then comes the question, what are we to do at this stage of such a case? Although I may be inclined to draw certain inferences from the tenor and import of this decree, I think it does require consideration, and has certain sanctions attached to it. It is a decree which has received effect in the process of 1815. It had then been produced, and no objections had been taken to it or none had received effect. Then there has been acquiescence in that view of matters for fifty years. There was sufficient opportunity to bring an augmentation, and there were strong considerations to induce the minister to do so. He has not done so. I think, therefore, there has been acquiescence. In these circumstances I think this decree requires further discussion. At what stage is that to be had? If we grant the augmentation at present, it would appear the result would be that the heritors would be compelled to pay under the interim scheme of locality, although it might be ascertained in the discussion of the final scheme that this was a valid decree. That would be inconsistent with justice. Therefore, I am disposed to sist procedure until an action of declarator is raised for the purpose of ascertaining the validity or invalidity of this decree; and I think this action should be at the instance of the minister. Meantime, he will have the benefit of the date at which he has brought his augmentation.

The LORD JUSTICE-CLERK—I concur; but I cannot help expressing regret that there are no means of trying such a question as this in the process of augmentation. Whether it would be competent to us to grant the augmentation conditionally upon there being found to be free teind, and remitting to the Lord Ordinary to ascertain that before preparation of the interim scheme, I give no opinion. But I cannot help saying that I do not see any reason why this should not be made competent by Act of Sederunt, there being no statute law on the subject. But I don't much regret, in the present case, that we should come to the conclusion of requiring the minister to clear his way by an action of declarator, because the incumbent of the parish since 1815, having remained quiescent, it is no great hardship that he should be called upon to take a step which, under other circumstances, might be a hardship.

The other Judges concurred.

Agent for the Minister—John Gillespie, W.S.

Agents for the Heritors—Tods, Murray, & Jamieson, W.S.

COURT OF SESSION.

Thursday, Dec. 20.

FIRST DIVISION.

CRAIG *v.* TAYLOR.

Expenses. A pursuer of an action of damages, who obtained a verdict with one farthing of damages, held entitled to expenses.

This was an action of damages for defamation at the instance of William Blackburn Craig, merchant in Glasgow, against William Taylor, junior, oil merchant and colour manufacturers, Liverpool. The case was tried before Lord Ormidale and a jury on the 17th July 1866, upon the following issue:—

"It being admitted that on or about the 14th day of March 1866, the defender, William Taylor, junior, wrote and transmitted to the pursuer a letter in the following terms:—"Liverpool, March 14, 1866. Sir,—Yours of the 13th inst. to hand. Just as I expected, '*your orders plentiful* yr. money *nowhere*, but there are too many of this class in your Town particularly—please try elsewhere, but friends in my way of business in this Town will have the opportunity of reading your communications. I cannot say I wish you better fortune elsewhere, because I believe Yr. system shd. be put a stop to. Yours, &c.,

(Signed) "W. TAYLOR, Jr.

"Mr Craig, Glasgow."

"Whether the said letter is of and concerning the pursuer, and falsely and calumniously represents the pursuer as a dishonest person who had sought to obtain goods from the defender, William Taylor, junior, without having the means of paying the price thereof, and without intending to pay the price thereof, and as one of a class who conducted business on the system of buying and obtaining goods without having the means of paying and without intending to pay, the price thereof, to the loss injury, and damage of the pursuer?"

Damages claimed, £500.

The jury returned a verdict for the pursuer, and assessed the damages at one farthing; and the question now in dispute was whether, under the circumstances of the case, this verdict carried expenses. The Lord Ordinary (Ormidale) on the 28th November 1866, found that it did. His Lordship observed in his note:—

"As a general rule, it cannot be denied that a pursuer of an action of damages, for slander or defamation of character, who has succeeded in obtaining a verdict, although only for nominal damages, is entitled to expenses. At the same time, it is equally undoubted that exceptional cases have occurred where a pursuer in an action of damages for slander or defamation of character has not been found entitled to expenses, notwithstanding of his having been successful in obtaining a verdict. The question here is, whether the present case falls under the general rule or the exception.

"The Lord Ordinary is of opinion that the present case is not to be treated as an exceptional one, and therefore the pursuer is entitled to expenses. In arriving at this conclusion, he has been influenced by the following considerations:—(1.) The slander or defamation by the defender, of which the pursuer complained, as set out in the issue, is of a very serious description. (2.) The jury, while by their verdict they found it proved that the slander or defamation complained of was uttered by the defender, have at the same time found that it was false and calumnious, and to the loss, injury, and damage of the pursuer. (3.) The defender down to the last made no apology or retractation; and (4.) while in consequence of no publication of the slander being proved, the jury may have thought it sufficient to give the pursuer only nominal damages, it cannot be overlooked that it was of importance to the pursuer to have the very serious charge made against him by the defender negatived by a jury; the more especially as the letter containing the slander also expressed something of the nature of a threat, that the matter would be made known by the defender to his friends in his line of business in Liverpool."

Against this interlocutor of the Lord Ordinary the defender reclaimed.

RHIND (with him RUTHERFURD CLARK), for

him, argued—1. If the case is one of damages for defamation, it falls within the exception stated in the Lord Ordinary's note, and not within the general rule. Mason *v.* Trail, 2d July 1851, 13 D. 1282; Duncan *v.* Balbirnie, March 3, 1860, 22 D. 934. 2. But this cannot be said to be an action of damages for defamation. The letter was never published beyond being sent to the pursuer; and thus the injury done was one not to his character but to his feelings only. Lovi *v.* Wood, 1st June 1802, Hume p. 613.

The SOLICITOR-GENERAL and SHAND, for the pursuer, were not called upon.

The LORD PRESIDENT—It appears to me that this verdict ought to carry expenses. A distinction has been drawn between injury to character and injury to feelings only. But the letter complained of is couched in language held to be slanderous by the jury, and we must hold it to be so, and to mean what is expressed therein. I think probably the jury went on the ground that this letter had not occasioned any injury except injury to the pursuer's feelings. But I do not think this is a case for departing from the ordinary rule that a verdict for nominal damages carries expenses.

The other Judges concurred.

The Court accordingly affirmed the judgment of the Lord Ordinary.

Agents for Pursuer—J. W. & J. Mackenzie, W.S.
Agent for Defender—R. P. Stevenson, S.S.C.

Friday, Dec. 21.

FIRST DIVISION.

CAMPBELL *v.* CAMPBELL.

Trust—Vesting. A testator left the liferent of certain lands to his widow, and directed that on her death they should be conveyed to his nephew in the event of his surviving him. He also left an English will dated on the same day, in which he appointed his trustees to permit his widow to have the free use of certain furniture, &c., during her lifetime (which provision she afterwards renounced), and also directed them at any time after his death to convert his personal estate into money, and invest the residue in trust for his nephew. The nephew survived the testator, but predeceased the widow, leaving a settlement in favour of his mother. Held that the right to the lands and the furniture had vested in the nephew, and was carried by his settlement.

By trust-disposition and settlement, executed on the 26th June 1860, and recorded on 30th May 1862, Colonel John Campbell of Melfort conveyed to trustees the lands of Kilchoan and others, with directions to them "to permit his wife, Mrs Louisa Farquhar Ricketts or Campbell, to have and enjoy the use of the said lands and others, including the residence on Kilchoan, during all the days of her life, she paying the yearly burdens to which liferenters are liable." The deed further provided that on her decease the lands should be conveyed and made over in fee to the truster's nephew, "Archibald Frederick Campbell, son of his late brother, William Frederick Campbell, in case of his survivance of the said deceased Colonel John Campbell, and the heirs male of his body; . . . . and in case of the predecease of the said Archibald Frederick Campbell . . . . the trustees were directed, on the death of his said wife, ... to sell, dispose of, and realise his said estate, and apply the proceeds thereof and all accumulations of rent in their hands to and among the truster's sisters who might then be surviving, and the issue of any of his brothers and sisters who might have died in his lifetime." Of same date with this disposition, Colonel Campbell executed a will in the English form, by which he appointed the trustees under the trust-disposition as his executors, and directed them to permit his said wife, "besides her liferent interest in the farm and residence at Kilchoan, to have the free use and enjoyment during her lifetime of the furniture, bed and table linen in and about his said residence, and of all his silver plate and plated articles;" and after her death to deliver over the same to his residuary legatee. The executors were further directed, at any time they might see fit after his decease, to call in and convert into money such other parts of his said personal estate as should not consist of money; and after paying deathbed and funeral expenses, to invest the residue of his personal estate "in trust for his said nephew, Archibald Frederick Campbell, the son of his deceased brother, William Frederick Campbell (who would then be head of his family) as his residuary legatee, his executors, administrators, and assigns; but if the said Archibald Frederick Campbell should die during his lifetime, then in trust for the first and only son of his said nephew, Archibald Frederick Campbell, who should live to attain the age of twenty-one years absolutely; and in case there should be no such son, then in trust for the first and only son of his deceased brother, Patrick Campbell, ... and in case there should be no such son, in trust for such of his sisters as might be living at his death, and for such of the issue living at his death of any of his brothers and sisters who might have died in his lifetime. But declaring always, that in case the said trust-funds so payable to the said Archibald Frederick Campbell, or his son, or the son of his late brother Patrick . . . should exceed in value (exclusive of the value of his furniture and bed and table linen at his residence at Kilchoan, and of his plate) the sum of £5000 sterling, all excess over such sum shall be payable and paid to and among his sisters, and the issue of his deceased brothers and sisters." By marriage settlement in the English form, of date 15th April 1839, Colonel Campbell had, prior to the date of the above deeds, and in contemplation of his marriage with Mrs Louisa Farquhar Ricketts or Campbell, agreed to pay to certain trustees a sum of £5000 within six months after his decease, in addition to another sum of £5000, therein narrated to have been that day paid to the said trustees.

Colonel John Campbell died on the 1st October 1861. He was survived by his wife, Mrs Louisa Farquhar Campbell; and on his decease the parties named in the above trust-disposition and settlement accepted and entered upon their office as his trustees and executors. The widow having claimed her provision both under the marriage-contract and under the *mortis causa* deed, Archibald Frederick Campbell, on the 26th September 1862, raised an action against her and against the testamentary trustees of his late uncle, concluding for declarator that she had, under the testamentary deeds of Colonel Campbell, accepted a liferent of the lands of Kilchoan in place of the sum of £5000, agreed by the marriage-settlement to be paid to her upon his decease; and, further, that the testamentary trustees should be interdicted from paying that sum of £5000; or otherwise to have it found that