

There is no clause dealing with residue, or which contemplates the possibility of any portion of the revenue payable to a child who has attained 21 being applied to any other purpose in case of that child predeceasing the time for dividing the capital.

But there is another clause of the deed which seems to me inconsistent with the postponement of vesting here contended for. I refer to the *proviso* as to the lands of Kingston. It contemplates the eldest son as being in a position at the age of 21 to declare his acceptance of these lands at a valuation. He is to find security "to the satisfaction of my said trustees" for the value. But are the trustees not entitled to accept as security, or part security, his right and interest in the succession? If they are, then presumably the deed was intended to empower him to give such security, although the period of final division had not arrived and might not arrive until after his death. Yet it is contended that the deed is so framed as to make such security worthless unless he survive until the youngest child shall have attained the age of 21.

My opinion is that the testator was here making a deed in favour of all his children, and intended to give to each who should survive the age of 21 a share of his estate.

Another clause which seems to indicate vesting before the period of final division is that relating to advances. Such advances are to be "on account of his or her or their shares." But I do not suggest that this clause is inconsistent with a postponement of vesting.

On these grounds I am unable to read the survivorship clause of this deed as having reference to the period of ultimate division. I am therefore for answering the question here stated in the affirmative.

LORD YOUNG was absent when the case was heard.

The Court answered the question of law in the negative.

Counsel for the First and Second Parties—
Law. Agents—Boyd, Jameson, & Kelly,
W.S.

Counsel for the Third Party—Sir Charles
Pearson. Agent—R. Bruce Cowan, W.S.

Saturday, February 8.

FIRST DIVISION.

[Lord Wellwood, Ordinary.

NEILSON v. JOHNSTON.

Reparation — Slander — Privilege — Town Councillor at Council Meeting Accusing Burgh Official of Breach of Duty.

A member of the corporation of a burgh, at a meeting of the town council, stated that eight carcasses reported suspicious by the slaughterhouse superintendent had been passed as sound by the sanitary inspector of the burgh, who had neglected to call in proper

professional assistance.

In an action of damages by the sanitary inspector against the town councillor, on the ground that he was charged with a scandalous breach of duty, held that as the duty in question fell under the supervision of the town council, and as the statements complained of were spoken in discussing this duty, the privilege of the defender was absolute, and an issue *disallowed*.

Reparation — Libel — Newspaper — Innuendo.

It was the duty of the sanitary inspector of a burgh to inspect the carcasses of animals killed at the burgh slaughterhouse. He was entitled under the provisions of the Public Health Act to call in any veterinary surgeon to advise with him in cases of doubt or difficulty. The town council of the burgh had appointed a Mr Lawson, veterinary inspector of the burgh.

An article in a newspaper published in the burgh contained the following statements—"It is a notorious fact that ever since Mr Lawson's special appointment of 8th July to examine and report upon all suspected carcasses at the slaughterhouse, the sanitary inspector has harassed and wrongously interfered with him in the discharge of his responsible duties. Time after time, when the veterinary inspector granted a certificate, the sanitary inspector challenged its accuracy, and even appealed to, and brought from Edinburgh, professors, who in every instance upheld Mr Lawson's opinion." One of the cows of a dairy had been slaughtered on account of illness. The sanitary inspector, in opposition to Mr Lawson, had pronounced the disease to be pleuropneumonia. Two eminent specialists had adopted Mr Lawson's opinion. "Had the sanitary inspector in this instance got his own will (as unfortunately is too often the case) hundreds of pounds would have been lost to the burgh, and very heavy loss would have been entailed on dealers, stock-owners, and dairy proprietors. . . Baffled in his attempts to discredit this official, the sanitary inspector has latterly succeeded (at least for a time) in 'dishing' his 'friend the enemy' in the following manner" . . . Several occurrences were here cited as illustrations of the statement. The article proceeded—"Mr Griffiths waxed eloquent on Thursday in support of his friend, the sanitary inspector, on the great expense and annoyance caused by the friction existing between the two officials. Who, we should ask, is to blame for all this? Without a shadow of authority or cause, the sanitary inspector has occasioned all the expense complained of by his uncalled-for, persistent, and arrogant interference with Mr Lawson in the discharge of his professional duties."

In an action at the instance of the sanitary inspector against the printer

and publisher of the newspaper, the pursuer proposed the following issue, Whether the above statements "falsely and calumniously represent that the pursuer, in his capacity of sanitary inspector for the town of Falkirk, had maliciously endeavoured to falsely discredit another official, Mr Lawson, veterinary surgeon, appointed by the Magistrates and Town Council of Falkirk, and in order to gratify his spite and malice against the said official, had recklessly spent the money of the community to their prejudice, to the loss, injury, and damage of the pursuer."

Held that the innuendo could be fairly gathered from the statements made in the article.

William Hood Neilson, Sanitary Inspector, Falkirk, raised this action of damages for slander and libel against Frederick Johnston, a member of the Town Council of Falkirk, and printer and publisher of the *Falkirk Herald and Linlithgow Journal* newspaper. The pursuer had held his office for ten years under the Public Health Act. It was part of his duty to inspect the carcasses of animals killed at the burgh slaughterhouses; and further, he was entitled under the Act, and he was authorised by the town council, in case of doubt or difficulty, to call in any local veterinary surgeon in whom he had confidence to advise with him.

On March 7, 1889, the town council appointed a Mr Lawson veterinary inspector.

The pursuer averred—At a meeting of the town council held on 8th April 1889, the defender complained that the pursuer had employed Mr Macintosh, veterinary surgeon, to inspect a carcass at the slaughterhouse, and that Mr Lawson, veterinary surgeon, had been overlooked. Further, that the defender, at a meeting of the town council held on 8th July 1889, moved that it should be compulsory on pursuer to employ Mr Lawson alone. The defender at said meeting, in the presence and hearing of Bailie Watson, Bailie Rennie, and Councillors Griffiths, Hamilton, and Baird, all members of the town council, or of one or more of them, and of various other persons, said, *inter alia*, of and concerning the pursuer, "In many ways the sanitary inspector had in this matter shown a good deal of feeling against the veterinary inspector. Mr Neilson ought to understand that Mr Lawson was a burgh official like himself, and in the performance of his public duty Mr Neilson should be actuated by no private feeling whatever. In fact any such feeling on the part of Mr Neilson would almost tend to cast suspicion upon him in his duties at the slaughterhouse. What Mr Neilson had to do was to employ officials they had appointed. They had a slaughterhouse superintendent who had seen a great deal of cattle disease both in living and dead animals. Several members he, Mr Johnston, had spoken to seemed to think it would be a tremendous expense to give the veterinary inspector fees for examining all carcasses, but nobody wanted carcasses examined that were visibly rotten to the naked eye. He had inquired into the subject, and he found

that in thirteen months, from May 1888, there were only three such carcasses that the owners consented to have destroyed. There should be a record kept of the diseased meat detected at the slaughterhouse. No doubt there were the books, but they should have the reports tabled before them. Within the last thirteen months there had been passed by veterinary surgeons at the slaughterhouse eight carcasses, and there had been destroyed three by mutual consent, four by veterinary surgeons, and two by Mr Neilson. He found there were actually eight carcasses reported suspicious by the slaughterhouse superintendent, passed by Mr Neilson, and sent down our maws. That was a disgrace to the town, and should not have been done. The very idea that these carcasses were passed by an unprofessional man was sufficient proof of the unsatisfactory state of matters. Mr Neilson could not be expected to have skill. He had plenty to do otherwise. To have suspected carcasses passed by Mr Neilson was a state of matters that had lasted long enough, and the sooner it was ended the better."

The pursuer explained his reasons for believing that the defender entertained an *animus* against him. He proposed this issue—"(1) Whether . . . the defender . . . falsely, calumniously, and maliciously made of and concerning the pursuer the statements quoted . . . meaning thereby to represent that the pursuer, with a shameful indifference to the health of the community, had been guilty of a breach of duty in not calling in professional assistance, and, in consequence thereof, had culpably passed as sound, carcasses which were unfit for human food, to the loss, injury, and damage of the pursuer?"

The pursuer further averred—The defender, in the issues of his paper the *Falkirk Herald and Linlithgow Journal*, on 5th October 1889 wrote and printed and published false, malicious, and slanderous statements of and concerning the pursuer in the form of a leading article, headed . . . "Veterinary Inspection at the Falkirk Slaughter-House," which contained the following statements of and concerning the pursuer:—"It is a notorious fact that ever since Mr Lawson's special appointment of 8th July 'to examine and report upon all suspected carcasses at the slaughterhouse,' the sanitary inspector has harassed and wrongously interfered with him in the discharge of his responsible duties. Time after time, when the veterinary inspector granted a certificate, the sanitary inspector challenged its accuracy, and even appealed to and brought from Edinburgh professors who in every instance upheld Mr Lawson's opinion. It will also be fresh in the memory of our readers how Mr Lawson lately saved the ratepayers very heavy loss in the shape of compensation, which would have had of necessity to be paid, consequent upon the slaughter of a whole dairy of cows in the burgh, one of which was killed at the slaughterhouse and condemned by Mr Lawson as being unfit for food. The sanitary inspector held, in opposition to Mr Lawson, that the carcass was affected with

infectious pleuro-pneumonia, and he was supported in his contention by the two other local vets. Two eminent specialists were summoned from Edinburgh, and both decided in favour of Mr Lawson's opinion. Had the sanitary inspector in this instance got his own will carried out (as unfortunately is too often the case), hundreds of pounds would have been lost to the burgh, and very heavy loss would have been entailed on dealers, stock-owners, and dairy proprietors. No gratitude, however, is shown to Mr Lawson for averting such a calamity! Baffled in his attempts to discredit this official, the sanitary inspector has latterly succeeded (at least for a time) in 'dishing' his 'friend the enemy' in the following manner:—On the last occasion Mr Lawson was called to examine a suspected carcase he requested to have a consultation with the medical officer of health, and the just demand was granted by the town clerk. Before the joint examination had taken place, however, the sanitary inspector, declining to consent to any delay, without authority called in the two other local vets., who each granted a certificate condemning the carcase. . . . We know of a recent instance when the sanitary inspector allowed a suspected carcase to hang two days at the slaughterhouse after notice had been sent to him by the superintendent. The sanitary inspector, forsooth, was browsing at his seaside residence, and left instructions that the carcase was to be locked up until his return—no words of blame in this case for neglecting so long to procure a certificate. There are many other facts which could be brought out to prove the *pros* of the case in favour of Mr Lawson. Mr Griffiths waxed eloquent on Thursday in support of his friend the sanitary inspector, on the great expense and annoyance caused by the friction existing between the two officials. Who, we should ask, is to blame for all this? Without a shadow of authority or cause the sanitary inspector has occasioned all the expense complained of by his uncalled-for, persistent, and arrogant interference with Mr Lawson in the discharge of his professional duties. The Council must see that not a penny of this expense is paid out of the public purse. Let him pay the debts who contracted them. In conclusion, we would simply add that it is nothing short of a scandal that a professional man, in whom not a fault could be proved so far as his services to the burgh were concerned, should be deposed and so falsely discredited in the eyes of the public, as has been so meanly done, much to the sanitary inspector's joy and satisfaction." He proposed the following issue—"Whether . . . the statements . . . falsely and calumniously represent that the pursuer, in his capacity of sanitary inspector for the town of Falkirk, had maliciously endeavoured to falsely discredit another official, Mr Lawson, veterinary surgeon, appointed by the Magistrates and Town Council of Falkirk, and, in order to gratify his spite and malice against the said official, had recklessly spent the money of the community to their prejudice, to the loss, injury, and damage of

the pursuer?"

The defender pleaded—"(1) The pursuer's averments are not relevant or sufficient in law. (2) The words complained of do not bear the meaning alleged, and without such meaning are not libellous. (3) The words spoken in the town council, being spoken without malice and relevant to the matter under discussion, were within his privilege as a member of council, and for which the defender is not liable. (4) The passages quoted from the defender's newspaper being a fair and *bona fide* comment on the conduct of the pursuer in his public character, founded on allegations true in substance and fact, and written and published without malice and for the public benefit, the defender ought to be assolizied."

The Lord Ordinary (WELLWOOD) repelled the first plea-in-law for the defender, and also the second plea-in-law so far as preliminary, and approved of the issues as adjusted.

"*Note.*—The defender maintained that the pursuer's condescendence contained no issuable matter, and as the question of relevancy depended mainly upon whether the words used by the defender and complained of by the pursuer would bear the innuendo put upon them by the pursuer, the latter was allowed, for the sake of convenience, to lodge the issues which he proposed; and the terms of the issues, as well as the relevancy of the condescendence, were discussed at the hearing. The only matter which I have at present to determine is whether the words complained of will, without doing violence to the language used, bear the defamatory construction put upon them by the pursuer. The slander first complained of is contained in a speech delivered by the defender on 8th July 1889 at a meeting of the Town Council of Falkirk. That occasion was clearly privileged, and therefore the pursuer is bound and undertakes to prove that the words were used maliciously. The defender maintains that the words mean, and can only be read as meaning, that he the defender objected to the system whereby a sanitary inspector, who had no professional training as a veterinary surgeon, was allowed to inspect and pass suspected carcasses without taking professional advice, and that this was a legitimate matter for discussion on the occasion. I am far from saying that the words will not bear that meaning, but I think that they may also bear the meaning put upon them by the pursuer, viz., that in passing suspected carcasses, without taking professional advice, the pursuer acted with a reckless disregard of the public health, and was actuated by personal dislike of Mr Lawson, who was the veterinary inspector appointed under the Contagious Diseases (Animals) Acts. It will be for the jury to say whether, in the light of the evidence laid before them, and the whole surrounding circumstances, the words, in their opinion, bear the one meaning or the other.

"The second libel complained of is not privileged. It is an article published on 5th October 1889, in the *Falkirk Herald and Linlithgow Journal*, of which the defender

was printer and publisher. I think that that article is capable of the meaning assigned to it by the pursuer, viz., that it represents the pursuer as having maliciously and falsely attempted to discredit the veterinary inspector Mr Lawson, and as having in his efforts to do so recklessly spent the ratepayers' money, to their prejudice. I accordingly think that he is entitled to go to a jury. If the defender succeeds in satisfying the jury that the passage complained of does not represent what the pursuer asserts, or if he can show that the matter under discussion was one of public interest, and that the words used did not exceed the limits of fair criticism, he will be entitled to a verdict."

The defender reclaimed, and argued—The words of his speech would not bear the innuendo. He had attacked a system and not an individual. There was no attack made on the pursuer, and it was not actionable for a member of the corporation to allege to the other employers of the pursuer that he was guilty of a culpable neglect of duty. The defender was privileged. To make the words actionable it would have been necessary to have said that the pursuer wilfully passed the suspected carcasses. The statements in the newspaper were in a somewhat different position, but here also what was attacked was a system; there was no evidence of private malice. It was a criticism of a man in his public capacity—*Auld v. Shairp*, December 16, 1874, 2 R. 191; *Brydone v. Brechin*, May 17, 1881, 8 R. 697; *Campbell v. Ferguson*, January 28, 1882, 9 R. 467; *Fraser v. Morris*, February 21, 1888, 15 R. 454; *Macrae v. Sutherland*, February 9, 1889, 16 R. 476; *Milligan v. Cole*, L.R., 10 Q.B. Div. 549; *Capital and Counties Bank v. Henty*, 1882, L.R., 7 App. Cases, 741.

Argued for respondent—The averments of the pursuer showed that the defender was actuated by malice both in his speech and in the article complained of. He was using his public office as a means of attacking the pursuer, and the interpretation which he now sought to put upon the language he had used was not what would have suggested itself to anyone either hearing the speech or reading the articles. The innuendo proposed was not forced, and was fully justified by the words—*Stair*, i. 9, 4, and cases above cited.

At advising—

LORD PRESIDENT—The pursuer is the sanitary inspector of the burgh of Falkirk, and he has been so for ten years. The words complained of in the first issue were spoken by the defender in his capacity as a member of the town council at a meeting of that body, and had regard to the duties of the sanitary inspector. It is stated on record that it was part of the pursuer's duty to inspect the carcasses of animals killed in the burgh slaughterhouses, and having been engaged in the performance of that duty for ten years it may be supposed that he has very considerable experience in the matter; but the question comes to be, whether the words complained of in the first issue mean anything more than an

expression of opinion upon the part of the defender as a town councillor as to the manner in which the pursuer's duties have been performed recently. Now, it rather appears to me that all that is alleged regarding the statement made by the defender upon that occasion is that he expressed an opinion that Mr Neilson, the pursuer, had not been performing his duties satisfactorily as sanitary inspector, and, in particular, that he had passed as sound carcasses which in view of the defender were not such as ought to have been passed. Looking to the position of parties and their relation to one another, it does not appear to me that there is any ground in law for complaining of such a statement. A public official must expect to have his conduct criticised by members of the town council at meetings of that body; and therefore I am for disallowing the first issue.

The second issue stands upon a different footing altogether. The matter complained of there is an article in the newspaper of which the defender is editor. Now, the article of which the pursuer complains contains here and there in the course of its statements which I think it is very difficult to say are not slanderous. The article is a long one, and therefore it is quite right that it should be innuendoed in the issue what is the substance of the matter that the pursuer complains of. According to the view which I take of it, the purpose and use of an innuendo in such a case as this is to gather together the expressions which really are of a slanderous character, and which appear to give colour to the whole article, and so to bring before a jury in a condensed form the substance of that which is complained of. In the article, for example, it is said to be "a notorious fact that ever since Mr Lawson's special appointment of 8th July 'to examine and report upon all suspected carcasses at the slaughterhouse,' the sanitary inspector has harassed and wrongously interfered with him in the discharge of his responsible duties." Mr Lawson is a veterinary surgeon who has been employed on various occasions to examine suspected carcasses; and the allegation there against the pursuer is, that as sanitary inspector he has harassed and wrongously interfered with Mr Lawson in the discharge of his duty. Again, the article said that "the sanitary inspector held, in opposition to Mr Lawson, that the carcass was affected with infectious pleuro-pneumonia, and he is supported in his contention by the two other local veterinaries. Two eminent specialists were summoned from Edinburgh, and both decided in favour of Mr Lawson's opinion. Had the sanitary inspector in this instance got his own will carried out (as unfortunately is too often the case), hundreds of pounds would have been lost to the burgh, and very heavy loss would have been entailed on dealers, stock owners, and dairy proprietors." Then follows this, that "in his attempts to discredit that official, the sanitary inspector has latterly succeeded, at least for a time, in 'dishing' his 'friend the enemy' in the following manner." Then follow in detail various things that hap-

pened. Further, the article said—"Mr Griffiths waxed eloquent on Thursday in support of his friend, the sanitary inspector, on the great expense and annoyance caused by the friction existing between the two officials. Who, we should ask, is to blame for all this? Without a shadow of authority or cause the sanitary inspector has occasioned all the expense complained of by his uncalled-for, persistent, and arrogant interference with Mr Lawson in the discharge of his professional duties." Now, it seemed to me that that, besides what I have already referred to, very well justifies the innuendo inserted in the second issue, which is that the words "falsely and calumniously represent that the pursuer in his capacity of sanitary inspector had maliciously endeavoured falsely to discredit another official, Mr Lawson, veterinary surgeon appointed by the Magistrates, and, in order to gratify his spite and malice against that official, had recklessly spent the money of the community to their prejudice, to the loss, injury, and damage of the pursuer." I think that innuendo can fairly be gathered from the different passages in the article, and therefore the second issue should be allowed.

LORD SHAND—In reference to the first issue I need not say much more than this, that, looking at it, even with the innuendo, I do not find that it amounts to a charge which can fairly be made the subject of an action. It is to be remembered that the defender, when he made the charges now complained of, was speaking in the character of a town councillor. Now a town councillor is entitled to speak very freely about the way in which duties which are under the supervision of the Council are discharged.

The charge made is that the pursuer "had been guilty of a breach of duty in not calling in professional assistance, and, in consequence thereof, had culpably passed as sound, carcasses which were unfit for human food."

I cannot say that a town councillor who says that an official who is under the control of the Council was guilty of a breach of duty, is to be liable to answer for that in an action of damages. There is no imputation made upon the private character of the official; that would be an entirely different matter. Suppose that a town councillor of the city were to say of the inspector of cleaning that he had shamefully neglected his duty, and that anyone looking at a certain street would see that it was so, he might or might not be speaking the truth, but no one would think that his language was actionable.

On the second issue I quite agree with your Lordship. Here we have to deal with one of a series of attacks which are said to have been made in gratification of a malicious feeling in the way which is explained on record. We have the passages to which your Lordship has referred, showing a design of holding up the pursuer as doing what he did, not in the discharge of his duty, but simply to gratify a spite which he had conceived against another official. With reference to this issue, looking to the

circumstances alleged and to the language of the articles, I am of opinion that there is enough to support the issue.

LORD ADAM concurred.

LORD M'LAREN—With regard to the first issue, it is to be observed that the pursuer is a servant of the town council, and that the matter that he complains of consists in a criticism passed by a member of the town council upon the manner in which he performed his duties. It seems to me that for such criticism a servant has no ground of action. If the employer, while professing to find fault with or comment upon the manner of the performance of the duties of the servant, travels beyond his subject, he has only a qualified privilege, and it is necessary that the pursuer should prove that the things he said are malicious; but if he keeps strictly within the line of discussion of how his servant performs his duty to him, and if the remarks are made either to the servant himself or in discussion between employers, then the privilege is absolute, and no cause of action arises. That issue suggests to me, I think, a strictly parallel case. Suppose a gentleman was sitting at dinner with his family and said that the dinner was badly cooked, and that the cook would be the better of some additional assistance, would the cook have an action for damages, putting in the issue that the master had represented that she, with a shameful indifference to the health of himself and of his family, had been guilty of sending up an uneatable dinner, and ought to have called in professional assistance? With regard to the second issue, that stands on a different footing, because it is publication in a newspaper, and newspapers have no privilege beyond the privilege of fair comment which belongs to every member of the community. I was inclined at first to think that there was nothing actionable in that article. It is written in a style not uncommon with the provincial press, who deal largely in superlatives. I think the newspapers called the style "Journalee;" and when translated into English the expression really comes to very little. But on consideration I agree with your Lordships that its construction ought to be left to the jury, who, no doubt, will know quite well how to deal with it.

The Court disallowed the first issue but allowed the second issue.

Counsel for the Pursuer—D. F. Balfour, Q. C. — Wilson. Agents—Macpherson & Mackay, W. S.

Counsel for the Defender—Guthrie Smith—Guthrie. Agent—Alexander Gordon, S. S. C.