But the judgment is not rested on that view at all, but on a supposed distinction between the requirements of the County Voters Act regarding a notice of a claim or objection to the assessor and a notice to the person objected to. I am certainly unable to find any ground for that distinction in the provisions of the County Voters Act, and I am satisfied that there is none in the provisions of the Burgh Voters Act, which is the statute applicable in the present case, and the statute which now regulates the service of notices. I think that we are bound to decide in accordance with what we conceive to be the sound construction of that Act, although we may be forced to question the reasons for a previous judgment in reference to the County Voters Act.

With regard to the other question I concur with Lord Trayner.

LORD ADAM—I concur with your Lordships except upon one point, and that is as to whether the notice of objection in this case was timeously posted. My opinion in that matter is that this very question was raised and decided in the case of *M'Creath*, and I do not see any reason why that decision should not be followed in this case. I therefore think that we ought to hold that notice was timeously given.

The Court sustained the appeal and remitted to the Sheriff-Substitute to restore the name of John Neilson to the roll.

Counsel for the Appellant — Comrie Thomson—Craigie. Agent—R. J. Gibson, S.S.C.

Counsel for the Respondent—C. S. Dickson—Pitman. Agents—J. & F. Anderson, W.S.

---

# COURT OF SESSION.

*Thursday, December 3.*

## FIRST DIVISION.

[Sheriff of Aberdeen, Kincardine, and Banff.

## COOK *v.* GRAY.
## MEARNS *v.* GRAY.

*Reparation—Libel—Hotel Conducted without Certificate — "Shebeen" — Trust — Breach of Trust—Innuendo—Veritas.*

The proprietrix of a hotel obtained a certificate and Excise licence therefor from Whitsunday 1889 to Whitsunday 1890. She died in October 1889, and her trustees carried on the business without obtaining a transfer of the certificate until March 1890. On 6th December 1889 a letter appeared in a local newspaper which suggested that the police superintendent "might inquire into the truth or untruth of the report at present current that an old public-house in the Guestrow is being personally conducted as a shebeen—in point of strict law—waiting the convenience of an ex-bailie and a town councillor who are both about to become joint-proprietors of the place when a licence has been secured." The trustees in possession of the hotel, who were the parties referred to in the letter, sued the writer thereof for damages.

*Held* that the letter was not libellous, as (1) in strict law the public-house was a shebeen, and (2) the letter would not bear an innuendo of breach of trust.

Mrs Duffus, the proprietrix and occupant of a hotel in the Guestrow in Aberdeen, held a certificate and Excise licence to carry on the hotel for the year from Whitsunday 1889 to Whitsunday 1890. She died on 1st October 1889, and after her death her trustees Daniel Mearns and Alexander Cook carried on the hotel, but did not obtain any transfer of the certificate till 22nd March 1890.

On 6th December 1889 the following letter appeared in the *Evening Gazette*—"In the meantime, Mr Wyness" (superintendent of police) "might inquire into the truth or untruth of the report at present current that an old public-house in the Guestrow is being presently conducted as a shebeen—in point of strict law—waiting the convenience of an ex-bailie and a town councillor, who are both about to become joint-proprietors of the place when a licence has been secured." The trustees were the persons referred to in the letter.

Alexander Cook thereupon, on 31st December 1889, raised an action for damages for slander, in the Sheriff Court at Aberdeen against Alexander Marr, the publisher of the *Evening Gazette*, and Henry Gray, a draper in Aberdeen, and writer of the letter complained of, praying the Court "to grant a decree against the above-named defenders, ordaining them jointly and severally to pay to the pursuer the sum of £500 sterling, with interest thereon." Daniel Mearns also raised actions against Marr and Gray. These actions were conjoined.

The actions so far as directed against Alexander Marr were subsequently settled.

The minute lodged for the pursuers "craved leave to restrict the prayer of the petition in this conjoined action to the effect of withdrawing all claim against the defender Alexander Marr, who has paid to the pursuers a sum of money in settlement of the damages due to them by him, reserving the right of action against the defender Gray."

The pursuer Mearns in the action against Gray averred—"The pursuer and the said Alexander Cook junior entered into the possession and management of the deceased's estate, and undertook the management of the said hotel in the Guestrow until it could be disposed of by them as trustees. The said hotel was at the date of the death of the said Mrs Duffus and had been for many years duly licensed for the sale of excisable liquors. In particular, Mrs Duffus had in April 1889 obtained a licence for the said premises for the year

from Whitsunday 1889 to Whitsunday 1890, and the Excise licence had also been obtained by her. On the occurrence of Mrs Duffus's death the Collector of Inland Revenue and the Superintendent of Police were informed of her decease, and that her executors were to continue the conduct of the business until it should be disposed of as aforesaid. The course followed by the pursuer and his co-trustee was in accordance with the usual custom observed in Aberdeen. On the decease of a person holding a licence the executors do not have the certificate transferred to their own names, but look out for a person to whom the business may be disposed, and to whom the certificate held by the deceased may be transferred. . . . The said letter is of and concerning the pursuer and his said co-trustee, the said Alexander Cook junior, and falsely and maliciously represents that the pursuer and his co-trustee were conducting the said Duffus's hotel in a disreputable manner, and as a shebeen, in the sense in which that word is used in the Public-House Statutes, and that they were doing so in order that they might commit a breach of trust and become proprietors of the hotel after the licence had been attained, and thus purchase for their own use part of the trust-estate under their management, to the prejudice of the trust, or otherwise that they were breaking the law in order that they might dishonourably and discreditably reap a personal benefit therefrom by purchasing the hotel when a licence had been granted. The said statements are false and slanderous." The averments of the pursuer Cook were substantially the same.

The defender denied that the words in the letter were libellous, or would bear the construction that the pursuers were about to commit a breach of trust, and stated that the allegation that they were conducting a shebeen was in substance and fact true.

He further pleaded that the pursuers having already accepted compensation for, and discharged their claim in respect of the alleged libel, were not entitled to insist in the present action against him.

The interpretation clause of the Public-Houses Amendment Act 1862 defines a "shebeen" as meaning and including "every house, shop, room, premises, or place in which spirits, &c., or excisable liquors are trafficked in by retail without a certificate and Excise licence in that behalf."

The Sheriff-Substitute (BROWN) allowed a proof, and thereafter on 16th December 1890 pronounced the following interlocutor:—"Finds in the conjoined actions—(1) that the letter complained of, is of and concerning the pursuers, and was written by the defender Henry Gray; (2) that by said letter the pursuers, as trustees and executors of the late Mrs Duffus, were held up to public reproach as conducting the hotel in Guestrow, formerly occupied by her, as a shebeen, or as unlicensed premises, and otherwise as a disreputable house, the said premises being duly licensed when said letter was written, and being lawfully carried on by the pursuers without objection from the magistrates or the licensing authorities, according to an existing practice; (3) that by said letter the defender further said of and concerning the pursuers that they were so conducting the said premises 'waiting the convenience of an ex-bailie and town councillor, who are both about to become joint-proprietors of the place when a licence has been secured,' meaning thereby, that the pursuers were about to purchase the trust-estate under their care and management to the hurt and prejudice of said estate, and to their own benefit: Finds that the defender, having thus slandered the pursuers, is liable to them in damages: Finds that the conclusions of the conjoined actions so far as directed against the defender Alexander Marr have been withdrawn, under a settlement made with him: In terms of the minute of restriction assesses the damages to be paid by the defender, the said Henry Gray, to the pursuers, at the sum of £50; and decerns against the defender for payment to each of the pursuers respectively of a sum of £25, with interest from this date."

And on appeal the Sheriff (GUTHRIE SMITH) on 4th March 1891 adhered and dismissed the appeal.

The defender appealed to the First Division of the Court of Session, and argued—There was here no slander. A transfer of the licence and certificate was required—6 Geo. IV. c. 81, sec. 21; 9 Geo. IV. c. 58, sec. 19—and therefore in the statutory sense affixed to the word by the writer the place was a shebeen—25 and 26 Vict. c. 35, secs. 17 and 37. The letter would not bear the innuendo of breach of trust put on it by the pursuers. The pursuer Cook, by concluding against both defenders, jointly and severally for the same sum of money, had treated the alleged wrong as a joint one, and was now barred from dividing it—*Barr* v. *Nicolsons*, March 20, 1868, 6 Macph. 657, and *Taylor* v. *M'Dougall & Sons*, July 15, 1885, 12 R. 1304, and he could not therefore after settling with one defender proceed in his action against the other. In case Mearns had recovered against Marr—and such a result might have ensued—*Brims* v. *Reid & Sons*, May 28, 1885, 12 R. 1016; and *Browne* v. *M'Farlane*, January 29, 1889, 16 R. 368—such a decision would have released the defender Gray, and a settlement had a like effect—Stair, i. 9, 5; *Mayor, &c., of Salford* v. *Lever*, 1891, 1 Q.B. 168; *Brinsmead* v. *Harrison*, L.R., 7 C.P. 547. The circumstances of the *Western Bank* v. *Baird* were different.

The pursuers argued—The word "shebeen" was not confined to the sense of 25 and 26 Vict. c. 35, sec. 37. It bore an opprobrious meaning in ordinary language, and must be so construed—*Capital and Counties Bank* v. *Henty*, Law Rep., 7 App. Cas. 741. The hotel was licensed at the date of the letter. It was only the certificate which had fallen by death, and that only required the ministerial act of two justices of the

peace to transfer it. The letter fully bore the innuendo put upon it. In the settlement the pursuers had reserved all their right of action against the defender Gray, and he was not released by it — *Western Bank* v. *Baird*, March 20, 1862, 24 D. 859, *per* Lord Benholme. The pursuers had not received full satisfaction in their settlement with the defender Marr, and their right of action against Gray therefore remained—*M'Nacht* v. *M'Ghie, in voce* Discharge, 3546. The cases of *Barr* v. *Taylor* fell to be distinguished. Here the pursuer Cook would have been entitled to separate issues against each defender—*North British Railway Company* v. *Leadburn Railway Company and Waddell*, January 12, 1865, 3 Macph. 340.

At advising—

LORD PRESIDENT—This is an action of damages for slander through the publication of a letter in the *Evening Gazette* newspaper. The Sheriff-Substitute allowed a proof, and we have therefore the evidence which was led in the proof as well as the document itself; but the primary question for us to consider is, what is the construction of the letter? The *gravamen* of the charge is that an old public-house in the Guestrow is being presently conducted as a shebeen in point of strict law; and it is that charge which gives rise to this action of damages. Now, it is true that the word "shebeen" is used in the letter, and I quite understand that that word would catch the eye of a careless or incomplete reader who might give no attention to the context. But while several witnesses say they regarded this a charge of keeping a disreputable public-house, it is worthy of observation that no single witness has been asked if he knew what in strict law a shebeen was. We must consider the terms of the letter as they appear when it is read with due care and attention. So doing, I accept Mr Asher's argument that the letter conveys this imputation, and no more, *i.e.*, that the pursuers are carrying on a public-house, formerly licensed, which is to be licensed, but which at present is not licensed, and therefore which is in strict law a shebeen; that of the pursuers one occupied and another occupies public positions; and that they are delaying to obtain that licence for their own convenience.

Now, leaving out of consideration the inaccuracy of the statement that these trustees intended to become joint proprietors of this public-house, is it not true that in strict law this house was a shebeen? The evidence as to the facts on that point is that Mrs Duffus died on 1st October 1889, and from that date till the 6th December, when the letter appeared, this house was carried on without a licence. There is no doubt that a person requires, in order to carry on a public-house, to have a certificate from the magistrates and a licence from the Excise authorities. These are personal, and on the death of the person to whom they are issued they fall, and the place becomes unlicensed. Well, now, the Act of 1862 says in so many words that the word "shebeen" shall mean and include any house in which excisable liquors are trafficked in without a certificate and Excise licence in that behalf. In law, then, this house was a shebeen, and it is only in strict law that the writer of this letter says it is a shebeen.

The Legislature indeed provides for the case of death during the currency of the period of the licence and certificate, by enacting that a transfer may be obtained from any two justices of the peace by the executors, disponees, or representatives of the deceased, which entitles the transferee to carry on the business till the next licence court is held, instead of being compelled to close the public-house during that interval. It is said that it is not the practice to insist strictly on immediate application for this transfer; but I cannot lay down in law that the executors, disponees, or representatives are entitled to delay making this application beyond the absolute necessities of the case, and in the case of smaller public-houses there exists a strong reason for not allowing laxity by an interregnum in the management. I do not impugn the discretion of the magistrates in not at once instituting a prosecution, but the representatives should as soon as possible furnish themselves with a licence, and they can go to any magistrates at hand without any formality requiring a day's delay. But the dates here take this case much beyond the legitimate working of the clause to which I have referred; and it is not possible that the trustees can be regarded as having been all this time in course of getting a transfer. The fact is they were doing without a licence in the meantime.

The Sheriff-Substitute holds a different view. He finds that in fact the premises were duly licensed when the letter was written. It is impossible to adhere to that. The consideration which leads me to the conclusion that in strict law this is a shebeen is the fact that the premises are not duly licensed. It is said the word "shebeen" carries with it an injurious meaning; we must, however, consider the statutory meaning, as that is the one affixed by the writer. Now, is there more in the letter than that interpretation? I think not. I find, however, that the Sheriffs, having disposed of the question of shebeen by saying the premises were duly licensed, go on to say that the letter means "that the persons were about to purchase the trust-estate under their care and management, to the hurt and prejudice of said estate, and to their own benefit." But the surprising fact is that there is not one hint of the trust-estate in the letter, nor any words which can be charged legitimately with that meaning. Whatever meaning persons in Aberdeen may have attached to the letter, we must read it according to the rule of libel, *i.e.*, according to the fair natural meaning of the words, without speculating on what other people may happen to deduce from them. I am of opinion that on a fair construction of

this letter there is no libel contained in it, except that this house was in strict law a shebeen, and the facts support the truth of that libel.

LORD ADAM—I am of the same opinion. We are familiar with an action of libel which goes to a jury, but although the procedure is different when the case comes from a Sheriff, yet the law is just the same. If the case had come to us in ordinary form we should have considered what issues to grant for trial. I do not see, on looking at the letter founded on, that we could have refused an issue on the allegation that the pursuers were carrying on a shebeen, as I think that is a libel not requiring an innuendo if in point of fact it is false. The next question would have been, whether we should grant another issue with an innuendo in the terms set out on record and found proved by the Sheriffs? We should have granted that according as we thought the letter would reasonably bear that construction. I confess that even at that stage I would have refused to grant it. That would have been my view on the issues to be granted. We are not now however in that position. If the case had gone to a jury it would have been for them, not for us, to decide what was a reasonable view to take of the letter. The Sheriff is, however, not in the same position as the jury, and we may consider whether the construction he puts on the letter is a reasonable one or not. I do not doubt that it is a libel to say that a person is carrying on a shebeen, and I understand that that means selling excisable liquors without a licence. But the answer to that is *veritas convicii*—that there is no libel as the statement is true. Next, on a reasonable construction of the letter, it is proved, as the Sheriffs hold, that the trustees are said to be guilty of breach of trust. Now, how can anyone spell that out of this letter. The meaning is not doubtful. It simply means that this ex-bailie and town councillor are for their own convenience delaying to apply for a transfer of the licence. I think that is the whole meaning, and I see no libel in that.

LORD M'LAREN—This case illustrates what I have often thought a defect of our practice in treating actions of libel, that in general a defender is not allowed to justify the libel unless he undertakes to justify the whole of it. Now, if this case had been tried on an issue, no defender would have faced a jury with that plea, as the issue on which the pursuer would have gone to trial would be an issue charging breach of trust. But the case has been tried by the Sheriff on the record, and while we may differ from the Sheriff on the matter of fact, what we are finding is that the construction put by the pursuers on the libel is not the true one, and that in the sense the defender used the words the libel is true. I agree with your Lordships that the meaning of the words used by the defender, so far as we can judge from the facts, is simply that an irregularity has been committed because the provisions of the Public-Houses Acts requiring a transfer of the licence in case of death had not been complied with. As this is proved from the fact that no transfer of the certificate had been applied for, there is here no calumnious accusation.

LORD KINNEAR—I agree that if the question had gone to a jury on an issue putting on the words the innuendo the pursuers put on them, it would have been impossible for the defender to have proved justification of the whole libel. But then I also think I should never have allowed an issue with such an innuendo, for the words will not, on a fair construction, bear the meaning the Sheriffs and the pursuers put on them. The question then is, whether without an innuendo the letter contains a slander. I agree there would have been a slander in charging people with carrying on a shebeen, but then the charge is true, because the place was without a licence. It is said that in the ordinary use of the word "shebeen" it bears a more serious and heinous meaning than the law attaches to it, but that difficulty is avoided by the limitation "in strict law," which the writer puts on the word. The public-house had no licence, for the certificate and the licence fell by the death of the keeper of the public-house; and as long as the certificate was not transferred the pursuers had no licence, and the allegation that it was, in law, a shebeen is accordingly true.

The Court pronounced the following interlocutor:—

> "Recal the interlocutor of the Sheriff-Substitute of 16th December 1890, and of the Sheriff of 4th March 1891: Find in fact (1) that the letter complained of was written by the appellant and sent by him for publication to the defender Marr, and that it was published in the *Aberdeen Evening Gazette* on 6th December 1889; (2) that at the date of the publication the sale of excisable liquors in the public-house in question was being conducted by the pursuers as trustees without a certificate and without a licence under the statutes, and that this had been done since 1st October 1889, the date of the death of the holder of the certificate and licence; (3) find that the said public house was in point of strict law a shebeen at the date of the publication; (4) find that the pursuers have failed to prove that the letter conveys any libellous meaning other than the charge of conducting a shebeen in point of strict law, which was true in fact: Find that the appellant Gray is not liable in damages: Assoilzie him from the conclusions of the summons, and decern: Find him entitled to the expenses in this Court and in the Sheriff Court," &c.

Counsel for the Pursuers and Respondents—Comrie Thomson—Sym. Agents—Auld & Macdonald, W.S.

Counsel for the Defender and Appellant—Asher—Maclennan. Agent—Andrew Newlands, S.S.C.

---

*Friday, December* 11.

## SECOND DIVISION.

[Lord Low, Ordinary.

## CAMPBELL *v.* A. & D. MORRISON.

*Reparation—Master and Servant—Insufficient Precaution for Safety of Workman—Defective Gangway—Relevancy.*

K. & Co., the contractors for a steamship, sub-contracted for the hull with S. & Co., who employed A. & D. M. to dry-dock the vessel. A. & D. M. fitted up for S. & Co.'s use a gangway, from which a workman of K. & Co. fell, and was injured. He sued A. & D. M. for damages, alleging that the gangway was defective and dangerous, but he did not allege that it was other or less sufficient than the defenders had contracted to supply, or that they were bound to maintain the gangway.

The Court *dismissed* the action as irrelevant, holding that the obligation of the defenders was to satisfy S. & Co., that the fair inference from the pursuer's averments was that they had done so, and that they were under no obligation to the pursuer.

*Reparation—Master and Servant—Damages—Joint Contributor—Discharge of Liability—Personal Bar.*

K. & Co., contractors, sub-contracted with S. & Co., who again employed A. & D. M. The latter fitted up for S. & Co.'s use a gangway, from which a workman of K. & Co. fell and was injured. An action for damages at his instance against these three firms having been dismissed for want of jurisdiction, the pursuer took a sum of money from S. & Co., which his agent acknowledged "as in full of expenses incurred by my client and myself, as his agent, in connection with his alleged claim for damages, and in consideration of the said payment the said S. & Co., but they only, are discharged of all said alleged claims." In consideration of a sum paid by K. & Co. the pursuer discharged them "of and from all claims of reparation and for payment of legal and other expenses now or hereafter competent to me" in respect of the accident, and bound himself to relieve K. & Co. "from all claims of relief competent to any other person liable in reparation for said accident.

*Held*, by the Lord Ordinary (Low), that these sums had not been received as compensation for the alleged injuries, and that the pursuer was not thereby barred from suing A. & D. M. for damages therefor.

George Campbell, Greenock, with consent and concurrence of his father as his curator and administrator-in-law, sued A. & D. Morrison, joiners and builders there, for £500 as damages for personal injury sustained by the pursuer.

The pursuer was an apprentice engineer in the employment of Messrs Kincaid & Company, Limited, engineers, Greenock, who were contractors for the s.s. "Alexandria," although they themselves only supplied her engines and machinery. Messrs Seath & Company, shipbuilders, were sub-contractors for the hull, and they employed the defenders to dry-dock the vessel. The defenders in the course of their employment had fitted up a gangway from the dock side to the ship's side. On 12th September 1890, when the pursuer was crossing this gangway on his way to his work, one of the planks of which it was composed turned over and he fell into the dock, and was injured.

The pursuer averred—"In order that the work might be done by the pursuer and other workmen engaged at the vessel, she had to be docked, and the operations in connection with the docking of said vessel were undertaken and performed by the defenders, and a gangway, from the side of the dock to the ship for the use of all the workmen engaged thereon, was supplied and laid down by them, which it was their duty to do. The said gangway was the only means of access to the vessel. It was part of the duty of the defenders when docking the vessel to provide a gangway for the use of the pursuer and anyone requiring to go on board the vessel, but the gangway which they provided was dangerous and defective."

The defenders averred, amendment having been allowed—"(Ans. 8) Explained further that on 8th January 1891 the pursuer discharged Messrs Seath & Company, the builders of the s.s. "Alexandria," against whom he had made a claim in respect of such injuries, of all claim for damages in consequence of the injuries alleged to have been sustained by him at Garvel Park Dock, Greenock, on 12th September preceding, and that his own employers, Messrs Kincaid & Company being insured with the Employers Insurance Company of Great Britain, Limited, the pursuer recovered from said insurance company prior to this action being raised, in respect of the accident which is the ground of action, and of Messrs Kincaid & Company's liability therefor, the sum of £40 or thereby in name of damages."

The defenders pleaded—"(1) The statements of the pursuer are not relevant and sufficient to sustain the conclusions of the summons. (9) In any view, the pursuer having elected to accept a sum in name of damages from the insurance company, with whom Messrs Kincaid & Company, his own employers, were insured, on their behalf and in respect of their liability for the accident, which is the ground of the present action, is barred from now recovering against the defenders."