alteration. I think there should be a further reservation made by inserting in the interlocutor as finally pronounced after the words "under reservation to the pursuer and to the bankrupt" the words "or any other persons interested," and with that variation I am of opinion that the interlocutor appealed against should be affirmed.

I have not hitherto mentioned section 98 (2), but as it was mentioned in argument it may be as well to say that it has clearly no application to the matter in hand. The class of provision there spoken to is a provision made by some deed of a third party, and does not refer to the *beneficium competentiæ*.

LORD SHAW—I meant to write fully on this case, but I have had the satisfaction and advantage of reading Lord Dunedin's judgment, and its decision and its exposition so clearly express my own view that I desire to adopt it without any variation or further suggestion of my own. May I, however, specifically add that I accept and entirely agree in my noble and learned friend's view with regard to the case of *Riley* v. *Ellis*, 1910 S.C. 934, 47 S.L.R. 788, and the opinion of Lord Kinnear in *Shanklin* v. *Macildowny*, 1912 S.C. 857, 49 S.L.R. 564.

I concur in the judgment proposed.

LORD WRENBURY—I have had the advantage of reading the opinion of my noble and learned friend Lord Dunedin. I adopt it, and agree that with the variation which he proposes the interlocutor appealed against should be affirmed. I have but little to add.

The operation of the statute is such that at the moment when *acquirenda* become *acquisita* the statute fixes upon them so that *ipso jure* they fall under the sequestration and are to be held as transferred to and vested in the trustee (section 98 (1)). The statute therefore speaks *in futuro*. In other words it deals in the present with the consequence of events to happen in the future. The only question upon this appeal upon which I find it necessary to express an opinion is whether it is competent to the Court to make an order speaking in like manner *in futuro* and affecting the *acquirenda* as and when they become *acquisita*. I can see no reason why such an order should not be competent to the Court. It is common daily practice for the Court to make orders operating in the future if and when defined events happen. Every injunction is an instance of such an order. The present order has an effect similar to that which would result from an order expressed as an injunction to prevent the *acquisita* (when and as they are acquired) from being dissipated or disposed of before the trustee perfects his title to them, and an order vesting them when received in the trustee pursuant to the statute. If this is not the true view it results that to effectuate the statute the trustee must make successive applications *toties quoties* and must run the risk that the *acquisita* may be dissipated before he has time to intervene. This would be not inconvenient only but perilous also; I see no reason why your Lordships should be driven to so mischievous a conclusion.

The order under appeal I think is right, and the appeal should be dismissed with costs. The variation proposed should not affect the incidence of the costs.

Their Lordships inserted after the words "under reservation always to the pursuer and to the bankrupt" the words "or any other persons interested" and with that variation affirmed the interlocutor appealed from, with expenses.

Counsel for the Appellant—Sandeman, K.C.—Gentles—H. G. Robertson. Agents—R. Miller, S.S.C. Edinburgh—Bruce, Millar, & Company, London.

Counsel for the Respondent—The Lord Advocate (Clyde, K.C.)—C. H. Brown. Agents—Macandrew, Wright, & Murray, W.S., Edinburgh—J. Kennedy, W.S., London.

Monday, July 28.

(Before Viscount Finlay, Viscount Cave, Lord Dunedin, Lord Shaw, and Lord Wrenbury.)

MAZURE *v.* STUBBS LIMITED.

(In the Court of Session, July 20, 1918, 55 S.L.R. 765.)

Reparation—Slander—Innuendo—Newspaper—Black List—Relevancy.

A weekly paper with a large trade circulation published weekly the decrees in absence obtained in the small-debt courts. The list was prefaced by an explanatory note that the publication in the paper of the decree in absence did not imply that the party against whom the decree had been pronounced was unable to pay, or anything more than that the entry appeared in the court books. The list on one occasion had in it the name of the pursuer as a person against whom a decree in absence had been pronounced. Admittedly no such decree had been pronounced. The pursuer brought an action of damages for slander; innuendoed the publication as meaning that he "was given to or had begun to refuse or delay to make payment of his debts, and that he was not a person to whom credit should be given;" and averred that it was so understood, and had in that way seriously affected him in business. *Held* (*dis.* Lord Wrenbury) (1) that the case was not covered by *Russell* v. *Stubbs, Limited*, [1913] A.C. 386, 1913 S.C. (H.L.) 14, 50 S.L.R. 676, and (2) that the averments were relevant.

This case is reported *ante ut supra*.

The defenders, Stubbs Limited, appealed to the House of Lords.

At delivering judgment—

VISCOUNT FINLAY—This is an action for libel, and it came before Lord Anderson

twice. On the first occasion, by his interlocutor of the 31st May 1917, he repelled the defenders' plea-in-law of irrelevancy and allowed proof. On the second occasion, after the proof had been taken, Lord Anderson, by his interlocutor of the 18th January 1918, sustained the pursuer's first plea-in-law that the pursuer having been slandered by the defenders was entitled to reparation, and assessed the damages at £50.

A reclaiming note was presented by Stubbs Limited, and the Second Division on the 20th July 1918 dismissed the appeal with costs. This appeal to your Lordships' House asks that the interlocutor should be recalled on the ground that the pursuer's averments are not relevant.

I adopt the following statement of facts made by Lord Anderson on the first occasion on which the case came before him—"In this action the pursuer, who is a licensed broker carrying on business at Dumbarton, sues the defenders for damages in respect of defamation. On 12th October 1916 the defenders published in their well-known Weekly Gazette an entry to the effect that decree in absence for £12, 11s. had been pronounced against the pursuer on 3rd October 1916 in the Small-Debt Court at Dumbarton. That statement regarding the pursuer was false. No such decree was pronounced against the pursuer, and the books of Court never contained any entry to the effect that any such decree had been pronounced. The pursuer pleads that the said publication by the defenders was not only false but also calumnious, and he alleges that the innuendo which the entry bears is 'that the pursuer was given to or had begun to refuse or delay to make payment of his debts, and that he was not a person to whom credit should be given.' The pursuer further avers that he had always regularly met his obligations as they fell due. He states that as a result of the publication of the said entry he has suffered great damage in his credit and business, and he makes specific averments to substantiate this general allegation of injury."

Stubbs' Gazette publishes extracts from the Court books of decrees granted in absence in the Small-Debt Courts, and this action was brought in respect of a false allegation of such an entry with regard to the pursuer. The allegation complained of was that decree in absence for £12, 11s. had passed in the Small-Debt Court of Dumbarton against the pursuer Mazure, who carried on business at Dumbarton. Prefixed to the list in which this allegation occurs was the following:—

"*Extract from the Court Books of Decrees in Absence in the Small-Debt Courts.*

"*Note.*—The following extracts from the Court books have been received since our last issue made up to the several dates given in the second column. It is probable that some of the decrees have been sisted, settled, or paid, and in no case does publication of the decree imply inability to pay on the part of anyone named, or anything more than the fact that the entry published appeared in the Court books."

Condescendence 11 made the following averments—"... The said Stubbs' Weekly Gazette has a wide circulation among the trading community and others through Scotland, and also in England and Ireland. It has a special portion devoted to the publication of the names and addresses of traders and others by and against whom decrees in absence have been taken. This is popularly known as and called the 'Black List,' and any trader appearing in that list is looked upon with great suspicion as being a person to whom it is unsafe to give credit, as he will or may refuse or delay to make payments of his just debts. The object of the said list is to give information to tradesmen and the mercantile community generally as to persons against whom it has been necessary to take decrees in order to enforce payment of their debts."

Condescendence 4 set out the passage in the Gazette complained of, and condescendence 5 made the following allegations:—"The said entry is of and concerning the pursuer, and is false and calumnious. It falsely represented that a decree in absence had been pronounced against the pursuer for the sum of £12, 11s., and that the pursuer was given to or had begun to refuse or delay to make payment of his debts, and that he was not a person to whom credit should be given. It was so understood by the public, and in particular by the pursuer's creditors and customers." No such decree in absence had in fact ever passed against the pursuer, and the statement to that effect in Stubbs' Gazette was the result of a blunder on the part of the clerk employed to examine the lists.

It was contended by the Solicitor-General for Scotland on behalf of the appellants that the appeal must be allowed on the ground that the averments are not relevant, and the decision of your Lordships' House in *Russell* v. *Stubbs Limited* (1913 S.C. (H.L.) 14, 50 S.L.R. 676) was pressed upon us. The facts and the allegations in the case were similar to those in the present case, with the very material exception that the innuendo was different, being that the pursuer was unable to pay his debts.

In my opinion the averments of the pursuer are relevant and were properly admitted to proof. In other words, I think that the entry in the Gazette of which he complained and the allegations in the pleadings are such as to support the innuendo alleged, and Lord Anderson so found at the trial. There was evidence that the entry had been understood in this sense, and that damage to the pursuer had been thereby caused. The object with which the list is published is that tradesmen and merchants may have material for forming a judgment whether credit may safely be allowed in any particular case. There was evidence that the list is known as the "Black List," and that the appearance of the name of any person in it is calculated to excite suspicion. The appellants relied on the note prefixed to the entry in the Gazette to the effect that in no case does publication of the decree imply inability to pay on the part of any person named. But without imputing insolvency such a publication might suggest that the person named was a bad payer, and that

inquiry should be made before giving credit to him. If the entry is capable of being read in this defamatory sense, it is no answer to an action for a false allegation that such an entry had appeared in the Court books to say that it is stated in the note that the publication of the decree does not impute insolvency. It may be defamatory without imputing actual insolvency. There was evidence to support the pursuer's averments. Their sufficiency was a matter for the Lord Ordinary by whom the case was tried without a jury, and there is no ground for interfering with his conclusion or for treating the damages as excessive.

Very great pains were taken in the judgments in *Russell* v. *Stubbs* to show that the decision was confined to the innuendo there alleged, namely, that the pursuer "was unable to pay his debts and was in insolvent circumstances and in pecuniary embarrassment, and was avoiding payment of a just debt" (1913 S.C. 16). The decision proceeded on the ground that such an imputation of insolvency was negatived by the note. That note was in the same terms as in the present case, but the innuendo is different. Lord Kinnear's judgment is rested on the ground that the imputation charged was one of insolvency, and that the note in the publication complained of expressly stated that insolvency was not to be inferred. On pages 22 and 23 of the report (1913 S.C.) Lord Shaw makes it quite clear that this was the ground, and the only ground, for the decision. He says—"For such a decree might pass for a large variety of reasons, none of which would injuriously affect the reputation or trade of the debtor. One quite natural interpretation of the entry would be that the alleged debtor had forgotten to pay the small sum sued for. Another reason might be that he was—having certain opinions as to the injustice of the claim or the full amount of it—determined not to pay except under force of law. A third reason for such a decree might be that he was absent and knew nothing about the summons. A fourth that he was a person given to refusing or delaying to pay his debts in ordinary and proper course. The last might possibly affect the reputation and credit of the alleged debtor. And I am not prepared to say that there may not be circumstances in which injury, more particularly to a trader in humble and struggling circumstances, would be produced if the erroneous entry had been taken up in the last-mentioned sense. Such a person might never have been in a court, might always have met his obligations with regularity, might be in a critical stage in the development of his business, and, as at present advised, I should not say that it was a strained construction to put upon the entry that it was reasonably likely to imply that he was given to or had begun the practice of refusing or delaying to make payment of his debts, and that the public or those dealing with him had understood it in that sense. The position taken up by the respondent, the pursuer in the action, is that he has put forward in issue the erroneous entry with a much more sweeping and serious innuendo. That innuendo is that the entry 'falsely and calumniously represented that the pursuer was unable to pay his debts.' He has, in short, taken upon himself the burden of saying that the entry of a decree in absence having passed against him for £9 odd was equivalent to or implied an imputation of his insolvency. After much consideration I am of opinion that this innuendo imports into the erroneous entry more than it can reasonably bear."

The Lord Chancellor, Lord Haldane, expressed his concurrence with the judgments of Lord Kinnear and of Lord Shaw.

Lord Shaw's judgment seems to make it quite clear that the appellants' argument proceeds on a misunderstanding of *Russell* v. *Stubbs*. The innuendo charged in the present case is practically in the same terms as the innuendo suggested by Lord Shaw as being one which might be supported by the publication of such an entry. The contention of the Solicitor-General that Lord Shaw's observations must be considered as referring only to the case of a trader in humble and struggling circumstances appears to me to be quite untenable. Such a set of circumstances might render damage more likely to ensue from such a statement, but can have no bearing upon the question of relevancy.

I am therefore of opinion that the decision in *Russell* v. *Stubbs* has not the effect contended for by the appellants, and indeed a careful examination of the judgments shows that they are rather against than in favour of the appellant in the present case. It is one thing to impute insolvency—it is another thing altogether to say, as is said here—that the pursuer was given to or had begun to refuse or to delay to make payment of his debts, and the statement in the note as to insolvency not being imputed by the publication of the entry does not rebut the possibility that the entry might be understood as importing a slighter degree of embarrassment, an imputation which might nevertheless prejudicially affect the trader.

For these reasons I am of opinion that this appeal should be dismissed, with costs.

I am informed that my noble and learned friend Lord Dunedin concurs in the judgment which I have just read.

Viscount Cave—The appellants are the proprietors of a paper called "Stubbs' Weekly Gazette (Scotland)" in which they publish among other matter of interest to traders what purport to be "Extracts from the Court books of Decrees granted in absence in the Small Debt Courts." The Gazette of the 12th October contained under the above heading an entry showing that a decree in absence for £12, 11s. had been made in the Small Debt Court at Dumbarton against the respondent. No such decree had in fact been made, and the statement was due to the carelessness of a clerk of the appellants who had incorrectly abstracted the entries in the Book of Causes kept by the Sheriff-Clerk. Complaint having been made, the appellants published an apology, which was not accepted, and thereupon this suit was commenced.

In the condescendence for the pursuer (the respondent) certain statements are made which are material on this appeal. In condescendence 2 he states as follows—"The defenders are the proprietors and publishers of the gazette known as Stubbs' Weekly Gazette. The defenders carry on for profit a business which they describe in their advertisements and prospectuses as a means of enabling traders to avoid making bad debts, and they act as an agency for the recovery of overdue accounts, bills, and rents, &c. The said Stubbs' Weekly Gazette has a wide circulation among the trading community and others through Scotland, and also in England and Ireland. It has a special portion devoted to the publication of the names and addresses of traders and others by and against whom decrees in absence have been taken. This is popularly known as and called the 'Black List,' and any trader appearing in that list is looked upon with great suspicion as being a person to whom it is unsafe to give credit, as he will or may refuse or delay to make payment of his just debts. The object of the said list is to give information to tradesmen and the mercantile community generally as to persons against whom it has been necessary to take decrees in order to enforce payment of their debts." Then, after setting out the entry of which complaint is made, condescendence 5 states as follows—"The said entry is of and concerning the pursuer, and is false and calumnious. It falsely represented that a decree in absence had been pronounced against the pursuer for the sum of £12, 11s. and that the pursuer was given to or had begun to refuse or delay to make payment of his debts, and he was not a person to whom credit should be given. It was so understood by the public, and in particular by the pursuer's creditors and customers."

Upon these statements the Lord Ordinary (Lord Anderson) allowed a proof; and the Second Division of the Court of Session, varying his decision, allowed a proof before answer. The suit was heard by the Lord Ordinary sitting without a jury, who found for the pursuer and awarded him £50 as damages, and this decision was confirmed by the Second Division. Thereupon this appeal was brought against the interlocutors allowing proof as well as against the decisions at the hearing.

It was hardly denied before this House that the statement in the Gazette, if read in accordance with the innuendo in condescendence 5, was defamatory, but it was argued on behalf of the appellants that the statement did not justify that innuendo. It may be that the statement taken by itself would not bear the meaning ascribed to it; but I think that when taken in conjunction with the circumstances alleged in condescendence 2 it is fully capable of bearing that meaning. Assuming, as for the purpose of considering whether proof should have been allowed we must assume, that the statements in that condescendence are true, the result is that in a paper published as a means of enabling traders to avoid making bad debts, and in a special portion of that paper devoted to the publication of the names of traders against whom decrees in absence have been taken, such portion being popularly known as the "Black List," it was falsely stated that a decree for the small sum of £12, 11s. had been obtained in absence against the respondent. It appears to me that such a statement made under such conditions is reasonably capable of bearing the meaning attributed to it in condescendence 5; and I am confirmed in this view by the fact that, not only the pursuer's customers who were called as witnesses, but no less than five learned Judges in the Courts below have found that meaning in it.

Reliance is placed by the appellants upon a headnote which is contained in the Gazette and which appears immediately under the heading "Extracts from the Court Books of Decrees in absence in the Small Debt Courts." The material part of this headnote is as follows:—"The following extracts from the Court books have been received since our last issue made up to the several dates given in the second column. It is probable that some of the decrees have been sisted, settled, or paid; and in no case does publication of the decree imply inability to pay on the part of anyone named, or anything more than the fact that the entry published appeared in the Court books."

The portion of the above headnote which is relied upon in the present case is the statement that in no case does publication of a decree imply anything more than the fact that the entry published appeared in the Court books. If this means that readers of the Gazette are invited to rely upon the statement that the entry has appeared in the Court books as a true statement of fact and to draw all proper inferences from it, then the headnote does not assist the appellants. But if it means that readers are not to draw from the fact stated any inference prejudicial to the credit of the person named, then I do not think that serious reliance can be placed upon a warning so contradictory to the nature of the publication itself. The Gazette is published and circulated in order that its readers may draw inferences as to the credit of the traders named, and it appears to me to be futile to suggest that the publishers of such a Gazette are protected by a mere warning that no such inference is to be drawn. So to hold would be in effect to hold them immune from responsibility for their mistakes, however serious the consequences which may ensue.

It is said that the case is concluded in favour of the appellants by the decision in *Stubbs Limited* v. *Russell* ([1913] A.C. 386), but in my view that case is clearly distinguishable from the present. In that case the entry and the headnote were indeed similar to those which are in question in this case, and the record included a statement of circumstances similar to those contained in condescendence 2 as above set out. But in *Russell's* case the pursuer, doubtless for good reasons, sought to attribute to the entry a different meaning, alleging that the statement "amounted

to a false and calumnious representation that the pursuer was unable to pay his debts"; and the decision of the case in this House turned entirely on that innuendo. Of the two leading judgments that delivered by Lord Kinnear laid stress on the fact that the meaning ascribed by the innuendo to the false entry was in terms negatived by the headnote, which stated that in no case did publication of a decree imply inability to pay. The judgment of Lord Shaw, with which I respectfully agree, was to the effect that, quite apart from any argument to be drawn from the headnote, the entry in question would not, even with the special circumstances alleged, bear the particular meaning sought to be put upon it, namely, that it imputed total insolvency. His judgment did not exclude the possibility of another interpretation prejudical to the credit of the person referred to, and was certainly not unfavourable to the view put forward by the pursuer in the present case. The decision in *Russell's* case is therefore not an authority for the appellants.

For the above reasons I am of opinion that proof was properly allowed. With regard to the hearing, I think it clear that the evidence which has been read to your Lordships contained ample material on which the Lord Ordinary could find for the pursuer. No question is raised as to the amount of damages.

In my opinion the appeal fails and should be dismissed.

LORD SHAW—I agree. In my opinion the case is not excluded by the decision in *Russell*. The case of *Russell* and the judgment delivered in this House have been most searchingly analysed in the Courts below. A formidable attack was made by the learned Solicitor-General for Scotland upon that analysis, and in particular upon the very thorough and careful examination of *Russell's* case by Lord Salvesen. This has made me, although unwilling in one sense to do anything but accept loyally the former decision of this House, re-examine the case of *Russell* and the position from the foundations. I think it right to confess to your Lordships that the result has been to confirm the judgment which I formed in regard to that case and to uphold the decisions of the Courts below in regard to it.

I trouble your Lordships only with these observations:—It is apt to be forgotten that the necessity for a direct weighing up of the breadth and the significance of the issue presented in *Russell* arose from these circumstances. Undoubtedly there, as here, Messrs Stubbs' newspapers contained an erroneous entry that a decree in absence against the pursuer had been passed. This was not the case, and the Sheriff Court books did not contain such a record. But although that mistake had been made, yet the broad facts were that not very long before the erroneous entry appeared there were nine or ten other decrees in absence which had in point of fact been obtained against the pursuer. The innuendo, however, that was formulated was that the one erroneous insertion of an announcement that a decree in absence had been passed against the pursuer, meant that the pursuer was unable to pay his debts—in other words meant his insolvency. It was held by the Court of Session that this issue should be allowed, and accordingly that the defenders could not put forward a counter-issue containing any lesser allegation, as, for instance, that this pursuer was the same person who had figured so frequently in lists of decrees in absence, and that therefore he was a person who neglected or declined to pay his debts. The answer was made—he might be all that and yet not be unable to pay his debts or insolvent; and unless you plead the *veritas* to all the breadth and gravity of that innuendo the jury will be told that there is no true answer to the pursuer's case because it has not risen to the measure of the pursuer's case. This seemed to me like blocking the way to the real truth of the case and paving the way to an unjust result. But it was this very consideration which made *Russell's* case one in which it was most necessary to see whether a wide innuendo of inability to pay debts or of insolvency could be truly said to arise out of a single false allegation that a decree in absence had been passed against a debtor.

The learned Judges in the Courts below were, I think, right in discerning in this circumstance the true significance of the decision in *Russell's* case. In the course of that case, if I may mention my own judgment, I thought it right to say that I could not see my way to exclude in all circumstances from responsibility the makers or circulators of a false accusation that a decree in absence had been passed against a tradesman. And I pointed out the responsibility which newspapers must accept which, in course of their business, circulate a false statement of that character. With regard to the procedure, I indicated the more reasonable innuendo which has been in terms adopted in this case. I think it was rightly adopted, and the careful judgment of the Lord Ordinary seems to show that under the principle a reasonable case for damages can be made out and a just and moderate result be reached. The judgments of both the Courts appear to me to be sound.

Further reflection, however, inclines me to add one remark as to the heading or cautionary notes placed by Messrs Stubbs at the top of their lists of such decrees. I think that I must amplify one observation made in *Russell* upon that subject. These notes are notes applicable to true statements and not to false statements. The assertion is made that the entry which has been advertised is an extract from the Court books, that it is a publication of a decree, and that it represents neither insolvency nor anything else than the bare record. I do not think it is legitimate to apply any such cautionary preface to what was not a true but a false assertion, and the statement as to what a publication of the decree might imply seems to have no application to a case in which no such decree was granted. In short, unless this view be taken, very serious consequences might arise and harm to business and reputation might result

when a newspaper is made, whether inadvertently or in the way of business, the vehicle for launching upon the public a false and calumnious statement. The limits of protection for both parties are found in the law itself; and it is not open to the author or circulator of a calumny to say to the public that they must take up a falsehood in one sense and no other, and by doing so to close the door to all remedy. A conditioned or specialised slander of that kind is not known to the law; the results of a calumnious falsehood arise from the impression which it—all of it, including reservations, cautions, and all the rest—makes upon the minds of the readers—an impression which may be quite apart from any artificial restriction which the author of the falsehood sought to impose. It is for those results that the author or promulgator of the libel is responsible. The law itself is not inconsiderate of all the legitimate excuses for error in such publications, but it cannot accept the will of the author of a wrong as the measure of the consequence of that wrong.

LORD WRENBURY—A large part of the matter which has been debated before your Lordships would have given me ground for serious consideration if *Stubbs Limited* v. *Russell* ([1913] A.C. 386) had not been decided in this House. That case seems to me to affirm the proposition that the statement in the head note that "in no case does publication of the decree imply inability to pay on the part of any one named," precludes an action for libel resting on the ground that it does involve such an implication. The proposition, expressed in general terms, seems to be as follows—if one makes and publishes as regards A falsely but without express malice a statement that something is a fact which is not a fact, and which if it were the fact would or might impute to A something discreditable, then if the writer by way of head note or the like states that he does not make or ask the reader to imply from the fact stated the calumnious imputation, he is not guilty of libel. Had I been a party to the decision in *Russell's* case I fear that in the present case I should have found myself in a minority of one. I should have thought that the question was what the reader would or might reasonably imply from the alleged fact even if the writer told him that he (the writer) did not imply, and did not invite the reader to imply, anything discreditable. But for the decision in *Russell's* case I should have been of opinion with your Lordships in the present case.

The innuendo which the pursuer puts forward in the present case is—"that the pursuer was given to or had begun to refuse or delay to make payment of his debts, and that he was not a person to whom credit should be given." This divides itself into two parts which must be considered separately. The first is—"that the pursuer was given to or had begun to refuse or delay to make payments of his debts." I cannot see that this is calumnious unless you add such words as "because he was unable so to do" or "because he was insolvent." A man may refuse or delay to make payment of his debts for a variety of reasons perfectly consistent with solvency and honest intention, as, for instance, that he disputes the debt, or that he has overlooked it, or that he is absent from the country, or that he is so overwhelmed with engagements (say of a political nature) that no one need feel surprise. It may be, of course, because of inability to pay, but when there may be many reasons which are not discreditable, what ground is there for selecting and attributing to the defender the imputation of one which is?

I therefore do not regard the suggested innuendo without the addition of some such words as above suggested as being calumnious. Then if the suggested words are to be taken as added the innuendo becomes equivalent to that in *Stubbs Limited* v. *Russell*, and the decision in that case is directly in point. There is no libel, because the entry read with the explanatory note is incapable of bearing the defamatory meaning ascribed to it.

The second part is—"that he was not a person to whom credit should be given." This I do not doubt is calumnious. But how is it got out of the language of the publication unless it be confined to the same meaning as before? Upon this part of the case argument was advanced before your Lordships that Stubbs' Weekly Gazette is regarded as being a sort of black list, and that to include the pursuer's name is equivalent to saying that he is on a black list. I cannot adopt this contention. The heading of the Gazette shows that it contains amongst other things dissolution of partnerships, applications for appointments of executors, new companies registered, and registration under the Limited Partnership Act—matters to which no stigma can possibly attach. And as regards the particular matter with which your Lordships are concerned, viz.—decrees granted in absence in the Small Debts Courts, the headnote expressly states that publication of the decree does not imply inability to pay. To call the list under these circumstances a black list seems to me to beg the question.

It was contended, however, and the Lord Ordinary in this case accepted the contention, that inasmuch as there was not in fact in the Court books an entry such as the appellant stated was there contained, the explanatory note did not apply to it, for that it applied only to published extracts from the book. This contention seems to me self destructive. It involves the conception, first, that there is no such entry as is said to impute insolvency (in which case there is, of course, no libel), and secondly, that there is such an entry, but that it is not qualified and explained by the headnote.

Regard the case how you will, it is in my judgment covered by the principle of the decision in *Stubbs Limited* v. *Russell*. The appeal, I think, should be allowed. Those who hereafter have to apply the two decisions of this House will find in your Lordships' judgments the grounds upon which

Stubbs Limited v. *Russell* and *Stubbs Limited* v. *Mazure* are to be reconciled.

Their Lordships dismissed the appeal, with expenses.

Counsel for the Appellants — Solicitor-General (Morison, K.C.)—Holden. Agents —Balfour & Manson, S.S.C., Edinburgh— M'Kenna & Company, London.

Counsel for the Respondent—E. O. Christie —Inglis. Agents — Manson & Turner Macfarlane, W.S., Edinburgh — Simmons & Simmons, London.

COURT OF SESSION.

Friday, June 27.

FIRST DIVISION.

YULE'S TRUSTEES *v.* DEANS AND OTHERS.

Succession — Vesting — Vesting subject to Defeasance — Bequests Conditional upon Testator's Son not Recovering his Sanity.

A testator, after narrating that his wife had become blind and his son insane, appointed trustees, and left an annuity to his wife and the remainder of the free income of his estate to his son to maintain him in an asylum, provided that if the son "should . . . recover [his sanity] I desire my whole estate . . . to be made over to him . . . but should my son not so recover, then after the death of both my wife and my son I wish my estate to be disposed of as follows" — Then followed bequests to various legatees, and a bequest of residue and a declaration that the deed was the testator's last will and testament for the disposal of his estate after the decease of himself and of his wife and son. The testator was survived by his wife and son. The widow predeceased the son. The son never recovered sanity, and survived some of the legatees who were to take in that event. *Held*, in a Special Case, that the legatees who had predeceased the son took a vested right to their legacies subject to defeasance in the event of the son's recovering his sanity, and that as that event had never occurred their representatives were entitled to the legacies in question.

Observations per Lord Skerrington and Lord Mackenzie on the application of the doctrine of vesting subject to defeasance.

John Dawson and others, the testamentary trustees of the deceased Robert Yule (the testator), *first parties*, Mrs Elizabeth Mechie or Deans, universal legatee of Margaret Yule, a niece of the testator, with consent, *second party*, James Will and another, as in right of legatees under the testator's trust-disposition and settlement, *third parties*, and the Royal Infirmary of Edinburgh as a residuary legatee of the testator, *fourth parties*, brought a Special Case for the opinion and judgment of the Court upon questions relating to the vesting of legacies left by the testator.

Robert Yule died on 10th December 1902, leaving a trust-disposition and settlement and codicil. The *trust-disposition and settlement* provided — "I Robert Yule . . . do hereby declare this writing to be my last will and testament for the disposal of my estate after my decease. My wife having unfortunately become blind and my son an inmate and patient in Morningside Asylum since the month of January 1876, I am compelled to request my friends kindly to act as trustees on behalf of my wife and son for the winding-up of my estate. . . . [*Then followed a nomination of trustees who were given powers to sell and dispose of the whole estate, both heritable and personal, or to retain and manage it until final winding-up, and to keep the testator's money securely invested, bearing interest for the objects of the trust.*] . . . To my wife Mary Anne Low or Yule I bequeath an annuity of fifty pounds sterling (£50) per annum, payable in advance at periods to be agreed on. To my son Robert Low Yule I bequeath the remainder of the free income arising from my estate, to be applied in keeping him as comfortable as possible in the asylum, and if he should in the course of Divine Providence recover the full use of his mental faculties I desire my whole estate of every kind to be made over to him, and the trustees remunerated as aforesaid and discharged of their trust, but should my son not so recover, then after the death of both my wife and my son I wish my estate to be disposed of as follows—[*Then followed various bequests, which included*] — to my nephew James Muir, residing at 40 Arundel Square, London, N., I bequeath the sum of Two hundred pounds sterling (£200); to my niece Margaret Yule, who has now come to live with us, if she will continue to live with and care for my wife while they may be spared together, I give and bequeath the small dwelling-house belonging to me and situated at 36 Bedford Street, Edinburgh, together with the sum of Two hundred pounds sterling (£200); also to the same Margaret Yule I bequeath the sum of One hundred pounds sterling (£100), to be paid to her at the first term of Whitsunday or Martinmas that happens after my decease without waiting for the final winding-up of the estate, and also a similar sum of One hundred pounds sterling to be paid to her at first Whitsunday or Martinmas as that happens after the death of my wife without waiting for final winding-up of the estate; to Mr Peter Cairns, residing at 4 Livingstone Place, Portobello, I beg to bequeath the sum of One hundred pounds sterling (£100); to Mr James Will senior, residing at 23 Howe Street, Edinburgh, I bequeath the sum of One hundred pounds sterling (£100); to Mr Edwin Wessels Watkins, son of J. L. Watkins, residing at 11 Duncan Avenue, Jersey City, United States, I bequeath the sum of One hundred pounds sterling (£100); to the Edinburgh Royal Infirmary I bequeath two-thirds (⅔)