interest that it got to be called legal interest. But circumstances have altered, and I think we have now got to this, that we frequently, indeed habitually, allow less, such as 4 or 3½ or even 3 per cent. It is not the law of Scotland that 5 per cent. is the interest payable to every creditor on every debt. There may be exceptional circumstances where 5 per cent. will be granted, but I do not think they occur here. This is just a simple case of a party not being in a position to make election for a number of years between her conventional provision and her legal rights, and the sole duty of the trustees is to account for what they have properly made of the estate in the meantime. If the party making the election was in a position to do it immediately after the death, then he is generally entitled to interest without reference to the income which the trustees received from the estate, but not necessarily to 5 per cent.

I am therefore of opinion that the defences should be sustained, and the defenders assoilzied.

LORD TRAYNER—I think that the result of the decisions, especially *Inglis' Trustees* v. *Breen*, is entirely opposed to the pursuer's claim. I therefore am of opinion that these decisions should be affirmed, with the result at which your Lordship has arrived.

The LORD JUSTICE-CLERK concurred.

LORD MONCREIFF was absent.

The Court pronounced the following interlocutor:—

"Recal the interlocutor appealed against: Sustain the second plea-in-law for the defenders: Assoilzie the defenders from the conclusions of the action, and decern."

Counsel for the Pursuer—Clyde. Agents—Sibbald & Mackenzie, W.S.

Counsel for the Defenders—The Solicitor-General—M. P. Fraser. Agents—Cuthbert & Marchbank, S.S.C.

Friday, June 17.

FIRST DIVISION.

M'COSH, PETITIONER.

Bankruptcy — Sequestration — Misprint in Statutory Advertisement — Nobile Officium—Advertisement Ordered of New.

On the petition of a bankrupt, the Court in the exercise of its *nobile officium*, ordered of new advertisement in the *Edinburgh* and *London Gazettes*, and fixed of new a date for the creditors meeting for the election of a trustee, the original advertisement having been vitiated by printer's errors in the name of the bankrupt and of the subscribing agent.

On 7th June 1898 the estates of James M'Cosh were sequestrated in the Sheriff Court of Lanarkshire, and a meeting of creditors for the election of a trustee was appointed to be held in terms of the Bankruptcy Act 1856 (19 and 20 Vict. cap. 79).

In terms of the 48th section of the said Act (which provides for the insertion of a notice in the *Edinburgh Gazette* within four days, and in the *London Gazette* within six days of the deliverance awarding sequestration), the bankrupt transmitted a notice in the form of Schedule B annexed to the Act to the printers of the *Edinburgh* and *London Gazettes*.

Owing to a printer's error the bankrupt was designated James "M'Cash" in place of "M'Cosh" in the advertisement inserted in the *Edinburgh Gazette* of 10th June. The name of the subscribing agent was also misprinted in the advertisement in the *London Gazette* of the same date.

In these circumstances the bankrupt, with consent of certain creditors, presented an application to the Court to appoint of new advertisement in the *Edinburgh* and *London Gazettes* of 21st June, and to fix the 29th of June as the date for the meeting of creditors.

The Bankruptcy Act 1856 (19 and 20 Vict. cap. 79), sec. 67, requires that the meeting of creditors for the election of a trustee should be held "on a specified date, being not earlier than six nor more than twelve days from the date of the Gazette notice of sequestration having been awarded."

Argued for the petitioner—This was an appeal to the *nobile officium* of the Court to rectify a fatal error in the procedure for which the printer of the Gazettes and not the petitioner was to blame. The provisions of section 48, which prescribed advertisement, were always strictly construed—Goudy on Bankruptcy, p. 158, and cases there cited—and if the mistake could not be put right, there must be a fresh "first deliverance" in the sequestration, which might have the effect of conferring preferences on creditors who enjoyed no preferences at present. The Court had granted similar applications—*Von Rotberg*, December 22, 1876, 4 R. 263; *Watt*, March 10, 1877, 4 R. 641; *Myles*, June 14, 1893, 20 R. 818. The expenses of this application should not be made a charge on the bankrupt's estates.

LORD PRESIDENT—This case seems to fall within that class of which *Von Rotberg* is the clearest type, where the Court do exercise their *nobile officium* to correct an error of this description; and I understand that the Court in so doing do not come to the rescue of an applicant who has made a blunder in the proceeding for his own sake, but rather exercise their power in order that the interests of creditors who may have been lying by should not be affected by a mistake for which they are not responsible. Accordingly, I think we may grant this application; and looking to the explanations which have been made, I think that nothing should be said about expenses.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court granted the prayer of the petition.

Counsel for the Petitioner—T. B. Morison. Agents — Macpherson & Mackay, S.S.C.

HIGH COURT OF JUSTICIARY.

Tuesday, May 17.

(Before the Lord Justice-General, Lord Adam, and Lord Kinnear.)

FORBES *v.* ROSS

Justiciary Cases — Malicious Mischief — Specification — Owner — Injury to Property of Another Person — Violence.

A person charged with malicious mischief was proved to have destroyed portions of certain walls which had stood for many years on an unfeued piece of ground. It was not stated in the complaint, and it was not proved, to whom the walls belonged, but the accused claimed no right in the walls or the ground, though he asserted a right-of-way which the walls obstructed. He had been previously warned against interfering with them. No violence was proved. *Held* that the accused was rightly convicted.

This was an appeal in a stated case at the instance of Roderick Forbes, clerk, Stornoway, against a conviction and sentence pronounced against him on 4th February 1898 in the Sheriff Court at Stornoway.

The complaint charged him with malicious mischief, in respect that he "did, on 21st January 1898, wilfully, maliciously, and mischievously break down and destroy, or cause to be broken down and destroyed, several portions of walls on the feu or lot of ground No. One, Immersligach, Stornoway."

The Sheriff-Substitute found the following facts proved:—That more than forty years ago the area of ground called Immersligach was feued out to five feuars, the feus being numbered consecutively 1 to 5. The northern boundary of these feus was a piece of unfeued ground, which was possessed by the respective feuars from time immemorial, either by the tolerance of the superior or as part and pertinent of their feus. That upwards of twenty years before the date of these proceedings there had been erected on the unfeued ground at the north of feus 1 and 2 certain kilns for smoking herrings, which two years before had been destroyed by fire, with the exception of several portions of concrete walls which formed the property in question. The appellant was not a feuar, and had no heritable property in the locality referred to; but he claimed that there was a right-of-way along the piece of ground to the north of the feus, and he had had verbal and written communications on the subject with the factor for the superior. In doing so he acted on behalf of his brother Donald Forbes, who was the feuar of feu No. 5. Donald Forbes, on 23rd September 1897, wrote to the agent for the owner of feu No. 1, requesting the removal of the walls; to which the agent replied with a refusal, the walls being, as he said, on the property of his client. He further intimated that if the property was interfered with or destroyed Forbes would be held liable.

The appellant, about eight o'clock on the night of 20th January last, employed several workmen, and in pursuance of said employment said workmen, between the hours of eight and eleven o'clock on the morning of 21st January last, pulled down and levelled with the ground the several portions of the concrete walls above referred to, without any legal warrant or authority from the Court, or the factor, or the owner of feu No. 1, and outwith their knowledge or consent, and that the appellant paid said workmen for their services.

It was further proved that no violence or disorderly conduct arose during the operations complained of, other than those necessary for breaking down said walls, and that the materials of which said walls were composed were of little value owing to the action of the fire referred to.

On these facts the Sheriff-Substitute convicted the accused of malicious mischief as charged, and fined him 10s. with the alternative of two days' imprisonment.

The question for the High Court was:—"Whether, on the facts stated, the appellant was rightly convicted of the crime of malicious mischief charged."

The appellant argued — The question raised by this complaint was one of civil right, and not appropriate for trial in a criminal prosecution — *Black* v. *Laing*, October 29, 1879, 4 Coup. 276; *Dalrymple* v. *Chalmers*, February 3, 1886, 1 White 37. The conviction implied a decision by the Sheriff of the question of civil right, and his decision was wrong—*Magistrates of St Monance* v. *Mackie*, March 5, 1845, 7 D. 582. But whether it was right or wrong, the appellant had relied on the terms of the titles, and had removed the obstruction in the *bona fide* belief that there was a right-of-way. The authorities showed that an act like this, if done in a reasonable though erroneous belief of a right, did not come within the category of malicious mischief, at all events where, as here, no violence or tumult occurred—Hume i. 122; Alison i. 449; Macdonald 116. Here the belief was reasonable — *Hozier* v. *Hawthorne*, March 19, 1884, 11 R. 766.

The respondent argued — So far as the appellant was concerned, there was no question of civil right in the case, for the appellant himself, not being one of the feuars, could not allege any right. He was sufficiently warned. *Black's* case was special, since the obstruction there had been recently erected, while here it was of old standing. The appellant knew that he was interfering with the property of other persons, and that amounted to malice.

LORD JUSTICE-GENERAL—At first sight it may be allowed to the appellant this