

other evidence. It appeared that the pursuer joined the newspaper in 1856, when he went into a partnership with a Mr M'Cormick. Each partner was to put £500 into the concern, and afterwards to add £150 more. The pursuer put in his £650, and drew an average income of £120 a-year, which was not paid out of capital, because he has since sold his interest to his partner for upwards of £700. But beyond the matter of emolument derived from the paper, the jury really had nothing to do with all the evidence that had been led as to its success or otherwise. If they were satisfied that the pursuer had been incapacitated from earning his income by reason of his injuries, then his income was an important matter, but for any other purpose the evidence was of no consequence. The pursuer says that he is still suffering seriously from the injuries, and in this he was corroborated by Dr Moore, who said he should not hereafter engage in any exciting work, and that he should not advise an insurance company to have anything to do with insuring his life; by Dr Purdom, who said he should not undertake any work involving continuous effort of the brain; and by his friend Mr Steel, a clergyman who had not seen him since before the collision until yesterday, and who said that he was so much struck with the change in his appearance since he had last seen him that he burst into tears. As to the pursuer's mental attainments they were said to have been not very high; but, however that might be, he was able enough to do his work as editor of the newspaper, such as it was. His Lordship concluded by telling the jury that the question as to how they were to estimate the damages depended upon a consideration of various elements, which might strike different persons in different ways, and of which they were the best judges; but the case they had to consider was that of a clergyman, who had no charge, and had gone into a secular kind of life, who was earning £120 a-year by his personal exertions, and who has now been, if the medical men are right, thrown into poverty through the admitted fault of the defenders.

The jury, after an absence of about half an hour, returned a verdict for the pursuer, and assessed the damages at £1500.

*Friday, Saturday, and Monday,
March 23, 24, and 26.*

PROUDFOOT v. LECKY.

Reparation—Master and Servant—Wrongful Dismissal—Justification. In an action by a servant against his master for damages for wrongful dismissal, the master pleading justification—verdict for the pursuer—damages a farthing.

Counsel for Pursuer—Mr Gifford and Mr Alex. Moncrieff. Agents—Messrs Wilson, Burn, & Gloag, W.S.; and Messrs Moncrieff, Paterson, Forbes, & Barr, writers, Glasgow.

Counsel for Defender—The Lord Advocate, the Solicitor-General, and Mr G. H. Pattison. Agents—Mr R. P. Stevenson, S.S.C.; and Mr W. R. Buchan, writer, Glasgow.

In this case George Proudfoot, merchant in London, and residing at St Paul's Place, Canonbury there, is pursuer; and Moncrieff, Paterson, Forbes, & Barr, writers, Glasgow, are his mandatories; and Francis Boyce Lecky, linen merchant in Glasgow, and residing there, and also carrying on business in London under the firm of Lecky & Jennings, is defender. The following is the issue:—It being admitted that the pursuer was employed and acted as manager of the defender's business in London, in terms of agreement, No. 7 of process:

"Whether, on or about 5th August 1864, the defender wrongfully and illegally dismissed the pursuer from his service—to his loss, injury, and damage?"

Damages laid at £1500.

By an agreement between the pursuer and defender, dated the 22d of November 1859, the pursuer bound and obliged himself to enter upon the service and employment of the defender as manager of his business in London, and faithfully and diligently to manage and conduct the same for and on behalf of the defender for the full space of seven years from and after the 1st November 1859, during which space the pursuer engaged to devote his whole time and attention to the business, and to prosecute the same to the utmost of his ability, and also engaged not to be concerned in any other business or employment whatever, directly or indirectly. In consideration of the services thus stipulated for, the defender bound and obliged himself not only to make payment to the pursuer of a salary of £200 per annum, to be payable quarterly, "but in case in any period of six months the profits arising from the said business shall be found to exceed £300, after paying the said salary, interest on capital, and all other expenses, then the said George Proudfoot shall also receive, by way of additional salary, a commission of 25 per cent. on the excess of profits over and above that sum, and which profits shall be ascertained once every six months by a balance to be then made up by the said George Proudfoot under the inspection of the said Francis Boyce Lecky." The business was that of disposing in London of linen goods. The defender purchased the goods chiefly in and around Belfast, from whence they were forwarded to London. As the pursuer's remuneration over and above his fixed salary depended on the amount of the profits, he had an interest to be satisfied that the purchase price of the goods was correctly stated by the defender, and that the profit was correctly ascertained, as provided for by the agreement. Accordingly, on 28th November 1859, within a week after the date of the agreement, the defender wrote to the pursuer—"I have arranged that all invoices come here, and that I charge you with them; but to make matters satisfactory to you, that when all accounts are chequed off each six months, that the original invoices will be compared with those you get from me. As I will have to settle all accounts, and may be buying from the same manufacturer for this and the London account, it will be necessary for original documents to be kept here." To this the pursuer replied on the following day—"Your arrangements as to invoices quite satisfactory."

Under this arrangement the parties acted harmoniously together until 1863, the pursuer having such confidence in the defender that he docketted the half-yearly balances without examining his books and invoices. In 1863, however, a coolness arose betwixt them; and when the balance was made out in April 1864 the pursuer declined to docket it, on the ground that it was not satisfactory to him. The pursuer proceeded to Glasgow on 26th July 1864, and next day saw the defender in his office in Glasgow. The pursuer admitted that he had left London without telling the defender of his intention to visit Glasgow, his explanation of this being that he believed the defender would have kept out of his way if he had done so. At the interview which took place, the defender at first expressed his readiness to exhibit his books and invoices, but in conversation they got upon the old cause of quarrel in 1863, and according to the defender's account the pursuer told him that he did not believe what he said in regard to it. The pursuer denied having said that he did not believe the defender, but admitted that he implied as much in what he did say. The result was that the defender told the pursuer that he had to go to Belfast until the following Wednesday, and that he would not show him the books and invoices at that time. The defender returned from Belfast unexpectedly on Sunday the 31st July; and on Wednesday, 3d August, wrote the pursuer, in answer to a letter which he had written, desiring him to return to his duties in London, otherwise

he would at once dismiss him. The pursuer did not return when so desired, and on 5th August the defender wrote him a letter dismissing him. At the same time he telegraphed to his solicitor in London to get the warehouse taken possession of. The pursuer left for London on the evening of the 5th, but on his arrival he found the warehouse locked against him. He thereupon raised an action for count and reckoning, and payment of the commission due to him, and for damages for wrongful dismissal. It was the latter branch of this action only that formed the subject of the present trial, which was commenced on Friday evening and terminated yesterday.

Lord BARCAPLE, in his charge to the jury, said—Cases founded upon wrongful dismissal, where the dismissal is sought to be justified, are usually of a very simple kind. The question generally is whether the servant has committed a fault of such magnitude as to justify dismissal? But here there is a combination of matters alleged against the pursuer; and these combined may justify dismissal, although possibly each one taken by itself might not. The first matter I may allude to is the statement on record by the defender, that the pursuer had been frequently at the warehouse in a state of intoxication, and unfit for business. This was not known to the defender when the dismissal took place, and it might have involved a question of law as to whether you were entitled to regard any matter which could not be in the defender's mind at the time of dismissal. But I am relieved from giving any opinion on this legal question, and you are also relieved from considering the matter, because the charge has been virtually abandoned by the counsel for the defender, and I think it right to say that it was not proved. The pursuer admitted that there was sometimes jollification in the warehouse; but intoxication was only spoken to by one witness, who has not been corroborated. In 1863, a coldness seems to have arisen, in consequence of the pursuer suspecting that the defender wished to transfer him to the employment of Tillie & Henderson—a matter in regard to which the pursuer seems to have been entirely mistaken—but there was no decided breach until July 1864, when the pursuer went to Glasgow without giving any notice of his intention, because, as he thought, the defender would try to avoid him if he knew of his coming. That indicated a most unfortunate state of mind on the part of the pursuer. In the course of the interview that took place, the defender says expressions were used to him by the pursuer which justified his dismissal. Both parties are agreed that the cause of this was the recurrence to the dispute of 1863, which was introduced into the conversation by the defender. You will judge of the evidence of what passed on this occasion. Mr Brown, a clerk, heard through a partition what took place, and he was of the impression that he heard the pursuer say the defender was no gentleman. That was certainly a strong thing to say, if it was said. The defender's next ground of justification is that the pursuer disobeyed his order to return to London. The pursuer says he proposed to the defender to wait in Glasgow until the defender's return from Belfast. The defender says the pursuer had told him he was to return on the Monday. He did not remember whether at the interview he had told him to return. The pursuer's letter of 27th July, written immediately after the interview, rather shows also that he had intended to return on the Monday. But he went off with his wife to the Highlands, and did not return to Glasgow until the Tuesday, and on 3d August he was ordered in writing to go back to London, but he did not do so until the 5th. The defender's next ground of justification is that the pursuer had made false and improper statements in regard to him to third parties. Mr Sinclair gave evidence that the pursuer had said to him of the defender that he dealt in an underhand way with the buyers of the houses he did business with. The defender

said nothing about this at the time, but he was quite entitled now to ask the jury to take it into account. Again, when the defender was in London he told Mr Sinclair that he could not be present at his daughter's marriage because his own mother was dying, and he required to go home; and the pursuer is said to have told Mr Sinclair in regard to this that it was all a pretence, and that he had left London to avoid him. The pursuer had also made statements as to the dispute about Tillie & Henderson, in regard to which, as I have said, he was mistaken. Then, again, he told Mr James Sinclair that the defender was endeavouring to prevent consignments being made to him, so as to save his commission, and that the defender was a "low, sneaking fellow." You will judge of the evidence as to all these matters, and say whether they are proved, and whether, putting them altogether, they form a sufficient justification of the dismissal. This was peculiarly a question for a jury. It is quite true that the pursuer was only a servant in one sense; he was the defender's agent and representative in London, and while he was entitled to considerable latitude and consideration, it is also to be kept in view that from a person occupying the position he did, there were expected a carefulness and gentlemanlike propriety in his conversation with others in regard to his principal which are not looked for from an ordinary or untried servant. The question is, has he gone beyond the proper boundary? If you come to be of opinion that the defender was justified in dismissing the pursuer, then the manner in which it was done is immaterial. But if, on the other hand, you think that he was not justified in dismissing him, then you will consider the circumstances under which the defender carried out his resolution, and these you will take into view as aggravating the damages which in that case you will find to be due to the pursuer.

The jury, after an absence of an hour and ten minutes, returned a verdict for the pursuer, and assessed the damages at one farthing.

Monday, March 26.

(Before Lord Kinloch.)

PRINGLE v. HOOD AND OTHERS.

Counsel for Pursuer—Mr Fraser and Mr Brand. Agents—Messrs Wotherspoon & Mack, W.S.

Counsel for Defenders—The Solicitor-General and Mr J. R. Davidson. Agents—Messrs Hill, Reid, & Drummond, W.S.

In this case, in which Andrew Monilaws Pringle, residing in Cumberland Street, Edinburgh, assignee of Miss Helen Pringle, residing there, conform to assignation by her in his favour, dated 1st October 1862, is pursuer; and Walter Hood, farmer, Lawhouses, Haddingtonshire, and others, trustees of the deceased John Hood, farmer, are defenders, the following were the issues:—

- I. "Whether, on or about Whitsunday 1843, the late John Hood, tenant Newmains, received from the trustees of his then deceased wife a legacy of £400, left by her to Helen Pringle, her niece? And whether the defenders, as trustees of the said John Hood, are due and resting-owing the said sum of £400, with interest, to the pursuer, as assignee of the said Helen Pringle?"
- II. "Whether, on or about Whitsunday 1843, the said John Hood received from the said Helen Pringle the sum of £150, to be taken care of by him for her behoof? And whether the defenders, as trustees of the said John Hood, are due and resting-owing the sum of £150, with interest, to the pursuer, as assignee of the said Helen Pringle?"
- III. "Whether, on or about Whitsunday 1849, the said Miss Helen Pringle left in Newmains farm-house, occupied by the said John Hood, in