

ther the truth of the defamation would excuse it. With regard to the law of England; authors differed on that point, and therefore no recourse could be had to such authority.

No. 3.

The Court, 8th August 1776, pronounced the following interlocutor: "The Lords having advised this petition with the answers, they adhere to their former interlocutor reclaimed against, and refuse the petition; and having advised the condescendence of damages and the account of expenses, modify the expenses to £52. 10s. Sterling in full, for which sum, and the expenses of extracting the decret conform to the collector's certificate, they decern; and as to damages, in respect of the behaviour of Robert Scotland, find him entitled only to £5. Sterling of damages; but as to John and David Scotlands, find them entitled jointly to the sum of £25. Sterling of damages, and decern."

Lord Ordinary, *Gardenstone.*  
Alt. *Ilay Campbell et Crosbie.*

Act. *Rae, Dean of Faculty Dundas.*

J. W.

\* \* \* This judgment was affirmed on appeal.

1808. May 18.

REV. DR. ALEXANDER HUTCHISON, *against* JOHN NAISMITH.

THE pursuer and defender resided in contiguous properties; and, from various causes, there existed a considerable degree of mutual irritation.

The defender had let to the pursuer a stable and an open shed connected with it. In winter 1803, the pursuer subset these premises to Mrs. Mitchelson. The lady obtained permission from the defender to put doors on the shed, provided they became the property of the defender at the end of the term. These doors having been put on; and at the end of the term, Mrs. Mitchelson having removed, the pursuer, under a misapprehension that they belonged to her, took down the doors, and laid them aside, till he should receive instructions from her with regard to them. At Whitsunday 1804, the term of the pursuer's removal, the key of the stable was sent to the defender by a servant, who being required to deliver the key of the shed also, said, that the doors, with their locks and keys, having been put up, were likewise taken away by Mrs. Mitchelson.

Whereupon the defender addressed (19th May 1804) the following letter to the pursuer:

No. 4.

Publication not necessary to warrant an action of damages for injurious and defamatory expressions in a letter.

No. 4. “ Reverend Sir,

“ You sent a message by your church-officer, Thomas Leiper, to Mrs. Naismith, on the 16th, importing that there were no lock or doors on the shed ; that Mrs. Mitchelson, who put on the doors, had taken them away. I find this is as false as many of your other assertions. Mrs. Mitchelson has assured me that she was not in the knowledge of the doors being removed ; and was much surprised to see that they were gone when she rode past the place on the 17th ; and she has now given me authority to recover these doors and padlock, and use them as Mrs. Naismith’s property.

“ As there is good ground to believe that you have feloniously carried them off, if you will restore them in their former situation, you will save me the disgustful task of exposing you to the ignominy which your conduct has deserved. I am,” &c.

(Signed) “ JOHN NAISMITH.”

P. S. I must remind you to keep up your poultry.”

The pursuer answered, (25th May 1804.)

“ Sir,—Yours of the 19th came to my hand only yesterday. Leiper must either have mistaken my message to Mrs. Naismith, or he must have been misunderstood. The message was, that I had taken off the doors of the shed, as they belonged to Mrs. Mitchelson, and laid them by to be at her disposal. Of this I gave her information by letter on the 15th current ; and whenever I receive her orders, they shall be disposed of accordingly. As to the falsehoods and felonies you allege upon me, they are wholly unfounded, and below my notice, till you think fit to publish them. Your tongue or your pen will not blot my character. Wishing you a better temper, I am,” &c.

(Signed) “ ALEX. HUTCHISON.”

And the defender replied, (May 29th 1804.)

“ Reverend Sir,

“ I thank you for the pious wish you expressed for the amendment of my temper, as well as for the pains you have taken to try it. By your own confession, the felony is established, which you say I have without foundation alleged, having owned that you carried off the property of another, without the knowledge and consent of the owner. I am equally well founded in charging you with falsehoods, of which I have ample proof. With respect to the last, there can be no misunderstanding. Having ground to doubt the truth of the message you sent by Thomas Leiper, he was made to repeat it ; and after I had written it *verbatim*, he subscribed it. You may get Leiper to father the falsehood for you ; but it will be a falsehood, whether it be

“ below your notice or not. Your character cannot be blotted except by your  
 “ conduct ; and I hope my tongue and pen will never be employed in the base  
 “ office of injuring the feelings and character of an innocent person. Perhaps  
 “ I might think it my duty to tear the sheeps clothing from an wolf, but in the  
 “ present case that is done to my hand ; and when you make restitution of the  
 “ door and padlock I have done with you. I shall therefore take a final  
 “ leave with returning my wish for your amendment.”

These letters were not published, nor was the defamatory matter contained in them uttered in the presence of any person. The pursuer raised an action, concluding for damages and reparation ; and “ That the said letters are  
 “ slanderous and defamatory ; and the said John Naismith has been guilty of  
 “ slander, defamation, and injury against the pursuer, crimes for which he is  
 “ highly punishable, the more especially where those are committed against a  
 “ minister of the gospel.”

The Lord Ordinary (Cullen) pronounced (Nov. 19, 1806,) the following interlocutor : “ Finds, that as the present action is chiefly founded on two let-  
 “ ters the one dated from Hamilton, 19th May 1804, and the other from Hamil-  
 “ ton, 29th May 1804, both which the defender acknowledges to have been  
 “ written to him by the pursuer, it is therefore unnecessary to involve the par-  
 “ ties in any proof ; and in respect the said letters are written in the most cruel  
 “ and intemperate terms, and manifestly tending, without any ground or rea-  
 “ son, to wound the pursuers mind, and vilify his character, and destroy his  
 “ usefulness as a minister of the gospel ; Finds the letters highly injurious and  
 “ calumnious, and such as thereby fully entitle the pursuer to reparation ;  
 “ and therefore finds the defender liable to the pursuer in the sum of £50.  
 “ Sterling of damages and solatium ; and farther finds the defender liable in  
 “ expenses ; and allows an account thereof to be given.”

The case came by petition and answers before the Inner-House.

Argument of the defender.

The letters libelled on never having been published, but having been sent privately to the pursuer himself, do not afford any ground for an action of defamation. A design to injure and defame is indispensable to support an action of defamation ; and of this design, activity in publishing, and a malicious industry in circulating the injurious charge, is the evidence which the law requires. In the present case the defender has neither been guilty of an intention to defame, nor of actual defamation ; and the letters have reached the public only through the means of the pursuer himself.

Argument of the pursuer.

The action concludes for damages arising from an injury *sui generis* as well as from defamation. For every wrong there is a remedy ; and the law provides redress, not only against wounds or violence committed on the body, but for those inflicted on the mind, and publicity of commission, however it may

No. 4. aggravate, is as little required to constitute any injury in the one case as in the other. Accordingly damages were awarded for injurious expressions contained in a silent letter, and so conveyed to the person injured, Carter against Crighton, 1778, (not reported.) To any man, but more particularly to a clergyman, the charges of falsehood, felony, and hypocrisy, are injuries of the most painful and aggravated nature.

The Court agreed in opinion with the Lord Ordinary, a very serious injury had been inflicted on the pursuer, whose feelings on the subject of character, from his sacred function, are entitled to the peculiar protection of the law.

On advising a reclaiming petition and answers, (18th May 1808) the Lords adhered.

Lord Ordinary, *Meadowbank.*

Act. *Ad. Gillies.*

Alt. *Jas. Moncrieff.*

*Ar. Millar, W. S. and Jo. Granger, W. S. Agents.*

*F. Clerk.*

*J. W.*

*Fac. Coll. No. 40. p. 143.*