for the determining of this question. We do not know the facts, and until we know them cannot exercise the discretion which we are called upon to exercise.

The LORD PRESIDENT was absent.

The Court appointed Mr B. P. Lee, advocate, curator *ad litem* to the children, and continued the cause.

Counsel for Petitioner—Young—Gunn. Agent—John Mackay, S.S.C.

Counsel for Respondent—Ure—Clyde. Agents—Dove & Lockhart, S.S.C.

Friday, June 8.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

WADDELL *v.* ROXBURGH.

Reparation — Slander — Issue — Innuendo —Taking Unfair Advantage to Secure Contract—Verbal Injury.

A newspaper, commenting on the manner in which a contract for printing the register of voters of a burgh had been secured, said—"This contract was secured by the lowest offerer in a mean and contemptible manner. We attach no blame to any of the burgh officials, but to the unfair advantage taken by the successful offerer to secure the contract."

The party who had secured the contract brought an action against the publisher of the newspaper, averring that the meaning of the statement was that he had obtained the contract by dishonest and improper means, and further, that the statement had been made with the design and the result of injuring him.

The Court *held* that the pursuer was not entitled to an issue of verbal injury, but *allowed* an issue of slander.

Observations on the case of *Paterson* v. *Welch*, May 31, 1893, 20 R. 744.

This was an action of damages at the instance of John Waddell, printer and publisher in Alloa, against Andrew Roxburgh, printer, publisher, and editor of *The Alloa Weekly News and District Reporter*.

The pursuer averred that in November 1893 the Tillicoultry Burgh Commissioners invited tenders for the printing of the register of voters for that burgh for a period of five years. The pursuer's tender was the lowest and was accepted. For some time previously the defender had borne a groundless ill-will against the pursuer. This he had shown in several instances (which were specified)—"(Cond. 4) In his said newspaper, *The Alloa Weekly News and District Reporter* of Wednesday 20th December 1893, the defender inserted an article headed 'Burgh Commissioners,' and in a note to that article he stated—'This contract was secured by the lowest offerer in a mean and contemptible manner. We attach no blame to any of the burgh officials, but to the unfair advantage taken by the successful offerer to secure the contract.—ED.'—meaning thereby that the pursuer had obtained the said contract by dishonest or fraudulent and improper means. The statements and representations contained in said note were made and published by the defender falsely and maliciously to gratify his spite and ill-will against the pursuer, and with the special design and object of injuring the pursuer in his trade as well as in his feelings and reputation, and of exposing him to public contempt. (Cond. 5) The pursuer was the lowest and successful offerer in the contract above referred to, and the said statements by the defender are of and concerning the pursuer, and are false, malicious, and slanderous. The statements referred to have been read by a large number of people in and around the district where the pursuer carries on his profession, and among others by his constituents and friends, with the result that he has been injured in his feelings and reputation as well as in his trade and business as a printer and publisher."

The defender pleaded—"(1) No relevant case."

The pursuer proposed the following alternative issues for trial of the cause—"(1) Whether the said statement was of and concerning the pursuer, and falsely and calumniously represented that the pursuer had obtained the said contract by dishonest and improper means, to the loss, injury, and damage of the pursuer. (2) Whether the said statement was of and concerning the pursuer, and whether the said statement was false, and was made and published by the defender with the design of injuring the pursuer, to his loss, injury, and damage?"

On 13th March 1894 the Lord Ordinary (KINCAIRNEY) disallowed the issues and assoilzied the defender.

"*Opinion.*—This is an action of damages for defamation by the printer and publisher of an Alloa newspaper against the printer, publisher, and editor of another newspaper, also published in Alloa. The words complained of published in the defender's newspaper are these—'This contract was secured by the lowest offerer in a mean and contemptible manner. We attach no blame to any of the burgh officials, but to the unfair advantage taken by the successful offerer to secure the contract.' The contract referred to was a contract for printing the register of voters for Tillicoultry, and the paragraph is said to refer to the pursuer. Two alternative issues have been tabled by the pursuer, the one appropriate to an action for slander, the other to an action for verbal injury.

"The first issue is, whether the paragraph referred to represented that the pursuer had obtained the contract by dishonest and improper means. The question debated was, whether the paragraph complained of could reasonably be innuendoed as involving a charge of dishonesty. I have answered that question in the negative, although not

without hesitation. The case is presented as a mere question of construction of the paragraph, and no circumstances are averred as colouring the paragraph, or as suggesting that the words meant more than their ordinary construction conveys. The idea of dishonesty involves some kind of fraud or falsehood perpetrated by misrepresentation, or concealment, or some sort of circumvention; but it is not suggested that the paragraph pointed at anything of that kind, and therefore it does not appear to me that according to its reasonable construction it can be held to involve a charge of dishonesty. The words 'unfair advantage,' read in connection with what precedes, seem to suggest some undue advantage taken by the pursuer which might be characterised as mean and contemptible, but not as fraudulent or dishonest.

"It was not maintained that the words, although objectionable and insulting, were defamatory without the innuendo.

"The alternative issue was proposed to meet the event of the paragraph being held not to be defamatory, and was said to be warranted by the recent case of *Paterson* v. *Welch*, May 31, 1893, 20 R. 744. The model of the issue in that case has not been followed exactly in the present case, but there would have been no difficulty in altering this issue so as to bring it into conformity with the issue in *Paterson* v. *Welch*. But I have disallowed the issue on other grounds, because I do not think that this is a case to which the judgment in the case of *Paterson* v. *Welch* applies, unless it applies to every false statement of which it is averred that it was made with a design to injure. I think that it cannot be reasonably suggested that the words complained of were used with any design to injure the pursuer or to expose him to public hatred and contempt."

The pursuer reclaimed, and argued—The statement complained of had been made, according to the pursuer's allegation, out of ill-will, with design to injure, and with the result of inflicting injury. The pursuer was in these circumstances entitled to an issue of verbal injury on the authority of *Paterson* v. *Welch*, May 31, 1893, 20 R. 744. It was proposed to alter the second issue to bring it into conformity with the issue allowed in that case. If not entitled to the second issue, the pursuer was entitled to the first, for the defender's words could reasonably be innuendoed as imputing dishonesty to the pursuer.

Argued for the defender—No dishonesty was imputed, but at the most dishonourable conduct. The innuendo was therefore unfair, and the statement was not slanderous—*Archer* v. *Ritchie*, March 19, 1891, 18 R. 719; *Turnbull* v. *Oliver*, November 21, 1891, 19 R. 154.

The defender was not called upon to answer the pursuer's argument that an issue of verbal injury should be allowed.

At advising—

LORD ADAM — The Lord Ordinary has refused the first issue proposed by the pursuer, but he says that he has done so with hesitation, and Lord Kinnear observed in the course of the hearing that that in itself was enough to show that there was a question which ought to go to a jury. I agree with that observation. In an action of slander the question of slander or no slander, libel or no libel, is always in the first instance a question for the jury. Accordingly, if it is not quite clear that by no reasonable interpretation of this language could it be affirmed that there was a libel, we are not entitled to refuse to send the case to a jury. Here the averment of the pursuer just comes to this, that the defender said of him that he—the pursuer—took advantage of other persons in a mean and contemptible and unfair manner. If the innuendo which the pursuer puts upon the words in question were sent to a jury, and they found for the pursuer, Mr Orr admitted that the defender could not ask for a new trial. That seems to me a conclusive test of the matter. I cannot say that the jury might not by reasonable construction of the words put the interpretation proposed upon them. I therefore think that the first issue must be allowed.

LORD M'LAREN—It was pointed out from the bar, and is well recognised in practice, that a different and stricter standard of construction is to be applied to calumnious expressions affecting a person in his business relations from that applied to expressions used of the same person in his public capacity. We have discouraged actions of damages directed against public men for language used by them, whether in the more important field of general politics or in regard to the administration of municipal affairs, or even of charitable societies. No doubt language used of a public man may be libellous, as, for instance, if one were to accuse a member of parliament of having obtained his seat by bribery, but such accusations are rarely made, and, as has been often observed, there is practically no limit to the language that may be used in public controversy, except that which is imposed by good taste and good feeling towards an opponent.

In the present case the kind of unfairness attributed to the pursuer is not specified, but point is given to the expression by reference to a particular contract, and that, I think, is sufficient to justify the innuendo that the kind of unfairness meant was dishonesty.

I agree accordingly that the first issue should be allowed.

LORD KINNEAR — I am of the same opinion. I think it is a question for the jury whether the words of which the pursuer complains really impute dishonesty to him or not. I cannot say that it is impossible that they should bear the meaning which he seeks to put upon them. That is for the jury to determine. As to the alternative issue proposed for the pursuer, I have no hesitation in holding, and I understand your Lordships are of

the same opinion, that if he is not entitled to the first issue he cannot possibly obtain the second. It appears to me that the case of *Paterson* v. *Welch* has been somewhat misunderstood. It was not intended by the Court in that case to lay down that whenever the words of which a pursuer complains are not in themselves slanderous, he may have an issue whether they exposed him to public hatred and contempt. I understand that the opinion of the Lord President in that case proceeded on this, that the words which the pursuer in that action was said to have used of a class of persons, were not slanderous of that class, but that nevertheless, to impute to the pursuer that he had used these words was an actionable wrong, because he undertook to show that they had been ascribed to him by the defender with the design of injuring him, and that he had in fact thereby been exposed to the public hatred and contempt. There were specific allegations of the special damage which had arisen to the pursuer from the words in question having been ascribed to him. I have no doubt that the form of issue adopted in that case was better calculated to bring the question fairly before the jury than the ordinary form of issue. Therefore I see no reason for dissenting from the judgment. It may be that to confine the use of the word slander to cases where the language complained of is obviously and on the face of it defamatory and injurious would be convenient, but I should rather have thought that all actionable words which are either injurious to the character or the credit of the person of whom they are spoken, or which expose the person with reference to whom they are uttered to public hatred and contempt, are defamatory or slanderous words. But however that may be, I am of opinion that if the language of which the pursuer complains is calculated to expose him to public hatred and contempt, then it is slanderous language. If it is not calculated to expose him to public hatred or contempt, or to do him any injury—if when properly construed it does not assail his character or credit—then it is not slanderous or actionable at all. I have no doubt that the pursuer must have an issue of slander in ordinary form or no issue at all.

LORD M'LAREN—I desire to express my concurrence with what has been said by Lord Kinnear as to the case of *Paterson* v. *Welch*. I thought the case a narrow one at the time, and it certainly was not intended to give such an extension to the form of issue there allowed as is now claimed.

LORD ADAM—I was one of the Judges in the case of *Paterson* v. *Welch*, and I concur in the obesrvations made by Lord Kinnear upon it.

The Court disallowed the second issue and appointed the first issue proposed by the pursuer to be the issue for the trial of the cause.

Counsel for the Pursuer—Comrie Thomson — Deas. Agent — Andrew Newlands, S.S.C.

Counsel for the Defender—Orr. Agents —George Inglis & Orr, S.S.C.

Saturday, June 9.

SECOND DIVISION.

[Lord Kyllachy, Ordinary.

PETERS *v.* MAGISTRATES OF GREENOCK.

(*Ante*, vol. xxix. p. 507, and vol. xxx. p. 937.)

Church—Stipend—"Competent and Legal Stipend"—Arrears—Interest—Mora.

The minister of the Mid-Parish of Greenock raised an action in 1891 against the magistrates of the burgh to have them ordained to pay him a competent and legal stipend, and for payment of certain arrears, upon the footing that from Whitsunday 1880 until Martinmas 1890 his stipend ought to have been £320 per annum, and from the latter date £400 per annum. Since 1880 he had protested against the stipend which the magistrates offered him, and since 1884, owing to his refusal to give unqualified receipts, he had received no payment. The House of Lords, affirming the decision of the Second Division, held that the magistrates were bound to pay the pursuer a "competent and legal stipend." The case came up again on the interpretation of the expression "competent and legal" for the purpose of the petitory conclusions of the summons, and for settling the question of arrears claimed by the pursuer.

Held (1) that £400 per annum was now a "competent and legal stipend" for such a parish as Mid-Greenock, and that £320 per annum had been so for the period between 1880 and 1890; (2) that the pursuer was entitled to the arrears of stipend which had not been paid by the defenders since the date they had been found liable to pay him a "competent and legal stipend;" (3) that in respect of his delay in raising the action, the pursuer was entitled only to 2 per cent. interest on these arrears.

This case is reported *ante*, March 16, 1892, 29 S.L.R. 507, and May 18, 1893, 30 S.L.R. 937 (H. of L.)

In 1891 the Rev. David Smith Peters, minister since 1877 of the New or Mid-Parish, Greenock, raised an action against the Provost, Magistrates, and Town Council of the burgh of Greenock, to have it found and declared that the pursuer, as the minister serving the cure of the New or Mid-Parish Church and district thereof within the burgh of Greenock, was and is entitled to be furnished and provided by the defenders, and that the defenders were