

doubted that there was here a wrongous use of diligence, but it is not with the merits of this case that we have at present to deal; it is before us merely on the question of relevancy and for the purpose of fixing the terms of the issue.

In an action for the wrongous use of diligence I do not think that it is at all necessary that malice need be averred or inserted in the issue. The issue should be one simply for the wrongful use of diligence, and it is not even necessary to insert in the issue that wrongous getting of the decree as a substantive ground of issue.

It was the use of the diligence and not the getting of the decree that constituted the wrong, and the issue should accordingly be framed so as to bring that out.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court approved of the following issue:—"Whether in the Sheriff Court at Glasgow the defenders Forbes, Bryson, & Carrick and Samuel M. Carrick, on or about the 7th day of March 1890, having obtained decree against James MacRobbie for payment of £14, 14s. 1d. sterling, did, on or about 26th day of May 1890, wrongfully charge him or cause him to be charged on said decree; and on or about 26th May 1890 did wrongfully serve notice of *cessio* upon him, or cause such notice to be served, all to his loss, injury, and damage. Damages laid at £250."

The Court refused a separate issue against M'Lellan's trustees.

Counsel for the Pursuer—Comrie Thomson—Dewar. Agent—T. M'Naught, S.S.C.

Counsel for the Defenders—Jameson. Agents—Boyd, Jameson, & Kelly, W.S.

Friday, January 30.

## FIRST DIVISION.

[Lord Stormonth Darling,  
Ordinary.

### ANDERSON v. HUNTER.

*Reparation—Slander—Privilege—Statements made about a Candidate for the County Council.*

In an action of damages for slander the pursuer complained that, when he was standing as a candidate for the County Council in the Ness Division of Lewis, the defender stated to various people that it would be of no use to elect him as he would soon be bankrupt. It appeared that the defender was a ratepayer in the parish in which the Ness Division was situated, but was not an elector in the Ness division, but in another division lying in the same parish.

*Held* that the defender's position was not privileged, and that malice need not be put in issue.

John Norrie Anderson, merchant in Storno-

way, brought an action of damages for slander in the Sheriff Court at Stornoway against Robert Hunter, ground officer and postmaster at Barvas.

The pursuer averred that in December 1889 he agreed, on the requisition of a number of the electors of the Ness Division of Lewis, to stand as a candidate for the County Council for that division; that shortly after he had so agreed to stand, he found that it was currently reported that he was about to become bankrupt; that these reports afterwards reached Stornoway, and became current there, greatly to his injury and annoyance; that on inquiry he found that the defender had on various occasions (several of which were specified) stated to different persons in the parish of Barvas, that it was no use to elect the pursuer as county councillor as he would be bankrupt soon, or used words substantially to that effect; that the said statements were false and calumnious, and were made by the defender maliciously and without probable cause, with the object of injuring the pursuer and ruining him; that in consequence of the said slanderous statements having been made by the defender, they had obtained general currency in the district, though they were totally devoid of foundation, and that the pursuer had thereby been seriously injured in his feelings, his business, and his character.

The defender averred that he was a ratepayer in the parish of Barvas (in which the Ness Division of Lewis was contained), and a member of the School Board; that in his capacity as ground officer he frequently came in contact with crofters, and the ratepayers of the district generally; that he was often applied to by them for information and advice regarding School Board, County Council, and other matters in the district; that on or about the dates mentioned in the condescendence the defender was applied to by several ratepayers for information and advice as to the then pending County Council election; that upon these occasions it was possible that the defender might have referred to the current reports mentioned by the pursuer in his condescendence; that if the defender did so, it was without malice, with probable cause, and solely in the interests of the ratepayers, and that the reference, if any, by the defender to the current reports concerning the pursuer's bankruptcy on the occasions referred to were privileged in the circumstances.

The defender pleaded—" (3) Any reference made by the defender to the rumours concerning pursuer's bankruptcy having been made (a) without malice, (b) with probable cause, and (c) in privileged circumstances, he is not liable in reparation."

The Sheriff-Substitute on 28th October 1890 allowed parties a proof of their respective averments, and to the pursuer a conjunct probation.

The defender appealed to the First Division of the Court of Session, and on 26th November 1890 the Court appointed the pursuer to lodge issues for the trial of the cause.

The pursuer proposed the following issues—(1) Whether in or about the beginning of January 1890, at or near the Barvas Inn, the defender in presence and hearing of John Gunn Macdonald, merchant, Stornoway, did falsely and calumniously say of and concerning the pursuer that it would be of no use to take the pursuer as county councillor, for he would be bankrupt soon, or did use words of the like import and effect of and concerning the pursuer, to his loss, injury, and damage? (2) Whether in or about the month of January 1890, in or near the sub-post-office of Barvas, the defender, in presence and hearing of Kenneth Murray, postrunner, Ness, did falsely and calumniously say in the Gaelic language, of and concerning the pursuer—"Co tha sibh dol a chuir a steach don Chounty Council air ur son? Mu se Mr Anderson cha bhi e fad aghaibh, or cha neil e legal oir tha e dol a bhriseadh a dh'aithghearr"—which words being translated into English bear the following or similar meaning: Who are you going to put into the County Council for you? If it be Mr Anderson, he will not be long with you, for it is not legal, as he will be bankrupt in a short time—or did use words to the like import and effect of and concerning the pursuer, to his loss, injury, and damage? (3) Whether in or about the month of January 1890, the defender at or near his house at Barvas, in presence and hearing of John Mackenzie, mason, Borve, parish of Barvas, did falsely and calumniously say in Gaelic of and concerning the pursuer—"Cha n'fhada gu m'bi e na bhankrupt," which words being translated into English bear the following or similar meaning—"It will not be long till he (meaning the pursuer) is bankrupt;" or did use words of the like import and effect of and concerning the pursuer, to his loss, injury, and damage? (4) Whether in or about the month of January 1890, the defender, at or near his house at Barvas, in presence and hearing of Donald Morison, blacksmith, Lionel, Barvas, did falsely and calumniously say in Gaelic of and concerning the pursuer—"Bhidheadh chance againn na m'bidheadh sinn a faiginn Æneas a steach. Cha neil chance aig Shonaidh Anderson qu faighean a steach co dhiu or tha e dol a bhriseadh a dh'aithghearr cha bhi e barrachd air ceithear la deng;" which words being translated into English bear the following or similar meaning—"We would have a chance if we were getting Æneas in, Johnnie Anderson has no chance of getting in at any rate, as he is to become bankrupt shortly, or in not more than a fortnight till then;" or did use words of the like import and effect of and concerning the pursuer, to his loss, injury, and damage? (5) Whether in or about the month of January 1890, in various places in or about the parish of Barvas, the defender, in presence and hearing of John Gunn Macdonald, merchant Stornoway, Kenneth Murray, postrunner, Ness, John Mackenzie, mason, Borve, and Donald Morison, blacksmith, Lionel, Barvas, or of one or more of them, did repeatedly, falsely, and calumniously say in Gaelic or English of and

concerning the pursuer, that he was about to become bankrupt, or did use words of the like import and effect of and concerning the pursuer, to his loss, injury, and damage?

When the case came up for discussion it was admitted at the bar by the defender's counsel, that there were two divisions in Barvas parish for the election of county councillors, and that the defender, though a ratepayer in the parish, was not an elector in the Ness Division, for which the pursuer stood as a candidate.

Argued for the defender and appellant—The pursuer, at the time when the slanders complained of were alleged to have been uttered, was seeking to be elected to a public post by the class to which the defender belonged. Members of that class were entitled to discuss the qualifications of candidates, and bankruptcy disqualified a man for the position of councillor. Malice and want of probable cause must therefore be put in issue—*Brimis v. Reid & Sons*, May 28, 1885, 12 R. 1016; *Coghill v. Docherty*, October 18, 1881, 19 S.L.R. 96; *Croucher v. Inglis*, June 14, 1889, 16 R. 774. The fifth issue was too vague and should be disallowed.

Argued for the pursuer—The defender's argument did not apply in the circumstances of the case. The defender was not an elector in the Ness Division of Lewis, and therefore did not belong to the class whose suffrage the pursuer solicited. Malice and want of probable cause should not be put in issue.

At advising—

LORD PRESIDENT—In this case the Court is of opinion that the fifth issue is too vague and cannot be allowed.

With regard to the matter of privilege, it appears that the defender is not an elector in the division of the county where the pursuer was a candidate. There are two divisions in the parish of Barvas. The defender is an elector in one of these, but the pursuer was seeking election in the other. We are all, I think, of opinion that there is no case of privilege, the defender not being a voter in the election with reference to which he is said to have made the statements complained of. We therefore refuse to insert the word "maliciously" in the issues.

The only observation we have to make with regard to the other issues is to put it to counsel whether it is necessary to have the Gaelic words in the issues.

LORDS ADAM, M'LAREN, and KINNEAR concurred.

Counsel agreed that the Gaelic words should be taken out of the issues. The Court therefore disallowed the fifth issue, and appointed the other issues as adjusted to be the issues for the trial of the cause.

Counsel for the Pursuer—M'Kechnie—A. Davidson. Agents—Carment, Wedderburn, & Watson, W.S.

Counsel for the Defender—Wilson. Agent—John Elder, S.S.C.