

Saturday, October 28.

FIRST DIVISION.

A B v. C D.

Administration of Justice—Law-Agent—Law-Agents (Scotland) Act 1873, secs. 14 & 22—Removal of Law-Agent's Name from Roll—Title to Petition—Injury.

In a petition by A B, who was not a solicitor or a member of any law-agent's society, it was averred that C D, an enrolled law-agent, while acting as agent for the vendors of certain property, had wilfully concealed an offer made by the petitioner, in consequence of which the property was sold to another offerer to the petitioner's prejudice. It was admitted that the offer finally accepted was higher than the petitioner's, and that before the final offer was accepted the respondent disclosed the petitioner's offer to the vendors. The petitioner prayed the Court to remove the law-agent's name from the rolls. *Held* that the petitioner had made no relevant averment of injury, and that therefore he had no title to present the petition.

Question reserved—Whether a private person who made a relevant averment of injury by the conduct of a law-agent would have a title to present a petition to remove his name from the rolls?

Observed by Lords Adam and M'Laren that such a petition should first be intimated to the law-agent's society of which the respondent is a member.

By the Law-Agents (Scotland) Act 1873, sec. 14, sub-sec. 1, it is provided that the name of any person shall be struck off the law-agents' rolls directed to be kept under the Act, "in obedience to the order of the Court, upon application duly made, and after hearing parties or giving them an opportunity of being heard."

By sec. 22 it is enacted that "every enrolled law-agent shall be subject to the jurisdiction of the Court in any complaint which may be made against him, and it shall be lawful for the Court, in either Division thereof, to deal summarily with any such complaint, and to do therein as shall be just."

The petitioner, who was not a solicitor nor a member of any society of law-agents, prayed the Court to remove the name of C D, an enrolled law-agent, "from any of the registers kept under the Law-Agents (Scotland) Act 1873, or to suspend him from exercising the office of law-agent for such time as to your Lordships shall seem proper." The petitioner averred that C D while acting as agent for a body of trustees who had advertised certain licensed premises for sale, wilfully concealed from his clients an offer made by the petitioner, in consequence of which the said offer was not accepted, as it would otherwise have been, and that the respondent "concealed said offer to serve his own personal ends, and to prevent any person

other than a client of his own from securing the business." In conclusion, the petitioner averred that "the actings of the said C D have been to the prejudice of the petitioner, and the said C D's professional conduct has been such as to make him unworthy of the position of law-agent."

Answers were lodged for the respondent—He averred that at the first meeting of trustees at which the proposed sale was discussed a list of the offers which the landlord of the premises in question was willing to entertain was laid before the trustees, and that in view of the landlord's refusal to entertain the petitioner's offer his name was not in the said list. At a subsequent meeting, and before the final offer was made, C D informed the trustees of the petitioner's offer and of the landlord's refusal to entertain it, and proposed that he should endeavour to get another offerer to increase his offer. The trustees approved of this course, and an offer higher than the petitioner's was ultimately accepted. The respondent had no personal end in view. The respondent submitted "that the petitioner has no title to present or prosecute the petition; that his averments are irrelevant and insufficient in law to support the prayer, and that the averments themselves, in so far as material, are unfounded in fact." "In these circumstances he submits that the petition should be refused, or otherwise dismissed."

Argued for the petitioner—The primary title to present the petition is in the person injured. Here there was injury, because if the petitioner's offer had been submitted to the trustees in ordinary course it would have been accepted. The Law-Agents Act does not prescribe the title. The word "duly" in sec. 14 means simply "in proper form," and does not refer to title. In *Clark's case*, 14 R. 161, the Lord President's words are not restrictive. He says "it is sufficient" if the persons he describes make the complaint. This does not imply that other persons may not do so. It is true that the application is usually made by a law society, but it may be made by any person injured by the agent's misconduct.—*Begg on Law-Agents*, p. 352. There are very few reported cases in Scotland, but in England the right to apply may be exercised not only by a person injured but by any person having official cognisance of the facts—*Cordery on Solicitors*, p. 172; *in re a Solicitor*, 25 Q.B.D. 17; *in re Sankey*, 59 L.J., Q.B., 238, per Lord Esher, at p. 243. If, even in England where the person injured has a civil remedy against the agent, an application of this sort may be brought, still more in Scotland where there is no civil remedy. The misconduct need not amount to an indictable offence—*Macaulay v. Angus*, M. 13,137; *in re a Solicitor*, 1894, 1 Q.B. 254; *Cordery on Solicitors*, p. 177, and the same causes which would justify the Court in refusing to admit a law-agent would justify it in striking off his name.

Argued for respondent—The petitioner has no title to present the application.

Sec. 14 of the Law-Agents (Scotland) Act 1873 says that the law-agent's name is to be struck off "upon application duly made." "Duly" means "by person having an interest." This petition has a punitive purpose only; it is not an action for damages. Consequently the only parties having an interest are those who have an interest to keep the roll pure—*Incorporated Society of Law-Agents in Scotland v. Clark*, 1886, 14 R. 161, per Lord President at p. 162. There is no case in Scotland of an application of this sort brought by any person not interested in the professional roll. In England, applications by an individual must now be made through an incorporated society—*Solicitors Act 1888* (51 and 52 Vict. c. 65), sec. 13; *in re Sankey*, 59 L.J., Q.B. 238, and even prior to the *Solicitors Act* the practice was that only enrolled law-agents made such applications to the Court. Even assuming that the person injured has a right to make the application, there is here no injury to the petitioner. There were no relations between him and the agent. If injury had been done to anybody by the petitioner's offer not being at once communicated to the trustees, the injury would have been to the trustees, but in point of fact no injury was done to anybody as the offer finally accepted was higher than that of the petitioner.

LORD M'LAREN—This is an application which, as explained to us at the bar, is founded on sec. 22 of the Law-Agents (Scotland) Act 1873. That section provides that "every enrolled law-agent shall be subject to the jurisdiction of the Court in any complaint which may be made against him for misconduct as a law-agent, and it shall be lawful for the Court in either Division thereof to deal summarily with any such complaint, and to do therein as shall be just."

Now there is nothing in that section about title. Sec. 14, to which we were also referred, says that the name of any person shall be struck off the rolls in obedience to the order of the Court "upon application duly made, and after hearing parties and giving them an opportunity of being heard."

I think that the observation made upon sec. 14 is sound, that "an application duly made" implies that there may be applications which are not in order, as not coming from a proper quarter, and I would add that the words "after hearing parties" seem to imply that the petitioner must qualify an interest and a title to promote the application. As the Act does not prescribe the requisites of title, I think it follows that title is co-extensive with lawful interest. The only authority subsequent to the passing of the Act of Parliament is the case of *Clark*, 14 R. 161, in which an exposition of the subject is given by the late Lord President Inglis, and I need hardly say that no higher authority could be cited with regard to the construction of an Act of Parliament passed in his own time. It appears to me that the question of title was relevant to the

question under consideration, and that his Lordship's observations are by no means to be regarded as *obiter* to the decision which was being given. I therefore take it that any mention of a law-agent's society whose roll is in question has a *prima facie* title to present an application, or, as the Lord President somewhat guardedly puts it, "the title to make a complaint of this kind is sufficient, if the person making the complaint is himself an enrolled law-agent, and has an interest to see that the roll is kept pure." But I do not understand the Court as dealing, in the case referred to, with other titles than those that come from within the society itself, and I should say that, if a relevant complaint is made by a client setting forth that he has been defrauded by his solicitor, keeping in view that large sums of money are necessarily entrusted by clients to their solicitors, I should be slow to reject such a title. But I am of opinion that no interest has been shown in this case such as is sufficient to support a title to present an application. The allegation is that the petitioner being an intending offerer for a lease of licensed premises, laid his offer before the law-agent for the sellers, but that in the interview between the solicitor and his clients this offer was not put before them. Now, it must often happen in the conduct of business that clients look to their solicitor to make a preliminary examination, and only to put before them the offers he selects. That is a possible answer in this case. Another is that the landlord has a veto on the selection of the tenant, and the probability of his refusal might very properly be inquired into by a solicitor, and all the facts laid before his clients. I think that where a party not having suffered direct damage comes forward, the relevancy of the case should be very strictly tested, and especially when the facts averred are consistent with innocence and proper professional conduct.

Further, it appears to me that no civil injury of any kind has been sustained by the petitioner. When an offer in answer to public advertisement is made to a seller, there is no relation between offerer and seller until the contract is made. The seller is under no duty to accept the highest offer made, and his agent can be under no higher duty. The only persons to whom the respondent owed a duty were his clients, the trustees. It is not said that he failed in that duty, or that through an error of judgment a smaller price was obtained. I think it would be unfortunate if encouragement were given to persons outside the law societies, who take upon themselves the duty of clearing the rolls, to make such application; and from our experience of the working of the Law-Agents Act I think the interests of the professional societies are quite safe in the keeping of these bodies themselves.

I concur in Lord Adam's opinion that when a relevant petition is put forward by a private person having a professional title, the first step is to intimate the petition to

the professional body of which the respondent is a member.

LORD KINNEAR—I quite agree; and I only desire to add that it does not appear to me necessary to decide whether a person who has sustained injury from the misconduct of a law-agent may or may not have a title to complain. But there is no relevant averment in this petition that the petitioner has sustained injury through the respondent's misconduct. What the petitioner says is, that he made an offer which was concealed by the respondent from his clients. The respondent has given a perfectly intelligible reason for withholding the petitioner's offer from his clients, and an account which does not imply misconduct on the part of the respondent. But I agree that we must take the petitioner's account of the matter in considering a question of relevancy, and the petitioner says that the reason for concealing the offer was not a good one, but that he intended to benefit another client at the expense of the trustees who were selling. Now, that might raise a question between him and the trustees who employed him, but it does not appear to me that the petitioner has anything to do with it. But even if he had, the petitioner suffered no prejudice, because he goes on to say that before the vendors considered the offers, and before they made up their minds as to what offers were before them, the respondent confessed that he had concealed the petitioner's offer, and laid the whole facts before them before the final offer was accepted. I cannot see that any injury was done to the petitioner by the delay in laying his offer before the vendors, because, according to his own statement, they knew all about it before they made up their minds which offer to accept. The petitioner goes on to say that the respondent and one of the trustees tried to get him to raise his offer, and if that is so, it only shows that he did not suffer by the delay in reporting his original offer. It seems to me, therefore, that there is no averment of injury done here, even if injury sustained from misconduct is sufficient to support a title to present an application. Whether such injury is sufficient or not I do not think it necessary to decide. On all the other points I agree with Lord M'Laren.

LORD ADAM—I have a little difficulty in this case, because I think the case put before us is one of moral delinquency, and I doubt whether in such a case injury suffered by the petitioner would be necessary to gain a title. However, I do not differ from your Lordships. If I had thought the petitioner had a title to present an application, I should not have been disposed to decide the case without intimation to the Law Agents' Society. I think they have an interest in reference to the matter of removing a person from the roll of Law Agents.

The Court dismissed the petition.

Counsel for the Petitioner — Salvesen.
Agents—Miller & Murray, S.S.C.

Counsel for the Respondent — Clyde.
Agents—Macpherson & Mackay, W.S.

Wednesday, November 1.

FIRST DIVISION.

SPROLL *v.* WALKER.

Expenses—Slander—Tender—Sufficiency of Apology.

The defender in an action of damages for slander, the slander consisting in the use of the expression "swindler" during a quarrel, tendered on record to the pursuer the sum of one guinea with expenses, and offered to retract any language of an offensive nature which he might have used. He further wrote to the pursuer a letter in which he expressed regret for having used the expression, if he did use it—while denying that he had used it. The pursuer rejected the tender, and the case was tried before a jury, who found a verdict in his favour, but awarded him only one farthing damages.

The presiding judge refused to grant to the pursuer the certificate necessary to entitle him to recover expenses where the damages are below £5.

Held that the defender was entitled to expenses from the pursuer.

An action was raised by James Sproll, confectioner, Leith, against John Walker, wine merchant, Uphall, Linlithgowshire, concluding for payment of £500 as damages for slander. The ground of action averred by the pursuer was, that while he was engaged in transacting business in the shop of Mr Fleming, one of his customers, the defender entered, and, in the presence of Mr Fleming, said of the pursuer, "That man is a damned swindler." The pursuer further averred that the defender made this statement intending to represent that the pursuer was a dishonest person, and that his business had suffered in consequence of the statement.

The defender averred that there had been a quarrel between the pursuer and himself over a trade transaction. He admitted having used strong language to the pursuer, but denied that he had intended to reflect in any way on his honesty. The defender further stated—"Defender without prejudice to his pleas, hereby offers to retract any language he used on the said occasion of an offensive nature, and to apologise for the same, and he also tenders the sum of one guinea sterling in full of the pursuer's claims against him, with the expenses of process to date as these may be taxed. Moreover, since the defences were lodged, the defender, with the view of ending the dispute between them, wrote a letter, of date 25th April, a copy of which is produced, apologising for what occurred on the occasion in question. Reference is made to said letter."

The letter in question was in the follow-