

which the defenders circulate amongst their members does not contain any heading is, in my opinion, immaterial if it in fact conveys to the members receiving it the information that the persons named are unworthy of business credit. The defenders themselves admit that the list contains the names which appear in the various publications issued in Scotland known as "black lists"—that is to say, it is a list of persons against whom decrees in absence have been obtained or against whom judicial proceedings have been taken which suggest that such persons are in embarrassed circumstances. Indeed, such a list might be the more damaging to a particular person included in it because of no reason being given why he was so included. Had the case therefore stopped there I should have been inclined, differing from the Sheriff, to have allowed inquiry.

There is, however, another ground on which the same result as the Sheriff arrived at may be reached. The complaint in the initial writ is that the list was issued by the defenders to their members, and it appears that these members are all traders in Musselburgh, who have formed an association for their own protection in dealing with possible customers. Each of them has a legitimate trade interest in knowing the persons with whom owing to their past history it might reasonably be inferred that they incur more than the average risk in supplying them with goods on credit. Now I think that if one trader in Musselburgh communicates to another, in good faith, information which he has received with regard to a possible customer of both, bearing on such customer's credit, that such a communication is privileged; and it makes no difference that the information is systematically obtained by an official of the association on the instructions of the members for their guidance in their business dealings. The cases referred to by Lord Dundas quite bear out this proposition. It is probably true that a communication of this kind is not made in the discharge of either a public or a private duty, but it is made by the association in the conduct of its own affairs in cases where the interests of each and every member is concerned. These are substantially the words used by Parke, B., in *Toogood's case*, and they are in terms applicable to the present. It would have been a different matter if a statement had been published in some newspaper or to members of the public who were not members of the association. On these short grounds I concur in the judgment proposed.

LORD JUSTICE-CLERK—I am of the same opinion. It is quite true that the absence of a heading from the printed list in question might not be enough if it could be alleged that the list had been got up from malicious motives and intent, but I agree with Lord Salvesen that the issuing of such a list among a number of traders, one to the other, stands in no different position from a communication by one

individual trader to another. Now I cannot doubt that if one trader comes to another with *bona fide* information as to the solvency of a third party, there will be no liability attaching to such a communication unless it be shown that the informant was actuated by specific malice. I have no difficulty in concurring in the views which Lord Dundas has stated with such accuracy and completeness.

The Court dismissed the appeal and affirmed the interlocutor of the Sheriff.

Counsel for Pursuer and Appellant—MacRobert—Jamieson. Agent—G. Meston Leys, Solicitor.

Counsel for Defenders and Respondents—Morison, K.C.—Mercer. Agent—Alex. Mitchell, Solicitor.

Tuesday, November 28.

SECOND DIVISION.

REID v. FREDERICK JOHNSTON & COMPANY.

Process—Proof—Diligence for Recovery of Documents—Reparation—Slander Contained in Newspaper Report—Paragraphs in Previous Issues of Paper Inferring Malice—Recovery of (a) Notes from which Paragraphs Printed, (b) Communications between Defenders and Local Correspondents, (c) Letters by Members of Public.

In an action of damages against newspaper proprietors for a slander alleged to be contained in a report in the paper of a political meeting, the pursuer, who averred malice and founded on paragraphs and letters referring to him published in previous issues of the paper, moved for a diligence to recover (1) manuscript notes or reports from which the paragraphs were printed; (2) correspondence relating to the subject-matter of the paragraphs between the defenders and (a) their local correspondents and (b) members of the public; (3) (a) shorthand or other notes made by the defenders' reporters or correspondents, and (b) written reports supplied to the defenders of the proceedings at the meeting; and (4) correspondence between the defenders and their local correspondents referring to the publication of the matters complained of on record.

The Court, in consideration of the detailed averments of malice, granted the diligence.

The Rev. Alan Reid, Parish Minister of Slamannan, raised an action against Frederick Johnston & Company, proprietors of the *Falkirk Herald and Midland Counties Journal*, concluding for damages for slander alleged to be contained in a report published in the defenders' newspaper on 14th December 1910,

of a political meeting held at Slamannan on 10th December 1910 in support of the candidature of Dr Chapple.

The pursuer averred, *inter alia*—“(Cond 2) For some time the defenders have been actuated by feelings of malice towards the pursuer, and have taken frequent opportunity of showing active hostility to him. In order to gratify their malicious feelings, they have taken occasion to call in question his fulfilment of his duties as parish minister, and have readily opened the columns of the *Falkirk Herald* to correspondents and contributors who were willing to attack the pursuer. On 9th July 1910, under the heading ‘Slamannan Notes,’ reference was made in the *Falkirk Herald* to pursuer’s remarks at a school demonstration. The said reference contained a wholly inaccurate and fictitious account of pursuer’s remarks, and falsely stated that the said remarks had caused great indignation among parents, teachers, and scholars, and in said issue the suggestion was made that pursuer should improve his pastoral efficiency by holding more services. Again, on 1st October 1910, the defenders gave space in their columns to certain statements from their local correspondent at Slamannan containing reflections upon the conduct of religious matters on the part of the pursuer and his elders in connection with the Parish Church of Slamannan, in respect that some communion cards were alleged to have been posted instead of delivered by personal call of the members of the kirk-session. These observations were followed on 8th October by a letter from a correspondent on similar lines, falsely representing that pursuer was remiss in visiting his congregation. . . .”

On 28th November 1910, issues having been approved and notice of trial given for the sittings, the pursuer moved in the Single Bills for a diligence for the recovery of documents in terms of a specification containing the following articles—“1. (a) The manuscript notes or reports from which the paragraph headed ‘Slamannan’ in the issue of the *Falkirk Herald* newspaper of 9th July 1910 were printed; and (b) all letters, memoranda, and other communications passing between the defenders on the one hand and Mr James Murphy, their correspondent in Slamannan, on the other hand, in the month of July 1910, having reference to the subject-matter of said paragraphs. 3. (a) The manuscript notes of reports from which the paragraphs headed ‘Slamannan’ in the issue of the said newspaper of 1st October 1910 were printed; and (b) all letters, memoranda, and other communications passing between the defenders on the one hand, and the said James Murphy on the other hand, during the period from 25th November 1910 to 7th January 1911, having reference to the subject-matter of said paragraphs. 4. All letters or other written communications addressed to the defenders or to the editor of their said newspaper or to anyone on the defender’s behalf, (a) by any of their correspondents, or (b) by members of the public, having reference to the subject-

matter of the paragraphs mentioned in the preceding article, between 1st October 1910 and 7th January 1911. 9. (a) All shorthand or other notes made by any reporters or correspondents of defenders’ newspaper of the proceedings of a meeting held in Slamannan on 10th December 1910 in support of the said candidature of Dr Chapple; (b) all written reports of said meeting supplied to the defenders; and (c) all letters, memoranda, and other correspondence passing between the defenders or anyone on their behalf on the one hand, and the correspondent or correspondents in Slamannan of their said newspaper on the other hand, in the month of December 1910, and having reference to the publication by the defenders of the matters complained of on record.”

The defenders objected to the above articles, and argued—The reports from the defenders’ correspondents being communications between master and servant, were confidential and could not be recovered—*Stuart v. Great North of Scotland Railway Company*, July 9, 1896, 23 R. 1005, 33 S.L.R. 730. The defenders having accepted responsibility for the publication of the articles complained of, could not be compelled to produce letters from members of the public containing the statements in the articles—*Lowe v. Taylor*, June 24, 1843, 5 D. 1261.

At advising—

LORD JUSTICE-CLERK—There is no doubt that this is a request for a fairly sweeping diligence, but in the circumstances of the case I do not perceive any ground for refusing the diligence asked for. If this had been an action of damages for slander of the ordinary nature, there is a good deal in the specification that might be open to objection. But the pursuer’s case here is that the statements in the report were put in by the defenders with malicious intent, and the pursuer has indicated that there are facts as to this which he can prove. In these circumstances I do not think that the diligence should be restricted. It may be a question whether some of the documents recovered can be used in evidence, but this must be left to the decision of the judge who presides at the trial.

LORD SALVESEN—I concur. I think this diligence may be justified on the ground that there is a very detailed averment by the pursuer of malice on the part of the defenders. We might have come to a different conclusion if there had been no such averment.

LORD DUNDAS concurred.

The Court granted the diligence.

Counsel for Pursuer—Macquisten.
Agents—Alex. Morison & Company, W.S.

Counsel for Defenders—C. H. Brown—
Burns. Agents—Henderson & Mackenzie,
S.S.C.