MILNE *v.* KIDD.

This was a similar action on a guarantee in connection with the Formartin and Buchan Railway, in which the Lord Ordinary (BARCAPLE) had sustained a plea by the defender that the alleged obligation sought to be enforced was different from that contained in the letter of guarantee, and had dismissed the action. The Court held that the decision in the case of *Souter* applied, and therefore recalled the Lord Ordinary's interlocutor, and remitted to him to proceed with the action.

Friday, July 3.

SECOND DIVISION.

MACKINTOSH *v.* SQUAIR.

Reparation—Slander—Opprobrious Words—Animus injuriandi. *Held* that opprobrious words which were not dictated by an *animus injuriandi*, and neither conveyed a special charge nor caused appreciable damage, did not ground a claim for reparation.

This was an advocation from the Sheriff-court of Nairnshire of an action in which William Mackintosh, flesher in Nairn, was pursuer, and Alexander Squair, builder in Nairn, was defender. The action was one of damages, brought up on two grounds—first, slander; second, assault. It appeared that the defender, on 17th January 1867, was passing along the Street of Nairn when he was struck by a snowball on the head as he was passing the pursuer's shop, that he suspected that the snowball came from the pursuer's shop, and that he accordingly rushed into the shop in a violent passion, and struck the door of the back-shop where the pursuer was, and gesticulated violently, and used a number of opprobrious expressions towards the pursuer, calling him a "low scoundrel," a "damned scamp," &c., &c. The pursuer made no complaint or demand for reparation for a month after the occurrence, but he then brought the present action; in the defences to which the defender tendered a full apology.

The Sheriff-Substitute (FALCONER) and the Sheriff (BELL) assoilzied the defender, holding that the circumstances afforded no ground for awarding damages.

The pursuer advocated.

MACKENZIE for him.

FRASER for respondent.

To-day the Court adhered, with additional expenses. Their Lordships held that there was no proof of assault; and that, as regards the slander, the words used were no doubt opprobrious and improper, but they were words used in a passion, with no deliberate *animus injuriandi*. They were, moreover, words of mere abuse, conveying no special charge, and causing no appreciable damage; and, in addition to that, there was the fact, which was itself very important, that no demand for reparation was made till the present action was brought.

Agent for Advocator—James Bell, S.S.C.

Agent for Respondent—John Galletly, S.S.C.

Tuesday, July 7.

FIRST DIVISION.

BROOMFIELD *v.* GREIG.

(*Ante*, p. 367.)

Reparation—Slander—Issue—Proof. In an issue laid on verbal slander, besides a statement of time and place, there must be inserted the name of at least one person in whose presence and hearing the slander was uttered, and the proof must establish that that person heard the slander.

Robert Broomfield, baker, South Queensferry, sued David Greig, surgeon there, and Provost of the Burgh, for damages for slander. The case was tried on 24th and 25th June last, before Lord Barcaple and a jury, on an issue:—

"Whether, on or about 3d October 1867, and within or near the Council Chambers of the burgh of South Queensferry, the defender did, in the presence and hearing of Charles Moir, residing in South Queensferry, falsely and calumniously say that the defender would probably have the pursuer's premises examined, as according to law peace-officers might by warrant search bakers premises, and if any adulterated bread or flour was found, the same might be seized and disposed of (meaning thereby that the pursuer kept, in violation of the law, adulterated bread or flour in his premises); or did falsely and calumniously use or utter words to that effect, to the loss, injury, and damage of the pursuer."

The jury found for the pursuer, and assessed the damages at £50, "with leave to enter up the verdict for the defender if the Court shall be of opinion that it was necessary in order to a verdict being found for the pursuer that it should be proved that the defamatory words were uttered in the presence and hearing of Charles Moir:" and the jury found "that it was not proved that the defamatory words were uttered in the presence and hearing of Charles Moir."

The defender moved that the verdict be entered up as a verdict for him.

A. MONCRIEFF (DEAN OF FACULTY MONCREIFF with him) for defender.

WATSON (BLACK with him) for pursuer.

At advising—

LORD PRESIDENT—It is of the utmost possible importance to attend to distinctness and precision in the construction and meaning of such issues as this. When one man accuses another of verbal slander he must make his averments and frame his issues with the most punctilious exactness as to the occasion on which he alleges it was uttered. For these *verba volantia*, slanderous no doubt in themselves, from the lightness with which they are uttered, are apt to be forgotten; and, if they are intended to be made the subject of a charge, they must be tied down to a distinct occasion when they made a distinct impression on the parties present. Therefore it is not sufficient to allege that the slander was uttered on a particular day, and at a particular place, but the Court have always required the names of certain parties in whose presence the slander was uttered. And the reason for that is obvious. It would be hard indeed, and would lead to a miscarriage of justice, to tie down the pursuer to a particular hour, for there is nothing on which the memory is more treacherous. But, just because of that, you must tie him down in some other way, by making him and the defender understand the precise occasion of uttering the slander. Therefore it is that the names of the parties are held to be essential. But if we were to allow the pursuer,—after having selected his names, as he has done here, and has said, "I fix the precise