

[Irish Rep.]

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COMMON PLEAS.

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Privileged communications—Words spoken from the pulpit.

Words spoken by a clergyman from the pulpit concerning a parishoner, though in good faith, and for a commendable purpose, are not privileged.

[May 8, 1877.]

The summons and complaint contained three counts, the first of which was as follows: "That the defendant falsely and maliciously spoke of the plaintiff the words following—that is to say (setting out the words in the Irish language), which said words, being translated into the English language, have the meaning and effect following, and were so understood by the persons to whom they were so spoken and published, that is to say: 'Let no man, woman, or child, keep his (meaning the plaintiff's) company, nor talk to him (meaning the plaintiff), and if he (meaning plaintiff) comes into any town-land, tie a kettle to his (meaning the plaintiff's) tail, as the people used to do of old; the defendant meaning by the said words that the plaintiff had committed an indictable offence of so grave and disgraceful a description as to deserve that the public should avoid and reject the company and conversation of the plaintiff.'" The second count complained of the speaking and publishing of the words following: "Can any one of you tell me where he (meaning the plaintiff) gets the money to spend? Is his mother foolish enough to give it to him, or does he (meaning the plaintiff) steal cows and horses?" The defendant meaning by the said words that the plaintiff had frequently feloniously stolen, and was in the habit of feloniously stealing, the cows and horses. The third count complained of the speaking and publishing of the words following: "I'll go to his (meaning the plaintiff's) mother to make him (meaning the plaintiff) leave the country, and if not, I'll go to the landlord to make him (meaning the plaintiff) do so." The defendant meaning by the said words that the plaintiff had committed an indictable offence.

In answer the defendant pleaded that he was at the time of uttering the words the Roman Catholic parish priest of the parish where the words were spoken; that at the time plaintiff was a parishoner; that he believed that plaintiff had been guilty of improper conduct; that the conduct was a matter of notoriety, and caused in the parish great annoyance; that at the time of speaking the words he was perform-

ing his duty as clergyman in the presence of his assembled parishioners, and that he uttered the words in good faith, believing them to be true, and for the sole purpose of rebuking sin, and preventing a repetition of the acts complained of. To this plaintiff demurred.

Peter O'Brien (with him *Murphy, Q. C.*), in support of the demurrer.

Anderson (with him *Heron, Q. C.*), *contra*, cited *Buckley v. Keernan*, 7 I. C. L. R. 75; *Cooke v. Wilde*, 5 E. & B. 341; *Spill v. Maule*, L. R. 4 Ex. 232; *Harrison v. Bushe*, 5 E. & B. 344; *Whitley v. Adams*, 15 C. B. (N. S.) 392; *Davies v. Snead*, L. R., 5 Q. B. 608; *Somerville v. Hawkins*, 10 C. B. 583; *Starkie on Slander* (4th ed.), 526, 527.

Morris, C. J. This action is brought against the defendant, a parish priest, complaining of his use of expressions toward the plaintiff of a slanderous character, and the defence is one of privileged occasion, based on the fact of defendant being a parish priest, and of the duty arising from that office of rebuking and admonishing sinners by name. The argument of the junior counsel in support of the plea, rested the privilege on the relative position of the plaintiff and defendant, and, as flowing from it, a duty to admonish the plaintiff, which, by the demurrer, it is admitted defendant did *bona fide* and believing in the truth of the statement. The case of *Somerville v. Hawkins*, 10 C. B. 583, was cited, where a master spoke of a servant in presence of other servants, in words which under other circumstances would have been actionable, but which were there held privileged. But Mr. Heron, for the defendant, claimed a privilege as arising to the defendant as a clergyman, *virtute officii*, of rebuking sin, and, by way of illustration, naming a particular person. There is no authority for such a proposition, and indeed Mr. Heron, when asked was the rule to be confined to Roman Catholic clergymen, and, if extended to clergymen of other denominations, where he would draw the line, answered that he would confine the rule to clergymen having the cure of souls, whom he defined as Roman Catholic priests and clergymen of the late Established Church. Such a distinction is merely arbitrary, and if the privilege existed at all, it should be extended to all clergymen of every denomination who preached sermons, or indeed to laymen, many of whom also preach sermons. We cannot adopt the analogy of the privilege of the members of the House of Commons, and of barristers, which has been also pressed upon us. Such a privilege is founded upon other and different principles, and we can find no public benefit in