no income for the year from the estate; that payment of the casualty was made by the appellant to the Duke without deduction of income-tax, because his Grace refused to allow deduction thereof, in respect that, as was admitted by the Surveyor, he was required by the Commissioners to make a special return of, and pay income-tax directly upon, all casualties received by him, and that had he allowed the appellant to retain tax in the manner provided by rules 9 and 10 of No. 4 of the general rules enacted under Schedule A of 5 and 6 Vict. cap. 35, sec. 60, he would have been submitting to a double charge. The said Duke had since made his special return, and been assessed upon the casualty. The assessment sought to be imposed upon the appellant was thus doubly charged, and as an overcharge fell to be vacated in manner provided by the Taxes Management Act 1880, section 60. The appellant therefore claimed relief from the assessment made upon him.

The Surveyor of Taxes maintained that the casualty of superiority paid by the appellant in the circumstances set forth was of the nature of a capital payment; the statute contained no provision for allowing such a payment to be deducted from or set against the rent or yearly value in assessing lands and heritages to property and income-tax, and that it was incompetent to make any such allowance. He referred to the deductions and allowances detailed in No. 5 of Schedule A of 5 and 6 Vict. cap. 35, sec. 60, also to rule 14 of No. 4 of the said section, and section 159 of the said Act, providing that no other deductions are to be allowed than such as are expressly enumerated in the Act.

The Commissioners found that the statute contained no provision authorising any allowance from an assessment under Schedule A in respect of the payment of a casualty of superiority, and therefore refused the appeal.

The appellant took a case, and argued—What was demanded was not a deduction of an assessment; it was the vacating of an assessment which was not chargeable. The rent for the year was not income or profit in the hands of the appellant, because he had been obliged to pay it all to the superior. The superior under the former law could have entered into possession to recover the amount—*Hill* v. *Caledonian Railway Company*, Dec. 21, 1877, 5 R. 86, *per* Lord Deas, 390; *Allan's Trustees* v. *Duke of Hamilton*, Jan. 12, 1858, 5 R. 510, where the Lord Justice-Clerk pointed out that where lands were in non-entry the superior is presumed to be in possession, and what the singular successor must render for his entry is the value of the beneficial enjoyment or income of the lands. See also *Sharpe* v. *Parochial Board of Latheron*, July 12, 1883, 10 R. 1163, where subjects being twice entered in a valuation-roll did not warrant the collection of poor-rate in assessing twice for them. He paid the whole rent of the lands for the year to the superior, he himself derived no benefit from them. The superior paid income-tax upon the sum so paid to him, and if the vassal was required to pay income-tax he not only paid upon value he did not receive, but the Commissioners exacted the duty twice upon the same sum, which was contrary to the terms of the Taxes Management Act 1882, sec. 60.

The respondents argued—A composition was not payment to the landlord of the rent actually drawn from the lands for that year, it was the price paid for the entry. It was a mere accident that the two sums corresponded in amount. They were two different subjects. The superior was therefore not the proprietor of the rent as contended by the appellant. The superior could only uplift the rents by virtue of legal proceedings.

At advising—

Lord Lee—This is an appeal from the decision of the Income-tax Commissioners by which the appellant was found liable to pay income-tax upon the annual value of certain lands in Argyllshire. The objection of the appellant is that the effect of the assessment imposed upon him is to charge doubly the rent for the year 1888-9—that is, to charge it with duty firstly in his hands, and again in the hands of his superior the Duke of Argyll.

This view is founded on the idea that a composition paid to a superior by a singular successor for his entry makes the superior the proprietor in right of the rents for the year in which the entry is obtained.

My opinion is that this is a fallacious view. I think that the composition is exigible not as rent, but as the price payable for the entry, and that it is a mere accident that in some cases the amount of the price is measured by a year's rent.

The vassal's right to the rents remains unimpaired so long as the superior is not in possession, and the superior could not uplift the rents without legal proceedings equivalent to declarator of non-entry. I therefore think that the determination of the Commissioners was right, and should be affirmed with expenses.

The Lord Justice-Clerk and Lord Rutherfurd Clark concurred.,

Lord Young was absent.

The Court held that the decision of the Commissioners was right.

Counsel for the Appellant—C. S. Dickson. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for the Respondents—Sol.-Gen. Darling—A. J. Young. Agent—David Crole, Solicitor for the Inland Revenue.

Saturday, February 9.

FIRST DIVISION.

[Lord Wellwood, Ordinary.

MACRAE *v.* SUTHERLAND.

Process—Caution for Expenses—Pursuer Living in England—Notour Bankruptcy—Debtors Scotland Act 1880 (43 *and* 44 *Vict. c.* 34).

Held that the pursuer of an action of damages for slander, who was living in England, and was notour bankrupt in the sense of the Debtors (Scotland) Act 1880, was not bound to find caution for expenses.

Reparation — Written Slander — Issue — Innuendo.

The owner of a house wrote to the agent of his tenant—"Thanks for your attention. That horrid man Macrae will never get a penny from me, and you know that as long as he keeps the key he is liable for the rent. There were several applicants for the place at a reduced rent on account of its being occupied by him. I do believe that he would be mobbed if he was appearing in the Strath. His statement of facts were a tissue of falsehoods." . . .

In an action of damages for slander at the instance of the tenant, he averred that these statements meant that he was of fraudulent and dishonourable character, and that he had been guilty of falsehood. *Held* that the statements would bear this innuendo.

Donald Macrae, M.D., late of Strathpeffer, and thereafter of 75 Greenwood Road, Dalston, London, raised the present action of damages for written slander against Angus Sutherland, Little Ferry Cottage, Golspie, concluding for payment of £1000.

Dr Macrae was tenant of a farm in Strathpeffer belonging to Sutherland under a lease for ten years from 1886 at a rent of £100 per annum. In November 1887 Macrae ceased to occupy the premises, alleging that they were uninhabitable. Sutherland afterwards brought an action against Macrae for the rent, and obtained a warrant for his ejection from the Sheriff on 10th July 1888. The pursuer appealed from this judgment to the Second Division of the Court of Session, but he failed to print and lodge the appeal as required by statute, and the same was accordingly held to be abandoned. On 12th October 1888 decree was granted against the pursuer for the sum of £20, 13s. 6d., expenses of said process and appeal. The decree was extracted on 15th October, and on the 17th of that month the pursuer was charged to pay the sums contained therein. The days of charge expired without payment, and the pursuer therefore became notour bankrupt within the meaning of the Debtors (Scotland) Act 1880.

Macrae removed to London, and while negotiating for the lease of a house there the landlord thereof received this anonymous letter—"Sir,—I think it my duty to inform you that Dr Macrae, who is in negotiation with you about your house, has left Strathpeffer very much in debt; his landlord there will give you his true character. I enclose his address. Dr Macrae has been followed to Dalston and his movements watched; he is a man of *no means*, and has swindled *many*. Such a man ought not to be allowed to take honest people in. From one who has suffered. Late landlord's address—Mr Sutherland, Little Ferry, Golspie, Scotland, N.B."

On 21st June 1888 the defender wrote to Robert Munro, writer, Tain, a letter in the following terms—"Dear Sir,—Thanks for your attention. That horrid man Macrae will never get a penny from me, and you know that as long as he keeps the key he is liable for the rent. There were several applicants for the place at a reduced rent on account of its being occupied by him. I do believe that he would be mobbed if he was appearing in the Strath. His statement of facts were a tissue of falsehoods. He must try some other Court. My son is a lawyer in London, and he will put him right there.—Yours truly, A. SUTHERLAND."

Macrae raised this action. He alleged that both letters had been writen by Sutherland, and that the statements made were false and calumnious. With regard to the letter of 21st June 1888 he alleged as follows—"The statements here made are of and concerning the pursuer, and are false and calumnious and malicious. They were intended to mean and do mean that the pursuer is of fraudulent and dishonourable character, and that in consequence thereof if he visited Strathpeffer he would be mobbed by the people in that locality. Further, they were intended to mean and do mean that he had been guilty of falsehood."

The defender denied the anonymous letter, and also the innuendo which the pursuer put upon the defender's letter of 21st June 1888.

The defender pleaded, *inter alia*—"(1) The pursuer having left the country and being notour bankrupt, the defender is entitled in the circumstances to have him ordained *ante omnia* to find caution for expenses. The letter of 21st June 1888 not being slanderous the defender ought to be assoilzied."

The following issues were adjusted for the trial of the cause—"1. Whether on or about 7th May 1888 the defender caused to be written and sent to Mr Bidgood, 117 Osbaldiston Road, Stokenewinton Common, Clapton, a letter in the terms set forth in the appendix hereto, marked A, which letter was received by the said Mr Bidgood? Whether the same is of and concerning the pursuer, and is false and calumnious, to the loss, injury, and damage of the pursuer? 2. It being admitted that on or about the 21st June 1888 the defender wrote and sent to Robert Munro, writer, Tain, a letter in the terms set forth in the appendix hereto annexed, marked B, and received by the said Robert Munro, Whether the same is of and concerning the pursuer, and whether the words—'I do believe that he would be mobbed if he was appearing in the Strath,' were intended to mean, and do mean that the pursuer is of fraudulent and dishonourable character, and that, in consequence thereof, if he visited Strathpeffer he would be mobbed by the people in that locality, and are false and calumnious, to the loss, injury, and damage of the pursuer?"

The two letters above quoted formed an appendix to the issues. By interlocutor of 16th January 1889 the Lord Ordinary (WELLWOOD) repelled the first plea-in-law for the defender, and approved of the issue as amended.

The defender reclaimed, and argued—This was a case in which the pursuer was bound to find caution—*Maxwell* v. *Maxwell*, March 3, 1847, 9 D. 797. He was notour bankrupt within the meaning of the Debtors (Scotland) Act 1880—*Samuel* v. *Greig*, July 12, 1844, 6 D. 1259; besides, he had now left Scotland and was permanently resident in London. The mere circumstance that the present action was one for the vindication of character was not *per se* sufficient to obviate the rule that the pursuer should find caution—*Clark* v. *Muller*, January 16, 1884, 11 R. 418. In order that a pursuer

should be liable to find caution it was not essential that he should be divested of his estate. The innuendo proposed was unfair as being too remote and too strained—*Broomfield* v. *Greig*, March 10, 1868, 6 Macph. 563; *Phosphate Sewage Company* v. *Molleson*, March 18, 1874, 1 R. 840; *Brydone* v. *Brechin*, May 17, 1881, 8 R. 697; *Fraser* v. *Morris*, February 24, 1888, 15 R. 454; *The Capital and Counties Bank* v. *Henty*, 1882, L.R., 7 App. Cas. 741.

Argued for respondent—The distinction between the present case and that of *Clark*, *supra*, was that here there was no divestiture. If the pursuer was successful in his action he would get the sum recovered in name of damages paid to himself. He was notour bankrupt and that was all, and in no case had it ever been held that any one in such a condition was bound to find caution but the reverse had been held—*Scott* v. *Johnston*, June 2, 1885, 12 R. 1022. The question of caution was one entirely for the discretion of the Court, and looking to the provisions of the Judgments Extension Act 1868, this was not a case in which caution was necessary. The defender's statements in the letter of 21st June 1888 would bear the innuendo proposed—Cases cited above; Debtors (Scotland) Act 1880 (43 and 44 Vict. c. 34), sec. 6.

The pursuer subsequently amended his issues at the bar as follows:—"(1) Whether on or about 7th May 1888 the defender caused to be written and sent to Mr Bidgood, 117 Osbaldiston Road, Stokenewinton Common, Clapton, a letter in the terms set forth in the appendix hereto marked A, which letter was received by the said Mr Bidgood. Whether the same is of and concerning the pursuer, and is false and calumnious, to the loss injury and damage of the pursuer. (2) It being admitted that on or about the 21st June 1888 the defender wrote and sent to Robert Munro, writer, Tain, a letter in the terms set forth in the appendix hereto annexed marked B, and received by the said Robert Munro, Whether the same is of and concerning the pursuer, and was intended to mean and does mean that the pursuer is of dishonourable character, and is false and calumnious, to the loss injury and damage of the pursuer. Damage laid at £1000."

At advising—

Lord President—I agree with the Lord Ordinary in repelling the first plea for the defender. The circumstances under which this plea is repelled are to be found in the answer to the third article of the condescendence in which the defender alleges that on 12th October 1888 decree was granted against the pursuer for £20, 17s. 6d.; that on 15th October the decree was extracted, and on 17th October the pursuer was charged to pay. It is then stated that "the days of charge have expired without payment, and the pursuer is therefore notour bankrupt within the meaning of the Debtors (Scotland) Act 1880." It is conceded that the definition of the term "notour bankrupt" in the 7th section of the Bankruptcy Act 1856 does not cover such a case as the present. That action does not apply to sequestration proceedings alone, but it is a general provision as to the circumstances which are to be deemed as constituting notour bankruptcy. Section 6 of the Debtors Act 1880, to which the defender refers, was introduced in consequence of the abolition of imprisonment for debt except in certain special cases, and so it was necessary that the modes of constituting any one notour bankrupt should be enlarged because the constitution of notour bankruptcy by imprisonment had been abolished.

The Debtors Act of 1880, by section 6 provides that—"In any case in which under the provisions of this Act, imprisonment is rendered incompetent, notour bankruptcy shall be constituted by insolvency concurring with a duly executed charge for payment followed by the expiry of the days of charge without payment, or when a charge is not necessary or not competent, by insolvency concurring with an extracted decree for payment followed by the lapse of the days intervening prior to execution without payment having been made." I think the provisions of this section were intended solely for the purposes of the Act in which they occur. It is such notour bankruptcy as will enable a debtor or creditor to sue out a *cessio*, and I do not think the law relating to notour bankruptcy was intended to be altered for any other object. There is not therefore, in my opinion, any notour bankruptcy in the present case, and that is sufficient for the disposal of the defender's first plea-in-law, for the idea that a person must find caution because he lives in another part of the kingdom can receive no countenance, since the Judgments Extension Act 1868 allows of the enforcement of a Scotch decree for expenses in any part of the United Kingdom.

As to the second issue, it is, I think, objectionable as it stands, but the objection can be removed if it is altered as Mr M'Kechnie proposes.

The letter which has been put in issue and which is printed, is as follows—"*Little Ferry, Golspie, 21st June* 1888.—Dear Sir,—Thanks for your attention. That horrid man Macrae will never get a penny from me, and you know that as long as he keeps the key he is liable for the rent. There were several applicants for the place at a reduced rent on account of its being occupied by him. I do believe that he would be mobbed if he was appearing in the Strath. His statement of facts were a tissue of falsehoods. We must try some other Court. My son is a lawyer in London, and he will put him right there.—Yours truly, A. Sutherland."

It is not very easy to see what is the real meaning of this letter, and various interpretations may be put upon it. It may have been intended to mean that Dr Macrae was a horrid man in the sense that he was disagreeable, and upon that account that he would be mobbed as being unpopular, and that his statements of fact were not consistent with truth as it afterwards appeared. If that is the meaning of the words, then they are not actionable. But they may also mean, and the pursuer says that he can prove that they did mean, that he was also dishonest. That is a possible, and perhaps not a forced meaning to put upon these words. The case is not like any which have been cited where the innuendo put upon the language was so forced and unnatural that the pursuer was held not entitled to go before a jury. I propose to allow the second issue provided the alterations suggested are made upon it.

LORD MURE concurred.

LORD SHAND—On the question of the pursuer being called upon in a case like the present to find caution for expense, I think this matter is one very much for the discretion of the Court. Here, no doubt there are circumstances which must be taken into account in considering the matter. The pursuer has left the country He has not paid his debts and he is notour bankrupt within the meaning of the Debtors Act 1880. If the action had been an ordinary one for the recovery of money, it might have been different. It is, however, an action to vindicate character, and the letters which have been laid before us disclose a case of deliberate written slander. In such a case I do not think that anyone in the circumstances of the pursuer ought to be required to find caution.

As regards the second issue, now that the pursuer is willing to take it as amended I have no objection to offer.

LORD ADAM concurred.

The Court adhered to the interlocutor in so far as it repelled the first plea-in-law for the defender; *quoad ultra* recalled the interlocutor: Approved of the issues as adjusted at the bar, appointed the same to be the issues for the trial of the cause, reserved all questions of expenses, and remitted to the Lord Ordinary to proceed with the cause.

Counsel for the Pursuer—M'Kechnie—Forsyth. Agent—D. Barclay, Solicitor.

Counsel for the Defender—Comrie Thomson—Rhind. Agent—Thos. Dalgleish, S.S.C.

Friday, February 8.

FIRST DIVISION.

[Lord Trayner, Ordinary.

KENNEDY *v.* STEWART.

Entail—Entailed Estate—Contract to Sell—Ratification of Court—Specific Implement—Entail Act 16 *and* 17 *Vict. cap.* 94, *sec.* 5; 38 *and* 39 *Vict. cap.* 61, *secs.* 5 *and* 6; 45 *and* 46 *Vict. cap.* 53, *secs.* 13, 19, 21, *and* 22.

An heir of entail in possession by holograph letter offered to sell an entailed estate at a certain price, under the condition that the sale was made "subject to the ratification of the Court." The offer having been accepted the heir of entail presented a petition to the Court under the 19th and following sections of the Entail (Scotland) Act 1882 (45 and 46 Vict. cap. 53), craving the Court to ratify and confirm the contract of sale, and to grant an order of sale of the estate. To this application the next heir lodged answers, objecting to a sale by private bargain.

In an action by the purchaser against the heir of entail for implement of the contract, the Court *held* that the latter was under a legal obligation to apply to the Court for authority to sell and dispone the estate, under 16 and 17 Vict. cap. 94, sec. 5; 38 and 39 Vict. cap. 61, secs. 5 and 6; 45 and 46 Vict. cap. 53, sec. 13; and the Court appointed the pursuer to lodge in process the draft of a disposition by the defender of the estate in favour of the pursuer in fulfilment of the contract of sale.

Sir Archibald Douglas Stewart was the heir of entail in possession of the entailed estates of Grandtully, Murtly, Strathbraan, and others, in the county of Perth.

In the summer of 1888 he received certain communications on the subject of a proposed sale of the estate from Mr Peter Glendinning, acting on behalf of an intending purchaser, whose name was not at first disclosed, but who was afterwards ascertained to be John Stewart Kennedy, banker in New York. On the 18th of September 1888 Mr Kennedy and Mr Glendinning went to Murtly, and saw Sir Archibald Douglas Stewart, and were shown over the castle and grounds, and other portions of the estate.

On 19th September 1888 Sir Archibald Douglas Stewart wrote the following holograph letter to Mr Kennedy:—"Dear Sir,—Having reference to my interview and conversation with you and Mr Glendinning yesterday, I now desire to say that I am willing to dispose of the entire estate of Murtly, &c., consisting of about 33,000 acres, with all the buildings and appurtenances thereto belonging, and all the rights, revenues, and issues thereof for ever, on the basis of twenty-five years' purchase of the present, or even an appraised valuation, of the nett rental thereof, as may be ascertained by an agreed appraisement, you appointing one and me the other, and if the two cannot agree a third party to be chosen by the two. Payment to be made in cash, unless it can be otherwise agreed as to any part, and possession to be given not later than the 15th May 1889. This offer to be open for your acceptance for two weeks from this date, and on your notifying to me or my agents (Messrs Dundas & Wilson, C.S.) of such acceptance on or before the expiry of that time, it will be binding on me. In the event of your acceptance the sale is made subject to the ratification of the Court.—Yours truly, A. D. STEWART."

On 20th September Mr Kennedy sent the following holograph letter in reply:—"Dear Sir Douglas,—I hereby accept your offer of the entire estate of Murtly, &c., with all the buildings and appurtenances thereto belonging, and all the rights, revenues, and issues thereof for ever, as contained in your letter to me of yesterday's date, and I agree to purchase said estate, &c., at twenty-five years' purchase of the present nett rental thereof, and that on the conditions set forth in your said letter, a copy of which is annexed hereto.—Yours faithfully, JOHN S. KENNEDY."

On 5th October Sir Archibald wrote to Mr Kennedy as follows:—"My dear Sir,—Since I wrote to you on the 19th ulto. I have thought a good deal, as you may suppose, about the important transaction which in that letter I proposed to enter into with you. I am quite satisfied on reflection that my offer was a very foolish one, and I should never have made it if I had not been hurried and pressed, or if I had taken proper legal advice, as I certainly should have done. I am told now that there are legal difficulties in the way, of which I was not then aware, and it