provisions in his trust-deed. Mrs Black or Ferrier, the testator's sister, predeceased him; her son, William Ferrier, survived him, but died on 18th May 1871, leaving a will constituting his wife sole executrix and universal legatee. The other nephews of the testator, John and James Ferrier, claimed the £300 left to them by the clause above quoted, on the ground that William had not survived the "period of payment." William Ferrier's widow, on the other hand, claimed the whole of the £500.

The questions submitted for the opinion of the Court were:—

"1. Whether the legacy of £500 vested in the said William Ferrier, and so was conveyed by his will to his widow, the first party?" or

"2. Whether the said William Ferrier died before the period of payment of the said legacy of £500, and the direction took effect to pay £200 thereof to his widow, and the remaining £300 to the said John Ferrier and James Ferrier?"

LEE, for Mrs Ferrier, contended that the legacy vested in William Ferrier *a morte testatoris*, and that there was nothing to show that the testator contemplated a different "period of payment," except in the event of his being survived by his sister, Mrs Black, in which case the legacy would have vested on her death.

M'LAREN, for John and James Ferrier, answered that the "period of payment" meant the time when it was convenient for the trustees to pay the money, and they were actually ready to pay it; and that William Ferrier must be held to have died before that period had arrived. He relied chiefly on the cases of *Howat's Trustees*, 1869, 8 Macph. 337, 7 Scot. Law Rep. 157; *Thorburn* v. *Thorburn*, 1836, 14 S. 485; and *Wilkie* v. *Wilkie*, 1837, 15 S. 430, where vesting was held to have been suspended until the period of "receiving payment," or that of actual division had arrived.

At advising—

LORD JUSTICE-CLERK—I do not suppose your Lordships are disposed to question what has been laid down in the authorities quoted to us, but the present case stands quite distinct from these. In these cases there was a period of receipt of payment, or of actual distribution of the testator's funds, entirely distinct from the period of the testator's death. In this case there were two alternative periods of payment, viz., the death of the testator, or the death of his sister, Mrs Black, in case she should survive him; but there is nothing to indicate the testator's intention that the legacy should not vest until some period subsequent to one of these events. The third purpose of the deed begins by directing the trustees to retain the £500, on the assumption that they actually had it in their hands. The remainder of the estate sufficed for payment of debts and the other legacies, and there was no reason why the trustees should delay to pay the £500. It was to be paid as soon as convenient after the death of the testator. I can, therefore, see no reason for holding that the period of payment was intended in any way to be postponed, or for departing from the ordinary rule that a legacy vests *a morte testatoris*.

LORD COWAN.—I concur in the view taken by your Lordship. I think the period of payment means the death either of the testator or of his sister. By the words "as soon thereafter as my trustees shall find it convenient," the testator merely expressed his desire that they should not be put to any inconvenience; and there is nothing to show that he intended to make the period of vesting dependent on their discretion.

LORD BENHOLME—It appears to me not to be the tendency of courts of law to hold that the vesting of rights should depend on mere accident or caprice. Unless there be some special and distinct reason that vesting should be suspended, the ordinary rule must be followed, and the legacy held to vest on the death of the testator. I am, therefore, of the same opinion as your Lordships.

LORD NEAVES concurred.

The Court accordingly answered the first question in the affirmative.

Agents—M'Kenzie & Kermack, W.S., and Henry Buchan, S.S.C.

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*Tuesday, May 21.*

## FIRST DIVISION.

### GILRAY (ROBERTSON'S CURATOR).

Curator Bonis—*Lunatic.*

Circumstances in which the Court refused to sanction a *curator bonis* to carry on the business of a lunatic, but directed the Accountant of Court to fix the rate of commission for past services.

Mr John Gilray, coal merchant, Edinburgh, was in 1867 appointed a *curator bonis* to a lunatic, William Robertson, ironfounder, Oakfield Foundry. The assets of the estate consisted chiefly of the stock and effects of the foundry, and of such profits as could be made out of the business. The curator continued to carry on this business, and in auditing his first account, closed on 30th June 1868, the Accountant of Court allowed the curator £100 as commission for the work which he had done, but stated in a note that as the foundry business was of a hazardous nature, the Court would not sanction the curator to carry it on, and that it would therefore be necessary for him to discontinue doing so. The curator, however, continued at his own risk to carry on the business, to the great benefit of the estate, and of the lunatic and his family. But when the Accountant of Court audited his accounts up to 30th June 1871, he reserved the question of commission, on the ground that it would imply approval of the curator carrying on the business, which involved such risk that it might terminate in the loss of the whole estate. The factor, however, having urged his claim for commission for the period up to 30th June 1871, the Accountant reported the matter to the Lord Ordinary on the Bills for instructions, and the Lord Ordinary having refused *in hoc statu* the curator's motion to have the amount of his commission fixed by the Accountant, the curator reclaimed.

BLACK for the *Curator Bonis.*

LEE for the Wards.

At advising—

LORD PRESIDENT—The Court cannot judicially sanction the curator to carry on this business, as to do so would establish a dangerous precedent. But the Accountant of Court in his report says, that under the management of the curator the business has for the last four years yielded a profit, by which the lunatic and his family have been

supported. Thus, although the Court cannot either express or imply their sanction to the curator to carry on the business in the future, or even during the current year, it is not inconsistent with their duty to consider whether he is not entitled to remuneration for past services.

I am of opinion that the Court should recall the interlocutor of the Lord Ordinary, and direct the Accountant of Court to fix the rate of commission to be paid to the curator for his services from 30th June 1868 to 30th June 1871.

LORDS DEAS, ARDMILLAN, and KINLOCH concurred.

Agents for Petitioner—Curror & Cowper, S.S.C.
Agent for Ward's family—H. W. Cornillon, S.S.C.

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*Tuesday, May* 21.

## SECOND DIVISION.

### CALDWELL *v.* MONRO.

*Slander—Reparation—Damages.*

A minister having, from the pulpit, declared his belief that "some one" had been guilty of "forgery," in writing a letter to a newspaper, signed "A member of the Kirk Session," but having afterwards disclaimed all intention of alluding to any one in particular; and having shortly thereafter stated in a letter to the same newspaper his reasons for the conclusion at which he had arrived;—*held* not liable in damages for slander to a person to whom some members of the congregation imagined his remarks from the pulpit to apply.

The pursuer in this action was James Caldwell, Kincaidfield House, Milton of Campsie, a member of the congregation of the parish church of Campsie, but not of the Kirk Session; the defender was the Rev. Thomas Monro, D.D., minister of the Parish of Campsie. The action arose out of some disputes with regard to a "patronage," and an "anti-patronage" petition which was circulated in the parish for signature during the month of February 1871. On Saturday, 4th March, there appeared in the *Glasgow Herald*, a letter criticising some remarks made by Dr Monro from the pulpit on the previous Sunday, and signed "A member of Campsie Parish Kirk Session." On the following day, Sunday, 5th March, Dr Monro alluded to this letter and the circumstances to which it referred, in the following terms:—"One would have thought that this tempest in a teapot would have been allowed to drop, but I observe from the newspaper that some one purporting to be a member of session has written an anonymous letter to the editor, which I have no doubt is a forgery. I have not had time to look at it, but I do not think it will require any notice from me, as it bears internal evidence that it is a forgery, and that the editor has been imposed upon by a so-called member of session;" and this was the first alleged libel of which the pursuer complained. The next day the pursuer wrote a letter to Dr Monro, containing, *inter alia*, the following passages:—"With reference to the extraordinary charges of the crimes of forgery and imposition made by you in church yesterday against some person whose name you did not mention, I learn that some of the congregation understood that, in making these charges, you were alluding to me. Why any of the congregation should have thought that such a wicked allusion applied to me, I know not. So far as I am concerned, I never dreamt of applying your observations to myself. . . . I think that, as a member of the church, I am entitled to ask of you as a christian minister to write me, saying you had no intention of applying the charges to me, nor of leading others to suppose that I was the party referred to."

Dr Monro's reply was to the following effect:—

*Manse of Campsie, 6th March* 1871.

"Dear Sir,—In reply to your long note of this morning, I have only time to say that neither you nor any one else was in my thoughts when I made the observations to which you allude, because I knew nothing about the anonymous letter in the *Herald* except what its internal evidence implies. —Yours," &c.

On 8th March there appeared in the *Glasgow Herald* a letter from Dr Monro, stating the grounds on which he had arrived at the conclusion that the letter of the 4th, purporting to be signed by a "Member of the Kirk Session," did not truly emanate from a member of that body. This was the second alleged libel complained of by the pursuer. On 11th March the pursuer again wrote to Dr Monro, stating that, notwithstanding the assurance contained in the above note written by the latter, it was still the almost universal belief in the parish that he (the pursuer) was the person to whom Dr Monro imputed the crimes of forgery and imposition. The pursuer, therefore, required Dr Monro publicly, from the pulpit, "to withdraw the charges of forgery and imposition" made by him from the pulpit on the previous Sunday, and "to state that, in making these charges, he had no member of the church in his thoughts at the time." Dr Monro declined to comply with the pursuer's request, whereupon the present action was raised in the Sheriff Court of Stirling, concluding for £100 in name of damages and *solatium* for the alleged libel.

The Sheriff-Substitute (SCONCE) assoilzied the defender from the conclusions of the action, and the Sheriff (BLACKBURN), on appeal, adhered to the interlocutor of his Substitute.

The pursuer appealed to the Court of Session. He pleaded, *inter alia*:—"(2) The defender having used and uttered and published false and slanderous expressions rashly and recklessly, and the general impression and belief having been thereby created in the minds of the congregation that the pursuer was the party who had committed, or who from the pulpit had been accused of having committed, the said crimes or crime, or practised deceit or other moral misconduct: the pursuer is entitled to redress, and to have his character cleared of the imputation cast upon it by the defender's wrongful act, though the defender may not have intended the said expressions to apply to the pursuer." "(3) The defender having been made aware that the pursuer was the party to whom the congregation applied his false and slanderous accusations, and having refused to withdraw said accusations as publicly as they were made, he is liable in damages for the slander remaining on the pursuer's character and reputation." "(4) The defender having caused to be published his said letter of 8th March, after being informed that the pursuer was considered as the party to whom said accusations were being applied, and having rashly and recklessly, repeated the above-mentioned charges, he is responsible," &c.