

sibly be denied, that the Magistrates and Council of St Andrews have certain administrative powers and certain administrative duties in relation to the public links. They may make convenient footpaths where necessary, and, if space permitted, even carriage drives; they might erect seats in convenient places, make and repair foot-bridges over the burn, and, in short, do whatever is necessary to secure the full use of the land and the full enjoyment of the public whether by the game of golf or otherwise. In this administration the only limitation is that the Magistrates and Council shall not do anything which destroys or injures the primary purpose for which the land is held, namely, its public enjoyment by golfing or otherwise. They must not on pretence of making public promenades destroy or injure it as a golfing ground, or impair the use by the public as it has been enjoyed from time immemorial.

This led to the question, in fact, whether the road proposed would in any degree be injurious to the game of golf as practised, or would make the ground less fit than hitherto for that game? Now, on this point I agree with the Lord Ordinary and with both your Lordships that the evidence is really conclusive that the game of golf as now practised will not in any degree, or in any appreciable degree, be injured or prejudiced by the formation of the proposed road. The evidence of skilled golfers on this point is really all one way. Indeed, many of them appear to regard the proposed road as an improvement to the ground, considered purely and solely as a golfing ground.

This seems to be enough to dispose of the whole case. If there is to be no alienation of the links or any part thereof, if no new right or burden is to be constituted or created over any part of the ground, and if no harm or injury or prejudice is to be suffered by any golfer or by any human being who has a right to resort to the links, then this Court will never interfere with a mere act of administration of the Magistrates and Council, which, while it may afford convenience or comfort to some of the inhabitants, will do no conceivable harm and create no conceivable inconvenience to anybody. It will be always in the power of the Magistrates and Council to take away or alter the road in the exercise of the same right of administration under which, and under which alone, they propose to make it.

The Court accordingly pronounced an interlocutor refusing the pursuers' motion to interpose authority to the joint-minute between them and the Town Council, "in respect the defenders the Provost, &c., have . . . departed from the same;" and they further adhered to Lord Curriehill's interlocutor, "but with this declaration, that the said defenders the Provost, Magistrates, and Town Council of St Andrews have no right to alienate the *solum* of the ground in question, or the administration and control of the same, but are bound to retain the same in their own hands for behoof of the community of the burgh, and discern; and before answer, on the motions of the defenders for expenses, allow them to put in their respective accounts."

Counsel for the Pursuers (Reclaimers)—Kinnear—Mackintosh. Agents—Mitchell & Baxter, W.S.

Counsel for the Town Council and Magistrates of St Andrews, Defenders (Respondents)—R. V. Campbell. Agents—Maitland & Lyon, W.S.

Counsel for James Bain and Others, Defenders (Respondents)—Asher—J. P. B. Robertson. Agents—Tods, Murray, & Jamieson, W.S.

Saturday, December 13.

FIRST DIVISION.

RICHARDSON *v.* LE CONTE.

Issues—Action for Judicial Slander—Counter-Issue of Veritas.

Terms of issues adjusted for the trial of an action of damages for judicial slander where there had been a question between the parties whether a counter-issue of *veritas* should cover the statements as innuendoed by the pursuer.

This was an action of damages for judicial slander raised by Robert Richardson, a sheriff-officer in Edinburgh, against John Le Conte, an engraver there. Le Conte had raised an action against a Mr William Scott Douglas on 20th June 1879, in which there was no conclusion directed against Richardson, but on the narrative that Douglas had formed a scheme for obtaining possession of Le Conte's property, and aggrandising himself at his expense, it was averred—"Said scheme was carried out in the following manner, viz.—'On or about 20th May 1879 the said Robert Richardson went to the pursuer's residence, and on the instructions of the defender executed a pretending pointing and valuation of certain effects therein, including said works of art and the pursuer's household furniture, of the value of £130, but instead of making a proper inventory and valuation, as the said sheriff-officer was bound to do, he wilfully put a false and absurdly low value upon said valuable property; and in order to conceal the false and fictitious nature of said valuation he illegally and wrongfully slumped a vast number of articles into a very few lots' . . . [these lots as specified amounted in all to the sum of £12, 4s. 1d.] . . . 'whereas the true value of said articles exceeded the sum of £130. And thereafter, on or about the 23d May, the said Robert Richardson and two assistants came to the pursuer's house and made a pretended sale of said articles to the defender, in slump, at the sum of £12, 4s. 1d., or at all events declared them to belong to him as at that value, in payment and satisfaction of his alleged debt of £12 of principal, with 4s. 1d. of expenses.'"

It was averred that these statements were false and calumnious of and injurious to the pursuer, and were inserted in the said condescendence maliciously and without probable cause, and that "they were not pertinent or necessary to the conclusion in said action, and the pursuer has thereby been injured in his character, his business, his business prospects, and his feelings. They falsely make it appear that under the pretence of covering a sum of £12, 4s. 1d., under a decree for that amount, he had consented to act, and acted, upon the illegal or improper instructions of Mr Douglas to

execute a pouncing and sale of the whole of the defender's effects, amounting in value to £130; that he did so by the fraudulent device of slumping the various articles in the defender's house into a few lots, to conceal the false and fictitious nature of his valuation; and that he sold the said valuable articles thus fraudulently slumped and under estimated to Mr Douglas himself on said 23d May." The pursuer stated that he had only acted in the execution of his duty as sheriff-officer.

The defender pleaded, *inter alia*, that the statements being substantially true, and *separatim*, not being malicious or without probable cause, he should be assuaged.

The following issues were proposed by the pursuer and defender respectively:—"Whether in a summons raised and executed at the instance of the defender against Mr W. Scott Douglas on or about 20th June 1879, there were inserted statements in terms of the schedule hereunto annexed? Whether the said statements are of and concerning the pursuer, and falsely and calumniously represent him to be a dishonest person and unfit to hold the office of a sheriff-officer, and were maliciously inserted or caused to be inserted in said summons by the defender, to the loss, injury, and damage of the pursuer.— Damages laid at £500.

"SCHEDULE.

"Said scheme was carried out in the following manner, viz.—On or about 20th May 1879 the said Robert Richardson went to the pursuer's residence, and on the instructions of the defender executed a pretended pouncing and valuation of certain effects therein, including said works of art and the pursuer's household furniture, of the value of £130. But instead of making a proper inventory and valuation, as the said sheriff-officer was bound to do, he wilfully put a false and absurdly low value upon said valuable property, and in order to conceal the false and fictitious nature of said valuation he illegally and wrongfully slumped a vast number of articles into a very few lots" [amounting in all to the sum of £12, 4s. 1d.] "whereas the true value of said articles exceeded the sum of £130 and thereafter on or about the 23d May the said Robert Richardson and two assistants came to the pursuer's house and made a pretended sale of said articles to the defender, in slump, at the sum of £12, 4s. 1d., or at all events declared them to belong to him as at that value, in payment and satisfaction of his alleged debt of £12 of principal with 4s. 1d. of expenses.

"AMENDED ISSUE PROPOSED BY THE DEFENDER.

"Whether the statements in the said schedule are true?"

The Lord Ordinary (CRAIGHILL) approved of the issue for the pursuer as finally adjusted, disallowing the amended issue for the defender. There was the following note to the interlocutor:—

"*Note.*—The issue proposed by the pursuer and adjusted by the Lord Ordinary was accepted by the defender as suitable for the trial of the cause. And with reference to the counter-issue, the question which was raised by the defender was not whether an issue in justification should be allowed, but assuming that he was to have an issue, whether he was not entitled to have an issue in the terms which had been disallowed.

The Lord Ordinary decided, that as it did not cover all which was in the pursuer's issue, the counter-issue as asked could not be granted."

The defender reclaimed, and argued—That it was sufficient in a counter-issue of *veritas* to prove the truth of the facts as stated in the pursuer's issue without meeting them on the breadth of the innuendo in that issue.

Authorities—*Torrance v. Weddel*, Dec. 12, 1868, 7 Macph. 243; *Ogilev v. Paul and Others*, June 28, 1873, 11 Macph. 776; *M'Leer v. M'Neill*, June 28, 1873, 11 Macph. 777.

At the instigation of the Court the innuendo was withdrawn, and the following issues as finally adjusted were approved of:—"Whether in a summons raised and executed at the instance of the defender against Mr W. Scott Douglas on or about the 20th June 1879, there were inserted statements in terms of the schedule hereunto annexed? Whether the said statements are of and concerning the pursuer false and calumnious, and were maliciously inserted or caused to be inserted in said summons by the defender, to the loss, injury, and damage of the pursuer?"

Counsel for Pursuer (Respondent)—Dundas Grant. Agent—D. Turner, S.L.

Counsel for Defender (Reclaimer)—Shaw. Agent—P. Morison, S.S.C.

Tuesday, December 16.

FIRST DIVISION.

[Lord Young, Ordinary.]

HANNAN & HAIR v. HENDERSON.

Partnership—Conventional Irritancy of "Declared Insolvency"—Where Held to be Applicable.

A contract of copartnership between A, B, and C, distillers, contained a stipulation that on the "death, mental incapacity, bankruptcy, or declared insolvency" of any of them, he should cease to be a partner, and be paid out of the concern in a specified manner. C was also sole partner in a coppersmith's firm of C and D, and this firm having become insolvent, a circular letter was sent round to their creditors, who finally accepted a composition of 10s. per £. A and B then brought an action asking for declarator against C that their partnership had come to an end, and that he had ceased to have any interest in the concern. *Held* (1) that the facts as proved constituted "declared insolvency," and that C had therefore ceased to be a partner in the distillery as from the date of the circular letter; and (2) that the irritancy could not be purged at the bar, the stipulation being a reasonable one, and not of a penal nature.

James Hannan, John Hair, and Alexander Gibb Henderson entered into a contract of copartnership, which was executed in December 1877, for the purpose of carrying on a distillery business under the name of the "Glen Kinchie Distillery Company," at Kinchie in East Lothian. The copartnership was to subsist, unless dissolved in manner