

nounced was an order of new ordering issues upon conditions as to expenses.

LORD PRESIDENT—It appears to me that under sec. 12 of the Act of Sederunt of 1865 we have power to repone in this case (whatever may be the precise form of our interlocutor), for the section says — [His Lordship read the section].

These last words seem plainly to indicate that on a reclaiming-note the interlocutor may be opened up, and the only question appears to be whether we should exercise that power in the present case.

Now it seems to me that we have here a case of misunderstanding and not of gross contumacy, and a case therefore different from those in which no appearance was made for one of the parties. Accordingly I think we may repone here, so as to put matters into the position which they occupied before the interlocutor reclaimed against, on condition of the payment of expenses since the date of the interlocutor ordering issues, which was the last effective order.

LORD ADAM and LORD M'LAREN concurred.

LORD KINNEAR—I also agree, and would only add that I have no doubt of our general power to repone against a decree by default, or of its application to the case in hand, unless in that particular case it has been expressly taken away by some statutory enactment. I look at the section to which our attention has been called, not for the purpose of finding whether it confers upon the Court a power to repone, but rather whether there is anything in it to limit our inherent jurisdiction. I think it recognises the power of the Court, but irrespective of that recognition I am of opinion that we have power to repone at common law.

LORD M'LAREN—I agree with Lord Kinnear as to our common law power.

LORD PRESIDENT—I also assent to that.

In each action the Court pronounced an interlocutor in the following terms:—

“Recal said interlocutor [of 21st November 1901], and remit to the Lord Ordinary of new to assign a date for the adjustment of issues, and to proceed as may be just; Find the pursuer liable to the defender in expenses since 8th November current, and remit,” &c.

Counsel for the Pursuer and Reclaimer — A. M. Anderson—Lyon Mackenzie. Agents—Clark & Macdonald, S.S.C.

Counsel for the Defenders and Respondents—T. B. Morison. Agents—Macpherson & Mackay, S.S.C.

Friday, November 22.

## SECOND DIVISION.

[Lord Low, Ordinary.]

BRUCE v. A. M. ROSS & COMPANY.  
*Reparation—Slander—Newspaper—Issue—Innuendo.*

A newspaper published an article commenting upon the circumstances attending the removal of a patient from an hospital by orders of the medical superintendent of the hospital. The article contained the following passages — “In the interests of humanity we are reluctantly compelled to draw attention to the cruel treatment meted out to a poor invalid who was unlucky enough to fall a victim to a disgusting piece of ‘red-tapeism.’ . . . What we are concerned with in the public interest is the cruel treatment meted out to the invalid on the next day by Dr Bruce. A cab was sent for and the unfortunate paralytic put into it and sent to an hotel in town. The hotelkeeper naturally refused to have anything to do with such a helpless individual, and there the cab stood at the hotel door, and there it seemed it would stand unless something turned up. The poor invalid felt his position keenly. He said he would sooner be put into his coffin than be treated the way he was, and complained bitterly. After a time the man was driven back to the hospital, and after some delay was re-admitted. . . . It was a very cruel proceeding. Pure red tape; nothing else.”

In an action of damages raised by the medical superintendent of the hospital against the proprietors of the newspaper for slander, alleged to be contained in this article, which was innuendoed to mean that the pursuer was guilty of cruelty to a patient, *held* (rev. judgment of Lord Low Ordinary, *diss.* Lord Young) that the action was irrelevant, in respect (1) that the facts upon which the expressions of opinion contained in the article were based were in substance admitted to be truly stated, and that expressions of opinion as to a statement of facts truly set forth are not actionable; and (2) that the article did not charge the pursuer personally with cruelty.

Opinion of Lord M'Laren in *Archer v. Ritchie & Co.*, March 19, 1891, 18 R. at p. 727, and 28 S.L.R. at p. 551, *approved and followed*.

This was an action of damages for slander at the instance of William Bruce, M.D., LL.D., Dingwall, against A. M. Ross & Company, proprietors and publishers of the *North Star and Farmers' Chronicle* newspaper, published in Dingwall.

The pursuer averred that he was Medical Superintendent of the Ross Memorial Hospital in Dingwall, and a consulting physician in Dingwall and Strathpeffer. He further averred as follows:—“(Cond. 6) On the placards of the issue of the defen-

ders' newspaper of 9th May 1901 there appeared the following words:—'Strange Affair in Dingwall—An Invalid's Adventure.' In the issue of the said newspaper of the said date there appeared under the heading 'Star Flashes' the following paragraphs:—'In the fear that we might do some harm to that admirable institution the Ross Memorial Hospital, we pondered long before we proceeded to pen this paragraph, but in the interests of humanity we are reluctantly compelled to draw attention to the cruel treatment meted out to a poor invalid who was unlucky enough to fall a victim to a disgusting piece of "red-tapeism." This invalid, a chronic and incurable paralytic, was sent down from Gairloch to the hospital some time ago. We understand that the man was not a pauper. For some cause or other Dr Bruce, as medical superintendent of the hospital, resolved that the man should leave the hospital, and apparently going on the assumption that the man was a pauper, wrote one afternoon to the Poor Inspector for Dingwall instructing him to have the man removed from the hospital by ten o'clock on the following morning, failing which he would have him removed to an hotel in town at the expense of Dingwall Parish Council. The Poor Inspector of Dingwall wired to the Inspector at Gairloch and got a reply that the man was not a pauper, and pending receipt of a letter following the telegram the Poor Inspector of Dingwall took no action in the matter, not knowing whether he had any right so to do. We know nothing of the official dispute between Dr Bruce and the Poor Inspector of Dingwall, and we care less. What we are concerned with in the public interest is the cruel treatment meted out to the invalid on the next day by Dr Bruce. A cab was sent for and the unfortunate paralytic put into it and sent to an hotel in town. The hotel-keeper naturally refused to have anything to do with such a helpless individual, and there the cab stood at the hotel door, and there it seemed it would stand unless something turned up. The poor invalid felt his position keenly. He said he would sooner be put into his coffin than be treated the way he was, and complained bitterly. After a time the man was driven back to the hospital, and after some delay was re-admitted. He was not allowed to remain, however, and was sent up to the hospital at Strathpeffer, where he now lies. It was a very cruel proceeding. Pure red tape; nothing else. Napoleon the Great, on an historic occasion, declared that cruelty can only be justified by necessity, but whether necessity justified the proceedings above related is a matter regarding which we have our doubts.' (Cond. 7) The said paragraphs are of and concerning the pursuer, and are false and calumnious. They falsely, maliciously, and calumniously represent that the pursuer had been guilty as a medical man and the Superintendent of the said hospital of cruel and inhuman conduct towards the said man Maclean; that the pursuer had, in disregard of his duty as a medical man and Superintendent of the

said hospital, turned the said man Maclean out of the hospital in a cruel and inhuman manner, without making any provision for the care of him, in spite of his helpless condition, and that the pursuer had acted in a manner improper in a medical man, and contrary to his duty as Medical Superintendent of the said hospital."

With reference to the statements in the article complained of, the pursuer averred (Cond. 4) that in consequence of a letter addressed to him by the Chairman of the Gairloch Parish Council, asking him if possible to get Maclean into an incurable hospital, "the pursuer wrote to the Inspector of Poor for Dingwall telling him that Maclean must be removed at once from the hospital, his case being unsuitable for treatment, and asking the Inspector to take him away to some place where he could be lodged and attended to, by ten o'clock on the following day. The Inspector, through his son, who is his assistant, informed the pursuer that he had been unable to find any person who would take and nurse the man Maclean. The pursuer thereupon himself proceeded to arrange for his removal, and went to the proprietor of the Royal Hotel at Dingwall and arranged that he should take in Maclean. The proprietor agreed to do so, but when Maclean arrived in a cab, and the proprietor saw how helpless he was, he declined to have him, and he was driven back to the hospital. (Cond. 5) When he found that the proprietor of the Royal Hotel would not admit Maclean, the pursuer sought for other accommodation for him, and found that he could be admitted into the Nicolson Memorial Hospital, Strathpeffer. For his admission there it was necessary to guarantee ten shillings per week and to engage to remove him when asked to do so. The pursuer arranged that Maclean should be received into the said hospital, and became personally liable in fulfilment of the conditions of his reception. Maclean was removed to the said Nicolson Memorial Hospital and remained in it for several weeks."

The defenders in answer admitted the publication in their newspaper of the article complained of. They denied that the statements contained therein were false and calumnious, and averred—" (Ans. 7) The whole facts stated in the said paragraphs are true in point of fact, and the references to the pursuer therein contained consist entirely of fair criticism upon his conduct as disclosed by the facts stated. The matters referred to were matters of public interest and concern, and the comments upon the pursuer's conduct were fair and reasonable criticisms of the actings of a public official, and were made in *bona fide* and without malice."

The defenders averred further that the whole steps for having Maclean removed from the hospital were taken by the pursuer at his own hand, and were unauthorised and *ultra vires*.

The pursuer pleaded—" (1) The defenders having libelled the pursuer, are liable in reparation as concluded for."

The defenders pleaded—“(1) No relevant case. (2) The paragraphs complained of not being libellous, the defenders are entitled to absolvitor, with expenses. (3) The paragraphs complained of being a fair criticism upon the public conduct of a person holding a public office, made by persons interested in the proper discharge of the duties of that office, and having been published in good faith and without malice, the said paragraphs are privileged. (4) The statements made in the paragraphs complained of being true, the defenders are entitled to absolvitor, with expenses.”

By interlocutor dated 16th July 1901 the Lord Ordinary (Low) approved of the following issue—“It being admitted that the defenders, on or about 9th May 1901, printed and published the paragraphs set forth in the schedule hereto annexed in the issue of their newspaper *The North Star and Farmers' Chronicle*, of that date—Whether the said paragraphs are of and concerning the pursuer, and falsely and calumniously represent that the pursuer, as a medical man and the Superintendent of the Ross Memorial Hospital, Dingwall, had been guilty of cruel treatment to a patient in the said hospital, to the loss, injury, and damage of the pursuer? Damages laid at £1000.”

The schedule set forth the article complained of *ut supra*.

*Opinion.*—“The defenders contend that the pursuer is not entitled to an issue, because (1st) the circumstances narrated in the article are substantially admitted; and (2nd) the comments contained in the article amounted to no more than this, that the pursuer by his rigid adherence to the rules of the hospital had in fact treated a patient with cruelty.

“The pursuer, upon the other hand, innuendoes the article as representing that he had been guilty of cruel treatment of the man Maclean, who had been a patient in the hospital.

“I am of opinion that the article fairly bears the innuendo put upon it. The pursuer is the Medical Superintendent of the Ross Memorial Hospital in Dingwall, and the article says that the treatment ‘meted out’ by him to an invalid was very cruel, so cruel that the writer was ‘reluctantly compelled to draw attention’ to it ‘in the interests of humanity.’ No doubt the writer says that the incident was the result of red-tapeism—‘disgusting red-tapeism,’ he calls it. I suppose that by ‘red-tapeism’ is meant an unreasonable and unjustifiable adherence to forms and rules, but as to what were the forms or rules in pursuance of which the pursuer is said to have cruelly treated a paralytic there is no hint.

“It therefore seems to me that the article may fairly be read as representing that the pursuer in his capacity of Medical Superintendent of the hospital acted with great cruelty to a patient. That is a most injurious charge to make against a person in the pursuer’s position, and therefore I am of opinion that he is entitled to an issue.”

The defenders reclaimed, and argued—(1) There was no relevant case here. The article would not bear the innuendo which

the pursuer put upon it. It did not accuse the pursuer of cruel treatment; its meaning was that the patient had suffered in consequence of a too rigid observance of the rules of the hospital; but that was not a charge of cruelty against the pursuer. (2) The facts stated in the article were substantially admitted by the pursuer, and in such a case no action would lie for an expression of opinion upon these facts—*Meikle v. Wright*, July 8, 1893, 20 R. 928, 30 S.L.R. 816; *Smyth v. Mackinnon*, July 13, 1897, 24 R. 1086, *per* Lord Young, at p. 1092, 34 S.L.R. 762; *Archer v. Ritchie & Co.*, March 19, 1891, 18 R. 719 (*per* Lord McLaren, at p. 727), 28 S.L.R. 547.

Argued for the pursuer and respondent—1. The article clearly imputed the cruel treatment to the pursuer personally, which was a most injurious charge to make against a medical man, and therefore libellous; at all events, unless the Court could affirm that a jury could not reasonably attach that meaning to it, the pursuer was entitled to an issue. 2. The cases cited by the reclaimers were only applicable where the expressions used were not in themselves libellous; but here it was otherwise. Besides, the article did not fully and truly set forth the facts. It omitted several important particulars, *e.g.* that the pursuer had previously made arrangements for the reception of the patient in the hotel and subsequently for his reception in the hospital at Strathpeffer.

At advising—

LORD JUSTICE-CLERK—The pursuer in this case asks for damages for slander said to have been committed in a newspaper article. The important circumstances as averred were that a patient in the Ross hospital at Dingwall was found to be a hopeless paralytic; that according to the rules of the hospital he was not a proper subject for treatment there, and could not remain in the hospital; and that the pursuer, a medical officer of the hospital, took steps to have him removed. He wrote to the inspector of poor to have him removed at once from the hospital, but the inspector failed to find a person willing to take the patient. The pursuer then arranged with the proprietor of the Royal Hotel to take the patient in, but on bringing the patient in a cab, the proprietor, seeing how helpless he was, refused to take him in, and he was taken to the hospital.

When the article complained of is looked at, it becomes apparent that as regards the statement of fact contained in it, it sets forth the incidents which have led to the present case in practically the same manner as the pursuer sets them forth in his own condescendence. There is no difference in any essential particular. The only statement of fact beyond that contained in the condescendence is this, that it is stated that as regards the removal of the paralytic to the hotel the poor invalid felt his position keenly. He said he would sooner be put in his coffin than treated the way he was, and complained bitterly. That is a statement which may or may not be true in point of

fact, but it in no way constitutes a libel against the pursuer, and the pursuer in his record makes no point of it. His case, both in the record and in the issue he proposes, turns solely upon the comments made on the facts as alleged. These comments may be concentrated in three or four words—"cruel treatment, cruel proceeding." The question truly is whether it can be founded on as a slander for which damages can be exacted. I am of opinion that the pursuer's case founded on these words is irrelevant. There are no facts stated to which the words "cruelty" or "cruel" can be applied as indicating bodily cruelty, the words being used in a metaphorical sense. In short, there is nothing in the facts stated by the pursuer to indicate that anything in the way of bodily cruelty was used. And the words which in each case accompanied the expressions complained of make that clear. The proceedings are spoken of as arising from red-tapeism. I cannot hold that these words of comment constitute an actionable slander. They are, no doubt, words expressing strong disapprobation of the conduct described, but they are not necessarily defamatory or involving attacks on moral character. This case seems to me to fall under the principles laid down in *Archer v. Ritchie & Company*. That case related to a newspaper comment on a speech. The speaker's conduct was referred to as "sharp practice." Lord M'Laren in that case says—"The expression of an opinion as to a state of facts truly set forth is not actionable, even when that opinion is couched in vituperative or contumelious language. I can see nothing in the expression used which can be construed as an imputation on the moral character of the pursuer—nothing indeed beyond what persons taking part in public work must be content to bear with good temper, and if necessary to meet with suitable reply." Concurring in what is there laid down, I am of opinion that the action is irrelevant and should be dismissed.

LORD YOUNG—I am of opinion that the judgment of the Lord Ordinary is right. I think the paragraph complained of is defamatory of the pursuer in his profession as a practising physician, and also as the holder of important medical offices in the district where it was published. The argument of the defenders' counsel was generally to the effect that the strong language of condemnation used in the paragraph regarded only a rule of the hospital of which the pursuer was and is medical superintendent, and did not impute cruelty or impropriety to him in his conduct. I cannot accept this view. The most striking expressions in the paragraph are—"In the interests of humanity we are reluctantly compelled to draw attention to the cruel treatment meted out to a poor invalid who was unlucky enough to fall a victim to a disgusting piece of red-tapeism." Again—"What we are concerned with in the public interest is the cruel treatment meted out to the invalid by Dr Bruce." Again—"It was a very cruel proceeding."

I think it clear that the article imputes the whole blame to the pursuer. Any doubt of this, if there were any, is removed by the defenders' statement on record (Ans. to Cond. 3)—"Averred further, that the whole steps for having Maclean removed from the hospital were taken by the pursuer at his own hand, and were unauthorised and *ultra vires*." The cruelty and disgusting red-tapeism and consequent suffering of a poor invalid to which attention is drawn in the interests of humanity are thus very distinctly imputed to the pursuer. I think it would be unjust to refuse him an opportunity of clearing his character.

LORD TRAYNER—I am of opinion that the pursuer has not set forth a relevant case entitling him to an issue. The pursuer complains of an article printed and published by the defenders in their newspaper, which he says is false and calumnious, and represents that he as a medical man "had been guilty of cruel treatment to a patient." Comparing the facts set forth in the article with the facts averred by the pursuer in his condescendence, I think it becomes clear that the article complained of is not false. The statement of facts given in the article coincides with the pursuer's own statement of the same facts in his condescendence. Upon the facts thus set forth the defenders in their article state that the treatment of the patient referred to was cruel; but this, fairly read, is only an expression of their opinion. But, as Lord M'Laren said in *Archer's* case, "the expression of an opinion as to a state of facts truly set forth is not actionable." It appears to me that the article does not charge the pursuer with cruelty. The writer of the article censures the "red-tapeism" which prevails in the hospital with which the pursuer is connected as leading to cruelty. He draws "attention to the cruel treatment meted out to a poor invalid who was unlucky enough to fall a victim to a disgusting piece of red-tapeism." I understand that to mean that a patient was treated cruelly through the rigid and unbending observance of the rules by which the hospital in question and its officers are governed. It is not said that the pursuer made the rules, or that he should have disobeyed or disregarded them; and although in another part of the article it is said that "the cruel treatment (was) meted out to the invalid on the next day by Dr Bruce," that is only saying that Dr Bruce was the officer who carried out the rules with the result that cruel treatment (as described) followed as a consequence. I think the article does not censure the pursuer or charge him with cruelty. It points out that the rigid adherence to rule resulted in cruelty, but censures the rules and a rigid adherence to them irrespective of the special circumstances of a case which might have warranted or called for some relaxation of the rules. And accordingly the article in question concludes—"It was a very cruel proceeding. Pure red-tape—nothing else."

It is not to the purpose to consider

whether the opinion expressed by the writer of the article is well founded or reasonable in itself. Some people may concur in that opinion—others may not. But I think there is nothing actionable in the writer expressing his opinion that the rules of the hospital as administered, which he calls “red-tapeism,” resulted in cruelty, or what he thought cruelty, and in calling public attention to that matter. The true facts were given to the public, who could judge whether they warranted the writer’s opinion or not.

LORD MONCREIFF was absent.

The Court recalled the interlocutor of the Lord Ordinary, and dismissed the action.

Counsel for the Pursuer and Respondent—Jameson, K.C.—Cooper. Agents—MacKenzie & Black, W.S.

Counsel for the Defenders and Reclaimers—Ure, K.C.—M’Lennan. Agent—Alex. Ross, S.S.C.

Friday, November 22.

## SECOND DIVISION.

(Sheriff Court at Glasgow.)

### R. & J. DICK v. EAST COAST RAILWAYS.

*Carrier—Carriage of Goods—Injury to Goods in Transit—Rejection—Damages—Measure of Damages.*

In an action by a firm of boot and shoemakers in Glasgow against a railway company the pursuers claimed £100, being the value delivered in Glasgow of a patent American lasting machine, which had been damaged in transit while in the defenders’ custody as carriers, and of which the pursuers had consequently refused to take delivery. The defenders contended that they were only liable for such sum as might be required to repair the machine. The proof established that while the machine might be repaired in this country it would take from £25 to £30 to renew the injured parts, over and above the expense of an expert to adjust them. The pursuers’ experts deponed that even if so repaired they would not guarantee that the machine would work satisfactorily.

*Held* that in these circumstances the pursuers were entitled to reject the machine and to receive from the defenders the value thereof delivered in Glasgow.

R. & J. Dick, gutta-percha boot and shoe manufacturers, Glasgow, raised an action in the Sheriff Court at Glasgow for £105 against the Great Northern and North-Eastern Railways, incorporated by Act of Parliament and trading in Glasgow under the name or firm of the East Coast Railways, having their office at 37 West George Street there.

The pursuers averred and the defenders admitted that on or about 2nd December 1899 the defenders, acting in their capacity as common carriers, took delivery of a Siever lasting-machine from Messrs Thomas Wilson, Sons, & Company, Limited, the agents of the English and American Machinery Company, Limited, 1 Worship Street, Finsbury, London, E.C., which machine had been purchased by the pursuers from the said English and American Machinery Company, Limited, for £100, and was delivered to the defenders to be conveyed by them to the works of the pursuers at Greenhead, Glasgow; that when the defenders got delivery of the said machine it was in good order and condition, and quite intact and unbroken; and that on or about 7th December 1899 the defenders tendered said machine at pursuers’ works, and that the pursuers refused to accept delivery.

The pursuers also averred that the machine was tendered by the defenders at the pursuers’ works in a damaged condition; that it was very badly smashed and in a useless condition, most of the principal parts being broken; that to have the machine repaired, adjusted, and tested would cost about as much as a new machine, and that the repaired machine would not be nearly so serviceable or reliable as a new one.

The defenders explained that the machine had been injured by reason of its being knocked off their lorry by a tramway car horse which fell while passing the lorry on its way along Argyle Street, Glasgow. They contended that if liable they were only liable for the damage done to the machine and not for the price of it.

The pursuers pleaded—“(2) The pursuers’ machine having been damaged while in the defenders’ hands for carriage, they are entitled to compensation from the defenders for the loss which they have thereby sustained. (3) The pursuers having sustained loss, injury, and damage to the amount sued for, decree ought to be granted as craved, with expenses.”

The defenders pleaded—“(3) In any event, the defenders are only liable to the pursuers in such sum as is necessary to repair the machine, and the sum sued for is excessive.”

Proof was allowed and led. The pursuers brought evidence to show that the machine was only worth its value as old metal as it stood; that it would take £30 to manufacture in this country the parts that had been broken; and that the parts could not be put together without the superintendence of an expert from Leicester. Their experts deponed that even if so repaired they would not guarantee that the machine would work satisfactorily.

The defenders’ witnesses deponed that the damaged machine could be made as good as new at an outlay of £15 or £16, 10s.

On 13th March 1901 the Sheriff-Substitute (GUTHRIE) pronounced the following interlocutor:—“Finds that the defenders were carriers of a Siever’s lasting-machine from Hull to Glasgow about 7th December 1899,