

the lending of money. I think that the agent should see that the fidelity he owes to the one party for whom he acts is not interfered with by any duty to the opposite party.

It appears to me that there is no difficulty as regards the first question that comes before us in this case. The duty of the defender Mr Smillie was to advise his client Mrs Oastler as to the sufficiency of the security on which her money was to be lent. Of course it is a different thing if nothing is left to his own discretion. If all he had to do as regards this transaction was to draw the deeds and pay over the money, then he has no responsibility. But here the facts are not so, and the pursuer is entitled to look to her agents to see that they invest her money upon a good and sufficient security. Accordingly the defenders confess that the security upon which Mrs Oastler's money was invested was not a good and sufficient security. But they say that it had been agreed between Brownlee and the pursuer that her money should be laid out in this special security. I do not believe that any such agreement had ever been entered into. The burden of proof is upon the defenders to show that they really had no discretion in the matter, and the presumption raised by the evidence is all the other way. I concur in thinking that the judgment should be for the pursuer.

LORD RUTHERFURD CLARK—I agree.

The Court pronounced this interlocutor:—

“Find in fact—(1) That in November 1874 the pursuer employed the defenders as her agents to invest a sum of £600, then placed by her in their hands; (2) that she did not authorise the defenders to invest the said sum, or any part of it, on a second or postponed security, but instructed them to invest it as a first charge on good heritable security; (3) that the defenders, in disregard of these instructions, lent £400 of the said sum to two brothers of the defender Thomas J. Smillie, on a bond and disposition in security of subjects in Braehead Street, Rutherglen Road, Glasgow, then recently acquired by them at the price of £1350; (4) that the said subjects were charged with a feu-duty of £15, and an heritable debt of £1000, which exhausted their value, and the said sum of £400, with interest thereon to the amount of £80, has been lost to the pursuer: Find in law that the defenders are bound to indemnify the pursuer for the loss thus sustained by her: Therefore sustain the appeal: Recal the judgment of the Sheriff—Substitute appealed against: Ordain the defenders, jointly and severally, to make payment to the pursuer of the sum of Four hundred and eighty pounds sterling, with the legal interest thereof from the date of citation to this action till paid, the pursuer being bound thereupon to deliver to the defenders, at their expense, an assignation to the said heritable debt: Find the pursuer entitled to expenses in the Inferior Court and in this Court,” &c.

Counsel for Pursuer—Lorimer. Agent—William Black, S.S.C.

Counsel for Defenders—Comrie Thomson—Orr. Agents—W. & F. C. M'Ivor, S.S.C.

Saturday, October 30.

OUTER HOUSE.

[Lord Fraser, Ordinary.

MITCHELL INNES AND OTHERS.

Process—Choosing Curators—Caution—Caution Restricted by Lord Ordinary.

This was an action of choosing curators. The pursuers were the minor children of the late William Mitchell Innes.

Two curators were nominated by the pursuers and accepted office, and their nomination was sustained by the Court. Thereafter inventories were given up, and the curators ordained to find caution in due form of law.

The rental of the heritage belonging to one of the pursuers, the only son of the deceased, was £26,196, 6s. 5d., and his moveable estate was of the value of £17,865, 0s. 4d., the moveable estate of the others amounting to £3037, 5s. 2d.

The curators and the pursuers moved the Lord Ordinary to restrict the caution to £5000, or to such other sum as to the Lord Ordinary should seem proper.

The Lord Ordinary pronounced this interlocutor:—“Having heard counsel for the pursuers and curators, and considered the minute for them, restricts the caution to be found by the curators to the sum of £9500 sterling.”

Counsel for Pursuers—Macphail. Agents—Tods, Murray, & Jamieson, W.S.

Saturday, October 30.

SECOND DIVISION.

[Lord Lee, Ordinary.

URQUHART v. M'KENZIE.

Reparation—Slander—Probable Cause—Relevancy.

A person was sued for damages for having, as was alleged, falsely and maliciously had the pursuer arrested on a criminal charge. Nature of averments which were held relevant to entitle the pursuer to an issue. Lord Rutherford Clark *dissented*, holding that the pursuer's own averments showed that the defender had probable cause for acting as the pursuer alleged.

This was an action by Donald Urquhart, a farmer at Lamington, near Tain, against Alexander M'Kenzie, hotel-keeper, Bonarbridge, Sutherlandshire, in which the defender claimed £500 as damages for injury to his character by the pursuer having, as he alleged, wrongfully caused him to be apprehended on a criminal charge. The pursuer stated on record that he had attended a market at Ardgay, near Bonarbridge, and stayed over the night in the defender's hotel; that in the morning he rose early to attend the market, and went out without paying his bill, but meeting the defender at the market, offered payment, which defender refused to accept, saying he could not then tell the amount; that it was his intention