locality. The present case, I think, is really ruled, if authorities are to rule such cases, by *Greig* v. *Simpson*, because it is perfectly clear on the evidence that when the pauper left West Calder, after a disagreement with his wife, as he himself says, he had definitely abandoned his residence there, and had no intention of returning, so that he was neither there in fact nor in intention from the time that he went to Shotts. I cannot admit that his having paid occasional visits to his wife towards the latter end of this period, and while he was looking forward to her coming to Shotts, that these occasional visits, which were no doubt made under pressure, and apparently with the view of arranging for their coming together again, can be held to re-establish the residence at West Calder in any true sense of the term. I am therefore of opinion with your Lordships that we should alter the interlocutor and hold that Shotts is liable.

LORD KINNEAR—I am entirely of the same opinion.

As to the effect of the admission of liability given by West Calder—

LORD PRESIDENT—We now have to decide the question that was left over, namely, the question as between Shotts, whom we have just held to be the parish liable as in a question with the parish of birth, and the parish of West Calder. Now, the ground upon which Shotts says that West Calder is liable is not that the settlement is truly in West Calder, because that has really been determined as a matter of fact the other way, but that they have got an admission of liability in distinct terms. It is contained in the letter of 14th January 1903, which is in response to several applications for payment of relief and a request for an early admission of liability. In that letter the Inspector of West Calder, writing to the Inspector of Shotts, says—"I am instructed to admit liability in this case."

Looking to the terms of section 70 of the Act of 1845 and the decisions that have been given by the Court in *Beattie* v. *Arbuckle* (2 R. 330) and *Young* v. *Gow* (4 R. 448), it would be idle to say that this admission does not bind. Accordingly the only question really is not whether the admission binds, but whether it applies to the sum of £39 odds, which is the sum which was expended for the relief of the pauper after a certain date, 27th November, the point being that upon the 23rd November the pauper with her children left West Calder poorhouse of her own accord, drifted up and down for four days in search of her husband, turned up at Shotts on the 27th, asked for relief, and was promptly sent back by the Shotts Inspector to West Calder. It is said that interrupted the chargeability, and that consequently the admission which was made for the period before that does not apply to this period.

I cannot think that what was said in those cases which I have cited leads to any such result. It seems to me that once there is a proper admission of liability which binds, that liability must cease in a proper sense, that is to say, that the pauper in some way or other must be shown to have become self-supporting again or to have come to be supported by somebody else, as would be the case if she had married. But here there is nothing of that sort. There is merely four days' undeterminable absence during which she does not seem actually to have got parochial relief, and during which, as she herself says, she did not earn anything at all because she had too much to do with the children. I am clearly of opinion that the admission still binds, and that, as in a question between Shotts and West Calder, West Calder is liable.

LORD ADAM—I concur.

LORD M'LAREN—I am of the same opinion.

LORD KINNEAR—I also am of the same opinion.

The Court pronounced this interlocutor:—

"Recal the said interlocutor: Find that Robert Stone acquired a residential settlement in the parish of Shotts which was subsisting at 27th November 1903: Sustain the first alternative of the plea-in-law for the defenders, the Parish Council of the Parish of Bo'ness and Carriden, and assoilzie said last mentioned parish from the conclusions of the summons; and in respect of the admission of liability by the Parish Council of the Parish of West Calder to the Parish Council of the Parish of Shotts, assoilzie also the said last mentioned parish from the conclusions of the summons: Find the Parish Council of the Parish of West Calder liable in expenses to both defenders; allow accounts thereof to be given in," &c.

Counsel for Pursuers and Respondents (The Parish Council of West Calder)—Watt, K.C.—A. M. Anderson. Agents—W. & J. L. Officer, W.S.

Counsel for Defenders and Reclaimers (The Parish Council of Bo'ness and Carriden)—Guthrie, K.C.—Orr Deas. Agent—Thomas Liddle, S.S.C.

Counsel for Defenders and Respondents (The Parish Council of Shotts)—Younger, K.C.—M. P. Fraser. Agent—D. Hill Murray, S.S.C.

Friday, November 17.

SECOND DIVISION.

[Sheriff Court of Perthshire at Perth.

STEWART *v.* HANNAH.

Reparation — Slander — Innuendo — Relevancy — Privilege — Malice — Facts and Circumstances Inferring Malice.

A law-agent, appointed to wind up an executry estate, but from whom the agency had been taken, and against

whom an action of count, reckoning, and payment had been brought by the executrix, wrote a letter to an insurance company, the cautioners for the executrix, advising them to withdraw their bond, as a personal guarantee given by him to the company that the estate would be divided by him according to law, was, in the altered circumstances, useless.

In the letter he stated that the executrix's son "is demanding payment of the whole estate. . . . I have reason to suspect that if the son who is demanding the whole estate gets hold of it, the other beneficiaries will never receive the share they are entitled to."

In an action for damages for slander brought by the son against the law-agent, the pursuer proposed an issue in which he innuendoed the letter as meaning that he would dishonestly appropriate money that did not belong to him, and averred that the defender wrote it maliciously with the object of obstructing the executrix, retaining the funds and agency in his own hands, and inducing the company to withdraw their bond. The defender objected to the issue on the ground that the letter could not bear the proposed innuendo, and that the occasion being privileged it was necessary for the pursuer to aver facts and circumstances inferring malice, and that he had not done so.

The Court allowed the issue, *holding* (1) that the innuendo was admissible; (2) that the occasion was privileged; (3) that assuming the necessity for an averment of facts and circumstances, the pursuer's averments were sufficient.

James G. Stewart, commercial traveller, Forres, brought an action in the Sheriff Court of Perthshire at Perth against Alexander Hannah, law-agent, Union Bank House, Aberfeldy, in which he sued him for £500 as damages for alleged slander contained in a letter of 18th February 1905 written by the defender to the General Accident Assurance Corporation, Limited, Perth.

The pursuer's averments showed that after the death of his brother, Mr William Robert Stewart, a Mr Charles Munro, the local agent for the Union Bank of Scotland at Aberfeldy, solicited the agency in the executry estate, and that an arrangement was come to that Munro should wind up the estate, it being understood, however, that the actual conduct of the business was to be undertaken by the defender Alexander Hannah, who was associated in business with Munro. The pursuer understood that he and his mother were to be appointed joint-executors to his brother, but as a matter of fact the mother, a lady of nearly eighty years of age, was appointed sole executrix. The defender undertook the legal business connected with the winding up of the estate, but the pursuer and his mother being dissatisfied with the conduct of Munro and the defender made a demand for payment of all moneys belonging to the executry estate, and the mother, as executrix, ultimately brought an action of count, reckoning, and payment against the defender and Munro in the Sheriff Court at Perth. The defender thereupon wrote the following letter to the General Accident Assurance Corporation, Limited, Perth, who were cautioners in the executry:—

"*Union Bank House,*
"*Aberfeldy, 18th February* 1905.

"Dear Sir,—*W. R. Stewart's Exy.*—You will remember that your company recently became cautioners for the executrix in this case, and that before doing so I guaranteed to your company that the estate would be divided by me according to law. I am sorry to say that the executrix left here before I could divide the estate, and is now staying in Forres with her son. This son is demanding payment of the whole estate in name of his mother the executrix, and has employed an agent to recover it. Now, I do not think that we can very well keep the estate out of the hands of the executrix if she chooses to employ another agent, but I think it right to intimate to you that of course my personal guarantee in the circumstances is inept, and such being the case your position as cautioners is such that I think you ought to withdraw your bond of caution, and should intimate this, on receipt of my letter, to the Sheriff-Clerk, because I have reason to suspect that if the son who is demanding the whole estate gets hold of it, the other beneficiaries will never receive the share they are entitled to, and I am aware that the others interested are likely to take steps to compel a settlement of their claims. Meantime you must proceed to protect yourself.—Yours faithfully,

"ALEXANDER HANNAH."

This letter was lodged by the defenders in the process of the action of count, reckoning, and payment, already referred to, and in this manner came to the knowledge of the pursuer.

The pursuer further averred (Cond. 6)—"The following statements contained in the said letter of 18th February 1905, viz., 'This son is demanding payment of the whole estate. . . . I have reason to suspect that if the son who is demanding the whole estate gets hold of it the other beneficiaries will never receive the share they are entitled to,' were made by the defender of and concerning the pursuer to the said Assurance Corporation and to the officials thereof. The statements are false and slanderous, and were made maliciously and without probable cause, and by making these false, malicious, and libellous statements to said Assurance Corporation, and to the officials thereof, defender meant thereby that pursuer was a dishonest person who was not to be trusted, and that he would fraudulently misappropriate money that did not legally belong to himself, and that he would illegally withhold money belonging to other persons if any money were placed in his hands, and would cheat and defraud the other beneficiaries entitled to a share of his said late brother's estate.

(Cond. 8) . . . Defender by so writing meant to falsely, maliciously, and slanderously charge the pursuer as a dishonest person who was not to be trusted with money, and that pursuer wanted to secure the possession of the funds of the executry estate of his said late brother, and to fraudulently apply them to his own purposes, and defraud and cheat the other beneficiaries of their legal shares, without the knowledge of the executrix, who had the legal control of said funds, and by said letters defender urged said corporation 'to protect' themselves against pursuer in consequence of the character given him by defender." [The following averments were added by way of amendment with the leave of the Sheriff, Christopher N. Johnston—] "The defender in writing said letter was not acting in the discharge of any right or duty incumbent on him, but he maliciously wrote said letters with the object of preventing the executrix obtaining the executry funds and papers, delivery of which she had lawfully demanded through another law-agent, and defender recklessly slandered the pursuer in the manner libelled in a malicious attempt to induce the said Assurance Corporation, whose guarantee premium had been paid by the executrix, to withdraw, if possible, their bond of caution, and thereby hinder and obstruct the executrix in the proper administration of the estate, and to prevent his own discontinuance as law-agent, and also prevent or delay the executry funds being taken out of his own hands, or out of the hands of the said Charles Munro with whom he was associated in business."

The pursuer pleaded, *inter alia*—"(2) The statements complained of by the pursuer being false and calumnious, he is entitled to *solatium* for the slanderous imputations thereby made by the defender in regard to him. (3) The said written words complained of by the pursuer having been uttered in regard to him by the defender, and intended and understood to bear the actionable meaning put upon them by pursuer in the condescendence, he is entitled to reparation from the defender. (6) The defender not having been privileged in making said false and slanderous statements regarding the pursuer, but having made the same maliciously, decree should be granted as craved."

The defender pleaded, *inter alia*—"(1) The pursuer's statements being irrelevant, the action ought to be dismissed. (2) The statements complained of not being in themselves slanderous, and not being capable of bearing the construction attempted to be put upon them by the pursuer, the defender ought to be assoilzied. (3) The statements complained of being privileged, the defender ought to be assoilzied."

The Sheriff-Substitute (SYM) on 19th June 1905 pronounced an interlocutor sustaining the first plea-in-law for the defender and dismissing the action.

The pursuer appealed to the Sheriff, who on 28th July 1905 pronounced an interlocutor allowing the pursuer to amend his record in the manner indicated in the averments quoted from Cond. 8, and allowing parties a proof before answer.

The pursuer appealed to the Court of Session, and proposed the following issue for the trial of the cause by jury—"Whether on or about 18th February 1905 the defender wrote and despatched the letter printed in the schedule annexed; whether the statements in said letter are of and concerning the pursuer, and falsely and calumniously represent that the pursuer would dishonestly appropriate money that did not belong to him, to the pursuer's loss, injury, and damage."

The defender opposed the granting of the issue, and argued—(1) The letter would not bear the proposed innuendo, as it did not necessarily, or even naturally, suggest a charge of dishonest appropriation. (2) In any case the letter was privileged, written as it was by one co-guarantor to another upon a matter in which they were jointly interested, and in circumstances conferring a duty—or at anyrate a right or interest—on the one side to make and an interest on the other to receive the communication—Odgers on Libel and Slander 264; *M'Dougall* v. *Claridge*, 1808, 1 Campbell 267; *Hunt* v. *Great Northern Railway Co.* (1891), 2 Q.B. 189, at 192; *Macdonald* v. *M'Coll*, July 18, 1901, 3 F. 1082, 38 S.L.R. 781; *Farquhar* v. *Neish*, March 19, 1890, 17 R. 716, 27 S.L.R. 549; *Innes* v. *Adamson*, October 25, 1889, 17 R. 11, 27 S.L.R. 26. (3) The letter being privileged, and malice having to go into the issue, there must be on record a relevant averment of "facts and circumstances inferring malice." There was none—*Farquhar*, *Innes*, and *Stevenson* v. *Wilson*, January 16, 1903, 5 F. 309, 40 S.L.R. 286.

Argued for the pursuer and appellant—(1) The statements complained of could reasonably bear the proposed innuendo; that was sufficient. (2) The occasion was not privileged, or if privileged the defender exceeded his privilege, he being only entitled to inform the company that he had ceased to act as agent. In any case the question of privilege was for the judge who might try the case. (3) Condescendence 8 contained a sufficient averment of "facts and circumstances" if such an averment were necessary—*Buchanan* v. *Corporation of Glasgow*, July 19, 1905, 42 S.L.R. 801.

LORD KYLLACHY—I understand that your Lordships are of opinion that the innuendo put into the first issue is not inadmissible. I am of the same opinion.

With regard to the question of privilege, although the question is narrow, I think, and I gather your Lordships agree, that on the pursuer's statement of facts a case of privilege is sufficiently disclosed. Malice must therefore go into the issue.

It was suggested in argument that no facts and circumstances inferring or suggesting malice are here averred. Assuming that the rule which requires the averment of such facts and circumstances is applicable to a case of this kind, it appears to us that the statement in the amendment made by the pursuer obviates any objection on this point.

The result is that we approve of the first issue, malice being inserted, and disallow the second issue.

LORD STORMONTH DARLING and LORD LOW concurred.

The LORD JUSTICE-CLERK was absent.

The Court allowed the issue.

Counsel for the Pursuer and Appellant—G. Watt, K.C.—A. M. Anderson. Agent—Alexander Ramsay, S.S.C.

Counsel for the Respondent—The Dean of Faculty (Campbell, K.C.)—Macmillan. Agents—Menzies, Bruce Low, & Thomson, W.S.

Friday, November 17.

FIRST DIVISION.

[Lord Dundas, Ordinary.

M'GREGOR *v.* M'LAUGHLIN.

Reparation—Decree in Absence—Service of Wrong Summons—Regular Return of Citation — Damages for Decree being Taken in Absence when Summons had in fact not been Served—Malice—Relevancy.

In an action in the Sheriff Court at the instance of A against B for payment of an account, the sheriff officer instructed to serve the summons inadvertently served a wrong summons on the defender (the summons actually served by him being one at the instance of C against D), but returned a regular execution of citation. A took decree in absence against B, and having extracted the decree, was proceeding to do diligence when the decree was set aside. Thereafter B raised an action of damages against A for wrongfully taking the decree in absence against him, averring that the decree had been published in the "Black Lists," and that he had suffered thereby. B did not aver that A had acted maliciously or that the mistake had been caused otherwise than by inadvertence on the part of the sheriff officer.

Held (*rev.* judgment of Lord Ordinary (Dundas)) that as there was no averment of malice on record, the pursuer's statement disclosed no issuable matter, and action *dismissed* as irrelevant.

On 30th January 1905 Edward M'Laughlin, butter and egg merchant, Glasgow, raised an action against William M'Gregor, grocer there, in the Small Debt Court at Glasgow for payment of the sum of £3, 19s. 4d., being the amount of an account incurred in November and December 1904, and on the same date instructed Alexander M'Laren, a sheriff officer in Glasgow, to serve the summons. The execution of citation returned by M'Laren was as follows:—"Upon the 30th day of January 1905 years I duly summoned the within designed Mr W. M'Gregor, defender, to appear and answer before the Sheriff in the matter, and at the time and place, and under the certification within set forth. This I did by delivering a full copy of the within summons or complaint with a citation thereto annexed and copy account for the said defender in his hands personally within his premises at 6 Steel Street, Glasgow. ALEX. M'LAREN, Sheriff Officer."

M'Gregor now raised an action of damages against M'Laughlin. He averred that no copy of the summons was ever served upon him; that on 30th January there was served upon him by the said sheriff officer a small debt summons at the instance of Alexander Cameron, tailor and clothier, 90 Jamieson Street, Glasgow, against Thomas M'Cartney, boilermaker, 39 Ralecut Street, Glasgow; that on 6th February 1905 the defender took decree in absence against him in said action for £3, 19s. 4d., with 4s. 4d. of expenses; that on 16th February he (the pursuer) was charged by the said Alexander M'Laren, sheriff officer, to pay the said sums within ten free days from said date under pain of poinding and sale and imprisonment, if the same be competent; that the said charge was the first notice the pursuer had that there were proceedings in Court against him; and that the said charge, proceeding as it did upon an illegal decree, was wrongous and illegal.

In answer the defender admitted that the execution of citation was in the terms quoted; that he had taken decree in absence against the pursuer, and that the pursuer had been charged to pay the said sum. He further averred as follows:—"Explained that the defender had no knowledge of the actings of the said sheriff officer in regard to the service of said small debt summons, except what appeared on the face of the execution of citation here quoted by the pursuer. The said execution is in all respects in regular and proper form, and the defender was, in these circumstances, within his right in taking decree in absence against the pursuer on 6th February 1905. If any mistake or irregularity occurred in regard to the service of the summons, such mistake or irregularity did not appear on the face of said execution of citation, and the defender had no knowledge thereof and no responsibility therefor. It was solely the act of the said sheriff officer, who was acting in the performance of his official duty as an officer of court, and for whose actings in such official capacity the defender is not responsible."

The pursuer further averred—"(Cond. 4) On said charge being given the pursuer applied for and obtained a warrant sisting execution in terms of section 15 of the Small Debt Act of 1837. The case was reheard on 6th March 1905, when the Sheriff-Substitute dismissed the action on the ground that it had not been served on the pursuer and awarded him 6s. of expenses. (Cond. 5) The said decree in absence taken by defender was published in *Stubb's Gazette* and other similar publications