birth to a child that the father of the child is her husband.

Now, it is not doubtful that a woman in such circumstances as the pursuer is placed in here is entitled to deal with other persons in her own right, and to incur debt on her on account; indeed, it is almost essential that she should be able to do so, and in law she has such a right, so that with the exception of matters affecting *status* she can act as if her husband was dead.

Now, this case raises a question of debt, and nothing else. The question is, whether a debt is due to the pursuer by the defender because she has to take charge of and provide for the upbringing of the child. She calls upon the defender to pay his share of the expenses so caused as a debt which he owes to her. I therefore think we cannot sustain the preliminary pleas of the defender, and should adhere to the interlocutor in the Court below.

LORD RUTHERFURD CLARK and LORD TRAYNER concurred.

LORD YOUNG was absent.

The Court adhered.

Counsel for Pursuer and Respondent—A. S. D. Thomson. Agent—

Counsel for Defender and Appellant—M'Lennan. Agent—Robert Broatch, L.A.

Saturday, January 16.

SECOND DIVISION.

[Lord Wellwood, Ordinary.

HILL *v.* THOMSON.

Reparation — Slander — Ship — Log-Book Entry—Merchant Shipping Act 1854 (17 *and* 18 *Vict. cap.* 104)*—Issue—Malice—Probable Cause.*

In an action of damages for slander by the chief officer of a merchant vessel against the master, the pursuer averred that the defender had on one occasion expressed his wish that a certain seaman should not be permitted to steer when his turn for wheel-duty came round. About six hours later it again came to this seaman's turn at the wheel when the pursuer was in charge of the ship; the pursuer for the time entirely forgot the verbal order he had received, and permitted the seaman to take the wheel. The defender came on deck, ordered the pursuer off duty on the ground of wilful disobedience, and made an entry in the log to the effect that the pursuer had wilfully and intentionally disobeyed his orders.

The Merchant Shipping Act requires the master of a vessel to enter on the log any instance of wilful disobedience, and to report the same to the authorities by delivery of the log within forty-eight hours of arrival at the final port of destination.

Held (1) that an issue in such a case must include malice and want of probable cause; and (2) that the pursuer's averments showed that the defender had probable cause for his statement; and the action *dismissed* as irrelevant.

The Merchant Shipping Act 1854 (17 and 18 Vict. cap. 104), sec. 243, provides for the punishment of certain offences by seamen, including "(4) Act of Disobedience—For wilful disobedience to any lawful command he shall be liable to imprisonment for any period not exceeding four weeks, with or without hard labour, and also at the discretion of the court to forfeit out of his wages a sum not exceeding two days' pay."

Sec. 244. "Upon the commission of any of the offences enumerated in the last preceding section an entry shall be made in the official log-book, and shall be signed by the master and also by the mate, or one of the crew, and the offender, if still in the ship, shall before the next subsequent arrival of the ship at any port, or if she is at the time in port, before her departure therefrom, either be furnished with a copy of such entry or have the same read over distinctly and audibly to him, and may thereupon make such reply thereto as he thinks fit, and a statement that a copy of the said entry has been so furnished, or that the same had been read over as aforesaid, and the reply if any made by the offender, shall likewise be entered and signed in manner aforesaid, and in any subsequent legal proceeding the entries hereinbefore required shall, if practicable, be produced or proved."

Sec. 281. "Every entry in every official log-book shall be made as soon as possible after the occurrence to which it relates." . . .

Sec. 282. "Every master of a ship for which an official log-book is hereby required shall make or cause to be made therein entries of the following matters, that is to say—(3) Every offence for which punishment is inflicted on board, and the punishment inflicted."

"Sec. 286 provides for official logs being delivered to shipping masters within forty-eight hours of the arrival of the ship at her final port of destination."

Thomas Hill, master mariner, lately chief officer of the steamship "Feliciana" of Glasgow, sued George B. Thomson, master mariner, Glasgow, late master of the said vessel, for damages for alleged slander contained in an entry in the ship's log.

The pursuer averred—"(Cond. 6) . . . The vessel upon 17th September proceeded upon her voyage to London. About eight o'clock the same evening, when a seaman was at the wheel, named James Harty, the defender expressed to the pursuer his wish that Harty should not be permitted to steer the ship when his turn for wheel-duty again came round. No reason was given by the defender for this order, nor was it entered by the defender in the night order book written up for the guidance of the

officer of the watch, and Harty was at the time continued by the defender himself at the wheel. The pursuer notwithstanding, accepted said order in good faith as from his superior officer, and it was his wish and intention to carry out said order loyally, as was his duty. (Cond. 7) About two o'clock on the morning of the following day it again came to Harty's turn at the wheel, when the pursuer was in charge of the ship. The said James Harty, who is a seaman of much experience, was thoroughly competent to steer said ship, and had regularly steered her without complaint throughout the voyage from Liverpool out and home. To this circumstance and to the casual intimation of his order upon the day before by the defender, it was probably owing, but in any case it is the fact, that the pursuer for the time entirely forgot the verbal order he had received respecting the said James Harty, and permitted him to take the wheel. Sometime thereafter the defender came upon the bridge, and seeing the said James Harty at the wheel, instantly, and without inviting or permitting any explanation, ordered the pursuer off duty, upon the pretext that he had wilfully disobeyed the orders of the defender. The defender, at the time he gave said order, knew well, from his previous experience of the pursuer on board said vessel, that the pursuer was not guilty of wilful and intentional disobedience. (Cond. 8) Thereafter, upon the same day, the defender made the following entry in his official log, viz:—"18th September 1891. H. M. 3·20 a.m., Lat. 52°, 52° N. Long., 1° 36′ E., 9 a.m., September 1891. This is to certify Mr Thomas Hill, chief officer, wilfully and intentionally disobeyed my orders in allowing James Harty, seaman, to steer the ship in narrow waters, seeing the said seaman was quite unable to steer, and the course he made with the ship could not be relied upon, and it was dangerous while he was at the helm to approach shipping; seeing such was the case, I ordered Mr Hill not to allow him to go there any more, but in the face of my instructions, and the care of the vessel, he, Mr Hill, allowed him to take the helm again, for which I knocked him off duty. GEORGE THOMSON, master.' The defender handed a copy of said entry to the pursuer. The said entry is false in fact, and a gross slander, in so far as it records that the pursuer was guilty of wilful and intentional disobedience to the defender's orders, and the defender well knew that it was slanderous and mendacious when he made it. The said entry was made, and the punishment foresaid was inflicted, maliciously and without probable cause by the defender, with the deliberate intention of injuring the reputation of the pursuer in his profession, and particularly with his employers, and of thus securing for himself the continued command of the steamship 'Feliciana.'" . . .

The pursuer pleaded—"(2) The statement complained of having been made by the defender maliciously and without probable cause, and the same being false and calumnious, the pursuer is entitled to solatium and damages as concluded for."

The defender pleaded—"(1) The pursuer's averments are irrelevant. (2) Privilege. (3) The statements compained of not being slanderous, the defender is entitled to absolvitor, with expenses."

Upon 18th December 1891 the Lord Ordinary (LOW) pronounced this judgment—"Repels the first plea-in-law stated for the defender: Assigns Tuesday the 5th day of January 1892 as a diet for the adjustment of issues: Reserves the question of expenses."

The defender reclaimed, and argued—The Lord Ordinary was wrong in allowing issues, but if an issue was to be allowed, it must contain not only malice, but also want of probable cause. The pursuer was bound to obey the defender's orders. He was disobedient. The entry in the log-book recorded this as required by the Merchant Shipping Act. The defender was a public official, because the log-book had to be submitted to Board of Trade officials. If a public official had a duty, or even a right, to make some statement defamatory of another person, he was entitled to have want of probable cause inserted in the issue—*Croucher* v. *Inglis*, June 14, 1889, 16 R. 774; *Gibb* v. *Barron*, July 14, 1859, 21 D. 1099; *Ewing* v. *Cullen*, August 24, 1833, 6 W. & S. 566. There was a variation in the case of *Marianski* v. *Henderson*, June 17, 1844, 3 D. 1036. Even in that case, however, it was admitted that want of probable cause ought to be inserted in such cases as this—*M'Pherson* v. *Cattanach*, December 10, 1850, 13 D. 287; *Shaw* v. *Morgan*, July 11, 1888, 15 R. 865. The question whether there was a want of probable cause or not was a question for the Court and not for the jury—*Urquhart* v. *Dick*, June 10, 1865, 3 Macph. 933. If it was assumed that want of probable cause must be inserted in the issue, the record showed that the master had probable cause for making the entry he did, and therefore the action ought to be dismissed as irrelevant—*Craig* v. *Peebles*, February 16, 1876, 3 R. 441.

The respondent argued—The pursuer was entitled to an issue without malice and want of probable cause. No doubt the defender's order was disobeyed by the pursuer, but he asked no explanation from the pursuer at the time. The most probable thing was to assume that the chief officer had only forgotten the order, and had not wilfully neglected it, but he was prepared to prove that the captain had borne him malice for a long time, and therefore had put a wrong construction upon the act. The libel was contained in the words "wilfully and intentionally," which showed the malice of the defender. There was no public duty on the defender to make the entry he did, so his case could not be assimilated to those cited by the defender. There was indeed no distinct authority as to when it was necessary to insert the words "want of probable cause" as well as malice in the issue—*Scott's Trustees* v. *Moss*, November 6, 1889, 17 R. 32. The entry in the log-book ought to be a statement of

fact, but the master had gone further than that and really made it an indictment—*Scott* v. *Turnbull*, July 18, 1884, 11 R. 1131.

At advising—

LORD JUSTICE-CLERK—The first thing of importance in this case is to see how the facts stand upon the pursuer's own averments. His case is that upon a certain occasion when the vessel, of which he was chief officer, was at sea, he received a verbal order from the master that a certain seaman who was then at the wheel should not be put to the wheel when next his turn came. When the master came on deck a few hours afterwards he found the pursuer as officer on duty, and the very man at the wheel whom he had ordered should not be put there. When the master found this he ordered the pursuer to leave the deck, which I suppose is the way of putting an officer under arrest at sea, and then entered in the official log-book this statement—[*Here his Lordship read the entry complained of.*] A copy of the entry was given to the pursuer at the time, and the record does not indicate that he gave any explanation at that time to the master why the breach of his order had occurred. On these facts the pursuer raises an action for slander against the master, because he had entered in the log-book that the pursuer had "wilfully and intentionally" disobeyed his orders.

The pursuer admits that he is bound to put into the issue a specific statement of malice by the captain towards him, thus binding himself to give at the trial specific proof of malice beyond the malice implied in slander. The question then is, whether the averment of malice is enough, or whether he must not also aver in the issue that there was a want of probable cause for the master making the entry in the log-book as he did.

There is no doubt of this, that if the master of a vessel believes that any order of his has been disregarded by the officers or any of the crew of his vessel, he is bound to enter a statement of that fact and the manner in which the person responsible for the disobedience was dealt with in the official log-book. The log-book must be shown to the proper officials when the vessel reaches port, and the record of the fault may be followed by criminal proceedings, because under the Act of Parliament the offender may be charged in a criminal court, and if the offence is proved, may be sentenced to imprisonment with hard labour. Therefore if there was no want of probable cause for what he did, it was the master's official and public duty to make such an entry in the log-book as he did.

Now, does this case state any facts showing that the master had not probable cause for making this entry. In my opinion the pursuer's statement shows that the captain had probable cause for what he did. He gave an order to the chief officer which in his view was a most important one, concerning the safety of the vessel and the crew for which he was responsible, and after a few hours when he next came on deck he found it had been disobeyed. It cannot be suggested that he had no probable cause for holding that his order had been intentionally disobeyed.

I hold that if the pursuer is entitled to get an issue at all, he must put into it not only malice but want of probable cause, and as in my opinion he has not stated any specific facts which show want of probable cause the case must be dismissed.

Mr M'Kechnie stated an argument upon the fact that the words "wilfully and intentionally" occurred in the entry objected to, to the effect that malice was shown thereby. If, however, the master had used the words "wilful disobedience," he would have been simply using the words of the statute, and I cannot see that the addition of the word "intentionally" makes any difference. It certainly in no way tends to include that the master had not probable cause for what he did, and upon this the whole case turns.

LORD RUTHERFURD CLARK—I am satisfied that if an issue is to be granted in this case the pursuer must insert that the entry complained of was made not only maliciously, but also without probable cause.

But then I think the record discloses in the clearest manner that the master had probable cause for what he did, and therefore I think the action should be dismissed as irrelevant.

LORD TRAYNER—The first question is, whether the pursuer is bound to put in issue "want of probable cause" as well as malice, and I agree with your Lordship that he is. There seems, as your Lordship has said, to be some difficulty in determining, according to the older cases on the subject, what exactly is the rule or principle on which these words are or are not required to be put in issue. But the recent case of *Croucher* v. *Inglis* seems to afford a rule on the subject which I am prepared to adopt. I venture to express my concurrence with the opinion thus expressed by Lord Shand, viz., that "where there is a duty, or rather a right," on the part of the writer to write and send the writing complained of, in such a case "the issue which the pursuer takes must embrace malice and want of probable cause." The more limited view of the Lord President in the same case would, however, if applied here lead to the same result. For in the present case the defender stood in the position of a public official charged by statute with the duty of entering in his official log any act of wilful disobedience on the part of any member of the crew, and of reporting to the public authorities such entries, by delivery of the log itself within forty-eight hours after his arrival in port. Indeed, this case would be covered by the rule which required want of probable cause to be put in issue in all cases where the ground of action was that information had been given to the public authorities that a crime had been committed. The wilful disobedience of orders on board ship is a crime under the Merchant Ship-

ping Act of 1854, and the defender in reporting it to the public authorities would have been entitled to the protection afforded by the words "want of probable cause" had there been no duty on him to make the report beyond the duty which every citizen has of making such a report. But the duty on the defender to make the entry now complained of in the log-book, and to report it to the public authority, was more than a moral duty. It is imposed upon him by statute, and a failure on his part to perform that duty would have subjected him in a penalty. Whether, therefore, the older and more limited rule is applied, or the more recent and wider rule of *Croucher* v. *Inglis*, I think the pursuer in this case is bound to put in issue that the report complained of was made not only maliciously but also without probable cause. The next question is, Can the pursuer be allowed such an issue in this case? I think not. The pursuer's statements show beyond any question that the defender had probable cause for believing and saying that the pursuer had been guilty of wilful disobedience, and it is remarkable that the pursuer did not offer to the defender any explanation of his conduct which might have altered or modified the defender's view of that conduct either at the time when he was ordered off duty on account of his disobedience, or at the time when he was furnished with a copy of the entry made in the log. Without any explanation offered or made, the defender could come to no other conclusion than that the pursuer's disobedience was wilful. I am therefore for refusing any issue, and think the defender should have absolvitor.

LORD YOUNG was absent.

The Court dismissed the action as irrelevant.

Counsel for the Appellant—Salvesen—Dickson. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Counsel for the Respondents—M'Clure—M'Kechnie. Agents — D. MacLachlan, S.S.C.

Tuesday, January 19.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

M'KERCHAR *v.* CAMERON.

Reparation—Slander—Innuendo.

A letter published in a newspaper, after calling attention to the fact that the reports of schools under a certain school board had not been published, and hinting that the reports were in some cases so bad that the board were ashamed to publish them, continued—"I wonder if it is the case, as it is rumoured, that the Ballachulish School is at the bottom of the poll this year again; if so, how long is this state of matters to be allowed to go on? Are the interests of the public to be sacrificed for the sake of providing a house and salary for a teacher?"

In an action by the teacher of the Ballachulish School—*held* that the language was capable of bearing the innuendo that the pursuer was unfit for his post as a teacher of a public school, and that it was the duty of the school board to dismiss him.

Reparation—Slander—Anonymous Letter—Privilege.

The teacher of a public school brought an action against the publisher of a newspaper on account of alleged slanderous statements contained in a letter signed "Another Ratepayer," which had been published in the defender's newspaper. *Held* (following *Brims* v. *Reid & Company*, May 28, 1885, 12 R. 1016) that the defender having refused to disclose the name of the writer of the letter, could not plead that it was privileged.

In the *Oban Times* of 17th October 1891 the following letter appeared:—

"Lismore and Appin School Board.

"(To the Editor *Oban Times.*)

"Sir,—The reports of schools under this Board have not yet been made public, and, as was indicated by 'Poor Man' and 'Ratepayer,' in your issue of 3rd curt., the ratepayers are getting impatient, and no wonder. It is now rumoured that the report in the case of one or more of the schools is so bad that the Board are ashamed to publish it. If to screen one school the whole of the reports are withheld, it is time the ratepayers took steps to enforce their rights. I wonder if it is the case, as it is rumoured, that the Ballachulish School is at the bottom of the poll this year again; if so, how long is this state of matters to be allowed to go on? Are the interests of the public to be sacrificed for the sake of providing a house and salary for a teacher?—I am, &c.

"ANOTHER RATEPAYER."

On account of the statement contained in this letter Thomas M'Kerchar, headmaster of the public school at Ballachulish, brought an action of damages against Duncan Cameron, printer and publisher of the *Oban Times*.

The pursuer averred—"The letter above quoted is of and concerning the pursuer, and falsely, maliciously, and calumniously represents, and was intended by the publication thereof as aforesaid to represent, (1) that the report upon the public school at Ballachulish by the Government Inspector was so bad that the School Board were ashamed to publish it; (2) that to screen the said school the whole of the reports of the Government Inspector were withheld; (3) that in consequence of the incompetency or fault of the pursuer the said school was at the bottom of the poll this year, as it had been in former years—that is, that it was the worst in point of results of all the schools examined; (4) that the