about the sex." There is another passage of Ulpian to be found in the same excellent book of Mr Mackintosh, which goes even nearer to the precise class of trouble which we have here, and it is this—"But what if both parties were mistaken about the nature and quality of the thing? For example, if I thought I was selling and you thought you were buying gold, when it was bronze; or suppose that an heir bought from his co-heirs at a fancy price a bracelet described as being of gold, but afterwards found to consist in great part of alloy—it is certain that the sale is good because there is some gold in it. For if a thing which I took to be pure gold contains an admixture of gold, the sale stands; but if bronze be sold as gold the sale is void." In applying that to the matter in hand, the whole matter I think comes to be whether the set of chairs were sold and bought as antiques. Now I agree that there has been no representation and no warranty by the seller; but, for the same reasons as Lord Mackenzie has detailed, it is quite clear that the seller certainly induced the buyer to consider that he was buying a set of old chairs which were got from somewhere as a set, and about which the seller was in a position to say "You can get no such workmanship nowadays." That being so, I think here there was a misrepresentation as to the real thing itself, and not merely as to the quality of the thing, and therefore upon the whole matter I come to the same conclusion as Lord Mackenzie, and to which the learned Sheriffs have come, though I do not do so, perhaps, on precisely the same grounds.

LORD KINNEAR, who was absent at the advising, concurred in the opinion of the Lord President.

LORD JOHNSTON was present at the advising, but delivered no opinion, not having heard the case.

The Court affirmed the interlocutors of the Sheriff and Sheriff-Substitute, of new assoilzied the defender, and sustained his counter-claim for £95.

Counsel for Pursuer and Appellant—Wilson, K.C.—King Murray. Agent—James M'William, S.S.C.

Counsel for Defender and Respondent—Constable, K.C.—J. A. T. Robertson. Agents—Laing & Motherwell, W.S.

Friday, January 26.

FIRST DIVISION.

[Lord Hunter, Ordinary.

BROWNE AND OTHERS *v.* D. C. THOMSON & COMPANY, LIMITED.

Reparation—Slander—Slander of a Class—Collective or Individual Action—Innuendo—Averments—Relevancy.

A newspaper published an article entitled "Sinister Side-lights on Home Rule—Irish Incidents showing Feeling toward Britain.—By One who has Lived in Ireland," and containing the following passage— . . . . . .

"Religion makes all the difference in everything in Ireland, This incident will show what it can do and has done.

"Two years ago, in Queenstown, County Cork, instructions were issued by the Roman Catholic religious authorities that all Protestant shop assistants were to be discharged. One shopkeeper, a Roman Catholic, refused to discharge an assistant he had had for a number of years. The consequence was that his shop was proclaimed, and in three months he had to close and clear out, his stock being sold for next to nothing. He and his family left for Britain, where, as he said, he could employ an atheist if he liked. . . . . ."

In an action of damages at the instance of certain clergy of the Roman Catholic Church in Ireland the pursuers averred that they were the persons referred to, and that they had been falsely and calumniously charged with abusing their religious influence over the Catholic laity to procure the indiscriminate dismissal of all Protestant shop assistants in the employment of Catholics in Queenstown, and with ruining the business of a Roman Catholic shopkeeper who had refused to discharge a Protestant employee.

Held that the pursuers' averments were relevant to sustain the innuendo, that they were entitled to sue for damages as individuals, and issue *allowed.*

On 10th October 1911 the Most Reverend Robert Browne, Bishop of the Roman Catholic Diocese of Cloyne, Ireland, residing at Bishop's House, Queenstown, County Cork, and certain other clergymen of the Roman Catholic Church there, brought an action against D. C. Thomson & Company, Limited, publishers and proprietors of the *Dundee Courier*, in which they claimed damages for slander in respect of an anonymous article which appeared in the *Courier* on 15th August 1911, entitled—

"*Sinister Side-lights on Home Rule.*

"*Irish Incidents showing Feeling toward Britain.*

"*By One who has Lived in Ireland.*"

The portion of the article of which the pursuers complained is quoted *supra in rubric.*

The pursuers averred—"(Cond. 1) . . . The pursuers are the sole persons who exercised religious authority in name and on behalf of the Roman Catholic Church in Queenstown aforesaid in the year 1909. During that year the pursuers alone were the 'Roman Catholic religious authorities' of Queenstown, and alone had power and jurisdiction to issue instructions to the members of their religious institutions. . . . (Cond. 4) The portion of said article, which is in the following terms—[*Here followed the portion complained of*]—was written and published by the defenders of and concerning the pursuers.

The defenders were well aware that the pursuers the Bishop of Cloyne and the said Queenstown clergy, as at a date approximately two years prior to the publication of the said article, constituted and could alone constitute 'the Roman Catholic religious authorities' of Queenstown, and it was their intention in publishing and circulating the article complained of to slander the pursuers and injure their reputations as office-bearers of the Catholic Church. . . . (Cond. 5) In the portion of said article quoted in the preceding article of the condescendence the pursuers are falsely, calumniously, and maliciously charged with having conceived, out of a spirit of religious intolerance and persecution, and to have put into operation, a criminal and illegal conspiracy to secure by an underhand use of ecclesiastical influence upon the Catholic laity the indiscriminate dismissal of all the Protestant shop assistants —a numerous body—in the employment of Roman Catholics in Queenstown solely on account of their being Protestants; and further, with having caused the banishment from Ireland, and ruined the business, of a Roman Catholic shopkeeper in Queenstown for refusing to discharge a Protestant employee when ordered to do so by the pursuers in the execution of their alleged illegal scheme and abuse of ecclesiastical authority and influence. (Cond. 6) The statements contained in the said article and the imputations therein conveyed are false, calumnious, and malicious. They constitute a gross libel on the pursuers. In point of fact no instructions whatever were issued by the pursuers either individually or collectively for the dismissal of Protestant shop assistants as alleged. No Roman Catholic shopkeeper was treated in the manner alleged, and the said story is a deliberately concocted tissue of false and calumnious statements, fabricated and published by the defenders in order to defame the characters and reputation of the pursuers and injure them in the eyes of the public. . . . (Cond. 7) The said false and calumnious statements have seriously injured all the pursuers in their character and reputation as priests and citizens. By them the defenders falsely and calumniously represented and intended to represent that the pursuers were unworthy of their offices in the Catholic Church; that they were guilty of criminal conspiracy according to the law of Ireland and of tyranny over the members of their Church, and of gross oppression of the Protestant shop assistants in Queenstown; and that they were actuated by feelings of bitter animosity and hatred towards the inhabitants of Great Britain."

The defenders pleaded, *inter alia*—"(2) The averments of the pursuers being irrelevant and insufficient to support the conclusions of the summons, the action should be dismissed."

On 9th January 1912 the Lord Ordinary (HUNTER) approved of the following issue—"It being admitted that on or about 15th August 1911 the defenders printed and published in the *Dundee Courier* of that date an article entitled 'Sinister Side Lights on Home Rule,' of which the schedule appended hereto contains an extract—Whether the statements in said extract, or part thereof, are of and concerning the pursuers, or any of them, and falsely and calumniously charge them with abusing their religious influence over the Catholic laity to procure the indiscriminate dismissal of all Protestant shop assistants in the employment of Catholics in Queenstown, and with ruining the business of a Roman Catholic shopkeeper who had refused to discharge a Protestant employee, to the loss, injury, and damage of the pursuers?

"Damages laid as follows:—

The Bishop of Cloyne . .	£2000
The Rev. Thomas Madigan .	500
The Rev. Cornelius Corbett .	500
The Rev. Denis O'Connor .	500
The Rev. John O'Donoghue .	500
The Rev. David Kent . .	500
The Rev. Wm. Francis Browne	500"

[A schedule containing the title of the article and also the portion complained of was appended to the issue.]

Opinion.—". . . [*After narrating the pursuers' averments*] . . . —The defenders maintained two points to me—*first*, that the article did not refer to the pursuers, and *second*, that it was not slanderous. It appears to me that both these points must be left to the jury. As regards the first, I think a jury would or might be entitled to hold that the article attacked the conduct of the Roman Catholic religious authorities in Queenstown, and was therefore of and concerning the pursuers. As regards the second, I cannot agree with the argument of the defenders that there is nothing in the article except a general railing accusation, or what might be regarded as attributing meritorious conduct to the pursuers from the standpoint of those professing the same form of faith. To falsely accuse the teachers of any form of Christian doctrine of such bigotry as leads them to compass the temporal ruin of those professing another form of Christianity appears to me an odious charge reflecting upon character and entitling those accused to maintain an action of slander against those making or circulating the charge. I shall therefore allow the pursuers an issue.

"The pursuers have proposed an issue without an innuendo, and putting to the jury the question whether the statements in the extract are of and concerning the pursuers, and are false and calumnious. In support of this form of issue I was referred to the case of *Macrae* v. *Wicks*, 13 R. 732, 23 S.L.R. 490, but that was an article reflecting upon an hotelkeeper's conduct of his business, and is not a form of issue that has been widely followed in practice. I think that, where the slander is a reflection upon personal character, and is contained in a series of sentences, each one of which is not necessarily slanderous, it is usual to focus what is defamatory by means of an

innuendo. The issue which I propose to allow is in the following terms:—"Whether . . . [*quotes v. sup.*]. . . ."

The defenders reclaimed, and argued—The article was not slanderous, for when fairly read it did not bear either the innuendo in cond. 5 or that in cond. 7. The words the "Roman Catholic Authorities in Queenstown" did not necessarily mean the pursuers, and even if they did the pursuers were not referred to as individuals but merely in their collective capacity. That being so the action was irrelevant—*M'Fadyen* v. *Spencer & Company*, January 7, 1892, 19 R. 350, 29 S.L.R. 295. [The LORD PRESIDENT referred to *Hulton & Company* v. *Jones*, [1910] A.C. 20.] *Esto* that slanderous statements regarding a set of persons in their collective capacity might ground an action at the instance of one of their number, that was only so where the party suing had been personally injured thereby—*Hustler* v. *Watson*, January 16, 1841, 3 D. 366. That was not so here, and the issue therefore should be disallowed.

Counsel for the respondents were not called on.

LORD PRESIDENT—As the pursuers are content with the issue as adjusted by the Lord Ordinary, I do not think it is necessary to call upon them for a reply. I think it is perfectly clear on principle, and certainly on authority—I refer to the case of *E. Hulton & Co.* v. *Jones*, [1910] A.C. 20—that it is for a jury to say whether the pursuers are the persons who would be understood to be referred to as the "Roman Catholic Religious authorities." As to the question of libel, I think the innuendo proposed is a possible one. It is in the interest of the defenders themselves that I should not say more, and it would be prejudging the case to make up one's mind whether the innuendo can properly be extracted from the language used before the whole circumstances are known. I think the Lord Ordinary has quite fairly put the matter in the form of the issue which he has approved, and has quite fairly put upon the pursuers a considerable burden. If they discharge that burden I think they will be entitled to a verdict.

The only other matter that was dealt with by Mr Murray was the question of individual and collective action. There might be difficult questions about such a matter, but I do not think any arise here. We are not dealing with any corporation or body known to the law, but merely with a certain congeries of individuals. I quite see that if the defence had been that the statement complained of was true, then there might have been a powerful argument that, inasmuch as the statement was only made as to the joint action of a body of persons, no individual person could have a ground of action, even though able to show that he himself had no part in the initiation of the joint action. But there is no case of that sort here. I think it is quite evident that if a certain set of people are accused of having done something, and if such accusation is libellous, it is possible for the individuals in that set of people to show that they have been damnified, and it is right that they should have an opportunity of recovering damages as individuals. On the whole matter I think the reclaiming note should be refused.

LORD KINNEAR—I agree with your Lordship, and I express no opinion with reference to the greater part of the argument which we have heard from Mr Murray. Much of it will be available to him before a jury and, at all events, it raises a question which it is not for us to decide. The question for the Court is whether the words complained of will bear the innuendo which it is sought to put upon them. If they will, then it is for the jury to say whether they do in fact bear that meaning—whether they would be understood by persons reading the article to convey a slanderous imputation. It is also a question of fact for the jury whether, holding the article to be libellous, it applies to the persons now complaining of it. That is a question of fact, and each of the pursuers must satisfy the jury that he is hit by the language of which they all complain. It might very well be that one might succeed and another might fail, but the question is one of fact, and the case must go to a jury.

LORD MACKENZIE—I concur.

LORD JOHNSTON was absent.

The Court adhered.

Counsel for Pursuers (Respondents)—Lord Advocate (Ure, K.C.)—Morison, K.C.—Gillon. Agents—P. Gardiner Gillespie & Gillespie, S.S.C.

Counsel for Defenders (Reclaimers)—Murray, K.C.—Macmillan—W. L. Mitchell. Agents—Menzies, Bruce-Low, & Thomson, W.S.

Friday, January 26.

SECOND DIVISION.

[Lord Ormidale, Ordinary.

GLASGOW CORPORATION *v.* SMITHFIELD AND ARGENTINE MEAT COMPANY, LIMITED.

Reparation—Public Health—Public Official—Public Health (Scotland) Act 1897 (60 *and* 61 *Vict. cap.* 38), *secs.* 43, 164, 166—*"Compensation" for "Damage Sustained by Exercise of Powers"—Damages for "Irregularity" in Exercise—Seizure of Meat Appearing to be Unsound but really Sound.*

The Public Health (Scotland) Act 1897 enacts:—Section 164—"Full compensation shall be made . . . to all persons sustaining any damage by reason of the exercise of any of the powers of this Act . . . and in case of dispute . . . when the sum claimed exceeds £50, such compensation shall