testatrix had left, which would vest in the survivor at the death of the predeceaser, Katherine administering the trust during their joint lives.

Counsel for the second party argued that there was nothing to indicate a joint bequest. There was no clause of survivorship. This was simply a bequest of half of the estate to each of the sisters vesting at the testatrix's death—*cf. Bibby* v. *Thompson* (1863), 32 Beav. 646.

At advising—

LORD M'LAREN—We have now been invited to consider whether the second question, in the precise terms in which it is put, should be answered in the affirmative, because that implies separate interests in the two sisters to the extent of one-half each. It has been suggested that this is a joint bequest, and that the joint character must continue to be attached to it.

I think it is clear that to give effect to this contention would be to give an illegitimate extention to the distinction between joint and several gifts. It is settled that a bequest to persons as a class—*e.g.*, to the children of A—is a joint bequest whether the children be named or not, and that nothing lapses by the predecease of one of the class, the legacy being divided among the survivors. An exception is admitted in the case where the testator has used such expressions as "equally and proportionally" among them. But when the legacy vests its joint character necessarily disappears, because it is then the right of each legatee to receive in money his proportional share of the subject of the gift. There are peculiarities in the case of jointliferents depending on the principle that each termly payment vests separately, but for the purposes of the present case these need not be considered.

This was a gift which vested at the death of the testatrix, and was then divisible between Katherine and Jane. There was no doubt a continuing trust, but for administrative purposes only, and that on account of Jane's health. It would be unfair to Katherine to hold she was unable to dispose of her share in her lifetime unless she survived Jane, and she is as much interested to have her share separated as the curator of her sister.

I am of opinion after further consideration that the second question as it stands should be answered in the affirmative.

The LORD PRESIDENT and LORD KINNEAR concurred.

LORD ADAM was absent.

The Court answered the second question in the affirmative.

Counsel for First Party—Mackay—Macphail. Agents—Lindsay, Howe, & Company, W.S.

Counsel for Second Party—Dundas—M'Clure. Agents—Hamilton, Kinnear, & Beatson, W.S.

Tuesday, January 16.

SECOND DIVISION.

[Sheriff of the Lothians.

BUCHAN *v.* NORTH BRITISH RAILWAY COMPANY.

Reparation—Slander—Privilege—Publication of Conviction in Court of Justice—Bill Posted up in Stations by Railway Company Announcing Conviction of Offence against Companies Acts.

A railway company posted up in some of their stations printed bills containing (1) names and addresses of certain persons convicted of travelling without a ticket, and other offences against the Companies Acts and bye-laws; (2) the date and nature of the offence; and (3) the result of the conviction.

One of those whose names were thus posted up brought an action of damages against the railway company, in which, while asserting that the conviction was unwarranted, he admitted that it had taken place, but averred that its insertion in the bill was made maliciously by the defenders in order to injure him in the eyes of the public.

Held that the action was irrelevant.

William Buchan raised an action in the Sheriff Court at Edinburgh against the North British Railway Company for £500.

The pursuer averred—"(Cond. 3) On the 13th August 1892 the Sheriff-Substitute, within the Sheriff Court of Edinburgh, on the evidence solely of the defenders' servants, convicted the pursuer of having contravened the Railway Clauses Consolidation (Scotland) Act 1845, sec. 96, and the Regulation of Railways Act 1889, sec. 5, sub-sec. 3 (*a*), by travelling on the North British Railway from Kirkcaldy to Haymarket without having previously paid his fare, and with intent to avoid payment thereof—and fined him 5s. 6d. and costs, with the option of twenty days' imprisonment. Said conviction was bad in point of law, and was not warranted by the evidence; but the pursuer in order to avoid the publicity of an appeal, at once paid the fine and expenses in the belief that the proceedings against him were then at an end. This prosecution was in reality instigated by the manager or agent of the defenders, and he supplied all the evidence upon which the conviction was obtained. The pursuer defended himself, and in the course of the trial proved in open Court the illegal, unwarrantable, and violent conduct of the defenders' servants in assaulting him and rifling his pockets,; and in consequence of this, and of his threat to raise an action against the defenders for said illegal conduct, the defenders' said manager or agent conceived malice and ill-will towards the pursuer, which he gratified in the oppressive proceedings after mentioned. (Cond. 4) Towards the end of February and beginning of March 1893, about six months after said conviction, the defenders' agent

or manager wrongfully and maliciously set about publishing such conviction against the pursuer, in order to gratify his said feelings of malice and ill-will, and to ruin pursuer's business as a traveller, agent, and collector. To accomplish this the defenders' said manager wrongfully and maliciously printed and published a large bill, a copy of which is herewith produced. Said bill is printed in large letters and in red ink, and *inter alia* contains the following 'List of Convictions for Offences against the Companies Acts and Bye-Laws:'—

Name and Address.	Date and Nature of Offence.	Result of Conviction.
William Buchan, Canvasser and Collector, 21 Arthur Street, Pilrig, Edinburgh.	Travelling from Kirkcaldy Station to Haymarket Station without having previously paid the Fare, and with intent to avoid payment thereof. 31st May 1892	Fined Five Shillings and Sixpence, with Thirty-Four Shilling and Sixpence of Costs, or Twenty Days' Imprisonment. Sheriff Court, Edinburgh, 13th August 1892.

There then follows a list of the names of several offenders against the Company's bye-laws; but the pursuer's name and address were maliciously placed at the top of said bill in order the more readily to arrest the attention of the public. . . . (Cond. 5) Said bill was posted up in all the principal stations on the defenders' railway system. It was posted up in prominent parts of the stations at Newport, Tayport, Dundee, Polmont, St Andrews, Leuchars, Kirkcaldy, Bridge of Earn, Leven, and various other stations over their whole system. It was not published until about six months after 13th August 1892, the date of the pursuer's conviction, and remained and in some stations remains still posted up, and was and is still read by the public. Pursuer's name and address and the conviction against him were inserted in said bill under the pretence of a caution to the public; but in point of fact this insertion was made maliciously in order to rake up said conviction against the pursuer, and injure him in the eyes of the public by representing that he had defrauded the defenders. The defenders have been repeatedly requested to stop the publication of said bill, but they maliciously decline to do so. (Cond. 6) In consequence of the publication of said bill throughout Scotland the pursuer has suffered great loss, injury, and damage in his business as a traveller, agent, and collector. . . . He has also suffered in his feelings and reputation in consequence of the persistent and malicious publication of the said conviction. Altogether the loss, injury, and damage sustained by the pursuer cannot be stated at less than £500. The defenders have been requested to make compensation, but they decline to do so, and the present action has become necessary."

The defenders lodged defences, and pleaded, *inter alia* — "(1) The pursuer's averments are irrelevant, and the action should be dismissed."

On 23rd November 1893 the Sheriff-Substitute (RUTHERFURD) pronounced the following interlocutor—"Finds that the pursuer's averments are not relevant or sufficient to support the conclusions of the libel; therefore sustains the defenders' first plea-in-law, dismisses the action, and decerns," &c.

Against this interlocutor the pursuer appealed to the Court of Session, and argued —The law allowed the publication of what took place in courts of law, for the reason that the proceedings might be made known to the public, who were unable to attend and that thus everyone might see that justice was done. But when the publication was not made for that purpose, but was made, as was averred here, by the pursuer for the purpose of gratifying spite against him, and injuring him in the eyes of the public, the law did not protect the persons publishing the proceedings, even although the report might be true in fact — *Stevens* v. *Sampson*, November 15, 1879, L.R., 5 Exch. Div. 53, opinions of Lord Coleridge and Lord Justice Bramwell, 55; *Riddell* v. *Clydesdale Horse Society*, May 27, 1885, 12 R. 976. The action should be held relevant and issue allowed, the real question for the jury being whether or not the defenders were actuated by malicious motives in making the publication.

Counsel for the defenders were not called on.

At advising—

LORD JUSTICE-CLERK—The facts in this case do not seem to me to be in the slightest degree in doubt. Both parties are agreed as to them. The pursuer was accused of an offence against the Railway Acts, and he was tried and convicted of that offence. All that the railway company have done is to announce shortly in a bill, put up in certain of their stations, the fact that the pursuer was convicted and fined for the offence. It certainly is according to the usual practice for railway companies all over the country to put up such notices in their stations. Here it is said that the pursuer is entitled to take objection to the railway company publishing facts which he does not deny, and he accuses the railway company of acting maliciously in doing so. But the case appears to me not to raise a question of privilege at all. This bill is just an announcement by the railway company of facts connected with its own business, namely, that they, in pursuance of a statutory byelaw, prosecuted the pursuer for a breach of it, and that he was convicted and fined. In these circumstances I think it is out of the question that the pursuer should be allowed an issue at all as for publication of a libel, and am of opinion that the action isir relevant.

LORD YOUNG—I agree. I think that the pursuer's contention is simply ridiculous.

LORD RUTHERFURD CLARK—I am of opinion that the pursuer has no ground of action.

LORD TRAYNER was absent.

The Court adhered.

Counsel for the Pursuer—T. B. Morison. Agent—Andrew H. Hogg, Solicitor.

Counsel for the Defender — Sol.-Gen. Asher, Q.C.—Cooper. Agent—James Watson, S.S.C.

HOUSE OF LORDS.

Thursday, July 20, 1893.

(Before the Lord Chancellor (Herschell), and Lords Watson, Morris, and Shand.)

COWIE *v.* MUIRDEN.

(*Ante*, vol. xxviii. p. 605, and 18 R. 706.)

Personal or Real—General Disposition—Annuity Declared to be a Real Burden—Completion of Title by Notarial Instrument—Titles to Land Consolidation Act 1868 (31 *and* 32 *Vict. c.* 101), *sec.* 19, *and Schedule L.*

In a general settlement a testator conveyed to his son his whole estate, heritable and moveable, "but declaring that this disposition and conveyance is granted and is to be accepted of under the following burdens, . . . which are hereby declared to be real burdens on the estate hereby conveyed." These burdens included, *inter alia*, an annuity of £35 in favour of the disponee's sister. The disponee completed his title by notarial instruments (in terms of Schedule L, sec. 19, of the Titles to Land Consolidation Act 1868), each of which, after setting forth the conveyance in the general disposition, and describing the several subjects in which the disponer was infeft, narrated at length the clause declaring the said authority to be a real burden. These notarial instruments were duly recorded.

Held (*rev.* the decision of the Second Division) that a real burden was created on the lands.

Expenses—Bankruptcy.

When the trustee in a mercantile sequestration engages in litigation, he is personally liable for costs to the opposite party.

This case is reported *ante*, vol. xxviii. p. 605, and 18 R. 706.

Jane Cowie appealed.

At delivering judgment—

LORD CHANCELLOR—This action was raised by the respondent, who was trustee under the sequestration of the estates of Alexander Cowie, in order to have it declared that an annuity of £35 had not been validly or effectively constituted a real burden upon the heritable subjects described in the summons. In the year 1881 Thomas Cowie died, leaving a trust-disposition and settlement by which he conveyed to his son Alexander Cowie, the bankrupt, his whole estate, heritable and moveable, real and personal, of which he should die possessed. The dispositive clause, after thus conveying the whole estate, proceeds in these terms—"But declaring that this disposition and conveyance is granted, and is to be accepted of, under the following burdens, conditions, obligations, and declarations, which are hereby declared to be real burdens on the estate and effects hereby conveyed." Then follows a statement of certain burdens, including among them the annuity of £35 per annum now in question. The heritable estate belonging to Thomas Cowie consisted of five subjects, and Alexander Cowie completed his title to those in the year 1882, in virtue of the general disposition to which I have alluded by expeding and recording notarial instruments in accordance with the terms of Schedule L of the Titles to Land Consolidation (Scotland) Act 1868. Each of these instruments set forth Thomas Cowie's title and infeftment, and the general disposition granted by him to which I have referred, and each of them narrated specifically and at length the real burdens purporting to be constituted, as I have said, by the general disposition and settlement. Each of these notarial instruments was duly recorded in the register of sasines, and the clause of annuity in favour of the appellant, declared to be a real burden on the disponee's right, was entered on the records.

The ground upon which it was contended that, under the circumstances to which I have referred, the annuity was not effectually constituted a real burden upon the heritable subjects, was that the title of Alexander Cowie was derived from a general disposition which did not contain a description of the lands to be affected. It is no doubt true that a real burden can only be constituted upon lands specifically described; but it is equally clear that even if lands specifically described in a disposition be thereby declared subject to a burden, that does not in itself make the burden a real one; it can only be made real by infeftment. Before the Titles to Land Act was passed, a disponee who was not an heir could only get infeftment in land conveyed to him in general terms by obtaining a decree in an action of adjudication followed by a charter of adjudication. By this process a real right was obtained to the lands specifically described in the charter; but this real right was subject to all debts which having been made a burden on the general conveyance by apt words in the dispositive deed, had been feudalised and become real burdens.

The question which is to be determined in the present case is, whether where a title is completed, not in the manner which was alone available prior to the Titles to Land Act, but in the manner which is provided for by the enactments contained in that Act, the title obtained by the appropriate instruments in the form prescribed by Schedule L can be and ought to be effectual to make burdens, which by appropriate words are declared to be burdens in the dispositive clause of a general conveyance,