

not hold a public office, but was the servant of and answerable to the school board. Further, unless the writer of the letter were a ratepayer in the district, he could have made no claim to the plea of privilege had the action been directed against him—*Anderson v. Hunter*, January 30, 1891, 18 R. 467, and the defender having refused to disclose the writer's name could not shelter himself behind that plea—*Brimms v. Reid & Company*, May 28, 1885, 12 R. 1016.

At advising—

LORD PRESIDENT—I think the Lord Ordinary has come to a right conclusion. Upon the first question it is to be observed that all that the pursuer requires to make out at this stage is that the letter complained of is susceptible of the interpretation he assigns to it. It is quite true that the letter purports to state, or to conjecture, the effect or a report of the Government Inspector of Schools. It is conceivable that even granting that the school is in a deplorable condition, that may not be due to the incompetency of the teacher. It might be accounted for by the paucity of scholars, or by their absence from illness, or to other causes which one may figure. That is quite intelligible. But the writer, in the last sentence of the letter, certainly goes a long way towards indicating a specific cause for the alleged defective state of the school. He says—"Are the interests of the public to be sacrificed for the sake of providing a house and salary for a teacher?" That seems to me to afford ample basis for the pursuer's allegation that he will be able to make out to a jury that the letter contains a covert attack upon his competency. I therefore think that the Lord Ordinary was quite right in allowing the issue.

The next question is, whether malice must be inserted in the issue. Several questions of great interest and of wide social importance have been mooted during the discussion—the question, for example, whether a member of the public in attacking any person holding any office under any public body can shelter himself behind the plea of privilege. But I do not think such questions arise, or rather are open for decision in the present case, because the case of *Brimms v. Reid* affords us a clear ground of judgment where the defence of privilege is pleadable by reason of the occasion upon which the alleged slander was spoken or written, and the relation of the writer to the subject-matter of which he speaks. What was the position of the writer of this letter? So far from our having any information about him, we have not even been told who he is, and the libel therefore must be held to be the letter of someone who has no ascertainable identity and no duty or responsibility or relation to the subject. Accordingly the whole reasoning of *Brimms's* case applies, irrespective altogether of the difference in the nature of the attack made upon the pursuer in that action. What the Court in that case held was that it is impossible to allow the defence of privilege in a case where the

libel is an anonymous letter in a newspaper and the writer is undisclosed. I therefore think the plea of privilege is inadmissible and that malice ought not to be put in issue.

LORD ADAM and LORD M'LAREN concurred.

LORD KINNEAR was absent.

The Court adhered.

Counsel for the Pursuer—Salvesen—Gardner Miller. Agents—J. Smith Clark, S.S.C.

Counsel for the Defender—Orr. Agents—Smith & Mason, S.S.C.

Tuesday, January 19.

FIRST DIVISION.

[Sheriff of Aberdeen, Kincardine, and Banff.]

WALKER AND OTHERS *v.* NORTH OF SCOTLAND AND ORKNEY AND SHETLAND STEAM NAVIGATION COMPANY (OWNERS OF "QUEEN").

Shipping Law — Measure of Claim of Salvage.

A steamer having grounded on a rock near the mouth of a harbour during a dense fog, a tug and two small boats came to her assistance. At the request of the master of the steamer each of the small boats carried a hawser from the steamer to the tug, and the steamer was then dragged off the rock by the tug and towed into port. The crew of the small boat which had first come to the steamer's assistance claimed £100 for the service rendered by them. It was proved that this service had been neither difficult nor dangerous, and might have been performed by one of the steamer's own boats; that the value of the steamer was estimated at £5500, and that it had been rescued from a position of considerable but not immediate danger. The Sheriff awarded a sum of £10.

Held, on appeal (*diss.* Lord M'Laren), that this sum was not so inadequate a remuneration for the service rendered as to justify the Court in interfering with the award of the Sheriff.

On 21st June 1891, during a dense fog, the s.s. "Queen," belonging to the North of Scotland and Orkney and Shetland Steam Navigation Company, grounded on a rock near the entrance to the harbour of Aberdeen when attempting to make that port. Her master at once fired guns, and these were heard on shore, with the result that a tug having a small boat in tow soon came to her assistance. On nearing the steamer the tug cast the small boat loose, and its crew rowing up to the steamer

proffered their assistance, which was accepted. At the request of the master of the steamer they then carried a hawser from the steamer to the tug, and a second hawser having been passed to the tug by another boat which had made its appearance, the "Queen" was dragged off the rock and towed safely into port, when it was discovered that she had sustained only trifling damage.

William Forbes Walker, and five others, being the crew of the small boat which had first reached the "Queen," thereafter presented a petition in the Sheriff Court at Aberdeen to have the amount of salvage due to them determined. They claimed £100.

In addition to the facts above narrated the following facts were established by the proof.—At about nine o'clock on the evening of Sunday 21st June the pursuers were standing at the end of the north pier of Aberdeen when they heard guns to seaward. Taking them to be signals of distress, they got a boat and put off in the direction of the sound. Though the fog was dense the sea was not high, there being only, in the words of the pursuer Walker "an ordinary swell on;" and the same witness said—"The sea on the evening in question was such that I have often gone for a pleasure sail upon a sea similar to it." On their way seaward the pursuers spoke the tug, which had also been attracted by the guns, and were, as already stated, taken in tow by her.

It appeared that the service rendered by the pursuers had been neither difficult nor dangerous, their only risk being that of running on a rock in the fog; that in their absence it might have been performed by one of the steamer's own boats, and that they had been offered a reward of £10.

On the other hand, the evidence showed that the "Queen" had been in a position of some peril, as she was fast amidships on a rock which was surrounded by deep water, and the tide was nearly full. The danger, however was not immediate, and did not extend to her passengers and crew, of whom there were thirty and twenty-eight respectively, as they could have been landed in her boats. She carried goods and the Shetland mails.

The value of the ship was certified by the Sheriff at £5500.

On 24th November 1891 the Sheriff-Substitute (GRIERSON) decerned against the defenders in favour of the pursuers for the sum of £10 sterling of principal, and decerned against the pursuers for payment to the defenders of the sum of £20, 5s. 4d. sterling of expenses.

The pursuers appealed to the Court of Session, and argued.—The most important element to be taken into consideration in assessing the recompense due to the pursuers was the serious peril from which the defenders' ship had been rescued, but it was also not to be overlooked that the pursuers themselves had run some risk in rendering the service for which they claimed, as they might easily have struck a rock in the fog. Looking to the value of

the ship and the whole circumstances the Sheriff-Substitute's award was grossly inadequate—"Effort," 1834, 3 Hag. Adm. Rep. 165; "Queen Mab" 1835, *ibid.* 243; "Maria," 1809, Edw. Adm. Rep. 175; Kennedy on Salvage, 116-118.

Argued for the defenders—The service performed by the pursuers was one of no danger or difficulty. In their absence it could have been performed by one of the steamer's own boats, and the "Queen" was not in any immediate danger. The award of the Sheriff-Substitute was not therefore so inadequate as to call for the interference of the Court. The policy of the Legislature was to discourage appeals in cases of this kind—Merchant Shipping Act 1854 (17 and 18 Vict. cap. 104) sec., 464, and the Court was unwilling to review the judgment of inferior courts in questions of this character—*Owners of the "Vulcan" v. Owners of the "Berlin,"* July 6, 1882, 9 R. 1057.

At advising—

LORD PRESIDENT—It is probably always difficult for any number of minds to arrive at precisely the same figure as an estimate of the value of services rendered in a case of salvage. The Legislature has confided the decision of such matters in cases like this, in the first instance, to the local judge, and it is evident in the present case that the Sheriff-Substitute has conducted the inquiry in a painstaking way, and that the facts were fully before him when he arrived at the decision which is the subject of this appeal. I think it right to say that my present impression is that his award is on the meagre side, but he was in possession of all the facts, and also knew the local conditions affecting the question, which we do not.

The services were rendered, not in any solitary and remote place, but at the mouth of the harbour of Aberdeen, and this is not a case where the services could not have been rendered by anyone else, by the "Queen's" own boats, for instance. The facts of the case are of a very simple and unexciting description. The pursuers were standing on the pier-head on an evening described by Walker, one of themselves, as being such that "I have often gone for a pleasure sail upon a sea similar to it." It is true that there was a dense fog, but the pursuers were acquainted with the coast, and it is plain that the place where the ship was lying was the opening at the mouth of the harbour. The service rendered was of a very simple kind, and it was rather a matter of convenience than of necessity that the intervention of a small boat was asked for. As the result of the whole story, I think it is clear that while it was convenient that the hawser should be handed from the ship to the tug through the medium of a small boat, this was not necessary for the safety of the ship, and there was in fact nothing to impart a peculiarly meritorious character to the assistance given.

Accordingly I am bound to say that I think it is within very moderate limits that

a difference of opinion can occur as to the amount of the remuneration due to the pursuers for their services. While, on the one hand, it is our duty to do nothing to discourage the laudable habit of helpfulness and courage which ought to prevail at our ports; on the other hand, it would be most unfortunate were we to assume a mean standard of courage on the part of the fishing or seafaring populations of these places, and in the present case there seems to have been no danger except in the eyes of landmen.

There is, however, one explanation of the pecuniary value of these services which seems to me to be satisfactory. The pursuers came into Court claiming £100, and they supported that estimate of the value of their services by statements to the effect that the weather was very unfavourable to navigation, and that a heavy sea and strong tide were running which caused great danger to themselves and their boat, and the rest of their narrative is pitched at the same elevation. Now, if £100 is a proper remuneration for services such as are alleged in the condensation, what is an appropriate reward for services of the prosaic character which we find from the evidence were really rendered in this case? One is brought down at once to a very moderate figure. Certainly £25 would be a liberal if £10 is a small sum to allow. That being so, and the question lying within these limits, I think it would be contrary to the policy of the statute to interfere with the award of the Sheriff. In the conditions in which this appeal is presented, I am afraid that the consequence of this decision is that we must find the appellants liable in expenses.

LORD ADAM—I agree. The only service rendered by the pursuers' boat was, after being towed by the tug to the neighbourhood of the rock where the "Queen" was lying, to carry the hawser from the ship to the tug, which could have been done without her assistance. £10 is not a large sum, but I cannot say that in my judgment it is an inadequate reward for the service rendered by the pursuers.

LORD M'LAREN—I have formed a definite opinion that the sum awarded by the Sheriff is inadequate. I could quite understand the view being taken that no salvage services had been rendered, in which case it would follow that the claim for salvage would be dismissed. But it is not possible to take that view upon the evidence in this case, because I think every person concerned is agreed that the pursuers did render useful service in saving the "Queen." When they set out they did not know what position the "Queen" was in, or what services it would be necessary for them to render, but I take it that when the master of the tug took them in tow, it was because he thought their services might be of use, and the master of the "Queen" having called on them to render assistance, it is, I think, impossible to say that they were not parties to the saving of that ship.

As to the sum which should be awarded,

I do not think that the fact of the tug having accepted £100 should prejudice the claim of the pursuers. Although no doubt the sums awarded now are generally smaller than was at one time customary, perhaps because they are usually rendered by steam-vessels, yet they always bear some sort of proportion to the value of the vessel, never less it has been said than 5 per cent. In this case the value of the ship was £5500, and 5 per cent. on that sum would give £275, and if that sum was divided between the tug and the small boat, we could hardly put the value of the services of the small boat so low as one-tenth. But the Sheriff appears to have assumed £100, or some such sum as that, as the total value of the services rendered, and to have given one-tenth to the pursuers. My own view is that a sum of between £30 and £40 would have been a fair remuneration for the pursuers' services, taking into view that the ship was admittedly in serious peril, because when the tide went out her back might have been broken, and that there was some little peril to life because the night was foggy and the boats might have lost their way.

It was argued, on the authority of a recent decision, that the Court would not be ready to review the decision of the Sheriff on a matter of amount, and no doubt, if a substantial sum has been awarded, we would be unwilling to interfere with the award merely because we might have given a little more or a little less. But the rule does not apply to cases where only a nominal sum has been awarded. In the view I take of the evidence we would have been quite entitled to review the Sheriff on the question of the amount of the award, and to give what we thought right.

LORD KINNEAR—I agree that we should not interfere with the award of the Sheriff. I think, with your Lordship, that if we were assessing the recompense due to the pursuers for the first time, I would be inclined to give something more than he has done, but the sum which I would be inclined to give does not exceed the award made by the Sheriff by so large an amount as to entitle me to say that the Sheriff has gone so seriously wrong, considering the nature of the question, as to justify our interference. The material fact, I think, both for his consideration and ours, is, that while in law the pursuers' claim is for salvage, the services in fact rendered by them were such as can be barely brought within the line which separates salvage services from ordinary labour. It is no doubt true that the ship which they aided in saving would have been exposed to peril if she had not been rescued from the position in which she lay before a change of circumstances occurred—for example, if the tide had gone down and the wind had risen while she was still stranded—but she was in no immediate danger, and the question of the amount of the salvors' reward must have reference to the imminency of the danger from which the ship was rescued, and the risk run by the salvors in saving her. Now,

the services rendered by the pursuers were of the simplest and slightest kind, and could have been performed by one of the ship's own boats. This last fact, of course, affords no reason for refusing the pursuers a fair remuneration for their services, but it explains the view which appears to have been taken by the Sheriff that these services were of the slightest kind.

I accordingly concur with your Lordship, although I regret that the result of our decision is that the pursuers must be found liable in expenses. That, however, is not a consideration which we are entitled to take into account.

The Court dismissed the appeal with expenses.

Counsel for Pursuers—M'Kechnie—Dove Wilson. Agents—Wishart & M'Naughton, W.S.

Counsel for Defenders—Comrie Thomson—Aitken. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Tuesday, January 19.

FIRST DIVISION.

[Lord Wellwood, Ordinary.

SIMPSON AND OTHERS v. BEGG AND OTHERS.

Trust—Sale of Trust Property—Ultra vires—Title to Sue—Relevancy.

In 1885 a working men's institute was erected in a town of 2000 inhabitants from funds obtained by voluntary contribution. Trustees were elected and an annual subscription for membership was fixed.

In 1890 a townsman bequeathed the residue of his estate to trustees for the establishment of a similar institute, the benefits of which would be available without subscription. The trustees of the existing institute, concluding that it could not compete with the proposed free establishment, sold at cost price to the endowment trustees the building under their charge for the purposes of the new institute, with the consent of the original subscribers and the paying members, and proposed to raise an action of multiplepinding for distribution of the proceeds of the sale. Certain working men of the town sought declarator that the transactions of both classes of trustees were *ultra vires*, and interdict against payment of the proceeds of the sale to the original subscribers, but the Court dismissed the action, holding that the actings of the defenders were legal and reasonable, and that as they proposed to distribute the price under decree of the Court there was no occasion for interdict.

In 1885 certain persons resident in Moffat and the neighbourhood subscribed for the purpose of establishing there an institute,

the primary object being to afford facilities to working men for social intercourse, mutual improvement, instruction, and rational recreation.

A provisional committee was appointed, a site was obtained, and buildings, including a reading-room and gymnasium, were erected at a cost of £1745. Thereafter the subscribers appointed twelve of their number to be trustees, and a constitution was framed. The Institute was opened in 1886, and carried on till March 1891. Under the constitution only paying members were entitled to the privileges of the Institute, although the Institute Committee had power to admit *bona fide* working men above eighteen years of age who were not members to the reading-room at a small charge for each visit. The trustees had power to revise the constitution, and to re-adapt it when necessary to the general purposes of the Institute. It appeared from the third head of the trust that the rules of the constitution might be altered by the trustees on due notice being given.

In 1890 Mr William Proudfoot, a native of Moffat, who had settled in Natal, died leaving a last will and testament, which contained, *inter alia*, the following residuary bequest—"Any money remaining after payment of my debts and the above legacies I leave at the disposal of the Provost and Bailies of the town of Moffat, Dumfriesshire, Scotland, to be applied to the benefit of the working men of Moffat. My wishes will be complied with if this money is laid out on a reading-room in connection with which refreshments on temperance principles are supplied at a low cost."

It was plain that two reading-rooms, one of which depended on annual subscriptions, and the other was intended to be free, could not co-exist in a town of 2000 inhabitants. Accordingly, communications passed between the Institute trustees and the Magistrates of Moffat with a view to the existing Institute being transferred to a mixed trust. The Magistrates felt difficulty in agreeing to share the control and responsibility of the Institute with any other body of trustees. But they proposed that the Institute should be made over to them unconditionally on payment of its cost price, on the understanding that it should be carried on by them on the same lines though on a more extensive scale than before. In the end, after consulting the subscribers, who unanimously agreed, the Institute trustees sold the subjects to the Magistrates of Moffat for the cost price of £1745, which was paid to the Institute trustees. The paying members were also favourable to the sale. The Magistrates practically undertook that the Institute should be used in like manner as before.

In June 1891 certain persons who alleged that they were working men resident in Moffat, and a committee of working men appointed at a public meeting held on 2nd May 1891, raised the present action of reduction against (1) the Institute trustees, and (2) the Magistrates of Moffat, as Proud-