

in the case of *Rosie v. Mackay*, not to be allowable under the Act, and one regrets it in some respects. But we must take it to be the law that you cannot carry on the compensation nominally when you are satisfied that there is no compensation due at the time.

That being so, a party in a case of this kind is very much in the same position as a person who sustains an accident through the fault of another. He is entitled to have ascertained the amount of compensation which is due to him at the time of the trial. He is not entitled to come back after a long lapse of time and say—"I was only able to lay before the jury certain facts, and these facts were dealt with by the jury; the jury were right so far on the evidence which was placed before them, but I am prepared to prove before another jury that I am still suffering from the accident and am entitled to additional compensation." The fact that the original award of damages is final may be a hardship to one or other of the parties, but it is a hardship which cannot be avoided; otherwise there would be no end to such claims. I have no doubt or hesitation in saying that there is nothing in this Act which would justify the raising of a new case by a workman in respect of an accident after his injuries have once been inquired into and the result of them ascertained, and after the Sheriff has held that the injured person is completely recovered, and that compensation must be ended. That in my opinion is an end of the matter once and for all.

LORD ARDWALL—I concur.

LORD DUNDAS—I agree with all your Lordship has said and think that the case is a hopeless one.

LORD LOW was absent.

The Court answered the question of law in the affirmative.

Counsel for Appellant—A. Mackenzie Stuart. Agents—Lindsay, Cook, & Dickson, Solicitors.

Counsel for Respondents—Murray, K.C.—J. H. Henderson. Agents—Morton, Smart, Macdonald & Prosser, W.S.

Tuesday, July 12.

FIRST DIVISION.

[Lord Guthrie, Ordinary.]

WOODS v. EDINBURGH EVENING NEWS, LIMITED.

Reparation—Slander—Newspaper—Advertisement not Prima facie Libellous—Advertisement for Wet Nurse—Innuendo—Relevancy.

A husband and wife brought an action of damages for slander against a newspaper for publishing an advertisement

for a wet nurse, applicants being referred to the address where the pursuers resided and carried on a wine and spirit business. The advertisement was untrue and unauthorised. At its date the pursuers had been about four months married. *Held* (1) (*rev.*) judgment of Lord Guthrie that the advertisement *per se* was not libellous, and (2) that it could not be innuendoed as meaning that the female pursuer had within five months of her marriage given birth to a child of which pursuer was the father, and that each of the pursuers had been guilty of antenuptial fornication and was of immoral character; defenders *assolviéd*.

Opinion reserved as to how far a newspaper can be made responsible, without averments of negligence, for the publication of an advertisement *prima facie* innocent and non-injurious.

James Wood, wine and spirit merchant, residing at Kinleith Arms, Juniper Green, and Mrs Margaret Prentice Wood, his wife, with her husband's consent and concurrence, raised an action against the Edinburgh Evening News, Limited, in which they claimed £1000 damages for slander alleged to be contained in an unauthorised and untrue advertisement for a wet nurse published in the defenders' newspaper. The pursuers averred—" (Cond. 1) The pursuers were married on 23rd November 1909. For some time previous to his marriage the pursuer the said James Wood carried on business, and he still carries on business, as a wine and spirit merchant at 8 Young Street, Edinburgh, and in Edinburgh he has a large circle of friends. The pursuer, the said Mrs Wood, previous to her marriage carried on business, and she still carries on business, as a wine and spirit merchant at the Kinleith Arms, Juniper Green. Since their marriage the pursuers have resided and still reside together at the Kinleith Arms aforesaid. There are no other married persons living in the establishment. (Cond. 2) On Friday the 15th day of April 1910 the following notice appeared among the notices of situations vacant in the issue of the *Edinburgh Evening News* of that date—" Nurse (wet) wanted immediately. Apply Kinleith Arms, Juniper Green. Fares paid." The same notice also appeared in the issue of the said *Edinburgh Evening News* of Saturday 16th April 1910. (Cond. 3) Neither of the pursuers authorised or instructed the said notice to be inserted. The pursuers had in point of fact no occasion for the services of a wet nurse. No child had been born at Kinleith Arms. The said notice was not received by the defenders in the ordinary course of business, or at all events it was not dealt with by them in the proper way. It is believed and averred that the said notice was handed to an employee of the defenders at their office at 18 Market Street aforesaid over the counter by some person or persons unknown. The notice was not signed, nor did it contain any indication of the person who was responsible for its insertion. The defenders, without making

any inquiry as to the genuineness of the notice, or even asking for the name and address of the person or persons who tendered it, inserted it in the column of their newspaper in which 'Situations Vacant' are advertised. The defenders were guilty of negligence in inserting the said notice without inquiry or authentication. Immediately the said notice appeared the pursuers informed the defenders that it was fictitious and unauthorised, and requested them to take steps to ascertain the person or persons who had ordered its insertion. Inquiries were made with the view of discovering the person who had instructed its insertion, but without success. (Cond. 4) The said notice is of and concerning the pursuers and each of them, and is false, calumnious and malicious. It falsely, calumniously and maliciously represents that the female pursuer had within five months of her marriage given birth to a child of which the male pursuer was the father, that each of the pursuers had been guilty of antenuptial fornication, and was of immoral character. The said notice was so understood by various members of the public who read it."

The defenders admitted publication, and pleaded, *inter alia* — "(1) The pursuers' averments being irrelevant and insufficient to support the conclusions of the summons, the action should be dismissed. . . . (3) The statements complained of not being defamatory of the pursuers, the defenders should be assolizied."

The Lord Ordinary (GUTHRIE), by interlocutor dated 16th June 1910, allowed an amended issue in the following terms— "Whether the pursuers were married on 23rd November 1909, and whether the defenders, in the issues of the *Edinburgh Evening News* of 15th and 16th April 1910, printed and published a notice in the terms set forth in the schedule annexed hereto? Whether the said notice is of and concerning the pursuers, and is false and calumnious, to the loss, injury, and damage of the pursuers? Damages for pursuer James Wood laid at £1000 sterling. Damages for pursuer Mrs Margaret Prentice Hamilton, or Wilson, or Wood laid at £1000. *Schedule* — 'Nurse (wet) wanted immediately. Apply Kinkleith Arms, Juniper Green. Fares paid.'

The defenders reclaimed, and argued— The advertisement was ambiguous in its terms and need not apply to pursuers. The case was not *in pari casu* with *Morrison v. Ritchie & Co.*, March 12, 1902, 4 F. 615, 39 S.L.R. 432. There was no necessary connection between the advertisement and the pursuers.

Argued for the pursuers—The advertisement was so closely connected with the place of residence of the pursuers that it would inevitably be associated with them. Its terms were such that those who knew the circumstances of the recent marriage would believe that these people had had a child. *Morrison v. Ritchie & Co.*, *cit. supra*, was exactly in point. Reference was also made to *M'Lean v. Bernstein and Others*, June 1, 1900 (O.H.), 8 S.L.T. 42.

In the course of the argument pursuers, to meet an objection from the Bench, were allowed to amend their issue by adding this innuendo,— "meaning thereby that the female pursuer had within five months of her marriage given birth to a child, of which the male pursuer was the father; that each of the pursuers had been guilty of antenuptial fornication, and was of immoral character."

LORD KINNEAR — In this case the Lord Ordinary has approved an issue for the trial, and the defenders reclaim against that interlocutor. The issue approved asks (1) "Whether the pursuers were married on 23rd November 1909, and whether the defenders, in the issues of the *Edinburgh Evening News* of 15th and 16th April 1910, printed and published a notice in the terms set forth in the schedule annexed hereto?" (2) "Whether the said notice is of and concerning the pursuers, and is false and calumnious? . . ." The notice in the schedule was in the following terms:— "Nurse (wet) wanted immediately. Apply Kinkleith Arms, Juniper Green. Fares paid."

I am clearly of opinion that the words in the advertisement taken by themselves contain no slander against anybody whatever, and that would be a sufficient reason for recalling the interlocutor and dismissing the action.

But the defenders, by a very fair indulgence to the pursuers, have consented to their maintaining an argument upon an issue which was not asked, and had not therefore been approved by the Lord Ordinary, and since the defenders make that concession it is necessary that the Court should consider whether the newly suggested issue putting an innuendo upon the words used ought to be allowed any more than the issue actually proposed. The innuendo which the pursuers propose to add would be in the following terms:— "meaning thereby that the female pursuer had within five months of her marriage given birth to a child, of which the male pursuer was the father; that each of the pursuers had been guilty of antenuptial fornication, and was of immoral character."

No doubt the words of the innuendo proposed would be libellous in themselves, but the rule with reference to sending an issue to a jury in such circumstances is perfectly clear. It is for the Court to say whether the words complained of will bear the innuendo proposed to be put upon them, and if it is possible that they might have a slanderous meaning put upon them, then it is for the jury to say whether in fact they bore that meaning. In this case I am of opinion that the words complained of will not bear the innuendo proposed to be put upon them, and I am therefore for recalling the Lord Ordinary's interlocutor.

LORD JOHNSTON — I concur, and have nothing to add.

LORD SALVESEN — I am of the same opinion. I put my judgment entirely upon the ground that the innuendo cannot be sup-

ported by the terms of the advertisement. I desire to reserve my opinion as to how far a newspaper can be made responsible without averments of negligence for the publication of an advertisement which was *prima facie* innocent and non-injurious, because I think that the position of a newspaper may in some respects be differentiated from that of a person who in good faith repeats words which might have a calumnious meaning. I say that, because actions of this kind directed against newspapers which receive and insert advertisements in the ordinary course of their business, must be more carefully looked at than when we are dealing with statements by private individuals affecting their neighbour's reputation. This advertisement which the defenders were asked to insert was *prima facie* perfectly innocent, and I think it is open to question how far apart from negligence they can be made responsible for its insertion, even if it bore a calumnious meaning in the particular circumstances of the pursuers.

LORD KINNEAR — I concur with Lord Salvesen in reserving my opinion upon the question to which his Lordship has referred. We do not require in this case to consider the extent of a newspaper's liability for publishing an advertisement apparently innocent when there are no circumstances before them to create a suspicion in the minds of their managers that some imputation is intended against some particular person.

The LORD PRESIDENT was absent.

The Court recalled the interlocutor of the Lord Ordinary and assoilzied the defenders.

Counsel for the Defenders (Reclaimers)—Morison, K.C. — Mair. Agents—Weir & Macgregor, S.S.C.

Counsel for the Pursuers (Respondents)—J. R. Christie—A. A. Fraser. Agents—Galbraith Stewart & Reid, S.S.C.

Friday, July 15.

FIRST DIVISION.

GENERAL BILLPOSTING COMPANY, LIMITED v. YOUDE AND OTHERS.

Diligence — Arrestment — Damages for Wrongous Dismissal — Creditor of Dismissed Servant Uses Arrestment before Servant has Made Claim or Raised Action — Validity of Arrestment.

Held (rev. the Lord Ordinary, Mackenzie, the Lord President *diss.*) that a claim of damages for illegal dismissal can be effectually arrested so as to give the arresting creditor a preference over the sum of damages recovered, although at the date when the arrestment was used the dismissed servant had made no claim, judicial or extra-judicial, against his employers.

Observations (by the Lord President) on the maxim of the civil law *Actio personalis moritur cum persona*, and on *Auld v. Shairp*, December 16, 1874, 2 R. 191, 12 S.L.R. 177, July 14, 1875, 2 R. 940, 12 S.L.R. 611.

The General Billposting Company, Limited, having their registered office at No. 16 North St Andrew Street, Edinburgh (*pursuers and real raisers*), raised an action of multiplepinding against Robert Youde, Portobello (*common debtor*), Henry Lindon Riley, barrister, 3 Percy Street, Liverpool, Walter Angus Ellis, Official Receiver in Bankruptcy, Sunderland, and others, in which they sought to have it declared that they were only liable in once and single payment of the sum of £2000 contained in a decree of the Sheriff of the Lothians and Peebles at Edinburgh, dated 25th May 1909, whereby the General Billposting Company, Limited, were found liable to the said Robert Youde in the sum of £2000, and that to such of the defenders or to such other person as should be found at discussing of their rights to the same.

Claims were lodged by, *inter alios*, the said Henry Lindon Riley and Walter Angus Ellis.

The facts of the case and grounds of the claims appear in the opinion of the Lord Ordinary (MACKENZIE), who on 1st February 1910 repelled the claim for Henry Lindon Riley, and found him liable in expenses to Walter Angus Ellis, official receiver of the estate of Robert Youde.

Opinion.—"The fund *in medio* in this multiplepinding is a sum of £2000 awarded as damages to Robert Youde for illegal dismissal by the General Billposting Company, Limited. Youde's appointment as managing director of the company was terminated on 23rd August 1907. A Sheriff Court action to recover damages was raised in January 1908, the Sheriff-Substitute decreed in favour of the pursuer on 15th April 1909, and the case was settled by joint-minute on 25th May 1909.

"On 31st March 1909 a receiving order was pronounced in England against Youde, and the claimant Walter Angus Ellis became the receiver. On 19th April 1909 the receiver intimated a claim to the General Billposting Company for all money payable to Youde under the above-mentioned decree. On 18th June 1909, at a meeting of Youde's creditors held in England, it was resolved that Youde should be adjudged a bankrupt. An order of adjudication was made against him by the Court on the same day.

"The receiver claims that he has a preference on the fund as against the claimants who now remain in the competition.

"The first of these is Henry Lindon Riley. In September 1907 he raised an action in the Court of Session against Youde for payment of £241, 17s. 10d. On the dependence of this action, on 3rd September 1907, he arrested the sum of £300 in the hands of the General Billposting Company. Decree for £217, 14s. 8d. and expenses was pronounced in the action on 13th November 1909.