general meeting of the company held on 29th November 1888, be continued, but subject to the supervision of the Court, in terms and with the powers conferred by the Companies Acts 1862 to 1886: Recal the appointment of James Alexander Molleson as provisional official liquidator of the estate and effects of the said company: Of consent confirm the appointment of the petitioner, the said John Frederick Moffatt, as liquidator of the said company, in terms of and with all the powers conferred by the said Acts: Also confirm the appointment of Thomas Aitken, 5 Grosvenor Crescent, Edinburgh, Robert, Clark, printer, Edinburgh, and James Macdonald, S.S.C. there, as a committee to advise with the liquidator in relation to all matters or questions arising in the liquidation: Declare that any of the proceedings under the said voluntary winding-up may be adopted as the Court may think fit: And declare that the creditors, contributories, and liquidator of the said company, and all other persons interested are to be at liberty to apply to the Court as there may be just occasion: Further, direct and ordain that unless and until it shall be otherwise directed and ordained by the Court, the liquidator shall not effect any compromise with any contributory except with the special leave of the Court: Find the said Thomas Aitken and Robert Clark and William Halden Beattie and David M'Gibbon, the petitioners, entitled to the expenses of the petition, and direct the same to be expenses in the liquidation, and remit to Lord Kinnear, Ordinary, in terms of the 6th section of the Companies Act 1886, to proceed in the subsequent proceedings in the winding-up; and decern."

Counsel for the Petitioners and for Mr J. F. Moffatt, C.A. — Graham Murray. Agents — Davidson & Syme, W.S.

Saturday, December 1.

FIRST DIVISION.

[Sheriff of Lanarkshire.

GUDGEON *v.* OUTRAM.

Reparation—Slander—Issue—Innuendo.

The following article appeared in a newspaper—"Fire at Ayr Farina Mills. Singular conduct of the manager. . . . It appears that the proceedings at the fire were somewhat unusual. The alarm was given, and the fire brigade turned out, but on their arrival at the gate of the establishment they were refused admittance by the manager Mr Gudgeon, who said they could manage the fire themselves. Superintendent M'Kay, the chief of the police, and some of his men were also refused admittance, although the fire was breaking through the roof of the buildings. Superintendent M'Kay and his men eventually got into the premises by climbing over the wall, and the fire brigade seem to have got in by forcing open the gate. . . . Mr Gudgeon ordered Superintendent M'Kay to take away the hose, but the Superintendent said he had no power to do so, and the fire brigade commenced to play on the flames, which were soon got under."

In an action of damages by the manager against the proprietors and publishers of the paper for alleged slander through the publication of the above article, *held* that the pursuer was entitled to an issue, but that an innuendo was necessary, to the effect that in so acting the manager had endeavoured to prevent the fire from being subdued, so as to cause the destruction of the works and stock therein.

Robert Gudgeon, manager of the Ayr Farina Mills, sued Messrs George Outram & Company, printers, publishers, and proprietors of the *Glasgow Evening Times* and the *Glasgow Weekly Herald*, for £2000 as damages for alleged slander.

On 17th September 1888 a fire occurred at the Farina Mills, Ayr, and the defenders published articles commenting on the occurrence in both their papers. The articles were in practically identical terms, and the following is the article which appeared in the *Glasgow Weekly Herald*:—"Fire at Ayr Farina Mills. Singular conduct of the manager. A fire occurred on Monday in Messrs Hyland & Company's Farina Mills, Ayr, and before the flames were got under, damage to the extent of £150 was done. It appears that the proceedings at the fire were somewhat unusual. The alarm was given, and the fire brigade turned out, but on their arrival at the gate of the establishment they were refused admittance by the manager Mr Gudgeon, who said they could manage the fire themselves. Superintendent M'Kay, the chief of the police, and some of his men were also refused admittance, although the fire was breaking through the roof of the buildings. Superintendent M'Kay and his men eventually got into the premises by climbing over the wall, and the fire brigade seem to have got in by forcing open the gate. They were followed by the crowd. Mr Gudgeon ordered Superintendent M'Kay to take away the hose, but the Superintendent said he had no power to do so, and the fire brigade commenced to play on the flames, which were soon got under. The Farina Mill is rather isolated, and is situated on the banks of the Ayr. The fire originated in the drying stove, in which a high temperature is kept up."

The pursuer averred, *inter alia*—"(Cond. 6) The said articles, immediately above quoted, are false, and are slanders and libels of, against, and concerning the pursuer, and falsely, calumniously and injuriously represented and represent to the public that the pursuer had endeavoured to cause destruction of the said works and stock by fire, or at all events had endeavoured to prevent the fire being subdued and so cause destruction of the premises and stock, and had committed or endeavoured to commit the crime of fire-raising, and the crime of causing further destruction by fire to said works and stock as aforesaid and so defraud the insurance companies with whom the same were insured, or one or more of said crimes or offences. In any event, the pursuer is falsely and calumniously represented thereby as culpably acting in violation of his duty as manager in connection with

and regarding the said fire. By these paragraphs, and by the representations thereby conveyed to the public, the pursuer's feelings have been deeply injured, and his reputation and business position have also been, and may still further be, very injuriously affected, to his serious loss and damage. The works, &c., under his charge may have increased rates to pay for insurance, or insurance companies may decline such risks altogether, in consequence of the said articles, and so cause the pursuer to lose his occupation, or at all events materially injure his position."

To which the defenders answered—"Denied. The defenders entirely repudiate the construction which the pursuer seeks to place upon the notices referred to."

The pursuer pleaded—"(2) The defenders having falsely and calumniously accused the pursuer of committing, or endeavouring to commit, the crimes or offences libelled, the latter is entitled to solatium and reparation therefor. (3) The articles complained of by the pursuer having been published in regard to him by the defenders, and intended and understood to bear the actionable meaning put upon them by the pursuer in his condescendence, he is entitled to solatium and reparation therefor from the defenders."

The Sheriff-Substitute (GUTHRIE) allowed a proof before answer.

"*Note.*—I cannot say that it would be clearly unreasonable and unnatural for a jury to find that the innuendos here stated are implied in the report in the defenders' newspapers. That was the only point argued."

The pursuer appealed to the First Division of the Court of Session, and proposed the following issues for the trial of the case:—"(1) Whether the said articles, or part thereof, are of and concerning the pursuer, and are false and calumnious, and to the loss, injury, and damage of the pursuer? (2) Whether the said articles, or part thereof, are of and concerning the pursuer, and falsely and calumniously represent that he, being the manager of Thomas Hyland & Company's works in Ayr, had endeavoured to prevent the fire at the said works referred to in the said articles from being subdued, to the loss, injury, and damage of the pursuer?"

The appellant argued—The article was obviously enough calumnious, if false, without the addition of any innuendo. The first issue should therefore be allowed—*Mackay* v. *Wicks*, March 6, 1886, 13 R. 732. As to the second issue, the article could bear the innuendo put upon it, and when so innuendoed was undoubtedly slanderous.

The respondent argued—The article was not necessarily libellous at all, and therefore the first issue should be disallowed. With regard to the second issue, the innuendo sought to be put on the article was strained and unnatural. "Singular conduct" was not a libellous expression, especially as the article represented the pursuer as giving a perfectly proper reason for his conduct, viz., "that they could manage the fire by themselves." At all events the issue as it stood was ambiguous, as it was not calumnious to say that the pursuer had endeavoured to prevent the fire from being subdued.

The second issue having been amended at the bar by the addition after the word "subdued" of the words, "so as to cause the destruction of said works and stock therein," the Court pronounced this interlocutor:—

"Disallow the first issue: Approve of the second issue as amended at the bar, and appoint the same to be the issue for trial of the case."

Counsel for the Pursuer—Comrie Thomson—Dickson. Agents—Gill & Pringle, W.S.

Counsel for the Defender—Graham Murray. Agents—Webster, Will, & Ritchie, S.S.C.

Tuesday, December 4.

SECOND DIVISION.

[Sheriff of Aberdeenshire.

ROSS *v.* COWIE.

Prescription—Triennial Prescription—Continuous Account.

A joiner sued the executrix of a person deceased for payment of an account extending over many years, and which *ex facie* was capable of division into three parts—(1) a portion for jobbing work; (2) a portion said to have been incurred for work and materials supplied in a building contract; (3) a portion consisting of a few small items for jobbing during the last seven years of the deceased's life. The whole was charged as a continuous account. *Held*, in a question whether it or part of it was prescribed, that it must all be treated as a continuous account, and that the executrix was not entitled to treat the first and second portions as running a separate period of prescription.

Process — Triennial Prescription—Proof before Answer.

In an action upon a joiner's account, the defender averred that two small items, at the interval of a year from each other, had been inserted merely to prevent the account from prescribing, and were not properly due by him for work done on his behalf. Proof before answer of this averment *allowed*.

This was an action by John Ross, joiner, Stonehaven, against Mrs Jane Cowie, executrix-dative *qua* relict of Alexander Cowie, sometime feuar there, for a sum of £379, 4s. 6½d. as the balance of an unpaid account for joiner work done on behalf of the deceased Alexander Cowie.

Cowie died on 25th September 1887.

The pursuer's account bore to begin at June 1875, and end at 4th May 1886. It was made up in the following manner—Under date June 1875 were sums amounting in all to £23, 2s. 6d. for jobbing work in a house in Stonehaven belonging to Cowie. From 22nd June 1876 to 28th May 1877 were entered sums amounting to £350, 19s. 3½d. for timber supplied, and for workmen's time at certain concrete houses in Stonehaven which Cowie had erected. Included in this account were two sums—one of £50, said in the account to have been paid on 22nd June 1876 to John Lindsay & Son, Montrose, being first instalment for concrete work, the other, £29, in the account said to have