proof was closed. The pursuer's agents used as much diligence in procuring evidence as they possibly could. But they did not hear of the foregoing facts in time to be available in the proof, and there was nothing in the evidence suggesting them, or suggesting inquiries to be made at the parties named. The evidence, as it was daily taken, was published in the newspapers, and it was believed that this induced the persons who can give evidence as to these facts to speak upon the subject, and thus they were learnt by the agents for the pursuer.

MACDONALD for the pursuer and respondent.

BALFOUR for the defender and appellant.

At advising—

LORD PRESIDENT—The admission of additional evidence, more especially in actions of divorce, is a matter of great delicacy, and the competency of the new averments must be strictly judged. In this case I have no doubt of the admissibility of the matter contained in articles 1 and 2 of the condescendence before us. The allegations in the record, as originally made up, were general. They averred a course of continued adultery with Grant extending over nearly a year. These averments were supported not by proceeding to prove any single act of adultery, but the case was constructed on the basis of inferring adultery from a long train of facts and circumstances, and the pursuer excused himself from taking this course by saying that he did not know when the particular acts of adultery were committed. In articles 1 and 2 of the condescendence of *res noviter* the pursuer sets out specific acts of adultery. I greatly doubt whether it would have been competent to prove these allegations under the record as it formerly stood. To render such proof competent either at the trial or now it was necessary to add a condescendence.

The question still remains, is the pursuer entitled to have the record opened up in order that he may add matter which ignorance prevented him from founding on in his former record, and which is now well and relevantly averred? I am prepared to admit the first two articles, and to proceed to make up the record of new by allowing the defender to answer them, and thereafter to close the record, and allow additional evidence.

As to the third article of the new condescendence, I entertain a different opinion. That is an allegation of facts which falls within the sixth article of the original record. The facts here set forth might have all been proved under the original record, and just amount to additional facts and circumstances from which to infer adultery. I do not think that we can admit the averments in that article to proof. I am therefore for admitting the first two articles and rejecting the third.

LORD DEAS—There is more delicacy in admitting a condescendence of *res noviter* in a case of divorce for adultery than in any other. This action is still undecided, and it is a point in favour of the pursuer that the only judgment that has been pronounced is in his favour. Still I should not be inclined to admit them unless the fresh statements are both *specific* and *important*. Now, nothing could be more specific or more important than the statements in articles 1 and 2 before us; so important are they, indeed, that if established they would substantiate his case independently of the evidence already led. We must of course be specially on our guard against the admission of false evidence. If we see anything palpably like an attempt to defeat justice by the introduction of false evidence we are bound to refuse to admit it. I see nothing of that sort here, and I agree with your Lordship that we should admit these two first articles; but, on the other hand, that we should reject the third for want of those conditions which I have just insisted upon.

LORD ARDMILLAN—The pursuer is in a position which, according to recognised usage, entitles him to get added to the record anything which is properly *res noviter*. Looking to the two first articles of this condescendence, and to the original record, I think that these are averments which he should be allowed to add. Of course the question whether they are really *res noviter venientes ad notitiam* is one which remains to be inquired into on the evidence, just as much as the truth of the averments themselves.

LORD KINLOCH concurred.

The Court accordingly "allowed the record to be opened up, and the first and second articles of the said condescendence of *res noviter* to be added to the record; refused to allow the third article to be added to the record," &c.

Agents for Mr Walker—Henry & Shiress, S.S.C.

Agents for Mrs Walker—J. B. Douglas & Smith, W.S.

Tuesday, November 1.

M'INTOSH, PETITIONER.

Messenger-at-Arms — Execution of Service. The Messenger's execution of service of this petition bore that he had "passed and in Her Majesty's name and authority," &c. Whereas the fact was, that his warrant was only an order or interlocutor of this Court.

The Court commented on the irregularity, but they allowed the execution to stand, on the ground that the real warrant was properly set forth, and that it was more or less true that the Messenger did "pass in Her Majesty's name and authority," as he was a Messenger-at-Arms, and acted under the authority of this Court, to which Her Majesty's was delegated.

Tuesday, November 1.

SMITH *v.* CRAIK & CO.

Jury Trial—Damages—Expenses. Where a jury give substantial damages, though only a portion of the random sum claimed, the rule is that expenses are carried; and, unless there is any glaring misconduct of the case, the Court will not go into the proof to see whether every part of the evidence was necessary for the success of the pursuer.

This case came before the Court upon a motion of the pursuer, to apply the verdict which had been given in his favour. On his afterwards moving for expenses, the defenders objected to his getting full costs of suit, on the grounds (1) that he had only got a verdict for a portion of the sum claimed; and (2) that he had led much irrelevant and unnecessary evidence, particularly as to the character of a certain road.