Thursday, May 13.

FIRST DIVISION.

[Lord Guthrie, Ordinary.

LEVER BROTHERS, LIMITED *v.* THE DAILY RECORD, GLASGOW, LIMITED.

Reparation — Slander — Issue — Verbal Injury—Holding up to Public Odium and Contempt.

Held that a pursuer who complained of certain statements published by the defenders, and who had been allowed an issue of dishonesty, was not entitled, in addition, to an issue whether the statements exposed him to "public odium and contempt," the Court being of opinion that if the innuendo of dishonesty were not established, the statements complained of did not amount to more than "fair comment" on the pursuers' actings.

Observations as to whether false statements, which though not strictly slanderous expose another to public odium and contempt, are actionable.

On 3rd December 1907 Lever Brothers, Limited, Port Sunlight, Birkenhead, brought an action against the Daily Record, Glasgow, Limited, in which they claimed £50,000 as damages for slander. The pursuers, who were soap manufacturers, complained of certain statements published by the defenders with regard to their conduct in entering into arrangements with other soapmaking firms, which the defenders referred to as the "soap combine."

The following are examples of the passages complained of:—

"*Monday*, 22*nd October* 1906.

"THE SOAP TRUST.

"It has no doubt dawned on the British public by this time that they are face to face with another of those octopus concerns against which President Roosevelt is bravely battling in the United States. Various attempts have recently been made in this country to obtain a monopoly of certain trade articles, and the latest is the ingenious design by a few soap manufacturers to control the price and sale of toilet necessaries. The articles that have already appeared in our columns on the operations of the Soap Trust will have both surprised and enlightened the public. . . . Were the Trust to become all-powerful, which is obviously its aim, it would be no less a menace than a beef trust or an oil trust.

"All the American 'combines' originated with the object, their promoters said, of cheapening production and reducing labour, and the people have found to their cost that the squeezing out of the smaller manufacturer has ended in the monopolist squeezing millions more out of the pockets of the public than were squeezed in the days of enterprising competition. . . . . .

"SOAP TRUST AT WORK.

"PRICES UP AND WEIGHT DOWN.

"WORKERS BEING DISMISSED.

"TOILET REQUISITES AFFECTED.

"To-day's news shows that the grocery trade, both wholesale and retail, is realising the serious menace of the coming Soap Trust campaign, with its enhanced prices and reduced weights.

"The public, too, which in any case seems bound to come off badly, is beginning to distinguish between soaps which belong to the Trust and those outside its scope.

"Prices have already been advanced in some districts for Trust goods.

"The Grocers' Federation has protested to have law against the 15-oz. pound, and it would now seem that the Trust are cutting the weight of 12-oz. bars to 11 ozs.

"Dismissals of employees are beginning, and seem, despite denials, inevitable, since the entire country is being parcelled up into spheres of operation. . . . . .

"THE POUND OF 15 OZS.

" . . . The Federation has lodged its protest against a pound of 15 ozs. . . . 'We want to be able to sell the public a pound of soap when they ask for a pound. The public are willing to pay a higher price per lb. provided the quality is not tampered with.'"

The pursuers averred—"(Cond. 7) The statements made . . . falsely and calumniously represent, and were intended by the defenders to represent, that the pursuers by themselves and in company with others had been guilty of deceiving the public and traders, and of corrupt, extortionate, and dishonest methods and practices in business. . . . The said statements . . . were further false, and made by the defenders without lawful occasion, and with the design of injuring, and with the result of injuring, the pursuers in their trade and business. Said statements were made and published by the defenders with the intent and effect of holding up the pursuers and exposing them to public odium and contempt. . ."

The defenders pleaded that the articles complained of were "fair comment on matters of public interest."

The pursuers proposed the following issues:—"It being admitted that the defenders printed and published in the issues of the *Daily Record and Mail* newspaper between 6th October and 3rd December 1906, and in the issues of the *Scottish Weekly Record* between 27th October and 24th November 1906, the matters contained in the schedule hereto annexed on the respective dates set forth in the said schedule: (1) Whether the statements therein contained are in whole or in part of and concerning the pursuers, and falsely and calumniously represent that the pursuers by themselves or in company with others had been guilty of deceiving the public and traders by dishonest methods and practices in business, to the loss, injury, and damage of the pursuers. (2) Whether the statements therein contained are in whole or in part of and concerning the pursuers, and whether said statements were false and were made with the design

of exposing, and did expose, the pursuers to public odium and contempt, to the loss, injury, and damage of the pursuers. Damages laid at £50,000."

On 12th March 1909 the Lord Ordinary (GUTHRIE) disallowed the second issue.

Opinion.—"It is conceded that the pursuers are entitled to the first issue, namely, of dishonesty. But they ask a second issue of holding up to public odium and contempt.

"It is admitted that, although occasion must often have arisen for a pursuer desiring, as here, if he fails in the more serious issue, to fall back on another, involving a lighter *onus*, there is no case in the books or known in practice where such a double issue, cumulative or alternative, has been allowed.

"The pursuers' counsel seemed uncertain whether the two issues could both be affirmed by the jury, so much damages being given under each, or whether they would be alternative, the words 'or otherwise' being read in between the two. In the end he presented them as alternative.

"I am of opinion that the pursuers are not entitled in this case to alternative issues. They must make up their minds as to the meaning and effect of the words alleged to be slanderous. If they will warrant an issue of dishonesty, then they will ask for that issue; if they cannot be brought up to dishonesty, then they may or may not be entitled to an issue of holding up to public hatred. I have not to consider the circumstances in which the Court will again allow the latter issue, after an interval, since the last case in which that issue was allowed was, I am told, some sixteen years ago.

"If the pursuers were entitled to auction with the jury by two bids as they propose, they would be entitled to more. They propose an issue of dishonesty and an alternative issue of public odium and contempt. According to the view they present, they might make their second issue into a third, and interject between the two an issue of public hatred, so that they would first ask a verdict on the ground of a charge of dishonesty; if they failed in that, they would next ask the jury to find that they had been held up to public hatred and contempt; and if they also failed in that, they would lastly ask a verdict on the ground that they had at least been held up to public odium. The alternative issues in a trial to reduce a will are not analogous. There, whichever issue is affirmed, the result is the same.

"I therefore approve the first issue, and disallow the second."

The pursuers reclaimed, and argued—The pursuers were entitled to both issues. *Esto* that there was no imputation of dishonesty, it was actionable to hold persons up to public contempt and odium as using detestable methods of working, as, for instance, employing sweated labour, and both issues therefore should have been allowed—*Cunningham* v. *Phillips*, June 16, 1868, 6 Macph. 926, 5 S.L.R. 602; *Paterson* v. *Welch*, May 31, 1893, 20 R. 744, 30 S.L.R. 668. The cases of *Waddell* v. *Roxburgh*, June 9, 1894, 21 R. 883, 31 S.L.R. 721, and *M'Laughlan* v. *Orr, Pollock, & Company*, November 6, 1894, 22 R. 38, 32 S.L.R. 36, were distinguishable, for there the words complained of did not, as here, imply the design to injure. Where there was a design not merely to ridicule but to injure or to produce loss of business, verbal injury, though not defamatory, entitled the injured party to an issue—*Ratcliffe* v. *Evans*, [1892] 2 Q.B. 524. In any event the pursuers were entitled to have the issues submitted to the jury as alternatives.

Counsel for respondents were not called on.

LORD PRESIDENT—The point before your Lordships in this reclaiming note is whether an issue is to be granted over and above the issue which is granted by the Lord Ordinary, the issue granted being a replica of the issue which was very carefully considered and granted after prolonged discussion in the case of *Ogston* (not reported) against the same combination of newspapers. The additional issue that is now proposed is, whether the statements contained in the articles "are in whole or in part of and concerning the pursuers, and whether said statements are false and were made with the design of exposing, and did expose, the pursuers to public odium and contempt, to the loss, injury, and damage of the pursuers."

We have had from Mr Murray a very good argument upon the question of whether there may not be an action for verbal injury which is not strictly to be designated as an action of slander. I shall assume for the purposes of this case that you can have such an action, but whenever the thing complained of is contained in a written document or series of documents, the question, after all, must always be, what is the injury that was effected by these documents? Now we had occasion very carefully to consider the contents of the schedule in *Ogston's* case, and the schedule in this case, is, if not identical, at least practically identical with the schedule in *Ogston's* case. The actual averments that are made in the condescendence are not quite the same, but although, no doubt, it is necessary for the purpose of pleading to make averments, yet at the same time the issue that is to be allowed will be drawn from the writings actually complained of. I have no hesitation in saying that after the very careful consideration that we gave to these documents in *Ogston's* case we came very clearly to the conclusion that there it was a question of dishonesty or nothing. That is to say, that if you eliminated from these documents all questions of dishonesty—and of course the phraseology used ought to be innuendoed in order to bring it up to a charge of dishonesty—if you eliminated all such questions, then there was nothing left in the documents except what we should have at once settled was fair comment, and would not have allowed to go to a jury to decide whether it was fair comment or not. Because I take it that it is

always in the power of the Court to say—"This is so obviously fair comment that there really is no stronger meaning in it;" and I certainly think the opinion of the Court in the last case was that the only thing that prevented the action from being dismissed there and then was this possible imputation of dishonesty. If that is so, it seems to me to settle the question, because here the pursuers have got an issue of dishonesty,—and they are perfectly entitled to prevail on that if they can,—but on the other hand, if they fail, then it follows from what I have said that I think there is nothing left in this schedule.

In saying that I am not for one moment supposing that there may not be cases where, although there is no actually slanderous statement, yet there may be such injury done by writing which is false that an issue may be allowed. On the whole matter I am clearly of opinion that the Lord Ordinary was right in refusing the second issue, because I think the true question between the parties will be perfectly properly tried upon the first issue.

LORD KINNEAR—I am of the same opinion. I do not think it is necessary to consider whether to make statements of another which are designed to expose and do expose him to public odium and contempt is a wrong distinguishable from slander, although I am disposed to think that language which falsely and without lawful excuse imputes conduct worthy of public hatred and contempt is slanderous language. The question we have to consider is whether an issue, putting to the jury that certain statements were made with the design of exposing pursuers to contempt, could serve the purpose of innuendo, and I am of opinion that it will not. The assumption of the argument was that the pursuer is not entitled to put the whole series of articles complained of before the jury and ask generally whether they are injurious without indicating the particular injurious meaning which he says they convey, but that, according to the judgment already given in the case of *Ogston*, it lies upon pursuer to innuendo the articles and show why they are slanderous or why they are actionable. Now to say that the articles exposed him to contempt is not, to my mind, an innuendo at all. Therefore I agree with your Lordship in the chair that the first issue raises the question sufficiently, and that to allow the second issue would only be misleading.

LORD PEARSON—I agree.

LORD M'LAREN was absent.

The Court adhered.

Counsel for Pursuers (Reclaimers)—Murray, K.C.—D. Anderson. Agents—Steedman, Ramage, & Company, W.S.

Counsel for Defenders (Respondents)—Cooper, K.C.—Lyon Mackenzie. Agents—W. & F. Haldane, W.S.

Saturday, May 22.

SECOND DIVISION.

[Sheriff Court at Kirkcaldy.

FIFE COAL COMPANY, LIMITED *v.* WALLACE.

Husband and Wife—Irregular Marriage—Cohabitation—Habit and Repute.

In September 1907 a man and a woman began to cohabit, and continued to live together till the death of the man in July 1908. During that time they were regarded by those with whom they came in contact as man and wife. Both before and after cohabitation began there was some talk between the parties of having the marriage ceremony performed, but the man wished to postpone it until he should be in better circumstances. He had asked her to go with him as his wife, and about a month after cohabitation began he gave her a wedding ring, which she afterwards wore. A child of the intercourse born after the death of the man was registered by the woman as illegitimate, in the belief as she explained that "they could do something to her" if she registered it as legitimate, she not having been regularly married and the father being dead.

Held that it had not been proved that the parties were married.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *secs.* 1 (3) *and* 13, *Sched. I* (8)—*Arbiter—Jurisdiction—Sheriff—"Dependent"—Husband and Wife—Irregular Marriage.*

Opinions reserved whether it is competent in an arbitration under the Workmen's Compensation Act 1906 for the arbiter to consider and decide whether the claimant has proved by evidence of cohabitation, habit and repute, that she was married to the deceased, in respect of whose death she claims compensation.

In an arbitration under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) in the Sheriff Court at Kirkcaldy, Annie Herd Shepherd or Wallace claimed compensation as an individual and as tutor for her child Jessie Agnes Wallace Shepherd, or alternatively as tutor for the child, from the Fife Coal Company, Limited, in respect of the death of David Wallace, whom the claimant alleged to be her husband, and who was killed by an accident arising out of and in the course of his employment with the Fife Coal Company. The Sheriff-Substitute (SHENNAN) awarded compensation, and at the request of the Fife Coal Company stated a case for appeal. The case gave the following *facts*:—"(1) On 14th July 1908 the said David Wallace, then residing at 22 Main Street, Lumphinnans, met with an accident in the course of his employment as a miner with defenders in their No. 11 pit at Lumphinnans, and sustained injuries in conse-