

Friday, January 19.

## SECOND DIVISION.

[Lord Kincairney, Ordinary.]

## MACDONALD v. RUPPRECHT.

*Reparation—Slander—Relevancy—Master and Servant—Malice.*

The head cook in a hotel raised an action of damages for slander against the hotel proprietor. She averred that on her asking the defender for the assistance promised her by him at the commencement of her engagement, he got into a violent temper, ordered her to leave the house at once, repeatedly accused her in the presence and hearing of certain fellow servants of being drunk and in consequence unfit for her work, and several times cried out in a loud voice to her in a public part of the hotel "You are drunk and must go at once," or used words of like import. She further averred that these statements were false, malicious, and calumnious, and without probable cause, and injurious to her feelings, character, and reputation; that the defender made the slanderous accusation recklessly and without taking any trouble to ascertain whether or not it was true, and well knowing that there was no foundation for it, and that he was angry with the pursuer for asking for further assistance and simply made this accusation to browbeat her.

*Held* (rev. Lord Kincairney, who had allowed an issue averring malice, and *diss.* Lord Rutherford Clark) that the action was irrelevant.

Jessie Macdonald raised an action of damages for slander against J. Fritz Rupprecht, proprietor of the North British Station Hotel, Glasgow.

The pursuer averred—“(Cond. 2) On the 31st July 1893 the pursuer, in response to a request contained in a letter addressed to her on behalf of defender, went to Glasgow and had an interview with the defender, at which he engaged her to act as head cook in his hotel at a salary of £1, 1s. per week. One of the conditions on which pursuer accepted the engagement was that she should have the same staff of assistants as the defender employed at the time of her engagement. (Cond. 3) On Tuesday, 1st August, the pursuer commenced her duties as head cook in the defender’s hotel, and continued to act in that capacity without complaint on the part of the defender till Thursday, 10th August. The pursuer during this period repeatedly complained to the defender that she had not been furnished with the assistance he had promised her, and that it was impossible to conduct the work of such a large hotel without a larger staff. (Cond. 4) On the evening of Thursday, 10th August, in or near the said North British Station Hotel, the pursuer again requested the defender to procure further assistance, and stated that other-

wise she feared she would require to give up her situation. Thereupon the defender got into a violent temper and ordered pursuer to leave the house at once. He further then and there repeatedly accused her in the presence and hearing of Mary M’Mahon, Jessie M’Lean, Catherine Fisher, and Margaret M’Nab, her fellow-servants, now or lately in the defender’s service, of being drunk and in consequence unfit for her work. The defender several times cried out in a loud voice to pursuer in a public part of the hotel, ‘You are drunk, and must go at once,’ or used words of like import and effect, meaning that the pursuer was guilty of the debasing practice of drunkenness, and that she was on account of being drunk unfit to perform her duties in the said hotel. The pursuer on being ordered by defender (who is a man of very violent temper) to leave the hotel had no other alternative but to obey. . . . (Cond. 5) The said statements made by the defender concerning the pursuer are false, malicious, and calumnious, and without probable cause, and are injurious to the pursuer in her feelings, character, and reputation. In particular, they are calculated to be and are injurious to the character and position of the pursuer in the practice of her vocation, and to cause her loss, injury, and damage, besides wounding her feelings. The defender made the said slanderous accusation recklessly, and without taking any trouble to ascertain whether or not it was true, and well knowing that there was no foundation for it. He was angry with the pursuer for desiring further assistance, and he simply made this accusation to browbeat her. (Cond. 6) The pursuer has suffered great loss, injury, and damage not only in her feelings but also in her character and reputation in consequence of the defender’s treatment, and the false and calumnious charges he has made against her, and the defender is liable in reparation, *solatium*, and damages therefor.”

The defender lodged defences in which he averred, *inter alia*—“On the occasion referred to when the pursuer left her situation, she comported herself in a violent and disrespectful manner towards the defender. She followed after him in the hotel, shouting and calling names, and was insolent and insulting in her behaviour and language. Any statement made to her by the defender had reference to her conduct at the time and was privileged. He spoke on the spur of the moment and under provocation, but he said nothing defamatory or intended to be defamatory of or concerning the pursuer.”

The defender pleaded, *inter alia*—“(1) The pursuer’s statements are irrelevant and insufficient to support the conclusions of the summons.”

By interlocutor dated 14th November 1893 the Lord Ordinary (KINCAIRNEY) approved of the following issue for the trial of the cause:—“Whether on or about 10th August 1893, in or near the North British Station Hotel, George Square, Glasgow, and in the presence and hearing of Mary M’Mahon, Jessie M’Lean, Catherine

Fisher, and Margaret M'Nab, now or lately the defender's servants, or one or other of them, the defender did falsely and calumniously and maliciously say of and concerning the pursuer, 'You are drunk,' or used words of like import and effect, to the loss, injury, and damage of pursuer. Damages £170."

Against this interlocutor the defender reclaimed, and the pursuer moved the Court to vary the terms of the issue by deleting the words "and maliciously."

Argued for the defender—The action was irrelevant. The words were not seriously meant; they were merely thrown out by the defender *in rixa* during a squabble between him and the pursuer. They were therefore not a proper subject for an action—*Shand v. Finnie*, Feb. 10, 1802, Hume's Decisions, 612; *Cusine v. Begbie*, December 10, 1803, Hume's Decisions, 622. The words themselves in the circumstances of the case were not actionable. Opinion of Lord President Hope in *Friend v. Skelton*, March 2, 1835, 27 S.J. 237. Even if the accusation was held to be seriously made, and the words were held to be actionable, it was a statement made to a servant by a master and therefore was privileged, and malice must be both averred and proved. No special malice was averred, and therefore no issue should be allowed.

Argued for the pursuer—The words of the defender were actionable, since they had hurt the feelings and reputation of the pursuer. To charge the head cook in the presence of others with being drunk was an actionable accusation, and it was for the jury to judge whether or not the accusation was slanderous—*Balfour v. Wallace*, July 14, 1853, 15 D. 913; *Craig v. Jex Blake*, July 7, 1871, 9 Macph. 973; *Rankine v. Roberts*, Nov 26, 1873, 1 R. 225; *Farquhar v. Neish*, March 19, 1890, 17 R. 716. The statement was not privileged, and malice should not be inserted in the issue. No doubt the statement was made by a master to a servant, but it had been spoken before other servants and shouted out several times in a public place—*Milne v. Smith*, November 23, 1892, 20 R. 95; *Ingram v. Russell*, June 8, 1893, 20 R. 771, opinion of Lord President Inglis p. 776; *Douglas v. Main*, June 13, 1893, 20 R. 793. Tendency of modern decisions was to leave the question of privilege open till the trial of the cause.

At advising—

LORD YOUNG—This is an action by a cook against her employer for damages for defamation. Now, it appears from the pursuer's statements on record that some sort of contention arose between the cook and her master, that they both lost their temper, and that upon that occasion he said to her "You are drunk, you must go at once." The action is not upon "go at once" but on "you are drunk," and the pursuer has added on record the explanation—a very candid one—that the defender made the accusation "you are drunk" without taking any trouble to ascertain whether or not it was true. He was angry with the pursuer

for asking for further assistance, and he simply made the accusation in order to browbeat her, and the question is, whether that is a relevant statement to support an action of defamation. I am of opinion that it is not. If a cook gets into a squabble with her master upon the question of requiring further assistance in the kitchen, and they both lose their temper, and the master in order to browbeat the servant, says to her "you are drunk," I do not think that constitutes a case of defamation which is an actionable case. I am therefore of opinion that the action should be dismissed.

LORD RUTHERFURD CLARK—Looking at the averments made by the pursuer on record, I think this case is a very extraordinary one, but notwithstanding these averments I personally would be inclined to allow the pursuer an issue.

LORD TRAYNER—I think the pursuer's case is irrelevant. The words used by the defender of which the pursuer complains were uttered by him, according to the pursuer's averment, while he was in a violent temper, and were uttered not for the purpose of making an accusation against the pursuer, but simply "to browbeat her." The *animus injuriandi* therefore which lies at the root of such cases as the present is negated by the pursuer's own averment.

LORD JUSTICE-CLERK—I have come to the conclusion to agree with the majority of your Lordships.

The Court recalled the Lord Ordinary's interlocutor, and dismissed the action as irrelevant.

Counsel for the Pursuer—Wilson—W. Thomson. Agent—Edward P. Thomson, W.S.

Counsel for the Defender—Young—Glegg. Agents—Morton, Smart, & Macdonald, W.S.

Friday, January 19.

#### FIRST DIVISION.

INSPECTOR OF GALASHIELS *v.* INSPECTOR OF MELROSE AND THE BOUNDARY COMMISSIONERS.

*Boundary Commissioners — Transferred Area—Relief of Paupers—Competency of Order—Local Government (Scotland) Act 1889 (52 and 53 Vict. c. 50), sec. 50.*

By order which came into force 11th June 1891 the Boundary Commissioners transferred a portion of the parish of M. to the parish of G.

In an action by G. against M. the Court of Session decided that M. continued to be liable for the relief of paupers who had acquired a settlement by birth or residence there before the date of the Commissioners' order.

M. and G. having failed to make an