

tions should be exempt from taxation because these bodies spend a large part of their income on hospitality, and also give considerable sums towards the maintenance of schools or of charitable endowments. The hall in such a case is a proper corporate residence, a place for the transaction of the business of the company, and the entertainment of its friends, and is just as proper a subject of taxation as any private residence. Accordingly, the class of buildings in the personal occupation of a public body that are to be exempted from taxation is very strictly defined by statute. They include a very limited class of cases, and one may say only cases where the purposes to which the buildings are devoted are such as would be universally recognised as being of a beneficial character to the public. Such are university halls, literary societies, and hospitals for the cure of disease. We held in the case of the *Signet Library* and also in the case of the *Surgeons Hall* that clauses of exemption from taxation were not to be extended analogically, but were to be strictly construed.

When you come to the case of income derived from real or heritable estate, then the statute takes a very intelligible distinction, that you are only entitled to exemption in respect of so much of the income as you can prove in the manner there pointed out to be specifically appropriated to purposes of charity. In this way also the Exchequer is protected against the large exemptions which might otherwise be claimed on the ground that in some vague or partial sense the body corporate is a charitable institution. I agree with your Lordships with respect to the present case that while this may be a building which is applied to purposes which are laudable and beneficial to the community, yet these buildings do not fall within the class which are exempted from taxation; and that under this case we cannot consider the other matter, the application of rents which after all amounted only to a few pounds a-year, and which I do not understand to be involved in the appeal.

LORD KINNEAR concurred.

The Court reversed the determination of the Commissioners and sustained the assessment.

Counsel for the Surveyor of Taxes—Sol.-Gen. Asher, Q.C.—A. J. Young. Agent—The Solicitor to the Board of Inland Revenue.

Counsel for the Free Church of Scotland—Jamieson—Guthrie. Agent—John Cowan, W.S.

Wednesday, May 31.

FIRST DIVISION.

[Lord Stormonth Darling,
Ordinary.]

PATERSON v. WELCH.

Reparation—Slander—Verbal Injury—Issue.

In an action of damages for slander the pursuer averred that the defender had represented him to have said that the pupils of the Board School would "contaminate the genteel children" attending a certain college. *Held* (1)—*rev.* Lord Stormonth Darling—that the statement alleged to have been made by the defender was not slanderous, but (2) that the pursuer was entitled to an issue based on the averment that said statement was false, and was made with the design of exposing, and did expose him to public hatred and contempt.

This was an action at the instance of John Paterson, Provost of St Andrews, against James Ritchie Welch, writer, St Andrews, for payment of £500 in name of damages.

The pursuer averred—" (Cond. 3) At the annual meeting of the School Board, held in St Andrews on 11th June 1892, the defender presiding, he, in the course of submitting the annual financial statement to the Board, said in the presence and hearing of . . . or one or more of them—'That the School Board had lost during the past year the grant under the 39th section of the Madras College Scheme for the education of the pupils in the sixth and ex-sixth standards, and that the members of the Board who were governors of the Madras College were endeavouring to secure the £90 to which they were formerly entitled, under the Madras College Scheme, for pupils attending the Burgh School, to enable them to complete their education in the Madras College, but that this had met with an unqualified opposition from one of the governors of the College, who stated at a recent meeting of governors that the pupils from the board schools would contaminate the genteel children attending the Madras College.' . . . The governor of Madras College, who was in the foregoing remarks referred to by the defender, and alleged to have made the said statement, was the pursuer. (Cond. 4) On 26th October 1892 a public meeting was held in St Andrews for the purpose of nominating candidates to fill the ten vacancies caused by the retirement of the senior members of council. . . . The defender at this meeting, in the presence and hearing of . . . reiterated and confirmed the statement complained of in the preceding article . . . (Cond. 5) The statement made and repeated by the defender as aforesaid, that the pursuer had used the words attributed to him by the defender, is absolutely false. The pursuer did not use the said words, and did not use any words of like meaning or effect. The defender, when he made and repeated

the said allegation regarding the pursuer, knew that it was false. He meant by the said statement to represent, and he did thereby represent, that the pursuer was a man who held in contempt the poorer classes of the community, and others whose children attend the board schools in St Andrews, and the said children; and who was capable of reviling them, and had in fact reviled them, by representing the presence of the said children at the Madras College as a source of contamination to the children of the richer members of the community, and by representing that the said children who attend the board schools were morally unfit to associate with the other pupils who attend the Madras College. The said statement and representation were made by the defender falsely, calumniously, maliciously, and of set purpose, with the view of inducing an ill opinion to be had of the pursuer by the inhabitants of St Andrews, of injuring him in his position of Chief Magistrate, in the opinion of the citizens generally, and of holding him up to contempt and odium. Further, the said statement and representation were maliciously and recklessly made in the knowledge that they were false, with the special view of injuring the pursuer by influencing the ensuing municipal election, and of damaging the prospects of the candidates who supported the line of policy advocated for several years past by the pursuer. Accordingly the greatest publicity was given to the defender's charge against the pursuer. Not content with the attention which was called to the matter by the reports in various newspapers, the defender, by means of placards and circulars published and issued by him, either alone or acting in concert with others, and also by word of mouth, did everything in his power to circulate the falsehood which the defender had originated and reiterated as before mentioned. As matter of fact, the injury caused to the pursuer by the defender has been very serious. The defender, by his unfounded accusations, and by putting words into the mouth of the pursuer which he never used, succeeded in poisoning the minds of great numbers of the citizens, so that they came to regard the pursuer as the enemy of the poor. At the municipal election which took place the evil consequences were most apparent, and as to the result of the prejudice which had been created against the pursuer very many persons were induced to record their votes against the candidates who were supporters of the pursuer, or professed themselves as in favour of the line of policy which he advocated. The pursuer's supporters in the council had at previous elections been returned at the top of the poll; but at this last election, in consequence of the prejudice which had been created against the pursuer, out of the ten candidates who were known as belonging to the pursuer's party only three were elected. Indeed, the feeling against the pursuer was excited to such an extent that on the night of the election a crowd attempted to enter the pursuer's grounds in front of his house for

the purpose of burning his effigy. . . . The said statement and representation of the defender have thus not only been hurtful to the pursuer's feelings, but they are calculated to impair, and have materially impaired, his influence and usefulness as a public man and a citizen, and seriously prejudiced his personal comfort and social position in St Andrews, where he lives." . . .

The defender pleaded, *inter alia* (1) that the pursuer's averments were irrelevant.

On 8th March the Lord Ordinary (STORMONTH DARLING) approved of the following issue—"1. Whether, on or about the 11th day of June 1892, at a meeting of the School Board of St Andrews, held in the Town Hall of St Andrews, the defender, in the presence and hearing of . . . all members of the School Board of St Andrews, and others, falsely and calumniously used the words set forth in the appendix hereto, or words of similar import and effect; and whether the statement was of and concerning the pursuer, and falsely and calumniously represented that the pursuer was a man who held the poorer classes of the community in contempt, and had reviled them by representing that their children were morally unfit to associate with, and therefore likely to contaminate, the children of the richer members of the community, to the loss, injury, and damage of the pursuer." The appendix contained the statement quoted in condescence 3. A second issue was approved of relative to the repetition of the statement complained of alleged in condescence 4.

"*Opinion.*—This is a very peculiar action of damages for slander, and I have had some hesitation in holding that there is issuable matter. But I have come to the conclusion that the pursuer is entitled to an issue if he chooses to insert in it the full innuendo which he avers on record.

"The alleged slander consists, not in any opprobrious language directly applied by the defender to the pursuer, but in what is said to be a false report of some observations made by the pursuer at a meeting of Governors of the Madras College. Misreporting a public speaker is of course not actionable unless the words put into his mouth are of a slanderous or scandalous description. But if A falsely says of B that he used slanderous words of C, that is the same thing as calling B a slanderer, and is, I take it, actionable.

"The question therefore is, whether the words (falsely, as I must assume) attributed to the pursuer can be said to convey a slander against anybody. They are that 'the pupils from the Board Schools would contaminate the genteel children attending the Madras College.' It is obvious that these words might mean nothing more injurious than this, that the one set of children were rougher in their manners and coarser in their language than the other set. If that was all, there was nothing like slander imputed to the pursuer. But 'contaminate' is an awkward word, and it may have been understood by those who heard it attributed by the defender to the pursuer, as meaning that the

one set would corrupt the morals of the other. If so, I think it would be a slanderous imputation, directed no doubt against a large class of persons, but none the less a slander.

"The pursuer undertakes to prove that the words were used by the defender, and understood by those who heard him, in that more serious sense, and it is hardly in the defender's mouth to deny that the words were capable of conveying it, for in a newspaper report, which he admits on record to be 'substantially accurate,' he is represented as having said at a public meeting that he considered the statement 'an insult to the working men's children.' The pursuer admits that there must be an innuendo, but in his issues as lodged he proposes one which does not seem to me to advance matters in the least, for it repeats the critical word 'contaminate' (in the form of 'contamination') without putting any gloss upon it. He maintains that even if the words were understood in a less injurious sense, still they imported a reflection on the children attending the Board Schools, and were calculated to make him unpopular. But I do not know where actions for slander would end if it were held actionable to impute, however falsely, unpopular sentiments to public men. I think therefore the pursuer must undertake the burden of proving that the words were understood to mean moral contamination.

"The defender raised the question of privilege. It is one of very little practical moment, because privilege could not possibly cover the second issue, relating to a public meeting which had nothing to do with the pursuer's conduct as a Madras College Governor. Even as regards the first issue, I am by no means satisfied that privilege arises so clearly on the pursuer's own statement as to require that malice should enter the issue. I shall therefore leave the question to arise at the trial."

The defender reclaimed, and argued—1. The statement complained of was only slanderous if it represented the pursuer as a slanderer. This it did not do. In the first place, it could not reasonably be held that a public man using such words in contrasting one class of the population with another was guilty of slander. Secondly, it was impossible to slander a class, for assuming that defamatory words were used of a class, no member of such class could sue an action of damages for defamation. In the third place, to impute a single slanderous statement to a person was not the same as calling him a slanderer. The issues granted by the Lord Ordinary should therefore be disallowed. 2. The alternative issue of verbal injury which the pursuer now sought should not be granted. It was essential to such an issue that the attacks should be repeated. There must also be patrimonial or other tangible loss alleged, and such an issue had never yet been granted for a verbal attack. If such an issue were granted, it should bear that the defender had made the statement with

the intention of holding the pursuer up to hatred and contempt.

Argued for the pursuer—1. The pursuer was entitled to the issues allowed by the Lord Ordinary. The statement made by the defender attributed the utterance of a slander to the pursuer—*Christie v. Hony*, May 14, 1824, 3 S. 11; *Home v. Lundie*, March 19, 1832, 10 S. 508. Anything said of a man which tended to vilify him in the minds of his neighbours was actionable—*Mackay v. Campbell*, July 25, 1833, 11 S. 1031; *Russel v. Shirrefs*, March 16, 1837, 15 S. 881; *Graham v. Roy*, February 11, 1851, 13 D. 634. The defender's statement was not the less defamatory because the slanderous words which it imputed to the pursuer referred to a class and not an individual—*Society of Solicitors v. Robertson*, November 16, 1781, M. 13,935. The fact that the words imputed to the pursuer referred to a numerous class of people increased the injury done to the pursuer, and was an odd ground for saying that he had no remedy. 2. Assuming that the defender's statement was not actually defamatory, still if it were falsely made with the design to injure the pursuer, and had done him injury, it was actionable—*Ersk. iv. 4, 80*; *Sheriff v. Wilson*, March 1, 1855, 17 D. 528; *Cunningham v. Phillips*, June 16, 1868, 6 Macph. 926; *M'Laren v. Ritchie*, referred to in *Coghill v. Docherty*, 19 S.L.R. 96; *Macfarlane v. Black & Company*, July 6, 1887, 14 R. 870, per Lord Young, 874. The same rule had been recognised in England—*Riding v. Smith*, 1876, L.R., 1 Exch. Div. 91. To entitle the pursuer to an issue on this ground, it was not necessary that the attacks should be repeated. Persistency in such attacks only went to prove intent to injure.

Thereafter on May 19th 1893 the pursuer lodged the following issue for trial of the cause (as alternative to the issues granted by the Lord Ordinary)—"Whether on the occasions after mentioned, or on one or other of them, viz.—(1) On or about the 11th day of June 1892, at a meeting of the School Board of St Andrews, held in the Town Hall of St Andrews, in the presence and hearing of Mrs Purdie, Mr Gerald Blunt, Mr John Laverock, and Mr Jesse Hall, all members of the School Board of St Andrews, and others; and (2) on or about the 26th day of October 1892, in the Town Hall of St Andrews, and in the presence of William Cruden, Baillie Macgregor, Ex-Baillie Aikman, and Baillie Ritchie, all of St Andrews, and others, the defender stated that the pursuer at a recent meeting of the Governors of Madras College, St Andrews, had said that the pupils from the Board School or the working men's children from the Burgh School of St Andrews, if admitted to Madras College, would contaminate the genteel children who were there, or made statements of similar import and effect; whether the said statements were made in pursuance of an intention to expose, and whether the pursuer is thereby calumniously and injuriously exposed to public hatred and contempt, to his loss injury, and damage?"

At advising—

LORD PRESIDENT—The Lord Ordinary has had some hesitation in coming to the conclusion expressed in his interlocutor, and I am not prepared to affirm it.

The fact complained of is that on two occasions the defender publicly ascribed to the pursuer words which he never used, those words being to the effect that the pupils from the Board Schools of St Andrews would contaminate the scholars at the Madras College if the two sets of children were educated together in certain classes. Now, the view of the Lord Ordinary is tersely indicated in the following sentence in his opinion—"If A falsely says of B that he used slanderous words of C, that is the same thing as calling B a slanderer, and is, I take it, actionable." In a subsequent passage his Lordship says "'contaminate' is an awkward word, and it may have been understood by those who heard it attributed to the pursuer as meaning that the one set would corrupt the morals of the other. If so, I think it would be a slanderous imputation, directed no doubt against a large class of persons, but none the less a slander."

Now, in the first place, I do not think that to say of B that he on a specified occasion used slanderous words of C is the same thing as calling B a slanderer, and there are decisions as to accusations of falsehood which point the difference. But secondly, I do not agree that an injurious charge against a class of the community, and particularly a large class of the community, has the same legal quality as the same charge directed against an individual or individuals. Publicly to accuse the working classes or the upper classes of immorality, is a very different thing from publicly accusing some particular working man, or some particular nobleman, of the very same thing. Now, what Mr Paterson is represented to have done was at most to have expressed the opinion that one class of the inhabitants of St Andrews were of worse morals than another class, and that the one would corrupt the other if they were brought together. This may be a very erroneous opinion, and is certainly a very unpopular one, but to express it on every occasion does not seem to me to constitute a slander in the legal sense of the term, and to accuse a man of expressing that opinion is not to ascribe to him conduct of a dishonourable or immoral kind. More particularly does the accusation against Mr Paterson seem to me to be no slander against him, when the words of his accuser, on which he sues, make it plain that when he is said to have used the obnoxious words about the children, he was speaking in his place as a member of the School Board, and that what he said, whatever its other qualities, was unquestionably relevant to the business in hand.

My opinion is therefore that the pursuer has not a good ground of action on the head of slander. In this view it is not necessary to consider whether on both or either of the occasions when the defender spoke he was privileged, even on the showing of the pursuer.

But assuming, as I now do, that the words sued on do not found a claim of damages on the head of slander, it by no means follows that they are not actionable. The true case of the pursuer is this—He says to the defender, "You publicly asserted that I said certain things; your assertion was false; it was made with a design to injure me, and I have been injured." In my opinion that is a good claim of damages. In judging of the relevancy of such a claim, it is of course necessary that the words ascribed to the pursuer, should be such as reasonably support the essential averments, that the attributing them to him was done with an intention to injure, and with the result of injuring. But subject to this observation, it seems to me that when speech is ascribed to A by B, A will have an action if (1) the statement of B is false, (2) the statement was made with a design to injure, and (3) injury has resulted. The pursuer's case complies with these conditions. He begins by saying that he never used the words ascribed to him. These words are invidious words, to utter which may well be supposed to bring down on him who was alleged to have used them, the hatred of his neighbours. The pursuer goes on to say that the defender ascribed these words to him, because the defender calculated their effect, and desired to inflict that injury on him. He ends by saying that the falsehood did its work; that he has become an object of public hatred; that the people have tried to burn him in effigy at his own door; that his personal comfort and public influence have been impaired; and all this through the falsehood of the defender.

The case thus presented is, in my opinion, one of legal wrong which, if proved, will entitle the pursuer to damages. The issue which I propose for the trial would run in the terms set out in the print of 19th May 1893 down to and including the words "import and effect," and would then proceed, "whether the said statements are false, and were made with the design of exposing and did expose the pursuer to public hatred and contempt, to his loss, injury, and damage?"

LORD ADAM and LORD M'LAREN concurred.

LORD KINNEAR was absent.

The Court approved of an issue in the terms proposed by the Lord President.

Counsel for the Pursuer—C. S. Dickson—Wilson. Agents—Mitchell & Baxter, W.S.

Counsel for the Defender—Comrie Thomson—M'Clure. Agents—Boyd, Jameson, & Kelly, W.S.