

*relict*. (2) By the law of Scotland *jus relict* is a certain share of the wife's estate, fixed so far as regards value as at the date of the wife's death. The estate having been reduced to cash by realisation, admittedly in due course and without undue delay, any question of valuation is obviated, and apart from specialities, which do not exist in the present case, no subsequent change in value, either of decrease or increase, which occurred in the course of the subsequent management of the estate by the executor will diminish or enlarge the value of the *jus relict*. It follows that the amount of the petitioner's claim is not affected by reason of the depreciation in value of the investments referred to in the question."

Counsel for the Petitioner — Dean of Faculty (Clyde, K.C.)—Henderson. Agents—Melville & Lindesay, W.S.

Counsel for the Attorney - General — Lord Advocate (Munro, K.C.) — Solicitor - General (Morison, K.C.) — Pitman. Agents—Carmichael & Miller, W.S.

Counsel for James Thomas Jones—Wark. Agent—P. Morison & Co., W.S.

Tuesday, June 6.

SECOND DIVISION.  
HENDERSON AND ANOTHER,  
PETITIONERS.

*Poor's Roll—Senior Counsel—Authority to Act for Poor Litigant—C.A.S., 1913, A, x, 13.*

It is unnecessary to obtain the authority of the Court to enable senior counsel to appear on behalf of a litigant who has obtained the benefit of the poor's roll.

C.A.S., A, x, 13, enacts—"No other advocate or agent than those appointed as herein provided shall be employed, or allow their names to be used in any stage of the cause, unless, on application to the Lord Ordinary or the Court by note, to be signed by the advocate or agent already appointed, the assistance of one of the other counsel or agents for the poor shall be specially authorised; . . ."

Mrs Janet Henderson and another, *pursuers*, brought in the Court of Session an action of damages for personal injuries against the Musselburgh and District Electric Light and Traction Company, *defenders*. The Lord Ordinary (ORMIDALE) having assolviced the defenders, the pursuers lodged a reclaiming note, and thereafter applied for and were admitted to the benefit of the poor's roll. They then presented a note to the Lord Justice-Clerk, in which they stated that a senior counsel had offered to appear with Mr Inglis, to whom the case had been remitted as one of the counsel for the poor, and craved the Court to authorise the said senior counsel to act in the cause. On the

note appearing in the Single Bills of the Second Division counsel for the petitioners referred to C.A.S., 1913, A, x, 13, and moved the Court to grant the prayer of the note. The Court having desired that the motion should be further heard, the case was put out for hearing in the Single Bills of 6th June 1916.

The DEAN OF FACULTY (CLYDE), who appeared at the Bar, having been requested to address the Court, *argued* that as under the Acts of Sederunt of June 16, 1819, and December 21, 1842 (which were in the same terms as C.A.S., 1913, A, x, 13), it had been decided that senior counsel were entitled to give their services in cases on the poor's roll without requiring the authority of the Court — *Garvie v. Hammermen of Perth*, 1832, 10 S. 755, at p. 758, *note*; *Bell v. Murray*, 1833, 12 S. 187—notwithstanding the re-enactment by the C.A.S. of the provisions of the earlier Acts of Sederunt which had been open to question, the same rule should be adhered to. He also stated that while it had been laid down that the senior acting for a poor litigant in a case on the poor's roll must do so gratuitously—*Robertson v. Finlay*, 1849, 12 D. 393; *Wark v. Russell & Wardrop*, 1850, 12 D. 1074—in more recent practice fees to senior counsel had been allowed.

The Court being of opinion that the authority of the Court was not required to enable senior counsel to appear in the cause, found it unnecessary to deal with the note.

Counsel for the Petitioners—E. O. Inglis. Agent—W. K. Lyon, W.S.

Tuesday, October 17.

SECOND DIVISION.

[Lord Dewar, Ordinary.]

A B v. Y Z.

*Reparation—Master and Servant—Slander—Privilege—Facts and Circumstances Inferring Malice—Averments—Relevancy.*

A B and C D, two employees in the drawing office of an electrical engineering works, brought actions against Y Z, the manager. The pursuers averred that on a certain day they were talking in the afternoon in the lavatory adjoining the office in which they were working, when they heard some one approaching; being unwilling to be found talking during business hours they entered a water-closet off the lavatory and closed but did not bolt the door; when they left the water-closet the defender summarily dismissed them, and in answer to a request for explanation replied, "When two men are discovered under those circumstances there is only one inference to be made from their conduct." Further, the pursuers averred that on the following day the defender went into the drawing office and addressed

the members of the drawing office staff, saying in the course of his remarks—“Two of your members were dismissed yesterday at a moment's notice. They left without a shred of character. They are not men, they are beasts.” The pursuers also averred that the defender made no inquiry into the matter, that he refused to listen to explanation, and that he made these accusations maliciously. It was admitted that the first occasion was privileged, but it was contended that malice had been relevantly averred, and that if the second occasion was privileged, then that malice had also as to it been relevantly averred.

*Held* that malice had not been relevantly averred as regarded the first occasion, and that the second occasion was privileged, and that no relevant averments of malice had been tabled; and pursuers' case *dismissed*.

A B and C D, assistants in the drawing office of an engineering works, *pursuers*, brought actions against Y Z, the manager of the works, *defender*, to recover in each case £3000 damages for slander. The averments were almost identical in the two cases.

A B *averred*—“(Cond. 2) On or about 18th January 1916 the pursuer and a fellow-draughtsman named C D, also in the employment of [the firm of engineers], along with a number of their fellow-draughtsmen, were working in the drawing office of the company. In the course of the afternoon of that date the pursuer and the said C D were in the lavatory provided for the use of the drawing office. While standing in the lavatory talking together they heard some-one approaching in the corridor adjoining the said lavatory, and the pursuer and the said C D, not being desirous of being found talking together during business hours, walked into a water-closet adjoining the said lavatory and closed but did not bolt the door. The person whose steps they had heard, and who it is believed and averred was the defender, entered the lavatory and after a short time left it. During the time he was in the lavatory he did not attempt to ascertain who was in the water-closet or whether the door was bolted. The pursuer then left the water-closet and returned to the drawing office. (Cond. 3) When the pursuer left the lavatory the defender was standing in the corridor. The pursuer had just got back to the office when the defender came to the office door and called him out. He went with the defender to the lavatory, and the defender, pointing to the water-closet door, demanded to know who was in it. The pursuer, realising from the tone of the defender's voice that he was annoyed at something, declined to tell. The defender then ordered the pursuer to put on his hat and coat and go, and told him that he must not come anywhere near the works again. (Cond. 4) The pursuer then began to collect his belongings, but found that he could not conveniently get everything taken away by him at that time, and told the defender that he would return the following day and

remove them in a bag. The defender refused to allow this. The pursuer then left. The said C D was also dismissed on the said date. (Cond. 5) Immediately after the said C D left the water-closet the defender, referring to the fact that the pursuer and C D had been in the water-closet together, stated to C D, ‘When two men are discovered under those circumstances there is only one inference to be made from their conduct,’ or used words of like import and effect. By the said statement the defender falsely, calumniously, and maliciously represented and intended to represent that the pursuer had been guilty of sodomy. C D on behalf of himself and the pursuer assured the defender that his inference was unfounded and offered to explain the circumstances, but the defender refused to listen to any explanation. (Cond. 6) On the following day, 19th January 1916, the defender went into the drawing office and addressed the members of the drawing office staff, and, *inter alia*, stated ‘Two of your number were dismissed yesterday at a moment's notice. They left without a shred of character. They are not men; they are beasts’—or used words of like import and effect. The said statement was made in the presence of . . . [*here followed the names of six employees*] . . . or one or more of them. The two persons referred to in the said statement were the pursuer and the said C D. It was so understood by those who heard it. (Cond. 7) The statement quoted in the preceding article was of and concerning the pursuer, and is false and calumnious. It was maliciously made by the defender. Further, the said statement falsely, calumniously, and maliciously represented, and was intended by the defender to represent, that the pursuer and the said C D had been guilty of conduct so indecent as to destroy their character as men, and to degrade them to the level of beasts. Before making the statements complained of in articles 5 and 6 the defender made no attempt to ascertain whether the grave accusations he was uttering had any foundation of truth. The statements were made recklessly without any inquiry and without any regard as to whether they were true or false. When an explanation of the circumstances was offered by C D, as above stated, the defender refused to listen to it. When in the lavatory the defender by trying to open the door of the water-closet could and would have ascertained that it was not snibbed or fastened in any way, and that there was accordingly not the slightest ground for suspicion regarding the conduct of the pursuer and C D, but he made no attempt to ascertain if the door was snibbed, and without any reasonable ground or probable cause made the grave imputations complained of on the character of the pursuer.”

The defender pleaded—“(4) The statements of the defender having been made upon a privileged occasion, and without malice, the defender is entitled to decree of absolvitor.”

On 21st June the Lord Ordinary (DEWAR)