

are Nos. 200 and 201 of process respectively; and (4) the remainder of the funds *in medio* shall be divided into nineteen equal parts or shares, of which one share shall be paid to the said claimant Ann Barclay or Burnside and her husband for his interest, one share shall be paid to the said claimant Margaret Barclay or Scott, one share shall be paid to the claimant Duncan M'Carter, Edinburgh, as executor dative of his father the deceased claimant Duncan M'Carter, Bathgate, one share shall be paid to the claimant George M'Carter, one share shall be paid to the claimant Elizabeth Watt or Dodds and her husband for his interest, one share shall be paid to the claimant Edward Cook otherwise called Edward Elliot Cook, as an individual, one share shall be paid to the claimant James Cook, sometime warehouseman London, one share shall be paid to the claimant Mary Cook or Fletcher, one share shall be paid to the claimant Ann Cook or Horner, one share shall be paid to the claimant Alexander Ireland, as assignee of the deceased claimant Margaret Cook or Kelly, one share shall be paid to the claimant Eleanor Cook or Worth and her husband for his interest, one share shall be paid to the claimant John Barrow as executor to his deceased wife Jane Cook or Milner or Barrow, one share shall be paid to the said claimant James Cook, Berwick-on-Tweed, two shares shall be paid to the claimant Stephen Maxwell Cook, one share shall be paid to the claimant Isabella Cook or Taylor and her husband for his interest, one share shall be paid to the claimant Eliza Ann Cook or Wilson and her husband for his interest, and two shares shall be paid to the claimant James Cathie: and Find that, as regards the question of expenses reserved by the interlocutors of sixth March eighteen hundred and sixty-one and fourteenth March eighteen hundred and sixty-two, and also as regards the question of expenses referred to in the interlocutors of twentieth July eighteen hundred and sixty-five and twelfth February eighteen hundred and sixty-seven, and all other questions of expenses, no party shall be entitled to or liable in expenses except in so far as already paid out of the fund *in medio* as above provided for: Rank and prefer the parties above specified on and to the fund *in medio* in terms of the scheme of division foresaid: Grant warrant to and ordain the said Charles Murray Barstow to convey and make payment in terms of the said scheme of division: *Quoad ultra* repel the whole claims lodged in process, and decern."

Counsel for Judicial Factor — Macdonald.  
Agents—M'Neill & Sime, W.S.

Counsel for Heirs-at-law and Next of Kin to William Maltman—Black, Gloag, and M'Kechnie.  
Agents—D. Currer, S.S.C.; Burn & Gloag, W.S.; and Thomas M'Laren, S.S.C.

Friday, March 20.

## SECOND DIVISION.

[Sheriff of Clackmannan-

MITCHELL v. STEELE.

*Slander—Action of Damages.*

Statements made as to the non-delivery of an article of dress held not libellous or sufficient to support the conclusions of an action of damages for slander.

The appellant and pursuer, Janet Mitchell, was employed in May last by Robert Philp, a draper, Mill Street, Alloa; and on Saturday, 17th of that month, she was sent by one of his employes with a cape to deliver to the defender, Miss Margaret Steele, Linden House, Walk, Alloa. She said that she had delivered the mantle in due course; but on the Monday following Miss Steele called at the shop and said the cape had not been delivered, as promised. The girl Mitchell was apprehended on the charge of theft; but the cloak having been shortly thereafter found by the defender in a drawer in her own house, the public prosecutor abandoned the charge.

Miss Steele, notwithstanding this, as the girl complained, repeated her accusations, in effect charging her with theft on several occasions and to several persons, of whom one was the United Presbyterian Minister, and repeated these accusations "falsely, injuriously, and calumniously." The girl accordingly, with consent of her father, a bottle-blower residing in Forth Street, Alloa, raised an action of damages, which were laid at £100, in the Sheriff Court against Miss Steele. In defence it was pleaded—(1) that the pursuer's whole material statements were unfounded in fact; (2) that, so far as the pursuer's statements were founded upon statements actually made by the defender, these latter statements were true; and (3) that the defender's statements were, in the circumstances, privileged, and that the pursuer was not entitled to prevail without averring that they were made maliciously.

The Sheriff-Substitute (CLARK), on 12th November, found generally for the pursuer, and gave her £5 damages, with expenses.

The defender appealed and on 24th December 1873 the Sheriff-Depute (MONRO) pronounced the following interlocutor and note:—"The Sheriff having heard parties' procurators orally, and made avizandum, and considered the whole process, recalls the Sheriff-Substitute's interlocutor of 12th November last; finds that the statements libelled, as made by the defender relative to the pursuer, although they may have been erroneous, were not uttered calumniously or injuriously, but were uttered in *bona fide*, and without malice, and do not infer liability in damages against the defender; therefore assoilzies the defender from the whole conclusions of the summons; finds the pursuer Janet Mitchell liable in the expenses of process, &c.

"Note—The calumnious acts found proved by the interlocutor under review are four in number, a fifth, included in the libel, being departed from.

"1. Regarding the first of these, the finding is, 'That on the forenoon of the following Monday (19th May last), the defender called at Philp's shop and complained to Agnes Young, the super-

intendent of the millinery department, that the cape had not been sent, as promised, on the previous Saturday night: to which Miss Young replied that the cape had been sent; and on the pursuer being called, she also stated that she had delivered the cape at the defender's house on Saturday night; but the defender, in presence of the said Agnes Young and Jane Neill, a milliner in said shop, insisted that the cape had not been delivered; and in a subsequent part of the interlocutor it is found 'that the pursuer delivered the said cape at the defender's house on the evening of Saturday, the 17th May last.'

"This first finding has reference to articles 3 and 4 of the condensation, which seem stated merely as introductory narrative, and not as containing substantive acts of calumny. Agnes Young is the only witness adduced in support of them; for Jane Neill only speaks to what she says occurred at a different call, said to have been made by the defender on the evening of the same day, but which is not referred to by any other of the pursuer's witnesses, nor by the defender as a witness.

"As to the conversation in the forenoon, it appears that the defender called at Mr Philp's shop on the forenoon of Monday, 19th May, and said to the head milliner Miss Young that the cape had not been delivered on the preceding Saturday, as had been promised. Miss Young, however, had actually despatched the cape by the message girl, the pursuer; and the pursuer on being called in said she had actually delivered it. After some inquiries, the defender said she thought there must have been some mistake, and she would go down to her house and make inquiry about it, and left the shop. The defender swears—'I never stated to any one that the pursuer Janet Mitchell had stolen the cape, or had made away with it, or anything intended by me to convey that impression.' A great deal of inquiry was consequently made by the defender, and also by the pursuer by Mr Philp, Miss Young, and others, leading to Mr Philp's applying to the police superintendent of the burgh, Mr Carmichael. This is the whole substance of the evidence as to this first act.

"Then what is said to have taken place on the evening of the same day forms the subject of article 5 of the condensation, which sets forth that the defender 'then and there stated to several persons, and in particular to the said Agnes Young, and to Jane Neill and Margaret Hill, both in Mr Philp's employment, that the said pursuer had failed to deliver, or had never delivered, the said cloak at the house, or had stolen or otherwise made away with it.' Of these three persons, Margaret Hill is not examined at all; Agnes Young does not allude to any meeting in the evening; and the sole witness is Miss Neill, who depones that the defender said, 'It was clear as day she had never delivered the cape;' while the defender is not asked as to any call in the evening, and on cross says, 'I don't remember using the expression to Miss Neill that it was as clear as day she was guilty.' Miss Neill also depones in chief—'She said on the Monday night that she was certain Janet Mitchell had taken the cape,' but adds, on cross-examination, 'I don't remember exactly whether she used the words "had taken the cape." The Sheriff supposes it is on what Miss Neill says relative to the evening meeting that the finding is based, that the defender 'insisted' the cape had not been delivered.

"That the defender up to this time, at least, was perfectly *in bona fide* is beyond a doubt; and the Sheriff does not concur in the finding that she was not acting 'in the discharge of any duty, public or private;' and even if the finding alluded to were well-founded, and if the expressions spoken of by Miss Neill had been used, the Sheriff is, on grounds hereinafter mentioned, not prepared to hold the defender liable.

"2. The second calumnious utterance found proved is, 'That on Friday, 23d May, the defender called again at the said shop, and again stated to the said Agnes Young and Jane Neill that the pursuer had not delivered the said cape, but had taken the cape; but that she (the defender) wished that she (the pursuer) would confess.'

"The evidence as to what passed in the shop on this Friday is comprised in the depositions of Miss Young, Miss Neill, and the defender. Miss Young says—'On Friday, 23d, Miss Steele (defender) called at the shop in Mar Street. She said she was annoyed at my taking Janet's part, for she (Miss Steele) was sure she was guilty: and she said as much as that Janet Mitchell had taken the cape. I think that Miss Steele expressed a wish that the girl would confess. She spoke a good deal about the matter on the occasion.' And on cross-examination, 'I do not know for what reason Miss Steele called on the 23d. I am not sure whether she called about slight mournings on that day. I know she did call about that time in regard to slight mournings. . . . I don't know what I had said that annoyed Miss Steele, but it is very likely I said as much as that I believed that she had delivered it. The defender may have only said that the girl had not delivered the cape; but I understood her to mean that, not having delivered it, she had kept it.' Miss Neill depones—'She (the defender) called on Friday, 23d, and had a conversation with Miss Young; and she (defender) expressed a wish that the girl would confess.' And on cross, 'I don't remember exactly whether she used the words "had taken the cape."' The defender's deposition has been partly given already, and she also depones—'I did not know anything of the girl except having seen her in Mr Philp's shop.' . . . And on cross, 'I said at one time to Miss Young that I wished Janet Mitchell would confess it; but I am not sure on what occasion that was. I said this because I was quite convinced that the girl had not delivered the cape.'

"This is the whole evidence as to the second act. At this time (Friday, 23d May) the pursuer stood charged with stealing the cape by the superintendent of the burgh police of Alloa, acting on the communication of Mr Philp and his own investigations during the preceding Monday and Tuesday. The cape had mysteriously disappeared, and the defender personally knew nothing of it. It might be a question, civilly, whether she was liable for the price of the cape, stated in the debate at £3, 3s.; and it was a still more grave question whether the pursuer, on the one hand, or the defender's servants, on the other, were to blame for its disappearance. Thus the defender was seriously interested in the question, and was entitled, within reasonable bounds, to speak of it with those representing Mr Philp in his shop, and to state her own convictions or impressions regarding it. There is no ground for alleging, and indeed it is not alleged, that ever the defender misrepresented or misstated

a single fact of the case so far as within her own knowledge. Her opinions were derived partly from her own knowledge and partly from the statements of her own servants, and even in part of the pursuer herself. Apparently the convictions which she expressed went no further than that the pursuer had not delivered the cape. The impressions of some of the witnesses, that there was an implied charge of theft against the pursuer, were evidently the result of inferences drawn by the witnesses themselves, which may or may not be sound. What is proved does not go beyond the statement that the pursuer did not deliver the cape—which was simply equivalent to saying that the cape was not delivered, it being admitted that the pursuer had received the cape for delivery. Unless the defender was to give up her position altogether she could not have said less.

“So much regarding the first two findings of calumny. Before the occurrence of the remaining two acts, the cape in question was discovered by the defender about half-past eight of the morning of Saturday, 24th May, in an open drawer of her own chest of drawers. How it came there is a mystery. The defender’s servants depone that they had never seen it before, and speculations have been raised as to possible modes of placing it in the drawer by parties from without. The defender herself is not inculpated. Naturally the trial fixed for the following Monday was abandoned, at least for the time; and the superintendent does not appear to consider anything as finally settled. The finding of the cape was a strong piece of evidence in the pursuer’s favour, and raised a serious presumption against one or both of the defender’s servants; but there are many facts in the case of an opposite tendency, quite sufficient to account for the defender continuing to believe that her servants, in whose honesty she had full confidence, had not received the cape. The matter became the subject of conversation in the town; indeed, it was mentioned in the *Alloa Advertiser* of Saturday, 24th May (produced to the Sheriff at his request at the debate) that Janet Mitchell, ‘a message girl lately in the employment of Mr Robert Philp, draper,’ was charged before the magistrate with stealing a cashmere mantle, with which she had been intrusted for ‘delivery to Miss Steel, residing at the Walk, Broad Street,’ and that she having pleaded not guilty, the case was adjourned for proof.

“The third calumnious act found proved is, that on Monday, 26th May, the defender met the Rev. Mr Matheson, then a U.P. minister in Alloa, ‘on a public street in Alloa, and in the course of a conversation with him on the subject of the cape, stated that the cape had not been delivered to her by the pursuer.’ On this matter the only witnesses are the Rev. Mr Matheson and the defender. The former expressly declines to swear that on the occasion in question the defender stated that the pursuer had not delivered the cape; and his reference to the other conversations not set forth is inadmissible. The defender herself says, ‘The Rev. Mr Matheson spoke to me on the subject on a day I met him in one of the streets of Alloa. He introduced the subject, and he told me that there were strong suspicions against her’ (my ‘servants. I then entered into further conversation with him, the character of my servants being impugned. I heard that others were speaking of the matter in a similar way, as involving my servants. This made

me more desirous that the truth in the whole matter should be ascertained;’ and on cross-examination she says—‘When I saw Mr Matheson he cautioned me to be very careful not to charge any one with taking the cape. I stated to him that Janet Mitchell had not delivered the cape, going over the circumstances to him. He had stated that suspicion attached to my servants.’ This conversation seems really to have been a discussion of the question of fact upon the evidence so far as known, and not the assertion of any crime having been committed by the pursuer. Mr Matheson having made an imputation on her servants, the defender was entitled to defend them, although that might infer that the pursuer was blameable.

“The fourth and last act found proved is thus stated—‘Finds that, on or about the 28th May (Wednesday), the defender having met Miss Duncanson, Forth Street, Alloa, on the Walk, and in the course of a long conversation with her on the subject of the cape, the defender said that the pursuer had not delivered the cape to her, and that she had kept it.’ In this instance the witnesses are Miss Duncanson and the defender herself. Miss Duncanson says in the course of her remarks—‘Miss Steele said that Janet had not delivered the cape, and that she had kept it, by which I understood her to mean that she had stolen it.’ The defender, on the other hand, depones—‘I tried to explain the whole to her.’ . . . ‘I never stated to any one that the pursuer Janet Mitchell had stolen the cape, or had made away with it, or anything intended by me to convey that impression;’ and at the close of her cross-examination she says, ‘With the exceptions I have mentioned, I think Miss Duncanson’s statement is correct.’ The Sheriff does not consider this a satisfactory corroboration of Miss Duncanson’s statement relative to the use of the words ‘had kept it.’ If that was pointed at, the question should have been put directly and distinctly. Probably the defender considered that she denied the statement when she said she never stated that the pursuer had made away with it, or anything intended to convey that impression. The Sheriff thinks Miss Duncanson’s evidences evinces a feeling adverse to the defender, and she goes further than any other witness who has been examined, and further even than the pursuer’s averment on the subject of this conversation (see Cond. 11). It is evident from the statement of both witnesses that there was a good deal of conversation; at least, that the defender entered at length and argumentatively into the subject. There is no reason to suppose that she distorted or misrepresented a single fact. Her personal knowledge of the matter was merely negative, and she no doubt told Miss Duncanson the story as it appears in the defender’s own evidence, with the addition of the facts that came out on the inquiry; and the statement, somewhat baldly reported by Miss Duncanson, that the pursuer ‘had not delivered the cape,’ whether with or without the addition that she ‘had kept it,’ was only the conclusions at which on the whole matter she had arrived. She was placed in a very painful position; for, if her servants had received the cloak and concealed it, and persisted in denying it, notwithstanding of the dilemma in which the innocent message girl was thereby involved, even although they had no theftuous purpose, their conduct was such as rendered them unsuitable for respectable service.

"The law of England contains doctrines and cases analogous to the present, and which seem to be founded on sound principles, and to be not adverse to the law of Scotland. Starkie in his chapter headed 'Occasion Malice in Fact,' commences as follows:—'The extensive principle which governs this class of cases, where the existence of express malice is a test of civil responsibility, comprehends all those where the author of the alleged mischief acted in the discharge of any public or private duty, whether legal or moral, which the ordinary exigencies of society or his own private interest, or even that of another, called upon him to perform; but where the occasion does not furnish an absolute defence independently of the question of intention, as on the one hand it would be contrary to common convenience to fetter mankind in their ordinary communications by the apprehension of vexatious litigation; so, on the other, would it be highly mischievous to allow men to inflict the most cruel injuries to reputation and character with impunity under the cloak and pretence of discharging some duty to themselves or to society, when they were in fact actuated by the most malicious intentions. The law, therefore, in such instances, and as it seems most wisely, makes the issue to depend on the existence or the absence of express malice; and thus an ample shield of protection is extended to all who act fairly and prudently, in order that men may not be deterred by the fear of an action or prosecution from making communications which are either important to themselves or beneficial to the public.'

"Among the most prominent of the decisions comprehended within the present class are those which have arisen from actions brought by servants against masters. The author proceeds to give examples of these. 'The privilege,' he says, 'which protects a master in giving a character to a servant extends over facts afterwards discovered, though at the time of giving the character unknown to the master; so that if a master, having given a servant a good character, soon afterwards discovers that the servant was dishonest, it becomes his duty to communicate his discovery to the person who applied to him for the servant's character.'

"A defamatory communication made by the owner of a house to his tenant, the occupier, imputing disgraceful and immoral conduct to some of the inmates, may be privileged if made *bona fide* as between a landlord and his tenant, without malice. And it appears that a publication in vindication of character, or by way of reply to personal imputations, is a privileged communication.'

"The same principles seem to be admitted in the law of Scotland—(see Borthwick on Libel, p. 236, and cases there cited; Guthrie Smith on Reparation, p. 237; 4 Ersk. 4, § 80, and Notes by Nicolson.) In the case of *Kennedy v. Baillie*, 5th December 1855 (18 D. 155), Lord Deas observed—'Privilege giving rise to the necessity of averring malice is not confined to persons acting in certain specific characters, or in the discharge of particular duties, but may, and often does, arise out of the mere circumstances under which individuals have occasion to communicate and deal with each other; and if this were not so, the intercourse of society would be subjected to intolerable restraint, and business could not proceed;' and again (p. 157), 'I think this case one of great importance with reference to the free and unfettered transaction of business, and to the fair protection and comfort

not only of professional men, but of society.' The influence of the same principle is perceptible in the judicial deliverances in the case of *Craig v. Jez Blake*, 7th July 1871, 9 Macph. 973. See also *M'Bride v. Williams*, 20th Jan. 1869, 7 Macph. 427.

"The Sheriff does not mean to enter into detail as to the party to blame in regard to the alleged non-delivery of the cape. He inclines to think there may have been no theftuous purpose on either side. But no doubt has been suggested in argument as to the sincerity of the defender's opinions on the subject; and the Sheriff is satisfied that, however erroneous these may be, there was ample 'probable cause' for them. Before the cape was discovered the defender had, in the Sheriff's opinion, both an interest and a duty not to suppress her belief; and after the discovery she had a duty to her servants, and also to herself as the head of a household, to state her opinions, the more so as for the time legal procedure was suspended; and the Sheriff does not see that (as in the case of *Jez Blake*) she fell into excess, and went beyond what was admissible. She 'took her servants' part,' just as Miss Young says—'I took the girl's part all along, and take it still.' The Sheriff considers there is a total absence of any proof of 'malice in fact' on the part of the defender, and he gives no opinion as to the question whether the cape was delivered or not.

"The Sheriff has decided this case without reference to the interlocutor of the Sheriff-Substitute (not appealed) as to the plea of privilege. He considers the principle on which he has decided to be one arising out of the whole circumstances as disclosed in the evidence; and that this course is within the power of the Sheriff on appeal. (See *Barclay's M'Glashan*, § 1485, 6, 7.)"

The pursuer appealed to the Court of Session.

Authorities referred to—Starkie, 3d ed. p. 526; *Walker*, 11 D. 665; per Lord Ormidale, *Bathgate Case*, 11 Scot. Law Rep., 89.

At advising—

LORD JUSTICE-CLERK—My Lords, this case embraces some points of considerable nicety and importance. In the view, however, which I feel disposed to take of it, there is not a necessity for coming to any conclusion as to what the real truth of the story is; and this I am very glad of, as the case presents some features of hardship to both parties. There has been an undue keenness and excitement, perhaps not unnatural, but on the other hand leading to a pushing of the pleas too far on all sides. Miss Steele should have reflected on the effect of what she was saying, and on the inferences deducible therefrom; and, again, it is to be regretted that Mr Matheson and Miss Duncanson did not hold as confidential what was said to them.

As to the case itself, it stands in a peculiar position. There is not here raised any general question on the law of slander; all we have is a matter of mutual allegation. The whole point at issue is, whether or not a certain article of dress was delivered at Miss Steele's house by the shop girl Janet Mitchell on the evening of the 17th of May: that question still remains unanswered. The pursuer Janet Mitchell was, in point of fact, the first to raise the question; for Miss Steele naturally went on the morning of the 18th to her milliner, and asked why her cloak had not been delivered. Thereupon Janet is sent for, and she

says, "I delivered it to Miss Steele's servant." The servant says she never received it; and therein the whole matter lies.

The pursuer had certainly a right to say to everybody, and on every occasion, that she had delivered the cloak to Miss Steele's servant. She had a perfect right to vindicate her own character. But, on the other hand, Elizabeth Aitken, the servant, had an equally good, indeed the same, right to state her version of the story, and to deny the account given by the pursuer, and say that she had not received the cloak. There could not be slander in such a case at all; for each was entitled to tell her own story, and vindicate her own character. No doubt one of the two stories was false; one of the parties was not telling the truth; but that is a different matter from slander.

Yet further again, other people were concerned in the disputed statements. Miss Young the milliner was entitled certainly to maintain the good name of her establishment, and to vindicate the character of her shop girl. So, on the other hand, was Miss Steele entitled to defend the character of her servants.

After giving due weight to these considerations, I come to look into what was the actual slander alleged. There are said to have been three occasions on which the defender slandered the pursuer (1) When the statement was made to Miss Young on May 23d; (2) On 26th May, when the defender spoke to the Rev. Mr Matheson; and (3) When the conversation with Miss Duncanson occurred on May 28.

(1) On the first occasion we have considerable doubt thrown on what was actually said by the admission made in cross-examination by Miss Young. That admission is to be found in the proof as follows:—"When the defender spoke of being sure that Janet Mitchell 'was guilty,' it was understood that she meant guilty of stealing the cape. I took the girl's part all along, and take it still. I don't know what I had said that annoyed Miss Steele, but it is very likely I said as much as that I believed she had delivered it. The defender may have only said that the girl had not delivered the cape, but I understood her to mean, that not having delivered it she had kept it." Now Miss Steele was perfectly entitled to say that the pursuer had not delivered the cloak, but she was not entitled to go into any inquiry beyond that. Though Miss Young may have drawn the inference that Miss Steele meant that her shop girl had stolen the cloak, it seems from that portion of the evidence I have just read that Miss Steele may "only have said that the girl had not delivered the cape." This, it appears to me, disposes of the first occasion.

(2) Then as to the conversation with the minister Mr Matheson. He had learned his account of the case from the pursuer, and it would appear that the pursuer complains that the defender tells her version also. Matters would have been very different had Miss Steele said what was done with the cape; but Mr Matheson was the first to begin the story, and he implied the guilt of Miss Steele's servant; but he is unable to specify even so much as the fact of Miss Steele's having asserted that the cloak had not been delivered.

(3) The third occasion is the conversation with Miss Duncanson, and that is involved in greater difficulty, because, according to Miss Duncanson's account, it was a volunteer statement on the part

of Miss Steele. The witness says:—"In the course of her remarks, Miss Steele stated that Janet had not delivered the cape, and that she had kept it; by which I understood her to mean that she had stolen it. I thought that her object was to endeavour to convince me that Janet had stolen the cape." But against this there is the evidence of the defender herself, who not only denies that she used these words, but also says that Miss Duncanson began the conversation with her, and she was certainly entitled so far to defend her servants by an assertion of their innocence.

Accordingly, on the whole matter I am of opinion that the question of privilege is not raised at all. The expressions proved to have been used were not slanderous: they only had reference to a matter of fact, into the truth or falsehood of which it is not necessary to inquire.

**LORD BENHOLME**—This case is one involved in considerable mystery. I have not been able to make up my mind as to the fact whether the cape was delivered on that Saturday evening or not. It appears to me, after a careful consideration of the circumstances, that the only instance of alleged slander was that with Miss Duncanson. I have not any difficulty with the other two occasions—those of Miss Young and Mr Matheson; but in the third instance I have considerable doubts. I have however arrived at the conclusion that there is not sufficient evidence of what occurred. The case of the pursuer is certainly a hard one; but I cannot make up my mind as to the extent of that hardship, which must be much greater if what she says be true. I merely content myself by observing that I sympathise much with the pursuer, but do not think her remedy is in getting damages.

**LORD NEAVES**—I concur in the result arrived at by your Lordships, and add no expression of my opinion as to the truth of the statements of either party.

**LORD ORMDALE**—The view expressed by the Lord Justice-Clerk so entirely coincides with that which I have arrived at that I think it unnecessary to add a single sentence.

The Court pronounced the following interlocutor:—

"Find it proved that on the occasion libelled the defender stated to the witnesses Miss Young, Rev. Mr Matheson, and Miss Duncanson, that the pursuer did not deliver the cape in question at the house of the defender on the night of Saturday, 17th May: Find it not proved that on any of these occasions she said that the pursuer had stolen or appropriated the said cape, or used words to that effect: Find that the statements so proved are not sufficient to support this action: Therefore dismiss the appeal and affirm the judgment appealed against on the merits: Recall the judgment as to expenses, and find no expenses due either in this or in the Inferior Court, and decern."

Counsel for Pursuer (Appellant)—Dean of Faculty (Clark) and Strachan. Agents—Morton, Neilson, & Smart, W.S.

Counsel for Defender (Respondent)—Watson and Mackintosh. Agent—J. B. McIntosh, S.S.C.