

In the present case there is no room for this distinction. The action is an action of damages at the wife's instance in respect of personal injury, and the question is whether the husband, by his conduct of the cause, has identified himself with the wife's claim in which she has been unsuccessful.

The husband was present when the cause of action occurred. He was engaged with his wife in carrying his furnishings and luggage by an outside stair into a house which he had hired for the summer months. The wooden railing attached to the stair gave way, and the pursuer fell to the ground and sustained a fracture of one of the bones of the leg. She sued the landlord, alleging that the stair was insufficiently guarded. The defence was that the spouses came into collision while the husband was going up the stair with a load on his back; that the railing was not designed to be proof against an accident of that nature, but only to serve the ordinary purposes of a staircase railing, for which purposes it was sufficient. The jury accepted the defender's evidence, which must, accordingly, be taken to be true. Now, the husband being present at the time, and being himself the involuntary cause of the injury complained of, ought not to have given his instance to enable the action to proceed. The impression left on my mind when I tried the case certainly was that the husband was an active litigant, and he supported his wife's claims by evidence which the jury must have disregarded when they considered their verdict. I am therefore of opinion that he is liable in expenses in respect of his conduct as a litigant; and on the general question, whether a husband, by giving his consent and concurrence, renders himself liable for expenses, I agree with the dictum of the Lord President in *Macgowan's case* (25 R. 635), that this must stand as it does at present on the authorities.

The LORD PRESIDENT, LORD ADAM, and LORD KINNEAR concurred.

The Court pronounced this interlocutor:—

“Apply the verdict in the case, and in terms thereof assolvie the defender from the conclusions of the action: Find the pursuer Mary Gilfillan or Maxwell, and her husband William Maxwell, jointly and severally liable in expenses, and decern,” &c.

Counsel for the Pursuer—Munro, Agents—St. Clair Swanson & Manson, W.S.

Counsel for the Defender—Hunter, Agent—W. Croft Gray, S.S.C.

Thursday, March 7.

FIRST DIVISION.

ROBERTSON v. HALL.

Process—Proof—Jury Trial—Time of Trial—Motion for Postponement.

An action of damages was raised on 22nd November 1900, complaining of slanders alleged to have been uttered in March 1898 and November and December 1899. Issues and a counter issue were adjusted on 19th February 1901. The counter issue referred to alleged acts of dishonest appropriation of money said to have been committed in 1894. On 4th March the pursuer gave notice for the sittings commencing on 21st March 1901. The defender moved for a postponement of the trial in respect of the shortness of the time between the adjustment of the issues and the probable date of trial, the difficulty of procuring certain material evidence in support of the counter issue, which referred to periods so far back as 1894, and the delay between the dates of the alleged slanders and the raising of the action.

The Court *discharged* the notice of trial.

On 22nd November 1900 Robert Chisholm Robertson, miners' agent, Glasgow, raised an action of damages for slander against John Hall, miner, Slamannan.

The pursuer averred that upon four specified occasions in March 1898 and in November and December 1899 the defender had slandered him, (1) and (2) by using words of and concerning him in connection with the distribution of certain funds during a strike in 1894 which falsely and calumniously represented that the pursuer had dishonestly appropriated a portion of said funds; and (3) and (4) by saying that the pursuer had embezzled money belonging to the miners.

The defender denied having used the expressions 3rd and 4th complained of, and pleaded, *inter alia*—“(3) Any statements made by the defender of and concerning the pursuer having been true, the defender ought to be assolvied.”

On 19th February 1901 the Lord Ordinary (STORMONTH DARLING) approved of four issues for the pursuer which referred respectively to the four alleged slanderous statements above mentioned. He also approved of the following counter issue for the defender:—“Whether during the year 1894 the pursuer, as agent of the Forth and Clyde Miners' Association, received from the Scottish Miners' Association sums of strike money amounting in all to more than £300, of which he dishonestly appropriated the sum of £160 in or about July 1894, and the sum of £140 in or about October 1894.”

On 4th March 1901 the pursuer gave notice for the sittings commencing on 21st March.

The defender presented a note to the First Division, craving the Court to postpone the trial of the case in view of “(1) the lack of time between the adjustment of issues and the probable date of the trial, and the difficulty in procuring certain

material evidence to meet the defender's said counter issue, the charges referring to periods so far back as the miners' strike of 1894, out of which the present action has arisen; (2) the delicate nature of said counter issue; and (3) the delay which has taken place between the date of the slanders said to have been uttered by the defender and the raising of the present action."

The pursuer objected to the postponement of the trial.

LORD PRESIDENT—The issue in this case was only adjusted on 19th February, and the sittings for jury trials begin on the 21st March. On looking at the issues and record it is pretty plain that documentary evidence will be required, and documents must be lodged eight days before the trial. The defender could not get a diligence before the issues were adjusted. The time available for preparation would accordingly be very short indeed, and as counsel tells us on his responsibility that he cannot with justice to the case go to trial at the sittings, it seems to me that we should grant this motion for postponement. If we declined to do so we might exclude the possibility of the defender proving his counter issue.

LORD M'LAREN—I am of the same opinion, and would only further observe that the right of a pursuer to lead in a jury case is not nearly so strong when there are counter issues as when there are issues only at the instance of the pursuer.

LORD ADAM and **LORD KINNEAR** concurred.

The Court discharged the notice of trial.

Counsel for the Pursuer—Horne. Agent—James B. Bryson, Solicitor.

Counsel for the Defender—Hunter. Agent—D. C. Oliver, Solicitor.

Friday, March 8.

SECOND DIVISION.

[Lord Pearson, Ordinary.]

A. B. v. E. F.

Judicial Factor—Curator Bonis—Removal—Neglect of Duty.

Circumstances in which, upon a report by the Accountant of Court with regard to the conduct of a *curator bonis*, which disclosed persistent neglect by the curator of his duties as such, and failure to comply timeously with the requisitions of the accountant, the Court removed the *curator bonis* from office.

In May 1900 A. B., one of the next of kin of C. D., an *incapax*, presented a petition praying for the removal of E. F., who had been appointed *curator bonis* to C. D. on 9th December 1892.

The petitioner averred as follows:—"In connection with the management of the

estate by the said E. F. there have been various irregularities. Annual accounts have never been punctually lodged, and the Accountant of Court has frequently threatened to report the curator to the Court, and has on at least one occasion, viz., 9th February 1899, carried out his threat."

The petitioner further averred—"The date fixed by the Accountant as the date on which the curator should annually close his accounts is 31st December. Owing to various irregularities, the Accountant has not yet finally approved of the curator's accounts for the period to 31st December 1898. Further, no account has been lodged by the curator of his intromissions for the period to 31st December 1899, and this notwithstanding repeated demands made on him by the Accountant."

The respondent lodged answers, in which he opposed the prayer of the petition. He denied that there had been irregularities in connection with his management of the estate, and that the Accountant had frequently threatened to report him to the Court. He explained that in 1898 he had fallen into ill health, and that during his absence from that cause the annual return to the Accountant was overlooked by his assistants.

The petitioner produced and founded on a report by the Accountant of Court dated 9th February 1899, in which the Accountant craved the Court to recal the respondent's appointment. This report was in the following terms:—"On 9th December 1892 the said E. F. was appointed to be *curator bonis* to the ward, and having found caution he extracted the appointment and entered upon the duties of his office. On 12th July 1898 the curator, after repeated requisitions, lodged with the Accountant an account of his intromissions for year to 31st December 1897. This account was duly audited by the Accountant, and on 11th August 1898 he communicated his draft report, with notes annexed, to the curator. The draft report, with answers to the notes, ought to have been returned within twenty days from the date of issue, but this the curator failed to do despite the issue by the Accountant of the notices required by statute. The Accountant on 28th November 1898 issued a requisition upon the curator requiring him to return within three days the foresaid draft report with answers to notes annexed. The period for complying with said requisition having expired without the curator having obtempered the same, the Accountant, on 15th December 1898, by notice to the curator, intimated his intention to report the curator's disobedience or neglect to comply with the foresaid requisition to the Court in the event of the curator not lodging objections in writing, if he any had, within forty-eight hours after such notice; and the curator having failed so to lodge objections in writing, the Accountant now reports the matter to your Lordship. The estate under the curator's management consists of heritage of the annual value of £36, and moveable property amounting to £22, 9s. 4d."