

that is not the usual way of bringing a separate action. I don't say that a separate action may not be involved in that way, and therefore it may stand as a separate action. It may turn out a separate action, and it may turn out purely supplementary. Your Lordship has said that the sum concluded for is the whole sum subject to deduction of what is decreed for in the first. Suppose the two to go on, and it is found in the first that the pursuer get nothing, the result would be to try the whole questions in the second action. That would be very anomalous.

LORD ARDMILLAN concurred with the Lord President.

Agents for Pursuer—Henry & Shiress, S.S.C.

Agents for Defenders—Wilson, Burn, & Glog, W.S.

Saturday, February 15.

SECOND DIVISION.

M'COLL v. GIBSON.

Issue—Relevancy—Reparation—Written Slander—Summons—Condescendence. A party sued for damages on account of a written slander, the terms of which were quoted in the summons, but in the condescendence it was only stated that the letter was written, but not that it was despatched. *Held* that these statements were relevant to entitle the pursuer to an issue.

In this action Sarah M'Coll, domestic servant in Glasgow, was pursuer, and John Gibson, residing at Uddingstone, was defender. The pursuer sued for wages and board wages, and also for damages on account of wrongous dismissal. The conclusion for damages is thus stated in the summons:—"Therefore the defender ought and should be decreed to pay to the pursuer the sum of £100, being damages sustained, and to be sustained, by the pursuer in her character, credit, feelings, and reputation, and as a *solutium* to her in consequence of the defender having, on or about the 18th day of January 1867, and at or near or within the defender's house or place of business at Uddingstone, or in or near Helensburgh, or elsewhere to the pursuer unknown, wickedly, maliciously, and without probable cause, slandered and calumniated the pursuer by stating wickedly, or writing wickedly, falsely, maliciously, and without probable cause, injuriously, and calumniously, that the pursuer's character for honesty and trustworthiness had much altered, and that the pursuer was far from honest, and quite an adept in all the usual modes of theft common amongst servants—all as contained in a letter written by the defender, and bearing date on or about the 18th day of January 1867, addressed and delivered about that time, or on or about said date, to Peter M'Callum, Esquire, Helensburgh, a former master of the pursuer's, and which letter is written of and concerning the pursuer, and the tenor whereof is as follows, viz.:—"Uddingstone Iron-works, near Glasgow, 18th January 1867.—P. M'Callum, jun., Esq., Helensburgh.—Dear Sir,—Some two months ago I engaged a girl as servant of the name of Sarah M'Coll. She showed me a certificate of character from you, where you state that she is respectable, honest, &c. She represented that both she and her sister were in your service till Martinmas last, but

had left solely from a desire of change. I have no reason to believe that she was not in your service so recently as she represented, and that since she left you her character for honesty and trustworthiness has become much altered. Indeed, I have had sufficient evidence that she is far from honest, and quite an adept in all the usual modes of theft common amongst servants. May I kindly ask the favour of your saying if you ever had a girl of this name in your service, and, if so, how long it is since she left you, the cause of her leaving, and your opinion of her. Your doing so will greatly oblige, yours faithfully," (Signed) "JOHN GIBSON."

A record was made up in the Inferior Court of Lanarkshire, where the action originated, by condescendence and answers. In the condescendence the ground of action on account of damages was thus stated:—"On or about the 18th January 1867, the defender, at or near or within his house or place of business at Uddingstone, or in or near Helensburgh, or elsewhere to the pursuer unknown, wickedly, maliciously, and without probable cause, slandered and calumniated the pursuer by stating or writing wickedly, falsely, maliciously, and without probable cause, injuriously and calumniously, that the pursuer's character for honesty and trustworthiness had much altered, and that the pursuer was far from honest, and was quite an adept in all the usual modes of theft common amongst servants, all as contained and set forth in a letter written by the defender, and bearing to be written at Uddingstone, and to be dated the 18th January 1867." The defender *inter alia* made the following statement:—"Under these circumstances, the defender wrote the letter founded on to Mr Peter M'Callum, Helensburgh, under the impression that Mr M'Callum would consider the same confidential. The defender did not on any occasion slander the pursuer, neither did he circulate nor publish any statements regarding her. Any publicity given to the matter has been occasioned solely by the pursuer herself in exhibiting the letter in question to her acquaintances."

The Sheriff-substitute (VEITCH) pronounced the following interlocutor:—"The Sheriff-substitute having heard parties' procurators in terms of appointment, and considered the closed record, Finds that this is an action for wages, board wages, and damages, at the instance of a domestic servant against her master, on the ground of the defender having brought slanderous accusations of dishonesty against her, and injured her character, and dismissed or compelled her to leave his service: Finds that the only ground on which she can claim wages and board wages is that of illegal dismissal: Finds that that ground of action is only not supported by, but is, on the contrary, inconsistent with the averments in the condescendence, by which she is represented to have left the service entirely in consequence of the alleged slander by the defender, and not in consequence of having been discharged by him: Therefore, dismisses the action *quoad* the conclusions for wages and board wages; and, in regard to the remaining conclusion for damages, allows to both parties a proof of their respective averments on record, and to the pursuer conjunct proof: Grants diligence at the instance of both parties against witnesses and havers, reserving to fix a diet for proceeding with the proof on this interlocutor becoming final."

On hearing on appeal, the Sheriff (GLASSFORD BELL) pronounced the following interlocutor:—"Having heard parties' procurators on the pur-

suer's appeal, Finds that one of the grounds of action set forth in the summons is, that the pursuer was dismissed from the defender's service 'illegally, wrongously, and without justifiable cause;' and it was stated for said pursuer at the debate that it was only *per incuriam* that the said averment was not repeated in the condescendence, and she craved to have the record opened up, with the view of enabling her to supply the omission. In these circumstances, recalls the interlocutor appealed against, opens up the record accordingly, and remits to the Sheriff-substitute to allow the said addition to be made to the condescendence, and to be met in the defences; but this only provided the pursuer pays to the defender, within six days from this date, the sum of 15s. of interim expenses; and thereafter to close the record of new, and proceed with the cause as to the Sheriff-substitute seems just, with certification, that if the above sum be not paid, the Sheriff-substitute, after again closing the record, has full liberty to repeat, if so advised, the interlocutor now appealed against." The pursuer did not avail herself of the opportunity given to her to amend her condescendence, and the record having been again closed by the Sheriff-substitute, his Lordship of new closed the record, and repeated his interlocutor of 30th April 1867. The Sheriff, on appeal, altered his interlocutor, and allowed the pursuer a proof of her whole averments. The case was then advocated by the pursuer, with a view to jury trial in terms of the Act 6 Geo. IV., c. 120, sect. 40. The following issue was proposed:—

"Whether, on or about the 18th day of January 1867, the defender addressed and delivered, or caused to be delivered, to Peter M'Callum, junior, Helensburgh, a letter in the terms set forth in the schedule annexed hereto, or in similar terms? and whether, in the said letter, the defender falsely and calumniously stated to the said Peter M'Callum that the pursuer was far from honest, and quite an adept in all the usual modes of theft common among servants; or did, falsely and calumniously, make use of words and expressions of and concerning the pursuer of the like tenor and import, to the loss, injury, and damage of the pursuer?"

Damages laid at £100 sterling."

Parties having failed to adjust before the Lord Ordinary (KINLOCH), his Lordship reported the issue.

CLARK and BLACK for advocator.

THOMSON, for respondent, contended that there was no issuable matter, and that no issue should be allowed. The fact that the ground of action was stated in the formal part of the summons, and withdrawn from the Condescendence, must be held to imply that the advocator intended to abandon it. The ground of action must be clear on the pursuer's own statement, and she was not entitled to spell out a relevant case by looking to the statements of the defender.

The Court unanimously sustained the issue, holding that there was sufficient averment; LORD NEAVES observing that the fair interpretation to be put upon the statement that a letter was written, is that it was despatched.

Agent for Advocator—W. H. Muir, S.S.C.

Agent for Respondent—A. Morrison, S.S.C.

Tuesday, February 18.

FIRST DIVISION.

MILNE v. EARL OF DALHOUSIE.

Reparation—Game—Landlord and Tenant—Issue.

Issue adjusted to try claim of damage to crops by excess of game. Counter issues founded (1) on mis cropping, refused as unnecessary; and (2) on alleged counter claim of damages for mis cropping, refused as incompetent.

Alexander Anderson Milne, tenant of the farm of Balmachie, on the estate of Panmure, brought an action in the Sheriff-court of Forfar against the defender, heir of entail in possession of the said estate, for damages on account of injury done to the pursuer's grain and grass crops on the said farm during the year 1866, by reason of the defender having wrongously preserved and had in excessive quantities upon the said farm game of various kinds. The pursuer's lease was dated in 1774. The pursuer obtained right to it by assignation in 1862. The lease reserved to the proprietor the sole and exclusive right and privilege of fishing, fowling, and killing game on the farm. The pursuer alleged:—
“(3) At the time the said lease was entered into, and up to a recent period, there was little or no damage by game. The defender succeeded to the estates of Panmure on the death of his father in 1852. At that time there was very little game on the lands; pheasants were unknown; there was only one game-watcher for that portion of the estate lying between Arbroath and Dundee, and the farmers were allowed to destroy the hares at pleasure.”

“(4) On the defender succeeding to the estates, he immediately put on ten or a dozen keepers over the district on which the pursuer's farm is situated; he imported and bred pheasants and also rabbits to a great extent, and turned them loose on the pursuer's lands, and in the woods adjoining, and he abstained from shooting during the first two or three years after 1852.”

“(5) By these means the game on the pursuer's farm and on some of the neighbouring farms has been enormously increased, and is yearly augmenting. Besides what he has used himself and distributed among his friends, the defender has sold immense quantities of game, killed almost exclusively on the pursuer's farm and one or two farms in the immediate neighbourhood. The defender is called upon to state the quantity and value of game sold by him for each of the last five years, with the names of the purchasers. In the summer of 1858, the defender was called upon by William Anderson, then tenant of the farm of Mains of Panmure, which adjoins the farm of Balmachie, to pay for game-damage, estimated at £160 or £170, and after an inspection and valuation the damage was settled extrajudicially by the defender paying Mr Anderson £100. Mr Anderson left Mains in 1860, and the farm has since been let to two different tenants, both of whom have thrown it up in consequence of the destruction to their crops by game. For the last three or four years it has been out of lease, and has been used by the defender as a game-preserve. Mains is only separated from Balmachie by a narrow strip of plantation, and the game fostered by the defender on the former farm have therefore easy access to the pursuer's crops on the latter.”

The pursuer averred that in consequence of these proceedings on the part of the defender, the game had destroyed the crops of the pursuer to a very