*Thursday, July 4.*

## FIRST DIVISION.

[Lord Kincairney, Ordinary.

## CRABBE & ROBERTSON *v.* STUBBS, LIMITED.

*Reparation—Slander—Publication of Decrees in Absence—Black List—Relevancy.*

A firm of traders brought an action of damages for slander against the proprietors of a newspaper gazette, on the ground that they had published the pursuers' names in a list of those against whom decrees in absence had been pronounced, whereas the decree actually pronounced against the pursuers had been *in foro*. *Held* that they had set forth a relevant ground of action.

Messrs Crabbe & Robertson, cabinetmakers, Dundee, brought an action of damages for slander against Stubbs, Limited, Edinburgh.

They averred—"The defenders are the publishers of a paper known as *Stubbs' Weekly Gazette*. The defenders carry on for profit a business which they describe in their advertisements and prospectuses as a means of enabling traders to avoid making bad debts, and they act as an agency for the recovery of overdue accounts, bills, rents, &c. The foresaid paper has a wide circulation throughout Scotland, which is not confined to the trading community. It has a special portion devoted to the publication of traders and others by and against whom decrees in absence have been taken. This is popularly called and known as the 'Black List,' and the name of any trader appearing in that list is looked on with grave suspicion as to solvency by all persons reading the said *Gazette* or knowing of its contents. Its object is to give information to tradesmen and the mercantile community generally as to bankrupts, insolvents, and defaulters in payment of their just debts and obligations."

They further averred that on 4th January 1895 a summons was raised against them in the Sheriff Court at Dundee by another firm of cabinetmakers for the sum of £2, 10s., and that a proof had been fixed for 19th February, but that on that date they consented to decree being pronounced against them, as they had become satisfied, after inquiry, of the accuracy of the claim. They had been throughout represented by an agent. They complained that the defenders in their issue of *Stubbs' Weekly Gazette* for Thursday 21st February 1895 had published a "Black List" of those against whom decree in absence had been pronounced on the 19th, which contained the names of the pursuers. The statement thus made and published about the pursuers was false, and by it the defenders falsely represented that the pursuers were unable to pay their debts, and were in insolvent circumstances or pecuniary embarrassment, and wishing to evade payment of a just debt. In consequence of the defenders' fault in thus publishing said decree against the pursuers, the latter have suffered great damage to their credit and business. Their firm has been talked about as insolvent amongst those trading with and interested in them.

The defenders explained—"There is prefixed to the said extracts in said *Gazette* a note stating that 'publication of the decrees does not imply inability to pay on the part of the persons named. The sums decerned for may have been fully or partially paid or otherwise satisfied or arranged." They admitted that the decree pronounced had been *in foro*, but averred that their action "in treating the decree obtained against the pursuers as a decree in absence was warranted by and was in conformity with the terms of the entry contained in the official record of the decrees pronounced in the Sheriff Small Debt Court at Dundee, and the defenders are absolutely privileged in publishing information in accordance with the terms of said entry. It is believed that through some error or omission on the part of the Sheriff Court officials, for which the defenders are not responsible, the said entry was inaccurate, to the extent that the decree should have been represented as one which passed, not in absence, but of consent."

The defenders pleaded, *inter alia*—"(1) No relevant case. (3) *Veritas;* or otherwise the statement complained of being warranted by and in conformity with the information furnished in an entry contained in an official record open to the general public, the defenders are not responsible for any inaccuracy therein."

Upon 12th June 1895 the Lord Ordinary (KINCAIRNEY) approved of the following issue for the trial of the cause—"Whether, on or about 21st July 1895, the defenders wrongfully published in a publication known as *Stubbs' Weekly Gazette* a false statement, to the effect that a decree in absence had been obtained against the pursuers for the sum of £2, 10s., with 8s. of expenses? And whether the defenders thereby falsely and calumniously represented that the pursuers were unable to pay their debts, to their loss, injury, and damage? Damages, £500."

"*Opinion.*—This is an action of damages brought in respect of the insertion of the pursuers' names in a list published in *Stubbs' Weekly Gazette*, bearing to be a list 'of extracts from the registers of decrees in absence in the Small Debt Courts.' It is said to be popularly known as the 'Black List,' and I suppose there is little doubt that the insertion of the name of any tradesman in that list may be extremely detrimental to his mercantile credit. The formidable character of this 'Black List' may in part arise from mere popular impression, but undoubtedly the fact that a decree in absence has passed against a tradesman for a small sum suggests (1) that the debt was a just debt, otherwise the decree would have been opposed; and (2) that the defender had refused to pay, or was unable to pay,

this just debt, otherwise there would be no occasion for a decree.

"The defenders have pleaded that there is no relevant case, and they have also pleaded privilege, a plea in support of which no argument was offered, and there are other pleas to the merits. As I think the pursuers are entitled to have the case sent to a jury, it is better that I should say no more than is necessary about the arguments and pleas of the parties.

"The defenders have maintained that they are not liable, because what they published was warranted by an official record open to the general public. The pursuers maintained that under sec. 17 of the Small Debt Act, providing for a register or record of small-debt decrees in the form directed, that record was not open to the general public. I am of opinion, however, that the book, which is directed by that section to be kept, is open to public inspection. As I read the section, it is there declared to be so, for I hold that the word 'registers' includes the book of small-debt decrees, and certainly nothing is said to the contrary; and the book of small-debt decrees has always been treated as open and accessible to the public. Whether this be so or not, I think that no action could lie against the defenders if all they did was to publish a decree pronounced in the open Court. That sufficiently appears from the opinions in the cases of *Andrew* v. *Drummond & Graham*, March 6, 1887, 14 R. 568; and *Taylor* v. *Rutherfurd*, March 17, 1888, 15 R. 608. The case of *Buchan* v. *The North British Railway Company*, June 16, 1894, 21 R. 379, in which a railway company was held not to be liable in damages for posting bills stating that the pursuer had been convicted of travelling without payment of his fare, rests on the same principles. The defenders quoted also the case of *Searles* v. *Scarlett*, September 1892, L.R., 2 Q.B. 56, which carries the immunity of persons publishing such a work as *Stubbs' Gazette* very far, and appears to put them in a position of privilege, a point which may perhaps arise before a jury, and about which I reserve my opinion.

"The defenders further maintain that they cannot be liable if what they published is a fair excerpt from the public record, even although the entry in the records was erroneous, and in support of that proposition they quoted the case of *Annaly* v. *The Trade Auxiliary Society*, 1890, L.R.I., 26 Q.B. and Ex. 394, which seems to bear it out. I do not find it necessary to decide whether that is so or no. The judgment in the more recent case of *Reiss* v. *Perry*, April 27, 1895, 11 Times Law Rep. 373, seems to throw some doubt on the cases of *Annaly* and *Searles*.

"But in this case it is averred that the publication in *Stubbs' Gazette* was not warranted by the entry in the Small Debt Book, and excerpts from that book have been referred to. It appears that the entry in the Small Debt Book discloses a judgment against the pursuers, but does not disclose whether the judgment was a decree in absence or *in foro*. The pursuers aver that it was a decree *in foro*, and that previous entries in the book would, had they been examined, have disclosed that fact.

"Now, no doubt, *Stubbs' Gazette* may serve a most useful purpose, but it is merely a commercial enterprise and venture by the publishers for their own profit, and it is clear that its publication necessitates the utmost caution on their part, and if they make an entry which goes beyond what the public register warrants, and if the reputation of anyone is thereby injured, I am not prepared to say that they may not be answerable for that injury.

"That is what, according to the pursuers' averments, has happened, and they have therefore, I think, stated a case which they are entitled to lay before a jury.

"In the case of *Rarity* v. *Stubbs*, July 17, 1893, 1 Scots Law Times 74, a similar question was raised before Lord Moncreiff, and his Lordship, on a proof, held that the defenders were liable in respect of an erroneous excerpt from a public register.

"The defenders found on a note in their *Gazette* to the effect that 'publication of the decrees does not apply inability to pay on the part of the persons named; the sums decerned for may have been fully or partially paid or otherwise satisfied or arranged.' It will be for the jury to say to what extent it aids the defence."

The defenders reclaimed, and also moved the Court to vary the issue by substituting for the words "a false statement to the effect that a decree in absence had been obtained against the pursuers for the sum of £2, 10s., with 8s. of expenses," the words "a statement or paragraph in the terms set forth in the schedule appended hereto: Whether the said statement or paragraph is in whole or in part of and concerning the pursuers;" and by appending to said issue, varied as aforesaid, a schedule in the following terms:—

*Extracts from the Registers of Decrees in Absence in the Small Debt Courts.*

The following extracts are taken from the official books since our last issue, and publication of the decrees does not imply inability to pay on the part of the persons named. The sums decerned for may have been fully or partially paid, or otherwise satisfied or arranged.

In publishing these decrees it is intended to confine the extracts from the records to decrees in absence for £2 and upwards. It may, however, sometimes happen that where the sum sued for exceeds £2, decree is taken for a less sum, in which case the fact of such decree having been pronounced may appear.

Should any inaccuracy be discovered, tending to prejudice anyone, or a decree be inadvertently taken, we are willing to insert a note, without any charge, on authentic information or explanation being supplied to us.

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FORFAR.

| Date. | Amount. | Defenders. | Pursuers. |
|---|---|---|---|
| 1895. | | | |
| Feb. 19. | £2 10 0 | Crabbe & Robertson, Cabinetmakers and Upholsterers, Tally St., Dundee. | Alexander Imlay & Son, Cabinet Manufacturers, Dundee." |

The defenders further argued—There was no issuable matter. A decree had undoubtedly been pronounced against the pursuers, and the defenders were entitled to make known what took place in open court, and to publish extracts from the books of court. The publication of such extracts was privileged—*Searles* v. *Scarlett*, L.R., 1892, 2 Q.B. 56. A mistake had been made in calling the decree one in absence, but the same inferences could be drawn from the fact of a decree *in foro* for such a small sum having been pronounced. They were careful to say that publication of such decrees did not imply inability to pay.

Argued for the pursuers—The defenders were entitled to publish what took place in Court, but only if they gave a true report. Very serious inferences as to solvency and commercial standing might be drawn from a man allowing a decree to go out against him in his absence which could not be drawn if the decree were *in foro*. The case was relevant—*cp. Andrews* v. *Drummond & Graham*, March 5, 1887, 14 R. 568.

At advising (the terms of the issue, in the event of any being allowed, having been adjusted at the bar)—

LORD ADAM—I think this is a perfectly relevant case for an issue. The averment is that the pursuers are upholsterers in Dundee, and that the defenders are publishers of a paper known as *Stubbs' Weekly Gazette*,—that they carry on for profit a business which they describe in their advertisements and prospectuses as a means of enabling traders to avoid making bad debts. Then they aver that in their paper the defenders publish the names of those against whom decrees in absence have been taken, and that this list of names is popularly called and known as the "Black List," and that the name of any trader appearing in that list is looked on with grave suspicion as to solvency by all persons reading the said paper. Now, it appears to me entirely a question for the jury to say whether the statement made by the defenders in their paper, *i.e.*, that a decree in absence had passed against the pursuers—which admittedly was not true—leads to the inference that the pursuers were unable to pay their debts.

As to the form of the issue, I think it is not in proper form, as the actual statement made in the *Gazette* should be set forth in the schedule. I think, therefore, that the issue should be varied as proposed.

LORD M'LAREN—In considering this case we start with the undoubted privilege which everyone has to give publicity to proceedings in open court in a court of justice. This may consist in a report of proceedings *in foro* where the interest lies in the facts of the case or the law which is elucidated, or it may consist of a publication of decrees in absence. In the latter case I suspect the only interest which the publication would have for the general public is the legitimate interest which a trader may have in the solvency of one who may possibly become his debtor. As the decree is given in public, it is the right of every citizen to give publicity to the fact of the decree having been obtained. But then it must be an accurate publication. I do not mean that every word need be repeated *verbatim*, but everything material and necessary to a true representation of the case must be disclosed, especially where character is involved, in order to enable the reader to form a just estimate of the case as affecting character.

Now, the publication complained of was of a decree in absence, and, notwithstanding that a protest is prefixed to it which might be right as a matter of caution, we know that the public do look on the publication of a name in the "Black List" as equivalent to a note of doubt as to the credit and solvency of the individual.

It is not an accurate representation of the proceedings to put the name of a person who has entered appearance in the list of persons against whom a decree in absence has been taken. I cannot doubt that the publication may be injurious, and it is certainly not privileged.

I think that an innuendo is necessary, and I cannot say that the one set forth by the pursuers is so extravagant that no sensible jury would give effect to it by finding that an imputation was intended.

It will be for the jury to say whether the publication amounted to a representation that the pursuer was unable to pay his debts, or whether, on the contrary, it was a true report containing an immaterial variation of circumstances, and that the whole matter was a mistake for which no damages ought to be given.

LORD KINNEAR—I am of the same opinion. It is quite clear that a correct statement of what takes place in open court is absolutely privileged, but there is no privilege to make statements which are not correct, and a statement that a decree in absence was taken against a person where there was no such decree in point of fact is certainly not privileged.

The only question, therefore, is whether the pursuer has averred a case of defamation relevant to entitle him to appeal to a jury. Now, I think that in considering this question we are not to look only at the words alleged to have been used, but we must take into account the circumstances in which they are said to have been published. The pursuers say that the defenders are a firm carrying on a business which they describe in their advertisements and prospectuses as a means of enabling traders to avoid making bad debts, and that they publish a gazette in which there appears a list, popularly known as the "Black List," of the names of persons against whom decrees in absence have been taken; that the pursuers' names were so inserted, contrary

to the fact, there having been in point of fact a decree *in foro* taken against them.

Now, I observe on that statement that it is possible that a statement that a decree was taken in absence may have a different effect on the minds of those to whom it is addressed from a statement that a decree was taken *in foro*, which is not in itself an injurious statement. For the latter statement means only that judgment has been given against one of the parties on a controverted question; and the former may be supposed to mean that the defender was unable or unwilling to pay a just debt, without being able to bring forward any reason for his failure to pay. But then the statement that the decree against the pursuer was one in absence was combined with the previous averment to which I have referred, and with the subsequent averment, that the avowed purpose of the pursuers in publishing the "Black List" is to give information to tradesmen as to bankrupts, insolvents, and defaulters in payment of their just debts and obligations. If all these things are proved satisfactorily to the jury, and the statement that the decree in absence passed against the pursuer is also proved to have been made and to be false, it seems a fair question for the jury whether such an inference can be drawn as the pursuer suggests to his injury.

It is not a question of law, but of the fair meaning which business men would give to the defenders' statements.

I therefore agree with your Lordships that there is issuable matter, but that the pursuer must put in issue not only the fact of publication, but also by an innuendo the injurious meaning of which he complains.

The LORD PRESIDENT was absent.

The Court varied the issue as proposed, and approved of the issue as so varied.

Counsel for the Pursuers—G. Watt—W. Thomson. Agents—W. & J. L. Officer, W.S.

Counsel for the Defenders—Sol.-Gen. Shaw, Q.C.—M'Lennan. Agent—Robert Broatch, L. A.

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*Friday, July 5.*

## SECOND DIVISION.

[Sheriff Court at Airdrie.

## THOMSON *v.* WILSON'S TRUSTEES.

*Sheriff — Jurisdiction — Trust — Trustee Resident in England.*

A feuar brought an action of damages in the Sheriff Court of the county where his lands were situated, against two trustees, who were his superiors in the feu, on the grounds that the defenders had wrongfully leased the minerals below his lands, which belonged to him, to a mining company; that the company had encroached upon and worked his minerals; and, further, that their operations had brought down the surface. One of the defenders was domiciled and resided in England.

*Held* that the Sheriff had jurisdiction to try the case, as it arose directly out of the administration of a trust estate situated within the county.

*Property—Superior and Vassal—Lease of Vassal's Minerals Wrongfully Granted by Superior—Damage Caused by Mineral Tenant's Operations—Process—Action by Vassal against Superior.*

A vassal brought an action of damages against his superior on the ground that he had wrongfully granted a lease of minerals previously feued to the pursuer; that the tenant had encroached upon and worked these minerals; and, further, had brought down the surface of the pursuer's ground by his operations.

*Held* that the vassal was entitled to bring an action against the superior alone, and plea of "all parties not called" repelled.

John Thomson brought an action in the Sheriff Court of Lanarkshire, at Airdrie, against "William Walkinshaw, Hartley Grange, Winchfield, Hants, England, and John Fisher, accountant, Glasgow, trustees of the late John Wilson, junior, of Arden," in which he craved decree against "the above-named defenders" for payment of £1000.

The pursuer was the proprietor of the *dominium utile* of a small piece of ground, part of the lands of Braefoot, in the parish of Shotts and county of Lanark. The defenders, as trustees of the late John Wilson, junior, were the superiors of the pursuer's feu.

The pursuer averred—"(Cond. 3) The defenders, a number of years ago, leased to the Shotts Iron Company the Slateyband ironstone in the lands of Arden, including, it is believed, the said ironstone in and under the pursuer's feu, and received from the Shotts Iron Company payment of the lordship or value of said ironstone; but the defenders never had any right or title whatever to work, win, or carry away the ironstone or other minerals from or through the pursuer's said property, or to lease the same to the Shotts Iron Company, or to receive said payment. . . . (Cond. 4) In the year 1882, or at some other time to the pursuer unknown, and without his knowledge or consent, the Shotts Iron Company encroached upon and worked out the Slateyband ironstone or other minerals underlying part of the subjects above described and belonging to the pursuer. These operations, which, it is believed, were conducted on the 'longwall' system, otherwise total excavation of the mineral, without leaving any of it to support the surface and buildings thereon in said area, have caused 'sits' or subsidences of the surface, whereby serious and permanent injury and damage have been caused to the said property and buildings erected thereon. The ground intended by the pursuer for building upon has been rendered unfit for that purpose, while the dwelling-houses already erected upon the ground have been cracked or rent