renter is any reason why he should not recover this money. If he had expended the money in the character of liferenter only, and had no other claim to the estate, or believed he had no other claim to the estate, the matter would be quite different, because then we would have been under the principle of money expended by a mere temporary possessor, and in that case it would have been property on which the money had been expended for his own benefit. But that is not the case here upon the facts, and therefore I concur with Lord Shand, that as the money had been expended by Mr Gerrard in the erroneous belief that he was expending it on his own property, the true owner cannot take possession of that property without paying for the benefit which he has thus acquired.

Lord President—I concur in the opinion of Lord Shand, and the only question of much interest in law which has been raised in this case appears to me to be that which regards the right of Mr Allan to take credit for the sum of £553 paid to Mr Gerrard as the amount of improvement expenditure made by him upon the estate during the subsistence of his liferent. The general rule of law I think is quite undoubted that where a liferenter expends money in improving the subject of his liferent he is to be presumed to do so for the purpose of enhancing his own benefit and enjoyment of the estate. But this rule is founded upon a presumption only, and I think that presumption must yield to the facts and circumstances of the particular case whenever these are sufficient to show that there is a view in the mind of the liferenter, and a purpose for which the improvements were made inconsistent with the notion that they were made with a view to his own personal enjoyment of the estate only. In short, I think the presumption may be rebutted by the facts and circumstances of any particular case, and I agree very much in the observations made by Lord Adam with respect to this particular case that Mr Gerrard made these improvements and expended this money under the erroneous belief that he was fiar of the estate and not liferenter, and that of itself seems to me to be sufficient to overcome the presumption upon which the ordinary rule of law is founded, I think it right to add these observations upon the only question of law that is involved in this case. As regards the details of the case otherwise I really have nothing to add to what has been said by Lord Shand.

The Court adhered to the interlocutor of Lord Adam of date the 1st April 1884, and altered the interlocutor of Lord Trayner of date the 24th June 1885, to the effect of finding that the defender was entitled to take credit for the sum of £553, 11s. 3d., and also altered the interlocutor of Lord Trayner in so far as it dealt with Dallas's bond.

Counsel for Pursuers (Respondents)—J. P. B. Robertson, Q.C.—Watt. Agent—Alexander Morison, S.S.C.

Counsel for Defender (Reclaimer) — D.-F. Mackintosh, Q.C. — Begg. Agents—Baxter & Burnet, W.S.

Thursday, July 15.

SECOND DIVISION.

[Sheriff Court of Lothians at Edinburgh.

SCOTT *v.* ROY.

Process—Finding Caution for Expenses—Undischarged Bankrupt—Slander—Delay.

Circumstances in which the Court *refused* to allow an undischarged bankrupt to sue an action for slander without finding caution for the expenses, in respect the letters on which the slander was founded were not injurious to character, and in respect also of the lapse of time between their publication and the raising of the action.

In 1881 Mr William Gilchrist Roy, S.S.C., sent the following letters to Mr James Gibson Scott, who was then manager of the Money Order Bank (Limited), Mr Macdonald, Q.C., being the chairman:—

"*Edinburgh, 20th April* 1881.

"Dear Sir—I was grieved and disappointed beyond expression to-day when Mr Macdonald, the chairman, came to me to say that it has been reported to him that you were intoxicated this morning in business hours. He is so disgusted that he can scarcely think what ought to be done, and I will abstain from repeating what he said. Our conversation however ended in this, that I agreed to write you saying that unless he receives from you early on Saturday morning a written admission of the offence coupled with a humble apology and a pledge that nothing of the kind will ever occur again, he will take his own way of bringing the matter before the directors and of effectually preventing any recurrence of such a thing on your part, at least as an official of the company. For myself I will only say that I feel affronted beyond measure that anyone recommended by me should so behave, and it is a lesson to me for the future, and the only comfort I have is that Mr Macdonald and others know me too well to suppose that I to any extent *wilfully* deceived them regarding you. That they have been 'let in,' however, would seem to be undoubted."

"*Edinburgh 25th April.*

"Dear Sir—I am very sorry for your own sake that you have not written to Mr Macdonald on the subject of my letter of 20th. The result is a letter which I have received from him to-day, which I would send you but that it deals with other matters, but from which the following is a quotation—'I am quite resolved on this, that he either writes and expresses contrition, or that I take steps to have a full enquiry, with the certain result, if the facts are substantiated, of his removal from office.' It is very sad to think you are so blind to your own interests, but it would seem to be so, and the plain inference is that a man who can so neglect himself and family need not be expected to attend to any adequate degree to the interests of the Money Order Bank. I apprehend that on Mr Macdonald's return to town you will receive an awakening to a sense of your position of a kind you will ever regret, but to avert that, if still possible, I strongly recommend you to lose not another moment in writing him.

There is no use trying to blink the matter. It has gone too far for that. The last affair was blinked over, but now nothing short of a frank avowal and apology will suffice, and I do trust you will realise how grave a matter it is and that you must face it."

On 19th March 1885 Scott raised an action of damages for £1000 in respect of these letters.

The pursuer averred that he was the inventor and patentee of a system for conducting money-order business by means of stamped paper; that he entered into an agreement with Mr Macdonald on behalf of an intended company, to work his patent, to be called the Money Order Bank (Limited), and of which he was to be manager; that before the company was formally started the letters in question were written by the defender; that on 2d February 1883 "the pursuer raised an action in the Court of Session against the Money Order Bank—being the said intended company—for breach of contract in not working his said invention and the system connected therewith as per specification annexed to said agreement, and on appeal in that cause to the Inner House the two said letters by the defender to the pursuer were published in full in a print called 'Print of Documents for Respondents;'" and that "the defender, without probable cause, falsely, maliciously, and injuriously, and to the loss and damage of the pursuer, wrote and used" the said letters.

The Sheriff (DAVIDSON) held that the pursuer, whose estates had been sequestrated on 28th March 1884, and who was undischarged, must find caution for expenses, and on his failing to find it the defender was assoilzied.

The pursuer appealed.

The defender cited *Collier* v. *Ritchie & Company*, November 4, 1884, 12 R. 47, and *Clarke* v. *Muller*, January 16, 1884, 11 R. 418, in support of his contention that the lapse of time since the publication of the letters disentitled the pursuer to any relaxation of the general rule that an undischarged bankrupt must find caution.

At advising—

LORD JUSTICE-CLERK—I do not think that this is a favourable case for allowing the pursuer to proceed without finding caution. He is an undischarged bankrupt, and therefore subject to the ordinary rule as regards caution. No doubt it is within the discretion of the Court to dispense with it in exceptional cases, but I think that this action, which is founded on a privileged letter by an agent to the pursuer as late manager of the Money Order Bank, is not a favourable case for our granting the indulgence and relaxing the general rule. Mr Scott then must find caution.

LORD YOUNG—I am of the same opinion. An undischarged bankrupt divested of all his funds may not raise an action without finding caution. If it were otherwise, such a person might bring oppressive actions. There are no doubt exceptions, and one of these is where a man's character is assailed. I think that exception, however, is confined to cases of real injury sustained by such an attack on his character. The case here presents nothing of this kind, and looking to the facts of it I am clearly of opinion that the indulgence is not to be granted. The pursuer has suffered no injury that I can see. The worst which can be said of the letters is that they were superfluous, and had better perhaps have never been written. If the pursuer had found caution, and the case had come before me, I should have dismissed it on the merits as containing no defamatory matter. I can make allowance for a man, who had once acted as agent, writing letters to his old client whom he had recommended to the Money Order Bank. But I cannot in 1886 allow an undischarged bankrupt to go on with an action without caution in respect of letters written in 1881, and published in 1883 in defence of an action which he was then pursuing against the clients of the writer. Statements and publications in an action are to a large extent privileged, and these are not idle publications nor do they imply any malignity. On the whole matter, looking to the facts and circumstances of the case, I entirely agree that though this is an action of defamation it does not afford a ground for making an exception to the general rule.

LORD CRAIGHILL—I concur. The ground of my judgment is that the time which has elapsed since the letters were written disentitles pursuer to the exception to the general rule. He was aware, months and months before he raised the present action, that the letters had been published. It was only after his sequestration that he instituted the action. I cannot think he was entitled then to complain of them without being subject to the ordinary rule applicable to sequestrated bankrupts.

LORD RUTHERFURD CLARK concurred.

The Court dismissed the appeal and affirmed the judgment of the Sheriff.

Counsel for Appellant—Party.

Counsel for Respondent—M'Kechnie. Agent—W. G. Roy, S.S.C.

Thursday, July 15.

OUTER HOUSE.

[Lord M'Laren.

STEEDMAN *v.* STEEDMAN.

Proof—Witness—Citation—Registered Letter—Citation Amendment Act 1882 (45 *and* 46 *Vict. cap.* 77).

A person was cited by registered letter to appear as a witness in a cause set down for proof in the Court of Session. The letter was returned by the Post Office authorities marked "Refused." The Lord Ordinary *granted* warrant to apprehend the witness and bring him as a witness on the day fixed for proof.

This was an action of divorce at the instance of William Steedman against his wife. The ground on which divorce was concluded for was the defender's alleged adultery. The case was defended by the wife. One of the witnesses for the pursuer was Robert White, a blacksmith, residing at Lochgelly, and a citation was sent to him by registered letter. The letter was returned to the pursuer's agent by the Post Office authorities marked "refused."