tories" be something beyond all law and reason, that is one kind of illegality. If, on the other hand, it be merely illegal to search them in the way asked and granted here, that is a different kind. The one illegality touches the substance of the proceedings; the other points to some error or omission in the same, or want of caution in carrying them out. Were the illegality of the first kind the pursuer might be entitled to an issue without malice and want of probable cause; but if the illegality be of the second order I am of a different opinion. I think this case comes under the latter class. Under this application it was competent to the Sheriff to have granted a legal warrant. For example, had he limited the search to particular documents, or appointed it to be carried out under his own eye, I am not prepared to say that that would have been an illegal warrant. Now, although that has not been done, I do not think that the defenders' application was out and out and in substance contrary to law. Therefore I am of opinion that the pursuer must take upon him the burden of showing that the defenders' statements were made maliciously and without probable cause. As regards the second issue, it is laid, not upon the petition, but upon the warrant, and is proposed as a separate demand. The pursuer had some difficulty in explaining what injury had been sustained by him other than through the slander, by reason of the warrant having been taken out and kept up against him—it having never been executed against him. The only way in which the granting of the warrant was said to have entailed a separate injury upon him was that he had been put to the expense of preparing a suspension of the warrant before its withdrawal had been intimated to him. I do not think grounds have been laid for that pecuniary claim. The pursuer does not say that the taking out of the warrant was intimated to him. He came to hear of it through its having been executed against the other persons affected by it. Before incurring the expenses of preparing a suspension of it he ought to have applied to the defenders to know the meaning of it, when in all probability its withdrawal as against him would have been intimated. But there is something of a different character in this issue. It is said that the pursuer sustained injury from the publication of the warrant. This publication may give greater cogency to a claim for damages for the calumny. The calumny involved here is of a peculiar kind. It is more of the nature of a judicial slander than anything else. The pursuer will be allowed an opportunity of amending the issues in conformity with the views now expressed, and of considering how the second issue is to be framed if put separately, or whether the whole matter might not be embodied in one issue founded upon slander done maliciously and without probable cause.

The other Judges concurred, Lord DEAS remarking that he did so with the qualification that as the Court held that the defenders' application was not in substance incompetent, it was not necessary to consider or determine whether the protection accorded by law to judicial statements would apply to proceedings taken by fiscals.

PRINGLE *v.* BREMNER AND STIRLING.

Reparation—Public Officer. Question as to the relevancy of an action of damages against police officers for searching a person's repositories and apprehending him without a warrant.

Counsel for Pursuer—Mr Watson and Mr MacLean. Agent—Mr W. Miller, S.S.C.

Counsel for Defenders—The Lord Advocate and Mr A. Moncrieff. Agents—Messrs Murray & Beith, W.S.

This is an action at the instance of James Pringle, millwright, near Newburgh, in the county of Fife, against J. F. Bremner, chief constable, and James Stirling, serjeant, in the Fifeshire constabulary. The grounds of action are two in number—(1st) That on 24th December 1864 the defenders came to the pursuer's house, stating that they had a warrant to search the same, which they accordingly did. They, it is alleged, also searched the pursuer's repositories, examined all his private books and papers, and seized and took away a number of the same. The pursuer says that they had no warrant for these proceedings. (2) That the pursuer was, on the same day, apprehended by the defenders, and lodged in the Police Office at Cupar; all without warrant. For these proceedings he sues the defenders for damages. In defence the defenders do not say that they had a warrant for the examination and seizure of the pursuer's papers, or for his apprehension; but that, holding a warrant to search his premises for other articles, they accidentally came upon a number of papers which seemed to them to throw light upon a matter which was then under investigation by the Procurators-Fiscal and police, and which was connected with the matter in regard to which they were making a search. They therefore thought it their duty to take possession of the documents, and to take the pursuer into custody, and take him to Cupar for examination before the Sheriff; which, however, in respect of the lateness of the hour, had to be delayed till the following day. It was not disputed by the pursuer that the after proceedings were regular and legal. But the pursuer says on record that the defenders did not accidentally come upon his papers in the course of their search for other articles, but that they in the beginning of their search proceeded to examine his books and papers.

The case was before the Court on Tuesday on a report by Lord Ormidale as to issues. The pursuer proposes to put two issues to a jury—1st, Whether this search for and seizure of his papers was wrongful and illegal? and 2d, Whether his apprehension and incarceration were wrongful and illegal?

The pursuer has no allegation that the actings of the defenders were malicious and without probable cause, and he contended that he was not bound to allege this, in respect this case was *a fortiori* of Bell *v.* Black and Morrison (37 Jurist, 257 and 543), when such a search as had been here made was pronounced illegal, though done by warrant of a sheriff, and in which it had been decided that it was enough to put in issue that it was wrongous and illegal. With regard to the apprehension, the pursuer was law-biding, and was apprehended without warrant in reference to occurrences which had happened a considerable time before. The pursuer referred to Dunbar *v.* Stoddart, 11 D. 587, to show that where a case of privilege was not admitted by him on record he was entitled to get to a jury without putting malice and want of probable cause in issue, leaving this to be ruled upon the trial.

The defenders contended that a case of privilege was raised by the admissions on record. This was not like the case of Bell. Here the officers were lawfully in the pursuer's premises making a legal search, and had they not seized the papers they found the evidence would have been lost. The pursuer had been afterwards committed for trial upon a charge of sending a threatening letter. The defenders were entitled to apprehend the pursuer in the circumstances without warrant.

The Court to-day, considering that it was important to know the way in which the search for papers had been begun and executed—parties being at issue thereupon—and the record not supplying the information required, before pronouncing any judgment as to issues, appointed pursuer to state specifically what he alleged with regard to these matters.

Thursday, Dec. 21.

SECOND DIVISION.

HATTON *v.* CLAY AND M'LUCKIE.

Landlord and Tenant—Removing. Objection to the relevancy of a summons of removing repelled, and decree of removing granted.

Counsel for Pursuer—Mr Millar and Mr J. C. Smith. Agent—Mr James Hatton, W.S.

Counsel for Defenders—Mr Fraser, Mr Scott, and Mr William N. M'Laren. Agent—Mr James Barton, S.S.C.

In December 1861 a lease of a shop in Nelson Street had been granted by the late Mrs Hatton to the defender John Clay, who is an ironmonger, for seven years, from Whitsunday 1862. This lease contained a clause excluding assignees and sub-tenants. On 3d September 1863, Mrs Hatton, with concurrence of her husband, raised an action of removing against the defenders. The grounds of the action are set forth in the 11th and 12th articles of the pursuer's condescendence as follows:—"On or about 6th June 1863 the remainder of the stock of ironmongery goods in the shop in Nelson Street was removed by Clay to another ironmongery shop occupied by him in Pitt Street; and about the same time the furniture belonging to Miss M'Luckie was brought into the shop and room adjoining the same, and the window of the shop, which had been previously stocked with ironmongery goods, was filled with gloves, ribbons, and other articles connected with her calling, which is that of a cleaner of gloves and ribbons. From the time she took possession of said shop, early in June, down to the execution of the summons in the present action, a period of more than three months, the shop was in the entire and sole possession of Miss M'Luckie." The summons concluded in the following manner:—"And our said Lords ought and should farther decern and ordain the said Jane M'Luckie, as assignee to said lease, or as tenant and sub-tenant in said subjects, holding and possessing the same under the authority of the said John Clay, in whatever manner she may pretend to do so, to cease from occupying the said subjects, and to flit and remove," &c.

It was maintained by the defenders that the action is irrelevant, because the conclusions are applicable only to a sub-lease, or an assignation to a lease, whereas it is nowhere averred in the condescendence that Clay had either sublet the premises to Miss M'Luckie or had granted to her an assignation to his lease. Lord Ormidale, of consent of both parties, granted a proof before answer. A voluminous proof having been led, his Lordship found for the pursuer, holding that the arrangement between the defenders, and their acts consequent thereon, amounted to a cession by the defender Clay of the shop and premises to the defender M'Luckie, and were adopted by them as a collusive device to defeat the conditions of the lease excluding sub-tenants and assignees.

The defenders having reclaimed, the Court held that the summons concluded that Miss M'Luckie should be decerned to remove, not only as assignee or sub-tenant, but also "in whatever manner she may pretend to possess the premises under the authority of the said John Clay;" that such a conclusion applied not only to an assignation of the lease or to a sublease, but to any form of possession which Miss M'Luckie may have held of the premises; that though nothing was said in the condescendence about Clay having sub-let the premises or granted an assignation to the principal lease, yet it was averred that Clay had left the premises with his goods and that Miss M'Luckie had come in with hers; and that the summons was therefore relevant. The Court then appointed parties to be heard on the proof, but before the debate had proceeded further the defenders consented to the Lord Ordinary's interlocutor being adhered to on the pursuer agreeing to accept a sum of £20 in name of expenses.

GALLETLY, HANKEY, AND SEWELL *v.* LAW.

Process—Jury Trial—17 and 18 Vict c. 34. Warrant to cite witnesses resident in England to give evidence at a jury trial *refused*, but commission to examine them in London *granted*.

Counsel for Pursuers—Mr Shand.

Counsel for Defenders—Mr W. M. Thomson.

A motion was to-day disposed of in this case, made by the defenders on the authority of the 1st and 2nd sections of the Act 17 and 18 Vic., c. 34, asking a warrant from the Court to cite certain witnesses, owners of vessels in London, to give evidence at a jury trial, to be held in Edinburgh during the ensuing jury sittings. The pursuers are brokers in London, and they bring the action against the defender, who is sole owner of the ship Indian Empire, concluding for their commission as brokers employed to freight the defender's ship, and for certain disbursements which they allege they were obliged to make to certain parties whose goods they had freighted to the Indian Empire, but were unable to carry by reason of the ship being taken out of their hands. The claim is resisted on the ground that the pursuers mismanaged their contract by taking lower rates of freight than other owners of ships were receiving at the time in the dock in which the Indian Empire lay.

The defenders propose to make out this defence through these owners of ships, and they asked a warrant to cite them for the trial which is to take place on Tuesday. They contend that this not being a case of skilled evidence, and therefore not a matter of opinion, but a question of fact, it does not fall within the judgment of the Court in Macniven *v.* Turner, where the Court refused to compel skilled witnesses to attend. The Court refused the motion, on the ground, that although the evidence referred to by the defenders might be the best evidence, it was not the only evidence, because the rate of freight at the time libelled was a general fact in the knowledge of several persons, and therefore there was not sufficient urgency authorising the Court to exercise their discretion in favour of the defenders. The Court, however, granted commission and diligence to the defenders to examine the witnesses in London.

DAVIDSON *v.* LAWRIE.

Remuneration of Services—Commission—Shipbroker. Defences to an action by a broker for commission on the sale of a ship, which (diss. Lord Benholme) repelled.

Counsel for the Advocator—The Solicitor-General, Mr Clark, and Mr Balfour. Agents—Messrs Gibson-Craig, Dalziel, & Brodies, W.S.

Counsel for the Respondent—The Lord Advocate and Mr Shand. Agents—Messrs Adamson & Gulland, W.S.

This is an advocation from the Sheriff Court of Lanarkshire. The action is at the instance of Alexander Bartleman Davidson, master mariner, lately residing in Glasgow, now master of the steamer Georgiana, of Liverpool, and is directed against James Gray Lawrie, shipbuilder, Whiteinch, Partick. The summons concludes for £375, which the pursuer says was the stipulated and agreed upon commission at the rate of 2½ per cent., between him and the defender on the sum of £15,000, being the price of a ship which the pursuer says he was the means of selling for the defender to Mr George Wigg, merchant, Liverpool. The pursuer brought about an interview between the defender and Mr Wigg, and ultimately a bargain was made. On 15th November 1862 a formal contract was executed between Mr Wigg and the defender, whereby he agreed, for the sum of £15,000 and £18,000 respectively, to build two steamers for Mr Wigg. Any question as to the second steamer is withdrawn in this process. Previous to the execution of this formal contract and during the communings that were going on between Mr Wigg, the pursuer, and the defender, the defender addressed the following letter to the pursuer:—

"Glasgow, 11th October 1862.

"Captain Davidson — Dear Sir, I could deliver my ship 212:0 × 25:0 and 1510 in 2½ months from date of order, with engines for 12 knots; and my price would be £15,000 cash; or I could deliver in 3