

Friday, January 21, 1916.

(Before Viscount Haldane, Lord Kinnear,
Lord Shaw, Lord Parmoor, and Lord
Wrenbury.)

LANGLANDS v. JOHN LENG &
COMPANY, LIMITED.

Reparation—Slander—Newspaper—Innuendo.

In an action of damages for slander against a newspaper the innuendo of corrupt conduct in giving interested advice to a public authority by an architect, its official, *disallowed, reversing judgment of the Second Division.*

On 15th October 1914 James Hendry Langlands, architect, Dundee, *pursuer*, brought against John Leng & Company, Limited, printers, proprietors, and publishers of the *Dundee Advertiser*, *defenders*, an action to recover £3000 as damages and *solatium* for an alleged slander.

On 7th October 1914 the defenders printed and published in the *Dundee Advertiser* the following article:—

“DUNDEE SCHOOL BOARD AND ITS ARCHITECT.

“Mr Christopher Bisset goes the right way about it in the resolution he submitted at Dundee School Board yesterday, dealing with the extraordinary muddle of the Harris Academy extension. The Board resolved on its present policy of extending the existing Academy on the basis of a plan and estimate by its architect, showing that the enlargement would cost £17,100. If the estimate had been for a much larger figure it is practically certain that the policy of enlargement would not have been adopted. But the offers from contractors show that the work will cost very nearly double the estimated amount, and the increase is not accounted for by war prices. In these circumstances Mr Bisset proposes to depart from the scheme, and it is imperative that the whole position be considered anew. The second part of Mr Bisset's motion is not less important, dealing as it does with the whole position of the architect. The Board has at present the curious arrangement with its architect by which he undertakes all work of the nature of alterations and additions to existing structures, while new buildings are submitted to open competition. Apparently the idea under this is that the Board's architect should manage the small things, while for the large things there is open competition. But for a considerable time past the ‘enlargements’ have been much bigger jobs than the erection of new structures—*e.g.*, the enlargement of Morgan Academy, costing about £20,000, and the projected enlargement of the Harris Academy, which would cost about £32,000. The rule as interpreted is an absurdity, and it puts a premium upon a certain kind of advice. Mr Bisset proposes to make an end of it, and it is to be hoped that in the public interest the Board will support its chairman.”

The pursuer proposed this *issue*—“It being admitted that on or about the 7th day of October 1914 the defenders printed and published in their newspaper, the *Dundee Advertiser*, an article or paragraph in the terms of the schedule hereunto annexed [*v. article quoted sup.*]. Whether the statements therein set forth or part thereof are of and concerning the pursuer, and falsely and calumniously represent that the pursuer had wilfully and corruptly misled the School Board of Dundee by furnishing said Board with estimates of expenditure which

he knew to be false, inaccurate, and misleading, that he had been unfaithful to the trust reposed in him as the Board's architect, and had in his position of architect to said Board acted corruptly for his personal benefit, or make similar false and calumnious representations of and concerning the pursuer, to his loss, injury, and damage? Damages laid at £3000.”

The *circumstances* are given in the opinion (*infra*) of the Lord Ordinary (ANDERSON), who on 11th December 1914 refused the issue and dismissed the action with expenses.

Opinion.—“I have formed a clear view as to how this case ought to be decided, and accordingly I do not think it necessary to delay pronouncing judgment. . . .

“It appears that the position of the pursuer in connection with the School Board of Dundee is this, that he is the architect of the Board, and the conditions of his appointment to that post are these—that in so far as alterations or additions or extensions upon existing buildings are concerned he is employed and remunerated as the architect of the Board, but he is not necessarily so in connection with new buildings, because with reference to these the rule of the Board is that there should be a public competition among architects.

“Now in the year 1911 and again in 1912, and again last year and the present year, the School Board of Dundee considered the question of making additions or extensions to the Harris Academy in Dundee, and ultimately the pursuer was asked to submit estimates of the probable cost of certain extensions, and in the present year he estimated that those proposed extensions would cost £16,300. The matter was submitted to the Education Department, and an additional sum of £800 was subsequently added to the above figure of £16,300, making the total cost of the proposed alterations as estimated by the architect £17,100. When, however, tenders were received from contractors it was found that the cost was practically doubled, and that something like £32,000 would be required to do the work which the architect thought ought to have been done for £17,100.

“In consequence of the tenders which had been received from the contractors, the School Board of Dundee had a meeting upon the subject in October of the present year, and the *Dundee Advertiser* gave a report of what occurred at that meeting. That report is summarised and referred to in the record, and with reference to that report what the pursuer says is—‘The pursuer believes and avers that said report is a fair representation of what passed at said meeting of the Board.’

“Now the report in question, which the pursuer characterises as a fair report, contains the terms of a resolution which was proposed by the chairman, and it is important that the terms of that resolution should be kept in view. The resolution was this—‘The Board, considering that the architect on 4th December 1913 reported that the Harris Academy reconstruction involved a total expenditure of approxi-

mately £16,300, subsequently increased by £800, and that the offers now received appear to show that the work will cost about double the estimated sum, resolve to depart from the scheme.'

"In a leading article dealing with this matter and with that meeting, which appeared in the *Dundee Advertiser* on 7th October 1914, the writer of the article made the observations which are complained of and which are said to be defamatory.

"The question I have to determine at this stage is whether that is a defamatory publication. This is a case in which a newspaper is concerned, and it is well settled that a newspaper does not in publishing such an article enjoy a situation of privilege in the ordinary acceptation of the term. A newspaper, of course, is entitled to publish what is fair comment on public events, and to publish reports of events of local importance, such as a meeting of the School Board, with reference to a matter of this sort.

"The pursuer does not maintain that the language in itself is defamatory, but he says it is capable of being innuendoed in a sense which imports defamation, and he had in the issue which he has tabled set forth the innuendo, or rather the innuendoes, which, he maintains, the language reasonably bears. These are three in number, and the first is that the defenders by the language they employed meant to 'represent that the pursuer had wilfully and corruptly misled the School Board of Dundee by furnishing said Board with estimates of expenditure which he knew to be false, inaccurate, and misleading.'

"Now, as I understood Mr Paton's argument, he fastens upon a sentence as being the justification for that innuendo which he proposes. That sentence is in these terms—'The offers from contractors show that the work will cost very nearly double the estimated amount, and the increase is not accounted for by war prices.' But it will be noted that apart from the last phrase of that sentence, the sentence is just a repetition of part of the resolution which had been proposed by the chairman and adopted by the Board at the meeting on 7th October. The last phrase is an addition, which in my view does not amount to a stigma or constitute anything defamatory, and consists of the addition of the words, setting forth a mere statement of fact—'the increase is not accounted for by war prices.'

"What I have to do at this stage is to determine whether or not any reasonable body of men could, from the language which I have read and from the terms of the whole article, reach the conclusion that the statement complained of is defamatory, and I find that how I have to proceed at this stage has been laid down in judgments of the Supreme Court in, first of all, the *Capital and Counties Bank v. Henty*, L.R., 7 A.C. 741, in which the Lord Chancellor puts the matter thus at p. 745—'The test, according to the authorities, is whether under the circumstances in which the writing was published reasonable men to whom the publication was made would be likely to understand it in a libellous sense.'

"And that statement by the Lord Chancellor was expressly approved by the House of Lords in the recent case of *Russell v. Stubbs, Limited*, 1913 S.C. 14, 50 S.L.R. 676, Lord Kinnear saying this at p. 20 (678)—'I take the doctrine as laid down by Lord Selborne in *Capital and Counties Bank v. Henty*, where, after stating the general rule to the same effect as I have just stated it, the learned Lord adds—'If the judge, taking into account the manner and the occasion of the publication and all other facts which are properly in evidence, is not satisfied that the words are capable of the meaning ascribed to them, then it is not his duty to leave the question raised by the innuendo to the jury.'

"That observation of the Lord Chancellor refers to English practice, and according to English practice practically every case of this character goes to the jury; but it is there laid down by the Lord Chancellor that if the innuendo is in the view of the judge unreasonable, he is not to allow a jury to pronounce an opinion upon it at all, but at the end of the pursuer's case it is his duty to withdraw it from the jury, and to decide in fact that the language complained of is not defamatory.

"That is not our practice. We decide that point—whether the language will reasonably bear the innuendo—at the present stage, and I have to do at this stage what the judges in England do at a later stage—to decide whether the language complained of will reasonably and naturally bear the meaning attributed to it by the pursuer.

"Accordingly, applying these tests, I have no difficulty in saying that the first innuendo—that the defenders intended to accuse the pursuer of wilful and corrupt conduct to the effect that when he made those estimates he knew them to be false, inaccurate, and misleading—finds no support in the language of the article, and my judgment is that no reasonable body of men could extract that innuendo from the language used.

"The second innuendo is that the pursuer had been unfaithful to the trust reposed in him as the Board's architect, but it seems to me that the same judgment must follow as to that, because that is merely a repetition in milder language of the first innuendo, and it depends for its support upon the same part of the article which I have adverted to.

"Thirdly, the last innuendo is that the defenders alleged that the pursuer had in his position of architect to said Board acted corruptly for his personal benefit. It seems to me that the same judgment must follow as to that innuendo, depending as it does upon the same language, and it may be also upon the phrase towards the end of the article in which the writer says—'The rule, as interpreted, is an absurdity, and it puts a premium upon a certain kind of advice.' Now it seems to me that if that last-mentioned phrase has any stigma in it at all it contains a stigma not upon the architect but upon the Board, because the rule was the Board's rule and not the architect's rule, and it was the Board which put a

premium on a certain kind of advice. Accordingly if reliance is placed by the pursuer on that part of the article, that reliance is in vain, because it does not refer to him at all but to the Board.

"Accordingly, although in these cases I am always unwilling to prevent a pursuer stating his case to a jury, I think I have no option in this case, where I am clearly of opinion that the pursuer has not been defamed, save to stop the case at this stage, and I therefore sustain the defenders' first plea-in-law and dismiss the action with expenses."

The pursuer *reclaimed* to the Second Division, and proposed amendments of his record and an amended issue, and on 9th July 1915 that Division pronounced this interlocutor—"The Lords having considered the reclaiming note for the pursuer against the interlocutor of Lord Anderson, dated 11th December 1914, and having also considered the minute of amendment of record proposed by the pursuer and answers thereto by the defenders and the issue now proposed by the pursuer, and having heard counsel for the parties, Recal the interlocutor of the Lord Ordinary reclaimed against: Open up the record and allow the same to be amended in terms of said minute and answers, and the amendments having been made, of new close the record: Approve of the said issue as amended at the bar; Appoint it as now authenticated and signed to be the issue for the trial of the cause, and remit the cause to the Lord Ordinary to proceed therein as accords: Find no expenses due to or by either party since said 11th December 1914."

The *issue allowed* by the Division was—"It being admitted that on or about the 7th day of October 1914 the defenders printed and published in their newspaper, the *Dundee Advertiser*, an account of a meeting of the School Board of Dundee, headed 'School Board Plight,' in terms of Schedule I hereto annexed, and also a relative article headed 'Dundee School Board and its Architect,' in the terms of Schedule II hereto annexed: Whether said account and article or part thereof are of and concerning the pursuer, and falsely and calumniously represent that the pursuer had in his position of architect to said Board acted corruptly for his personal benefit, or make similar false and calumnious representations of and concerning the pursuer, to his loss, injury, and damage?"

"SCHEDULE I.

"SCHOOL BOARD PLIGHT.

"ESTIMATES THAT HAVE DOUBLED.

"Probable Drastic Action.

"A rather serious position of affairs connected with the proposed extension of the Harris Academy was revealed at the monthly meeting of Dundee School Board yesterday.

"A dramatic note was struck during the proceedings by the resolution submitted by the chairman, Mr C. J. Bisset, involving a drastic proposal with regard to the Board's advising architect, Mr J. H. Langlands.

"The discussion was raised by the reading of a letter from an Edinburgh firm of measurers who had been asked to report on the tenders received for the

mason and brick work, joiner work, and steel work for the Harris Academy extension. The letter stated that the rating for the mason and brick work had been very erratic. In many cases the rates were out of all proportion to their true value, many being much too high, and in other cases much too low. The rates for excavation and for rubble building were too low, and the contractor had not taken a proper idea of the value of the demolition of all old buildings. Indeed, the prices for the latter items were very much below their proper value. On the other hand, the rates for hewn work were very high, and it was difficult on the whole to understand how this offer was the cheapest. The letter proceeded to state that the schedules for joiner and iron and steel work appeared moderately stated. It pointed out that as a result of the war the prices of timber and steel had risen considerably, but the price of mason work should not be similarly affected at all. The measurers added that they were of opinion that on the conclusion of the war and on the markets for timber and steel resuming normal conditions, more reasonable offers might be obtained. 'We think it right to point out,' they proceed, 'that contingent sums amounting in total to £1049, 11s. 6d. are included in the three offers under review. While it is usual to have a sum to cover any small alterations and jobbings that may be found necessary, we are of opinion that part of this sum could be saved.'

"Architects Differ in Estimates.

"The chairman explained the position to the Board in a lengthy speech. He pointed out that it was first decided to extend the Harris Academy in May 1912, when it was the original intention to extend the existing building to the east towards Tay Square. The architect's first estimate was £10,000. Further detailed estimates were then asked for, and for completed sketch plans the architect named £11,000. The plans were then submitted to the Education Department, who pointed out that their architect had reported that the site even when enlarged was too restricted, whereupon the Board estimated an extension to the east at £16,500, this including the cost of the property, amounting to £2500.

"At a subsequent interview with several members of the Board Sir John Struthers, of the Education Department, stated that the plan submitted by the Board had been found by them to be scarcely satisfactory, and also indicated that the cost had been under-estimated, and that their architect had brought out the total expenditure at £19,500. At the request of the Board the Board's architect explained that his estimate was based on comparison with prices at which he had been erecting work for the Board in the past, with an estimated allowance for the rise in building rates, the prices being based on specifications cut down to the lowest possible point.

"An Inaccurate Estimate.

"That scheme, the chairman went on to explain, was then departed from in favour of an extension towards Park Place, and in December 1913 the estimate by the architect for this extension, amounting to £16,300, was submitted. The plans were subsequently adjusted, and owing to a rearrangement necessary for the provision of additional science accommodation the foregoing estimate was increased by £800. These plans were submitted to the Department, who in returning them remarked that they appeared to embody a satisfactory solution of the somewhat difficult problem before the Board.

"It now appeared, however, proceeded the chairman, that the cost was to be about double that amount. He explained that at the last meeting of the Board he had unintentionally misled the members by stating that the Department had confirmed the estimate of the Board's architect. That, however, was not so. What the Department had confirmed referred to the former scheme, which the Board had departed from, and not to the present scheme. He did not think that the letter from the measurers suggested any reason arising out of the war or otherwise