

refused the application mistook his duty altogether. The claim for relief was by a blind and deaf young man, quite unable to maintain himself and altogether destitute, but with certainly a right to be maintained by his mother if she was able to maintain him. It was quite unreasonable that the pauper should be left to bring an action against his mother and her husband for an order for his maintenance. It was ridiculous to say that he was to bring such an action, and be left to starve until he got the order on his mother. He had to be maintained somehow, and the proper authorities to maintain him were the parochial authorities, it being open to them to have recourse against the mother if upon consideration they came to think that that was the proper course. The Sheriff-Substitute does not seem to have considered that at all; he simply refused this application because this pauper's mother had some money. In these circumstances I am of opinion that we should sustain this appeal to the effect of recalling the judgment of the Sheriff-Substitute and remitting to him to make an order on the parochial authorities to grant interim relief to the pauper.

LORD TRAYNER—The question—I think an important question—here raised is as to the competency of this appeal. I cannot say that I have any doubt on that subject. I think the appeal is competent. The constitutional principle is that every judgment of an inferior court is subject to review, unless such review is excluded expressly or by necessary implication. It is argued for the respondent that this appeal is excluded by the terms of section 73 of the Poor Law Act of 1845. It cannot be said to do so expressly. Does it do so by necessary implication? I think not, because it makes no provision whatever for the case which happened here. It provides certain procedure where the Sheriff has granted the pauper's application, but it makes no provision for (and does not appear even to contemplate) the case of that application being refused. I am of opinion that in neither case (whether the application is granted or refused) is the Sheriff's judgment made final. The pauper's application is for the enforcement of a legal right, and the only answer to it is that the right does not exist. This question is submitted by the statute to the Sheriff of the county—a judicial officer—who is to determine upon it in that capacity. It is a judicial deliverance, and therefore subject to review, unless as I have said excluded. I find nothing whatever in the statute to warrant or even suggest the view that the Sheriff's deliverance is to be final, and therefore on principle it is subject to review.

LORD MONCREIFF was absent.

The Court sustained the appeal, found the appellant entitled to interim relief as applied for, and remitted to the Sheriff to make an order on the Inspector of Poor of the parish of Rutherglen to grant interim relief to the appellant.

Counsel for the Applicant and Appellant—G. Watt, K.C.—Morton. Agent—W. A. Hyslop, W.S.

Counsel for the Respondent—Deas—D. P. Fleming. Agents—H. B. & F. J. Dewar, W.S.

Saturday, November 7.

SECOND DIVISION.

MACKAY v. GRANT.

Reparation—Slander—Rixa—Mere Vulgar Abuse—"Liar"—"Swindler"—Bystanders Asked to Hear Accusations as Witnesses.

A, in denial of a statement by B that A was due an account to B, said that B was a liar. Ten months afterwards A again met B, and in the presence of two bystanders called him a liar and a swindler, and stated that hell was too good for him. He then added, "I repeat it before two respectable witnesses."

B having raised an action for damages for slander against A, held, after a proof, that while A's statement on the first occasion was made *in rixa*, and not in a defamatory sense, the words used by A on the second occasion must be held to have been used in a defamatory sense, and not *in rixa*, and that B was entitled to damages.

This was an action brought in the Sheriff Court at Dornoch by Alexander Mackay, station-agent, Rogart, against William Grant, merchant there, concluding for £100 as damages for slander.

The pursuer averred that on 10th December 1902 at Rogart station, and in presence of pursuer and of George Mackay and James Matheson, both railway servants at Rogart, and of others, the defender stated that the pursuer was "a liar and the biggest swindler in the parish, and that hell was too good for him," and that the pursuer was thereby injured in his feelings, reputation, and business.

The defender pleaded, *inter alia*—" (3) The words complained of having been used by the defender *in rixa*, and as a retort to the words used by pursuer of and concerning him, and being words of mere vulgar abuse, and no specific charge made, defender falls to be assuaged from the conclusions of this action, with expenses."

A proof was allowed, the import of which was as follows—The pursuer succeeded the defender as station agent at Rogart. Friction arose between them as to accounts outstanding between the defender and the Railway Company. On 27th February 1902, when the defender went to the railway station to have some coals weighed, the pursuer insisted on receiving prepayment of the weighing charges, *viz.*, twopence. This led to an altercation, during which the pursuer stated that he had had to pay a previous account for the defender. The

defender then told the pursuer that he was a liar. On 10th December 1902 George Mackay and James Matheson entered the booking-office at the station and found the pursuer and defender already there. Mackay deponed that when he entered the pursuer and defender appeared to be on friendly terms. Thereafter the defender called the pursuer a liar and a swindler, and stated that hell was too good for him. He drew the attention of Mackay and Matheson to what he had said, saying, "I repeat it before two respectable witnesses." Neither Mackay nor Matheson had any idea why the defender used such language to the pursuer, although they saw that the defender was in a rage. The defender in his evidence deponed that there had been a "slanging match" between him and the pursuer in renewal of their former altercation.

On 28th April 1903 the Sheriff-Substitute (MACKENZIE) found that the expressions were uttered *in rixa*, and after provocation on the part of the pursuer, and assoiled the defender.

The pursuer appealed to the Sheriff (C. GUTHRIE), who on 1st July 1903 pronounced the following interlocutor:—"Recals the judgment of the Sheriff-Substitute of 28th April 1903 complained of: Finds that on 27th February 1902, at the Rogart Railway Station, the defender stated that the pursuer was a liar: Finds that this statement was made in denial of a statement made by the pursuer at the same meeting that the defender was due an account to the pursuer: Finds that the said words were used *in rixa*, and that it has not been proved that they were used in a defamatory sense: Finds that on 10th December 1902, at the Rogart Railway Station, the defender stated that the pursuer was a liar and a swindler, and that hell was too good for him, and stated in presence of George Mackay and James Matheson that he repeated these statements before two respectable witnesses: Finds it proved that the said words were used of the pursuer in a defamatory sense, and finds that the defender has failed to prove that the said words were used by him *in rixa*: Finds the pursuer entitled to damages; Assesses the same at £20."

Note.—"As I read the evidence, the objectionable statement by the defender on 27th February 1902 was provoked by the pursuer's gratuitous statement that the defender owed him an account. I regard the defender's language, however improper, as merely amounting to an emphatic denial of the pursuer's allegation.

"But on 10th December 1902 George Mackay and James Matheson prove that the statements then made by the defender were unprovoked. In these circumstances I cannot accept the defender's representation that the words were used in the course of 'a slanging match between the two of us.' The defender stated that the pursuer was a liar and a swindler, and called George Mackay and James Matheson to witness that he had made the statement. It is not alleged that the statement was true, and I

can find nothing in the circumstances to show that it was made *in rixa*, or otherwise than deliberately and without provocation."

The defender appealed, and argued—The language used on 27th February had been held not actionable, as it had been provoked by the pursuer, and was uttered *in rixa*. The statements now complained of were made during a renewal of the former quarrel. It was unreasonable to assume that intemperate language used in such circumstances was slanderous—*Christie v. Robertson*, July 12, 1899, 1 F. 1155, 36 S.L.R. 890.

Counsel for the respondent was not called on.

LORD JUSTICE-CLERK—I am of opinion that the Sheriff's judgment is right. The parties had a dispute, in the course of which they used strong language towards each other. Some months after, and when the heat of the previous quarrel had subsided, the defender called the pursuer a liar and a swindler, and said that hell was too good for him. He not only did this, but he called the attention of those present to what he was saying, and stated that he repeated his accusations before two respectable witnesses. There is nothing in this of the character of *rixæ*. A man might say such things *in rixa*, but it is not *rixæ* when he deliberately calls on two bystanders to be witnesses of what he is saying. In this view of the case it is not necessary to consider what began the dispute on December 10th. But it is striking that the evidence shows that when the witnesses first came on the scene the parties were on good terms, and that they heard nothing from the pursuer to provoke the attack made on him by the defender. I think the judgment of the Sheriff is in accordance with these facts.

LORD YOUNG—I think that there are no sufficient grounds for disturbing the Sheriff's judgment. It is such a trumpery case that I do not think it necessary to add anything.

LORD TRAYNER and LORD MONCREIFF concurred.

The Court pronounced this interlocutor—

"Dismiss the appeal: Find in fact and in law in terms of the findings in fact and in law in the interlocutor of the Sheriff dated 1st July 1903: Of new find the pursuers entitled to damages, and assess the same at the sum of £20 sterling, for which decern against the defender."

Counsel for the Pursuer and Respondent—A. O. Deas. Agent—W. F. Finlay. W.S.
Counsel for the Defender and Appellant—A. M. Anderson. Agents—W. & J. L. Officer, W.S.