

and opposing the conclusions hereof" should be ordained to pay expenses. Well, they ought to have weighed well what would be the results to them, and they must be taken to have done so. The one question is, Who were the antagonists of pursuers in the action? and when these are found, then, according to reason and the practice of the Court, they are entitled to a decree for expenses against them.

LOED RUTHERFURD CLARK—I agree with your Lordship and Lord Craighill.

The Court approved of the Auditor's report, and granted decree for the amount of the expenses against the Glasgow Feuing and Building Company, William Barr Crawford, James Pollok, Hugh Herron, and David Bird.

Counsel for Pursuers—R. Johnstone—Alison. Agent—R. Ainslie Brown, S.S.C.

Counsel for Defenders—M'Kechnie—Shaw. Agent—Thomas Carmichael, S.S.C.

Saturday, May 21.

SECOND DIVISION.

[Lord Lee, Ordinary.]

M'MURCHY v. CAMPBELL AND MACLULLICH.

Reparation—Slander—Public Official—Averment of Malice—Relevancy.

In an action of damages for slander at the instance of a police sergeant against his superior officer, in respect of statements contained in an official report—*held* that the action was irrelevant because there was no special averment of facts and circumstances from which malice could be inferred.

This was an action of damages for slander at the instance of Donald M'Murphy, sometime sergeant of police at Oban, against Peter Campbell, late inspector of police, Oban, and John Campbell MacLulich, S.S.C., Procurator-Fiscal, Inveraray.

The ground of action was that the defenders, on or about 19th September 1885, "acting in concert together or separately, or one or other of them," prepared a report concerning the pursuer, which they sent, signed by the defender Campbell, to Colin M'Kay, Chief-Constable of Argyleshire, in which there was this statement—"I have to report you alleged misconduct on the part of Sergeant M'Murphy, Oban, which, if found on investigation to be true, will seriously affect his moral character. What I am about to state is well known at Inveraray among all classes (including P.-F.), at Taynafaed public-house, and the post-boys at Dalmally Hotel. On the 1st or 2d January 1884 M'Murphy took Alexander Gillies, a boy prisoner, from Bonaw to Inveraray, charged with theft, and it is alleged that while at Inveraray on that occasion, and in broad daylight, he had a woman named Jessie Luke, who is considered a prostitute with two or three illegitimate children, in Buntine's Hotel; that he pulled down the blinds, got whisky, and locked the door, and had the woman there for about two hours, and I need hardly say what is supposed to have taken place. . . . M'Murphy

took the woman Luke in the conveyance to Taynafaed public-house that night, gave the driver, Angus M'Intyre, drink, and kept him waiting outside till the poor old man got benumbed, the result being that the driver was put down for being drunk, by Fraser, when he arrived at Dalmally, dismissed, and has not driven a conveyance since. Again, in June last, M'Murphy had Luke in the conveyance with him, Duncan M'Callum, driver, from Inveraray to Taynafaed, where there was some delay." . . . The report concluded—"Of course an independent investigation must be made into all these allegations in the interest of the public and for the purity of the police force."

The pursuer averred—"These statements regarding the pursuer are unfounded and malicious falsehoods, and represented the pursuer to have acted as an immoral and dissolute person, and to be unworthy of employment in the police force." He stated that in consequence of the report having been sent to the Chief-Constable he had been suspended for two weeks, but that he had been reinstated after the charges had been investigated by the Police Committee at Inveraray, and found to be without foundation.

The defender Campbell stated in answer that the facts contained in the report were currently reported about Inveraray and Dalmally. This the pursuer denied. Campbell further stated, that as the pursuer's superior officer, and in the discharge of his duties, he had made the report to the Chief-Constable.

The defender MacLulich stated that he had no knowledge of the report until a copy of it was sent him in his official capacity by the Chief-Constable.

The pursuer further averred—"The above-mentioned false and calumnious charges against the pursuer were made and circulated by the defenders maliciously, and without any just or probable cause. The defenders were actuated by a feeling of ill-will against the pursuer, and a desire to damage his character and deprive him of his situation in the police force."

Campbell pleaded privilege.

Issues were ordered, and on 25th March 1887 the Lord Ordinary (LEE) found that the pursuer's allegations were not relevant and sufficient to support the action, and assoilzied the defenders.

Note.—When issues were ordered in this case it was understood that the question of relevancy was to be raised upon the issues, and accordingly a discussion upon the relevancy took place.

"The case is a peculiar one, but as it involves a question of general importance in actions of slander based upon statements contained in an official report, or what purports to be an official report, I shall state the grounds upon which I have arrived at the conclusion that the action is irrelevant.

"The pursuer was a sergeant in the Argyleshire police, the defender Campbell was an inspector of police in the same force, and the defender MacLulich was and is Procurator-Fiscal of the county. The only slander complained of in the issues proposed is that set forth in condensation, art. 2, and it is said to have been contained in the written report or statement there referred to. That statement or report bears to be written by the defender Campbell,

and to be addressed to the Chief-Constable of the county. It is not said that the other defender (the Procurator-Fiscal) either signed it or authorised it, and it does not appear to have been written on the responsibility of any person excepting the defender Campbell. All that is alleged in order to connect with it the defender Macullich is, that 'the defenders acting in concert together or separately, or one or other of them, prepared a report or written statement,' and in reply to Macullich's statement in answer it is 'averred that the said defender acted in concert with the defender Campbell, and was in full cognisance of and party to the writing of the alleged report.'

"In this state of the record, and looking to the terms of the letter, I think that there is no sufficient allegation that the slander was uttered by the defender Macullich, and that on this ground alone the action fails as against him. Assuming the fact to be that he was cognisant of it and was consulted about it, and a party to it in the sense of approving of Campbell writing it, this would not be sufficient to make him responsible for its contents unless he knew that the statements contained in it were falsehoods, which is not averred.

"As to the case against Campbell the record discloses the fact that the report was made by him in his official capacity, and to his superior officer the Chief-Constable. It does not profess to vouch for the truth of the statements concerning the pursuer, but only that such misconduct was alleged, and that the allegation was current at Inveraray. It assumes and states that 'of course an independent investigation must be made.'

"In this state of matters I think that the case is one in which it was not enough for the pursuer to allege malice in general terms, and that it was incumbent on him to set forth the facts and circumstances from which he is to maintain that malice may be inferred. He avers that the statements 'are unfounded and malicious falsehoods,' and he denies that any report affecting his moral character was ever current 'as alleged in ans. 2.' But he does not allege that the alleged rumours were inventions by the defenders, or that the report was made to the Chief-Constable recklessly or without probable cause. He states that the information referred to in condescence 3 was given without probable cause as well as maliciously, but no issue is proposed as to that matter, and no want of probable cause is alleged as regards the report in question. My opinion is that the statements contained in the report to the Chief-Constable, being made by a person within whose duty it was to report matters affecting the character and efficiency of the police force, and as statements requiring investigation, are not actionable if there was probable cause for so reporting them. I therefore think that the general averment of malice is insufficient, and that the action cannot be maintained.

"The case of *Craig v. Pebbles*, 3 R. 441, and the opinion of the Judges in that case, though relating to an action against a Procurator-Fiscal for slander in a complaint before the Justices of Peace, appear to me to apply with equal force to slanderous statements contained in an official report. I may refer also to the case of *Green v. Chalmers*, 6 R. 318, on this point."

The pursuer reclaimed, and argued that there was a sufficient averment of malice and want of probable cause—*Adie v. Gowans and Ferguson*, January 16, 1847, 9 D. 495.

Counsel for the defenders were not called upon.

At advising—

LORD JUSTICE-CLERK—It may appear hard, but I think that the pursuer can have no remedy in this action. I think the Lord Ordinary was right. The statement of the defender means that he acted in the course of his duty, and that he did in fact act in discharge of his duty in so sending in his report, and that he would have been culpable if he had not done so. Certain reports as to the pursuer's conduct had been circulated, and Campbell as his superior officer makes a report on them to the Chief-Constable. The statements in the report were upon investigation found not to be substantiated, but standing as they do in an official report, and without any substantial allegation of malice, I do not think they form any ground for an action. I think the Lord Ordinary is right.

LORD YOUNG—I am of the same opinion. With respect to the Procurator-Fiscal, no case has been stated against him, and with respect to the Inspector of Police I think the action is not relevant. Our law with respect to defamatory statements said to have been made by public officers in the discharge of their duty, and alleged to be untrue, is not very mature, and perhaps it is creditable that it is not matured, because cases of that kind are of the rarest occurrence. The ordinary cases of libel are those among ordinary citizens, but it is only within living memory that it was decided that an action would not lie against a Judge in this Court for statements made by him on the bench. I think it was only so decided in an action against Lord President Hope for observations made by him upon the bench in the course of an action. But it was conclusively decided on grounds of expediency and of the public interest that no action would lie against a judge upon any allegation whatever. It was thought so desirable that judges should be able to make any remarks that seemed proper to them on the cases before them without fear of an action for libel. If the bounds of judicial duty should be transgressed there may be a remedy in Parliament. Again, with regard to prosecutors, I do not know that it stands on any decision at present, but rather on generally received opinion, that no action would lie against the public prosecutor, such as the Lord Advocate, for any averment made in the discharge of his duty upon the allegation that it is false and made maliciously. It is thought to be in the public interest that no action should be allowed. I think I am right in saying that it is only within the last ten years that it has been decided in England—I do not know that it has been decided in Scotland at all—that an action of damages for slander does not lie against a witness, for slander uttered in the witness-box, on the ground that it was malicious. Now, although it may not be necessary for the decision of this case, I have no objection to indicate that in my opinion it is not in the public interest, or for the purity of the police force, that an action for libel should lie against a public officer for statements

made in a report by him to a superior officer upon the conduct of an inferior. Again, it may be a hardship that there should be no redress for such suffering, but I think, on grounds of public interest and expediency, when such a report has been made, I should require a much more exceptional statement of malice than what we have here.

LORD CRAIGHILL concurred.

LORD RUTHERFURD CLARK—I concur. I think that in refusing this reclaiming-note we are doing the best thing for the pursuer himself, because it is plain that he could not win even if he did get a trial. On the question of the action against Campbell I have some hesitation. It is averred that no reports such as those which were alleged were in circulation in the district, and what was meant by that was that the defender Campbell, in making his report, invented these charges, and asked for an investigation to be made into them. It is an extraordinary statement, but it may be relevant. But if he wanted to make out that case he ought to have made it clearer. There are no special facts stated here from which we may infer malice. The rule of law as usually laid down is, that special facts and circumstances must be stated from which malice may be inferred—*Scott v. Turnbull*, July 18, 1884, 11 R. 1131—and although I cannot say that I altogether agree with the rule so broadly stated, I think this is a case in which it may be properly applied.

The Court adhered.

Counsel for Pursuers.—Rhind—A. S. Patterson.
Agent—J. D. Macaulay, S.S.C.

Counsel for Defender Campbell.—Forsyth.
Agent—Robert Emslie, S.S.C.

Counsel for Defender MacLullich.—M'Kechnie.
Agent—Thomas Carmichael, S.S.C.

Thursday, May 26.

FIRST DIVISION.

[Exchequer Cause.

THE INCORPORATION OF TAILORS IN GLASGOW v. THE COMMISSIONERS OF INLAND REVENUE.

Revenue—Customs and Inland Revenue Act 1885 (48 and 49 Vict. cap. 51), sec. 11, sub-sec. 3—Corporation Duty—Exemption.

The Customs and Inland Revenue Act 1885 by section 11 imposes a duty of 5 per cent. upon the income of all real and personal property belonging to or vested in bodies corporate or unincorporate, but exempts, by sub-section 3, the income of property "legally appropriated . . . for any charitable purpose."

The property belonging to the Incorporation of Tailors in Glasgow was derived from the accumulations of entry-money paid by the corporators. The bye-laws of the Incorporation provided that its funds were to be applied in maintaining decayed members,

their widows and children, but conferred upon the administrators of the fund a discretionary power as to each application. *Held* that though the property was "legally appropriated" within the meaning of the section, so as to confer a right upon the corporators as a class to demand that it should be applied in terms of the bye-laws, yet, as this right depended upon the consideration given, by payment of entry-money, the purpose was not a charitable one entitling the property to exemption.

The Commissioners of Inland Revenue, acting under the provisions of the Customs and Inland Revenue Act 1885, sections 11 to 20, assessed the property belonging to the Incorporation of Tailors in Glasgow as chargeable to the extent of £2602, 0s. 4d. of income, with duty at the rate of 5 per cent. amounting to £130, 2s.

The Incorporation presented this petition and appeal against the assessment on the ground that their property was exempt under sub-section 3 of section 11.

Section 11 provides—"Whereas certain property, by reason of the same belonging to or being vested in bodies corporate or unincorporate, escapes liability to probate, legacy, or succession duties, and it is expedient to impose a duty thereon by way of compensation to the revenue: Be it therefore enacted, that there shall be levied and paid to Her Majesty in respect of all real and personal property which shall have belonged to or been vested in any body corporate or unincorporate during the yearly period ending on the 5th day of April 1885, or during any subsequent yearly period ending on the same day in any year, a duty at the rate of five pounds per centum upon the annual value, income or profits of such property accrued to such body corporate or unincorporate in the same yearly period, after deducting therefrom all necessary outgoings, including the receiver's remuneration, and costs, charges, and expenses properly incurred in the management of such property. Subject to exemption from such duty in favour of property of the descriptions following (that is say)—. . . (3) Property which, or the income or profits whereof, shall be legally appropriated and applied for any purpose connected with any religious persuasion, or for any charitable purpose, or for the promotion of education, literature, science, or the fine arts."

The Incorporation of Tailors came into existence in virtue of a charter granted for the protection of trading, in 1546 by the Magistrates and Council of the burgh of Glasgow, and that charter was renewed or confirmed by another in 1569.

The Act of 1846 (9 and 10 Vict. cap. 17) for the abolition of the exclusive privilege of trading within burghs applied to the Incorporation of Tailors. Bye-laws and regulations were thereafter passed by the Incorporation at different times, and were approved of by the Court of Session on 15th July 1880.

The bye-laws made this provision, *inter alia*:—"It is declared and enacted that pensions may be awarded to decayed members, and the widows and children of deceased members in indigent circumstances, or an amount expended for their behoof, to such extent as the Deacon and Masters consider suitable; and this allowance shall be payable only during their pleasure, and no person shall have or acquire a legal title to share the funds of the