

Thursday, March 19.

FIRST DIVISION.

[Lord Wellwood, Ordinary.]

ARCHER v. RITCHIE & COMPANY.

Reparation—Slander—Issue—Innuendo.

A newspaper published a report of a meeting of a Good Templar Lodge, headed "Mr A.'s Crooked Ways." It was set out in the report that "Brother H.," who had been a candidate for the Grand Chiefship, stated that "Brother A." came to him and urged him to become a candidate, as he had no intention of standing again for the post, and that subsequently, without giving him, "Brother H.," any notice of his change of mind, "Brother A." presented himself as a candidate, and was re-elected. The same issue of the paper contained a leaderette, which substantially repeated the statement attributed to "Brother H." in the report, and added—"It is to be hoped that this sharp practice, which is of a piece with the other proceedings of the official clique at the head of the Order, will not be lost upon the members." The news-bill of the day also contained the words, "Mr A. and his Crooked Ways."

In an action by A. against the proprietors of the newspaper for alleged slander, the Court held (*rev.* Lord Wellwood) that the above publications would not naturally bear a defamatory meaning, and *assolizied* the defenders.

Opinion by Lord M'Laren that the epithet "dishonourable" imports no substantial charge, and is not self-explanatory, or in a legal sense injurious.

This was an action of damages for alleged slander brought by Gilbert Archer, 2 Wellington Place, Leith, against John Ritchie & Company, proprietors of the *Evening Dispatch*, Edinburgh.

The pursuer averred—"(*Cond.* 2) On 2nd September 1890 the defenders caused to be printed and published in the *Evening Dispatch* newspaper of that date the following paragraph:—'Mr Archer's Crooked Ways.—The usual weekly meeting of Sir Walter Scott Lodge, I.O.G.T., was held last night in Marshall Street Hall—the C. T. (Mr James R. Clark) was in the chair. Brother James Hamilton, Grand Councillor of the Order, was one of the visitors, and he was requested to occupy a seat on the platform beside the Chief Templar. After the initiation of candidates, Brother Hamilton was asked to address the meeting. In the course of his remarks he referred to the business which had been before the Grand Lodge at Aberdeen. He stood before them that night as the defeated candidate for the Grand Chiefship, but he felt bound to explain how he happened to be a candidate for the office at all. Had he known that Brother Archer

was anxious for the post again, he certainly would not have allowed his name to be proposed. The idea of being a candidate for the office had never entered his head until some time before the meeting of the Grand Lodge Brother Archer came to him and urged him to become a candidate, as he said he had no intention of standing again for the post of Grand Chief. That was the origin and history of his candidature, and while he was not in the least astonished at Brother Archer's name being proposed again for the G. C. T., they could fancy his feelings when he saw that Brother Archer was actually a candidate, and seemed to have no intention of withdrawing, for that was the first and only intimation he ever received that Brother Archer had changed his mind, and was ambitious to again fill the chair. He felt he was justified in making these explanations, as his conduct in opposing Brother Archer was apt to be misunderstood and misrepresented by the brethren throughout the country. Brother Hamilton concluded by earnestly urging the members to work more energetically than ever. It was in the subordinate lodges, and not in the district and Grand Lodges, that the work must be done, if it is done at all. Brother Hamilton received a cordial vote of thanks for his address.' The meeting referred to in said paragraph was, as the defenders well knew, a private meeting of the Good Templar Lodge referred to, and as the defenders also well knew it is and was contrary to the rules of the said Order and the said Lodge to publish reports of the proceedings at the meetings. There were no reporters at the meeting, and the defenders obtained the information as to what passed at said meeting improperly and surreptitiously." "(*Cond.* 3) In the same issue of the said *Evening Dispatch* newspaper the defenders also printed and published an editorial note or leaderette to the following effect:—'The mystery connected with the Chief Templarship becomes deeper than ever by the explanations given by Mr Hamilton in an Edinburgh Lodge last night. No one stands higher—few indeed so high—in the estimation of the Order, and any statement made by him regarding his candidature for the G. C. T.-ship may therefore be readily accepted. That candidature was none of his seeking. Mr Archer about three months ago intimated that he did not intend to offer himself for re-election, and he suggested that Mr Hamilton should stand. Mr Archer's resolution was referred to publicly in several lodges and elsewhere, and no whisper was heard of any change in his intention until his name was proposed again at the Grand Lodge Session, and the surprise of Mr Hamilton may be understood when he found that Mr Archer did not withdraw his name. The contest was thus forced upon Mr Hamilton under circumstances which he never contemplated, rendering his position very unpleasant. It is to be hoped that this sharp practice, which is of a piece with other proceedings of the official clique at the head of the Order,

will not be lost upon the members.' . . . The defenders also on the same day printed and published and exposed publicly in the streets and other public places in Edinburgh, Leith, and other towns, a bill of contents, being a large placard, in which were prominently printed in large type the words, 'Mr Archer and his Crooked Ways.'" "(Cond. 4) The statements contained in the foresaid paragraphs, note, and placard are of and concerning the pursuer, and are false and calumnious, and were printed and published by the defenders maliciously, and without probable cause. The pursuer never went to Mr Hamilton or urged him to become, or suggested that he should become, a candidate for the office of Grand Chief Templar, or said to Mr Hamilton that the pursuer did not intend to stand again for the office. By the statements above quoted the defenders intended to represent, and did represent, that the pursuer had been guilty of deceitful and dishonourable conduct, and that he habitually indulged in conduct that was unfair and deceitful and dishonourable, and that he was unworthy of the confidence and respect of the members of the said Order. The said statements further represented that the pursuer had wilfully misled the said James Hamilton by statements which he, the pursuer, knew to be false, and that the pursuer had been guilty of unfair and treacherous conduct towards Mr Hamilton, and that the pursuer was a man who was frequently guilty of wilfully misleading others by statements known by him to be false, and of unfair and treacherous conduct in his dealings with others, and that he was a man who was unworthy of trust or confidence."

The defenders admitted the publication of the report of the meeting and leaderette quoted in Conds. 2 and 3, but denied that they were slanderous, or could bear the innuendo attempted to be put upon them. They also averred that the statements made therein were substantially true; that the publication of the report was justifiable, and the statements therein privileged, as being the fair and reasonable discussion and criticism of matters of public concern, and that the leaderette, so far as it was not a mere resumé of actual facts in connection with the election to the Grand Chief Templarship, was a fair and reasonable criticism of the public action of the pursuer in his relations with a public body.

The defenders pleaded, *inter alia*:—“(1) The pursuer's statements are irrelevant, and the action should be dismissed. (2) The paragraphs, leaderette, and placard complained of, not being libellous, decree of absolvitor should be pronounced.”

On 13th January 1891 the Lord Ordinary (WELLWOOD) approved of the following issue for the pursuer—“It being admitted that the defenders are the printers, proprietors, and publishers of the *Evening Dispatch* newspaper, published in Edinburgh. It being also admitted that in the number of the said newspaper which bears date and was printed and published in Edinburgh upon the second day of Septem-

ber 1890 there was printed the paragraph set forth in the Schedule A hereto annexed, as also the editorial note or leaderette set forth in the Schedule B hereto annexed. Whether the defenders on 2nd September 1890 printed and published and publicly exposed a bill of contents of said newspaper, or large placard, bearing the words 'Mr Archer and his Crooked Ways?' And whether the said paragraph, note, and placard, or any of them, are of and concerning the pursuer, and falsely and calumniously represent that the pursuer's conduct had been dishonourable, to the pursuer's loss, injury, and damage? Damages laid at £500.”

The following counter issue for the defender was disallowed by the Lord Ordinary—“Whether, prior to the election of a Grand Chief Templar in August 1890, the pursuer represented to members of the Independent Order of Good Templars that he did not intend again to be a candidate for the office of Grand Chief Templar; and whether by said representations being repeated to him, James Hamilton, a member of said Order, was induced to believe that the pursuer would not be a candidate for said office, and was, with the knowledge and acquiescence of the pursuer, induced to become a candidate for said office himself; and whether the pursuer, notwithstanding said representations, and without any notice to the said James Hamilton, did become a candidate for the said office, and was elected to said office, and thereby defeated the candidature of the said James Hamilton?”

Opinion.—The defenders maintain that the pursuer's averments are wholly irrelevant, and that no issue should be allowed. The question is a narrow one, and the slander complained of, if it was a slander, was perhaps not very serious. But on considering the whole of the pursuer's averments I think that the case must go to a jury.

“The publications of which the pursuer complains were all inserted in or published in connection with an issue of the *Evening Dispatch* of 2nd September 1890. The pursuer complains—firstly, that the defenders published what bore to be a report of a weekly meeting of the Sir Walter Scott Lodge of the Independent Order of Good Templars in Scotland, of which the pursuer was then and is now Grand Worthy Chief Templar. In that report it is stated that 'Brother Hamilton,' who had been a candidate for the Grand Chiefship, stated that 'Brother Archer,' the pursuer, came to him and urged him to become a candidate as he had no intention of standing again for the post, and that subsequently, without giving him, Brother Hamilton, any notice of his change of mind, the pursuer presented himself as a candidate and was re-elected. In regard to the publication of this report the pursuer makes two complaints—First, that the statement attributed to Brother Hamilton is false in respect that he, the pursuer, never went to Brother Hamilton or urged him to become a candidate on the representation that he was not going to

stand again; and, secondly that the meeting was a private meeting, the proceedings of which should have been kept secret by the members of the lodge.

"The pursuer next complains that whether the publication of that report by itself would have been a good ground of action or not, the defenders have given it a calumnious meaning, and lost any privilege they might otherwise have had by inserting the heading 'Mr Archer's Crooked Ways.'

"The pursuer further complains that the defenders printed and published and publicly exposed in the streets and elsewhere a placard on which were printed in large type the words 'Mr Archer and his Crooked Ways;' and that in a leaderette in the same issue of the paper the defenders repeated the statement attributed to 'Brother Hamilton' in the report, and added—'It is to be hoped that this sharp practice, which is of a piece with the other proceedings of the official clique at the head of the Order, will not be lost upon the members.'

"The pursuer avers that by those publications the defenders falsely and calumniously represented him to have acted in a treacherous and dishonourable manner by intentionally inducing Brother Hamilton to become a candidate and sustain defeat by an untrue and deceitful representation that he, the pursuer, did not intend to seek re-election; and further, that the defenders hinted, by the heading and the passage in the leaderette which I have quoted, that this act of deceit and treachery was not a solitary one on the part of the pursuer, but of a piece with his previous conduct and that of the other officials at the head of the Order.

"The defenders, on the other hand, maintain that their words will not bear that meaning, and that, at the worst, they can only be read as meaning that the pursuer's conduct was shabby and not straightforward. I express no opinion as to which construction should be put upon the publications; that, I think, is a matter for a jury to decide in the knowledge of all the facts. All that I decide at present is, that the publications admit of the construction put upon them by the pursuer. In allowing an issue I am, to a certain extent, influenced by the consideration that the reported statement of Brother Hamilton, on which the defenders' comments bear to proceed, is not admitted by the pursuer to be true. Indeed, the defenders admit in their fourth answer, as I read it, either that Brother Hamilton was wrongly reported, or at least that the statement he then made was not in accordance with the facts. Something also depends on the question whether the meeting of the lodge was public or private.

"The pursuer's proposed issue which I have allowed is framed on the footing of putting in issue the whole of the publications made by the defenders and reading them together as a whole. I am not prepared to say that that is an unfair way of putting the case before the jury. Indeed, it is more favourable to the defenders than if the pursuer were to separate the para-

graphs, for instance, by taking a separate issue in regard to the printing and publishing of the placard.

"I have disallowed the counter issue proposed for the defenders, because it does not amount to a justification of the alleged slander. At the same time, I think that without a counter issue the defenders at the trial will be entitled to prove the circumstances in which the alleged libel was published. I do not think that such evidence will be excluded. In *Paul v. Jackson*, 11 R. 460, the Lord President, while stating that a defender is not entitled to prove the truth of the statements without a counter issue, or any part of them, in order to mitigate damages, or for any other purpose whatever, adds—'It is equally well settled, however, that a defender charged with slander is entitled to lay before the jury the circumstances in which the slander was uttered, in order to prove the state of his information with regard to the subject-matter, and to show that the offence and consequent injury to the pursuer is not so great as is represented, and so to diminish the amount of damages.'

"It will also be open to the defenders at the trial, without a counter issue, to prove, if they can, that the report was one which they were entitled to publish, and that it was an accurate report, and to maintain to the jury that their comments were fair and reasonable criticism on a matter of public interest and the actions of a public man, and therefore not calumnious—*Wright & Greig v. Outram & Company*, 16 R. 1004.

"The concluding paragraph of the pursuer's issue seems to be justified by the terms of the issue adjusted by the Inner House in the case of *Macrae v. Sutherland*, 16 R. 476."

The defenders reclaimed, and argued—There was no such denial by the pursuer of the truth of the facts stated in the report and leaderette as was necessary to entitle him to an issue—*Gray v. Society for Prevention of Cruelty to Animals*, July 18, 1890, 17 R. 1185; *Campbell v. Ferguson*, January 28, 1882, 9 R. 467. The documents were not in themselves libellous, and the innuendo was unreasonable and forced—*Fraser v. Morris*, February 24, 1888, 15 R. 454. The report being accurate was privileged, and so was the criticism in the leaderette, as it did not exceed the bounds of fair and reasonable criticism. If the case was sent to trial, separate issues should be adjusted referring to the separate documents complained of. Further, the defenders should be allowed a counter issue, for otherwise they would not be entitled to prove their counter averments—*Paul v. Jackson*, January 23, 1884, 11 R. 460; *Torrance v. Weddel*, December 12, 1868, 7 Macph. 243. The defenders were only bound under their counter issue to prove the substantial truth of the statements made by them.

Argued for the pursuer—The documents complained of were slanderous and would bear the innuendo put upon them. The epithet "crooked ways" was calumnious,

and was very suggestive of what was the intended meaning of the publications—*Cunningham v. Duncan & Jamieson*, February 2, 1889, 16 R. 383; *Dun v. Bain*, January 24, 1877, 4 R. 317. It was not desirable to dissociate in the issues the publications complained of. The facts pointed at in the counter issue might be proved without the counter issue. The counter issue did not meet the pursuer's case.

At advising—

LORD ADAM—This is an action of damages for slander brought by a Mr Archer against John Ritchie & Company, the proprietors of the *Evening Dispatch*. The documents said to contain the slander consist of a report which appeared in the *Evening Dispatch* of a meeting of a lodge of the Good Templar Society, a leaderette, and a placard.

The first of these documents, namely, the report of the meeting, is headed "Mr Archer's Crooked Ways," and states that a meeting of a Good Templar Lodge had been held, and that after certain business Brother Hamilton made these remarks—[*His Lordship then read the report of Brother Hamilton's address as given above*]. Now, this is a report of what Brother Hamilton is stated to have said, and it appears to me that it does not contain slanderous matter. What it reports Brother Hamilton to have said seems to me to be just this, that Brother Archer urged him to become a candidate for the Grand Chiefship, as he, Brother Archer, was not himself going to stand; that he, Brother Hamilton, consented, and that Brother Archer changed his mind—that is, after he had urged Brother Hamilton to stand, and gave him no intimation of this change of mind. That seems to me to be the only reasonable construction that can be put upon the document, and I certainly fail to see that it is a slanderous statement to say that a person who had urged another to stand as a candidate for a particular office, for which he did not mean at the time himself to stand, afterwards changed his mind, and offered himself as a candidate without giving the other person notice of his change of mind. It may be an accusation of discourteous conduct, as Lord M'Laren called it in the course of the discussion, but it appears to me to be nothing more than that, and I can see nothing slanderous in it. No doubt the report is headed "Mr Archer's Crooked Ways," but while that may be rather a strong epithet to apply to the proceedings referred to, I do not think it alters the result. So far therefore as the report is concerned, it does not appear to me to contain defamatory or slanderous matter.

The next document—the leaderette—is perhaps even less objectionable—[*His Lordship then read the leaderette already quoted*]. The difference between the leaderette and the report is just this—In the report it is stated that Mr Archer personally communicated to Mr Hamilton that he would not stand. In the leaderette all that is said is, that Mr Archer let it be known that he

did not intend to offer himself for re-election, and suggested that Mr Hamilton should stand, and then that he changed his mind and, as stated before, stood without giving Mr Hamilton any intimation of his change of mind. It appears to me that this is the reasonable construction of the document, and that being so, I can see nothing slanderous or defamatory in it.

No doubt, however, while there may be nothing slanderous upon the face of the documents, the pursuer is entitled to put an innuendo upon them, but, at the same time, he is not entitled to put upon them any innuendo he may choose to propose. In my view, the only innuendo which can be allowed in such circumstances is such as, on a fair and reasonable construction, the alleged slanderous documents will bear. The question, accordingly, which remains is, whether the proposed innuendo is one which can fairly be put upon the documents complained of? That innuendo is in these terms—"By the statements above quoted the defenders intended to represent, and did represent, that the pursuer had been guilty of deceitful and dishonourable conduct, and that he habitually indulged in conduct that was unfair and deceitful and dishonourable, and that he was unworthy of the confidence and respect of the members of the said Order." I fail to see that on a reasonable construction the documents contain any charge of deceitful or dishonourable conduct. If it had been said that Mr Archer intended himself to stand for the Chiefship at the time he urged Mr Hamilton to stand, and concealed his intention, that might have been a charge of deceitful conduct, but I should have thought it doubtful whether it was slanderous. No such statement, however, is made, and while the pursuer may be charged with discourtesy he is charged with nothing more. The innuendo proposed by the pursuer then goes on—"The said statements further represented that the pursuer had wilfully misled the said James Hamilton by statements which he, the pursuer, knew to be false, and that the pursuer had been guilty of unfair and treacherous conduct towards Mr Hamilton, and that the pursuer was a man who was frequently guilty of wilfully misleading others by statements known by him to be false, and of unfair and treacherous conduct in his dealings with others, and that he was a man who was unworthy of trust or confidence." I cannot see any possible reading of the documents which would lead to that construction. No false statement is alleged to have been made by Mr Archer. Nothing unfair or treacherous is alleged against him. In my opinion, therefore, the documents will not bear, on any reasonable or proper construction, the innuendo sought to be put upon them.

That disposes of everything but the placard, which the defenders are said to have issued upon the same day as they published the report and leaderette, bearing the words, "Mr Archer and his Crooked Ways." Now, that placard simply indicates to the public the contents of the newspaper, and

that anyone desirous to see it would find something in it which the publishers characterised as crooked ways. Now, that is a very strong expression, and probably comes being as near defamatory as can be, but, upon the whole matter, I do not think that any person reading that placard would put the construction upon it proposed by the pursuer, or would see anything in it detrimental to Mr Archer's reputation and character. Upon the whole matter, my opinion is that there is no issuable matter in the record, and differing from the Lord Ordinary, I think the action should be dismissed.

LORD M'LAREN—In this action, which is instituted against the proprietors of the *Evening Dispatch* newspaper, the pursuer claims damages for an alleged libel contained in (1) a report of a speech delivered by a gentleman designed as Brother Hamilton at a meeting of a branch of the Good Templar Society; (2) an editorial comment on this report; and (3) a placard in which the title of the editorial article is said to have been inserted, apparently by way of advertisement of the contents of the newspaper.

The Lord Ordinary has approved of an issue for the trial of the cause, and we are now to consider whether his Lordship's interlocutor is well founded—that is, whether an issue of libel can be extracted from the facts of the case as set forth in the summons and closed record.

As Mr Archer was not present at the meeting at which Mr Hamilton made the speech, he cannot in any view be held to have given a consent to the publication of the report of the proceedings, and therefore if the speech is a libel on Mr Archer, or if the speech contains expressions which may be properly sent to a jury on the issue of libel or no libel, the defenders are undoubtedly responsible for any damage which may have resulted from the publication. But it appears to me that the speech as reported does not contain any expressions reflecting on the pursuer's character or calling for vindication by legal proceedings. The substance of the speech (I mean the scheduled part of it) is this—Mr Hamilton refers to his own unsuccessful candidature for the presidency of the society, and he explains that Mr Archer, who is the President or "Grand Chief" of the society, had called on him at the end of a year of office, stating that he did not desire re-election, and inviting the speaker, Mr Hamilton, to come forward for the post. Then Mr Hamilton goes on to say that Mr Archer had eventually offered himself for re-election, but had not given the speaker any notice of his having changed his mind on the subject, and had thereby placed the speaker in an embarrassing position—in the position, which he did not desire, of appearing to oppose the re-election of his Chief.

The speech might possibly be construed into an imputation of want of courtesy on the part of Brother Archer towards Brother Hamilton. This is the only innuendo

which, as I think, can be extracted from the speech. The law, however, does not take cognisance of charges of this kind, but leaves it to the party aggrieved to put himself right with his friends by making the necessary explanations, to which he will generally be able to give the same publicity which was given to the original attack.

It is right to add that, as I read this speech, it was not intended to convey any imputation whatever against Mr Archer. Mr Hamilton merely sought to explain the cause of his apparent antagonism to Mr Archer, and in doing so he could not avoid mentioning Mr Archer's omission to give him notice of his change of mind. But his references to Mr Archer are perfectly respectful, and the circumstance that he received a vote of thanks for his address indicates that they were so understood by the audience, as it is not likely that the members of the society would vote their thanks for a speech which contained a covert attack on the character of their Chief.

The question arising on the editorial article or "leaderette" involves somewhat different considerations. The article refers to Mr Hamilton's speech, of which it gives a summary, and in commenting on the proceedings of Mr Archer the writer uses the expression Mr Archer's "sharp practice." I do not find that the article misrepresents what took place at the meeting. This is not alleged in the record, nor are there any facts alleged which would give a meaning to the article different from the apparent meaning. The case then is, that on a true report of a speech, which is not in itself libellous, the writer of the article expresses an unfavourable opinion regarding Brother Archer's conduct. Now, the expression of an opinion as to a state of facts truly set forth is not actionable, even when that opinion is couched in vituperative or contumelious language. The Good Templars are a society constituted for public objects and appealing to the public for support, and observations on their proceedings cannot be said to lie outside the legitimate sphere of journalism. I see nothing in the expressions used which can be construed as an imputation on the moral character of the pursuer—nothing, indeed, beyond what persons taking a part in public work must be content to bear with good temper, and, if necessary, to meet by suitable reply.

There remains for consideration the publication of the placard alleged to contain the inscription "Mr Archer and his Crooked Ways." The difference between this case and the case in the report is, that the placard of course goes to the public without the explanatory statement which renders innocuous the use of the same expression in the report. It is plain enough that a libel may be conveyed by a placard as well as by any other publication in print or writing. On the other hand, the proprietors of the newspaper are entitled to say that the primary and indeed sole ostensible purpose of the cir-

culatation of such placards is to call attention to the contents of the newspaper which is thus advertised. It is also to be observed that metaphorical expressions, such as "crooked ways," when applied to the acts of an individual may be intended to refer either to his moral or intellectual characteristics, or, it may be, to such faults of temper or breaches of the minor morals as may be criticised without exposing the critic to an action of damages. In this case the placard merely announced a paragraph in the newspaper on the subject of Mr Archer's "crooked ways." No facts are averred giving a sinister meaning to this expression, which I take to be not necessarily or obviously defamatory. The words do not naturally import a charge of deviation from moral rectitude, but rather a habit or preference for getting at results by circuitous and indirect methods, instead of by proceeding in a direct line to the object in view. Such insinuations when made with respect to the public action of an office-bearer or member of a social or political association may be disagreeable, but they are not actionable. They do not, in my opinion, amount to a charge of dishonesty. The Lord Ordinary has proposed to put in issue whether the pursuer is charged with "dishonourable conduct." But the word "dishonourable" is a mere epithet; it does not import a substantial charge, and is not self-explanatory. It is, I think, an expression of the same character as "crooked ways," and is not injurious in a legal sense. In all the circumstances, I am of opinion that there is no case here for a jury, and that the defenders are entitled to be assoilzied from the action.

LORD KINNEAR concurred.

The LORD PRESIDENT was absent.

The Court assoilzied the defenders.

Counsel for the Pursuer—Young—Orr.
Agents—Irons, Roberts, & Company, S.S.C.

Counsel for the Defenders—Jameson—Cooper. Agents—Henderson & Clark, W.S.

Thursday, March 19.

FIRST DIVISION.

[Lord Kincairney, Ordinary.]

LIQUIDATORS OF MOUNT MORGAN (WEST) GOLD MINE COMPANY, LIMITED v. M'MAHON.

Company—Forfeiture of Shares—Voluntary Liquidation—Claim for Calls—Fraudulent Prospectus.

M took shares in a limited company, paying the amounts due on application and allotment, but declined to pay further calls upon his shares on the ground that he had been induced to take shares by fraud. The directors, therefore, under powers conferred upon them by the articles of association, forfeited his

shares, and removed his name from the register. Shortly thereafter the company went into voluntary liquidation with a view to reconstruction, and the liquidators raised an action against M for payment of the calls made upon his shares, founding upon one of the articles of association, which provided that money payable in respect of any forfeited share should, notwithstanding the forfeiture, be payable to the company. It was admitted that the prospectus contained misrepresentations which would have entitled the defender to rescind his contract for taking shares if he had raised an action for that purpose before the liquidation, and that the debts of the company had all been paid.

The Court (*rev. Lord Kincairney*) *assolizied* the defender, *holding* that his contract of membership having been previously determined by a valid act of the directors, he was at the date of the liquidation merely a debtor of the company, and that to any claim for payment of the calls he had the unanswerable defence that his liability had arisen from a fraud.

The Mount Morgan (West) Gold Mine Company, Limited, was incorporated on 25th October 1886, with a capital of £200,000 in 200,000 shares of £1 each. By the articles of association (20-22) the directors were empowered to declare the shares of any member forfeited if he failed to pay calls made in respect of the shares. Art. 23 provided—"Any money which shall be payable to the company in respect of any forfeited share shall, notwithstanding the forfeiture, continue to be payable to the company, and shall be recoverable by them, with interest, from the forfeiting member or his representatives." Art. 24 provided—"The directors may sell, or otherwise dispose of, re-allot, re-appropriate, or extinguish any forfeited share in such manner as they may think proper; and the directors may, in their absolute discretion, remit or annul the forfeiture of any share, upon payment of all arrears and of all interest due thereon, together with such sum of money, if any, by way of fine, or upon such other terms and conditions as the directors shall determine."

John M'Mahon applied for and had allotted to him 100 shares of the company, and he paid 2s. per share on application, and 3s. on allotment. On 25th November 1886 the directors resolved that the remaining 15s. per share should be called up by three calls payable respectively on 22nd December 1886, and 4th February and 12th March 1887, but by subsequent resolutions the dates of the 2nd and 3rd calls were postponed until 18th February and 4th April respectively. These calls M'Mahon declined to pay on the ground that he had been induced to take shares by fraudulent misrepresentations in the prospectus, but he took no steps (as some other shareholders did with success) to have his contract of membership rescinded, or his name removed from the register, or the money he had already paid in respect of the shares re-