circumstances the pursuer has not timeously exercised his option.

Lord CURRIEHILL concurred. He was of opinion that the defender had acted throughout with great fairness and liberality. He thought that after 23d January the option was at an end, but was very clear that after 28th January it was. His Lordship also expressed doubt as to whether even on 2d March the option had been validly exercised. Under the obligation he was, on declaring his option, to pay money, whereas when he did so he asked some.

Lord DEAS, in concurring, had no doubt that their Lordships had taken the equitable view of the case, but he had a little difficulty as to the law. The letter of 22d January was written on the footing that the pursuer was entitled to some notice from the defender before he lost his option. If so, he was entitled to a reasonable time. Then on 28th January, instead of giving the pursuer a week or some such period, the defender's agents write that they hold the option at an end. If they had given him a reasonable time, their position would have been unassailable. These difficulties, however, did not justify his Lordship in arriving at an opposite conclusion.

Lord ARDMILLAN concurred with the Lord President.

ORMISTON *v.* RIDPATH, BROWN, & CO.

Reparation—Relevancy. An action of damages for raising an action, taking decree, and giving a charge thereon, the debt sued for having been previously paid, *dismissed.*

Trade Protection Societies. Observations (per Lord President) on the uses of such societies.

Counsel for Pursuer—Mr Scott, Agent—Mr Alex. Duncan, S.S.C.

Counsel for Defenders—The Solicitor-General and Mr Gifford. Agents—Messrs White-Millar & Robson, S.S.C.

The pursuer sued the defenders for damages sustained by their having raised an action against him, in which they took decree and charged him thereon, while the supposed debt, in relation to which legal proceedings had been adopted, had been truly paid. He proposed the following issue:—"Whether the defenders, on or about 12th August 1865, raised against the pursuer before Her Majesty's Justices of the Peace for the shire of Edinburgh, a complaint concluding for payment of the sum of £1, 5s. 8d. as the amount of an account due by him to them, and took decree on said complaint, and caused the pursuer to be charged upon said decree? and whether the said proceedings were taken and carried through wrongfully after payment of the said sum of £1, 5s. 8d., and through gross negligence on the part of the defenders, or others for whom they are responsible—to the loss, injury, and damage of the pursuer?"

Damages laid at £100.

The defenders objected to the issue that it did not propose to prove that they had acted maliciously. They also pleaded that the action was not relevant, and cited the case of Aitken *v.* Finlay and others, 25th Feb. 1837 (15 S. 683). The Court dismissed the action, but found no expenses due to either party.

The LORD PRESIDENT said—This is a case attended with considerable nicety. The ground of action is that the defenders had served the pursuer with a summons within a short time after he had paid the debt. It appears that the defenders were not the active parties in the matter. They had put their claim into the hands of the Scottish Trade Protection Society for recovery. The defenders are, of course, responsible for the acts of the society, and they don't say they are not. It is not disputed that this debt had been paid to the society before the summons was issued. This is said to have been a mistake. We are told that the business of this society is conducted by means of various clerks, and that the clerk who received the payment had omitted to enter it, and that thus the summons was issued notwithstanding of the payment. I have no idea that a society of this kind by subdividing their labour in this way can escape liability by saying that one of its hands does not know what its other hand is doing. It is also very clear that the pursuer has great ground to be dissatisfied in this case with the proceedings of the society, for it was negligence and carelessness on the part of the society which according to their own account led to the pursuer being summoned. I believe this society has existed for some time, and that its objects are good. Its name indicates a beneficial purpose. If well conducted the society may be of great public utility in enabling honest traders to recover claims from fraudulent debtors. But if it is carelessly and negligently conducted, if it uses its powers against persons who are not fraudulent debtors, it becomes mischievous and evil. I don't say that it is the habit of this society to act as they did here, but this case having occurred, I think it right that this caution should be given. In this case, however, I confess I feel considerable difficulty in granting any issue by reason of the circumstances that have occurred. I don't mean to say that a party who has been wrongfully sued for a debt which he has paid may not in some circumstances have a claim of damages. Some of the defences stated are quite extravagant. It is said that the pursuer is bound first to reduce the decree. That will never do. Then it is said that the pursuer should have applied for a rehearing. That is also out of the question. I give no opinion on the general question raised by the objection stated to the relevancy, but I think there were some things which the pursuer ought to have done in this case which he did not do. In the first place, he has not stated any good excuse for not going to the Court. He may have had a very good excuse, but he does not give it. His proper course was to have gone to the Court as a triumphant defender and presented his receipt, when he would have been assoilzied with costs. But further, the pursuer does not aver that the summons was issued in the knowledge that the debt was paid. It is one thing to issue a summons in forgetfulness, and another thing to do so knowing of the payment. Therefore on the whole though I think the conduct of the society not excusable, and that the defenders have stated some pleas which ought not to have been put on record, I think we ought to refuse an issue, dismiss the action, and find neither party entitled to expenses.

The other Judges concurred.

SECOND DIVISION.

INGLIS *v.* INGLIS.

Reparation—Written Slander—Relevancy—Inuendo. It is no objection to the relevancy of an action for written slander that the words used are apparently perfectly innocent, if the pursuer avers and offers to prove that they were intended to convey and did convey a calumny.

Counsel for Pursuer—Mr Gordon and Mr Gifford. Agent—Mr James Renton jun., S.S.C.

Counsel for Defender—The Solicitor-General and Mr J. T. Anderson. Agents—Messrs White-Millar & Robson, S.S.C.

This was an action of damages in respect of a circular issued by the defender to his customers in the following terms:—

"Steam Mills, Musselburgh, July 1865.

"Dear Sir,—William A. Inglis, who recently acted as agent for the sale of my flour in your district, intimates to me that he has got a number of my empty sacks into his possession, for which he demands payment, or as many of his sacks in lieu thereof. Presuming that these sacks must have come into his hands by some irregularity of some of my customers, I now beg you to be careful, when returning my sacks, to put on the full name and

address — John Inglis, Steam Mills, Musselburgh Should you not be careful on this point it may lead to trouble in settling up—Yours, &c.

(Signed) "JOHN INGLIS, *p.* ROBT. LAMBERT."

On the adjustment of issues it was maintained by the defender that there was no relevant matter to warrant an issue, the latter not being of a calumnious character, and the pursuer not being entitled to inuendo calumnious intent, which could on no reasonable construction be inferred from the words used. The pursuer, on the other hand, having inuendoed calumnious intent on the record, denied the competency of the Court to judge of the soundness of the inuendo.

The Court repelled the defender's objection, and granted an issue, the Lord Justice-Clerk observing that in a case of written slander, where it is alleged that a writing has been circulated, it is of no consequence whatever to represent that the terms of the letter are apparently perfectly innocent if the pursuer alleges and offers to prove that the writing conveyed, and was intended to convey, to others an injurious charge against him. The following is the issue which was adjusted.

"Whether the defender in or about July 1865 wrote and circulated among the pursuer's customers a letter in the terms set forth in the schedule hereunto annexed: whether the said circular is of and concerning the pursuer; and falsely and calumniously represents that the pursuer having without right or title obtained a number of the defender's empty sacks, dishonestly retained said sacks, and dishonestly refused to give them up to the defender, to the loss, injury, and damage of the pursuer."

Tuesday, Feb. 20.

OUTER HOUSE.

(Before Lord Barcaple).

DUCHESS OF SUTHERLAND *v.* WATSON AND OTHERS.

Property — Mussel Scalps — Fishing — Barony — Prescription. Held (per Lord Barcaple) that a title of barony, containing a grant of salmon fishing, and power of killing and catching other fish as well great as small," is not sufficient, though followed by prescriptive possession, to confer an exclusive right to mussel scalps.

Counsel for the Pursuer — Mr J, B. Balfour. Agent—Mr Colin Mackenzie, W.S.

Counsel for the Defenders—Mr Watson. Agent—Mr L. M. Macara, W.S.

This is an action of declarator at the instance of the Duchess of Sutherland against the defenders, who are fishermen residing in Cromarty and its vicinity, to have it found that in virtue of her Grace's titles to the lands and barony of Tarbat, she has the sole and exclusive property in, and right to the mussel-beds, scalps, or fisheries on the shores and sands of Nigg and lands of Milntown in the bay of Cromarty, *ex adverso* of the lands of the barony of Tarbat. Founding upon her title as being one of barony, and containing a grant of "salmon-fishing and power of killing and catching other fish, as well great as small," in any part of the said lands, the pursuer further pleads that in respect of immemorial possession of the subjects libelled on the part of herself and her ancestors, she is entitled to exclude the defenders from taking bait from the mussel-beds in question. Contrary usage and the insufficiency of the titles produced to carry the right are averred on the part of the defenders.

The Lord Ordinary has to-day pronounced an interlocutor, finding that the title founded on by the pursuer is not sufficient to give her the exclusive right to the mussel-fisheries in question, or to establish such a right in her by prescriptive possession.

His Lordship observes in his note:—

"The Lord Ordinary does not think that any principle clearly involving the decision of this question has been hitherto authoritatively settled, and he feels it in the existing state of the authorities to be a question of considerable difficulty. There are, however, points having an important bearing upon it, which, though they have been the subject of controversy, may now be taken as fixed.

"The exclusive right to mussel-scalps and to take mussels may be conferred by the Crown upon a subject-proprietor of lands. This was decided in the cases of Grant *v.* Rose, in 1764 (M. 12,801), and Erskine *v.* Magistrates of Montrose, 7th December 1819 (Hume, 538); and the doctrine has since been recognised. Thus Lord Corehouse, in the case of the Duke of Portland *v.* Gray, 15th November 1831 (11 S. 14), said—'It is settled law that a right to fish oysters and mussels in the sea from the scalp or bed to which they are attached may be appropriated.' Mr Bell (Prin., s. 646) says that the 'right is effectual when expressly granted.' To this extent the doctrine must be held to be now established in our law, and it is recognised by the Act 10 and 11 Vict., c. 62. But whether it is essential that the grant shall be express, conferring the right to fish mussels *eo nomine*, and whether even an express grant is sufficient without prescriptive possession, are points which have been controverted, and can hardly be said to have been authoritatively settled.

"The Lord Ordinary is also disposed to hold that it must now be received as settled law that 'the charter of a barony is a good title by prescription to carry salmon fishing.' The law is so laid down by Mr Bell (Prin., s. 754), in accordance with what appears to be the prevalent opinion. On the other hand, though the opinion of Stair (ii. 3, s. 60-69) upon the point is at least ambiguous, and is followed in an adverse sense by Mackenzie (Inst. ii. 6, 3), the Lord Ordinary thinks it must be held that a charter of barony which does not mention salmon fishing will not carry that right without the aid of prescriptive possession. It remains to be inquired whether the same principles can be applied to the different right to mussel-beds which is now in question.

"In the case of Grant *v.* Rose there was an express grant of mussel-scalps. It may be taken as the leading authority for the proposition that mussel-scalps may be appropriated by express grant; but it can go no further.

"In the case of the Duke of Argyle *v.* Robertson, the grant was in fishing as well in salt as in fresh waters, with no mention of mussels. The Lord Ordinary in that case stated that 'he was not aware of any authority for holding that such a title would be sufficient to confer an exclusive right to fish for mussels on the shores of the sea, even if it had been followed by exclusive possession for the prescriptive period.' As possession was not proved, it was unnecessary to determine that point; but the present Lord Ordinary, after going over all the authorities, concurs in the view so expressed by Lord Mackenzie.

"As the pursuer's title contains an express grant of fishings, it does not appear to the Lord Ordinary that her case is materially strengthened by the circumstance that it is also a barony title. If fishings had not been mentioned it might have been maintained that a grant of fishings was to be implied in a barony title. In a question as to salmon fishings, a barony title is held to imply a grant of fishings, which, by aid of prescriptive possession, may be construed to include salmon fishings If a barony title can by prescriptive possession support a claim to mussel-scalps which are not mentioned in the grant, the Lord Ordinary does not see any reason which is to him satisfactory why a mere grant of fishings, without erection into a barony, should not have the same effect.

"The Lord Ordinary has come to the conclusion that neither a mere grant of fishings, nor a barony title, nor, as in the present case, both combined, constitute a sufficient title to prescribe an exclusive right to mussel-scalps. He thinks that, in regard