

Counsel for the Defenders and Respondents—Watt, K.C.—Graham Robertson. Agents—Martin, Milligan, & Macdonald, W.S.

Wednesday, November 19.

SECOND DIVISION.

[Lord Sands, Ordinary.

MACLEOD v. MACASKILL.

Reparation—Seduction—Master and Servant—Methods Employed to Induce Consent—Ascendancy of Master.

In an action of damages for seduction the Court allowed an issue where the pursuer averred—"That night the defender, taking advantage of his position as her master and the circumstance of their being alone in the house, as well as by his assurances of the sincerity of his affection for her, and by representing that he would do her no harm, prevailed upon the pursuer to allow him to have carnal connection with her, and succeeded in having carnal connection with her. . . ."

Jeanie MacLeod, *pursuer*, brought an action of damages against Kenneth MacAskill, *defender*, for seduction, in which the pursuer averred—" (Cond. 1) The defender is a farmer, and is tenant of the farm of Glen Elost, Bracadale. For some time he had charge of his father's farm of Glenmackaskill, Horlosh, Skye. The pursuer, who is twenty-six years of age, went to Glenmackaskill Farm in November 1917 to act as housekeeper to the defender. The only other person who stayed in the house was a herd boy named Angus M'Leod. . . . (Cond. 2) After the pursuer had been there some time the defender began to pay her marked attention and endeavoured to win her affection. He tried to get her to go out walks with him on Sundays, and pressed his company upon her at every opportunity. On a Sunday about the beginning of March 1918 the defender met the pursuer when she was walking on the hill. He was then so persistent in his attentions to her that the pursuer threatened to leave his service unless he desisted. (Cond. 3) On the following Tuesday, the defender, unknown to the pursuer, sent the herd boy home for the night, so that there was no one in the farmhouse but the pursuer and the defender. That night the defender, taking advantage of his position as her master and the circumstance of their being alone in the house, as well as by his assurances of the sincerity of his affection for her, and by representing that he would do her no harm, prevailed upon the pursuer to allow him to have carnal connection with her, and succeeded in having carnal connection with her. . . ."

The defender *pleaded, inter alia*—"The pursuer's averments being irrelevant, the action should be dismissed."

On 17th October the Lord Ordinary (SANDS) allowed the following issue for the trial of the cause:—"Whether, in the

course of the period between December 1917 and March 1918, the defender, taking advantage of his authority and influence as her employer and by his professions of sincere affection for her, seduced the pursuer and prevailed upon her to permit him to have carnal connection with her, to her loss, injury, and damage?"

The defender reclaimed, and argued—The facts averred by the pursuer were insufficient to prove seduction—*Hislop v. Ker*, 1696, M. 13,908; *Linning v. Hamilton*, 1748, M. 13,909; *Stewart v. Menzies*, 1837, 15 S. 1198; *Forbes v. Wilson*, 1868, 6 Macph. 770, 5 S.L.R. 501; *Gray v. Brown*, 1878, 5 R. 971, 15 S.L.R. 639; *Gray v. Miller*, 1901, 39 S.L.R. 256; *Cathcart v. Brown*, 1905, 7 F. 951, 42 S.L.R. 718; *Brown v. Harvey*, 1907 S.C. 588, 44 S.L.R. 400.

Argued for the respondent—The facts averred by the pursuer were sufficient to prove seduction. There was no case in the books where an action of damages for seduction had been held to be irrelevant. The pursuer was at least entitled to a proof before answer. A proof before answer was allowed in *Murray v. Fraser, cit. Reid v. Macfarlane*, 1919, 56 S.L.R. 482, and *Gray v. Miller, cit., per Lord Trayner* at p. 257, were also referred to.

LORD JUSTICE-CLERK—This appears to me to be a very narrow case, but I have come to the conclusion that we must allow it to proceed.

The pursuer, who is twenty-six years of age, says she went to act as housekeeper to the defender, who is a farmer in Skye, and that the only other person who stayed in the house was a herd boy. In condescendence 2 she says the defender began to pay her marked attention and pressed his company upon her at every opportunity. When she was out walking he met her, and he was then so persistent in his attentions to her that she threatened to leave his service unless he desisted. That was on a Sunday in March 1918; and then the next averment we have is that on the following Tuesday—that is to say, within forty-eight hours or thereby after she had threatened to leave his service—"the defender, unknown to the pursuer, sent the herd boy home for the night, so that there was no one in the farmhouse but the pursuer and the defender," and then it is alleged "that night the defender, taking advantage of his position as master and the circumstance of their being alone in the house, as well as by the assurances of the sincerity of his affection for her, and by representing that he would do her no harm, prevailed upon the pursuer to allow him to have carnal connection with her, and succeeded in having carnal connection with her."

Now in the issue two considerations are founded on, namely, taking advantage of his authority and influence as her employer and his professions of sincere affection for her. I think that on the cases that have already been decided we could not safely, in face of averments such as I have referred to, deprive the pursuer of the opportunity of having the case investigated.

Accordingly I think we must adhere to the Lord Ordinary's interlocutor and refuse the reclaiming note. No exception was taken to the issue, which will stand as adjusted by the Lord Ordinary.

LORD DUNDAS—I agree with some reluctance. I think this case is very near the line which separates relevancy from irrelevancy, and although I am a good deal impressed by the fact that there seems to have been no previous case of this kind which has been thrown out upon the pleadings, I must say that this record tempts one very much to create a precedent in that direction.

There is nowhere on this record any allegation of the usual arts and wiles which are averred in actions of this sort—professions of courtship and affection with a view to marriage. There is no averment of threats of violence or of actual violence such as occur in some of the cases. There is no averment, as occurs in others of the cases, of a gradual process of debauching and corrupting the mind of the woman ultimately seduced. There is, as your Lordship has pointed out, merely the baldest averment that the man taking advantage of his position as the employer of the girl, who was his servant, overcame her scruples. It seems to me that in allowing this record to pass, as I think it may pass, we are going almost to the extreme limit of indulgence.

LORD GUTHRIE—I agree in thinking that the case is a very narrow one, but I also think that there is sufficient here to entitle the pursuer to inquiry.

LORD SALVESEN was absent.

The Court adhered.

Counsel for the Reclaimer (Defender)—
Wilton, K.C.—King Murray. Agent—D. Maclean, Solicitor.

Counsel for the Respondent (Pursuer)—
Morton, K.C.—Forbes. Agent—Alexander Ross, S.S.C.

Wednesday, November 19.

FIRST DIVISION.

[Exchequer Cause.

KEIR v. GILLESPIE.

Revenue—Income Tax—Occupancy of Lands—Pastoral Holding—“Husbandry”—Finance Act 1918 (8 and 9 Geo. V, cap. 15), sec. 21.

The occupation and use of land for the purpose of grazing sheep is included under the term “husbandry” in section 21 of the Finance Act 1918.

The Finance Act 1896 (59 and 60 Vict. cap. 28) enacts—Section 26 (1)—“Where this or any other Act enacts that income tax shall be charged in any year at any rate, there shall be charged, levied, and paid during that year in respect of all property, profits, and gains respectively described or comprised in the several Schedules A, B, C, D, and E in the Income Tax Act 1853, the tax

at that rate . . . for every 20s. of one-third of the annual value of lands, tenements, hereditaments, and heritages chargeable under Schedule B in the said Act in respect of the occupation thereof.”

The Finance Act 1918 (8 and 9 Geo. V, cap. 15) enacts—Section 21—“Sections 26 and 27 of the Finance Act 1896 (which relate respectively to the application of the Income Tax Acts, and to annual value for the purpose of exemption from or abatement of income tax under Schedule B) shall, as respects income tax under Schedule B, have effect as if for the references to one-third of the annual value there were substituted references to an amount equal to twice the annual value: Provided that where it is proved to the satisfaction of the Income Tax Commissioners concerned that any person occupying any lands and assessed to income tax in respect thereof under Schedule B is not occupying those lands for the purposes of husbandry only, or mainly for those purposes, the above provisions shall . . . apply in relation to those lands as if for the reference to an amount equal to twice the annual value there were substituted a reference to an amount equal to the annual value.”

Duncan Keir, farmer, Oldtown of Carnaveron, Alford, Aberdeenshire, *appellant*, being dissatisfied with a decision of the Commissioners for the General Purposes of the Income Tax Acts for the County of Aberdeen assessing him to income tax upon twice the annual value of certain hill grazings occupied by him, took a Case for appeal in which Thomas Gillespie, surveyor of taxes, Aberdeen, was *respondent*.

The Case set forth— . . . “[The appellant appealed against the following] assessments made [upon him] for the year ending 5th April 1919, as occupier, under Schedule B of the Acts 16 and 17 Vict. cap. 34, and 8 and 9 Geo. V, cap. 15, section 21, on an amount equal to twice the annual value, in respect of the following subjects in the county of Aberdeen, of which the appellant is entered in the valuation roll for the year 1918-19 as tenant and occupier, namely:—

No. on Roll.	Parish of Strathdon.	Yearly Rent or Value.
209	Croft and house, Conryside, . . .	£ 9 1 1
343	Farm and house, Dunaanfew and Dunfiel, . . .	31 19 9
355	Grazings, Faevait and Delnadamp, . . .	127 3 7
<i>Note.</i> —From this rent is deducted £8, the annual value of two houses, Nos. 356 and 357 on roll, of which appellant is tenant but not occupier, thus leaving a net value of £119, 3s. 7d. on which appellant is assessed.		
427	Land, Skellater, Mains of, . . .	28 2 6
<i>Parish of Glenmuick.</i>		
311	House and Grazings, Glenfenzie, . . .	60 0 0

1. The following *facts* were admitted:— (1) The subjects, although variously described in the entries in the valuation roll, were in each case occupied by the appellant for the grazing of sheep. (2) The income arising from the occupation of said subjects is chargeable under Schedule B of the Income Tax Act 1853. (3) Appellant claimed that he should be assessed on the annual value of the above entries in the valuation roll in place of twice the annual value as contained in the notices of assessment. . . . (6) No proof was led by the appellant.”