

LORD ARDMILLAN—I am of the same opinion. It is a clear principle of law that co-existent rights in one subject must not be destructive of each other. There must always be some means of preventing such a result. In such a case as this, there must be in the Supreme Court a power of equitably adjusting the claims of the proprietor of ground on the one hand and the holder of a servitude on the other. The law will not permit the holder of a servitude so to exercise his right as to infringe injuriously on the just rights of the proprietor, nor will the law permit the proprietor of the ground so to exercise his right as to impede the just exercise of the right of the servitude holder. In the present case, I am of opinion that the just exercise of the servitude has been adequately secured; and that the demand made by the holder of the servitude would be inconsistent with the exercise of the right of the proprietor.

Motion refused.

Agent for Pursuer—L. M. Macara, W.S.

Agents for Defenders—J. M. & J. Balfour, W.S.

Saturday, February 1.

M'NEILL v. CARRUTHERS.

Reparation—Slander—Inuendo—Issue. Action on slander dismissed as irrelevant, the statement put in issue not being in itself slanderous, and there being no inuendo on record.

William M'Neill, miller, Crossmichael Mill, in the parish of Crossmichael and stewartry of Kirkcudbright, brought an action of damages for slander against Thomas Carruthers, farmer in Mountaintop in said parish. It appeared that in February 1867 the defender sent a quantity of corn to the pursuer for storage. The pursuer now averred that the defender, on two specified occasions, "falsely, calumniously, maliciously, and without probable cause, stated that he had delivered to the pursuer, not 37 bushels, but 47 bushels of corn, and the pursuer had failed to account for ten of these bushels, and that he would force him to account for the ten bushels before the Sheriff, or did use words of and concerning the pursuer of a like import and effect." He proposed issues founded on this averment. The defender contended that the action was irrelevant.

The Lord Ordinary (BARCAPLE) reported the case on issues, stating his opinion that the statement put in issue—viz., that the pursuer failed to account for a part of the oats stored with him, and that the defender would force him to account before the Sheriff—was not defamatory in the legal sense of the term.

W. M'LAREN for pursuer.

SOLICITOR-GENERAL (MILLAR) and SCOTT for defender were not called on.

The Court unanimously dismissed the action as irrelevant.

The LORD PRESIDENT said that the case was one of the clearest he had ever seen. There was no possible ground for holding that the statement made by the defender was slanderous in itself. It might, perhaps, have been made so by inuendo, but there was no inuendo on record, and the action must therefore be dismissed.

Action dismissed with expenses.

Agent for Pursuer—J. M. Macqueen, S.S.C.

Agent for Defender—W. S. Stuart, S.S.C.

Saturday, February 1.

SECOND DIVISION.

WALKER v. CUMMING.

Issues—Reparation—Search of Premises without a Warrant—Carrying away of Goods—Privilege—Maliciously and without probable Cause—Circulation of Slander—Revised Condescence—New Ground of Action—Defect in Specification. Held (1) that the pursuer was not bound to put into his issue the words "maliciously and without probable cause" where the act founded on was not the giving of information to the police—in doing which, the defender would be in a position of privilege—but the alleged seizure of property, without a warrant, after the information was given. (2) That a party who circulates a slander to non-official persons is not in a position of privilege merely from first having given information to the police. (3) Statements which held to be a mere expansion of, not inconsistent with the grounds of action set forth in the condescence. (4) Issue disallowed in respect of defect in specification.

William Walker, photographer, brought this action against John Cumming, photographer, 1 South Hanover Street, Edinburgh, for damages for wrongfully entering his premises at Hawick, and taking away certain photographic materials in his (the pursuer's) lawful possession, which Cumming alleged to have been stolen from him by the pursuer and another.

The pursuer made the following statements, *inter alia*, in his original condescence:—"On or about said 3d May 1867, the defender, in the Railway Hotel, Wilton, Hawick, occupied by Robert Learmond, innkeeper in Wilton, Hawick, in presence of the said Robert Learmond, and Joseph Lush, servant to the pursuer, or one or other of them, and also in presence of several other parties, falsely and calumniously stated that the pursuer and the said Joseph Laurie Cox had been carrying on a system of robbing him of his property; that Cox would soon be in jail; and that, so soon as he got to Edinburgh, he would get a warrant for apprehending the pursuer on said charge; or used words of a like import and effect of and concerning the pursuer.

"The defender repeated the said slander of and concerning the pursuer between the 4th and 7th May 1867, at different places within the city of Edinburgh, to George Mason, commercial traveller, then in Edinburgh; John Aitken, presently photographer at Hawick; and the said Joseph Laurie Cox, or one or more of them. He also repeated said slander in Edinburgh, during said period, to various other parties. Further, on or about the said 4th May 1867, he repeated said slander at the Railway Station, Galashiels, to the said George Mason."

The pursuer proposed the following issues:—

"1. Whether, on or about the 3d day of May 1867, the defender, along with John Nicol, superintendent of police at Hawick, and Joseph Bailey Cartledge, photographer there, wrongfully and illegally entered the premises at Wilton, Hawick, occupied by the pursuer, and took possession of, and carried away several glasses, and an album containing photographic prints, or one or other of them, belonging to or in