

yes. We cannot, of course, review the amount. We have nothing to do with that. In all these cases it is for the Court to say whether there was evidence before the arbitrator entitling him to make the award he does make, and that is what the arbitrator here means by saying "Whether . . . I was justified in awarding 15s. a-week." It is not a question of shillings or pence at all. The matter was entirely in the hands of the arbitrator, and there is no reason for this Court interfering with the award that he has made. Section 3 of Schedule I is not limited by Schedule I (1) (b). Even if it was, the arbitrator would not be outside the limits of Schedule I (1) (b) here, because it is not more than fifty per cent. of the average weekly earnings during the previous twelvemonths. But that section does not limit Schedule I (3). What the arbitrator has to do is to strike an average of the weekly earnings of the workman before the accident, the average weekly amount after the accident which he is able to earn or earning at some suitable employment or business, and then what he fixes has to bear such a relation to the amount of that difference as may in the circumstances appear proper. There is no reason for supposing that the arbitrator did not apply his mind to the true question. The facts which he holds proved warrant him in arriving at the conclusion which he did if he thought it was a just conclusion, and therefore the third question—the second question in the case—should be answered in the affirmative.

LORD SKERRINGTON—I prefer not to answer the first question, because, although I can guess its meaning, it is badly framed. On the other hand the second question fairly raises the point which alone was argued before us, viz., whether in view of the facts which he held to be proved the arbitrator was entitled to reduce the compensation to 15s. a-week, or whether he was bound to treat the appellant as a man who was still totally incapacitated. Two salient facts were proved which decide the case in favour of the respondents. In the first place, the appellant is not in fact totally incapacitated, and his services as a light worker are worth 20s. 6d. a-week. In the second place, if the appellant chooses to go from Stirling, where he now resides, to Fallin, which is a few miles off, he would receive not merely 20s. 6d. a week, but a considerably larger wage which the respondents are willing *ex gratia* to pay him. It was suggested at the debate that there existed some good reason why he should decline to leave Stirling and to take up his residence at Fallin, but no facts supporting this suggestion are to be found in the Stated Case. If the appellant's counsel had informed us that some such facts had been established at the proof, but that the arbitrator, though asked to do so, had refused to state them in the case, we should have considered the propriety of remitting the case for amendment, but no such statement and no motion for a remit were made to us.

The LORD PRESIDENT, who had not heard the case, delivered no opinion.

The decision of the Court was intimated by

LORD JOHNSTON—The precise meaning of the queries is a matter of impression, and as the general opinion of the Court is that we should decline to answer the first, and with regard to the second simply say that on the facts proved or admitted the arbitrator was entitled to award 15s. a-week as the amount of compensation, the Court's determination will be accordingly.

Counsel for the Appellant—J. Crabb Watt, K.C.—Scott. Agent—E. Rolland M'Nab, S.S.C.

Counsel for the Respondents—Horne, K.C.—Carmont. Agents—W. & J. Burness, W.S.

Thursday, February 24.

FIRST DIVISION.

[Lord Anderson, Ordinary.

M'VICAR v. BARBOUR.

Proof—Evidence—Slander—Innuendo—Two Occasions with One Witness only to Prove each, the Expressions used being Different though the same Innuendo was Attributed to them.

In an action of damages for slander the pursuer founded upon certain statements made concerning her by the defender on two different and unconnected occasions. The words used were different on each occasion, but were innuendoed to bear the same meaning. At the trial one witness spoke to the use of the words founded on the one occasion, and one witness to the use of the words on the other occasion. Both witnesses attributed to the words the meaning specified in the innuendo. A separate issue was taken for each of the occasions, and the jury found for the pursuer on both issues. *Held* that the verdict of the jury was supported by sufficient evidence.

Juliet Stewart M'Vicar, *pursuer*, brought an action against John Barbour, *defender*, concluding for £1000 damages for slander.

It was admitted that there was a *fama* in the district to the effect that the pursuer had improper and immoral relations with a Mr M'Douall. The pursuer averred that on three occasions the defender made certain statements of and concerning her which she innuendoed to mean that she had had immoral relations with M'Douall. Different words were used on the different occasions, and the occasions themselves were unconnected. The defender denied having made any such statements.

On 2nd November 1915 the Lord Ordinary (ANDERSON) approved of the following issues—"1. Whether, in or about the month of September 1908, on or near the Eldrick Road, on the Logan estate, Wigtownshire, and in the presence and hearing of James M'Garva, forester, Logan, the defender did falsely and calumniously say of and concerning the pursuer 'You (M'Garva) have

not got a big daughter to entertain M'Douall like M'Vicar,' or did use words of the like import and effect of and concerning the pursuer, meaning thereby that the pursuer had immoral relations with Andrew Kenneth M'Douall, of Logan, to the loss, injury, and damage of the pursuer. 3. Whether, in or about the month of July 1909, near Inshanks Farm, Wigtownshire, and in the presence and hearing of William Hutton, Port-Logan, the defender did falsely and calumniously say of and concerning the pursuer, 'M'Douall plays with Juliet M'Vicar,' or did use words of the like import and effect of and concerning the pursuer, meaning thereby that the pursuer had immoral relations with the said Andrew Kenneth M'Douall, to the loss, injury, and damage of the pursuer. Damages laid at £1000 sterling."

The case was tried by Lord Anderson and a jury on 20th and 21st December 1915.

The jury found for the pursuer on the first and third issue.

At the trial one witness, James M'Garva, spoke to the use of the words in the first issue by the defender, and stated that he understood those words to mean that the pursuer had been guilty of immoral conduct with M'Douall. The only other person who could have heard the conversation was Alexander Rodie, who was adduced as a witness for the defender, and stated he did not remember the use of the words.

One witness, William Hutton, spoke to the use of the words in the third issue by the defender, and stated that he understood those words to mean that the pursuer had had immoral relations with M'Douall. The only other person present was George Nelson, who had died before the date of the trial.

The defender moved for a new trial on the ground that the verdict was contrary to the evidence.

At the hearing on the rule, argued for the pursuer—The verdict was supported by sufficient legal evidence. The evidence led on the third issue was corroborative of the evidence led on the first issue, and *vice versa*, and that amounted to sufficient legal evidence on both issues, for the slander was in each case the same though the words expressing it were different—Dickson on Evidence (1887 ed.), sec. 1808; *Landels v. Gray*, 1816, 1 Mur. 79. Lapse of time between the occasions was immaterial—*Ramsay v. Nairne*, 1833, 11 S. 1033, *per* Lord President Hope at p. 1046; *Dougall v. Dougall*, 1833, 11 S. 1020, *per* Lord President Hope at p. 1026; *Wilson v. Weir*, 1861, 24 D. 67; *Cullen v. Ewing*, 1832, 10 S. 497. The rule was the same in actions for divorce and in the criminal law—Hume, Comm., ii, 385.

Argued for the defender—The evidence of one witness as to facts occurring on one occasion could not be corroborated by the evidence of another witness as to facts occurring on another occasion so as to prove one fact unless there was some connection between the two occasions, and also only if no other witness was available on either occasion. In *Wilson's*, *Landels's*, *Ramsay's*, and *Dougall's* cases (*cit.*) there was a connection between the occasions. In this case

the slander itself was not a connecting link, for the words used were different on the different occasions. It was of the essence of slander that the persons who heard the words took a slanderous meaning from them—*Abrahams v. Bernhart*, 1912 S.C. 748, 49 S.L.R. 574—but it was impossible to say that the fact that a slanderous meaning was taken by one person from one set of words on one occasion was corroborative of the fact that another person had taken the same meaning from a different set of words on another occasion. Further, corroboration by iteration had no application when there were other available witnesses, as was the case here—*Wilson v. Weir (cit.)*. This form of corroboration was exceptional and limited to well-known classes of cases, *e.g.*, actions of divorce for adultery—*Murray v. Dickson*, 1847, 9 D. 1556; *Whyte v. Whyte*, 1884, 11 R. 710, 21 S.L.R. 470. In an action of damages for rape averments as to criminal assaults on other women unconnected with the assault in question were not remitted to probation—*A v. B*, 1895, 22 R. 402, 32 S.L.R. 297; *Dombrowitzki v. Dombrowitzki*, 1895, 22 R. 906, 32 S.L.R. 681; *Inglis v. National Bank of Scotland*, 1909 S.C. 1038, 46 S.L.R. 730; *Oswald v. Fairs*, 1911 S.C. 257, 48 S.L.R. 279; *H. v. P.*, 1905, 8 F. 232, 43 S.L.R. 258; *Kinnear v. Brander*, 1914 S.C. (J.) 141, *per* Lord Dundas at p. 145, 7 Ad. 456, 51 S.L.R. 660.

At advising—

LORD PRESIDENT—This is an action of damages for slander which went to the jury on three separate issues. They found for the pursuer on the first and third issues and made no finding on the second, and it was agreed that that was a finding in favour of the defender. The sole question we have now to consider is whether the verdict in the pursuer's favour on the first and third issues can stand. It is impeached on the ground that it is contrary to evidence. It is certain that the pursuer adduced in support of each of the first and third issues—one witness and one witness only. The question is whether that is sufficient by the law of Scotland. I am of opinion that it is, and that if the jury believed, as they appear to have believed, the evidence of M'Garva, to whom the words in the first issue were spoken, and Hutton, to whom the words set out in the third issue were spoken, they were entitled to find, as they did, in favour of the pursuer on the first and third issues.

There was before us no challenge on the part of the defender of the soundness of the rule or doctrine in the law of evidence, which is stated as follows by a familiar text writer—"In an action of damages for uttering the same slander on two or more occasions the case may go to the jury on the evidence of one witness in each instance, for the witnesses mutually corroborate each other"—Dickson on Evidence, title 8. It will be observed that this rule is not confined in its application to cases in which the occasions all occurred in the same place; the *locus* of each occasion may be different. Nor is it confined to cases where there are no more than

one witness present. Nor is it essential that there should be some connecting link between the different occasions, or that they should have occurred at close intervals of time. The rule as laid down and accepted by counsel for the defender here contains no such limitations.

But it was contended that the slanders here were not the same but different, and that unless the words actually spoken were identical or substantially identical the rule was not applicable. I am not of that opinion. In my view, although the words actually used were different, if they substantially meant the same thing, then the rule, even viewing it in its narrowest acceptation, would be applicable.

Now that is so in the present case, because, although the words actually used as set out in the first and third issues were different, the meaning was the same. They were innuendoed as meaning the same thing. They were understood in the same sense by the persons to whom they were addressed, namely, as making a charge of immoral relations upon the part of the pursuer with her father's master. Indeed, it appears to me that there can be found in the books no stronger example for the application of the rule than we now find before us.

In the case of *Cullen v. Ewing*, (1832) 10 S. 497, the pursuer alleged three different slanders—she said that she had been accused (first) of resetting a ton of coals, (second) of entering into a fraudulent conspiracy to defeat the landlord's right of hypothec, and (third) of keeping a disorderly house. Now these were different slanders. They were not the same in the sense in which they are the same in the case before us. But Lord President Hope in charging the jury said that although there was only one witness adduced in support of the third of the three slanders—that of keeping a disorderly house—nevertheless, the evidence given in support of the other two might be prayed in aid. His words were these—“In regard to the objection that the slanderous conversations with Thomson”—that is the one witness adduced in support of the third slander—“were proved by only one witness, it would have been a good objection had that witness been unsupported. But the judicial slanders of similar tenor and directed against the same party were a corroboration of Thomson sufficient to constitute a competent evidence by the law of Scotland, which was fit to go before a jury that they might say whether it convinced them.” Now the slanders there, as I have pointed out, were not the same, and I may point out that the occasions there were separated not by months but by years.

In the case of *Dougal v. Dougal*, (1833) 11 S. 1020, an attack was made upon the professional character of a medical practitioner. On two occasions he was accused, it was alleged by the defender, of more or less unskilful treatment of a patient and, on a third occasion, of lifting dead bodies. And yet I find that Lord President Hope in charging the jury said—“Had the issue

embraced two occasions of uttering the same slander, and one witness had spoken to each, that might have been legal proof of both. For although one uncorroborated witness could not prove a fact, yet the deposition of each witness, in the case supposed, would have been corroborative of the deposition of the other.” That, I apprehend, is sound law, and it signifies nothing whether the different occasions were embraced in one issue or in separate issues.

In the case of *Ramsay v. Nairne*, (1833) 11 S. 1033, there were seventeen issues laid before the jury or set out in the case, but only the third, fourth, and fifth alleged the same slander. The third issue was supported by one witness and one witness only. The fourth issue was withdrawn altogether from the jury, and the fifth it was agreed had not been proved. Lord President Hope in charging the jury said—“In regard to the third issue it has been argued that there has been no legal proof, as the conversation is only sworn to by one witness. But the conversation is not of an isolated and detached character. It is connected with other alleged acts of scandal of the same kind and by the same party. One witness to each act, when there are more acts than one all of which hang together, undoubtedly makes legal proof of the whole. Were it otherwise, any man might propagate scandal to five hundred individuals, and if he only took the precaution of telling it to one at a time, he might defy the injured party to prove his offence. But that is not the law of Scotland.”

And lastly, in the case of *Wilson v. Weir and Strang*, 1861, 24 D. 67, there were three separate and distinct slanders alleged—the pursuer complained that on one occasion he was called a thief, a robber, an embezzler, and a scoundrel; that on the second occasion he was accused of embezzling a sum of money; and that on the third occasion he was accused of stealing a portmanteau from a Liverpool steamer. In support of the last occasion one witness and one witness only was adduced. The Court held, however, that *veritas* had been proved and constituted an adequate defence to the first and second slanders I have mentioned. Yet I find Lord Cowan in delivering the judgment of the Court saying—“There remains the third act of slander”—the charge of theft from a Liverpool steamer—“specially set forth in article 8th of the condescendence. This stands in the peculiar position, that in its substance the slanderous statement is sworn to as having been uttered by the defender on the occasion libelled by the witness Alexander Russell, and that it is not met in defence by any proof of *veritas*. The evidence of Russell, however, stands uncorroborated. . . . The question thus is, whether this charge of slander does not also fail because of not being supported by legal evidence. I can understand the ground on which the Sheriff, in this respect taking a different view from his Substitute, held this act of slander to be proved, as explained by him in the note to his interlocutor—that is, that ‘where a summons or indictment is laid upon

several acts it is not necessary to bring two witnesses to prove each act, but it is sufficient if each is proved by one credible witness, the proof in relation to the others being held as supplementing the first.' This may be true, and I am far from saying that had the other alleged acts of slander—that is to say, the act of embezzlement and the charge of being a thief, a robber, and the rest of it—“or either of them, being established, this principle might not have supported and rendered Russell's single testimony sufficient evidence of this third act of slander. The legal rule on this point is well explained by Mr Hume, and would, I think, have been applicable to such a case as this, had it stood on the proof, as I have supposed. But when the other acts of slander have been either not proved at all or proved not to be slander because of the statements made being true, the single witness to the remaining act of slander is left unsupported, and is insufficient in law to establish the charge.” From this I gather that Lord Cowan held that had the general charge of being a thief, a robber, and so on, and the charge of having embezzled money been supported, they would have been sufficient corroboration of the charge of theft from the Liverpool steamer.

From an examination of these cases it appears therefore that the present is a much clearer and stronger case for the application of the rule to which I have referred than any of the prior cases. And accordingly if the jury, as I assume they did, believed the evidence of the two witnesses adduced in support of each of the first and the third issue, then they were entitled to find as they did, and we cannot disturb their verdict on the ground that it was contrary to evidence.

I am very far from saying that I would have returned the same verdict. I acknowledge that, this slander being very stale and the pursuer not only having failed to prove, but having made no attempt to prove, the very serious charge against the defender of having originated as well as having attempted to spread the slander, and there being evidence that on several occasions when the slander was uttered by others in the defender's presence he stoutly stood up for the pursuer's character, I might have come to a different conclusion from the jury. But that is of no moment. All these considerations were before the jury, and I assume were duly weighed by them when they found for the pursuer. I can find no legal ground upon which we can set aside this verdict on the ground that it is contrary to evidence. Therefore I move your Lordships to discharge the rule for a new trial.

LORD JOHNSTON — I have experienced much difficulty in disposing of this case, and not the less that I have been aware that your Lordships had come to be of the opinion which your Lordship has announced. Still I think that it is a serious question here whether the evidence is either competent or sufficient to support the verdict.

But before I come to state my ground of

doubt I must preface that my first impression is that the decision of the case before us does not depend upon the question of competency, by which I understand legal sufficiency of evidence, but upon the more common question whether there was evidence in support of the verdict upon which the jury could reasonably proceed. As, however, the case has been argued as if it depended on competency, and as if it was all plain sailing once that question was determined in the pursuer's favour, and as your Lordship's judgment would appear to take that restricted line, I shall state the reasons which lead me to follow your Lordship with great hesitation before I state what I think should be the true ground of judgment.

On the first point, then, of competency—legal sufficiency—the matter which has caused me doubt is this. Your Lordship has referred to the leading text writer on evidence, who summarises the law thus—“By the law of Scotland the testimony of one witness, however credible, is not full proof of any ground of action or defence, either in a civil or a criminal cause. . . . But this rule does not require that two witnesses should swear to every fact in the case. . . . In an action of damages for uttering the same slander on two or more occasions, the case may go to the jury on the evidence of one witness to each instance, for the witnesses mutually corroborate each other”—Dickson, secs. 1807 and 1808. But I venture to think that the learned writer's own expression required interpretation. What does he mean by “one witness”? Is it sufficient to adduce one witness to each of the two or three different occasions only where there could in the nature of things be no more than one witness, or is it enough to adduce only one witness where you have two, three, or it may be five hundred persons present all just as able to speak? I question whether the latter can be his meaning, for he commences by presenting the idea of “full proof,” and assumes that full proof is in the circumstances not possible, but may be made good by lateral support. I do not think that any of the leading cases to which your Lordship has referred clears up this matter. In *Landles v. Gray*, (1816) 1 Murray 79, two utterances of the same slander, expressed in language if not identical closely similar, were separately put in issue. There could be but one witness to each other than the party charged with the slander, as in both instances the alleged slanders were uttered in private conversation. In each case the one possible witness was called to prove the slander put in issue. There the evidence stopped, and the case went to the jury on these two witnesses for the pursuer, no evidence being led for the defender, as the only other possible witness was the defender himself, and he was excluded by the law as it stood at the date of the action. The two witnesses swearing respectively to the two different instances of slander were held sufficient in law. But they were the sole possible witnesses.

The two other cases on which the principle of the legal sufficiency of such proof

stands present the same feature. They are *Ramsay*, 1833, 11 S. 1033, and *Wilson v. Weir*, 1861, 24 D. 67. If you examine either of these cases you will find that the Judges on whose opinions reliance is put could not by any possibility have been speaking of anything except the case where one witness and one witness only was physically possible, because, to take *Ramsay's* case, there were a large number of instances put in issue, as many indeed as seventeen, all bearing on the same general slander. Far the larger number of them were cases of written slander. But the 3rd, 4th, 5th, 6th, and 12th were cases of spoken slander. The 4th, 5th, and 6th were abandoned, and only the 3rd and 12th went to the jury. In the 3rd the *locus* was the Parliament House, the conversation passing between two Writers to the Signet, the defender and Arnott, no one else being suggested as being within hearing. The 12th was an occasion of precisely the same character; and in charging the jury the Lord President (Hope) said regarding the 3rd issue—"The conversation is not of an isolated and detached character. It is connected with other alleged acts of scandal of the same kind and by the same party. One witness to each act, when there are more acts than one, all of which hang together, undoubtedly makes legal proof of the whole;" and he added that the same observation applied to the 12th issue. Two things are to be noted—first, that the whole alleged slanders *hung together* in an unusual way. They were all written or uttered by a Writer to the Signet in the too eager championship of his client's cause, and all harped on the same string. Here they are three isolated alleged utterances spread over nine months, and unconnected except by the fact that if uttered they made the same imputation on the character of the same person. There was nothing of the connected course of action about them. Second, that there was only one person other than the defender, who was legally excluded, who could be a witness.

The case of *Wilson v. Weir* does not advance the matter. Three instances of slander were alleged, in one of which only was there one possible witness, a man Russell. The Sheriff held the whole three instances of the slander alleged proved, accepting the evidence of Russell, who alone deponed to the third, as sufficient on the principle here contended for. While reversing the Sheriff along the whole line, Lord Cowan is reported to have said—"I am far from saying that had the other alleged acts of slander or either of them been established, this principle might not have supported and rendered Russell's single testimony sufficient evidence of the third act of slander." As the other two instances were not proved, in no view could the principle apply. When I find in all three cases the Judges whose opinions are founded on, speaking with reference to a state of circumstances where only one witness was in the nature of things possible, I hesitate to hold that they intended their words to apply to a case where the possibility of full proof existed, and where the pur-

suer does not choose to adduce, though he could so if he chose, what the law regards as full proof. I am somewhat confirmed in my hesitation when I find Lord President Hope in *Ramsay's* case justifying the principle or practice which he was applying, on the ground that otherwise a man might utter the most heinous slander to five hundred people with impunity, provided he took the precaution of communicating it to each of them separately one at a time. I think this shows that he had in his mind just the case which was before him, of there being in the nature of things but one possible witness to the utterance and no possibility of full legal proof. I cannot conceive, to reverse his Lordship's analogy, that, given the allegation of the utterance of an identical or similar slander in the presence of three successive meetings of five hundred people, he would have accepted as sufficient legal proof the evidence of one witness from each meeting. I venture therefore to doubt whether the principle to which the pursuer has appealed in support of her verdict goes so far as your Lordship is prepared to carry it. But there is in this case an element not present in *Ramsay's* case, and which cannot be overlooked. This is not a direct slander, but is one which requires to be innuendoed, and in each of the three issues is innuendoed. In *Ramsay's* case both the 3rd and 12th issues were issues of direct slander requiring no innuendo. The question then arises whether you can, where it is necessary to innuendo, not only prove the slander but prove the innuendo by one witness.

But I not only doubt the legal sufficiency of the evidence in this case in support of the verdict; I also doubt whether the case can be simply solved by appeal to the principle of legal sufficiency; and I am disposed to think that the real question to be determined is whether there is evidence on which the jury as reasonable men could have brought in the verdict in question.

In expressing this further doubt I should wish to say that my questioning the verdict in no way is intended to endorse the imputation on the pursuer's character. My own view is that she has suffered a grievous wrong from the gossip of the countryside which was flying about some years ago, without her knowledge and with no apparent foundation, and which was, unfortunately for her, brought to the surface once more by Mr M'Douall's ill-judged and improper action of using the episode for his own purposes in 1913. But the question is, has she brought this stale slander home to the defender, and I think he is entitled to an expression of my doubt, as if the verdict stands it carries with it the imputation on him of being, if not the originator, at any rate the chief spreader of a cruel slander, and of now resorting to perjury in his defence. I think therefore that I am bound, entertaining the doubts which I do, to express them.

The pursuer alleges four and puts in issue three instances attributed to the defender of a slanderous report which she alleges has been for years circulating in the district in

which she lived, imputing improper relations between her and Mr M'Douall, the proprietor of the estate on which her father was first gamekeeper and afterwards grieve. These three instances so put in issue are alleged to have occurred in 1908 and 1909 and to have been spread over nine months. The person alleged to have uttered them is John Barbour, at the time a tenant on the estate. There is no explanation of why he should in 1908-9 have been interested in spreading the fama, and in rather a vicious way if the allegations on record are true, though there might have been had the date been 1912-13. Though averring that these slanderous reports had been going about for years, the pursuer says they only came to her ears in September 1914.

I see no reason for questioning this last statement, although it is extraordinary that her father had known of the report for at least two years, if not more, and her mother for nine months, and had taken no steps. At the same time one commences the consideration of the evidence with the fact that the slander, so far as the defender is concerned, was stale. Five to six years had elapsed. Next we have the peculiar feature that in April 1912 the defender and Mr M'Douall fell out on the subject of game, followed by instant warning to the defender to remove, which he had to do at Whitsunday 1913. In connection with his removal defender claimed compensation, *inter alia*, for capricious removal, which again Mr M'Douall in his defence justified by alleging that the present defender, the claimant in the arbitration, had been instrumental in spreading the above slanderous reports, coupling his name with that of the pursuer. Proof on the subject was led in the arbitration, but failed to impress the arbiter. What strikes one as noticeable is that the slanderous reports should have been circulating for so long, as there is no doubt that they had been, and yet no one been found to fasten them upon except this dismissed tenant of Mr M'Douall. And not only was the alleged slander stale, and so mixed up with Mr M'Douall's quarrel with the defender as his tenant, but there is this important feature in the history of the case, that a number of most unexceptionable witnesses came forward to prove that the defender had when they brought up the subject in conversation with him scouted the idea of there having been anything in the stories, holding that the characters of of both parties attacked were entirely above suspicion.

In these circumstances the least that can be said is that the allegations against the defender must be proved by exceptionally clear and reliable evidence.

The first instance of the slander put in issue is said to have been uttered in presence of James M'Garva, but as it is said that the innuendo meaning of the words spoken was attributed to them "*by the parties* who heard them at the time," there must have been other possible witnesses. M'Garva is the only witness adduced by the pursuer. He speaks of the instance, is contradicted by the defender—now a competent witness

—and is certainly not confirmed, but, as I think, is substantially contradicted by Rodie, the only other person whom we know to have been present and who was called by the defender.

The second instance is spoken to by Bradshaw, but he is so discredited that the pursuer's counsel abandoned it.

The third instance is spoken to by Hutton alone. Now the other two slanders, if proved, really require no proof of innuendo, the import of the words alleged to have been used is so clear. But the case to which Hutton is brought to speak is not so. It is one where the words alleged to have been uttered are susceptible of an innocent as well as a slanderous meaning, and this, I think, justified the doubt which I have ventured to express as to whether, where an innuendo has to be established, you can do that by the evidence of one witness. Hutton was only the one possible witness, because another witness had died in the interim. But there was hearsay evidence of his reference as to the occasion and it was not confirmatory of Hutton, who was also contradicted by the defender.

The fourth instance alleged on record is specific, not merely general, terms, but not put in issue, was said to have been addressed to Laird, the local schoolmaster. When referred to the statement on record by the defender's counsel he said at once "That statement is absolutely false."

In these circumstances, look at what the evidence was which was really laid before the jury. You have No. 1 instance spoken to by one witness at the instance of the pursuer, countered by evidence on the other side. You have No. 2 instance so discredited that it has to be withdrawn. And you have No. 3 instance and its innuendo spoken to by one witness. You have a fourth instance alleged on record which the pursuer dare not put in issue, the evidence regarding which is led by the defender, and you find it emphatically denied that the occasion alleged ever happened by the man who is said to have been the only witness to it.

First, then, let us see where the principle of proof of each of several instances of slander by one witness would lead us. We should have the defender convicted of a heinous attack, thrice repeated, on a respectable woman's character on the strength of the evidence for the pursuer of one witness in the first case contradicted by the defender's proof; of one witness in the second case so discredited as to be abandoned to his fate; and of one witness in the third case, on whose evidence doubt is thrown by hearsay, but of whom alone it can be truly said that he was the only possible witness.

It is, I think, a strong thing to say that any one of these cases, even if the principle of the sufficiency of one witness be applicable to them, receives corroboration from the other two, so that in combination they establish the general issue of slander.

Second, let us look at the question from the ordinary point of view, and as I think the proper point of view, viz., of the sufficiency of this evidence to satisfy twelve

reasonable men who had heard not merely the evidence of the pursuer's one witness to each instance but the whole evidence in the case. When one regards the staleness of the slander, the circumstances which surround its disinterment, the total failure of one of the cases put in issue, the trumped-up nature of a fourth instance specifically alleged on record but which never reached the jury, and the general evidence of the defender's attitude towards the fama, which was none of his creating but was certainly a matter of public property, and, in the light of all this, weigh the very unsatisfactory nature of the evidence for the two instances, to each of which one witness only is got to speak for the pursuer, I cannot help entertaining very grave doubt of the verdict, and expressing great hesitation in concurring in the discharge of the rule.

LORD MACKENZIE—The question in this case is whether there was legal evidence upon which the jury could find for the pursuer upon the first and third issues.

I think that the law on this subject is correctly laid down in *Dickson on Evidence*, 1887 edition, title 8, where this is said, that "in an action of damages for uttering the same slander on two or more occasions, the case may go to the jury on the evidence of one witness to each instance, for the witnesses mutually corroborate each other." And the cases which in my opinion are sufficient to justify that statement of the law are *Ramsay v. Nairne*, 1833, 11 S. 1033, *Dougal*, 1833, 11 S. 1020, and the case of *Wilson*, 1861, 24 D. 67. We were referred to some more recent cases and it was said that remarks had been made which might be taken to conflict with what was there laid down. In my opinion these latter cases deal with different topics and in no way affect what was laid down in the cases I have referred to. If the slanders are different then they must be proved independently. This is stated in the sentence of *Dickson on Evidence* that follows the one I read.

As I followed the argument of the Solicitor-General, it was this, that you must make an exception to that general rule in the cases (first) where there is a possibility of calling other witnesses, and (second) where the words used require to be innuendoed. Now as regards the first of these I am myself unable to see how the legal sufficiency of the evidence depends upon excluding the idea that there were other witnesses who might have been called. That is a matter which may be urged with great force to the jury as a reason why the jury should not accept the evidence of a single witness. It does not affect the legal sufficiency of the evidence, because the logical conclusion of accepting that doctrine would be that if you had two witnesses and one of them died before the case was tried, then the evidence of the one who survived would be legally sufficient, although if the other had been living it would not. I think that no exception of that kind can be made in applying the rule.

Nor can I see ground for excepting from

the general statement of the law cases where you require to innuendo the words used. I understand the Solicitor-General's argument turned very much upon the fact that there were two separate issues here and that there was no general issue on the question whether the defender had imputed immoral relations to the pursuer with the person named. The case must, in my opinion, be taken as if there was one general issue that on two separate occasions the defender used words which did mean that the pursuer had immoral relations with the person named in the issue. If the words used conveyed the same meaning on each occasion it is sufficient if one witness speak to each occasion. It is analogous to a criminal indictment which sets out that in pursuance of a scheme to obtain money under false pretences you did, first, pretend to A and, second, pretend to B. In a case of that kind, no doubt, it would be competent to prove a general scheme by the evidence of one witness to each occasion, provided the same false pretences were alleged.

The truth is that the difficulty in this case is not the law. It cannot possibly be the law that the same slander might be uttered to a hundred different people, and provided there was only one witness to each the slander could not be proved. I think that cannot possibly be the law. The difficulty in the case is in regard to the sufficiency of the evidence. But the difficulty there would be exactly the same if you had a dozen witnesses to prove issue 1 and a dozen witnesses to prove issue 3. Stale slanders they may very well be described to be and with a considerable interval of time between them. Obviously that is a case in which the jury might very well have said—"It may be that there is legal evidence but the evidence is not sufficient for us. This action was brought in March 1915 to recover damages for slander alleged to have been uttered in September 1908 and July 1909. We may add there appears to be no truth whatever in the suggestion made, and indeed the defender has stoutly repudiated that there was ever any truth in the story at all."

But the jury has taken a different view, and we cannot interfere with the jury in what is their proper province. Accordingly once it is settled that there was legal evidence, then we cannot touch the verdict in favour of the pursuer.

LORD SKERRINGTON, who had not heard the case, delivered no opinion.

The Court discharged the rule.

Counsel for the Pursuer—Watt, K.C.—Duffes. Agent—James G. Bryson, Solicitor.

Counsel for the Defender—The Solicitor-General (Morison, K.C.)—Macquisten. Agents—Simpson & Marwick, W.S.