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AND
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[Continued from p. 1070.]

TUESDAY, JULY 21, 1863

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MONDAY, July, 20.

ROGERS V. DICK—DEFAMATION.

In this action, Dr Rogers, chaplain at Stirling Castle, was pursuer, and the defender, was ex-Provost Dick, of Stirling. The issues laid before the jury were as follows:—

"I. Whether, on or about 14th October, 1861, the defender, for the purpose of getting the pursuer dismissed from his situation as chaplain at Stirling Castle, wrote and transmitted to the Principal Secretary of State for War, a letter of and concerning the pursuer, in the terms set forth in the schedule hereto annexed, and whether in said letter the defender falsely, calumniously, maliciously, and without probable cause, represented the pursuer as having neglected his clerical duties in the pursuit of objects of a secular description, incompatible with the proper discharge of the duties of his office as chaplain at Stirling Castle, and as having attempted to desecrate parish churches by an illegal act, to the loss, injury, and damage of the pursuer?"

"II. Whether on or about 7th November, 1861, at Stirling Castle, and in presence and hearing of the Reverend George Robert Gleig, Chaplain-General, Major Elton, Commander of the 23d Depot Battalion at Stirling Castle, and Major J. M'Bean, 92d Royal Highlanders, Mr John Dick, jun., speaking for the defender, who was then and there present, and by the instructions of the defender, given maliciously and without probable cause, did make a false and calumnious statement, to the effect that the pursuer had, some years ago, appended to the prospectus or preliminary notice of a society originated by himself, a list of names of persons, as members thereof, without any authority from such persons, to the end that he might collect money under the pretext of improving the town of Stirling, and thereafter transfer the same into his own pocket; that he had raised £40 in this way, and that where the money now is, Dr Rogers (meaning the pursuer) knows best, meaning thereby, that the pursuer had been guilty of fraud, to the loss, injury, and damage of the pursuer?"

"III. Whether, time and place aforesaid, and in the presence and hearing of the persons foresaid the defender falsely, calumniously, maliciously, and without probable cause, stated that the pursuer had appropriated to his own use about £60 of the Wallace Monument funds, and that he was now raising money from the landowners, clergy, and others throughout the country, at 7s. 6d. each, to form the funds of a Churchyard Improvement Society, for the ostensible purpose of levelling all the churchyards in Scotland, but that his, the pursuer's, object was to do with these funds as he had done with the monies of other societies, meaning thereby that the pursuer had been guilty of fraud, and intended to commit fraud; to loss injury, and damage of the pursuer."

"IV. Whether, time and place aforesaid, and in the hearing of the persons foresaid, the defender falsely, calumniously, maliciously, and without probable cause stated that the pursuer had, during the night, thrown down some walls attached to burying-places at the High Church of Stirling, and that this proceeding of his had involved the town of Stirling in an action which had cost the burgh about £400; or did falsely, calumniously, maliciously, and without probable cause make statements of the like import and effect, to the loss, injury and damage of the pursuer." Damages laid at £5000.

SCHEDULE REFERRED TO IN FIRST ISSUE.

To the Right Honourable the Principal Secretary of State for War, War Office, London.

Stirling, 14th October, 1861.

"MY LORD,—I have the honour to solicit your Lordship's attention to the following statement of facts, in connection with certain proceedings of the Reverend Charles Rogers, LL.D., chaplain to the garrison, Stirling Castle, in order that your department may take the same into consideration.

"It may be known to your Lordship that for some years back the Rev. Dr Rogers has been taking a prominent part in promoting the erection of the National Wallace Monument, now being erected on the Abbey Craig at Stirling, and that he acted as joint-secretary to the Wallace Monument Committee. Shortly after the foundation-stone of that monument was laid (24th June, 1861), the chaplain of the garrison voluntarily resigned his situation as secretary to the Wallace Committee, on the ground of his declared inability to continue to fill it, and immediately thereafter he formed what he called an 'Auxiliary or Supplemental Committee,' with the view, as he alleged, of raising funds to complete the monument lay out and adorn the ground around it, &c. This 'Supplemental Committee' was, it is believed, almost entirely got up by Dr Rogers himself. He was appointed to act as secretary thereto, at, I believe, a certain salary, and he proceeded to agitate the country by issuing circulars, holding public meetings, and otherwise with the view of raising funds for the purposes said to be contemplated by the Supplemental Committee.

"The acting committee of the Wallace Monument felt that such conduct on the part of the Rev. Dr Rogers was calculated to defeat the objects which they had in view, and which he, the said Dr Rogers, had hitherto affected to further. The acting committee, therefore, were called together by the Right Hon. Lord Jarviswood, their convener, on the 6th day of August last, and on that day the resolutions were unanimously adopted, and ordered to be inserted in the leading Scottish newspapers, in order that the public might be guarded against sending subscriptions to an improper quarter, a copy of which (resolutions) your Lordship will find in a copy of the *Stirling Journal* newspaper, of date August 9th, 1861, sent herewith. These resolutions explain themselves, and were adopted, as your Lordship will see, in order, if possible, to prevent the undue interference of your chaplain with the Wallace Committee, the secretaryship of which he had, as already stated, voluntarily resigned. Notwithstanding that his scheme of raising money was thus publicly denounced, the chaplain continued to persevere in endeavouring to raise money over the country in aid of the Supplemental Committee, and, as a new method of doing so, he issued circulars to the church officers or beadles of the parish churches throughout Scotland, appointing them collectors for the 'Supplemental Fund,' and recommending the said beadles 'to affix the enclosed placard to the door of the parish church'—i.e., a bill of which, as well as of said circular, I send a copy herewith. I also send copy of *Stirling Journal* newspaper, of date October 4th, 1861, containing copy of said circular and bill, and a statement attached thereto by the editor, of what I, as Chief Magistrate of this burgh, did in connection therewith.

"A copy of said circular and bill was sent by the Rev. Dr Rogers, or others in his employment, to the beadles of the East, West, and North Churches here, and on Sunday, 29th September last, I found that the said copy of the said bill was affixed to the doors of the said churches. In the place set apart for the proclamations of Her Majesty and such other public documents.

"I crave leave here to explain to your Lordship that the Provost, Magistrates, and Town Council of Stirling, for the time being, are the patrons of the said East and West Churches, and that the beadles of the same are appointed by them. The North Church, again, is held by a number of gentlemen, who act as managers, from whose hands, in the course of a certain number of years, the said church passes into those of the Provost, Magistrates, and Town Council. The burghal authorities, in the meantime, with a view to the preservation of their prospective rights, have a right of surveillance over the church, and also the appointment of its minister. The beadle is appointed by the congregation.

"With these explanations as to the rights of the Magistrates and Town Council in connection with the said churches and their officers, I proceed to say that on the Sunday in question, when the said bills were affixed to the doors of the said churches, I, as Chief Magistrate of the burgh, and one of the patrons of said churches, caused them to be removed, seeing that they had been placed there without any authority whatever, and that they had no official or public character.

"Your Lordship will at once notice, that in order to protect the parish churches from desecration, and to vindicate the vested rights of the patrons, I had no other course left; because if such a 'placard' as the one complained of had been allowed to remain affixed to the doors of the churches, then every class of announcement, moral or immoral, might by precedent have claimed a place on the doors of the parish churches throughout the country, contrary to all law and usage.

"On Monday the 30th September last, I received a letter from Mr Andrew Crawford, writer here (which I send herewith), requesting, on behalf of the Rev. Dr Rogers, to know 'by what authority I had caused the notices to be removed from the doors of the parish churches.' To that letter I returned an answer on 1st October current, a copy of which will be found in the *Stirling Observer* newspaper of date 10th October past, sent herewith, declining to give any explanation of my reasons for removing said bills. I was justified in pursuing this course, as from the fact of Mr Crawford being a law agent I had reason to presume that his letter was intended to lead me to give explanations which might have been founded on in a subsequent legal process, and, besides, I felt that I was not called upon to give any explanation to a person who had himself, on

his own authority, committed a manifestly illegal act, which it was my duty, as Chief Magistrate, and one of the patrons of the parish, to check.

"I convened a meeting of my brother Magistrates on the subject, who approved of my conduct in causing said bills to be removed, and circulars were issued directing the beadles of the churches not to allow any such notices to be placed on the church doors in future.

"I have now to call your Lordship's attention to a letter which appears in the said *Stirling Observer* newspaper of the 10th October current, written and signed by your chaplain, to which I refer you for its terms. Your Lordship will observe that Dr Rogers therein presumes to review and condemn my Magisterial conduct in the execution of my duty, in connection with this matter, and farther refers to my Magisterial conduct and position generally, with the view of placing me in a false position with the constituency for whom I act, as well as with the public at large.

"In these circumstances I am compelled to lay the whole matter before your Lordship and ask redress. I rather ask redress, having in view my public situation, and the vindication of its functions, than as a private individual.

"I have confined myself to the matter of the interference with the parish churches by your chaplain; but I may state that ever since he was placed here he has not ceased to agitate the country generally, and the town of Stirling in particular, with the view of raising money, for various schemes of a most questionable kind, of which he is generally found to be the originator himself. An idea of the extent of his various undertakings, and secular business, may be gathered from the fact that, at this moment, Dr Rogers employs, and has long done so, a clerk to conduct his correspondence; and that he himself, or said clerk, writes anonymously to various newspapers, advocating certain schemes, in which he, or his said clerk, feel interested. In evidence of the truth of this, I beg to state to your Lordship that a series of letters, subscribed 'Vigilant,' which appeared from time to time lately in the *Stirling Journal*, reflecting generally on the conduct of the Wallace Committee, and on Mr William Burns, writer in Glasgow, connected therewith, have recently been discovered to be the production of his (Dr Rogers') clerk. In proof of this, I send herewith copy of *Stirling Journal*, of date 27th September last, wherein, in answer to the inquiries of Mr Burns, you will find the editor's statement as to who the author was of these anonymous letters, to which I beg to refer your Lordship.

"Occupying as I do the position of Chief Magistrate of Stirling, I am in a position to know somewhat of the feelings of the town and neighbourhood; and I am aware that public feeling has long since expressed itself disapprovingly of the schemes and conduct of Dr Rogers. On many occasions he has, by the local press and its correspondents, as well as by other organs, been reminded in vain that he ought to discharge more efficiently the sacred and important duties of his office by confining himself strictly to the discharge of them.

"He has now attempted to desecrate the parish churches by an illegal act, and has, when checked, interfered with the prerogatives of the Magistracy, the patrons and guardians of the Established churches.

"It is for your Lordship to judge what steps should be taken to prevent your chaplain from proceeding farther out of his line of duty, or rather to bring him permanently back to it. Removal to another locality, or a more rigorous enforcement of the duties which he is placed here, and paid by Her Majesty's Government, to discharge, would have, I am satisfied, a salutary effect in preventing the reverend chaplain from interfering with matters in which he has no concern, directly or indirectly. Looking to the course of interference and agitation which he has for years pursued, with the view, chiefly, of obtaining money for the execution of schemes of various kinds, I am led to believe that his removal to another locality might be considered by many as a great boon to the inhabitants of this place. This, as I have said, is for your Lordship to judge, and I now leave the whole matter in your Lordship's hands. —I have the honour to be, my Lord, your most obedient servant,

(Signed) "JOHN DICK, Provost of Stirling."

MR F. W. CLARK opened the case for the pursuer. He said that Dr Rogers performed the duties of chaplain in such a manner as to merit the attachment of the troops, but that they did not occupy his whole time, and he devoted his leisure hours to the promotion of objects which he thought was for the benefit of Stirling. He also exerted himself in the cause of temperance, and took great interest in the movement for the erection of the Wallace Monument. He acted as secretary of the Wallace Monument Committee for some time. Ultimately, some difficulties of a personal kind occurred between him and the committee, and, seeing that he could not benefit the scheme by remaining longer secretary, he resigned his office as secretary. Anxious, however, to forward the scheme, he formed a Supplementary Committee, of which he was appointed secretary, and obtained a small salary. Things went on in this way, when Provost Dick, of Stirling, the defender, conceived an ill feeling towards Dr Rogers, and formed the scheme of getting Dr Rogers out of the town. Instead of bringing forward openly any charges against Dr Rogers, Provost Dick took the somewhat novel method of addressing a letter to the Secretary of State for War regarding Dr Rogers—a document rather novel in its character, and which showed singular ingenuity in its mode of statement, as it was so drawn out that, while it might bring about the pursuer's removal from Stirling, it would at the same time save to a great extent any risk of danger which the defender might incur of being the author of the letter. [Mr Clark here read the first issue and the letter given above in the schedule appended to the issues.] One thing, he said, was very clear on the face of that letter—that the Provost wanted, for some reason of his own, to get Dr Rogers removed from Stirling, and it was also quite clear that if the Secretary of State for War had believed anything like the contents of this letter—that a clergyman was desecrating churches, attacking the prerogatives of the Magistrates, and that he was carrying on questionable schemes for obtaining money under something like false pretences—Dr Rogers could not have been allowed to remain in any community of Christians as a minister, and the result might have been that Dr Rogers might have been removed from his appointment altogether, or else he might have found a blighting influence acting against him, for what reason he could not tell, as he might not have known the charges which had been made against him. The result of the defender's letter, however, was not what was anticipated. The Secretary of War directed a court of inquiry into these charges to meet at Stirling. The defender and his nephew attended the court, but did not succeed in obtaining a verdict against him, although they repeated and intensified the charges made in the Provost's letter to the Secretary of War. Although the evidence led by Dr Rogers on the occasion clearly showed that the charges made against him were unfounded, yet mischief was done to his character on account of the court of inquiry being conducted with closed doors, and, accordingly, he put in the second and third issues. Mr Clark proceeded to read the second and third issues, and concluded by expressing conviction that the jury would be satisfied by the evidence that the charges referred to in the issues were made against Dr Rogers; that there was no ground for these charges; that they were made maliciously to serve a private purpose; and that injury had been done to Dr Rogers' character by these charges.

DR ROGERS, the pursuer, was the first witness called, and being sworn, deposed—I am chaplain at Stirling Castle, and the son of a clergyman of the Church of Scotland, and am an ordained clergyman in that Church. I was appointed to Stirling Castle in February 1855. I had about 500 soldiers under my charge in 1861. That is the average number in the garrison. I have taken an interest in local matters connected with Stirling and neighbourhood, and have written some historical notices connected with the neighbourhood. I took an interest in procuring a burying-ground for the soldiers, and also in a cemetery which was erected in Stirling in 1856. I took a good deal of charge connected with it. I also claim to myself the credit of originating the Wallace Monument, along with Mr C. R. Brown. Some depreciatory notices in a journal led to the thing being taken up warmly by people in Stirling and throughout Scotland. Mr Dick, the defender, joined early in that movement. I was appointed joint secretary with Mr Thomas Galbraith, and continued to be secretary till July 1857. At that time I resigned. I had a good deal to do with the duties of secretary. The duties devolved upon me almost entirely. I visited places in Scotland and England, and held public meetings with the view of raising money for the object, and also conducted a great deal of correspondence. During the first year I received £100—£50 being allowed for a clerk, the second year £50 altogether. During the remainder of the three years I received no salary, except the allowance of £1 per month for clerk. During part of that time there was a great day in Stirling, on 24th June, 1861, when the foundation-stone of the monument was laid. Mr Dick was at that time, and continued to be, a member of committee by virtue of his official position as Provost of Stirling. I was officiating as secretary down to July 1861. I had some differences about this time with some members of committee. There was some difference of opinion as to the shape the monument should take. Some were for an architectural building, others for a monument. This was the main cause of the differences of opinion. I resigned in July 1861, but intimated that I would still take an interest in the movement. A new committee was set agoing, called the Supplemental Com-

parish churches by an illegal act? It may not have been consistent with the regulations in Stirling to put up placards of that kind on the doors of the parish church, but we have no evidence of authoritative regulations one way or other, and it was in evidence that it was no usual thing to place notices of a secular character upon the doors of parish churches; but it might happen that it was not usual to put these notices there without authority; and in that case the person to apply to for such authority was the beadle of the church. It was not alleged in this action that the pursuer placed the placards upon the church doors without authority, for it was in evidence that he applied to the beadle for authority to do so. It would therefore be rather a strong thing to say that the pursuer had desecrated parish churches by an illegal act when he merely sent the notices referred to to the beadle with a request that they might be posted up. But it was particularly necessary that the jury should satisfy themselves that the letter of the defender was sent to the Secretary for War, for the purpose or with the intention of getting the pursuer dismissed from his situation as garrison chaplain at Stirling. Now, on that subject, he thought they had no evidence except that of the letter, and of the defender himself. The removal of the pursuer was suggested as an alternative, and it was the prominent proposal; for the defender asked the Secretary of State either in the first place to remove him from Stirling, or to get him to interfere less in the secular affairs connected with the town of Stirling. But the essential thing that must be made out against the defender was, that the things complained of were in the letter; that they were put in for the purpose of getting the pursuer removed from his office; and that this letter was written, and these things were said falsely, calumniously, maliciously, and without probable cause. In dealing with this, the first question to be disposed of by them was—had the defender probable cause for saying that the pursuer had neglected his clerical duties, and that he had desecrated parish churches? They had heard all the evidence upon this point, and they would have to decide the point. That the pursuer engaged in secular occupations was very clear, but they would have to conclude whether they were or were not incompatible with his duties as chaplain. He did not think any one would maintain that the circulation of religious tracts was incompatible with the discharge of his ministerial duties, and as to his being editor of a newspaper, for all they knew the print might be calculated to promote the interests of piety. But they had no evidence as to the character of the newspaper the pursuer conducted; and there was nothing incompatible with his clerical duties in editing a secular newspaper—if its objects were good. (Laughter.) It was no uncommon thing to find a minister editing a newspaper. He recollected in a city not far from Stirling that a very eminent clergyman there—and afterwards of this city—took charge of a newspaper alternately with another eminent gentleman, now a professor in one of their universities. But their objects were good. And this newspaper conducted by the pursuer, may have been one calculated to promote good feeling, to promote temperance, or to promote piety. But they did not know—they had no evidence as to its character. But the question was not so much about the particular nature of the schemes, as to whether he pursued these things in a way that was incompatible with the efficient discharge of his duties. Now, it was for the jury to consider whether he did so—or not. They had heard the evidence on that point, and it was for them to judge whether his duties were efficiently discharged or whether there was any reasonable or probable ground for saying they were not. If there was no reasonable ground, then one of the most important of the issues would fail. If there was no reasonable ground for charging the pursuer with neglecting his duties, then would come the question whether there was malice displayed on the part of the defender. And if there was no reasonable ground for making such a charge, very little would supply the place of malice; for it is not easy to conjecture any other motive for so writing against a person, if there was no probable cause. Upon that matter, the defender himself says, he had no malicious feeling, and it was proved that after the inquiry he offered to shake hands with the pursuer; but there were one or two witnesses who spoke of the defender not being friendly to the pursuer. There was a witness of the name of Walker, who spoke, in general terms, to the effect that the defender did not appear to be friendly to the pursuer. And a witness of the name of Abercromby, spoke as to the defender having said that the pursuer was meddling too much in public affairs, and was a troublesome fellow, and ought to be put a stop to. And then perhaps the more important part of this subject is the letter which appeared in the *Stirling Observer* upon the 7th October signed by the pursuer who when examined on it was obliged to admit that the meaning of this letter was, in substance, that he did not consider the defender was a man who was consistent in his conduct, had a high sense of honour, and was careful of the performance of his promises. But the question was not whether that letter justified the defender in retaliating, but whether feelings of malice, and smarting under that letter instigated him to write for the removal of the pursuer from his office. If they were of opinion that that was what prompted him then that along with the want of any probable cause might perhaps satisfy their minds on the matter. In regard to the 2d, 3d, and 4th issues, the question came to be whether the statements alleged in them were true or were not true. It appeared to him in regard to the whole matter connected with this part of the case, that in the so-called Court of Inquiry before the Chaplain-General there was no regular course of proceeding, but a great deal of desultory conversation about various matters in which several persons joined at one time; so that it was not very clear to anybody who said one thing or who said another. He must observe, however, that while the pursuer told them that he considered himself accused of all the things set forth in the issue as having been said on the occasion of the Court of Inquiry, a good many witnesses said that they did not understand this to be the case; and the defender especially said that he did not say such things as were alleged. A question was put whether a gentleman in Glasgow—Mr Burns, had not complained of over charging of commission; but it appeared from the explanation they had had from the Chaplain-General that these questions were put after the gentlemen came in and were put with the view of making it more plain and palpable to the pursuer that there was no imputation of the kind against him. And he thought Mr Yellowles' evidence was substantially to the same effect. Major M'Bean did not recollect anything of the kind being said. Provost Murrie did not hear anything of the kind. They had seven witnesses present besides the pursuer at the Court of Inquiry, and it did not appear to him that any one of them made out these accusations; on the contrary it was stated that no imputation was cast upon the pursuer, that it was disclaimed on the occasion, and that there was no imputation as to having appropriated funds or as to his moral character. And he thought the Chaplain-General seemed to have been anxious to make that very clear by the questions he put; and told the pursuer that it was unnecessary to call any more witnesses. And further stated in his evidence that had such been the case he would have felt it to be his duty to institute further inquiry. If that was the view they took of these matters then these three issues would fail from want of evidence. It appeared to him that the issue which required their most serious consideration was the first issue. His lordship concluded by stating that he left the case in their hands.

The jury then retired, and after an absence of one hour returned into Court, when the foreman read the following verdict:—"Find unanimously for the pursuer on the first issue; find the second, third, and fourth issues not proven."

The Lord Passmore inquired whether the jury had agreed on the amount of damages to be assessed on the first issue?

The Foreman—The jury award damages to the amount of one shilling. (Applause.)

The Court then adjourned.

Counsel for the pursuer—Mr Gordon and Mr F. W. Clarke. Agents—Lindsay & Paterson, W.S.

Counsel for the defender—Mr Clark and Mr Shand. Agent—J. Patten, W.S.