

was rather that the person charged must have such an interest in the street as would entitle him in association with others to put the street into proper repair. But the answer, as I think, is conclusive—that as the statute has given power to the frontagers, whom failing the Corporation, to put a street into proper repair, no further title than what the 47th section has itself given is requisite to authorise the execution of the work, whether it is to be executed by the frontagers or by the corporation. I confess I am unable to see any ground for limiting the generality of the statute, and while we see from the current of the authorities that some exceptional cases have been recognised, I think the exceptions are more apparent than real. One of them is a case where there was a proprietor who had a wall interjected between the street and his ground. That is only an apparent exception, because the property of the person sought to be charged did not in fact abut on the street. And then in another case, on the construction of one of the London Metropolitan Acts, while the owner of a field adjacent to the street or road was held exempt, the proprietor of a wall which separated the street from that field was held to be liable. That was certainly a very critical case for testing the generality of the enactment there under construction, and it is a decision entirely consistent with the judgment proposed in this case.

I do not think there is any substantial difference in meaning or phraseology between that Metropolis Act and the Act for Edinburgh.

I therefore agree in the opinion that the appeal is not well founded, and that it ought to be dismissed.

LORD KINNEAR—I agree with your Lordships.

The Court refused the appeal.

Counsel for the Appellants—Dundas, K.C.—M'Clure. Agents—Hope, Todd, & Kirk, W.S.

Counsel for the Respondents—Dean of Faculty (Asher, K.C.)—Cooper. Agent—Thomas Hunter, W.S.

Wednesday, March 13.

FIRST DIVISION.

MACDONALD v. HEDDERWICK & SONS.

Proof—Diligence—Action of Damages for Slander—Defender's Right to Recover Pursuer's Income-Tax Receipts

In an action against the proprietors of a newspaper in respect of an alleged slander in an article published in the newspaper, the pursuer averred that his business credit and reputation had been seriously injured thereby. Held that the defender was entitled to a diligence to recover the

pursuer's income-tax receipts for the last three years.

Charles C. Macdonald, jeweller, Glasgow and Birmingham, brought an action against Messrs James Hedderwick & Sons, publishers of the *Glasgow Evening Citizen* newspaper, concluding for payment of £2000 as damages for slander.

In his condescence the pursuer averred that he had been employed to make a sword of honour to be presented to Colonel Hector Macdonald, and that the defenders on 5th September 1900 had published an article in the *Evening Citizen* stating that the sword had come to pieces in the hands of Colonel Macdonald, and was of little value. With regard to the damage he had thereby sustained he made the following averment;—“(Cond. 9) The publication of the article complained of has inflicted serious injury on the pursuer's reputation and feelings. In the pursuer's business, both wholesale and retail, the absolute confidence of the public and of his customers in his integrity and honest dealing is essential. The defenders' newspaper is widely circulated and read by a large section of the public, and the dissemination by its means of the false and slanderous statements complained of has seriously injured the business credit and reputation of the pursuer, besides injuring his feelings. The pursuer has called on the defenders to make reparation for the loss and damage thus suffered by him, but they repudiate all liability. The pursuer estimates the damage suffered by him at the sum sued for.”

After the issues for the trial of the cause had been adjusted, the defenders moved for a diligence for the recovery of, *inter alia*, the receipts for income-tax paid by the pursuer for the last three years. In support of their motion they cited *Johnston v. Caledonian Railway Company*, December 22, 1892, 20 R. 222.

The pursuer opposed the granting of the diligence, and argued that the proper evidence of loss to business resulting from slander was contained in the business-books kept by him.

LORD PRESIDENT—There is no doubt that there was at one time a variation in the practice as to granting a diligence for the recovery of income-tax receipts, but for a considerable time it has been settled, and it is very important to adhere to a settled rule of practice, that such a diligence may be granted in actions of damages for loss of business through personal injury. The reason for granting such a diligence must be to enable the jury to compare the earnings of the pursuer before and after the injury, and for that purpose such receipts are often used. A man's books do not form absolute proof of what his profits are, and they may be kept in such a way as not to show his profits at all. Nor are they in themselves evidence. They require to be proved, and often also explained by witnesses. Income-tax receipts are more direct as containing a man's own statement, and he cannot complain if he is

asked to explain why they show a different result from the books, if they are not in harmony. The pursuer may say that, either through mistake or otherwise, he has returned his income too low, but I can see no difference in principle between an action of damages for loss of business through personal injury and an action for loss of business in consequence of slander.

LORD ADAM—I am of the same opinion. If a man's books were conclusive evidence of his profits in business it might be irrelevant to ask for diligence to recover other evidence in order to contradict them. But the books are not conclusive evidence, and they may or may not be the best evidence according to circumstances. They may be kept in such a way as not to be entitled to any credit. I think that the statement which a man gives to the Income-Tax Commissioners as to his income is relevant evidence of his profits, and may be better evidence than his books. That shows that these receipts may be of importance with regard to the cardinal fact in question, *i.e.*, what was the amount of the pursuer's profits. I agree that if a man chooses to make a statement of his profits less than he actually earned on his income-tax returns, though it may hurt his feelings to be examined upon them, that is no reason why these receipts should not be used as evidence.

LORD M'LAREN—It must be kept in view that while one man may understate his profits for the purpose of paying income-tax on a less income, another may overstate his profits; in the case, for instance, where he proposes to take in a capitalist partner, or to turn his business into a company. Neither the books nor the income-tax receipts are evidence until proved, but if the books are proved by the testimony of the pursuer that they are correctly kept, that would not prevent the other party from leading evidence to contradict them. It seems to me that the reasons for granting a diligence of this kind in accident cases apply, though not perhaps in the same degree, to other cases in which the amount of the pursuer's income is an element in the case.

LORD KINNEAR—I do not see any distinction between one case in which the pursuer complains of loss of business and another. I think the rule must be the same whether the cause of loss be personal injury or slander. I do not at all proceed on the assumption that the income-tax receipts will contradict the pursuer's books, but it appears to me, as your Lordships have explained, that though the income-tax receipts are not evidence, they may be made evidence by putting them to the pursuer and asking him whether these are the sums he paid, because the fact that he paid at a certain rate is an item of evidence tending to show what the amount of his profit really was. In that respect they stand on the same footing as the pursuer's books; they are neither of them conclusive evidence, but they may be made evi-

ence if the pursuer is properly examined upon them.

The Court granted the diligence.

Counsel for the Pursuer—Clyde. Agent—W. C. B. Christie, W.S.

Counsel for the Defenders—Cooper. Agents—Millar, Robson, & M'Lean, W.S.

Saturday, March 16.

FIRST DIVISION.

(Without the Lord President.)

MACDONALD v. HEDDERWICK & SONS.

Proof—Diligence—Slander in Newspaper—Recovery of Defender's Business Books to show Circulation of Newspaper and Localities in which Sold.

In an action of damages against the proprietors of a newspaper for slander alleged to be contained in an article which had appeared in the paper, held that the pursuer was entitled to a diligence to recover the defenders' business-books in order to show the circulation of the newspaper at the date on which the alleged slander was published, but was not entitled to have excerpts from the books in order to show the localities in which the newspaper was sold.

The circumstances of this case are reported in the preceding report, p. 455.

The pursuer asked for a diligence for the recovery of, *inter alia*, "the business-books of the defenders relating to the business carried on by them as proprietors and publishers of the *Glasgow Evening Citizen* newspaper, including their cash-books, ledgers, day-books, sales-books, balance-sheets, and generally all books and memoranda showing or tending to show the number of copies of the *Glasgow Evening Citizen* sold or circulated, and the places in which such copies were sold or circulated in the years 1899 and 1900."

The defenders opposed the granting of the diligence on the ground that the circulation of the *Evening Citizen*, and the localities in which it was sold, were matters which ought to be proved at the trial by the evidence of their manager and agents.

LORD ADAM—My view of this case is that the pursuer is entitled to know the average circulation of the newspaper at the time of the alleged slander. He is not bound to take as sufficient the statement of the officials of the defenders by putting them into the witness-box. To restrict him to that would be against all principle—I mean that it would not do to refuse the diligence merely on the ground that the pursuer is able to get the evidence he requires by putting the defender into the witness-box. Accordingly, I think that the pursuer is entitled to some information from the books, but I dissent to granting an order in