

a style improper, either for married or unmarried parties, and were 'simply loathsome' to right-thinking persons from their immodesty and immorality; or it makes one or more of these false and calumnious representations or insinuations. Although the history of her whole life from childhood was fully investigated, in order that her character might be assailed, and was made the subject of lengthy evidence in the proof in the conjoined actions upon which the House of Lords gave judgment, the said article falsely asserts that 'she is an adventuress, launched into the world nobody knows how, with a previous history that has never been told,' insinuating, and intending to insinuate, by these false and calumnious assertions, that her previous history had been of so disreputable a character that it could not be told without shocking public decency; or making some similar insinuations prejudicial to the pursuer's moral character." She further states that the said article contains statements for the making of which there was and is no probable cause, and the said statements are malicious, and are not justifiable as fair newspaper comments upon proceedings taking place in a court of justice.

The defenders' pleas, so far as affecting the jury trial, were as follow:—

3. The article complained of is not defamatory of the pursuer, and is not actionable at her instance,

4. This action cannot be maintained, and the defenders are entitled to be assolized, in respect the article complained of is within the limits of fair criticism.

LORD JERVISWOODE charged the jury that a newspaper was entitled to report the proceedings in a court of justice in the ordinary case where the court was open; and they all knew that that was done every day. But while a newspaper and the publishers of a newspaper were entitled to report the proceedings of a court, if they went beyond the mere report of these proceedings, and if they made comments on the report of the proceedings of the court of justice, then he had to state in law that they had no special privilege in that matter. If they made comments on the conduct of the parties, and if any individual conceived he was injured by these comments, then it was a question for the jury to determine whether these were fair and right comments, and whether the publishers were justified in making them. That was the question for the jury, and the publishers had no privilege as regarded that particular matter. He had no doubt that the jury would be of opinion that the article set forth in this schedule as taken from the newspaper was an article which *prima facie*—that was to say, at the first blush of reading it—detracted from the pursuer's character. He need not read the article fully, but there were statements in it which would probably strike them as in some degree detracting from the pursuer's character. There might be something in this article against Major Yelverton as well as against Miss Longworth; but with that neither he nor the jury had anything to do. The case had reference to Miss Longworth alone. Now, the defence made on the part of the newspaper on this subject was that this was a legitimate comment on the proceedings in this case, and these proceedings were so far before the jury for the purpose of this action. His Lordship proceeded to quote various passages from the correspondence which had taken place between the parties, and the opinions of the judges upon them, both in the Court of Session and the House of Lords. He concluded by saying—Gentlemen, it is for you to say, with reference to the whole of these letters, whether you think the newspaper was warranted in using these expressions as to the "interests of morality," and so forth. I think it would be wrong in me, after the very long and able addresses you have heard, to detain you by going through all the documentary evidence which has been submitted to you at so great length. The question which you have to consider is whether the

comments made by this newspaper are fair, looking to the whole circumstances of the case, the position of the parties, and the public discussion of the case within the courts of justice, or are they the reverse? Are they unfair comments—such comments as you think the publisher or conductors of this paper ought not to have made? If you think them fair, you will give effect to that view. If you, on the other hand, think the newspaper has gone beyond that line, and has published remarks on the pursuer's character which are not warranted in the circumstances, then it will be your duty to return a verdict for the pursuer.

After an absence of nearly six hours, the jury, by a majority of nine to three, returned a verdict for the defenders.

Thursday, Dec. 7.

FIRST DIVISION.

PETITION—JAMES COLLIE.

Process. Form of procedure under the "Companies' Act 1862."

Counsel for Petitioner—Mr Fraser. Agents—Messrs Murray & Beith, W.S.

The Petitioner was appointed by the Court, on 5th March 1864, official liquidator of the Fraserburgh Arctic Seal and Whale Fishing Company, which company the Court ordered, on 24th February 1864, should be wound up under the Companies Act, 1862. The petitioner having after his appointment investigated into the affairs of the company, found that there was an apparent deficiency of £838, 13s. 3d. He therefore, on 9th June 1865, presented a petition for powers to proceed with the winding up, and *inter alia* to settle a list of contributories, and to make a call on each of them at the rate of £9 per share. This power having been granted, the petitioner made the call authorised, which has been paid by some of the contributories but not by others, and he now prayed the Court, in terms of section 121 of the Companies Act, to pronounce decree against those who had failed to pay the call, for the sums due by each, with interest, "in the same way and to the same effect as if they had severally consented to registration for execution on a charge for six free days, of illegal obligation to pay such sums and interest, and to grant warrant for extracting the said decree immediately, and to declare that no suspension thereof shall be competent except on caution or consignment, unless with special leave of the Court or the Lord Ordinary."

The Court granted the prayer of the petition.

UNIVERSITY OF ABERDEEN v. IRVINE.

Trust—Mortification—Annual Rent—Positive and Negative Prescription.

Counsel for Pursuers—The Solicitor-General, Mr Patton, and Mr John Hunter. Agents—Messrs Patrick, M'Ewen, & Carment, W.S.

Counsel for Defender—Mr Gordon and Mr Gifford. Agent—Mr Arthur Forbes Gordon, W.S.

This is an action of declarator and reduction at the instance of the University of Aberdeen, the Lord Provost, Magistrates, and Town Council of Aberdeen, as managers and patrons of the Grammar School of Aberdeen, the masters of the said Grammar School, and certain bursars in the University and Grammar School, against Mr Alexander Forbes Irvine of Drum. The object of the action is to declare the pursuers' right to the Lands of Kinmuck in Aberdeenshire, which are said to be worth about £700 a year.

It appears that an ancestor of the defender, Alexander Irvine of Drum, made the following provisions by his testament and last will, dated in 1629, viz:—

"For the maintenance of letters, by thir presents, I leave, mortify, and destinate ten thousand pounds