issue for the trial of the cause, and it is in every way undesirable that there should be two trials. I have great doubts as to the competency of our proceeding with the cause here pending this appeal, and if any doubts exist as to the competency, that puts an end to the expediency of the course proposed.

I am therefore for refusing the motion.

LORD MURE and LORD ADAM concurred.

LORD SHAND was absent.

The Court refused the motion.

Counsel for the Pursuer — Balfour, Q.C.— Asher, Q.C. — Dundas. Agents — Dundas & Wilson, C.S.

Counsel for the Defender—Lord Adv. Robertson Q.C.—Murray—Dickson. Agents—Tods, Murray, & Jamieson, W.S.

Saturday, June 29.

FIRST DIVISION.

[Lord Wellwood, Ordinary.

BLASQUEZ *v.* LOTHIANS RACING CLUB AND ANOTHER.

Reparation—Slander—Wrongful Expulsion from Ring at Race Meeting—Jury Trial.

A went to the meeting of a racing club, and was admitted to the ring on payment of the usual charge of 10s. B, a bookmaker, having pointed him out to the inspector of the ring as a man "who owes me money," A was expelled from the ring by the police.

In an action of damages by A against the racing club and B the defenders submitted that the case was not appropriate for jury trial, in respect that it involved difficult questions (1) with regard to the construction of the Jockey Club rules, under which the meeting was held, and which conferred on the racing club and its members neither direction nor authority in controlling the proceedings; (2) with regard to the right conferred by payment for admission to the ring, which they averred was a mere licence liable to be withdrawn for certain reasons; and (3) as to whether it was actionable to charge a person with failure to pay his gambling debts, betting being illegal. *Held* that the case was appropriate for trial by jury, and issues ordered.

Reparation—Slander—Issue—Innuendo—Counter Issue.

In an action of damages for slander the pursuer obtained an issue whether the defender in the ring or paddock of the "Lothians Racing Club and Edinburgh Meeting" at Musselburgh, and in the presence of certain parties named, falsely and calumniously said of and concerning the pursuer, "This is the man who owes me money," or used words of similar import, meaning thereby that the pursuer was owing him money on betting transactions which he dishonourably refused to pay, and was a person who ought not to be allowed to remain in the said ring or paddock, to the loss, injury, and damage of the pursuer?

The defender proposed a counter issue. *Held* that the counter issue must fully meet the *innuendo*, and must include the words "and was a person who ought not to be allowed to remain in the said ring or paddock."

On 5th October 1888 Raymond Blasquez attended the meeting of the Lothians Racing Club held on Musselburgh Links. On payment of the usual charge of 10s. he was admitted to the paddock or ring. Shortly after he had entered the ring a bookmaker named Cosmo Reid came up in company of the inspector of the ring, and pointing to Blasquez said to the inspector "This is the man who owes me money," or some words to that effect. Having received this information the inspector ordered a detective to remove Blasquez from the ring, which was done.

In consequence of his expulsion from the ring Blasquez brought the present action of damages against the members of the Racing Club and Cosmo Reid. Damages were laid at £5000 against the defenders jointly and severally, or alternatively at £3000 against the members of the Racing Club, and at £2000 against Cosmo Reid.

The pursuer's averments were to the effect that he had been wrongfully and unwarrantably expelled from the ring by the inspector, in the presence of a number of people to whom only one explanation of the incident was possible, namely, that the pursuer had been guilty of criminal or dishonourable conduct which debarred him from associating or meeting with gentlemen. As the meeting was under the management and control of the Racing Club they were responsible for the pursuer's expulsion from the ring. Reid's statement that the pursuer owed him money, and which was made in the presence of, amongst others, Augustus Powell, medical student, Edinburgh, and Walter Sprott, of the Edinburgh police force, was false and calumnious, and was meant to imply and did imply that he was owing him money on betting transactions which he dishonourably and fraudulently refused to pay, and that he was unfit to remain in the ring, and ought to be publicly and ignominiously expelled therefrom.

The defenders, the members of the Lothians Racing Club, in answer averred that the meeting was held as usual under the rules of racing of the Jockey Club, under which the Lothians Racing Club and its members had neither direction nor authority in the conduct of the proceedings at the meeting other than that they nominated the stewards and the clerk of the course, who required to be approved by the committee of the Jockey Club, and when so approved had the entire control and authority independently of the said Lothians Racing Club. Payment for admission to the ring conferred no absolute right, but a mere licence or franchise which was liable to be withdrawn; and in accordance with the rules of racing, and of all meetings conducted under the Jockey Club rules, the stewards and the clerk of the course, and the inspector of the ring, acting under their authority, had power to

exclude or expel, *inter alios*, any person who was a defaulter, or who disturbed or threatened to disturb the peace. Such power was absolutely necessary for the safety and comfort of the general public who frequented the ring. On the occasion in question the defender Reid, who was known by the inspector of the ring to hold a respectable position as a bookmaker, informed the said inspector that the pursuer was a defaulter, as he owed money to him on betting transactions. The inspector having informed the pursuer of what was alleged against him the latter returned an evasive answer, and was violent in his language and conduct, and the ring inspector, believing him to be a defaulter, and likely to create a disturbance, informed him that he must leave the enclosure, and on his refusal to go requested a detective to remove him, which he did without force or violence.

The defender Reid adopted the averment of the Lothians Racing Club that the meeting was under the rules of racing of the Jockey Club, and the statement with regard to the nature of these rules. He admitted that he informed the ring inspector that the pursuer was a defaulter, and set forth various sums which he averred were owed by the pursuer to him for betting transactions which he had executed for the pursuer on commissions.

The pursuer pleaded—"(1) The defenders, the said Lothians Racing Club, being liable and responsible for the official or officials in charge of the said ring or paddock, or for the official known as the inspector of the paddock, are liable to the pursuer in damages in respect of the wrongful expulsion of the pursuer from the said paddock. (2) The defender Cosmo Reid having instigated, procured, and been a party to the pursuer's wrongful expulsion, is liable to the pursuer in damages in respect thereof. (3) The defender, the said Cosmo Reid, having falsely, maliciously, and calumniously slandered the pursuer, is liable to the pursuer in damages. (4) The whole defenders having been jointly concerned in the pursuer's wrongful expulsion from said paddock, are jointly and severally liable to the pursuer in respect thereof."

The defenders, the Lothians Racing Club, pleaded—"(2) The statements of the pursuer are not relevant to support the conclusions of the action so far as directed against these defenders. (3) These defenders having, in terms of the rules under which the said meeting was conducted, no authority or control at the said meeting, they ought to be assoilzied. (5) *Separatim*—1st. The pursuer having, on the occasion in question, acquired no right of entry to the ring, but merely a revocable permission to be there, and no unnecessary force having been used in removing him, these defenders are not liable in damages for his expulsion as concluded for: 2nd. In respect that the ring inspector, having probable cause to believe the pursuer to be a defaulter, and to apprehend a disturbance and breach of the peace, was justified in removing the pursuer from the ring, these defenders ought to be assoilzied: 3rd. The ring inspector having used no force or violence towards the pursuer, but merely, in the performance of his duty, called in the aid of the police, these defenders ought to be assoilzied."

The defender Reid pleaded—"(1) The pursuer's averments being irrelevant and insufficient, the action ought to be dismissed. (3) The statement complained of as having been made by the defender to an official of the Lothians Racing Club, being true in point of fact, neither it nor the actings of the said official or others thereon, can form a just ground of action against this defender. (4) The defender, not having authorised nor asked the exclusion or ejection of the pursuer from the said ring or paddock, is entitled to absolvitor."

The Lord Ordinary (WELLWOOD) on 28th May 1889 allowed parties a proof of their respective averments, and to the pursuer a conjunct probation, and appointed the proof to proceed on a day to be afterwards fixed.

"*Opinion.*—Both defenders, the Lothians Racing Club and Cosmo Reid, plead that the action should be dismissed on the ground of irrelevancy. The objections stated for the Lothians Racing Club raised, *inter alia*, a question as to the right of the owners or occupiers of lands or premises to expel at their discretion, and without assigning any reason, a person who has paid for admission, leaving the person so expelled to recover if he can in an action for breach of contract. The defender Cosmo Reid again maintains broadly that it is not actionable to charge a man with having failed to pay a gambling debt, because betting being illegal, no one is legally bound to pay such debts. I forbear to express any opinion on those and other questions of law going to the relevancy of the pursuer's averments, because I do not think that they can be satisfactorily disposed of until the precise facts are ascertained. I have accordingly allowed a proof before answer.

"The defenders moved that in the event of my not dismissing the action the case should be tried in the way which I have directed. The pursuer, on the other hand, maintains that he is entitled to have the case tried with a jury, and that he should be allowed issues—one against both defenders applicable to the expulsion of the pursuer from the paddock, and the second against the defender Cosmo Reid in respect of the alleged slander. In ordinary circumstances, this being an action of damages and involving a question of slander should be tried with a jury; but I think that looking to the difficulty of the questions raised, and the whole character of the case, sufficient cause has been shown to warrant me in directing that it shall be disposed of on a proof before a judge without a jury. There would I think be considerable difficulty in adjusting satisfactory issues. If this difficulty were overcome the decision of some at least of the questions of law involved would remain to be argued and decided in the course of the jury trial, and the rulings and directions of the presiding Judge would almost certainly lead to exceptions at the instance of one or other of the parties, and possibly to a new trial. There would therefore in all probability be no saving of expense in sending the case to be tried with a jury, and the questions of law involved would not, I think, be so satisfactorily argued and disposed of in the course of a jury trial as on a concluded proof before answer."

The pursuer reclaimed, and argued that it was a proper case to go to a jury. It was of the class specially appropriated to trial by jury, and

a jury was quite a fitting tribunal to decide the questions which would arise.

The defenders, the Lothians Racing Club, argued that the questions which would arise in the case were difficult questions of law and of the rules of racing, *e.g.*, whether the ring inspector was responsible to the Lothians Racing Club or not, and what right the pursuer acquired by paying for admission to the ring. The case was therefore unsuitable for trial by jury—*Wood* v. *Leadbetter*, Feb. 22, 1845, 13 Meeson & Welsby, 838.

The defender and respondent Reid argued that a difficult question of law might arise as to whether it was a libel to call anyone a defaulter, betting debts not being exigible at law. It would also be difficult to present the case to a jury so as to do justice to the cases of the separate defenders.

At advising—

Lord President—I have always a delicacy in interfering with the discretion of a Lord Ordinary in a case of this kind, but I can see no sufficient cause in the present case to deprive the pursuer of his right to go to a jury. The questions which will be submitted are all questions of unmixed fact. Of course there may be points requiring direction, but counsel for the defence have entirely failed to specify any difficult questions which are likely to arise at the trial, and I do not see reason to anticipate that there will be any. I think therefore the interlocutor of the Lord Ordinary should be recalled, and the pursuer appointed to lodge issues.

Lord Mure—This is one of those actions particularly set apart for trial by jury by statute, and I think there must be very specific reasons for not sending it to a jury. No doubt there may be questions of some little difficulty raised at the trial, but not sufficient difficulty to render the case unfit to go to a jury.

Lord Shand—I share in your Lordships' unwillingness to disturb the Lord Ordinary's decision with regard to the mode of trial of a case, and I listened attentively to see what nice questions of law might arise, but I do not think that this is a case in which any nice questions of will require to be considered at the trial. The members of a jury are probably much more familiar with race meetings than a judge would be, and more suited to deal with the questions likely to arise in a case of this kind. I think this is an appropriate as well as an appropriated case for trial by jury.

Lord Adam—I agree with your Lordships. *Prima facie* when an action arises out of a dispute on a racecourse it looks as if a jury were a more appropriate tribunal than a judge. I do not see any reason to anticipate that the Judge presiding at the trial will not be able to deal with and explain to the jury any questions of law which may arise.

The Court recalled the interlocutor of the Lord Ordinary and appointed the pursuer to lodge issues for trial of the cause.

The following issues were proposed by the pursuer—"(1) Whether, on or about 5th October 1888, within the ring or paddock of the 'Lothians Racing Club and Edinburgh Meeting, at Musselburgh, the defender Cosmo Reid, in the presence and hearing of Augustus Francis Meredith Powell, medical student, Edinburgh, and Walter Sprott of Edinburgh Police Force, and others, falsely and calumniously said of and concerning the pursuer, 'This is the man who owes me money,' or used words of similar import, meaning thereby that the pursuer was owing him money on betting transactions which he dishonourably refused to pay, and that the pursuer ought not to be allowed to remain in the said ring or paddock, to the loss, injury, and damage of the pursuer? Damages laid at £2000. (2) Whether, on or about 5th October 1888, the defenders, The Lothians Racing Club, through their officials, and the defenders Cosmo Reid, or one or other of said defenders, or those for whom the said defenders are responsible, wrongfully expelled the pursuer or caused him to be expelled from the ring or paddock of the 'Lothians Racing Club and Edinburgh Meeting' at Musselburgh, to the loss, injury, and damage of the pursuer? Damages laid at £5000."

The defender Reid maintained that the words in the latter part of the first issue, "and that the pursuer ought not to be allowed to remain in the said ring or paddock," ought to be deleted from the issue as being not in any reasonable sense the meaning of the words said to be used by him, but a consequence deduced by the pursuer from what preceded them in the *innuendo*. He offered to take a counter issue, "Whether the pursuer was owing the defender money on betting transactions which he dishonourably refused to pay."

The pursuer argued—That the counter issue of the defender must be made to meet the issue of the pursuer. The latter part of their issue was a substantial part of the libel, and the defender's issue must meet it. If there were different parts of a libel, it was quite competent to prove justification of one part and not another, but here there was only one libellous statement—*Torrance* v. *Weddel*, December 12, 1868, 7 Macph. 243; *M'Iver* v. *M'Neill*, June 28, 1873, 11 Macph. 777; *Bertram* v. *Pace*, March 7, 1885, 12 R. 798; *Ogilvie* v. *Paul, &c.*, June 28, 1873, 11 Macph. 776.

At advising—

Lord President—I think these words should be added to the counter issue for the defender Reid.

Lord Mure—I think the defender Reid must prove the allegation contained in these words as part of his defence, and I do not think there is any hardship in requiring him to do so, because if a person is distinctly proved not to pay his racing debts, one may be entitled to infer from that that he is not a person to be allowed to remain in the ring. I accordingly do not see any harm in the addition of these words, and think they should be inserted.

Lord Shand—I agree with Lord Mure that there is no need to add these words. If the defender makes out the first part of his counter issue, he substantially meets the issue for the pursuer. But I am in the same condition of mind as Lord Mure, and see no harm in the addition of these words.

LORD ADAM—The concluding words of the pursuer's issue form, I think, a substantial part of the libel, and if there is to be a counter issue, it must be made to meet that issue, and must include these words.

The Court approved of the following issues for the trial of the cause—"(1) Whether, on or about 5th October 1888, within the ring or paddock of the 'Lothians Racing Club and Edinburgh Meeting' at Musselburgh, the defender Cosmo Reid, in the presence and hearing of Augustus Francis Meredith Powell, medical student, Edinburgh, and Walter Sprott, of Edinburgh Police Force, and others, falsely and calumniously said of and concerning the pursuer, 'This is the man who owes me money,' or used words of similiar import, meaning thereby that the pursuer was owing him money on betting transactions which he dishonourably refused to pay, and was a person who ought not to be allowed to remain in the said ring or paddock, to the loss, injury, and damage of the pursuer?—Damages laid at £2000. Or whether the pursuer was owing the defender money on betting transactions which he dishonourably refused to pay, and was a person who ought not to be allowed to remain in the said ring or paddock? (2) Whether, on or about 5th October 1888, the defender Cosmo Reid wrongfully expelled the pursuer, or caused him to be expelled, from the ring or paddock of the 'Lothians Racing Club and Edinburgh Meeting' at Musselburgh, to the loss, injury, and damage of the pursuer?—Damages laid at £5000. (3) Whether, on or about 5th October 1888, the defenders, the Lothians Racing Club, wrongfully expelled the pursuer, or caused him to be expelled, from the ring or paddock of the 'Lothians Racing Club and Edinburgh Meeting' at Musselburgh, to the loss, injury, and damage of the pursuer?—Damages laid at £5000."

Counsel for the Pursuer—Graham Murray—Wilson. Agent—A. W. Gordon, Solicitor.

Counsel for the Defenders, the Lothians Racing Club—Comrie Thomson—H. Johnston. Agents—Gillespie & Paterson, W.S.

Counsel for the Defender Reid—M'Kechnie—Sym. Agent—D. Hill Murray, S.S.C.

Tuesday, July 2.

FIRST DIVISION.

[Lord Kyllachy, Ordinary on the Bills.

MARSHALL & AITKEN *v.* MILLAR.

Sequestration—Compromise of Claim—Resolution of Creditors—Right of Creditor to Sue.

The brother of a bankrupt before the sequestration had received certain funds of the bankrupt and paid therewith certain of his creditors. The trustee on the estate agreed to receive the balance of these funds in full of all claims against the bankrupt's brother, who in turn waived certain alleged claims against the trust-estate for payments made by him on behalf of the bankrupt before the funds came into his hands. A special general meeting of creditors approved of this settlement, and rejected a counter motion by a creditor that as he was prepared to guarantee the expenses in an action against the bankrupt's brother in connection with his alleged illegal intromissions as agent for the bankrupt, the trustee should be requested to give his consent to the said action. The Court *refused* an appeal by this creditor, in respect that the transaction between the trustee and the bankrupt's brother was truly of the nature of a compromise, and that loss might possibly result to the trust-estate if the question was re-opened.

The estates of Captain J. A. L. Campbell were sequestrated on 28th August 1888, and R. C. Millar, C.A., was appointed trustee thereon. The bankrupt had retired in the previous April from the service, and had then received a gratuity of £1200 from the War Office. That sum had at first been put to his credit with Messrs Cox & Company, and subsequently, after deduction of £67, 11s. 10d., the balance due to Messrs Cox & Company by the bankrupt, the remainder, amounting to £1132, 8s. 2d., had been transferred to the account of the bankrupt's brother Captain E. P. Campbell.

On 3rd October the trustee wrote to Captain E. P. Campbell's agent, Mr Greig, for an account of the disbursements made by Captain E. P. Campbell from that sum, and relative vouchers. In reply Mr Greig sent (1) an account showing that Captain E. P. Campbell had disbursed £891, 2s. 7d. of the above sum in payments on behalf of Captain J. A. L. Campbell; and (2) an account of previous payments made by Captain E. P. Campbell to or for Captain J. A. L. Campbell amounting to £1042. He also sent the relative vouchers.

On 15th November the trustee, with the consent of the only commissioner then acting on the estate, wrote to Mr Greig as follows—"I beg to acknowledge receipt of your letter of 14th inst. with the vouchers therein referred to, with the further exception of the £5 paid W. Gordon on 9th February, of which only a memorandum without any account has been produced. I have very carefully considered the accounts sent to me by you, and I am advised that I must claim payment of the balance of the £1200, the gratuity paid on Captain Campbell's retirement, under deduction only of the sums legally paid thereout of by Captain E. P. Campbell. Without prejudice to my right to sue for a larger sum, I am disposed to accept the balance of the £1200 0 0

Less—

Retained by Cox & Co.	£67	11	10	
and paid per account	801	2	7	
				958 14 5
Balance, .				£241 5 7

if paid to me within five days, as a full accounting by Captain E. P. Campbell with said sum of £1200. I hope you will be able to advise Captain E. P. Campbell to pay over that amount, and should I not receive payment within five days, this letter is to be held *pro non scripto.*"

On 22nd November Mr Greig replied in the following terms—"Referring to your letter of