Wednesday, October 15.

SECOND DIVISION.

[Lord Low, Ordinary.

M'LINTOCK *v.* STUBBS, LIMITED.

Reparation—Slander—Newspaper — Black List—Decree in Absence — Accuracy of Excerpt from Court Book.

In an action of damages for libel alleged to have been committed by the publication in a "black list" of an excerpt from a Small-Debt Court Book, which appeared under the heading of "decrees pronounced in absence of the defenders, though appearance may have been made by them or on their behalf at the original diet," and which bore that a decree for £2, 0s. 10d. had been pronounced against the present pursuer in absence, the pursuer averred that although he had not been present or represented when the decree in question was granted it had been pronounced at an adjourned diet after appearance had been made for him at the first calling, when, the sum sued for being a law-agent's account, objection had been taken to the amount, and a remit had been made to the Auditor, who taxed off 4s. 2d., with the result that the decree granted was for £2, 0s. 10d. only, instead of £2, 5s., the sum originally claimed; that the entry in the "black list" did not show either that the decree had been pronounced at an adjourned diet or that it was for a sum less than the sum originally claimed; that the "black list" was consequently inaccurate and misleading; that the pursuer had been thereby represented to be a person who was unable to pay his debts; and that his credit had suffered in consequence. *Held* that the report in the "black list" was sufficiently accurate and was not misleading, and that the action was therefore irrelevant.

Thomas Bryce M'Lintock, produce broker and commission agent, 1 Strathallan Terrace, Dowanhill, Glasgow, raised an action of damages for libel against Stubbs, Limited, Princes Street, Edinburgh.

The pursuer averred — "(Cond. 5) The defenders are the proprietors and publishers of a publication entitled *Stubbs' Weekly Gazette* (Scotland) 'containing recorded protests on bills and promissory-notes, decrees in absence, sequestrations, cessios (Debtor's Act 1880), trust-deeds, &c., and dissolutions of partnerships, certain Small-Debt Court decrees granted in absence' . . . This *Gazette* has a wide circulation throughout the commercial classes in the United Kingdom. It is familiarly known as 'The Black List.' It is published weekly, and its main object is to give information to tradesmen and the mercantile community generally as to bankrupts, insolvents, and defaulters, so that they may take steps to secure payment of their debts and obligations or refrain from dealing with such persons."

The pursuer further averred that between April and June 1901 he employed Messrs St Clair Swanson & Manson, writers, Glasgow, to do certain work on his behalf, and that on 21st November 1901 a small-debt summons was served upon him at their instance for £2, 5s., being the alleged amount of their business account; that the summons was called in the Sheriff Court at Glasgow on 28th November, when the present pursuer's agent attended and moved for a remit to the Auditor for the taxation of the account sued on; and that on 4th December the parties attended before the Auditor, who taxed off 4s. 2d. "(Cond. 4) The said small-debt summons was put to the roll for 5th December 1901, and on that day the Sheriff-Substitute, having considered the report by the Auditor of Court, pronounced decree in favour of Messrs St Clair Swanson & Manson against the pursuer for £2, 0s. 10d., being the taxed amount of the said account sued for in the said small-debt summons, with 6s. 10d. of expenses. The pursuer did not attend the Court on the last-mentioned day, nor did an agent on his behalf attend. It was unnecessary that he should be represented, seeing that he did not intend to object to the report by the Auditor of Court or to resist decree being pronounced for the sum brought out as due by the Auditor. The said decree pronounced in the said small-debt action was a decree *in foro*, in respect that litiscontestation had taken place between the parties. The pursuer paid the sum contained in the said decree to Messrs St Clair Swanson & Manson. He would have done so whenever the said account was rendered to him but for the fact that he had been advised and believed that the said account was overcharged. There was a *bona fide* dispute between the pursuer and Messrs St Clair Swanson & Manson, which dispute was the subject of consideration by the Sheriff and the Auditor. With reference to the defenders' statement in answer, it is denied that the said decree was entered as a decree in absence in the book of causes kept in the Sheriff Court in Glasgow. (Cond. 6) In their issue of the said *Gazette* published on 12th December 1901 the defenders falsely, calumniously, and maliciously inserted a notice of the said small-debt decree granted in favour of Messrs St Clair Swanson & Manson against the pursuer. The said notice appeared among the decrees in absence reported by them, and it is in the following terms :—

Extracts from the Registers of Decrees in Absence in the Small-Debt Courts.

. . . . . .

Court.	Date.	Amount.	Defenders.	Pursuers.
.				
. . .	. . .	. . .	. . . . .	. . . . .
. . .	. . .	. . .	. . . . .	. . . . .

The following are Extracts of Decrees pronounced in absence of the defenders, though appearance may have been made by them or on their behalf at the original or adjourned diet.—*See Head Note.*

Court.	Date.	Amount.	Defenders.	Pursuers.
			LANARK.	
. . .	. . .	. . .	. . . . .	. . . . .
. . .	. . .	. . .	. . . . .	. . . . .
Glasgow	Dec. 5	£2 0 10	T. B. M'Lintock, 1 Strathallan Terrace, Dowanhill, Glasgow	St Clair Swanson & Manson, Glasgow
. . .	. . .	. . .	. . . . .	. . . . .

The said notice was meant and calculated and intended to convey, and as a matter of fact did convey, to the readers of the said *Gazette* that the pursuer was a person unable to pay his debts, and that a decree in absence for £2, 0s. 10d. had been pronounced against him. The pursuer was thus held up by the defenders to the readers of the said *Gazette* as a person to whom traders and the public generally should not give credit. (Cond 7) The above quoted notice in the said *Gazette* relating to the said small-debt decree is not a fair and accurate report of what had passed in Court in the proceedings following upon the said small-debt summons at the instance of Messrs St Clair Swanson & Manson against the pursuer. On the contrary, it is incomplete, inaccurate, unfair, and misleading. It does not disclose the fact that there had been a *bona fide* dispute between the parties, and that the said dispute had been the subject of consideration by the Sheriff and the Auditor. It does not disclose the fact that the pursuer had, and by his agent stated, a defence to the said small-debt summons. Nor does it refer at all to the remit by the Sheriff to the Auditor. It contains no reference to the fact that while Messrs St Clair Swanson & Manson in said small-debt action sued the pursuer for £2, 5s., they obtained decree against him for £2, 0s. 10d. only."

The defenders pleaded—"(1) Pursuer's statements are irrelevant."

On 5th June 1902 the Lord Ordinary (Low) repelled the first plea-in-law for the defenders, and ordered issues.

Opinion.—"This case differs from that of *Crabbe & Robertson* v. *Stubbs, Limited*, 22 R. 860, which was relied upon in two particulars. In the first place, in that case the Book of Causes of the Small-Debt Court did not bear that the decree had been in absence, while here the entry in the book is that the 'defender' (the present pursuer) was absent. In the second place, in the case of *Crabbe & Robertson* the notice in the defenders' gazette appeared in what purported to be decrees in absence in the proper sense—that is to say, where the defender had never entered appearance. In this case, on the contrary, the notice was in a part of the *Gazette* which bears to contain 'extracts of decrees pronounced in absence of the defenders, though appearance may have been made by them or on their behalf at the original or adjourned diet.'

"The case of *Crabbe & Robertson* therefore is not a direct authority, although the principles upon which it was decided are applicable.

"The sum for which the present pursuer was sued in the Small-Debt Court was £2, 5s., being the amount of a law-agent's account. The pursuer did not deny liability, but appeared in Court by his procurator and asked that the account should be taxed. The Sheriff accordingly remitted the account to the Auditor, who taxed off 4s. 2d., leaving £2, 0s. 10d. as the amount due. As the pursuer was satisfied with the taxation he did not attend the Court when decree was moved for, and accordingly he was entered in the Book of Causes as absent.

"The notice in the *Gazette* contained the date, the amount for which decree was given, and the names of the parties. The notice therefore, so far as it went, was a perfectly correct report of what appeared in the book of causes. There was, however, one particular which appeared in the book which was not given, namely, the amount (£2, 5s.), sued for. The pursuer maintained that that omission rendered the report misleading and calculated to injure his credit, which a full copy of the entry in the causes book would not have done, because anyone looking at the book would have seen that decree was given for a smaller sum than that sued for, which would have suggested that the action had been brought, not because the defender in the action was unwilling or unable to pay his debt, but because he disputed and had reason to dispute the amount.

"The defenders, on the other hand, argued that the headnote (which I have quoted) to the part of the *Gazette* in which the report appeared had the same effect as publishing the full entry in the causes book would have had, because it notified the public that the cases following were not to be regarded as decrees in absence in the proper sense, but only as decrees which had in fact been taken in absence of the defender, who might notwithstanding have appeared at a previous diet.

"Now, I do not think that the publication of what appears in the causes book can be objected to. But what is published must be a true report of what appears in the book, or as Lord M'Laren put it in *Crabbe & Robertson*, of 'everything material and necessary to a true representation of the case.' Now, I do not think that the entry in the *Gazette*, if read without the headnote, did contain everything that was material and necessary, and the question is whether the entry when read along with the headnote did so.

"Now, that is a question which I do not think it is for me to answer. I suppose that the list of cases in which the pursuer's name appeared was a 'black list,' although not of so dark a hue as that which preceded it. The object of publishing such a list avowedly is to give traders information whereby they may avoid making bad debts. Presumably, therefore, the information

which was given in regard to the pursuer was such that a trader doing business with him might think it prudent to make inquiries as to his credit. If the information given was exactly what anyone who looked at the Register of Small-Debt Causes would find, the pursuer cannot complain. But if it was not so, but omitted, as I think it did, something appearing in the book of causes which was material, the pursuer is entitled to claim damages. Whether the headnote had the effect of making the information given in regard to the case for all practical purposes identical with what appeared in the book of causes is not a question of law, but a question of what the effect of the notice would be upon the opinion of the public, or of that portion of the public which would be likely to be doing business with the pursuer. That is, in my opinion, a jury question, and therefore I think that an issue must be allowed."

The defenders reclaimed and lodged the following certified excerpt from the Books of the Sheriff Small Debt Court of Lanarkshire kept at Glasgow:—

"*At Glasgow, the fifth day of December Nineteen hundred and one years, sitting in judgment* WILLIAM GUTHRIE, Esquire, *Advocate, Sheriff-Substitute of Lanarkshire.*

Number.	Dates of Complaints.	Pursuers.	Whether absent or present personally or by Representative at calling, with name of Representative, and also of Procurator when he appears for or with a party.	Defenders.	Whether absent or present or by Representative at calling, with name of Representative, and also of Procurator when he appears for or with a party.	Nature and Amount.	How cited.	By what Officer.	Amendment of Summons.	Interlocutors and Decrees.	Date of Enrolment or next Enrolment	Date of Sist, and for when issued.	When and to whom extract issued.
13	Continued cases, 1901, Nov. 21	Messrs St Clair, Swanson, & Manson, W.S., Glasgow	P. by J. Jardin	T. B. M'Lintock, Strathallan Terrace, Dowanhill, Glasgow	A.	a/c £2, 5s.	L.	J. Crossley		Decerns for £2, 0s. 10d., with 6s. 10d. of costs	28th Nov. 1901		Pursuers 13th Dec. 1901"

Argued for the reclaimers—The decree obtained against the respondent was a decree in absence — *Oliver* v. *Simpson*, November 16, 1898, 1 F. (J.C.) 12, 36 S.L.R. 62; *Montgomery* v. *Loughran*, February 2, 1891, 18 R. (J.C.) 25, 28 S.L.R. 345. Litiscontestation was not constituted by a remit to the Auditor, which would have been made as matter of course without any attendance by the respondent. No action lay against the relaimers for publishing a true account of a decree obtained against the respondent—*Andrews* v. *Drummond & Graham*, March 5, 1887, 14 R. 568, Lord President at p. 572, 24 S.L.R. 415: *Searles* v. *Scarlett* [1892], 2 Q.B. 56; *Fleming* v. *Newton*, February 17, 1848, 6 Bell's App. 175. With regard to the cases relied on by the respondent, the defenders had merely published an extract, accurate so far as it went, from a public register; that extract contained a full and exact account of what took place in Court when the decree was granted, and so fulfilled the law laid down in *Wright & Greig, cit. infra*. The facts in the cases of *Crabbe & Robertson* and *M'Neil, cit. infra*, had no application here; in the former case the publication was inaccurate.

Argued for the respondent—The parties having been at issue as to the accuracy of the account sued on, and the respondent having obtained a remit to the Auditor, the decree pronounced against him was a decree *in foro*; therefore both by what they had stated and by what they had omitted to state the reclaimers had given an inaccurate report, and should be held liable for any injury caused thereby to the respondent—*Rarity* v. *Stubbs & Company*, June 8, 1893, 1 S.L.T. Case 97; *Reiss* v. *Perry*, 1895, 11 T.L.R. 373. The respondent had averred a relevant case and was entitled to an issue—*Crabbe & Robertson* v. *Stubbs, Limited*, July 4, 1895, 22 R. 860, 32 S.L.R. 650; *Andrews* v. *Drummond & Graham, cit. sup.*; *Wright & Greig* v. *Outram & Company*, July 17, 1889, 16 R. 1004, 26 S.L.R. 707, and March 11, 1890, 17 R. 596, 27 S.L.R. 482; *M'Neil* v. *M'Neil*, March 5, 1891, 18 R. (J.C.) 38, 28 S.L.R. 599.

LORD JUSTICE-CLERK—We have had a very full debate here, and the opinion I have come to is that there is not here a relevant case. The entry in *Stubbs' Gazette* which was made in the case of this pursuer was an entry which in every particular of it was absolutely correct. It appeared under a heading which says "The following are Extracts of Decrees pronounced in absence of the defenders, though appearance may have been made for them or on their behalf at the original or adjourned diet." Taking that heading along with the notice — which is quite legitimate — everything there is absolutely correct, and it makes no misrepresentation whatever. The document from which it was taken bears that it was in absence, for in the column for that purpose the letter "A" is entered as the mode of entering the absence of the defender. The decerniture was for £2, 0s. 10d., and in the original Small-Debt Court Book the sum sued for is stated as £2, 5s. The complaint is made that that report is not full enough, and that if it had been full certain other things would have been disclosed, including the sum which was originally sued for. I am unable to see myself that that makes any such difference as to constitute this upon the face of it a libel. If the full extract had been given it would have disclosed that it was in absence, and that this decree was

for the modified amount of £2, 0s. 10d., and that after this decree the pursuer had to take out extract after a considerable number of days because the debt was not paid. Of course in the issuing of such a list as this, and from the very nature of it, as it is a list intended for the information of persons who are dealing in trade, in order that they may be warned to consider what they do in dealing with others, it is absolutely essential that nothing should be stated that is contrary to fact; and I quite agree that something would be stated which was contrary to fact if the statements upon one side were given and explanations and statements made or given on the other side on behalf of the defender were not given. It is quite plain that the report of proceedings in Court may be made quite false by quoting only part of any case correctly and not quoting the rest at all. But this is not a case in which there are any such circumstances, and I am unable to see that there was omitted anything which would cause it to be a misleading statement against the pursuer in this case. I am therefore for recalling the interlocutor of the Lord Ordinary and sustaining the plea-in-law which he has repelled.

LORD YOUNG—The facts of the case are really very simple and very clear. In November an action was brought in the Small-Debt Court against the pursuer for the sum of £2, 5s. He did not appear himself, but a man-of-business asked that the account should be remitted to the Auditor to be taxed. The Sheriff did that as a matter of course, with the result that an that day week the case was again before the Sheriff with the Auditor's report fixing the amount at £2, 0s. 10d. There had been an objection stated to the claim on the first occasion, and the defender did not appear upon the second occasion, when the pursuer in his absence moved for decree, and got it, for £2, 0s. 10d., with a small sum for expenses. Now, I do not think the term "absence" need concern us here on account of any statutory or technical meaning which attaches to that term in particular circumstances. In the ordinary meaning of the word in the English language it was applicable to the case here when the decree for the sum was pronounced in the absence of the defender, he neither by himself nor by any one appearing for him having stated any objection to the decree which the pursuer asked. Now, I think that was in the natural sense a decree in absence, and the Lord Ordinary takes that view. But then the Lord Ordinary is under the impression that there should have been something in the reclaimers' publication to indicate that the case had been before the Court upon a previous occasion, when the claim was 4s. 2d. larger than the sum for which decree was given, and that if that had been in it would have saved the pursuer's character from a blemish which it otherwise sustained. I cannot agree with that at all. I think everything was stated correctly, and that there was no omission of anything which ought to have been inserted to make the statement correct, it being a mere announcement that decree was pronounced in absence of the pursuer in this action. I hardly think it necessary to guard myself against taking a view in opposition to what Mr Salvesen referred to, and which he never disputed, namely, that the proprietor of a gazette such as this is responsible for the accuracy of the statements made therein, in this sense, that he will be responsible if there is anything appearing in it materially inaccurate either by actual statement or by omission, which statement or omission is injurious to character. The party whose character is injured by the inaccuracy of the statement or the impropriety of the omission will have an action against the proprietor of the gazette. I need not say anything to guard myself against countenancing any idea to the contrary.

LORD TRAYNER—I am of the same opinion. The complaint which the pursuer makes here against the defenders is that they published an excerpt from the Sheriff Court books of Glasgow, which represented that a decree in absence had passed against him for £2, 0s. 10d. on a certain date. This case is different from the case of *Crabbe & Robertson* referred to by the Lord Ordinary, for there the statement which was published as an extract from the record of Court was inaccurate, and amounted by reason of that inaccuracy to a false statement, whereas in this case it is admitted that everything set forth in the excerpt complained of is true and represents nothing but the fact which is true, that a decree in absence was pronounced against the respondent at the instance of the persons named for £2, 0s. 10d. But the pursuer maintains that he is entitled to damages against the defenders for not printing *in extenso* all that appears on the Sheriff Court record on the particular date with reference to this particular claim. I find that the only things omitted are these —(1) that there were two continuations of the cause mentioned in the record of Court which are not given in the defenders' excerpts, and (2) that the sum originally sued for, which was larger to the extent of 4s. 2d. than the sum for which decree was granted, is also omitted to be given. I do not think that the defenders were at all bound to publish the record of the continuations. They could not know what these continuations were for or who moved for them, or for what purpose they were moved for, or indeed what took place in reference to them; and they were of no concern to the public or the defenders' customers. It was immaterial to the defenders' character to say that decree had been pronounced against him after two continuations rather than at the first diet. In regard to the entry of the full amount (£2, 5s.) I do not think that that has any bearing on the case, because the presence or absence of information as to the amount of the claim made against the pursuer does not affect the fact that decree in absence passed

against the pursuer for a certain sum. The whole extract from the record published by the defenders being true, and being a record of what took place in a public Court, I think the pursuer has no ground for his present claim.

LORD MONCREIFF—I am of the same opinion. I do not think it is necessary to consider whether technically this is a decree in absence or a decree *in foro*. In the "black list" complained of I think the defenders have sufficiently made it plain that they did not enter that decree as a decree in absence in the ordinary sense of the word. They have a long list of decrees in absence, and they have a separate list in which they enter decrees in which appearance has been made at earlier stages of the case, but not when the decree was pronounced. But the true complaint here for the pursuer is that the entry in the list is not a true excerpt of the entry in the register. Now, if anything had been omitted which would have aided the pursuer there would have been a good deal to be said for it. But I do not think he is prejudiced in the least by the omission made here. In the first place, if the entry itself, the true entry in the register, had been inserted in full, it *ex facie* would have disclosed a decree in absence, and nothing else. There was no entry of any appearance having been made on behalf of the defender at an earlier diet. On the contrary, what appears is that the pursuers were present and the defender absent, and finally that decree for £2, 0s. 10d. was given. But it has been said that if the amount sued for had been inserted it would have shown that, as decree was only given for £2, 0s. 10d., appearance must have been made and objection taken at an earlier stage. I do not think that that is a necessary inference, because the pursuer might have restricted his claim or the Sheriff might have suggested its restriction. On the whole matter I think there is really no relevant substance in the pursuer's averments.

The Court recalled the interlocutor reclaimed against, sustained the first plea-in-law for the defenders, and dismissed the action.

Counsel for the Pursuer and Respondent —Orr—J. C. Watt. Agents—Clark & Macdonald, S.S.C.

Counsel for the Defenders and Reclaimers —Salvesen, K.C.—T. B. Morison. Agent—George F. Welsh, Solicitor.

Thursday, October 16.

FIRST DIVISION.

[Jury Trial.

CONNELLY *v.* TRUSTEES OF THE CLYDE NAVIGATION.

Process—Jury Trial—Bill of Exceptions—Form of Bill—Court of Session Act 1868 (31 *and* 32 *Vict. c.* 100), *sec.* 35.

Section 35 of the Court of Session Act 1868 provides that "The bill of exceptions . . . shall consist of a distinct statement of the exception or exceptions so noted, with such a statement of the circumstances in which the exception or exceptions were taken (including, if necessary, a statement of the purport of the evidence, or extracts therefrom so far as bearing upon such exception or exceptions, but without any argument) as along with the record in the cause may enable the Court to judge of such exception or exceptions. . . ."

The pursuer in an action in which the jury returned a verdict for the defenders presented a bill of exceptions, which contained no statement of the circumstances in which the exception was taken beyond the statement that the Judge had given a certain direction for which he was requested by the pursuer to substitute another. There was no statement of the purport of the evidence.

The Court (1) *refused* the bill of exceptions, and (2) refused to grant leave to amend by printing the notes of the evidence.

An action was raised by John Connelly, labourer, Glasgow, against the Trustees of the Clyde Navigation for payment of the sum of £300 as damages in respect of injuries sustained by him in an accident, which the pursuer alleged occurred through the fault of the defenders' employee.

The pursuer at the time of the accident was working in the hold of a vessel which was discharging iron ore by means of a steam crane and four buckets belonging to the defenders. One of the empty buckets fell upon him and caused the injuries in respect of which the present action was raised.

The pursuer averred that the accident occurred through the fault of the craneman, an employee of the defenders.

The defenders averred that "the accident was caused or materially contributed to through the fault of the pursuer's fellow-servants or by himself." They further averred that they hired out to the stevedore the crane and a man to work it, and that the craneman was "bound to obey the orders given to him by the stevedore, his foremen, and men, and *pro hac vice* the craneman was the servant of the stevedore."

The case was tried on 17th March 1902 before the Lord President and a jury on