

manse. A remit was made to a land valuator, who reported:—"This new approach is, no doubt, a very great improvement and addition to the amenity of the manse, but it was not absolutely necessary, as the original approach could have remained as it was."

The account was remitted to the Clerk of Teinds, who lodged a report pointing out that these items were not within the expenses allowed by the Glebe Act, and deducting them from the total account. To this report the petitioner objected, and argued that the new avenue to the manse was a necessary part of the feuing arrangements, and that the expense of it should be allowed.

At advising—

LORD ADAM—I think Mr Craigie's objection is not well founded. The first of the claims is that this road having been made for the convenience of the manse, the expense of making it is to form a charge against the future incumbents of the glebe. The claim arises in these circumstances:—The glebe having been feued made it desirable for the amenity of the manse that a new avenue should be made. That may be a matter of great importance for the manse, but it cannot be said that it has been made "with the view of the more advantageous feuing" of the glebe. But the words I have quoted are the words of section 14 of the Glebe Lands Act, which is the only authority that the Court has for allowing the expenses of making roads. Now, the road in question was made, not for the more advantageous feuing of the glebe, but was constructed after the feuing was completed and solely for the convenience of the manse. The other two sums whose disallowance was objected to follow the fate of the first, for they represent expenses incurred in connection with the formation of this access to the manse. I therefore think that the Teind Clerk's report disallowing the items I have referred to should be approved.

LORD KINNEAR—I think the only expenses which we are empowered to impose as a permanent burden on the glebe are the expenses required to make the feuing, which we have authorised, profitable to the benefice, and not expenses incurred to improve the amenity of the manse or required for its convenient occupation.

LORD M'LAREN, LORD STORMONTH DARLING, and LORD LOW concurred.

The Court approved of the report of the Clerk of Teinds, and decerned in terms thereof.

Counsel for the Petitioner — Craigie.  
Agent—Wm. Duncan, S.S.C.

Tuesday, February 25.

## FIRST DIVISION.

[Lord Kincairney, Ordinary.]

POWELL v. LONG.

*Reparation — Slander — Veritas — Issue — Counter-Issue — Scope of Issue and Counter-Issue in Relation to Alleged Slander.*

The pursuer in an action of damages for slander said to be contained in two pamphlets published by the defender, averred upon record that the import of the pamphlets was generally to represent him as "a dishonest and disreputable person." The issues proposed by him were however limited to certain specific charges of dishonesty contained in the pamphlets brought forward to support the general charge. The defender pleaded *veritas*, specified other instances of alleged dishonesty on the part of the pursuer, and proposed counter-issues upon all the alleged acts of dishonesty.

*Held* that the pursuer was entitled to the limited issues he proposed, and that the scope of the counter-issues for the defender must be limited by that of the issues.

*Observed* (*per* Lord President) that this limitation did not preclude the defender from cross-examining the pursuer on all or any of the matters which the defender desired to make the subject of counter-issues.

This was an action of damages for slander at the instance of Walton Powell, editor of the *Torch* newspaper, Glasgow, against Harry Alfred Long, director of missions, Glasgow.

The alleged slanders were contained in a leaflet and handbill issued by the defender. The former, issued in August 1895, was in the following terms:—

"LIVERPOOL AND SOUTHPORT TO THE RESCUE

"Letter from Mr Thomas Thompson (*of Liverpool*) to Mr H. A. Long.

"SIR,—I feel it my duty as a Christian to let you know something of the character of Walton Powell, who is troubling Glasgow, as he has other places. Of his life before his professed conversion I know nothing save what he or Mrs Powell have told me. Since his conversion he was fined at Bristol for violently assaulting a policeman, which is recorded in the *Western Daily Press*, October 1892. He left Bristol for Liverpool, residing there till he left for Glasgow. During his Liverpool residence he has been repeatedly before the County Court for non-payment of the accounts of tradesmen—as printers', billposters', milkmen's accounts, &c.—judgment being entered against him in all cases. He offered his services to the Christian Evidence Society, but his character being shady they were declined. At a discussion in Leeds (1893) he made a false statement, for which that honoured evangelist, Mr W. R. Bradlaugh, had to

pay heavy legal expenses, besides damages of £30; in fact, he still owes £70 of the amount. Mr Powell affirms that the information was derived from a sea captain, but no man can see his informant.

"The saloon carriage he has shown off was obtained thus:—A Mr Barber, of Southport, had it for sale. After much negotiation, Mr Powell got it under promise of paying £110, but paid down £25, which he borrowed from a colleague, giving the promise of monthly payment of the balance, of which, however, he has paid nothing; and, as a consequence, the mental health of Mr Barber has been seriously injured.

"THOMAS THOMPSON.

"132 Boundary Lane, Liverpool."

The handbill or advertisement issued in September 1895 was as follows:—

### "POWELLISM EXPLODED!

"Glasgow can endure its affliction no longer. The doings of Walton Powell to be shown up, whether in Bath, Bristol, Manchester, Liverpool, Southport, Sunderland, Belfast, or Glasgow.

#### PUBLIC MEETING

IN THE

BLYTHSWOOD ROOMS

On MONDAY, 16th, at 8 p.m.

To be addressed by

Mr THOMPSON, of Liverpool, the Rev. J. DEANS, Mr LONG, and other Gentlemen.

Dr JAMIESON,

President Glasgow Protestant Laymen's Association,

WILL OCCUPY THE CHAIR.

"SYLLABUS.—Mr Powell as a Medico in Ceylon. As a Salvationist. His work in Bristol. Migrates to Liverpool where he is converted, April 1893. Makes for Southport. Here is the story of the Saloon Carriage and horses two. Lectures at Failsworth; borrows largely, forgets to pay. Leaves Liverpool by louping the dyke and giving creditors the rue. The £100 story clearly told.

QUESTIONS ALLOWED.

Mr Powell has been invited to attend.

Admission 3d. Reserved Seats 6d."

The pursuer averred that "Both leaflets, or parts thereof, are of and concerning the pursuer, and grossly false and calumnious representations are therein made as to his conduct and actings"; and that the first leaflet represented "(1) That the pursuer is a dishonest and disreputable person, and as such would be a source of trouble and annoyance to any community among whom he might be residing for the time."

He averred further that the pamphlet imputed to him certain specific acts of dishonesty.

He proposed the following issues:—"(1) Whether, in or about the month of August 1895, the defender caused to be printed and published in Glasgow a leaflet in the terms set forth in the first schedule hereto appended; and whether the first portion of the said leaflet, purporting to be a letter

from Thomas Thompson to the defender, or part thereof, is of and concerning the pursuer, and falsely and calumniously represents that the pursuer, while resident in Liverpool, upon several occasions got work done for him, or produce or goods supplied to him by tradesmen there, without the intention of paying therefor, and dishonestly withheld payment of the debts justly incurred by him therefor, until actions had been raised and judgment entered against him therefor in the County Court; or makes similar false and calumnious representations of and concerning the pursuer, to his loss, injury, and damage. (2) Whether the said first portion of the said leaflet, or part thereof, is of and concerning the pursuer, and falsely and calumniously represents that the pursuer had obtained a saloon carriage from Mr Barber of Southport, therein mentioned, upon the false representation that he would pay to the said Mr Barber the full price thereof on delivery, and that he dishonestly failed to pay to the said Mr Barber a balance of £85 due by him in respect thereof, after deducting £25 paid by him on account of said price; or makes similar false and calumnious representations of and concerning the pursuer, to his loss, injury, and damage. Damages laid at £1000. (3) Whether, in or about the month of September 1895, the defender caused to be printed and published in Glasgow a handbill or advertisement in the terms set forth in the second schedule hereto appended, and whether the said handbill, or part thereof, is of and concerning the pursuer, and falsely and calumniously represents that the pursuer borrowed money at Failsworth, which he dishonestly failed to repay, and that in or about August 1895 he absconded from Liverpool with the object of eluding his lawful creditors there, and of defrauding them of their just claims; or makes similar false and calumnious representations of and concerning the pursuer, to his loss, injury and damage. Damages laid at £1000 sterling."

The defender denied that the leaflets imported that "the pursuer is a dishonest or disreputable person," but assuming that they did so, pleaded *veritas*, and stated a number of specific occasions on which he averred the pursuer had been guilty of dishonesty.

He proposed the following counter-issues:—"(1) Whether the pursuer, in or about 1893, incurred the debts, amounting to £1, 0s. 3d., to John Fothergill, dairyman and fishdealer, Dorothy Street, Liverpool, and of £1, 0s. 5d. to Mr Pottage, chemist, Picton Road, Liverpool, when he knew he could not pay the said debts and without the intention of paying them, and dishonestly withheld or evaded the payment thereof. (2) Whether, in or about the month of June 1895, the pursuer obtained possession of the said saloon carriage belonging to the said Mr Barber under false pretences and promises of payment of the price thereof which he knew he could not fulfil; and whether he dishonestly withheld payment thereof? (3) Whether, in or about the winter of 1893-4, the pursuer came

under an obligation to repay to Mr Butterworth, within three months, being the stipulated time, the sum of £25, which he had borrowed from him and dishonestly failed to fulfil said obligation; and whether in or about said month of August 1895, the pursuer left Liverpool with the object of eluding his creditors there, and of defrauding them of their just claims."

The Lord Ordinary (KINCAIRNEY) on 20th December approved of the proposed issues and counter-issues.

The defender reclaimed, and moved the Court, in the event of their allowing the pursuer's issues, to substitute the following counter-issue in place of the first proposed by him:—“(1) Whether the pursuer incurred the debts or obligations specified in the schedule hereto annexed, and at or about the dates therein mentioned, when he knew he could not pay or fulfil them, and dishonestly withheld or evaded the payment or fulfilment thereof, or of one or more of them, and left Liverpool to elude his creditors, or one or more of them.

The schedule annexed specified twelve alleged debts or obligations incurred by the pursuer.

Argued for the reclamer—The pamphlets complained of were of the same character and connected with one another. The charges contained in them should be consolidated, since they constituted a general attack upon the character of the pursuer, and accordingly the general counter-issue should be allowed—*Hunter v. Macnaughton*, June 5th, 1894, 21 R. 852; *Macdonald v. Begg*, March 1st, 1862, 24 D. 685; *Mason v. Tait*, July 10th, 1851, 13 D. 1347. The pursuer was not entitled to pick out the special cases dealt with in his issues from this general attack on his character, for if the defender could prove the truth of the general attack, it would not be equitable that he should suffer for possible errors in one or two of the details.

Argued for respondents—There were two distinct pamphlets issued at different times, and there was no reason for consolidating them as asked by the defender. The leaflets might be treated as separate libels, and the pursuer was entitled to ignore the general attack on his character contained therein, and fasten on certain specific charges.

At advising—

LORD PRESIDENT—It may be conceded to the defender that, if this action is brought for the vindication of character, the pursuer's methods are unusual. The import of the first of the two prints complained of was tersely stated by the pursuer himself in the condescendence to be that he is a dishonest and disreputable person, and there is, to say the least, great plausibility in this avowal of the meaning of the print. *Prima facie*, the second print complained of has the same drift. Instead, however, of taking a general issue on this footing, the pursuer by the issues which he asks, limits his complaint to certain specific statements in the two prints, which to the ordinary reader

might appear to be made rather as illustrations of the general character of a rogue than as separate accusations of fraud.

In my opinion the pursuer is legally entitled to take the course which he has chosen. First of all, he is entitled to treat the two prints which were published at different times as separate libels. Then I think he is also entitled to fasten upon one or two specific charges contained in the prints and make them the ground of action, ignoring the general attack on his character which these specific charges were advanced to support. This course may not commend itself to persons of sensitive honour, but reparation for libel is a remedy not confined to that class. A man whose general character for honesty is indefensible, or is treated (by himself) for the purposes of the action as indefensible, is entitled to redress for accusations of specific acts of dishonesty of which he happens to be innocent, although the measure of damage may be as limited as his own ambition for good fame. In this view I think that the Lord Ordinary has rightly allowed the first issue. If this be so, the logical result is that the relative counter-issue must be correspondingly limited in its scope, and the first counter-issue allowed by the Lord Ordinary meets this requirement. The charge which the pursuer resents being a local and specific one, to wit, that in Liverpool he cheated tradesmen, who took him to the County Court, it is not to the purpose to say that in ten specified cases he swindled people who either were not swindled in Liverpool, or although swindled in Liverpool, were not tradesmen, or although tradesmen and swindled in Liverpool, yet did not sue him in the County Court.

The second issue and counter-issue were not in dispute. So far as the third issue and counter-issue were discussed, they fall within the same principle as determines the first.

It is unnecessary to add that the decision which I propose does not at all exclude the cross-examination of the pursuer on all or any of the matters which the defender desired to make the subject of counter-issues.

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

The Court adhered.

Counsel for Pursuer and Respondent—A. Jameson—Wilton. Agent—John Rhind, S.S.C.

Counsel for Defender and Reclamer—J. C. Thomson—Crabb Watt. Agents—Cuthbert & Marchbank, S.S.C.