

ment to be prejudicial to the interests of the Society; (4) that it is provided by rule 31 that any person feeling aggrieved at the decision of the committee of management with regard to his suspension or discharge as collector or otherwise, such person should have the right of appealing to the next available annual or special meeting of delegates by giving twenty-one days' written notice of his intention to do so addressed to the committee of management; (5) that the pursuer did not avail himself of said right of appeal, but raised an action in the Sheriff Court; and (6) that under section 68 of the Friendly Societies Act 1896, which by rule 3 applies to said Society, it is provided that every dispute between an officer and the Society shall be decided in manner directed by the rules of the Society, and the decision so given shall be binding and conclusive on all parties without appeal, and shall not be removable into any court of law: Find in law that the pursuer has not stated any relevant case for inquiry, and, *separatim*, that he has failed to establish on the facts that he was illegally dismissed: Therefore assoilzie the defenders from the conclusions of the action, and decern: Find the pursuer liable in expenses," &c.

Counsel for the Pursuer and Respondent
Watt, K.C.—Grainger Stewart—Duncan
Smith. Agents—W. & J. L. Officer, W.S.

Counsel for the Defenders and Appellants
—Clyde, K.C.—Hunter. Agents—Morton,
Smart, & Macdonald, W.S.

Friday, October 25.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.]

MALCOLM v. MOORE.

*Expenses—Reparation—Slander—Tender
and Apology—Qualified Apology.*

The defender in an action of damages for slander in his defences tendered £20 with expenses, and stated that at the time of the alleged slander he was under the influence of liquor, that "he did not intend" to make the charge complained of, "and is not conscious of having done so," but that if anything said by him "could have been construed as reflecting on the pursuer's character in any way . . . the defender expresses his regret for having used language capable of such interpretation, and unreservedly retracts the same as there were no grounds therefor." He afterwards in his adjusted defences prior to the closing of the record raised the tender to £51.

The jury found for the pursuer, and awarded fifty pounds of damages.

Held that the apology offered by the defender was ample, and with the tender of £51 should have been accepted by

the pursuer, and that the defender was entitled to his expenses from the date at which the tender was raised to £51.

Observations as to the effect of qualified or hypothetical apologies tendered in actions of slander.

An action of damages for slander was raised by Thomas Malcolm, compositor, 15 Iona Street, Leith, against William Moore, 7 Balfour Street, Leith.

The pursuer averred that on the night of 18th February 1901 he and the defender had been drinking together, and that the defender having lost his pocket-book accused the pursuer of stealing it, and said that he was a thief and a liar.

On 12th June 1901 the defender lodged defences in which he made the following statement—"Explained that on the evening in question the pursuer and defender had been drinking together, and that . . . the defender was under the influence of liquor. Although annoyed at the loss of his pocket-book he did not intend to charge the pursuer with having meddled with it, and is not conscious of having done so. If, however, anything said by the defender could have been construed as reflecting on the pursuer's character in any way, or imputing mendacity or dishonesty to him, the defender expresses his regret for having used language capable of such interpretation, and unreservedly retracts the same, as there were no grounds therefor. Under reservation of all his pleas, the defender hereby tenders to the pursuer the sum of £20 sterling, with the expenses of process." The tender was afterwards raised to £51 in the adjusted defences prior to the closing of the record. The tender and apology were not accepted by the pursuer, and the case was tried before a jury. The jury found for the pursuer, and assessed the damages at the sum of fifty pounds.

In moving to apply the verdict the pursuer asked for his expenses. The defender maintained that in respect of his tender and apology contained in the defences, and of the sum awarded by the jury, he was entitled to expenses from the pursuer after the date of the tender.

Argued for the pursuer—He did not dispute the general principle that if a jury returned a verdict for an amount less than the sum tendered the defender would be entitled to his expenses subsequent to the date of the tender. But that principle was modified in the case of actions of damages for slander, where the pursuer was entitled not only to damages but also to a public vindication of his character—*Faulks v. Park*, December 22, 1854, 17 D. 247. Here the defender in his apology did not admit that he had made use of the slanderous expressions complained of, and accordingly his apology was insufficient—*Sproll v. Walker*, November 1, 1899, 2 F. 73, 37 S.L.R. 54.

Argued for the defender—No doubt in actions of slander there must be an apology in addition to the tender, but here there had been an ample apology. The pursuer

had been put in the same position as he would have been put by the verdict of a jury, and the mere fact that the defender had forgotten making use of the slanderous words, and therefore could not admit that he had done so, in no way detracted from the value of the apology—*Mitchells v. Nicoll*, May 24, 1890, 17 R. 795; *Hunter v. Russell*, March 1, 1901, 3 F. 596, 38 S.L.R. 420.

LORD PRESIDENT—I am of opinion that in this case the defender should get his expenses from the date of the tender of £51, and I arrive at this conclusion both on the reason of the thing and on the practice in analogous cases. It is true that if a person is charged with having made a calumnious statement, and by way of tender or retraction only says, “I withdraw it,” or “I regret that I made it,” that will not suffice. because such an expression of regret or retraction is quite consistent with his continuing to believe in what he had said, and the person against whom the calumny was uttered is not placed in the same position as if it never had been uttered. But when a man not only unreservedly withdraws what he has said, but expresses his regret for having said it, and admits that there was no ground for it, the position is wholly different, because when it is admitted that there is no ground for the statement, or in other words that it is untrue, the person injured is put, in so far as the person who made the statement can do it, in the same position as if the statement had never been made.

It is true that over and above this there is the question of damages, which may be very material. If only a nominal amount is tendered, there may be no sufficient vindication of character. The offer of only a nominal sum and its acceptance might convey the impression that the matter was one of small importance. But if the sum tendered is considerable the position is different. Now, in this case not only was there an unreserved retraction and an admission that the charge was groundless, but there was ultimately also a tender of £51. No one could say that this was merely a nominal sum. The tender of it implied an admission that substantial damage had been suffered. The tender, indeed, very accurately gauged the situation, for the verdict of the jury was for £50—£1 less than the tender. In these circumstances I think that the pursuer is entitled to expenses down to the date of the tender of £51, and that the defender is entitled to expenses after that date.

LORD ADAM—In cases of this kind there are two matters in issue between the parties—the sufficiency of the apology and the sufficiency of the damages. Was the apology in this case sufficient and ample enough to vindicate the character of the pursuer? It does not appear to me that there is much, if any, difference between a hypothetical apology and any other. Now, the defender here simply says that he does not remember saying what he is charged with having said, and I see no reason why

a man should be bound to admit saying what in his belief he did not say. Why should he admit as a fact that he made a statement which he believes he never made. Further, can the pursuer be said to be in a worse position if the defender says, “Assuming that I made the statement complained of then I admit that it was entirely false and that there were no grounds for it,” than he would be if the defender was able to admit, and did admit, making the statement. Accordingly, the question in this case just comes to be, Was the apology made a real and true retraction of the calumnious statement which the defender is assumed to have made. I think it is, and that it is difficult in the circumstances to conceive a more ample apology or more complete vindication of the pursuer's character. The apology, however, does not terminate the case. According to some of the cases cited the tender was equivalent to the verdict of a jury in favour of the pursuer, and the case should have gone no further. But there is always in addition to the apology the question of damages to be considered, for the apology does not satisfy that claim, and the pursuer is entitled to go on with the case to have their amount determined, but he must do so on the ordinary conditions; he must make up his mind either to be satisfied with the sum tendered or take the risk of getting a larger or smaller sum from the jury. I see no reason why in a case like the present the ordinary result should not follow from the sum found by the jury's verdict being smaller than the amount tendered.

LORD M'LAREN—I do not think that any general rule can be laid down as to the sufficiency or insufficiency of a qualified or hypothetical apology. There may be cases where such an apology would meet the justice of the case, and others where it ought to be rejected as being evasive or a repetition of the injury. The clearest case for a hypothetical apology is where words have been used which are innocent in themselves but are said to contain a covert meaning. In such a case it is surely enough for the person using the words to say “I admit that I used the words, but not that they bear the meaning attributed to them; if, however, they have conveyed that impression to others I regret and apologise for their use.” Or take this illustration of the other extreme, where a defender has in writing attacked the character or honour of another, I do not think he could get out of it by saying, “If my words convey that impression, I withdraw them.” There would be an obvious insincerity in that form of apology, and I need not say that every apology must be such as a person in good faith and desirous of making reparation would be likely to offer.

In the present case I think the apology is sufficient, first because the Judge who tried the case is of that opinion, and also because I understand that when the slander was uttered the defender was not quite sober, and may have used words which he did not afterwards recollect.

LORD KINNEAR — I agree with Lord McLaren that it would not be wise to lay down any general rule as to qualified apologies, because the conditions which may qualify a tender are innumerable and spread over a range that is quite indefinite. The only general rule which it is necessary to consider is, that in order to put the pursuer in the wrong in going on with his action after a money tender has been made that tender must be accompanied by an apology sufficient to enable the pursuer to say that his character has been vindicated, and the sum tendered must be sufficient compensation for the injury sustained. In the present case I think the apology is sufficient, because it includes an admission that the slander complained of was unfounded in fact, and the amount tendered is more than sufficient, because the jury found for a smaller sum. It does not appear to me to make any difference that the apology proceeds on the hypothesis that the slander was uttered, instead of an admission that it was in fact uttered, because the one form of apology vindicates the pursuer's character as effectually as the other. It is no vindication of character to prove that somebody has made an injurious charge against the pursuer, but it is a vindication to prove that the charge is not true. Accordingly, the hypothesis does not detract from the value of the apology, and it is quite natural and reasonable in the circumstances, because if the defender does not remember what he said, it may be very right and proper for him to say that if he said those things they are not true and he regrets them, but it cannot be his duty to admit that he did say what he does not know that he said.

I accordingly agree that the pursuer ought to have accepted the apology, and to have obtained decree for the amount tendered, which would have vindicated his character just as well as the decree which he obtains now.

The Court pronounced this interlocutor:—

“Apply the verdict found by the jury on the issues in this cause, and in respect thereof decern against the defender for payment to the pursuer of the sum of fifty pounds sterling: Find the pursuer entitled to expenses to 12th June 1901 (the date at which the tender was raised to £51): Find the defender entitled to expenses subsequent to said date, and remit,” &c.

Counsel for the Pursuer—J. C. Watt—Spens. Agents—Reid & Crow, Solicitors.

Counsel for the Defender—G. Watt, K. C.—Munro. Agents—Sim & Garden, S.S.C.

Tuesday, September 10.

BILL CHAMBER.

[Lord Moncreiff.

GLASGOW INTERNATIONAL EXHIBITION v. SOSNOWSKI.

Process—Bill Chamber—Breach of Interdict—Petition and Complaint—Jurisdiction of Lord Ordinary on Bills during Vacation—Act of Sederunt, 31st July 1532.

Held by the Lord Ordinary on the Bills (Lord Moncreiff) during vacation that the Lord Ordinary on the Bills has during vacation jurisdiction to entertain and dispose of a petition and complaint for breach of interdict.

Opinion that the Lord Ordinary during vacation has power at least to preserve matters entire until the Court has power to determine the matter finally.

Opinion reserved upon the question whether the Lord Ordinary on the Bills during vacation has power to punish a person who has committed a breach of interdict

The Incorporated Glasgow International Exhibition 1901, incorporated under the Companies Acts 1862 to 1890, and having its registered office at Kelvingrove Park, Glasgow, with concurrence of the Right Honourable Andrew Graham Murray, His Majesty's Advocate, brought a petition and complaint against George de Sosnowski, residing in Langside Road, Glasgow.

The petitioners were incorporated for the purpose of arranging for and managing a large industrial exhibition of an international character in Glasgow. The respondent Sosnowski was among the exhibitors in the said Exhibition, and occupied the ground floor of a pavilion situated in the grounds of the said exhibition and known as the Russian Central Pavilion.

The petitioners had previously presented a note of suspension and interdict to have the respondent restrained from selling goods at the stances occupied by him in the Exhibition for removal at the time of purchase. The prayer of the note was in these terms—“May it therefore please your Lordships to suspend the proceedings complained of, and to interdict, prohibit, and discharge the said respondent—(1) from inviting or allowing visitors to the Glasgow International Exhibition 1901, at present open in Kelvingrove Park, Glasgow, and under the superintendence and control of the complainers, to purchase goods for removal at the time of purchase from said respondent at the stances or places occupied by him within the Russian Imperial Pavilion at said Exhibition, or the room annexed thereto of which the said respondent has the occupation, unless the respondent shall have first obtained special permission in writing from the Exhibits and Space Committee of said Exhibition to invite and allow visitors so to purchase said goods; and (2) from permitting said visitors to remove goods so purchased from the respondent from said stances or places occupied by him at said Exhibition.”