called the proper contradictor. On this point I concur with Lord Rutherfurd Clark.

The LORD JUSTICE-CLERK concurred.

The Court adhered.

Counsel for Reclaimer—Comrie Thomson—Cook. Agent—A. W. Gordon, Solicitor.
Counsel for Respondent — M'Kechnie — Kennedy. Agent—R. Broatch, Solicitor.

Tuesday, June 5.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

HUNTER *v.* MACNAUGHTON.

Reparation — Slander — Issue — Counter-Issue—Veritas.

In an action of damages for slander by an elder against the minister of a parish, the pursuer obtained an issue whether the defender had falsely and calumniously represented that the pursuer was addicted to taking strong drink to excess, and that this was notorious to the parishioners. The defender, who pleaded *veritas*, specified on record a number of occasions on which he alleged that the pursuer had been drunk in public places. The Court *allowed* as a counter-issue, whether the pursuer, from November 1887 downwards, was addicted to taking strong drink to excess, and whether this was notorious among the parishioners and congregation.

Observed that it would seem more consistent with our modern general practice to allow the issue to stand in general terms, the specific occasions legitimately falling within the inquiry being those of which notice had been given on record.

On 16th July 1893, in the course of a communion service in the Parish Church of Carsphairn, the Rev. George F. A. Macnaughton alluded to the absence of one of the elders John Hunter in these terms—"All present know the sad cause of the absence of one of my elders from his place this day, but I trust every member of the church will consider it to be his duty now, both by example and in every other possible way, to strengthen and encourage him to fight against his enemy,"—or made use of other or similar words of like meaning and effect.

Hunter thereafter brought an action of damages for slander against Macnaughton.

He averred—"(Cond. 4) The said statements . . . falsely and calumniously, maliciously, and without probable cause, represent that the absence of the pursuer from the communion service on Sunday 16th July 1893 was due to intoxication, and that he was in such a state of intoxication on that day that he was unable to attend church. Further, the said statements falsely, calumniously, maliciously, and without probable cause, represent that the pursuer was guilty of conduct unbecoming his position of an elder in the church and of his charactor of a Christian man; that the pursuer was accustomed to drink intoxicating liquors to excess; that he was an habitual drunkard; and that his character as a drunkard was notorious and was known to all the members of the congregation and the inhabitants of the parish."

The defender admitted that the statement he had made represented that the pursuer had on recent occasions been taking intoxicating liquor to excess, and that this failing was known to the congregation and inhabitants of Carsphairn. He averred that the statement was true, and specified at least thirteen occasions since 15th December 1887 on which he alleged the pursuer had been seen in public places either quite intoxicated or affected by drink to a degree unbecoming in an office-bearer of the church.

The defender pleaded—"(2) *Veritas.*"

On 22nd May 1894 the Lord Ordinary (STORMONTH DARLING) approved of the following issues for trial of the cause—"(1) Whether, on Sunday 16th July 1893, in the course of the communion service in the Parish Church of Carsphairn, and in the presence and hearing of the congregation then and there assembled, including William Buck and Mrs Isabella Hunter or Buck, both residing at Brockloch Cottage, Carsphairn, James Hunter, Legget, Carsphairn, and others, the defender did say—'All present know the sad cause of the absence of one of my elders from his place this day, but I trust every member of the church will consider it to be his duty now, both by example and in every other possible way, to strengthen and encourage him to fight against his enemy,'—or did use other or similar words of like import and effect? Whether the said statements are of and concerning the pursuer, and falsely and calumniously represent that the pursuer's absence from the communion service on said Sunday was due to intoxication, and that the pursuer was in such a case of intoxication on said Sunday that he was unable to attend church, or make similar false and calumnious representations of and concerning the pursuer, to his loss, injury, and damage? (2) Whether the said statements are of and concerning the pursuer, and falsely and calumniously represent that the pursuer was addicted to taking strong drink to excess, and that this was notorious to the parishioners of the said parish of Carsphairn, or make similar false and calumnious representations of and concerning the pursuer, to his loss injury and damage?"

The Lord Ordinary disallowed the following counter-issue proposed by the defender—"Whether the pursuer from November 1887 downwards was addicted to taking strong drink to excess, and whether this was notorious among the parishioners and congregation of Carsphairn"?

"*Note*—The Lord Ordinary has disallowed the counter-issue proposed by the defender

in respect that it does not specify the occasions on which the pursuer is alleged to to have taken strong drink to excess?"

The defender reclaimed, and argued—The counter-issue proposed should have been allowed. It exactly met the principal issue, and there was foundation for it on record. The defender was not bound to propose a counter-issue putting the question whether the pursuer had been drunk on each of the occasions specified by the defender on record, nor to take separate counter-issues relating to each of these occasions, nor even to prove the particular dates on which the pursuer had been seen drunk. A counter-issue in general terms was sufficient—*Aird* v. *Kennedy*, February 22, 1851, 13 D. 775; *Carmichael* v. *Cowan*, December 19, 1862, 1 Macph. 204; *Innes* v. *Swanson*, December 8, 1857, 20 D. 250.

Argued for the pursuer—There was no foundation on record for the counter-issue proposed, and it was also too vague and general in its terms. The only way in which the defender could prove that the pursuer was a notorious drunkard was by proving specific instances in which he had been seen drunk. The defender was bound to take a counter-issue, specifying the dates on which the pursuer was alleged to have been seen drunk—*M'Rostie* v. *Ironside*, November 14, 1849, 12 D. 74; *Bertram* v. *Pace*, March 7, 1885, 18 R. 798. In *Aird's* case, the accusation being that the pursuer had been in the constant habit of indulging in ardent spirits, the counter-issue allowed specified continual drunkenness during a particular period. If the pursuer was going to confine his proof to the particular instances alleged on record, the pursuer would have no objection to the terms of the counter-issue, but he frankly stated that he was going to lead proof of rumour in regard to the pursuer's habits, and proof of that kind was quite incompetent.

At advising—

LORD PRESIDENT—If we were to regard the counter-issue apart from the record I should be of opinion with the Lord Ordinary, because there are no occasions specified in the issue, and of course it would be out of the question to send a person to trial on a question of character without giving him notice of the occasions upon which the accusation is based. But the record gives notice of a number of specific occasions, and that being so, the question seems to be one merely of practice or procedure, whether, notice having been given on record of the specific instances which are founded on to prove habitual drunkenness, it is necessary to repeat these in asking the jury whether there existed that habit. It would seem more consistent with our modern general practice to allow the issue to stand in general terms, the specific occasions legitimately falling within the inquiry being those of which notice has been given on record.

The only other question appears to be whether the record contains a relevant averment of "addiction." Now, it is hardly fair, I think, to represent that question as being the same as this, whether, given nine or ten instances of intoxication, that is enough of itself to instruct the habit. The jury would be entitled to consider the circumstances of each occasion and to draw their own inferences as to whether they were specimens of the habit, or whether the cases which turn out to be proved were isolated and pardonable instances of this gentleman being overtaken. Therefore I think, the question being a proper jury question, and the record containing a sufficient amount of specific notice to support the general averment, and the jury being entitled to draw their own inferences as to the representative character of the specific occasions, that the record is quite sufficient for its purposes.

I therefore think that we should recall the Lord Ordinary's interlocutor in so far as it disallows this counter-issue, and approve of the issues and counter-issue as the issues for the trial of the cause. Much has been said as to what will take place at the trial in consequence of the pursuer involving himself in the question of notoriety, but these are matters which will extricate themselves, or be extricated by the judge at the trial, and do not affect the question which we have now to determine.

LORDS ADAM, M'LAREN, and KINNEAR concurred.

The Court recalled the Lord Ordinary's interlocutor in so far as it disallowed the counter-issue, and approved of the issues and counter-issue as the issues for the trial of the cause.

Counsel for the Pursuer—M'Lennan—D. Anderson. Agent—P. J. Purves, S.S.C.

Counsel for the Defender—Comrie Thomson—C. N. Johnston. Agent—J. B. M'Intosh, S.S.C.

Wednesday, June 6.

FIRST DIVISION.

[Sheriff of Roxburghshire.

SCOTT *v.* SCOTT.

Husband and Wife—Separation—Parent and Child—Aliment of Child in Wife's Custody.

After a wife had raised an action of separation and aliment against her husband, an arrangement was concluded, in accordance with which the husband made over £1100 to trustees for behoof of the wife in liferent, and the wife in respect of this provision agreed to abandon the action. About two and a-half months after the date of the trust-disposition, the wife, who was living separate from her husband, bore a child, and when this child was between one and two years old an