than £25. Now this case goes somewhat further, and I think when the true price or value is defined we must take that definition as conclusive.

Lord Deas—I entertain no doubt whatever. In the recent case of *Henry* v. *Morison* the judgment was the other way, but we had occasion to consider the principle applicable to such cases, and the authorities which have produced that principle. The value of the cause is the determining principle. The value here is expressly fixed by the conclusion of the action. The prayer is alternative—either to deliver an article or to pay £6, 10s. That is all that could be decerned for, and all that could be recovered. The value of the case could not by possibility be more definitely fixed than it is by the prayer ordaining him "to deliver to the pursuers a medium sewing machine" and failing delivery "ordaining him to pay to the pursuers the sum of £6, 10s. stg., as the value of the said machine and its accessories."

The party concluded against is quit of the action and all its consequences by paying this £6, 10s. And it is like a small-debt action in that it fixes nothing beyond. It might be said to imply a good many other things, but that has nothing to do with it.

Lord Mure referred to his opinion in the case of *Aberdeen* v. *Wilson*, and concurred.

The Lords dismissed the appeal as incompetent.

Counsel for Pursuer (Respondent)—Trayner—Dickson. Agents—J. W. & J. Mackenzie, W.S.

Counsel for Defender (Appellant) — Shaw. Agent—R. C. Gray, S.S.C.

Tuesday, May 17.

FIRST DIVISION.

[Lord Adam, Ordinary.

BRYDON *v.* BRECHIN.

Reparation — Slander — Issue — Innuendo — Relevancy.

In an action of damages for slander the pursuer will not be allowed by a forced construction to spell a libel out of the terms of a letter which does not *prima facie* import libellous matter.

Mrs Brydon, with consent of her husband James Brydon, grocer and dairyman, residing in the Lawnmarket, and he, for his own interest, raised an action of damages for libel against Malcolm Brechin, a partner of a firm of butchers and poulterers. On or about 15th January 1881 the defender wrote and posted the following anonymous letter—which was marked on the envelope as "Private"—to Mrs MacIntyre, his wife's sister, who was then residing with the pursuers at Lawnmarket:—"Is it possible that a daughter of Mrs Gray's is living in the Lawnmarket? Things have surely gone to a pitch now, Mrs MacIntyre, with you. The day is past when you would have spurned at living in such a place, and being the guest of Mrs Brydon, who in days gone past has not been your best friend, *but the opposite;* the writer is a wellwisher, and would ask you to consider your position, and take heed and turn from such a way of living as the present is with you. The writer hopes to hear of different behaviour, and not going under the roof of anyone but the one you should, viz., your mother, or go to some place where drink and your present companions wont get near you, so that temptation will be out of your way. The writer sympathises with your mother under her circumstances with your conduct.—Your Wellwisher."

The pursuer averred—"The statements made by the defender in the said letter, which is in his handwriting, are of and concerning the pursuers, and are false, calumnious, and injurious. The said statements were intended to mean, and did mean, that the friendship of the pursuer Mrs Brydon for Mrs MacIntyre was treacherous, malign, and false in the past, and directed to tempt and lead away the said Mrs MacIntyre from the paths of honesty and virtue. Further, the said letter was intended to mean, and did mean, that the pursuers were keepers of a house of disreputable character, where loose and immoral people were allowed to associate with each other, and where Mrs MacIntyre would find drunken and profligate companions, and would thereby be exposed to temptation to do wrong."

The defender denied this inuendo, and averred —"The letter was written solely with the view of inducing the defender's said sister-in-law to return to her mother's house. The defender had no idea of reflecting in any way on the character or conduct of the pursuers. The defender in writing the said letter was not thinking of the pursuers, but was only desirous of influencing his sister-in-law to return to her mother's house, which she ought not to have left. The defender knew very little about the pursuers, but he admits that it would have been untrue to say of them that they were not perfectly honest, decent, and respectable people. He believes that they were in every respect the opposite of what he is represented to have said of them in the said letter. The said lette rwas not written with reference to anyone in particular, in so far as reflection upon character is concerned, excepting always the defender's said sister-in-law. It was written with the best intentions, and for a proper purpose. The defender withdraws every expression in the said letter which can in any way reflect on the pursuers' character or conduct, and regrets very much that they should in any way have suffered in their feelings from any expression in a letter not referring to them and not addressed to them. The defender at the same time denies that the construction put upon the said letter by the pursuers is warranted by its terms."

The defender pleaded—"(1) The pursuers' statements are not relevant nor sufficient to support the conclusions of the action."

The Lord Ordinary (Adam) approved of an issue for the trial of the cause, as follows:—"Whether the letter was in whole or in part of and concerning the pursuer Mrs Brydon, and falsely and calumniously represented that the pursuers were keepers of a house of disreputable character, where loose and immoral people were

allowed to associate with each other, and where Mrs MacIntyre would find drunken and profligate companions, and would thereby be exposed to temptation to do wrong, to the loss, injury, and damage of the pursuers? Damages laid at £500."

In the course of the debate it was stated that Mrs MacIntyre was in good circumstances, being the wife of a chief engineer in the Royal Navy, who was at present at sea.

The defender argued—The action should be dismissed as irrelevant. The inuendo sought to be put on the letter was extravagant and unreasonable. No facts and circumstances stated on record were sufficient to infer a libellous construction of the terms of the letter, which *prima facie* imported no libel. The letter was one written to a sister-in-law, and marked as "private."

Authorities—*Kennedy* v. *Baillie*, 5th Dec. 1855, 18 D. 138; *Rodger* v. *MacEwan*, 9th Mar. 1848, 10 D. 882.

The pursuer replied that he was entitled to put a meaning on the letter by inuendo, without setting out facts and circumstances on record to establish that it was libellous—*Dun* v. *Bain*, 24th Jan. 1877, 4 R. 317; *Broomfield* v. *Greig*, 10th Mar. 1868, 6 Macph. 563; *M'Iver* v. *M'Neill*, 28th June 1873, 11 Macph. 777; *O'Brien* v. *Clement*, 8th May 1846, 15 M. & W. 435.

At advising—

Lord President—Where the words of alleged libel are not in themselves of a plainly libellous character, but require to have an inuendo put upon them, the question is, whether in the circumstances the inuendo is admissible or not; for some inuendos are so unreasonable and forced that we cannot allow them to go before a jury. Now, the words here I think are clearly not in themselves actionable. The plain meaning is that the writer disapproves of Mrs MacIntyre living with anyone but her mother, for he thought she was open to temptation in the way of drink. The only insinuation against anyone is in these words:—"The writer hopes to hear of different behaviour, and not going under the roof of anyone but the one you should, viz., your mother, or go to some place where drink and your present companions would not get near you, so that temptation will be out of your way." Now, I think the only reasonable construction of these words is an imputation against Mrs MacIntyre. Is there any other imputation in them more than this, that if Mrs MacIntyre is thrown into the company of those who take more drink than is good for them she may be tempted to do so also? But then there are the words—"The day is past when you would have spurned at living in such a place, and being the guest of Mrs Brydon, who in days gone past has not been your best friend, but the opposite," and so on; and out of these the pursuer tries to construct a libel, to the effect that Mrs Brydon kept a house of ill-fame. But in the record we have no facts and circumstances alleged which could give any such meaning to the words. Nor are we told anything of Mrs MacIntyre, whether she is married or not, or what or where her mother's house may be. We are asked to take the letter by itself and spell a libel out it. The statements on record are of the most meagre description. On the whole matter, I think the case comes under the rule of *Broomfield* v. *Greig*, and that the proposed issue is too unreasonable to be admitted to go to a jury. I am therefore for recalling the Lord Ordinary's interlocutor and dismissing the action.

Lord Deas—I think this is quite unlike an action against a newspaper, because all the country is in the habit of reading the papers, and everything in them is seen by all the public. But this is a case between relations, where the observation does not apply. Among relations the law allows a freedom of speech and writing quite different from that which obtains among members of the public. There may be here an insinuation against Mrs MacIntyre; if there is, it is simply that if she were in a place where drink was going freely she might be tempted to excess; but there is no action by her now before us.

There is a great want of specification of facts and circumstances in the record. I am not unwilling to take into view the explanations stated to us at the bar, but these facts and circumstances seem to me to tell against the pursuer, for it appears Mrs MacIntyre is a married woman whose husband is at sea; and what more proper than for a relation to tell her that the proper place for her to be was under her mother's roof. Under that roof she would not try to get drink, or get it if she did try; I think it was very right and natural for a brother-in-law to say to the woman herself or to her friends—"In all the circumstances you had better stay with your mother;" and really there is nothing more said as regards Mrs Brydon. All that is said of her and her house implies nothing more than this, that being there, and not being with her mother, Mrs MacIntyre might get drink—which she might do in any respectable tradesman's house in Edinburgh. The sting of the inuendo is quite extravagant; and though all the facts and circumstances of which we have heard had been fully stated on the record, I should still be clearly of opinion that the action is not relevant. There is no expediency in encouraging actions of this sort. I may add that if the letter had not been anonymous I should have had no hesitation in coming to the conclusion I have reached. I think that fact is against the defender, but it is not enough to alter my judgment on the matter.

Lord Mure—I have come to the same conclusion. These questions of inuendo are sometimes very difficult, but I think the rule is, that when the words used substantially exclude altogether the idea of what is inuendoed, the Court will stop the case before it goes to a jury, and not let the jury put a forced construction on the words used. Now, applying that rule here, I think there is nothing in this letter to warrant us in sending the case to a jury to say whether the defender intended to describe the pursuers as "keepers of a house of disreputable character, where loose and immoral people were allowed to associate with each other, and where Mrs MacIntyre would find drunken and profligate companions." I think there is nothing more in the whole letter than a warning to Mrs MacIntyre that she had left her mother's house, where the writer thought she had better have been. There is nothing actionable at the instance of the persons she was living with, and I think the action must be dismissed as irrelevant.

Lord Shand was absent.

The Lords recalled the Lord Ordinary's interlocutor, sustained the defender's first plea-in-law, and dismissed the action.

Counsel for Pursuers—Brand. Agent—David Barclay, Solicitor.

Counsel for Defender — Trayner — Jameson. Agent—Wm. Lawson, Solicitor.

Wednesday May 18.

SECOND DIVISION.

[Sheriff of Midlothian.

CROAN *v.* VALLANCE.

Sale—Horse.

Where a horse which had been sold was returned as being unfit for the buyer's purposes to the seller, who afterwards used it to his own profit—*held* that the seller was thereby barred from maintaining an action for its price.

This was an action raised in the Sheriff Court of Midlothian by Patrick Croan, horse-dealer, against Thomas Vallance, a cab proprietor in Edinburgh. It concluded for the sum of £19, 10s. sterling, as the price of a mare which the pursuer averred he had sold to the defender. In the proof which was taken on the averments on record it appeared as follows:—As the pursuer and defender were returning from Dalkeith fair held on 13th May 1880, the former sold and delivered the same evening to the latter, for the sum of £19, 10s., a grey mare for the purpose of being driven as a cab horse; next morning the defender sent back the mare as unfitted for his purpose and as having shown vicious propensities, but the pursuer declined to take her back and returned her. The next morning (the 15th) the defender a second time returned her to the pursuer, who, although he wrote protesting against the return and intimating his intention to put the mare into neutral custody at livery at the defender's expense, nevertheless worked the animal as a cab horse, and, as he deponed in evidence, "he had worked her more since she came into his possession than most cab horses in Edinburgh are wrought—more than he worked his own."

The defender pleaded, *inter alia*, that the pursuer was barred from suing the action, inasmuch as on the return of the animal he had retained and worked and used her as his own property and failed to put her into neutral custody.

The Sheriff (Davidson), affirming the judgment of the Sheriff-Substitute (Hallard), found that as the pursuer had not said or done anything to show that he accepted back the mare, but on the contrary had insisted throughout on his rights as seller, he was entitled to recover the stipulated price.

The defender appealed, and argued—In point of law, the converse was equally sound of such cases as *Ransan* v. *Mitchell*, June 3, 1845, 7 D. 813; *Padgett & Co.* v. *M'Nair & Brand*, Nov. 24, 1852, 15 D. 76; and *M'Bey* v. *Gardiner*, June 22, 1858, 20 D. 1151; and therefore the pursuer's claim for repetition of the price was under the circumstances untenable.

At advising—

Lord Justice-Clerk—In this case we have not heard any discussion on the question whether this horse failed to answer the warranty alleged to have been given by the seller, and whether there is any conclusive proof of the vicious habits attributed to it, but I do not think that it is necessary to do so owing to the way in which the seller dealt with the horse when it was returned upon his hands by the purchaser. The day after the sale the defender brought back the horse to the pursuer, who declined to resile from the bargain, and the horse was sent back. On the next day, however, the horse was again sent to the pursuer's stable and left there. The pursuer communicated with the defender through his agent, asking him to take back the horse, but this was never done. The pursuer, when the horse was sent back to his stable, did not put it out to livery with some neutral party, but kept it at his own stables, and used it for his own behoof in his business, working it, according to his own account, "more since it was in my possession than most cab horses in Edinburgh are wrought—more than I work my own." I think that the pursuer having acted in this way when the horse was returned to his stable under an allegation that it failed to answer the warranty, the present action is untenable, and that we need not go further into the case.

Lord Young—I am entirely of the same opinion. Of course I give no opinion on the question as to whether the defender was entitled to return this horse as not being fit for the purpose for which he bought it, and not according to the warranty alleged to have been given. But it is important as a fact in the case that the defender did return the horse as not fit for his purpose, and that the pursuer accepted the return and proceeded to use the animal as his own, for his profit and in the course of his trade, and that not only for a few days before he raised this action, but, so far as we learn, down to the present time. I hold that that conduct must be held to have imported an acceptance by him of the return of the horse. He was not, I think, entitled to take these two courses at once—to raise this action and to use the animal as his own. The animal was used by the pursuer for the purposes of his trade, and that in such a manner as clearly implied that he thought the horse was well returned. In no other view is his conduct justified. On these two facts—that the defender returned the horse on the allegation it was not fit for his purpose, and that the pursuer used it for his own purposes when it was so returned—I think that this action is quite untenable.

Lord Craighill concurred.

The Lords therefore sustained the appeal and dismissed the action.

Counsel for Appellant—Hon. H. Moncreiff. Agent—Daniel Turner, S.L.

Counsel for Respondent—J. A. Reid. Agent—Charles Robb, L.A.