

is suggested here—an exception and modification to the effect that after his mother's death and after his own puberty an illegitimate child takes the settlement of his stepfather—the settlement of his stepfather as possessed at his mother's death.

I am not myself prepared to sanction such a result, and therefore I am, on the whole matter, of opinion that the pauper takes his own birth settlement, and that the interlocutor of the Sheriff should be affirmed.

LORD KINCAIRNEY—I agree. I am of opinion that the settlement of this pauper is in the parish of his birth.

LORD STORMONTH DARLING—The case for Govan Combination involves the rather startling proposition that when a lad of sixteen, eight years after his mother's death, becomes a proper object of parochial relief, the burden of maintaining him falls, not on the parish of his birth, but on the parish in which his mother had, at the time of her death, acquired a residential settlement through marriage.

The primary ground of liability, as explained by Lord Barcaple in *Craig v. Greig*, 1 Macph. 1172, at p. 1191, is that every pauper entitled to relief ought to be supported by his own parish, *i.e.*, the parish of his birth or the parish of his own residential settlement. But the course of decision—mainly induced by certain considerations of social duty and humanity—has superimposed upon that primary ground of liability certain modifications, which are now quite as firmly fixed as the original rule itself. Thus, the wife of a living husband and the pupil (or unemancipated) lawful children of a living father follow his settlement. Nay, more, a settlement thus acquired through a father is not lost by a pupil child after the father's death by the child's attainment of puberty, but is retained in his own right until he loses it by his own failure to fulfil the statutory conditions (*St Cuthberts v. Cramond*, 1 R. 174). In the case of a bastard similar considerations have led to the rule being fixed that during pupilarity the child's settlement is that of its mother, to the exclusion even of the parish of its own birth (*Caldwell v. Dempster*, 10 R. 1263), and that that settlement, however derived, is not lost even by the death of the mother, the child being still a pupil at the date of chargeability (*Primrose v. Milne*, 17 R. 512). The only case cited to us in which a residential settlement derived from the mother was held to be still available to the bastard after pupilarity was that of *Wallace v. Caldwell* (22 R. 43), but that was a case in which the settlement had been not merely acquired by the mother's own residence (as distinguished from a settlement derived through marriage), but the residence had been continued in the same parish by both mother and son for some years after the bastard's attainment of puberty.

The argument for Govan has for its foundation the theory that in the case of a bastard a settlement derived from the mother is attended by the same conse-

quences as the settlement derived by a legitimate child from its father, and in particular that it may continue after the child's attainment of puberty, even when it was derived through the mother's marriage and the mother herself is dead. I think this is an unwarrantable extension of the doctrine applied in *Primrose v. Milne* and *Wallace v. Caldwell*. The analogy seems to me to fail when the settlement attributed to the bastard after puberty is not the mother's own settlement, but a settlement derived from a husband with whom, of course, the bastard never had any connection. There is no decision which requires us to carry the theory of derivative settlement so far, and the reasons which have induced the Court to adopt it do not apply to the present case.

I would only add that I do not think that the education afforded to M'Alpine at and after January 1900, under the Blind and Deaf Mute Children (Scotland) Act 1890 had the effect of making him a pauper while he was still a pupil.

I am therefore of opinion, with the Sheriff-Substitute and your Lordships, that Govan is liable.

LORD JUSTICE CLERK—The case for Govan is that the rule applied in the case of legitimate children, whereby the settlement of the father rules even after puberty, and applies to the children till another settlement is acquired, must logically be applied in the case of a bastard having his mother's settlement. I do not think that there is any ground for so holding. The rules in regard to such cases are rules of policy modifying the law of birth settlement.

I agree that there is no ground for carrying the modification to the extreme that would be the result of giving effect to the contention of Govan Parish.

The Court dismissed the appeal and affirmed the interlocutor appealed against.

Counsel for the Pursuers and Respondents—Younger, K.C.—Spens. Agents—Cadell, Wilson, & Morton, W.S.

Counsel for the Defenders and Appellants—Solicitor-General (Salvesen, K.C.)—Deas. Agents—Mackenzie, Innes, & Logan, W.S.

Saturday, July 1.

SECOND DIVISION.

[Lord Ardwall, Ordinary.]

GREEN v. PETER REID & COMPANY,
AND ANOTHER.

Reparation—Slander—Newspaper—Criticism of Management of a Public Institution—Action of Damages by the Secretary—Innuendo—Dishonesty in Application of Hospital Funds—Jobbery.

The following letter appeared in a newspaper published in W.—“*The B. Hospital Management*. Sir—Is there

any way by which the public can ascertain how the money is spent in the management of the B. Hospital? So long as Sir A. B. was paying the whole bill himself, some people argued that he had a perfect right to squander a lot of it on the retainers who form his B. Street bodyguard, although others maintained that, as he represented all the electors equally, there should be an equal division of the spoil among them. But whatever might be said about that, the position is now somewhat different. The public are now being appealed to for assistance. Although the hospital has been named after the gentleman who is thereby advertising himself so assiduously in his own newspaper and elsewhere, an attempt is being made to save his pocket. Appeals have been made by the secretary to all the churches in town and county to raise money for it, while concerts and other means are being used to raise money for such a good object. Churchgoers and others have already subscribed. A good object will always raise money. But as there has been such a very strong flavour of jobbery about the institution from the beginning, would it not be fair and right, seeing that the public are being called on to assist, that a statement should be produced shewing how the money is being spent on the hospital? How are the church collections being disposed of? The public surely has a right to know that. Such a statement is, I think, necessary to gain the confidence of the subscribing public.—I am, &c., A SUBSCRIBER.”

G., who was the secretary for the hospital, for which Sir A. B., M.P. for the group of N. Burghs, of which W. was one, had originally supplied the funds, and who was also the political agent of Sir A. B. with an office in B. Street, W., brought an action for damages for slander against the proprietors of the newspaper, in which he innuendoed the letter to mean that he was guilty of dishonest conduct in the application of the funds of the hospital, and was a person unfit to be entrusted with the management of public funds.

Held that the letter would not bear the innuendo.

George Alexander Oag Green, solicitor, Wick, brought an action against Peter Reid & Company, proprietors and publishers of the *John o' Groat Journal*, and Ernest Buik, sole partner of the company, in which he sued them for £1000 sterling as damages for slander alleged to be contained in a letter published in the issue of their newspaper of 24th February 1905, and also in a leading article in the issue of their newspaper of March 3, 1905.

On the case being heard in the Inner House on a reclaiming-note, the pursuer abandoned his case in so far as founded on the leading article, and the present report accordingly does not deal with that branch of the case.

The pursuer averred—“(Cond. 1) The pursuer is a solicitor in Wick, and is also secretary and treasurer of the Bignold Cottage Hospital, Wick. The defenders, Peter Reid & Company, are proprietors and publishers of the *John o' Groat Journal* newspaper, which is published weekly in Wick, and the defender Ernest Buik is the sole partner of said company. He is also editor of the said newspaper. (Cond. 2) In the issue of defenders' newspaper, published on February 24, 1905, the defenders printed and published a letter in the following terms”—(the letter is quoted in the rubric). “(Cond. 3) . . . The pursuer's office is situated in Bridge Street, Wick, and the reference in the letter of 24th February to Sir Arthur Bignold's retainer forming his Bridge Street bodyguard clearly applies to the pursuer, who is the only person in Bridge Street who is closely associated with Sir Arthur Bignold, and is Sir Arthur's agent in Wick.” . . .

The pursuer further averred (Cond. 4) that the said letter was written of and concerning the pursuer, and falsely and maliciously and calumniously represented “that the funds of the Bignold Cottage Hospital have been diverted from their proper purpose, and improperly applied for the personal benefit of the pursuer, that the pursuer has been concerned in perpetrating jobbery in connection with the affairs of the said hospital, whereby he has been personally benefited at the expense of the funds of the hospital. . . . That the pursuer has improperly appropriated to his own uses the funds of said hospital, and that while subscriptions have been canvassed for and received from the public ostensibly for a public object, these have been applied for the personal gain of the pursuer . . . that no regular or proper accounts have been kept, and that, for the purpose of concealing the personal benefits accruing to himself therefrom, the true state of the funds and their application have been improperly withheld by the pursuer from the public or those who have a right or interest to know, and that the appropriation of the funds to his own uses has thereby been facilitated. . . .” By said “letter the defenders have represented the pursuer as guilty of dishonest and dishonourable conduct, and as one who is unworthy to be entrusted with the management of public funds, and who improperly and dishonourably uses the funds of a public charitable institution, and also funds subscribed by the public for its objects, for his own personal aggrandisement and pecuniary benefit. (Cond. 6) The said statements published by the defenders are of and concerning the pursuer, and were understood by the whole community to refer to him. They have obtained wide currency in the district in which the pursuer lives and carries on business as a solicitor, and they have caused great injury to his character and reputation. . . . (Cond. 7) The said statements were published by the defenders maliciously. They are entirely false, and there is not, nor ever

has been, the least ground for the unfounded charges made against the pursuer.” . . .

The defenders stated in answer—“(Ans. 4) Explained that said letter deals with a matter of public interest. It correctly sets forth what is matter of fact, and the observations and questions about the hospital constitute perfectly fair and legitimate comment and inquiry. No reflection upon the personal character of the pursuer is made or intended to be made.” In a separate statement of facts they averred—“(Stat. 2) About the time of Sir Arthur Bignold becoming a candidate for the Wick Burghs, it was made known in Wick that he had purchased Northcote House for the purpose of being converted into a hospital. It was also announced that he intended to give a large sum to endow the institution if he was returned member for the constituency. These circumstances were freely mentioned by Sir Arthur Bignold’s supporters with a view to furthering his candidature. . . . (Stat. 3) About a year after Sir Arthur Bignold’s return to Parliament it was known that estimates were being received by Sir Arthur Bignold or his architects for the extension of Northcote House, and for the purpose of having the building made suitable for a cottage hospital. Contracts were not publicly asked for, and it was current talk in the town that the contracts for the various works were to be given only to certain prominent political supporters of Mr Bignold. In fact these contracts had been promised to tradesmen who had been his prominent supporters at the election. . . . (Stat. 4) The facts relating to the ‘jobbery’ in connection with the contracts for the extension and furnishing of the hospital were well known. None but those who were supporters of Mr Bignold at the election were allowed to contract for the works or furnishings required. . . . (Stat. 5) With reference to the allusions to Sir Arthur Bignold’s ‘retainers, who form his Bridge Street bodyguard,’ the pursuer’s allegation that the expressions apply personally to him because he has his office in Bridge Street, Wick, is quite wrong. Under no reasonable interpretation of the expression can it bear such a construction to any local person who is acquainted with the facts. The Liberal Unionist Club, which is financed by Sir Arnold Bignold, is situated in Bridge Street, and the reference to the ‘bodyguard’ and ‘retainers’ applies to the more prominent supporters of Sir Arthur Bignold attached to that institution, who have profited in various ways through the hospital and otherwise. Sir Arthur on various occasions has sent to the town large consignments of venison, pheasants, &c., and he has also distributed large quantities of coal and meal and of money at various times to electors and others, and these distributions have been made through certain individuals connected with the Unionist Club, who have always taken a prominent position in everything tending to popularise Sir Arthur with the electors in the town.”

The pursuer pleaded, *inter alia*—“(2) The defender having slandered the pursuer as descended on, the pursuer is entitled to damages.”

The defenders pleaded, *inter alia*—“(2) The statements contained in the letter complained of not being of and concerning the pursuer, and not bearing or being capable of bearing the innuendo proposed by the pursuer, the action ought to be dismissed. (3) The defenders ought to be assuaged in respect that the letter complained of deals with a matter of public interest, and contains only fair criticism of what had occurred in connection therewith.”

On 1st June 1905 the Lord Ordinary (ARDWALL) pronounced an interlocutor disallowing an issue on the slander alleged to have been contained in the leading article, and allowing an issue in the following terms on the slander alleged to have been contained in the letter:—“1. ‘Whether the defenders printed and published in the *John O’Groat Journal* newspaper of 24th February 1905 the letter signed ‘A Subscriber,’ and whether the said letter or part thereof is of and concerning the pursuer, and falsely and calumniously represents that the pursuer had been guilty of dishonest [and dishonourable] conduct in having improperly applied the funds of a public charitable institution for his own personal benefit, and is thus a person who is unfit to be entrusted with the management of public funds, to the loss, injury, and damage of the pursuer?’” The words bracketed were deleted in the printed issue.

Opinion.—“I must say that I have difficulty in allowing an issue in this case, and I am clear that the pursuer is not entitled to an issue upon the article complained of, and therefore I disallow the second issue.

“With regard to the letter, were it not for the statements in the opening paragraph I do not think I would be disposed to grant an issue on it either. But the letter commences with a statement that, at a former period when the Bignold Hospital funds were all provided by Sir Arthur Bignold, these funds were squandered upon the Bridge Street bodyguard (Bridge Street being the site of the pursuer’s office, which is the headquarters of the Unionist party in Wick); and further, that this bodyguard divided the ‘spoil’ amongst themselves without communicating any of it to the other electors; then the letter goes on to say that that was the state of matters then, but that now it is different, and the letter may be so construed as to suggest that instead of only Sir Arthur Bignold’s money being squandered, it is the money of the public that is now being treated in that way, and possibly is forming part of the spoil of the Bridge Street bodyguard. Accordingly, the writer of the letter calls for a statement showing ‘how the money is spent on the hospital,’ and ‘how the church collections are being disposed of.’ Of course calling for a full statement of the accounts of a charity is quite a proper and reasonable thing to do, but when we look into the reason why the statement is being called

for, I think that the letter may be viewed as libellous. The innuendo proposed by the pursuer may be a little strained, but he undertakes to satisfy a jury that it sets forth the meaning of the letter, and I do not see my way to refuse an issue. I accordingly allow the first issue with an alteration, and disallow the second."

The defenders reclaimed, and with the leave of the Court amended the issue allowed by the Lord Ordinary by substituting for the words following "falsely and calumniously" in the original issue the words which follow below, viz., "represents that the pursuer was guilty of dishonest conduct in the application of the funds of the Bignold Cottage Hospital, and is a person who is unfit to be entrusted with the management of public funds, to the loss, injury, and damage of the pursuer."

Argued for the appellants—The letter was incapable of bearing the innuendo suggested by the pursuer. It did not make a charge of dishonesty against anyone, and at any rate not against the pursuer, who was only referred to as the person who had sent out appeals on behalf of the hospital, a perfectly legitimate proceeding. The Bridge Street bodyguard referred to in the first paragraph were Sir Arthur Bignold's political followers, whose headquarters were in Bridge Street, of whom it was true the pursuer was one, but it was perfectly impossible to construe a statement that Sir Arthur Bignold had squandered his money upon his followers into an insinuation that they or any one of them had been guilty of dishonest conduct. If there was an imputation against anyone it was against Sir Arthur Bignold. The letter reasonably read was a fair criticism on a matter of public interest.

Argued for the respondent—The letter was capable of bearing the innuendo proposed. The pursuer was the only person in Bridge Street closely associated with Sir Arthur Bignold, and no one acquainted with the local history of Wick could have any doubt that the letter was directed against the pursuer, and meant to indicate that he had been guilty of dishonest conduct in the application of the hospital funds.

LORD KYLLACHY—I do not think it necessary to say much in proposing to your Lordships that this issue should be refused. The innuendo now submitted to us does not appear to differ at all materially from that which we considered the other day. It rests, like the latter, on the theory that the letter complained of imputes dishonesty to the pursuer in connection with the application of these hospital funds. Now it does not appear to me that the letter can reasonably be read as imputing such dishonesty to the pursuer. I at least cannot so read it, nor can I conceive a jury doing so; at least I should not consider they acted reasonably if they did.

LORD KINCAIRNEY—I concur. I cannot read any part of this letter as imputing dishonesty to the pursuer.

LORD STORMONTH DARLING—Actions of reparation for slander or libel exist in order to clear character, and do not exist for the mere purpose of stirring up dirty water which had better be allowed to remain stagnant. They are not meant to encourage mere recrimination. The whole object of such actions is to clear character and nothing else, and if character is not seriously attacked the action should not be allowed to proceed. Here the pursuer is not even named in the letter of which he complains, and unless we can fairly read that letter as imputing personal dishonesty to the pursuer, I do not think that an issue should be allowed either with the innuendo which the Lord Ordinary with great difficulty passed or with the innuendo now proposed. I cannot find any charge of, or any implication of, personal dishonesty against the pursuer in this letter, and I therefore concur with your Lordships.

LORD JUSTICE-CLERK—Mr Watt took the opportunity of improving his issue, but I do not think that he has succeeded in doing so. The new innuendo is not satisfactory. It sets forth that the letter "falsely and calumniously represents that the pursuer was guilty of dishonest conduct in the application of the funds of the Bignold Cottage Hospital, and is a person who is unfit to be entrusted with the management of public funds." Now, I should have expected that the issue would have gone on to say, after the words "Bignold Cottage," "by doing" so and so, giving the mode by which he was said to have acted dishonestly. Mr Watt when asked said that he could not say in what particular way the writer of the letter represented that the pursuer had acted dishonestly. I find it difficult to see that the pursuer is intended to be attacked at all in the letter. The only reference to the pursuer is in relation to the sending out of appeals which are said to have been "by the secretary." If the words "by the secretary" are left out there is nothing to connect the pursuer with the letter, and it is, I suppose, matter of course that circulars should be signed by the secretary. I am unable to see that this mere reference to the secretary as an official can be innuendoed to mean that the pursuer was guilty of personal dishonesty. I therefore agree with your Lordships.

The Court recalled the interlocutor reclaimed against and disallowed the issue.

Counsel for Reclaimers—Solicitor-General (Salvesen, K.C.)—Hunter. Agents—Macpherson & Mackay, S.S.C.

Counsel for Respondent—G. Watt, K.C.—D. Anderson. Agent—S. F. Sutherland, S.S.C.