

monials were not intended to certify Dr Auld's fitness for a Professorial Chair, and this is undoubtedly true; and it appears to me that the mere inaccuracy in detail as to what had happened six years previously is no sufficient proof of the defender's malice, and not even an indication of the absence of *bona fides*.

On the issue of slander, therefore, in respect of the defender's privileged position, and that he acted in *bona fide* and without malice, I feel myself bound to find for the defender. I might add, in reference to the alleged damages resulting directly from the slander, that there is no proof of any direct damage. It is in evidence that Principal Shairp's letter had no effect on the mind of the Duke of Portland, to whom it was addressed. It did not alter the Duke's intention. The Duke himself expressly says so. He adhered to the last to his intention to appoint Dr Auld the moment the office should become vacant, and whether the defender acted illegally or not in retaining the office (which is a different question), it seems clear enough that the alleged slanderous letter had no effect *per se* in keeping Dr Auld out of the Professorship, and this brings me to the second branch of the case.

2. The second ground of action on which the pursuer relies is that the defender acted illegally, and to Dr Auld's loss, injury, and damage, in retaining the Humanity Chair after having intimated his intention to resign it as at 15th May 1869. This branch of the action involves several distinct and difficult questions, apart altogether from its bearing on the question of malice, to which I have already adverted.

In the first place, I am of opinion that neither the late Dr Auld up to the time of his death, nor the pursuer, as his widow and executrix, ever had any title to challenge the illegality of Principal Shairp's retention of the Humanity Chair, or to claim damages therefor.

The late Dr Auld never was appointed Professor of Humanity. The presentation was never issued or delivered. All that Dr Auld had or could have was an intimation of the patron's intention to appoint him to the Chair, an intention which, while it never varied and was never altered on the part of the patron, was yet never carried into effect. Dr Auld, so far as that Chair was concerned, was never more than one of the general public, with expectations certainly, but with no more rights than any citizen of the country. A hoped for or expected appointment will not give a title to sue. Suppose, then, that Principal Shairp had never written to the Duke of Portland at all, and had never been in communication either with the patron or his agents, would this action have lain—would the present branch of it have been competent either at the instance of Dr Auld or of his widow? I think not. The abstract legality or illegality of Principal Shairp's conduct might have been raised by the patron, by the Crown, by the Senatus or its members, and perhaps by any member of the University, or by others, but not by any mere member of the community, and not by Dr Auld unless he had actually obtained a presentation, and certainly without such presentation Dr Auld, even supposing that he could have tried the question, could never have claimed damages.

But, in the second place, I am not prepared to affirm in point of law the absolute illegality in Principal Shairp continuing after his induction as Principal

to hold the Chair of Humanity. It is plain that in certain circumstances he might do so after becoming Principal. For example, in this very case, when appointed Principal in the middle of a session, it was hardly disputed that he might fairly and rightly continue Professor of Humanity till the close of the Session. Any other course would have been unfair to the University, and unjust to the students of the class.

In like manner, it might often happen that circumstances might render expedient even a more prolonged tenure of the Chair by a Principal or by an occupant who had been promoted to the Principalship. It is rather a question of expediency than of absolute illegality, and if all interested concur or acquiesce in a temporary union of the two offices I see no absolute illegality which would prevent such temporary arrangement. In this case there was, if not a virtual acquiescence and concurrence, at least an absence of any challenge on the part of all concerned, that is, neither the Crown, nor the patron, nor the Senatus, nor the University Court, nor any other party interested, intervened or complained of the illegality of the course taken.

On the general abstract question whether a Principal holding that office for life might not also hold for life the Chair of Humanity, I would rather decline giving any opinion. Such unions are not unknown in other Universities, although in general I should think they are not expedient. Something might depend on the terms of each appointment, and on the concurrence of the Crown, the patrons, and the authorities of the University. It is sufficient for the present case—if, indeed, it is even necessary to go so far—to find that there was no absolute illegality in the unchallenged arrangement of a temporary and precarious character which took place in the present case.

On the second branch of the case, also, I think the defender is entitled to absolvitor.

Counsel for Principal Shairp—Dean of Faculty (Clark) Q.C. and Lancaster. Agents—Tods, Murray & Jamieson, W.S.

Counsel for Mrs Auld—Solicitor-General (Watson) and Smith. Agent—Thomas Spalding, W.S.

July 14, 1876.

## FIRST DIVISION.

A. V. B.

*Process—Seduction—Damages—Diligence to recover defender's books.*

A. raised an action of damages for seduction against B., and in the course thereof moved for a diligence to recover (1) the books of the defender; (2) The books of a railway company to which B. acted in the capacity of a carrier, the object being to show the amount of his income—held that in an action of damages for seduction such a diligence could not be competently granted, and motion refused.