

Friday, October 25.

SECOND DIVISION.

[Sheriff-Substitute at
 Dundee.

FINLAY v. THE ROYAL LIVER
 FRIENDLY SOCIETY.

*Friendly Society—Exclusive Jurisdiction
 of Courts of Society—Collector—Dis-
 missal of Collector—Friendly Societies
 Act 1896 (59 and 60 Vict. c. 25), sec. 68.*

The rules of a Friendly Society em-
 powered the committee of management
 to deprive a collector of his collecting-
 book for conduct which in their opinion
 was injurious to the interests of the
 society, but allowed appeal from their
 decision to the delegates of the society.
 The rules provided further that while
 a collector might with the approval of
 the committee nominate a successor,
 no collector should have any right of
 property in his collecting book, which
 remained the property of the society.

A collector who had been dismissed
 by the committee of management "for
 conduct injurious in their opinion to the
 interests of the society," brought
 an action against the society, in which
 he claimed damages for illegal dismissal,
 and for having been deprived of the
 right of nominating a successor to
 his collecting-book.

Held (1) that as the pursuer had failed
 to avail himself of the appeal provided
 by the rules he was barred under section
 68 of the Friendly Societies Act
 1896 from suing the society in a court of
 law; and (2) that in any case as a collector
 had under the rules no right of property
 in his collecting-book, and the
 society were not bound to accept his
 nominee, the pursuer's claim of dam-
 ages under that head must fail.

This was an action brought in the Sheriff
 Court at Dundee by Crawford Finlay,
 Dundee, against the Hon. Edward Lyulph
 Stanley and others, the trustees and office-
 bearers of the Royal Liver Friendly Society,
 in which the pursuer craved decree, *inter
 alia*, (1) for payment of £100 in name of
 damages on account of his having been
 illegally dismissed from the office of col-
 lector of the Society, and on account of his
 having been illegally deprived of his col-
 lecting book.

The pursuer averred that on 6th February
 1899 he had been appointed by the com-
 mittee of management to be a collector of
 the Society, in pursuance of an agreement
 between him and one Towns, a retiring
 collector, whereby the pursuer had agreed
 to pay Towns the sum of £40 for nominat-
 ing the pursuer as his successor; that he
 thereupon took over Towns's collecting-book
 and acted as collector down to 3rd May
 1900, when he was suspended by the com-
 mittee of management. He averred that
 he had faithfully discharged his duties as
 collector, and had maintained the average

amount of payments due by policy-holders
 which it was his duty to collect. He averred
 further that on said 3rd May 1900 he was
 suspended by the committee of manage-
 ment without any reason being assigned
 therefor, and deprived of his collecting-
 book; that he was on 17th May 1900 called
 upon to state what reasons he had to give
 why he should not be discharged from the
 Society's employment; that he thereupon
 requested information of the complaints
 made against him, and at the same time
 offered to resign provided the Society would
 accept his nominee as his successor; that
 on 24th May 1900 he nominated as his suc-
 cessor one Wilson, who had agreed to pay
 him a certain sum in the event of his
 nomination being accepted, but that the
 Society refused to sanction the said nomi-
 nation, and also refused to receive any other
 nomination from the pursuer; and that on
 29th May 1900 the committee of manage-
 ment discharged him from his office of col-
 lector. He averred that he had never been
 guilty of dishonesty or wilful disobedience
 of orders, nor of any conduct which might
 be calculated in the opinion of the com-
 mittee of management to be injurious to
 the interests of the Society, and further,
 that no charge of such conduct had ever
 been made against him by the committee.
 The pursuer estimated his loss of commis-
 sion, &c., at £1 per week, and the value of
 his collecting-book at £40.

The defenders, in answer, admitted that
 they had suspended and finally discharged
 the pursuer, and explained that they had
 for a long time previously been dissatisfied
 with his conduct, and had warned him of
 the fact. They averred that the reason of
 his suspension, which was communicated to
 him at the time, was "his neglect of busi-
 ness and conduct calculated in the opinion
 of the committee to be prejudicial to the
 interests of the Society."

The defenders founded upon the terms of
 the pursuer's appointment, which bore that
 he was "to be subject in all respects to the
 present or any future rules of the Society;"
 and upon their rules 29 and 31, which were
 in these terms—Rule 29, "The Society may
 have an unlimited number of collectors in
 the United Kingdom and elsewhere, to be
 appointed in writing by the committee of
 management, who shall remain in office so
 long as their conduct is satisfactory to the
 committee, subject to the following provi-
 sions:—That no collector holding a collect-
 ing book or books, and receiving for his own use
 the commission, entrance fees, and other em-
 oluments incidental to such holding, shall be
 deprived of such book or books except for
 dishonesty, wilful disobedience of orders,
 or conduct calculated in the opinion of the
 committee of management to be injurious
 to the interests of the Society, and (subject
 to the approval of the committee of man-
 agement) he shall be at liberty to nominate
 as his successor any other person who shall,
 in the opinion of the committee of man-
 agement, be eligible for such position, and
 after approval of such nominee by the com-
 mittee, such book or books shall be handed
 over to such nominee, and the collector so

retiring shall be entitled to receive from such nominee for his own use such premium or benefit for such nomination as he shall think fit: Provided that this privilege now accorded to the collectors of the Society shall in no way interfere with the full power and absolute discretion of the committee of management to conduct the affairs of the Society in such manner as they deem expedient for the interests of the Society: Provided also that no property in any collecting-book shall be acquired by any collector, but the property therein shall be vested in the trustees for the time being of the Society." Rule 31—"Should any person feel aggrieved at the decision of the committee of management with regard to his suspension or discharge as . . . collector or other officer of the Society, or as to any matters affecting his interest as such . . . collector or other officer, such person shall have the right of appealing to the next available annual or special meeting of delegates by giving twenty-one days' written notice of his intention to do so addressed to the committee of management." . . .

The pursuer pleaded—"(1) Pursuer having been deprived of his collecting-book by the Society without his having been guilty of dishonesty, wilful disobedience of orders, or conduct injurious to the interests of the Society, is entitled to decree for the sum in the first place craved in lieu of commissions and other emoluments or in name of damages. (2) Pursuer having, contrary to the rules of the Society and to his agreement of service with the Society, been dismissed from his office as collector without having had any charges made against him, and without having had the opportunity of replying to any such charges, is entitled to decree for the sum in the first place craved in lieu of commissions and emoluments or in name of damages. (3) The defenders having refused to receive a nomination by pursuer in terms of the rules of the Society of a person to act as his successor, and having without such nomination and without consent of pursuer appointed another person as pursuer's successor, pursuer is entitled to decree for the sum in the first place craved in name of damages."

The defenders pleaded—" (2) The pursuer's appointment being subject to the rules of the Society, and the said rules providing a special appeal to persons aggrieved at the decision of the committee of management with regard to their suspension or discharge, the present action is incompetent. (3) The said rules providing that collectors shall remain in office only so long as their conduct is satisfactory to the committee of management, and the said committee having been satisfied that the pursuer was guilty of neglect of business and conduct calculated in their opinion to be prejudicial to the interests of the Society, the committee were entitled to dismiss the pursuer. (5) The committee of management having in terms of rule 29 an absolute discretion to withhold the privilege of nomination of a successor, and having done so in the present case, the pursuer has no ground of action in respect thereof."

The Friendly Societies Act 1896 by section 68 (1) [which by rule 3 of their rules applies to the defenders' Society] provides that every dispute between an officer of any registered branch and the society "shall be decided in manner directed by the rules of the society or branch, and the decision so given shall be binding and conclusive on all parties without appeal, and shall not be removable into any court of law."

The Sheriff-Substitute (CAMPBELL SMITH) before answer allowed a proof, to which for the purpose of this report it is unnecessary to refer.

On 26th February 1901 the Sheriff-Substitute pronounced an interlocutor whereby he found, *inter alia*, that the defenders had wrongfully and in breach of their contract with the pursuer refused to accept his nomination of the purchaser of his collecting book, and decerned against them for £27, 4s. in name of damages.

The defenders appealed to the Court of Session, and argued—The Sheriff had no jurisdiction. Section 68 of the Friendly Societies Act 1896 provided that all disputes between a Friendly Society and its officers should be decided in the manner directed by the rules of the Society without appeal. Rule 31 of the Society gave a right of appeal to the delegates of the Society, and accordingly the pursuer was restricted to that remedy. In any view, the pursuer had set forth no relevant grounds for claiming damages. He had been dismissed and deprived of his collecting book for conduct calculated in the opinion of the committee of management to be injurious to the interests of the Society, and the committee were the sole judges of such a question. Even if a collector who had been dismissed had a right to nominate a successor, which the defenders denied, that right was subject to the approval of the Society; and if they disapproved of the nominee, as they did, they were not bound to allow the pursuer to nominate another. In any view, the pursuer had no right of property in his collecting book, which belonged to the Society (rule 29.)

Argued for the pursuer and respondent—(1) The pursuer's case was, that the defenders had acted contrary to the rules of the Society in the matter of his dismissal, and also in depriving him of his right to nominate a successor; and if that were so the Court had jurisdiction—*M'Kernan v. Greenock Lodge of United Operative Masons of Scotland*, March 19, 1873, 11 Macph. 548, 10 S.L.R. 261. The fact that the pursuer had been dismissed did not deprive him of his right to nominate a successor, and if the defenders did not approve of the person first nominated they were bound to allow him to nominate another. The pursuer maintained, further, that he had been dismissed illegally, in respect that the defenders had given him no opportunity of replying to the charges made against him.

LORD YOUNG—I think this action is more than irrelevant. It would not occur to me on reading this record that an action was

maintainable upon the pursuer's statement, and if it had come before me I should certainly not have allowed a proof upon that statement. I think it is clear enough, looking to the rules of this Society, and they constitute so far as they are applicable the terms of any contract between them and such an employee as the pursuer was, that they did not intend that any question between the Society and an employee should be made the subject of litigation. It was intended that the right to employ, and to continue or not in employment, should lie entirely with themselves. This pursuer was employed upon these terms, that he might resign when he pleased, or he might be dismissed—his services dispensed with—by his employers when they thought it in the interests of the Society that he should cease to be employed by them, but that, nevertheless, if he, upon resignation, or upon his services being dispensed with by the Society, nominated a successor of whom the Society approved, he might be at liberty to receive anything from his successful nominee which that nominee was prepared to give him. I do not think, upon the statement here, that there has been any violation on the part of the employers of any obligation laid upon them by that contract. They were not satisfied with the pursuer's conduct as their servant, and they intimated their dissatisfaction to him, and indicated the grounds—possibly not the whole of the grounds, but sufficient grounds—for being dissatisfied with his services, and desiring that they should be discontinued. He, thereupon, upon the 24th of May gave in his resignation, and nominated a successor of the name of Wilson; and if that nomination had been approved of by the Society in the manner which I have already explained the pursuer would have been entitled to receive from Wilson such sum as Wilson was pleased to give for the nomination with which he had favoured him. But when the Society disapproved of that nomination, and thought it in their interest to appoint another, I cannot find any obligation upon them either to subject their reasons for disapproving of the nomination to the judgment of a court of law or to afford the pursuer an opportunity of making another nomination. I can well believe that in many cases a society would feel it to be only proper, if one nominee was rejected, to say, "Well, nominate somebody else—our reason for not approving of your nominee is so and so; try and get somebody to whom that objection of ours does not apply, and if you get such a one and nominate him we will approve of him." But I can find no legal obligation upon them to do that under the circumstances of the individual case. The circumstances of this particular case might be very far from being such as to call upon the Society to pursue any such course. Upon the whole matter, therefore, upon the pursuer's averments without any proof I should have dismissed the action as not presenting a good ground for claiming damages, but taking the facts, not only as they are set forth but as proved before us,

I am of opinion that upon these facts there is no good ground for the claim of damages which is here submitted to us. And I therefore suggest to your Lordships that the judgment of the Sheriff should be recalled, and a judgment to the effect of assolving the defenders pronounced, with such findings as may be thought necessary upon the facts.

LORD TRAYNER — I am of the same opinion. The pursuer claims damages on two grounds, or rather damages consisting of two items—first, damages for illegal dismissal from the defenders' service, and secondly, damages for having been deprived of the right of selling his collector's book, which he values at £40. I think it very clear that the pursuer has no claim whatever for the second of these items. By the rules of the defenders' Society, which, as has been pointed out, formed part of the pursuer's contract with the defenders, that book is expressly declared to be the property of the Society, and not in any sense or to any extent the property of the collector who holds it. The pursuer could not be deprived of what was not his. With regard to the claim on account of wrongful dismissal, I agree with what has been said. The pursuer was dismissed because in the opinion of the committee of management his conduct had been such as was calculated in their opinion to be injurious to the interests of the Society. Now, they are authorised by the rules, which, as I repeat, are part of the contract with the pursuer, to dismiss any servant whose conduct is of that character. The committee are not required to give any reason for their opinion, and we cannot review the decision which followed upon the opinion which the committee had formed.

If the pursuer thought that the opinion expressed by the committee was erroneous and one that could not be justified, he had by the rules of the Society an appeal against it to delegates belonging to the different districts or branches of the Society. Of that appeal the pursuer did not avail himself. In these circumstances it is impossible to say that the pursuer was wrongfully dismissed, and that being so, the first item of his claim is excluded.

LORD JUSTICE-CLERK—I entirely agree with what has fallen from your Lordships, and I have nothing to add.

LORD MONCREIFF was absent.

The Court pronounced this interlocutor:—

"Sustain the appeal and recal the said interlocutor appealed against: Find in fact (1) that on 6th February 1899 the pursuer was appointed a collector for the defenders' Society under the agency of G. E. Pithie, Dundee, subject to the rules of said Society; (2) that the pursuer was on 3rd May 1900 suspended as a collector for said Society; (3) that on 20th May 1900 his services as a collector for said Society were dispensed with for conduct calculated in the opinion of the committee of manage-

ment to be prejudicial to the interests of the Society; (4) that it is provided by rule 31 that any person feeling aggrieved at the decision of the committee of management with regard to his suspension or discharge as collector or otherwise, such person should have the right of appealing to the next available annual or special meeting of delegates by giving twenty-one days' written notice of his intention to do so addressed to the committee of management; (5) that the pursuer did not avail himself of said right of appeal, but raised an action in the Sheriff Court; and (6) that under section 68 of the Friendly Societies Act 1896, which by rule 3 applies to said Society, it is provided that every dispute between an officer and the Society shall be decided in manner directed by the rules of the Society, and the decision so given shall be binding and conclusive on all parties without appeal, and shall not be removable into any court of law: Find in law that the pursuer has not stated any relevant case for inquiry, and, *separatim*, that he has failed to establish on the facts that he was illegally dismissed: Therefore assoilzie the defenders from the conclusions of the action, and decern: Find the pursuer liable in expenses," &c.

Counsel for the Pursuer and Respondent Watt, K.C.—Grainger Stewart—Duncan Smith. Agents—W. & J. L. Officer, W.S.

Counsel for the Defenders and Appellants—Clyde, K.C.—Hunter. Agents—Morton, Smart, & Macdonald, W.S.

Friday, October 25.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.]

MALCOLM v. MOORE.

Expenses—Reparation—Slander—Tender and Apology—Qualified Apology.

The defender in an action of damages for slander in his defences tendered £20 with expenses, and stated that at the time of the alleged slander he was under the influence of liquor, that "he did not intend" to make the charge complained of, "and is not conscious of having done so," but that if anything said by him "could have been construed as reflecting on the pursuer's character in any way . . . the defender expresses his regret for having used language capable of such interpretation, and unreservedly retracts the same as there were no grounds therefor." He afterwards in his adjusted defences prior to the closing of the record raised the tender to £51.

The jury found for the pursuer, and awarded fifty pounds of damages.

Held that the apology offered by the defender was ample, and with the tender of £51 should have been accepted by

the pursuer, and that the defender was entitled to his expenses from the date at which the tender was raised to £51.

Observations as to the effect of qualified or hypothetical apologies tendered in actions of slander.

An action of damages for slander was raised by Thomas Malcolm, compositor, 15 Iona Street, Leith, against William Moore, 7 Balfour Street, Leith.

The pursuer averred that on the night of 18th February 1901 he and the defender had been drinking together, and that the defender having lost his pocket-book accused the pursuer of stealing it, and said that he was a thief and a liar.

On 12th June 1901 the defender lodged defences in which he made the following statement—"Explained that on the evening in question the pursuer and defender had been drinking together, and that . . . the defender was under the influence of liquor. Although annoyed at the loss of his pocket-book he did not intend to charge the pursuer with having meddled with it, and is not conscious of having done so. If, however, anything said by the defender could have been construed as reflecting on the pursuer's character in any way, or imputing mendacity or dishonesty to him, the defender expresses his regret for having used language capable of such interpretation, and unreservedly retracts the same, as there were no grounds therefor. Under reservation of all his pleas, the defender hereby tenders to the pursuer the sum of £20 sterling, with the expenses of process." The tender was afterwards raised to £51 in the adjusted defences prior to the closing of the record. The tender and apology were not accepted by the pursuer, and the case was tried before a jury. The jury found for the pursuer, and assessed the damages at the sum of fifty pounds.

In moving to apply the verdict the pursuer asked for his expenses. The defender maintained that in respect of his tender and apology contained in the defences, and of the sum awarded by the jury, he was entitled to expenses from the pursuer after the date of the tender.

Argued for the pursuer—He did not dispute the general principle that if a jury returned a verdict for an amount less than the sum tendered the defender would be entitled to his expenses subsequent to the date of the tender. But that principle was modified in the case of actions of damages for slander, where the pursuer was entitled not only to damages but also to a public vindication of his character—*Faulks v. Park*, December 22, 1854, 17 D. 247. Here the defender in his apology did not admit that he had made use of the slanderous expressions complained of, and accordingly his apology was insufficient—*Sproll v. Walker*, November 1, 1899, 2 F. 73, 37 S.L.R. 54.

Argued for the defender—No doubt in actions of slander there must be an apology in addition to the tender, but here there had been an ample apology. The pursuer