The defender pleaded, *inter alia*:—"(2) The defender's statement from the pulpit, not having been made maliciously or without probable cause, he is entitled to absolvitor." "(4) The defender's statements not having contained or implied any personal reference to the pursuer, and the defender not being responsible for any belief entertained by third parties as to the pursuer being the author of the anonymous letter published on 4th March 1871, the pursuer is entitled to absolvitor." "(5) The defender having been called on by the pursuer to disavow, and having sufficiently disavowed, any imputation upon the pursuer, is entitled to absolvitor."

The SOLICITOR-GENERAL, ASHER, and MONCRIEFF, for the pursuer, referred to the cases of *Smith* v. *Gentle*, 1844, 6 D. 565; *Outram* v. *Reid*, 1852, 14 D. 577; *Le Fanu* v. *Malcolmson*, 1 Clerk and Finelly (H.L.), 637; and *Kennedy* v. *Baillie*, 1855, 18 D. 138; and to Starkie on Libel, pp. 361, 453, 655; and they contended that the defender was responsible for the consequences of his rash and reckless statement from the pulpit.

SHAND and MACLEAN, for the defender, referred to the cases of *Craig* v. *Hunter*, 29th June 1809, F.C.; *Torrance* v. *Weddel*, 1868, 7 Macph. 243, 6 Scot. Law Rep. 180; and *Wotherspoon* v. *Gray*, 1863, 2 Macph. 38; and they argued that no relevant case had been established.

At advising—

LORD BENHOLME—I am of opinion that the pursuer has not made out a relevant case. The statements made in the letter to the *Glasgow Herald*, signed by a "Member of Campsie Parish Kirk Session," were apparently inconsistent with circumstances with which every member of the Kirk Session was acquainted, and it is, therefore, not to be wondered at that Dr Monro pronounced it, from internal evidence, to be a forgery. This was the first alleged act of slander complained of. The next day the pursuer wrote to Dr Monro, requesting an explanation, and the Doctor immediately replied in a straightforward manner, that neither the pursuer nor any one else was in his thoughts when he made the statement. One would have supposed that the pursuer would then have allowed the matter to drop; but Dr Monro having written a letter to the *Glasgow Herald* explaining his reasons for doubting the genuineness of the letter signed by a "Member of the Kirk Session," the pursuer again wrote to the Doctor, requiring him publicly to retract the statements he had made from the pulpit on the previous Sunday. This letter of Dr Monro's was the second libel complained of. Now the first alleged libel was merely a negative statement by the Doctor that he believed "some one" had been guilty of an act of deception, and his letter to the newspaper giving his reasons for that belief was both sensible and justifiable. He appears to have been profoundly ignorant of the authorship of the letter in question, and there is nothing whatever in his statements which can be construed as an inuendo against any individual in particular. I, therefore, think the pursuer's averments are quite irrelevant, and I propose to your Lordships to adhere to the judgment of the Sheriff.

LORD NEAVES—I concur. I think this a most untenable and unjustifiable action. It is impossible to libel a letter; you must libel a person. "Some one," of course, wrote the letter, but in order to construe such an expression as an inuendo against any individual, it is necessary to point it in such a way that the person meant is at once known. Whatever may have been the responsibility of Dr Monro for his statement from the pulpit on the 5th of March, he was entirely relieved from it by his letter to the pursuer on the 6th. He disclaimed any intention of alluding to the pursuer, and his explanation was accepted. Had the pursuer's second letter been the first he addressed to Dr Munro, the case might perhaps have assumed a different aspect, but in his first letter the pursuer himself relieves the minister from responsibility by stating that he never dreamt any allusion to himself was intended. In these circumstances the action is quite untenable.

LORD COWAN—I am of the same opinion. I think the learned Sheriffs have properly disposed of the case, although, perhaps, in the elaborate opinion of the Sheriff-Substitute the facts of the case have been a little too much mixed up with the question of relevancy. It appears to me impossible to construe the statements complained of into any inuendo against the pursuer. The action is a most unjustifiable one, and, in the circumstances, the defender is entitled not merely to have the action dismissed, but to decree of absolvitor from the conclusions of the summons.

The LORD JUSTICE-CLERK concurred.

Agents for Pursuer—Maconochie & Hare, W.S.
Agents for Defender—Mitchell & Baxter, W.S.

Wednesday, May 22.

PAUL AND ANOTHER (BARNET'S TRUSTEES) *v.* BARNET AND OTHERS.

Trust—Exoneration.

Trustees under a trust-disposition having raised an action of M.P., the Court found one of the claimants entitled to the heritage. After this decree the trustees granted a lease of part of the heritage, and refused to convey the estate to the heir until they received exoneration. *Held* that the trustees were entitled to exoneration up to the date of the raising of the action, but that they were bound to denude in favour of the heir without receiving exoneration for subsequent actings.

This was an action of multiplepoinding and exoneration by the trustees of the deceased Mr Barnet of Hillhead in Aberdeenshire. The truster left considerable property, heritable and moveable, and after a proof, Alexander Barnet, residing at Backward of Kemnay, Aberdeenshire, was preferred to the heritage, and certain other claimants to the moveables. Against that preference the unsuccessful claimants of the moveables appealed to the House of Lords, but the unsuccessful claimant of the heritage did not appeal. Alexander Barnet having called on the trustees to denude, they offered to comply on receiving exoneration; this, however, he refused to grant, on the ground that they had acted *ultra vires* in granting a lease of the heritage after the date of the multiplepoinding, and that this lease was to be reduced. The Lord Ordinary ordained the trustees to execute and lodge in process a disposition of the heritage, and thereafter found Alexander Barnet entitled to borrow it from process and retain it as his own deed. Against that interlocutor the trustees reclaimed.

SOLICITOR-GENERAL and BIRNIE, for the reclaimers, argued that trustees were not bound to denude till offered exoneration for their whole actings with reference to the trust-estate; that the trustees here had not sufficient funds in their hands or deposited in Court to secure them against the result of the threatened reduction; and that they were not safe to denude in favour of the heir in heritage until the issue of the appeal as to the moveables should be ascertained. Farther, that if the heirs in moveables were held not to have been the nearest relations of the deceased, and therefore to have been wrongously preferred to the moveables, their brother, the heir in heritage, must have been wrongously preferred to the heritage. (*Elliot's Trustees* v. *Elliot*, 1828, 6 S. 1058; *Edmond* v. *Blaikie and Anderson*, 1860, 23 D. 21.)

WATSON and JOHNSTONE, for the respondents, replied that after the heir had obtained decree in his favour, the trustees could no longer lawfully withhold from him the disposition to the heritage; that they had acted *ultra vires* in granting a lease of the heritage after the case was in the hands of the Court, and that, therefore, they could not claim exoneration for actings subsequent to the date when the action was brought into Court.

At advising—

LORD JUSTICE-CLERK—Had the trustees raised a question of this nature before the date of the multiplepoinding, the case would have been different. But by that action the entire property in dispute was lodged in the hands of the Court, after which the trustees ceased to be proprietors in the ordinary sense, and they have, therefore, no right to withhold the heritable property from the heir, who has obtained a decree in his favour. With regard to the lease granted by the trustees, it may turn out advantageous to the heir, or it may turn out to have been granted by them *ultra vires*. In any event, the heir is entitled to get possession of the estate; and the question whether the administration of the trustees subsequent to the raising of the action of multiplepoinding has been beneficial is a mere question of accounting, and must be settled afterwards. With regard to expenses, in a matter in which the trustees have been litigating for their own interest, and have been unsuccessful, I see no reason why they should not be held personally liable.

LORD COWAN—I think it was a somewhat extraordinary act on the part of the trustees to grant the lease in question without the authority of the Court, in whose hands the whole estate was placed, but I cannot at present say whether that act was *ultra vires* or not. I am clearly of opinion that the disposition must be given up by the trustees, but that they are entitled to exoneration for their administration of the trust-estate previous to the raising of the action.

LORD BENHOLME—I am of opinion that the trustees must give up the disposition to the heir *de plano*.

LORD NEAVES concurred.

The Court pronounced the following interlocutor:—"Find that the reclaimers are entitled to be exonered and discharged of their whole actings and intromissions up to the date of bringing the action into Court, and exoner and discharge them accordingly, and decern. *Quoad ultra*, adhere to the Lord Ordinary's interlocutor: Find the reclaimers liable in expenses since the date of that interlocutor, and remit," &c.

Agents for Reclaimer—Tods, Murray, & Jamieson, W.S.

Agent for Respondents—T. J. Gordon, W.S.

Wednesday, May 22.

M'ALLEY, PETITIONER.

Poor's Roll.

Held that an applicant for the benefit of the poor's roll, who adduced no evidence as to his circumstances but his own statement, and was alleged by the kirk-session to be a person unworthy of credit, must prove his poverty in some other manner satisfactory to the Court.

This was a petition by William M'Alley, residing at Cupar Fife, for admission to the benefit of the poor's roll, with a view to enable him to raise an action in the Court of Session. The petitioner produced a certificate from the kirk-session of Cupar, containing his own declaration as to his circumstances, unsupported by farther evidence, and a statement by the members of the kirk-session that they regarded him as a person unworthy of credit. The petitioner admitted that his earnings as a tile-maker amounted to 16s. per week during five and a-half months of the year; that during the remainder of the year he earned about 12s. a week by letting lodgings; and that his wife, from whom he was separated, and his adult children, were not maintained by him.

KIRKPATRICK for the petitioner.

ASHER and MILLIE for the respondents.

At advising—

LORD JUSTICE-CLERK—The applicant cannot obtain the benefit of the poor's roll unless he establish his poverty in some satisfactory manner. The kirk-session report that his credibility is not to be relied on, and we therefore cannot grant his petition on his own *ex parte* statement. Assuming, however, the applicant's statement to be true, I should be inclined to hold that his circumstances are not such as to entitle him to be admitted to the poor's roll.

The other Judges concurred.

Agent for Petitioner—R. A. Veitch, S.S.C.

Agents for Respondents—Leburn, Henderson, & Wilson, S.S.C.

Thursday, May 23.

FIRST DIVISION.

SPECIAL CASE—EDWARD SNELL AND OTHERS.

Succession—Heritage—Vesting.

A testator conveyed his whole heritable estate to his spouse, for her liferent use allenarly, whom failing by decease to his daughter, also in liferent, for her liferent use allenarly; and to and in favour of the children of the said daughter, procreated or to be procreated of her existing or any future marriage, and the survivors or survivor of them; and failing the said children, to and in favour of three nephews and a niece, and the survivors or survivor of