

Wednesday, December 28, 1881.

FIRST DIVISION.

[Lord Adam, Ordinary.]

CAMPBELL v. FERGUSON.

Reparation—Issue—Slander—Relevancy—Innuendo.

To found an issue for the trial of an action of damages for slander it is not sufficient merely to place an innuendo of slander upon statements of facts written or uttered by the defender, not in themselves slanderous; there must also be a specific denial of the facts so stated.

In an action of damages for slander by a parish minister against a parishioner, in which the pursuer alleged that the defender had falsely and calumniously represented the pursuer as having neglected his duties as a parish minister, and as having behaved in a manner unbecoming a minister of the Gospel, and deserving of the censure or admonition of the ecclesiastical court—the alleged slander being contained in a letter written to a newspaper, in which the defender stated that the pursuer had absented himself from his parish for six weeks without the consent of the Presbytery; the pursuer did not deny that he had so absented himself—held that the action was irrelevant.

The pursuer in this action was the minister of the *quoad sacra* parish of Iona, the defender was a farmer in that parish, and the action was one of damages for slander alleged to be contained in the following letter, which was admittedly written by the defender, and sent by him to the *Oban Times* newspaper for publication, in which it appeared on 20th August 1881:—“Iona Parish.—Sir,—The Rev. John Campbell, minister of the parish of Iona, absented himself from his charge for six weeks without the consent of his congregation, or even intimating from the pulpit that he intended to take such leave of absence. Whether he acquainted his Presbytery of his intentions, and that they granted him such liberty, is not known here; but the fact that no supply had been sent to the pulpit by the Presbytery is apparent proof that they were ignorant of the real state of matters. It is sad to think that the church was closed during the six busiest weeks of the season, and the minister away, no one here knew where. He will lift his six weeks' salary all the same as if he had preached twice every Sabbath. It is to be hoped that the Mull Presbytery will do their duty, and not allow this part of their vineyard to be neglected, and call him to account. If not, the Synod will be duly acquainted with the behaviour of the rev. gentleman.—I am, &c.,
A CHURCHMAN.”

The pursuer averred—“By the said letter, and especially by the last sentence thereof, the defender falsely, calumniously, and maliciously represented and insinuated that the pursuer had, in violation of his duty as a parish minister, neglected his parishioners and congregation, and had, both in the past and at the date of the said letter, behaved in a manner unbecoming a minister of the Gospel, and deserving of the admonition or censure of the ecclesiastical courts.”

The defender averred—“The statements made in the said letter are true, and are not libellous. In particular, it is true that the pursuer was absent six weeks or thereby from his charge. That he had not the consent of his congregation to that absence. That he did not intimate from the pulpit in the *quoad sacra* church of Iona that he intended to take such leave of absence. That no leave of absence had been asked or given by the Presbytery, and no supply for the pulpit was arranged for by the Presbytery during the pursuer's absence. That the said church was closed during the busiest weeks of the season. That the members of the congregation did not know where the pursuer was during the said time. From 1877 to 1880 the defender was treasurer of the said *quoad sacra* church of Iona, and is still a member of the congregation worshipping there, and he has all along taken, and still takes, a deep interest in its welfare. It was against the interest of the congregation that the church should be closed as it was from 21st June to 6th August, which is the tourists' season, and it was of importance, both as regards the usefulness and credit of the Church of Scotland in that district, that the church at Iona should have been open for divine service every Sunday at that time. Since the letter was written the defender has ascertained that the pursuer, at a service held by him in a schoolhouse at Creich, in Mull, where he officiates every alternate Sunday, intimated that he was to be from home for a Sunday or two, but no such intimation was, to the defender's knowledge, made in the Iona church. The defender considered it his duty, in the interests of the *quoad sacra* church in Iona, to give publicity to the way in which the pursuer was behaving.”

The pursuer pleaded—“The pursuer having slandered the pursuer, to his loss, injury, and damage, decree ought to be pronounced in terms of the conclusions of the summons.”

The defender pleaded—“(2) The letter complained of being a fair criticism upon the public conduct of a person holding a public office by a person interested in the proper discharge of the duties of that office, the said letter is privileged. (3) The statements made in the letter complained of being true, the defender is entitled to absolvitor, with expenses.”

The issue proposed by the pursuer was in these terms—“It being admitted that the defender Malcolm Ferguson, on or about 20th August 1881, wrote and caused to be published in the *Oban Times* newspaper of that date the letter contained in the schedule herenuto annexed—Whether the said letter falsely and calumniously represents the pursuer as having, during the period immediately preceding the publication of the said letter, neglected his duties as a parish minister, and as having during said period behaved and acted in a manner unbecoming a minister of the Gospel, and deserving of the censure or admonition of the ecclesiastical courts, to the loss, injury, and damage of the pursuer? Damages laid at £500.”

The issue proposed by the defender was in these terms—“Whether the pursuer absented himself from his charge in Iona for six weeks or thereby, in the months of June, July, and August 1881, without the consent of the congregation of the *quoad sacra* church of Iona; whether no

supply for the pulpit of the said church was provided during the pursuer's said absence; and whether the said church was closed during the said period?"

The Lord Ordinary (ADAM) approved of the issue proposed by the pursuer, and disallowed the counter issue proposed by the defender.

The defender reclaimed.

At advising—

LORD PRESIDENT—I think that in some respects this case is a very singular one. When an action is raised for slander, written or verbal, one always looks, in the first place, to see what is the real complaint of the pursuer, and the first item of his complaint always is that the statements complained of are false; the second, that there is something actionable in what is said or written; and thirdly, that he has suffered injury. Now, it appears to me that in the present case the first of these elements is entirely wanting. The statements in the letter are not in the least degree ambiguous. In the first place, it is quite distinctly stated that this minister absented himself from his charge for six weeks, and that during these six weeks the church was shut up and no service held at all; and, in the second place, it is suggested, not quite broadly stated, but suggested very distinctly, that this must have been without the knowledge or consent of the Presbytery, because they made no supply for the pulpit. These are the facts charged against him, and I do not think that there are any more facts in the letter. Now, the pursuer does not say that he was not absent for six weeks, or that the Presbytery knew and approved of his conduct in the matter. On the contrary, he abstains very carefully from saying anything on that subject, and therefore I think that we are entitled to assume in dealing with the relevancy of this record that the facts are as stated in the letter. What, then, is the position of the pursuer if that be so? He comes into Court substantially saying—"I admit that I went away for six weeks, and shut up my church without making any provision for public worship there during my absence, and I admit that I had no communication with the Presbytery on the subject, and therefore I complain that you have said that what I have done is neglect of duty and conduct unbecoming a minister of the Gospel, and deserving of the censure of the ecclesiastical courts." Now, I think that this is quite irrelevant. I do not say that it is a bad innuendo—quite the reverse; but no man can come into Court with a mere innuendo; he must have facts and circumstances as well as innuendo, and a statement that the facts and circumstances are false. Here there is no such statement, but a statement that the facts are practically true. In these circumstances I think that this record is quite irrelevant.

LORD DEAS—I agree with your Lordship that this is not a relevant record.

LORD MURE—I concur. I think there is a great want in this record of any allegation of the falsehood of the facts alleged. On the contrary, the main facts are not denied, and that being so, I think we are entitled to assume that they are true. I am therefore of opinion that this record is irrelevant.

LORD SHAND—I agree with your Lordships. I think that an innuendo in order to be good as part of an issue must, in a reasonable sense, be justified by the article complained of, or rather in a reasonable and not absurd or extravagant way may be extracted from the article read in the light of the facts stated by the pursuer. You must look at these facts as he states them on record in order to see whether the innuendo may reasonably be taken from the article, and is not altogether extravagant. Now, applying that principle to this case, I agree in the view taken by your Lordships. The point complained of is that this church was not used for six weeks through the neglect of the clergyman, and that being the point of the accusation, if the pursuer meant to found an issue with an innuendo of this kind, I think that it would have been necessary for him to add one or other of two things—either to say that the facts alleged were false, or to explain that there were other facts truly in the mind of the writer, as, for instance, that there was a *fama* against this minister relating to something else current in the parish which the writer of the letter meant to support, and that the public of the neighbourhood would so understand his statements; but without a denial of the facts directly pointed out in the letter, and without an avowal of other facts such as I have mentioned, I think that this innuendo is extravagant, and ought not to be allowed.

The Lords recalled the Lord Ordinary's interlocutor, disallowed the issue proposed by the pursuer, and dismissed the action as irrelevant.

Counsel for Pursuer—Murray. Agents—Adam & Sang, W.S.

Counsel for Defender—Jameson. Agent—F. J. Martin, W.S.

Friday, January 20, 1882.

FIRST DIVISION.

[Lord Fraser, Ordinary.

FLEMING & COMPANY (LIMITED) v. THE
AIRDRIE IRON COMPANY.

Sale—Warranty—Implied Warranty—Particular Purpose.

An ironfounder contracted to make and supply certain cast-iron stills, the contract bearing that they were "to be first-class castings of Scotch iron of best quality." The stills were to be used in the distillation of rosin oil, which involved the application of great heat. There was no express reference in the contract to the purpose for which the stills were purchased, but the ironfounder visited the oil-works before entering into the contract, and had an opportunity of seeing what was required. The stills became useless after having been three months in operation—the ordinary life of a still in the manufacture of rosin oil being three years. The oil manufacturer raised an action of damages for breach of contract. He admitted that the stills were "first-class castings of Scotch