be scheduled with reference to each separate possession. The Lord Ordinary understands that the pursuer does not now insist on including the alleged increase of rabbits in his issue. The only averment in regard to them is, that they have increased 'to some extent.'"

The defender having died, the action was transferred against his executors.

YOUNG and BALFOUR for pursuer.

CLARK and SHAND for defenders.

After discussion, the following issue was approved of by the Court:—

"It being admitted that the defenders' author, the Right Honourable John Stuart Earl of Moray, now deceased, was during the year 1865 proprietor of the lands of Meikle Couston and Muirton Park, in the parishes of Aberdour and Dalgety, as also of the lands of Chesters and New Kirk Parks, 'The Barns' Farm, and Hattonhead Park, also in the said parish of Dalgety; and it being admitted that the pursuer was, during the year 1865, tenant, under the said Earl of Moray, of—

"1. The said lands of Meikle Couston and Muirton Park, under agreement dated 3d June 1853;

"2. The said lands of Chesters and New Kirk Parks, under agreement dated 12th and 13th February 1855;

"3. The said 'Barns' Farm, under an agreement entered into shortly before Martinmas 1859; and

"4. The said lands of Hattonhead Park, under an agreement entered into shortly before Martinmas 1862:

"Whether, during the year 1865, the said John Stuart, Earl of Moray, had upon the said lands, or any part thereof, an unreasonable and excessive stock of game, beyond what existed thereon at the dates of entering into the said leases respectively, to the loss, injury, and damage of the pursuer?

"Damages laid at £270."

Agents for Pursuer—Gibson-Craig, Dalziel, & Brodies, W.S.

Agents for Defenders—Melville & Lindsay, W.S.

Saturday, February 1.

RATTRAY *v.* TAYPORT PATENT SLIP CO.

(5 Macph., 944.)

Servitude—Rights of servitude holder and proprietor of the ground. Motion by servitude holder to have the proprietor of the ground over which the servitude extended ordained (1) to remove an embankment, retaining wall, and paling erected by him; and (2) to have him interdicted from making any erection on or otherwise occupying the said ground, *refused.* Observed (1) that the erections complained of were a legitimate exercise of the proprietor's right of property in the ground; and (2) that such a claim was incompetent by a servitude holder against the proprietor.

These were conjoined actions of (1) suspension and interdict and (2) declarator and damages, at the instance of Susannah Rattray, proprietrix of certain subjects in Tayport, against The Tayport Patent Slip Company (Limited), and their contractor. After various procedure, the Court, on 26th June 1867 pronounced an interlocutor, finding and declaring, *inter alia*, in respect of minutes for the parties, and reports by Mr Wylie, C.E., that the footpath described in the said reports was a public way, and ordaining the defenders to lay it out at sight of Mr Wylie, and thereafter to maintain it; applying the verdict of the jury, and finding and declaring that the pursuer had a servitude of bleaching and drying clothes on so much of the ground marked K K K K K on the plan, No. 100 of process, as was not occupied by the Patent Slip and the Shipbuilding shed in connection therewith, erected and occupied by the defenders; decerning and ordaining the defenders to lay out the said ground in the manner suggested by Mr Wylie; and finding that the pursuer was barred by the terms of the compromise and arrangement entered into between the parties, respecting the road above mentioned, from insisting on the removal of the defenders' slip and shed, or for restoration of the ground of the said servitude beyond what was above found and declared.

The pursuer now moved the Court, "in order to exhaust the conclusions of the actions, to decern and ordain the defenders to restore, as far as now practicable, to the state in which it was before the defenders' operations, the ground over which the pursuer's right of servitude has been found to extend, viz., so much of the ground marked K K K K K on the plan, No. 100 of process, as is not occupied by the patent slip and the shipbuilding shed, erected and occupied by the defenders, by removing—(1) The embankment made by them thereon; (2) A retaining wall on the west side, and making part of said embankment; and (3) A paling extending across the said ground, all erected by the defenders; and further, to interdict, prohibit, and discharge the said defenders from interfering with or making any erection on or otherwise occupying the said ground, over which the pursuer's right of servitude has been found to extend, in all time coming."

CLARK and GIFFORD for pursuer.

DEAN OF FACULTY (MONCREIFF), and N. C. CAMPBELL for defenders.

The LORD PRESIDENT held, on the first branch of the motion, that the operations complained of were a quite fair exercise of the defenders' right of property in the ground over which the pursuer's right of servitude extended; and held, on the second branch, that such a claim for interdict was quite inconsistent with the right of a servitude holder, which did not confer on him any title to sue an action of that kind.

LORD CURRIEHILL—I am inclined to put the right of a servitude holder a slight shade lower than your Lordship has done. The rule of our law is, that a servitude holder must exercise his right *civiliter;* so that when there is more than one way in which effect can be given to it, it must be exercised in the way least burdensome to the servient tenement.

LORD DEAS—There is no doubt that a right of servitude does not give the party who holds it a right to prevent all use being made, by the proprietor, of the ground over which the servitude extends. The proprietor may make every use of the ground he pleases, if such use is not inconsistent with the servitude. So much is this the case, that a servitude may be restricted to a particular portion of the ground if that can fairly be held sufficient for the proper exercise of the servitude. That restriction is very reasonably applicable to the servitude of bleaching.

Lord Ardmillan—I am of the same opinion. It is a clear principle of law that co-existent rights in one subject must not be destructive of each other. There must always be some means of preventing such a result. In such a case as this, there must be in the Supreme Court a power of equitably adjusting the claims of the proprietor of ground on the one hand and the holder of a servitude on the other. The law will not permit the holder of a servitude so to exercise his right as to infringe injuriously on the just rights of the proprietor, nor will the law permit the proprietor of the ground so to exercise his right as to impede the just exercise of the right of the servitude holder. In the present case, I am of opinion that the just exercise of the servitude has been adequately secured; and that the demand made by the holder of the servitude would be inconsistent with the exercise of the right of the proprietor.

Motion refused.

Agent for Pursuer—L. M. Macara, W.S.

Agents for Defenders—J. M. & J. Balfour, W.S.

Saturday, February 1.

M'NEILL *v.* CARRUTHERS.

Reparation—Slander—Inuendo—Issue. Action on slander dismissed as irrelevant, the statement put in issue not being in itself slanderous, and there being no inuendo on record.

William M'Neill, miller, Crossmichael Mill, in the parish of Crossmichael and stewartry of Kirkcudbright, brought an action of damages for slander against Thomas Carruthers, farmer in Mountaintop in said parish. It appeared that in February 1867 the defender sent a quantity of corn to the pursuer for storage. The pursuer now averred that the defender, on two specified occasions, "falsely, calumniously, maliciously, and without probable cause, stated that he had delivered to the pursuer, not 37 bushels, but 47 bushels of corn, and the pursuer had failed to account for ten of these bushels, and that he would force him to account for the ten bushels before the Sheriff, or did use words of and concerning the pursuer of a like import and effect." He proposed issues founded on this averment. The defender contended that the action was irrelevant.

The Lord Ordinary (Barcaple) reported the case on issues, stating his opinion that the statement put in issue—viz., that the pursuer failed to account for a part of the oats stored with him, and that the defender would force him to account before the Sheriff—was not defamatory in the legal sense of the term.

W. M'Laren for pursuer.

Solicitor-General (Millar) and Scott for defender were not called on.

The Court unanimously dismissed the action as irrelevant.

The Lord President said that the case was one of the clearest he had ever seen. There was no possible ground for holding that the statement made by the defender was slanderous in itself. It might, perhaps, have been made so by inuendo, but there was no inuendo on record, and the action must therefore be dismissed.

Action dismissed with expenses.

Agent for Pursuer—J. M. Macqueen, S.S.C.

Agent for Defender—W. S. Stuart, S.S.C.

Saturday, February 1.

SECOND DIVISION.

WALKER *v.* CUMMING.

Issues—Reparation—Search of Premises without a Warrant—Carrying away of Goods—Privilege—Maliciously and without probable Cause—Circulation of Slander—Revised Condescendence—New Ground of Action—Defect in Specification. Held (1) that the pursuer was not bound to put into his issue the words "maliciously and without probable cause" where the act founded on was not the giving of information to the police—in doing which, the defender would be in a position of privilege—but the alleged seizure of property, without a warrant, after the information was given. (2) That a party who circulates a slander to non-official persons is not in a position of privilege merely from first having given information to the police. (3) Statements which held to be a mere expansion of, not inconsistent with the grounds of action set forth in the condescendence. (4) Issue disallowed in respect of defect in specification.

William Walker, photographer, brought this action against John Cumming, photographer, 1 South Hanover Street, Edinburgh, for damages for wrongfully entering his premises at Hawick, and taking away certain photographic materials in his (the pursuer's) lawful possession, which Cumming alleged to have been stolen from him by the pursuer and another.

The pursuer made the following statements, *inter alia*, in his original condescendence:—"On or about said 3d May 1867, the defender, in the Railway Hotel, Wilton, Hawick, occupied by Robert Learmond, innkeeper in Wilton, Hawick, in presence of the said Robert Learmond, and Joseph Lush, servant to the pursuer, or one or other of them, and also in presence of several other parties, falsely and calumniously stated that the pursuer and the said Joseph Laurie Cox had been carrying on a system of robbing him of his property; that Cox would soon be in jail; and that, so soon as he got to Edinburgh, he would get a warrant for apprehending the pursuer on said charge; or used words of a like import and effect of and concerning the pursuer.

"The defender repeated the said slander of and concerning the pursuer between the 4th and 7th May 1867, at different places within the city of Edinburgh, to George Mason, commercial traveller, then in Edinburgh; John Aitken, presently photographer at Hawick; and the said Joseph Laurie Cox, or one or more of them. He also repeated said slander in Edinburgh, during said period, to various other parties. Further, on or about the said 4th May 1867, he repeated said slander at the Railway Station, Galashiels, to the said George Mason."

The pursuer proposed the following issues:—

"1. Whether, on or about the 3d day of May 1867, the defender, along with John Nicol, superintendent of police at Hawick, and Joseph Bailey Cartlidge, photographer there, wrongfully and illegally entered the premises at Wilton, Hawick, occupied by the pursuer, and took possession of, and carried away several glasses, and an album containing photographic prints, or one or other of them, belonging to or in