

CESSIO—MACKAY *v.* HIS CREDITORS

(ante, p. 174).

Cessio honorum. A person who is in prison for non-performance of a decree *ad factum praestandum* cannot apply for the benefit of *cessio*.

Counsel for Petitioner—Mr Gebbie. Agents—Messrs Macgregor & Barclay, S.S.C.

Counsel for Incarcerating Creditor—Mr Macdonald. Agent—Mr Robert Johnston.

This was a reclaiming note against a judgment of the Sheriff of Caithness finding that an application for the benefit of *cessio* was incompetent on the ground that the applicant was not incarcerated for payment of a civil debt but on a decree *ad factum praestandum*. The decree under which the petitioner had been imprisoned in the jail of Wick since August last was one pronounced by the Sheriff of Sutherlandshire, by which he granted warrant to officers of court to charge the petitioner and his partner, Angus M'Donald, to deliver up to David Levack, a herring fishing-boat and appurtenances and certain herring fishing-nets and buoys. It was not disputed that this was a decree *ad factum praestandum*, nor was it pretended that a person incarcerated on such a decree was in a position to apply for the benefit of *cessio*; but it was argued (1) that the agreement under which Levack claimed the absolute property of the boat, &c., in question was one which only gave him a right to them in security of a debt due to him; and (2) that the petitioner was not capable of implementing the decree against him, because the boat, &c., had been, in his absence in Aberdeenshire, sold under a diligence by a creditor of his partner, Angus M'Donald.

The Court refused the reclaiming-note, holding that as the decree was not brought under suspension it must be assumed to be a good decree; and that being a decree *ad factum praestandum*, it could not be made the foundation of an application for *cessio*.

PATERSON *v.* SOMERS.

Reparation—Slander—Newspaper—Issue. Form of issue in an action against a newspaper publisher for slander. Question whether it is actionable falsely and calumniously to represent a person in a public newspaper as the author of an anonymous letter, without farther specification of anything injurious in the statement or the letter.

Counsel for Pursuer—The Solicitor-General and Mr Lorimer. Agents—Messrs Neilson & Cowan, W.S.

Counsel for Defender—Mr Gifford. Agent—Mr Thomas Ranken, S.S.C.

This is an action of damages by Dr James Paterson, Glasgow, against Mr Somers, the printer and publisher of the *Glasgow Morning Journal*. The pursuer complains of the following article which appeared in the defender's paper on 24th March 1865:—"The following communication from one who had had much personal knowledge of Dr Pritchard has been sent us." The communication concludes with the following words:—"The whole matter lies in a nutshell. An anonymous letter is written by some moral coward or other, who either hazarded a stab in the dark, or whose love of justice did not conquer his sense of modesty—a man who, no doubt, does 'good by stealth, and blushes to find it fame,' a blush, doubtless, of deservedly deep scarlet. Well, this anonymous communication is traced to its source, and the writer must, of course, adopt the letter and stand to it. Then the apprehension of the gentleman named or alluded to in it is a natural result, and the *post-mortem* examination, the scrutiny in his household, and all that has since taken place follow in natural sequence, and here the affair rests. But it is not a little strange that a whisper of 'antimony' should have been heard about the County Buildings before even the examination was commenced. Why, what was Dr Paterson about if he

knew anything about antimony being administered? Was he not called in his professional capacity, and entitled therefore to speak with a voice of authority as to what should be administered and what withheld; and if administered against his advice, and he saw or suspected anything wrong, why did he not at once deem it his duty to boldly protest, or immediately communicate with the authorities? But we have not yet heard that he has adopted the anonymous letter referred to. It cannot be denied that his position in the case does not, *prima facie*, appear either lucid or pleasant, and this he must feel himself, and acutely too. Dr Paterson should really clear himself as regards this anonymous letter; and the public, seeing that it was the primary cause of the arrest and the subsequent events, should withhold its opinion, give the accused fair-play, and calmly wait for more light."

The pursuer stated, in regard to this article, that it referred to him and was calumnious—that it falsely insinuated and represented that he was the writer of the anonymous letter referred to, in consequence of which suspicion at first attached to Dr Pritchard, and that he was a moral coward, and had not the courage or sense of public duty to state any circumstances of suspicion known to him in reference to the deaths of Mrs Taylor and Mrs Pritchard; that he had thus done Dr Pritchard a grievous injury in a base and underhand way, and as if by a stab in the dark, and that he was guilty of a base action and of gross neglect of public duty, &c., &c.

The issue proposed merely put the question, whether the article complained of was of and concerning the pursuer, and whether the pursuer was thereby falsely and calumniously held out or represented as being the author of the anonymous letter therein referred to. This issue was objected to on the ground that it was not actionable to say of a man that he was the author of an anonymous letter. After discussion, in the course of which opinions were expressed that the proposed issue could not be allowed, the pursuer consented to embody in his issue the statement made by him that he had been represented falsely to be a moral coward; and the issue was to-day adjusted in these terms:—

"It being admitted that the defender is the printer and publisher of the *Morning Journal* newspaper, published daily in Glasgow, with the exception of Sundays, and which had, at the date after referred to, a considerable circulation in Glasgow and elsewhere:

"It being also admitted that in the number of the said newspaper which bore date and was printed and published in Glasgow upon 24th March 1865, there were also printed and published under the heading 'The following communication from one who had had much personal knowledge of Dr Pritchard has been sent us,' the words and sentences set forth in schedule (A), annexed hereto:—

"Whether the said words and sentences are, in whole or in part, of and concerning the pursuer; and falsely and calumniously represent that the pursuer was the author of the anonymous letter referred to in said article, and that he was a moral coward, who hazarded a stab in the dark—to the loss, injury, and damage of the pursuer?

"Damages claimed, £3000."

Friday, March 2.

SECOND DIVISION.

GORDON *v.* GORDON'S TRUSTEES

(ante, pp. 69, 110).

Entail—Trust Settlement—Construction. A trustor having directed his trustees to invest the residue of his estate in the purchase of lands, and to execute a deed of entail thereof in favour of his