[HEARD 11*th*—JUDGMENT 17*th February*, 1848.]

WILLIAM FLEMING, Manager of the Clydesdale Bank, Edinburgh, and Others, *Appellants*.

WILLIAM HOOD NEWTON, No. 54, New Buildings, North Bridge, Edinburgh, *Respondent*.

Libel.—Records.—As all the records are by statute made open to the public, it is not libellous for a body of merchants to publish to each other the names appearing upon the Register of Protests, of persons who have dishonoured their bills.

Ibid.—Ibid.—The decrees of the Courts upon the registration of deeds and protests are equally open to the public, and may be published to it, as decrees pronounced *in foro contentioso*.

Ibid.—Jurisdiction.—Interdict.—Whether the Courts have any power to interdict *a priori* the publication of matter alleged to be libellous. *Quære?*

Ibid.—Interdict.—A party cannot ask interdict to restrain the publication of matter which, by the application for interdict, he himself makes more public than the publication complained of could have done. *Semble*.

IN the year 1837, certain individuals, amounting in number, at the date of the application about to be mentioned, to 320, formed themselves into a society, to be governed by a committee of twelve directors and a secretary, having for its object the communication to its members of information in regard to the mercantile solvency of persons not connected with the society; and the following regulations, among others, were adopted for the accomplishment of this object:—

"III. The Secretary shall collect from the General Records "of Protests, Hornings, and other records of diligences, kept "for Scotland at Edinburgh, the names and designations of "debtors in trade and otherwise, appearing in these records.

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"The Secretary shall likewise excerpt from the 'Edinburgh "Gazette,' the names and descriptions of sequestrated bankrupts, and all notices of applications for *cessio bonorum*. The "whole information thus collected, will be so classed in alphabetical order, as to render the whole clear and comprehensive "and easy of reference; and the lists of debtors so arranged, "shall be printed and forwarded monthly, or oftener, as the "General Committee of Directors shall think proper, to each "member of the Society respectively.

"IV. So soon as the Society's funds will admit of it, the "General Committee shall appoint District Secretaries or Sub-committees in each county town of importance in Scotland, "for the purpose of collecting, in manner before recited, the "names and designations of debtors whose names shall appear "in the County Records of Protests and Hornings, and against "whom decrees may be allowed to pass in absence, as contained "in the minute-book kept in each Sheriff-court. The information so collected shall be transmitted monthly, or oftener, as "the General Committee may direct, to the Secretary of the "Society at Edinburgh, and included by him in the printed "lists to be circulated amongst the members respectively, in "manner before mentioned.

"V. The information contained in the printed records so "forwarded to members, shall be confined to themselves for "business purposes; and no member shall communicate or use "such information for other purposes, under the penalty of "deprivation of membership.

"VI. With reference to the information contained in those "printed records, every member shall be perfectly free and "unrestrained in his engagements, and left to the full use of his "own discretion and pleasure, in giving or refusing credit to any "individual.

"VII. In order to remedy the inconvenience so much felt "from the want of a regular source of information regarding

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" the amount of dividends on bankrupt and insolvent estates, " and the dates of payment, it is hereby provided, that on " receipt of positive intelligence of the failure of any house or " person, who may be indebted at the time to any member or " members of this Association, it shall be the bounden duty of " each member receiving such intelligence, to communicate the " particulars and amount of their claim to the Secretary of this " Association immediately.

" X. Wholesale merchants, manufacturers, bankers, under- " writers, insurance companies against risk by sea, fire and life " assurance societies, wherever resident, and none others, except " the Secretary of the Society for the time being, shall be " eligible as members of the Association; and it is hereby " declared, that in case any persons shall become members under " an erroneous designation, or shall become members of a pro- " fession inconsistent with this rule, it shall be competent to the " Committee to expel them; and in particular, no licensed " attorney shall be eligible as a member of the Society, under " the exception before expressed.

" IX. Monthly meetings of the General Committee shall be " held for the purpose of transacting the ordinary business of the " Society, if occasion requires, and for the purpose of admitting " new members; and it is hereby declared, that no person shall " be admitted without the approbation of two-thirds of the " members of Committee present, such approbation to be ascer- " tained by the vote of the Committee."

This society, of which the Appellants were the committee of managers, had for some time printed and distributed among its members every week the information which it had obtained from the public records, in the manner pointed out by its regulations.

In the month of November, 1845, the Society was about to publish its ordinary weekly intelligence, in which would have been inserted the name of the Respondent, as the maker of two promissory notes, which had been protested for non-payment.

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But the publication was stopped by an application to the Court of Session, on behalf of the Respondent, setting forth, "that "the Respondents," *i. e.*, the present Appellants, "know "nothing, and have no concern with the promissory notes, "after mentioned, viz., a promissory note, of date the 21st "day of March last, granted by the complainer to Andrew "Millar, flax-dresser in Kirkaldy, for 48*l.* 13*s.* 4*d.*; 2nd, a pro- "missory note, of date 18th February last, granted by the com- "plainer to the said Andrew Millar, for 100*l.*, and both of "which notes are, and have been indorsed by the said Andrew "Millar to the Union Bank of Scotland, and having fallen due, "were protested for non-payment, and the protests recorded by "James Andrew Anderson, Esq., manager thereof. The com- "plainer has good grounds for declining to pay the said promis- "sory notes," and praying for an interdict to prohibit them "from publishing or printing the name" of the Respondent "in a list or publication entitled 'The Scottish Mercantile "'Society's Record,' or from inserting his name therein as "a party connected with the said promissory notes, or from "otherwise interfering with the complainer's name in any "way."

The Appellants answered that there had not been any circulation of the Society's lists beyond its own members, and that, with the view of confining it to them, a notice was prefixed to each number, in these terms, "For the exclusive use of mem- "bers. Any member exhibiting or communicating the con- "tents of his list to persons unconnected with the Society will "forfeit his right of membership;" and they admitted, that in the number, which was about to be published at the time the application for interdict was presented, the name of the Respondent would have appeared in the manner anticipated by him.

The Lord Ordinary granted interim interdict, and after the preliminary papers were printed, reported the case to the Court,

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upon the following note, which discloses the grounds upon which the application of the Respondent was rested.

"The Lord Ordinary considers this a case of great import-
" ance, and calling for the authoritative determination of the
" Court, with as little delay as possible. The Respondents
" describe themselves as members of a society, for whose use
" there is prepared, printed, and circulated among themselves, a
" weekly paper, called 'The Scottish Mercantile Society's Re-
" 'cord.' This paper contains a list, taken from the General
" Register of Protests kept at Edinburgh, of the names and
" designations of all parties against whom protests have been
" recorded, and also from the record of Hornings and other
" diligences, as well as of all sequestrated bankrupts and other
" applicants for *cessio bonorum*. It further embraces the names
" of those appearing in similar county records, or against whom
" decrees in absence have passed, as well as a note of suspension
" of charges, taken from the books of the Bill-Chamber. The
" information thus procured is arranged in alphabetical order,
" for the sake of easy reference. There is no limitation as to
" the number of the members of this society, as it is called. It
" was admitted that there are at present several hundreds, con-
" sisting chiefly of bankers and mercantile men; and it was
" contended, that there was no law to prevent the circulation of
" such a list among 1000, or 20,000, or any number of persons
" who might think fit to join. But it was said, that this does
" not amount to publication, the information being confined to
" the members for business purposes, and the penalty for com-
" municating to others the information thus obtained, or using
" it for other purposes, being a forfeiture of the right of mem-
" bership.

"If the publication of the list be in itself lawful, there
" seems no occasion for any such restriction. On the other
" hand, if it be unlawful, the Lord Ordinary cannot help think-
" ing that the disguise is a very thin one, and that, where a

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" paper is printed, and circulated among hundreds, or thousands " of persons, for business purposes, even although the penalty " of stopping delivery of their copies in future should they " communicate the intelligence to others, be enforced,—this, in " truth and substance, amounts to publication. It is not pre- " tended that the members or subscribers have any direct con- " nection with any of the parties, or with the debts which are " entered in the list. On the contrary, all the members desire " information as to all registered protests of every debtor in the " kingdom; and they contend that any number of persons, that " is, the public at large, are entitled to subscribe, for the pur- " pose of printing and circulating, among all who do subscribe, " this list, which it appears, according to the current phrase- " ology, is denominated the 'Black List.' In other words, any " person may become a member of the society, that is, obtain a " copy of the paper, upon payment of the price, just as he " might subscribe to any newspaper. There is no qualification " required for membership; and the condition, that he shall not " show the paper to others, even if it could be enforced, becomes " utterly nugatory, when any one who wishes it may obtain that " information upon payment of the price.

"The interdict here sought is against entering the name of " the complainer in the list, as a party against whom two protests " have been recorded in the General Register, and against pay- " ment of which, he states, he has good grounds of objection. " Although, no doubt, access may be had to that register for all " lawful purposes, it is not one instituted for the purpose of " publication. It was established by the Act 1681, c. 20, " which declares, that protests upon bills of exchange 'shall be " 'registrable within six months after the date of the bill, in " 'case of non-acceptance, or after falling due thereof, in case " 'of non-payment, in the Books of Council and Session, or " 'other competent judicatures, at the instance of the person to " 'whom the same is made payable, or his order, either against

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" ' the drawer or indorser, in case of any protest for non accept-
" ' ance, or against the acceptor, in case of a protest for non-
" ' payment, to the effect that it may have the authority of the
" ' Judges thereof interponed thereto, that letters of horning,
" ' upon a simple charge of six days, and executorials necessary
" ' may pass thereupon, for the whole sums contained in the
" ' bill, as well exchange as principal, in form as effeirs; sick-
" ' like, and in the same manner, as upon registrat bonds, or
" ' decrees of registration proceeding upon consent of parties.'
" The object of this Act was merely to give a registered protest
" the force and effect of a decree. The names of the parties are
" not required to be published for any purpose prescribed by
" the Act. It is clear that the publication of a party's name in
" a list containing sequestrated bankrupts, and all whose pro-
" tested bills have been registered within Scotland, to which
" list all may have access who choose to subscribe,—may be
" attended with the most injurious consequences, and his credit
" utterly ruined. The bill may have been allowed to be pro-
" tested and the protest recorded through error, absence, or
" inadvertence. There may have been error even on the part
" of the creditor. There may be good ground for disputing the
" debt; and yet, in ignorance of all the circumstances, the fact
" that a protest has been recorded against a man of business is at
" once made known to 300, or 3000, or any number of bankers
" and merchants throughout the kingdom, and his credit is
" gone. Nay, even a stronger case may be put. Where a
" party accepts a bill for the accommodation of the drawer,
" and where, being in good credit, he gets the bank who dis-
" counted the bill which has been dishonoured to allow him to
" do diligence in their name against the true debtor under the
" recorded protest, yet here, of course, his name will appear in
" this list, and be circulated throughout the country, without
" any explanation, as a party apparently unable to retire a bill
" of which he is the acceptor. Is this a legitimate use of the
" Register of Protests?

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"There is another view of the matter which also induced the "Lord Ordinary to take this case to report. If it shall be held "that this list is substantially a publication, and that the circu- "lation of such a list is not a legitimate use of the record, then "it will be proper to consider, whether, besides giving the "individual interdict here sought, some steps may not be "necessary to prevent the keeper of the register from giving "copies in future for the purpose of such publication. The "Lord Ordinary had no difficulty in granting the interim inter- "dict, as in no view could this do any harm to the Respond- "ents. But the matter being now brought before the Court, "they will have a full opportunity of having the views of the "Lord Ordinary corrected, in so far as these may be erroneous."

The Court ordered minutes of debate to be prepared, and laid before the whole judges for their opinion, and on the 10th March, 1846, in conformity with the opinions of a majority of the consulted Judges, passed the note of suspension, and continued the interdict. The appeal was taken against this interlocutor.

Mr. Wortley and *Mr. Gordon* for the Appellants.—The complaint here is of an intention to publish the name of the Respondent, as having dishonoured two promissory notes, by non-payment of their contents, not because the information proposed to be given by the publication is false or erroneous, but because it may be injurious to the party; but

In the first place, the fact of a party having dishonoured a bill or note is not a private matter, it is open and patent by the Records to all the world. By the Act 1681, applicable to foreign bills of exchange, extended by the Act 1692 to inland bills, and by 12 Geo. III., cap 72, and 23 Geo. III., cap. 18, to promissory notes, the protest upon a bill or note is to be registered in the books of the Court of Session, "to the effect "it may have the authority of the Judges thereof interponed

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" thereto, that letters of horning, upon a simple charge of six " days and executorials necessary, may pass thereupon for the " whole sums contained in the bill, as well exchange as prin- " cipal, in form as effeirs, sicklike and in the same manner " as upon registrate bonds or decrees of registration, proceeding " upon consent of parties."

The practice in compliance with this statute, is strictly of a judicial nature. The entry in the books of the Court, both in form and effect is precisely the same, *mutatis mutandis*, as in the case of a decree formally contested. Not only are the public entitled to be present at the pronouncing of decrees in open Court, but the 1 and 2 Vict., cap. 118, provides for the knowledge that might be thus acquired, being communicated to those who have not had this opportunity, by enacting that " the minute book of " the Court of Session," containing the entries of its decrees, " shall be printed and sold by the keeper thereof, and shall be " sold to the public at the lowest rate which will defray the neces- " sary expense of printing the same." As the public have a right, not only to be present at the pronouncing of a decree in *foro contentioso*, but to procure printed information of it, and to avail themselves in the ordinary pursuits of life, of the informa- tion thus acquired, so upon every principle they must be equally entitled to do so, where the decree passes *sub silentio* by consent of the party, for every reason for publicity which applies to the one case applies to the other. But, independently of reasoning upon principle, this register of protests, like all the other registers in Scotland, is by the Act of Regulations, 1695, public property. By that act, which has all the force of a statute, it is enacted, " that the registers immediately under the clerk regis- " ter's keeping in the Lower Parliament House, or anywhere else, " *be patent to all the lieges*, without any payment or other " acknowledgement of that sort to be made to any for sight of " the minute book," and specified fees are authorized for searches in the Record itself; no limit is here made as to whom the

register is to be patent to,—to the creditor or debtor in the bill or note for instance, or some one having authority from them, but it is "to all the lieges." And the 55 Geo. III., cap. 70, which is entitled "an Act for better regulating the formation and "arrangement of the judicial and other records," proceeds upon a preamble that "the due arrangement of the judicial records "is essential to the usefulness of that class of the public Re- "cords."

The 1 and 2 Geo. IV., cap. 38, in its 27th section, provides that "whereas it is expedient that the keepers of the several "registers of records of sasines, reversions, abbreviates of ad- "judications, inhibitions, and deeds and probative writs, recorded "in the books of Council and Session, should form alphabetical "indexes of the persons and matters to which those records "relate, for the purpose of easy reference to the same respec- "tively," the Court of Session should have power to regulate by act of sederunt the form of the indexes. And the 3 Geo. IV. lays down a table of fees for inspection of the record, when there is no minute book, of the record when there is a minute book, and of the documents recorded themselves. Any one who chooses to pay those fees has a right of access to the record, which no one can refuse him; and in practice nothing further is asked of him by the keeper, indeed it could not well be otherwise, for if the keeper were entitled to ask what interest a party, asking inspection of the record, had in the matter of the record, he must of course have the power of saying whether the party had established a sufficient interest, and of refusing or allowing inspection accordingly. But such a state of matters would be altogether irreconcileable with the Act of Regulations, 1695, that the records are to be "patent to all the lieges."

Publicity, as to every man's circumstances, is in truth the principle of Scotch jurisprudence. Every burden or judgment affecting lands must be put upon record, which by the Act 1695, is open to all the lieges. So the mode of execution against the

estate of debtors in one step of it—denunciation, was public. "the intent thereof," as *Stair* expresses it, III., 3, 8, "being "that the publication thereof may come to the ears of the "country, and be carried by common fame, that all parties may "look to their interest." And *Bankton*, IV., 4, 18, speaking of the registers of deeds for execution says, "these are not only "useful to found summary execution against the granters of "such registrable writings, but likewise in order to discover the "circumstances of persons."

In short, all the public registers of Scotland, whether of judicial proceedings, of deeds, or notarial or public instruments, whether for preservation or for preservation and execution, are accessible to every body, who, for any legitimate purpose, may by their means possess himself of the information they afford.

II. The Appellants, being all engaged in trade, have a material interest to know the solvency of the parties with whom they are about to deal; the communication to the general body is not done therefore in idleness, to gratify any unworthy or improper motive, but to communicate to each that information which is necessary for his safety in business; and if individually, they may use the records as sources of information, the body may, on the same principle, do it by their agent. Each man may search the record for himself either personally, or by his clerk, and the officer of the society is no other than the agent or clerk of all the members.

III. If the Appellants may lawfully procure this information, and communicate it to each other, their doing so will not become unlawful because it may by possibility be injurious; the inference, from the circumstance that a man has not paid his bill, is not necessarily that he is unworthy of credit,—it may have that effect with some minds, while with others it may produce no other effect than suggesting the necessity for inquiry as to the reason of non-payment. But the statement of the fact of non-payment is not a statement of either of these inferences, nor

can the party be answerable for either of them. Indeed, to all properly constituted minds, the second inference is the one which would be drawn; for there are many reasons why a bill may have been dishonoured, besides the party's inability or unwillingness to pay, and it is notorious to every one, that the Appellants cannot know, and do not profess to give the true reason, but intend only to communicate the bare fact of non-payment, and that not for the idle purpose of meddling with their neighbour's affairs, but of enabling themselves, as prudent merchants, to conduct their dealings with safety. If their statement be true, then they can no more be liable for the injurious inference which peculiar minds may possibly, but not necessarily, draw from it, than a party can in any other case be liable for an injurious inference, drawn from any other statement harmless in itself. The fact proposed to be stated in this case is true; it is public upon the records, which are open to every one,—and it is to be stated for a legitimate purpose and to those having a legitimate interest to know it. It is difficult to discover any ground upon which the interdict therefore can be supported.

Mr. Bethell and *Mr. Anderson* for the Respondent.—It is not possible to dispute that the printing and circulation of the Appellant's circular, though confined to their own body, is a publication, to all those at least engaged in the operation of printing and of such circulation. And the injury to the Respondent from this publication is manifest, by the benefit which the Appellants propose to themselves from it, as shown by the regulations under which they act. The benefit they propose to themselves is the knowledge of persons of "doubtful credit," and the injury they inflict upon the Respondent is the being held out to the world as such. This benefit may be very desirable to these parties, and very essential to the safe conduct of their business, but what possible right can that give them to do the injury to the Respondent, which being held out as a

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person of doubtful credit, must necessarily entail, upon his respectability as a merchant, and without the possibility of his warding it off, in case persons should decline doing business with him, because of the appearance of his name in the Appellant's list, but without assigning this as the reason.

The effect of the publication is neither more nor less than a slander upon the Respondent, not merely by the statement of his promissory notes having been dishonoured, but by the inference intended to be drawn from that circumstance. If the Appellants were in any way interested in the transaction, and thus cognisant of its circumstances, they might or they might not be justified in publishing it; but, admittedly, they are not,—they are no way interested in the transaction,—and they know nothing of its circumstances, further than the mere fact of the protest having been registered; yet they publish that fact as inferential evidence of the Respondent being a merchant of doubtful credit, and associate his name with that of persons who undoubtedly must be of that character; such as bankrupts and pursuers of processes of *cessio bonorum*. The obvious inference from the publication is, that the notes are justly due, and that their protest has been occasioned by an inability on the part of the Respondent to pay, although there may be half a dozen other reasons why the notes have been dishonoured, accident, mistake, forgery, want of consideration, or the like, and should the cause have been obviated, and the notes paid after the Appellant's list is published, there is no way by which the Respondent could remove the injury done to his credit by the appearance of his name. There it would remain.

Not only are the Appellants total strangers in the transaction in question, but they never had, nor is it alleged they ever contemplated having, any transaction whatever with the Respondent; they have no legitimate interest therefore to inquire into his solvency, and still less to publish to others any circumstance which may give an injurious or doubtful opinion of it.

II. But it is said the register of protests is open, and intended for publication;—this is to confound the character of the different registers, some of which are expressly for publication, while others, of which the register of protests is one, are for execution only. The mere fact of possession of personal property gives the possessor the character of owner, and entitles the world to deal with him as such; there is no way, therefore, in which a right can be constituted over moveables apart from the possession of them; no register, therefore, is required in order to fix the character of ownership. It is otherwise, however, with real property; in regard to it the law has declared that the register, and it alone, shall evidence ownership;—accordingly, all land rights must be registered, and *ex necessitate* the registers must be open to the public, as publication is their purpose; such are the register of sasines, of reversions, of tailzies, of adjudications, and of inhibitions. The Act 1617, cap. 16, declares that the register of sasines "shall be patent to "all our sovereign lord's lieges;" but even as to it extracts of the record are to be given only "to all as shall have adoe with "the same;" and the Act 1672, cap. 19, in regard to adjudications, and of 1581, cap. 119, relating to inhibitions, all show an express purpose of publication. And, in regard to all these, the existence of a right to land, or of a burden upon it, and the discharge of that right or burden must appear upon the record.

On the other hand, as to moveable estate, though there are registers with respect to it, such as the register of deeds, of probative writs, and of protests,—these are for preservation only, or for preservation and execution. They neither are intended nor can they serve for publication. To take the register of protests, for instance,—it will shew the fact of a protest upon a particular note having been taken; but the note may have been paid the next half-hour afterwards; this fact, however, cannot enter the record. For the purpose of publication, therefore, of the true state of matters, this register is utterly nugatory. If a

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sasine upon an heritable bond appear upon the register of sasines, the world may and must believe the granter of the bond to be debtor in its amount, but so soon as he pays off the bond the discharge is put on the same register. But if a protest upon a promissory note is registered, nothing further appears. Accordingly, the express object of the Act 1681, cap. 20, for the registry of protests, is, that bills "may have ready execu-"tion," without mention, as in the statutes which have been noticed in regard to real rights, of the register being open to the lieges; and by none of the institutional writers are the records for execution treated as intended for publication—*Bankt.*, IV., 4, 18; *Ersk.*, II., 5, 54; *Ersk.*, III., 5, 6.

But though the register of protests were embraced by the Act of Regulations, 1695, which is not so certain, without evidence that it was then "immediately under the clerk "register's keeping," yet it does not follow that, because a register is to be "patent to all the lieges," this is to be taken literally to mean all, whether with or without an interest in the matter; but rather as implying all having such an interest; and still less will it imply a right in each individual not only to inspect the record personally, but to publish the result of his inspection to others.

III. It is, no doubt, true that the registration of the protest upon a note is equivalent in its effect to a decree for payment in favour of the creditor. It gives him the same warrant for execution; but, by the agreement of the parties, it is a private proceeding withdrawn from the public; and unless the publication in question can be justified, as being a publication of part of a public record, it can never be justified as publication of a decree of Court, which it is only by fiction.

LORD CHANCELLOR.—My Lords, If it were necessary to lay down a rule respecting the jurisdiction which has been exercised in this case by the Court of Session, in granting

interdict against the publication of libels, this case would be one of the highest importance, and of the greatest difficulty, in the present state of information submitted to this House, for it is impossible to read the observations of the learned Judges, without seeing that there is in them much want of precision, and indeed of acuteness upon the subject; but being of opinion that the general question is not necessarily involved in the consideration of the appeal, I think it expedient under the circumstances not to give any opinion upon the general question. But I cannot avoid expressing an earnest hope, that if this question should arise and require decision in the Court of Session, and no distinct rule should be found upon the subject, that the consequences of any rule to be established for the first time will be most carefully considered, and particularly how the exercise of such a jurisdiction can be reconciled with the trial of matters of libel and defamation by juries, under the 15 George III., chapter 42, or indeed with the liberty of the press. That Act appoints a jury, as the proper tribunal for trial of injuries to the person by libel or defamation; and the liberty of the press consists in the unrestricted right of publishing, subject to the responsibilities attached to libels public or private. But if the publication is to be anticipated and prevented by the interdict of the Court of Session, the jurisdiction is taken from the jury, and the right of unrestrained publication is destroyed. And I must add that, according to the doctrine attributed to the Lord Justice Clerk in the printed report of his judgment, the exercise of this power would be quite arbitrary, for he considers that the right to claim damages, if the act had been committed, is not the test according to which the interdict must be granted or refused.

I do not pursue the question further, because, assuming the jurisdiction to be as extensive as it is claimed, I think that in this particular case it has been improperly exercised.

Bills and notes dishonoured and protested are by certain

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Acts of Parliament to be registered, of which bills the Defendants are in the practice of publishing a list, and the object of the interdict is to restrain the Defendant from printing in such lists the name of the pursuer, that is, he, thereby admitting the fact that the two bills in question have been dishonoured by him, prays that fact may not be published; but he himself, by the application for the interdict, not only admits the fact, but gives to that fact a greater degree of publicity than would have attended it, if his name had been inserted in the list. If the publication intended had been a narrative or statement injurious to the party complaining, and which he had a right to prevent, the observation would not apply, but in this particular case the jurisdiction by interdict being to prevent a wrong we find it exercised in a case in which it could not possibly have any such effect. I found my opinion, however, upon this, that the publication of the fact proposed to be inserted in the Defendant's list, has been made by Act of Parliament, public property and the publication of it authorized.

The Act of 1681 cap. 20 enacts, that foreign bills shall be registerable in the books of Council and Session "to the effect "that it may have the authority of the Judges" for process to issue "sicklike, and in the same manner as upon registrat bonds "or decrees of registration proceeding upon consent of parties." Subsequent Acts included inland bills and promissory notes. The effect of this is to give this registration the effect of a decree or judgment of the Court of Session. It is what in this country we call a judgment upon a warrant of attorney. In neither case does the Court interfere, but in both, as in cases of judgment by default and decree in absence, the party having a right to the authority of the Court to confirm his claim obtains the judgment as of course. Whether it be obtained by authority of Parliament, or by the consent of parties, or by the practice of the Court, appears to me to be immaterial. It is for all purposes a judgment of the Court until altered or reversed,

and entitled to all the attributes of any judgment after the longest and most contested litigation.

This indeed is not in dispute. The Lord Justice Clerk says in his judgment "I hold the register to be a proper record of "Court, as much as the actual book of procedure now on the "table, and entered up from day to day by the clerks. The "party appears with his protest, and asks the Court for a certain "decree upon it; which decree is not obtained by deliverance "which leaves the Court, but by an entry in the book of "Court."

Is it then unlawful to state or publish the decree or judgment of a Court of Justice? If their proceedings are public, so must the result of such proceedings, namely, the judgment, be. For although the steps preliminary to the judgment are not transacted in open Court, the whole being incontestible in that stage, yet the whole is supposed to be the result of regular proceedings. The register, therefore, is, in its nature, public, but it is especially made so for purposes distinct from the object of giving effect to the right of the party. So *Lord Bankton* states in the passage referred to, IV., 4, 18. The Act of Regulations of 1695 provides, that the register under the clerk register's keeping be patent to all the lieges. This includes the books of Council and Session, in which the entry of protests are kept. The 55th George III, cap. 70, regulates the keeping of registers of deeds and instruments of protest. Section 27 of 1 and 2 George IV., cap. 38, provides for making indexes to certain and divers registers, and, amongst others, adjudications recorded in the books of Council and Session, for the purpose of easy reference, and that they may be made accessible to the public. It appears that in fact no index was made of the register of protests, but by the table of fees a different fee is payable for searches where there is and where there is not an index, so that the contents of all the registers, whether with indexes or not, are open to the public upon payment of a certain fee.

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So far are any proceedings of the Court from being considered shut against the public, that by 1 and 2 Victoria, cap. 118, sect. 22 it is provided, that the minute book of the Court of Session and Teind Court, the record of edictal citations, the weekly calling list of causes, and the weekly printed roll of Outer House and Teind causes, "shall be printed by the re-"spective keepers thereof, and shall be sold to the public at the "lowest rate which will defray the necessary expense of printing "the same."

From these references it appears to me clear that the legislature have thought that the public at large ought to have recourse to this register, and of all the public, the Defendants have the highest interest in the knowledge of its contents. They are engaged in mercantile affairs in which their security and success must greatly depend upon a knowledge of the pecuniary transactions and credit of others. That each of them might go or send to the office and search the register is not disputed; and that they might communicate to each other what they had found there, is equally certain; but what they have done is only doing this by a common agent, and giving the information by means of printing. No doubt if the matter be a libel this is a publication of it, but the transaction disproves any malice, and shows a legitimate object for the act done.

I think, therefore, that upon this view of the case alone, the Respondent has failed to establish any title to the interdict, which, though *ad interim* only, must be discharged, unless shown to rest upon some tenable ground. Now it is admitted that no case can be produced in which such an interdict has been supported. The proceeding in its nature is much in the discretion of the Court, and most so when the case is perfectly new. In the exercise of that discretion, I think the Court of Session ought to have refused the interdict, and therefore advise your Lordships to reverse this interlocutor, with costs below.

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Ordered, That the interlocutors, in so far as complained of in the appeal, be reversed; and that the cause be remitted back to the Court of Session in Scotland, with directions to that Court to recall the interdict granted by the Lord Ordinary, and continued by the Lords of Session of the Second Division, and to refuse the note of suspension and interdict, at the instance of William Hood Newton, the Respondent, against the Appellants. And it is further ordered, That the said Respondent do pay to the said Appellants the costs incurred by them in the Courts below. And it is also further ordered, That the cause be remitted back to the Court of Session in Scotland, to do therein as shall be just.

GRAHAM and WEEMS—ALEXANDER ROBERTSON, Agents.

Note the comparison with dishonour of a bill where the party is deemed right to recover by damages on his part.