

Saturday, November 14.

OUTER HOUSE.

[Lord Kyllachy.

PARLANE v. TEMPLETON AND
OTHERS.

Slander—Trade Union—Issues—Innuendo—True Statement Made Maliciously with Design and Result of Injury.

A statement true in fact, and not defamatory, is not actionable, even if made maliciously with the design and result of injuring a man in his trade or business.

A printers' trade union published in its annual report a "register of rats," which, after mentioning the names of persons expelled from the union for various reasons, gave a list of a number of men "all working in a closed office in Paisley." There was no statement that these men were members of the union, or that they were expelled from it. A printer, whose name appeared in the list, who was not a member of the union, but admitted that he had been working in the "closed office" referred to, brought an action of damages against the Executive Council of the union, alleging that he had suffered injury in his trade and reputation from the above entry in the register. He proposed three issues, founded respectively on the following bases:—(1) That the entry referred to charged him with dishonourable and unfair conduct—either (a) innuendoed as a statement that he was a member of the union and had been expelled from it, or (b) as an accusation of that character whether he was a member of the union or not; (2) That the entry was false, and held him up to public hatred, ridicule, and contempt; (3) That the entry, whether true or false, was made maliciously, with the design and result of injuring him in his trade. The Lord Ordinary (Kyllachy) allowed the first issue, so far as based on the innuendo proposed, *disallowed* the second issue on the ground that the entry complained of was true in fact, and *disallowed* the third issue as based on a state of facts which disclosed no actionable matter.

This was an action at the instance of Adam Parlane, printer in the works of J. & R. Parlane, printers, Paisley, against John Templeton and others, as representing the Executive Council of the Scottish Typographical Association, and as responsible for the sixtieth report of said Association issued in 1896.

The following averments made by Parlane explain the facts of the case:—"The defenders have, through their various agencies, endeavoured to induce the pursuer and his employers, the said J. & R. Parlane to join the said Association. The pursuer was satisfied that it was not in his interest to do so, and has repeatedly de-

clined, and in consequence the defenders have conceived an *animus* against the pursuer, and resolved to gratify it by injuring his character and damaging his reputation as a printer. In publishing the annual report of the said Association the defenders have for some years been in the habit of including in said report what they term the 'register of rats.' This register is a list of the names of those members of the Association who have been guilty of dishonourable conduct unworthy of a member of said Association, and who have been expelled from it either because of their having been false to said Association, or because they had neglected their work through drunkenness or incompetency, or in the matter of the printers' trade had dealt unfairly or dishonestly in a question with the other members of said Association. A 'rat' thus became known in the trade as a person who had been guilty of dishonourable conduct, and who ought to be excluded from the printers' trade as a person unworthy of being a member of it. For a number of years prior to 1896 the defenders had confined the list of said 'register of rats' to the names of those persons who had formerly been members of said Association. But in order to gratify their *animus* against the pursuer, and with the view of injuring and slandering him, and in that way concussing him into joining the said Association, the defenders printed and published on page 71 of said sixtieth report for the year ending 1895 the 'register of rats,' and falsely, calumniously, and maliciously inserted therein the name of the pursuer. The entry in said report is as follows:—

"Register of Rats.

"Henry Dunn, George Meiklejohn, and Alexander Reid expelled.

"James Adamson Wilson expelled for working in *Falkirk Mail*.

"John Donaldson expelled for going into *Edinburgh Scotsman*.

"Harry Goldie, Alexander Reikie, William Henderson, Alexander Ratray, Alexander Knox, William Hamilton, Adam Parlane, and William Berry, all working in a closed office in Paisley."

The Adam Parlane referred to is the pursuer, and the several others mentioned alongside of pursuer's name are all workmen employed in Messrs J. & R. Parlane's works. The 'closed office' referred to is Messrs Parlane's office. By inserting the pursuer's name in the said 'register of rats,' the defenders falsely, calumniously, and maliciously intended to represent, and did represent, that the pursuer was a 'rat,' meaning thereby that the pursuer having been a member of the defenders' Association had been expelled therefrom for unfair and dishonourable conduct in connection with his trade, or that pursuer's conduct in his trade was so unfair and dishonourable that he was a pest in the printing trade, and ought to be driven from it; that his conduct was unworthy of a member of said Association, and that he was only fit to be classed among those persons who had been dismissed for dishonourable conduct from said Associa-

tion with ignominy. The printing, issuing, and distribution of said "register of rats" by the defenders was also done maliciously and with intent to injure the pursuer in the lawful carrying on and exercise of his business, and with the design of exposing, and did expose, the pursuer to hatred and contempt with printers and the public generally, and for the purpose of coercing and intimidating the pursuer into joining the said defenders' Association."

The defenders explained "that the expression a 'rat,' as used in said report, and also as well understood by the members of the Association, by the pursuer, and by all members of the printing trade, unionist and non-unionist, means a person who is a non-unionist, that is, a person who is not or who has from any cause ceased to be a member of the Association."

Parlane proposed the following issues—(1) Whether the defenders caused to be published in the said report the statements quoted above, and whether such statements or part thereof are of and concerning the pursuer, and falsely and calumniously represent that the pursuer, having been a member of the defenders' Association, had been expelled therefrom for unfair and dishonourable conduct in connection with his trade, or that his conduct was unworthy of a member of said Association, and that he was only fit to be classed among those persons who had been expelled from said Association for unfair and dishonourable conduct, to the loss, injury, and damage of the pursuer. (2) Whether such statements or part thereof are of and concerning the pursuer, and are false, and were made with the design of exposing him to public hatred and contempt, to his loss, injury, and damage. (3) Whether said statements or part thereof are of and concerning the pursuer, and are injurious to the pursuer in his trade as a printer, and were maliciously made and published by the defenders with the design of so injuring him, to the loss, injury, and damage of the pursuer.

On 14th November 1896 Lord KYLLACHY issued the following opinion and judgment:—"The pursuer here has proposed a set of amended issues which are three in number. The first is an ordinary issue of defamation, but it includes two alternatives, each of which should properly form a separate issue. I propose to allow the first alternative and to refuse the second.

"The first alternative puts the question whether the publication complained of, for which the defenders admit responsibility, falsely and calumniously represents that the pursuer, having been a member of the defenders' society, had been expelled therefrom for unfair and dishonourable conduct. The innuendo thus expressed is deduced (1) from the conjunction in which the pursuer's name appears in the register or list; and (2) from the conduct attributed (viz., working in a closed office) taken in connection with the title of the publication, viz., 'The Register of Rats.' The objections to the innuendo are two. It is said (1) that read with due attention the publication will not bear the construction that it was a list of

persons expelled from the society, the word 'expelled' being carefully omitted in the case of the pursuer and some others, and it being plain that the omission was not merely elliptical but designed. It is also said (2) that in any view there was no imputation of unfair or dishonourable conduct, but an imputation simply of working in a closed office—a thing not in itself dishonourable, and not becoming so merely because characterised as being the conduct of a 'rat.'

"Now, as to the element of expulsion, what strikes me is this—that whether intended or not, the terms of the publication were fitted to convey, especially to a cursory reader, that this list which was published by the defenders' society was a list of persons who had in some way been connected with the society and who had been expelled from it. That would certainly have been so but for the omission in the pursuer's case and that of one or two others of the word 'expelled.' And it appears to me that this omission might quite reasonably have been read by a cursory reader as merely accidental. I do not say that the jury ought, in my opinion, to take this view, but I doubt whether I can say that they would not be justified in doing so. I doubt this the more because I must confess that at first I so read the list myself.

"Then as to the unfair and dishonourable conduct, I do not consider that, apart from the pursuer's assumed membership of the society, and the obligations and duties which might be understood thence to arise, the language used would bear the proposed innuendo. But membership of the society being premised, it may, I think, very well have been true that working in a closed office was unfair and dishonourable—that is to say, unfair and dishonourable in a member of the society; and to the average reader it may very well have appeared that that was what was imputed to the pursuer.

"On the whole, although with some difficulty, I am disposed to sustain the innuendo in the first alternative of this first issue.

"With regard, however, to the second alternative, which omits altogether the elements of membership of the society, I do not think that the innuendo proposed is admissible. The only conduct imputed is 'working in a closed office,' and, however characterised, that could not in itself convey to any rational reader an imputation against the pursuer's character. The act charged was in itself perfectly and obviously innocent, and no reader of the publication could, I think, infer from the mere application to the pursuer in respect of that act of an offensive epithet, that there existed in the pursuer's case special duties or obligations which changed the character of the act and made it unfair and dishonourable.

"I of course have in view that the charge made—that of working in a closed office—was in fact true. If it had been false there might conceivably have been a different question, but that question comes up under a subsequent issue.

"The pursuer's second issue is supposed to be based on the case of *Paterson v.*

Welch, reported 20 R. 744; and it accordingly puts the question, *inter alia*, whether the statements complained of were false, and held up the pursuer to public hatred, ridicule, and contempt. As to this, it seems to be enough to repeat what I have just said, that the charge made against the pursuer—so far as it charged a fact—was not false, but admittedly true. I cannot in these circumstances grant an issue in the terms proposed. Whether falsehood is essential to such an issue I need not inquire. The pursuer appears to be satisfied, probably on good grounds, that that is so, and that the present case does not admit of an issue such as has been sometimes granted in cases of what is sometimes called ‘convicium’ cases, the essence of which consists in the combination and repetition of statements or epithets not in themselves slanderous, but the combination and repetition of which may amount to persecution. See the authorities collected in the notes to Mr Glegg’s Book on Reparation, 103.

“It remains to consider the third issue, which also omits all question of truth or falsehood, and proceeds on the assumption that true statements not defamatory may yet be actionable if made maliciously, with the design and result of injuring a man in the exercise of his trade or business. It is admitted that no such issue has yet been granted in Scotland, but it is said that in a case very similar to the present recently tried in England, Mr Justice Hawkins charged the jury in terms which assumed the relevancy of the proposed issue—*Trollope v. London Building Trades Federation*, May 4, 1896, 12 Times L.R. 373. I have been referred to a newspaper report of the trial in question, and have also been furnished with the printed pleadings in the suit, and so far as I can judge it does appear that the learned judge’s charge bears the construction put upon it. But with the greatest deference to so high an authority, I am not prepared—sitting as a single Judge in the Outer House—to make a new departure of the kind suggested. In the meantime at least I do not myself see how a thing lawful in itself, and therefore within a man’s right, can become unlawful by reason merely of the motive which a jury may find to have been the sole or ruling motive present in the man’s mind. I incline rather to hold that such cases belong to the sphere of ethics rather than the sphere of law. But be that as it may, it is I think enough for the refusal of this issue that it is without precedent in Scotland, and that there has yet been no authoritative judgment either in England or Scotland in which the principle of Mr Justice Hawkins’ charge has been affirmed.

“The result therefore will be that the first alternative of the first issue stands substantially as proposed, and that the issue will run thus—‘Whether during the year 1896 the defenders caused to be printed and published in the “Sixtieth Report of the Scottish Typographical Association” the words or statements contained in the schedule appended hereto? and, Whether said words or statements, or part thereof,

are of and concerning the pursuer, and falsely and calumniously represent that the pursuer having been a member of the defenders’ association, had been expelled therefrom for unfair and dishonourable conduct in connection with his trade, to the loss, injury, and damage of the pursuer. Damages laid at £500.”

Counsel for the Pursuer—Salvesen—T. B. Morison. Agent—Peter Morison junior, S.S.C.

Counsel for the Defender—Guthrie—M’Lennan. Agents—Morton, Smart, & Macdonald, W.S.

Saturday, December 12.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.]

TURNER AND ANOTHER v. ROBERTSON AND OTHERS.

Process—Leave to Reclaim—Court of Session Act 1868 (31 & 32 Vict. cap. 100), secs. 27, 28, and 54—Act of Sederunt, 10th March 1870, sec. 2.

In an action of accounting raised by beneficiaries against testamentary trustees, the pursuers objected to the amount of the account of the law-agent of the trust. The Lord Ordinary having remitted that account to the Auditor of the Court of Session to tax and to report, held that a reclaiming-note presented by the defenders, without leave having been granted, against the interlocutor of the Lord Ordinary, was incompetent.

Quin v. Gardner & Sons, Limited, June 22, 1888, 15 R. 776, distinguished.

Mrs Christina Turner and another raised an action of accounting against James Robertson and others, the testamentary trustees of the late Mrs Fraser, Glasgow. The defenders produced an account, and the pursuers objected to their taking credit therein for a sum representing the said Mr Robertson’s charges as law-agent of the trust. The defenders averred that Mr Robertson’s account had been examined and taxed by Mr Hannay, the auditor appointed by the Faculty of Procurators in Glasgow, and that it was an implied condition of Mr Robertson’s employment that his accounts should be taxed by that gentleman.

The pursuers pleaded—“(2) The trustees, or the pursuer as an individual, not having agreed to refer the accounts in question to Mr Hannay for taxation, or approved of his taxation, it is not binding on them or her.”

On 4th December 1896 the Lord Ordinary (KYLACHY) pronounced the following interlocutor:—“The Lord Ordinary having heard counsel in the procedure roll on the question between the parties as to the right of the pursuer to have the business accounts of the defender James Robertson, one of