clearly establish that the proposed evidence was intended to prove this against him; and the discussion on any isolated questions was taken on this footing. Such was simply evidence of the *veritas convicii*, which in our law is inadmissible without an issue in justification, which was not taken here. What was sought to be proved was not mitigatory circumstances, such as that the defender had heard from credible persons what she had alleged, and the like. It was direct evidence of the facts forming the slander. There was nothing to prevent the defender from taking an issue on these facts. They were such as from their nature were capable of direct proof. As the defender took no issue in justification, and so did not give the pursuer any warning to protect himself against the effect of the evidence, she was not entitled to lead the evidence; and it would have been gross injustice to the pursuer to have allowed her to do so.

Lord Mure—Upon the question of privilege, I adopted at the trial very much the views which your Lordship has expressed; and I should not think it necessary to add anything to what has been already said, were it not for the difficulties raised by Lord Deas. I agree with his Lordship that it was a somewhat difficult matter to determine the issue on which the case was to be tried. In the issue proposed, and ultimately approved of by my interlocutor of the 7th March, the difficulty was to see what in point of fact was the slander—wherein the slander which was charged consisted. But upon the best consideration I could give to the case I came to the conclusion that there was no necessity of inserting any inuendo, such as that contained in the 8th article of the condescendence, in order that the precise nature of the alleged slander might be put distinctly in issue before the jury. On the contrary, as stated in my note, I was satisfied that the words used were in themselves sufficiently distinct and direct to render it unnecessary to insert any interpretation of them in the issue.

If the defender had thought it advisable to justify her expressions, she must have taken a counter issue in the same terms. Such counter issue was not taken; and therefore, assuming that the words were used by the defender, a proof of their truth when applied to the pursuer was no part of her case. That being so, the first question objected to, which was put to Dr Christison, went at once to prove the *veritas*, or at least to mitigate damages. Both were, under the circumstances, incompetent. Then later in the case a similar question was put to the defender herself, and objected to, as introductory to proving the *veritas*. It was here arranged that the whole discussion should take place upon the question of privilege, and as to the admission of this evidence. This discussion did take place, and I gave my ruling on both points. But your Lordship will observe from my notes of the evidence that I did not stop the defender from leading this evidence up to a certain point. I allowed proof to show under what belief or impression the defender had acted, so long as it stopped short of proving the *veritas*, either as a bar or as in mitigation of damages. The result was that I allowed the defender to prove generally the existence of the riot, and all the circumstances connected with it, except that the pursuer was taking part and was a ringleader in it. I even allowed proof that the pursuer was at Surgeons' Hall at the time, and that the defender had heard certain reports connected with the matter. I considered I was bound to do so after the decision in the case of *Scott* v. *M'Gavin*. But beyond that I did not think myself authorised to go, for anything farther must have been proof of the *veritas*.

Exceptions disallowed.

On a subsequent motion to apply the verdict, a discussion took place upon the subject of expenses. The Lord Ordinary had, in accordance with section 40 of the Court of Session Act, 1868, certified the case as one brought for the vindication of character, and, in his opinion, fit to be tried in the Court of Session. The defender maintained that this was not a case in which the pursuer should get his costs, and referred to *Duncan* v. *Balbirnie*, 22 D. 944; *Ross* v. *M'Vey*, 22 D. 1144; *Borthwick*, 2 Macph. 125; *Rogers* v. *Dick*, 2 Macph. 591; *Craig* v. *Taylor*, 5 Macph. 203, etc.

The Court, after consideration (diss. Lord Deas) held that the pursuer was entitled to his costs.

Agents for Pursuer—Pattison & Rhind, W.S.

Agents for Defender—Millar, Allardice & Robson, W.S.

Saturday, July 1.

ANN THOMSON AND OTHERS.

Judicial Factor — Executor. Circumstances in which the Court *appointed* a judicial factor on the estate of a deceased, one of two executors-nominate being absent from the country, and the other having a large claim as a creditor on the estate.

This was a petition for the appointment of a judicial factor on the estate of the deceased John Thomson, farmer at Finlaggan, Islay. Mr Thomson died on the 21st February 1869, leaving a holograph testament, by which he appointed his sister, Ann Thomson, and his cousin, Dr M'Nicol, his joint executors, along with a natural son (then fourteen years of age), when he should attain majority. The value of the estate was said to be about £1900, of which the greater part was to be liferented by the testator's mother, and at her death to be paid to the said son. Miss Thomson, and her sister Mrs Pragnell, had large claims on the estate as creditors. Dr M'Nicol was acting as a ship surgeon. He was home for a short time in March 1871, and then sailed for South America.

Miss Thomson and Mrs Pragnell accordingly presented the present petition. There were no allegations of mismanagement against Dr M'Nicol. On the contrary, it was admitted that the estate was being wound up by a local agent in a satisfactory manner. But from the absence of Dr M'Nicol, Miss Thomson was practically the sole executor on an estate against which she had a large if not exhaustive claim. In these circumstances, the petitioners submitted that it would be for the advantage of all parties if the estate were placed in neutral management.

Answers were lodged for Dr M'Nicol in his absence. It was stated that Dr M'Nicol was only taking a few voyages for the sake of professional experience, and that he intended to settle permanently at Dunoon, where he was expected about Whitsunday of the present year. It was further stated that, although the petitioners had alleged in vague terms that they had claims against the estate, they had failed to lodge any specific claims,

or supply Dr M'Nicol with any information as to their grounds; that he was perfectly ready carefully to consider any such claims, and to deal with them according to their merits; that he considered it his duty to Mr Thomson and his son to remain in office, and resist the present application.

The Lord Ordinary on the Bills, on the 20th April 1871, nominated a judicial factor.

Dr M'Nicol reclaimed; and the case was debated on the 18th May.

BALFOUR for him.

M'LAREN for the petitioners.

The Court were of opinion that it would be a strong step to supersede an executor-nominate, with no allegations of mismanagement against him. They were not in as favourable position to decide this application as they should be. Dr M'Nicol should be in this country, and the claims of the petitioners should be put in some tangible shape.

Their Lordships, with this view, superseded the application for one month, and the case came up on the roll on 1st July.

A statement of the claims of the petitioners in the executry was put in, in regard to which it is sufficient to say that they were claims in respect of various funds alleged to have fallen to the petitioners by succession, and to have been uplifted by the deceased. The total amount exceeded the value of the executry.

Dr M'Nicol had not returned to this country; and although parties were not agreed as to his intentions, it was evident that they were of a somewhat uncertain character.

At advising—

LORD PRESIDENT—This is one of those cases where it is difficult to exercise our discretion to the satisfaction of one's own mind. There are weighty considerations on both sides. The expense of a judicial factory in so small an estate is large. If there was any fair prospect of such an application being avoided in the end, I should not be disposed to appoint a judicial factor. But even if Dr M'Nicol returned, I do not see how the two joint executors could well dispose of Miss Thomson's claims. If we wait till he comes home, the strong probability is that we shall be obliged in the end to resort to a judicial factory. On a balance of considerations, I think the best course is to appoint a factor now.

LORD DEAS—I concur with some hesitation. If the executors could have assumed a third party, a judicial factory might have been avoided. But the testator has given no power of assumption. And if we refused the present application we should only be bringing back the parties before us at some future time.

LORDS ARDMILLAN and KINLOCH concurred.

On the question of expenses, the Lord President observed—I am not generally disposed to saddle the estate with the expenses of a dispute of this kind. But here the conflict between the petitioners and the absent Dr M'Nicol was inevitable. There has been a failure of administration, which has landed the estate in difficulties. The petitioners were justified in making the application. In his absence, the representatives of Dr M'Nicol were justified in lodging answers. I am inclined to say, not only that the petitioners' expenses should come out of the estate, but Dr M'Nicol's also. There would be no justice in Dr M'Nicol having to pay his expenses when he came home.

The other Judges concurred.

The Court named a judicial factor, and appointed the expenses of both parties to be paid out of the estate.

Agents for Petitioners—J. & R. Macandrew, W.S.

Agents for Dr M'Nicol—Murray, Beith & Murray, W.S.

Saturday, July 1.

LICKLEY, PETITIONER.

Process—Inhibition—Recall—Expenses. Inhibition having been irregularly executed and recorded on the dependence of a summons, which had never been served, the party inhibited presented a petition for its recall. Thereafter the agents of the party inhibiting produced a discharge of the inhibition, and offered to have it recorded and the whole matter arranged extrajudicially. A difficulty occurring in this arrangement, the party inhibited insisted in his petition, obtained the recall of the inhibition, and moved for his expenses. This latter motion was resisted, on the ground that an extrajudicial discharge and purging of the register had been offered and refused.

Held that after a petition had been presented for recall it would not do for the respondent to tender anything in lieu of recall; and that the petitioner being absolutely entitled to judicial recall, he was also entitled to the expenses of the application.

BIRNIE for petitioner.

KEIR for respondent.

Agents for the Petitioner—Henry & Shiress, S.S.C.

Agents for the Respondent—Andrew & Wilson, W.S.

LANDS VALUATION COURT.

Saturday, July 1.

COUNTY OF FORFAR.

(Before Lords Ormidale and Mure.)

JAMES F. WHITE, APPELLANT.

Statute 17 *and* 18 *Vict., c.* 91. Appeal partially sustained, without expenses.

Mr White, merchant, Dundee, appealed against the valuation of his house, Spring Grove, Dundee, being fixed at £200.

The assessor had entered the house in the valuation roll at £260. On appeal, the Magistrates of Dundee were of opinion that the valuation should be reduced to £200. The appellant, considering that the house was not worth more than £120, craved a case for the opinion of Her Majesty's Judges, which was accordingly stated and signed. For Mr White it was contended that the house would not let for more than £120. The Act 17 and 18 Vict., c. 91, section 6, provides, "In estimating the yearly value of lands and heritages under this Act, the same shall be taken to be the rent at which, one year with another, such lands and heritages might, in their actual state, be reasonably