

defender falsely and calumniously printed, published and circulated, or caused to be printed, published and circulated, as part of the evidence given in said small-debt actions by a Miss M'Nab, the passage contained in schedule D. hereunto annexed, and whether the said passage, or part thereof, is of and concerning the pursuer's manse; and falsely represents or insinuates that the said manse was a grossly immoral and ill-regulated house, and that great numbers of bastards were begotten in it, or contains one or more of said false and calumnious representations or insinuations, or false and calumnious representations of the same or similar import, to the loss, injury, and damage of the pursuer?"

The fifth issue put the question, whether certain articles published on 27th November 1867 falsely and calumniously represented that the pursuer had been guilty of wilful falsehood, and was a likely person to be guilty of perjury if he were required to repeat his false statements on oath?

The other issue put the question, whether certain articles published on 16th November 1867 falsely and calumniously represented or insinuated that the pursuer had instigated certain proceedings in the kirk-session of his parish against M'Nab and his wife for the sin of perjury, charged against them from vindictive or other selfish and improper motives?

After some discussion on the issues, the Lord President suggested that the present was a case in which a general issue might be taken, laid on a series of defamatory articles, amounting to a continuous persecution, and referred to the cases of *Sheriff v. Wilson*, 1 March 1855, 17 D. 528, and *M'Laren v. Ritchie* (*Scotsman Newspaper*), 8 July 1856 (unreported).

The pursuer then proposed an issue, "It being admitted, &c. &c. (then followed the articles and paragraphs complained of), Whether the said articles and passages, or any parts thereof, are of and concerning the pursuer; and whether the pursuer is thereby calumniously and injuriously held up to public hatred, contempt and ridicule, to his loss, injury, and damage?"

At advising—

LORD PRESIDENT—The Court have considered the matter carefully. The difficulty is this. The publication which forms the subject of the 4th and 5th issues originally proposed seems to be slanderous as they are innuendoed, and the pursuer therefore would be entitled to have issues laid on these publications. There is some difficulty in embracing in this general issue now proposed two articles which are in themselves slanderous, and might be made the subject of a distinct claim of damages on that ground. The pursuer is in this position that he must choose between two courses. If he wishes to prosecute in these two cases as for slander, he must take separate issues. But if he is disposed not to deal with these two cases as distinct slanders, but to deal with them as steps in a general persecution, he would require to minute that he is not to insist for damages in respect of these as separate slanders.

The pursuer put in a minute stating "that in the event of the Court adjusting a general issue as now proposed for the trial of the cause, he would not insist in reference to the matter contained in the 4th and 5th issues as reported by the Lord Ordinary for any separate claim of damages as for slander."

The following issue was adjusted:—

"It being admitted that the pursuer is the minister of the parish of Crieff, and that the defender is the proprietor and publisher of a newspaper called the "Strathbearn Herald," and General Advertiser for Crieff, Comrie, Auchterarder, &c., published at Crieff, in the county of Perth, and that there were printed and published in the said newspaper of the dates after mentioned the articles and verses hereinafter quoted, viz.:"—

(Then followed the articles, with the dates of publication.)

"Whether the said articles, passages, and verses are of and concerning the pursuer; and were published in pursuance of an intention to expose, and did calumniously and injuriously expose, the pursuer to public hatred, contempt and ridicule, to his loss and damage?"

Damages claimed, £1000.

Agents for Pursuer—Macgregor & Barclay, S.S.C.
Agents for Defender—M'Ewen & Carment, S.S.C.

Wednesday, June 17.

ROBERTSON v. HEITON.

Agreement—Guarantee—Construction. A letter held, on construction of its terms, not to amount to a guarantee of payment, and action for payment dismissed.

Douglas contracted to perform the mason-work of a dwelling-house, of which the defender Heiton was the architect. Robertson supplied lime for the work, and now sued Douglas and Heiton for the price. Robertson's case was, that, not being sure of Douglas' solvency, he declined to furnish him with lime except on the order and responsibility of Heiton as well as of Douglas; that Heiton ordered the pursuer to supply the requisite lime, stating that he would pay the pursuer for the same, and repay himself out of the money to be paid to Douglas; that the pursuer accordingly furnished lime to Douglas, and asked payment from Heiton, who, however, delayed to pay, but, in December 1865, wrote to the pursuer that, "in reference to the promise I made you regarding the lime supplied, I will deduct these sums from the amount due John Douglas, on the completion of his contract, to the extent of the funds in hand." Heiton admitted the letter, but denied liability, Douglas having failed, Robertson sued him and Heiton for the price of the lime, resting his case against Heiton on the letter of December 1865, the conclusion being for payment of £82, "being the amount of an account for lime and bricks furnished by the pursuer to the said John Douglas, and which was supplied upon the order of the defender, the said Andrew Heiton, and for payment of the price of which he is also liable to the pursuer, under and in virtue of his holograph letter to the pursuer, dated 8th December 1865." The Sheriff-substitute (BARCLAY) assolizied Heiton, on the ground that the letter contained no unconditional obligation of payment, but merely implied that, if the money of the contractor came into Heiton's hands, he would deduct the pursuer's claim before paying the contractor. The Sheriff adhered.

The pursuer advocated.

FRASER and SCOTT for advocator.

CLARK and SHAND for respondent.

At advising—

LORD PRESIDENT—I am of opinion that the in-

terlocutors complained of are well founded. This is an action at the instance of the advocate Robertson against two defenders, Douglas and Heiton, and concludes against them, conjunctly and severally, for £82, 4s. 10d. [*reads conclusions*]. In the condescendence in the Inferior Court the pursuer alleges that, there being some difficulty in his mind as to the solvency of Douglas, he applied to Heiton, and informed him that he would not supply lime except on his order and responsibility along with that of Douglas. That the defender, the said Andrew Heiton, then ordered the pursuer to supply to the said John Douglas whatever lime he might require for the erection of the said house, and stated that he would pay the pursuer for the same, and repay himself out of the money which the said John Douglas was to receive for performing the said mason-work, &c. The pursuer accordingly supplied to the said John Douglas the lime particularly specified in the account annexed to the summons. Then, farther, in the third article he alleges [*quotes*]. The pursuer, in these articles, alleges employment by Heiton, a promise by Heiton to pay, the postponement of the fulfilment of this promise, and—these being all denied—he renounced probation, and cast himself entirely on the letter of 8th December, and he proposes to extract from that a guarantee that Heiton will in all events see him paid his account. I can hardly conceive a party in a more unfortunate position for extracting such a guarantee from such a document. From the document itself, it is plain that Heiton's intention was merely to assure Robertson that, in the event of money payable to Douglas coming into his hands, he would deduct his account for lime. The document cannot be carried farther, and therefore the pursuer entirely fails. The claim of Robertson as against Douglas' other creditors may be a very delicate question, but we have nothing to do with that here.

The other judges concurred.

Agent for Advocate—J. Galletly, S.S.C.

Agents for Respondent—Henry & Shireess, S.S.C.

Thursday, June 18.

POTJER v. M'WILLIAM & GIBSON.

Ship—Demurrage—Bill of Lading—Proof. In an action by a shipmaster against consignees for demurrage—he alleging that he had received no information before sailing as to the names of the consignees, and that they had for several days failed to instruct him, on reaching the port of call in this country, where to proceed to for discharge—*held*, (1) on construction of the shipping documents, that there was no liability on the consignees except for payment of the freight; and, (2) on the proof, that it was more probable, on the whole evidence, that the pursuer had been told the names of the consignees.

The pursuer, master and owner of the vessel "Geertruida Jacoba," entered into a charter-party at Buenos Ayres with Mr Hall, a merchant there, the vessel to proceed to Parana and receive a cargo of bone ash and bones, and then to "proceed to Queenstown or Falmouth for orders, to discharge in one safe port in the United Kingdom (said orders to be given by return post after master's report of his arrival at port of call, or lay days to count), or so near thereto as she may get, and deliver the

same agreeably to bills of lading," &c.; the charterers binding themselves to load the vessel and receive the same at the port of delivery. The cargo was loaded and bills of lading signed, bearing that the vessel was "bound for Queenstown or Falmouth for orders," and that a cargo had been shipped by Hall to be delivered in good condition at port of discharge "unto order or to his assigns, he or they paying freight." The bills of lading were transferred by indorsation to the defenders. The vessel proceeded to Queenstown. The master now claimed from the defenders damages on account of detention at Queenstown, the port of call, in consequence of the alleged fault of the defenders in not timeously forwarding instructions to him there as to the port to which he was to proceed for delivery of the cargo; alleging that when he left Parana he received no information as to the port to which his vessel was to proceed after reaching Queenstown or Falmouth; that he asked Mr Hall, who gave him no information; and that he was not aware of the names of the parties to whom the cargo was consigned. He stated that, after reaching Queenstown on the 19th July 1864, he advertised his arrival in the *Shipping Gazette* and other papers, but did not hear from the defenders until 2d August.

The defenders alleged that the pursuer was informed by Hall, before leaving Buenos Ayres on his homeward voyage, that the defenders were consignees, and received from him a letter addressed to the defenders for the purpose of its being sent them by the pursuer immediately on his arrival at Queenstown or Falmouth.

An issue was given in for trial by jury, but a proof was afterwards taken by commission, and thereafter the Lord Ordinary (ORMIDALE) found that the pursuer had failed to establish his case, and assolizied the defenders.

The pursuer reclaimed.

BURNET, for him, argued that the bill of lading having informed the defenders that the vessel was to call at Queenstown for orders, the defenders ought to have had orders there awaiting the arrival of the vessel. The Bills of Lading Act, 18 & 19 Vict., c. 111, imposed this obligation on the defenders. Further, at common law it was the duty of the defenders, as consignees, to watch the arrival of the vessel at the port of call; 1 Bell's Com. pp. 577-8. The defender's statement, that the pursuer had been furnished with a letter to the consignees, was not proved, and the *onus probandi* lay on them.

THOMSON, for the defenders, replied. He argued that consignees were not liable for demurrage, unless it was so stipulated in the bill of lading; Smith on Mercantile Law, 7th ed., p. 324; *Wegener v. Smith*, 24 L. J. (C. B.) 25; *Chappell v. Comfort*, 10 C. B. (N. S.) 802. Farther, the pursuer was himself in fault, not having forwarded to the consignees the letter which it was proved he had received.

At advising—

LORD PRESIDENT—The charter-party in this case was entered into between the pursuer, as owner and master of the vessel Geertruida, and Mr Hall of Buenos Ayres. The pursuer undertook by it to load a cargo of bones at Parana, and carry them to this country, proceeding to Queenstown or Falmouth [*reads from charter-party, ut supra*]. Under that charter-party Mr Hall, the shipper, shipped his cargo, and then sold it to Francis Younger, who appears to have been agent for the defenders at Buenos Ayres, and then it was transferred by indorsation to the defenders. Now the bill of lad-