the property for the lawful beneficiaries, and in conformity with the trust purposes as these are now declared." That would, I conceive, be exactly in accordance with their present legal position. But their position, as explained in argument by the respondents, is just the opposite. They say the trustees will have reason to complain if they are compelled to give the use of the property to the Free Church and to remain themselves subject to all the burdens of ownership. The answer is that the trustees have it in their power to offer to denude at any time upon the conditions above referred to being fulfilled, and that meantime they are under a continuing obligation as to the uses of the property which they persistently decline to fulfil. It was suggested that they hold it "subject to the lawful orders of the Free Church General Assembly, or its Commission," and that no such orders have been given. I do not know how this stands in point of fact; I was referred to an Act of the Free Church Assembly (31st October 1900) anent trustees for property, which enacted that the trustees then holding any property such as that now in question be appointed to continue to hold the same for behoof of and for the uses of the Free Church, but with permission to make such arrangements (subject to the orders of the Assembly and its Commission) as to its use by members of either Church as the circumstances should demand. But whether the Free Church Assembly or its Commission have issued lawful orders to the trustees or not the trustees are in my view under a continuing obligation to hold and apply the property for the use of the complainers and those adhering to them. It was further urged as matter of law that only a proprietor infeft can remove tenants and possessors from a heritable subject, and that the application must fail on that ground as the respondents are protected by the infeftment of Lord Overtoun and his co-trustees. I observe in passing that both parties founded upon section 26 of the Titles Act 1868 as having the effect of vesting their respective bodies of trustees in the property. But assuming that Lord Overtoun and his co-trustees are to be regarded as duly infeft, I do not see what application the rule of law has to the circumstances of this case. So far as I have heard from the parties, the Principal and professors are not tenants either of their chairs or of their class-rooms under any title from these trustees; I rather think that both trustees and professors hold positions quite independent of each other, each by appointment of the General Assembly. But however that may be, the question is as to the use of trust property for behoof of the rightful beneficiaries, and that cannot be affected by any objection founded on the infeftment of trustees, who are there to sustain the formal title of property and to do their duty to the beneficiaries as the Courts have defined it. The true view of the case seems to me to be, that after litigation certain persons, or a certain defined body of persons, have been finally settled to be trust beneficiaries to the exclusion of their opponents, and this is a mere question of substituting the one for the other in the beneficial use and enjoyment of what is admitted to be the trust property. I think it clear that the complainers are entitled to have the note passed. It is not usual at this stage to repel any of the respondents' pleas; and I have only dealt with them at length in deference to the strenuous argument submitted in support of them by the respondents. I have equally little doubt that it is my duty to grant interim interdict. It appears to me that although this is always more or less discretionary, a great deal depends on the credentials which the parties are able to produce in favour of their respective views. Now, here the complainers hold an exceptionally advantageous position in founding upon the House of Lords' judgment as applied by the Division. In my view the granting of interim interdict is necessary to give effect to the clear rights of the complainers. But I have superseded the issuing of the certificate until Monday that the respondents may make the necessary arrangements."

Counsel for the Complainers — Henry Johnston, K.C. — Salvesen, K.C. — J. R. Christie. Agents—Simpson & Marwick, W.S.

Counsel for the Respondents—Shaw, K.C. —Orr. Agents — Cowan & Dalmahoy, W.S.

Tuesday, November 1.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

A B *v.* C D.

Reparation—Slander—Statement Injurious in Relation to Position of Person Spoken of—Allegation that Country Solicitor had Lost his All.

A solicitor in a country town holding several public appointments of trust brought an action of damages for defamation, averring that the defender had stated that the pursuer was cleaned out and had lost his all, and that this statement had injured him in his reputation and business.

Held that having regard to the position of the pursuer the alleged statement might, on a reasonable construction, have injured his credit and reputation, and accordingly that the pursuer's averments were relevant to entitle him to an issue.

A B, a solicitor in the country town of S., brought this action of damages for slander against C D, manufacturer there.

The pursuer averred that he was a partner of a firm who had for many years carried on business as solicitors in S., and that he held several important public appointments of trust in S. "(Cond.

3) After his return from a holiday the pursuer discovered that an extraordinary story of the most damaging character had been put into circulation by the defender of and concerning the pursuer, and had thereby gained currency in and around S., to the effect that the pursuer had lost his whole means by speculating, and that the pursuer was a ruined man. (Cond. 4) In particular, in a compartment of the railway train which left S. for Glasgow at 8·33 a.m. on Thursday 14th April 1904 the defender, in presence of" certain persons named "stated that the pursuer was cleaned out and had lost his all by speculation, and that he was a ruined man, or used words of the like import and effect."

The pursuer further averred—"(Cond. 6) The said statements made by the defender as aforesaid were of and concerning the pursuer, and were false and calumnious. They were intended by the defender to represent that the pursuer was a speculator; that by his speculation he had lost his whole means; that he was a ruined man who as a professional man was discredited, and whom it would be unsafe to trust with money, or with the investment of clients' means or management of their affairs involving trust. The pursuer has among his clients several well-to-do farmers and other residents in the country districts, to whom the idea of speculation . . . is repugnant. Moreover, owing to the occurrences recently in the West of Scotland (where S. was situated) of cases in which clients have sustained heavy losses through defalcations by solicitors, who had been engaged in speculation, in which they had lost their means, public opinion is very sensitive to any suggestion that a solicitor has incurred such losses, and a charge of the kind is seriously detrimental to him in his profession. (Cond. 7) By and in consequence of the said false and slanderous statements the pursuer has suffered greatly in his feelings and reputation. The defender's statement has also injured him in his reputation and business, and he has thereby been subjected to annoyance and loss in connection with his business as a professional man. Already the rumour put into circulation by defender has, as a direct and natural consequence of his action, obtained great publicity, and many of the pursuer's clients in S. and in the surrounding districts have been seriously alarmed. . . . The story has been so persistently circulated and has got such a deep hold in the district from which the pursuer derives his practice that it has been found almost impossible to remove the unfavourable impression which it produced." . . .

The defender denied the pursuer's material averments, and stated that in the course of casual conversation in the railway compartment the defender remarked—"Have you heard the latest"—meaning the latest gossip of S.—that on being asked by one of the occupants of the carriage compartment what it was he replied, "It is reported that wee B. has lost his all," that the other replied, "That will be nonsense," to which the defender answered that he had heard it from one or two people, or words to that effect, that the subject then dropped, that no reference was made by the defender to speculation or any other cause whereby the pursuer might have lost money, that what was said was not stated as fact but merely as rumour and interrogatively, and the matter was dealt with in the most incidental way, and that the defender was not actuated by any ill-feeling towards the pursuer, and merely repeated, as he stated, what he heard.

The defender pleaded, *inter alia*—"(1) The action is irrelevant. (2) The defender not having slandered the pursuer, the action should be dismissed with expenses."

On 5th July 1904 the Lord Ordinary (KINCAIRNEY) approved the following issues and appointed them to be the issues for the trial of the cause:—"(1) Whether on or about 14th April 1904, in a carriage of a railway train between S. and Glasgow, in presence and hearing of" certain persons named "or one or more of them, the defender falsely and calumniously stated of and concerning the pursuer that he was cleaned out and had lost his all, or used words of like import and effect, to the loss, injury, and damage of the pursuer? (2) Whether on or about 14th April 1904, in a carriage of a railway train between S. and Glasgow, in presence and hearing of" certain persons named "or one or more of them, the defender falsely and calumniously stated of and concerning the pursuer that he was cleaned out and had lost his all by speculation, or used other words of the like import and effect, to the loss, injury, and damage of the pursuer?"

The defender reclaimed, and argued—There was no defamatory matter, as the alleged statement of the defender did not imply either (1) that the pursuer lost his money in any discreditable way, or (2) that he was unable to pay his debts. In the absence of either of these imputations, the words alleged to have been used by the defender were not injurious. It was not a sufficient basis for an action of defamation that the pursuer averred injury—*M'Laren* v. *Robertson*, January 4, 1859, 21 D. 183; *Outram* v. *Reid*, February 28, 1852, 14 D. 577; *Wright & Greig* v. *Outram & Co.*, July 17, 1889, 16 R. 1004, 26 S.L.R. 707; *Macrae* v. *Sutherland*, February 9, 1889, 16 R. 476, 26 S.L.R. 335; *Anderson* v. *Hunter*, January 30, 1891, 18 R. 467, 28 S.L.R. 324; *Bruce* v. *Leisk*, February 20, 1892, 19 R. 482, 29 S.L.R. 412. [LORD KINNEAR referred to Erskine's Institutes, iv, 4, 81.]

Argued for the pursuer and respondent—A statement was defamatory if it affected a man's commercial credit and injured him in his business. The statement of the defender here did both. It was out of the question to dissociate the position of the pursuer here from the effect the words would naturally have. The other side assumed an innocent construction of the words, and argued that on that construction there was nothing defamatory in

them. But if words were capable of an injurious as well as of an innocent interpretation, and if the injuriousness or innocence of the words depended on the relation between the words and the situation of the person of whom they were spoken, it was eminently a question for a jury. It would, of course, lie on the pursuer to prove that he had suffered injury. Reference was made to *Cox* v. *Lee*, 1869, L.R., 4 Ex. 284.

LORD PRESIDENT—It appears to me that both issues proposed by the pursuer should be allowed.

In considering whether the use of particular words may or may not have an injurious effect on the character of a person, it is very material to have regard to the position of the person in regard to whom the words were used and the business he is carrying on. If the pursuer had been living on his private means, the statement in a railway carriage that he was reported to have "lost his all" might have excited compassion but it would not have injured him in his public reputation or purse. But the case is very different when the man is carrying on a business or profession by which he lives, and which requires that he shall possess such a character that people may safely trust him with their money. We know the nature of the business of a writer in a country town. It is quite common for women and other clients, where property belonging to them has been sold or a bond paid up, to leave the price or the money paid up in the hands of their law-agents until another investment is found for it. In other words, local solicitors frequently act as practically the bankers of their clients. Now, the question is whether it is so certain that to say of a man in that position that he was cleaned out and had lost his all could not damage him that we should not allow the pursuer an opportunity of proving that it could and did. If it were proved that as a result of the statements made clients removed their money from his keeping or took their papers out of his hands this would show very distinctly that the words were injurious. I am of opinion, then, that the pursuer should have an opportunity of proving his averments of injury.

What I have said with reference to the first issue applies *a fortiori* to the second issue. Experience proves that where an agent loses his own money in speculation he not infrequently uses his client's money in the same way, no doubt generally intending to replace it, but not infrequently being unable to do so. I therefore think that the issues should be allowed.

LORD ADAM—The words complained of as being defamatory are that the pursuer "was cleaned out and had lost his all."

I agree with your Lordship that these words may not be libellous in certain circumstances, and in other circumstances may be extremely injurious. In this case the person of whom the words were spoken is a writer in S. holding several important public appointments of trust. The pursuer avers that the statement has injured him in his reputation and business, that many of his clients were seriously alarmed by the rumours put into circulation by the defender, and that these things were the natural and direct results of the defender's statement. The question is whether the pursuer should be allowed to prove this if it is the fact. Mr Jameson says that there is nothing defamatory in the actual words. But the passage from Erskine, referred to by Lord Kinnear, is authority for the view that to impute bankruptcy to a man is a ground of action, not because it reflects on his moral character, but because such an imputation may have the effect of ruining his credit. That is exactly the position here, and accordingly I think the issues should be allowed.

LORD M'LAREN—There is no doubt that in the law of Scotland defamatory words affecting the credit of the person spoken of are actionable—that is, the law recognises that injury to commercial credit is a wrong for which reparation is granted. If authority were needed, the passage in Erskine, to which Lord Kinnear called attention, is sufficient. It is not necessary to lay down a criterion as to what words fall within this character and what words would fall outside. It has been decided that it is defamatory to say of a trader—or indeed of any person—that he is "insolvent." It has not been decided that you may make statements affecting the financial credit of an individual if you stop short of attributing insolvency. The distinction between an imputation of insolvency or bankruptcy and the present case is a very thin one. In the case of a writer or a merchant, to say that he had lost all his money would certainly be injurious to his credit. No solicitor can carry on a business worth having without credit, because in the ordinary course of business clients' money necessarily comes into his hands. To say of a solicitor that he was "cleaned out" and had lost his all is certainly calculated to injure his business. It is for a jury to say whether the words have had an injurious effect in this case.

If these words were not actionable, I fail to see how the addition of the words "by speculation" would make a difference. Speculation is a word of very indefinite meaning. There is legitimate and illegitimate speculation. Thus in my view the one issue is merely a variation of the first.

LORD KINNEAR—I agree. I should assent to Mr Jameson's observation that it is not a sufficient reason to ground an action of defamation that the pursuer alleges injury. That is not enough if in the opinion of the Court it is clear that the words are not calculated to cause such injury. But then the pursuer describes his position as a professional man in S., so that his means of subsistence are dependent on the confidence of his neighbours in his capacity and credit as a man of business. It is not an unreasonable construction of the words used to say that they may have injured his

means of subsistence and credit, and that being so he is entitled to an issue.

The Court adhered.

Counsel for the Pursuer and Respondent—Shaw, K.C.—J. R. Christie. Agents—Macpherson & Mackay, S.S.C.

Counsel for the Defender and Reclaimer—Jameson, K.C. — Scott Brown. Agents—Lister Shand & Lindsay, S.S.C.

Thursday, November 3.

FIRST DIVISION.

[Sheriff Court of Renfrew and Bute at Paisley.

DUFFY *v.* YOUNG.

Process—Appeal for Jury Trial—Action of Damages for Personal Injuries—Motion to Remit Case Appealed for Jury Trial Back to Sheriff for Proof—Judicature Act 1825 (6 *Geo. IV. cap.* 120), *sec.* 40.

An action at common law for £500 as damages for serious personal injuries having been appealed to the Court of Session for jury trial, the Court *refused* a motion by the defender to remit the case to the Sheriff for proof, *holding* that there was nothing to show that there did not exist a genuine claim for an amount exceeding £40.

Michael Duffy, labourer, Paisley, brought an action at common law against William Young, job and post-master there, in the Sheriff Court of Renfrew and Bute at Paisley, for £500 as damages for personal injuries alleged to have been sustained by the pursuer through the fault and negligence of the defender or of those for whom the defender was responsible.

The pursuer averred, *inter alia*, that on 13th June 1904, while he was crossing from the east to the west side of Sunnyside, Paisley, he was knocked down and run over by three horses and a bus belonging to the defender, and in charge of a servant of the defender.

The pursuer further averred—"(Cond. 3) At the time of the accident the horses to which the said bus was attached were being driven in a furious and reckless manner by defender's said servant. The driver had no proper control over the animals and failed to keep a proper outlook or give any warning to the pursuer of the approach of said bus. (Cond. 5) In consequence of said accident the pursuer sustained serious injuries to his chest, ribs, and over his body generally. He also sustained a severe shock to his nervous system. It is believed and averred that it will be a considerable time before he is able to resume work."

The Sheriff-Substitute (LYELL) allowed a proof.

The pursuer appealed to the Court of Session for jury trial.

In the Single Bills the defender moved that the case should be sent back to the Sheriff Court for proof, and referred to *M'Nab* v. *Fyfe*, July 7, 1904, 41 S.L.R. 736.

The pursuer argued that having regard to the nature of the accident and the serious character of the injuries, the sum of £500 claimed as damages was a genuine claim, and accordingly that he should not be deprived of his right to a trial by jury. He moved that the issue be approved.

LORD PRESIDENT—No doubt we have sent cases back to the Sheriff Court when it appeared upon the face of the record that the pursuer could only recover a very small sum. Although the averments in this case are somewhat narrow I cannot say that sufficient cause has been shown for sending it back to the Sheriff Court. The pursuer avers that he was knocked down and run over by three horses and an omnibus, that he sustained serious injuries to his chest, ribs, and to his body generally, and that he also suffered a severe shock to his nervous system. At this stage we must assume that the pursuer may prove his averments, and though they are somewhat vague they contain allegations which show that serious injuries might be proved. It appears to me, therefore, that the pursuer is entitled to have the case tried before a jury here.

LORD ADAM—I have more than once expressed my opinion in this kind of case. The Legislature has laid it down that when the claim is above £40 the pursuer has a right to appeal for jury trial. No doubt we have sent cases back to the Sheriff for proof, but in my opinion we would only do so when it appears upon the face of the pleadings that the pursuer cannot possibly recover £40. In this case the pursuer claims £500, and on reading the record I cannot say that it is of the character to which I have referred. That being so, I am of opinion that we are not entitled to send the case back to the Sheriff.

LORD M'LAREN—I concur. I do not think that the argument for sending these cases back to the Sheriff Court has much strength or substance in it. My impression is that the 40th section of the Judicature Act, with its analogue in the Court of Session Act, was intended for the benefit of defenders. It was quite unnecessary for the protection of a pursuer, who might raise his action in the Court of Session if he pleased. Where a trivial sum of damages is awarded in an action which has been removed from the Sheriff Court to the Court of Session, the true remedy would be arrived at by applying a proper scale of expenses in the Court of Session. The difficulty which exists in dealing with this class of cases has arisen, not from a difference of opinion as to the desirability of dealing with expenses, but from a difference of construction of our powers on the part of the two Divisions of the Court.

LORD KINNEAR—I agree with Lord Adam. I think the pursuer has a right by statute to bring his case before a jury in this Court,