writ of the defenders' company. Taking all these documents together I have no hesitation in saying that in my view I regard this loan as proved. If that is so, there is an end of the action.

LORD ADAM and LORD KINNEAR concurred.

LORD M'LAREN having heard only part of the argument gave no opinion.

The Court adhered.

Counsel for the Pursuers and Respondents—Wilson, K.C.—Moncrieff. Agents—J. B. Douglas & Mitchell, W.S.

Counsel for the Defenders and Appellants—Fleming, K.C.—Pitman. Agents—J. & F. Anderson, W.S.

Wednesday, July 19.

FIRST DIVISION.

[Lord Dundas, Ordinary.

BUCHANAN *v.* CORPORATION OF CITY OF GLASGOW.

Reparation — Slander — Institution of Wrongous Prosecution — Privilege — Malice — Public Officer.

In an action of damages brought against a corporation, the pursuer averred that two inspectors, appointed by the corporation to see that the bye-laws made under its Tramways Acts were observed, (1) had in a tramcar and before a friend charged him with having committed a contravention of the bye-laws a few days previously, and having at that time given a false name, and (2) had, although the pursuer had when so charged established his identity and so shown them to be in error, reported the matter to the police with a view to and with the result of a prosecution being instituted. The pursuer proposed two issues, and inserted therein the word "maliciously," but he averred no facts and circumstances from which malice could be inferred. The Lord Ordinary having allowed the second issue, the defenders reclaimed.

Held that, as there were no facts and circumstances averred from which to infer a malicious motive, there was no issuable matter on record.

James Buchanan, 7 West George Street, Glasgow, brought an action of damages against the Corporation of the City of Glasgow to recover the sum of £250. The pursuer averred—"(Cond. 1) . . . The defenders are the owners of and have the management and control of the tramway system in the city of Glasgow, and are the employers of the officials engaged in connection with that system. The defenders have made bye-laws under the powers conferred by their Tramways Acts prohibiting, *inter alia*, passengers on tramcars from spitting in or upon said cars, and enacting that persons guilty of said acts shall be liable to fine or imprisonment, and they have in their employment inspectors charged with the duty, *inter alia*, of seeing that said bye-laws are not infringed, and that persons contravening them are proceeded against. (Cond. 2) On Friday, 14th April 1905, the pursuer was travelling on a tramway car belonging to the defenders. . . . While he was on said car two tramcar inspectors . . . whose names are unknown to the pursuer, and who were in the employment of the defenders, and entrusted by them with the duty above described in connection with said bye-laws, entered the said car and falsely and calumniously charged the pursuer with having committed the said offence of spitting in or upon a tramcar belonging to the defenders in New City Road, Glasgow, on 10th April 1905, and further stated that he had been then charged with doing so, and that when so charged he had given a false name and address, or used words of similar meaning and import. Said charge so made against pursuer was false and calumnious and illegal, and said statements were made openly in said car in the presence and hearing of the pursuer and of William Gibb, Houston Street, Glasgow, and were uttered maliciously and without probable cause. The said inspectors before making said charge had called a policeman, and brought him on to said car for the purpose of arresting the pursuer. They made the said charge and the said statements against the pursuer in the presence of said policeman, and then at once requested the policeman to arrest pursuer for said pretended offence said to have been committed on 10th April. The said action on the part of the inspectors was entirely unwarranted, and was wrongful and illegal. In making said charge against pursuer, and said statements in regard to him, and in ordering pursuer's arrest, said inspectors were acting within the scope of their employment as defenders' servants and in the interest of the defenders. The pursuer assured the said inspectors and policeman, and it is the fact, that he was entirely innocent, and that the inspectors had made a mistake, but notwithstanding pursuer's explanations the inspectors persisted in the said charge and the said assertions against him. Ultimately, when pursuer exhibited his diary and season ticket, and when his friend the said William Gibb also furnished the inspectors with credentials, the pursuer was allowed to go. . . . (Cond. 3) Notwithstanding the said explanations given on said date, 14th April 1905, to said inspectors by and on behalf of the pursuer, the said inspectors thereafter unwarrantably, wrongfully, and illegally reported to the police, or caused a report to be made to the police (on or about, it is believed and averred, 21st April 1905), that the pursuer had been guilty of the said offence on 10th April, with a view to pursuer being prosecuted and fined or imprisoned. In making or causing said report to be made to the police said inspectors were acting within the scope of their em-

ployment and in the interests of the defenders. Said charge and report to the police were wrongful and illegal, and were made falsely, calumniously, maliciously, and without probable cause. In consequence of said charge and report having been made to the police, a complaint that the pursuer had been guilty of said offence whereby he was liable to a penalty. . . . was on 22nd April 1905 served upon him. The case was called on 26th April at the Northern Police Court before one of the Glasgow police magistrates, when the pursuer was in attendance with his agent and seven witnesses to prove his innocence of said charge. The case, however, did not go to trial, the diet having been deserted *pro loco et tempore* on the motion of the prosecutor."

He pleaded, *inter alia*—"(2) The said inspectors, while acting within the scope of their employment as defenders' servants, having falsely and calumniously, maliciously and without probable cause, charged the pursuer to the police with the commission of said offence, in consequence whereof criminal proceedings were taken against him, the defenders are liable to the pursuer in reparation."

The defenders pleaded, *inter alia*—"(1) No relevant case. (3) Privilege. (4) The charge complained of having been made by the said inspectors *bona fide* and with probable cause, and in the performance of their duty to the public, *et separatim* the said charge being true and well founded, the defenders should be assoilzied, with expenses."

The pursuer proposed two issues.

On 24th June 1905 the Lord Ordinary pronounced the following interlocutor—"Disallows the first issue proposed by the pursuer, approves of the second issue proposed by him, as amended and as now authenticated, and appoints the same to be the issue for the trial of the cause."

Opinion.—"The pursuer in this action sues the Corporation of the City of Glasgow for damages. The Corporation are the owners and managers of the tramway system in that city, and make bye-laws under their statutory powers, and employ inspectors whose duty it is to see that these bye-laws are not contravened, or that any contravener is duly proceeded against. The present case is based upon alleged illegal actings by two of these inspectors in regard to the pursuer. His first complaint, upon which the first of his proposed issues is based, is that while he was travelling on 14th April 1905 upon one of the defenders' tramcars the said inspectors, 'who were in the employment of the defenders, and entrusted by them with the duty above described in connection with said bye-laws,' entered the car and charged the pursuer with having, four days previously, contravened one of the bye-laws, and having then given a false name and address. It is averred that they called a policeman for the purpose of arresting the pursuer, but after he and his friend Mr Gibb had satisfied the inspectors as to his identity and address 'the pursuer was allowed to go.' The pursuer avers that the charge so made against him was false, and that the inspectors' statements, made openly in presence of Mr Gibb, 'were uttered maliciously and without probable cause.' The defenders' counsel urged that these averments were insufficient to ground an issue, because beyond the mere introduction of the word 'maliciously' the pursuer states no facts or circumstances from which the Court or a jury could infer malice upon the part of the inspectors. The pursuer's counsel admitted, and I think rightly, that his case upon this head was really one of damages for slander, and that if an issue were granted it should be in the usual form adopted in an action for slander, and that, as his own record disclosed a case of privilege, malice would have to enter the issue. The general law applicable to the matter was laid down in the recent case of *Macdonald*, 3 Fr. 1082, when the Lord President said—'It appears to me that the general rule to be derived from the decisions as to the circumstances under which the pursuer of an action of damages for defamation is bound to allege facts inferring malice, in addition to alleging that the statement complained of was made maliciously, is very well stated by Lord Kyllachy in the case of *Sheriff* v. *Denholm*, 5 S.L.T. 309, in which his Lordship said that the rule which requires a statement of such facts and circumstances must now be taken to apply generally "to all cases where a defamatory statement is made in pursuance of any definite and special duty, whether to the public or to an individual, including any duty owed to the aggrieved person himself." It might be proper to add to this statement of the rule the words, "or in the exercise of any right."' The general law so laid down by the Lord President was accepted and approved by the other learned Judges, though the Court decided that, in the case then under consideration, the special circumstances averred justified the granting of an issue. The case of *Macdonald* was followed by that of *Lee*, 6 Fr. 642, when the Court held that the pursuer's averments were or might be sufficient to justify an inference of malice from the defender's alleged hastiness and recklessness. But in the present case I confess that I am unable to find any averments from which a jury would be justified in inferring that the inspectors—assuming, as I must assume upon relevancy, that they did and said all that the pursuer alleges—were acting, not in discharge of their duty, but from some illegitimate motive, and without any reasonable grounds of belief. I think, therefore, that the first of the proposed issues cannot be allowed, either as it stands or in the form of issue usually granted upon relevant allegations of slander.

"The second issue proposed by the pursuer seems to stand in a somewhat different position. The averments in support of it are contained in the third article of the condescendence, which sets forth that, notwithstanding what took place, as above stated, upon 14th April 1905, the said inspectors, on or about 21st April, reported, or caused to be reported, to the police that the pursuer had

been guilty of the said contravention of the statutory bye-law, with a view to his being prosecuted, and fined or imprisoned; that, in consequence, a complaint was served upon the pursuer on 22nd April; that the case was called on 26th April at the Northern Police Court in Glasgow, when the pursuer was in attendance with his agent, and seven witnesses to prove his innocence; and that the case did not go to trial, the diet having been deserted *pro loco et tempore* by the prosecutor. The pursuer alleges that the report to the police was not only falsely made, but also maliciously and without probable cause. The defenders' counsel argued that all these allegations, assuming them to be correct, were merely the natural and necessary sequel of what had occurred on 14th April, and, as before, that the mere insertion of the adverb 'maliciously' would not suffice unless relevant averments from which malice might be reasonably inferred were forthcoming, which he contended were entirely absent from the record. He referred to the well-known case of *Ivory*, 14 R. 1057, and also to *Young*, 18 R. 825, where an issue against police constables was only allowed upon pretty strong and specific averments from which malice might reasonably be inferred. The present case seems to me to be rather a narrow one, but, upon the whole, I think that I ought to grant the pursuer an issue upon this head. I am not prepared to say that a jury might not reasonably infer something amounting to malice from the facts, if proved, that the inspectors, after hearing the pursuer's explanation on 14th April, saw fit to report the matter to the police a week later, and set *quasi* criminal proceedings afoot, which after he had incurred trouble and expense for his defence, were departed from, and have, so far as appears, not since been resuscitated. I shall therefore approve, as the issue for the trial of the cause, the second of the issues proposed by the pursuer, with such verbal alterations as are necessary, owing to the disallowance of the first issue, and with the insertion, to which the pursuer's counsel admitted that he must submit, of the words 'maliciously and without probable cause.'

The issue allowed was—"Whether, on or about 21st April 1905, two tram-car inspectors, servants of the defenders, acting within the scope of their employment as defenders' servants, falsely, calumniously, maliciously, and without probable cause, informed or caused information to be given to the police, accusing the pursuer of having, on 10th April 1905, committed the offence of spitting in or upon a tram-car belonging to the defenders in New City Road, Glasgow, to the pursuer's loss, injury, and damage? Damages laid at £250 sterling."

The defenders reclaimed, and argued—The second issue for the pursuer should be disallowed on the same ground as that on which the Lord Ordinary had disallowed the first, viz., want of relevant averment of facts and circumstances to infer malice. Such averments were necessary in a case like the present one—*Young* v. *Magistrates of Glasgow*, May 16, 1891, 18 R. 825, 28 S.L.R. 645. The amount of explanation given by the pursuer did not exclude the charge, and public justice would be hampered if the mere giving an address precluded officials from further action. Similar averments to those in the case of *Douglas* v. *Main*, June 13, 1893, 20 R. 793, 30 S.L.R. 726, might have formed a basis for an issue such as that proposed, but in the present case these were lacking. Moreover, the onus here was much higher, since the question was of public officials in the execution of their duty—*Beaton* v. *Ivory*, July 19, 1887, 14 R. 1057, 24 S.L.R. 744; *Macdonald* v. *M'Coll*, July 18, 1901, 3 F. 1082, 38 S.L.R. 781.

Counsel for the pursuer and respondent argued—An action for damages might properly be brought against those who gave false information to the police with a view to a prosecution — *Lightbody* v. *Gordon*, June 15, 1882, 9 R. 934, 19 S.L.R. 703. And the Corporation, being responsible for the inspectors employed, was therefore rightly sued here. The case was one of malicious prosecution, and a bare averment of malice was then sufficient—*Beaton* v. *Ivory*, *ut supra*; and *Innes* v. *Adamson*, October 25, 1889, 17 R. 11, 27 S.L.R. 26. The actings in question here were those of a much humbler class of official with a greatly lower scale of privilege than in the cases cited. Consequently there was not the necessity to aver facts and circumstances—*Reid* v. *Moore*, May 18, 1893, 20 R. 712, 30 S.L.R. 628. But further the averments did give sufficient facts and circumstances to infer malice, for the inspectors should have reported immediately to the police; instead, they allowed a week to elapse, and then did so without inquiry, so acting with a recklessness equivalent to malice—*Lee* v. *Ritchie*, May 14, 1904, 6 F. 642, 41 S.L.R. 509. The issue should therefore be allowed.

LORD PRESIDENT—The case argued here is whether there is really any issuable matter on record, in respect that no special facts and circumstances inferring malice are averred. I have looked in vain for such special facts and circumstances. On the authorities it is clear that this is a case where such facts and circumstances require to be averred, because the inspectors, though not high officials, were nevertheless appointed to carry out the provisions of an Act of Parliament. The Corporation of Glasgow have an excellent bye-law prohibiting spitting in their cars, which could not be enforced unless such inspectors were appointed.

The pursuers' averments are that on 14th April, while he was travelling on a car, two inspectors accused him of having committed the offence of spitting on a car on the 10th of April, and of having, when charged with doing so, given a false name and address. The inspectors called up a policeman and requested him to take the pursuer in charge. The pursuer assured the inspectors he was innocent of the charge, and produced his diary and a season ticket as a proof of his identity.

On that the inspectors behaved in a perfectly sensible way and did not arrest the pursuer, and afterwards reported the whole matter to the police. I do not see what else they could have done.

The pursuer now brings this action against the inspectors and avers that they acted maliciously. But there was nothing in either their manner or method of acting from which one could extort any idea of malice at all.

The Lord Ordinary has already disallowed the first issue, and I propose that we should also disallow the second.

LORD ADAM—It is not disputed that this is a case of privilege. Cases of privilege vary from a high degree of privilege to a low degree; and the present case is not one of a very high degree of privilege. But being a case of privilege it is not disputed that there must be an averment of malice.

The facts are that two tramcar inspectors, appointed by the magistrates of Glasgow to see that the bye-laws made by them under the powers conferred by their Tramways Acts are not infringed, charged a person with committing an offence against these bye-laws by spitting in or upon a tramcar. He gave a name and address, which turned out to be false, and they allowed him to go. Four days afterwards they saw the present pursuer on a tramcar, and supposing, right or wrongly, that he was the man who had been guilty of the offence, they summoned a policeman and charged him with the offence. The pursuer asserted his innocence, gave his name, and produced evidence of his identity. What were they doing wrong? Were they not doing just what it was their duty to do? Four days afterwards they reported the offence to the police, who took apparently the usual proceedings in such cases. Where is there anything in all this from which we could presume malice? I do not know what a jury might do, but I do know what a jury ought to do. Accordingly, I am clearly of opinion that there is no issuable matter in this record.

LORD M'LAREN—I concur, and I have little to add. I had some doubts in the case of *Macdonald* whether the Court had not gone too far in extending a special privilege to persons in authority—that to found an action of damages against them it was necessary not only to aver malice but to aver special facts and circumstances from which the Court would judge whether there was issuable matter for a case of malicious injury. It is carrying that principle very far to apply it to police constables and tramway inspectors, but in the present state of the authorities there can be no doubt as to what our decision should be. I am reconciled to the principle of the case of *Macdonald* by the consideration, that without this extension of the privilege it would not be easy to protect the humbler classes of officials and their employers from groundless actions of damages. There is in England the great protection of "probable cause," which is there determined by the judge. In our practice it is not however of much avail, since it goes to a jury who may or may not understand its effect, however clearly it is put to them by the presiding judge. I agree with your Lordships and the Lord Ordinary that upon the facts stated on the record I should not hold that there was issuable matter for a case of malicious injury.

LORD KINNEAR—I am unable to find any issuable matter in this record, and I concur in your Lordships' judgment.

The Court disallowed both issues and dismissed the action.

Counsel for the Defenders and Reclaimers—Mackenzie, K.C.—Macmillan. Agents—Simpson & Marwick, W.S.

Counsel for the Pursuer and Respondent—Orr, K.C.—A. M. Anderson. Agents—Clark & Macdonald, S.S.C.

Wednesday, July 19.

SECOND DIVISION.

[Lord Johnston, Ordinary.

LUMSDEN *v.* WEST LOTHIAN PRINTING AND PUBLISHING COMPANY.

Reparation—Slander—Newspaper — Innuendo.

In an action of damages for libel the pursuer complained of a letter written in criticism of certain licensing authorities. The letter, after referring to the case of a licence-holder in B who was convicted of shebeening and fined £10, proceeded—"And I should like to ask if this was the first conviction against the same party." *Held* (*rev.* judgment of Lord Johnston) that the pursuer, a licence-holder in B, who had been once convicted of shebeening and fined £10, and was the only licence-holder there who had been so convicted and fined, was entitled to an issue, whether the letter complained of represented that he had been more than once convicted of shebeening.

This was an action of damages for libel at the instance of Alexander Lumsden, publican, Clifton Buildings, Station Road, Broxburn, against the West Lothian Printing and Publishing Company, Limited, 34 Hopetoun Street, Bathgate.

The pursuer averred—"(Cond. 1) The pursuer was until recently a wine and spirit merchant at Broxburn, and was licensee of the Central Bar there from 1900 to 1904. The defenders are the printers and publishers of the *West Lothian Courier*, which is published, *inter alia*, in the Broxburn district. . . . (Cond. 3) In or about June 1904 the pursuer was convicted of shebeening by the Justice of Peace Court at Linlithgow and fined £10. The offence which the pursuer committed was supplying a regular customer with whisky from his house on a