though not necessarily with having uttered it in so many words. I think, therefore, that this issue must be disallowed, and that the point raised thereby may be included in the first issue by making it read thus—[*His Lordship then read the issue as amended.*] If there is a statement that the defenders Fleming and Harvey were acting in concert, I do not think it necessary to put in the issue that the one made use of the words complained of in presence of the other. I think with that alteration the first issue will raise the question which the pursuer desires to raise in the second issue.

LORD M'LAREN—I am of the same opinion. I think we should not sanction what would be an innovation in the law of slander. What it is really proposed to put in issue is, whether one defender was art and part with another in uttering the slander complained of, and the proper form of doing that is to charge both with uttering the slander, leaving it for the jury to say whether the circumstances proved in regard to the second defender's conduct amount to an utterance of the slander on his part.

LORD KINNEAR—I agree. I think that the second issue has been framed upon a misconception of the principle on which issues of this kind are allowed. In actions of damages for slander the pursuer must put in issue the particular wrong complained of. The wrong complained of in this case is that the defender Fleming was a party to a spoken slander so as to be responsible therefor, though he did not himself use the words in question. If the pursuer can satisfy the jury that the defender Fleming was a party to the slander in that sense, he will be entitled to a verdict. The proper form of putting the matter in issue is that suggested by your Lordship. It must be put directly to the jury. The facts set forth in the 2nd issue do not of themselves imply a wrong at all, as it may depend on circumstances whether concurring in a slander is a slander or not, but it would be possible to obtain a verdict on the issue as it stands against a person who was not a party to the slander.

The Court approved of the following issue as allowed and adjusted at the bar—"Whether, in or about the 8th day of January 1891, and at or near the house in Milliken Street, Houston, occupied by Alexander Scott, gardener there, the defenders John Gourlay Harvey and William Fleming, or either and which of them, in presence and hearing of the said Alexander Scott, and of Mrs Elizabeth Burn or Scott, his wife, or one of them, falsely and calumniously stated of and concerning the pursuer that the pursuer's conduct towards that girl Dunlop at Barrochan Cross had been shameful, meaning thereby that the pursuer had committed or connived at immoral conduct towards Eliza Dunlop residing at Barrochan Cross, or did use words of like import of and concerning the pursuer, to his loss, injury and damage."

Counsel for Pursuer—Comrie Thomson—M'Lennan. Agents—Cumming & Duff, S.S.C.

Counsel for Defender—Ure—A. S. D. Thomson. Agents—Simpson & Marwick, W.S.

Saturday, October 17.

SECOND DIVISION.

[Sheriff-Substitute, Haddington.

LEES *v.* KEMP.

Poor—Settlement—Lunatic—Forisfamiliation.

A young man who all his life had been imbecile although not a congenital idiot, remained in his father's family without earning anything until twenty-two years of age, when he was confined in an asylum as a pauper lunatic. *Held* (following the case of *Fraser* v. *Robertson*, June 5, 1867, 5 Macph. 819) that he had never been forisfamiliated, and that the parish of his father's settlement and not his own birth settlement was liable for his support.

Thomas Lees, Inspector of Poor, North Berwick, brought an action against T. W. Kemp, Inspector of Poor, Haddington, to have it found and declared that the parish of Haddington was liable for sums paid and to be paid in the relief of a pauper lunatic, Michael Buchan, confined in the Haddington District Lunatic Asylum.

It was admitted that Michael Buchan was born in Haddington on 26th August 1867, that since his birth up till 19th June 1889, when he was admitted to the above asylum as a pauper lunatic, with the exception of the period from 25th November 1885 to 26th February 1886, when he was confined in the same asylum, he had lived in family with his father in various parts of Haddingtonshire, that he had never earned wages, and that neither he nor his father, who was still alive, had at the date of his becoming chargeable a residential settlement in Haddingtonshire.

The Sheriff-Substitute (SHIRREFF), after a proof, the import of which sufficiently appears from his note, pronounced the following interlocutor:—"Finds in point of fact, first, that Michael Buchan designed in the petition, has been during his whole life an idiot or imbecile; second, that he has never been able to earn anything for his own support; third, that the said Michael Buchan has been during his whole life, prior to his removal to the Haddington District Asylum where he now is, maintained by his father as a member of his family, except during the period of three months from 25th November 1885, when he was maintained by the Parochial Board of Dunbar in the Haddington Asylum: Finds in point of law, that in these circumstances the parish of his father's settlement is the parish bound to relieve the pursuer of the maintenance of Michael Buchan: Therefore

sustains the defences, assoilzies the defender, and decerns, &c.

"*Note.*—This is an action at the instance of the inspector of poor of the parish of North Berwick, for recovery of outlays in the maintenance of Michael Buchan, a lunatic, on the ground that Haddington as the parish of the lunatic's birth, is liable for his maintenance.

"The lunatic was born in the parish of Haddington, on 26th August 1867. He was residing with his father at Balgone Barns in the parish of North Berwick, in June 1889, when his father applied for parochial relief for him, and he was admitted to the Haddington District Asylum, where he still is.

"The lunatic has never been able for any work so as to earn anything for his own support. He has been taught to read and write and count a little. He has a certain amount of intelligence. He can tell the hours on a clock, or go a message to a shop. The whole of the five medical witnesses concur in the opinion that he has never been able to earn his own livelihood, and is not now able to do so.

"He has resided in his father's family from his birth till he was removed to the Asylum in June 1889, excepting a period of three months from 25th November 1885, when he was previously in the Asylum.

"Although he had attained the age of twenty-two years when he became chargeable to the parish of North Berwick, his father was still bound to support him. After he attained majority, he did nothing to break the ties that 'united him to the family circle.' He was therefore 'still a child of the house in the ordinary sense of that expression, a member of the family of which his father was the head, and consequently his settlement still depended on that of his father.'—*Fraser* v. *Robertson*, June 5, 1867, 5 Macph. 819, *per* Lord-Justice-Clerk, 823.

"The only ground on which in this action, the parish of Haddington is sought to be made liable for the maintenance of the lunatic is that Haddington is his own parish of birth. As the Sheriff-Substitute is humbly of opinion that the parish bound to support the lunatic is the parish of his father's settlement, the defender, as representing the parish of Haddington, is assoilzied."

The pursuer appealed to the Court of Session, and argued—This pauper was not a congenital idiot, and not therefore in perpetual pupillarity. His mind had always been weak, no doubt, but he had sufficient intelligence to acquire a settlement of his own. He could apparently have earned a little if he had been set to work under proper supervison. If his father had been dead, the place where he had acquired a residential settlement or his own birth settlement, as the case might be, would have been liable. Here his birth settlement was liable. Continued residence in a father's house did not make a man's settlement necessarily the same as his father's unless he were a congenital idiot. Wealthy men's sons often lived with their fathers and earned nothing, and yet might be forisfamiliated. This man became forisfamiliated when he attained majority. The case was ruled by the cases of *Cassels* v. *Somerville & Scott*, June 24, 1885, 12 R. 1155, and *Nixon* v. *Rowand*, December 20, 1887, 15 R. 191.

Argued for Haddington—In *Cassels'* case the father was dead, and in *Nixon's* the father had deserted his family. Here the father was still alive, and the pauper, whether capable of acquiring a settlement of his own—which was doubtful—or not, had never in fact been forisfamiliated. The case was ruled, as the Sheriff-Substitute had held, by that of *Fraser* v. *Robertson*, June 4, 1867, 5 Macph. 819.

At advising—

LORD JUSTICE-CLERK—The Sheriff-Substitute has decided that the pauper whose settlement is in question, and who is now a lunatic, has been during his whole life an idiot or an imbecile, and that he has never been able for any work. That is really the practical import of the evidence. The pauper's history may be shortly sketched thus—He was during the whole of his youth in the state described by the Sheriff-Substitute except during the time when he was suffering from acute lunacy and in an asylum. I think the case of *Fraser* rules the present, and this pauper was never forisfamiliated but continued part of the family of which his father was the head. I am therefore of opinion that it falls upon the parish of the father's settlement to give support in this case.

LORD RUTHERFURD CLARK—The case of *Fraser* was not impugned and I think our judgment must be pronounced in accordance with the views of the law therein expressed.

LORD TRAYNER—I am of the same opinion as your Lordships.

LORD YOUNG was absent.

The Court adhered.

Counsel for Pursuer and Appellant—D.-F. Balfour, Q.C. — Graham Stewart. Agents—Lyle & Wallace, Solicitors.

Counsel for Defender and Respondent—Comrie Thomson — Guthrie. Agents — H. & H. Tod, W.S.