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

and are bound to furnish and provide the pursuer with a competent and legal stipend, to be paid out of the revenue of the burgh, or out of the other funds, property, and revenues held and enjoyed by the said magistrates and town council for the special use and behoof of the minister serving the cure of the said church and district, from the date of his ordination and induction to the said cure, and in all time coming during his lifetime and serving said cure; and he sought decree 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, or such other sum as should appear to the Court to be a "competent and legal stipend."

The pursuer founded upon a decree of disjunction and erection pronounced by the Court of Teinds upon 15th July 1741.

Upon 23rd June 1891 the Lord Ordinary (KYLLACHY) pronounced the following interlocutor—"Finds that the obligation libelled, contained in the decree of disjunction and erection dated 15th July 1741, is binding upon the defenders: Finds that upon a just construction of the said obligation the defenders are bound to provide the pursuer and his successors in the New or Mid-Parish Church of Greenock with a legal and competent stipend suited to the circumstances of the time and the position and duties of the benefice: Therefore finds, declares, and decerns in terms of the first declaratory conclusion of the summons."

The defenders reclaimed, and upon 16th March 1892 the Second Division refused the reclaiming-note, and adhered to the interlocutor reclaimed against.

The defenders appealed to the House of Lords, and upon 18th May 1893 the interlocutors appealed against were affirmed, and the appeal was dismissed.

The case was accordingly enrolled again before the Lord Ordinary for parties to be heard as to the petitory conclusion, and upon 8th July 1893 the Lord Ordinary appointed the pursuer "to lodge in process a statement of the stipend which he claims, and of the facts and circumstances on which he relies in support thereof, and that *quam primum*."

The pursuer accordingly put in a minute. The defenders also lodged answers.

In his minute the pursuer stated the conclusions of the summons, which have been quoted above, and detailed at length the reasons for which he contended that a "competent and legal stipend" should be fixed at the amount claimed by him. He stated that there was no "present stipend" to which reference could be made, but that he had restricted his claim to £320 per annum for the period prior to the raising of the action, in respect that that was the sum considered necessary by the defenders when a stipend of definite amount was last fixed by them, viz., on 4th July 1861. The average stipend actually paid by them to him had for the five years 1877-1881 been actually in excess of this amount, having been £340. With regard to the considerations usually taken into account in augmenting a benefice, the pursuer stated—1. The population of the parish had certainly fallen from 9355 in 1861 to 5251 in 1891, but this fall in numbers—due chiefly to the action of the defenders in pulling down a number of houses in the middle of the parish—had caused no diminution in the duties of the incumbent. The parish included the district inhabited by the poorest classes in Greenock. A number of the members of the church lived outside the parish, which fact gave additional work. The membership of the church had not materially diminished, there being 800 communicants now as against 850 when the pursuer became minister in 1877. No *quoad sacra* parishes had been planted in this parish. There had been a fall in the payment of seat-rents, but this was due to the conduct of the defenders, who had the letting of the seats, and to the present dispute. 2. The cost of living had materially increased since 1861. That this was recognised by the defenders was shown by the fact that previously to the pursuer's election the defenders had expressed an opinion that £500 with a manse would be a reasonable stipend. 3. Since early in this century a manse had been attached to the parish. It was valued at £60 per annum. But this was not at all unusual in town parishes, as was shown by comparison with others, and where there was no manse an allowance was made in lieu of one. 4. The resources of the defenders were quite adequate to meet the proposed increase. Their attitude was certainly hostile to it, but that did not affect the question. 5. A return of ministers' stipends presented to the House of Commons in 1874 showed the average stipend for 845 out of 901 parishes paying stipend out of teinds from which returns were made was £345, while that for 46 parishes (including Mid-Greenock), whose stipends "are not made up from teinds by a locality," was £400.

The pursuer went at length into these comparisons, for the purpose of showing that £400 was not an unreasonable stipend to demand since 1891. He further stated that any disputes between him and his congregation had been due to the action of the defenders.

The defenders in their answers denied generally the statements of the pursuer. They alleged—1. On the pursuer's own admission there had been a fall of 43 per cent. in the population since the stipend was last considered, which in the Teind Court would be fatal to the demand for augmentation. The parish was a small one, with a manse conveniently situated, and in every respect an easy one for the incumbent. 2. The cost of living had—taking everything into consideration—not materially increased since 1861. The pursuer had come on the understanding that he was to receive £120 a year as legal stipend, plus the balance of seat-rents after paying expenses. The fall in value of the pew-rents was due to the conduct of the pursuer. 3. The existence of a manse was very unusual in church parishes.

4. There were no church funds beyond the mortified £1000 from which the augmentation was to come. 5. The comparison with other benefices produced by the pursuer, was quite fallacious, the circumstances being different.

Upon 2nd February 1894 the Lord Ordinary pronounced this interlocutor:—"Having considered the minute for the pursuer and answers thereto for the defenders, and having heard counsel for the parties thereon in the procedure roll, Finds that the pursuer is entitled to stipend at the rate of £320 per annum for the period from Martinmas 1880 to Whitsunday 1891, payable half-yearly at Whitsunday and Martinmas, and at the rate of £400 per annum thereafter, payable said stipend of £400 at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first half-yearly payment as at the term of Martinmas 1891, and the next half-yearly payment as at the term of Whitsunday 1892, and so forth, half-yearly and termly thereafter; but reserving the right of the pursuer and his successors in the cure to apply for an increase of stipend in the event of the said stipend at the rate of £400 at any time ceasing to be a competent and legal stipend; and the right of the defenders and their successors in office to apply to have the stipend fixed at a less amount in the event of stipend at the foresaid rate at any time coming to be in excess of a competent and legal stipend, according to the circumstances of the time and the position and duties of the benefice: Finds that the pursuer is entitled to interest at the rate of 2 per centum per annum upon the balance in the hands of defenders, from time to time, of stipend accruing due to the pursuer during the said period from Martinmas 1880 to Whitsunday 1891, calculated at the foresaid rate of £320 per annum, payable half-yearly as aforesaid: Finds that the pursuer is entitled to interest at the rate of 4 per cent. per annum upon stipend accruing due to him from and after the term of Whitsunday 1891, at the rate of £400 per annum, payable half-yearly as aforesaid: Appoints the defenders to lodge in process an account showing the amount due by them to the pursuer in accordance with the foregoing findings: Finds it unnecessary to dispose of the reductive conclusions, dismisses the same, and decerns."

On 21st February 1894 the Lord Ordinary pronounced this further interlocutor—"In respect of the account No. 33 of process and of the findings contained in the preceding interlocutor of 2nd February 1894, decerns against the defenders to make payment to the pursuer of (1) the sum of £859, 9s. 11d. in full of stipend at the rate of £320 per annum, and interest thereon concluded for in the first petitory conclusion; and (2) the sum of £1051, 3s. 1d., being the amount of stipend at the rate of £400 per annum to Martinmas 1893, and interest thereon due under the second petitory conclusion, with interest upon said respective sums decerned for at the rate of five per centum per annum from the date hereof till payment: And *quoad ultra* with regard to the said conclusion decerns and ordains against the defenders in respect of the finding thereanent contained in the said interlocutor of 2nd inst., to make payment to the pursuer as the minister serving the said cure as aforesaid of the sum of £400 per annum as a competent and legal stipend from and after the said term of Martinmas 1893, and that at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first half-yearly payment at the term of Whitsunday 1894, and the next half-yearly payment at the term of Martinmas 1894, and so forth yearly and termly thereafter (but reserving the right of the pursuer and his successors in the cure to apply for an increase of stipend in the event of the said stipend at the rate of £400 at any time ceasing to be a competent and legal stipend, and the right of the defenders and their successors in office to apply to have the stipend fixed at a less amount in the event of stipend at the foresaid rate at any time coming to be in excess of a competent and legal stipend according to the circumstances of the time and the position and duties of the benefice) with interest of each term's payment at the rate of 5 per centum per annum from the term at which the same shall fall due until paid: Finds the pursuer entitled to expenses," &c.

The defenders reclaimed, and argued—Looking at all the circumstances, the proper stipend to be paid was £320, including the interest on £1000 and revenue derived from seat-rents. The ordinary rate of stipend was to be looked to; ministers were not a highly paid body in Scotland, and it was not just to give any minister a very large stipend because the source of the stipend happened to be the rates of a burgh—*Cæsar* v. *Magistrates of Dundee*, June 9, 1848, 20 D. 859. Whatever stipend was given, the decree ought to apply only since the raising of the action, and not go back to 1880. The action was not raised until 1891, although it was admitted that the pursuer had began to protest in 1880. If this action was to be treated like a process of augmentation in the Teind Court, it was plain that the pursuer could not get what he asked, because the Magistrates of the burgh had offered him every year the stipend which they, as the proper judges in the matter, had considered to be the "legal and competent stipend," and the pursuer had refused to take it. If treated like an action for aliment, the law regarding non-payment in past years was equally plain, as it had been decided that no arrears were due by a deserting husband—*M'Millan* v. *M'Millan*, July 20, 1871, 9 Macph. 1067; *Donald* v. *Donald*, May 26, 1860, 22 D. 1118.

The respondent argued—As regarded the future stipend, this was not an action in the Teind Court; it was for fulfilment of a civil obligation, and the Court was bound under the judgment of the House of Lords to fix what was a legal and competent sti-

pend. In the circumstances disclosed by the pursuer, £400 as decerned for by the Lord Ordinary was not too high. The question of seat-rents was beside this matter, because through the operations of the defenders this parish of Greenock was yearly being filled by the class of people who were least able to pay their seat-rents, and yet the calls upon the minister's time and energies were as urgent as before. As regarded payments for past years, this was not an action in the Teind Court. It was an action for fulfilment of a civil obligation to pay a competent stipend, and although the amount was not fixed, the obligation was determined at the date the demand was made. If this case was to be treated like an action for aliment, the cases cited by the defenders had no application, because in them it was found that the husband was liable for the wife's alimentary debts during the years he had deserted her. The proper rule was laid down in cases of aliment in *Finlayson* v. *Gown*, July 7, 1809, F.C.; *Dunnett* v. *Campbell*, December 11, 1883, 11 R. 280.

At advising—

LORD TRAYNER—Two questions were submitted to us under this reclaiming-note—(1) whether the sum fixed by the Lord Ordinary as a legal and competent stipend was not excessive; and (2) whether in any view the defenders were liable to the pursuer on the stipend so fixed for any period anterior to the date of the summons.

On the first of these questions I see no reason for interfering with what the Lord Ordinary has done. The information laid before us as to the stipends paid to other parish clergymen in Scotland holding cures similar to that of the pursuer, appears to justify the amount at which the pursuer's stipend has been fixed. With regard to the second question I entertain no doubt that the pursuer is entitled to the decree pronounced in his favour. It is not disputed (at least cannot now be disputed) that the defenders were at Martinmas 1880 liable to provide the pursuer with a legal and competent stipend. That was their obligation then, although it was not then ascertained what in money value was the extent of the obligation. It is now ascertained that £320 a-year was the money value of the defenders' obligation at that date, and accordingly it is now ascertained that at Martinmas 1880 the defenders were bound to pay and should have paid the pursuer a yearly stipend of £320. That was their debt to the pursuer then; they have not paid it; they must pay it now. The delay on the part of the pursuer to bring this action to enforce his rights does not diminish or preclude them; there has been no abandonment or discharge of them, and the pursuer seems sufficiently punished for his delay in only being allowed interest at the rate of £2 per cent. as his just claim for about eleven years.

LORD JUSTICE-CLERK—That is the opinion of the Court.

LORD YOUNG was absent.

The Court adhered.

Counsel for the Appellants—H. Johnston—Sym. Agents—Cumming & Duff, S.S.C.

Counsel for the Respondents—C. S. Dickson—M'Lennan. Agents—Miller & Murray, S.S.C.

VALUATION APPEAL COURT.

Friday, May 25.

(Before Lord Wellwood and Lord Kyllachy.)

AYR HARBOUR TRUSTEES, PAROCHIAL BOARD OF PARISH OF AYR, AND PAROCHIAL BOARD OF PARISH OF NEWTON-ON-AYR *v.* ASSESSOR FOR BURGH OF AYR.

Valuation Cases—Valuation of Harbour—Tenants' Profits—Power to Lease Rates—Apportionment of Value between Two Parishes.

The trustees of the Ayr Harbour are authorised under statute to levy certain rates subject to a maximum fixed for a period of twenty-one years, and approved by the Board of Trade, upon vessels and cargoes using the harbour, and are bound to apply the revenue derived from the rates for purposes prescribed by the Harbour Acts. The trustees have also power to let the rates to a lessee, subject to the restrictions imposed by the Acts, but this power has not been exercised, and the existing rates collected by the trustees are only sufficient to meet the expenditure prescribed by the Acts.

The Assessor, in estimating the yearly rent or value of the harbour, took the gross yearly revenue under deduction of the charges and expenses necessary to earn that revenue, including interest on moveable plant and floating capital, together with the expenses of collection and management, but without any allowance for tenants' profits.

Held that the valuation was right, inasmuch as if an allowance were made for tenants' profits, it would necessitate a corresponding increase in the rates and in the revenue so as to meet the statutory expenditure, and that the valuation would therefore remain the same as before.

Held also that in a question between the two parishes in which the harbour works were situated, that the *cumulo* valuation of the harbour was properly allocated between the parishes according to the lengths of quayage in the two parishes.

I. The appellants the Ayr Harbour Trustees are empowered under various Acts to administer and manage the Ayr Harbour,