

action was brought for the vindication of character, and was in his opinion fit to be tried in the Court of Session."

Thereafter the pursuer moved the First Division to apply the verdict, and asked for expenses—*Craig v. Jex Blake*, July 7, 1871, 9 Macph. 973; *Craig v. Taylor*, Dec. 20, 1866, 5 Macph. 203.

The defender argued that the question of expenses was in the discretion of the Court. The damages awarded were nominal, and as there had been no publication the pursuer's character had not suffered—*Duncan v. Balbirnie*, March 3, 1860, 22 D. 934; *Graham v. Napier*, Jan. 21, 1874, 1 R. 391.

At advising—

LORD PRESIDENT—No doubt this is a case of nominal damages; but I certified in terms of the statute that the action was brought for the vindication of character, and further, that it was a fit case to be tried in the Court of Session. The issue is a serious one, and the jury affirmed it, and therefore found that the defender falsely and calumniously represented the pursuer as having been guilty of fraud or dishonesty. Now that is a very serious charge, and I can have no doubt that had the libel been extensively published the jury would have assessed the amount of damages very differently. But in this case the libel was uttered in a letter to the inspector of the market where the butter was bought, and he very discreetly sent it to the pursuer without showing it to anyone. Of course the pursuer said nothing about it, and indeed no one ever saw it but the inspector. That state of the facts quite accounts, in my opinion, for the small amount of damages awarded. At the same time I think the action was quite justified, and that, although the libel was never published, the pursuer was entitled to have a verdict to clear his character. For these reasons I think the pursuer is entitled to his expenses.

LORD MURE, LORD SHAND, and LORD ADAM concurred.

The Court found the pursuer entitled to the expenses of the action.

Counsel for Pursuer—Nicoll. Agents—Gibson & Paterson, W.S.

Counsel for Defender—Wallace. Agents—Rhind, Lindsay, & Wallace, W.S.

Thursday, June 2.

FIRST DIVISION.

[Sheriff of Aberdeen, Kincardine, and Banff.]

ROSS v. GRAY.

Process—Appeal—Printing—Court of Session Act 1868 (31 and 32 Vict. cap. 100), sec. 71—A.S., 10th March 1870, sec. 3, sub-sec. 2.

Held that the provisions of the Act of Sederunt, 10th March 1870, sec. 3, sub-sec. 2, do not apply where printing has been dispensed with *in hoc statu*.

This was an action for the aliment of an illegiti-

mate child raised in the Sheriff Court of Aberdeen, Kincardine, and Banff, at Peterhead, at the instance of Amelia Ross, domestic-servant, Stuartfield, Old Deer, against Alexander Gray, farm-servant, Auchleuchries, Cruden, whom she alleged to be its father. The Sheriff-Substitute (DOVE WILSON) and the Sheriff (GUTHRIE SMITH) assoziled the defender from the conclusions of the action. The pursuer appealed to the First Division of the Court of Session. The appeal was received by the clerk of Court on April 25th. On the 2d May the Lord Ordinary on the Bills (FRASER) dispensed with printing *in hoc statu*. On the 17th May the First Division of the Court refused the appellant's motion to dispense with printing; and on the 31st May the print of the appeal was lodged.

Thereafter the defender and respondent moved the Court to dismiss the appeal on the ground that it must be held as abandoned, as the terms of the A.S., March 10th, 1870, sec. 3, sub-sec. 2, had not been complied with. It was contended that the fourteen days began to run from the 25th April, that they ran until the 2d May, that they recommenced to run on the 17th May, and that consequently lodging the print of appeal on the 31st May was too late.

The sub-section provides that "the appellant shall, during vacation, within fourteen days after the process has been received by the clerk of Court, deposit with the said clerk a print of the note of appeal, record, interlocutors, and proof, if any, unless, within eight days after the process has been received by the clerk, he shall have obtained from the Lord Ordinary officiating on the Bills an interlocutor dispensing with printing in whole or in part, for which purpose the assistant-clerk shall, if required, lay the process before the Lord Ordinary on the Bills; and in such case, the appellant shall deposit with the clerk, as aforesaid, a print of those papers, the printing whereof has not been dispensed with, and, if printing has been in whole dispensed with, shall lodge with the said clerk a manuscript copy of the note of appeal; and the appellant shall, upon the box-day or sederunt-day next following the deposit of such print with the clerk, box copies of the same to the Court; or, if printing has been in whole dispensed with, shall furnish to the clerk of the Lord President of the Division a manuscript copy of the note of appeal; and if the appellant shall fail, within the said period of fourteen days, to deposit with the clerk of Court, as aforesaid, a print of the papers required, or to lodge with him a manuscript copy of the note of appeal, as the case may be, or to box or furnish the same as aforesaid, on the box-day or sederunt-day next thereafter, he shall be held to have abandoned his appeal, and shall not be entitled to insist therein, except upon being reponed, as hereinafter provided."

It was argued for the pursuer and appellant that the sub-section did not apply to the case where the dispensation with printing was *in hoc statu*, and that the fourteen days ran from the 17th of May, and that consequently the print of appeal was timeously lodged on the 31st of May.

At advising—

LORD PRESIDENT—It appears to me that the 2d sub-section of section 3 of the Act of Sederunt, 10th March, 1870, does not apply where the

dispensation with printing is *in hoc statu*. This dispensation having been refused on May 17th, we ought to have appointed a special day for lodging the print, and we shall take care that that is done on another occasion. Meantime, this is a demand for a penalty, and as this sub-section does not apply, I am for refusing the motion, and for sending the case to the roll.

LORDS MURE, SHAND, and ADAM concurred.

The Court refused the motion and sent the case to the roll.

Counsel for Pursuer (Appellant)—A. S. Pater-son. Agent—J. D. Macaulay, S.S.C.

Counsel for Defender (Reclaimer)—Macfar-lane. Agent—Alex. Morrison, S.S.C.

Thursday, June 2.

SECOND DIVISION.

[Lord Lee, with a jury.

WILSON v. CALEDONIAN RAILWAY COMPANY.

Reparation — Negligence — Hiring of Crane — Liability of Owner.

The owners of a crane upon a steamboat wharf let it for hire, together with the services of a crane-man, to a stevedore for the purpose of loading a vessel alongside the wharf. The crane-man, in working the crane, was properly stationed in such a position that he could not keep a look-out in the direction towards which the crane swung. A servant of the stevedore had the duty of fixing to the chain of the crane the cargo to be put on board, and of giving the signal to the crane-man to heave away. The stevedore's servant stood facing the crane-man, and was in a position to see whether the line of swing was clear. On an occasion when the stevedore's servant had signalled to the crane-man to heave away, a person on the wharf was injured, as the crane swung round, by barrels attached to the chain. In an action against the owners of the crane, the pursuer was awarded damages by a jury. The Court granted a new trial on the ground that it was the duty of the stevedore's servant to see that the way was clear before giving the signal, and that the owners of the crane were therefore not liable.

This was an action at the instance of James Wilson, steward of the s.s. "Camoens," against the Caledonian Railway Company to recover damages for personal injuries.

The circumstances attending the accident were these—On 31st July 1886, when the "Camoens" was berthed at the west wharf at Granton, the pursuer arrived at the pier early in the morning in a van with provisions for the ship. With a view to getting these on board he walked along the wharf until he was alongside of the vessel, and shouted to those on board to put down the gangway. While so engaged he was struck on the back by a barrel which was being hoisted on board the ship by means of a steam-crane, and

knocked over the pier on to the deck of the vessel, a depth of 20 feet, sustaining severe injuries.

The action was tried by Lord Lee and a jury upon the issue "Whether the pursuer was struck by a barrel attached to a steam-crane belonging to the defenders, and then being worked by them or others for whom they were responsible, and thereby sustained severe injuries in his person, through the fault of the defenders;" and at the trial the following facts were proved—The crane in question was worked by the Caledonian Railway Company, and hired out by them, together with the services of a crane-man, to stevedores for the purpose of loading vessels.

Collins, the foreman stevedore employed at the "Camoens" on the day in question, deponed—"The stevedore's man on the pier gives the order to the crane-man to heave up when he is ready. . . . The crane-man can see straight before him, but not to the side. . . . It is the well-known course of business that the crane-man works to the order of the stevedore."

Morton, one of the stevedores, deponed—"I first saw pursuer on the van, and then he went away aft. The crane was working when he went aft. The chain was down in the hold. The chain came up while he was aft, and two other barrels were slung, and I noticed him when I turned round after slinging the barrels. I shouted to him 'Look out, steward,' but the barrels were away, and he had no time. The barrels, after they struck him, were immediately slung back. I was alone slinging the barrels. The crane-man works the crane, and the man at the barrels tells him when to heave away. I face the crane when I tell him to heave away. . . . I did not look round to see if all clear before giving the order to heave away."

Mr G. M. Cunningham, C.E., consulting engineer to the railway company, deponed—"Nobody could give the word to heave except the man who is fixing the goods."

The jury returned a verdict for the pursuer. Damages £350.

The defenders moved for a new trial, and obtained a rule.

The pursuer now showed cause, and argued—The crane belonged to the defenders, and they had hired it out, together with a man to work it. If any damage was done in the working of the crane they were responsible. The stevedore merely gave the signal to the crane-man. There ought to have been a regulation that before the crane was started by the crane-man he should get notice that the way was clear, and the defenders were bound to have a man on the look-out for that purpose. Assuming it was the duty of the stevedore to see that the way was clear, then on the occasion in question the crane-man, who was facing the stevedore, ought to have seen that the latter had not made sure that no one was in the way. The case was the same as that of a person who had hired a carriage, and met with an accident through the fault of the driver. The master of the driver was clearly liable—*Quarman v. Burnett and Another*, 1840, 6 M. & W. 499. The barrels ought to have been raised to a height sufficient to clear the pursuer.

Counsel for the defenders were not called upon.