

He averred that he was *ex officio* trustee, and at present practically sole trustee, of a bequest left for the poor of his parish, and that the letter was directed against him.

A single issue with damages laid at £1000 was approved by the Lord Ordinary, but upon the defenders reclaiming to the First Division, the pursuer moved to be allowed to substitute the following four issues, viz.—“(1) Whether, in the issue of *The Caithness Courier and Weekly Advertiser for the Northern Counties*, dated on or about 18th November 1892, the defenders, or either and which of them, printed and published the letter printed in the schedule hereto appended? (2) Whether the said letter is of and concerning the pursuer, and falsely and calumniously represents that he is not a trustworthy trustee and administrator of a charitable bequest instituted for behoof of the poor of his parish, and is a person capable of appropriating the funds of the said bequest to his own uses and purposes, or makes similar false and calumnious representations of and concerning the pursuer, to his loss, injury, and damage? Damages laid at £300. (3) Whether the said letter is of and concerning the pursuer, and falsely and calumniously represents that he has acted partially and corruptly in the administration of said charity, or makes a similar false and calumnious representation of and concerning the pursuer, to his loss, injury, and damage? Damages laid at £300. (4) Whether the said letter is of and concerning the pursuer, and falsely and calumniously represents that he is guilty of conduct unbecoming a minister of the Gospel, inasmuch as he frequents the bar of a public-house for the purpose of obtaining intoxicating liquors, or makes similar false and calumnious representations of and concerning the pursuer, to his loss injury, and damage? Damages laid at £400.”

The defenders argued (1) that the complaint that no accounts had been published could not bear the innuendo sought to be put upon it in the second issue; (2) that a charge of partiality was not a charge against a person's moral character, but merely a charge of showing a preference; and (3) that the words “unbecoming a minister of the Gospel” were too vague. The conduct should be described as “indecorous and unseemly.”

At advising—

LORD PRESIDENT—In the print dated 25th May 1893 there appear to be four separate issues. The first and second, however, necessarily form together but one issue, and I am prepared to grant an issue in these terms. The article founded on must be read as a whole in order to gather the meaning and motive of the words used, and I cannot say that the construction assigned to the words referred to in the first issue is so far-fetched that the pursuer ought not to be allowed to submit it to a jury.

The issue numbered (3) ought, I think, to be disallowed. A charge of partiality is not of itself actionable, and if the word

“corruptly” is used in any proper sense of its own, then there is nothing on the pursuer's record or in the article itself to support it.

The issue at present numbered (4) seems to me to be open to no valid objection.

The pursuer has inserted a separate schedule of damages for each issue. This does not seem necessary, as the issues are both founded on the same article, and should the jury hold but one issue to be proved, they can competently award (within the limits of the lump claim) whatever sum they think fit.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The first and second issues were made one, the third issue was deleted, the fourth issue became the second, and a lump sum of damages, laid at £1000, was put after the issues, which in this form were approved by the Court.

Counsel for the Pursuer—Jameson—M'Lennan. Agent—Thomas Liddle, S.S.C.

Counsel for the Defenders—Comrie Thomson—D. Anderson. Agent—P. J. Purves, S.S.C.

Wednesday, June 7.

FIRST DIVISION.

BOARD OF SUPERVISION v. LOCAL AUTHORITY OF LOCHMABEN.

(*Ante*, p. 457.)

Public Health (Scotland) Act (30 and 31 Vict. cap. 101), sec. 97—Board of Supervision—Petition and Complaint—Procedure where Local Authority makes No Appearance.

In this case Mr James H. Barbour, C.E., in terms of the remit of 28th February, presented a report to the Court containing a scheme for procuring a sufficient and suitable supply of water for the burgh of Lochmaben, to which the local authority lodged no objections. The Board of Supervision intimated that they had resolved not to enforce the introduction of a new drainage scheme in the meantime.

The Court—following the case of *The Board of Supervision v. The Local Authority of Linlithgow*, 1889 (unreported)—pronounced this interlocutor:—“Having resumed consideration of the petition and proceedings, with the report of Mr James H. Barbour, C.E., and heard counsel for the petitioners, Ordain the respondents, the local authority of the burgh of Lochmaben, to execute the work necessary for the introduction of a suitable water supply into the burgh in terms of the report (Bankhead scheme), and that at the sight and to the satisfaction of James H. Barbour, and decern; remit to Mr Barbour to see the works properly

executed, and to report to the Court; *quoad ultra* continue consideration of the petition."

Counsel for the Petitioners—Maconochie.
Agents—Macrae, Flett, & Rennie, W.S.

Wednesday, June 7.

SECOND DIVISION.

[Lord Low, Ordinary.]

PATTISON'S TRUSTEE v. LISTON.

*Bankrupt—Assignment and Back-Letter—
Sale—Right in Security—Delivery.*

By assignation dated 25th June 1890, A, in consideration of the sum of £250 instantly paid to him by B, sold, assigned, conveyed, and made over to B the whole household furniture and effects in his dwelling-house. The assignation concluded with these words—"And I have herewith delivered up to B the said household furniture and effects, with the keys of said dwelling-house." By back-letter of the same date, B acknowledged that the assignation was truly in security of the advance of £250 with interest, and that in payment thereof he was bound to deliver up the assignation, and by the same letter A authorised B in the event of the £250 and interest not being repaid to B by 1st July 1891, to sell and dispose of the said furniture and effects in whole or in part and to account to him for the balance remaining after the debt was paid.

At the date when these letters passed between the parties the dwelling-house was unoccupied and the keys were in the hands of B as house-agent. The house with the furniture in it was occupied by A and his wife during July and August 1890, after which it was again shut up and the keys returned to B. After Martinmas 1890 the house was let furnished to two tenants in succession, the rent being collected by B and paid over to A without deduction. During the absence of the first tenant from town, and during the period between the departure of the first tenant and the entry of the second, the keys were left with B, and on these occasions he removed various articles of furniture, &c., without the knowledge of A.

In December 1891 A became bankrupt.

Held (diss. Lord Young) that no effectual security had been constituted over the furniture and effects in question in whole or in part in favour of B, and that they formed part of A's estate at the date of his sequestration.

In the summer of 1890 R. T. Pattison being in pecuniary difficulties, applied to George Liston, house-agent, Edinburgh, for a loan of money, which the latter agreed to give on the security of the furniture and effects

belonging to Mr Pattison situated in his house in Chester Street. The transaction was carried out by Mr Liston advancing in loan to Mr Pattison the sum of £250, in return for which he received from the latter an assignation dated 25th June 1890, in the following terms—"I, R. T. Pattison, residing formerly at number 2 Chester Street, Edinburgh, and now at the Western Club, Glasgow, in consideration of the sum of two hundred and fifty pounds sterling instantly paid to me by George Liston, 83 George Street, Edinburgh, as the price thereof, of which I hereby acknowledge the receipt and discharge him, do hereby sell, assign, convey, and make over to and in favour of the said George Liston and his executors and assignees whomsoever, the whole household furniture, plenishing, and effects, including paintings, pictures, articles of vertu, plate, china, books, ornaments, bed and table linen, nappery, and whole other articles, fittings, and effects of whatever nature or description belonging to me at present in my said dwelling-house number 2 Chester Street, Edinburgh, and I have herewith delivered up to the said George Liston the said household furniture and effects with the keys of the said dwelling-house." Of even date with that letter Mr Liston wrote and delivered to Mr Pattison a letter in the following terms—"Sir,—With reference to the assignation of your household furniture and effects granted by you in my favour of even date herewith, although the same is *ex facie* absolute, I admit that it is truly in security of an advance of two hundred and fifty pounds (£250) made by me to you contained in your promissory-note to me of this date, payable on June, Eighteen hundred and ninety-one, with interest thereon at the rate of six per cent. per annum, and whole expenses already incurred or to be incurred by me in relation thereto, and on repayment of the said advance, interest, and expenses, I shall be bound to deliver up the said assignation and promissory-note to you, but in the event of the said advance, interest, and expenses not being repaid to me on or before the said first day of July Eighteen hundred and ninety-one, I shall then be entitled at any time, as you by your subscription hereto empower and authorise me, to sell and dispose of the said furniture and effects in whole or in part, and account to you or your representatives for any balance that may remain after payment of the said advance, interest, and expenses and any preferable charges." This back-letter was signed by both Mr Liston and Mr Pattison before witnesses.

At the date when the letters above referred to passed between Mr Pattison and Mr Liston the house in Chester Street was unoccupied, and the keys thereof were in the hands of the latter as house-agent. The house, with the whole furniture in it, was occupied by Mr Pattison and his wife during the months of July and August 1890, when it was again shut up and the keys returned to Mr Liston. It was thereafter let as a furnished house to a Mr Stewart for a year from Martinmas