

paratively mild form of ecclesiastical censure. But apart from the relation of the parties the words are too vague to amount to defamation. As I have said before, the law of Scotland, differing from the law of England, allows an action for verbal slander without any averment of special damage, but this does not relieve us from the necessity of taking care that this special privilege of thin-skinned people in Scotland should be kept within reasonable bounds.

But, again, the pursuer offers to prove that the words complained of were used with the innuendo "that the pursuer exercised an evil moral influence on those with whom he came into contact." This is not the most obvious meaning of the words. The natural meaning would seem to be that the pursuer was the cause of the friction which existed between the priest and his congregation. But the pursuer undertakes to prove that his meaning is the meaning with which the words are used. The Lord Ordinary says that the innuendo is just a paraphrase of the words complained of, and I agree with his Lordship. It is not a bit more pointed. No doubt the word "moral" is introduced to qualify the word "evil." But "evil" influence may always be said to be, in a sense, immoral. Now unless some particular moral fault, or some particular evil influence, were averred as being referred to by the defender, I fail to see how the innuendo makes the pursuer's case any better.

In the existing constitution of society everyone is subject to annoyance from language used by other people regarding him. But this is a necessity of social life. It is only when the speaker exceeds the bounds of moderation, and imputes some vice or crime, and his statement is untrue, that verbal imputations will give rise to a claim of damages. Here there was no substantial imputation, and I am therefore of opinion that we should adhere to the interlocutor of the Lord Ordinary.

LORD PEARSON—I am entirely of the same opinion. The words complained of are not in themselves actionable, when we have regard to the circumstances in which they were uttered. Enough is admitted by the pursuer to show that nothing in the nature of moral evil was imputed to the pursuer. It was all a matter of clerical discipline on the one side, and what the defender calls "insubordination" on the other, and that in a matter so secular as the use of a billiard table. The pursuer tries to meet this objection by undertaking to prove an innuendo. But the innuendo which he offers to prove does not make the words complained of any less general or more pointed; and I do not think it is possible to extract from them an accusation of moral evil against the pursuer.

LORD DUNDAS—I am entirely satisfied with the way in which the Lord Ordinary has dealt with this case, and I have nothing to add to what he and your Lordships have said.

The Court adhered to the judgment of

the Lord Ordinary, and dismissed the action.

Counsel for Pursuer (Reclaimer)—Watt, K.C.—Orr Deas. Agent—Robert M. Scott, Solicitor.

Counsel for Defender (Respondent)—Cooper, K.C.—G. D. Murray. Agent—Charles George, S.S.C.

Saturday, November 7.

FIRST DIVISION.

[Sheriff of Dumfries.

M'WHIRTER v. LYNCH.

Parent and Child—Bastard—Filiation—Proof—Opportunity—Corroboration—False Denial by Defender—Defender Called as First Witness for Pursuer.

In an action of filiation, in which the alleged intercourse was said to have been in a hay-shed and opportunity was proved, the defender denied ever having been in a certain byre alone with the pursuer without his brother-in-law also being present. It was proved that on some occasions a farmer and not the brother-in-law had been the third party.

Held that as the contradiction of the defender was not regarding a circumstance throwing suspicion on him, it did not amount to corroboration of the pursuer's evidence.

Dawson v. M'Kenzie, 1908 S.C. 648, 45 S.L.R. 473, approved.

Per the Lord President—"The practice of putting in the defender as first witness accentuates the necessity that the contradiction relied on must be of a material fact. If the defender's evidence is to be contradicted at a later stage by the pursuer's witnesses, and that contradiction is to be founded on as throwing suspicion on him, he must be given good warning that serious importance is attached to the evidence in question. . . . The practice of the pursuer calling the defender as her first witness, although it may be defensible in exceptional circumstances, has not the approval of this Court."

Margaret M'Whirter, domestic servant, residing at Leathes Cottage in the parish of Buittle and Stewartry of Kirkcudbright, brought an action of filiation and aliment in the Sheriff Court at Stranraer against Alexander Lynch, farm servant, residing at Mark, Castle Kennedy, in the County of Wigtown.

A proof was allowed. In the proof the pursuer called the defender as her first witness. The defender did not lead any evidence. The pursuer's story was that carnal connection took place on New Year's Night 1907 in a hay-shed where she had gone with the defender after meeting him in the byre. The defender in his evidence stated that he had never been at any time

in the byre with the pursuer or spoken to her save when his brother-in-law was present. Their employer, a farmer Rust, spoke to the pursuer and defender having sometimes been together in the byre when he was the only third person present. He also spoke to the pursuer and defender having left the byre together on the night in question.

On 8th February 1908 the Sheriff-Substitute (WATSON) gave decree against the defender.

The defender appealed to the Sheriff (FLEMING), who, on the ground that the pursuer was corroborated by contradiction—*Macpherson v. Largue*, June 16, 1896, 23 R. 785, 33 S.L.R. 615—refused the appeal and adhered.

The defender appealed to the Court of Session, and argued—The pursuer was uncorroborated. The contradiction relied on by the pursuer was not regarding a material fact, and cast no suspicion on him; it accordingly did not amount to corroboration of the pursuer's story—*Dawson v. M'Kenzie*, 1908 S.C. 648, 45 S.L.R. 473.

Argued for the pursuer—The contradiction was with regard to a material fact, and the rule of *Macpherson v. Largue*, *cit. sup.*, applied. [The Lord President having commented on the fact of the pursuer having called the defender as her first witness, counsel referred to *Darroch v. Kerr*, December 21, 1901, 4 F. 396, 39 S.L.R. 270, and argued that *M'Arthur v. M'Queen*, June 27, 1901, 3 F. 1010, 38 S.L.R. 732, was there disapproved].

LORD PRESIDENT—I am sorry that I cannot agree with the judgment of the learned Sheriffs. I can only repeat the observations which I made in *Dawson v. Mackenzie*, 1908 S.C. 648, to the effect that while in these cases one may always reach a conclusion contrary to the fact, because the true facts are only known to two persons, yet none the less the Court has a duty to protect innocent people, and must be sure not to be moved by sympathy to depart from the rules by which evidence must be judged. Now it has been held again and again that where there is the pursuer's oath against the defender's, the mere proof of opportunity does not amount to corroboration of the pursuer's story. Is there here any corroboration of a positive character, as, for instance, evidence of the parties being surprised in suspicious circumstances, of familiarities between them, or of their doing suspicious things? There is none. The sole point of corroboration relied on by the Sheriffs is of a negative character—a supposed contradiction of the defender's evidence by the pursuer and her master, the farmer Rust. I have nothing more to add to what I said in *Dawson v. M'Kenzie* as to the scope of this doctrine of corroboration by contradiction, but, as I do not wish to quote myself, I will quote a sentence of Lord M'Laren's opinion in that case—"There must be corroboration of the pursuer's evidence; yet when the effect of the defender's false evidence, *i.e.*, his denial

of circumstances which are otherwise proved, is to show that there is something of which he is ashamed, or something the admission of which he conceived would throw suspicion upon himself, this will put a different complexion on what the Court might otherwise be disposed to regard as innocent intimacy between the parties." The only contradiction of the defender here is not regarding a circumstance that would have thrown suspicion on him. The defender says he never was in the byre alone with the pursuer without the protectingegis of his brother-in-law. The evidence of Rust the farmer is that there were occasions when he and not the brother-in-law was the third person. The circumstances were just as innocent if the third party was the farmer as if the third party were the brother-in-law—the point is that the defender was not *solus cum sola*. Both parties may have been speaking in good faith; certainly the brother-in-law may often have been there, as he was cotman on the farm, and it may have slipped the memory of the defender that on some occasions his brother-in-law had gone out and left the farmer. What matter? The contradiction at worst sheds no reflecting light on whether the opportunity was a suspicious opportunity or not. I hold that the pursuer has failed to prove her case.

Some remarks have been made in the course of the case on the fact that the pursuer put in the defender as her first witness, and certainly the practice of putting in the defender as first witness accentuates the necessity that the contradiction relied on must be of a material fact. If the defender's evidence is to be contradicted at a later stage by the pursuer's witnesses, and that contradiction is to be founded on as throwing suspicion on him, he must be given good warning that serious importance is attached to the evidence in question. Our attention was called to a supposed conflict between *M'Arthur v. M'Queen*, June 27, 1901, 3 F. 1010, in the First Division, and *Darroch v. Kerr*, December 21, 1901, 4 F. 396, in the Second Division. I should not have thought it necessary to hold that the latter judgment was inconsistent with the former. It was not laid down in *M'Arthur v. M'Queen* that there was any incompetency in a pursuer calling the defender as his first witness, but there were comments made by several judges as to the propriety of so doing. I agree with the First Division in disapproving of the practice, a disapprobation which also has been expressed in the House of Lords. As to the former practice, before parties were competent witnesses, of ordaining the defender to undergo judicial examination, to which Lord Trayner refers in *Darroch v. Kerr*, that has nothing to do with the present practice. Therefore I hope it will go forth that the practice of the pursuer calling the defender as her first witness, although it may be defensible in exceptional circumstances, has not the approval of this Court. If it is done, the position must be carefully

scrutinised, and it must be seen that the defender by being put in by the other side is not put to any disadvantage.

LORD KINNEAR—I entirely agree with your Lordship's remarks as to the practice, in this class of case, of putting the defender into the box as the pursuer's witness. I also agree that the pursuer here has failed to prove her case.

LORD SKERRINGTON concurred.

The Court recalled the interlocutors appealed against and assolizied the defender.

Counsel for the Pursuer (Respondent)—Lyon Mackenzie. Agents—Baillie & Gifford, W.S.

Counsel for the Defender (Appellant)—Fenton. Agents—Simpson, & Marwick, W.S.

Tuesday, October 20.

SECOND DIVISION.

LONDON AND EDINBURGH SHIPPING COMPANY, LIMITED.

Company—Memorandum of Association—Objects of Company to be Considered as Separate Objects and not as a Main with Ancillary Objects—Confirmation.

On 24th September 1908 the London and Edinburgh Shipping Company, Limited, presented a petition praying the Court to confirm proposed alterations of its constitution.

The company had been registered as an unlimited company under the Companies Act 1862, and its constitution had been defined by a deed of copartnership dated in 1809, and a supplementary contract dated in 1863. On 7th July 1908 the company was registered under the Companies Acts as a company limited by shares, and the company resolved to substitute a memorandum and articles of association for the deeds of 1809 and 1863.

On 7th October 1908 the petition was remitted to Charles E. Loudon, Esq., W.S., to inquire and report.

The memorandum of association gave as the objects of the company—“1. To purchase, charter, hire, build, or order or procure to be built, or otherwise acquire steam and other ships or vessels, lighters, barges, and boats, with all equipments, engines, tackle, stores, and furniture, and to employ the same in the conveyance of passengers, mails, troops, munitions of war, live stock, meat, corn, oil, petrol or other spirit, and other produce, and of treasure, and manufactured and unmanufactured goods and merchandise of all kinds, between the ports of Leith and London, or any such other ports as may seem expedient, or for surveying, signalling, dredging, laying telegraph or other cables, or otherwise, and to acquire any postal subsidies. 2. To carry on the business of shipowners and shippers,

carriers by land and water, warehousemen, wharfingers, barge-owners, lightermen, forwarding agents, bonded carmen and common carmen, and refrigerating store-keepers. 3. To insure with any other company or person against losses, damages, risks, and liabilities of all kinds which may affect this company, and also to accept the whole or any part of such risks and liabilities of the company as underwriters. 4. To carry on the business of purveyors, refreshment caterers, and contractors in all its respective branches on board of the company's ships or vessels. 5. To carry on business as tourist agents and contractors, and to facilitate travelling, and to provide for tourists and travellers, or promote the provision of conveniences of all kinds in the way of through tickets, sleeping-cars or berths, reserved places, hotel and lodging accommodation, baggage transport, and otherwise. 6. To maintain, repair, and alter any buildings, plant, machinery, or works necessary or convenient for the purposes of the company, and to maintain, repair, improve, convert, alter, fit and refit, provide with engines, tackle, equipment, stores, and furniture the ships, vessels, lighters, barges, and boats belonging to or under charter to the company, and to sell, exchange, let on hire, or dispose of any of the said ships, vessels, lighters, barges, or boats, or any of their engines, tackle, equipment, stores, or furniture. 7. To acquire by purchase, lease, feu, excambion, or otherwise, or to erect, build, or construct, or cause to be erected, built, or constructed, any wharves, docks, piers, offices, warehouses, factories, tramways, elevators, cranes, lifts, machinery, engines, or plant, and patent rights in connection with the same, or to acquire any right to use or easements over the same, and to acquire by purchase any lands, tenements, and hereditaments of whatever tenure, or any real or personal property or easements in or over the same. 8. To borrow and raise any sum or sums of money by way of loan, discount, cash credit, overdraft, or guarantee, or upon bills of exchange, promissory notes, bonds, bonds and dispositions in security, mortgages, cash credit bonds, debentures, debenture stock, deposit-receipts, or in any other manner, and to grant security for all or any sums so borrowed, or for which the company may be or may become liable, or for performance by the company of any obligation or liability that may be incurred or undertaken by the company, or any manager, ship's husband, or other duly authorised person, and by way of such security to dispense, mortgage, pledge, or charge the whole or any part of the property, assets, or revenue of the company, including uncalled or unpaid capital, or to dispense, transfer, or convey the same absolutely or in trust, or to give to lenders or creditors powers of sale and other usual and necessary powers. 9. To lend and advance money or give credit to such persons and on such terms as may seem expedient, and in particular to customers and others having dealings with the company,