Tuesday, November 6.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

M'LAUGHLAN *v.* ORR, POLLOCK, & COMPANY.

Reparation — Slander — Verbal Injury — Ridicule—Issue.

In an action against a newspaper proprietor, the pursuer alleged that the defender had published a series of articles intended to hold him up to public ridicule, contempt, and scorn. The Court (*rev.* decision of Lord Kincairney) *dismissed* the action on the ground that the articles complained of did not impute moral depravity to the pursuer, and that it was not actionable to hold a person up to ridicule for his public conduct.

Observed that it is only where private character is attacked, or where the criticism of public conduct is combined with the suggestion of base or indirect motives, that redress can be claimed on the ground of injury to reputation.

Observations on the form of issue to be allowed, where injury to reputation is relevantly averred, but no specific misrepresentation is founded on.

James M'Laughlan, one of the magistrates of the burgh of Port-Glasgow, brought an action of damages against Orr, Pollock, & Company, printers, proprietors, and publishers of the *Greenock Telegraph and Clyde Shipping Gazette*, in respect of eleven articles which appeared in that newspaper between 17th October 1891 and 3rd November 1892. These articles all referred to the pursuer as a public character, and contained such phrases as the following:—"Some 'rare ould ructions' will be witnessed at Port Glasgow during the coming election. The bailie is a terrible Zulu when he starts." . . . "The Port-Glasgow bailie is not alone in the temperance party in the intemperate and personal character of his speeches. Such public (?) men can never advance the real interest of temperance. They only inflate their own vanity until, like Bailie M'Laughlan, they are like to 'explode or burst.'" . . . "Port-Glasgow's senior magistrate Bailie James M'Laughlan has been sojourning in London. Her Majesty is now once more in Balmoral, the 'bloated' aristocracy are simply crowding into Scotland, and it is expected that the bailie also will ere long come north again." . . . "Failing the appearance of either Bailies Rodger or Macfarlane, Magistrate James M'Laughlan was forced by a strong sense of public duty to come forth from his retirement on Thursday last to act in his famous character as Judge. This was the first time that his Honour—with a capital 'H' has occupied the bench for many weeks." . . . "Bailie M'Laughlan emerged from the fight in the First Ward a victor, and he took occasion to smite his enemies hip and thigh. Last night he 'went for' his principal foes with all the glee of a conqueror in the first flush of success. He tomahawked them most unmercifully, and told them that the punishment he would give them would be sixty days each. If James M'Laughlan is again to be 'His Honour,' those gentlemen who have during the past few days made themselves prominently busy against him had better keep out of his clutches." . . . "Bailie M'Laughlan, said Councillor Hood, at the meeting of the 'Port' Corporation fathers yesterday, has a commanding presence, oratorical powers, and other qualifications that should go to make him a very successful leader of a body such as Port-Glasgow Town Council, and the bailie smiled again. Mr Hood, however, forgot to allude to his Honour's great muscular abilities. Do they, too, not qualify him to lead a body such as Port-Glasgow Town Council or even Greenock Parochial Board?" . . . "Bailie M'Laughlan has arrived home from Rome, and is going about Port-Glasgow relating the story of his travels to anyone who has time to listen to his yarns." . . . The pursuer averred that these statements were false, slanderous and malicious, and were made with the purpose and design of holding him up to public ridicule, contempt, and scorn, and of degrading him in the estimation of the community in which he lived, and of impairing his usefulness as a public man; that they had been the subject of much comment throughout Port-Glasgow, and had lowered him in the estimation of his friends and acquaintances as well as of the public generally.

The defenders pleaded that the pursuer's statements were irrelevant.

Upon 14th July 1894 the Lord Ordinary (KINCAIRNEY) approved of the following issue:—"Whether the said paragraphs, articles, and letter, or any parts thereof, are of and concerning the pursuer, and were published in pursuance of an intention to expose, and did calumniously and injuriously expose the pursuer to public ridicule and contempt, to his loss and damage. Damages laid at £500."

"*Opinion.*—I am of opinion that the pursuer is entitled to an issue, and as in my view the case will go before a jury, it is neither necessary nor desirable that I should express a detailed opinion.

"The pursuer avers that from time to time the defender has published in the newspaper of which he is proprietor a series of articles intended and calculated to expose him to public contempt and ridicule, and that he has in consequence been lowered and degraded in the estimation of his friends and acquaintances, and of the public generally. I think that is an averment of a wrong and an injury which he is, according to our practice, entitled to submit to a jury if the articles complained of are of the character represented. No one is entitled to hold a man up to public scorn by representing his character and conduct as ridiculous and contemptible, any more than he is entitled to expose him to reprobation and blame by untruly repre-

senting his character and conduct as culpable or immoral. The former form of attack may be less injurious, but to many people it will probably be the more unpleasant. Many a man will bear an imputation on his character with indifference who will wince at an attack on his self-esteem. One who occupies a public position such as that of a magistrate is hardly the less entitled on that account to be protected against such attacks. No doubt his public conduct is open to legitimate and even severe criticism, which may fairly take the form of sarcasm or ridicule. He must put up with rough language and unmannerly jests, and with attacks which he may think grossly unfair, and which may give him considerable pain, but persistent and repeated attacks must not go beyond fair criticism of public conduct however severe, or degenerate into mere personalties or insults. He is not with impunity to be made the mark for the wit of an editor too abundantly endowed with what he may suppose a faculty of humorous writing.

"The question whether the articles complained of go so far as to be actionable is not an easy one, for certainly more objectionable articles frequently appear in the public press, and several of those in question might have been passed over without notice. But taking them altogether they seem to be such as to entitle the pursuer to lay them before a jury under the issue adjusted. They seem for the most part hardly criticism at all, but rather of the nature of indifferent jokes or personal insults.

"In the cases of *Sheriff* v. *Wilson*, March 1, 1855, 17 D. 528; *M'Laren* v. *Ritchie*, 1856; Glegg on Reparation, appendix; and *Cunningham* v. *Phillips*, June 16, 1868, 6 Macph. 926, issues to try questions of this kind were allowed, and the actionable nature of such articles in newspapers was recognised in the case of *Macfarlane* v. *Black*, July 6, 1887, 14 R. 870.

"I have felt some doubt, considering that the articles complained of cover a period of two years, as to whether they can be regarded as such a series of persistent attacks as can be considered as intended and calculated to hold the pursuer up to ridicule. But I think that that is a question which must come before the jury.

"I may be permitted to add that I have allowed the issue in this case with some reluctance, for I suspect that the pursuer's wiser course might have been to treat these unseemly and annoying attacks with good-humoured contempt. But, as I have indicated, if he desires to submit his grievance to a jury, I think he is entitled to do so.

"The issue must be in the form adjusted in *Sheriff* v. *Wilson* and *Cunningham* v. *Phillips*, and must put the question whether the articles were intended to do the injury complained of."

The defenders reclaimed, and argued—No issue should be allowed. It was impossible to extract actionable matter from any one of the articles. They consisted of good-humoured banter of a public character long well-known in Port-Glasgow. There was no inexcusable repetition. Each article was evoked by some new appearance. Nothing false was said, and nothing whatever was said about the Bailie's private life or occupation or character. This was pure ridicule, and that was not actionable. The cases referred to by the Lord Ordinary were all different. *Sheriff* v. *Wilson* was a case of unjustifiable attacks on a private man, who was a teacher. In *Cunningham* v. *Phillips* there were undoubted slanders. *M'Laren* v. *Ritchie* was the only case approaching the present, but there the issue was whether the pursuer had been held up to public hatred, which was very different from ridicule. If the pursuer was right, a public man had only to go on long enough and he must be left alone.

Argued for the respondent—The articles were throughout, not criticisms of public services, but insults, involving a continuous holding up of the pursuer to ridicule and contempt. That was actionable. A man merely because he occupied a public position was not to have his feelings thus outraged without redress. The form of issue closely resembled that in *M'Laren* v. *Ritchie*, and should be approved.

At advising—

LORD M'LAREN—This is a reclaiming-note against an interlocutor of the Lord Ordinary allowing an issue of libel in relation to eleven excerpts from newspaper articles and paragraphs, published at different times between 17th October 1891 and 3rd November 1893, of and concerning the pursuer, who in each of the excerpted passages is mentioned by name.

The pursuer has not proposed to take an issue in the ordinary form with or without an innuendo as to any one of the articles or paragraphs complained of. It may therefore be assumed that his counsel have not discovered anything in them which can be described as slanderous in the ordinary sense. I am bound to say that, after an attentive perusal of the schedule annexed to the issue, I have not been more successful in discovering anything slanderous, if by slander is meant the imputation of something which is criminal, dishonest, or immoral in the character or actions of the person aggrieved.

The issue proposed by the pursuer and approved by the Lord Ordinary does not raise any question of specific slander, but puts the question whether the expressions scheduled "were published in pursuance of an intention to expose, and did calumniously and injuriously expose the pursuer to public ridicule and contempt, to his loss and damage."

My first observation on the proposed issue is, that the authorities quoted by the Lord Ordinary do not support an issue in these terms. The issue granted in *Cunningham* v. *Phillips*, although intended to try the same kind of question, is differently expressed, and the case has not been followed as a precedent.

In the case of *M'Laren* v. *Ritchie & Russell* the question was whether by the words libelled the pursuer was "held up to public hatred, contempt, and ridicule," and I cannot help thinking that the expression "public hatred," which the pursuer of this issue rejects, is the most important and significant part of an issue of the form proposed. I am confirmed in this opinion by the report of the case of *Macfarlane* v. *Black*, because in that case the other Division of the Court suggested that the pursuer should take an issue in the precise terms of the issue in *M'Laren* v. *Ritchie & Russell*, and the invitation was declined by counsel, obviously because of the difficulty of establishing the supposed intention to hold up the complainer to public hatred and contempt.

Now, I think that in the adjustment of issues it is desirable to adhere to established styles, and I am certainly not prepared to send to a jury a claim of damages founded on the fact that the public conduct of the pursuer has been held up to ridicule. It is hardly necessary to point out that the constitution of this country tolerates the utmost freedom in the discussion of the conduct and motives of those who take part in its public business, whether in the higher place of statesmanship or in the conduct of local affairs. In such criticism, ridicule is just as legitimate as any other rhetorical artifice. If, as the Lord Ordinary observes, this should take the form of rough language and unmannerly jests, the person aggrieved must put up with it, and I may add it is open to him to defend himself in the same way, and if he has been unfairly treated he will generally get the better of his antagonist. It is only when private character is attacked, or when the criticism of public conduct is combined with the suggestion of base or indirect motives, that redress can be claimed on the ground of injury to reputation. The claim in such cases may either take the form of an issue of damages founded on specific misrepresentation, as if a member of Parliament should be accused of bribery, or a member of a local board of corruptly influencing the disposal of public contracts, or where no specific charge has been made the pursuer may be entitled to an issue of holding up to public hatred, ridicule, and contempt. But I venture to think that an issue in the last-mentioned form ought not to be granted except where the libel imputes moral depravity of some kind, or is capable of being read as containing such an imputation, it being for the jury to say whether the purpose of the libel was to exhibit the pursuer as having laid himself open not merely to ridicule but to the odium of his associates and fellow-citizens.

In the present case, when the so-called libels are examined, it will be found that they consist of a species of criticism in which the writer makes fun out of supposed peculiarities of manner, indiscretions of speech, and assumptions of autocratic authority on the part of the pursuer, which if they really existed would be legitimate subjects of ridicule, although scarcely within the province of journalism. I assume of course that there is no real foundation for these critiques, and on that assumption it is difficult to see how they can do harm to anyone but the writer. In the scheduled paragraphs Bailie M'Laughlan is described as a "terrible Zulu," as a person "inflated" with vanity, as acting the "bloated aristocrat," as emphasising his own dignity in large print, and so forth. Such language when applied to a burgh magistrate who is doing his duty unobtrusively and to the best of his ability, is of course very offensive, and I agree with the Lord Ordinary when he says that the matters complained of are hardly criticism at all, but are rather of the nature of indifferent jokes or personal insults. But I must add that it is just because the language used is merely vituperative and pointless that the law regards it as innocuous, or at all events as incapable of resulting in any injury to character or reputation. I therefore propose that your Lordships should disallow the issue and dismiss the action.

The LORD PRESIDENT, LORD ADAM, and LORD KINNEAR concurred.

The Court recalled the Lord Ordinary's interlocutor and dismissed the action.

Counsel for Pursuer — Strachan — Orr. Agent—J. L. Officer, W.S.

Counsel for Defenders — Lord Advocate (J. B. Balfour, Q.C.)—Salvesen. Agent—W. B. Rainnie, S.S.C.

Tuesday, November 6.

FIRST DIVISION.

WALLACE *v.* CALDWELL.

Poor — Residential Settlement — Bastard — Minor—Poor Law Act 1845 (8 *and* 9 *Vict. c.* 83), *sec.* 76.

Held that an illegitimate pupil child has a derivative settlement in the parish where its mother has acquired a residential settlement, and that this settlement is not lost by the child on attaining the age of puberty, but continues until lost by non-residence, under section 76 of the Poor Law Act 1845.

This was a special case presented by (1) Andrew Wallace, Inspector of Poor for the Parochial Board of the Govan Combination, and (2) David Caldwell, Inspector of Poor for the Parochial Board of the Parish of Ayr.

The statements made in the case were as follows:—"Alexander Sandilands was born in the parish of Ayr on 8th September 1874, and owing to debility became chargeable as a pauper to Govan Combination on 13th April 1893. He is still an inmate of the Govan Poorhouse. (2) The pauper is the illegitimate son of Jessie Sandilands and John Owens, baker, whose residence is unknown. After his birth his mother was married