

all obtain a warrant from the Dean of Guild Court, and accordingly I can see nothing in the power given to this company which does not belong to other proprietors in Edinburgh. The Dean of Guild has therefore I think quite properly interfered to prevent the building in question going on until a proper warrant has been obtained.

I think, therefore, that the question on the merits is as clear as the question on the jurisdiction, and that this appeal fails to be refused.

LORDS MURE, SHAND, and ADAM concurred.

The Court refused the appeal.

Counsel for Appellants—Pearson—Graham Murray. Agent—Stuart Neilson, W.S.

Counsel for Respondent—Sol. Gen. Asher, Q.C.—Lang. Agents—Graham, Johnston, & Fleming, W.S.

Wednesday, May 27.

FIRST DIVISION.

[Bill Chamber.

RIDDELL v. THE CLYDESDALE HORSE SOCIETY AND OTHERS.

Interdict—Publication—Private Correspondence—Publication of Judicial Proceedings.

A society incorporated to aid in preserving the purity of a breed of horses proposed to publish and circulate among its members for their information a report of proceedings taken before a Court in America for the extradition of a party charged with forging false pedigrees to be inserted in their stud-book. In these proceedings letters had been read which were the property of a person in Scotland. These letters with the other proceedings had been reported in the American newspapers at the time. He sought interdict against the publication of the letters and the report. *Held* that the letters as well as the proceedings having been published already in reports of what took place in a public court, and it not being averred that the report complained of was unfair or inaccurate, interdict could not be granted.

Observed that the publication of the report along with an averment of malice might give rise to an action of damages.

The Clydesdale Horse Society was incorporated under the Companies Acts of 1862 and 1867. Its objects were the preservation of the purity of breed of Clydesdale horses, and the promotion of the interests of breeders and owners of these horses. The Society published a stud book, and took every precaution that the pedigrees registered in it should be accurate. About January 1883 the Society suspected that the names of certain persons affixed to alleged pedigrees given in to be registered by two brothers named David and Joseph Raeside were forged, and after cer-

tain investigations information was lodged with the Procurator-Fiscal of Lanarkshire, who thereafter caused to be apprehended David Raeside and a man named William M'Kinlay, a clerk of the complainer Riddell, on a charge of forging pedigrees.

Joseph Raeside was in America when the charge was made against him, and an application was made for his extradition that he might be brought to this country for trial. In the proceedings for his extradition evidence was led in December 1884 in Chicago before a Commissioner authorised by the District Court to hear extradition cases under the treaty between Britain and the United States. In the course of the proceedings a number of documents were read, and a considerable amount of oral testimony was submitted to the Commissioner.

The Government of the United States ultimately refused extradition, on the ground that the facts brought out in the evidence did not constitute an offence falling within the provisions of the extradition treaty.

At the time when William M'Kinlay was arrested he was a clerk in the employment of the complainer David Riddell, farmer and breeder of Clydesdale horses at Blackhall, Paisley, and he had in his possession a letter addressed by David Riddell to Joseph Raeside, and dated 21st November 1883, but which had not been posted to Joseph Raeside.

This letter was enclosed in a sealed envelope. Along with it there was enclosed in the sealed envelope a letter which had been written and addressed to Riddell by John M'Tier, farmer, Ladyfield, Dumfries, dated 16th November 1883.

At the time of his apprehension these letters were taken from M'Kinlay by the Procurator-Fiscal. Copies of them were sent to America and made use of in the proceedings for the extradition of Joseph Raeside, being read by counsel in the course of the case, and being published in the newspapers which had reported all the case. As the society had incurred large costs without having been able to bring Joseph Raeside to trial, it resolved to print a report of the proceedings in the extradition case, including the two letters referred to, for the use of its members, and a print thereof marked "private and confidential," and "printed for the information of members of the Clydesdale Horse Society of Great Britain and Ireland," was circulated among the members. It contained copies of the letters found on M'Kinlay.

David Riddell presented this note of suspension and interdict against the Clydesdale Horse Society, and against Patrick Stirling, Esq. of Kippendavie, and Sir Michael Robert Shaw Stewart of Greenock and Blackhall, Baronet, two of the council of the society, and against James Neil Hart, Procurator-Fiscal of Lancashire, praying that the respondents should be interdicted from printing and circulating (1) the two letters above referred to; and (2) the extradition proceedings taken against Joseph Raeside, as the report contained false and calumnious statements against the complainer. He averred that in the proceedings taken in America Mr M'Neillage, the secretary of the society, had appeared and given evidence. He was the author of many of the statements made in the proceedings, which the complainer averred

contained false and calumnious statements against him. He also averred that the report contained, besides the two letters above referred to, many false and calumnious statements against him.

The Clydesdale Horse Society averred that the whole proceedings which they proposed to print were held in open Court, and the most part appeared in the newspapers of the United States and also of this country. The letters were also printed in several "stock" papers, and were read in Court.

The respondent Hart averred that the letters in question had been handed by him to the complainer's agent in February before the note was presented.

The complainer pleaded that he was entitled to interdict against the proposed publication.

The Society pleaded that they were entitled to reprint proceedings in open Court for the information of their members.

On 25th February 1885 interim interdict was granted.

On 16th March 1885 the Lord Ordinary on the Bills (TRAYNER) recalled the interim interdict and refused the note.

"*Note.*—The complainer seeks to have the respondents interdicted from printing, publishing, circulating, or making any use of (1) two letters specified in the prayer of the note; and (2) of a report of the proceedings taken in America against Joseph Raeside for the purpose of obtaining his extradition on a charge of forgery and uttering. With regard to the proceedings against Joseph Raeside, it is plain from the newspapers produced that they have already been published both in America and in this country. They were proceedings openly and publicly taken in a court of justice. It is not said that the report of these proceedings which the respondents propose to circulate is garbled or unfair—that anything is reported to have taken place which did not take place, and that anything is reported as taken place otherwise than as actually occurred. In these circumstances I am of opinion that the respondents are entitled to publish, for the information of the members of the society, a report of the proceedings which took place in open court (see *Newton v. Fleming*, 10th March 1846, 8 D. 677, *rev.* 6 Bell's App. 175). I would have had more difficulty about the two letters, had it not been that they formed an integral part of the proceedings, were obviously read in open court, and one of them at least is published at length in several of the newspaper reports.

"The subject-matter of the proceedings referred to is one in which the members of the Clydesdale Horse Society have a decided interest, and it appears to me quite legitimate that the council of that society should communicate to the members whatever information it has upon the subject. The form in which it is now proposed to communicate that information does not appear to me such as should be interdicted."

The complainer reclaimed, and argued—The letters sought to be published were the complainer's private property. One of them was his letter in the hands of his servant, never put out of his power; the other was a letter addressed to him, and was his private property. They were wrongously taken from M'Kinlay. The Sheriff's warrant was to arrest M'Kinlay, not to search him. The

letters were confidential—see case of *Caddell*, June 1, 1804, 13 F.C. 375. The statements contained in these letters were capable of explanation, but if published without explanation they would be prejudicial to the complainer. The secretary of the company was actuated by malice towards the complainer, and the whole publication was intended to damage him. Interdict was competent.

Authorities—*Davis v. Miller*, July 28, 1855, 17 D. 1166; Short on Copyright, 31; *Bell v. Black and Morison*, June 28, 1865, 3 Macph. 1026; *Fleming v. Newton*, March 10, 1846, 8 D. 677; Bell's Notes to Hume, ii. 165; *Thomas v. Williams*, 14 Ch. Div. 864; *Hermann Loog v. Bean*, 26 Ch. Div. 306; *Thorley's Cattle Food Co. v. Massam*, 14 Ch. Div. 764; *James v. James*, L.R., 13 Eq. 424; *Quartz Hill Co.*, L.R., 20 Ch. Div. 501; *Stevens v. Sampson*, November 15, 1879, L.R., 5 Ex. Div. 53.

Argued for respondent—The proceedings proposed to be published and circulated took place in open court, and were published in the papers both in this country and America. It was virtually a reprint of these proceedings that the respondents proposed to issue for the benefit of the members of the society. Reports of proceedings in open court were privileged. The question of whether in the circumstances interdict should be granted was one for the Court.

Authorities—*Hale*, 3 Com. Pl. Div. 319; *Lewis, Ellis, Blackburn, & Ellis*, 537; *Weyson v. Walter*, L.R., 4 Q.B. 73; *Stevens v. Sampson*, 5 Ex. Div. 53; *White v. Dickson*, July 5, 1881, 8 R. 896; *Pritchard*, 2 Swanston, 413.

David Raeside had brought a similar process to interdict the proceedings at the extradition of Joseph Raeside.

The Lord Ordinary had also refused the note, and it was arranged that the decision in *Riddell's* case should rule it.

At advising—

LORD PRESIDENT—The prayer of this note of suspension consists of two parts. In the first place, it craves interdict against the publication, circulating, and making use of two letters—one addressed to the complainer Riddell by John M'Tier, and the other written by the complainer, and addressed by him to Joseph Raeside, in America, but not posted or delivered to Raeside. In connection with that there is also a prayer to ordain the respondent, the Procurator-Fiscal, to deliver up the letters to the complainer. The two letters in question have been delivered up to the complainer by the Procurator-Fiscal. They came into his possession with a view to criminal proceedings being taken in this country against certain parties; and these criminal proceedings having been now practically abandoned, the Procurator-Fiscal has very properly delivered back the two letters to the complainer. That, of course, puts an end to any proposal on the part of the respondents to publish these letters as separate documents. The second part of the prayer of the petition is to interdict the respondents from printing copies of the report of proceedings taken in 1884 against Joseph Raeside for the purpose of obtaining a warrant for his extradition under the treaty with the Government of the United States, in so far as the report of the proceedings contains false, malicious, and

calumnious statements against the complainer. Now, in the report of these proceedings the letters in question are set out at length, having been used in evidence in these proceedings. If the respondents are entitled to publish, as they propose to do—that is to say, to circulate among the shareholders of their company—a report of these proceedings, of course the contents of these two letters will appear. They will not be published as letters independently of the proceedings at all, but only as having been put in evidence there and read. The only question, therefore, turns upon this, whether the report of the proceedings in the United States is such a document or such a compilation as the respondents are entitled to publish. That depends upon whether it is a fair and accurate report of proceedings before a public court. I gather from the commencement of the report itself that the proceedings took place before the Commissioner specially authorised by an order of the Circuit Court for the district of Illinois to hear extradition cases. It appears very clearly that the Court in which these commissions proceeded is a public Court to all intents and purposes—a Court at which the proceedings are conducted in the public interest, and at which the public are entitled to be present. That being so, the only remaining question is whether the report of these proceedings which it is proposed to publish is an accurate and a fair report, and certainly there is no relevant averment to the contrary. It is not said that there is anything in the report which did not take place before the Commissioners in open Court, and it is not said that what is reported is inaccurately or unfairly reported. Therefore, if this is a fair and accurate report of the proceedings of a Court of competent jurisdiction, and if the proceedings are reported for a legitimate purpose, I do not see how it is possible to entertain this application for interdict. This is not the case of a book being got up for the first time as a report of these proceedings; they were all admittedly reported in the newspapers of the time, and this pamphlet is merely a reproduction of the newspaper reports. Accordingly, the view which the Lord Ordinary has taken is that this is a perfectly legitimate proceeding on the part of the respondents, and I agree with him. I do not think it is possible to sustain the suspension and interdict, or to give any countenance to the attempt to suppress the publication of the report, the object of which is that the unfortunate transactions which took place about the pedigree of certain Clydesdale horses should be published to the members of the society. I do not desire to give any opinion upon whether if that report is published in the manner proposed, it may not give rise to an action of damages. That is a totally different question.

The publication of these letters along with an averment of malice may give rise to an action of damages, while on the other hand an accurate account of the proceedings in a court of law will not *prima facie* give rise to an action of libel. Upon the whole matter, therefore, I agree with the Lord Ordinary, and am for adhering to his interlocutor.

LORD MURE—I am of the same opinion. The proceedings which the respondents propose to publish and circulate among their members took

place in open court in the United States, and they have already been published in the public press both here and in America. I cannot see any ground in equity or law for restraining the printing and publishing of this report among the members of the society who have a deep interest in its subject-matter.

The two letters are in a somewhat different position, and I agree with your Lordship in thinking that, provided there had been no proceedings in America, they could not have been published separately. Seeing, however, that they were used in evidence in the proceedings, I do not see upon what ground we can now prevent their being republished in the report of what then took place.

LORD SHAND—I cannot see that there is any material distinction between these two letters and the rest of the proceedings which the respondents are proposing to publish and circulate among their members. The question which we have to determine is, whether this Court will interdict the publication of the proceedings which took place in a court in the United States. It is not suggested in the record that the proposed report will not give a true and fair account of what took place in open Court, but it has been stated in argument that the object of this publication is not so much for the enlightenment of the members of this society as to gratify private malice. It is said that Mr M'Neillage, the secretary of the society, is actuated by malice, but I do not think it is well averred that it is he who is to be the publisher of the report. It is to be the society's report, and it is for distribution among its members that the publication is about to be made. Where the proposal is to publish legal proceedings which took place in open court, I do not see how we can interfere to stay by interdict the publication of these proceedings. If anyone can shew that the real object of publishing this report is to gratify private malice, and that he is damaged thereby, he can obtain his remedy by means of another action.

I therefore agree with your Lordships that we should affirm the interlocutor of the Lord Ordinary, as it is clear that the authorities are not going to take proceedings in the matter, or perhaps a somewhat different question might have arisen.

LORD ADAM—I concur and have nothing to add.

The Court adhered.

Counsel for Reclaimer—Brand—Lang. Agent—John Gill, S.S.C.

Counsel for the Society (Respondents)—Mackintosh—Graham Murray. Agents—J. & J. Ross, W.S.

Counsel for Hart (Respondent)—Mackay. Agent—C. B. Logan, W.S.