

deduction only of the cost of working and winning them.

I have thoroughly examined the papers, and I am satisfied that Lord Trayner's calculations are correct, and that on the above assumption the award proposed is reasonable.

LORD JUSTICE-CLERK — That is my opinion also.

LORD YOUNG was absent.

The Court found the amount due to the pursuers by the defenders to be £4148, 13s. 6d., and gave decree for that amount.

Counsel for Pursuers — Shaw, Q.C. — Younger. Agents — Campbell & Smith, S.S.C.

Counsel for Defenders — Lord Advocate (Graham Murray, Q.C.) — Clyde. Agents — Hope, Todd, & Kirk, W.S.

Wednesday, January 31.

SECOND DIVISION.

[Sheriff of Lanarkshire.

SCOTT v. WILSON.

Issues—Counter-Issues—Slander—Veritas—Specification.

Counter-issues of *veritas* respectively allowed and disallowed in an action of damages for slander.

This was an action brought in the Sheriff Court at Glasgow by James Scott, 16 India Street, Partick, against J. Havelock Wilson, Member of Parliament for Middlesborough, in which the pursuer craved decree for the sum of £1000 as damages for slander. The pursuer was a superintendent at Glasgow in the employment of the Shipping Federation, Limited, and the defender was the President of the Sailors and Firemen's Union.

The defender pleaded, *inter alia*, "(4) *Veritas*."

A proof having been allowed, the pursuer appealed for jury trial.

The following issues and counter-issues were, *inter alia*, proposed for the trial of the cause:—

Issue I. Whether during the month of November 1898 the defender stated to Mr W. H. Raeburn, one of the Committee of the Shipping Federation, Limited, in his office at 81 St Vincent Street, Glasgow—(1) that two years ago the pursuer was found helplessly drunk in Argyle Street, Glasgow, and taken in charge by two policemen to the Central Police Station; (2) that the pursuer had been seen by police officers taking common prostitutes into the Federation Offices at all hours of the night, meaning thereby that he was a man of immoral character, and had taken prostitutes into said office for the purpose of fornication; and (3) that in the early part of the year 1898 the pursuer was drunk and incapable at the Shipping Federation Office, 9 James Watt Street, Glasgow, or used words of

similar import and effect, and whether the said statements are of and concerning the pursuer, and were made by the defender falsely and calumniously, to the loss, injury, and damage of the pursuer?

Counter-issue I. (1) Whether the pursuer was drunk in or near Argyle Street, Glasgow, on or about Saturday, 13th July 1895, and was taken by two policemen to the Central Police Station, Glasgow? (2) Whether the pursuer, on an occasion early in the year 1896, took Mrs Taylor, a woman of loose character, residing at 2 Anderston Quay, Glasgow, into the office in Glasgow of the Shipping Federation, Limited, for immoral purposes, and whether the pursuer, on various other occasions during the years 1896, 1897, and 1898 took the said Mrs Taylor and her two sisters who lived with her, and other women of loose character, one at a time, into the said office for immoral purposes? (3) Whether early in the year 1898 the pursuer was drunk and incapable at the office in James Watt Street, Glasgow, of the Shipping Federation, Limited?

Issue II. Whether about the beginning of December 1898, and prior to the 9th day thereof, the defender despatched from Glasgow to Mr H. Llewelyn Smith or other officer of the Board of Trade a written document containing the statements set forth in Schedule A appended hereto, or statements of similar import and effect, and whether said statements are of and concerning the pursuer, and are false and calumnious, to the pursuer's loss, injury, and damage?

Schedule A was as follows:—"Mr Scott was formerly an inspector in the Partick Police Force, near Glasgow, and that he was called upon to resign his position for misconduct. That when under the influence of drink he brutally assaulted a moulder, and that the case was not brought into Court in consequence of Scott's solicitor paying a sum of money to the man to let the matter drop. That two years ago Mr Scott was found helplessly drunk in Argyle Street, Glasgow, and taken in charge by two policemen to the Central Police Station. That in the early part of this year (1898) Mr Scott and a boarding-house keeper were in a public-house called the 'Edinburgh Castle.' There was present a publican, and an altercation took place between Scott and this man. Scott took up a chair and struck the publican on the head, inflicting a very severe wound. He was under the influence of drink at the time. That in the early part of this year (1898) Scott was drunk and incapable at the Federation Office, 9 James Watt Street, Glasgow, and a cab was brought, and M'Donald, the outside delegate, assisted him into the cab, in which he was driven home."

Counter-issue II. (1) Whether the pursuer, on or about 23rd June 1890, was compelled to resign the office of superintendent in the police force at Partick for misconduct? (2) Whether the pursuer, on or about 18th May 1890, while under the influence of drink, brutally assaulted John Clark, moulder, at 72 Douglas

Street, Partick? (3) Whether the pursuer was drunk in or near Argyle Street, Glasgow, on or about Saturday, 13th July 1895, and was taken by two policemen to the Central Police Station, Glasgow? (4) Whether the pursuer, in or about the month of August 1898, in or near the 'Edinburgh Castle' public-house, Argyle Street, Glasgow, when under the influence of drink, assaulted A. C. Kellock, publican, 127 Eglinton Street, Glasgow, by striking him on the head with a chair, thereby inflicting a very severe wound? (5) Whether early in the year 1898 the pursuer was drunk and incapable at the office in James Watt Street, Glasgow, of the Shipping Federation, Limited?

No objection was taken to the issues, but the pursuer objected to certain of the counter-issues.

Argued for the pursuer—In a counter-issue the same specification was required as in a criminal indictment. Generally speaking, here all the counter-issues, with the exception of II. (1) and II. (4) were too loose and vague in their allegations to be allowed—*Bisset v. Ecclesfield*, May 21, 1864, 2 Macph. 1096; *Grant v. Fraser*, July 16, 1870, 8 Macph. 1011; *Anderson v. Hunter*, January 30, 1891, 18 R. 467 (fifth issue at p. 468). Counter-issue I. (1) did not counter anything in the issue, and therefore ought not to be allowed. A statement that the pursuer was drunk two years before November 1898 could not be justified by proof that the pursuer was drunk on 13th July 1895. Counter-issue I. (2) did not counter the second part of the issue. It was not said that Mrs Taylor was a common prostitute, nor was it said that her two sisters were common prostitutes. Moreover, the counter-issue was lacking in specification. In the first part too great latitude in point of time was taken. The same objection applied with even greater force to the second part, and the women referred to were not sufficiently identified. In counter-issue I. (3) the month at least should be stated. Counter-issue II. (2) did not counter the issue. The sting of the slander lay in the statement that the pursuer had paid a sum of money to let the matter drop, and there was no attempt to justify this in the counter-issue. The defender was bound to counter the whole of the issue—*Ogilvie v. Paul*, June 28, 1873, 11 Macph. 776. Counter-issue II. (3) did not counter the issue, and counter-issue II. (5) was too vague in point of time.

Argued for the defender—The counter-issues sufficiently countered the issues, and all the specifications which could reasonably be required had been given.

The Court after considering the case disallowed the counter-issues I. (1) and (2), and II. (3), and allowed counter-issues I. (3) and II. (1), (2), (4), and (5).

Counsel for the Pursuer—Jameson, Q.C.—Cook. Agent—Campbell Faill, S.S.C.

Counsel for the Defender—Shaw, Q.C.—Guy. Agents—Clark & Macdonald, S.S.C.

Friday, February 2.

SECOND DIVISION.

MATHESON'S TRUSTEES v.
MATHESON.

Succession — Vesting — Survivorship — Destination to Children and their Issue — Conditional Institution.

A testator directed his trustees after payment of his debts and a legacy of £50 to hold the remainder of his estate for the life of his wife during her life, and to divide the estate after her death amongst his children *nomi-*
natim equally, share and share alike; declaring that in the event of the death of any of the said children leaving lawful issue before the division took place, the issue should succeed to the predeceasing parent's share; and declaring also that the shares falling to his daughters should be held for their life-
rent use allanarly, with power to the daughters to dispose of the capital by will, and with power to the trustees to advance to the daughters such portion of the capital as they might see fit.

The life-rentrix and all the children survived the testator, but one of the children died before the life-rentrix, leaving issue and a trust settlement disposing of his whole estate.

Held that the estate vested in the children of the testator *a morte testatoris*, and that the share belonging to the child who died before the life-rentrix was accordingly carried by his trust settlement.

Robert Matheson of West Coates died on 5th March 1877, leaving a trust-disposition and settlement dated 24th February 1877, by which he conveyed his whole estate, heritable and moveable, to trustees. The deed provided for the payment of debts and a legacy of £50. The remaining trust purposes were as follows:—“*Third*, I direct my trustees to hold the whole of the remainder of my means and estate for the life-rent use and enjoyment of Alexa Urquhart or Matheson, my wife, during all the days of her life. And *Lastly*, I direct and appoint my said trustees to divide the said estate after her death amongst my children, the said William James Matheson, Robina Reid Matheson, Alexa Matheson or Robertson, Ann Matheson or M'Call, Johan Matheson, and Percival Matheson equally, share and share alike; declaring that in the event of the death of any of my said children leaving lawful issue before the said division takes place the said issue shall succeed to their predeceasing parent's share, and also that the shares falling to my daughters already married shall be held under the provisions of their marriage-contracts, and to my daughters still unmarried shall be held by my said trustees and settled in similar terms in their marriage-contracts, and in the event of their remaining unmarried shall be held by said trustees for their life-rent use allanarly, but with