

name of freight. I may point out what the result would be if the owners' claim for freight beyond the £220 were allowed. It appears that the ship sailed from Peterhead about the 15th of July 1904, but was unable to complete the delivery of her outward cargo until 5th July 1905—a period of nearly twelve months. Now, if the owners are entitled to claim freight beyond the £220, their claim would be for the stipulated amount of freight per month for that long period. Therefore, assuming the delay to have been unavoidable, I do not see how the amount to which the owners would be entitled could be less than £450, the maximum amount which the charterer could have been called upon to pay if the whole voyage had been safely completed and the homeward cargo delivered. It certainly would be an anomalous position of matters if the charterer were bound to pay the full freight for a voyage which was never completed by reason of the loss of the ship and the cargo. It would require a very express agreement to impose such an obligation. Here the agreement appears to me, for the reasons which I have given, to be the very reverse, and accordingly I am of opinion that in so far as the action is for payment of freight the defender is entitled to be assoilzied.

The pursuers, however, maintain that they have a claim against the defender on another ground. They aver that the ship arrived in the vicinity of Kickerton Island in Cumberland Inlet, where they were to discharge the outward cargo on 15th September 1904, but that by reason of ice they were unable to complete the discharge until the 5th of July 1905. They then allege that during the period from 15th September 1904 to 5th July 1905 "the defender had the use of the ship as a warehouse for the goods which he bought from and sold to the natives." For that use of the ship the pursuers claim that they are entitled to be remunerated upon the principle of *quantum meruit*. I confess that I have great difficulty in understanding the claim. If there had been two distinct voyages, and if in an interval between the termination of the one and the commencement of the other, when the ship was not under charter, the servants of the defender who were on board had used the ship as a warehouse in which they trafficked with the natives, there might very well have been a claim for remuneration on the part of the owner. But there was nothing of that kind. The ship (or to use the words of the charter-party, the "whole ship") was under charter the whole time, and the defender's goods were being kept on board during the period in question, not because he required a store wherein to carry on trade with the natives, but because the condition of the ice prevented the cargo being delivered. Further, I assume, there being no averment to the contrary, that the goods which the defender's servants sold to the natives were part of the outward cargo, and that the goods which they bought or received in exchange from the natives formed part of the homeward cargo.

I am therefore of opinion that the pursuers have made no relevant averments to support their claim for remuneration for a use of the ship beyond that for which the charter-party stipulated, and I think that the action in so far as that claim is concerned should be dismissed.

LORD KYLLACHY—That is the opinion of the Court (the LORD JUSTICE-CLERK, LORDS KYLLACHY, STORMONTH DARLING, and LOW).

The Court pronounced this interlocutor—

"Recal the interlocutor reclaimed against, and in so far as the sum concluded for in the summons is a claim for freight, assoilzie the defender from the conclusions thereof: *Quoad ultra* dismiss the action as irrelevant, and decern."

Counsel for the Reclaimer—Cullen, K.C.—Sandeman. Agent—Andrew Newlands, S.S.C.

Counsel for the Respondents—Clyde, K.C.—Lippe. Agents—Boyd, Jameson, & Young, W.S.

Thursday, December 20.

FIRST DIVISION.

[Lord Johnston, Ordinary.]

BROWN v. EDINBURGH MAGISTRATES AND ANOTHER.

Reparation — Contract — Burgh — Police — Master and Servant — Wrongous Dismissal — Dismissal from Alleged Interested Motives — Malice — Edinburgh Improvement, &c., Amendment Act 1893 (56 and 57 Vict. cap. cliv), sec. 34 (1) — Edinburgh Municipal and Police Act 1879 (42 and 43 Vict. cap. cxxxvii), sec. 55 — Dismissal by Chief-Constable of Lieutenant from Alleged Interested Motives.

The Edinburgh Improvement, &c., Act 1893, section 34 (1) enacts—"The Magistrates shall from time to time appoint a Chief-Constable, at a fixed annual salary, who shall not be removable or subject to have his salary diminished by the Magistrates and Council unless with the approbation of the Provost of the City and the Sheriff, or, in case of their differing in opinion, of the Secretary for Scotland; but may be suspended by the Magistrates with consent of the Sheriff for a definite period pending any inquiry instituted with a view to his removal. . . ."

The Edinburgh Municipal and Police Act 1879, section 55, enacts—"When and as often as the Magistrates and Council shall fix the number of lieutenants, inspectors, sergeants, constables, and other officers of police which they shall judge necessary for guarding, patrolling, and watching within the burgh, the Chief-Constable is hereby

authorised and empowered to appoint proper officers for such offices, to direct their distribution or otherwise, and also to suspend or remove such constables appointed by him at pleasure. . . .”

A lieutenant of police, having been dismissed by the Chief-Constable, brought an action of damages against the Magistrates of the City and also against the Chief-Constable. He alleged that the Chief-Constable had acted from interested personal motives.

Held (aff. Lord Ordinary Johnston in (1) and (2) and rev. in (3)) that the pursuer was not entitled to an issue (1) against the Magistrates, since they were in no way responsible for the dismissal, or (2) against the Chief-Constable on the ground of wrongous dismissal, since it was within the contract of employment, or (3) against the Chief-Constable on the ground of wrongous and malicious dismissal, since there was no alleged wrongful act done to his hurt—*Commercial Bank v. Pollock's Trustees*, June 12, 1829, 3 W. & S. 320, *followed*; *Morrison v. Abernethy School Board*, July 3, 1876, 3 R. 945, 13 S.L.R. 611, *distinguished*.

“Malice” defined. *Allen v. Flood*, [1898] A.C. 1, *commented on (per Lord Kinnear)*.

Reparation—Slander—Police—Terms Used by Superior Officer in Dismissing Subordinate after an Inquiry by Himself—“Danger to the Force” —“Disgrace to the Force.”

A lieutenant of police was charged by the Chief-Constable with having circulated a false and slanderous rumour about him, and after an inquiry by the Chief-Constable, conducted as alleged “oppressively and with malice,” was dismissed with the words—“I find you guilty. You are a danger to me, a danger to the force, and I dismiss you—as a disgrace to the force.” The lieutenant sought to recover damages for slander, averring that the Chief-Constable meant that he “was a person who ought to be shunned by his fellows as a danger to them, and that he was a disgrace to his profession and unfit to be a member of it.”

Held that the expressions, having regard to the circumstances in which they were used, did not amount to a slander.

On May 9, 1906, David Brown, 18 Montague Street, Edinburgh, brought an action to recover damages against the Lord Provost, Magistrates, and Town Council of the City of Edinburgh, and Roderick Ross, Chief-Constable in the Edinburgh City Police, 21 George Square, Edinburgh. The summons contained a conclusion for £3000 as damages for wrongous dismissal, against the Lord Provost, Magistrates, and Town Council, alternatively against the Chief-Constable, and alternatively against them both conjointly and severally or severally, in such proportions as the Court should fix, and, lastly, it contained a conclusion against

the Chief-Constable for £2000 as damages for slander.

The facts of the case are narrated by the Lord Ordinary (JOHNSTON) in his opinion (*infra*).

The pursuer, who was summarily dismissed on 21st March 1906 for circulating false and slanderous statements regarding the Chief-Constable—he admitted having referred to a current rumour when in conversation with G. W. Taylor, clothier in George IV Bridge, some years previous—based his claim on the ground of slander on the following averment—“(Cond. 8) Upon the said 21st of March the defender Ross, in his own room, constituted himself a species of tribunal, making himself both prosecutor and judge, the pursuer being the accused, in regard to said rumour about himself, but said proceedings had no relation to the police force or discipline therein. The pursuer attended this tribunal as ordered. The defender Ross read over a paper containing a charge of circulating false and slanderous statements about himself, and asked, ‘Are you guilty or not?’ The pursuer said he had already explained the circumstances. The defender Ross interposed in an overbearing manner and said, ‘I’ll see what you have to say afterwards; are you guilty or not? You must be the one or the other.’ The pursuer then pleaded not guilty. Witnesses were called in and examined by the defender Ross, who conducted the proceedings oppressively and with malice against the pursuer. Taylor was examined and corroborated what the pursuer had said. Constable Strachan was called and admitted telling the pursuer of the rumour, and for merely repeating it was then and there sentenced by the defender Ross to a reduction of 4s. weekly. Two other witnesses were examined by the defender Ross, who precognosced such witnesses before he (so to speak) put them into the box and questioned them before himself. The defender Ross got gradually more and more malicious towards the pursuer, and after summing up the results of the investigation made by himself, he announced that the pursuer was guilty and that he did not intend to put off long time with him, and proceeded to pronounce sentence. He said ‘I find you guilty. You are a danger to me, a danger to the force, and I dismiss you,’ or words to that effect. Then after a pause, he added, ‘as a disgrace to the force.’ By this Ross meant that the pursuer was a person who ought to be shunned by his fellows as a danger to them, and that he was a disgrace to his profession and unfit to be a member of it. Said words were addressed by Ross to the pursuer, they were of and concerning the pursuer, and they were falsely, calumniously, and maliciously and without any cause uttered by Ross in the hearing and presence of the said Deputy Chief-Constable Chisholm, the said G. W. Taylor, Sergeant William Anderson, Constable Alexander Strachan, Constable George Renton, and ex-Superintendent James Minty. . . . Denied that the defender Ross was actuated by any opinion of what discipline in the force required, or by any

other motive than revenge. Denied that the pursuer was guilty of any offence. Said rumour had no bearing upon discipline, and in point of fact had not affected discipline in any way as the defender Ross well knew. He used discipline as a pretext for revenge."

The pursuer, *inter alia*, pleaded.—“(1) The pursuer having been wrongfully, maliciously, and without any cause dismissed from his employment in the Edinburgh City Police, he is entitled to decree against one or other of the defenders as craved. (2) The defender Ross having acted wrongfully and maliciously and without any cause in dismissing the pursuer from his position in the Edinburgh City Police, the pursuer is entitled to decree as craved against him. (3) *Alternatively*. The pursuer having been wrongfully dismissed by the defender Ross, acting as a servant of the other defenders within the scope of the authority conferred upon him by or through them, they are liable to the pursuer in reparation, and the pursuer is entitled to decree against them. (4) The defender Ross having slandered the pursuer, the pursuer is entitled to reparation, and decree ought to be granted as concluded for in the fourth conclusion of the summons.”

The defenders the Magistrates of Edinburgh, *inter alia*, pleaded.—“(2) These defenders should be assoilzied, in respect that the defender Ross is not their servant, and that they are not responsible for his actings.”

The defender Ross, *inter alia*, pleaded.—“(2) This defender having dismissed the pursuer in the exercise of a discretion conferred and of a duty laid upon him, by statute, he should be assoilzied with expenses. (3) The defender not having slandered the pursuer, he should be assoilzied with expenses. (4) The actings of the defender and the conversations libelled having taken place on privileged occasions, and without malice and in discharge of defender's duty, he should be assoilzied with expenses.”

On July 24th 1906 the Lord Ordinary (JOHNSTON) pronounced this interlocutor—“Finds that the pursuer has stated no relevant case against the Lord Provost, Magistrates, and Town Council of Edinburgh: Therefore dismisses the action against the said defenders, and decerns: Finds the said defenders entitled to expenses, allows an account to be given in, and remits the same to the Auditor to tax and report . . . : Further, holds the issue as adjusted and settled; approves of the same as now authenticated accordingly, and appoints the same to be the issue for the trial of the cause against the defender Roderick Ross.” [The issue allowed was—“Whether on or about 21st March 1906 the pursuer was wrongfully and maliciously dismissed from his employment in the Edinburgh Police Force by the defender Roderick Ross, to the loss, injury, and damage of the pursuer?”]

Opinion.—“In this case David Brown, lately lieutenant in the Edinburgh Police, sues the Lord Provost, Magistrates, and

Town Council of the City, and Roderick Ross, Chief-Constable of the City Police, for damages for wrongous dismissal from his post of lieutenant of police, and *separatim* the defender Ross for damages for slander uttered in connection with such dismissal.

“In connection with the adjustment of issues three questions have been raised—First, Does any action lie against the Corporation? Second, Is the defender Ross protected by the statutory provision under which he acted? and Third, Can an additional statement proposed to be added by Ross as an amendment of record be allowed? These questions must be determined before I can proceed to the adjustment of issues.

“The circumstances of the case are peculiar. The pursuer joined the Edinburgh Police in 1885 as constable, and between that date and March 1906 he rose with, I think, unusual rapidity through the ranks of sergeant, inspector, and detective-inspector to that of lieutenant of police, to which he was promoted on 16th March 1906. Five days afterwards, viz., on 21st March 1906, he was summarily dismissed from the force. As his pay in the rank which he had gained was £160 per annum, with the prospect of a substantial retiring allowance, and as he was interested in various police funds, it follows that the loss to which he was subjected by his summary dismissal is very serious. His career is broken. He cannot get employment in the line to which he has devoted himself through life, and at the age of something over forty he will find it difficult to make a fresh start. On the other hand, his dismissal was based on the offence of circulating a scandalous and untruthful statement reflecting on the moral character of the Chief-Constable, conduct which, if brought home to him, may be fairly said to be subversive of discipline. The case therefore from whichever side it is viewed is a most serious one, and deserved the anxious and able argument which it received.

“In disposing of the preliminary questions which have been raised I desire to be particularly careful not to prejudice the character of either of the principal parties to it. But I am obliged nevertheless to deal with the averments as they appear on record.

“Briefly, the circumstances as disclosed on the pursuer's condescendence are these—Certain rumours affecting the character of the defender Ross are alleged to have been current in the police force and outside of it from two to four years ago, and the pursuer, though regarding them as he says as idle gossip, on a particular occasion, at least a year preceding his dismissal, admits that he spoke of them as such gossip to a certain G. W. Taylor, a mutual friend of his own and the defender Ross. The conversation was, as the pursuer alleges, after that interval of time reported by Taylor to the defender Ross, and he further avers that Ross, who was quite aware of said rumours when they were prevalent, had asked Taylor

to report to him the name of any constable who might repeat the said rumours in his hearing, so that, instead of vindicating his character in the usual way, the defender Ross might wreak his private vengeance on the persons under his control who might be detected discussing him or said rumours. Taylor having reported the above conversation to the defender Ross, the pursuer alleges that he was on 19th March 1906 called into Ross's room in the Police Chambers in Edinburgh and charged with what had thus come to Ross's knowledge. I do not go into the detail of what further is alleged to have occurred on the 19th, 20th, and 21st March, but it is admitted that on the latter date Ross, after certain proceedings in which he acted alone in his position and on his authority as Chief Constable, summarily dismissed the pursuer. The police record, published in ordinary course, of the occurrence is as follows:— '21st March 1906. — Lieutenant David Brown dismissed the service for that he did on certain dates between three and four years ago, and the summer of 1905, circulate a scandalous and untruthful statement severely reflecting on the moral character of the Chief Constable.'

"I think it right to state that in considering the record with reference to the various points which have to be decided, it has weighed with me that the offence charged was separated from the punishment inflicted by such a lapse of time, and the weight of this consideration is not diminished by the statement of the defender Ross that on said 19th March 1906 it came to his knowledge that the pursuer had while on duty as an inspector in the police force circulated statements similar in character but much more serious in degree, regarding him, from that admitted by the pursuer, and which circulation, if it occurred, would from the context appear to have taken place so far back as the spring of 1904.

"The statements on both sides are most unfortunately prolix, and I do not think that any advantage would accrue from further analysing them.

"The first question to which I have to address myself is, assuming that the pursuer was wrongfully dismissed by the defender Ross as chief-constable, does any action of damages therefor lie against the Corporation? I use that term in brief for the Lord Provost, Magistrates, and Council, not in their proper character as the Corporation of the City, but as police authority. The earlier Edinburgh Police Acts were superseded by the Edinburgh Municipal and Police Act 1879, and that Act is still in force, except so far as modified by the amending Act of 1893. By sec. 34, sub-sec. 1, of the Act of 1893 it is enacted that the Magistrates and Council shall from time to time appoint a chief-constable, who shall not be removable by the Magistrates and Council unless with the joint approbation of the Lord Provost and of the Sheriff, or in the case of their differing in opinion of the Secretary for Scotland. The Chief Constable therefore holds an ex-

ceptional position. He is not appointed *ad vitam aut culpam*, nor is he appointed at the pleasure of the Magistrates and Council. He occupies an intermediate position, if not of independence, at least of protected employment. And the reason and propriety of this is not far to seek when the history and character of his office is considered. Now the police authority of the city are bound by statute to provide and maintain the city police force, though with the assistance of the Government subsidy. But by sec. 55 of the Act of 1879 it is enacted that, when and so often as the Magistrates and Council shall fix the numbers of the officers of police in their various grades which they shall judge necessary for the policing of the city, 'the Chief-Constable is hereby authorised and empowered to appoint proper persons for such offices, to direct their distribution or otherwise, and also to suspend or remove such constables appointed by him at pleasure.' I am not at present concerned with the malicious dismissal of a constable by the Chief-Constable. Even assuming him to be the representative or employee of the Corporation, what he does maliciously he does outwith the scope of his duty, and his employers are not responsible. But assume that without malice he has wrongfully dismissed a constable, does action lie against the Corporation? I answer this question in the negative. It is true that the Chief-Constable is employed by the Corporation in the sense that he is appointed by them and receives his remuneration through them and largely from them, *i.e.*, from the police rate, which they are authorised to levy and administer. It is true also that he is in a sense under their control, but not as an ordinary servant. Their control is limited, and limited by statute consistently with the necessities of the situation. The Chief-Constable therefore occupies a position not only of protected employment but of statutory though it may be limited independence, and in relation to the constables subject to his authority that independence is very wide, and in the matter of their appointment, suspension, or removal, is, as it appears to me, absolute. And the reason of this also is not far to seek in the necessities of the situation. For his action, where he is thus independent, I cannot think that the Corporation, even if to certain effects they are his employers, can be held responsible. I think that the case is entirely distinguishable from those in which they have a statutory duty, which duty they can only perform through officials or servants employed by them, and which duty, by reason of the negligence of such employees, they fail to perform, as in the case of *Virtue v. Police Commissioners of Alloa*, 1 R. 285.

"I therefore come without hesitation to the conclusion that no action lies in the circumstances of the present case against the Corporation of the City of Edinburgh as police authority.

In the second place, is the defender Ross protected by the statutory authority to which I have referred? He maintains

that he is by statute entitled to dismiss a constable at pleasure, and that all inquiry is precluded into the reason for such dismissal. I cannot think that this is so. It is true he need give no reason. He may commit most grievous error of judgment. He may really act from the most frivolous caprice. But if he is acting within the scope of his duty and is not actuated by personal motives, the constable removed cannot challenge his action or inquire into his reasons. But all this does not entitle him to remove a constable outwith the scope of his duty, and that he does the moment, actuated by personal motives, he removes such constable for his own private ends. While the statute precludes all inquiry into the reasons, it does not in my opinion preclude inquiry into the motives of dismissal. If these motives are malicious there is no protection, because the removal is not within but without the scope of the Chief-Constable's duty. This consideration may affect the averments necessary to justify an issue, and may affect the form of issue, but if the averments properly raise a question of malicious dismissal, then I think the statutory enactment affords no protection.

"But do the averments properly raise a question of malicious dismissal? It is said that it is not sufficient to aver malice but that the pursuer must relevantly aver circumstances from which malice may be inferred. I quite agree with this as a general proposition. But then it must be added that the *res gestæ* of the act or libel complained of are themselves circumstances, and often of themselves sufficient circumstances, from which to infer malice. I confess I think that here if the pursuer's version of them is correct, and I am only judging on relevancy, that his averments are so. The personal interest of the defender Ross, the lapse of time between the offence and the punishment, the character of the inquiry into the pursuer's conduct, and the summariness of his dismissal, are themselves circumstances from which a jury might infer a malicious motive, and when pieced together by the other averments of the pursuer the demands of relevancy are, I think, satisfied.

"In the third place, a question of some difficulty remains as to whether a certain amendment proposed by the defender Ross can be allowed. . . . [*His Lordship disallowed the amendment as proposed.*] . . .

"Having now disposed of these preliminary points, it remains to consider the issues. In the first place, it follows from what I have already said that malice must be put in issue. In the next place, can a separate issue on slander be allowed against the defender Ross. This is a somewhat complicated question. The alleged slander is part of the *res gestæ* of the dismissal, and if the dismissal was both wrongful and malicious there could be no separate issue on slander so as to involve a second and separate award of damages. But assume that the dismissal was not malicious, but only wrongful, then for mere wrongful dismissal the defender Ross is protected by

statute. But the statutory protection does not entitle him to accompany the wrongful dismissal with slanderous statements, and therefore I think that a separate case of slander does arise, which must be considered by itself, if the words alleged to have been used involve a slanderous imputation. But then it must be remembered that the defender Ross was in a position of privilege when they were uttered, and therefore the question of malice again arises, and it is hardly conceivable that there should be malicious slander if there was not malicious dismissal. But though theoretically the pursuer might be entitled to a separate issue contingent upon the jury finding for the defender Ross on the first issue, I think, nevertheless, that I am relieved from dealing with this somewhat academic question by the fact that I do not find the words alleged to have been used to be anything more than appropriate to the circumstances of the sentence which was being pronounced, and therefore not really separable from it.

"The issues as they stand cannot be granted. They must be altered so as to eliminate the Corporation, and to put malice in issue as regards the defender Ross in the question of dismissal. The issue on slander will be disallowed.

"Before dealing with the issues I should have said that I was moved to send this case to proof before myself as likely to involve questions of difficulty requiring time and discrimination at the trial. I think that this will very likely be the case. But I do not on that ground think that I should be justified, against the pursuer's opposition, in withdrawing this case from the jury court. While much of it might be better disposed of by a judge sitting alone, there are other parts of it eminently appropriate to a jury."

The defender (Ross) reclaimed, and argued—Under the statute which formed the measure of the pursuer's contract of service, viz., the Edinburgh Municipal and Police Act 1879, section 55, the dismissal of the pursuer was within the scope of the defender's statutory right and duty, and he was free from liability in consequence, nor would any action lie against him—*Mitchell v. Smith*, January 26, 1836, 14 S. 358; *Fosdick v. North British Railway Company*, December 7, 1850, 13 D. 281; *Innes v. Adamson*, October 25, 1889, 17 R. 11, 27 S.L.R. 26; *Robson v. School Board of Hawick*, January 19, 1900, 2 F. 411, Lord McLaren at p. 418, 37 S.L.R. 306; *Finlay v. The Royal Liver Friendly Society*, October 25, 1901, 4 F. 34, Lord Young at p. 37, 39 S.L.R. 23. The defender's discretion as to dismissal was absolute, and he had to table no reasons for dismissals—*Commercial Bank v. Pollock's Trustees*, June 12, 1829, 3 W. & S. 430. The defender's act being lawful, the motive on which it proceeded was unimportant and did not demand inquiry—*Macfarlane v. Mochrum School Board and Others*, November 9, 1875, 3 R. 88, Lord President Inglis at p. 101, 13 S.L.R. 49; *Allen v. Flood*, L.R., [1898] A.C. 1, Lord Watson at p. 94, and Lord Herschell at p.

118. The present case, an action for damages, was distinguished from *Morrison v. Abernethy School Board*, July 3, 1876, 3 R. 945, 13 S.L.R. 611—which was an action to recover a sum of money in lieu of reasonable notice of dismissal; and from *Marshall v. School Board of Ardrrossan*, December 10, 1879, 7 R. 359, 17 S.L.R. 242, where what was sued for was a teacher's pension bestowed by statute but oppressively withheld. The defender in dismissing the pursuer was performing an act of administration under statute, and so was *a fortiori* entitled to an absolute protection, according to the principles decided in *M'Ewan v. Watson*, July 28, 1905, 7 F. (H.L.) 109, 42 S.L.R. 837, and extended by *Campbell v. Cochrane*, December 7, 1905, 8 F. 201, 43 S.L.R. 221. The Lord Ordinary was in error in putting malice in issue, since it did not affect this case of dismissal, but if it were inserted want of probable cause should be added. Further, no relevant case of slander was made on record, having regard to the circumstances in which the statements alleged to be slanderous were made, of which these statements formed a part, viz., a privileged occasion—*Hassan v. Paterson*, June 26, 1885, 12 R. 1164, 22 S.L.R. 775; *Malcolm v. Duncan*, March 7, 1897, 24 R. 747, 34 S.L.R. 625—nor were facts and circumstances averred to infer malice, and the issue therefore should be disallowed—*Innes v. Adamson, ut supra*; *Beaton v. Ivory*, July 19, 1887, 14 R. 1057, 24 S.L.R. 744; *Campbell v. Cochrane, ut supra*, Lord Dunedin at 8 F. 212; *Farrell v. Boyd*, October 20, 1906, 14 S.L.T. 334.

Argued for the pursuer and respondent—The defender Ross had acted outwith his statutory duties and rights, actuated by private motives of revenge, and facts and circumstances being relevantly put on record to infer malice and oppression, inferring *mala fides* on his part, an issue should be allowed—*Marshall v. The School Board of Ardrrossan, ut supra*, Lord Deas at 7 R. 374, and Lord Mure at 375; *Morrison v. Glenshiel School Board*, May 28, 1875, 2 R. 715, Lord Neaves at 725 and Lord Ormisdale at 727. It was merely owing to lack of specification that the action was dismissed in *Macfarlane v. Mochrum School Board, ut supra*. The case of *Commercial Bank v. Pollock's Trustees, ut supra*, had no bearing, since here the defender was acting outwith the scope of his duty, and the only question gone into in that case was whether two-thirds of the directors had ordered the dismissal. "At pleasure" did not mean that dismissal was to take effect at the caprice of the defender and when the discipline of the force was not endangered. If there were averments of oppression and facts to infer malice, then inquiry should be allowed—*Willis v. Childe*, (1850) 13 Beav. 117, for the statutory right to dismiss at pleasure governing the contract of service must be exercised without malice—*Doyle v. Wurtzburg*, 32 N.S. L.R. 107, reported in Smith on Master and Servant, 6th ed. at p. 146. Further, the pursuer was entitled to an issue against the

Magistrates, whose servant Ross was and for whom they were responsible—Edinburgh Improvement (Amendment) Act 1893, sec. 34 (1); Edinburgh Municipal and Police Act 1879, secs. 11 and 33. The relations of the two defenders were analogous to those of their predecessors in both offices, which had been judicially considered and by that consideration the action against the Magistrates lay—*Mitchell v. Stuart*, February 1, 1838, 16 S. 409, by Lord Gillies at p. 416—and the master was responsible for such conduct on the part of his servant as was here alleged—*Hanlon v. Glasgow & South-Western Railway Company*, February 14, 1899, 1 F. 559, 36 S.L.R. 412; and *Wood v. North British Railway Company*, February 14, 1899, 1 F. 562, 36 S.L.R. 407, were in point. In any case, the pursuer should have an issue on slander. The defender was not in judicial office nor was he privileged; moreover, facts and circumstances were averred sufficient to infer malice—*Laidlaw v. Gunn*, January 31, 1890, 17 R. 394, 27 S.L.R. 317; *Innes v. Adamson, ut supra*; *M'Murphy v. Campbell*, May 21, 1887, 14 R. 725, 24 S.L.R. 514; *Campbell v. Cochrane, ut supra*, was distinguishable in that such facts and circumstances were lacking. That "disgrace" was slanderous if malice were proved, even though there was privilege, had been laid down in *Newlands v. Shaw*, December 2, 1833, 12 S. 550.

Counsel for the defenders the Magistrates of Edinburgh were not called upon.

At advising—

LORD M'LAREN—[read by the LORD PRESIDENT]—This is an action at the instance of David Brown, who was until lately an inspector and afterwards lieutenant in the police force of Edinburgh. It is directed against—(1) the Corporation of Edinburgh, (2) the Chief-Constable Roderick Ross, (3) the Corporation and Ross jointly and severally, and the sum claimed is £3000. The pursuer's complaint, when stripped of its rhetorical embellishments, seems to be that he has been dismissed the police service for no reason, or for insufficient reasons. There is also a conclusion for £2000 of damages for slander which is directed against the defender Ross.

I may begin by saying that I have difficulty in representing to my own mind the legal propositions or grounds of action on which the claim of damages for dismissal are based. The 1st, 2nd, and 3rd pleas-in-law for the pursuer put the case as one of "wrongful" dismissal from his employment; in the 1st and 2nd pleas the dismissal is said to be wrongful and malicious. But it seems to me that the true ground of action, if there is any, must be breach of contract, because if it was according to the contract of service that the pursuer was liable to be dismissed without notice and without reason assigned, I am unable to see how it is possible that a wrong could be done to the pursuer by putting into execution a term of the contract to which he had assented.

The first questions to be considered are these:—What is the contract of service

under which the pursuer served in the police force of Edinburgh, and how does that contract bear upon the liability to dismissal from the service?

As to the actual contract of service, it is not disputed that this is regulated by statute. Section 55 of the Edinburgh Municipal and Police Act, 1879, regulates the appointment and removal of members of the police force, and is as follows . . . [*Quotes Statute supra*] . . .

My first observation on this section is that it gives no power to the Corporation or any of its members either to appoint or to dismiss members of the police force other than the Chief-Constable; their duties under this section are confined to the fixation of the number of police officers of the different grades enumerated. Now it is according to the pursuer's case that he was appointed and successively promoted in the ordinary way; and he does not say that the Magistrates and Council dismissed him. This disposes of the action so far as directed against the Magistrates and Council; because, if the Corporation had not the power to appoint and dismiss constables, and if it did not in fact interfere in the appointment or dismissal of the pursuer, it is a complete *non sequitur* to say that they are responsible to him in damages. On this point I agree with the findings of the Lord Ordinary, except that I think the Lord Provost, Magistrates, and Council are entitled to expenses as between agent and client under the Public Authorities Protection Act, as moved for by their counsel.

The next observation on section 55 of the Act of 1879 is that it empowers the Chief-Constable to appoint proper persons for the offices enumerated, and also to suspend or remove such constables appointed by him at pleasure. As I read the section it would not be in the power of the Chief-Constable to engage a police officer of any grade upon other terms than the statutory terms. He could neither engage a constable from year to year nor bind himself to a term of notice, nor even engage himself to give reasons for the exercise of the power of dismissal.

The contract of service, of course, is made in each case by the Chief-Constable and the officer appointed, but the terms of the contract are prescribed by the Act of Parliament. From this it follows that every person who enters the police service of Edinburgh engages under the statutory condition that he is liable to be suspended from service or removed at the pleasure of the Chief-Constable, and I must say that I am unable to see how an officer removed under the conditions of his contract is wronged, or why he should have a claim of damages for a thing that is done in conformity with his contract of service. I do not think it is necessary in that question to consider the reasons which may have influenced Parliament in giving an unqualified power of removal to the Chief-Constable, because the language of the section is unambiguous. No doubt the discipline of the police force was the primary reason. But if that is admitted,

it does not follow that we are entitled to inquire whether in the particular case the removal of the pursuer was done in the interests of discipline. That would, as I think, be a complete perversion of the statute, which commits the execution of these disciplinary powers to the Chief-Constable without appeal.

Again, I am not moved by the consideration that the power of removal may be exercised in such a way as to be injurious to good order and to the efficiency of the police force. The Chief-Constable is not irresponsible. He is himself liable to be removed by the Corporation subject to the approval of the Lord Provost and the Sheriff, or, in case of their differing in opinion, of the Secretary for Scotland.

I now pass to the consideration of the reasons which induced the Lord Ordinary to allow an issue of wrongful and malicious dismissal. The Lord Ordinary explains his view to be that "if the Chief-Constable is acting within the scope of his duty and is not actuated by personal motives the constable removed cannot challenge his action or inquire into his reasons." "But all this," he says, "does not entitle him to remove a constable outwith the scope of his duty, and that he does the moment, actuated by personal motives, he removes such constable for his own private ends. While the statute precludes all inquiry into the reasons, it does not, in my opinion, preclude inquiry into the motives of dismissal." The present case no doubt contains strong averments of interest and improper motive on the part of the Chief-Constable, and I do not wish to say anything as to the weight which might be given to such averments if this were an official inquiry into the action of the Chief-Constable. But after full consideration of the Lord Ordinary's opinion, I think that the distinction he has taken is unsound and unworkable when applied, as he proposes, to judicial proceedings. It comes to this, that whenever a dismissed officer of police comes into court with a circumstantial statement charging the Chief-Constable with indirect motives, the Chief-Constable is to be amerced in damages if a jury thinks he acted unfairly. I do not stop to consider whether any person having money or a character to lose would accept the post of Chief-Constable under such conditions. It seems to me that on whatever ground the proposed issue may be defended, the effect of it is to substitute the judgment or decision of a jury for that of the Chief-Constable. The statute says that the Chief-Constable may remove any member of the force at pleasure. There is no appeal to the Town Council, the Lord Provost, or the Sheriff, on the individual case, and I think to allow an issue of damages in such a case would be against the true meaning of the statute, which is that the contract of service may be terminated at the pleasure of the officer commanding the police force.

A large number of authorities were cited in the arguments addressed to us, but I think it is only necessary to refer to two of them.

In the case of the *Commercial Bank v. Pollock's Trustees*, 1829, 3 W. & S. 430, where the bank manager was removed by the directors in the professed exercise of their contract rights, the ground of judgment is summed up (p. 440) by the Lord Chancellor (Lord Lyndhurst) in the following terms—"Taking, then, the whole of the circumstances together, and considering what the nature of the contract was between these parties, it appears to me clear that the committee of management had an absolute discretion to remove Mr Pollock when they thought proper—that they were not responsible for the manner in which they exercised that discretion—and that they were not bound to make any compensation or remuneration to Mr Pollock for the loss he sustained in consequence of that removal."

The other case which I must notice is *Morrison v. Abernethy School Board*, 1876, 3 R. 945, where it was held that a schoolmaster, although he held office during the pleasure of the School Board, was at common law entitled to notice, and an award of damages was made equivalent to three months' salary and use of the house and garden. If this principle were applied to the present case it would only entitle the pursuer to a quarter's salary, or £40. But this is not at all the nature of the pursuer's claim. He wants compensation on the basis of the capitalised value of his future earnings as a lieutenant of police, estimated at £3000.

The ground of his claim is not want of notice but malicious dismissal. Therefore I do not think that the *Abernethy* case will avail him. At the same time I may say, as this case was much discussed, that I should not without further consideration be prepared to extend it to cases under the Police Acts—indeed, I think that in any case not arising under the Education Acts the judgment of the House of Lords in the *Commercial Bank* case is the better guide to the interpretation of a contract of service terminable at pleasure.

The claim of damages for slander is based on intemperate expressions said to have been used by the Chief Constable to the pursuer when the latter was dismissed. The use of these expressions is denied, but I do not think it necessary that we should inquire into the truth of the averments, because the expressions taken in connection with the circumstances in which they were used do not, in my opinion, amount to what the law regards as a slander. I am therefore of opinion that the action as against the defender Ross should also be dismissed.

LORD KINNEAR—I am of the same opinion. This is an action, in the first instance, for damages for wrongous dismissal, and so far as these conclusions are directed against the Lord Provost and Magistrates of Edinburgh I think it clear that the pursuer has stated no relevant case, because the Lord Provost and Magistrates had no power to dismiss the pursuer, and no power to control the Chief-Constable with regard to

his dismissal, and, in point of fact, they did not dismiss him. I can see no ground on which they can be held responsible for that action on the part of the Chief-Constable.

I think the conclusions as directed against the Chief-Constable are also irrelevant, because there is no relevant averment of breach of contract and no relevant averment of actionable wrong. So far as regards the contract I entirely agree with the opinion of Lord M'Laren. The conditions of employment in the police force are regulated by Act of Parliament, and the Act of Parliament requires that the subordinate officers of the force shall hold their situations subject to the Chief-Constable's pleasure. I cannot doubt that that implies a power, and also a duty, on the part of the Chief-Constable to dismiss a member of the force if he is in any way dissatisfied with his conduct. The pursuer's tenure of office was therefore entirely dependent on the Chief-Constable's pleasure, and as soon as the Chief-Constable's pleasure to retain him in the force came to an end, then his period of service came to an end also.

I only desire to add a word to the opinion of Lord M'Laren on this point, and that is that while I entirely agree that the case of *Morrison v. Abernethy School Board*, 3 R. 945, is inapplicable because it proceeded upon the construction of a different statute, yet even if it had been applicable it would not have helped the pursuer. For what the pursuer asks for is damages for wrongous dismissal. Now, in *Morrison* what the Court held was that although the master held his appointment at pleasure yet he was entitled to notice before being dismissed. It held that there was an implied contract that he should get notice, and therefore that if he were dismissed without notice he had a good claim for wages in lieu thereof. But the Judges in the majority took care to point out that the case before them was not a claim for damages for illegal dismissal, and that a claim for damages would not have been available, though a claim for wages or compensation in lieu of notice might be maintained. I think the same considerations are a conclusive answer to the question whether there is here any relevant averment of an actionable wrong, for there can be no actionable wrong in carrying out a contract according to its express terms. If the defender had a legal right and duty to dismiss the pursuer at pleasure, and the pursuer had no right to stay on in the face of such a dismissal, there can be no actionable wrong in the defender having exercised his right in so dismissing him.

The Lord Ordinary, however, has allowed an issue based on the averments that in dismissing the pursuer the defender was actuated by malicious motives. Now, the word "malice" may be used in two senses, either in its strict sense as a technical term of law, or in its ordinary signification. But in neither of these senses do I think that it helps to make the pursuer's averments relevant. What "malice" means when used as a technical legal term has been

fully discussed in several recent cases. There are two definitions of the word when used in this sense, by English Judges, which are cited with approval by Lord Watson in the House of Lords. One is a definition by L.J. Bowen in "*The Mogul Steamship Co. v. M'Gregor, Gow, & Company*, 1889, L.R., 23 Q.B.D. 598, at p. 612, where, after pointing out the distinction between intent to "injure" and intent to harm, he says—"Maliciously" in like manner means and implies an intention to do an act which is wrongful, to the detriment of another. The term 'wrongful' imports in its turn the infringement of some right." The other definition is that of Bailey, J., in *Bromage v. Prossa*, 1825, 4 B. & C. 247, at p. 255, where he says—"Malice in common acceptance means ill-will against a person, but in its legal sense it means a wrongful act, done intentionally, without just cause or excuse." Therefore, in order to constitute legal malice the act complained of must be "wrongful" in the sense of importing the invasion of a right without just cause or excuse. If, then, what the pursuer means here is malice in its legal acceptance, the answer is that no wrong has been done, for to allege that a man was dismissed in accordance with the terms of his contract but wrongfully, is a contradiction in terms.

I think therefore that the pursuer must be taken to have used the word malice in its common acceptance, as meaning that the defender's conduct had been actuated by the evil motive of ill-will towards the pursuer personally. Now, even if the word "malice" be taken in that sense, does it make any difference in the question of relevancy? It seems to me that any possible suggestion of a difference has been entirely negated by the decision of the House of Lords in *Allen v. Flood*, [1898] A.C. 1. The question for discussion in that case was so entangled in circumstances that, although I do not think it difficult to extract from the elaborate judgments that were there delivered the legal doctrine that was laid down, I prefer to state it in the authoritative language of Lord Macnaghten in *Quinn v. Leatham*, [1901] A.C. 495, at p. 508, rather than in any words of my own. What Lord Macnaghten says is this—"The head-note to *Allen v. Flood*, might well have run in words used by Parke, B., in giving the judgment of an exceptionally strong Court nearly half-a-century ago (*Stevenson v. Newnham*, 1853, 13 C.B. 297)—'an act which does not amount to a legal injury cannot be actionable because it is done with a bad intent.'" And again Lord Lindley in the same case, [1901] A.C., at p. 533, says—"This decision, as I understand it, establishes two propositions, one a far-reaching and extremely important proposition of law, and the other a comparatively unimportant proposition of mixed law and fact, useful as a guide, but of a very different character from the first. The first"—and it is to the first that I am here referring—"The first and important proposition is that an act otherwise lawful, although harmful, does

not become actionable by being done maliciously in the sense of proceeding from a bad motive and with intent to annoy or harm another. This is a legal doctrine not new or laid down for the first time in *Allen v. Flood*, it had been gaining ground for some time, but it was never before so fully and authoritatively expounded as in that case,"—and then he goes on to point out a limitation to the application of that doctrine, with which we are not here concerned. I take these two opinions as expressing accurately the substance of the decision in *Allen v. Flood*, and therefore I do not propose to refer to any of the passages in the more elaborate judgments delivered in that case, but I do not think it uninteresting to notice that Lord Watson in the course of his opinion in *Allen v. Flood* [1898], A.C. at p. 100, puts the exact case which we have to consider, for in dealing with the proposition that evil motives could make "that unlawful which would otherwise be lawful," he says that would lead to some singular results: for example "a master who dismissed a servant engaged from day to day, or whose contract of service had expired, and declined to give him further employment because he disliked the man and desired to punish him, would be liable in an action for tort." The learned Lord thus puts as a *reductio ad absurdum* of the doctrine he is refuting, the exact proposition which we are asked to affirm, and that the Lord Ordinary has sustained. I am of opinion that the view of the law on which the Lord Ordinary proceeded is directly negated in *Allen v. Flood*.

With reference to the averments intended to support the case of malice, I do not think it necessary to examine the pursuer's statements in detail. Much of what he sets forth is altogether irrelevant, but I think I am fairly stating the substance of his averments when I say that they amount to this. A question, as he sets forth, had arisen between the pursuer and the Chief-Constable as to whether the pursuer had circulated among the force a rumour prejudicial to the defender's character. The pursuer denied that he circulated any such rumour, but admitted that he did repeat it to another officer, and, therefore, the Chief-Constable called him to account, and made an investigation into the matter by himself, as indeed he was entitled to do, though the pursuer avers that it was a one-sided investigation. He further avers that the defender was very angry and used very strong and abusive language towards him in conducting the inquiry, and at the end of it the defender dismissed him with an expression of opinion that he was a danger to the force—meaning, I suppose, to the discipline of the force. That is, I think, the substance of what the Chief-Constable is alleged to have said, though, according to the pursuer it was couched in much stronger language. Now on the pursuer's own statement he discloses that a question had arisen into which it was the plain right and duty of the Chief-Constable to enquire,

because nobody could dispute that if one of the officers in the force under his command were really circulating rumours or repeating to other members of the force rumours that were discredit-able to him, the Chief-Constable was very well entitled to consider whether that was conduct satisfactory to him, or injurious or otherwise to the discipline of the force, and if he came to the conclusion that it was harmful to the discipline of the force he was quite entitled to dismiss the offender. Whether the pursuer's conduct had been really harmful or whether the dismissal was a harsh proceeding it is not for us to inquire, because the decision of that question has been committed by the Act of Parliament to the judgment of the Chief-Constable. Here the Chief-Constable, having investigated the pursuer's conduct, came to the conclusion that it was injurious to the discipline of the force that the pursuer should remain a member of it, and therefore dismissed him. In my opinion in so acting he was acting entirely within his right and within the scope of the duty laid upon him by statute. He committed no actionable wrong in so doing, and, on the doctrine laid down in *Allen v. Flood*, to say that in so doing he acted with a feeling of ill-will, which had arisen in his mind towards the pursuer, is altogether irrelevant. I am therefore of opinion, with Lord M'Laren, that the pursuer cannot have the issue which the Lord Ordinary has allowed him.

I also agree with Lord M'Laren and with the Lord Ordinary that no issue for slander can be allowed. The issue of slander merely raises the same question from another point of view, for the alleged slander was really a part of the inquiry which the Chief-Constable had a right to make. He was quite entitled to intimate the conclusion he had arrived at, and to state to the pursuer his reason for dismissing him. I assent to what was said by the pursuer's counsel, that if the Chief-Constable really used the language ascribed to him—which he denies having done—it was an exceedingly harsh and rude way of expressing his opinion, but an action of slander will not lie upon any mere rudeness of expression, but only upon the meaning and substance of what has been said. I agree that no issue can be allowed, and the decision of the Court will therefore be that we recall the Lord Ordinary's interlocutor and dismiss the action altogether, finding the Lord Provost, Magistrates, and Town Council entitled to expenses in terms of the statute referred to by Lord M'Laren, and finding the other defender entitled to expenses in the ordinary way.

LORD PEARSON—The legal positions of the various parties to this dispute are made quite clear by the 34th section of the Edinburgh Improvement Act 1893. On the words of that section it is I think plain that no relevant case is here alleged against the Magistrates and Council. No doubt they have the appointment of the Chief-Constable, but beyond that they have nothing to do with him except this, that

the regulations to be prescribed by the Chief-Constable for guarding, patrolling, and watching within the burgh are to be under their control. There is nothing which could make the Magistrates and Council answerable in damages for the alleged wrongful act of the Chief-Constable in dismissing the pursuer from the force.

Then as regards the liability of the Chief-Constable himself for wrongful dismissal, that depends on his relation to his subordinates as expressed in sec. 55 of the Act of 1879. That section expresses the tenure on which the lieutenants, constables, and other officers of police hold their office under him; and when one finds that the Chief-Constable is thereby authorised and empowered to remove such constables at pleasure, it appears to me that an action of damages for wrongful dismissal is out of the question where the dismissal is alleged to be wrongful solely on the ground of an examination of the motives which prompted the dismissal. It may seem to be a singularly strong and autocratic power to vest in the hands of anyone; but I have no doubt that it was considered necessary in the interests of the discipline of the force. Here the Chief-Constable found that a member of the force was circulating stories about him reflecting on his private character. I can hardly conceive any course of action more subversive of discipline than that. At any rate the defender was entitled so to regard it; and whether the stories were true or not, it seems to me that the Chief-Constable might well feel compelled to take action in the interests of discipline. He took action accordingly, by using his power of removal. I see here no legal ground on which the dismissed officer can complain. What is the alternative course which the pursuer suggests on record as the proper course? It is that the Chief-Constable should "vindicate his character in the usual way," which I take to mean that the Chief-Constable should have raised an ordinary action of damages for slander against his subordinate. I think that such a suggestion is absurd on the face of it, and that it would be entirely subversive of discipline.

As to the issue on slander, which has been disallowed by the Lord Ordinary, I also agree with Lord M'Laren. It is impossible, as the record is framed, to separate this part of the pursuer's case altogether from the question of wrongful dismissal. The expressions complained of as to the pursuer being a danger and a disgrace to the force, are said by the pursuer to have been used in the course of an investigation by the defender into the pursuer's conduct. The pursuer really does not deny that by repeating them to a brother officer he took part in circulating the objectionable stories about his chief; and the expressions complained of were, even on the pursuer's statement, used in the course of the proceedings leading up to dismissal, and by way of assigning a reason for it. I think the pursuer's statements are quite insufficient to support the second issue.

The LORD PRESIDENT was absent at the hearing.

The Court dismissed the action as against both defenders with expenses, those due to the Magistrates being to be taxed as between agent and client.

Counsel for the Pursuer and Respondent—Crabb Watt, K.C.—R. S. Brown. Agent—John Robertson, Solicitor.

Counsel for the Defenders (The Magistrates of Edinburgh)—Cooper, K.C.—W. J. Robertson. Agent—Thomas Hunter, W.S.

Counsel for the Defender and Reclaimer (Ross)—Scott Dickson, K.C.—Wm. Thomson. Agent—Norman M. Macpherson, S.S.C.

Friday, December 21.

FIRST DIVISION.

[Lord Ardwall, Ordinary.]

AIRD v. TARBERT SCHOOL BOARD.
(See *ante*, February 17, 1905, 42 S.L.R. 373, and November 1, 1906, 44 S.L.R. 26.)

Reparation—Interdict—School—Board School—Teacher—Irregular Dismissal of Teacher Followed by Interdict Subsequently Recalled—Wrongous Interdict—Damages—Relevancy.

The headmaster of a Board school appointed in 1893 was irregularly dismissed by the School Board, who subsequently applied for interdict against him and obtained interim interdict. The interim interdict having been recalled on the ground that the dismissal was irregular, the schoolmaster raised an action of damages for wrongous interdict. No question of salary was involved.

Held that the action was irrelevant inasmuch as though the interdict ought not to have been applied for and the Board was responsible therefor, the schoolmaster's legal rights had not been injuriously affected, since under the Education (Scotland) Act 1872 he held his office at the pleasure of the Board, and under the Education (Scotland) Act 1882 he could be summarily suspended by them.

Process—Sist of Deceased Pursuer's Representatives as Executors and as Individuals—Effect of Sist—Scope of Action—Claim by Representatives of Deceased Pursuer as Individuals for Damages in respect of his Death Caused by Wrongous Interdict—Competency.

The representatives of a schoolmaster, who had raised against his School Board an action of damages for wrongous interdict, obtained interim by the Board to prevent him officiating and subsequently recalled on the ground that his dismissal had been irregular, were on his death sisted as executors and as individuals as pursuers in the cause in his room and place. The representatives, one of whom was his mother,

proposed to claim in the action damages for the schoolmaster's death, alleged to have been brought about by the interdict.

Held that the claim was incompetent since it enlarged the scope of the original action.

Expenses—Offer by Pursuers to Stop Litigation on Condition of Expenses not being Found Due by Either Party—Effect of Offer on Expenses where Defenders Prevalled—Abandonment of Action.

A pursuer in an action to recover damages for wrongous interdict, who was also involved in other actions with the same defenders, died. His representatives offered to stop all litigation on condition that no expenses were held due to or by either party. This offer was refused and the defenders prevailed. *Held* that the defenders were entitled to expenses, the pursuers' proper course having been abandonment on payment of expenses in statutory form.

Expenses—Public Authorities Protection Act 1893 (56 and 57 Vict. cap. 61), sec. 1, (b)—Expenses of Reclaiming Note—Scale of Taxation.

Held (after consulting their Lordships of the Second Division) that a defender, a public authority, who had successfully reclaimed against the interlocutor of a Lord Ordinary, was entitled to have his expenses both in the Inner and Outer House taxed as between agent and client.

Opinions, per the Lord President and Lord Kinnear, that the complete discretion possessed by the Court as to expenses was unimpaired by the Public Authorities Protection Act 1893.

Bostock v. Romsey Urban Council, [1900], 2 Q.B. 616, *approved*.

The Public Authorities Protection Act 1893 (56 and 57 Vict. cap. 61), section 1, enacts—
“Where after the commencement of this Act any action, prosecution, or other proceeding is commenced in the United Kingdom against any person for an act done in pursuance, or execution, or intended execution, of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, duty, or authority, the following provisions shall have effect—
... (b) Wherever in any such action a judgment is obtained by the defendant it shall carry costs, to be taxed as between solicitor and client.”

On July 8, 1905, Robert Aird, headmaster of Tarbert Public School by appointment in 1893, residing at Bank Buildings, Tarbert, Lochfyne, raised an action to recover five hundred pounds as damages against the School Board of the parish or district of Tarbert, Lochfyne. He died on 29th September, 1905, and his executors, his mother Mrs Margaret Aird, and his brother John Aird, were on 2nd March 1906 sisted “as executors foresaid and as individuals as pursuers in the cause, in room and place of the said Robert Aird.”