

SUMMER SESSION, 1883.

COURT OF SESSION.

Saturday, May 12.

FIRST DIVISION.

[Sheriff of Aberdeen.

STEWART *v.* M'BEY.

Process—Appeal—Cessio—Debtors (Scotland) Act 1880 (43 and 44 Vict. c. 34)—Appeal before Issue of Interlocutor Granting or Refusing Decree of Cessio.

A creditor's petition to have his debtor ordained to execute a disposition *omnium bonorum* for behoof of his creditors was opposed by the debtor as incompetent, on the ground that he had been sequestrated twenty years before and was still undischarged, and that the new process of *cessio* could not therefore proceed. The trustee in the sequestration had been discharged. The Sheriff repelled the objection, and appointed the petition to be enrolled that a diet for examining the debtor might be fixed. On appeal the Sheriff adhered. The debtor appealed to the Court of Session. The Court, following *Adam & Son v. Kinnes*, 27th February 1883 (*ante*, p. 436), held that the appeal was incompetent.

Counsel for Appellant—Baxter. Agent—D. Roberts, S.S.C.

Counsel for Respondent—J. A. Reid. Agents—Ronald & Ritchie, S.S.C.

Friday, May 18.

SECOND DIVISION.

[Sheriff of Lanarkshire.

M'NEILL *v.* FORBES.

Reparation—Slander—Privilege—Charge of Slander by Pupil Teacher against School-mistress—"Street Walker."

A young woman who had been a pupil

teacher in a school raised an action of damages against the schoolmistress alleging that the defender had slandered her by calling her a "street walker." The pursuer had remained in the school for nearly two years after the alleged slander was uttered. The evidence showed that the defender, while reproving the pursuer in the course of her duty as head of the school, had used the expression complained of, but not that she had so used it as to charge the pursuer with immorality. *Held* that while the action was not barred by *mora*, the circumstance that the pursuer had remained in the school for so long a time after the alleged slander, taken with the other evidence in the case, showed that the defender had not, in rebuking the pursuer, exceeded the privilege of her position by imputing immorality to her, and that the defender ought therefore to be assolizied.

This action of reparation and damages for alleged slander arose out of the following circumstances—The defender Anne Forbes, otherwise known as Sister Mary Ignatius, was principal mistress or superintendent of St Patrick's Roman Catholic School for Girls, Anderston, Glasgow. In 1880 the pursuer, Helen M'Neill, who was then fifteen years of age, and who was the daughter of an iron driller in Glasgow, was a pupil teacher in the said school. The pursuer averred that the defender having conceived ill-will and malice against her, in February of that year, in the class-room of the Convent at No. 58 Charlotte Street, Glasgow, and in the hearing of the scholars and others, and particularly of two other pupil-teachers named, "accused the female pursuer of being, and applied to her the epithet of being, 'a street walker, and fit for nothing else,' or used words and expressions of like import and effect, meaning and intending thereby to mean, and leading or tending to lead her hearers to understand, that she (the female pursuer) was a prostitute, or that she was a young woman of vile, vicious, and immoral habits, character, and conduct."

She also averred that the defender in the month of August following, also within the school, in the presence of certain parties

specified, "publicly declared that the female pursuer 'was every inch a fast girl,' or did use words or expressions of like import and effect, meaning and intending thereby to mean, and leading or tending to lead her hearers to understand, that she (the female pursuer) was a young woman of immoral, or at least improper, indecent, and vicious, propensities and habits. She set forth that the expressions so used by the defender of and towards her were "false and unfounded, and were used and uttered by the defender not only without justification, but solely through feelings of malice, hatred, and ill-will, and with the view of hurting her feelings, injuring her name, character, and reputation, and blasting her prospects in life." She also averred that she had suffered in her feelings and in her professional prospects as a teacher.

The defender averred that she had charge of the whole pupil teachers in the said school, and was responsible to the managers for the conduct of the school, and for the behaviour of the teachers in connection both with the school and the church. She denied having used any epithets or expressions of and concerning the pursuer, injurious to her character, prospects, and reputation in any way, and in particular the epithet charged. She explained that she had on more than one occasion, in her character of school-mistress reproved and scolded the pursuer for unbecoming conduct in walking with young men on the street, and coming in late for school. She had done so on complaints made by the clergymen of St Patrick's Church, with which the school was connected.

The defender pleaded, *inter alia*—(3) *Mora*.
“(5) Any expressions used by the defender of and concerning the female pursuer in the conduct and discipline of the school being privileged, the defender cannot be subjected in damages.”

The evidence was to the effect that the pursuer was sometimes rebuked for coming late to school, and also in connection with her dress and manner of wearing her hair. It also appeared that she had on some occasions been somewhat impertinent to the defender when corrected. It likewise appeared that the defender had been informed by the mother of two pupils at the school that she had seen the pursuer walking on the street in the company of young men. In consequence of such complaints with regard to the pursuer and other teachers, the clergymen in charge of the school requested the defender to admonish the teachers on the subjects. Certain of the teachers who were called as witnesses for the pursuer, deponed that on the first of the two occasions complained of, the defender, speaking to the pursuer, and in the course of a reproof she was administering to her, called her a street walker. The evidence on this point, however, was somewhat conflicting. The account given by the defender of the occurrence was that in consequence of the instructions she had received, and of the complaints made to her, she had on the occasion in question, and addressing herself to the whole of the teachers, used words to the effect that, according to the complaints made of them, they were little better than street walkers. She denied that she had charged pursuer with being a street walker or with any immorality. She denied also having

called her a fast girl, her explanation of that charge being that in the course of reproving her as to her style of dress and deportment she had only said to her that such a manner of dressing as she was rebuking in the pursuer gave a girl the appearance of being a fast girl. The pursuer remained in the school till October 1881, when she was dismissed by one of the managers.

The Sheriff-Substitute (LEES) found that the pursuer had failed to substantiate any subsisting ground of damages against the defender, and assolizied her.

“*Note*.—The defender says that the expressions of which the pursuer complains were not used by her, or at any rate had no bad meaning, or so far as they had, were applied to the pupil teachers generally and not to the pursuer in particular. The words used in August 1880, viz., that the pursuer was a fast girl, are not, I apprehend, of themselves actionable; and I think it is distinctly shown by the evidence that these words were not intended to convey any imputation on the pursuer's morality, but were intended to be applied, and were by the hearers to be applied, only to the style of the pursuer's dress. But the statement made in February 1880 that the pursuer was no better than a street walker and fit for nothing else, is, I am afraid, shown to have had a worse meaning.

“In the ordinary case, therefore, and apart from the peculiar circumstances of the present one, as I think it is proved that the words were used, I should have held that there were grounds to justify a material award of damages.

“The circumstances of the present case, however, do not on reflection appear to me to warrant such a course.

“The pursuer was at the time a mere girl of fifteen, and though her excitable nature seems to have made her feel the words, there is no proof of any injury to her character or her prospects, or in any way except as regards her feelings.

“Her father apparently did not then consider that there was any ground for claiming reparation on this score, for though in the knowledge of the occurrence he wrote a disgraceful letter to the defender making complaints of other matters, he made none of this.

“On the contrary, he suffered his daughter to remain for nearly two years in her position of pupil teacher, and it was not till three months after the pursuer was dismissed by one of the managers for other reasons that this action has been thought of. In these circumstances, and those I am about to mention, there is reason to think that if there was any ground for claiming damages, there has been a *remissio injuriarum*.

“The pursuer and defender stood to one another in the relation of teacher and pupil, and in that state of matters there is room for the plea of privilege. If that be so, it is matter of familiar knowledge that a pursuer must aver and prove that the false imputation complained of was uttered maliciously and without probable cause. Now, though the condescendence is thickly powdered with superfluous epithets, the needful words of 'without probable cause' are wanting, and no words equivalent to them are used.

“But it is more satisfactory to base the judgment on other than technical grounds, and I

prefer to rest it on grounds of equity and common sense.

"The defender concedes that there is nothing against the moral character of the pursuer, and says that she never thought there was, and she further explains (what I do not doubt is true) that if the pursuer had been of immoral character she would not have been allowed to remain for a day as a pupil teacher. But though nothing is urged against the pursuer's morality, it is clearly shown that the girl was of a most foolish, insubordinate, and irritating character, and that the words complained of were uttered by the defender as the result of much provocation on the pursuer's part. The defender thought it her duty frequently to remonstrate against the pursuer's style of dress. These reproofs, instead of meeting with the attention they deserved, were sometimes disregarded, and on other occasions followed by impertinent words and acts on the part of the pursuer.

"It is further proved that complaints were made to the defender from various sources of the way in which the pupil teachers under her care were in the habit of walking with young men on their way to and from the Convent, which led to the defender remonstrating with her pupils. And apparently it was with this running in her mind that the defender, who had anything but a liking for the pursuer, rashly and in anger applied to her the more serious words complained of. On the occasion in question the pursuer had arrived late for her duties, as she too frequently did, and hence the cause of this action arose. The pursuer denies that she was in the habit of walking with young men, and one or two other things of an equally innocent though of a forbidden nature, but they are all more or less clearly proved.

"In the whole circumstances of the case, I therefore think that the justice of it is met by absolvitor without costs."

The pursuer appealed to the Sheriff (CLARK), who adhered.

"*Note.*—While concurring generally with the views stated by the Sheriff-Substitute, I think it right to add the following observations. I do not attach any importance to the absence of the words 'without probable cause,' because in a case like this if the expression 'street walker' libelled were clearly established to have been used by the defender of and concerning the pursuer, the only defence would appear to be one of *veritas convicii*, and this has not been taken.

"But on a careful perusal of the proof I very much doubt whether it can be held proved that these words were used by the defender of and concerning the pursuer, or in the connection libelled. There is a great conflict of evidence upon this point. And upon the whole, taking the proof as we have it, I rather incline to think that the defender really expressed herself as she herself explains in her deposition. It is quite clear that complaints had been made as to the conduct of the pupil teachers of a very serious kind; and it would rather seem that the defender did no more than make the pursuer and the others aware that such complaints had been made, and warn them against giving any cause for such statements being made about them. If the words libelled were really used in the connection contended for by the pursuer, she has

herself to blame for not having brought this more clearly out; and it is here that the element of *moræ* comes into play. When so long a period is allowed to elapse between the alleged slander and the raising of an action of damages as has occurred in the present case, it may reasonably be expected that on both sides the evidence will prove indistinct, and the witnesses though acting with the utmost honesty may confuse subsequent conversations and surmises with what they actually heard stated at the time. If the pursuer's case suffers from this, the fault rests with herself.

"It is also plain that the pursuer has instructed no damage of a patrimonial kind, as she had every opportunity of doing if any such had accrued. It may be said no doubt that her feelings were injured, but if so it is remarkable that she should have so long delayed to seek for reparation, more especially when no reason for such delay of an adequate or satisfactory kind can be assigned.

"At the same time, while I do not think that the pursuer has proved up to her libel, it would rather appear that the defender was unguarded and inconsiderate in the language she used on the occasion in question, and that she has thereby in some sense exposed herself unnecessarily to legal proceedings. On these grounds I think the ends of justice are reached when absolvitor is given, but no expenses are found due."

The pursuer appealed to the Court of Session.

At advising—

LORD YOUNG—This is a painful case, and I think it would have been better for the pursuer if it had not been brought. The delay which has occurred on the pursuer's part, the alleged slander having been uttered when she was fifteen years of age, though it would certainly not have barred the action, is to be looked at in the light of the evidence, and in this view is very material.

The facts of the case are that at the time of the alleged slander the pursuer was a pupil teacher under the charge of the defender as superior teacher, who I understand was a nun in a convent, where the scene of events is laid. It was reported to the defender that the pursuer was in the habit of being on the streets with young men, she herself being rather gaudily dressed. In short, it was reported to her, and apparently truly, that the pursuer was behaving in a manner so unbecoming as to call for interference and remonstrance, and to call for a scolding, the unbecoming conduct being walking on the streets with young men gaudily dressed. A young girl of fifteen may do that with perfect chastity, but such conduct may lead to other results, and may lead to observations about the girl which are by no means desirable, but which are injurious to herself. And therefore a mother or a person in the position of the defender here is not only entitled but is in duty bound to remonstrate and scold the girl, and she may use very vigorous language. I think such an occasion is a privileged occasion, and the only question here is, whether the privilege was exceeded or abused, and I think that according to the evidence it was not. I think it is proved that the expression "street walker" was used, but the exact connection in which it was used I am not prepared to express by putting the whole words together, but I think it is according to the evidence that the defender

was remonstrating with and scolding the pursuer for behaving in that unbecoming manner—walking on the street gaudily dressed with young men, and being late for school—and that there was no intention on her part, and it was not understood that she was imputing actual prostitution—that is, walking the streets as a prostitute. I put the question to Mr Rhind, “Was it consistent with any such belief on either side when the party who gave the scolding kept the girl in the school as a pupil-teacher, and when the party who received it remained there for two years? If such a charge had been actually made—if she had believed the pursuer to have been in reality a street-walker—she would never have kept her a moment longer; if the pursuer had believed the charge was made in that sense, she never would have remained. Therefore, so far as the parties are individually concerned, the defender, in the exercise of her right and in the discharge of her duty, administering a rebuke and a scolding, and the pursuer being the party receiving it, it was not understood on the one side or the other that there was an imputation of being a prostitute. Nor do I think any reasonable person listening to a scolding of that kind would suppose that the school-mistress really intended to impute the crime of being a prostitute to the girl. Nobody would understand it to be so. I quite agree that it is a material question what the hearers of any defamatory language understand by it. The worst of all slander is slander which a person does not believe but which he intends the hearers to believe. A person knowing another to be perfectly pure, accuses that other of immorality, in language intended to be so received and understood. That is the worst of all slander. I think it quite clear upon the evidence, and from all the circumstances, that the hearers did not understand that the defender did mean the pursuer or anybody else to believe that she was accusing pursuer of being a prostitute; and I am quite satisfied from the circumstances connected with the case that nobody present understood the language used to be anything but a very proper scolding—it might be in somewhat rough language—of a girl of fifteen for her impropriety and levity of conduct, which had attracted attention, and was the subject of complaint. I am therefore, on the whole matter, repeating my regret that the case ever came here, of opinion that the judgment of the Sheriff should be sustained.

LORD CRAIGHILL concurred.

LORD RUTHERFURD CLERK.—Had I been satisfied that defender called pursuer (individualising her) a street-walker, I should have had very great hesitation in assailing defender, whatever her meaning, when she used the expression alleged. But on considering the evidence I have come to the conclusion along with the Sheriff that it is not proved that she used the language complained of. Having regard to the fact that this action was not brought until more than two years had elapsed after the events took place, I cannot say it is proved to my satisfaction that the expressions libelled were used by the defender. It is upon that ground, and upon that ground only, that I concur in the judgment of the Court. I confess, however, that while so concurring, I think the language which was used was not such as I can approve of as proper to be used on such an occasion.

LORD JUSTICE-CLERK—On first reading the evidence I had formed an impression unfavourable to the pursuer's case. This impression has strengthened during the hearing, and the result is that I concur entirely in the opinion of Lord Young.

The Court dismissed the appeal and affirmed the Sheriff's interlocutor.

Counsel for Pursuer (Appellant)—Campbell Smith—Rhind. Agent—William Officer, S.S.C.
Counsel for Defender (Respondent)—The Hon. H. J. Moncreiff—Dickson. Agents—M. M'Gregor & Co., S.S.C.

Saturday, May 19.

FIRST DIVISION.

[Exchequer Cause.]

WILSON (SURVEYOR OF TAXES) v. FASSON.

Revenue—Inhabited House Duty Act (48 Geo. III. c. 55), Schedule B, Case IV.—Exemption—Hospital—14 and 15 Vict. c. 36.

The Act 48 Geo. III., c. 55, exempts from assessment for inhabited-house-duty, *inter alia*, “any hospital.”

Held that the dwelling-house of the medical superintendent of an infirmary situated within the infirmary grounds, was exempt from inhabited-house-duty, because it was a necessary part of the infirmary.

In this case Charles H. Fasson, Deputy Surgeon-General, Superintendent of the Royal Infirmary, Edinburgh, appealed to the Commissioners for the county of Edinburgh against an assessment of £2, 5s. as inhabited-house-duty, at the rate of 9d. per pound on £60, the annual value of a dwelling-house occupied by him within the precincts of the Royal Infirmary grounds.

The house, which was self-contained, and occupied by Mr Fasson and his family, was a part of the Infirmary buildings, but separate and distinct from the Infirmary itself, being distant about 30 yards from the nearest point of it. There was an entrance to the house by the principal gate of the Infirmary in Lauriston Place, but there was also a private entrance for the superintendent and his family from the Meadow Walk, a public thoroughfare, though for foot-passengers only.

There was nothing in the constitution of the Royal Infirmary which required the superintendent to reside within the precincts of the Infirmary, and for a time the appellant had lived in a house provided for him by the managers in another part of the city, but on 16th October 1876 the Building, House, and Finance Committees of the managers adopted a joint report in which they came to the “unanimous conclusion that the superintendent should be required to live within the Infirmary grounds, and that a suitable residence should be provided for him there.” They came to this conclusion on, *inter alia*, the following grounds.—“The experience of the last four years seems to the committee to have proved that the duties of superintendent cannot be efficiently and in their entirety carried out unless he resides at the Infirmary. He cannot, living at a distance,