the first claim I made on the defender since I wrote him in 1865." So that for twenty-one years she was silent and indicated no claim against the defender.

In these circumstances I am of opinion that the grounds of action are not proved, and that the evidence here does not satisfy me either that any debt was due to the grandfather who brought up the child, and who has been dead for some years, or to the mother, who does not seem to have paid anything for its maintenance. I think, therefore, we should find that the averments of the pursuers have not been established, and assoilzie the defender.

Lord Craighill concurred.

Lord Rutherfurd Clark—I have found some difficulty in regard to this case. I think that in the ordinary sense of the word the child was throughout maintained by the mother. No doubt he lived in the grandfather's house, but he was placed there by the mother, who thought that in that way she was fulfilling her duty to the child. Now the defender has not contributed much, if anything, to the support of the child since he was four years old, and his first defence to this action for aliment is that he offered to take and maintain the child at his own home. If I thought that was a legal offer then there would be an end of the case. I think no doubt it would have been a legal offer if the child had been seven years of age. I think that is the principle to be deduced from the cases quoted to us. But I doubt if a father can denude himself of his liability to pay aliment for his illegitimate child by offering to take it away from the mother and maintain it himself if it is only one, two, or three years of age, or indeed of any age under seven. But then it is said that the child was not living with the mother. It is true that the mother was not constantly living in the same house, but the child was in her custody, and it is not clear whether the father is entitled to take a young child out of the custody of its mother, and if she refuses to give it up then to hold that he is free from all liability for aliment. I do not think that the offer was a good one, but I have some hesitation, because the conduct of the parties seems to show that when the offer was made and refused the mother preferred to keep the child and give up her claim for aliment. I am disposed to think that the only safe ground on which we can dispose of this case is that the pursuer abandoned her claim against the defender, as she was not content to act on the offer made to take the child and maintain him when he was four years of age, and made no further claim for aliment. As that seems to be the opinion of your Lordships I am not disposed to differ.

The Court recalled the interlocutor of the Lord Ordinary, and assoilzied the defender, with expenses.

Counsel for Defender (Reclaimer)—Kennedy. Agent—J. D. Macaulay, S.S.C.

Counsel for Pursuers (Respondents)—Rhind—A. S. Paterson. Agent—Abraham Nivison, Solicitor.

Wednesday, June 1.

FIRST DIVISION.

[Lord President, with a jury.

BONNAR *v.* RODEN.

Expenses — Jury Trial — Nominal Damages — Court of Session Act 1868 (31 *and* 32 *Vict. c.* 100), *sec.* 40.

In an action of damages for slander the damages were laid at £1000. The jury returned a verdict for the pursuer, and assessed the damages at one farthing. The presiding Judge granted a certificate in terms of section 40 of the Court of Session Act 1868, "that the action was brought for the vindication of character, and was, in his opinion, fit to be tried in the Court of Session." *Held* that the pursuer was entitled to his expenses.

This was an action of damages for slander at the instance of Hugh Bonnar, butter merchant, Tullagan and Sligo, Ireland, against John F. Roden, medical student in the University of Edinburgh.

The case was tried before the Lord President and a jury on the following issue—Whether on or about the 14th day of October 1886, the defender, John F. Roden, wrote or caused to be written and sent, or caused to be sent to the Inspector of the butter market in Sligo, Ireland, the letter in the terms set forth in schedule annexed; and whether the said letter, or any part thereof, is of and concerning the pursuer, and calumniously represents the pursuer as having been guilty of fraud or dishonesty in the transactions therein referred to, or makes similar false and calumnious representations of and concerning the pursuer to his loss, injury, and damage?" Damages were laid at £1000. The letter was as follows—"Dear Sir—Will you be able to recollect if Mr Hugh Bonnar bought in your market on Tuesday, August 17th last, a large number of firkins qualified by you as firsts? There is a lawsuit pending between him and us about twelve firkins—a part of the large consignment he bought that day—he sold us, which he described as being the finest Sligo firsts qualified by you. When we received the butter we found it was not equal to thirds, as it was oily and greasy. We returned the butter to him. You will oblige me very much by giving what information you can on the subject, as it is my conviction that this butter never passed through your hands as firsts, and even perhaps never entered your market. It is, Sir, a gross injustice to your market to have men coming here selling an inferior butter as Irish firsts. It is such misrepresentation that has caused our Irish butter to lose its hold on this and other markets, and the sooner Irishmen both at home and here put their foot on it, the better it will be for our Irish butter trade."

At the trial it was proved that the letter was written by the defender and sent to the inspector, and that the inspector, without showing the letter to anyone, sent it to the pursuer of the present action. The jury found for the pursuer, and assessed the damages at one farthing.

The presiding Judge certified in terms of the Court of Session Act 1868, sec. 40, "that the

action was brought for the vindication of character, and was in his opinion fit to be tried in the Court of Session."

Thereafter the pursuer moved the First Division to apply the verdict, and asked for expenses—*Craig* v. *Jex Blake*, July 7, 1871, 9 Macph. 973; *Craig* v. *Taylor*, Dec. 20, 1866, 5 Macph. 203.

The defender argued that the question of expenses was in the discretion of the Court. The damages awarded were nominal, and as there had been no publication the pursuer's character had not suffered — *Duncan* v. *Balbirnie*, March 3, 1860, 22 D. 934; *Graham* v. *Napier*, Jan. 21, 1874, 1 R. 391.

At advising--

Lord President—No doubt this is a case of nominal damages; but I certified in terms of the statute that the action was brought for the vindication of character, and further, that it was a fit case to be tried in the Court of Session. The issue is a serious one, and the jury affirmed it, and therefore found that the defender falsely and calumniously represented the pursuer as having been guilty of fraud or dishonesty. Now that is a very serious charge, and I can have no doubt that had the libel been extensively published the jury would have assessed the amount of damages very differently. But in this case the libel was uttered in a letter to the inspector of the market where the butter was bought, and he very discreetly sent it to the pursuer without showing it to anyone. Of course the pursuer said nothing about it, and indeed no one ever saw it but the inspector. That state of the facts quite accounts, in my opinion, for the small amount of damages awarded. At the same time I think the action was quite justified, and that, although the libel was never published, the pursuer was entitled to have a verdict to clear his character. For these reasons I think the pursuer is entitled to his expenses.

Lord Mure, Lord Shand, and Lord Adam concurred.

The Court found the pursuer entitled to the expenses of the action.

Counsel for Pursuer—Nicoll. Agents—Gibson & Paterson, W.S.

Counsel for Defender — Wallace. Agents — Rhind, Lindsay, & Wallace, W.S.

Thursday, June 2.

FIRST DIVISION.

[Sheriff of Aberdeen, Kincardine, and Banff.

ROSS *v.* GRAY.

Process—Appeal—Printing—Court of Session Act 1868 (31 *and* 32 *Vict. cap.* 100), *sec.* 71—*A.S., 10th March* 1870, *sec.* 3, *sub-sec.* 2.

Held that the provisions of the Act of Sederunt, 10th March 1870, sec. 3, sub-sec. 2, do not apply where printing has been dispensed with *in hoc statu*.

This was an action for the aliment of an illegitimate child raised in the Sheriff Court of Aberdeen, Kincardine, and Banff, at Peterhead, at the instance of Amelia Ross, domestic-servant, Stuartfield, Old Deer, against Alexander Gray, farm-servant, Auchleuchries, Cruden, whom she alleged to be its father. The Sheriff-Substitute (Dove Wilson) and the Sheriff (Guthrie Smith) assoilzied the defender from the conclusions of the action. The pursuer appealed to the First Division of the Court of Session. The appeal was received by the clerk of Court on April 25th. On the 2d May the Lord Ordinary on the Bills (Fraser) dispensed with printing *in hoc statu*. On the 17th May the First Division of the Court refused the appellant's motion to dispense with printing; and on the 31st May the print of the appeal was lodged.

Thereafter the defender and respondent moved the Court to dismiss the appeal on the ground that it must be held as abandoned, as the terms of the A.S., March 10th, 1870, sec. 3, sub-sec. 2, had not been complied with. It was contended that the fourteen days began to run from the 25th April, that they ran until the 2d May, that they recommenced to run on the 17th May, and that consequently lodging the print of appeal on the 31st May was too late.

The sub-section provides that "the appellant shall, during vacation, within fourteen days after the process has been received by the clerk of Court, deposit with the said clerk a print of the note of appeal, record, interlocutors, and proof, if any, unless, within eight days after the process has been received by the clerk, he shall have obtained from the Lord Ordinary officiating on the Bills an interlocutor dispensing with printing in whole or in part, for which purpose the assistant-clerk shall, if required, lay the process before the Lord Ordinary on the Bills; and in such case, the appellant shall deposit with the clerk, as aforesaid, a print of those papers, the printing whereof has not been dispensed with, and, if printing has been in whole dispensed with, shall lodge with the said clerk a manuscript copy of the note of appeal; and the appellant shall, upon the box-day or sederunt-day next following the deposit of such print with the clerk, box copies of the same to the Court; or, if printing has been in whole dispensed with, shall furnish to the clerk of the Lord President of the Division a manuscript copy of the note of appeal; and if the appellant shall fail, within the said period of fourteen days, to deposit with the clerk of Court, as aforesaid, a print of the papers required, or to lodge with him a manuscript copy of the note of appeal, as the case may be, or to box or furnish the same as aforesaid, on the box-day or sederunt-day next thereafter, he shall be held to have abandoned his appeal, and shall not be entitled to insist therein, except upon being reponed, as hereinafter provided."

It was argued for the pursuer and appellant that the sub-section did not apply to the case where the dispensation with printing was *in hoc statu*, and that the fourteen days ran from the 17th of May, and that consequently the print of appeal was timeously lodged on the 31st of May.

At advising—

Lord President—It appears to me that the 2d sub-section of section 3 of the Act of Sederunt, 10th March, 1870, does not apply where the