me to take a different view from your Lordships as to what the judgment should be.

LORD GUTHRIE—It seems to be that the rules are quite clear on this matter. By these rules it is evident that this was understood and intended to be a benefit to the member himself. No doubt, whatever the rules say, we must look to the essence of the matter. The sound construction of the statute must rule, and cannot be avoided by any rules, however expressed. The benefit in question results to the advantage both of the member himself and, as in this case, to the advantage of his wife and children. The member in entering into the contract has in view his own benefit, because he makes it certain that his remains shall escape what is universally looked upon as the disgrace of a pauper funeral. No doubt, secondarily, he has in view that at a specially straitened time his family shall not be burdened with the expense of his funeral. But that does not seem to me the primary benefit, which I think is a benefit to the member.

The Court affirmed the Sheriff's interlocutor.

Counsel for the Pursuer—Stevenson. Agent—Thomas J. Connolly, Solicitor.

Counsel for the Defenders—Morton, K.C.—J. A. Christie. Agent—Sterling Craig, S.S.C.

Saturday, July 20.

SECOND DIVISION.

[Lord Anderson, Ordinary.

MAZURE *v.* STUBBS LIMITED.

Reparation—Slander—Innuendo—Newspaper—Black List.

The defenders in an action of damages for slander were the proprietors and publishers of a weekly gazette having a large trade circulation, which contained a column of names of persons against whom a decree in absence had been pronounced in the Small Debt Courts. The list was prefaced by an explanatory note to the effect that the mere publication of the decree in absence in the gazette did not imply inability to pay on the part of the person named in connection therewith, or anything more than that the entry published appeared in the court books. In a particular issue of the gazette there appeared in this column the name of the pursuer as a person against whom decree in absence had been pronounced, no such decree having in fact been pronounced. The pursuer recovered damages upon the innuendo 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." *Held* that the innuendo was justifiable, and had in fact on a proof been substantiated.

Russell v. *Stubbs Limited*, 1913 S.C. (H.L.) 14, 50 S.L.R. 676, *commented on* and *distiuguished.*

Samuel David Mazure, licensed broker, 125 Allison Street, Glasgow, *pursuer*, brought an action of damages for slander against Stubbs Limited, *defenders*, based upon the following entry in the defenders' published list of "Extracts from the Court Book of Decrees in Absence in the Small Debt Courts":—

Court.	Date.	Pursuers.	Defenders.	Amount in Decree.
Dumbarton	1916 Oct. 3	E. Barrow, Glasgow	S. Mazure, rag, rope, paper and metal merchant, 96 Church Street, Dumbarton	£12 11/

The said list had prefixed to it this 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."

The pursuer *averred*—"(Cond. 5) 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. . . ."

The pursuer *pleaded, inter alia*—"1. The pursuer having been slandered by the defenders is entitled to reparation."

The defenders pleaded, *inter alia*—"1. The averments of the pursuer being irrelevant, and *separatim* lacking in specification, the action should be dismissed. 2. The defenders not having slandered the pursuer should be assoilzied."

The *facts* are given in the opinions of the Lord Ordinary (ANDERSON), who on 31st May 1917 repelled the defenders' first plea and allowed a proof.

Opinion.—"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.

"In pre-war days I should have pronounced an order for issues, and the question of relevancy would have been debated and determined at the adjustment thereof. I heard a debate on relevancy in the procedure roll, as cases of this sort are now dealt with by way of proof and not jury trial. But I propose to consider and dispose of the question of relevancy as if the case were to be decided by a jury—that is, I shall at this stage endeavour to determine whether or not the meaning ascribed by the pursuer to the entry published by the defenders is 'a reasonable, natural, or necessary interpretation of its terms,' the test postulated by Lord Shaw in the case of *Russell* v. *Stubbs Limited*, 1913 S.C. (H.L.) 14, 50 S.L.R. 676.

"The defenders argued that the case was irrelevant in respect that the proposed innuendo was unjustifiable, and maintained that the decision in the case of *Russell* was exactly in point. To determine whether this contention is sound it is necessary to consider what were the facts in *Russell* and what that case really decided. The facts in *Russell* were that the defenders published what had in point of fact been recorded in the Court books, to wit, that a decree in absence had been passed against the pursuer. This entry has been altered in the books of Court subsequent to its having been copied by the defenders and the true account of what had taken place in Court substituted for the erroneous account which had been copied by the defenders. The amended and accurate entry bore that the case had been dismissed. The innuendo put upon the publication of the entry in the case of *Russell* was that it represented that the pursuer 'was unable to pay his debts.' The House of Lords decided that the entry, when read in conjunction with an explanatory note published by the defenders in their gazette in association with the entry complained of, would not bear the innuendo suggested, and that the issue fell to be disallowed.

"The explanatory note referred to played an important part in bringing about the decision in *Russell*. The reasoning of Lord Kinnear, who gave the leading judgment, may I think be summarised in these propositions—(1) The mere entry complained of is not *per se* libellous, (2) that the entry is really meaningless unless the heading is referred to, (3) the explanatory note appended to the heading must be read along with the heading and with the appended entries, (4) the statements in the explanatory note necessarily negative the innuendo proponed by the pursuer.

"To these propositions, which I think are exhaustive of the reasoning of Lord Kinnear, the Solicitor-General for the defenders suggested that a fifth proposition should be added which he maintained was involved in the decision, to wit, that the statements embodied in the explanatory note excluded any defamatory innuendo. I am unable to accept this contention. I do not read the case of *Russell* as deciding anything more than that the particular innuendo proponed was unjustifiable.

"The House of Lords in effect decided that an innuendo of 'inability to pay' could not be justified against a defender who said, 'My statement must not be held as implying inability to pay.' That is the only representation which the explanatory note expressly repudiates, unless the general statement which follows is to be held as including all other possible defamatory innuendos. In view of what was said by Lord Shaw in *Russell*, to which I shall allude in the sequel, I am not prepared to give that general statement the meaning contended for.

"The outstanding difference in fact between this case and *Russell* is that whereas in the latter case the defenders had some justification for the publication, in the present they had none. The only official entry in the books of Court is to the effect that the summons against the pursuer was 'not returned,' that is, had not come into the hands of the officials of Court. The defenders' clerkess made a serious blunder in reading this entry as one indicating that a decree in absence had been pronounced. Lord Kinnear had some observations pointing to the necessity of care and circumspection on the part of those conducting undertakings like the defenders', which observations seem to be pertinent to what was done in the present case. I have difficulty in holding that this is a case in which the defenders may competently appeal to their published explanatory note. That note applies only to published extracts from the Court books, and it is common ground that no Court book contained an entry to the effect published.

"But I shall take the case on the footing that the defenders' explanatory note may be legitimately referred to. The innuendo now proposed is entirely different from that dealt with in *Russell*. It is not surprising that the House of Lords held in *Russell* that the statement that a person had been judicially ordered to pay £9 did not reasonably or naturally imply that he could not pay any of his debts. It is quite a different suggestion which the pursuer makes in this case. He maintains that it is a reasonable conclusion to be drawn from the publication complained of that he was given to delay making payment of his debts—that he required a legal spur—and that accordingly it was inadvisable to give him credit. The only other conceivable inferences are that he did not know what was taking place, or that he was so careless of his affairs as to make no arrangements for paying the particular debt—inferences which in the case of a tradesman conducting a business on credit and by means of a banking account are far fetched and unwarrantable.

"I therefore hold that if I were adjusting an issue my duty would be to send the case to a jury on the ground that the

innuendo suggested by the pursuer was *prima facie* reasonable and natural.

"I am confirmed in the conclusion I have reached by a consideration of certain observations contained in the judgment of Lord Shaw in *Russell.* He figures the very case disclosed in these pleadings, and the pursuer has proponed the very innuendo which Lord Shaw suggests as being not unreasonable. Lord Shaw figures certain reasons which might account for the passing of a decree in absence, none of which would injuriously affect the reputation or trade of the debtor. The fourth suppositious case figured by the noble and learned Lord is that the debtor was a person given to refusing or delaying to pay his debts in ordinary and proper course. But then Lord Shaw goes on to say regarding this last-mentioned case—'This 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.'

"I shall accordingly repel the defenders' first plea-in-law and allow a proof."

On 18th January 1918 the Lord Ordinary, after a proof, sustained the first plea-in-law for the pursuer and assessed the damages at the sum of £50.

Opinion.—"I refer to my former opinion.

"The facts disclosed by the proof as to the Small Debt Court litigation are as follows—In August 1916 the pursuer was due to E. Barron, rag merchant, Glasgow, a balance of an account amounting to £12, 11s. The pursuer considered that Barron's account had been overcharged, and he offered £6 in settlement of the foresaid balance. This offer was refused by Barron, who on 7th September had a Small Debt summons for said sum of £12, 11s. served by post on the pursuer. On the same day, according to the receipt, a settlement of the action was effected between the pursuer and Barron by a payment of £9, 10s. being made by the pursuer. Thereafter the occurrences took place as narrated in the record and in my former opinion, which eventuated in the publication complained of.

"The action may now be most compendiously disposed of by considering the points made at the hearing on evidence by the defender's counsel.

"1. The general contention formerly maintained was reiterated, to wit, that the defenders were immune from any action of damages for defamation in respect of (*a*) the terms of the explanatory note published in their Gazette, and (*b*) of the judgment of the House of Lords in *Russell.*

"I have already dealt with this general contention, and see no reason for altering in any respect the views I formerly expressed. As to the explanatory note it was suggested that by its terms a reader of the Gazette is interpelled from drawing any defamatory inference from any published entry in the black list. I am unable to accept this suggestion. In my opinion the whole purpose of the publication of this list is to induce an inference as to the credit of those named in it. The publishers by this list say in effect to their readers 'Beware of trading with those who are blacklisted; their credit is doubtful.' This being the design of the defenders' publication I hold that they are debarred from maintaining that no imputation against financial credit is intended. That is the very imputation that the defenders aim at conveying.

"As to the case of *Russell* a consideration of that decision confirms me in the view I formerly expressed that it decided no general point but merely declared that the particular innuendo proposed was inadmissible. This is made clear by a consideration of the facts averred and proved, the argument addressed to the House of Lords by counsel, and the opinions delivered by the noble and learned Lords.

"One of the most conclusively settled doctrines of our law is that an employer is responsible for the negligence of an employee while acting within the scope of his employment. The defenders maintain that the House of Lords decided in *Russell* that they alone of all employers are to be immune from the operation of this general rule of law. I am satisfied that this immunity has not been conferred on the defenders by that decision.

"The only foundation for this suggestion is the general statement made by Lord Kinnear towards the end of his opinion, where he says, 'I cannot say that I see any other libellous suggestion in the publication complained of if the pursuer's innuendo fails.' I make these three remarks with reference to that general observation—(1) It is purely obiter, as the judgment of the Court is based on the terms of the innuendo proposed; (2) it is inconsistent, not only with certain passages in the opinion of Lord Shaw, but with what Lord Kinnear himself said at the outset of his opinion, where he points out that those in the position of the defenders have a duty of care and circumspection with reference to what they publish, and that they 'take the risk of their own interpretation of the entries which they may not perfectly understand.' The only conceivable risk the defenders run is that of being called to account in an action for defamation, and this risk would not exist if the defenders' publication were incapable of being construed as defamatory; and (3) I prefer the former part of Lord Kinnear's opinion to the latter, because, as I have already stated, the publication of a name in the defenders' black list necessarily compels in my opinion an inference of dubious credit. If this inference is induced

by a statement which is false the result is that there is defamation.

"2. The defenders next maintained that assuming they were wrong on the preceding general contention the pursuer had not proved that he fell within the exceptional case figured by Lord Shaw as 'justifying an action for defamation.' I do not regard the cases figured by Lord Shaw as being exhaustive of those in which such an action would be competent. If, however, it be necessary for the pursuer's success that he should bring his case within the category referred to by Lord Shaw, I think he has done so.

"The pursuer's business is of a somewhat humble character, depending to a certain extent upon the obtaining of credit. He has met his obligations regularly in the past, and so far as the proof disclosed had never before been in a court of law. This therefore seems to me to be just the kind of case which Lord Shaw had in view when he stated that in such a case an action for defamation would lie.

"3. The defenders next argued that the innuendo had not been proved. I am against the defenders on this point. I am of opinion that the parole testimony substantiates the pursuer's innuendo. Thus the witness Easden deponed—'The impression produced upon my mind at the time was either that his credit was very low or that, as he explained, the entry was a mistake.' Mark Osborne stated—'We subscribe to Stubbs' Gazette in order to see if there are any people getting blacklisted so as not to give them credit.' And again—'(Q) When you read the entry in Stubbs' Gazette what impression did it produce on your mind?—(A) When you see a man is blacklisted you don't want to give him credit. (Q) You think you may have trouble with him?—(A) Yes.' And the witness Campbell deponed—'I could not see why I should take the trouble of selling scrap and take the risk of not getting the money, when I could sell it without any question whatever. What influenced me in this case was the feeling that there had been some refusal to pay on his part, or that he was getting inclined to fail to pay, or becoming reckless with regard to his financial position, and I had not quite made up my mind on the point, and simply put him off. (Q) Was it because you heard about his name being in the black list?—(A) That led to my frame of mind in the matter.' It was however conceded that apart from what was deponed to on this point by the witnesses the pursuer would succeed if the Court took the view that the innuendo had been established. It is well settled that it is for the Court to determine at the stage of adjustment of issues whether or not a proposed innuendo is reasonable. It seems to me to follow that in the procedure followed in the present case where the Court is discharging the functions of a jury it must decide at the final stage of the action whether the innuendo has been made out. I am of opinion that the innuendo has been substantiated, and that the publication conveys in substantial effect the imputation alleged by the pursuer. Reading what has been published by the defenders regarding the pursuer I necessarily conclude that he had refused or delayed to pay his debts, and that he was a person to whom credit ought not to be given.

"4. The defenders next maintained that the pursuer was himself responsible in whole or at all events in part for what had occurred, and therefore could not recover damages. Reference was made to the Small Debt Act 1837 (7 Will. IV and 1 Vict. cap. 41), sections 3, 15, 16, and 17, and to the case of *Ormiston*, 4 Macph. 488.

"I have no doubt that the duty was primarily on the creditor Barron, who had accepted a payment in settlement of the action, to take steps to prevent any decree going out against the pursuer. Barron or his agent discharged this duty by (presumably) putting the principal copy of the summons in the fire.

"The case of *Ormiston*, however, shows that there may be circumstances in which there is also a duty on a debtor to see that no decree in an action which has been settled goes out against him. If it be that the pursuer had any duty in this direction, I hold that he discharged it by instructing a law agent to attend the Court and see that no decree was pronounced inconsistent with the settlement which had been effected. The law agent attended as instructed, and made sure that the case was not called and that no decree was pronounced. That seems to me to be a complete discharge of any duty incumbent on the pursuer. But the defenders say the pursuer's solicitor should have done something more. It is suggested that he should have moved the Sheriff to grant decree of absolvitor. I am unable to agree with this suggestion. It is not difficult to surmise what would have occurred had such a motion been made. The agent would have been told that there was no such case before the Court, and that the Sheriff had no writ whereon he could write the decree proposed.

"5. Finally, the defenders maintained that no damage in consequence of the publication had been sustained or proved. On this point I am with the defenders to this extent, that I think the pursuer has come far short of proving the somewhat exaggerated averments of damage which he makes. But I am of opinion (1) that he has proved some special damage, and (2) that in a case of defamation he is by our system entitled to an award apart from proof of special damage.

"On the matter of amount of damages I was referred to the sum awarded by a jury in the case of *Anderson* v. *Gibson & Company*, 24 R. 556, 34 S.L.R. 435 and 631, and which the Court refused to modify. The present case does not, however, appear to me to be one for a large award of damages, and I think I am doing the pursuer full justice by assessing the damages at the sum of £50."

The defenders reclaimed, and argued—The explanatory note at the head of the list in question here was so framed as to exclude the innuendo complained of. Any possible innuendo was not libellous, it not being

libellous to say that a man had not paid a particular debt. The publication did not imply that the pursuer was unable to pay his debts or that he was dishonestly refusing to do so. It was decided in the case of *Russell* v. *Stubbs Limited*, 1913 S.C. (H.L.) 14, 50 S.L.R. 676, (*a*) that an entry in a gazette of a decree in absence was not *per se* libellous, and (*b*) that the explanatory head-note in Stubbs' list fell to be read along with the rest of the publication, and was to receive effect as a qualification of the entries therein. The difference in the head-notes distinguished the case of *Russell* v. *Stubbs Limited* (*cit.*) from that of *Crabbe & Robertson* v. *Stubbs Limited*, (1895) 22 R. 860, 32 S.L.R. 650.

Argued for the respondent—The pursuer had suffered serious prejudice in his business even although he might not be able to prove a total cessation of the credit given him. Apart from the head-note the entry in the list was *per se* injurious to the pursuer and his business. The mere publication of the pursuer's name in the list was defamatory and served to call in question publicly his business integrity. It constituted an attack on his credit. The pursuer did not require to prove the innuendo as it was contained in the exact words put on record. In the case of *Russell* v. *Stubbs Limited* (*cit.*) the Court did not decide a general point of law, but merely negatived the particular innuendo which the pursuer in that case chose to put on the entry, viz., that the pursuer was insolvent. A correct report was protected by privilege, but for which it might be slanderous—*Searles* v. *Scarlett*, [1892] 2 Q.B. 56. In the present case, however, the entry in the list was entirely erroneous. Publication of a single decree in absence was not so forcible as a series of them would be, but when inserted in a collocation of such decrees it gained in force through being one of a list of such cases. Counsel also referred to *Anderson* v. *Gibson & Company*, (1897) 24 R. 556, 34 S.L.R. 435, 631; and *Crabbe & Robertson* v. *Stubbs Limited* (*cit.*).

At advising—

LORD JUSTICE-CLERK—The first question which has to be determined in this case is what was decided in the previous case of *Russell* v. *Stubbs*, 1913 S.C. (H.L.) 14. The defenders maintain that the result of that judgment was to give them complete protection against such an action as the present. I do not agree with this view. I think the Lord Ordinary was right when he said—"I do not read the case of *Russell* as deciding anything more than that the particular innuendo proponed was unjustifiable." Lord Kinnear in his judgment no doubt said—"I cannot say that I see any other libellous suggestion in the publication complained of if the pursuer's innuendo fails, and there are no extrinsic facts averred which would support any other." He went on, however, to add—"But I do not propose to put my judgment upon that ground. I make the observation in passing, but the true ground of judgment is to my mind that the pursuer must allege his own ground of action. . . . If it cannot be sustained as he states it, it is not for the Court to discover some other ground"—and his Lordship had already indicated his opinion that the innuendo proposed by the pursuer was not permissible. Lord Kinnear's view as to other innuendoes was thus expressly put as an *obiter dictum*. Lord Shaw in his judgment indicated more than one innuendo which he thought would have been permissible, and I think there may be others besides those suggested in Lord Shaw's judgment.

The pursuer, following the suggestions which Lord Shaw made, has in my opinion stated a relevant case and included in his averments that of a proper and permissible innuendo.

The proof is not so satisfactory as I would have wished. But I think it is sufficient. It is proved in my opinion that the defender's publication is known popularly as a "black list."

As soon as the entry complained of appeared, suspicion attached to the pursuer and his credit because of it. The evidence of the witnesses Osborne, Easden, and Campbell may be specially referred to.

The pursuer is a respectable tradesman whose credit had never been questioned before—there was no warrant at all for the entry, as no decree had been pronounced against the pursuer. The defenders made a mistake—which in my opinion it has been proved injured the pursuer's credit—and the defenders must pay for their mistake so far as damages or solatium requires.

The defenders raised no point for decision as to the amount of the damages awarded though they thought the amount large.

In my opinion we ought to refuse the reclaiming note.

LORD DUNDAS—I have found this to be rather a puzzling case, but I think we should adhere to the Lord Ordinary's interlocutor. *Prima facie* it seems to me that the proprietors of Stubbs' Gazette, a publication carried on for profit, and obtainable by any member of the public who chooses to pay his subscription money, must in law be responsible for any damages which can be shown to have in a reasonable sense been caused by the publication in their Gazette of an erroneous entry. Persons who engage in a trade like this volunteer their information not from any sense of duty but as a matter of business and must risk the consequences which may follow if the information they publish is erroneous—*cf. Macintosh*, [1908] A.C. 390; *Barr*, 1912 S.C. 174, 49 S.L.R. 102. But when one comes to consider decided cases closely touching the question now raised I confess I find it somewhat difficult to affirm precisely how the law stands. I think, however, that the case of *Russell* v. *Stubbs*, 1913 S.C. (H.L.) 14, laid down as matter of decision no more than that the particular innuendo there put forward would not do, viz., that "the pursuer was unable to pay his debts." When Lord Kinnear remarked "I cannot say that I see any other libellous suggestion in the publication

complained of if the pursuer's innuendo fails," the context shows that his Lordship's observation was purely *obiter dictum*. The present pursuer, however, founds upon remarks made by Lord Shaw to the effect that the suggestion that someone is "a person given to refusing or delaying to pay his debts in ordinary and proper course . . . might possibly affect the reputation and credit of the alleged debtor" and be productive of injury to him, to which his Lordship added—"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 this sense." The pursuer's source of inspiration is unmistakable, when he avers (cond. 5) that the entry complained of falsely represented 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. I do not admire such plagiarism as matter of pleading, but the presence of Lord Shaw's dictum or part of it on the record had weight with me when on 3rd July 1917, after a discussion on relevancy we recalled the Lord Ordinary's interlocutor and remitted to him to allow the parties a proof before answer, thus leaving the question of relevancy open until the facts should be ascertained. At the renewed discussion before us the Solicitor-General maintained that the action was irrelevant, and that the pursuer had entirely failed to prove the innuendo he averred. I think the case is narrow, but I am not prepared to assent to either branch of the learned Solicitor's argument. I find it difficult, looking to the authoritative source from which part at least of the pursuer's innuendo has been borrowed, to affirm that it is not one which the circumstances of the case might fairly warrant, and it seems to me that the pursuer has by the evidence sufficiently though perhaps only barely substantiated his innuendo. I need not repeat any analysis of the proof.

I do not think that I should have awarded so large a sum as £50 in name of damages. But that point is not before us, for the Solicitor-General expressly stated in answer to the bench that, viewing this case as one raising a broad and important question of legal liability, he disdained to occupy time in discriminating between £50 and some lesser amount.

LORD SALVESEN—For many years, as the reports of decided cases show, newspapers have been published the main contents of which consist of extracts from the records of the various law courts of decrees in absence which had been granted against debtors who have been sued for payment of debts. In Scotland there is also a register of bills protested for non-payment; and a separate column containing the names of the creditors, the names of the debtors, and the amount of the bills protested for non-payment has been in use to be published in the same papers. The information is of no interest to the general public, but in the case of persons who sell goods on credit the fact that persons who may be desirous of dealing with them on credit have recently allowed decrees in absence to be pronounced against them is of some importance in enabling them to decide whether they will commence to deal or continue dealing with them. In popular parlance such papers come to be known as "black lists."

The circumstance that a decree in absence has passed against a particular debtor does not necessarily infer any imputation on his solvency. He may have declined to pay the debt because he did not think it justly due, although he knew there was no legal defence; or the decree may have been allowed to pass through a mistake or negligence on his own part or that of his agent. But for the most part it may be taken that a man who is owing a debt and does not settle it either before or after proceedings are raised, but allows a decree in absence to pass against him, does so because at the time he is unable to meet it; and without any other knowledge to proceed on than the fact that such a decree has been recently obtained against a debtor, traders are apt to conclude that such a person is not a desirable customer.

The defenders are proprietors and publishers of "Stubbs' Weekly Gazette," which is a newspaper of the description above mentioned and has a wide circulation amongst the trading communities of Scotland, England, and Ireland. It is issued to persons who subscribe for it by a yearly subscription, and there can be no doubt that it is subscribed for and read by them mainly because of the bearing of its contents in enabling them to consider whether they would be justified in giving credit to prospective customers or continuing to deal with prior customers. So far back as 1867, in *Davies* v. *Brown & Lyell*, 5 Macph. 842, 4 S.L.R. 58, several publications are referred to, which were said to be known as "black lists," in respect that they published particulars of all decrees in absence including the names and addresses of the creditors and debtors, and the amount of the debts, and the dates on which the decrees were pronounced. Amongst these publications is included "Stubbs' List," of which, no doubt, Stubbs' Weekly Gazette is the lineal descendant. In *Gibson & Co.* v. *Anderson & Co.*, 24 R. 556, speaking of the Scottish Gazette, Lord Adam remarked—"This paper seems to be one of those papers that are not uncommon nowadays—Stubbs' Gazette being perhaps the best known paper so called—which are the chosen home of what is called the 'black list,' that being a list where the record is published of all persons who like the pursuer in this case have had decrees in absence taken out against them in the courts."

In the case of *Crabbe & Robertson* v. *Stubbs Limited*, 22 R. 860, it was held that the publication of a decree for £2, 10s. as having been obtained in absence in the Small Debt Court against the pursuers when in fact the decree was *in foro* entitled the pursuers there to an issue settled by

Lord Kincairney in these terms—"Whether on or about 21st February 1895 the defenders wrongfully published in a publication known as Stubbs' Weekly Gazette a false statement to the effect that a decree in absence had been obtained against the pursuers for the sum of £2, 10s. with 8s. of expenses, and whether the defenders thereby falsely and calumniously represented that the pursuers were unable to pay their debts, to their loss, injury, and damage?" This issue was varied by the First Division in form but not in substance, and the same innuendo was allowed. Lord Kinnear, who took part in the judgment, said—"Now I observe on these averments that it is possible that a statement that a decree was taken in absence may have a different effect on the minds of those to whom it is made from a statement that a decree was taken *in foro*, which is not in itself an injurious statement, for the latter statement means only that judgment has been given against one of the parties to a controverted question; and the former may be supposed to mean that the defender was unable or unwilling to pay a just debt without being able to bring forward any reason for his failure to pay." In a later part of his opinion the same learned Judge said that, looking to the averments (which were substantially the same as those in the present case), he thought it "a fair question for the jury whether such an inference can be drawn as the pursuer suggests to their injury. It is not a question of law, but of the fair meaning which business men would give to the defenders' statement."

Lord Kinnear was therefore a party to the innuendo which was settled in that case as one which could be fairly extracted from a false statement that a decree in absence had been obtained against a trader, viz., that he was unable to pay his debts.

On the facts before us the case for the pursuer is stronger. He complains, not that a decree *in foro* was falsely represented as a decree in absence, but that the defenders in their Gazette published a statement that a decree in absence for £12, 11s. had been granted on 12th October 1916 in the Sheriff Court at Dumbarton against the pursuer at the instance of E. Barron, Glasgow, and that no such decree ever existed or was pronounced against him. He accordingly maintains that the entry was false and calumnious, and the meaning that he gives to it on record is that it represented "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." In another part of the record he states—"Any trader appearing in the list (*i.e.*, Stubbs' Weekly Gazette) 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."

We remitted the case thus stated to the Lord Ordinary for inquiry, and after a proof he has now found for the pursuer and assessed the damages at £50. His judgment is open to review by this Court, but on the question whether there was evidence on which he could reasonably find that any of the innuendoes set forth on record had been established his opinion appears to me to be at least as valuable as that of an ordinary jury. After summarising the evidence led in the case he concludes thus—"Reading what has been published by the defenders regarding the pursuer, I necessarily conclude that he had refused or delayed to pay his debts, and that he was a person to whom credit ought not to be given." Perhaps it would have been more accurate to say "a debt," namely, the debt to which the entry specifically referred.

We are asked to recal the judgment mainly on the ground that it is contrary to the decision of the House of Lords in the case of ***Russell***, 1913 S.C. (H.L.) 14. That case was heard before the Lord Chancellor Haldane and Lords Kinnear and Shaw. The Lord Chancellor desired it to be stated that he had had the advantage of reading the judgments which had been prepared by these two Judges and that he concurred in them. Lord Kinnear considered the decision of the First Division, to which he was himself a party, in the case of *Crabbe & Robertson* v. *Stubbs*, and came to the conclusion that it was rightly decided, and Lord Shaw stated that he agreed with his observations thereon. As I read Lord Kinnear's opinion he did not overrule the decision but sought to distinguish it mainly on the ground that "the explicit statement which I have quoted and which seems to me to be the vital point in the appellants' case was not to be found in the paper complained of in the case of *Crabbe & Robertson*." The statement to which he refers is, I take it, the head-note, which was in these terms—"The following extracts from the Court books have been received since our last issue. . . . It is possible 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 that the entry published appeared in the Court books." The learned Judge goes on to say—"This appears to me to be conclusive of the whole question. It is impossible to say that this statement fairly read would convey to any reasonable mind the imputation on persons whose names are found in the list that they are unable to pay their just debts."

With all respect to the learned Judge, I think he has fallen into an error of fact. It is true that the head-note which was in use in Stubbs' Gazette when the entry complained of in *Crabbe & Robertson's* case was published was in slightly different terms but the substance was the same. The exact terms of the head-note as appearing in the report are—"The following extracts are taken from the official books since our last issue, and publication of the decrees does not imply inability to pay on the part of the persons named. The sums decerned for may have been fully or partially paid or otherwise satisfied or arranged." I am quite unable to see that the language in

which the head-note is expressed conveys a different meaning in the one case from the other.

The true ground of judgment in *Russell's* case, to which I am able to give an intelligent assent (although I cannot understand how it squares with the decision in *Crabbe & Robertson*), is to be found in Lord Shaw's opinion, in which he points out that the only innuendo proposed by the pursuer was expressed in such terms as to preclude the defenders from taking the counter issue which they proposed, namely, "Whether the pursuer during the period from February till October 1911 repeatedly refused or delayed to make payment of his just and lawful debts to his trade creditors." That counter issue was founded on a list of eleven cases during a period of six months prior to the alleged slander in which the pursuer had been sued for debts and his creditors had been unable to obtain payment from him of the sums due at their due date, and only obtained payment after actions had been raised and in some cases after decree had been pronounced. I do not read his judgment as holding that the false publication of a decree in absence may not give a person against whom no decree has in fact been taken a ground of action; but that it does not reasonably infer an imputation of insolvency. He goes on to say—"Had the far less strained interpretation been put upon the words that the entry meant that this trader was a person who was refusing or delaying to pay his just debts this would have enabled the whole facts in both the issue and the counter issue to go before the jury because it was exactly that not unreasonable interpretation which the defenders were willing to meet, and if they had established their averments and their counter issue they would of course have been entitled to a verdict."

Now that innuendo is substantially the one which in the Lord Ordinary's opinion the pursuer has succeeded in establishing by the evidence which he adduced, and as there was no counter issue proposed it follows that he is entitled to damages. I do not think the case for the pursuer is made less strong but rather the reverse that the Lord Ordinary has also found it proved that the entry conveyed to the mind of the ordinary reader that the pursuer was a person to whom credit ought not to be given. For my own part I have no doubt, to use Lord M'Laren's language in *Crabbe & Robertson*, that the public look on the publication of a name in the "Black List" as equivalent to a note of doubt as to the credit or solvency of the individual. I accept, however, as now settled by the House of Lords that a false entry in Stubbs' Gazette that a decree in absence has been taken against a particular person does not naturally or reasonably imply that that person is insolvent, but that it may reasonably imply that he has refused or delayed to pay a just debt and is therefore a person to whom traders should be slow to give credit. Such an innuendo might have been met (or partly met) by the counter issue proposed in *Russell's* case, and would therefore have obviated the injustice which I think was the foundation of Lord Shaw's opinion. Had the latter adopted the view of Lord Kinnear as to the effect of the head-note as excluding any ground of action I should of course have been bound loyally to follow the judgment, although I confess I should have done so against my own conviction. I agree on this matter with the opinion of Lord Kincairney in *Crabbe & Robertson*, and with the substance of Lord Wellwood's decision in *Rarity* v. *Stubbs & Company*, 1 S.L.T. 74. I can easily conceive cases in which a head-note disclaiming a slanderous interpretation of a statement afterwards made instead of avoiding the slander may make it more pointed; and I observe that Lord Shaw expressly reserved his opinion on this point in the passage where he says—"I do not refer to the note which specifically stated that nothing was meant to be inferred except that a decree had been taken. It may be true that in a weekly gazette of this character a note so inserted might not alter the full effect of the wrong entry."

On the whole matter I have come to be clearly of opinion that the Lord Ordinary was right in finding a verdict for the pursuer, and as the question of the amount of damages was not raised I express no opinion upon it.

LORD GUTHRIE concurred.

The Court adhered.

Counsel for the Defenders and Reclaimers—The Solicitor-General (Morison, K.C.)—Garson. Agents—Balfour & Manson, S.S.C.

Counsel for the Pursuer and Respondent—J. A. Christie—A. M. Mackay. Agents—Manson & Turner Macfarlane, W.S.

Tuesday, July 2.

FIRST DIVISION.

BRUCE PEEBLES & COMPANY, LIMITED *v.* WILLIAM BAIN & COMPANY.

Company—Process—Petition—Compromise with Creditors Proposed by Directors without having Consulted Company—Competency—Companies (Consolidation) Act 1908 (8 *Edw. VII, cap.* 69), *sec.* 120.

Held (*dis.* Lord Johnston) that a petition presented in name of a company, whose directors had power to do everything not reserved by statute or the articles of association for the company itself, under section 120 of the Companies (Consolidation) Act 1908, for power to convene meetings and for sanction of a scheme of arrangement with the creditors of the company, was competent although the views of members of the company had not previously been ascertained.

The Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69) enacts—Section 120—"(1)