supervening legislation which has given to the appellants a right to make a claim which was not in the contemplation of the parties at the date of the agreement, and he adds that the parties never intended to submit that claim to arbitration. I think I understand that submission, though I am quite unable to assent to it. It amounts in fact to this, that where parties choose to bind themselves by an arbitration clause, that clause will cease to have operative effect if later legislation modifies the situation of the parties in a manner which they did not contemplate at the time they entered into the arbitration clause. The contention must go that length or else in my judgment it is meaningless. This contention cannot in my judgment be sustained. I take the view that if parties choose to bind themselves unconditionally to an arbitration clause, they may be assumed, not indeed to predict with particularity what legislation will be passed, but to anticipate that some legislation will be passed, even that that legislation may affect the subject of agreement, and still to prefer an arbitration to a law court."

The result of my view is that I am in agreement with the opinions of the Lord Ordinary and your Lordships, and also as to the form of interlocutor proposed.

The Court pronounced this interlocutor—

"... Recal the said interlocutor [of 23rd June 1922]: Find that the dispute between the parties as to whether the pursuers were bound to deliver the 1875 bales short-delivered of the bales sold by them for shipment during July and August 1917 falls to be determined by arbitration: Therefore repel the first and second pleas-in-law for the pursuers and *quoad ultra* sist the action in the meantime. . . ."

Counsel for the Reclaimers (Pursuers)—Chree, K.C.—Candlish Henderson, K.C.—Mackintosh. Agents — Morton, Smart, Macdonald, & Prosser, W.S.

Counsel for the Respondents (Defenders)—Gentles, K.C.—A. R. Brown. Agents—Aitken, Methuen, & Aikman, W.S.

Saturday, June 24.

SECOND DIVISION.

[Lord Anderson, Ordinary.

GRIFFIN *v.* DIVERS AND SHERRY.

Reparation — Slander — Innuendo — Statement that Licence-holder had Signed Requisition for Poll under Temperance (Scotland) Act 1913 (3 *and* 4 *Geo. V, cap.* 33)*—Hypocrisy and Treachery towards Licensed Trade.*

The licence-holders in a city, in anticipation of a poll being taken under the Temperance (Scotland) Act 1913, formed an association for the purpose of protecting the interests of the licensed trade. In an action of damages for slander brought by one licence-holder against another the pursuer averred that he had joined with his colleagues in the trade in organising opposition to the taking of a poll and had pledged himself not to sign a requisition form, and sought an issue as to whether the defender had falsely and calumniously stated that he (the pursuer) had signed a requisition form in favour of a poll, thereby representing "that the pursuer was a hypocrite, and was acting deceitfully and treacherously towards his colleagues in the licensed trade." The defender pleaded that the action was irrelevant. The Court (*rev.* the judgment of Lord Ordinary) *allowed* the issue, *holding* that in view of the averments of the pursuer the case could not be disposed of without inquiry.

Slander—Innuendo—Accusation of Hypocritical and Treacherous Conduct—Privilege—Malice—Sufficiency of Averments of Malice — Knowledge that Statement is Untrue.

The licence-holders in a city, in anticipation of a poll being taken under the Temperance (Scotland) Act 1913 (3 and 4 Geo. V, cap. 33), formed an association for the purpose of protecting the interests of the licensed trade. One of the licence-holders brought an action of damages for slander against two other licence-holders, in which he averred that at a meeting of a ward committee of the Local Veto Defence Association the defenders, acting in concert and with the design of injuring him and holding him up to public odium and contempt, falsely, calumniously, and maliciously stated that he had signed a requisition form in favour of a poll, thereby representing that the pursuer was a hypocrite and was acting deceitfully and treacherously towards his colleagues in the licensing trade. The defenders averred that the information on which they proceeded had come from the pursuer himself. This the pursuer denied. *Held* that the occasion was privileged, but that malice had been relevantly averred, and issue *allowed*.

Observed, per Lord Hunter—"I cannot imagine any better case of malice than

if a defender makes a slanderous statement of a pursuer and then says, 'I made it because the pursuer told me that it was in accordance with fact.' If it turns out that that was a mere invention, then it appears to me it must be inferred against the defender that he was acting maliciously."

William Griffin, wine and spirit merchant, Glasgow, *pursuer*, brought an action of damages against John James Divers and Owen Sherry, both wine and spirit merchants in Glasgow, *defenders*, in which the conclusions were (first) for payment by the defenders conjunctly and severally of £5000, (second) for payment by the defender Divers of £3000, and (third) for payment by the defender Sherry of the sum of £3000.

The parties averred, *inter alia*—"(Cond. 1) The pursuer is a wine and spirit merchant holding licences for four public-houses in Glasgow and is interested in a large number of other public-houses throughout the said city. In particular, he is the proprietor of one of the largest of the licensed businesses in the city, well known in Glasgow and popularly called the Lauder Bar, and his interests in the licensing trade are of very substantial importance. The defenders are also licence-holders in the city of Glasgow. (Cond. 2) Arising out of the provisions of the Temperance (Scotland) Act 1913 the Corporation of the city of Glasgow arranged to have a poll under said Act on the 2nd of November 1920, and there was held a poll under said Act in all the thirty-seven wards of the said city. Prior to the said poll the licence-holders in each of the thirty-seven wards formed themselves into committees for the purpose of combating the attempt to dispossess them of their licences, and the pursuer joined with his colleagues in the trade in the organising of said opposition. Prior to the poll, and when the requisitions in terms of the Act were applied for on or about the 16th of August 1920, the general committee representing the licence-holders came to the deliberate understanding and agreement that they should do all in their power to prevent the necessary number of signatures to said requisitions for a poll being obtained in the said thirty-seven wards. To this end a leaflet calling upon the electors not to sign the requisition was prepared and circulated throughout the whole of the licensed premises in Glasgow. There are over 1600 licence-holders in Glasgow, and with few exceptions these leaflets were distributed from all their premises, and in many of the wards the said leaflets were delivered to the houses of the voters. In particular, in all the premises occupied by the pursuer and in those in which he had an interest, these leaflets were circulated between the 16th of August and the 30th of September. Further, the pursuer employed the assistants in his shops to go round the locality in which his business premises were situated and circulate the leaflets to the householders inviting all the electors not to sign the said requisition. It is believed that in the city of Glasgow these leaflets were circulated to the number of nearly half-a-million and caused public comment, forming as they did a part of the propaganda carried on on both sides so that the policy of the licensed trade in this matter became well known to the electorate. Further, it was, as a part of the policy of the licensed trade, resolved that no licence-holders should sign a requisition form, and this resolution was observed by all the 1600 licence-holders in Glasgow. It was further regarded in the trade as the duty of every licence-holder to do his utmost to prevent those in favour of no-licence from obtaining signatures to requisition forms, as if in any ward the number of signatures required by the Act were not obtained the result would be that in that ward there would be no poll. It came to be widely known that the pursuer and the other members of the trade were opposed to the signing of requisitions and had pledged themselves to one another, as in fact they did, to refrain from signing requisitions and to use their utmost endeavours to prevent others doing so. . . . (Cond. 3) In order to defray the expenses necessarily incurred in fighting the organisation which existed for the purpose of securing a poll in favour of no-licence or limitation it was arranged to ask subscriptions from members of the licensed trade to a fund for this purpose. The defenders Sherry and Divers volunteered their services to obtain subcriptions to this fund. Towards the end of September 1920 the defender Sherry, ostensibly for the purpose of delivering some of the leaflets before mentioned for distribution by the pursuer and his assistants, called for the pursuer at his place of business at Garscube Road, Glasgow. On this occasion the defender Sherry was accompanied by the defender Divers. The latter, however, did not enter the pursuer's place of business but remained standing outside the door. No conversation whatever took place between the pursuer and the defender Sherry on this occasion. The defenders' averments and explanations in answer are denied. The pursuer at no time made the statement to the defender Sherry or to anyone that he had signed a requisition paper, and both defenders were well aware that he made no such statement. (*Ans.* 3) Admitted that in order to defray the expenses of the licensed trade organisation it was arranged to ask subscriptions from members of the licensed trade to a fund for this purpose, and that the defenders undertook to distribute leaflets and solicit subscriptions to this fund. Admitted further that about the end of September 1920 the defender Owen Sherry called for the pursuer at his place of business at Garscube Road, Glasgow; that he was accompanied by the defender John James Divers, but that the latter did not enter the pursuer's place of business. *Quoad ultra* denied in so far as not coinciding herewith. Explained that both of the defenders were members of the ward committee of the licensed trade for Cowcaddens Ward. In distributing leaflets and soliciting subscriptions they acted as delegates of the committee. The section of the ward in which they operated included the street in which the pursuer's shop is situated. On

the occasion referred to the defender Divers did not remain outside the door of the pursuer's shop, but crossed the street to another shop while the defender Sherry entered the pursuer's shop. He explained the purpose of his visit and asked for a subscription to the fund, which the pursuer undertook to give. In the course of conversation with the defender Sherry the pursuer said that he had signed a requisition form. The said defender asked him what his object was in so doing and he said that it was to have a contest in all wards in Glasgow so that the opposition party would not be able to concentrate their efforts on any particular ward. After his interview with the pursuer the defender Sherry rejoined the defender Divers and reported to him the terms of the conversation detailed above. (Cond. 4) The required number of signatures to requisitions was obtained in all the thirty-seven wards, and in terms of the statute the requisitions were exhibited by the local authority in the district libraries in the said city from the 1st until the 8th of October, and were examined by a large number of the electors in the city. (Cond. 5) The defenders were well aware of the said policy of the licence-holders, and of the intense feeling the local veto campaign had caused in the various areas. The defender Divers entertained feelings of ill-will and malice towards the pursuer arising out of a difference which some time earlier had arisen between them with reference to a transaction relating to the sale of a public-house. The pursuer had been some time previously in negotiation with a Mr Gunn with a view to purchasing a public-house in Clydebank which the latter wished to sell. The pursuer believed that the defender Divers intervened to induce Mr Gunn not to accept the pursuer's offer. Believing that Divers had acted unfairly towards him in connection with this transaction, the pursuer resolved to have no further dealings with him. Some time later, at one of the Ayr race meetings in August 1920, the defender Divers came up to the pursuer and wanted to shake hands with him. The pursuer informed him that he had no desire for his friendship. Divers then challenged the pursuer to fight and threatened to give him a 'lively time.' The pursuer believes and avers that as a result of this incident Divers conceived an ill-will against him, and resolved as he had threatened to do him injury if opportunity offered, and that he conceived the design of using the circumstances above mentioned to injure the pursuer by slandering him and holding him up to public contempt and odium as a man who was deceitful and disloyal to his associates in the trade. In pursuance of this design he resolved in concert with the defendender Sherry, who is a competitor with the pursuer in the licensed trade, and who willingly became a partner in the malicious scheme to circulate among the pursuer's fellow-members of the licensed trade, the customers of the pursuer, and the members of the public generally, a statement which they both knew to be untrue, to the effect that the pursuer had signed a requisition for a poll in one of the wards in which the pursuer had licensed premises, and to represent thereby that the pursuer, though professing to support the policy of the licensed trade in preventing the requisitions receiving the necessary signatures, was in reality endeavouring to secure that the requisitions were effectual and had himself signed one, and was a hypocrite and acting deceitfully and treacherously towards his colleagues in the trade. . . . (Cond. 6) Accordingly during the period that the requisitions were in the public libraries between the 1st and the 8th of October and for some time prior thereto, the defender Divers, in his public-house at 200 New City Road, Glasgow, on a large number of different occasions falsely, calumniously, and maliciously stated to persons calling there that the pursuer had signed the requisition. The pursuer is unable to condescend on all the persons to whom the defender Divers made this statement, but he avers that in said premises on or about the 5th October 1920, in the presence and hearing of Mr E. A. Renfrew, who is the licence-holder of premises at 62 Great Western Road, Glasgow, Mr John Brough, of Messrs Brough & MacLaren, solicitors, Glasgow, and certain other persons who happened to be in his shop at the time, the defender Divers falsely, calumniously, and maliciously stated that the pursuer had signed a requisition. Further, at a meeting of the Cowcaddens Ward Committee of the said Local Veto Defence Association held on 5th October 1920 at 5 Wellington Street, Glasgow, at which Charles Law Warren, wine and spirit merchant, Scotia Street, Glasgow, John Cameron MacRae, wine and spirit merchant, Cedar Street, Glasgow, James Denholm, wine and spirit merchant, Pollokshaws Road, Glasgow, and other licence-holders were present, the defender Divers and the defender Owen Sherry, acting in concert and in pursuance of the said design of injuring the pursuer and holding him up to public odium and contempt, falsely, calumniously, and maliciously stated that the pursuer had signed a requisition paper in favour of a poll. This statement was volunteered by the defenders, and was made with the sole object of injuring the pursuer. It was not made officially by them as members of the said committee, nor was it relevant or pertinent to the business before the committee. . . . (Cond. 7) As before stated, in furtherance of their campaign the licence-holders had formed themselves into committees in the various wards of the city of Glasgow, and the said statements made by the defenders obtained wide currency and credence throughout the whole of the city and were referred to in the Hutchesontown Ward Committee and various other ward committees throughout the city in which the pursuer had licensed premises. These statements were all made as coming from and with the authority of the defenders. Moreover, the statement complained of received wide publicity amongst the electors generally and was the subject of comment and conversation amongst the leaders of the licence-holders' campaign,

with the result that the pursuer became the subject of ridicule and contempt as being a hypocrite and disloyal to his fellow-colleagues in the trade. The statements complained of were intended by the defenders to represent, and did represent, that though the pursuer professed to his colleagues in the trade to be supporting their policy of preventing the requisitions receiving the requisite number of signatures, yet that he had done his best to make the requisitions effectual by himself signing one, and he was a hypocrite, and acting treacherously to his colleagues in the trade. . . . (Cond. 8) The requisitions were open to public inspection, and if the defenders had honestly thought that there was any foundation for the statement complained of they could have satisfied themselves by an examination of the requisitions that the statement was unfounded, as in point of fact it was. The defenders, however, recklessly and maliciously spread the said statement broadcast. The said statement was false and calumnious and was so to the knowledge of the defenders, and was made by them in furtherance of their scheme to injure the pursuer. The defenders knew that the said statement would result in the pursuer being regarded with odium and contempt by the public and in many of his customers leaving him, and the said statements were made with the intention of exposing the pursuer to public odium and contempt. By said statement the pursuer was injuriously exposed to public odium and contempt. . . . (Cond. 9) In consequence of the circulation of the statement complained of the pursuer has suffered seriously in his feelings and in the reputation he held among his colleagues in the licensed trade and in the community as an honest business man. The said false and slanderous statement, the pursuer believes and avers, was made by the defenders with the intention not merely of damaging his reputation in the eyes of his colleagues and the community, but of injuring his business. The defenders are the pursuer's rivals in trade and some of the patrons of the pursuers also patronise the defenders. The circulation of the statement complained of had a very serious detrimental effect upon a number of the businesses carried on by the pursuer in Glasgow. The pursuer's customers knew that the pursuer had assisted by himself and his assistants in distributing the leaflets before referred to and they heard the statement complained of and believed the pursuer to be a hypocrite, and in consequence many of them refused any longer to give his shops their custom, with the result that there was a very serious and rapid diminution of the drawings in the pursuer's shops. By circulating the aforesaid false statement about the pursuer, the defenders have thus, as was their intention, injured the pursuer in his feelings, held him up to public odium and contempt, and inflicted on him serious financial loss. (Cond. 10) In the circumstances it has become necessary to bring these proceedings in order to vindicate the pursuer's character and also to obtain reparation for the financial loss occasioned to the pursuer as above condescended on. The sum sued for in name of damages is a moderate estimate of the damage suffered by the pursuer."

The pursuers pleaded *inter alia*—"1. The defenders, acting in concert, having falsely and calumniously and maliciously slandered the pursuer as condescended on, are jointly and severally liable to the pursuer in solatium and damages. 2. The defenders having, acting in concert, published the statements complained of in pursuance of an intention to expose, and having thereby calumniously and injuriously exposed the pursuer to public contempt and odium, are jointly and severally liable to the pursuer in solatium and damages. 3. The defenders having respectively and individually falsely, calumniously, and maliciously slandered the pursuer as condescended on are liable in solatium and damages in terms of the separate conclusions against them. 4. The defenders having respectively and individually published the statements complained of in pursuance of an intention to expose, and having thereby calumniously and injuriously exposed, the pursuer to public contempt and odium, are liable in solatium and damages in terms of the separate conclusions against them."

The defenders pleaded, *inter alia*—"1. The pursuer's averments being irrelevant the action should be dismissed. 2. The defenders not having slandered the pursuer either as acting in concert or individually they should be assoilzied. 3. The defenders not having in concert or individually published the statement complained of in pursuance of an intention to expose, and not having thereby exposed, the pursuer to public contempt and odium they should be assoilzied. 4. The pursuer's averments, so far as material being unfounded in fact, the defenders should be assoilzied. 5. The statements complained of having been made by the defenders honestly and in reliance on information supplied by the pursuer and on privileged occasions and not having been made maliciously, the defenders should be assoilzied."

The pursuer proposed the following issues —"1. Whether on 5th October 1920 at 5 Wellington Street, Glasgow, in the presence and hearing of Charles Law Warren, John Cameron M'Rae, and James Denholm, all wine and spirit merchants, Glasgow, and others, the defenders, or one or other and which of them, falsely *and* calumniously [and maliciously] stated that the pursuer had signed a requisition for a poll under the Temperance (Scotland) Act 1913, or did make a statement of similar import and effect concerning the pursuer, and whether the said statement falsely *and* calumniously [and maliciously] represented that the pursuer was a hypocrite and was acting deceitfully and treacherously towards his colleagues in the licensed trade, to the loss, injury, and damage of the pursuer. Damages laid at £5000. Or *2. Alternatively, whether on 5th October* 1920 *at 5 Wellington Street, Glasgow, in the presence and hearing of*

Charles Law Warren, John Cameron M'Rae, and James Denholm, all wine and spirit merchants, Glasgow, and others, the defenders, or one or other and which of them, stated that the pursuer had signed a requisition for a poll under the Temperance (Scotland) Act 1913, *or did make a statement of similar import and effect concerning the pursuer; whether the said statement was made in pursuance of an intention to expose the pursuer to public odium and contempt, and whether the pursuer was thereby calumniously and injuriously exposed to public odium and contempt, to his loss, injury, and damage. Damages laid at* £5000. [2.] *3.* Whether on 5th October 1920 the defender John James Divers in his public-house at 200 New City Road, Glasgow, in the presence and hearing of Mr E. A. Renfrew, 62 Great Western Road, Glasgow, Mr John Brough of Messrs Brough & MacLaren, solicitors, Glasgow, and others, falsely and calumniously stated that the pursuers had signed a requisition for a poll under the Temperance (Scotland) Act 1913, or did make a statement of similar import and effect concerning the pursuer, and whether the said statement falsely and calumniously represented that the pursuer was a hypocrite and was acting deceitfully and treacherously towards his colleagues in the licensed trade, to the loss, injury, and damage of the pursuer. Damages laid at £3000. or *4. Whether on 5th October* 1920 *the defender John James Divers in his public-house at* 200 *New City Road, Glasgow, in the presence and hearing of Mr E. A. Renfrew,* 62 *Great Western Road, Mr John Brough of Messrs Brough & MacLaren, solicitors, Glasgow, and others, stated that the pursuer had signed a requisition for a poll under the Temperance (Scotland) Act* 1913, *or did make a statement of similar import and effect concerning the pursuer; whether the said statement was made in pursuance of an intention to expose the pursuer to public odium and contempt, and whether the pursuer was thereby calumniously and injuriously exposed to public odium and contempt, to his loss, injury, and damage. Damages laid at* £3000."

[The words in brackets were inserted, and the deletions (in italics) made in terms of the interlocutor pronounced by the Inner House *infra*.]

On 14th July 1921 the Lord Ordinary (ANDERSON) sustained the first plea-in-law for the defenders and dismissed the action.

Opinion—"The main question in this case is whether it is defamatory to state falsely that a licence-holder had signed a requisition in favour of a poll under the provisions of the Temperance (Scotland) Act 1913.

"The pursuer is a wine and spirit merchant who states that he holds four public-house licences in Glasgow, and is interested in a large number of other public-houses throughout Glasgow. The two defenders are also licence-holders in Glasgow.

"The pursuer alleges that on 5th October 1920, at a meeting of the Cowcaddens Ward Committee of the City of Glasgow Local Veto Defence Association, the defenders, acting in concert, falsely stated that the pursuer had signed a requisition paper in favour of a poll under the said Act.

"For this false statement, alleged to be defamatory, the pursuer sues the defenders, conjunctly and severally, under the first conclusion of the summons for £5000 of damages.

"On the same day the pursuer avers that the defender Divers in his public-house at 200 New City Road, Glasgow, made a similar statement regarding the pursuer. The pursuer under the second conclusion of the summons craves decree for £3000 against Divers as an individual in respect of this slander.

"The third conclusion of the summons, which was designed to support a claim against the defender Sherry an as individual, is not now insisted in.

"The pursuer has lodged alternative issues as to each of these occasions, one issue being an ordinary issue of slander, the alternative issue of 'public odium and contempt' being founded on the decision of the Court in *Paterson* v. *Welch*, (1893) 20 R. 744, 30 S.L.R. 668.

"The pursuer is as matter of proper procedure entitled to submit alternative issues in this form — *Waugh* v. *Ayrshire Post Limited*, (1893) 21 R. 326, 31 S.L.R. 248; *Lever Brothers Limited* v. '*Daily Record*' (*Glasgow*) *Limited*, 1909 S.C. 1004, 46 S.L.R. 725; *Andrew* v. *Macara*, 1917 S.C. 247, 54 S.L.R. 200. But he is not entitled to have both of the alternative issues submitted to the jury. As was pointed out by the Lord President (Dunedin) in *Lever Brothers Limited*, (1909 S. C. 1008) it will always be found that the true question between the parties can always be perfectly properly tried upon one of the alternative issues. If the Court thinks that this question will be more properly tried under one issue than the other the appropriate issue will be allowed and the other disallowed.

"The pursuer's counsel, therefore, quite properly moved that the issue of slander should be allowed and the other issue disallowed; alternatively, that if the issue of slander should be disallowed the other issue should be allowed.

The issue of slander falls, therefore, to be considered first. It is conceded by the pursuer that the statement complained of is not *per se* defamatory. The pursuer therefore innuendoes the said statement as representing that he was a hypocrite and was acting deceitfully and treacherously towards his colleagues in the licensed trade. There is no doubt that this innuendo is defamatory. By old authorities referred to in Cooper on Defamation it has been decided that it is slanderous to call a man a hypocrite, or to say that he had acted deceitfully, or that he had acted treacherously. To state, therefore, that a person had been guilty of all three of these acts is to make an allegation which is grossly defamatory.

"But the defenders' counsel maintained that the statement said to have been made would not justify the innuendo which has been suggested. The duty of the Court at this stage, as was pointed out by Lord

Shaw of Dunfermline in *Russell* v. *Stubbs, Limited* (1913 S.C. (H.L.) 14, at p. 23, 50 S.L.R. 676, at 680) is to determine whether or not the meaning sought to be attributed to the language complained of is 'a reasonable, natural, or necessary interpretation of its terms.' And as Lord Kinnear stated in *James* v. *Baird* (1916 S.C. (H.L.) 158, at p. 165, 53 S.L.R. 392, at p. 396) it is the duty of the pursuer and not the Court to state distinctly the slanderous meaning which he attaches to the statement complained of. If the pursuer fails to satisfy the Court that the innuendo suggested is reasonable, and is unable to suggest another defamatory innuendo falling within his averments, his action necessarily fails. No other innuendo than that contained in the issues was suggested by the pursuer's counsel.

"The circumstances in which the statement complained of was made must be considered in determining whether or not the proposed innuendo is reasonable. The material averments relied on by the pursuer's counsel were these—that the pursuer had joined with his colleagues in the trade in organising opposition to the temperance party's efforts under said Act; that there was a policy adopted by the trade to prevent the necessary number of signatures for a requisition for a poll being obtained; that the pursuer had taken part in circulating leaflets in furtherance of the views of the licensed trade; that the licensed trade had 'resolved' that no licence-holders should sign a requisition form; and that the pursuer had pledged himself not to do so.

"What all this comes to is that the defenders are represented as having stated that the licensed trade had a policy which the pursuer refused to support, and that having made a pledge he changed his mind.

"Was he thereby a hypocrite, deceiver, and traitor?

"It is to be noted that the Act sanctions the signing of a requisition by any elector and authorises this to be done as a public act of citizenship. The doing of this public act by one who happens to be a licence-holder, in the circumstances I have alluded to, is said to make him a hypocrite, deceiver, and traitor.

"A licence-holder in the position of the pursuer might conceivably sign a requisition from motives of self interest. The *Glasgow Herald* recommended the electors to vote for limitation, and it is conceivable that a person holding several licences for high-class premises would not have objected to a limitation resolution having been carried. Another reason is suggested by the defenders, to wit, that it was considered by some members of the trade desirable to have polls in all the wards to avoid concentration of attack by temperance reformers on particular wards. The conclusion I have reached as to the slander issues is that the innuendo suggested by the pursuer is unreasonable and that these issues cannot be allowed.

"On this part of the case I had an argument on the question of privilege, and lest the views I have expressed are erroneous I shall state the opinion I have formed on the points of privilege and malice.

"I consider that the pursuer's averments disclose that the occasion on which the two defenders are said to have acted together is privileged. It appears from those averments that they attended the ward meeting as delegates and that they spoke in pursuance of a duty to report what they understood had taken place. Those the defenders reported to had a duty to hear. The situation therefore seems to fall within the dictum of Lord President Strathclyde in *James*, 1916 S.C. 510, at p. 517—'A communication honestly made upon any subject in which a person has an interest, social or moral, or in reference to which he has a duty, is privileged if made to a person having a corresponding interest or duty.'

"The occasion, then, being privileged, it is necessary to aver malice. I take it that since *Macdonald* v. *M'Coll* ((1901) 3 F. 1082, 38 S.L.R. 781) the law of Scotland requires in all privileged cases that the pursuer should aver specific facts and circumstances indicative of malice. As to Divers, this specific averment has been made; as to Sherry, I am unable to hold that malice has been relevantly averred.

"As to the issue directed against Divers as an individual, the occasion, in my opinion, was not privileged.

"If then the pursuer is entitled to issues of slander, they ought, in my judgment, to be directed against Divers alone (the action being dismissed as against Sherry) and the word 'maliciously' ought to be inserted in the issue which deals with what was said at the ward meeting.

"I proceed now to consider the pursuer's alternative issues of holding up to public odium and contempt. The defender's counsel threw doubt upon the soundness of the decision of the Court in *Paterson* v. *Welch, supra*. That seems to me a hopeless contention in view of what was said and done in such cases as *Waugh, supra, M'Laughlan* v. *Orr, Pollock, & Company*, (1894) 22 R. 38, 32 S.L.R. 36, *Andrew, supra*, and *Lever Brothers, Limited, supra*. It is true that in the last-mentioned case Lord Kinnear (1909 S.C. 1009) suggests that there need never be occasion for any other issue than one of slander in respect that 'language which falsely and without lawful excuse imputes conduct worthy of public hatred and contempt is slanderous language.' But in the same case the Lord President expresses the view that there may 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.'

"The present point, however, seems to be ruled by the decision I am referring to. In that case the Lord President pointed out that if the question of dishonesty was eliminated there was nothing left to support an injurious meaning—that is, to warrant the allowing of an issue of 'public hatred and contempt.' So in the present case if the suggestions of hypocrisy, deceit, and treachery are eliminated, nothing remains to support the alternative issue. Nothing is

left save the allegation that the pursuer did a public act sanctioned by statute, and I am unable to hold, and can conceive no reasonable jury holding, that he thereby made himself an object of public odium and contempt.

"It is doubtful whether the decision of a case of this kind is helped by reference to analogies, but I may suggest two which seem to be apposite.

"A politician whose principles are well known is falsely charged with having voted for an opposition candidate. Is it reasonable to say that he has thereby acted hypocritically, deceitfully, and treacherously? I think not.

"Again, certain Presbyterian Assemblies resolved to support 'no licence' or 'limitation' resolutions. Suppose a clergyman, a member of one of these bodies, had been asked and had refused to sign a requisition for a poll and had gone on to vote 'no change.' Could anything worse have been said of him than that he was a man of independent views who refused to follow the policy advocated by his church?

"I hold, therefore, that the pursuer's averments disclose no issuable matter.

"I shall accordingly sustain the defenders' first plea-in-law and dismiss the action."

The pursuer reclaimed, and argued — 1. The issues of slander (issues Nos. 1 and 3) should be allowed, because the words complained of were capable of bearing the defamatory meaning ascribed to them in the innuendo, and having regard to the surrounding circumstances the defamatory meaning was extremely reasonable—*Russell* v. *Stubbs Limited*, 1913 S.C. (H.L.) 14, 50 S.L.R. 676, *per* Lord Kinnear at 1913 S.C. (H.L.) 20, 50 S.L.R. 678; *Gardner* v. *Robertson*, 1921 S.C. 132, 58 S.L.R. 124, *per* Lord Justice-Clerk (Scott Dickson) at 1921 S.C. 137, 58 S.L.R. 127; *Myroft* v. *Sleight*, (1921) 37 T.L.R. 646, *per* M'Cardie, J., at 648. On this aspect of the law of slander the law of England was the same as the law of Scotland, and in *Myroft* v. *Sleight* (*cit.*) M'Cardie, J., considered the question of the defamatory nature of the words there complained of and held that they were slanderous. 2. An action of damages for verbal injury was competent—*Andrew* v. *Macara*, 1917 S.C. 247, 54 S.L.R. 200, *per* Lord Justice-Clerk (Scott Dickson) at 1917 S.C. 250, 54 S.L.R. 202; *Lever Brothers, Limited* v. "*Daily Record*" (*Glasgow*) *Limited*, 1909 S.C. 1004, 46 S.L.R. 725, *per* Lord President Dunedin at 1909 S.C. 1008, 46 S.L.R. 726 (extra slip); *Paterson* v. *Welch*, (1893) 20 R. 744, 30 S.L.R. 668, *per* Lord President (Robertson) at 20 R. 749, 30 S.L.R. 671; and in the present case if the issues of slander were disallowed, the issues of holding up to public odium and contempt (issues Nos. 2 and 4) should be allowed, as was done in *Paterson* v. *Welch*. 3. It was admitted that the slanderous statement which formed the subject-matter of issue No. 1 was uttered on a privileged occasion, but malice was relevantly averred against the defender Sherry as well as against the defender Divers. The averment that Sherry knew the slanderous statement to be false was a sufficient averment of malice—*Macdonald* v. *M'Coll*, (1901) 3 F. 1082, 38 S.L.R. 781; *Suzor* v. *M'Lachlan*, 1914 S.C. 306, 51 S.L.R. 313, *per* Lord President (Strathclyde) at 1914 S.C. 313, 51 S.L.R. 318.

Argued for the respondents—The issues of slander (issues Nos. 1 and 3) should be disallowed. To say of a licence-holder that he had signed a requisition was not in itself slanderous, and the innuendoes of hypocrisy and treachery to the trade were not reasonably extractable from the words complained of. Admittedly an imputation of hypocrisy was slanderous, but in the present case the imputation of hypocrisy necessarily involved an imputation of treachery, and, moreover, it involved the assumption that the plaintiff was acting against his own interests. Accordingly the innuendoes were unreasonable. *Myroft* v. *Sleight* was distinguishable. In that case the disloyalty innuendoed was not in itself improbable, because it was in the plaintiff's own interest to be disloyal. 2. The issues of holding up to public odium and contempt (issues Nos. 2 and 4) should also be disallowed. If the issues of slander were disallowed there was nothing left in the case — *Lever Brothers, Limited* v. "*Daily Record*" (*Glasgow*) *Limited* (*cit.*), *per* Lord President (Dunedin) at 1909 S.C. 1008, 46 S.L.R. 726. 3. The statement which formed the subject-matter of issue No. 1 was uttered on a privileged occasion, and malice was not relevantly averred against the defender Sherry. To aver that Sherry knew the statement to be false was not a sufficient averment of malice, and there were no averments susceptible of independent proof such as violence of language, refusal to listen to explanations, or unreasonable conduct — *Mitchell* v. *Smith*, 1919 S.C. 664, 56 S.L.R. 578, *per* Lord Mackenzie at 1919 S.C. 672, 56 S.L.R. 585.

LORD JUSTICE-CLERK—The Lord Ordinary, in my opinion, was not correct when he said—"The main question is whether it is defamatory to state falsely that a licence-holder had signed a requisition in favour of a poll under the provisions of the Temperance (Scotland) Act 1913." If that were really the main question in the case, speaking for myself, I would be of opinion that such a statement is not defamatory. It is only because of the special averments that are here made that I come to a different conclusion from the Lord Ordinary. The question here is one which we could not in view of the averments of the pursuer dispose of without inquiry. I think it is undesirable that in disposing of a case which must go to a jury we should say much as to the facts, but here the pursuer avers that one of the defenders, against whom the pursuer had set out definite extrinsic facts which would admittedly infer malice, concerted with the other defender, against whom there is comparatively little averment bearing upon malice, and framed a scheme for the purpose of injuring the pursuer and carried that scheme to a successful result by causing a considerable amount of damage. The averments as they

stand are, in my opinion, enough to bring the case especially within what was decided in *Suzor* v. *M'Lachlan*, 1914 S.C. 306, 51 S.L.R. 313. Therefore I think we should recal the Lord Ordinary's interlocutor and approve of the issue.

LORD HUNTER—Looking to the averments made by the pursuer in this case, I do not think it is possible to say whether or not a slander was uttered by the defenders against him. That could be decided only after proof, and it is for the jury to say when the whole facts are before them whether or not the pursuer was slandered. One of the two occasions on which the alleged slander was uttered was a privileged occasion, and the question is whether there is sufficient averment of malice. In my opinion there is. A question is raised between the pursuer and the defenders with reference to whether the pursuer made any statement at all. One of the defenders states that the information on which he proceeded came from the pursuer himself. There is thus a sharp controversy, and it is for the jury to say which of the two parties is telling the truth. I cannot imagine any better case of malice than if a defender makes a slanderous statement of a pursuer and then says, "I made it because the pursuer told me that it was in accordance with fact." If it turns out that that was a mere invention, then it appears to me it must be inferred against the defender that he was acting maliciously; but that is a matter on which the jury can judge. If the jury were to come to be of opinion that something was said by the pursuer that warranted the inference, that would be a different question. But that cannot be decided until the proof is concluded.

LORD ORMIDALE—I concur.

The Court pronounced this interlocutor—

"Recal the said interlocutor: Approve of the issues proposed by the pursuer as now altered and adjusted; appoint the same as now authenticated to be the issues for the trial of the cause; and remit the cause to Lord Ashmore, Ordinary, to proceed therein as accords."

Counsel for the Reclaimer (Pursuer)—D. P. Fleming, K.C.—Thom. Agents—Pairman, Miller, & Murray, S.S.C.

Counsel for the Respondents (Defenders)—Solicitor-General (Constable, K.C.)—Graham Robertson. Agents—J. Douglas Gardiner & Mill, S.S.C.

Saturday, June 24.

FIRST DIVISION.

[Sheriff Court at Dumbarton.

KERR *v.* BRYDE.

Landlord and Tenant — Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (10 *and* 11 *Geo. V, cap.* 17), *sec.* 3 (1)—*Notice of Intention to Increase Rent — Failure to Give Notice of Removal — "Period during which but for this Act the Landlord would be Entitled to Obtain Possession"—Tacit Relocation.*

The Increase of Rent and Mortgage Interest (Restrictions) Act 1920 enacts—Section 3 (1)—"Nothing in this Act shall be taken to authorise any increase of rent except in respect of a period during which but for this Act the landlord would be entitled to obtain possession. . . ."

A house was let on 28th August 1916 for a period of one month at the standard rent, and thereafter the tenancy was renewed from time to time by tacit relocation. On 27th July 1920 and subsequent dates the landlord served on the tenant the statutory notice of his intention to increase the rent but did not serve a notice of removal. The tenant paid the increased rent for a time and then got into arrears. In an action by the landlord for recovery of the arrears, *held* that in the absence of notice terminating the tenancy the periods in respect of which increases of rent were asked were not "periods during which but for the Act" pursuer "would be entitled to obtain possession"; that accordingly the increase of rent had not been authorised by the Act, and action *dismissed.*

Richard Kerr, proprietor of a tenement of dwelling-houses at Clydebank, and James Stewart & Sons, his factors, brought an action in the Small-Debt Court at Dumbarton against Dougald Bryde, tenant of one of the houses, for payment of £4, 11s. 9d. arrears of rent.

The parties averred, *inter alia*—"(Cond. 2) The house was let to defender on 28th August 1916 at a rent of £1, 2s. 6d. for a period of one month, including occupier's rates, the rent being 18s. 3d. and the occupier's rates 4s. 3d. per month. At the time when the let was entered upon, the said house was a house to which the Increase of Rent and Mortgage Interest War Restriction Act 1915 applied, and the Increase of Rent and Mortgage Interest (Restrictions) Act 1920 now applies. The standard rent within the meaning of said Increase of Rent and Mortgage Interest (Restrictions) Act 1920 of said house is £1, 2s. 6d. per month, and the net rent 18s. 3d. per month. (*Ans.* 2) Admitted. (Cond. 3) The defender entered into occupation and is still in occupation of said house. (*Ans.* 3) Admitted. (Cond. 4) On 27th July 1920 the pursuers James Stewart & Sons, Clydebank, as factors foresaid, under said Increase of Rent and Mortgage Interest (Restrictions) Act 1920 gave