

the meaning of words. Counsel quite properly referred us to a number of cases where somewhat similar words, occurring in other Acts of Parliament passed for various purposes, have been construed by the Court in Scotland and in England. But I do not think one derives any substantial assistance from such cases, none of which, of course, can be said to be directly in point. I am not ambitious to attempt any general definition of what may or may not be held to be a "dwelling-house" within the meaning of the Act under consideration. It seems to me clear enough that this club-house was not constructed for, and is not in fact used as, a dwelling-house, and is not dwelt in, in any proper or usual or feasible sense of these words. I agree, therefore, in thinking that it does not fall within the terms of section 263 of the Act of 1892. We ought accordingly, in my opinion, to pronounce a finding to the effect indicated, recal the interlocutor of the Sheriff-Substitute, and dismiss the complaint.

The Court sustained the appeal and recalled the Sheriff's interlocutor, found in law that the club-house did not fall under the definition of a house within the meaning of section 4 (13) and sections 263 and 264 of the Act, and assoizied the defenders.

Counsel for the Pursuers (Respondents)—Dean of Faculty (Dickson), K.C.—Hon. W. Watson. Agents—Dalgleish, Dobbie, & Company, S.S.C.

Counsel for the Defenders (Appellants)—Hunter, K.C.—D. P. Fleming. Agents—Webster, Will, & Co., S.S.C.

Saturday, November 7.

EXTRA DIVISION.

[Lord Salvesen, Ordinary.

ROONEY v. M'NAIRNEY.

*Reparation — Slander — Verbal Slander — Innuendo — Relevancy.*

A Roman Catholic clergyman, in his own house and in the presence of witnesses, said to the pursuer—"You are the cause of all this trouble; you'll keep my eye on. You are a source of evil in the parish, and the sooner you are out of it the better." *Held* that the words used were not slanderous in themselves, and that as no specific moral evil was averred on record to which the words might refer, the innuendo proposed, viz., that "the pursuer exercised an evil moral influence on those with whom he came into contact," was irrelevant, and action *dismissed*.

Roger Rooney, holder-on, residing at 33 Clarendon Street, Partick, Glasgow, raised an action of damages for verbal slander against Michael M'Nairney, a Roman Catholic clergyman, residing at St Peters, Hyndland Street, Partick, Glasgow.

The averments of the pursuer were to the effect that in the progress of a dispute between him and the defender, the St Peter's Branch of the League of the Cross, to which the pursuer belonged, had been ejected from an unused chapel in Bridge Street, Partick, which they had for some time been permitted to occupy as a recreation room. That following thereon the League petitioned the Bishop of the Diocese on the matter, and he delegated it to two of his clergy, who, after meeting a deputation of the League, of whom the pursuer was one, decided that the chapel should be reopened to the League, and advised the deputation to go to the defender and arrange for the reopening.

In particular he averred—" (Cond. 10) . . . On the afternoon of 24th April 1907 the party waited upon the defender, who agreed to open the hall. After the interview came to an end, as the deputation was leaving the room, the defender, pointing the index finger at pursuer, said to him—"You are the cause of all this trouble; you'll keep my eye on. You are a source of evil in the parish, and the sooner you are out of it the better,"—or words of the like meaning, import, or effect. These words addressed by the defender to the pursuer were made in the presence and hearing of the said John Heggarty, Francis M'Cart, and James O'Brien, members of the deputation. The said statement had no connection whatever with or any bearing on what had taken place at the interview, but was purely the outcome of defender's ill-will to pursuer, conceived as afore-said, and was made for the purpose of lowering him in the esteem of his friends and others. Pursuer asked defender to withdraw his words, but defender refused to do so. The following day pursuer wrote to the defender asking him to apologise, but he received no reply to his letter. (Cond. 11) The hall in which the League was held was opened on 27th April, and on 7th May when the pursuer entered the hall he was informed by the doorkeeper that defender had left instructions not to allow him (pursuer) to enter. This he did solely in consequence of his ill-feeling towards pursuer. (Cond. 12) The said statements made by the defender as condescended on were of and concerning the pursuer, and they were false, calumnious, and malicious, and were made without probable or any cause. They were intended to represent and did represent that the pursuer exercised an evil influence on those with whom he came into contact, that he was not a fit associate for people in the parish, that he had a demoralising and corrupting influence on his associates and other people, and that he was not a person fit to live in the community, and the defender's language was so understood by those who heard it. The defender was well aware that there was no truth whatever in the said statements."

On the 29th November 1907 the Lord Ordinary (SALVESEN) pronounced the following interlocutor—"Finds that the allegations of the pursuer are not relevant and sufficient to support the conclusions of the

action: Therefore assoilzies the defender from the conclusions of the summons: Finds no expenses due to or by either party, and decerns."

*Opinion.*—"This action arises out of an alleged verbal slander. The words attributed to the defender are as follows—"You are the cause of all this trouble; you I will keep my eye on. You are a source of evil in the parish, and the sooner you are out of it the better." It was maintained that these words were actionable without any innuendo, and, accordingly, the first issue proposed was one which simply put the question whether the words were false and calumnious. I cannot assent to that view. In my opinion the primary meaning of the words is not defamatory in the sense of making an imputation on the pursuer's character. They seem rather to be in the nature of a criticism of his conduct, and they are quite consistent with the view expressed by the defender in his answers that they were intended simply to convey that the pursuer was a cause of disunion in the parish.

"On the other hand, I do not think it doubtful that the words would be actionable if there were any extrinsic facts set forth on record which might warrant a specific innuendo of a defamatory kind—if, for instance, the pursuer had averred that there were rumours existing regarding his habits in the use of alcoholic liquor, and undertook to prove that the words were calculated to convey to those who heard them that it was to these rumours the defender referred, the case might be properly sent to a jury. But here the only innuendo which the pursuer proposes is that the words represented that he exercised an evil influence on those with whom he came in contact, and that he was not a fit associate for people in the parish. This innuendo does not make the vague language of the alleged libel any more precise. Indeed, it is just a paraphrase of the language complained of. It is sufficiently obvious from the pursuer's other averments why he is averse to propound an innuendo except of a general character. The narrative contained in the record shows that there had been a dispute between the defender and certain members of the St Peter's Branch of The League of the Cross with regard to the use of a hall for recreation purposes; and that the defender having somewhat arbitrarily used his authority to close the hall, had identified the pursuer as a ringleader in the dispute. When, therefore, under the pressure of his ecclesiastical superiors he was induced to reopen the hall, he seems to have expressed himself strongly with regard to the pursuer's conduct. 'You are the cause of all the trouble' clearly means the dispute caused by the members of the branch, whether under the pursuer's guidance or not, in resisting the defender's authority; and the subsequent words, in the absence of any other definite meaning being attached to them, must be presumed to have had reference to the same matter. At the worst the language must be treated as merely

vituperative, as in the case of *Cockburn v. Reekie*, 17 R. 568; and it is well settled that unmeaning abuse will not give a right of action.

"While, therefore, I hold that there is no relevant case, I do not propose to award the defender any expenses. He does not deny that before the action was raised he received a letter from the pursuer asking him to apologise, and that he took no notice of it. It is pretty plain that the reverend gentleman had lost his temper at what he regarded as the pursuer's insubordination; and I think the pursuer had some reason to complain, not merely of the high-handed way in which the defender acted, but of the unnecessarily strong language which was pointedly applied to him. I shall accordingly dismiss the action, and find neither party entitled to expenses."

The pursuer reclaimed, and proposed the following issue for adjustment—"Whether, on or about 24th April 1907, in the defender's house, St Peter's, Hyndland Street, Partick, Glasgow, in the presence and hearing of John Heggarty, residing at 5 India Street; Francis M'Cart, residing at 9 India Street; and James O'Brien, residing at 33 Clarendon Street—all in Partick, Glasgow—and the pursuer or one or more of them, the defender did falsely and calumniously say of and concerning the pursuer, 'You are the cause of all this trouble; you I'll keep my eye on. You are a source of evil in the parish, and the sooner you are out of it the better'; or did use words of the like import or effect of and concerning the pursuer, thereby representing that the pursuer exercised an evil moral influence on those with whom he came into contact—to the loss, injury, and damage of the pursuer."

The pursuer argued—(1) The words used by the defender were slanderous in themselves and therefore actionable; (2) even if the words used were not actionable *per se*, they were capable of bearing the innuendo suggested in the proposed issue—*Macrae v. Sutherland*, February 9, 1889, 16 R. 476, 26 S.L.R. 335.

Counsel for respondent were not called upon.

LORD M'LAREN—This is an action for slander of a type of which we have had many examples in recent years. The pursuer complains of words of a general character not imputing any special fault, alleges that he has been injured, and claims pecuniary reparation. It is said, in the first place, that the words are actionable in themselves. The words complained of are—"You are the cause of all this trouble; you I will keep my eye on. You are a source of evil in the parish, and the sooner you are out of it the better." These words are said to have been used by a priest with regard to a member of his congregation, and, setting aside any question of privilege, which does not really arise here, we are entitled to take into consideration the circumstances in which the words were used and the relations of the parties. For a minister or priest to say what is complained of to one of his congregation was a com-

paratively mild form of ecclesiastical censure. But apart from the relation of the parties the words are too vague to amount to defamation. As I have said before, the law of Scotland, differing from the law of England, allows an action for verbal slander without any averment of special damage, but this does not relieve us from the necessity of taking care that this special privilege of thin-skinned people in Scotland should be kept within reasonable bounds.

But, again, the pursuer offers to prove that the words complained of were used with the innuendo "that the pursuer exercised an evil moral influence on those with whom he came into contact." This is not the most obvious meaning of the words. The natural meaning would seem to be that the pursuer was the cause of the friction which existed between the priest and his congregation. But the pursuer undertakes to prove that his meaning is the meaning with which the words are used. The Lord Ordinary says that the innuendo is just a paraphrase of the words complained of, and I agree with his Lordship. It is not a bit more pointed. No doubt the word "moral" is introduced to qualify the word "evil." But "evil" influence may always be said to be, in a sense, immoral. Now unless some particular moral fault, or some particular evil influence, were averred as being referred to by the defender, I fail to see how the innuendo makes the pursuer's case any better.

In the existing constitution of society everyone is subject to annoyance from language used by other people regarding him. But this is a necessity of social life. It is only when the speaker exceeds the bounds of moderation, and imputes some vice or crime, and his statement is untrue, that verbal imputations will give rise to a claim of damages. Here there was no substantial imputation, and I am therefore of opinion that we should adhere to the interlocutor of the Lord Ordinary.

LORD PEARSON—I am entirely of the same opinion. The words complained of are not in themselves actionable, when we have regard to the circumstances in which they were uttered. Enough is admitted by the pursuer to show that nothing in the nature of moral evil was imputed to the pursuer. It was all a matter of clerical discipline on the one side, and what the defender calls "insubordination" on the other, and that in a matter so secular as the use of a billiard table. The pursuer tries to meet this objection by undertaking to prove an innuendo. But the innuendo which he offers to prove does not make the words complained of any less general or more pointed; and I do not think it is possible to extract from them an accusation of moral evil against the pursuer.

LORD DUNDAS—I am entirely satisfied with the way in which the Lord Ordinary has dealt with this case, and I have nothing to add to what he and your Lordships have said.

The Court adhered to the judgment of

the Lord Ordinary, and dismissed the action.

Counsel for Pursuer (Reclaimer)—Watt, K.C.—Orr Deas. Agent—Robert M. Scott, Solicitor.

Counsel for Defender (Respondent)—Cooper, K.C.—G. D. Murray. Agent—Charles George, S.S.C.

Saturday, November 7.

FIRST DIVISION.

[Sheriff of Dumfries.

M'WHIRTER v. LYNCH.

*Parent and Child—Bastard—Filiation—Proof—Opportunity—Corroboration—False Denial by Defender—Defender Called as First Witness for Pursuer.*

In an action of filiation, in which the alleged intercourse was said to have been in a hay-shed and opportunity was proved, the defender denied ever having been in a certain byre alone with the pursuer without his brother-in-law also being present. It was proved that on some occasions a farmer and not the brother-in-law had been the third party.

Held that as the contradiction of the defender was not regarding a circumstance throwing suspicion on him, it did not amount to corroboration of the pursuer's evidence.

*Dawson v. M'Kenzie*, 1908 S.C. 648, 45 S.L.R. 473, approved.

Per the Lord President—"The practice of putting in the defender as first witness accentuates the necessity that the contradiction relied on must be of a material fact. If the defender's evidence is to be contradicted at a later stage by the pursuer's witnesses, and that contradiction is to be founded on as throwing suspicion on him, he must be given good warning that serious importance is attached to the evidence in question. . . . The practice of the pursuer calling the defender as her first witness, although it may be defensible in exceptional circumstances, has not the approval of this Court."

Margaret M'Whirter, domestic servant, residing at Leathes Cottage in the parish of Buittle and Stewartry of Kirkcudbright, brought an action of filiation and aliment in the Sheriff Court at Stranraer against Alexander Lynch, farm servant, residing at Mark, Castle Kennedy, in the County of Wigtown.

A proof was allowed. In the proof the pursuer called the defender as her first witness. The defender did not lead any evidence. The pursuer's story was that carnal connection took place on New Year's Night 1907 in a hay-shed where she had gone with the defender after meeting him in the byre. The defender in his evidence stated that he had never been at any time