Thursday, February 27.

FIRST DIVISION.

[Jury Trial.

BOAL *v.* SCOTTISH CATHOLIC PRINTING COMPANY, LIMITED.

(See *ante*, 44 S.L.R. 836, 1907 S.C. 1120.)

Process—Jury Trial—Excess of Damages—New Trial—Power of Court to Restrict Damages and Refuse New Trial—Defender's Consent.

The consent of the defender as well as that of the pursuer is necessary before the Court can, in considering a motion for a new trial on the ground of excess of damages, restrict the amount of damages awarded by the jury and refuse a new trial.

Watt v. *Watt*, [1905] A.C. 115, *followed.*

Reparation—Slander—Damages—Amount of Damages—Expenses.

Circumstances in which the Court, in an action of damages for slander, restricted the amount of the jury's award of damages from £250 to £125, allowing the pursuer his expenses save in connection with the motion for a new trial.

This case is reported *ante ut supra.*

The cause, an action of damages for slander at the instance of Samuel Boal, described as a journalist and lecturer, against the Scottish Catholic Printing Company, Limited, on account of an article printed in the *Glasgow Observer* of December 1, 1906, of which paper the defenders were owners, was tried before the Lord President and a jury on the 23rd December 1907, when a verdict was returned in favour of the pursuer, the damages being assessed at £250. On 21st January 1908 the Court granted a rule, the defenders seeking to set aside the verdict on the ground of excess of damages.

The *evidence* showed that the pursuer, who had also at one time but unsuccessfully been in business as a draper, had for long been lecturing in support of Protestantism as against Roman Catholicism, and had come to Glasgow in March 1905. Here he founded in the summer of 1905 an association called the Glasgow Protestant Association, consisting of his followers, and continued to give lectures in a hall and in the open air. Members of the association paid an entrance of 6d. for men and 3d. for women, and collections were taken at the lectures. The association aimed at giving the pursuer a salary of £200 per annum, but as matter of fact the total drawings were about £93, which he received. Subsequent to the publication of the article in question, which was read as implying that the pursuer was a person capable of collecting money for charitable purposes and using it for his own private advantage, the total of the drawings for nine months was £43, the membership fell away, and would have still further diminished if the pursuer had not taken steps to clear his character—(For further details *v.* previous report.)

On the rule—argued for the pursuer—The damages awarded were not excessive and the verdict should stand. The slander was contained in a newspaper article and had had a wide circulation. There was proved direct patrimonial loss. These two points distinguished the case from *Ritchie & Son* v. *Barton*, March 16, 1883, 10 R. 813, 20 S.L.R. 530, where the Court had reduced an award of damages for slander. The only ground on which the Court would interfere with a verdict on account of excess of damages was that it was not a verdict which "twelve ordinary men would find"—*Casey* v. *United Collieries, Limited*, 1907 S.C. 690, 44 S.L.R. 522; *Landell* v. *Landell*, March 6, 1841, 3 D. 819. Applying that test the award should stand. *Casey* no doubt was a case of bodily injury, not slander, but no distinction on that ground was to be drawn. The same test had been applied in slander cases—*Hunter & Company* v. *Stubbs*, June 9, 1903, 5 F. 920, Lord M'Laren at 922, 40 S.L.R. 681. In England the rule was the same—*Praed* v. *Graham*, (1894) 24 Q.B.D. 53, Lord Esher (M.R.) at 55; Odgers on Libel and Slander, 3rd ed., 615. *Watt* v. *Watt*, [1905] A.C. 115, was referred to during the argument on the point whether the Court, to avoid a new trial, could with the pursuer's consent restrict the amount of damages, without the consent of the defenders.

Argued for the defenders—The amount of damages was excessive. The elements to be considered by the jury in assessing were (1) injury to character and credit; (2) patrimonial loss; (3) *solatium* for wounded feelings; and (4) the nature of the slander. Now no justification for the award on any one of these could be found in the evidence. The pursuer was not a public man, and what was published had done him little or no harm. His feelings could not have been wounded, for he did not take action for about a year, and the slander was a very venial one. Reasonable ground for believing the jury were influenced by prejudice or partiality was all the defenders need show to obtain a new trial—*Johnston* v. *Dilke*, June 16, 1875, 2 R. 836, L.J.C. at 840, 12 S.L.R. 486. *Ritchie & Son* v. *Barton, cit. sup.*, gave a criterion for the damages to be assessed.

At advising—(Counsel for both pursuer and defenders having stated that parties were willing to accept the decision of the Court as to the amount of damages)—

LORD PRESIDENT—The finding of the Court is that the verdict be reduced to £125, which will carry the expenses of the action with the exception of those connected with the motion for a new trial, as to which no expenses will be found due to or by either party. I think it right, for the guidance of the bar and of the profession in general, to say a few words more, for this is the first case since the decision of the House of Lords in the case of *Watt* v. *Watt*, [1905] A.C. 115, in which we have had an opportunity of stating the opinion of

the Court in this matter. After the judgment in that case it is no longer possible to follow the old practice by which, in cases where the Court thought that the amount of the damages found due by the jury was excessive but that the verdict was otherwise justified, the Court were in the habit, without consulting the defender, of giving the pursuer the alternative of accepting the amount which they thought reasonable or of facing a new trial. The case of *Watt* seems to have laid down that the consent of the pursuer only is not enough, and that a verdict for a new amount can be pronounced by the Court only with the consent of both parties. Accordingly, in the present case we should not have done as we have done to-day had we not previously obtained the consent of both parties.

I may add that, speaking as the Judge who presided at the trial, it is my opinion that, had a new trial been granted, the pursuer would again have secured a verdict, for although I do not think that any *malus animus* was proved on the part of the writer of the article, still I think that the article associated the pursuer with a somewhat doubtful transaction with which he had nothing to do, and that this had been taken advantage of to injure the pursuer in his profession. At the same time, the damages found due by the jury were excessive—more than double the whole earnings of the pursuer for the year. Looking to the fact that his character has been completely cleared, we think that the sum which we have awarded is sufficient compensation.

LORD M'LAREN—I am of the same opinion. The judgment of the House of Lords in the case of *Watt*, [1905] A.C. 115, is of course subject to the observation that it was pronounced in a case in England where the conditions and rules relating to jury practice have been largely innovated by statute, while we have kept to the practice as it existed in the time of George III, when juries in civil cases were introduced into this country. But in this case I cannot think that the differences between English and Scottish practice can prevent a decision of the House of Lords being binding on us in the Courts of Scotland. There may be cases where the defender might have good reason for refusing to consent to the assessment of damages by the Court. It might be that the verdict of the jury, in addition to being excessive in the amount of the damages awarded, was also unreasonable in the view taken of the evidence, though not so unreasonable as to warrant its being set aside as contrary to the evidence. In such a case the defender might be justified in saying, "The verdict is so absurd that I prefer to have a new trial." I may say that, if the point were open, my individual opinion would be in agreement with the judgment in the case of *Watt*.

LORD KINNEAR—I entirely agree with your Lordship. I am satisfied that the judgment of the House of Lords is binding upon us, because it proceeds upon principles which apply as much in this country as in England. I cannot doubt, after your Lordship's explanations, that the defenders in this case have exercised a wise discretion in agreeing to leave the assessment of damages to the Court, but I quite agree that we could not have compelled them to do so.

LORD PEARSON was not present.

The Court discharged the rule and refused to grant a new trial; on the motion to apply the verdict, of consent restricted the amount of damages assessed to £125, and decerned for that sum, finding the pursuer entitled to expenses, save the expenses of the motion for a new trial, to which neither party was found entitled.

Counsel for the Pursuer—Crabb Watt, K.C.—T. Trotter. Agents—Bryson & Grant, S.S.C.

Counsel for the Defenders—Morison, K.C.—Findlay. Agent—E. Rolland M'Nab, S.S.C.

Friday, March 6.

SECOND DIVISION.

[Lord Guthrie, Ordinary.

LAWRIE *v.* JAMES BROWN & COMPANY, LIMITED.

Master and Servant — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 1 (2) (*b*), *Schedule II*, 8, 14—*Agreement—Registration of Memorandum—Ordinary Action of Damages for Breach of Part of Agreement—Competency.*

An agreement between an injured workman and his employers set forth the amount of compensation to which he was entitled under the Workmen's Compensation Act 1897, and then stated that the employers agreed "in lieu of such compensation" to give the workman "regular employment" at specified work and to pay him the fixed weekly wage of 23s., and also, on the date of the agreement, the sum of £90 sterling, "and these in full of all his claims for compensation under the said Act." A memorandum of the agreement was duly recorded in terms of Schedule II (8) of the Act. The employers paid the £90, and after keeping the workman for nearly three years in their employment, and paying him the stipulated wages, dismissed him as the result of a dispute.

The workman brought an ordinary action of damages against the employers founded on breach of the contract of employment. *Held* (Lord Ardwall indicating an opinion *contra*) that the action was incompetent, inasmuch as the agreement being one and indivisible, and having become by