Welch, reported 20 R. 744; and it accordingly puts the question, *inter alia*, whether the statements complained of were false, and held up the pursuer to public hatred, ridicule, and contempt. As to this, it seems to be enough to repeat what I have just said, that the charge made against the pursuer—so far as it charged a fact—was not false, but admittedly true. I cannot in these circumstances grant an issue in the terms proposed. Whether falsehood is essential to such an issue I need not inquire. The pursuer appears to be satisfied, probably on good grounds, that that is so, and that the present case does not admit of an issue such as has been sometimes granted in cases of what is sometimes called 'convicium' cases, the essence of which consists in the combination and repetition of statements or epithets not in themselves slanderous, but the combination and repetition of which may amount to persecution. See the authorities collected in the notes to Mr Glegg's Book on Reparation, 103.

"It remains to consider the third issue, which also omits all question of truth or falsehood, and proceeds on the assumption that true statements not defamatory may yet be actionable if made maliciously, with the design and result of injuring a man in the exercise of his trade or business. It is admitted that no such issue has yet been granted in Scotland, but it is said that in a case very similar to the present recently tried in England, Mr Justice Hawkins charged the jury in terms which assumed the relevancy of the proposed issue—*Trollope* v. *London Building Trades Federation*, May 4, 1896, 12 Times L.R. 373. I have been referred to a newspaper report of the trial in question, and have also been furnished with the printed pleadings in the suit, and so far as I can judge it does appear that the learned judge's charge bears the construction put upon it. But with the greatest deference to so high an authority, I am not prepared—sitting as a single Judge in the Outer House—to make a new departure of the kind suggested. In the meantime at least I do not myself see how a thing lawful in itself, and therefore within a man's right, can become unlawful by reason merely of the motive which a jury may find to have been the sole or ruling motive present in the man's mind. I incline rather to hold that such cases belong to the sphere of ethics rather than the sphere of law. But be that as it may, it is I think enough for the refusal of this issue that it is without precedent in Scotland, and that there has yet been no authoritative judgment either in England or Scotland in which the principle of Mr Justice Hawkins' charge has been affirmed.

"The result therefore will be that the first alternative of the first issue stands substantially as proposed, and that the issue will run thus—'Whether during the year 1896 the defenders caused to be printed and published in the "Sixtieth Report of the Scottish Typographical Association" the words or statements contained in the schedule appended hereto? and, Whether said words or statements, or part thereof, are of and concerning the pursuer, and falsely and calumniously represent that the pursuer having been a member of the defenders' association, had been expelled therefrom for unfair and dishonourable conduct in connection with his trade, to the loss, injury, and damage of the pursuer. Damages laid at £500.'"

Counsel for the Pursuer—Salvesen—T. B. Morison. Agent—Peter Morison junior, S.S.C.

Counsel for the Defender—Guthrie—M'Lennan. Agents—Morton, Smart, & Macdonald, W.S.

Saturday, December 12.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

TURNER AND ANOTHER *v.* ROBERTSON AND OTHERS.

Process—Leave to Reclaim—Court of Session Act 1868 (31 *&* 32 *Vict. cap.* 100), *secs.* 27, 28, *and* 54—*Act of Sederunt*, 10*th March* 1870, *sec.* 2.

In an action of accounting raised by beneficiaries against testamentary trustees, the pursuers objected to the amount of the account of the law-agent of the trust. The Lord Ordinary having remitted that account to the Auditor of the Court of Session to tax and to report, *held* that a reclaiming-note presented by the defenders, without leave having been granted, against the interlocutor of the Lord Ordinary, was incompetent.

Quin v. *Gardner & Sons, Limited*, June 22, 1888, 15 R. 776, *distinguished.*

Mrs Christina Turner and another raised an action of accounting against James Robertson and others, the testamentary trustees of the late Mrs Fraser, Glasgow. The defenders produced an account, and the pursuers objected to their taking credit therein for a sum representing the said Mr Robertson's charges as law-agent of the trust. The defenders averred that Mr Robertson's account had been examined and taxed by Mr Hannay, the auditor appointed by the Faculty of Procurators in Glasgow, and that it was an implied condition of Mr Robertson's employment that his accounts should be taxed by that gentleman.

The pursuers pleaded—"(2) The trustees, or the pursuer as an individual, not having agreed to refer the accounts in question to Mr Hannay for taxation, or approved of his taxation, it is not binding on them or her.'

On 4th December 1896 the Lord Ordinary (KYLLACHY) pronounced the following interlocutor:—"The Lord Ordinary having heard counsel in the procedure roll on the question between the parties as to the right of the pursuer to have the business accounts of the defender James Robertson, one of

the trustees, and law-agent and factor of the trust, taxed, Finds that the said accounts have been already taxed by the auditor of the Faculty of Procurators, Glasgow, but that it is admitted that said taxation took place *ex parte*, and was obtained by the defender the said James Robertson at his own hands, and that without special authority from or intimation to the other trustees or beneficiaries: Finds that in these circumstances the pursuer is entitled to have the said business accounts taxed of new: Therefore remits the same to Mr James M'Intosh, S.S.C., Auditor of the Court of Session, to tax, and to report *quam primum;* reserving all questions of expenses."

The Lord Ordinary refused the defenders motion for leave to reclaim.

The Court of Session Act 1868 (31 and 32 Vict. cap. 100), sec. 27, contains certain enactments relating to procedure after the closing of the record, and in particular to the allowing or refusing of probation.

Section 28 enacts that any interlocutor pronounced by the Lord Ordinary, as provided for in the preceding section, shall be final, unless within six days from its date the parties, or either of them, shall present a reclaiming-note against it to one of the Divisions of the Court.

Section 54—"Except in so far as otherwise provided by the 28th section hereof, until the whole cause has been decided in the Outer House, it shall not be competent to present a reclaiming-note against any interlocutor of the Lord Ordinary without his leave first had and obtained."

The Act of Sederunt 10th March 1870, section 2, enacts—"That the provisions of the 28th section of the said statute [the Act of 1868] shall apply to all the interlocutors of the Lord Ordinary hereinbefore referred to, so far as these import an appointment of proof, or a refusal or postponement of the same."

The defenders reclaimed.

On the case appearing in the Single Bills the pursuers objected that the reclaiming-note was incompetent.

Argued for the pursuers—The reclaiming-note was clearly excluded by section 54 of the Act of 1868. The interlocutor of the Lord Ordinary here was not one appointing, refusing, or postponing a proof. Hence the case was easily distinguishable from that of *Quin* v. *Gardner & Sons*, June 22, 1888, 15 R. 776, relied on by the defenders, where the remit to a man of skill was intended to take the place of a proof.

Argued for the defenders and reclaimers—The reclaiming-note was competent. *Quin's* case afforded an exact analogy to the present one.

At advising—

LORD PRESIDENT — The Court are of opinion that this reclaiming-note is incompetent, the interlocutor reclaimed against not falling within the provisions of the 27th and 28th sections of the Court of Session Act 1868 as modified by the Act of Sederunt of 10th March 1870. We consider that the case of *Quin* does not apply. The reclaiming-note is therefore excluded by the 54th section of the Act.

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

The Court refused the reclaiming-note,

Counsel for the Pursuers—Clyde. Agent—R. Ainslie Brown, S.S.C.

Counsel for the Defenders — M'Lennan. Agents—Cumming & Duff, S.S.C.

Friday, December 18.

FIRST DIVISION.

[Sheriff Court of Aberdeen.

FARQUHAR *v.* AITKEN.

Process—Abandonment of Action—Appeal for Jury Trial—Judicature Act 1825 (6 *Geo. IV. c.* 120), *sec.* 40.

Held that an appellant for jury trial in terms of sec. 40 of the Judicature Act 1825, may competently abandon his action by a minute in the form provided in sec. 10 of the Judicature Act and sec. 115 of the relative Act of Sederunt, 11th July 1828, for actions originating in the Court of Session.

Robert Farquhar, house painter, Aberdeen, raised an action in the Sheriff Court of Aberdeen concluding for £50 damages in respect of alleged slander. The Sheriff-Substitute (BROWN) allowed a proof, and the defender appealed under sec. 40 of the Judicature Act (6 Geo. IV. c. 120) to the First Division of the Court of Session for jury trial.

On 19th December 1896 the pursuer put in a minute of abandonment, in which, after narrating the various steps in the procedure of the case, he concluded—"And that in view of the denial by defender of the slander complained of, and in respect of the heavy expenses which would necessarily be incurred in having the case tried by a jury, the pursuer and respondent has resolved to abandon, and hereby abandons, the action in terms of the statute."

The provision referred to is contained in section 10 of the Judicature Act, as regulated by the 115th section of A.S., 11th July 1828.

A question having arisen as to whether the minute should not be presented in the form provided by section 61 of A.S., 10th July 1839, which prescribes the appropriate form for abandonment in actions raised in the Sheriff Court,

Argued for pursuer—When an appeal for jury trial was presented under the Judicature Act, it could be dealt with by the Court as though originating in the Court of Session—*Cochrane* v. *Ewing*, July 20, 1883, 10 R. 1279; and accordingly abandonment in Court of Session form was competent. In *Kermack* v. *Kermack*, November 27, 1874, 2 R. 156, a minute of abandonment was held to be competently presented in Sheriff Court form, but that was an ordinary