

The defender appealed to the Court of Session, and argued—(1) This was an illegal attempt on the landlord's part to remove a crofter from part of his holding in face of the Crofters Holdings (Scotland) Act 1886. (2) The crofter had a right to peats as an incident of his holding, and the moss at Killichronan had been substituted for that at Killiemore. (3) The holding had been renewed from year to year for twenty years with right to cut peats at Killichronan, and the landlord had no right at mid-term to take away this pertinent of the croft. (4) It was an unreasonable alteration of the enjoyment of this croft. It put the crofter to serious inconvenience. The Killiemore moss being inaccessible with a cart was, although nearer the croft, much more troublesome to work, and contained inferior peats.

Argued for the respondent—The crofter's right to peats was merely to get them without being put to serious inconvenience, not to get them from any particular place. Killichronan moss was given during the landlord's pleasure and because of the mill, which was no longer in existence. There was no attempt here to deprive the crofter of his right to peats. The place assigned him was the ground his father had originally used, and was only half the distance from the croft. There was no hardship in having to go to a place where a horse with creels could be employed.

At advising—

LORD JUSTICE-CLERK—The evidence has satisfied the Sheriffs that the change from Killiemore to Killichronan was a piece of grace on the landlord's part, and not a right of the tenant. There is no evidence to the contrary. It was argued that he had no right to get peats except from Killichronan. Such an argument is quite inconsistent with the universal rule and practice as we know it to exist, and would involve a hardship to crofters in the event of the peat at any particular place becoming exhausted. The privilege of being allowed to cut peats is not attached to any particular place. Crofters have a right to get peats, but the landlord has a right to point out where they are to go for them. If the landlord subjected the crofter to gross injustice by asking him to go to an extremely out-of-the-way place for his peats, we might interfere. Here, the distance he is asked to go is less than the distance he has hitherto gone. That advantage is, no doubt, counter-balanced by the fact that he can only use a horse, and must make more journeys than when he was able to employ a cart, but I think the Sheriffs were right in holding that this was within the landlord's discretion.

LORD YOUNG, LORD RUTHERFURD CLARK, and LORD LEE concurred.

The Court pronounced the following interlocutor:—

“Find in fact (1) that the pursuer is proprietor of the lands of Killichronan in the Island of Mull, which includes the farm of Killiemore; (2) that the defender is tenant, under the pursuer, of a croft, part of said lands, with right to cut peats on the lands of Killiemore; (3) that in or about the year 1867 the pursuer gave leave to the defender's father, then tenant of the said croft, to cut

peats during his, the pursuer's, pleasure, on the home farm of Killichronan instead of the farm of Killiemore, and that the tenants of the croft availed themselves of the privilege from that time till shortly before the institution of the present action, when the pursuer recalled the leave thus conditionally given: Find in law that the pursuer was entitled to recal the permission granted as aforesaid: Therefore dismiss the appeal: Affirm the judgments of the Sheriff and Sheriff-Substitute appealed against: Find and declare, interdict, prohibit and discharge in terms of the prayer of the petition: Find the pursuer entitled to expenses in the Inferior Court and in this Court,” &c.

Counsel for the Pursuer—Sir Charles Pearson—Graham Murray. Agent—F. J. Martin, W.S.
Counsel for the Defender—Dickson—Salvesen. Agents—Gill & Pringle, W.S.

Friday, June 14.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.]

CROUCHER v. INGLIS.

(Ante, p. 541.)

Reparation—Slander—Privileged Statement—Minister of Parish—Probable Cause.

In an action of damages against the minister of a parish for alleged slanderous statements in two letters written by him to the inspector of poor of a neighbouring parish and the Board of Supervision respectively, and which challenged the pursuer's fitness as guardian of certain children boarded with him by the parochial board of the neighbouring parish, it was held that the defender was entitled to an issue of want of probable cause as well as of malice.

Opinion per Lord Shand, that a defender other than the minister of a parish would be entitled in similar circumstances to the protection of a similar issue.

This action was raised by Charles Croucher, general dealer, residing at Kirkton of Auchterhouse, against the Rev. William Mason Inglis, minister of the parish of Auchterhouse, for payment of £500 as reparation and *solatium* for alleged slanders.

The statements complained of were contained in two letters written by the defender to the Inspector of Poor of Dundee and to the Board of Supervision respectively, and which called in question the pursuer's fitness to have the charge of several pauper children boarded with him by the Parochial Board of Dundee.

The letters were in the following terms:—

“*Manse, Auchterhouse,*

“16th October 1888.

“Dear Sir,—You are aware of the fact that several children on your parochial board list are boarded out in this village under the guardianship of a man named Croucher, a hawker to trade. I have just seen this man engaged in fighting for a considerable time with another

man belonging to this parish, and such conduct for its brutal and disgusting character I have never witnessed. I leave you to judge as to whether such a man is a proper guardian for these poor children. From enquiries I have made at the local policeman and other respectable people, I am satisfied that the sooner these children are removed to another house the better it will be for them, and the more creditable to the parochial authorities of Dundee.—I am, &c.
"To T. Brown, Esq. "W. MASON INGLIS."

"*Manse of Auchterhouse, near Dundee,*
"20th November 1888.

"To Members of Board of Supervision.

"Gentlemen,—I beg to call your attention to a matter which I do not hesitate to say demands the immediate consideration of the Board of Supervision.

"Fully a year ago five orphan children were placed by the parochial authorities of Dundee under the guardianship of a man named Croucher and his wife, who reside in the Kirkton of Auchterhouse. This man is a hawker by trade, and occupies what is practically a two-roomed cottar house. He has five of a family, and at the present time there are ten children in this house under the care of his wife. This man came to reside in the village about two years ago, and was engaged in the hawking business. He was, not long afterwards, convicted in the Burgh Court of Dundee for gross cruelty to a horse, and fined for the offence. Not long after this conviction he succeeded in obtaining from the Parochial Board of Dundee five children as boarders. In the course of my visitation of the parish I was led to understand that there was something wrong. My attention was, however, more directly called to the condition of those children by Mr Gibson, police-constable, located in the village, who informed me that Croucher's house was practically a baby-farming establishment, where the children were simply boarded as a matter of business and traffic, and to his knowledge they were very badly treated. He informed me of their dirty, poverty-stricken, half-starved condition, and of their being driven out of the house, and compelled to spend most of the day in an old shed in all kinds of weather. He also expressed to me his astonishment that the children should ever have been placed under such guardians, and compelled to endure such treatment. I investigated the matter for myself, and found that the constable's statement was entirely borne out by what I personally witnessed.

"My attention was again called to their condition by a Mr Cummings, who occupied the adjoining house. He told me that the conduct of Croucher and his wife was disgraceful, and the language of the woman most filthy and disgusting. He also brought under my notice the cruel treatment to which he and his wife had seen the children subjected. My attention was further called to the house by Mr Walker, gamekeeper, and Mrs Walker, most reliable and respectable people, who lived in the adjoining house. They also referred to the disorderly character of the Crouchers, and particularly of the filthy, disgusting language of the woman, and of her cruel treatment of the children. One child, she informed me, went about for days often shrieking with pain from a dislocated arm

which had never been attended to. The children were subjected to most cruel treatment by being sworn at and mercilessly beaten. They were also compelled to search midden and manure heaps for rags and bones for Croucher to dispose of. She also informed me that the parishioners wondered very much that I did not take measures to have those children removed. She characterised the house as a disgraceful one, and is quite prepared to testify to that effect before any board. I have also been informed by police-constable Shepherd that he has on several occasions seen Croucher the worse of drink, and that his wife is notorious for her filthy language and quarrelsome brawling disposition. He has had repeatedly complaints lodged with him against her. He also states that the children ought never to have been placed under such guardians, and that his opinion is the one which prevails all over the parish and neighbourhood. Complaints of a similar character have reached me from other parishioners. Personally I have repeatedly seen Croucher drunk, and quite recently I came upon him engaged in a hand-to-hand fight with a man belonging to the parish, and told him he was a disgrace to the district. I have reported the condition of the house, the character of the occupants, and the general treatment to which the children have been subjected to the parochial authorities of Dundee, but nothing has been done to remove the scandal. Mr Brown, the Inspector of Poor, whose letter I enclose, informed me that he had already received complaints, and his own opinion was that the children should be instantly removed. It appears, however, that his opinion has been overruled by certain influences brought to bear by friends of Croucher upon certain members of the Board Committee, so that the children still remain under their care.

"In such circumstances I have been compelled to direct your attention to this scandalous case, and trust that you will order a thorough investigation as early as convenient.—I am, &c.,

"W. MASON INGLIS,
"Minister of Auchterhouse."

On 23rd May 1889 the Lord Ordinary (KYLLEACHY) approved of the following issues for the trial of the cause—"(1) Whether the defender on 16th October 1888 wrote and sent to Mr Thomas Brown, inspector of poor, Dundee, a letter in the terms contained in the schedule No. 1 hereto annexed; and whether the said letter is of and concerning the pursuer, and falsely and calumniously and maliciously represents him to be a man of such brutal character as to be unfit to have charge of children boarded out by the parochial authorities of Dundee under his guardianship, and that it was the duty of the Parochial Board forthwith to remove them, to the loss, injury, and damage of the pursuer? (2) Whether the defender on 20th November 1888 wrote and sent to the Board of Supervision a letter in the terms contained in the schedule No. 2 hereto annexed; and whether the said letter is of and concerning the pursuer, and falsely and calumniously and maliciously represents him as keeping a baby farming establishment, and as being a man unfit for the guardianship of parochial children, as systematically ill-treating and starving them, and as being a drunkard and a worthless character, and as being

a disgrace to the district, to the loss, injury, and damage of the pursuer? Damages laid at £500."

The defender reclaimed, and argued—The defender was not bound to take an issue in justification, but was entitled to have the words "without probable cause" inserted in the issues. Statements made in discharge of a duty, if made with "probable cause," were not a good ground for damages. The duty of ministers in this respect had been recognised in the case of *Forbes*, and by the pursuer's own statement complaints had here been made to the minister—*Forbes v. Gibson*, December 18, 1850, 13 D. 341; *Lightbody v. Gordon*, June 15, 1882, 9 R. 934; *Kinnes v. Adam & Sons*, March 8, 1882, 9 R. 698; *Craig v. Peebles*, February 16, 1876, 3 R. 441; *Shaw v. Morgan*, July 11, 1888, 15 R. 865; *Beaton v. Ivory*, July 19, 1887, 14 R. 1057; *Gibb v. Barron*, July 1, 1859, 21 D. 1099.

Argued for the pursuer and respondent—There was no case of ordinary slander where both "maliciously" and "without probable cause" had been put in issue. In all cases where the latter words had been thought necessary in addition to the former the defender had had a title to set in motion some judicial proceedings. The rule was that if a man was in a privileged position, "maliciously" must be put in issue; if he was exercising a legal right, "without probable cause" must be added—*Davies v. Brown & Lyell*, June 8, 1867, 5 Maeph. 842; *Craig v. Peebles*, *supra*; *Wolthekker v. The Northern Agricultural Company*, December 20, 1862, 1 Maeph. 197; *Rae v. Linton, &c.*, March 20, 1875, 2 R. 669.

At advising—

LORD PRESIDENT—The pursuer of this action is resident in the parish of Auchterhouse, and he calls himself a general dealer, which I suppose is the equivalent of hawker. The defender is the minister of the parish. The pursuer's complaint is that the minister wrote two letters, one to the Inspector of Poor at Dundee, and the other to the members of the Board of Supervision, containing very slanderous statements concerning the pursuer with regard to the condition of certain children boarded with him by the Dundee Parochial Board. The statements are certainly very strong, and are *prima facie* libellous. As put in issue they impute to the defender that he represented the pursuer to be "of such brutal character as to be unfit to have charge of children;" and again, that he represented him "as keeping a baby-farming establishment, and as being a man unfit for the guardianship of parochial children, as systematically ill-treating and starving them, and as being a drunkard and a worthless character." These issues in substance must go to a jury. The Lord Ordinary, however, has determined that "malice" must be inserted in the issues, and accordingly it has been so inserted. The defender contends that he is also entitled to have "without probable cause" put in issue, and that is the point which is now to be determined.

Now, it appears to me that the sort of privilege which entitles the defender to have these words inserted in a case like the present depends very much upon the character in which the defender acted. The ordinary cases of a malicious prosecution or of giving information to the police are not exactly parallel to the present case, but it

is, I think, to be ruled by the same principles. There is a duty incumbent on every citizen who has reason to believe that a crime has been committed to give information to the police, and in such cases he is surrounded by the protection of having these words put in issue. In the present case the defender is a public official, and as such he is charged with the duty of seeing after the well-being of the people of his parish, and if in that capacity he gave information to the proper authority, he is quite entitled to the same protection as surrounds every person who gives information to the police of the commission of a criminal offence.

Again, the Parochial Board of Dundee was the body under whose jurisdiction these children were. They boarded them out with the pursuer. If intimation was to be given of improper conduct on the part of the pursuer the Parochial Board of Dundee was the proper authority, and, failing their interfering, the Board of Supervision was the proper tribunal to resort to for the same purpose, and therefore the defender resorted to the proper authorities to give information to. It seems to me in doing this he is entitled to the same protection as a party giving information to the police of the commission of a crime, or instituting a prosecution for an alleged offence. The circumstance that the person charged turns out to be altogether innocent will not deprive the party of the protection referred to. It is not therefore necessary for the defender to take an issue in justification. He may be justified in giving the information he did though the pursuer may be innocent of the conduct alleged against him. The defender is therefore, I think, entitled to have the words "without probable cause" put in issue.

It was urged in argument that if the minister of a parish was entitled to this protection, anyone else would be in similar circumstances. On that question I do not intend to offer any opinion; its solution depends on different considerations from the question with regard to the official duty of a minister. If such a duty lies on members of the public it rests on a different foundation. That is a question which it is not necessary to solve in order to decide the question before us. The ground on which I desire to rest my decision is that a duty attaches to the office of the minister of a parish to communicate with the proper authorities in such cases as the present.

LORD SHAND—In the case of *Lightbody v. Gordon*, 9 R. 934, the Court had occasion to deal with the principles to be applied in cases where criminal information has been lodged with the police, and an action of damages has followed, and it was there held that where a person is seeking damages for such information where no conviction has followed, "without probable cause" must be inserted in the issue as well as "maliciously." The ground taken for that decision was that there is a public duty to give information to the police of the commission of a crime, and if a person *prima facie* in exercise of that duty moves by giving information against anyone, or by causing the apprehension of anyone, he has the protection of it being assumed that he acts in *bona fide*. Obviously if that were not so the ends of justice must be frustrated, and serious consequences might follow, and accordingly the pur-

suer in such cases has to prove that the defender acted not only "maliciously," but also "without probable cause."

I think the principles of that case are applicable here. If in the case of giving criminal information a person has reason to believe that a crime has been committed, it is his duty and right to inform the police. Also if in the present case defender having reason to believe that children out of the custody of the parish were being cruelly used, gave information to the Parochial Board, and failing their interference complained to the Board of Supervision. I think a minister of a parish so doing acts most certainly in the exercise of a duty and a right. For my own part, however, I am not prepared to say that I would draw any distinction between the minister of a parish and anybody else. I am not aware of anything in the office of a parish minister to make a valid distinction between his case and the case of a minister of any other denomination, or a neighbour. I put my opinion on the broad ground that there is a duty or a right to give information in such cases. A person giving information must be assumed to be acting *bona fide* for the protection of the children, and if an action of damages is brought against him he is entitled to have both malice and want of probable cause put in issue. If the complaint were made to some other party than the parochial board or the guardian of the children it would be a different matter, but where it is made to the person entitled to interfere protection is to be given to the person who gives the information. I am accordingly for holding that the principles of *Lighbody's* case apply to anyone else giving information as well as to the minister of a parish.

LORD ADAM—I think the words "without probable cause" are proper and appropriate words to be inserted in the issues, where the person complained of had a right or duty to do the act complained of, as to give information to the police and to make use of lawful diligence, and in similar cases where there is a right or a duty to do the act complained of. Here the defender, who was the minister of the parish, had not only a right, but a duty was laid upon him, if he saw or had good reason to believe that pauper children were being ill-used to give information to the proper authority. If he had a duty laid upon him, he is entitled to have want of probable cause put in issue.

I agree with your Lordship as to the question with regard to other people that it does not arise. I confess during the discussion I inclined to the opinion now expressed by Lord Shand, but I desire entirely to reserve my opinion upon that point.

LORD MURE was absent at the hearing.

The Court varied the issues by the insertion of the words "without probable cause," approved of them as now adjusted, and remitted to the Lord Ordinary to fix a day for the trial.

Counsel for the Pursuer—M'Kechnie—Hay. Agent—Jas. Skinner, S.S.C.

Counsel for the Defender—C. S. Dickson. Agents—Guild & Shepherd, W.S.

Monday, June 24.

SECOND DIVISION.

(Before Seven Judges.)

M'NEE AND OTHERS *v.* BROWNLIE'S TRUSTEES.

Reparation—Landlord's Liability for Defective Drainage—Relevancy.

In an action of damages against a landlord, a tenant averred that the drainage in a house let to him was defective, as the drains were old and not properly jointed; that he had complained to the defender, who had taken unsuitable or insufficient, or at any rate unsuccessful steps to remedy the nuisance; that his wife and child had suffered in health in consequence; and that he had incurred considerable expense in medical attendance, and by removal to other premises, and in loss of profit on the sale of goods in the premises for the unexpired period of the let. The landlord pleaded that the action was irrelevant. The Sheriff-Substitute allowed a proof before answer.

Held that the Sheriff-Substitute had acted rightly in allowing such a proof.

Question by Lord Young—Whether a landlord is liable to his tenant for loss arising from defective drainage apart from any special averment of fault on his part.

Mrs Jeanie Fowler M'Culloch or M'Nee, 21 Seymour Street, Glasgow, with consent of her husband James M'Nee junior, and James M'Nee junior for himself, and as tutor for his pupil child Jeanie Fowler M'Culloch M'Nee, brought an action in the Sheriff Court at Glasgow against the testamentary trustees of the late William Brownlie, 30 M'Culloch Street, Pollokshields, Glasgow, for £200 damages on account of loss sustained by them owing to the defective condition of the drains of a house rented by them from the defenders.

The following were the material averments of the pursuer:—The premises, consisting of a shop and house behind, No. 78 North Woodside Road, Glasgow, were let by the defenders to James M'Nee for the year from Whitsunday 1886 till Whitsunday 1887. M'Nee and his family entered into possession about the beginning of May 1886, and remained therein until October 1888, the let being renewed from year to year by missive, or otherwise by tacit relocation. In October the pursuers were compelled to remove from said premises owing to the insanitary condition thereof, the same having become dangerous to health, and the defenders' attempts to remedy the evil having proved ineffectual. In March 1888 the pursuers discovered disagreeable smells in said house and shop, arising as they averred from the defective condition of the sewage pipes and the drains, which were old, not properly jointed, and allowed the sewage and sewage gas to escape therefrom, and which were generally insufficient for the purpose for which they were being used. M'Nee in March, and on several occasions between then and October following, and in particular in the months of April, May, and September,