

Tuesday—Thursday, April 2—4.

SECOND DIVISION.

(Before the Lord Justice-Clerk.)

MILNE v. BAUCHOPE.

Reparation—Slander. Verdict for pursuer.

In this case Eliza Milne, teacher, was pursuer, and John Bauchope, teacher, was defender. The following issue was submitted for the pursuer:—

“It being admitted that the pursuer is a certificated teacher, and was infant schoolmistress of St Mary’s Sessional School, Edinburgh, from October 1861 to July 1865, and that the defender was, during said period, and still is, a master in said school:

“Whether, on or about the 10th day of January 1865, the defender did write and transmit, or cause to be written and transmitted, to the Rev. Dr Grant, minister of the parish of St Mary’s, Edinburgh, a letter in the terms contained in the schedule. And whether, in said letter, the defender did falsely and calumniously say of and concerning the pursuer that she had told falsehoods—to her loss, injury, and damage?

“Damages, £500.”

The letter in question charged the pursuer with misrepresentations of fact regarding some of the pupil teachers, of conduct in many respects subversive of discipline, and concluded by saying:—

“She questions some of the scholars about me in a way she ought not to do. She has spoken insolently and falsely to me, and about me, in presence of the pupil teachers and others. In many instances she has shown little or no interest in school, and she seems to be actuated by a spirit of petty annoyance. She has sometimes told direct falsehoods, occasionally to the knowledge of the pupil teachers. Her conduct in ignoring my position, and the daily system of petty annoyance which she pursues, makes me desirous of having this state of matters remedied as soon as possible.”

The following counter-issue was submitted for the defender:—

“Whether the statements in the said letter, to the effect that the pursuer had told falsehoods, are true?”

The jury, by a majority of 9 to 3 found that although by the letters and documents before the Court the defender is regarded as head master, there is no evidence to show that he was appointed to such an office, and the jury do not recognise him as such; also by the same majority they found for the pursuer, and assessed the damages at £10.

Counsel for Pursuer—Mr Fraser, Mr W. A. Brown, and Mr Kerr. Agent—James Bruce, W.S.

Counsel for Defender—Mr Watson and Mr Gloag. Agent—Andrew Scott, W.S.

HOUSE OF LORDS.

Monday—Tuesday, April 1—2.

DUNLOP v. JOHNSTON.

(In Court of Session, 3 Macp. 758.)

Husband and Wife—Post-nuptial Settlement—Bankruptcy of Husband. Held (aff. C. of S.)

that a post-nuptial provision by a husband in favour of his wife and children, to take effect during the subsistence of the marriage, was ineffectual in a question with creditors under his sequestration.

This was an appeal from the Second Division of the Court of Session. An action of declarator and reduction had been raised by the respondent, as trustee on the sequestrated estate of George Moore Dunlop, against the bankrupt and his wife, the present appellants, and the trustees under her marriage-contract. The condescendence set forth that the appellant, at the age of nineteen, was married to George Moore Dunlop in 1860. No ante-nuptial marriage-contract was executed. In 1861, her husband commenced business in Glasgow as an oil merchant and drysalter, in partnership with James Anderson Mackintosh, under the firm of Mackintosh, Dunlop, & Co. In 1862, the firm was dissolved by mutual consent, being then indebted to the amount of about £4000. In November 1862, Dunlop commenced business on his own account, and so continued till his estate was sequestrated on 6th August 1863, and Mr Johnston was elected trustee. On 29th March 1861, Dunlop and his wife executed a post-nuptial contract, whereby the husband bound himself to pay, for behoof of his wife, £5000 to certain marriage trustees, directing the trustees to pay the income to the wife during her life for her aliment and that of her family, such income being declared alimentary, and not affectable by her deeds or debts, or by creditors of the husband. In the event of her death, the trustees were to hold half of the capital—namely, £2500—for the benefit of the children, and to pay the other half to the husband. When the husband executed this deed, he was a minor. On 25th December 1862, Dunlop and his wife executed a supplementary contract, conveying to trustees certain securities in implement of the obligation in the marriage-contract, and varying the destination of the £5000. The trustees obtained payment from Dunlop of the sum of £5000, and became vested in the securities. It was alleged that the post-nuptial contract was a *donatio inter virum et uxorem*, and was revocable and revoked by the sequestration of the husband, and that the said provisions were not a reasonable and moderate provision for the wife, considering the circumstances of the husband.

The defenders, in their answers, set forth that at the time of the marriage Mr Dunlop’s fortune amounted to £10,000, the wife having no fortune; that the post-nuptial contract was executed to secure the wife against the risks of the husband’s business, and was fair and reasonable; that the wife, in consequence, renounced her legal rights; that the trustees were duly vested in the fund by registration and intimation; that the provisions were not now revocable, and that they were granted for onerous cause.

The Lord Ordinary (Barcaple) found that the provision of the post-nuptial contract, in so far as it directed payment of the income to the wife during the marriage, was a donation *inter virum et uxorem*, and was revocable, and was revoked by the sequestration. On reclaiming-note, the Lords of the Second Division adhered.

Mrs Dunlop appealed.

LORD ADVOCATE (Gordon), ROBERT HORN, and RUFERT POTTER, for her, argued—The marriage-contract provision could not be revoked by the bankrupt, or by the trustee for his creditors, because the bankrupt, at the date of his sequestration, was absolutely divested of the property in