previous lease for nineteen years, from Whitsunday 1882, "in consideration of the rent and other prestations hereinafter mentioned," and of the prestations, &c., contained in relative regulations and conditions of let of the farms on the Fife estate. The lease contains the stipulation which is quoted in the case.

Now, on the termination of the former lease, either of two courses was open to the proprietor. He might settle with the outgoing tenants by paying them the value of the buildings and meliorations himself, or he might do so by arranging with the incoming tenant that the latter should pay for them. He preferred to adopt the latter course, and accordingly Black paid the outgoing tenants £1044, 15s. as meliorations payable to them, that sum being made up, as we see, to the extent of £1000 for buildings on Sheriffston and Fosterseat, and £44, 15s. for metal pipes. The question is, Whether that payment by the incoming tenant was not a consideration other than rent in the sense of the sixth section of the Statute. I am of opinion that it was. The proprietor was thereby relieved of an onerous obligation—repayment of an outlay necessary to make the subjects lettable during the currency of that lease, and it is to be presumed that the tenant got the lease at a smaller rent than he would have had to pay if the landlord had settled with the outgoing tenants himself. This much is clear. The buildings were on the ground at the beginning of the lease, and the subjects as they then stood were worth annually more than a rent of £500, because the tenant found it worth his while not only to pay an annual rent of £500, but to make an immediate outlay of £1044, 15s., which otherwise the landlord would have had to provide. The rent in the lease was therefore not a yearly rent conditioned as the fair annual value of the subject without other consideration.

It is true that at the expiry of the lease the tenant will be repaid the then value of the buildings and meliorations, but this does not, I think, affect the question before us, which is, Did the proprietor, before granting, and as a condition of granting the lease, stipulate for and receive a consideration other than the rent? The answer to that is, that he did receive a present consideration in that he was relieved during the currency of the lease of making an outlay of £1044, 15s.

The cases relied on by the appellant are clearly distinguishable. In *Stewart's Factor* v. *The Assessor for Leith*, 16 R. 799, case No. 95, the tenant was, no doubt, bound to erect a circus on the ground, but this, the Judges held, was simply in order to give an additional security for the rent. Instead of it being declared that the building was to become the property of the landlord, it was provided that the tenant should be entitled to remove it at the termination of the lease.

In the other case—*The North British Railway Company* v. *The Assessor for Glasgow*, 17 R. 846, case No. 108—the tenant was not taken bound to erect any buildings, but he was given liberty to do so, the landlord being at liberty to acquire such buildings, if erected, at a valuation at the expiry of the lease. The landlord thus got no benefit or consideration other than rent.

I do not think that these cases have any application here.

LORD KYLLACHY concurred.

The Court were of opinion that the determination of the Valuation Committee was right.

Counsel for the Appellant—Jameson—Dickson. Agents—J. K. & W. P. Lindsay, W.S.

COURT OF SESSION.

Friday, February 27.

SECOND DIVISION.

[Lord Kyllachy, Ordinary.

MACLEOD *v.* MARSHALL AND OTHERS.

Reparation — Slander — Issues — Counter Issues—Justification.

A pursuer sought damages on the ground of slander from a person who had, as he averred, in May 1890, called him a "swindler," a "liar," a "thief," a "blackguard," and a "low scoundrel."

Held (*diss.* Lord Young) that the defender was entitled to counter issues in justification of what he said, based upon a statement that the pursuer for his own personal advantage had in October 1887 and January 1888 induced him to take shares in a mining company by false and fraudulent representations as to the value of the mines, and had further in January 1888 induced him to apply for additional shares by falsely representing that it would be necessary to do so in order to secure an allotment, although well knowing that the shares had not been applied for to nearly the full extent.

Slander—Several Defenders—Separation of Trials.

In an action for slander against four defenders, with five issues and two counter issues, three of the defenders moved to have two separate trials on the ground that they were interested in only two of the issues, and that the counter issues, which would involve a lengthy inquiry, had been taken only by the remaining defender. Motion *refused.*

Angus Macleod, merchant, Norwood, Dullatur, brought an action of damages for slander against Thomas A. Marshall, Craigard, Dullatur, John Steele Wyllie, merchant, Richmond House, Dullatur, John Wylie and James A. Wylie, both sons of and residing with the said John Steele Wylie.

The pursuer averred that upon Saturday

17th May 1890 he entered the grounds of the Dullatur Tennis Club on the invitation of Mr Thomas Dow, the secretary of the said club, and seated himself beside Mr John Gourlay, and that on the occasion in question, instead of engaging in the game which he had come to play, the said Thomas A. Marshall, when he saw the pursuer, came and sat down on the seat which he was occupying, but on the other side of Mr Gourlay, and in the presence and hearing of the said John Gourlay, commenced to address the pursuer thus, 'Macleod, are you a member here? To which the pursuer made no reply. He (Marshall) then repeated, 'I say, Macleod, are you a member here; because if not, you have no right to be here, and you had better get out.' To this also pursuer made no reply. The said Thomas A. Marshall then said, addressing the pursuer, 'This is no place for questionable characters like you.' That the pursuer subsequently went to a seat at the opposite side of the ground, to which he was shortly afterwards followed by the said Thomas A. Marshall, who wantonly and unprovokedly continued to address him in the most violent language, flourishing at the same time both his racquet and his fist in the pursuer's face, and in the presence and hearing of John Risk, distiller, residing at Dullatur, Robert Knox Risk, residing at Bankier, Castlecary, Donald Macleod Malloch, residing at The Glen, Elderslie, and the said Thomas Dow, and others, the said Thomas A. Marshall falsely, calumniously, maliciously, and without probable cause called the pursuer a 'swindler,' a 'liar,' a 'thief,' a 'blackguard,' and other terms of the like nature, such as a 'low scoundrel,' and a 'poltroon.' That when the pursuer was leaving the grounds with Mr Dow the said Thomas A. Marshall stopped his play, and turning to Mr Dow, requested him, referring to the pursuer, for the future not to bring such 'questionable characters' on to the courts. That after a meeting of the committee of the Dullatur Tennis Club had been duly called for the evening of Tuesday, 20th May 1890, to consider the conduct of the said Thomas A. Marshall on the occasion above described, they, the defenders, concocted a joint letter in the following terms—'*Craigard, Dullatur Dumbartonshire, 19th May* 1890.—Dear Sir—You are aware that for good reasons Mr Angus Macleod's presence at any general gathering of the inhabitants of Dullatur must be irksome to many of those present. We would therefore request that you, as secretary of the Dullatur Tennis Club, will take such measures as will prevent his being a second time introduced to the courts. The first clause of rule 8 can be limited, we presume, in its application. Your personal opinion, frequently strongly expressed, of Mr Macleod's doings and character, will, we feel sure, make you desirous to do what is necessary to secure all the members of the club in the enjoyment of their rights, without their being subjected to Mr Macleod's presence in the courts. Yours faithfully, THOMAS A. MARSHALL; J. S. WYLIE; JOHN WYLIE; JAMES A. WYLIE." The said letter was signed by the whole defenders, and was delivered by one of their number, or someone on their behalf, to the said Thomas Dow, as secretary of the said club, on the evening of said 19th May 1890, and was read to the Committee of said club at their meeting of 20th May 1890. That at the meeting of the committee of the said club, held on the evening of the said 20th May 1890, there were present the defender John Steele Wylie, the president of the club, and who occupied the chair at said meeting, the said John Stewart Dymock, William Montgomerie junior, secretary of the Broxburn Oil Company, Thomas Parker, insurance manager, Glasgow, and the said John Risk and Thomas Dow, the secretary of the club. At the said meeting of committee, when in the course of the discussion as to the course to be pursued, the said John Steele Wylie was asked by one of the members (Mr William Montgomerie) a question in the following or similar terms—'Suppose, Mr Wylie, that I am a member of the Western Club in Glasgow, and that I introduce a friend there, and that you, Mr Wylie, being also a member, come into the club, and seeing my friend there, begin grossly to insult him within the club premises, would you not be at once expelled?' the said John Steele Wylie replied—'Oh, but if you bring in a knave you are responsible for the consequences,' or in words to that effect. That the defender Marshall wrote on 29th May 1890 to John S. Dymock, a member of said committee, the following letter—'*29th May* 1890.—Dear Sir—Your letter of the 26th was received last night on my arrival here after two nights' absence. I opened it this morning on ascertaining from you that the D on envelope was your initial, and not that of the other D of Dullatur. Since my talk with you this morning it has occurred to me that part of the object you and Messrs Parker and Montgomerie may have in calling for me may be to explain the steps your club propose to take to prevent a recurrence of the offensive introduction of MacLeod senior to the tennis courts, in reply to my own and the Messrs Wylies' requisition of the 19th inst. to that effect. If so, I shall be glad to receive you at your convenience, If, however, any part of your object is to refer to my action in publickly characterising his conduct as such as rendered his presence an offence to all honourable men, I warn you that I will look on such reference as a gross impertinence, and will know how to fitly resent it. Apologising for the delay in replying to your letter, I am, yours truly, THOMAS A. MARSHALL. John S. Dymock, Esq.'—which letter was laid before said committee at their meeting of 5th June 1890."

The defender Marshall admitted that upon 17th May 1890, in the Dullatur Tennis Grounds, after remonstrance with Mr Dow, he crossed "said tennis ground to the place where the pursuer was seated, and endeavoured to induce him to leave, and explained that the defender did so because the pursuer was, and knew himself to be,

personally objectionable to the defender and other members of said club. The pursuer, however, did not withdraw, and defender then stated as the ground of his request that the pursuer had taken advantage of his former intimacy with the defender to feather his own nest at defender's expense; that he had made false statements to the defender with regard to the Val d'Elsa Copper Company (in which pursuer was interested as a promoter and vendor) to induce the defender to subscribe to the capital of said company; that his conduct was little removed from thieving; and that in the circumstances his intrusion into said Tennis Club grounds was cowardly. Explained and averred that the remarks to the defender were made to and in the hearing of the defender alone." He further stated that "during the summer of 1887 the pursuer, who had been acquainted with the defender for about two years, and travelled almost daily with him from Dullatur to Glasgow, had frequent conversations with the defender as to the exceptionally favourable opportunities for investment afforded by copper mine securities, and he informed the defender that he possessed very special advantages in respect of information with reference to such securities owing to his having friends in the London market. About the month of October following the pursuer approached the defender with the information which he professed to give to the defender confidentially, and from motives of friendship, that a company was going to be formed to work certain Italian copper lodes of a most valuable character in the Val d'Elsa, that only the earliest applicants would have a chance of allotment, and that the shares on allotment would be at 20s. premium. The pursuer did not then tell the defender, nor was the defender aware that the pursuer was interested in the Val d'Elsa mines, and in reliance upon the business knowledge, friendly professions, and the truthfulness of the pursuer's statements of the value of said copper, the defender was induced to give him the sum of £50 to secure on his behalf an interest in the concern although the prospectus was not yet issued. After some delay, in the month of January 1888 the pursuer showed the defender a prospectus of the Val d'Elsa Copper Company, which he said was the company he had referred to in the previous October. In said prospectus the Val d'Elsa mines were represented as a most valuable property, and the pursuer at that meeting assured the defender that not only had the promoters taken care not to exaggerate the value of the claim in said prospectus, but that he could vouch from personal inspection to its great value. These statements with reference to the value of said mines, as well as those to the same effect made in October preceding, were to the knowledge of the pursuer false. The pursuer and the Messrs Colquhoun were, as vendors of the concessions to the Val d'Elsa Company, to receive from the company the sum of £35,000, and the object of the pursuer, it is believed and averred, in making the false statements set forth was that said company should be successfully floated, and he consequently should become entitled to his share of said £35,000. On 31st January 1888 the pursuer further stated that the run by the public upon the shares had been so great that it would be necessary for the defender to take more shares in order to make sure of an allotment, and in reliance upon the truthfulness and accuracy of this, along with the other representations of the pursuer, the defender was induced to give a further sum of £6, 5s. to the pursuer in consideration of the deposit upon 25 additional shares of said company. So far from the allegation of the pursuer as to the number of applications being true, it is the fact that only 25,000 of the 60,000 shares offered to the public were applied for, and the pursuer and other promoters—that is to say, the vendors—consequently applied for 15,000 additional shares in order that the company might proceed to an allotment, when they would become entitled to said sum of £35,000."

The pursuer pleaded, *inter alia*—"(5) The statements in defence for the defender Marshall are impertinent and irrelevant, and ought not to be remitted to probation."

The defender Marshall pleaded—"(1) The defender not having slandered the pursuer, should be assoilzied. (2) The statements made by the defender to the pursuer as set forth in the defender's answers are in substance true, and in the circumstances were justified. (3) In the whole circumstances the defender should be assoilzied."

The defenders Wylie pleaded, *inter alia*—"(3) These defenders not having slandered the pursuer as alleged, they should be assoilzied. (4) Anything said or written by these defenders as to the matters alleged was privileged and without malice."

The following issues were proposed by the pursuer—"(1) Whether, on or about Saturday 17th May 1890, in or near the ground of the Dullatur Tennis Club, Dullatur, in presence and hearing of John Risk, residing at Dullatur; Robert Knox Risk, residing at Bankier, Castle Cary; Donald Macleod Malloch, residing at the Glen, Elderslie; and Thomas Dow, residing at Dullatur, or one or more of them, the defender Thomas A. Marshall did falsely and calumniously say that the pursuer was a 'swindler,' a 'liar,' a 'thief,' a 'blackguard,' a 'low scoundrel,' or did falsely and calumniously use or utter one or more of the said expressions with reference to the pursuer, or words to the same effect, to the loss, injury, and damage of the pursuer? Damages laid at £300. (2) Whether, date and place foresaid, in presence and hearing of John Gourlay, residing at Dullatur, the said John Risk, Robert Knox Risk, Donald Macleod Malloch, Thomas Dow, and of John Stewart Dymock, timber merchant in Glasgow, or one or more of them, the defender Thomas A. Marshall did falsely and calumniously say, addressing the pursuer, 'This is no place for questionable characters like you,' and did also request the said Thomas Dow for the future not to

bring such 'questionable characters' on to the said ground, or did use or utter words to the like effect, referring thereby to the pursuer, and falsely and calumniously representing that the pursuer was a person of such bad character as not to be fit to associate with honourable men, to the loss, injury, and damage of the pursuer? Damages laid at £300. (3) Whether, on or about 19th May 1890, the defenders Thomas A. Marshall, John Steele Wylie, John Wylie, and James A. Wylie wrote or caused to be written and signed a letter in the terms set forth in Schedule 1' [the first letter quoted above] 'hereunto annexed, and delivered, or caused to be delivered, the same to the said Thomas Dow, secretary of the said Dullatur Tennis Club; and did, on or about 20th May 1890, at Dullatur, cause the same to be read in presence and hearing of the said John Stewart Dymock, William Montgomerie junior, residing at Dullatur, Thomas Parker, residing at Dullatur, the said John Risk, and the said Thomas Dow, or in the presence and hearing of one or more of them; and whether the said letter was of and concerning the pursuer, and falsely, calumniously, and maliciously represented that he was a person of such bad character as not to be fit to associate with honourable men, to the loss, injury, and damage of the pursuer? Damages laid at £1000. (4) Whether, time and place foresaid, and in presence and hearing foresaid, the defender John Steele Wylie, in answer to a question put to him by the said William Montgomerie in the following or similar terms—'Suppose, Mr Wylie, that I am a member of the Western Club in Glasgow, and that I introduce a friend there, and that you, Mr Wylie, being also a member, come into the club, and seeing my friend there, begin grossly to insult him within the club premises, would you not be at once expelled?' said—'Oh, but if you bring in a knave you are responsible for the consequences,' or did use or utter words to that effect, referring thereby to the pursuer, and falsely, calumniously, and maliciously representing that the pursuer was a knave, to the loss, injury, and damage of the pursuer? Damages laid at £1000. (5) Whether, on or about 29th May 1890, the defender Thomas A. Marshall wrote or caused to be written, and sent or caused to be sent, to the said John S. Dymock a letter in the terms set forth in Schedule 2" [the second letter quoted above] "hereunto annexed; and whether said letter, or any part thereof, was of and concerning the pursuer, and falsely and calumniously represented that the pursuer was a person of such bad character that he was not fit to associate with honourable men, to the loss, injury, and damage of the pursuer? Damages laid at £300."

The following counter issue was proposed by the defender Marshall—"Whether the pursuer, in or about October 1887 and January 1888, made false and fraudulent representations to the defender regarding the value of certain mineral concessions in the Val D'Elsa, Italy, and thus induced the defender to contribute to the capital of the Val D'Elsa Copper Company, in the promotion of which the pursuer was pecuniarily interested as vendor?"

The Lord Ordinary (KYLLACHY) upon 6th January 1891 approved of the issues and the counter issue proposed.

"*Opinion.*—The questions which I have here to consider are—(1) Mr Johnston's argument as against Mr M'Clure being allowed any counter issue; . . . and (3) I have to consider the question of privilege. I think these are all the questions, except the mere form of the issues.

"On the relevancy of the defender Marshall's averments of *veritas*, I consider that the averments are relevant enough, and that that defender may obtain an issue in justification in the terms which he now proposes. I think that if he proves what is set out in his issue, and, in particular, proves the fraudulent character of the alleged representation, he will sufficiently justify the substance—sufficiently support the sting of the accusation. . . .

"Then as to privilege, I do not think that there is any room for privilege as regards the accusation in the tennis ground which forms the subject of the first and second issues. I think, however, as regards the letter to the secretary of the club, and the statement made by John S. Wylie at the meeting of the club, that those statements are *prima facie* privileged—that is to say, I think that, upon the pursuer's own averment of what passed, those statements are privileged. They are the subjects of issues three and four, and therefore I shall introduce 'malice' into those two issues, but I shall refuse Mr Dickson's request that 'probable cause' be inserted. 'Probable cause' is only introduced in a quite different class of cases—cases where parties are in the discharge of a public duty and make statements alleged to be slanderous, *prima facie* in the discharge of a public duty—*e.g.*, information laid before procurators-fiscal, complaints made to parochial boards or the Board of Supervision, &c. This is not a case of that description.

"Then, as to the form of the issues, I do not know that there is anything to say. I am not sure that I like them much, but I do not think that I can make them better. Therefore I shall approve of the issues as they now stand, Mr M'Clure putting in an issue in the terms of the issue which he has read, and I adding the word 'maliciously' in the third and fourth issues for the pursuer."

The pursuer reclaimed, and argued—What was averred as to the copper company was not relevant matter entitling Marshall to a counter issue. It was not said that the company was in liquidation. As a fact it was a going concern although it had not yet declared a dividend. The averments would have needed to be specific enough, if proved, to entitle Marshall to reduce the contract by which he took shares. Statements made in January 1888 were too remote to justify this slander in May 1890—*Brownlie* v. *Thomson*, February 11, 1859, 21 D. 480; *M'Donald* v. *Begg*, March 1, 1862, 24 D. 685. Besides, a man was not

entitled to use public means to vindicate a private wrong. Further, the counter issue did not square with the defender Marshall's second plea-in-law. The new counter issues were still wanting in specification, and should not be allowed.

Argued for Marshall—He was not debarred from justifying his language because he had not brought an action of reduction. If he was entitled to call the pursuer a swindler—and he was, because he had been swindled in the manner specifically set forth—he was justified in using the other epithets—Odgers on Libel (2nd ed.) p. 171. He asked leave however to substitute for the proposed counter issue the following:—"(1) Whether the pursuer, in or about October 1887 and January 1888, made false and fraudulent representations to the defender regarding a proposed joint-stock company to be formed to take over certain mineral concessions in the Val d'Elsa, Italy, by representing the mines to be of great value, which, in point of fact, he knew they were not, and thus induced the defender to contribute to the capital of the Val d'Elsa Copper Company, in the promotion of which the pursuer was pecuniarily interested as vendor? (2) Whether the pursuer, in or about January 1888, falsely and fraudulently represented to the defender that the applications for shares in the said proposed company were so numerous that, in order to be sure of an allotment, it would be necessary for the defender to apply for a greater number of shares, the fact being, as the pursuer well knew, that the shares had not been applied for to nearly the full extent: and Whether the pursuer thereby induced the defender to make an additional application for shares in the said company, the pursuer as vendor being dependent for the carrying out of the sale on sufficient shares being applied for to allow the company to proceed to allotment?" These were as specific as he could be expected to make them.

Argued for the Wylies—(1) The letter of 19th May 1891 did not warrant the innuendo sought to be put upon it. It was to be read as a whole, and it only said the pursuer's presence was "irksome" to many of the inhabitants of Dullatur. That might well be for a variety of reasons without implying that his character was dishonourable. (2) They were only interested in two of the five issues, and had not taken any counter issue of *veritas*. The trials should therefore be separated so as not to involve them in the hardship of a lengthy trial which would necessarily result if Marshall's counter issues were allowed.

At advising—

Lord Justice-Clerk — The question before us in this case is, whether a set of two counter issues which have been lodged by the defender Marshall are to be allowed or not? The case relates to alleged slanders uttered by the defender against the pursuer in which he was called a number of very strong names, and point was given to these epithets which were used against him by allegations which appear in some of the issues in reference to his conduct regarding a company which he was promoting, and which it is alleged that he, knowing it not to be in a good condition, represented to the defender Marshall to be a company in which it was advisable he should take shares, and represented to him that unless he made application for a very large quantity of shares he would not get an allotment because the run upon them was so great. Now it is quite plain that such allegations as form the basis of these counter issues may in certain circumstances amount to nothing more than a statement that the pursuer having something in which he was interested, and which it was his desire to puff and make the most of, spoke in very high terms of it just as in trade a tea merchant maintains his is the best tea, or in amusements a theatre manager announces the enormous success of his pantomime, and so on. But looking to the averments upon this record, I have come to the conclusion we must allow the counter issues. I think in this case it is a question for the jury whether the representations made, upon which the defender founds as justifying the alleged slanders, were made, as he alleges, falsely and fraudulently for a personal purpose, to gain advantage of the pursuer, he well knowing the real facts to be to the contrary of what he was stating to this defender, and therefore falsely and fraudulently making a representation, and inducing the pursuer to act on that representation. I understand that those words "he well knowing" have been put into the second issue in addition to the words "the fact being." That was agreed to at the bar, and it must be done. I think it is a question for the jury in this case whether that representation so made was a false and fraudulent representation made for the purpose alleged, viz., of benefiting himself, his interest being to secure that a certain number of shares should be applied for, otherwise certain advantages which would accrue to him in the formation of this company would not accrue. Upon the whole matter I have come to the conclusion that it must be sent to a jury with that alteration upon the second issue which I have mentioned.

Lord Young—I understand that all of your Lordships are of the opinion which has now been expressed. I am of a different opinion, but as the case must go to trial in consequence of the finding of the majority of the Court, I think perhaps the less I say the better. My own opinion is that there are no averments upon this record to justify the slander which is the ground of the action, and that therefore they will not support an issue of *veritas*—I mean support an issue of justification. I am very far from saying that the averments respecting the pursuer's conduct are irrelevant. I think they may go to mitigate any offence which he may have committed, and the facts established within these averments at the trial may be such as to induce and warrant the jury to return a verdict for a

merely nominal sum of damages. We are certainly all familiar with the fact that where a slander is mitigated down to that point, that a jury not unfrequently find a verdict for the defender, and that there is no slander at all. Unfortunately the matter of pleading—I mean of records in actions of damages for libel and slander—has always in my time been in a very unsatisfactory because unsettled condition, and the law at this moment is not very distinct as to what may or may not be averred in defence with or without counter issues in such a case. But I think the law is, and it has ever been my opinion upon the best consideration of the matter in principle and upon the authorities, that to justify a libel or slander there must be a distinct substantive averment of a fact or facts which if proved will justify it, not in the opinion of the jury, but in the opinion of a court of law. Now, I find no such distinct substantive averment of a matter of fact to be proved upon this record which will justify the slander which is alleged. Upon that ground my opinion is against allowing a counter issue. I think the slander alleged is not upon the record justified by the averment of any fact which we can put in issue, just as if it were an indictment charging the pursuer with an offence which that fact involves. The issue is not of the offence in any case; it is of the fact which is raised to justify charging him with the offence, for here the charges are of that character. I am, therefore, individually against the view in which your Lordship, and I understand the others of my brethren, are for allowing an issue in justification here.

LORD RUTHERFURD CLARK—I agree with your Lordship in the chair.

LORD TRAYNER—I think the defender Marshall has made averments relevant, and if proved, sufficient to justify the slander of which the pursuer complains. He has given the pursuer not only fair, but, as it seems to me, sufficiently specific notice of what he intends to prove. I therefore agree in the view that the counter issues proposed by the defender should be allowed.

LORD JUSTICE-CLERK—I should like to add that I entirely concur in Lord Young's view that it is for the Court to judge whether the words will justify the slander alleged. What I meant by referring to the jury was that the words, while justifying, if said in a certain sense, may be held by the jury not to have been said in that sense at all. But of course the Judge sitting at the trial would not allow the case to go to the jury unless the words would justify, if the jury took the view that they were expressed in that certain sense. I quite agree in the view that it is for the Court to judge whether they will justify or not.

The Court pronounced the following interlocutor:—

> "Approve of the issues for the pursuer, No. 16 of process, and the amended counter issues for the defenders, No. 20 of process, as the issues for the trial of the cause; and remit the cause to the Lord Ordinary to proceed therein as accords."

Counsel for the Pursuer and Reclaimer—Asher, Q.C.—H. Johnston. Agents—Smith & Mason, S.S.C.

Counsel for Wylies—D.-F. Balfour, Q.C. —Dickson.

Counsel for Marshall—Graham Murray—M'Clure. Agents—J. & J. Ross, W.S.