

Saturday, March 8.

FIRST DIVISION.

[Lord Wellwood, Ordinary.]

COCKBURN v. REEKIE.

Reparation—Slander—Issue—Innuendo.

Held that the words "I will put you in prison," used by a head clerk in a company to one of the clerks under him, were not actionable, and would not support the innuendo that the person to whom they were addressed had been guilty of such criminal misconduct as would warrant his being apprehended on a criminal charge and thereafter imprisoned.

This was an action by William Russell Cockburn against Thomas Reekie for £500 as damages for alleged slander.

The pursuer was a clerk in the employment of the London and Edinburgh Shipping Company, Leith, from October 1877 down to 18th November 1889, and the defender was cashier and managing clerk in the same company.

The pursuer averred that for some time past the defender had entertained feelings of hostility and malevolence toward him, and had done everything in his power to injure him in his reputation and prospects. In particular he averred—" (Cond. 5) On 18th November 1889, the pursuer, finding the work of his department rather heavy for him to undertake efficiently, wrote to the defender a most courteous and respectful letter, suggesting that some assistance should be given him to enable him satisfactorily to overtake the said work. The defender, on receipt of said letter, on the date above mentioned sent for pursuer, and in the head office of the said Shipping Company, in Commercial Street, Leith, asked him, 'What the hell do you mean by sending me this letter?' and attacked the pursuer in most violent and abusive language. Towards evening of the same day the defender came up to the pursuer's desk in the clerks' room, in the said Shipping Company's office, and after some abusive language, said that 'he had a d—d presumption,' and charged him with being incompetent for the duties of his office. Defender then called on pursuer to resign his post at once, and pursuer said he was willing to do this. Thereafter the defender, in the presence of Mr Seater and Mr White, both clerks in the said shipping office, and in their hearing, also stated to the pursuer, 'I will put you in prison,' thereby meaning it to be understood that the pursuer had been guilty of such criminal misconduct as would warrant his being apprehended on a criminal charge, and thereafter imprisoned. The said charge is false and calumnious, and the words were used by defender maliciously and without probable cause. No provocation was given by the pursuer."

On 4th February 1890 the Lord Ordinary (WELLWOOD) fixed the following issue for trial of the cause:—"Whether on the 18th

day of November 1889, within the head office of the London and Edinburgh Shipping Company, in Commercial Street, Leith, in presence and hearing of Seater and William White, both clerks in the employment of the said Shipping Company, the defender said to the pursuer, 'I will put you (meaning the pursuer) in prison,' and whether he thereby falsely and calumniously represented that the pursuer had been guilty of such criminal misconduct as would warrant his being apprehended on a criminal charge and thereafter imprisoned, to the loss, injury, and damage of the pursuer."

The defender reclaimed, and argued—There was nothing in the circumstances in which they were used to attach to the words 'I will put you in prison' a libellous meaning, which they would not otherwise bear. The construction attempted to be put upon them by the proposed innuendo was forced and unreasonable—*Fraser v. Morris*, February 24, 1888, 15 R. 454; *Stewart v. Moss*, December 5, 1885, 13 R. 299; *Brydone v. Brechin*, May 17, 1881, 8 R. 697.

The pursuer and respondent argued—Looking to the fact that the words used were unqualified, they naturally bore the innuendo put upon them—*Webb v. Beavan*, May 30, 1883, L.R., 11 Q.B.D. 609; *Blasquez v. Lothians Racing Club*, June 29, 1889, 16 R. 893.

At advising—

LORD PRESIDENT—The appellant in this case, who is the defender, is the cashier and managing clerk of the London and Edinburgh Shipping Company, Leith, and the pursuer was in the service of the company for a considerable time, namely, from 1877 down to December last. According to the statement of the pursuer, the relations between him and the defender were anything but pleasant. That is not admitted by the defender, but I take it for granted that the pursuer could establish the truth of his statement. The defender, he says, found fault with him over and over again for neglect of duty.

The circumstances of the particular occurrence in question as stated by the pursuer on record are, that finding his work too heavy for him he wrote to the defender a courteous and respectful letter suggesting that some assistance should be given him, and that the defender on receiving this letter sent for the pursuer and in rude terms asked what he meant by sending it, and that in the evening of the same day the defender came to his desk and said that "he had a damned presumption," and charged him with being incompetent for the duties of his office. Now, there is nothing slanderous in that, and no issue is proposed with regard to these words. It is quite plain, however, from the statement read that both parties were angry and were quarrelling with one another.

Then comes a statement that the defender called upon the pursuer to resign his post at once, which the pursuer said he was willing to do, and that thereafter, in the presence of two clerks in the office, the defender

said to the pursuer "I will put you in prison."

That is the whole statement made by the pursuer, and the innuendo sought to be put upon it is that the defender meant "that the pursuer had been guilty of such criminal misconduct as would warrant his being apprehended on a criminal charge, and thereafter imprisoned." It appears to me that these words which were admittedly used, or something like them, will not bear the construction sought to be put upon them. I think it a most unreasonable and forced construction, because the only imputation made against the pursuer by the defender was one of incompetence and neglect of duty, which as cashier and managing clerk of the company the defender had a perfect right to make if he thought himself justified. That was the only subject of quarrel. It is no doubt ludicrous to say that because of negligence the defender had the power to put the pursuer in prison, but either from anger or from some other reason the defender seems to have had the notion that in a contract of the kind between the pursuer and the company he had the power to enforce fulfilment by imprisonment, but it is important to observe that no criminal charge was made against the pursuer. The way the innuendo puts it is that the defender meant "that the pursuer had been guilty of such criminal misconduct as would warrant his being apprehended on a criminal charge, and thereafter imprisoned." It is not suggested what kind of criminal misconduct is intended, and I think even if it were otherwise intelligible, the innuendo is not sufficiently precise. Some kind of criminal charge must be alleged. Apart from that, however, it is perfectly plain that no kind of imputation of a criminal offence could be intended. The details of the interview and misunderstanding between the parties show that the only question between them was a question of the performance or non-performance by the pursuer of his duties as clerk. I think, therefore, the case falls under the category of such cases as *Broomfield v. Greig*, March 10, 1868, 6 Macph. 563, 40 Scot. Jus. 568, where the Court held that an innuendo of a forced and unreasonable character could not be allowed to be put upon words not in themselves slanderous.

LORD SHAND—There are two separate grounds, I think, for refusing an issue. The words "I will put you in prison," following upon angry words previously used, satisfy me that this was a mere scolding interview. The defender was angry at the letter he had received, and charged the pursuer with being unfit for his duties, and followed that up with a threat of imprisonment. That was scolding and nothing else. If these words, however, had been spoken in all calmness, I should still have held that they would not bear the construction attempted to be put upon them. Imprisonment for debt has been abolished, but imprisonment to enforce obligations *ad factum præstandum* still remains, and the defender might have thought that he had the

right to enforce this contract of service by imprisonment. If there had been any allusion to loss of money or anything of that sort, it would be different, but in the absence of anything of the sort I am of opinion that the proposed innuendo cannot be put upon the words in question.

LORD ADAM concurred.

LORD M'LAREN — I am of the same opinion. It is true that our law gives more encouragement to actions of damages for slander than the law of England, for by that law actions for verbal slander are only allowed when the words complained of impute an indictable offence, or at least one punishable by fine or imprisonment. We make no distinction between written and verbal slanders in this respect, but we have never gone so far as to hold that mere unmeaning abuse—mere vituperation—will give a right of action. We only give compensation for defamatory language, that is to say, language which conveys some definite imputation as to the character or conduct of a pursuer.

It may seem hard to the pursuer that he should have no remedy for coarse abuse levelled at him, but he always has the power to repay the person who has so attacked him in his own coin, and in such cases the right is generally taken advantage of to the fullest extent.

The Court recalled the interlocutor of the Lord Ordinary, sustained the defences, and assolizied the defender.

Counsel for the Pursuer—Baxter. Agent—J. H. Dixon, W.S.

Counsel for the Defender—C. S. Dickson—Salvesen. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Thursday, January 23.

FIRST DIVISION.

[Lord Kinnear, Ordinary.]

DICK LAUDER v. THORNTON.

*Superior and Vassal—Casualty—Dupli-
cand of Feu-Duty on Entry of Each Heir
or Singular Successor—Conveyancing
(Scotland) Act 1874 (37 and 38 Vict. cap.
94), sec. 4, sub-secs. 2 and 3.*

An heir of entail by feu-contract granted in 1864 feued subjects for payment of feu-duties, "and doubling the said feu-duties at the entry of each heir and singular successor as the taxed casualties due upon each entry, and that over and above the feu-duty for the year in which such entry takes place." The charter forbade subinfeudation, and took heirs and singular successors of the vassal "bound to enter with the heir of entail in possession, and be infeft within three months of the date of the purchasing or succeeding," and included irritant clauses.