue, but that an ordinary reader might reasonably extract the meaning innuendoed out of the articles I have no doubt, and that is enough at this stage of the case to entitle the pursuer to the issue proposed.

LORD LOW—I agree. I have no doubt that these articles are reasonably capable of bearing the innuendo put upon them by the pursuer, and that is quite enough to enable us to adhere to the interlocutor of the Lord Ordinary

The Court adhered.

Counsel for the Pursuer (Respondent)—G. Watt, K.C.—Constable. Agents—Constable & Sym, W.S.

Counsel for the Defenders (Reclaimers)—Hunter, K.C.—Horne. Agents—M. J. Brown, Son, & Company, S.S.C.

Tuesday, March 13.

FIRST DIVISION.

[Lord Johnston, Ordinary.

WALKER *v.* SMITH AND OTHERS.

Partnership — Mandate — Law-Agency — Implied Mandate—Power of Partner to Bind Firm—Partner of Law-Agent's Firm Borrowing Money on Security of Property Vested in Third Party—Obligation by Firm to Produce Deed Vesting Property in Partner Granted by the Partner.

It is not within the implied mandate of the partner of a firm of law-agents to grant a letter of obligation in the name of the firm undertaking to produce a deed vesting in him property on the security of which he is borrowing money, but which stands vested in a third party.

Agent and Client—Law-Agent Acting on Behalf of Lender—Scope of Authority—Borrower a Partner of a Firm of Law-Agents—Acceptance by Lender's Agent of Obligation Granted by Borrower in his Firm's Name to Produce Deed Vesting Security-Subjects in Borrower.

Held (*per* Lord Johnston, Ordinary) that a law-agent acting on behalf of a client, who was lending money to a member of a firm of law-agents, was not justified in accepting from the borrower, without ascertaining that he had his partners' authority, an obligation granted by him but in his firm's name undertaking to produce a deed vesting in the borrower the security-subjects which stood vested in a third party, and consequently that the lender could not on the obligation recover from the borrower's partners.

Bar — Mora — Contributory Negligence — Obligation by Partner in Name of Firm —Fraud of Partner—Delay in Enforcing Obligation.

A member of a firm of law-agents borrowing money for his own use granted an obligation in his firm's name undertaking to produce a deed vesting in himself the security-subjects which stood vested in a third party. The lender's agent accepted the obligation, but no steps were taken to enforce it. Nine years later the lender sought, on the obligation, to recover from the partners of the borrower's dissolved firm. *Held* (*per* Lord Johnston, Ordinary) that the lender could not recover from the partners other than the borrower inasmuch as her agent had contributed to the loss in not seeing that the obligation was fulfilled.

On 1st December 1904 Miss Annabella Walker raised an action for payment of the sum of £220, 13s. 4d. against William Kidd Smith, Robert Boyd, and William Cunningham Wilson, who had carried on business as law-agents in partnership under the firm name of Smith, Boyd, & Wilson, until the dissolution of the firm in 1896.

On 3rd July 1895 the defender Smith borrowed from the pursuer £200, and on the same date Smith granted to the pursuer a bond and disposition and assignation in security of certain ground-annuals, which was recorded on 4th July 1895. Along with the said bond and disposition and assignation the titles to the ground-annuals were delivered to the pursuer, and from these it appeared that the ground-annuals were vested in Dr William L. Muir, of Glasgow. In this transaction the pursuer's agent was W. P. M. Black, and at the settlement the defender Smith handed to him the following letter:— "11 West Regent Street,

"Glasgow, *3rd July* 1895.

"W. P. M. Black, Esq., Writer,

"Wellington Street.

"Dear Sir, *Loan of* £200.

"Referring to the settlement of this transaction to-day, we undertake to record and deliver to you (1) disposition and assignation in favour of Mr Smith, and (2) to bring down and exhibit to you clear search, and to purge the search of any incumbrances not at present disclosed in the search.—Yours faithfully,

"SMITH, BOYD, & WILSON."

The signature to this letter was written by the defender Smith. The pursuer also averred that at the settlement of the transaction Smith exhibited to Black a disposition and assignation of the ground-annuals purporting to be granted by Muir in favour of Smith, but the defenders Boyd & Wilson did not admit this, and averred that any such deed if produced must have been fabricated by Smith.

It was admitted by the pursuer that at the time the loan was made the pursuer's agent Black was aware that Smith was borrowing the money in connection with his own private business, and not on behalf of his firm.

The interest on the loan was paid by Smith until Martinmas 1900, but after that date, although making certain small payments, he failed to pay the interest with regularity. In 1901 he was sequestrated, and at the date of the action he was still undischarged.

In 1899 Smith, for the purpose of preparing a discharge and retrocession of the bond and disposition and assignation in security, had obtained from the pur-