here—*Brunton* v. *Angus*, 1822, 2 S. 61; *Ritchie* v. *Little*, 1836, 14 S. 216; *Fife* v. *Innes*, 1860, 23 D. 30.

Argued for the defenders—(1) There were here averments of two contracts—service and loan—neither could be proved except by writ or oath. If there was only one contract, it was innominate and unusual. (2) The triennial prescription applied—Fraser on Master and Servant, p. 155; *Scott* v. *Gregory's Trustees*, 1832, 10 S. 375; *Smellie* v. *Cochrane*, 1835, 13 S. 544; *Smellie* v. *Miller*, 1835, 14 S. 12; *White* v. *Caledonian Railway Company*, 1868, 6 Macph. 415 (L. P. Inglis, at p. 419), 5 S.L.R. 250.

At advising—

LORD PRESIDENT—The question which we have now to decide is whether the pursuer is entitled to a proof *prout de jure* of his averments, or whether he is by force of the Act 1579, cap. 83, limited to a proof by writ or oath, and the answer to this question in my judgment depends upon whether in his record he avers a contract of service and nothing else, or whether he alleges a contract under which he is entitled not only to specified remuneration for his services but also to a share of the profits of the business, in the conduct of which he was associated with his brother the defender. If the contract alleged is one of service only, the Act of 1579, cap. 83, will, in my view, apply, but if it is either an innominate contract containing only simple provisions, or is partly a contract of service and partly a contract of partnership, I think that the restriction on the mode of proof introduced by the Act just mentioned will not apply.

[*His Lordship narrated the averments of parties, ut supra*].

Such being the nature of the averments in the record, it appears to me that the pursuer alleges not merely such a contract that the restriction on the mode of proof introduced by the Act of 1579, cap. 83, would apply to it, but a complex contract implying partnership as well as service, and that consequently the Act of 1579, cap. 83, should not apply to the case.

With reference to the defenders' contention that this restriction applies because the contract is an innominate one, I may refer to the case of *Forbes* v. *Caird*, 4 R. 1141, in which it was held that the proof of an innominate contract is not restricted to writ or oath unless the stipulations which it contains are of an extraordinary character, and I see nothing extraordinary in the stipulations of the contract alleged by the pursuer.

I am therefore of opinion that the Lord Ordinary's interlocutor of 14th November 1903 should be recalled, except in so far as it repels the first plea-in-law for the pursuer, and the first, second, and third pleas-in-law for the defenders, and that before further answer a proof should be allowed to the parties of their respective averments, and to the pursuer a conjunct probation.

LORD M'LAREN—I also concur, and I shall only add that in my view the character of the proof required will be the same whether the agreement in question amounts to a proper constitution of a partnership or whether it is only an agreement to share profits, without giving the pursuer the powers of a partner. Under the Act of 1579 the triennial prescription was applied to merchants' compts, servants' fees, and the like, which are a class of debts in which long credit is not usually given. But the agreement alleged here is for a share of profits, under an arrangement by which the profits are not paid when due, but are placed to the credit of the manager in the books of the firm, and are held up for a time. Now, under such an arrangement—by no means an uncommon arrangement in commercial relationships—it is easy to see how three years might elapse without a payment being made, and without negligence being imputed to the party in the assertion of his claim. I am unable to hold that a pursuer must be limited to a proof by writ or oath when, under such circumstances as these, the triennial period has elapsed without fault or remissness on his part. I am of opinion that this agreement does not fall within the scope of the Triennial Prescription Act, but is one of those commercial contracts to which the Act of 1579 was not intended to apply.

LORD ADAM and LORD KINNEAR concurred.

The Court pronounced this interlocutor—

"Recal the said interlocutor: Of new repel the first plea-in-law for the pursuer, and the first, second, and third pleas-in-law for the defenders: And before further answer allow parties a proof of their respective averments, and to the pursuer a conjunct probation; and decern."

Counsel for the Pursuer—Clyde, K.C.—MacRobert. Agents—Pringle & Clay, W.S.

Counsel for the Defenders—Campbell, K.C.—M'Lennan. Agents—R. R. Simpson & Lawson, W.S.

Friday, February 26.

OUTER HOUSE.

[Lord Low, Ordinary.

ARMITAGE'S TRUSTEES *v.* ARMITAGE AND OTHERS.

Domicile—Abandonment of Domicile of Origin—Acquisition of New Domicile.

Circumstances in which *held* that a person abandoned his domicile of origin in England and acquired *animo et facto* a domicile in Scotland.

The facts of this case are fully set forth in the opinion of the Lord Ordinary.

Opinion.—"This is a multiplepoinding brought by the trustees of the deceased Dr Walter Stanley Armitage, who died on 2nd June 1902, for distribution and payment of the residue of his estate.

"The claimants are (1) the trustees, who claim to hold and administer the estate; (2) Dr Armitage's widow, claiming one-third of the estate as her *jus relictæ;* and (3) the curator *ad litem* to his two children, Margaret and Frederick, both in minority, who claims the estate on the assumption that there is no *jus relictæ*, or alternatively, two-thirds of the estate if there is *jus relictæ.*

"The main question is whether the widow is entitled to *jus relictæ.* The competition is between her and her children, and between them only; and it depends solely on the domicile of Dr Armitage when he died.

"An elaborate proof on that point has been led, and I have been asked to give a judgment confined in the meantime to the question of domicile—a question which I consider extremely narrow.

"Dr Armitage lived an uneventful life, and the incidents in it were few and unimportant, except for one untoward and unhappy event which seems to have had the effect of entirely disconnecting the later from the earlier part of his life; but I do not think it had much effect on Dr Armitage's domicile.

"Dr Armitage was born in Ireland in 1861; his father was undoubtedly a domiciled Englishman; and he spent the last twenty years of his life in Scotland, and he died there in 1902. His birth in Ireland seems to have been regarded as in a manner accidental, and neither party contended for an Irish domicile, and I see no reason to doubt that they were right. The question is between an English and Scotch domicile, and as there is no doubt that his father was an Englishman, and therefore that his domicile of origin was English, the question or questions come to be whether Dr Stanley Armitage had abandoned or lost his English domicile of origin and had acquired a Scotch domicile.

"The facts, as I gather them, are as follows:—

"Dr Armitage, father of Dr Stanley Armitage, seems to have been a person of some note. He belonged to a family which had settled in the neighbourhood of Leeds, and he spent his life chiefly in London. He was a medical practitioner, and I think followed his profession in London; but was chiefly distinguished for his charitable work among the blind, in whom he took a deep interest. The mother of Dr Stanley Armitage was an Englishwoman, but she seems to have had, or supposed she had, a Scotch ancestry. She succeeded to a property called Noan in Ireland, near Tipperary, which she and her husband frequently visited; and on the occasion of one of their visits to Noan Dr Stanley Armitage was born there in 1861. He spent a short part of his childhood at Noan, and afterwards with his parents in London. The proof says little about his early life except that he was educated in Derbyshire and at Harrow. In or about 1881 he went to Edinburgh in order to attend the medical classes there. It does not appear that he had any relations in Edinburgh, and the reason of his preference, or his father's preference, of Edinburgh to London is not quite clear. There is a suggestion that he thought the London examinations harder. It seems that in or about 1885 he sailed with a whaler—the 'Cornwallis'—to, I think, Davis Straits along with the witness Edwards, who was mate, but that was only an incident illustrative of his somewhat unsettled character. He duly passed at Edinburgh as a Fellow of the Royal College of Surgeons. There is little evidence about his college life. In 1887 he married an English lady, the claimant Mrs Armitage. The marriage was in England, and a settlement was executed, dated the 8th August 1887. The deed is in the English form, and Dr Stanley Armitage is designed in it 'of 34 Cambridge Square, London.' At or about that time he spent a short time in Middlesex Hospital, but it is not clear whether that was before or after his marriage. After his marriage he and his wife lived together in Findhorn Place, Edinburgh, and afterwards for some years in Ravelston Place. His daughter Margaret was born in England in 1888, and his son Frederick in Scotland in 1889. These were his only children, and they are represented in this case by their curator *ad litem* Mr Clay.

"Dr Armitage's idea was to practise as a specialist. To what particular specialty he meant to devote himself does not clearly appear, but for a short time he acted as the assistant of Dr M'Bride. I suppose he tried to get practice, but there is no trace of any patient in the proof.

"Up to this time Dr Armitage's means had been somewhat narrow. But in 1890 his father died leaving large estates, but the bequest to his son was burdened with a liferent of it to his mother, and so did not admit of immediate enjoyment. His father left him besides an annuity of £1000.

"In 1890 and 1891 he executed two trust-dispositions and settlements. Both were framed in the Scotch form, and both of them bore that *jus relictæ* and legitim were discharged. These deeds were subsequently revoked. In May 1890 Dr Armitage purchased a dwelling-house in Ravelston Park, in which he afterwards resided—an act of some significance.

"In 1893 he joined the Northern Club in Edinburgh, and about that time he leased, it is said, a partridge shooting at Tranent.

"In 1892 (a circumstance not without consequence) he joined the Southampton Yachting Club. I do not find clearly whether he was addicted to yachting before this. But he seems to have become passionately fond of it afterwards, and from 1892 to 1895 he was frequently living at the Dolphin Hotel, Southampton, where he engaged in yacht racing; and so ardently did he pursue that sport that some time afterwards he was elected (so Miss Rowe says) Rear Commodore of the Royal Southampton Club. Dr Armitage seems to have been at all times fond of athletic pursuits, but his favourite pastime was always yachting—a taste which has to be taken into account because it took him frequently to England although only for that sport. He never had a house in England or a Club in

London, and seems never to have visited England for any other purpose than for yachting in the Solent.

"In 1896 the event occurred which altered entirely the tenor and character of his life. He left his wife, his family, and his house in Edinburgh, along with the witness Miss Rowe. Whether he had any differences with his wife does not appear, at least not clearly or certainly. The rupture with Mrs Armitage was final; terms of separation were afterwards adjusted, and he lived with Miss Rowe for the rest of his life. Miss Rowe was examined as a witness, but special allusions to her relations with Dr Armitage, except so far as they bore on his domicile, were, with much propriety, carefully avoided.

"When they left Edinburgh they visited the Channel Islands, and afterwards went for a short time to France.

"A document belonging to this period has been founded on by the curator *ad litem*, which it may be right here to mention. It is called an Extrait du Registre D'Immatriculation, which embodies a declaration made before the Maire at Cartaret, a town in the Department of La Manche. In this document, opposite the word 'Nationalité,' there is written 'Irlandais,' which no doubt expresses the information furnished to the Maire by Dr Armitage. But it is not of much consequence, because it relates to nationality, not domicile, and may have been intended to express merely the fact of his birth in Ireland. It does not, according to its natural construction, relate to domicile; and if it could be held to do so, the reference must be to an Irish domicile, for which neither party contends.

"Returning from France, Dr Armitage and Miss Rowe took a lease of a house at Wormit, a small and rather secluded village on the south bank of the Tay, near Newport, where they resided. In or about 1897 he bought the house in which he lived, or rather he bought two adjoining houses, and in one of them he stored his books and medical and other scientific instruments, and in the other he and Miss Rowe resided. When he bought the house at Wormit, he sold the house in Ravelston Park, his wife and children having gone to England. In June 1897, or about that date, he received a legacy of £10,000; and in November 1901 his mother died, and the large funds which he had inherited from his father were relieved of her liferent. During his residence at Wormit his means seem to have been ample, and he then followed no profession. What his manner of life was during his residence at Wormit does not distinctly appear. It was apparently retired and secluded, as probably in the circumstances was inevitable. But he joined a Club (the New Club) in Dundee. Apparently, however, he had few acquaintances either in Dundee or at Wormit.

"He afterwards conveyed the house at Wormit to Miss Rowe.

"He seems never to have been on cordial or even friendly terms with his mother, and latterly his liaison with Miss Rowe widened the breach between them, so much so that she left the property of Noan to his brother.

"About this time his health appears to have failed, and he died at Wormit on the 22nd June 1902, at the age of forty-one. It does not appear from the evidence of what illness he died.

"These are the chief incidents in this case. They are very few, and not very important or significant. The proof discloses little or nothing of the character or habits of Dr Armitage which bear materially on the question. I judge him to have been a man of some culture, but somewhat excitable and unsteady, addicted to athletics and sport, but chiefly to yachting. After his elopement with Miss Rowe certain letters passed between his wife and him, much to her credit, and not wholly to his discredit, but I do not think they bear on this question.

"There is not much important evidence about the views expressed by Dr Armitage himself. He does not seem to have expressed himself deliberately on the subject; but the balance of the evidence is to the effect that he preferred Scotland to England or Ireland, and meant to remain there. But I think there is nothing in the proof about his personal views which can assist much in the solution of the question, except a part of the evidence of Miss Rowe, which requires special attention. So much is this so, that it does not seem to shift the difficulty to consider, or rather conjecture, what Dr Armitage would have said if the question had arisen during his life. The passage in Miss Rowe's evidence alluded to is this—she deponed that Dr Armitage said that Mr Curr (who is a trustee and as such a claimant) was keen about him making a Scotch will, and had said that if he, Dr Armitage, did so, it would make him a domiciled Scotchman, but (so Miss Rowe depones Dr Armitage to have said) 'I am not a domiciled Scotchman, and I do not want to be a domiciled Scotchman;' and further on in her evidence Miss Rowe represents Dr Armitage as having said, 'Unless Mr Curr is very much on her side I do not see what he is urging me to do that for; I cannot see any advantage to me, rather the opposite.' 'Dr Armitage,' Miss Rowe continues, 'knew that if he was a domiciled Scotchman his widow would have certain rights, and he refused to make a Scotch will lest it should give the smallest colour to that.'

"I have felt great difficulty in determining what weight should be given to this evidence. I have no adverse comment to make on Miss Rowe's evidence. She had no interest in the litigation, and gave her evidence apparently with candour. I think indeed that she seemed (as was natural) unfavourably disposed to Mrs Armitage. Her evidence is quite uncorroborated, and it might have received some, if not complete, corroboration from Mr Curr, who was examined as a witness for Mrs Armitage, but he was not examined on the subject by the curator *ad litem;* and Miss Rowe's evidence is not very probable, because it is not easy to understand why

he — Dr Armitage — should object to a Scotch will, seeing that in point of fact he had in 1890 and 1891 executed two trust deeds, both of them in the Scotch form. These deeds, of course, contained no provision in favour of Miss Rowe. They were revoked; and his last will, dated 15th June 1897, which regulates his succession, is an English deed.

"Further, one cannot be certain about the absolute accuracy of Miss Rowe's evidence as to the words used; nor whether these words expressed Dr Armitage's settled intention or merely a passing mood.

"The more important of the above facts, in their bearing on domicile, seem to be these—(1) the English domicile of origin; (2) the residence in Edinburgh after 1881; (3) the marriage in England in 1887; (4) the death of Dr Armitage and the succession of Dr Stanley Armitage in 1890; (5) the purchase of a house in Ravelston Park in 1890; (6) his frequent visits to Southampton; (7) his elopement with Miss Rowe, the purchase of a house at Wormit, and his residence there with Miss Rowe until his death at Wormit in 1902.

"The case presents unusual features, which distinguish it from most cases of domicile, and make it difficult to regard any of them as a precedent. The most notable of these exceptional features seem to me to be these—(1) the paucity of the events and the insignificance of most of them; (2) the slightness of connection with the domicile of origin; (3) the desertion of his wife and family when he left with Miss Rowe, by which his home was broken up and the whole course of his life was altered; and (4) that this is not a case of double residence, but of a Scotch residence only.

"Cases about domicile are sometimes difficult and obscure, and I think it is difficult satisfactorily or wholly to reconcile all the decisions. I venture to think that this obscurity arises very much from the uncertainty and the differences — often slight, but important—in the various definitions or descriptions which have been offered of the term domicile. The propositions that there is a presumption, generally strong, in favour of the continuance of a domicile of origin, and that a domicile cannot be chosen or changed by bare residence, or except *animo* as well as *facto*, may be assumed as elementary; and I think there is no difficulty about the meaning of *factum;* but I think that can hardly be affirmed about the word *animus*. It means intention, no doubt, but intention about what? There is a notable *dictum* by Lord Curriehill in *Donaldson* v. *M'Lure*, December 18, 1857, 20 D. 307, which seems to imply that the intention must be consciously to adopt all the changes of legal rights consequent on the change of domicile, and which, if that be his meaning (and I think it is, for his Lordship speaks of intentions and not of consequences), I should feel much difficulty in following.

"It appears to me on the whole that the definitions which can be most safely relied on are those given by Lord Chancellor Cairns in *Bell* v. *Kennedy*, 6 Macph. (H.L.) 69, 71, 5 S.L.R. 566, and by Lord Chancellor Hatherley, Lord Chelmsford, and Lord Westbury in *Udny* v. *Udny*, June 3, 1869, 7 Macph. (H.L.) 89, 99, and 97. Lord Cairns defines the question arising in such cases thus—'whether a party had determined to make and had made Scotland his home with the intention of establishing himself and his family there, and ending his life in the country.'

"Lord Chancellor Hatherley says:—'A change of domicile can be effected *animo et facto*, that is to say, by the choice of another domicile evidenced by residence;' and Lord Westbury in the same case expresses himself thus—'Domicile of choice is a conclusion or inference which the law derives from the fact of a man fixing voluntarily his sole or chief residence in a particular place with the unlimited intention of continuing to reside there.' I understand that by the somewhat peculiar expression 'unlimited intention' was meant an intention to reside without any limit in the intention as to the time or condition of residence.

"I think that these definitions may be taken to be reliable, and that no serious doubt has been thrown on them by subsequent cases.

"The question therefore is, whether, looking to the facts and features of this case in the light of these *dicta* and definitions, it has been shown that Dr Armitage abandoned his English domicile of origin and chose a Scottish domicile. The considerations on either side of that question are not unequally balanced, and I think it necessary to consider how this matter stood at more than one period of Dr Armitage's life.

"First of all he was by origin a domiciled Englishman. He did not, in my opinion, lose that domicile by merely attending medical classes and living in Edinburgh in order to do so. He took a degree, indeed, as Fellow of the Royal College of Surgeons; and that is no doubt a point in favour of a Scotch domicile; but it does not seem sufficient of itself to change the domicile.

"The next important point in time is 1887, when he married, and I hold that at that time his English domicile continued. That may not be a clear point, but considering the English marriage and English marriage-contract, I am of opinion that that was so. That is, of course, a point of great importance, for it carries the inference that Mrs Armitage did not by her marriage acquire a right to *jus relictæ*; and the question is whether through the acts of her husband she acquired that right afterwards.

"The next important point of time is 1896, just before he deserted his wife and family. What would have been held his domicile had the question arisen then? I think this the most vital and most difficult question in the case. By that time he had resided in Scotland for fifteen years voluntarily, without any special reason likely to deter him from returning to England. But he did not choose to return. He had lived for part of that time in his own house which he had bought, and he

had no other house. The condition expressed by the word *factum* has been certainly and amply implemented. What about the *animus?*

"The evidence on this point is more defective than it need have been. For instance, I do not observe that it is proved that he had a door plate announcing his profession or that his name was entered in the directory as a surgeon. But still there was residence, to which a note of permanence is given by the purchase of a house. This purchase was more than the mere acquisition of Scotch heritage. That would have been something, but in this case there was the purchase of a house for residence in it. It is true that Dr Armitage does not seem to have had any duties of a permanent sort, nor seemingly any real business or any permanent interests which bound him to Edinburgh. Still it was the only house he had, and he was a married man with a wife and family. Add to all this that he executed two deeds in the Scotch form—in which he seemed almost to recognise his Scotch domicile, because he makes provision for legitim and *jus relictæ;* altogether, I think he must have fulfilled those conditions which, according to the *dicta* quoted, are necessary for the acquisition and change of a domicile.

"At this point comes in the consideration that his ties to England were unusually slight. It is true that every man's domicile of origin comes to him in much the same way; still I think it may be said that one domicile of origin is stronger or weaker than another, and more or less difficult to break. Dr Armitage had no property or business affairs there, and I think his relations towards his parents were not such as to increase much his ties to England. On the whole I have come to the conclusion that before he left Edinburgh with Miss Rowe his domicile was Scotch.

"What is the effect of that conclusion? The fact that he deserted his wife and family could not of itself destroy his domicile. Had he left Scotland for a considerable time the Scotch domicile might have been lost. But it is to be remembered that his domicile was not an Edinburgh but a Scotch domicile; and so long as he remained in Scotland it is not easy to see how his Scotch domicile could be lost. Had the question been whether he acquired a domicile by his life with Miss Rowe at Wormit, the question might have been different and more difficult than it is. But if I am right in thinking that his domicile was Scotch when he left Edinburgh, then the question is a question about retaining and not a question about acquiring or changing a domicile.

"No doubt that domicile might have been abandoned, but I cannot think that that happened. The *factum* would have been wanting; although there might not be wholly awanting indications of intention favouring an English domicile, such as the execution of an English will and the evidence of Miss Rowe, which has been adverted to. But it seems to me that there was nothing in the life of Dr Armitage after 1896 which could effect a loss or abandonment of his Scotch domicile if it was acquired.

"On the whole matter I have come to the conclusion that Dr Armitage died domiciled in Scotland.

"The authorities referred to in the argument were—*Lowndes* v. *Brown Douglas*, July 18, 1862, 24 D. 1391; *Udny* v. *Udny*, June 3, 1869, 7 Macph. (H.L.) 89; *Dombrowizki* v. *Dombrowizki*, July 16, 1895, 22 R. 906, 32 S.L.R. 681; *Fairbairn* v. *Neville*, November 30, 1897, 25 R. 192, 35 S.L.R. 178; and *Brooks* v. *Brooks' Trustees*, July 19, 1902, 4 F. 1014, 39 S.L.R. 816. In *Brooks* v. *Brooks' Trustees* the question was, as in this case, whether a man had lost his English domicile of origin and had acquired a Scotch domicile by residence in Scotland; and the decision was that he had retained his English domicile notwithstanding his residence in Scotland. That was a case of great importance, but it differed from the present case in a most material point. In this case Dr Armitage had no tie to England, except that until 1890 his parents, and until 1900 his mother, lived there; but Sir William Brooks retained property and interests of great magnitude and importance in England, and had a dwelling-house in Manchester and another in London, ready at any time to receive him; and it was on these accounts that it was held that the English domicile had not been abandoned. In *Fairbairn* v. *Neville*, *supra*, one of the individuals whose domicile was in question was held to have lost his English domicile of origin and to have acquired a domicile in Scotland by residence there, although he had a property in Westmoreland which he visited yearly and in which he permitted his sisters to live. He had come to Scotland in 1845, having obtained an appointment of a permanent character in the Edinburgh Post Office, and it was held that in 1863 his domicile was Scotch. He died in 1895, and the question of his domicile in 1863 arose afterwards, but probably it was of consequence in regard to that question that he had continued to reside in Portobello, where he had bought a house. It seems to me that *Fairbairn* v. *Neville* is more like this case than *Brooks* is, and indeed that it is a close authority. I do not think it necessary to refer at greater length to the other authorities. But I do not think any of them are adverse to the conclusion at which I have arrived, that Dr Armitage had when he died lost his English domicile and acquired a Scotch domicile."

The Lord Ordinary pronounced the following interlocutor:—"Finds (1) that the deceased Walter Stanley Armitage was born in 1861; (2) that his domicile of origin was England; (3) that he came to Edinburgh in 1881, and attended the medical classes in the University there; (4) that he married the claimant Mrs Ellen Armitage Playne or Armitage in 1887; (5) that thereafter he resided in Edinburgh until 1896; (6) that he purchased a house in Edinburgh in or about 1890, and lived in it with his wife and

family until 1896; (7) that he then left his wife, family, and house; and (8) thereafter lived in the village of Wormit in Fifeshire; (9) that he bought a house there and lived in it until his death in 1902; (10) that in 1896 he had abandoned his English domicile and had acquired *animo et facto* a domicile in Scotland; (11) that he retained that domicile until his death in 1902, and was therefore at his death a domiciled Scotchman: Appoints the cause to be enrolled for further procedure: Grants leave to reclaim."

A reclaiming-note was lodged, but the case was afterwards settled.

Counsel for Pursuers and Real Raisers, and for Claimants, Mr S. Armitage's Trustees—M'Lennan. Agent—J. Murray Lawson, S.S.C.

Counsel for Mrs Armitage—Guthrie, K.C. —Chree. Agents—A. P. Purves & Aitken, W.S.

Counsel for Curator *ad litem* to Margaret and Frederick Armitage—Clyde, K.C.—M'Clure. Agents—Pringle & Clay, W.S.

Saturday, May 14.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

LEE *v.* RITCHIE.

Reparation—Slander—Privilege—Malice—Relevancy—Master and Servant.

In an action of damages for slander the pursuer averred that while she was performing her duties in the employment of a firm, in premises at which the defender was manager, the defender ordered her to leave the premises and dismissed her from her situation; that the defender, on being asked by the pursuer for an explanation, said—"It is a clear case of theft against you. Clear out at once or I will fling you out of the door, as the theft is quite clear against you"; and that these statements were false, and were uttered by the defender maliciously and without probable or any cause.

The defender pleaded that the action was irrelevant, in respect that, the occasion being privileged, it was necessary for the pursuer to aver facts and circumstances inferring malice, and that she had not done so.

The Court *repelled* the plea to relevancy, holding that the positive and reckless nature of the words, used without due inquiry, was sufficient to infer malice.

Kate Lee, 32 Lancefield Street, Anderston, Glasgow, brought this action against William Couper Ritchie, wine and spirit merchant, The Mine House, Bridge of Allan, concluding for £200 as damages for slander.

The defender was the manager of David Sandeman & Son, Limited, wine and spirit merchants, 53 Miller Street, Glasgow.

The pursuer entered the employment of David Sandeman & Son, Limited, in May 1903. Her duties were to wash bottles and sweep out and dust the counting-house.

The pursuer averred—"(Cond. 3) On or about the morning of 17th November 1903 the pursuer and another girl named Maggie M'Kinlay or Rankine, who was also in the employment of the said David Sandeman & Son, Limited, were performing their usual duties in the premises of the said David Sandeman & Son, Limited . . . While they were so doing the defender ordered them to leave the premises, and dismissed them from their situations. The pursuer was taken completely by surprise, as there was no ground for her being dismissed. She asked the defender for an explanation, and he, speaking to the pursuer and the said Maggie M'Kinlay or Rankine, said 'It is a clear case of theft against you.' Again, he said to the pursuer and the said Maggie M'Kinlay or Rankine, 'Clear out at once or I will fling you out of the door, as the theft is quite clear against you.' The said Maggie M'Kinlay or Rankin repudiated the defender's accusation, and requested him to fetch a policeman to investigate, but the defender would not do so. The pursuer and the said Maggie M'Kinlay or Rankine then left the premises and their situations. They went and reported what had occurred to the police authorities, who advised them to consult a law-agent. The defender refused to pay the pursuer any wages when dismissing her, but on 24th November she received from the said Messrs Sandeman & Son, Limited, the sum of 10s. of wages. (Cond. 4) The said statements are of and concerning the pursuer, are false and calumnious, and were uttered by the defender maliciously and without probable or any cause. (Cond. 5) The defender repeated to the said David Sandeman & Son, Limited, that the pursuer had been guilty of theft, and the result is that the pursuer, although her character had hitherto been blameless, has been unable to get a certificate of character from the said David Sandeman & Son, Limited. She has thus been unable to obtain another situation."

The defender admitted that while the pursuer and Maggie M'Kinlay or Rankine were at their work on 17th November 1903, he dismissed them from their situations and ordered them to leave the premises; and that it was in answer to a request made by the pursuer for an explanation that what was said by the defender as to a suspicion of theft was said. *Quoad ultra* the defender denied the pursuer's averments and averred that on said 17th November 1903 it was reported to him by one of the clerks that the pursuer had been in a state of intoxication on the day previous, and that, after the pursuer and the said Maggie M'Kinlay or Rankine had left for the day, several bottles full of liquor, belonging to David Sandeman & Sons, Limited, had been found concealed among the empty bottles which the pursuer and the said Maggie M'Kinlay or Rankine had been washing. The defender made further inquiry into the matter, and came to the