penses due to or by either party since said 2nd August 1906, and remit to the Sheriff to dispose of the expenses prior to said date as expenses in the cause."

Counsel for the Appellant (Pursuer)—T. B. Morison, K.C.—J. M. Irvine. Agents—Dove, Lockhart, & Smart, S.S.C.

Counsel for the Respondent (Defender)—Morton. Agent—Charles George, S.S.C

Friday, July 5.

FIRST DIVISION.

(SINGLE BILLS.)

TRAINER *v.* RENFREWSHIRE UPPER DISTRICT COMMITTEE.

Process — Interdict — Sheriff — Interdict Granted in Sheriff Court—Regulation of Interim Possession Pending Appeal—Court of Session Act 1868 (31 *and* 32 *Vict. cap.* 100), *secs.* 69 *and* 79.

In an action in the Sheriff Court the Sheriff-Substitute, *causa cognita*, granted interdict. The defenders having appealed to the Court of Session, lodged a note to the Lord President craving that pending the decision of the appeal the interdict should be recalled.

Held that the course proposed was incompetent, the appellant's remedy being to apply to the Sheriff-Substitute under section 79 of the Court of Session Act 1868 for regulation of *interim* possession pending the appeal, and note *refused.*

The Court of Session Act 1868 (31 and 32 Vict. c. 100) enacts:—

Section 69—"*Effect of Appeals under this Act.*—Such appeal shall be effectual to submit to the review of the Court of Session the whole interlocutors and judgments pronounced in the cause, not only at the instance of the appellant but also at the instance of every other party appearing in the appeal, to the effect of enabling the Court to do complete justice without hindrance from the terms of any interlocutor in the cause, and without the necessity of any counter appeal. . . ."

Section 79—"*Regulation of Interim Possession Pending Appeal to the Court of Session.*—In all cases where the judgment of any inferior court shall be brought under the review of the Court of Session by appeal, it shall be competent for the inferior court to regulate in the meantime, on the application of either party, all matters relating to interim possession, having due regard to the manner in which the interests of the parties may be affected by the final decision of the cause; and such interim order shall not be subject to review except by the Court at the hearing of such appeal, when the Court shall have full power to give such orders and directions in respect to interim possession as justice may require."

James Trainer, Holm Farm, Mearns, Renfrewshire, raised an action of interdict in the Sheriff Court at Paisley against the Upper District Committee of the County Council of Renfrewshire, in which he sought interdict against the defenders discharging sewage from the village of Mearns into the Broom Burn or allowing sewage from their irrigation works to percolate into it. The Sheriff-Substitute having granted interdict the defenders appealed, and on 5th July presented a note to the Lord President craving his Lordship to move the Court, pending the decision of the appeal, to recal the interdict granted.

The note, *inter alia*, stated—"The defenders, who are the local authority of the district in which Newton Mearns is situated, have at great expense, involving a rate of one shilling in the pound, provided sewage purification works which they were advised by their expert engineer are of the design best suited for the purpose and the locality. Since their erection the defenders have improved these works in matters of detail, and they believe them to be thoroughly efficient. . . . Were the present interdict to be enforced it would become necessary to construct altogether new sewage purification works on some other principle, and would double the expense, while it is impossible to say that the pursuer would ultimately be in any way benefited thereby. Further, the erection of new purification works would take a considerable time. A new scheme would have to be devised and considered and the consent of the County Council and the approval of the Local Government Board obtained, and fresh contracts entered into, while the execution of the work itself would involve much time. All this would further involve a very great waste of public money, and it would be wholly improper that such waste should be allowed, at least until it is finally ascertained the pursuer is entitled to the remedy he seeks. Again, until new purification works were constructed there would be no means of disposing of the sewage of Newton Mearns except by diverting it unfiltered in some other direction, which might, and almost certainly would, involve a widespread nuisance, and would endanger the public health in a manner and to an extent that the defenders cannot contemplate without alarm. While as regards the public interest the danger would be great, the pursuer would meantime suffer very little damage or inconvenience. The damage said to have been sustained by him from the inception of the works till June last has been assessed by the Sheriff-Substitute at £30."

On the note appearing in the Single Bills counsel for the appellants stated that there was no direct authority for the application now made. The nearest recent analogous case dealing with the subject was *Clippens Oil Company, Limited* v. *Edinburgh and District Water Trustees*, March 20, 1906, 8 F. 731, 43 S.L.R. 540, which dealt with the subsistence of *interim* interdict granted in the Bill Chamber. In appeals to the House of Lords the Division to which the cause

belonged could on petition regulate the *interim* possession. The Division should regulate the possession pending the appeal, and should recall the interdict as craved. Reference was made to secs. 69 and 79 of the Court of Session Act 1868 (31 and 32 Vict. c. 100).

Counsel for respondent stated that the appellant had largely contributed to the delay by appealing to the Sheriff, and that in these circumstances the note should be refused.

LORD PRESIDENT—This application raises a point which it is surprising to find is novel. One would have supposed that the point would have arisen before, but counsel have not been able to produce any authority. The matter arises in this way. The Upper District Committee of the County Council of Renfrew have had an action raised against them in the Sheriff Court at Renfrew seeking to interdict them from discharging sewage into a certain burn from their irrigation works. Now these sewage works are part of a sewage scheme of the defenders, and it is clear that to prevent the operation of their sewage works is a very serious thing. The pursuer asserts that the defenders are doing an illegal act, and the Sheriff-Substitute has so found, and has, *causa cognita*, granted interdict.

I assume of course at present that that interlocutor is right, but at the same time it is a judgment against which the defenders are entitled to appeal, and they have appealed. They have also lodged this note to the Lord President, pointing out the serious consequences which the enforcement of the interdict would involve, and craving that, pending the decision of the appeal, the interdict granted by the Sheriff-Substitute should be recalled.

I have come to be of opinion that the course asked by the defenders is incompetent, but that the defenders are not without remedy. The matter is regulated by two sections of the Court of Session Act 1868, viz., secs. 69 and 79. Section 69 is the section which determines the effect of appeals from the Sheriff Court to this Court, and it provides—" . . . [*His Lordship quoted the section*] . . . " The matter is more particularly dealt with in sec. 79. It provides—" . . . [*His Lordship quoted the section*] . . . " It seems to me that section 79 covers the case, and that it is perfectly possible for the defenders to make a motion before the Sheriff-Substitute asking him to suspend the operation of the interdict until the appeal shall have been decided in this case. It will not affect the decree, and in truth will not be an ordinary interlocutor in the cause. I say this that the Sheriff-Substitute may not be hampered by the fact that the process is here. It will not, as I have said, be strictly speaking an interlocutor in the cause, but will be an independent interlocutor written on a separate interlocutor sheet, though of course the interlocutor will be subject to review in terms of the 79th section.

I have no doubt that what I have said will be before the Sheriff-Substitute when he comes to consider the suggested application, and that he will have it in mind that it is a very serious thing to stop the operation of a drainage scheme when perhaps—I don't say probably but perhaps—the judgment may be reversed.

LORD KINNEAR and LORD DUNDAS concurred.

LORD M'LAREN and LORD PEARSON were not present.

The Court refused the note.

Counsel for Appellants—M'Clure, K.C.—Macmillan. Agent—F. J. Martin, W.S.

Counsel for Respondent — MacRobert. Agent—J. A. Kessen, S.S.C.

Saturday, July 6.

EXTRA DIVISION.

[Lord Salvesen, Ordinary.

BOAL *v.* SCOTTISH CATHOLIC PRINTING COMPANY, LIMITED.

Reparation—Slander—Newspaper — Innuendo.

A newspaper published an article containing the following passages:—"We have received a printed note appealing for donations of money or gifts of material for the fitting and furnishing of a 'Home' at 11 Old Govan Road, Paisley Road, Glasgow, S.W. 'The Rev. G. Thompson Diver' is stated to be the General Superintendent, and somebody called Boal appears to have scribbled a note saying—'We will be pleased to receive a small donation.' Of that we have not the least doubt. In the public interest we beg to inquire—When was this home started? What has been the number of inmates sheltered in it since then? Is there a balance-sheet? and what guarantee is there that the money subscribed does not go to the private profit of the Rev. G. Thomson Diver or the scribbling Boal?"

In an action of damages for slander by Boal against the proprietors of the newspaper the pursuer innuendoed the article to mean that he was a person capable of appropriating funds collected for charity to his own purposes.

Held (*aff.* Lord Ordinary, Salvesen) that the innuendo sought to be put on the words used was possible, and an issue *allowed*.

On February 19th 1907 Samuel Boal, lecturer and journalist, Glasgow, brought an action of damages for slander against the Scottish Catholic Printing Company, Limited, the proprietors of the *Glasgow Observer*.

In the condescendence the pursuer averred that he, generally known as Pastor Boal,