

supported. Thus, although the Court cannot either express or imply their sanction to the curator to carry on the business in the future, or even during the current year, it is not inconsistent with their duty to consider whether he is not entitled to remuneration for past services.

I am of opinion that the Court should recall the interlocutor of the Lord Ordinary, and direct the Accountant of Court to fix the rate of commission to be paid to the curator for his services from 30th June 1868 to 30th June 1871.

LORDS DEAS, ARDMILLAN, and KINLOCH concurred.

Agents for Petitioner—Cunrro & Cowper, S.S.C.  
Agent for Ward's family—H. W. Cornillon, S.S.C.

Tuesday, May 21.

## SECOND DIVISION.

CALDWELL v. MONRO.

Slander—Reparation—Damages.

A minister having, from the pulpit, declared his belief that "some one" had been guilty of "forgery," in writing a letter to a newspaper, signed "A member of the Kirk Session," but having afterwards disclaimed all intention of alluding to anyone in particular; and having shortly thereafter stated in a letter to the same newspaper his reasons for the conclusion at which he had arrived;—held not liable in damages for slander to a person to whom some members of the congregation imagined his remarks from the pulpit to apply.

The pursuer in this action was James Caldwell, Kincaidfield House, Milton of Campsie, a member of the congregation of the parish church of Campsie, but not of the Kirk Session; the defender was the Rev. Thomas Monro, D.D., minister of the Parish of Campsie. The action arose out of some disputes with regard to a "patronage," and an "anti-patronage" petition which was circulated in the parish for signature during the month of February 1871. On Saturday, 4th March, there appeared in the *Glasgow Herald*, a letter criticising some remarks made by Dr Monro from the pulpit on the previous Sunday, and signed "A member of Campsie Parish Kirk Session." On the following day, Sunday, 5th March, Dr Monro alluded to this letter and the circumstances to which it referred, in the following terms:—"One would have thought that this tempest in a teapot would have been allowed to drop, but I observe from the newspaper that some one purporting to be a member of session has written an anonymous letter to the editor, which I have no doubt is a forgery. I have not had time to look at it, but I do not think it will require any notice from me, as it bears internal evidence that it is a forgery, and that the editor has been imposed upon by a so-called member of session;" and this was the first alleged libel of which the pursuer complained. The next day the pursuer wrote a letter to Dr Monro, containing, *inter alia*, the following passages:—"With reference to the extraordinary charges of the crimes of forgery and imposition made by you in church yesterday against some person whose name you did not mention, I learn that some of the congregation understood that, in making these charges, you were alluding to me.

Why any of the congregation should have thought that such a wicked allusion applied to me, I know not. So far as I am concerned, I never dreamt of applying your observations to myself. . . . I think that, as a member of the church, I am entitled to ask of you as a christian minister to write me, saying you had no intention of applying the charges to me, nor of leading others to suppose that I was the party referred to."

Dr Monro's reply was to the following effect:—

*Manse of Campsie, 6th March 1871.*

"Dear Sir,—In reply to your long note of this morning, I have only time to say that neither you nor any one else was in my thoughts when I made the observations to which you allude, because I knew nothing about the anonymous letter in the *Herald* except what its internal evidence implies.—Yours," &c.

On 8th March there appeared in the *Glasgow Herald* a letter from Dr Monro, stating the grounds on which he had arrived at the conclusion that the letter of the 4th, purporting to be signed by a "Member of the Kirk Session," did not truly emanate from a member of that body. This was the second alleged libel complained of by the pursuer. On 11th March the pursuer again wrote to Dr Monro, stating that, notwithstanding the assurance contained in the above note written by the latter, it was still the almost universal belief in the parish that he (the pursuer) was the person to whom Dr Monro imputed the crimes of forgery and imposition. The pursuer, therefore, required Dr Monro publicly, from the pulpit, "to withdraw the charges of forgery and imposition" made by him from the pulpit on the previous Sunday, and "to state that, in making these charges, he had no member of the church in his thoughts at the time." Dr Monro declined to comply with the pursuer's request, whereupon the present action was raised in the Sheriff Court of Stirling, concluding for £100 in name of damages and *solatium* for the alleged libel.

The Sheriff-Substitute (SCONCE) assolizied the defender from the conclusions of the action, and the Sheriff (BLACKBURN), on appeal, adhered to the interlocutor of his Substitute.

The pursuer appealed to the Court of Session. He pleaded, *inter alia*:—" (2) The defender having used and uttered and published false and slanderous expressions rashly and recklessly, and the general impression and belief having been thereby created in the minds of the congregation that the pursuer was the party who had committed, or who from the pulpit had been accused of having committed, the said crimes or crime, or practised deceit or other moral misconduct: the pursuer is entitled to redress, and to have his character cleared of the imputation cast upon it by the defender's wrongful act, though the defender may not have intended the said expressions to apply to the pursuer." " (3) The defender having been made aware that the pursuer was the party to whom the congregation applied his false and slanderous accusations, and having refused to withdraw said accusations as publicly as they were made, he is liable in damages for the slander remaining on the pursuer's character and reputation." " (4) The defender having caused to be published his said letter of 8th March, after being informed that the pursuer was considered as the party to whom said accusations were being applied, and having rashly and recklessly, repeated the above-mentioned charges, he is responsible," &c.

The defender pleaded, *inter alia*:—" (2) The defender's statement from the pulpit, not having been made maliciously or without probable cause, he is entitled to absolvitor." " (4) The defender's statements not having contained or implied any personal reference to the pursuer, and the defender not being responsible for any belief entertained by third parties as to the pursuer being the author of the anonymous letter published on 4th March 1871, the pursuer is entitled to absolvitor." " (5) The defender having been called on by the pursuer to disavow, and having sufficiently disavowed, any imputation upon the pursuer, is entitled to absolvitor."

THE SOLICITOR-GENERAL, ASHER, and MONCRIEFF, for the pursuer, referred to the cases of *Smith v. Gentle*, 1844, 6 D. 565; *Outram v. Reid*, 1852, 14 D. 577; *Le Fanu v. Malcolmson*, 1 Clerk and Finley (H.L.), 637; and *Kennedy v. Baillie*, 1855, 18 D. 138; and to *Starkie on Libel*, pp. 361, 453, 655; and they contended that the defender was responsible for the consequences of his rash and reckless statement from the pulpit.

SHAND and MACLEAN, for the defender, referred to the cases of *Craig v. Hunter*, 29th June 1809, F.C.; *Torrance v. Weddel*, 1868, 7 Macph. 243, 6 Scot. Law Rep. 180; and *Wotherspoon v. Gray*, 1863, 2 Macph. 38; and they argued that no relevant case had been established.

At advising—

LORD BENHOLME—I am of opinion that the pursuer has not made out a relevant case. The statements made in the letter to the *Glasgow Herald*, signed by a "Member of Campsie Parish Kirk Session," were apparently inconsistent with circumstances with which every member of the Kirk Session was acquainted, and it is, therefore, not to be wondered at that Dr Monro pronounced it, from internal evidence, to be a forgery. This was the first alleged act of slander complained of. The next day the pursuer wrote to Dr Monro, requesting an explanation, and the Doctor immediately replied in a straightforward manner, that neither the pursuer nor any one else was in his thoughts when he made the statement. One would have supposed that the pursuer would then have allowed the matter to drop; but Dr Monro having written a letter to the *Glasgow Herald* explaining his reasons for doubting the genuineness of the letter signed by a "Member of the Kirk Session," the pursuer again wrote to the Doctor, requiring him publicly to retract the statements he had made from the pulpit on the previous Sunday. This letter of Dr Monro's was the second libel complained of. Now the first alleged libel was merely a negative statement by the Doctor that he believed "some one" had been guilty of an act of deception, and his letter to the newspaper giving his reasons for that belief was both sensible and justifiable. He appears to have been profoundly ignorant of the authorship of the letter in question, and there is nothing whatever in his statements which can be construed as an inuendo against any individual in particular. I, therefore, think the pursuer's averments are quite irrelevant, and I propose to your Lordships to adhere to the judgment of the Sheriff.

LORD NEAVES—I concur. I think this a most untenable and unjustifiable action. It is impossible to libel a letter; you must libel a person. "Some one," of course, wrote the letter, but in order to construe such an expression as an inuendo against any individual, it is necessary to point it in such a way that the person meant is at once known.

Whatever may have been the responsibility of Dr Monro for his statement from the pulpit on the 5th of March, he was entirely relieved from it by his letter to the pursuer on the 6th. He disclaimed any intention of alluding to the pursuer, and his explanation was accepted. Had the pursuer's second letter been the first he addressed to Dr Munro, the case might perhaps have assumed a different aspect, but in his first letter the pursuer himself relieves the minister from responsibility by stating that he never dreamt any allusion to himself was intended. In these circumstances the action is quite untenable.

LORD COWAN—I am of the same opinion. I think the learned Sheriffs have properly disposed of the case, although, perhaps, in the elaborate opinion of the Sheriff-Substitute the facts of the case have been a little too much mixed up with the question of relevancy. It appears to me impossible to construe the statements complained of into any inuendo against the pursuer. The action is a most unjustifiable one, and, in the circumstances, the defender is entitled not merely to have the action dismissed, but to decree of absolvitor from the conclusions of the summons.

The LORD JUSTICE-CLERK concurred.

Agents for Pursuer—Maconochie & Hare, W.S.  
Agents for Defender—Mitchell & Baxter, W.S.

Wednesday, May 22.

PAUL AND ANOTHER (BARNET'S TRUSTEES)  
v. BARNET AND OTHERS.

*Trust—Exoneration.*

Trustees under a trust-disposition having raised an action of M.P., the Court found one of the claimants entitled to the heritage. After this decree the trustees granted a lease of part of the heritage, and refused to convey the estate to the heir until they received exoneration. *Held* that the trustees were entitled to exoneration up to the date of the raising of the action, but that they were bound to denude in favour of the heir without receiving exoneration for subsequent actings.

This was an action of multiplepointing and exoneration by the trustees of the deceased Mr Barnett of Hillhead in Aberdeenshire. The truster left considerable property, heritable and moveable, and after a proof, Alexander Barnett, residing at Backward of Kennay, Aberdeenshire, was preferred to the heritage, and certain other claimants to the moveables. Against that preference the unsuccessful claimants of the moveables appealed to the House of Lords, but the unsuccessful claimant of the heritage did not appeal. Alexander Barnett having called on the trustees to denude, they offered to comply on receiving exoneration; this, however, he refused to grant, on the ground that they had acted *ultra vires* in granting a lease of the heritage after the date of the multiplepointing, and that this lease was to be reduced. The Lord Ordinary ordained the trustees to execute and lodge in process a disposition of the heritage, and thereafter found Alexander Barnett entitled to borrow it from process and retain it as his own deed. Against that interlocutor the trustees reclaimed.