

matter of fact the tenants were put under proper conditions, because that is not the direction which was asked for. The direction asked was an unqualified direction that the landlord who lets his ground for such a purpose will incur no responsibility. The second exception is if possible more objectionable, because it really amounts to this, that as matter of law a person who lets his ground can never under any circumstances be responsible for a breakdown. I think it can almost never happen that a judge would be disposed or that it would be his duty to give directions in such unqualified terms. I would also say that, while agreeing that these directions were not suitable to the case, I have no doubt from all that has been said to us on the subject that the directions actually given were sufficient for the guidance of the jury in the disposal of the case.

LORD KINNEAR concurred.

The Court refused the bill.

Counsel for the Pursuer—Watt, K.C.—  
J. A. Chrystie: Agents—St Clair Swanson  
& Manson, W.S.

Counsel for the Defenders—Clyde, K.C.—  
Irvine. Agents—Constable & Johnstone,  
W.S.

Tuesday, October 21.

#### FIRST DIVISION.

[Lord Kincairney,  
Ordinary.]

#### M'KECHIE v. BLACKWOOD & SONS.

*Reparation—Slander—Magazine Article—  
Charge of "Want of Womanly Delicacy"  
—Issue—Innuendo—Counter Issue.*

A magazine article describing the life of the miners in the village of K. contained, *inter alia*, the following passages:—"One evening there were several neighbours calling, and the party in the kitchen numbered more than a dozen. The lassie of seventeen, growing tired, got up, and in our midst without hesitation prepared herself for her bed and got into it. . . . Now this might be called 'indelicate.' Delicacy, however, is a standard of the more complex world, and this girl knew nought of it." In an action of damages for slander brought by a girl, who averred that she was referred to in the above passage as "the lassie of seventeen," and innuendoed the passage as meaning that she was without natural and proper womanly delicacy of mind, and was immodest and indecent, held that the pursuer was entitled to an issue.

Terms of issue *approved*.

Terms of counter issue *refused*.

This was an action at the instance of Helen M'Kechie, daughter of and residing with James M'Kechie, brickmaker, Kelty, Fife,

against William Blackwood & Sons, publishers and proprietors of *Blackwood's Magazine*, for slander alleged to be contained in an article in the magazine.

The article, which was entitled "Among the Fife Miners," contained the following passage:—"Where wages are good in comparison with the cost of living early marriages are always common. House rents in Kelty are moderate. The oldest houses in the village rent for £4, 10s.; the newer and average houses rent for £7 and £8 a-year, and the best of them for £10. The great trouble is that there are not nearly enough of them, hence the evil of overcrowding is forced upon the people, who are only too eager to have homes of their own. That overcrowding is an evil and a sore one there is no contradicting, but from what I saw of it in Kelty I am inclined to think that it is a much misunderstood evil, just as the drink problem has until recently been much misunderstood. From a hygienic standpoint the wrong that is done the people who are forced to corral together like sheep can scarcely be exaggerated. In summer the atmosphere becomes stifling; in our house we never had sheets over us, merely rough blankets, and at times these were 'gey ill to thole.' There was one window in the room four feet two inches high by two feet five inches wide. This dropped down about half-way from the top, so that we could get some fresh air, though often it was hot. In winter, however, everything is kept shut tight—"to keep out the cold," as the people say—and in the kitchen, where four or five persons sleep and all the food is cooked, the air becomes poisonous. Granting then that all that is said on this point is justified, and that on these grounds alone the evil is a scourge that is threatening a definite proportion of the working class, and is therefore a blot on the scutcheons of those whose indifference prevents its remedy, what of the other point so often dwelt upon by reformers, namely, morality. In Kelty I found myself enjoying life in the rough. There was the maximum of naturalness and the minimum of convention. It was a bold illustration of life without the limelight glare of etiquette and fashion. Society is buried beneath its forms. But the workers never masquerade; they live their lives with a wholesome freedom from sham that develops hearts and souls if not fine manners, and holds honesty and truth above ability to amuse and entertain. In ordinary weather when the men got ready for bed they threw off their jackets and boots and rolled under their blankets. The heat sometimes necessitated a somewhat further preparatory disrobing, but save in exceptional instances a man was ready for his bed in a few seconds or at most a minute. One evening there were several neighbours calling, and the party in the kitchen numbered more than a dozen. The lassie of seventeen, growing tired, got up, and in our midst, without hesitation, prepared herself for her bed, and got into it. The act was accompanied by no embarrassment on her

part, and excited absolutely no notice whatever from the company. It was nearly as simple a proceeding as with the men, and took very little longer. After that I saw her do the same thing again and again, and not once was any heed given her. On that particular evening her lead was shortly followed by her father, who in an incredibly short time was snoring contentedly a few feet from where the rest of us were circled in a group. Now this might be called 'indelicate.' Delicacy, however, is a standard of the more complex world, and this girl knew nought of it."

The pursuer made the following averments—(Cond. 4) "The author of the article, the said Kellogg Durland, is believed to be an American. Of his antecedents nothing is known, but he took lodgings in the pursuer's father's house in the course of last year, and lived in the house for about four weeks. He did so, as he himself freely indicated to all and sundry in the village, with the intention of procuring material for writing and publishing some narrative of village life among the miners, and this fact in consequence soon became known to the inhabitants, who were aware that he was lodging with the M'Kechies. (Cond. 5) The article complained of duly appeared in the said magazine, and excited wide attention from the extravagant and untrue statements with which it was rife, and its often grotesque misrepresentations of the scenes and characters it purported to describe. Excerpts from it were published in local newspapers throughout the country, and it created, as it was intended by both author and publishers to do, a sensation in the community affected by it. (Cond. 6) The article alludes to the pursuer as 'the lassie of seventeen,' 'the girl of seventeen' who was left to do all the work of the house and all the week's washing besides. It goes on to narrate regarding her as follows:—"One evening there were several neighbours calling, and the party in the kitchen numbered more than a dozen. The lassie of seventeen, growing tired, got up, and in our midst without hesitation prepared herself for her bed and got into it. The act was accompanied by no embarrassment on her part, and excited absolutely no notice whatever from the company. It was nearly as simple a proceeding as with the men, and took very little longer. After that I saw her do the same thing again and again, and not once was any heed given her. On that particular evening her lead was shortly followed by her father, who in an incredibly short time was snoring contentedly a few feet from where the rest of us were circled in a group. Now this might be called 'indelicate.' Delicacy, however, is a standard of the more complex world, and this girl knew nought of it." (Cond. 7) The statements above quoted were of and concerning the pursuer; they are false, malicious, and calumnious, and were made without probable or any cause. They were naturally calculated to hold the pursuer up to public contempt and ridicule, especially in the eyes of people in the same class as herself, and this the defenders well knew. The

words mean, and were intended to mean, that the pursuer was without natural and proper womanly delicacy of mind, and was immodest and indecent, and showed this by undressing and going to bed in the presence of a number of strangers of both sexes on several occasions. This accusation is utterly without foundation in fact. The pursuer did not on any occasion prepare herself for bed and get into it in presence of strangers as narrated in said article. The said statements are not only false as regards her, but are false as descriptive of the habits of the girls or women among the Fife miners and the class to which the pursuer and her parents belong. It is not the practice for them to prepare themselves for bed and to get into it in presence of strangers as alleged by the pursuer. Such an act would, by them and by all the households of which they form a part, be considered not only as indelicate but as grossly immodest and indecent, and would neither be practiced nor tolerated, and this the writer of the article well knew, and the defenders also well knew or ought to have known. (Cond. 8) The publication of said statements has occasioned the pursuer intense pain and mortification. The whole community in which she resides at once recognised her as the person alluded to. She was identified not only by the facts above mentioned with regard to the said Kellogg Durland as a lodger in her father's house but by his references in said article to other inmates of the house, as well as to various facts and circumstances which served positively to identify her as the person referred to. She was in consequence everywhere subjected to taunts, ridicule, and reproach for her conduct as alleged in said article, and her life has been rendered miserable thereby."

The defenders averred that what was stated to have occurred by the writer of the article did occur, and was witnessed by him. They denied that the article, fairly read, made any imputation upon the character of the pursuer. They did not deny that she was the "lassie" referred to in the article.

The pursuer pleaded—" (1) The defenders having published false and defamatory statements regarding the pursuer, are liable in damages. (2) The pursuer having been falsely and unjustly held up to public contempt and ridicule in the article complained of, is entitled to reparation."

The defenders pleaded as follows:—" (1) No relevant case. (2) The defenders having *bona fide* published an article of social interest, are privileged. (3) The defenders not having published false and defamatory statements of and concerning the pursuer, ought to be assuaged. (4) The defenders ought to be assuaged in respect that the statements of fact, so far as relating to the pursuer, are substantially accurate, and that the comments thereon are fair and were made without malice."

The pursuer scheduled the portion of the article quoted in *Condescence 6, supra*, and proposed alternative issues. Their terms are quoted in the opinion of the Lord Ordinary, *infra*.

The schedule referred to consisted of the whole of the passage from the article which is quoted *supra*.

On 11th July 1902 the Lord Ordinary (KINCAIRNEY) pronounced an interlocutor, in which he approved of the following issue for the trial of the cause:—"It being admitted that the defenders published in their magazine of March 1902 the statements set forth in the schedule hereto:—Whether the said statements are in whole or in part of and concerning the pursuer, and falsely and calumniously represent that the pursuer prepared for and went to bed in presence of strangers of both sexes, and was thus chargeable with want of proper womanly delicacy, to the loss, injury, and damage of the pursuer. Damages laid at £500."

To his interlocutor the Lord Ordinary appended the following opinion:—

*Opinion.*—"The adjustment of issues in this case has involved the decision of questions of novelty, interest, and importance, and, I think, of difficulty. The pursuer is a girl of seventeen years of age, and she sues with consent of her father, with whom she resides, and who is designed as a brick-maker living in the village of Kelty, in Fife, which may, I suppose, be described as a mining village. It appears that the pursuer has learned in some way that she has been made the subject of a study in an article in *Blackwood's Magazine*, entitled "Among the Fife Miners." She might, had she been so minded, have regarded the notice as a distinction; but apparently she has not taken that view at all, but has considered it offensive and insulting, and has raised this action of damages on account of it.

"It seems that the author had conceived the idea of studying the manners and customs of the Fife miners, with, I suppose, the view of improving their mode of living, and possibly also, I suppose, of composing an interesting and entertaining magazine article on the subject. If he entertained the latter design he has certainly succeeded. With that view he assumed the dress of the miners, obtained employment in a mine, worked as a miner, and lodged with the pursuer's father, which enabled him, I suppose, to study the more private domestic life of the miners, at least he so suggests, and in his articles in *Blackwood* (there are two) he purports to describe what he saw at the pits and in the house. The articles are vivid and graphic. They touch on various topics connected with the mines and the miners, but the only passages relating to the pursuer are those which deal with overcrowding, and it is only when the author treats of that subject, taking the house and household of the pursuer's father as his text, that he has sounded the susceptibilities of the pursuer.

"The action has been raised, not against the author but against the proprietors and publishers of *Blackwood*, but I do not understand that they repudiate responsibility, whatever that may be.

"The pursuer has lodged two issues, which are alternative, the one without and

the other with an innuendo. But in truth there is no important difference between them. She has scheduled the following passage excerpted from the article in question:—"One evening there were several neighbours calling, and the party in the kitchen numbered more than a dozen. The lassie of seventeen, growing tired, got up, and in our midst without hesitation prepared herself for her bed and got into it. The act was accompanied by no embarrassment on her part, and excited absolutely no notice whatever from the company. It was nearly as simple a proceeding as with the men, and took very little longer. After that I saw her do the same thing again and again, and not once was any heed given her. On that particular evening her lead was shortly followed by her father, who in an incredibly short time was snoring contentedly a few feet from where the rest of us were circled in a group. Now, this might be called "indelicate." Delicacy, however, is a standard of the more complex world, and this girl knew nought of it!" The first issue is whether the statements in the passage scheduled are false, and the alternative issue is whether these statements falsely represent that the pursuer prepared for and went to bed in presence of strangers of both sexes, and was thus guilty of want of proper womanly delicacy. That was the last form in which she tabled the alternative issue, differing slightly from the issue at first proposed.

"The defenders maintained that no issue could be allowed. They argued that the author of the article had not the least desire to hurt the feelings of the pursuer, much less to attack her character, and had not done so; that the article contained nothing disparaging to her; that when fairly read it could not be held to charge her with want of womanly delicacy, still less with any blameable conduct; and further, that it is not actionable to say of a woman that she wants delicacy, if that were held to be said, seeing that such a statement involves no charge against character or behaviour, and is at the worst rather a reflection on her manners than on her morals, although in truth it was not even that.

"They further maintained that, if an issue were to be allowed, a longer excerpt from the article should be scheduled in order to show its spirit and tone, and in that suggestion, which was not rejected by the pursuer, I agree, and think that the whole of the passage about overcrowding preceding the sentences selected by the pursuer should be scheduled.

"I have had much difficulty as to the question whether an issue should be allowed, and what it should be. I accede in the main to the view of the article presented by the defenders' counsel. The article may be somewhat heedless and a little inconsiderate, and may take for granted some want of sensitiveness in the pursuer, but I find no animus in it against the miners or against the pursuer. It does not necessarily mean that the pursuer wanted womanly delicacy, although perhaps it may seem to say that. I do not myself read it so. Delicacy the

author represents to be an artificial quality, the absence of which is not to be considered as a want at all; and I think it was not meant to say or insinuate anything affecting the pursuer's modesty and innocence. But I am not able to say that it might not be so interpreted by other people—for example, by a jury. As to the contention that it is not actionable to say of a woman that she wanted delicacy, I would agree, and would refuse an issue if that were the whole question. In the case of *Archer v. Ritchie & Company* (March 19, 1891, 18 R. 719) Lord M'Laren said, 'The expression of an opinion as to a state of facts truly set forth is not actionable, even when that opinion is couched in vituperative or contumelious language.' That proposition is expressed in very absolute language, and I venture to think it might bear some qualification, although it is to be noted that Lord M'Laren does not speak of an opinion couched in calumnious language. It has been recognised in other cases, and there is no doubt that it is a sound expression of the law in all but very exceptional cases, and I would have little hesitation in refusing the pursuer's issues if she had nothing to complain of but the author's expression of his own opinion about her delicacy. I might have thought the expression of his opinion uncalled for, but the pursuer could not have had an action for defamation. But then this case is not of that kind at all, and the dictum of Lord M'Laren is inapplicable. Because the peculiarity of this case and the feature of it which creates all the difficulty is this, that all the assertions in the passage scheduled are denied, and one must of logical necessity take this argument on relevancy on the hypothesis and assumption that they are all false. It is indeed difficult to read the article without the impression that it is sincere, but in deciding the question of relevancy that impression must be entirely suppressed.

"The pursuer says—'The said statements are not only false as regards her, but are false as descriptive of the habits of girls or women among the Fife miners and the class to which the pursuer and her parents belong. It is not the practice for them to prepare themselves for bed and to get into it in presence of strangers as alleged of the pursuer. Such an act would by them and by all the households of which they form a part, be considered not only as indelicate but as grossly immodest and indecent, and would neither be practised nor tolerated.' And this statement by the pursuer must be provisionally accepted.

"Suppose that no more had been said except that the pursuer habitually prepared for bed and went to bed in the presence of a number of both sexes; and supposing, as she says, that she never did so, and would have considered it indecent to do so, has she no remedy? Can this author say what he pleases about the people with whom he has lived without being called on to justify what he has said? I confess that in this case I am disposed to sympathise at least as much with the pursuer as with the defenders. Conceding and appreciating

the good intentions of the defenders, and recognising that it may be most desirable to call attention to the condition of the working classes, and in particular to the evils of overcrowding, if care be taken to avoid unjust reflections on the individuals, even although the remedy may not be obvious—still it does not strike me as fair or right or delicate to lodge in a house and then detail to all the world the private lives of the inmates, at least without using every endeavour to conceal the identity of the individuals referred to, and I nowise wonder that the pursuer should feel aggrieved at this unauthorised revelation of her private life even if all that was said were true, but very much more if it was all untrue or if she thought it untrue, or if it was exaggerated or coloured so as to meet the taste of the reading public.

"Supposing the statement untrue, which is, as I have said, the hypothesis on which I must proceed, I confess the publication of the scheduled passage appears to me to be somewhat of an outrage. If such things were said untruly of persons in a different position, belonging to what the author is pleased to call 'the more complex world,' the outrage would, I think, hardly be denied, and I do not think our law would in that case refuse a remedy. But I am unable to find any solid distinction between the case which I have supposed and the present case. The pursuer's world may be more complex than the author in his brief sojourn in it has found out; and perhaps womanly delicacy may be a feeling more elementary than he imagined.

"Suppose it was alleged of a lady that she habitually undressed and went to bed among strangers of both sexes, and no more was said, it may be that according to our practice no issue could be allowed without an innuendo, although the reason for the practice is not obvious. There would, however, be no difficulty in such a case (supposing the statements false) in innuendoing indelicacy, immodesty, or indecency, although the author might in fact have intended nothing of the kind.

"In this case the author has himself furnished an innuendo—want of delicacy—not indeed so strong an innuendo as immodesty or indecency, and I am not prepared to say that on that account the first issue might not have been allowed. Yet the language is not such as we are accustomed to in an innuendo, and I think it might be more satisfactory to prefer the alternative issue. I think that the words will bear the innuendo there expressed, although I do not myself so understand the author's meaning, and I propose to approve of it, substituting the words 'chargeable with' for the words 'guilty of,' which appear inappropriate, and otherwise adopting the language which the pursuer suggested—that is to say substituting the words 'prepared for' and the word 'delicacy' for 'undressed' and 'modesty' as in the issue lodged, and also scheduling a longer extract from the article, as I have explained.

"I ought to have noticed that it was

admitted that the pursuer was the 'lassie' referred to. The author seems to have been at no pains to conceal her identity, and as she lived in her father's house it might have been very difficult to do so."

The defender reclaimed, and argued—No issue should be allowed. An innuendo must be a reasonable inference from the whole facts, and the only reasonable inference from the passage scheduled was that in Kely there was overcrowding, and that overcrowding precluded delicacy. It contained no imputation against the character of the pursuer, but only a criticism of the manners of the society in which she lived. The words "prepared for and went to bed" in the issue were ambiguous, and might mean that she merely took off her hat and lay down in bed. There could be no slander in that statement. There was no statement that she undressed in the presence of strangers.

Argued for the pursuer—The article held up the pursuer to the contempt of the people with whom she lived, and was therefore slanderous, whatever the author may have meant. A charge of want of delicacy was sufficient even without the innuendo.

In answer to a question from the bench counsel for the defenders stated that they were prepared to amend the issue by substituting the words "undressed and" for the words "prepared for" in the issue.

The defenders proposed the following counter issue:—"Whether upon the occasion referred to the pursuer in presence of several persons of both sexes prepared for bed and got into it."

The pursuer objected to this counter-issue on the ground that it did not meet the innuendo.

The Court (without giving opinions) refused the counter-issue, and approved of the issue as amended at the bar.

Counsel for the Pursuer—Salvesen, K.C.—A. S. D. Thomson. Agent—John Veitch, Solicitor.

Counsel for the Defenders—Jameson, K.C.—Hunter. Agents—Horne & Lyell, W.S.

Tuesday, October 21.

### FIRST DIVISION.

[Lord Pearson, Ordinary.

#### M'INNES v. AYR HARBOUR TRUSTEES AND ANOTHER.

*Process—Jury Trial—Verdict—Apportionment of Damages by Jury—Issue.*

In an action of damages against A and B at the instance of the mother of a man who was killed in an accident for which, as she alleged, they were responsible, the conclusions of the action were for payment of £500 from the defenders jointly and severally or severally. The issue put the question

whether the deceased met his death through the fault of the defenders or one or other and which of them, and the schedule was simply "damages claimed £500." The jury found for the pursuer against both defenders, and assessed the damages at £110. The verdict then proceeded as follows:—"And they apportion the said sum, if they can competently do so, as follows: two-thirds thereof against" A, "and one-third thereof against" B. On a motion to apply the verdict, *held* that in view of the form of the conclusions of the action and of the issue the jury had no power to apportion the damages, but that their attempt to do so, in the words quoted above, did not invalidate the verdict, and verdict *applied* by decerning against both defenders jointly and severally for payment of £110.

The widow of the same pursuer brought an action against A, concluding for £1000 damages, and a supplementary action against B, also concluding for £1000. These actions were conjoined and tried under one issue, which put to the jury the question whether the deceased met his death through the fault of the defender or one or other and which of them. In the schedule of damages £500 was claimed from A and £500 from B. The jury found for the pursuer against both defenders, and added a clause of apportionment in the same terms as that quoted above. On a motion to apply this verdict, *held* that under the terms of this issue it was competent for the jury to apportion the damages, and verdict *applied* accordingly.

Duncan M'Innes, labourer, Ayr, was killed through the fall of a derrick at Ayr Harbour.

Mrs Helen Ford or M'Innes, his widow, brought an action of damages against the Home Trade Steam Carrying Company, Limited, concluding for £1000 damages. She subsequently brought a supplementary action against the Ayr Harbour Trustees. The conclusions of this latter action were that it should be conjoined with the action at her instance against the Home Trade Steam Carrying Company, and whether it should be conjoined or not that the defenders should be ordained to make payment to the pursuer of the sum of £1000. On the death of Mrs Helen M'Innes her executrix Miss Ford was sisted as pursuer in these actions.

Mrs Sarah M'Phail or M'Innes, the mother of Duncan M'Innes, also brought an action directed against the Home Trade Carrying Company and the Ayr Harbour Trustees. The conclusions of the action were that the defenders should be ordained "jointly and severally or severally, or otherwise as to our said Lords shall seem just, to make payment to the pursuer of the sum of £500."

On 21st January 1902 the Lord Ordinary (KINCAIRNEY) conjoined all these actions.

The issue approved of for the trial of the actions at the instance of Miss Ford (Mrs M'Innes' executrix) was in the following