slander; but if slang is used it must be taken according to its ordinary meaning. Here it is nothing else than slang, and calling a man a fraud does not mean that he has committed a fraud. All that is meant is that he is not nearly so good as he pretends to be; and it may be that in a great many walks of life, or in what can scarcely be called walks of life, a man may be called a fraud, *e.g.*, with reference to his pretensions even to play a game well, or to be an authority on a certain branch of knowledge. And I have no doubt whatever, knowing the English language as it is used—and a judge is entitled to make use of such knowledge—that the ordinary slang expression of calling a person a fraud does not mean that the person has committed a fraud in the legal sense of the term. Therefore, to call a man a liar and a fraud is not slanderous. It is abusive language, which may or may not be deserved, but it is not slanderous.

The rest of this matter may be disposed of in the same way as the Lord Ordinary has disposed of the other issues. It does not come to anything more than this—that if the pursuer, who was in arrears at the time, did not pay up by the end of the week the matter would be put into the hands of the authorities. That does not mean that he has cheated. It means that if he does not pay by the time he ought to have paid, then investigation will be made to see why he has not paid. In a case like this, where the parties are in such business relations, there must be a certain freedom for the superior towards his subordinate who is in arrears.

I therefore recommend your Lordships to come to the same conclusion as the Lord Ordinary. And although, as regards the second issue, I prefer to put my decision on the ground I have mentioned rather than on the very difficult and delicate ground on which the Lord Ordinary decided it, and on which I reserve my opinion, the interlocutor need not be varied.

LORD M'LAREN—If we should have to consider in another case the question as to the liability of a company for their written statements containing imputations on other persons, I think it would be necessary to consider very carefully the limits of the principle which was laid down in the Privy Council case to which we have been referred. Therefore I shall say no more upon that subject except that I doubt whether the principle can be extended to verbal slander. The whole subject would have to be considered, and therefore I do not express any opinion on it.

I agree with your Lordship in the chair that the words in the present case, which were uttered verbally and not written, and were addressed to the pursuer himself, are not actionable. While the law of England would have excluded this action on two grounds, first, that it was a statement to the party himself, and secondly, that it was verbal, the law of Scotland recognises verbal slander; but I think that we have been in the habit of scrutinising the averments of verbal slander much more rigidly than we do those of libel. The reason is, that everything is to be presumed in favour of a person who is speaking, and if his words are ambiguous we should not necessarily put the worst construction upon them. In the present case I do not think the words are actionable, because they are such that, used as they were, they would have done harm to no one. Considering the circumstances in which they were used I do not think these words will bear a defamatory meaning, and I am therefore for disallowing the issue.

The LORD PRESIDENT intimated that LORD KINNEAR, who was present at the hearing, concurred.

LORD PEARSON was absent.

The Court refused the reclaiming note and adhered to the interlocutor reclaimed against, finding the defenders entitled to additional expenses.

Counsel for the Pursuer and Reclaimer—Orr, K.C.—J. D. Miller. Agents—Inglis, Orr, & Bruce, W.S.

Counsel for the Defenders and Respondents — Cooper, K.C. — C. D. Murray. Agents—Campbell & Smith, S.S.C.

Wednesday, January 24.

FIRST DIVISION.

[Sheriff Court of Lanarkshire at Glasgow.

STARK'S TRUSTEES *v.* DUNCAN.

Jurisdiction—Appeal—Process—Interdict Granted in Sheriff Court—Breach of Interdict—Appeal from Sheriff-Substitute to Sheriff—Minute of Parties Waiving Certain Objections—Sheriff not thereby Constituted Arbiter — Appeal — Competency.

In a complaint for breach of interdict, in a Sheriff Court, the evidence was not formally recorded, and the Sheriff-Substitute gave judgment, the defender not being present in person. On appeal to the Sheriff a minute of parties was presented accepting the Sheriff-Substitute's notes as the notes of the evidence and waiving objection to the judgment having been given in defender's absence. An appeal having been taken to the Court of Session it was contended that the appeal was incompetent, parties having by their minute made the Sheriff arbiter and so excluded the jurisdiction of the Court.

Held that the case being *quasi* criminal, it was not possible to make the Sheriff arbiter and that appeal was competent.

Dykes v. *Merry & Cuninghame*, March 4, 1869, 7 Macph. 603, 6 S.L.R. 405, *distinguished.*

Jurisdiction—Process—Sheriff Court—Interdict—Complaint of Breach of Interdict—Appeal—Decree of Fine or Imprisonment in Default Pronounced in Absence of Defender—Refusal to Review Proceedings when Interdict Granted—Competency.

A Sheriff-Substitute having interdicted a defender from interfering with heritable subjects or their rents, subsequently found on petition that a breach of interdict had been committed, and in the absence of the defender fined him and adjudged him, in default of payment, to be imprisoned, refusing to review the proceedings when the interdict was originally granted. The Sheriff having adhered to his Substitute's judgment, an appeal to the Court of Session was taken. *Held* (1) that the proceedings in the Sheriff Court were competent; (2) that inquiry was not allowable into the proceedings when interdict was granted; (3) that the defender's absence when judgment was pronounced did not invalidate the judgment.

On 24th May 1905, in the Sheriff Court of Lanarkshire at Glasgow, in an action at the instance of James Rennie, teacher, Maryhill, Glasgow, and others, the testamentary trustees of the late James Stark sometime residing at Barrwood, Gourock, interim interdict was granted against Ebenezer Steel Duncan, engineer, 15 Phœnix Park Terrace, Glasgow, restraining him from interfering further with certain property or uplifting the rents thereof.

On 7th June 1905 Stark's trustees presented a petition in the Sheriff Court praying the Court "To grant warrant to cite the defender to appear personally before the Court at such diet as it shall appoint to answer hereto; to find that he has committed a breach of the interdict granted by the Court on 24th May 1905 in an action at the pursuers' instance to have the defender, and all others acting on his behalf, interdicted from interfering with the property . . . and uplifting the rents thereof, and has thereby been guilty of a contempt of Court; to fine and amerce the defender in the sum of £50, or such other sum as the Court shall think fit in the circumstances, or otherwise, or failing his payment of such fine, to adjudge him to be imprisoned for such period as the Court shall appoint, and to find him liable in expenses."

The pursuers made averments of what constituted the alleged breach of interdict, and pleaded—"The defender having wilfully disregarded and broken the interdict granted by the Court, ought to be punished for the contempt of Court thereby committed."

The defender pleaded, *inter alia*—"(1) This action for breach of interdict is incompetent in respect it rests upon an interim interdict in an action which in itself is inept. (2) In respect that the citation of the defender in the action in which the interim interdict was procured is by one of the pursuers thereof, and is consequently invalid, this action, which is founded thereon, falls to be dismissed. . . . (5) The defender having in no way disregarded and broken the interdict granted by the Court is entitled to absolvitor."

On 2nd August 1905 the Sheriff-Substitute (DAVIDSON), after proof had been led on 21st July, pronounced judgment, finding that a breach of interdict had been committed, and fining the defender £5, and adjudging him in default of payment within ten days to be imprisoned for ten days. The defender was not present in person.

On 8th August 1905 the defender appealed to the Sheriff (GUTHRIE), and on 16th August the following minute of parties was presented:—"R..... for pursuers and W..... for defender concur—defender being present in Court—in holding the notes of evidence taken by Mr Sheriff Davidson, as in all respects formally recorded, and waive all objections thereto. They also concur in waiving all objections to the competency of the sentence, in respect of the same having been pronounced in absence of the respondent. . . ."

The Sheriff on 22nd August 1905 adhered to the Sheriff-Substitute's findings, and of new fined the defender £5 with fourteen days in which to pay, and adjudged him in default of payment to be imprisoned for ten days.

"*Note.*—Some objection was taken to the competency of the appeal on the general ground that a complaint for breach of interdict is a criminal proceeding. That is not so in the wide sense intended, although it is a proceeding of a *quasi* criminal nature (compare *Christie Millar* v. *Bain*, 1879, 6 R. 1215). In practice there have constantly been appeals to the Sheriff, just as there have been appeals from judgments in breach of interdict proceedings from the Outer to the Inner House of the Court of Session. See also in illustration of principle *Magistrates of Portobello* v. *Magistrates of Edinburgh*, 1882, 10 R. 130. As the case was presented to me, however, it would have been impossible to deal with the merits, because the sentence sought to be reviewed was pronounced in absence of the defender, and because the notes of evidence were not taken in any form recognised in the Ordinary Court. I have thought, with some hesitation, that both of these objections are obviated by the consent of parties embodied in the joint-minute. The parties are not unaware of the effect of that minute, the case of *Dykes* v. *Merry & Cuninghame*, 1869, 7 Macph. 603, having been referred to by the pursuers' procurator in the course of the debate.

"Accordingly, I have considered the arguments of parties upon the merits of the petition for breach of interdict, which are quite distinct from the merits of the petition for interdict, which has now ceased to exist as such. . . . I concur in Sheriff Davidson's remarks in his note, and I think that on the whole he has taken the right view of the position. It is matter for regret, however, that the pursuers should have been obliged to resort to this kind of proceeding under the very peculiar lease which is the subject of the

leading action. Of course nothing can be said now of the merits of that action, upon which to a great extent the appellant's argument in this appeal was founded. I agree with the Sheriff-Substitute in regarding such argument as irrelevant, and holding it indispensable to the proper administration of justice that a subsisting interdict shall be obeyed even when it is one which, if all the circumstances had been known, the Court might not have granted.

"In the circumstances I think the defender is sufficiently punished by the fine and expenses in the judgment under review, and I allow no expenses in the appeal. I adhere to the judgment of the Sheriff-Substitute."

The defender appealed, and argued — 1. The appeal was competent. The fact that the full notes of evidence had not been printed did not make the appeal incompetent if the ground of appeal was fundamental irregularity in procedure. Even interlocutory judgments could be appealed to that Court when irregularities in procedure had taken place—*Miller* v. *Crawfurd*, January 15, 1881, 8 R. 385, 18 S.L.R. 247. And the Court could entertain appeals against judgments if irregularity had occurred, even though the merits could not be entered upon—*Bone* v. *School Board of Sorn*, March 16, 1886, 13 R. 768, 23 S.L.R. 537. The case of *Dykes* v. *Merry & Cuninghame*, March 4, 1869, 7 Macph. 603, 6 S.L.R. 705, was distinguished from the present, as there the penalty was a pecuniary one with no alternative of imprisonment, and the proceedings before the Sheriff-Substitute were regular. In the present case the proceedings were irregular, and no consent of parties could validate them — Mackay's Manual, p. 64. 2. The Sheriff's judgment should be quashed. Complaint for breach of interdict should be to the Court of Session. Further, the fact that the interdict was from the beginning irregular was a good ground of appeal. The cases of *Gray* v. *Petrie*, March 10, 1849, 11 D. 1021, and *Anderson* v. *Conacher*, December 20, 1850, 13 D. 405, showed that decerniture for a fine with imprisonment in default was incompetent in the defender's absence. The case of *Walker* v. *Junor*, July 3, 1903, 5 F. 1035, 40 S.L.R. 745, was distinguished by the fact that there there was no question of imprisonment.

Argued for the pursuers and respondents —1. The appeal was incompetent. By the minute as to the evidence the case had been taken *extra cursum curiæ*, and the Sheriff was constituted an arbiter from whom no appeal was possible—*Dykes* v. *Merry & Cuninghame*, *cit. sup.* 2. The judgment should stand. The pursuers had followed the usual practice in applying to the Sheriff Court in a case of breach of its interdict, and the jurisdiction of that Court was privative—*Monro* v. *Robertson's Trustees*, June 24, 1834, 12 S. 788; Dove Wilson's Sheriff Court Practice, 4th ed., p. 442; M'Glashan's Sheriff Court Practice, 2nd ed., . 52. The present appeal was not therefore on a question competent for the Court of Session. The real question in this case was not whether the interdict should have been granted in the Sheriff Court, but whether the order of that Court should be obeyed. As to the absence of the defender when fine and imprisonment were decerned, the case of *Walker* v. *Junor*, *ut supra*, showed that the Court in such proceedings could fine competently in the absence of the defender. The appeal should be dismissed. The cases of *Brown* v. *Thomson*, July 20, 1882, 9 R. 1183, 19 S.L.R. 838, and *Anderson* v. *Hunter*, January 30, 1891, 18 R. 467, 28 S.L.R. 324, and *Henderson* v. *Maclellan*, May 23, 1874, 1 R. 920, 11 S.L.R. 531, were also quoted.

At advising—

LORD PRESIDENT—This is an appeal from the Sheriff Court of Lanarkshire at Glasgow in a petition to ordain the defender to appear and to find that he had committed a breach of interdict, and to sentence him to fine or imprisonment. If it had been in the Supreme Court it would have been called a petition and complaint.

The pursuer did not appear personally in answer to the citation. The matter was gone into in his absence, and the Sheriff-Substitute found that a breach of interdict had been committed, fined the defender £5, and failing payment within ten days sentenced him to imprisonment for ten days, and found him liable to the pursuers in expenses. Against that an appeal was taken to the Sheriff. No notes of the evidence taken before the Sheriff-Substitute had been formally recorded at the time, and parties put in a minute holding the notes of evidence taken by the Sheriff-Substitute as in all respects formally recorded and waiving all objections thereto, and also waiving all objections to the competency of the sentence in respect of the same having been pronounced in absence of the respondent. The Sheriff came to the same conclusion as the Sheriff-Substitute on the merits. He held that he could not go into the question raised in the action of interdict out of which this petition took its rise, and he then repeated the finding of the Sheriff-Substitute and again fined the defender to the same extent as before.

The Sheriff mentioned that he could not have taken up the appeal if it had not been for the minute which had been lodged, and he warned the parties as to the effect of that minute as laid down in the case of *Dykes* v. *Merry & Cuninghame*, 7 Macph. 603.

The first question raised now is as to the bearing of that case, the respondents arguing that this proceeding having been taken *extra cursum curiæ* by the minute, and the Sheriff having been thereby constituted an arbiter between the parties for the final disposal of the case, no appeal was according to that decision competent. I do not think the case of *Dykes* can possibly have any effect in a *quasi* criminal proceeding like this. Parties may be able by paction to take a case *extra cursum curiæ* and

constitute a judge an arbiter of civil rights between them. But they cannot by minute appoint any person an arbiter to pronounce a sentence of fine or imprisonment. I think the case on which this objection is based has nothing to do with the matter.

We have therefore to consider the case on the merits. The questions raised are three. First—Are the proceedings here taken competent in the Sheriff Court? There can be but one answer to that, and the reports supply numerous cases in which it has been exercised.

The second question is—Was the decision of the Sheriff-Substitute right that he could not look at the proceedings in the action of interdict or consider who was in the right there? I am of opinion that the Sheriff-Substitute was clearly right. Persons are not entitled to disobey an order made by the Court and then to claim to show that the Court ought not to have made the order.

The third question is whether this is a bad decree because it imposed a fine on the respondent without him being present. The test of that matter is this—could the present appellant have suspended the decree by which he was fined. I hold that he could not. The ground of the argument is that persons in criminal cases cannot be sentenced in their absence without special provision therefor in the statute which creates the offence. But this is not a criminal proceeding, but a method by which the Court protects its own authority from contempt. It is usual to summon the person charged with contempt to the bar; but I think that Lord President Inglis put that matter, not on any duty to the respondent, but on the view that this being a matter of public interest, it was proper to insist on the person being present. The rule is not universal, because there was cited at any rate one case in which the person charged was not at the bar, the complainer saying that he did not desire him to be brought there. If it is a right of the respondent it could not have been waived by the complainer.

There is another reason why a criminal court does not sentence a person unless he is present. It vindicates its authority by fugitation. But a civil court cannot fugitate, and therefore it seems to me to be out of the question that the court should not be able to vindicate its authority simply because the respondent resorts to the expedient of staying away. I cannot say I think it makes the decree in any way vitiated that the respondent was not present.

I am therefore for refusing the appeal.

LORD M'LAREN—I concur with your Lordship's judgment.

LORD PRESIDENT—Lord Kinnear, who was present at the hearing, also concurs in the judgment.

The Court dismissed the appeal.

Counsel for Defender and Appellant—Craigie, K.C.—A. M. Stuart. Agent—Alexander Ramsay, S.S.C.

Counsel for Pursuers and Respondents—Hunter, K.C.—Munro. Agents—St Clair Swanson & Manson, W.S.

REGISTRATION APPEAL COURT.

Monday, December 18.

(Before Lord Kinnear, Lord Stormonth Darling, and Lord Johnston.)

EMMERSON *v.* OLIVER.

Election Law—Household Franchise—Occupation for Twelve Calendar Months—Entry on First Day of the Twelve Months—Disqualification of Occupier—Representation of the People (Scotland) Act 1868 (31 *and* 32 *Vict. c.* 48), *sec.* 3—*Representation of the People Act* 1884 (48 *Vict. c.* 3), *secs.* 2 *and* 7 (4).

The tenant of a house situated in a county entered on his tenancy on 1st August 1904, and claimed at a Registration Court held in October 1905 to be enrolled as a voter in respect thereof. *Held* that the claimant was not qualified by possession for "not less than twelve calendar months next preceding the last day of July," as required by statute, his possession having been one day short of that period.

Waddell v. *Macphail*, December 2, 1865, 4 Macph. 130, 1 S.L.R. 50, *followed*.

The Representation of the People (Scotland) Act 1868 (31 and 32 Vict. cap. 48), sec. 3, enacts—"Every man shall . . . be entitled to be registered as a voter, and, when registered, to vote at elections for a member or members to serve in Parliament for a burgh, who, when the Sheriff proceeds to consider his right to be inserted or retained in the register of voters, is qualified as follows—that is to say . . . (2) Is and has been for a period of not less than twelve calendar months next preceding the last day of July an inhabitant-occupier as owner or tenant of any dwelling-house within the burgh. . . ."

The Representation of the People Act 1884 (48 Vict. cap. 3), sec. 2, establishes a uniform household franchise at elections in all counties and burghs throughout the United Kingdom, and provides that every man in possession of a household qualification in a county in England or Scotland shall be entitled to be registered as a voter, and when registered, to vote. Section 7 (4) enacts—"The expression 'a household qualification' means, as respects Scotland, the qualification enacted by the third section of the Representation of the People (Scotland) Act 1868, and the enactments amending or affecting the same, and the said section and enactments shall, so far as they are consistent with this Act, extend to counties in Scotland. . . ."

This was an appeal by way of special case stated by the Sheriff of Roxburgh, Berwick, and Selkirk (CHISHOLM) from a decision at a Registration Court held by him at Hawick on 4th October 1905.