pursuers proceeded to put the drains in question into what they considered a proper and safe condition: Find, however, that the pursuers did not proceed to remedy or remove defects of structure in the then existing drains, but disregarding the existing structure altogether laid down an entirely new drain in a different site and with a different outflow: Find that the pursuers' proceedings were not authorised by said section 16 of the Glasgow Police (Amendment) Act 1890: Therefore recal the interlocutor appealed against; sustain the appeal; assoilzie the defenders from the conclusions of the action."

Counsel for the Pursuers—Lees—Salvesen. Agents—Campbell & Smith, S.S.C.

Counsel for the Defenders—Ure—Clyde. Agents—Simpson & Marwick, W.S.

Friday, June 26.

SECOND DIVISION.

MARTIN *v.* CRUICKSHANKS.

Reparation—Slander—Privilege—Motion for New Trial—Whether Evidence of Malice Sufficient to Support Verdict.

A clerk and a porter who were employed by a railway company at one of their goods sheds, raised an action of damages for slander against an inspector who had been for thirty years in the employment of the railway company. The action was founded upon a report made by the defender in which he alleged that he had found one of the pursuers using a gimlet in the side of a cask of beer, while the other was sitting upon it with a water-can in his hands, that he had said to them they were in an awkward position, and that they had asked him not to report their conduct. The case went to trial upon an issue in which malice was inserted. The defender swore to the truth of his report. The pursuers denied the acts and conversation alleged, and declared that the whole report was an invention, but did not prove or suggest any motive which could have induced the defender to make a false charge against them.

The jury found for the pursuers and assessed the damages at £100 to each.

The Court *refused* (*diss.* Lord Young) to grant a new trial, on the ground that the question was one of credibility, and that the charge made by the defender, if false, must necessarily have been made maliciously.

William Martin, goods porter, Inverkeithing, and James Stark, railway clerk, Dunfermline both formerly in the employment of the North British Railway Company at Inverkeithing Station, raised an action of damages for slander against William Cruickshanks, a railway inspector in the employment of the company.

Two issues were adjusted for the trial of the cause, one for each of the pursuers, and both in the same terms. That for the pursuer William Martin was—"Whether the defender wrote and transmitted to John Stewart, Burntisland, the report set forth in the schedule hereto annexed, and whether the said report is of and concerning the pursuer William Martin, and falsely, maliciously, and calumniously represents that the said pursuer was, on or about 8th August 1895, pilfering, or attempting to pilfer, from a cask in the custody of the North British Railway Company, at or near their station in Inverkeithing, to the loss, injury, and damage of the said pursuer? Damages claimed by the pursuer William Martin, £250.

"SCHEDULE.

"Goods Department, Dunfermline Station. S. 174,388 10/8

To John Stewart, Esq., Burntisland. Date 12th August 1895.

"Inverkithing, 8th August 1895.

"Dear Sir,—On me visiting the above, and entering goods shed from east end, I came on the clerk Stark using a gamlet in side of a cask, and it on its end. The porter was sitting on it with a watter can in his hands. I went to them and said men you are in a very awkard position, the clerk turned up his head and said they were. I saw another man sitting in shed looking at them, I did not know him, he had on a mixted soot of tweeds. The clerk left shed, so did the porter with can, and the porter returned to me and asked me if I was going to say anything about it. I told him that I would consider what I was to do with that; he was not pleased, and he folled me up the time I was checking three sidings, repeting the same questin. I told him I was afraid it was not his first time, and he said it was. I asked him whatever attemped him to do it, and he said he had been drinking this last two nights. When I put it to him was it his first time, he said he was brought up to it. I went to the hut—there was a party there with clerk, and I did not speak to him, but went to Mr Simpson, and him and me examined cask, and found there had been a spail put in as cask was liking. The cask was addressed Sim, Invkithing.—Yours truly, W. CRUICKSHANKS."

The trial took place on 25th February 1896, before the Lord Ordinary (Low) and a jury.

The defender, who had been thirty years in the employment of the Railway Company, deponed as follows:—"Then I went into goods shed at south end to look at waggons there. I passed one waggon, and on second waggon the clerk, Stark, was sitting, using his right hand on a barrel which was on platform. The porter, Martin, was sitting on cask facing clerk, with can between his legs. Stark was down on his right knee. Martin was sitting on top of cask. It was a common station water pitcher that Martin had. I did not look into it, but by the way Martin was holding it it looked empty. I came on them sud-

denly. I can be under no mistake as to what I saw. I walked up to them and said —"Well, men, 'don't you think you are in a very awkward position?' and they turned their heads and said, 'Yes.' When I spoke Stark stopped the movement with his hand. I can't say what he had in his hand, but it was either a gimlet or other instru ment. He rose up and said nothing more. Martin also rose to his feet with the pitcher. I thought at first he was the fireman. Nothing more passed at that time. I then went out of shed. Martin followed me and said, 'I hope you won't say anything about it,' and I said I would consider. He still followed me up, and repeated the same question three or four times. I made the same reply, and then he said, 'The cask's open, I must go and shut it.' He said if I said anything about it it would be his job. The only other thing I said was 'I wish to see the clerk before you see him.' I then went to the office, but someone was with Stark, and so I did not mention the subject. I should have said that I asked Martin what made him attempt it, and he said he had been drinking for the last two nights. He said he had been brought up to it, but whether it was to the drinking or the broaching I did not know. I thought I was bound in duty to report the matter to my superiors. Mr Simpson was the station-master, so I went to him and told him that I had seen two of his men in a very awk-ward position, and would he come with me. We went to the shed. This was about five to ten minutes after I had caught the men. I pointed out to Simpson the cask at which the men had been working. It had been put away among other casks. It was alone when I caught the men. I had no difficulty in recognising the cask. There were four or five others, but it was the smallest cask the men had. Simpson and I turned the cask up, and I pointed where it had been broached. It was leaking, and a spill of white wood put into it. It was a soft wood spill. They are usually hard wood. I saw it was different from the usual spill. There was a little leakage. The spill looked new wood, not like as if it had had a journey. Simpson and I took number of cask and name of consignee. The number was 25586, and the consignee was Mr Sim. I entered the name and number in my book at the time. Having reported the matter to Simpson, I left it, but I afterwards re-ceived from Mr Stewart a request for a written report to him, and I wrote report in schedule to issues, and sent it to Stewart. That was the only written report I made. All I say in report is true. . . . Had no ill-will to either Martin or Stark, and never had. I had no quarrel with either of them, and knew little of them. I had no desire to do anything but my duty."

The pursuer James Stark, who had been in the employment of the company since May 1876, deponed as follows:—"When I was speaking to them [two persons who had come to inquire for goods] the defender came into the shed. I saw him just about the middle of the shed on platform. He came in at the south side, the side next the goods office by the loading-table. When the men left I went back to the office. The defender had not spoken to me or I to him. This would be between 3 and 4 p.m. Martin was about the place where he had sat down. When he came in he was some distance away from me. I did not see defender speak to Martin. There was beer in the shed at that time—some ale returned as not having been ordered, I understand. It was at end north of shed, exactly at the back of me. There was a piano case between me and it. I knew of some beer to be delivered that day to one Sim at Inverkeithing—two half-barrels and a quarter-hogshead. I don't know if that beer was there at the time I speak of, or had been sent away by carrier. The defender did not follow me to the goods office. He spoke to me in the office later on. One Beedie was with me—cashier to Cowan & Company, carriers. The defender did some business with me about waggons, but did not mention any charge against me. He never did so at any time. Never heard of charge till Angus, policeman, and Simpson, the stationmaster, challenged me on the morning of 9th August. They charged me with pilfering beer from one of Sim's casks. I denied it." In cross he deponed—"I was at the top door of the shed speaking to the two men. Martin sitting about centre of shed. Can't say what he was sitting on. Don't think he was sitting on a cask. Defender did not speak to me or to Martin. Martin was about five yards from me. I was kneel-ing on my right knee in front of a cask. I had not a gimlet in my hand, and was not doing anything to bung-hole. Martin was not sitting on barrel with pitcher between his knees. Defender did not say, 'Now, men, don't you think you are in a very awkward position?' I did not say yes. He went on checking the waggons."

The pursuer William Martin, who had been three and a-half years in the employ-ment of the company, deponed—"The defender came through the shed. He came in at last door next the goods office. He passed on and gave me good-day, and I answered him. Nothing else passed. He went through the shed and out at the end. I had no conversation with him that day except a word at passing one time. Nothing said about any charge. First I heard of charge was next day from Angus and Simpson. In cross he deponed—"The de-fender's report is an invention from begin-ning to end. Defender came into shed near four o'clock. Smoking in shed is not allowed. The can was not between my feet. It was on floor a few feet from me. I was sitting with my face towards the line. It was then the defender passed along. The can was full. It was intended to be taken to the office. Kerr's casks were the only barrels of beer in shed at time. They were at end of shed. I was about the middle. I don't know how many barrels there were exactly. Sure that all Sim's casks were away before defender came in. There were two for Sim. No. 15 of process may be one of the cards on Sim's barrels, but I cannot say. I did

not notice number on Sim's casks. They had been taken away on the back of two o'clock. I was not sitting on a barrel with can between legs. Defender did not say to us what he said in report. I did not follow him or speak to him as he says in report. I did not say that I would require to go and close the cask, as Simpson would be down on anything like that. I saw Simpson and defender afterwards in yard, but can't say if they went into shed. I knew defender before. He was often about."

There was no proof or suggestion on the part of the pursuers of any motive to induce the defender to make the charge contained in his report.

Thomas Rose, an engine-driver, deponed that about 3·40 p.m. the pursuer Martin came up with the can, got it filled with water, and went towards the shed with it, and that a few minutes afterwards he saw the defender coming from the north entrance of the shed. John Martin, the fireman on the engine, also gave evidence that about twenty minutes to four one of the pursuers came to get water at the engine. Charles Stewart, lorryman at Inverkeithing, deponed that he delivered the barrel in question at the shop of James Sim, spirit dealer, Inverkeithing, between two and three o'clock, while Sim himself gave evidence that in his opinion the barrel had not been tampered with.

For the defender, George Simpson, the stationmaster, deponed that defender came to him about 4·30 p.m. on 8th August, and that in consequence of what defender said he went with him to the shed and examined the bung of the barrel, and that it looked as if it had been chipped or roughly cut in two or three places, and that next day he went with John Angus, railway detective, to Sim's, and again saw the barrel and found that the spill was of soft wood and not a trade spill. He said that it struck him that something had been done to the cask. John Angus corroborated Simpson as to the bung being chipped looking and as to the spill being soft. George Duncan, a police inspector in employment of the Railway Company, deponed that he examined the cask, and that there appeared to have been a corkscrew or other sharp instrument slightly inserted into the bung and drawn out again. John Stewart, traffic superintendent, gave evidence that the defender was honest and reliable in the discharge of his duties.

In both cases the jury returned a verdict for the pursuers, and assessed the damages at £100 to each pursuer.

The defender on 11th June obtained from the Second Division a rule to show cause why the verdict should not be set aside, and the pursuers were heard upon the rule upon October 20th. They argued—It was a matter of credibility. There was evidence in support of both sides, and the jury believed the pursuers. The Court were not entitled to set aside the verdict of the jury unless they were satisfied that from no point of view could it be reconciled with the evidence—*Kinnell* v. *Peebles*, February 7, 1890, 17 R. (*per* Lord President Inglis, Lord Shand, and Lord Adam), p. 424, 425.

Argued for defender—The verdict of the jury was contrary to the evidence and should be set aside. The probabilities of the case, as well as the real evidence and the surrounding circumstances, must be taken into account. The report was made by a man privileged to make it, and against whom there was no presumption of malice. The fact that this man, for thirty years in the employment of the railway company, had no conceivable motive for inventing such a charge against these men was such strong *prima facie* evidence in his favour, that it would require much stronger evidence than that led on behalf of the pursuers to find him guilty of malicious falsehood.

At advising—

Lord Low—If I had been trying this case alone, and without the assistance of a jury, I should have come to the conclusion that the pursuers had failed to prove their case, because I should have been unable to get over the extreme improbability that the defender, who for some thirty years has held a position of trust and responsibility in the employment of the North British Railway Company, had, without any cause which can be suggested or imagined, invented a wicked and injurious charge against two young men whom he hardly knew. But it is a very different thing to say that upon the evidence which was laid before them the jury were not entitled to come to a different conclusion. I think it must be conceded that the pursuers presented to the jury a strong case. Your Lordships cannot know, and it is right that I should mention it, that the appearance of both the pursuers and their demeanour in the witness-box, were markedly in their favour. They gave their evidence apparently with great candour and moderation. In the next place they were both young men who had been in the employment of the railway company for a considerable time, and nothing against their previous character was suggested, and, as Lord Trayner pointed out, it would have been practically impossible for the jury to give a verdict against the pursuers without affirming that they had been guilty of an attempt at dishonesty, because there was no suggestion in this case that they had been innocently doing something which the defender believed to be an attempt to draw beer from a barrel in the goods shed. In the next place, it appeared that the pursuers when separately charged with having tampered with the barrel of beer, gave the same account of what had occurred when the defender came to the goods shed, and they did so, as far as could be seen, without any opportunity of communicating or consulting with each other. In the next place, Mr Sim, to whom the barrel was consigned and who may be regarded to a certain extent as a man of skill in the matter, said that he could find no indication upon the barrel that it had been tampered with, and that he does not believe that it had been tampered with.

And finally, the pursuer's story as to what took place in the goods shed when the defender came there receives important confirmation from the evidence of the engine-driver and the fireman of the goods engine, who had been working at the goods shed shortly before the arrival of the defender.

There is only one point, I think, one matter in regard to which it could be argued that the evidence given by the pursuers was contradicted, and that was in regard to the time when the barrel with which they are said to have tampered was removed from the goods shed. That, from one point of view, was a very important matter. From another point of view I do not think that it was so important. If the pursuers had been able to establish that the barrel with which they are said to have tampered had been removed from the goods shed before the defender came there, that would have been a piece of evidence in their favour so strong as to be almost conclusive; and at the close of the pursuers' case it did appear as if they had proved that that was the case, because Stewart, the lorryman who removed the barrel, and who is a witness against whose credibility nothing can be suggested, gave evidence which, if correct, made it quite certain that the barrel had been taken from the shed long before four o'clock or a quarter to four, when the defender says he came there. But then there is the evidence of the stationmaster, whom I also take to be a perfectly unimpeachable witness, that when he went to the goods shed about half past four with the defender, the barrel was still there, that he took the number of the barrel and found that was the number of the barrel on Sym's premises next morning. Now the result of that is, that the pursuers cannot be held to have proved that the barrel was removed before the defender came to the goods shed, but I do not think it goes further. I do not think that fact can be used as discrediting the pursuers, or as showing that they wilfully gave false evidence in the witness-box. All that it amounts to is this, that they have been mistaken in common with one or other of the witnesses in the case. They have either been mistaken in common with Stewart as to the time when the barrel was taken to the goods shed, or they have been mistaken in common with the stationmaster, and with the defender himself, as to the time when the latter went to the goods shed. The question before the jury therefore appears to have been entirely a question of credibility, and a question of credibility in regard to which the considerations upon the one side and upon the other were not unevenly balanced.

In these circumstances it appears to me that it is impossible to say that the verdict of the jury was contrary to the evidence, I therefore come to the conclusion, although I confess that I do so with some regret, that it is not competent for the Court to allow a new trial in this case.

Lord Justice-Clerk—I am of the same opinion as has been expressed by Lord Low. Of course it is a very unusual case when it depends absolutely on credibility as between the pursuer and the defender, as it does in this case practically, and in the ordinary case one could not, judging such a case for one's self, pronounce a verdict such as was given by the jury here except on strong grounds; but as the case does turn on credibility, and as the evidence of the pursuers was distinct and clear on the matter, and as we have heard from the Judge who tried the case that they impressed him favourably in regard to their truthfulness, I am unable to say that the verdict is contrary to the evidence, so that we should set it aside and send the case to another jury. Therefore I think we must discharge the rule.

Lord Young—The question is, whether we have grounds upon which we can and ought to send this case to be tried again. The case is certainly peculiar. I have not seen an action in the course of my not short experience exactly like it. The defender has been, I think, over thirty years in the employment of the North British Railway Company, and for eighteen years he has been an inspector with a duty of taking notice of—inspecting—the conduct of others with a view to reporting anything which he sees amiss, and which he in his judgment (which is not inexperienced) thinks ought, in the interests of the company, to be reported. He did, in the case of the two pursuers, with respect to whom he had the duty I have referred to, give a report to his own superior officer in writing which we have printed in these proceedings. He reports in it no more than that he saw one of the men using a gimlet in the side of a cask which was on its end. The porter was sitting on it with a water can in his hand, and the other man had just begun to use, or was just using, the gimlet. He does not say he saw them take anything out of the cask, but merely that he saw them in this suspicious position. He went to them and said—"Men, you are in a very awkward position." That is what he reports that he did, and one of the men turned his head aside and said they were in an awkward position, and asked him to say nothing about it. Now, I think it was his duty to report this, and that in doing so he was in a privileged position. When anybody speaks of another—a neighbour, or friend, or an enemy—slanders, or writes of him libellously—falsehood and malice are presumed, and it is incumbent on him to remove the presumption by showing that what he said or reported is true. A man in the privileged position — undoubtedly privileged position—of the present defender is not in that case. His position altogether excludes any presumption of falsehood or malice, and makes it incumbent upon the party who charges him with having made a false and malicious charge to prove falsehood and malice. To prove that the charge is erroneous is not enough; it must be proved to be malicious, and in the common case—certainly in this case—the proof of malice, and the only proof of malice, is that it was false to his knowledge. That is stated in the text-

books. When a man is in a privileged position, where malice and falsehood are not presumed, but require to be proved, if it is shown that what he said was false to his knowledge, that is evidence of the falsehood of course, and also of the malice. That is held to be sufficient evidence of malice. Now, it was incumbent upon the pursuers here to prove that, and not only (to use an expression which I noticed was used by my learned brother Lord Low) to present a case not unevenly balanced. I am by no means of opinion that the case here is evenly balanced. But where the burden is incumbent upon the pursuer as a condition of his success to prove malicious falsehood so that that can be affirmed by a jury, he certainly does not discharge the *onus* upon him by presenting a case not unevenly balanced. Nor do I at all concur in the view that the jury, by saying that they were not convinced, and not prepared to affirm that the pursuers had proved wilful and malicious falsehood on the part of the defender, thereby affirmed that the pursuers had been guilty of dishonesty. They would merely have affirmed that the pursuers had not proved the case which it was incumbent on them to prove as a condition of their success. By finding that the party upon whom the *onus* lies, upon whom it is incumbent to prove as matter-of-fact a certain thing, had not proved that, they would not affirm that the contrary was the truth. If this old servant of the railway company, thirty years in their employment, and eighteen years in a comparatively high position, were indicted now—as he might well be upon a verdict by a jury finding that he was guilty of making a false charge, and of having sworn to it—and the jury found that it was not proved against him, they would not thereby affirm that the two pursuers had been guilty of dishonesty. They would merely affirm that it had not been proved to their satisfaction—that there was not evidence which ought to satisfy anybody—that that was the truth which could be affirmed by a verdict which is a declaration of the truth, and I suppose nobody can doubt for a single moment that any jury who were asked the question upon such evidence as was submitted to this jury—"Is it proved that this man is a malicious slanderer and guilty of wilful and corrupt perjury?" would have said—"No, it is not proved." Suppose any man (it may be the head of the police) going along the street, or in a railway station, and seeing somebody attempting to pick a pocket, goes up to him, says, "I saw you attempting to pick that man or that lady's pocket," and takes him into custody against the man's remonstrances, who says "Oh, for God's sake don't take me, I will never do it again; I was hungry; I was wanting something; but I will really not do such a thing again." There is then a prosecution such as this against him as being a false and malicious slanderer. There is no suggestion that he had any malice—no suggestion that he was otherwise than perfectly respectable himself, or that he had any knowledge whatever of the individual taken into custody—nothing to suggest a motive for malice. Nevertheless, the jury finds that malice is proved because the person whom he apprehended said—"Oh, I am not guilty, I did not do it." There is nothing else here—nothing in the world besides the denial by the party who is charged by one having a duty as much as an inspector, a constable, or the head of the police force, to interfere in the matter as he has done—nothing except the denial of the party against whom the charge is made—and the learned Judge who tried the case said that if he had been trying it, and had had to return a verdict, he would have returned an opposite verdict from that which the jury here returned. Did the learned Judge mean when he said that, that by returning an opposite verdict he would have found the two pursuers guilty of dishonest conduct or would have found merely that there was no reasonable evidence on which to come to the conclusion that this old railway servant had been guilty of wilful and corrupt falsehood? Now, I am clearly of opinion that there was no evidence here upon which the conclusion expressed in the verdict—the opposite conclusion to that at which the learned Judge arrived—can be sustained. Of course a common-place observation occurs here, as in every case when there was evidence to submit to the jury, that it was for them to judge. That observation is applicable, and is true, in every case that comes before us on a motion for a new trial upon the ground that on the evidence as we read it the verdict is not satisfactory. Motions for a new trial are not always or even generally upon the ground that there was no evidence at all for the consideration of the jury. It is said that there was not evidence which reasonably supports the verdict, and that is enough if the Court comes to that conclusion, and I put the question more than once in the course of the discussion whether in a case of this kind—an action for slander against a person in the position of this defender—such a verdict as this had ever been returned where there was no evidence showing malicious feeling on the part of the person in a privileged position towards the party against whom he made the charge. The answer was in the negative, and I do not believe that your Lordship's experience—though perhaps something shorter—is different from my own in this, that I never met with or heard of such a case—an action against a perfectly respectable individual in a privileged position who is found guilty of wilful and corrupt malice by inventing a charge against a person of whom he knew nothing and against whom he had no ill-will whatever. Such a case has never been presented. I am therefore of opinion that this is a clear case — I should say a gross case—in which we are not only entitled, but in our duty called upon, to grant a new trial—in duty to this highly respectable man, who, as we are told, and as no one would be surprised to hear, is continued in the service of the company, who did not believe such a charge

against him as the jury have affirmed. I think it is in all justice to him our duty in such a gross case to send the case again for trial.

LORD TRAYNER—I concur in all that Lord Low said, except one observation, and that was, that if he had been trying this case himself he would have been unable to have got over the improbability of the defender, considering him as a most respectable man as Lord Young has said, having made a statement absolutely untrue and without foundation. In dealing with this case I think that the question of probability and improbability is not for us to consider at all. The probabilities or improbabilities of any case as affecting the effect to be given to the evidence adduced, is a consideration to be urged on the jury, and in this case was urged as strongly, I have no doubt, as possible. It is just the peculiar function of the jury to deal with the probabilities of the case before them, in considering what effect they are to give to the evidence adduced. But if we are to consider probabilities, I repeat now what I said in the course of the discussion, that notwithstanding the respectability of the defender I am not able to see that there is any more probability that the pursuers are thieves than that the defender is untruthful. The defender is a very respectable man, and has been a long time in the service of the railway company. Granted. The pursuers are respectable men, and have been a long time in the service of the railway company. Why should it be suggested that to save one man from the charge of untruthfulness, other two men are to be subjected to the charge or the supposition of dishonesty. I see no reason in the world for such a suggestion. I quite concede that in this case the pursuers had to establish not only that the charge was false but that it was malicious. Have they not done so? The jury thought they had, for they affirmed it, and they did that on a charge of a very distinct character from the learned Judge who presided at the trial. His Lordship told the jury that there were two stories as they must have seen; that the story of the pursuers and the story of the defender were absolutely conflicting and contradictory, and that it was a question of credibility entirely, and one on which they must make up their own minds. If the defender's statement was true—if they believed the defender's evidence—then the pursuers could not succeed, for the defender had then established to the satisfaction of the jury that the statement he had made to his superior officer was true. If they believed the pursuers' case, then they must of necessity have disbelieved the defender, who did not suggest that he might have been mistaken, but told a circumstantial story not only as to what the pursuers were engaged in doing, but as to the conversation which took place between him and them thereafter, which involved practically an admission of guilt on the part of the pursuers, and a request that their conduct should not be reported. Now, if that is not true, or if it is not believed —and that is the same thing—if the jury did not believe the defender's statement, it was the same as if it were not there at all, then the defender's story was a story that was false, and false to his knowledge. Nothing could be more malicious, and if that was the view the jury took of the evidence, they were entitled and bound to find for the pursuers as they did.

I have, contrary to my original intention, rather expressed some views that I had not intended to express in this case, because I think it is sufficient for the determination of the question before us to hold, as I do very distinctly hold—and I think I do in common with the learned Judge who tried the case—that there was sufficient evidence adduced by the pursuers to warrant the verdict returned if that evidence was believed. That it was believed is ascertained by the fact that the jury returned the verdict they did, and I am clearly of opinion that to grant a rule for a new trial in this case would be utterly inconsistent with the principles and practice that have ruled and formed part of our procedure during the whole time I have known the procedure of the Court.

LORD MONCREIFF—I have felt some difficulty about this case. The pursuers had to prove that the charge complained of was made by the defender maliciously and without probable cause, and I have no doubt that this was clearly explained to the jury by the presiding Judge. The peculiarity of the case is that there is no proof or suggestion of motive on the part of the defender to make the charge if it was not true. Further, in order to arrive at their verdict the jury must have held, not only that the defender swore falsely, but also that the stationmaster at Inverkeithing, and Angus, the railway detective, and Duncan, the police inspector, were not to be believed when they said that they saw marks of a corkscrew or other sharp instrument having been used on the cask.

But we are dealing with the verdict of a jury. The question is one of credibility. There is no room for mistake; the story on the one side or the other is false. The jury have thought fit to believe the evidence for the pursuers, and we cannot set aside their verdict unless we are prepared to hold that that evidence if believed is not sufficient to support it. Now, I am unable to say, that if the evidence of the pursuers, and the witnesses Sim and Stewart, is to be believed, it is not sufficient to support the verdict. I have, therefore, with some hesitation come to the conclusion that the rule should be discharged.

The Court discharged the rule and of consent applied the verdict.

Counsel for the Pursuers—Watt—A. S. D. Thomson. Agent—John Veitch, Solicitor.

Counsel for the Defender—Balfour, Q.C. —Grierson. Agent—James Watson, S.S.C.