ping Act of 1854, and the defender in reporting it to the public authorities would have been entitled to the protection afforded by the words "want of probable cause" had there been no duty on him to make the report beyond the duty which every citizen has of making such a report. But the duty on the defender to make the entry now complained of in the log-book, and to report it to the public authority, was more than a moral duty. It is imposed upon him by statute, and a failure on his part to perform that duty would have subjected him in a penalty. Whether, therefore, the older and more limited rule is applied, or the more recent and wider rule of *Croucher* v. *Inglis*, I think the pursuer in this case is bound to put in issue that the report complained of was made not only maliciously but also without probable cause. The next question is, Can the pursuer be allowed such an issue in this case? I think not. The pursuer's statements show beyond any question that the defender had probable cause for believing and saying that the pursuer had been guilty of wilful disobedience, and it is remarkable that the pursuer did not offer to the defender any explanation of his conduct which might have altered or modified the defender's view of that conduct either at the time when he was ordered off duty on account of his disobedience, or at the time when he was furnished with a copy of the entry made in the log. Without any explanation offered or made, the defender could come to no other conclusion than that the pursuer's disobedience was wilful. I am therefore for refusing any issue, and think the defender should have absolvitor.

LORD YOUNG was absent.

The Court dismissed the action as irrelevant.

Counsel for the Appellant—Salvesen—Dickson. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Counsel for the Respondents—M'Clure—M'Kechnie. Agents — D. MacLachlan, S.S.C.

Tuesday, January 19.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

M'KERCHAR *v.* CAMERON.

Reparation—Slander—Innuendo.

A letter published in a newspaper, after calling attention to the fact that the reports of schools under a certain school board had not been published, and hinting that the reports were in some cases so bad that the board were ashamed to publish them, continued—"I wonder if it is the case, as it is rumoured, that the Ballachulish School is at the bottom of the poll this year again; if so, how long is this state of matters to be allowed to go on? Are the interests of the public to be sacrificed for the sake of providing a house and salary for a teacher?"

In an action by the teacher of the Ballachulish School—*held* that the language was capable of bearing the innuendo that the pursuer was unfit for his post as a teacher of a public school, and that it was the duty of the school board to dismiss him.

Reparation—Slander—Anonymous Letter—Privilege.

The teacher of a public school brought an action against the publisher of a newspaper on account of alleged slanderous statements contained in a letter signed "Another Ratepayer," which had been published in the defender's newspaper. *Held* (following *Brims* v. *Reid & Company*, May 28, 1885, 12 R. 1016) that the defender having refused to disclose the name of the writer of the letter, could not plead that it was privileged.

In the *Oban Times* of 17th October 1891 the following letter appeared:—

"Lismore and Appin School Board.

"(To the Editor *Oban Times.*)

"Sir,—The reports of schools under this Board have not yet been made public, and, as was indicated by 'Poor Man' and 'Ratepayer,' in your issue of 3rd curt., the ratepayers are getting impatient, and no wonder. It is now rumoured that the report in the case of one or more of the schools is so bad that the Board are ashamed to publish it. If to screen one school the whole of the reports are withheld, it is time the ratepayers took steps to enforce their rights. I wonder if it is the case, as it is rumoured, that the Ballachulish School is at the bottom of the poll this year again; if so, how long is this state of matters to be allowed to go on? Are the interests of the public to be sacrificed for the sake of providing a house and salary for a teacher?—I am, &c.

"ANOTHER RATEPAYER."

On account of the statement contained in this letter Thomas M'Kerchar, headmaster of the public school at Ballachulish, brought an action of damages against Duncan Cameron, printer and publisher of the *Oban Times*.

The pursuer averred—"The letter above quoted is of and concerning the pursuer, and falsely, maliciously, and calumniously represents, and was intended by the publication thereof as aforesaid to represent, (1) that the report upon the public school at Ballachulish by the Government Inspector was so bad that the School Board were ashamed to publish it; (2) that to screen the said school the whole of the reports of the Government Inspector were withheld; (3) that in consequence of the incompetency or fault of the pursuer the said school was at the bottom of the poll this year, as it had been in former years—that is, that it was the worst in point of results of all the schools examined; (4) that the

interests of the public in connection with the said school were being sacrificed solely for the sake of providing a house and salary for the pursuer; and (5) that the pursuer was unfit for his post as teacher of a public school, and that it was the duty of the School Board of Ballachulish, in the interests of the ratepayers, to dismiss him from it. The said statements and representations are false and calumnious, and were maliciously made with the view of ruining, or at least seriously injuring, the professional reputation of the pursuer, and destroying his usefulness as the teacher of a public school."

The defender, *inter alia*, answered that the contents of said letter were a fair comment on a matter of public importance; that they were not defamatory, and were privileged; and further, that when the letter was written the pursuer was unfit for his post as teacher of the Ballachulish School. He refused to disclose the name of the writer of the letter.

The defender, *inter alia*, pleaded—"(2) The letter complained of is not defamatory, and, *separatim*, it is privileged.

The pursuer proposed the following issue for trial of the cause—"It being admitted that the defender published in the *Oban Times*, of date the 17th October 1891, the letter set forth in the annexed schedule, whether the said letter is of and concerning the pursuer, and falsely and calumniously represents that the pursuer was unfit for his post as teacher of a public school, and that it was the duty of the School Board, in the interests of the ratepayers, to dismiss him from it, to the loss, injury, and damage of the pursuer?"

The defender proposed the following counter issue—"Whether at or about the date when the letter libelled on was written the pursuer was unfit for his post as teacher of the said public school at Ballachulish?"

On 6th January 1892 the Lord Ordinary (KYLLACHY) approved of the above issues for the pursuer and defender, and appointed the same to be the issues for the trial of the cause.

"*Opinion.*—I think the issue proposed by the pursuer in this case must be allowed. The objections stated to it are—(1) That the innuendo is not justified by the terms of the letter, these, it is said, plainly importing an imputation, not on the pursuer, but on the School Board; (2) that the innuendo is irrelevant, it not being defamatory to impute to the holder of a public office unfitness for the duties of his post; (3) that the letter complained of was a fair comment on a matter of public interest, and is therefore privileged.

"1. As to the reasonableness of the innuendo, I do not require to consider what view the jury may take of the meaning of the letter. They may, when they hear the evidence, consider that what was really meant by the writer was only this—that the School Board were perpetrating a job by keeping a school open in this locality. But in the meantime I have only to consider whether the innuendo is so extravagant and unreasonable as to make it useless to send the case to trial. I cannot say that I think this is so. On the contrary, I rather think that, *prima facie*, the innuendo is justified.

"2. I am not prepared to hold that to impute to the teacher of a public school that he is unfit for his post is not defamatory and actionable. It is settled that it is defamatory to impute to a professional man incapacity in the exercise of his profession, and I have not been satisfied by anything I have heard that there is a sound distinction between the two cases. There may, of course, be a difference as regards privilege, and malice may be more readily presumed in the one case than in the other, but assuming malice presumed or proved, I do not see why the imputation complained of should not be actionable.

"3. With respect to the question of privilege, I need only refer to the opinions of the Court in the comparatively recent case of *Brims* v. *Reid*, 12 R. 1016. Here, as there, the alleged slander is contained in an anonymous letter addressed to a newspaper, the printer of which refuses to disclose the writer's name. That being so, I must hold, as the Court held in that case, that there is no room for the defence of privilege so as to make it necessary to put malice in issue.

"With respect to the counter issue, I have heard nothing against it, and I shall accordingly allow it."

The defender reclaimed, and argued—(1) The letter would not, fairly and reasonably construed, bear the innuendo sought to be put upon it. (2) Assuming that the letter was susceptible of the meaning suggested by the pursuer, it was privileged as being a criticism of a public officer in his public capacity—Addison on Torts, 203; *Kelly* v. *Tinling*, 1865, L.R., 1 Q.B. 699; *Parmiter* v. *Coupland*, 1840, 6 M. & W. 105; *Harle* v. *Catherall, &c.*, July 16, 1866, 14 Law Times, 801; Odgers on Libel, 2nd ed., 40-50. In *Harle's* case this rule was applied to the case of the road officer of a district, and there seemed no reasonable ground for excluding from its application the case of a public school teacher. In the following action for libel at the instance of a parochial schoolmaster, the Court in granting decree proceeded upon a finding that the slanders had been uttered maliciously—*Cooper* v. *Greig*, December 10, 1813, Hume's Rep. 648. The editor of a newspaper was justified in withholding the name of a correspondent—*per* Baron Martin in *Harle's* case, *supra*. The result of his refusal was to lay upon him the responsibility of having written the letter, and the question of privilege must be looked on in that light.

Argued for the pursuer—(1) The letter was capable of bearing the construction put upon it. (2) A distinction must be drawn between the case of a professional man and a person holding a public office. It was only to the case of the latter that the rule contended for by the defender applied. The teacher of a public school did

not hold a public office, but was the servant of and answerable to the school board Further, unless the writer of the letter were a ratepayer in the district, he could have made no claim to the plea of privilege had the action been directed against him—*Anderson* v. *Hunter*, January 30, 1891, 18 R. 467, and the defender having refused to disclose the writer's name could not shelter himself behind that plea—*Brims* v. *Reid & Company*, May 28, 1885, 12 R. 1016.

At advising—

LORD PRESIDENT—I think the Lord Ordinary has come to a right conclusion. Upon the first question it is to be observed that all that the pursuer requires to make out at this stage is that the letter complained of is susceptible of the interpretation he assigns to it. It is quite true that the letter purports to state, or to conjecture, the effect or a report of the Government Inspector of Schools. It is conceivable that even granting that the school is in a deplorable condition, that may not be due to the incompetency of the teacher. It might be accounted for by the paucity of scholars, or by their absence from illness, or to other causes which one may figure. That is quite intelligible. But the writer, in the last sentence of the letter, certainly goes a long way towards indicating a specific cause for the alleged defective state of the school. He says—"Are the interests of the public to be sacrificed for the sake of providing a house and salary for a teacher?" That seems to me to afford ample basis for the pursuer's allegation that he will be able to make out to a jury that the letter contains a covert attack upon his competency. I therefore think that the Lord Ordinary was quite right in allowing the issue.

The next question is, whether malice must be inserted in the issue. Several questions of great interest and of wide social importance have been mooted during the discussion—the question, for example, whether a member of the public in attacking any person holding any office under any public body can shelter himself behind the plea of privilege. But I do not think such questions arise, or rather are open for decision in the present case, because the case of *Brims* v. *Reid* affords us a clear ground of judgment where the defence of privilege is pleadable by reason of the occasion upon which the alleged slander was spoken or written, and the relation of the writer to the subject-matter of which he speaks. What was the position of the writer of this letter? So far from our having any information about him, we have not even been told who he is, and the libel therefore must be held to be the letter of someone who has no ascertainable identity and no duty or responsibility or relation to the subject. Accordingly the whole reasoning of *Brims's* case applies, irrespective altogether of the difference in the nature of the attack made upon the pursuer in that action. What the Court in that case held was that it is impossible to allow the defence of privilege in a case where the libel is an anonymous letter in a newspaper and the writer is undisclosed. I therefore think the plea of privilege is inadmissible and that malice ought not to be put in issue.

LORD ADAM and LORD M'LAREN concurred.

LORD KINNEAR was absent.

The Court adhered.

Counsel for the Pursuer—Salvesen—Gardner Miller. Agents—J. Smith Clark, S.S.C.

Counsel for the Defender—Orr. Agents—Smith & Mason, S.S.C.

Tuesday, January 19.

FIRST DIVISION.

[Sheriff of Aberdeen, Kincardine, and Banff.

WALKER AND OTHERS *v.* NORTH OF SCOTLAND AND ORKNEY AND SHETLAND STEAM NAVIGATION COMPANY (OWNERS OF "QUEEN").

Shipping Law — Measure of Claim of Salvage.

A steamer having grounded on a rock near the mouth of a harbour during a dense fog, a tug and two small boats came to her assistance. At the request of the master of the steamer each of the small boats carried a hawser from the steamer to the tug, and the steamer was then dragged off the rock by the tug and towed into port. The crew of the small boat which had first come to the steamer's assistance claimed £100 for the service rendered by them. It was proved that this service had been neither difficult nor dangerous, and might have been performed by one of the steamer's own boats; that the value of the steamer was estimated at £5500, and that it had been rescued from a position of considerable but not immediate danger. The Sheriff awarded a sum of £10.

Held, on appeal (*diss.* Lord M'Laren), that this sum was not so inadequate a remuneration for the service rendered as to justify the Court in interfering with the award of the Sheriff.

On 21st June 1891, during a dense fog, the s.s. "Queen," belonging to the North of Scotland and Orkney and Shetland Steam Navigation Company, grounded on a rock near the enterance to the harbour of Aberdeen when attempting to make that port. Her master at once fired guns, and these were heard on shore, with the result that a tug having a small boat in tow soon came to her assistance. On nearing the steamer the tug cast the small boat loose, and its crew rowing up to the steamer