Tuesday, June 23, 1908.

FIRST DIVISION.

[Lord Guthrie, Ordinary.

THE GRAND THEATRE AND OPERA HOUSE, GLASGOW, LIMITED *v.* GEORGE OUTRAM & COMPANY, LIMITED.

Reparation—Slander—Heading of Newspaper Paragraph—Heading Alleged to be Slanderous—Innuendo—Relevancy.

A newspaper report of an application for the judicial winding-up of a theatre was published on the same day as the order for intimation was pronounced, and was headed—"Glasgow Theatre Surprise. 'Grand' to be wound up. Petition in Court."

The petition having been eventually refused the company brought an action of damages against the newspaper for having, as they alleged, falsely and calumniously represented that the theatre was to be wound up as insolvent.

Held that the heading, whether read alone, or in conjunction with the rest of the paragraph, was not libellous, and action *dismissed* as irrelevant.

[Reference is made to the case of *Leon* v. *The Edinburgh Evening News, Limited*, May 13, 1909, *ante* p. 705, in which the case now reported was referred to.]

On 9th March 1908 the Grand Theatre and Opera House, Glasgow, Limited, brought an action against George Outram & Company, Limited, proprietors and publishers of the *Glasgow Evening News*, in which they claimed £2500 as damages for slander alleged to be contained in the heading of a newspaper paragraph published by the defenders.

The heading and paragraph were as follows:—

"GLASGOW THEATRE SURPRISE.

"'GRAND' TO BE WOUND-UP.

"*Petition in Court.*

"*Edinburgh, Saturday.*—A petition was presented to the First Division of the Court of Session to-day by Richard Waldon, theatrical manager, Crosslees House, Thornliebank, and William Campbell, house factor, 3 Dundas Street, Glasgow, for the winding up of the Grand Theatre and Opera House (Glasgow), Limited. . . . [*This paragraph narrated how the petition came to be presented and was not complained of*] . . . The company, it is said, has spent all its capital, and cannot carry on business, and should be wound-up by the Court. The petitioner Waldon holds 100 preference and 1041 ordinary shares, and the petitioner Campbell holds 50 preference and 190 ordinary shares. Apart from ordinary trade debts, which are of no great amount, the only liabilities of the company are the bond for £7500 and another in an adjoining property for £1500, the debentures for £4000, and the £3000 loan from the bank. The theatre and adjoining property have been valued at £31,000, and if the sale is effected there will be a considerable surplus of assets available for divison. It is expedient that the company should be sold as a going concern, but should be carried on meantime, as Fred Karno is to produce a pantomime early in December. It is suggested that the liquidator should be authorised to borrow £1000 to carry on the business.

"Intimation was ordered of the petition."

The pursuers averred—"(Cond. 3) On 23rd November 1907, the date on which the First Division ordered intimation, advertisement, and service of said petition, the defenders published in the most prominent part of the *Glasgow Evening Times*, a paragraph with a heading in very large type, as follows:—'Glasgow Theatre Surprise.' 'Grand to be wound up.' By the said heading and paragraph the defenders falsely, calumniously, and maliciously stated and represented to the public that the Grand Theatre was insolvent and bankrupt; that a winding-up order had been pronounced by the Court in consequence of the inability of the company to pay its debts; and that the said company was to be wound-up."

They proposed this issue—"It being admitted that the defenders printed and published in the *Glasgow Evening Times* newspaper of 23rd November 1907 the heading and paragraph contained in the Schedule hereto annexed—Whether the statements and representations contained in the said heading are of and concerning the pursuers' company, and falsely and calumniously represent that the pursuers' company had become bankrupt, and that the Court of Session had pronounced an order for the winding up of the pursuers' company, to the loss, injury, and damage of the pursuers? Damages laid at £2500." [A schedule containing the report followed.]

On 21st May 1908 the Lord Ordinary (GUTHRIE) dismissed the action as irrelevant.

Opinion.—"In this case the question, as raised by the issue, is limited to the one matter of the meaning, when fairly read by a reasonable reader, of the headlines and paragraph complained of, which appeared on 23rd November 1907 in the defenders' paper. In condescendence 3 the other question is raised as to whether the defenders made an illegitimate use of *ex parte* averments contained in a certain petition by publishing them at a particular stage of Court procedure, but no issue is taken upon this question.

"In regard to the question which forms the matter of the issue, it is clear enough that, if the issue is allowed, it would require to read—'Whether the statement and representation contained in the said heading *and paragraph* are of and concerning the pursuers,' and so on. Taking the two together, it appears to me that the pursuers have not made a relevant case. In the first place, it is clear on the authorities that the two must be read together. They do not require to be read carefully, as one

reads a deed of entail, but as a casual reasonable reader—a layman—would read an ordinary newspaper paragraph.

"There is no complaint of the terms of the paragraph itself. It is carefully framed and brings out distinctly that the facts averred are a mere echo of what is contained in the petition.

"The complaint is limited to the heading, which runs—

Glasgow Theatre Surprise.
'Grand' to be Wound-up.
Petition in Court.

"The heading must be taken as a whole. In condescendence 3 the heading is quoted without the last words 'Petition in Court.' If the heading had been so worded the result might have been different. But taking these words 'Petition in Court' along with the two preceding lines, I do not think that any person who could be called a reasonable reader would be entitled to come to the conclusion that there had been an order to wind up the company. He would either conclude—as I think a lawyer would—that there was a mere proposal to wind up the company, or he would be doubtful what the words meant. If he were in the latter position, he would go to the paragraph and his doubt would be at once removed, because he would find that all that had been done was that a petition had been presented and intimation ordered. Therefore I do not think there is sufficient ground for the pursuers going to a jury to say whether, in the words of condescendence 3, 'By the said heading and paragraph the defenders falsely, calumniously, and maliciously stated and represented to the public that the Grand Theatre was insolvent and bankrupt; that a winding-up order had been pronounced by the Court in consequence of the inability of the company to pay its debts; and that the said company was to be wound up.

"It is right to add that the ambiguity to which I have referred applies in another view to the second line of the heading. A company may be wound-up without being insolvent. The expression is ambiguous; but the ambiguity disappears when the paragraph to which the heading is a finger-post is read.

"I therefore disallow the issue and dismiss the action."

The pursuers reclaimed, and argued—The headnote was slanderous, inasmuch as it represented that the reclaimers' company was to be wound up as insolvent. A slander might be contained in the headnote to a paragraph, though the paragraph itself was not defamatory—*Archer* v. *Ritchie & Company*, March 19, 1891, 18 R. 719, 28 S.L.R. 547 (Lord M'Laren's opinion).

Counsel for respondent were not called on.

LORD M'LAREN—It is only necessary to read a sentence in the Lord Ordinary's note to see that there is no case calling for investigation by a jury. As one of your Lordships observed in the course of the argument, there are cases of degree, and it is impossible to lay down any unqualified rule that under no circumstances could the heading of a newspaper paragraph be actionable, because on reading the paragraph the reader might be able to find out that the title had been wrongly chosen, and that the facts did not justify the imputation that might be read in the heading. But in this case I do not think that that difficulty arises, because the heading, although it might possibly suggest something more serious than the paragraph, yet is to a certain extent guarded. The heading of the paragraph, besides the words that were objected to—"Glasgow Theatre Surprise—Grand to be Wound Up"—contains these important words, "Petition in Court." Without imputing to the ordinary reader a knowledge that might only be possessed by a lawyer, these paragraphs are to be read by people with the ordinary knowledge educated members of the public might be supposed to have regarding the proceedings. I think any reasonable reader when he came to the words "Petition in Court" would at once see that this was a question still undecided, because if it had been decreed that the theatre was to be wound up, then the liquidation proceedings would be out of Court, and there would be an end to it. I think the words "Petition in Court" clearly limit the meaning of what came before to this extent, that there was a proceeding in Court which might result in the Grand Theatre being wound up. The paragraph which follows just says the same thing in much greater detail and in more explicit language. But even in the heading, taken apart from the paragraph—though it necessarily could not be so full as the paragraph—there is nothing which can be said to attain to an independent averment to the effect that the Grand Theatre is insolvent and is to be wound up in consequence of its insolvency. In this case I think the Lord Ordinary has rightly begun by saying that if the case were to go to a jury at all the words "and paragraph" must be inserted in the issue. The subject for the consideration of the jury must be the heading and the paragraph. But when we come to read the heading with the paragraph there is nothing that even upon a strained interpretation could be held to be a slander against anyone. In fact, there is nothing that is capable of being innuendoed as a statement of insolvency. I think the Lord Ordinary has rightly so found and dismissed the action.

LORD KINNEAR—I am of the same opinion. I do not think it doubtful that there might be a good action for slander founded upon words contained in the headline of a paragraph even although the paragraph following upon that line might be of itself perfectly innocuous. That must depend upon the fair meaning of the words. But a headline of the kind complained of in this action is a mere summary of what is contained in the paragraph, and a reasonable reader would see that he must read the whole to know what had taken place in Court. If he did so, he

would find that it was a quite correct summary so far as it went, and also that there was nothing in the headline and paragraph taken together which will bear the meaning the pursuers put upon the headline alone. I would have come to the same conclusion if the headline were to be taken alone. The question is whether the headline contains a statement which falsely represents that the pursuers' company had become bankrupt, and that the Court of Session had pronounced an order for the winding up of the pursuers' company. I do not think any reasonable reader could put that meaning upon the words. What they really mean is plain, that there was a petition in Court for the winding up of the Grand Theatre, and that to the newspaper there was something surprising in that. There is nothing injurious in saying that the paper was surprised that there should be a proposal to wind up the theatre. All that the heading itself contains is that there was a petition for winding up, and that is perfectly true. To put upon these words the innuendo that the pursuers' company had become bankrupt, and that not only was there a petition in Court, but that the order for winding up had been pronounced, is to my mind going altogether beyond what is justified by the words themselves. Mr Steedman in his very clear, and I must say also very moderate argument, said that there were some people who would only read headlines and not paragraphs who might have misunderstood this one. It is very possible, perhaps very likely; but then in order to support an action for slander it must be shown that the meaning ascribed to the words is that which would be ascribed to them by reasonably intelligent people. I think for these reasons that the Lord Ordinary is perfectly right.

LORD MACKENZIE concurred.

The LORD PRESIDENT and LORD PEARSON were absent.

The Court adhered.

Counsel for Pursuers and Reclaimers—Wilson, K.C. — Steedman. Agents — Steedman, Ramage, & Company, W.S.

Counsel for Defenders and Respondents —Clyde, K.C.—Black. Agents—Webster, Will, & Company, S.S.C.

Thursday, July 8, 1909.

FIRST DIVISION.

[Sheriff Court at Glasgow.

WILLIAMSON *v.* MEIKLE.

Trade Name — Similarity — Deception — Company.

A, the managing director of a business known as the Kelvindale Chemical Company, after severing his connection with that company, started a similar business in the same neighbourhood under the name of the Kelvinside Chemical Company. It was conceded that the name had not been adopted with any wrongful intention. In an action of interdict at the instance of the Kelvindale Chemical Company to prevent the defender using the name "Kelvinside," the evidence showed that the similarity of the names had led to some inconvenience, chiefly through the misdirection of correspondence, but it was not proved that there had been any actual confusion between the two companies.

Held that as the pursuer had failed to show that the name chosen by the defender was calculated to mislead his customers or to divert his business, he was not entitled to interdict, and action *dismissed.*

On 12th October 1908 Ernest Henry Williamson, chemical manufacturer, carrying on business as "The Kelvindale Chemical Company," Lochburn, Maryhill, Glasgow, brought an action against James Meikle, chemical manufacturer, Dawsholm, Maryhill, Glasgow, carrying on business there as "The Kelvinside Chemical Company," in which he craved the Court "to interdict the defender from using the name 'Kelvinside Chemical Company' or any other name or description of firm which is substantially the same or is a colourable imitation of the pursuer's."

The pursuer acquired the business (as well as the goodwill) of the Kelvindale Chemical Company in May 1908 from the liquidator of the Kelvindale Chemical Company (1904) Limited, the business having been originally started in 1889. In July 1908 the defender, who had been the manager of the original Kelvindale Chemical Company and also of the two limited companies which succeeded it, started a similar business under the name of the Kelvinside Chemical Company not far from the pursuer's works.

The pursuer pleaded—"(1) The pursuer having acquired the right to the business of the Kelvindale Chemical Company is entitled to interdict against the defender trading under the name of the Kelvinside Chemical Company or any other colourable imitation of pursuer's trade name. (2) There being a similarity between the name taken by defender with pursuer's name, and particularly in view of defender's previous connection with pursuer's company, the use by defender of said name being intended and likely to injure the pursuer and benefit the defender, interdict should be granted with expenses as craved."

The defender pleaded—"(2) The action is irrelevant. (4) The name used by defender being geographically correct and not intended or calculated to mislead the public he is entitled to absolvitor, with expenses."

On 21st April 1909 the Sheriff-Substitute (MACKENZIE) after a proof, the import of which appears from the opinion (*infra*) of Lord Kinnear, granted interdict as craved, and on appeal the Sheriff (MILLAR) adhered.