of the settlement is against the ordinary presumption, but I do not see how that affects the question. The power was not exercised, and the conveyance stands as a conveyance to a *nominatim* disponee, whom failing to the heirs and assignees of the granter, and I therefore come to the conclusion without difficulty that the Lord Ordinary is clearly right.

Lord Deas concurred.

Lord Mure—I arrive at the same conclusion. There are various points of importance which have been raised on the terms of the deed as to the meaning of the disposition of 1874 and of the mutual settlement.

It was maintained that under the conveyance in 1874 there was a fee in Mr Watson, and that the terms of the deed were not sufficient to give a *pro indiviso* half to his wife. Assuming the statement to be correct, that the property was purchased with Mr Watson's own money, I am disposed to think that that contention is sound. But then by the mutual settlement which was subsequently made by the spouses one half of the subjects purchased in 1874 was settled by the wife on the husband in liferent, the fee being given to the son, whom failing to her own nearest heirs and assignees. In that clause of the mutual settlement of 1877 there is an express declaration that the settlement of the property on the husband is for his liferent use allenarly. It has accordingly been assumed by the parties that a *pro indiviso* half was in the wife. Under that mutual deed, however, although the husband had a mere liferent allenarly, he had also a right to revoke the disposition in so far as regarded his own estate. Then after the death of Mrs Watson and the son, Mr Watson made a will which contained a revocation of all previous wills made by him, and it is maintained that by that will he revoked the conveyance by Mrs Watson and her disposition of the property. On that there arises the important question whether he had power under the terms of the mutual deed to revoke it. I am disposed to think, following the opinion of Lord Eldon in the case of *Hepburn* v. *Brown and Others*, 2 Dow's App. 342, where the power to alter a mutual deed after the death of one of the parties was considered, that Mr Watson had not power to alter the mutual settlement with regard to the wife's property after her death. Even if he had that power he did not by his deed revoke the destination to heirs and assignees in the mutual settlement, for it is expressly said in his will that the revocation is to apply to all wills "made by me." I cannot look on Mrs Watson's special conveyance of her one-half as a will made by him, and not by Mrs Watson.

Then the question remains, whether under the destination to her own heirs and assignees, Mrs Watson intended that her own heirs should take on the death of her son, and I agree that that is a question of intention. No doubt there are presumptions in favour of conditional institution or substitution, but these may be displaced by the terms of the deed. Here there is a clearly expressed conveyance of a *pro indiviso* half, which, as I read it, indicates that the heirs and assignees of the granter should take after the death of her son.

Lord Shand—I am of the same opinion on both points.

The property here disponed is heritable, and the ordinary rule in the case of such a disposition of heritage is that a substitution was intended, as well as a conditional institution. I think that there are no circumstances here to displace that presumption. There is however an alleged revocation by Mr Watson, and the reserved power of revocation contained in the mutual settlement has been referred to. It is in these terms, "power and liberty to us, or either of us, to alter or revoke these presents at pleasure, so far as regards the estate conveyed by us respectively." But that is not a power to the husband to revoke the conveyance by his wife. It is said, however, that the husband in the mutual settlement made a donation to the wife, and that he subsequently made a will which operated a revocation of the conveyance which he had allowed the wife to make. But I think that would have required much more distinct words. Mr Watson in his will refers to the property in Craignestock Place, but I think the description used will be satisfied by referring it to the one-half share which he possessed. I agree that the opening words "I revoke all other wills . . . made by me" will not cover the conveyance by his wife.

The Court adhered.

Counsel for Pursuer.—Mackintosh—Lorimer. Agents—Macbrair & Keith, S.S.C.

Counsel for the Defender—Gloag—Jameson. Agents—F. J. Martin, W.S.

Wednesday, January 23.

FIRST DIVISION.

PAUL *v.* JACKSON.

Reparation—Slander—Veritas Convicii—*Issue in Justification*

The defender in an action of damages for slander said to be contained in two letters written and sent by him to the pursuer, took no issue in justification, but proposed to prove in mitigation of damages the truth of certain statements made by him on record. *Held* that these statements amounted to an averment of *veritas convicii*, and therefore could not be proved without a counter issue.

This was an action of damages for slander at the instance of Andrew Paul, tanner, Edinburgh, against Thomas Jackson, plumber, Edinburgh, founded on the following two letters addressed by Jackson to Paul:—

"21*st June* 1883.

"Sir,—As I am informed that you have been using violent language towards me, and threatening to waylay me for the purpose of inflicting serious personal injury, and as I believe that you are capable of doing that, I have now to inform you that I am communicating with the authorities for the purpose of having you duly restrained. I am quite aware of the animus you have against me—that I have been long aware of. I am also aware of how you and several other persons of a similar description have bandied together for the purpose of injuring me otherwise; but both you and they will find that the

law is still powerful enough to restrain and punish both you and them.—I am, Sir, your obedt. Servt. THOMAS JACKSON."

"*8th July* 1883.

"Sir,—As I have now ascertained from my nephew, Mr John Thyne junr., that you have been using other previous horrible threats against me, besides those referred to in my letter to you of 21st ult.—which you have taken care not to reply to,—and that these other previous threats against me actually amount to threats of murder; and as I believe you to be, and my nephew also believes you to be, a most dangerous and malicious man, and that you have a most inveterate hatred of me, and that you are capable of carrying out these most nefarious threats of yours if you could find a fitting opportunity—I have now to inform you that matters are being placed in the hands of the Procurator-Fiscal, in order that you may be duly restrained. Young Mr Thyne has, I understand, as the result of these threats of yours, removed certain animals which you were feeding for him, as he did not consider they were any longer safe in your possession after the murderous threats you had used to him against my very life.—I am, Sir, yours obedy., THOMAS JACKSON."

In his defences (Ans. II. and III.) the defender averred—"Explained that from Martinmas 1880 till Whitsunday 1883 the pursuer occupied a yard in West Canonmills Meadow, Edinburgh, as subtenant under the defender. In connection with this some differences arose between them, and the pursuer came to regard the defender with a marked dislike and hatred. On various occasions he has used violent and abusive language about the defender, and referred to him in menacing terms, threatening bodily harm. This he has repeatedly done in speaking to the defender's nephew, John Tod Thyne, residing at 21 Danube Street, Edinburgh. Particularly on a Sunday afternoon in the end of May or beginning of June 1883, the pursuer stated to the said John Tod Thyne, in the boiler-house of his yard at Dalry, that 'if he had yon b——r Jackson [the defender] here, he could d——d soon put him out of sight.' He further stated that he would put the b——r [the defender] into the boiler, and mix his bones with others lying about. Also on another Sunday afternoon in the beginning of June last, the pursuer used abusive and threatening language regarding the defender to the said John Tod Thyne, in a yard in West Canonmills Meadow, Edinburgh. Further, on or about 16th June last, the pursuer, in his said yard in West Canonmills Meadow, came forward to the said John Tod Thyne in a great rage, again used threats as to the defender, and in particular said, 'When I get yon b——r Jackson by himself I'll let him see.' The defender was told of the said threats, and as he was afraid some injury might be done to him by the pursuer, he wrote him with respect to the threats he had been using. The defender gave no information to the Procurator-Fiscal, and wrote the pursuer for the purpose of deterring him from carrying his threats into effect."

The case was tried before Lord Fraser and a jury on the 4th December 1883, on two issues, (one applicable to each letter), which were, Whether the defender wrote or caused to be written, and sent or caused to be sent, to the pursuer, letters in the terms set forth? And whether the letters, or any part of them, were of and concerning the pursuer, and were false and calumnious, to the loss, injury, and damage of the pursuer?

The following issue in justification was at the time of adjustment of issues proposed by the defender—"Whether, in or about the months of May or June 1883, the pursuer, in or at his yard at Dalry, Edinburgh, or in or at his yard in West Canonmills Meadow, Edinburgh, used threats of extreme personal violence against the defender, in presence of John Tod Thyne, residing at 21 Danube Street, Edinburgh?" The Lord Ordinary disallowed this issue, as not a sufficient issue in justification, and on a reclaiming-note the Court adhered (see opinions of Lord President and Lord Fraser, *infra*).

In the course of the cross-examination of Andrew Paul, the pursuer, at the trial, the pursuer having stated that on a Sunday afternoon in the end of May or beginning of June last he had visited his piggery at Dalry in company with a Mr John Thyne junior, and that he did not recollect of any reference having been made to the defender on that occasion, the counsel for the defender, to maintain and prove his case under the said issues, proposed to put the following question to the witness—"Was the defender's name never mentioned?"

Counsel for the defender stated that by this line of evidence he proposed to prove the averments in answers to condescendences 2 and 3 upon record (above quoted). The counsel for the pursuer objected to the admissibility of the proposed evidence, as proving the *veritas convicii*, in respect that no counter issue had been taken by the defender.

The Lord Ordinary sustained the objection, to which ruling the counsel for the defender excepted (1st exception).

Counsel for the defender then stated that he proposed to prove particularly the threats stated in said answers to condescendences 2 and 3. The counsel for the pursuer objected to the line of examination proposed, as tending to prove *veritas*. The Lord Ordinary disallowed the line of examination proposed by the defender, to which ruling the counsel for the defender excepted (2d exception).

Counsel for the defender requested the Lord Ordinary to direct the jury, in point of law, to the following effect:—That it was competent, without an issue in justification, to prove the circumstances which led to the writing of the letters in issue, and in particular the threats condescended on in the defences, for the purpose of determining what compensation, if any, should be allowed, as well as disclosing the consideration shown by the pursuer for the feelings of others.

The Lord Ordinary refused to give the direction asked, and the defender's counsel excepted to his Lordship's refusal to give the said direction (3d exception).

The jury found for the pursuer, and assessed the damages at £20.

Argued in support of the bill of exceptions—The facts stated in the answers to conds. 2 and 3 did not amount to an averment of *veritas convicii*, and might therefore be proved without a counter issue, in order to show the circumstances under which the slander was uttered—*Ogilvie* v. *Scott*,

March 19, 1836, 14 S. 729; *Bryson* v. *Inglis*, January 15, 1844, 6 D. 363; *M'Neill* v. *Rorison*, November 12, 1847, 10 D. 15; *Barnaby* v. *Robertson*, March 3, 1848, 10 D. 855; *Holehouse* v. *Walker*, May 21, 1863, 15 D. 665; *Craig* v. *Jex-Blake*, July 7, 1871, 6 Macph. 973; *Kelly* v. *Sherlock*, L.R. 4 Q.B. 686.

Answered for the pursuer—Admitted that provocation might have been proved, but the Judge disallowed the evidence because it was tendered to prove the whole of the statements in the answers to conds. 2 and 3, which amount to an averment of *veritas convicii*. The defender could have taken an issue in justification of a part of his statements—*Brodie* v. *Blair*, January 20, 1836, 14 S. 267; *Mackellar* v. *Sutherland*, January 14, 1859, 21 D. 222.

At advising—

Lord President—This is an action for defamation of character, and the alleged calumny is contained in two letters written by the defender on 21st of June 1883 and on the 18th of July following respectively. These letters accuse the pursuer of having used threats against the defender, amounting to threats of murder.

The issues are in the usual form, whether letters in the terms set forth were written by the defender and sent to the pursuer, and whether they were false and calumnious, to the loss, injury, and damage of the pursuer. The pursuer did not take an issue in justification; he proposed one, indeed, but it was plainly irrelevant, because he sought to put in issue only the question whether at certain times and in certain places the pursuer used threats of extreme personal violence. That certainly did not come up to the terms of the libel, and was not a justification of it. Whether the defender could have made a good issue in justification is a question which I shall consider bye-and-bye. The case went to trial upon the pursuer's issues only, and the jury returned a verdict in his favour, assessing the damages at £20.

This bill of exceptions is presented by the defender against the exclusion of evidence by the presiding Judge, and the record of the tender of evidence and the ruling of the presiding Judge is given thus in the bill. The counsel for the defender proposed to put to the pursuer this question in cross-examination with reference to an occasion at the pursuer's piggery at Dalry when he was in conference with a Mr John Thyne junior—"Was the defender's name never mentioned." In itself that is a perfectly unobjectionable question, but the counsel for the defender proceeded to state "that by this line of evidence he proposed to prove the statements in his answer to cond. 2 and 3." That was objected to, and the reason stated for the objection was that the defender was attempting to prove the *veritas convicii* without having taken a counter issue. The presiding Judge sustained the objection, and the defender excepted.

Counsel for the defender further stated that he proposed to prove particularly the threats stated in the answers to conds. 2 and 3. An objection was taken on the same ground, the question was disallowed, and this forms the second exception. It is needless to specify the third exception, as it is confessedly bad. The question therefore is, whether the defender without taking a counter issue is entitled to prove the statements in answers 2 and 3?

Nothing is better settled in practice than that a defender is not entitled without a counter issue to prove the truth of the statements complained of, or any part of them, in order to mitigate damages, or for any other purpose whatever. It is equally well settled, however, that a defender charged with slander is entitled to lay before the jury the circumstances under which the slander was uttered, in order to prove the state of his information with regard to the subject-matter, and to show that the offence and consequent injury to the pursuer is not so great as is represented, and so to diminish the amount of damages. The question therefore under which rule this case falls depends upon the nature of the statements in answers 2 and 3, referred to in the bill of exceptions. I need not go into details, for it is sufficient to say that they contain statements to the effect that the pursuer on various occasions used violent and abusive language about the defender. I do not give the particular expressions, which are of a very coarse description, and certainly if they mean anything—if they were used seriously—they do amount to threats of murder. If the defender had proposed an issue corresponding to these statements, he would have required to inuendo them as amounting to threats of murder in order to make them square with the slander complained of, but with that explanation I think he might have taken an issue in justification. It therefore seems that what he proposed to prove at the trial would have amounted to proof of the *veritas convicii*.

The question therefore depends entirely upon whether he could have put the words in his answers into such a shape as to make a good issue of *veritas*. I think he could; he must have set out the words, and would have required to inuendo them, but with that I think he would have had a good issue in justification.

I am clearly of opinion therefore that these statements could not be put in evidence. At the same time I quite perceive that there are one or two statements in answers 2 and 3 which if separated might have been allowed to be proved, as showing the circumstance in which the slander was uttered. It would have been quite admissible to prove that the defender had been told that threats had been used by the pursuer, or that reports had reached him, in which case the tenor of the reports could have been proved. But in answers 2 and 3 as they stand, I doubt if there is anything which could be taken as meaning that reports had reached him, or that he had been told of them, because after stating that the pursuer did use the threats, the averment goes on—"The defender was told of the said threats, and as he was afraid some injury might be done to him by the pursuer, he wrote him with respect to the threats he had been using." That is merely part of the *veritas*. It is not a statement by the pursuer that he had been told of threats, or that he wrote to the pursuer asking if a report was true, but it is a reference to threats which the defender says the pursuer actually did use. While I think it possible for the defender to prove the prevalence of reports, or the fact that a particular person told him threats had been used of this nature, I do not think he was entitled to put in evidence the statement contained

in these articles. Even if he might have been entitled to prove some of the averments in these answers, I think he must have separated them from the others, instead of which he made a tender of the whole. I think the evidence proposed was inadmissible.

Lord Deas—I do not know any rule that is better established than that *veritas convicii* cannot be proved in whole or in part without an issue in justification, nor I do not know any better established rule than that which provides that what cannot be done directly cannot be done indirectly.

I do not go into the question of whether the defender was entitled to prove that he had been told of threats. I see the Lord Ordinary did not refuse to allow that to be done, but upon that point I give no opinion. On the question of whether this evidence was properly rejected, I think the Lord Ordinary is quite right, and I have no hesitation in agreeing with your Lordship, reserving my opinion upon all delicate questions with regard to proving circumstances.

Lord Mure—This is an action of slander in which no issue of justification has been taken, so that the truth of the libel is not disputed. In such a case it is quite incompetent under the ordinary rules to allow proof of the truth of the slanderous matter either as a defence against the action or in mitigation of damages. That is distinctly laid down in the case of *M'Neill* v. *Rorison*, 10 D. 15.

The question, therefore, now to be disposed of is, whether what was here proposed to be proved, and was disallowed, was the *veritas* of the alleged slander, and this must be determined with reference to what is set forth in the bill of exceptions. Now, we have a distinct statement in the bill that the pursuer's counsel objected to the defender's line of evidence in proving the answers to condescendences 2 and 3, on the ground that that would amount to proof of the *veritas convicii* in a case where no counter issue had been taken, and it is not there denied on the part of the defender that this was his object. There is no dispute, therefore, in the bill as to the object of the line of evidence, but it was argued that the pursuers in tendering that evidence only wished to prove the circumstances leading to the slander in mitigation of damages. That is not, in my opinion, an admissible argument on the face of what is stated in the bill.

The first exception bears that the counsel for the defender stated that he proposed to prove particularly the threats that are stated in answers to condescendences 2 and 3. In those answers two things are distinctly set out—First, a statement that the threats were made, and secondly, that the defender was told of these threats, and was afraid that some injury might be done to him. Now, in the cases of *M'Neill* v. *Rorison*, 10 D. 15, and *Scott* v. *M'Gavin*, 2 Mur. 486, it is distinctly laid down that the truth of the statement that threats such as these were made, or in other words the *veritas*, cannot be proved either in answer to the libel or in mitigation of damages without an issue in justification. In the opinion delivered by Lord Moncreiff in *M'Neill's* case, which was very anxiously considered, as being apparently a departure to a certain extent from the previous decision in the case of *Ogilvy* v. *Scott*, his Lordship quotes the opinion of Chief Commissioner Adam as a statement of the ruling practice—"As the Lord Chief Commissioner stated in *Scott* v. *M'Gavin*—'The questions whether slanderous and whether true are quite different. You may shew by argument that it is not slanderous, or you may prove, in diminution of damages, that the matter was generally reported; but if you mean to prove the truth of the particular facts, you must state them with time and place and person, so as to put the pursuer on his guard what you mean to bring against him.' He repeated this more deliberately in his book on Jury Trial, p. 102, referring to that case. But as to the general principle, I have understood it to be entirely settled, both in England and in this country, that in an action for a libel the defendant cannot give in evidence the truth of the words, even in mitigation of damages, but must justify, specially stating all the circumstances." The rule, therefore, as there laid down, shows that the truth of the statements cannot be proved without a counter issue, and the law as thus laid down has, I think, been here applied by the Lord Ordinary, following the opinions of the Lord Chief Commissioner and Lord Moncreiff. I think, therefore, that the Lord Ordinary was right in refusing to allow proof of these threats.

In addition, however, to the statements in answers 2 and 3 that threats were made, there is a statement that the defender was told of these threats. If evidence had been tendered simply to prove that there was such a report, I should have had some difficulty in holding that to be incompetent, but there was no proposal of that kind; the proposal was to prove the whole of what is contained in answers 2 and 3. I think the Lord Ordinary in rejecting that evidence did what was right, and I have the less hesitation in applying the strict rule that it was admitted at the bar that in the course of the proof questions were put and answered showing that the defender had been told of these threats.

Lord Shand—This is a case of difficulty and delicacy, but I have come to agree with your Lordships in thinking that the bill of exceptions should be disallowed. As to the rule in cases of slander or libel, I think it is only reasonable that the general circumstances in which the libel was uttered should be laid before the jury. I cannot see how the Judge or the jury can possibly decide justly if they are left in ignorance as to the circumstances in which the libel was written or the slander uttered, or of the incidents which gave rise to the libel or slander. As regards the proof of these circumstances and incidents, I think there should be considerable latidude allowed.

It is settled that where the defender has not averred that the libel or slander is true, he is not entitled to lead evidence in support of the *veritas convicii*. That is reasonable, for the pursuer, in the absence of such an averment and relative issue, is entitled to assume that justification or *veritas* is not to be proved.

On the other hand, when the defender's statements do not amount to *veritas*, but disclose something short of that—where they disclose circumstances which amount to provocation, or

conduct on the part of the pursuer of such a nature as to lead to the slander, although not to justify it—it is settled that then the defender is entitled to lead evidence of these circumstances, as material on the question of damages. When the statements of the defender do not amount to an averment of *veritas*, but that the pursuer's conduct was of the kind I have mentioned, the defender may say that this conduct led to the slander, and that he was entitled because of it to express himself strongly, though not in the libellous or slanderous words used. If the pursuer has really provoked the slander, though he has not done what will justify it, I do not think that he is entitled to recover damages on the footing that he had done nothing, for when he has been guilty of provocation that would be a most unjust result.

The question of delicacy here is whether this case falls under the one class or the other. If the statements by the defender amount to an averment of *veritas*, then the presiding Judge was right to exclude evidence in support of them, for this would be to allow proof of *veritas* without any issue to that effect; but if they fall short of *veritas*, and are merely an averment of provocation, then they may be proved. The decision depends upon the view to be taken of what is contained in the answers to condescendences 2 and 3, and I shall only say that I should have difficulty in holding that the statements they contain would have warranted an issue of *veritas*. In stating his own view the defender says—"On various occasions he has used violent and abusive language about the defender, and referred to him in menacing terms threatening bodily harm." And then further on—"The defender was told of the said threats, and as he was afraid some injury might be done to him by the pursuer, he wrote him with respect to the threats he had been using." According to that view the defender did not feel that he could bring the pursuer's statements up to a threat of murder, which was necessary in order to prove the *veritas*, but yet considered that the threats meant serious harm. I should have been disposed to hold that the evidence tendered of this was admissible, on the ground that these averments do not amount to *veritas*. But as your Lordships have come to the conclusion that these statements do amount to an averment of *veritas*, and that a counter-issue should have been taken if they were to be made the subject of proof—this being so, I do not differ from your Lordships' decision.

Lord Fraser—Under the two issues for the pursuer which were sent for trial, all that he required to prove was that the defender wrote and sent the letters complained of, that they were calumnious, and to his injury and damage. If he satisfied the jury that they were calumnious, the law presumes that the statements contained in them were false, unless the defender undertook to prove the truth. Now, it has been long settled in our practice that the *veritas* can only be established by giving notice that it is intended to be proved, and this is done by taking a counter issue. The object of the counter issue is indeed solely to advertise the pursuer of the defender's intention, so that he may be prepared with his evidence to show that the statements contained in the libellous letter are untrue. If such notice were not given by means of the counter issue, then it would be necessary, in fairness, to allow the pursuer to lead evidence in replication, which at a jury trial is very often impracticable. In certain special circumstances such evidence has been allowed in the discretion of the Judge, as in the case of *Christie* v. *Thomson* (28th January 1859, 21 D. 337), where the presiding Judge allowed evidence to be adduced by the pursuer after his case was closed and the defender's case begun, that a notice (required by statute) that an action would be raised had been given to the defender, and which the pursuer of the action required to prove that he had given. And in like manner, in the case of *Rankin* v. *Roberts* (26th November 1873, 1 R. 225), the presiding Judge, after the defender had closed his proof, allowed the pursuer to prove, in reference to a statement complained of as slanderous, but said to be privileged, that the defender was actuated by malice. But these are very exceptional cases, and proof in replication at jury trials, if not now obsolete, is avoided by the use of the counter issue.

The rule requiring a counter issue—the object of which is to prevent injustice to the pursuer at the trial—has been attempted to be broken down upon various grounds. Where the defender is not prepared to justify his words by proving their truth, it has been maintained that without a counter issue he could prove their truth, with a view to mitigation of damages. But this has been settled by the two cases of *M'Neill* v. *Rorison*, November 12, 1847, 10 D. 15, and *Craig* v. *Jex Blake*, July 7, 1871, 9 Macph. 973, to be incompetent. The same argument has, however, been presented under other names. It is maintained that, with the view of showing provocation, or irritation, or with the view of giving explanation, a defender, without giving notice to the pursuer, may prove the *veritas;* and this to a certain extent, but no further, may be admitted—as for example, where two parties are engaged in a dispute, and vituperative epithets are passing between them, it would be competent for the defender who is sued in an action of damages for some slanderous assertion to prove the language of the pursuer which provoked him. This is proving simply the *res gesta*, and this can be done without any counter issue. But this was not what the defender in the present action sought to prove. It was competent to him to have taken a counter issue to establish the truth of a part of the statements contained in the alleged libel. In the case of *Scott* v. *M'Gavin*, in the year 1821, 2 Mur. 484—which the Lord Chief Commissioner said was "the first case in which the *veritas convicii* has been stated as a defence"—counter issues were taken to justify a part of the alleged libel, and in charging the jury he laid down the law to them as follows:—"In defence what is termed a justification has been pleaded, and upon this two questions arise, Whether the facts are proved? and, if proved, Whether they cover the whole of the charge made?—for if they do not cover the whole, then the part to which they do not apply must stand on the evidence for the pursuer; and the only question upon this part will be the amount of the damage. His Lordship here read part of the libel, to which he stated it as his opinion that the justification did not apply." The law was laid down to the same effect in the case of *Craig*

v. *Jex Blake;* and this necessarily must be held, when the defender in order to obtain mitigation of damages means to prove one-half of the alleged slander to be true, but cannot do so without a counter issue. Now the defender did propose a counter issue in this case; but it was in such terms of vagueness in regard to time and place that it gave no proper notice to the pursuer of what was intended to be proved against him. The month and the day of the month were not stated. It was "Whether, in or about the months of May or June 1883," the pursuer used threats against the defender. Nor was the place where the threats were uttered mentioned. Two places are specified thus—"In or at his yard at Dalry, Edinburgh, or in or at his yard in West Canonmills Meadow;" and the threats which are said to have been used were not the threats of murder charged against the pursuer in the letters. This issue was disallowed because of its vagueness, and as justifying no part of the charge against the pursuer.

When therefore at the trial the defender offered to prove the averments in answer to condescendences 2 and 3 of the record, and particularly the threats that are stated in these answers, he simply proposed to prove the *veritas* without a counter issue. I cannot read the passage in the record proposed to be proved as being anything else than a charge against the pursuer of threatening to murder the defender. There was no proposal to prove a part of these answers. The threats to murder (as shown by the second exception) were the matter which the defender sought to establish. He adds at the end of these answers the words that "the defender was told of the said threats." But the threats themselves he maintained to be true, by his offer to prove them, and his plea upon the record is that "the pursuer having used the threats complained of by the defender, he is not entitled to damages." How far an offer to prove, in mitigation of damages and without a counter issue, that a slander had been reported to a defender, can be allowed, must depend very much upon circumstances. There are not many persons who would slander their neighbour without having been stirred up by some suggestion of a malignant or thoughtless gossip who carried it to their ears. The different rulings given upon this point, as shown by the decisions from *Scott* v. *M'Gavin* (where an offer to prove that the slander had been specially reported to the pursuer was refused) downwards, indicate that no general rule can be laid down upon the point, and that it must be a question for the discretion of the Judge at the trial. But the present case is not one which raises this point at all—first, because the ruling which was excepted to had no reference to the statement that the defender had been told of the threats; and secondly, because even if it had been sought to be proved, it was upon the footing that what was told was true. The case which comes nearest to the present is that of *Brodie* v. *Blair*, July 17, 1834, 12 S. 941, reported also upon a bill of exceptions, January 20, 1836, 14 S. 267. At the trial before Lord President Hope it was offered to be proved that the alleged slander had been commonly reported in the neighbourhood, and the question was disallowed by the presiding Judge, whose ruling was, on the hearing of a bill of exceptions, upheld by the Court. Lord Gillies stated the point thus—and I conceive the remark applicable to the present case—"Undoubtedly the addition is made that a proof of the currency of the report was also offered, but still that was on the footing that the fact of the accusation having been made was true, and that the report was well founded. I conceive, therefore, that the offer of proof was rightly repelled,"—and in this opinion the other Judges concurred. I am of opinion in the present case that the bill of exceptions should be disallowed.

The Court disallowed the exceptions.

Counsel for Pursuer—Rhind—W. Campbell. Agent—D. Howard Smith, Solicitor.

Counsel for Defender—Sol.-Gen. Asher, Q.C. —M'Lennan. Agents—Liddle & Lawson, S.S.C.

Wednesday, January 23.

FIRST DIVISION.

BRODIE AND ANOTHER, PETITIONERS.

Nobile Officium — Casus improvisus — *Salmon Fisheries (Scotland) Act* 1862 (25 *and* 26 *Vict. cap.* 97), *secs.* 18 *and* 24—*Reconstitution of Lapsed District Board.*

A district board had been constituted under the provisions and in terms of the Salmon Fisheries (Scotland) Act 1862 for the preservation of the fisheries in a district, but had subsequently lapsed upon the expiry of the three years' term of office of the persons first elected without a new board having been elected. The Court *granted* the prayer of a petition by two of the proprietors qualified under the 18th section of the Act, asking a remit to the Sheriff to reconstitute the board according to the forms enacted by the section in the case of a first election.

By a bye-law dated 24th December 1862, and in terms of the 6th and 15th sections of the Salmon Fisheries (Scotland) Act 1862 (25 and 26 Vict. cap. 97), the Commissioners appointed under that Act fixed the limits of the district of the river Nairn, and the point of division between the upper and lower proprietors.

The 18th section of the said Act provides—"Within three months after any bye-law constituting the district shall have been published, the sheriff shall direct the sheriff-clerk to make up a roll of the upper proprietors, and also a roll of the lower proprietors in each district; . . . and the sheriff shall thereafter direct the sheriff-clerk to call a meeting of the upper proprietors, and also a meeting of the lower proprietors, at such times and such places as he shall direct; . . . and the upper proprietors and lower proprietors present at such separate meetings respectively shall elect not more than three of their number to be members of the district board; . . . and the members so elected, with the proprietor having the largest amount entered in the valuation roll as the yearly rent or yearly value of fisheries in such district, shall constitute the district board; and the last-mentioned proprietor shall be the chairman of the board, and have a deliberative