

Thursday, March 19.

FIRST DIVISION.

[Lord Guthrie, Ordinary.]

PYBUS v. MACKINNON.

Reparation—Slander—Master and Servant—Statements Made to Pursuer Alone—“Unjust Steward”—Innuendo—Privilege—Malice—Relevancy.

Averments held incapable of supporting an issue whether the defender said to the pursuer that he had been an unjust steward and unfaithful, and whether the said statements falsely, calumniously, and maliciously represented that the pursuer in administering the defender's estate had been unfaithful to his trust and dishonest, to the loss, injury, and damage of the pursuer, on the ground (1) that they were *too vague* to be submitted to probation, and (2) disclosed *no circumstantial case of malice*, the occasion being privileged.

On 28th November 1907 C. J. Pybus, Waterhaugh, Darvel, Ayrshire, raised an action against T. N. Mackinnon of Lanfine, Newmilns, Ayrshire, concluding for £500 as damages for slander and £500 as damages for assault. (The question of assault was not raised in the Division.)

The pursuer, who had been the defender's factor on the estate of Lanfine in Ayrshire from his purchase of it in 1902, made the following averments:—“(Cond. 2) In 1905 a change took place in the defender's domestic arrangements, and then or shortly thereafter the defender conceived an animus against the servants who had been previously in his employment, including the pursuer. He summarily dismissed various of the underservants, and his manner towards the pursuer entirely changed. The change was so marked that in February 1906 the pursuer wrote the defender asking whether he was dissatisfied about anything, but the defender gave no explanation of his conduct. (Cond. 3) Shortly thereafter the defender became incapable of attending to business, and from June 1906 to April 1907 he was away from Lanfine altogether, and the pursuer had no communication with him. . . . (Cond. 4) On 26th April 1907 the defender unexpectedly returned to Lanfine, and the pursuer at once went over to see him. By this time the coldness which he had previously exhibited to the pursuer had developed into a violent dislike, to which he sought to give vent by making charges of the most reckless and unwarranted description against the pursuer. At his first meeting with the pursuer he immediately began to abuse the pursuer for his management of the estate and for the arrangements made in connection with the shooting lease during the previous season. The pursuer pointed out that he had no opportunity of consulting with the defender, and offered full explanations of all he had done, but the defender refused to

listen to him and plainly indicated that he suspected the honesty of the pursuer's administration. . . . (Cond. 5) On the afternoon of 29th April 1907, when the pursuer was passing through the stable yard at Lanfine, he found the defender in conversation with the head keeper. Leaving the keeper the defender came up to the pursuer and abruptly put the question, ‘Are you an honest man, sir?’ On the pursuer answering that he was, the defender replied, ‘You're a liar.’ The pursuer indignantly repudiated the accusation and demanded an explanation, but the defender expressly refused to give any, and maliciously proceeded to make other equally unfounded accusations against the pursuer. In particular, he asked the pursuer if he knew the story of the unjust steward, and said that the pursuer was and had been an unjust steward. He said that the pursuer had been unfaithful; he also asserted, though he knew it to be false, that the pursuer had left his last engagement without a character, and he maliciously proceeded to insult the pursuer (who is a Roman Catholic) about his religion, by making grossly offensive insinuations about the immorality of priests. (Cond. 6) The said statements made by the defender to and concerning the pursuer were false and calumnious, and falsely and calumniously represented, and were intended by the defender to represent, that the pursuer in administering the defender's estate in his absence had been unfaithful to his trust and dishonest. Further, the said statements were made recklessly and maliciously without the defender having the slightest grounds for them or making the slightest effort to inquire whether there were grounds for them, for the sole purpose of gratifying the spiteful feelings which he entertained towards the pursuer.” . . . [The pursuer then averred assaults, upon which an issue had been allowed] . . . “(Cond. 10) Not content with these unprovoked assaults upon the pursuer the defender threatened him with apprehension, and sent to Newmilns for George Adams, the inspector of the police. Upon the inspector's arrival the defender requested him to interfere and prevent the removal of the furniture, but the inspector refused to do so. The defender also informed the inspector that he had unsettled claims against the pursuer, and that the pursuer had been unfaithful to him. . . . (Cond. 11) Since that time the pursuer has ascertained that the defender has been repeating false and calumnious accusations against him to third parties. In particular, in or about the beginning of September 1907, at Lanfine, the defender stated to Mr Robert Gibb, farmer, Newfield, one of the estate tenants, that the pursuer had been unfaithful to him. The said statement, and in like manner the similar statement made to the inspector of police, was false and calumnious, and falsely and calumniously represented, and was intended by the defender to represent, that the pursuer while administering his estate in his absence had been unfaithful to his trust, and had been dis-

honest. Further, the said statement was made recklessly and maliciously, and purely for the purpose of gratifying the defender's ill-feeling against the pursuer."

The defender, *inter alia*, pleaded—“(1) The pursuer's averments being irrelevant and insufficient to support the conclusions of the summons, the action ought to be dismissed. (4) Any statements made by the defender concerning the pursuer having been made without malice on privileged occasions, *et separatim*, *in rixa* caused by the pursuer's conduct, the defender is entitled to absolvitor.”

On 1st February 1908 the Lord Ordinary (GUTHRIE) repelled the defender's first plea-in-law and approved, *inter alia*, of the following issues for the trial of the cause:—“1. Whether on or about the 29th day of April 1907, and in or about the stable yard at Lanfine, Newmilns, Ayrshire, the defender asked the pursuer whether he was an honest man, and on the pursuer answering that he was, said to the pursuer that he was a liar. Whether, time and place aforesaid, the defender also asked the pursuer if he knew the story of the unjust steward, and said to the pursuer that he had been an unjust steward; and whether, time and place aforesaid, the defender also said to the pursuer that he had been unfaithful; or whether the defender did, time and place aforesaid, utter to the pursuer words of a like import and effect; and whether the said statements falsely, calumniously, and maliciously represented that the pursuer in administering the defender's estate had been unfaithful to his trust, and had been dishonest, to the loss, injury, and damage of the pursuer? Damages laid at £500. 2. Whether on or about the 13th day of September 1907, and in or near the drawing-room of the factor's house at Lanfine aforesaid, the defender assaulted the pursuer, to the loss, injury, and damage of the pursuer? Damages laid at £500.”

[Three other issues were allowed, the one as to assault, which was not challenged, and two others referring to the charge of unfaithfulness, which were afterwards departed from by the pursuer.]

Opinion.—“The defender raises no question on the last issue, that relating to the alleged assault. He objects to the other issues on the ground that the construction put by the pursuer on the words alleged to have been used is forced and unreasonable. Clearly such an expression as ‘you are a liar’ is not actionable—*Watson v. Duncan*, 17 R. 404, and *Agnew v. British Legal Life Assurance Company, Limited*, 8 F. 422. See also *Cockburn v. Reekie*, 17 R. 568, and *Christie*, 1 F. 1155. But a comparison by a landlord to his factor of the factor to the unjust steward, and a charge of unfaithfulness brought by a landlord against his factor, are reasonably capable of a slanderous meaning. Some might think that the actings of the unjust steward not having been beyond his mandate, and not involving any immediate pecuniary benefit to himself, were nothing more than astute, while others might consider that these

actings resulting as they did in nothing but loss to the employer and an indirect advantage to the steward were in breach of trust and dishonest. As to the charge of unfaithfulness, it may merely mean that the factor has been careless and neglectful, or it may mean that he has been dishonest—*Mitchell v. Grierson*, 1894, 21 R. 367, per L. P. Inglis, 369, middle. The pursuer innuendoes dishonesty on record. He now proposes not to include dishonesty, but to confine this innuendo in his issue to unfaithfulness to trust. I think, on the lines suggested by the Lord President in *Mitchell's* case, that dishonesty must go into the innuendo.”

The defender reclaimed, and argued—The first issue should be disallowed. A charge of dishonesty could not be inferred, for the words used would not bear that innuendo. *Esto* that the words used were abusive, an issue would not be allowed for mere abuse any more than for words spoken in *rixa*; *Cockburn v. Reekie*, March 8, 1890, 17 R. 568, 27 S.L.R. 454; *Christie v. Robertson*, July 12, 1899, 1 F. 1155, 36 S.L.R. 899; *Agnew v. British Legal Life Assurance Company, Limited*, January 24, 1906, 8 F. 422, 43 S.L.R. 284. The charge here was so much mixed up with the parable as not to be capable of conveying any imputation of dishonesty. Moreover, the occasion was clearly privileged, and no facts or circumstances inferring malice had been averred. The mere insertion of the word “maliciously” would not make a relevant case of malicious slander; facts and circumstances inferring malice must be set forth—*Ingram v. Russell*, June 8, 1893, 20 R. 771, 30 S.L.R. 699. *Esto* that the words used implied dissatisfaction with the pursuer, dissatisfaction was not malice. The alleged subsequent charges on which the pursuer founded were too remote. They were not made, according to his own averment, till long afterwards. The same objections applied to the issue as now proposed to be amended (*vide infra*) as to the issue in its original form.

Argued for respondent—The Lord Ordinary was right. The words used were capable of conveying a charge of dishonesty, and such a charge was clearly actionable. The pursuer was entitled to prove his innuendo. The circumstances averred on record (*e.g.*, in Conds. 4 and 5) inferred malice, while the subsequent incidents referred to in Conds. 10 and 11 threw a light back on the defender's conduct at the time the charge in question was made, and indicated such dislike and ill-feeling as amounted to malice. Malice was also to be inferred from the recklessness with which the charge here was made. To meet the defender's criticism that the charge made was so mixed up with the parable as not to convey any imputation of dishonesty, the respondent now proposed to amend the first issue so as to make it run thus—“Whether on or about the 29th day of April 1907, and in or about the stable yard at Lanfine, Newmilns, Ayrshire, the defender said to the pursuer that

he had been an unjust steward and unfaithful; and whether the said statement falsify" . . . &c., as in the original issue.

LORD PRESIDENT—An issue of assault has been allowed here, and the only question is whether there is to be an issue of slander as well. The statement complained of was uttered to the pursuer alone, and it has often been observed that the law of Scotland differs from other systems in allowing actions of slander in such circumstances. But while that is so, it is by no means expedient that vague averments as to what was said should be admitted to probation.

I think the statements of the pursuer here are much too vague, and while I am not to be taken as laying down that to call a man an unjust steward, especially a man who has acted in the capacity of a steward or factor, is not slander, the charge that was made here was so mixed up with the parable that it is really quite impossible to hold it as tantamount to conveying any imputation of dishonesty. I think therefore that the pursuer's averments are too vague to be admitted to probation.

I also think they fail in another respect—they have no sufficient substratum of malice, the occasion on which the statement was made being clearly privileged. I entirely agree with the view expressed by Lord M'Laren in the case of *Ingram v. Russell*, 20 R. 771, that it is not enough to use the word maliciously to make a relevant case of malicious slander, but that a circumstantial case of some kind must be set forth.

On both grounds therefore I am of opinion that the issue should be disallowed.

LORD M'LAREN—I concur. I would only add that while the law of Scotland does allow an action of slander for defamatory statements made to the pursuer himself, we apply to such cases a different standard of comparison from that which is applicable where the language complained of is spoken in the presence of others who might take the words used seriously.

I have never known an issue allowed in relation to language such as was used here, except when other persons were present who might be led to form an unfavourable opinion of the pursuer's character.

LORD KINNEAR—I agree with your Lordship. The allusion complained of conveys no definite imputation of a slanderous character. It might have different meanings to different minds, and the pursuer cannot prove his innuendo by evidence of the impression conveyed to persons who heard it, because nobody heard it except himself. I also agree that, if this were doubtful, there is no relevant averment of malice.

LORD PEARSON was absent.

The Court disallowed the proposed issue.

Counsel for the Pursuer (Respondent)—**Watt, K.C.**—Constable. Agents—**Oliphant & Murray W.S.**

Counsel for the Defender (Reclaimer)—**Scott Dickson, K.C.**—**R. S. Horne.** Agents—**Carmichael & Miller, W.S.**

Thursday, March 19.

FIRST DIVISION.

[Sheriff Court at Glasgow.]

CRICHTON & STEVENSON v. LOVE.

Sale—Contract—Implied Warranty as to Quality—Seller's Knowledge of Purpose for which Goods Supplied—Sale of Goods Act 1893 (56 and 57 Vict. cap. 71), sec. 14, sub-sec. 1—Application of Sale of Goods Act 1893 to Manufactured Goods.

An agent for coalmasters, being anxious for an order, saw the agents for a ship, and in conversation told them that his coal would suit them as well as another which they were in the habit of using. They expressed their willingness to give an order, but stated that their orders for coal were made through a certain coal merchant. The coalmasters' agent saw the coal merchant, and both parties being in knowledge of the communings with the ship's agents, received an order for his coal, the coal being named. When it came to be used by the ship the coal was found defective in quality so as to be useless to her and was rejected.

In an action by the coalmasters against the coal merchant for the price of the coal, held that the Sale of Goods Act 1893, section 14 (1) applied, inasmuch as the whole proceedings being viewed as one transaction, the communings with the ship's agents must be considered, and so considering them the purchaser had disclosed the purpose of the purchase and had relied on the skill or judgment of the seller, and consequently that the warranty thereby implied not having being fulfilled, the defender was entitled to absolvitor.

Gillespie Brothers & Company v. Cheney, Eggar & Company, L.R. [1896], 2 Q.B. 59, approved.

The Sale of Goods Act 1893 (56 and 57 Vict. cap. 71), section 14, enacts—"Subject to the provisions of this Act and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows: (1) where the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose, provided that in the case of a contract for the sale of a specified article under its