proof before answer, the Court *refused* to send the case to trial by a jury.

William Weir, cooper, near Fort William, sued the Lochaber District Committee of the Inverness County Council, and Neil Chisholm, their road contractor, for damages for personal injury sustained by him on 29th January 1891.

He averred that in passing a heap of stones which Chisholm's servant was breaking for road-metal he was struck by a splinter of stone, which destroyed the sight of his right eye. "The said accident was caused through the fault of the defenders. They were in fault in breaking stones at the place in question. It is a narrow strip of ground lying on the south side of said highway, and on the north side of the boundary wall of the Ben Nevis Distillery, between its main or cart entrance and the ice house. This strip of ground runs east and west, and is only 8 feet broad at the east end, and 7 feet 6 inches at the west end. It adjoins, and is in no way separated from the highway. Chips and splinters which flew off as the stones were being broken made the operation of breaking extremely dangerous to persons using the highway, which at this place is much used. The operation was attended with special danger at this place, because the stones were not the ordinary freestone which is usually broken up and spread upon roads, but were of peculiarly hard water-worn granite and whinstone, which is broken with difficulty, and is peculiarly liable to fly off in chips. Further, there was special danger from the proximity of the wall to the north, as the chips in flying off sometimes struck the wall and rebounded with great force at higher elevations than in their first flight, rising to the height of the eyes of grown-up people passing along, and even higher. These peculiar dangers were unknown to the pursuer, but were well known to the defenders. It was a duty incumbent upon the defenders accordingly to have obviated these dangers by selecting a site for breaking the stones at a safe distance from the highway, or at least by putting up a hoarding or some protection for the public. As matter of fact they took none of these precautions, nor any precautions whatever, and in consequence the accident in question was occasioned. The explanations in answer are denied. The danger of the practice of breaking stones close to the highway is now generally recognised, and in many districts in Scotland it has for the sake of safety been discontinued. The place above mentioned was selected by the defender Chisholm with the knowledge and consent of the other defenders, whose surveyor and other officials weekly inspected the road and the metal broken by Chisholm, and saw the operation of breaking it performed there, and yet made no objection, as they might have done and ought to have done, to its being broken there. If they had objected, Chisholm would have been bound to give effect to their objection under his contract with them."

Upon 7th November 1891 the Lord Ordinary (STORMONTH DARLING) allowed parties a proof before answer.

The pursuer appealed, and argued—This was an action for damages, and ought to be sent to trial by jury. No special cause was alleged for not sending the case to a jury—only the general cause of difficulty, which might be raised in almost every case of the kind—*Trotter* v. *Happer*, November 24, 1888, 16 R. 141.

The respondent argued — Besides the question of injury and damages to be tried in this case, there was an important legal question as to the relation between the County Council and Chisholm, the contractor. That was one special reason for refusing jury trial. Another was that the pursuer averred a custom of breaking stones different from that followed by the defenders, and there might be a legal question as to the necessity of the defenders to follow that custom if it was proved.

At advising—

LORD JUSTICE-CLERK — The Lord Ordinary has considered this matter, and allowed a proof of the parties' averments, and I think there has been nothing stated to us to-day that would lead us to alter his interlocutor. The Lord Ordinary has only allowed a proof before answer, and may decide the relevancy after he has heard the evidence.

LORD RUTHERFURD CLARK and LORD TRAYNER concurred.

LORD YOUNG was absent.

The Court adhered.

Counsel for the Reclaimer—M'Kechnie—A. S. D. Thomson. Agent—J. Stewart Galletly, S.S.C.

Counsel for the Respondent — Comrie Thomson — Tait. Agents — Forrester & Davidson, W.S.

Saturday, November 21.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

TURNBULL *v.* OLIVER.

Reparation — Landlord and Tenant—Wrongous Sequestration—Lease—Verbal Agreement—Relevancy.

A landlord sequestrated his tenant's crop for rent due under his lease. The tenant sued for damages on the ground that the sequestration was in breach of an agreement by the landlord to allow an abatement of rent, but he produced no evidence of the alleged agreement. *Held* that the lease could not be controlled by the alleged verbal agreement.

Reparation — Landlord and Tenant—Slander — Innuendo — "Dishonourable Conduct."

A landlord wrote to a tenant complaining that he had not implemented the award of an arbiter, and used those words—"I . . . am surprised at your conduct, which you must see is very dishonourable."

In an action of damages for slander by the tenant, *held* that the landlord's letter only addressed a remonstrance to the pursuer and appealed to his sense of honour, and that the words complained of were not actionable—*Law* v. *Gibsone*, 13 Sh. 396, *followed*.

John Turnbull raised the present action of damages for wrongous sequestration and for slander, against John Oliver, solicitor, Hawick.

In 1876 the defender let to the pursuer's father, who died in 1889, the farm of Burnflat, near Hawick, under a written lease for a period of fifteen years, from September 1876, and at a yearly rent of £40 for the first ten years of the lease, and £45 for the remaining five thereof. The smaller rent, however, continued to be paid down to Candlemas 1890. At Lammas of that year the defender claimed from the pursuer, who had succeeded his father, the sum of £22, 10s., being a half-year's rent at the rate £45 per annum, and on 29th September sequestrated the stock and crop on the farm for payment of that rent, and in security of the following half-year's rent at the same rate.

The pursuer averred that in September 1890, the defender at a meeting with him agreed to accept of the rent due at the former rate of £40 with certain abatements, and to postpone his demand for payment till the crop on the farm had been realised, and that in breach of this agreement the defender had illegally sequestrated his stock and crop on the above-mentioned day.

The defender averred that he had only agreed to accept payment of the smaller rent on condition of immediate payment, and that this condition not having been fulfilled he had sequestrated for the full rent. He further averred that the lease being a written document could not be controverted by a mere averment of a parole agreement.

Certain disputes had also arisen between the parties with reference to the state in which the defender as an outgoing tenant was to leave the fences on the farm. On a reference the arbiter decided against the pursuer and estimated the cost of the repairs necessary at the sum of £5, 19s. 6d. The pursuer, however, delayed payment on various grounds, and the defender in consequence wrote him the two following letters:—

"*Burnflat Fences.*

"Dear Sir,—I have received yours of yesterday, and am surprised at your conduct, which you must see is very dishonourable. We agreed to abide by the arbiter's decision. The arbiter having decided that you are to pay a sum of money in settlement, your duty now is to fulfil your obligation by sending me cheque in payment, as per note of yesterday. If I do not receive payment by return, I shall immediately serve you with a summons.—Yours truly, JNO. OLIVER."

"Dear Sir,—Since writing you yesterday I have seen Mr Hobkirk, who informs me that he sent you a copy of his award, and that he has never heard from you on the subject since. Behaviour of this kind is scandalous. You have no right to trouble Mr Hobkirk any further in the matter, and if I do not receive payment to-morrow, I shall take legal proceedings without delay. Please return my copy of the award.—Yours, &c., JNO. OLIVER."

The pursuer pleaded—"(1) The defender having maliciously and without cause taken wrongful, illegal, harsh, nimious, and oppressive proceedings against pursuer, and pursuer having been injured thereby, defender is liable to the pursuer in reparation. (2) The defender having falsely, calumniously, and maliciously slandered the pursuer as set forth, is liable to him in reparation as concluded for."

The defender pleaded, *inter alia*—"(1) The pursuer's statements are irrelevant and insufficient to support the conclusions of the action. (3) The defender not having slandered the pursuer, he should be assoilzied."

On 15th July 1891 the Lord Ordinary (KINCAIRNEY), before answer, appointed the pursuer to lodge issues.

On 31st October 1891 his Lordship approved of the following issues for the trial of the cause—"(1) Whether on or about the 29th day of September 1890 the defender wrongfully sequestrated stock, crop, and other effects belonging to the pursuer on the lands of Burnflat, near Hawick, to the loss, injury, and damage of the pursuer? Damages laid at £500. (2) Whether, in or about the month of April 1891, the defender falsely and calumniously wrote and despatched to the pursuer the letters set forth in the schedule hereto annexed, and whether the said letters are of and concerning the pursuer, and falsely and calumniously represent him as having been guilty of dishonourable conduct, to the loss, injury, and damage of the pursuer? Damages laid at £500."

"*Opinion.*—I have come to the conclusion, although with considerable hesitation, that the issues as finally proposed should be allowed. The first issue is proposed to try the conclusion for damages for wrongous sequestration, and is admittedly expressed in the appropriate terms—*Watson* v. *M'Culloch*, July 1, 1878, 5 R. 843. But the defender maintains that the record does not warrant any such issue. What the pursuer alleges is that the landlord agreed to abate the rent, and to allow time for payment of it, and that the sequestration was used for the full rent and before the lapse of the time allowed. It is not maintained that it was wrongous for any other reason. It is indeed averred that the stock sequestrated was greatly in excess, but it was explicitly admitted at the debate that no more was meant by that averment than that it exceeded what was necessary to cover the abated rent, and it was con-

ceded that there would have been no actionable excess had there been no abatement.

"The defender's objection was that it was incompetent to prove by parole the alleged agreement to abate the rent and to allow time for payment, and reference was made to *Gibb* v. *Murray*, May 28, 1829, 7 S. D. 677; *Law* v. *Gibsone*, February 3, 1835, 13 S. D. 396; and *Kirkpatrick* v. *Allanshaw Coal Company*, December 17, 1880, 8 R. 327.

"I express no opinion on this argument at present, but it appears to me that it does not follow from it that the issue must be disallowed. The question may arise at the trial, or perhaps it may not arise. The pursuer does not admit that there is no written evidence of the alteration of the terms of the lease which he alleges. If he recovers such evidence the question will not arise at all. If he fails to recover it, then the defender's plea will arise, and if it be sound—and I indicate no opinion to the contrary—then the result will be that the pursuer will lose this issue. But I incline to think, having regard to the averments on record, that it is safest to allow the case to go to trial without any prejudgment of this point.

"The pursuer desired to delete the word 'dishonest' in the second proposed issue, and did not desire to innuendo the word 'dishonourable,' used in the first letter, as meaning 'dishonest.' He held that it was actionable without an innuendo to characterise a man's conduct as dishonourable.

"The case of *Macrae* v. *Sutherland*, February 9, 1889, 16 R. 476, is a judgment to the effect that it is actionable to represent that a man's character is dishonourable, and it appears to me to follow that it is equally actionable to accuse a man of dishonourable conduct. It is true that considerable doubt is thrown on this point by the opinion of Lord M'Laren in *Archer* v. *Ritchie*, March 19, 1890, 18 R. 719; but I think I am bound to follow the judgment in the case of *Macrae*, and I confess that it appears to me that the epithet 'dishonourable' is almost, if not altogether, equivalent to 'dishonest,' and is in ordinary language equally expressive of moral turpitude.

"I send the case to a jury with considerable reluctance, for the lawsuit is of the most trivial character, and creditable, as it seems to me, to neither party."

The defender reclaimed, and argued—There was here no ground of action, and both issues should be disallowed. (1) *On the question of wrongous sequestration*—The sequestration was competent. There was here no averment by the pursuer of anything but a parole agreement to found on. Parole evidence was incompetent to overturn the terms of a written lease—*Gibb* v. *Winning*, May 28, 1829, 7 S. 677; *Law* v. *Gibsone*, February 3, 1835, 13 S. 396; *Kirkpatrick* v. *Allanshaw Coal Company*, December 17, 1880, 8 R. 327. The only new actings averred were prior to the alleged verbal agreement, and so of no effect. (2) *On the question of slander*—It was not libellous in a wrangle to describe conduct as dishonourable—*Archer* v. *Ritchie & Company*, March 19, 1891, 18 R. 719, and Lord M'Laren's opinion, p. 726. The cases of *Macrae* v. *Sutherland*, February 9, 1889, 16 R. 476, and *Blasquez* v. *Lothians Racing Club and Reid*, June 29, 1889, 16 R. 893, fell to be distinguished, as there the words complained of had been communicated to third parties. In the case of *Drew* v. *Mackenzie & Company*, February 28, 1862, 24 D. 649, there was an imputation of dishonesty, not of dishonourable conduct.

The respondent argued—(1) On the first question—There was here a relevant averment of actings on the new agreement, and inquiry should be allowed—*Bargaddie Coal Company* v. *Wark*, March 11, 1859, 3 Macq. H.L. App. 467, and *Sutherland* v. *Montrose Shipbuilding Company*, February 3, 1860, 22 D. 665. (2) The word "dishonourable" had here got a definite meaning, and the Lord Ordinary had done what was safe in allowing an inquiry as to what was meant, and if anything had been done to hurt.

At advising—

LORD PRESIDENT—The first ground on which the action is laid is the averment that the defender carried out the sequestration wrongfully, and the alleged wrong is that the sequestration was in direct breach of an agreement with the pursuer, by which in place of the rent of £45 the defender had agreed to accept a rent of £40. The whole case is contained in articles 2 and 4 of the condescendence, and the sole reason the pursuer avers for bringing his action is that the sequestration was brought against him for £22, 10s. instead of £20. Now, it is plain, on a statement of the case, that this is an averment of a mere parole agreement, and the position of the pursuer is, that without asking for a diligence, or offering any evidence in writing, he is seeking to set up a verbal agreement in contradiction of the terms of a written lease. The Court is, however, bound to deal with the case as it stands, and must decide it in accordance with the rule "*De non apparentibus et non existentibus eadem est ratio.*" The case of *Law* v. *Gibsone*, quoted by Mr Sym, is directly in point, while the other cases cited do not deal with a question of wrongous sequestration as that one does. I therefore think that there is no ground of action on the question of sequestration, and that the first issue should be disallowed.

The second issue is laid on two letters regarding transactions which had arisen out of the lease of the farm. In these the defender is simply complaining of the pursuer not having fulfilled his obligation by sending a cheque in accordance with the arbiter's award. The use of the word "dishonourable" in one of these letters is the sole ground of action, and it is here important to observe that the defender, the writer of the letter, prefixed to the word "dishonourable" the words "which you must see," so that it is really a remonstrance which he is addressing to the pursuer, and an appeal to his sense of honour. Can it therefore be said that in a matter of controversy the use of such a word addressed as a remon-

strance may be held as a ground of action? The word "dishonourable" does not of itself contain any accusation of moral turpitude or disgrace, and, as was observed by Lord Adam, the sense of honour varies in different classes, and according as the appeal is made to a particular individual. The word "dishonourable," however, may be used in cases involving moral turpitude or disgrace, and this judgment lays down no rule that an issue will not be allowed if the word be properly innuendoed. I am therefore of opinion that the action is untenable on both grounds.

LORD ADAM concurred.

LORD M'LAREN—I agree upon both grounds. The Lord Ordinary has referred to my remarks in the case of *Archer* v. *Ritchie & Company*. I there said, with the concurrence of my colleagues, that we should not be disposed to allow an issue because the charge of "dishonourable" was in itself too vague. I did not say—I do not say now—that the word "dishonourable" may not be used in a way to characterise a man's conduct and actions so as to injure him in the sight of his fellow-men. But in a question between creditor and debtor it must be conceded that the party who thinks his just right is being hurt may express his opinion under the rule which excludes an action on mere vituperative epithets.

LORD KINNEAR concurred.

The Court disallowed the issues and assoilzied the defender.

Counsel for Pursuer and Respondent—Comrie Thomson—Wilson. Agent—John Elder, S.S.C.

Counsel for Defender and Reclaimer—Jameson—Sym. Agents—W. & J. Burness, W.S.

REGISTRATION APPEAL COURT.

Monday, November 23.

(Before Lord Adam, Lord Trayner, and Lord Kincairney.)

BURNS *v.* CASSELLS.

Election Law—Registration—Claim Signed by Person having no Mandate—Registration of Voters (Scotland) Act 1856 (19 *and* 20 *Vict. c.* 58), *sec.* 36.

Held that a claim to be enrolled on the register of voters, signed on behalf of the claimant by the organising secretary of a political association who had no mandate, written or otherwise, from the claimant, was bad.

At a Registration Court for the North-Eastern Division of Lanarkshire, held at Motherwell on the 5th day of October 1891, a claim to be enrolled on the register of voters for the North-Eastern Division of Lanarkshire was made on behalf of Matthew Cassells in respect of his being joint-tenant of minerals at Blackridge, in the parish of Shotts, in said division. The claim form was signed—"Matthew Cassells, per J. Jack Robertson."

James Burns, solicitor, Motherwell, objected that Mr Cassells had not signed the claim nor authorised Mr Robertson to sign same for him, and that even though Mr Robertson had a mandate he did not sign as agent or mandatory nor give his designation.

It was admitted that Mr Robertson had no written mandate to sign the claim, and it was not proved that he had authority to do so from the claimant and respondent, but it was stated that he was authorised by the Unionist Association of the district to do so, and in most of the cases the claimants were aware that claims were being made for them. Mr Robertson, who was not a law-agent, was the recognised organising secretary for the Conservatives for that division of the county, and it was contended that he had a presumed mandate from Cassells and all parties for whom he signed claims.

Cassells had the necessary qualification entitling him to be put on the roll if the claim was valid.

The Sheriff-Substitute (MAIR) admitted the claim.

A case was stated for the Court of Appeal, the question of law being—"Whether a claim signed in the manner and in the circumstances above set forth was a valid claim under the Registration Statutes?"

The Registration of Voters (Scotland) Act 1856 (19 and 20 Vict. c. 58), sec. 36, provides—"Any claim, objection, notice of appeal, or other writ may be signed, and any proceedings under this Act may be prosecuted, by any person as agent or mandatory for the party thereto, and any mandate bearing to be signed by such party shall be *prima facie* a sufficient mandate, and every such mandate shall have all the privileges attached to any judicial mandate."

The respondent referred to *Rutherfurd* v. *Lockie*, 1880, 8 R. 6, 18 S.L.R. 71; *Davies* v. *Hopkins*, November 16, 1857, 27 L.J., C.P. 6.

At advising—

LORD ADAM—I think the case upon the merits is clear. The claim for the respondent was signed "Matthew Cassells, per J. Jack Robertson." Now, upon the face of it, that signature does not bear to be as agent or mandatory for Mr Cassells. When the case came before the Sheriff objection was taken to the claim in respect that Mr Cassells had given no authority or mandate to Mr Robertson to sign for him. That was a question of fact. The findings with which we have to deal are these—"It was admitted that Mr Robertson had no written mandate to sign the claim, and it was not proved that he had authority to do so from the claimant and respondent." Now, upon that statement