

liable for the amount of the valuation, and that has been paid. I see no good basis in law for the claim of damage for injury to feelings.

Lord CURRIEHILL—The landlord's hypothec undoubtedly attached to this crop; and if there had been no agreement, it is clear he was entitled to do all he did. The question is, did the agreement prohibit him from making his hypothec effectual? Some proceeding was necessary for the purpose. I don't see anything in the agreement which prohibits him. I think the landlord has done nothing which he was not legally entitled to do. Any damage which has been caused has resulted to him, and not to the pursuer.

Lord DEAS—I am of the same opinion. The question is whether the landlord did anything illegal, and that depends upon the terms of the agreement. It was entered into in December 1862. Is there anything in it to prevent the landlord sequestrating if he sees that necessary? The tenant's ordinary creditors might have carried off the crop if it had not been secured by sequestration. I see nothing in the agreement by which the landlord abandoned his legal rights. We are not in the habit of sending parties out of Court in cases of this sort very readily; but on the pursuer's own showing he has no case against the defender.

Lord ARDMILLAN concurred.

Counsel for Pursuer—Mr Millar and Mr J. G. Smith. Agent—Mr W. S. Stuart, S.S.C.

Counsel for Defender—Mr Gordon and Mr J. H. A. Macdonald. Agent—Mr John A. Macrae, W.S.

GLEBE SUGAR REFINING COMPANY *v.* LUSK.

Reparation—Slander—Company—Issue.—Form of issue in an action of damages for slandering a mercantile company.

Process.—An action having been raised by a company and its partners, as partners and as individuals, and not insisted in by the partners as individuals, held that the defender was entitled to have the action dismissed in so far as not insisted in.

In this action of damages in which the Glebe Sugar Refining Company, sugar-refiners in Greenock; and James Johnstone Grieve, Charles Philip Hunter, John Kerr, and Walter Grieve, all merchants and shipowners in Greenock; and Abram Lyle, merchant and sugar-refiner there, partners of the said Company, are pursuers; and Robert Lusk, wholesale grocer and sugar broker in Greenock, is defender, the following issue was to-day adjusted: "Whether, on or about 14th November 1865, the defender, within the public coffee-room or news-room in Greenock, commonly called and known by the name of the Greenock Coffee-room, situated in or near Cathcart Square, Greenock, and in the hearing and presence of Hew M'Ilwraith, writer in Greenock, and then one of the bailies of the town of Greenock; Mr William Neill, surveyor at Greenock to the Glasgow Underwriters' Association, and shipowner there; Mr Peter Ballingall, accountant, Bank of Scotland, Greenock; Mr Robert Morrison, assistant surveyor or officer of customs, Greenock; and Mr John Lyle, wine and spirit merchant, Greenock, or one or more of them, did falsely and calumniously say of and concerning the said Glebe Sugar-Refining Company that their conduct or actings in regard to what the defender called Ker Street of Greenock was infamous, or most infamous, or did use words of similar import; meaning thereby that the said company had been guilty of dishonest and dishonourable conduct,

to the loss, injury, and damage of the pursuers?"

Damages laid at £2000.

The action had been raised at the instance of the company and its individual partners, as such partners and as individuals; but at the adjustment of the issue,

GIFFORD and WATSON, for the pursuers, stated that they did not intend to insist in the action for the individual pursuers as individuals. Whereupon

The LORD ADVOCATE (with him the SOLICITOR-GENERAL and J. G. SMITH), for the defender, moved that the action should be dismissed, in so far as it was raised at the instance of the individual pursuers, as individuals.

GIFFORD submitted that this was not usual or necessary. He was willing to delete the words "and as individuals" from the principal summons.

The Court thought that the defender was entitled to have the action dismissed to the extent asked, which was done.

Agents for Pursuers—Patrick, M'Ewen, & Carment, W.S.

Agent for Defender—W. Archibald, S.S.C.

SECOND DIVISION.

M.P.—CAHILL *v.* SPENCE AND OTHERS.

Presumption of Life—Circumstances in which held (aff. Lord Kinloch) that there was no evidence to prove that a person was dead.

This case was raised for the distribution of the estate of the late Captain John Cahill, who died at the Cape of Good Hope in 1853, survived by a brother, Lieutenant David Cahill, who died in 1854. Mrs Mary Wilson or Cahill, the widow of David, was appointed administratrix of the estate of John by the Prerogative Court of Canterbury; and the main question raised in this process was whether a third brother, named Patrick Cahill, was alive, and if dead, when he died.

If he predeceased either John or David the whole of John's estate went to David's widow. If he survived David, the one-half of John's estate would fall to him, or to his next of kin.

It appeared from the proof which was led that Patrick sailed from London in 1852 for Australia, on board the ship *Mermaid*, that he wrote from off the Cape, but that nothing had been heard of him since.

After the proof had been taken, Mrs Spence appeared as a claimant, alleging that she had been married to Patrick in 1843, that he soon after deserted her, that she had obtained decree of adherence in February 1852, and also alimony at the rate of £30 a-year from 1843. She then obtained a decree of divorce, and now claimed £270 of arrears of alimony decreed for and £203 of interest.

The Lord Ordinary (Kinloch) held that there were no circumstances established sufficient to prove or raise a presumption that Patrick Cahill was dead; and preferred Mrs Spence as his creditor.

The other claimants having reclaimed, the Court, unanimously adhered, on the ground that, it being impossible to say that Patrick Cahill was dead, neither of the other claimants were entitled to appear.

Counsel for Claimant Mrs Wilson—Mr Horn and Mr Guthrie Smith. Agent—Mr Andrew Scott, W.S.

Counsel for Mary Ann Cahill—Mr Pattison. Agent—Mr Somerville, S.S.C.

Counsel for Mrs Spence—Mr Napier and Mr Lamond. Agent—Mr Steele, S.S.C.