his application that the pursuer should be ordained to find caution.

LORD PRESIDENT -The pursuer is an undischarged English bankrupt, and the question is, whether he should be allowed to proceed in the action without finding caution. It is necessary for the determination of that question to consider the circumstances of the case and the nature of the action. On a recent occasion we had to give careful consideration to the quality of this action of damages for slander, and we were not favourably impressed with its *bona fides*, as intended for the vindication of the pursuer's character from the charges which had been made against him. Taking advantage of his technical right to sue on certain isolated charges, he did not face up to the real attack made upon his character. I mention this in consequence of our obligation to consider the nature of the pursuer's claims in his action. We are also aware of the recent occasions when, on questions as to the time for trying this action, the pursuer has evinced no eagerness to meet the jury. We are now told that he has left Glasgow in debt, and without leaving an address.

Accordingly, in the whole circumstances, I think this is a case in which we should ordain the pursuer to find caution within eight days.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court ordered caution to be found by the pursuer within eight days.

Counsel for the Defender—Crabb Watt. Agents—Cuthbert & Marchbank, S.S.C.

Friday, July 3.

FIRST DIVISION.

[Edinburgh Dean of Guild Court.

LORD SALTOUN *v.* EDINBURGH MERCHANT COMPANY.

Dean of Guild—Process—Record—Petition for Warrant—Written Objections Lodged for First Time on Appeal—Competency—Remit.

In a petition for a warrant to a Dean of Guild Court, the corporation of the burgh, which was called as respondent, was represented before the Dean of Guild by the Burgh Engineer, who stated verbal objections to the petition, but lodged no written answers. The Dean of Guild having refused the petition, the petitioners appealed, and the corporation proposed to lodge in the Court of Session written answers embodying their verbal objections. The petitioners objected to the answers being received at this stage, maintaining that they ought to have been lodged in the Dean of Guild Court.

The Court *allowed* the answers to be received, but *remitted* the cause to the Dean of Guild, holding that the questions raised in the answers fell within the jurisdiction of the Dean of Guild, and that the petitioner was entitled to have a judgment upon them in the Dean of Guild Court.

A petition was presented in the Edinburgh Dean of Guild Court by Lord Saltoun and others for warrant to construct a room over a portion of the flat roof of the present building forming the lobby connecting 74 Queen Street with the hall at the rear. In the course of the proceedings the Burgh Engineer appeared on behalf of the Corporation of Edinburgh, and made verbal objections to the petition.

The Dean of Guild refused warrant in respect that all the open space presently existing was required for the proper lighting and ventilation of the premises.

The petitioners appealed to the Court of Session.

Answers to the petition were then submitted on behalf of the Corporation of Edinburgh, in which it was contended that the appeal ought to be dismissed, as the area on which it was proposed to construct the buildings was already sufficiently covered, and the proposed buildings would diminish the space which, in the discretion of the Dean of Guild Court, was required for the purposes of the light and ventilation of the street tenement belonging to the petitioners.

The petitioners objected to the answers being received at this stage.

Argued for petitioners — The answers should have been lodged in the Dean of Guild Court, so as to enable them to be dealt with there. They raised questions within the jurisdiction of the Dean of Guild, upon which the petitioners were entitled to have his judgment before coming here. It would be inflicting unnecessary expense upon them to allow the answers to be received at this stage. Accordingly the case should be remitted to the Dean of Guild Court to make up a record.

Argued for respondents—The course proposed was one in conformity with the practice of the Court—*Stewart* v. *Marshall*, July 20, 1894, 21 R. 1117. The same course had been followed in *Glasgow Coal Exchange Company* v. *Glasgow City & District Railway Company*, July 20, 1883, 10 R. 1283, at 1287.

LORD PRESIDENT—I should be sorry to do anything to impose upon the town expense and trouble to add to the formal procedure in Dean of Guild applications, and probably in the greater number of cases it is unnecessary. But we must consider the rights of proprietors, and according to the showing of the town, what has been done here is that the town, having an answer to the application in the Dean of Guild Court, withholds it, and the opposite party comes to this Court. If we order a record to be made up here, two very undesirable things will happen—first, we will not have the advantage of a judgment from the Dean of

Guild on the question raised by the answers; and second, because the town has thought fit to withhold its answer, its opponent will have to pay the expense of a Court of Session litigation. I am against arriving at a conclusion which involves either of these results. I think the proper course is to allow the answers to be received, and to remit them with the case to the Dean of Guild.

LORD ADAM—I am of the same opinion. The Dean of Guild has both administrative and judicial functions, and I can quite understand that in the vast majority of applications the town, or the opposite party, is entitled to rely on the knowledge of the Dean of Guild, assisted if necessary by the advice of the burgh engineer, properly disposing of them, and that it is quite unnecessary for either party to interfere. But that is not the course which has been followed here, because we are informed by counsel for the town that the town did object to the application being granted at the first. If that is so, I agree that it is not fair that the town, having a case to submit, should in the first instance lie by and take the chance of the decision of the Dean of Guild being in their favour, and should not come forward to state their answer to the application until the other party has been obliged to come here.

I agree that we should allow the answers, and I think further that in this class of case we are entitled to have the judgment of the Dean of Guild and to review it, and that the parties should not come here in the first instance. I asked whether the questions raised could be tried in the Dean of Guild Court, or whether the case was such as would from its nature come back to us, and I was informed that it was not a case of that kind.

On the whole matter, therefore, I agree with your Lordship.

LORD M'LAREN—I should have been content, having regard to the practice of the other Division, to hear this case on the petition and answers as stated, and, if a practical question were found to exist, then to remit it for the decision of the Dean of Guild. But the question of making up a record is a matter for the discretion of the Court, and no doubt the course approved by your Lordships is a convenient one to adopt, and will not have the effect of preventing the parties from hereafter obtaining a judgment of this Court on the construction of the statute.

LORD KINNEAR—I concur. The considerations that have weighed with me are, first, that the answers, as we have been informed by the counsel for the respondents, raise questions for the judicial determination of the Dean of Guild, and within his jurisdiction, so that after the decision in the Court of first instance, the case, if it comes here at all, will come only for review; and secondly, that the counsel for the magistrates informs us that the objections taken in the answers were intended to be taken at the original proceedings, and that the respondents appeared and verbally opposed the petition on these very grounds. But I must observe that this verbal opposition does not appear to have been made known to the other party. Accordingly the magistrates represent themselves as having obtained a judgment on questions which they have abstained from raising in any formal manner until they came to this Court. I agree that this is not a convenient course of procedure, nor altogether fair to the petitioners. The petitioners are entitled to have the Dean of Guild's judgment upon the questions that are raised in the answers; and we on the other hand ought to be informed with more certainty than we are at present whether the deliverance submitted to review was or was not a judgment pronounced after hearing parties.

The Court allowed the answers to be received, remitted the cause to the Dean of Guild to proceed, and found the respondents liable in expenses in this Court.

Counsel for the Petitioners—Clyde. Agent—Lindsay Mackersy, W.S.

Counsel for the Respondents—J. Boyd. Agent—Thomas Hunter, W.S.

Saturday, July 4.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

BANNERMAN AND OTHERS *v.* MACQUEEN (BANNERMAN'S TRUSTEE) AND OTHERS.

Trust—Charitable Trust Purpose—Condition of Bequest—Forfeiture.

A testator directed his trustees to hold a certain sum, and pay the income thereof to the incumbent of a certain church so long as the congregation worshipping therein "shall not be united to, or in connection with," the Scottish Episcopal Church. There followed a declaration that in the event of the said congregation at any time "uniting, or being in connection with," the Scottish Episcopal Church, the incumbent should forfeit his interest in the said provision, and the capital should be divided among the testator's residuary legatees.

Facts and circumstances which *held* (*rev.* judgment of Lord Kyllachy—*diss.* Lord M'Laren) to instruct that the congregation in question was "connected with" the Scottish Episcopal Church, and consequently to infer forfeiture of the testator's bequest.

By trust-disposition and settlement Miss Georgina Bannerman, who died in 1876, directed her trustees to set apart the sum of £3000, the capital thereof to be retained by them, and the income arising therefrom to be paid "to the incumbent for the time being of St James' Episcopal Church in Aberdeen, for the purpose of augmenting