

Saturday, November 20.

SECOND DIVISION.

[Lord Blackburn, Ordinary.]

GARDNER v. ROBERTSON.

Reparation—Slander—“Offered a Bribe to Give Information”—Issue—Innuendo—Relevancy.

A member of a town council brought an action of damages for slander against another member, in which he averred that at the close of a meeting of the council, at which the subject of the town pier had been discussed, the defender, referring to him (the pursuer), said—“I have something to say before the meeting closes regarding Mr Gardner, and I hope the press will take note of it. I have been informed by two men on the boat that Mr Gardner offered them a bribe to give him information about the piermaster being absent from his duties on the pier. Further, I am informed that the captain, when he heard of it, told the two men that if they carried any information to Mr Gardner he would give them instant dismissal.”

On record the pursuer innuendoed the statement as representing that he (the pursuer) had committed the dishonourable action of endeavouring to bribe two seamen in order to induce them to make a statement to him by means of which he might charge the piermaster with neglect of his duties.

Held (rev. the judgment of the Lord Ordinary (Blackburn)) that the words complained of were not in themselves actionable, that they were not capable of bearing the innuendo placed upon them by the pursuer, and action *dismissed* as irrelevant.

James Gardner, Woodend House, Millport, Cumbræ, *pursuer*, brought an action against Robert Robertson, farmer, Breakach, Millport, *defender*, for payment of £1000 as damages for slander.

The pursuer averred—“(Cond. 1) The pursuer resides in Millport, and has for some years been a member of the town council of that burgh, which consists of the provost, two bailies, and seven councillors. The defender is a farmer at Breakach, Millport, and is also a member of the town council of that burgh. (Cond. 2) The old pier at Millport belongs to the town council who levy tolls on passengers using the pier. The pier is under the charge of a piermaster, who is a servant of the town council. . . . (Cond. 3) In the early months of 1920 the pursuer, who is a member of the pier committee of the town council, and accordingly specially interested in the matter, formed the opinion that the receipts from the tolls were less than they ought to be having regard to the numbers of passengers who were using the pier. This view was shared by other members of the town council. The apparent deficiency was believed to be due to passengers entering and leaving the pier, not through the turnstiles, but through the

pier gates which were not being kept closed as they ought to have been. (Cond. 4) At a meeting of the town council in the month of April 1920, at which the question of the apparent leakage in the pier dues was being considered, the pursuer proposed a resolution to the effect that it be an instruction to the piermaster that the pier gates should always be kept closed so that all passengers would pass through the turnstiles. This resolution was discussed at the said meeting, but was not disposed of. (Cond. 5) At the next meeting of the town council, held on 10th May 1920, the said resolution came up at the end of the meeting as continued business. A full discussion of the matter then took place, and the town council unanimously adopted the said resolution proposed by the pursuer. (Cond. 6) The said resolution was the last item on the agenda of the said meeting of 10th May 1920. And after it had been disposed of, and the business of the meeting finished, the defender rose and made a statement regarding the pursuer in the following words or in words to the same effect, viz.—‘I have something to say before the meeting closes regarding Mr Gardner, and I hope the press’ (here the defender pointed to the reporters present at the meeting) ‘will take note of it. I have been informed by two men on the boat’ (referring to the steamer ‘Benmore’ which plies to Millport) ‘that Mr Gardner offered them a bribe to give him information about the piermaster being absent from his duties on the pier. Further, I am informed that the captain, when he heard of it, told the two men that if they carried any information to Mr Gardner he would give them instant dismissal. I would like to know if this is true.’ . . . (Cond. 7) The said statement quoted in cond. 6 was made by the defender of and concerning the pursuer in presence and hearing of the whole members of the town council, as well as of the town clerk of Millport and his deputy, the burgh surveyor, the chief of police, and a number of the public who had been present at the meeting which had just concluded prior to the said statement being made, and was spread throughout the town the following day. The said statement was false. It was made by the defender in order to slander the pursuer and did slander him. It represented and was intended to represent the pursuer as having committed the dishonourable action of endeavouring to bribe two seamen in order to induce them to make a statement to the pursuer by means of which he might charge the piermaster with neglect of his duties. (Cond. 8) The said statement was not only entirely without foundation in fact, but it was made by the defender maliciously and well knowing it to be untrue. There has been much friction in the town council owing to the action of the provost in taking a lease of the town hall for the purpose of a cinematograph show which he runs for profit as a private enterprise. An action was raised by, amongst others, the pursuer in the Sheriff Court at Rothesay against the provost of Millport for the purpose of testing the legality of the provost’s action. In conse-

quence of the raising of that action the provost and his supporters have shown very strong antipathy to the pursuer, and have taken every opportunity to evince their hostility. The defender is one of the principal supporters of the provost. The statement complained of was made by him for no other reason than that, being incensed at the pursuer for raising the action referred to against the provost, he desired to injure the pursuer's reputation. (Cond. 9) By the defender's action in making the said statement publicly, as he did, the pursuer's reputation and feelings have been greatly injured. The pursuer has thereby suffered loss, injury, and damage for which the defender is responsible, and which is moderately stated at £1000, the sum sued for."

The defender pleaded, *inter alia*—"1. The pursuer's averments being irrelevant and insufficient to support the conclusions of the summons, the action should be dismissed. 2. The defender not having slandered the pursuer, decree of absolvitor should be pronounced. 3. The occasion in question having been privileged, and there being no relevant averment of malice, the action should be dismissed."

On 2nd November 1920 the Lord Ordinary (BLACKBURN) approved of the following issue—"Whether on or about 10th May 1920 in the Town Council Chambers, Millport, the defender, in the presence and hearing of William Sinclair, Sinclair Gardens, Millport; Robert Young, 9 Kelburne Street, Millport; William Paterson, Cross House, Millport; William Connacher Greig, Craig Street, Millport; and John Tennant Mackay, 1 Guildford Street, Millport, or one or more of them, falsely and calumniously said of and concerning the pursuer that the pursuer had offered a bribe to two men employed on the steamer "Benmore" to give him information about the Piermaster at Millport being absent from his duties, or used words of the like meaning and effect of and concerning the pursuer, to his loss, injury, and damage. Damages laid at £1000 stg."

Opinion—"I think in this case I must allow the issue. I confess that on first reading the record it did not seem to me that there was any serious accusation in the statement alleged to have been made by the defender at the meeting of the town council. But I am constrained to take the view that to say that someone bribed another to make a statement may to the minds of many people carry an impression which at a first reading it did not convey to me. I read it as meaning that the defender had been accused of trying to collect information, which otherwise would not have been disclosed, by inducing people who did not want to do so to come forward and give it. But I can see that it is capable of another interpretation, and that the words might be taken to mean that the defender had endeavoured to induce people to give false information. In that sense the words are slanderous, and I think the question of which meaning the words were intended to convey when uttered is one for decision by a jury rather than a judge. I must therefore allow the issue.

With regard to the question of privilege, I cannot decide anything now, because I think it depends to a very great extent on the question whether or not the defender drew the attention of the press to the accusation which he was going to make. If he did so he waived any right of privilege, but if he did not I should be inclined to charge the jury that the occasion was privileged."

The defender reclaimed and moved the Court that in the event of the issue being allowed its terms should be varied by inserting the word "maliciously."

Argued for the reclamer—(1) The action was irrelevant because the pursuer had not averred a slander. The pursuer did not aver that the words complained of attributed to him a corrupt motive in giving the bribe. The words were capable of an innocent meaning and therefore the pursuer must specify the libellous meaning which he put upon them—*James v. Baird*, 1916 S.C. (H.L.) 158, 53 S.L.R. 392, *per* Lord Chancellor (Buckmaster) at 1916 S.C. (H.L.) 161, 53 S.L.R. 394, and Lord Kinnear at 1916 S.C. (H.L.) 165, 53 S.L.R. 396; *Gudgeon v. Outram & Company*, 1888, 16 R. 183, 26 S.L.R. 130. The innuendo which the Lord Ordinary regarded as possible was not the innuendo which the pursuer himself put upon the words. The innuendo which the pursuer himself put upon the words was harmless and did not give them a defamatory meaning. Moreover, the words must not be scrutinised too closely if, as was the case here, the occasion was privileged—*Lyal v. Henderson*, 1916 S.C. (H.L.) 167, 53 S.L.R. 557. (2) If the Court were to allow an issue it should contain the word "maliciously." The occasion was clearly privileged. The privilege could not be affected by anything which was said on the occasion. Anything said on the occasion might be proof of malice but could not alter the privilege. The press had the right to be present, and therefore their presence did not affect the privilege of the occasion—*Odgers' Libel and Slander* (5th ed.), p. 298. Privilege could not be waived. In order to overcome the privilege the pursuer must aver external circumstances inferring malice, but this he had not done—*Mitchell v. Smith*, 1919 S.C. 664, 56 S.L.R. 578, *per* Lord Mackenzie at 1919 S.C. 672, 56 S.L.R. 585; *Suzor v. M'Lavichlan*, 1914 S.C. 306, 51 S.L.R. 313. [LORD DUNDAS referred to *Chisholm v. Grant*, 1914 S.C. 239, 51 S.L.R. 202.]

Argued for the respondent—(1) The pursuer had relevantly averred a slander. The word "bribe" always involved the element of corruption—*Murray*, *New English Dictionary*, vol. i, p. 1092, and in the context in which the word was used in the present case it primarily involved the meaning of corruption—*Torrance v. Weddel*, 1868, 7 Macph. 243, *per* Lord President (Inglis) at 245; *Seaton v. Ritchie & Company*, 1890, 17 R. 680, 27 S.L.R. 536, *per* Lord President (Inglis) at 17 R. 685, 27 S.L.R. 539. *James v. Baird*, *per* Lord Kinnear, *cit.*, and *Odgers' Libel and Slander* (5th ed.), p. 115, were also referred to. (2) The word "maliciously" should not be inserted. The occa-

sion was not privileged. Admittedly, had there been privilege the privilege could not be waived, but there was no privilege. The incident occurred after the meeting of the Town Council was over. In *Shaw v. Morgan*, 1883, 15 R. 865, 25 S.L.R. 620, the slander was uttered during the meeting. Moreover, in the present case the statement complained of was irrelevant to the object of the meeting. It was not addressed to the Town Council at all, but to the press—*Shaw v. Morgan, cit., per Lord Justice-Clerk (Moncreiff)* at 15 R. 869, 25 S.L.R. 624, and Lord Young at 15 R. 870, 25 S.L.R. 625. [The LORD JUSTICE-CLERK referred to *M'Neill v. Forbes*, 1883, 10 R. 867, 20 S.L.R. 580.]

At advising—

LORD JUSTICE-CLERK — The pursuer alleges that the defender said of him immediately after a meeting of the Town Council of Millport, of which body they were both members—“I have something to say before the meeting closes regarding Mr Gardner, and I hope the press” (here the defender pointed to the reporters present at the meeting) “will take note of it. I have been informed by two men on the boat” (referring to the steamer “Benmore” which plies to Millport) “that Mr Gardner offered them a bribe to give him information about the piermaster being absent from his duties on the pier. Further, I am informed that the captain, when he heard of it, told the two men that if they carried any information to Mr Gardner he would give them instant dismissal. I would like to know if this is true.”

The piermaster was a servant of the town council, the pier being the property of the town council.

The pursuer also attaches on record the following innuendo to the defender's language: — “It represented, and was intended to represent, the pursuer as having committed the dishonourable action of endeavouring to bribe two seamen in order to induce them to make a statement to the pursuer by means of which he might charge the piermaster with neglect of his duties.”

The Lord Ordinary has allowed an issue without any innuendo, reserving the question of privilege until it is seen whether it arises at the trial.

We have now to decide whether the words spoken justify an issue either with or without the innuendo referred to.

The pursuer's whole case rests on the word “bribe,” which he contends necessarily imports slander. That word is ambiguous. It is capable, no doubt, of being so used as to imply what might be regarded as slanderous. On the other hand it may bear a quite innocent interpretation. In determining how it is to be understood in the present case one must have regard to the statement complained of as a whole.

The Lord Ordinary's first impression was that the correct view was that all that the defender had done was to charge the pursuer with “trying to collect information which otherwise would not have been disclosed by inducing people, who did not want to do so,

to come forward and give it.” In my opinion that is all that the language in itself does mean. The word “bribe” may convey the suggestion that more is being given than the information is worth, or that the consideration that is offered to the informant is so great as to induce him to give information which he has, but which but for the inordinate amount of the consideration he would not communicate. The pursuer had as a town councillor a legitimate interest to ascertain whether the keeper of the town pier was properly attending to his duties, and I do not think it imports any slander to say that he was willing to pay for information on the subject. The matter was being discussed in the town council at the time or immediately before the defender used the words complained of, or was at least pertinent and relevant to what was being or had just been considered by the town council. I agree that the word “bribe” was not happily chosen, but I cannot agree with the Lord Ordinary when he says that the use of the word “bribe” meant or “might be taken to mean that the pursuer had endeavoured to induce people to give false information,” at least without that innuendo being put upon it by the pursuer.

In saying that, the Lord Ordinary is putting an innuendo on the defender's language, perhaps the word would bear such an innuendo though that would not have occurred to me; but it is not the innuendo which the pursuer attaches to the defender's statement. There is no suggestion in condescence 7 (where the pursuer's innuendo occurs) that the defender wished to buy false information. It seems to me very far fetched, if not unreasonable, to suggest that the defender was charging the pursuer with wanting to buy false information. But if the Court are to allow any innuendo in the issue, it must be one which the pursuer has put on record, and the innuendo which occurs in the Lord Ordinary's note is not on record. The Lord Ordinary has, as I have said, adjusted an issue without an innuendo. I think the words attributed to the defender are not in themselves and without innuendo actionable, and the only innuendo which the pursuer puts forward does not in my opinion make the case any better than it is on the words without innuendo. On this point I refer to the case of *Rooney v. M'Nairney* (1909 S.C. 90) which, though not cited to us, seems to me very pertinent. In the case of *Langlands* (1916 S.C. (H.L.) 102) the law is thus laid down by Viscount Haldane (105 s. 4)—“The question which we have to deal with we have to decide as judges of law. It is whether it is possible, if the language used is read in its ordinary sense, to say that it is such as can reasonably and naturally support the innuendo. It is not enough for the pursuer to say ‘the language is ambiguous, it is capable of one of two meanings, either is equally probable, and it is for the jury to choose which it will put on it.’ The pursuer must make out his case, and the pursuer must therefore, if he wishes to succeed, when he puts forward his innuendo put it forward either on the foot-

ing that the language taken by itself supports the innuendo, or that there is extrinsic evidence, extrinsic to the libel itself, which shows that that was the sense in which the words were intended to be construed." And Lord Kinnear in the same case said—"Now I think, in accordance with what was laid down in this House in the case of *Stubbs* (1913 S.C. (H.L.) 14) that it was for the Court, and is therefore now for your Lordships, to say whether the words used are reasonably capable of the meaning ascribed to them. If that is a meaning which could be read as the natural or reasonable inference from the language employed, then the innuendo is justified; if not, then the Court ought to have held, as the Lord Ordinary held, and your Lordships must now hold, that there is no sufficient ground for ascribing that particular libellous meaning to the language which has been used by the appellants."

In my opinion these statements of the law are applicable to this case. The language complained of will not, I think, support an action in itself. I do not require to consider whether it will bear any actionable innuendo. But the pursuer has selected the innuendo which he says applies to the language which he complained of, and in my opinion the innuendo suggested by the pursuer is not one which would import actionable liability against the defender. The pursuer plainly does not accept the suggestion that the defender attributed to the pursuer the attempt to procure false evidence.

The pursuer relied greatly on the case of *Torrance v. Weddel*, 1868, 7 Macph. 243. In my opinion the judgment in that case has really no bearing on the present. The case was heard on a bill of exceptions which raised no controversy such as we have here. The language complained of there did not use the word "bribe," but the issue adjusted contained the innuendo that the defender by his language represented that the pursuer had been guilty of an attempt at bribery or of other corrupt and improper conduct. In my opinion that raised a question *toto cælo* different from that with which we have to deal.

In my opinion the pursuer has stated no relevant case, and the action should be dismissed on that ground.

LORD DUNDAS—The slander here alleged is that the defender stated of and concerning the pursuer that the latter had offered a bribe to two men employed on the steamer "Benmore" to give him information about the pier-master at Millport being absent from his duties. The Lord Ordinary's judgment discloses both his first and second thoughts about the matter. I confess that I prefer the former of these to the latter. His Lordship tells us that, on first reading the record it did not seem to him that there was any serious accusation in the statement made by the defender. It is true that "bribe" is an ugly word, but one must of course have regard to the whole context in which it is said to have been here uttered. People often use words, and are understood to use

them, not in their strict natural sense, but loosely and in a manner not intended to convey, and which could not reasonably be understood as conveying, any sinister meaning which, if used in their strict sense, they might import. I do not think that the words here complained of are *prima facie* slanderous; whether or not they are capable of any reasonable innuendo in such a sense is a different question. The Lord Ordinary came, on second thoughts, to think that the defender's statement might be taken to mean that the pursuer had endeavoured to induce people to give false information; and that in that sense it would be slanderous. But that is not the meaning which the pursuer himself attaches to the defender's statement. He avers that "it represented and was intended to represent the pursuer as having committed the dishonourable action of endeavouring to bribe two seamen in order to induce them to make a statement to the pursuer by which he might charge the pier-master with neglect of his duties." That is the innuendo, and the only innuendo, which the pursuer on his record puts upon the defender's language. It does not seem to me to avail him at all, or to advance his case one whit. It is just a paraphrase of the language said to have been used. Now it is for the pursuer to state the innuendo which he attaches to the words, and it is not for the Court to do so. In my judgment, therefore, the action as laid is irrelevant, and must be dismissed.

LORD SALVESEN—I am of the same opinion. It seems to me that the words complained of convey nothing more than that the pursuer had been accused, to use the words of the Lord Ordinary, "of trying to acquire information, which otherwise would not have been disclosed, by inducing people who did not want to do so to come forward and give it." It may be that the word "bribe" implies that an unduly large sum was offered in proportion to the services which were to be rendered. But bribery in the legal sense implies corruption, and reading the word "bribe" here along with the context, it does not seem to me to be capable of being understood in the legal sense. It is not suggested that it would have been contrary to the duty of these two seamen to have observed the pier-master's actions, and reported to the town council who were interested in seeing that he attended to his duties, and therefore the idea of an inducement offered for a corrupt purpose is entirely out of the case.

Even if I did not take that view of the statement I should still think, with both your Lordships, that the only innuendo which the pursuer puts upon the words will not do. To begin with it does not in the least expound the meaning that he attaches to the word "bribe" but merely repeats it. And as for what the Lord Ordinary says, for my part I see no suggestion in the statement complained of that the defender ever desired to obtain false information by means of the inducement that he offered.

I agree with your Lordships that the use

of the word "bribe" was inappropriate, but the word has to be read in the context in which it appears. If it is capable, as I think it is, of an innocent meaning by itself, and still more when it plainly appears from the context that it was in an innocent meaning that it was used, I do not think that it will support the action, and the Lord Ordinary's interlocutor must be recalled.

LORD ORMIDALE—This is an action of damages for slander. The pursuer is a member of the town council of Millport, and so is the defender.

The alleged slander of which the pursuer complains is contained in a statement said to have been made by the defender on the 10th of May last at the close of a meeting of the town council after the last item of the agenda had been disposed of and the business of the meeting finished. The statement was made of and concerning the pursuer in the presence of the whole members of the town council as well as of sundry officials and a number of the public.

I do not quote the statement at length, but it contains this sentence—"I have been informed by two men on the boat that Mr Gardner," *i.e.*, the pursuer, "offered them a bribe to give him information about the piermaster being absent from his duties on the pier," and that the speaker was further informed that the captain of the boat told the men that if they carried any information to Mr Gardner he would give them instant dismissal.

Now, to offer a man a bribe—apart from any context—conveys to my mind the meaning that the man making the offer is guilty of a blameworthy action, that he is adopting in order to secure the object he has in view a course that is unworthy and improper, and that he does so because he cannot, or thinks he cannot, secure his end by ordinary means. It involves the idea that he is attempting to pervert the judgment or corrupt the conduct of those to whom he is offering the bribe. Accordingly, to say of a man that he offered some one a bribe is, in my judgment, *per se* defamatory.

The context, however, may be such as either to dissipate altogether or again to confirm or emphasise what I venture to think is the primary meaning of the phrase, or yet again to leave it doubtful whether the words were used in an innocent or in an offensive sense. To say that a man bribed a child with a sweetie to run out to post a letter would be to use the word "bribe" in a secondary and entirely innocent sense, meaning that the man did nothing more than offer the child a sweetie to induce it to do a perfectly meritorious action which otherwise it was disinclined to perform. On the other hand, to say that a man offered another a bribe to induce him to betray his trust, or to swear falsely, would just as clearly, I think, emphasise the primary sense of the term.

It was maintained that in the present case the words "offered a bribe" meant no more than "offered a tip or money." If that was his meaning then it would have

been very easy for the defender to use the neutral and inoffensive term. It is a point against the innocent construction he puts on the words that were in fact used that he did not do so. It is said, however, that reading the word in the light of the rest of the statement it is clear that "bribe" was used in an innocent sense. I am unable to accept that view. I cannot hold that the context necessarily instructs that the word was certainly used in an innocent sense. It may have been but it may not. The context in my judgment leaves the matter doubtful.

The statement complained of being then susceptible of two meanings—one of them inoffensive and the other defamatory—it is incumbent on the pursuer to state clearly and to put before the jury the slanderous meaning which he attaches to it. In other words he must innuendo it. Now I am unable to find on the record any averments relevant to instruct an innuendo. All that the pursuer says is that the statement was made by the defender in order to slander him and did slander him. He nowhere says what is the slanderous or defamatory meaning which he attaches to or extracts from the statement. No doubt in the end of condescendence he avers what the statement represented, and was intended to represent—but after giving that averment careful consideration it appears to me to be no more than a paraphrase, in not very dissimilar language, of the sentence which forms the subject of his complaint. It repeats *in gremio* of it the word "bribe," and there is no attempt made to set forth or to explain the defamatory sense in which according to the pursuer that word was used to the injury of his reputation.

As an innuendo is necessary, and the pursuer has alleged none, his case, in my opinion, fails, and the action must be dismissed.

The Court recalled the interlocutor reclaimed against, found it unnecessary to dispose of the motion to vary the issue, disallowed the issue, and dismissed the action.

Counsel for the Reclaimer (Defender)—Dean of Faculty (Constable, K.C.)—King Murray. Agents—J. Miller Thomson & Company, W.S.

Counsel for the Respondent (Pursuer)—Hon. W. Watson, K.C.—Black. Agent—J. Gibson Strachan, Solicitor.