

the article? If you find that its purport is to criticise the pursuer as a lecturer, then the expressions, however intemperate they may be, which fairly considered with the rest of the article, may in fairness be held as only applicable to his public conduct, must be so construed. And on that ground I agree with your Lordship that the first, second, and third issues ought to be negatived, because I do not think that in any fair reading of an article—the general purport of which is a political attack—we can torture out of the expressions there referred to charges either of dishonesty or of insobriety. But, again, newspaper critics must be very careful not to go beyond the range of the actual license which the law allows, and when they touch upon a man's private character they are not entitled to any special protection, but are liable on the same grounds as we should hold any private attack to be actionable. It appears to me that the words referred to in the fourth issue are capable of being read as an accusation of dishonesty and an attempt to swindle the proprietor of the lecture hall of the rent. That is an imputation that no man is entitled to make on another. Therefore I think the issue under that head ought to be sent to trial.

LORD ADAM was absent.

The Court recalled the interlocutor of the Lord Ordinary, and appointed the following issue to be the issue for the trial of the cause:—"It being admitted that on or about 19th April 1890 the defenders printed and published in the *Dundee Weekly News* of that date the article contained in the schedule hereunto annexed—Whether the following words in said article, viz., 'Now, one of them has "left the town." Any information as to his whereabouts will be thankfully received by a sorrowing landlord, the proprietor of the hall, who now concludes that a Tory Cleon is no more profitable as a tenant than a Socialist Boanerges'—are of and concerning the pursuer, and falsely and calumniously represents that the pursuer, being liable as tenant or otherwise to pay the rent of the hall used for said meeting on the Sunday evening referred to, had secretly left Dundee without leaving any address, and without making provision for payment of said rent, for the purpose of defrauding the proprietor of the hall of his just claims for same, or makes similar false and calumnious representations of and concerning the pursuer, to his loss, injury, and damage?"

Counsel for the Pursuer—Salvesen—Younger. Agents—Sturrock & Graham, W.S.

Counsel for the Defenders—Guthrie—Law. Agent—John Rhind, S.S.C.

Saturday, July 12.

FIRST DIVISION.

Lord Kincairney, Ordinary

KINLOCH, CAMPBELL, & COMPANY,
AND ANOTHER v. COWAN.

*Bill—Diligence—Suspension of Charge—
Caution—Bills of Exchange Act 1882 (45
and 46 Vict. c. 61.)*

Held that the acceptors of a bill who had delivered it blank in the name of the drawer were not entitled to have a charge at the instance of the drawer, who averred that he had given value for it, suspended without finding caution.

Messrs Kinloch, Campbell, & Company, merchants, 35 Robertson Street, Glasgow, and James Wright Campbell, 35 Robertson Street, Glasgow, carrying on business under the style of Kinloch, Campbell, & Company, were on 28th May 1890 charged at the instance of Samuel Cowan, publisher in Perth, to make payment to him of the sum of £527, 7s. with legal interest till paid, being the sum alleged to be due under a bill dated 4th January 1890 payable four months after date, of which Cowan was the drawer, and Kinloch, Campbell, & Company the acceptors.

Messrs Kinloch, Campbell, & Company, and James W. Campbell presented a note of suspension in which they averred—In November last the complainer J. W. Campbell, with the view of extending the business of his firm, advertised in the *Glasgow Herald* for a party who would be willing to put £5000 into his firm. George Hill, 56 Parliament Hill Road, Hampstead Heath, London, replied to the advertisement, and stated that if the business was a suitable one he, as principal, would put £5000 in it. It was arranged that Kinloch, Campbell, & Company should accept bills to the amount of £6250 and remit them to Hill, who within one week of receiving them should remit to them the sum of £5000. The bills were to be renewed from time to time during a period of four years. On 6th January the complainers sent Hill nine bills for sums amounting to £6250 dated on 4th, 6th, and 8th January 1890 and payable four months after date. The bill upon which the charge of payment under suspension was given was one of these bills.

Hill did not perform his part of the said agreement, and never remitted the complainers any sum whatever. Accordingly they demanded return of their bills on 23rd January 1890. Hill returned to the complainers bills for sums amounting to £5123, 16s. 6d., leaving in his hands three bills for £1126, 3s. 6d. The complainers continued to press Hill to return the remaining bills, but as he did not do so they instructed their solicitors in London to take proceedings in Court there to prevent him from parting with them and for delivery of them.

Proceedings were accordingly adopted in the High Court of Justice in England against Hill and the respondent, and on

30th April 1890 the complainers obtained an interim injunction restraining the respondent or his agents or servants from parting with or in any way negotiating the said bill now charged upon.

The complainers stated that the respondent advertised for a party who would put £5000 into his business, and that a Mr Bowerman replied to that advertisement and suggested an arrangement similar to what Hill entered into with the complainers, and he agreed to that arrangement. The respondent sent Bowerman bills accepted by him for which he was to obtain cash. Bowerman did not send him the cash, and it is believed that in consequence the respondent required him to return the bills. This, it was believed, was done. Bowerman, however, seemed to have sent the bill in question to the respondent, who, without any authority from the complainers, drew the bill upon them. The respondent did not give any value to the complainers for the said bill. He obtained it when he knew the party into whose possession it had come was dishonest. He did not acquire it in the ordinary course of business. Besides, the bill had never been acted upon beyond the respondent adhibiting his signature.

The respondent in answer averred—When he received the bill from the holder, Bowerman, he was informed and believed that value had been given for the complainer's acceptance, and that the bill was payable absolutely at maturity. The charger himself gave value for the bill in good faith and without any knowledge of the George Hill referred to by the complainers, nor of his dealings with them. The English Court had no jurisdiction over the charger, and the interim injunction was confined to England.

The complainer pleaded—“(2) No value given for said bill. (3) The respondent having obtained the said bill outwith the ordinary course of business and in bad faith, cannot found upon it. (4) The respondent having no authority to draw the said bill cannot recover it.”

On 18th June 1890 the Lord Ordinary (Kincairney) passed the note without caution.

The respondent reclaimed, and argued—If bills were issued a holder for value could proceed against the acceptor even though the latter had received no value for the bill—*Simpson v. Brown*, June 9, 1888, 15 R. 716; Bills of Exchange Act 1882 (45 and 46 Vict. c. 61), secs. 20, 100.

The complainer argued—The acceptance had been fraudulently obtained, and no value had been given to the acceptor for it. The *onus* was therefore on the holder to show that he gave value for it—Bills of Exchange Act 1882, sec. 30 (2). The Lord Ordinary, therefore, had rightly passed the note without caution.

At advising—

LORD PRESIDENT.—It appears to me that when a man sends acceptances blank in the name of the drawer into circulation he must take all the consequences of his rashness, which enables anyone to sign as

drawer and become creditor of the acceptor. Therefore, *prima facie*, I have no doubt the acceptor is liable to pay the amount in the bill on being charged to make payment. I quite understand that there may be an answer, but in the Bill Chamber such answers require to be instantly verified. If I thought it was shown in the present case that Samuel Cowan did not give value for the bill I should be inclined to agree with the Lord Ordinary, but I am not satisfied on that point. So far as I see at present there was value given for the bill, though it may turn out in the end that Cowan is not a *bona fide* holder for value. In the meantime I think the complainer must find caution as a condition of having the note passed.

LORD SHAND.—That is also my opinion. The provisions of the Bill of Exchange Act enacted what was the old law, that an acceptor of a bill was *prima facie* the obligant and the drawer *prima facie* the creditor. The obligant here seeks to suspend a charge by the creditor. In the ordinary case the rule is that the note can only be passed on caution. It is said that the bill was got from the acceptor by fraudulent means. Immediately that is proved the *onus* will be shifted to the charger to prove that he gave value for it, but the *onus* at present is on the other side, and accordingly caution must be found before the note can be passed. If the suspender could show that a number of considerations pointed to the fact that the bill was got without value then he might have the diligence suspended without caution. On the contrary, however, I think the transaction in the course of which the bill was granted shows, so far as I can see, that the bill was given for value, and that will form the subject of future investigation.

LORD M'LAREN.—I have felt rather unwilling to disturb the decision of the Lord Ordinary on what is to some extent a matter of discretion, but as your Lordships think that this is a question of principle we may, I think, reconsider the matter of caution on its merits, and I do not differ from the decision at which your Lordships have arrived.

The Court recalled the interlocutor of the Lord Ordinary and remitted to him to pass the note on caution.

Counsel for the Complainer—Rhind. Agent—Wm. Officer, S.S.C.

Counsel for the Respondent—Vary Campbell. Agents—Morton, Smart, & Macdonald, W.S.