Saturday, July 8.

SECOND DIVISION.

[Sheriff of Perthshire.

MEIKLE *v.* WRIGHT.

Reparation — Slander — Innuendo—Relevancy—Newspaper Letter and Leaderette.

A newspaper published a letter to the editor which stated that all the public-house keepers in a town did not shut their shops upon New Year's Day as recommended by the magistrates, and proceeded—"One I will name, and he is Mr George Meikle, corner of Canal Street and Princes Street, who kept the thing in swing till ten o'clock, at times having to control the run by locking the doors." In a leaderette the editor commented upon this letter as follows—"Most of the publicans yesterday loyally observed their resolution to close their premises at 4 o'clock. Those of the trade in the west end of the city seem to have been particularly strict in refusing drink after this hour. There were one or two black sheep, however, and a correspondent calls attention to the disgraceful scenes which occurred at Mr Meikle's premises in Princes Street and Canal Street. The magistrates, we hope, will deal with this gentleman." Meikle sued the publisher of the newspaper for damages.

The pursuer did not allege that any of the statements in the letter were untrue, but he averred that the statements in the editorial comments and the letter "falsely, maliciously, and calumniously represents that the pursuer conducted his business on the 2nd day of January in a disorderly and illegal manner." It was finally conceded that the letter was not actionable.

The Court *held* that under the phrase "black sheep" the editor did not intend to say more than that some public-house keepers did not follow the example set by the majority of the trade; that the words "disgraceful scenes" did not refer to the manner in which the pursuer conducted his business, or suggest that he carried it on in an illegal and irregular manner, but merely pointed to the disorder which arose in the street in consequence of the pursuer's shop being open till a late hour; that the editor was entitled to put forward the statements in the letter as a ground for consideration on the part of the magistrates, whether they should renew the pursuer's licence. The action was *dismissed* as irrelevant.

On 3rd January 1893 the *Perthshire Courier* newspaper published this letter to the editor with the title "Publicans and New Year's Shutting," and subscribed "A Ratepayer"—"Sir—I approve of the magistrates recommending the licensed trade to close on New Year's Day, but I can't see the good to be got for looking on quietly and seeing only a few closed, and the others doing a roaring trade, and taking no further notice of it. It is simply ridiculous. Of course, the magistrates are aware of the decision of a few of the trade to keep open till four o'clock (which I consider as impudence), but perhaps they are not aware of a few doing a very good trade after that. One I will name, and he is Mr George Meikle, corner of Canal Street and Princes Street, who kept the thing in swing till ten o'clock, at times having to control the run by locking the doors. If this is to be allowed unchecked, then I would say, don't recommend to shut; but if the recommendation is made, then let it be followed up with the firmness of the Dundee Magistrates."

In the same issue of the paper appeared this editorial or leaderette—"Most of the publicans yesterday loyally observed their resolution to close their premises at four o'clock. Those of the trade in the west end of the city seem to have been particularly strict in refusing drink after this hour. There were one or two black sheep, however, and a correspondent calls attention to the disgraceful scenes which occurred at Mr Meikle's premises in Princes Street and Canal Street. The magistrates, we hope, will deal with this gentleman."

George Meikle raised an action in the Sheriff Court against Alexander Wright, printer and publisher and proprietor of the *Perthshire Courier*, for £500 damages.

The pursuer averred — "(Cond. 6) The said statements in the said editorial comment or leaderette, and the said letter, falsely, maliciously, and calumniously, represent that the pursuer conducted his business on the 2nd day of January 1893 in a disorderly and illegal manner."

He pleaded—"(1) The defender having published in said newspaper an editorial comment or leaderette and letter, containing false and calumnious statements in reference to the pursuer, he is liable in damages therefor as concluded for. (2) The false and calumnious statements as libelled being calculated and intended to injure the pursuer, and having had that effect, the pursuer is entitled to reparation for the damages thereby caused."

The defender pleaded—"(1) The action is irrelevant. (2) The statements contained in the said letter and leaderette not being slanderous, the action ought to be dismissed."

Upon 17th March 1893 the Sheriff-Substitute (GRAHAME) repelled the first plea-in-law for the defender, and allowed a proof.

Upon appeal the Sheriff (JAMESON) repelled this interlocutor and dismissed the action.

The pursuer appealed to the Court of Session, and argued — He founded not upon the terms of the letter; it was admitted that it was not slanderous. He founded upon the statement in the editorial comment, that disgraceful scenes had taken place at the pursuer's public-house, and that on account of these the magistrates should deal with the pursuer

by taking away his licence at the next Licensing Court. The statement could bear no other meaning, and therefore the innuendo that the pursuer has been carrying on his business in a disorderly way was warranted, because the magistrates would not otherwise be justified in dealing with his licence. *Archer* v. *Richie & Company*, March 19, 1891, 18 R. 719, only decided that the phrase "crooked ways" was not slanderous.

The respondent argued—The pursuer had stated no relevant case. It was of the essence of a charge of slander that the facts upon which the alleged slander was founded should be averred to be false. Here it was not said that any statement in the letter was untrue. The slander admittedly was in the leaderette and not in the letter, but it was the pursuer's case that the leaderette was simply comment on the letter, so that there could be no slander if the comment were justifiable on a non-slanderous letter—*Campbell* v. *Ferguson*, January 28, 1882, 9 R. 467. In the second place, the innuendo proposed could not be supported. The innuendo was that the pursuer carried on his business in a "disorderly and illegal manner," but that was not enough. He must be prepared to show that what the defender said amounted to a charge of disorderliness or illegality. He did not, however, show this, so that the leaderette was merely comment on a non-slanderous letter, and was not slanderous in itself.

At Advising—

Lord Justice-Clerk—This case arises upon a letter which appeared in the defender's newspaper, and upon certain comments on it in a leaderette in the newspaper. The letter refers to a state of matters which it said existed in the town of Perth upon the first of January 1893. The Magistrates of Perth had issued a recommendation to the occupiers of public houses in Perth, that they should not have their public-houses open upon that day. Some of the publicans acted upon that recommendation and did not open their shops at all that day. Others complied with the recommendation partially, and shut their houses at four o'clock in the afternoon, and some did not shut their houses at all until the usual closing hour. Now, all that the letter says is simply that "Mr George Meikle, corner of Canal Street and Princes Street, kept the thing in swing till ten o'clock, having to control the run by locking the doors." It is not averred by the pursuer that any one of the statements in this letter is not correct as matter of fact.

The leaderette carries the matter a stage further—[*Here his Lordship read the passage referred to*]. I certainly think these expressions are unfortunate. It is plain that the writer of the leaderette thought that the statements in the letter showed a disgraceful state of things. But that he did so think, and expressed his opinion to that effect, is not enough to justify the innuendo sought to be put upon the words, that the pursuer conducted his business on that day in a disorderly and illegal manner.

The last part of the leaderette is said to be rather stronger in its terms. It is this—"The magistrates, we hope, will deal with this gentleman." Now, I think the tone of that sentence is not a pleasant one; it seems to suggest that the pursuer ought to be deprived of his licence, but when strictly construed the sentence itself does not come to more than this, that the paper puts forward the statements in the letter as a matter for the consideration of the Magistrates, whether they should give the licence of this house again to George Meikle. Whether it would be right for the Magistrates to take that statement into consideration or not of course I do not say, but I do not think that merely stating these facts for consideration will give ground for an action for slander. Upon the whole matter I do not think that the pursuer has stated a relevant case.

Lord Rutherfurd Clark—I am of the same opinion. The Magistrates of Perth issued a recommendation that the occupiers of public-houses should shut their shops upon the 1st January 1893. The pursuer, who carries on business as a wine and spirit merchant in Perth, did not obey the recommendation, but kept his house open. It appears that certain public-houses were shut all day, and that others were shut at four o'clock; but the pursuer and a few others traded until ten o'clock at night. In this position a person named Leitham wrote to the *Perthshire Courier* newspaper a letter pointing out that the pursuer had not complied with the Magistrates' recommendation, but that on the contrary, to use the words of the letter, he "kept the thing in swing till ten o'clock, at times having to control the run by locking the doors." It is now maintained that the letter is actionable.

The editor of the newspaper commented upon it. He notices the fact that most of the publicans closed their premises at four o'clock. He says that there were "one or two black sheep," and the pursuer was one. But in using this phrase I do not think that he meant to say more of the pursuer than that he did not follow the example set by the majority of the trade. But he went on to say that his correspondent called attention to "disgraceful scenes" which occurred at the pursuer's premises. He applies the epithet to the occurrences which his correspondent had described. He thinks that it was disgraceful that there should be a crowd round the pursuer's premises, and that doors had to be locked "in order to control the run." It does not refer to the manner in which the pursuer conducted his business, or suggest that he carried it on in an illegal and disorderly manner. He merely points to the disorder which arose in the streets by reason of the pursuer keeping his shop open to so late an hour. I cannot hold the action to be slanderous.

I do not attach importance to the last words in the editorial comment, as in my

opinion they only mean a recommendation to the Magistrates to consider whether at the next licensing Court they should give or withhold a licence to the pursuer's premises, and such a recommendation is not slanderous.

LORD TRAYNER—This action is based on both the letter and the leaderette which appeared in the defender's paper. It is now conceded that the letter is not actionable, and it is admitted that the facts therein stated are true. With regard to the leaderette, I entirely concur in the views stated by Lord Rutherfurd Clark. I cannot see anything in the terms of that article to justify the innuendo which is sought to be put upon it. I do not go into a detailed examination of the language there used, but I may say with regard to the words "one or two black sheep" that the pursuer took no exception to them on record, or made them a ground of action; and further, with regard to the words "disgraceful scenes," I think that that is simply a statement of opinion on the character of scenes which admittedly took place. If the article had stated that the pursuer's conduct had led to the disgraceful scenes the case might have been different.

LORD YOUNG was absent.

The Court refused the appeal and dismissed the petition.

Counsel for Appellant—G. Stewart. Agents—J. & J. Galletly, S.S.C.

Counsel for Respondent—Glegg. Agent J. D. Walker, S.S.C.

Thursday, July 6.

SECOND DIVISION.

[Sheriff of Argyllshire.

EDUCATION TRUST GOVERNORS *v.* MACALISTER.

Property—Bounding Title—Possession for Prescriptive Period on Title which could be Construed as Embracing such Possession.

By charter dated 20th September 1854 a proprietor disponed to the Society in Scotland for Propagating Christian Knowledge "All and whole that piece of ground, part of the lands of Glenbarr, with the house erected thereon, sometime occupied by the said Society as a schoolhouse, afterwards for a short period occupied as the parish schoolhouse, and presently standing empty, together with the small piece of ground adjoining thereto and immediately behind the said house, as the same is fenced off from the other lands of Glenbarr by a turf fence dyke, bounded the said lands and others before disponed as follows, viz., on the west by the high road leading from Campbeltown to Tarbert, and on the east, north, and south by the said lands of Glenbarr, lying in the parish of Killean and shire of Argyll."

Prior to 1892, for more than the prescriptive period, the said Society and their successors, the Governors of the Trust for Education in the Highlands and Islands, in terms of the scheme under the Educational Endowments (Scotland) Act 1882, possessed about five acres of grounds with the schoolhouse erected thereon, the ground being fenced off and bounded in the same manner as the ground described in the charter of 1854.

Held that the Society and their successors were proprietors of the land so possessed by them under a title which could be construed as embracing the whole of that land.

By charter of novadamus dated 20th September 1854, Mr Keith Macalister of Glenbarr, on the narrative that the Society in Scotland for Propagating Christian Knowledge had asserted that they formerly held a valid title to certain lands after described, and that the said title, if it ever existed, had been lost, gave, granted, and disponed, and for him, his heirs and successors, perpetually confirmed to the said society, "All and whole that piece of ground, part of the lands of Glenbarr, with the house erected thereon, sometime occupied by the said Society as a schoolhouse, afterwards for a short period occupied as the parish schoolhouse, and presently standing empty, together with the small piece of ground adjoining thereto and immediately behind the said house, as the same is fenced off from the other lands of Glenbarr by a turf fence dyke, bounded the said lands and others before disponed as follows, viz., on the west by the high road leading from Campbeltown to Tarbert, and on the east, north, and south by the said lands of Glenbarr, lying in the parish of Killean and shire of Argyll, but always with and under the conditions and declarations" therein set forth. Briefly stated these conditions were two—that the lands were to be retained by the Society while in the opinion of the minister and kirk-session of the parish of Killean the use of a school and accommodation for a teacher were required for the district of Barr, and that the said lands were not to be sold without offering the same in the first instance to the disponer or his successors in the entailed estate of Barr.

In September 1892 the Governors of the Trust for Education in the Highlands and Islands of Scotland, to whom the whole funds and estate belonging to the Society for Propagating Christian Knowledge had been transferred by the scheme under the Educational Endowments (Scotland) Act 1882, raised an action in the Sheriff Court of Argyllshire at Campbeltown against Major Charles Brodie Macalister of Glenbarr, in which they prayed the Court "to interdict the defender, and all others acting for him or under his instructions, from entering or encroaching in any way on the