Manson, 1 R. 371. Reference was also made to the law of England as explained in M'Laren on Wills, i. 714, and the English authorities there cited.

It does not appear to me that the first class of cases—I mean those of which *Bell* v. *Cheape* is the best example—are at all in point. What those cases settled was, I understand, this, that if a legacy or bequest is given to a person and his heirs and assignees, the "assignees" favoured are presumably assignees after vesting, so that, *e.g.*, if the legatee dies before the testator nothing passes to his assignees or executors-nominate. That principle of construction has, I think, distinctly no bearing upon the present case, where the bequest to "representatives whomsoever" is expressly directed to take effect before vesting—that is to say, is expressly applicable to the event of the legatee predeceasing the testator.

Neither do I think that the case of *Stewart* taken by itself, or as explained in the recent case of *Manson*, goes the length which the next-of-kin contends. The expression there construed was "personal representatives," and while that expression was, in the deed there under construction, held to mean representatives *ab intestato*, I see no reason to hold that that case laid down any general principle, or that a similar construction would have been applied to the different and broader language of the deed which your Lordships have now to construe. The same observation applies to the English authorities, as to which it is enough to say that none of them appear to deal with a bequest expressed in the words of the bequest here.

On the whole, therefore, I am of opinion that the Lord Ordinary's interlocutor is right, and should be affirmed.

The Court pronounced this interlocutor—

"Refuse the reclaiming-note, and adhere to the interlocutor reclaimed against: Find the said claimant and the claimants William Bogie and others, trustees and executors of Robert Methven, entitled to the expense incurred by them since the date of the said interlocutor," &c.

Counsel for the Reclaimer—Jameson—Baxter. Agent—W. J. Lewis, S.S.C.

Counsel for the Respondent—Lorimer—M'Kechnie. Agent—William Black, S.S.C.

Friday, January 31.

FIRST DIVISION.

[Lord Trayner, Ordinary.

LAIDLAW *v.* GUNN.

Reparation — Slander — Issue — Malice — Probable Cause—Privilege.

A domestic servant was convicted of stealing certain articles from her master's premises, and was dismissed. Thereafter she instructed a law-agent to demand the balance of her wages from her master. In the course of the correspondence which followed with the law-agent, the master wrote—"We now miss many more things than those found in her possession;" and in a subsequent letter—"We have no doubt she has also taken the things now amissing."

In an action of damages by the servant against her former master, the pursuer averred malice, and proposed the following issue— . . . "Whether the defender falsely, maliciously, and calumniously says" (in the letter scheduled) "of and concerning the pursuer, that 'We' (that is, the defender) 'have no doubt she has also taken the things now amissing,' meaning thereby that she had stolen the things referred to in said letter, to the loss, injury, and damage of the pursuer?"

Held that although the occasion was privileged on which the defender wrote the letter complained of, the statements therein would bear the innuendo put on them, and the defender was entitled to an issue of malice.

This was an action by Worthly Moir Baird Laidlaw, domestic servant, against John Gunn, proprietor of Queen's Hotel, St Colme Street, Edinburgh, in which the pursuer claimed £500 as solatium and in name of damages for an alleged slander, and £3, 2s. 9d., balance of wages due to her by the defender. The pursuer entered the defender's service at the Queen's Hotel as laundry-maid on 24th May 1889. On 15th August 1889 she was arrested, and on 16th August 1889, having pleaded guilty, was convicted in the Edinburgh Police Court of having stolen certain articles from the defender's premises. Thereafter the pursuer was dismissed from the defender's service.

On 16th and again on 17th August 1889 the pursuer waited on the defender at the Queen's Hotel and asked for payment of her wages, but failed to get a settlement.

The pursuer on 19th August 1889 instructed a law-agent, David Barclay, to recover her wages from the defender, and he accordingly wrote the defender on that day requesting a settlement. The defender on 22nd August 1889 replied as follows—"I have recd. your note regarding the woman Laidlaw. When she left this on the 17th I asked her to call back on the 20th and she wd. get what money I owed her. I presume you are aware she was dismissed for very serious

misconduct. We now miss many more things than those found in her possession, and a lady who has been here for three months has a long list of things she misses, amounting to over three pounds. A gentleman misses several things also. We are anxious to have those things traced if possible." In answer to this David Barclay wrote the defender on 24th August 1889 asking an explanation of the statement as to the other articles alleged to be lost, and on the same day the defender wrote the following reply—"I have recd. this evening your note of this date. Your declaration of war has no sting and no terror for me. I am sorry to make any insinuations about the young girl, I may say the young thief, your client. Unfortunately for her, we have clear enough proof of her vile habits and her guilt. She certainly is the only person in this house we accuse of dishonesty and dishonest practices. Articles to the number of 18 or 19 belonging to me was found in her locked box by the members of the criminal department sent here to make the investigation, in my presence, and other members of this establishment. We have no doubt she has also taken the things now amissing. It's very unlikely she would tell you or me that she has got them. It would probably have been more conducive to your business had she not pled guilty, and had I desired her punishment to have been greater it would have suited me better also. She, however, knew and felt it would be better and safer for her to do as she did, and so far I think she has shown more prudence and wisdom than her counsellors. She called for her things and her box on the 17. She demanded her money in an insolent and arrogant manner, and looking at her bold front, the bold front of a thief, I said it might be a question whether she had not forfeited her wages, but if she would call in two days she would get all wages due to her. She has only to call here and her wages will be paid to her. She will likely find it more to her advantage had she done so in place of having to give half the amount to an agent for unnecessary work.—Yours faithfully, J. GUNN. *P. S.*—The foregoing was written at a very late hour on Saturday night after a very busy day. I have just looked over it, and I do not think I wish to modifiy anything in it. I wish you to understand that your client can have her wages by calling here for them. It seems to me you are taking the surer means to prevent her from seeing her serious faults in the manner. It might be for her future good she did not see them; but perhaps you wd. not be sorry if she shd. again have to consult you in regard to her misdeeds. It might, however, be to her benefit and her future happiness and welfare if you would kindly point out to her the grave nature of her crime. J. G."

The pursuer averred (Cond. 5)—"The statements in said letters are false, malicious, and calumnious, and were intended to mean and do mean that she was a thief, and had theftuously and feloniously stolen various effects from his hotel, and were written for the purpose and with the object to blacken and ruin the character and prospects of the pursuer. The pursuer feels deeply wounded in her feelings, and injured in her character, prospects, and reputation by these slanderous and defamatory statements, and although she has, through her law-agent, called upon the defender to retract the same, and for an apology, he declines or at least delays to do so, hence the present action has been rendered necessary."

The defender pleaded, *inter alia*—"(2) The defender having had probable cause for making the statements complained of, should be assoilzied from the conclusions of the summons. (3) The defender being privileged in the circumstances in making the statements complained of, should be assoilzied. (5) The defender having all along been willing to pay the pursuer her wages for the time she served defender, the action, *quoad* the second conclusion of the summons, was unnecessary."

The Lord Ordinary on the 10th December 1889, approved of the following issue:—"It being admitted that on or about the 24th August 1889 the defender wrote and sent to David Barclay, solicitor, Edinburgh, a letter in the terms set forth in the Appendix, and that the same was received by the said David Barclay: Whether the defender falsely, maliciously, and calumniously says therein of and concerning the pursuer that 'We' (that is, the defender) 'have no doubt she has also taken the things now amissing;' meaning thereby that she had stolen the things referred to in said letter, to the loss, injury, and damage of the pursuer?"

The defender reclaimed, and argued—No issue should have been allowed, for the pursuer admitted the conviction in the Police Court, and the defender had probable cause for making the statements he did as to the other missing articles. Further, this on the face of it being a case where the defender had made statements not voluntarily, but in answer to letters from the pursuer's agent, was a case of privilege, for high duty gave the same privilege as official position. And the pursuer should have averred special facts and circumstances from which malice might be inferred—*Watson* v. *Burnet*, February 8, 1862, 24 D. 494; *Craig* v. *Peebles*, February 16, 1876, 3 R. 441; Archer on Libel, 224; *King* v. *Waring*, 5 Espinasse's Reports, 13; *Warr* v. *Jolly*, 6 Carrington & Payne's Reports, 497; *Urquhart* v. *Gregor*, Dec. 21, 1864, 3 Macph. 283; *Beaton* v. *Ivory*, July 19, 1887, 14 R. 1057; *Innes* v. *Adamson*, October 25, 1889, 17 R. 11; *Croucher* v. *Inglis*, June 14, 1889, 16 R. 774.

Argued for the pursuer—The pursuer did not admit that she had stolen any of the articles, but even if she had, that was no justification for calling her a thief. The only question between the pursuer and defender was whether the pursuer was to get her wages. The defender might have refused to pay the wages, assigning her conduct as a reason for his refusal; or he might have reported the girl to the police for the additional missing articles. But what he did was to offer to pay the wages and at

the same time charge the pursuer with a new crime. This was outside of his duty—*Leyman* v. *Latimer*, June 22, 1877, L.R., 3 Ex. Div. 15; *Mackellar* v. *Duke of Sutherland*, January 14, 1859, 4 D. 222.

At advising—

LORD PRESIDENT—In this case the Lord Ordinary has approved of an issue which is set out in the Appendix, and which puts the question, "Whether the defender falsely, maliciously, and calumniously says therein of and concerning the pursuer that 'We' (that is, the defender) 'have no doubt she has also taken the things now amissing,' meaning thereby that she had stolen the things referred to in said letter, to the loss, injury, and damage of the pursuer?"

Now, it was contended that the statements on record, and the correspondence between the defender and pursuer's agent disclosed such a state of matters that there was no case to go to a jury. I cannot assent to that proposition. I think that the case must go to the jury. If we were to take upon ourselves to decide that there is no issueable matter, we should, I rather think, be usurping the functions of the jury. I must say that I think if the case fell to be decided upon the correspondence before us your Lordships would not have much difficulty. The pursuer, however, has averred malice, and put it into the issue. We must not therefore deprive her of the opportunity of proving it. In the next place, if the innuendo can be fairly put upon the words used, that they meant that "she had stolen the things referred to in the letter," they are undoubtedly actionable. It is for the jury to say (1) whether they have this meaning, and (2) whether, if they have, the pursuer has suffered injury entitling her to the remedy asked. We must then, I think, affirm the Lord Ordinary's interlocutor.

LORD SHAND—I am of the same opinion. There is no doubt that the occasion on which the letter complained of was written was privileged, and the Lord Ordinary has therefore rightly caused the issue to be framed with a view to making the pursuer show that the statements contained in the letter were not only false and calumnious but malicious.

It is contended that the record ought to have contained averments of special malice. There is no doubt that where a slander has been uttered in the course of official duty the rule of law is that such special malice must be alleged. This case, however, does not in my view fall under that class of cases.

Certainly, looking at the averments the case is very unlike one of malice at all. The defender appears to have paid the pursuer her wages, which he was not bound to do, which seems to negative the idea of malice. But this is for the jury, before whom the defender will be entitled also to prove, as part of the surrounding circumstances in which his letter was written, that the pursuer was convicted on her own confession of the theft of a number of articles from his house.

I feel, however, on the whole matter, that it would not be safe to throw out the action in the meantime.

LORD ADAM and LORD M'LAREN concurred.

The Court adhered to the interlocutor of the Lord Ordinary, refused the reclaiming-note, and found no expenses due to or by either party.

Counsel for the Pursuer—Forsyth. Agent—David Barclay, Solicitor.

Counsel for the Defender—Guthrie—F. T. Cooper. Agents—Auld & Macdonald, W.S.

Tuesday, February 4.

FIRST DIVISION.

WATSON *v.* DUNCAN.

Reparation—Slander—New Trial—Language Used under Provocation.

An inspector of water meters in a burgh having falsely charged a millowner with improperly abstracting the town water, the latter retaliated by calling the former "a liar" and "a damned liar." Subsequently, at a meeting held for the purpose of nominating candidates for the town council, the inspector complained that a stream of water which used to keep the public drain near his house clean had been let to the millowner the year before, and that the water having been diverted the drain had become so filthy that his family had been attacked with fever, and asked the candidates whether they would restore the water to the drain again, and thus place the health of the community before a question of pounds, shillings, and pence to a trader. The millowner thereupon rose and charged the inspector with telling a deliberate falsehood, as he (the millowner) had used the water for thirteen years. On the inspector calling for a retractation, the millowner declined to retract, and, according to the account of some of those present, called the pursuer "a liar."

In an action of damages for slander by the inspector against the millowner the pursuer obtained a verdict. On a motion for a new trial, the Court *set aside* the verdict on the ground that the jury were in error in attributing a serious meaning to the language used on the occasions in question.

This was an action of damages for slander brought by Robert Watson, blacksmith in Macduff, against James Duncan, grain merchant and miller there, damages being laid at £500.

The issues adjusted for trial of the cause were as follows—"(1) Whether on or about 15th May 1888, at the defender's premises in the town of Macduff, the defender did falsely and calumniously say to the pursuer that he, the pursuer, was 'a malicious