[*24th August* 1833.]

No. 39.

WILLIAM EWING, Appellant.—*Lord Advocate* (*Jeffrey*).

Mrs. HELEN M'KENZIE or CULLEN, Respondent.—*Jervis.*

Reparation.—Certain judicial statements alleged to be slanderous, held (reversing the judgment of the Court of Session) to be privileged, unless it was proved that the party using them did so from motives of malice, and did not believe them to be true; and a remit made to ascertain these facts by the verdict of a jury.

Husband and Wife. — Circumstances under which held that a married woman was entitled to sue for damages on account of slander without the concurrence of her husband.

1ST DIVISION. ARCHIBALD WIGHT, who had been in the service of the appellant Ewing as the manager of a depôt for the sale of coal, brought an action against Ewing for damages in respect of an alleged wrongous dismissal, and for payment of a balance on their mutual accounts, including wages. In defence Ewing denied that he had wrongously dismissed Wight, and made certain statements impeaching the respectability of his character, and charging him with carrying off and not accounting for the value of coals. In making these statements he introduced the name of the respondent, who was living separate from her husband, and in whose house Wight

was with others a lodger. Founding on these statements as malicious and slanderous, and also certain other extrajudicial statements as slanderous, the respondent brought an action before the Court of Session against the appellant, in which she concluded for 2,000*l.* of damages. The appellant pleaded in defence, 1. That the respondent being a married woman had no title to insist in the action, in respect that her husband did not concur with her in it. 2. That the judicial statements were pertinent to the matter at issue, were believed by the appellant and his advisers to be relevant, and were not malicious. And 3. That the extrajudicial statements were either not true, or formed the subject of communications to the appellant's law agents in the action at Wight's instance.

Lord Newton, on the 18th of May 1830, sustained the first of these defences and dismissed the action; but the Court, on the 19th of November, altered, and appointed the respondent's father to be her curator ad litem.* Thereafter the following issues, which embraced the matter set forth in the respondent's summons, were sent to a jury:—

"1. Whether on or about the 12th day of May "1827 the defender did lodge or cause to be lodged, "in a process then depending in the Jury Court, a paper "or pleading intituled Answers for William Ewing, "Esq. to the condescendence for Archibald Wight, con- "taining the following words, or words to the following "effect, according to the meaning herein-after set furth, "viz.—'He' (meaning the said Archibald Wight)

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" ' was habitually addicted to gambling and drunken-
" ness, and frequently spent days and nights in this
" ' and other kinds of profligacy, and having gone to
" ' reside with a married woman of the name of Cullen,'
" (meaning the pursuer,) ' then living apart from her
" ' husband, he fraudulently supplied her with coals
" ' from the depôt, for which no payment has ever been
" ' made by either of them,' (the defender meaning
" thereby that the pursuer was a party to the alleged
" fraud, by receiving or resetting coals which she knew
" to have been unfairly or fraudulently procured by the
" said Archibald Wight from the defender's depôt.)
" And whether the whole or any part of the said words
" are of and concerning the pursuer, and are false and
" calumnious, and were maliciously inserted or ma-
" liciously caused to be inserted in the said paper, to
" the loss, injury, and damage of the pursuer?
" 2. Whether on or about the 2d day of June 1827
" the defender did lodge or cause to be lodged in the
" said process a paper or pleading intituled Revised
" answers for William Ewing, Esq. to the revised con-
" descendence for Archibald Wight, containing the
" following words, or words to the following effect, ac-
" cording to the meaning herein-after set furth, viz.—
" ' He' (meaning the said Archibald Wight) ' was
" ' habitually addicted to gambling and drunkenness,
" ' and frequently spent days and nights in this and
" ' other kinds of profligacy, and having gone to reside
" ' with a married woman of the name of Cullen, then
" ' living apart from her husband, he engaged in a
" ' fraudulent transaction with this female to disappoint
" ' her landlord of his right of hypothec while in the
" ' employment of the defender,' (the defender meaning

" thereby that the pursuer became a party to a fraudu- No. 39.
" lent transaction for the purpose of disappointing or 24th August
" defrauding her landlord of his right of hypothec over 1833.
" her furniture for payment of his rent.) And whether," EWING
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" 3. Whether on or about the 6th of September
" 1827 the defender did lodge or cause to be lodged
" in the said process a paper or pleading intituled
" Re-revised answers for William Ewing, Esq. to the
" re-revised condescendence for Archibald Wight, con-
" taining these words, or words to the following effect,
" according to the meaning herein-after set furth, viz.—
" 'And of this date (November 9, 1825) sold a quan-
" 'tity of coals to Mrs. Cullen, a married woman'
" (meaning the pursuer) 'with whom he' (meaning
" the said Archibald Wight) 'cohabited' (meaning
" thereby lived in a state of adultery) 'during the
" 'whole period of his employment in the defender's
" 'service; that he' (meaning the said Archibald
" Wight) 'had engaged in a fraudulent transaction
" 'with this person, on or about the 21st of November,
" 'to defeat the landlord's right of hypothec by clan-
" 'destinely carrying and concealing the furniture of
" 'the house,' (the defender meaning thereby that the
" pursuer had become a party in a fraudulent trans-
" action to defeat her landlord's right of hypothec
" over her furniture by furtively carrying away and
" concealing the same with the assistance of the said
" Archibald Wight.) And whether," &c.

" 4. Whether on or about the 18th day of Novem-
" ber 1828 the defender did lodge or cause to be
" lodged in the said process a paper or pleading in-
" tituled Re-revised answers for William Ewing, Esq.,

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" containing the following words, or words to the fol-
" lowing effect, according to the meaning herein-after
" set forth, viz.—' That in like manner, on or about
" ' the 9th of November 1825, the said Archibald Wight
" ' did deliver over to Mrs. Cullen, residing in Roxburgh
" ' Place, Edinburgh,' (meaning the pursuer,) ' a quan-
" ' tity of coals belonging to the defender, in extinction of
" ' a debt due by the said Archibald Wight to the said
" ' Mrs. Cullen, or for some other unlawful considera-
" ' tion.' (The defender meaning thereby that the
" pursuer for some unlawful consideration received or re-
" setted coals from the said Archibald Wight, she know-
" ing the same not to belong to him, but to the defender,
" and to have been unfairly or fraudulently procured
" by the said Archibald Wight.) And whether," &c.

" 5. Whether on the North Bridge, Edinburgh, in
" the end of November or month of December 1825,
" or January 1826, and in presence and hearing of
" John Thomson, slater in Edinburgh, the defender
" did falsely and calumniously say that the pursuer
" kept an improper and disorderly house, (meaning a
" bawdy-house,) in which the said Archibald Wight
" was living and cohabiting (meaning living in adultery)
" with her; that he the said Archibald Wight and
" the pursuer were keeping a bawdy-house in Roxburgh
" Street; that she fed him on roast ducks and other
" good cheer to supper to make him useful to her,
" (meaning thereby that he might be able to administer
" to her the pursuer's carnal and licentious appetite;)
" that the pursuer was burning his the defender's coals
" in her bawdy-house; that he the defender would
" disappoint the pursuer of a few nights of Wight by
" having him apprehended and put in jail; or did

" falsely and calumniously use or utter words to that " effect, to the loss, injury, and damage of the pursuer."

Two other issues, (6 and 7,) in the same terms, but at different times and places, then followed, and another, 8, " Whether in the chambers of Messrs. Campbell and " Mack, writers to the signet in Edinburgh, on one or " other of the days of November or December 1825, " or January 1826, in presence and hearing of the said " Messrs. Campbell and Mack the defender did falsely " and calumniously say" (as in the preceding issue).

No issues in justification were taken.

On the 14th of March 1832, the jury, under the direction of the Lord President, with concurrence of Lord Gillies, returned a verdict, by which " in respect of " the matters proven before them they find for the " pursuer upon the first, second, third, fifth, and seventh " issues, and assess the damages at 200*l.* sterling, and " find for the defender on the other issues."* Against the direction to the jury a bill of exceptions was tendered in these terms:—" And the said counsel for the " said defender did maintain and insist before the said " Lord President and Lord Gillies that in reference " to the expressions founded on in the fifth, sixth, and " seventh issues, and which are said to have been used " in 1825, or January and February 1826, that all " action on the part of the pursuer in relation thereto " was excluded by the length of time which had been " allowed by the pursuer to elapse before complaining " of the same or raising her said action, which was not " raised till the 8th November 1828. But the said " Lord President did at the said trial declare and de-

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* 10 S. D. R. 497.

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" liver his opinion, that the action was not barred nor " the question of damages there affected, and that " though these issues were only established by the tes- " timony of John Thomson, a single witness, yet that " Thomson's evidence was corroborated by the judicial " statements made by the defender in the above-men- " tioned papers given in by him in the said process " between him and Wight, and now given in evidence " for the pursuer, and that this was fit matter for con- " sideration of the jury; and farther, the said Right " Honorable Lord President gave it as his opinion and " charge to the jury in point of law, that the expression " or words libelled on in the said first four issues were " totally irrelevant between the said defender Mr. " Ewing and the said Archibald Wight in the said " process mentioned, and were not in any way privi- " leged, though used in a judicial discussion; and " with those directions his Lordship left the case to the " said jury; and the jury then and there gave their " verdict on the first, second, third, fifth, sixth, and " seventh issues for the said pursuer, with 200*l.* of " damages; whereupon the said counsel for the said de- " fender did then and there on behalf of the said de- " fender except to the aforesaid several opinions of the " said Lords, and insisted on the said several matters as " an absolute bar to the said action."

The Court, on the 30th of June 1832, disallowed the bill of exceptions, sustained the verdict, decerned against the appellant for 200*l.* sterling, and found him liable in expenses.*

Ewing appealed.

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* 10 S. D. B. 743.

Appellant.—1. The respondent is a married woman, and the object of the action is to establish a liability against the appellant for payment of a sum of money. On the supposition that such a liability exists, the debt is due not to the respondent, but to her husband, in whom it vested jure mariti. It is attachable by his creditors, and not by her creditors; and if he were dead it would not belong to her, but would form part of the goods in communion, and be distributed according to the rules of law. This objection is not obviated by the nomination of a curator ad litem. Such an appointment may be proper and fit where the subject in dispute belongs to the wife herself, as a heritable estate, and the husband declines to concur, or where he has an adverse interest to that of the wife. But the subject in question belongs to the husband de jure, and so far from having an adverse interest to the wife, it is his interest that the money should be recovered.

2. The direction that the language used in judicial pleadings was not privileged and was irrelevant to the matter then in dispute was contrary to law, in respect that language used judicially and pertinent, or which the party believes to be pertinent to the matter at issue, is protected, unless evidence be brought that it was used maliciously; and accordingly malice is both libelled and put in issue. From the very nature of the action between the appellant and Wight every statement affecting the respectability of his character and his honesty, and relative to his embezzlement of or intromission with the coals belonging to the appellant, was relevant to exonerate the appellant from the claim of damages made by Wight for his alleged wrongous dismissal, and to show that he had no claim on the state of accounts be-

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tween the parties.* Besides, it is to be presumed that statements made judicially are relevant, unless the contrary be shown; and in this case the respondent did not lay before the Court the condescendence to which the answers were made containing the statements complained of, and consequently it was impossible for the Court to know that these statements were irrelevant; and as malice was not proved the jury ought to have been directed to find for the appellant.

3. By the law of Scotland one witness is not sufficient to prove any charge, either of a criminal or civil nature. The only witness adduced in regard to the extrajudicial statements was a person of the name of Thomson. It is true that the testimony of a single witness may be made sufficient by the evidence of corroborative circumstances, but the only circumstance alleged to have existed is that the appellant stated judicially the facts mentioned by Thomson. This is not corroborative of the evidence of Thomson; it is merely a repetition to the Court of the statement, but not that the statement was made to Thomson.

Respondent.—1. It is an established rule that when a husband without good reason refuses to concur in an action at his wife's instance for the vindication of her rights or character, it is competent to authorise the action to be carried on in her own name and of a curator ad litem.† The object of the present action

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* Robertson v. Graham, 15th July 1818, 3 Dow, 277; Forteith v. Earl of Fife, 18th November 1819, F. C. 2 Murray's Reports, 470; Gilchrist v. Dempster, 3 Murray, 364.

† Marshall v. Marshall, 9th January 1623, Mor. 6037; Halket v. Gordon, 8th July 1673, Mor. 6,039; Byres, 28th July 1708, Mor. 6045; Finlay v. Hamilton, 5th February 1748, Mor. 6,051; Lady Fowles, 21st December 1626; Mor. 6158; 1 Stair, 4, 15.

was to vindicate the respondent's character, and it was peculiarly fit that she should be authorised to insist in it in her own name and for her own behoof, as her husband, notwithstanding a decree of adherence, remained in a state of separation from her, and the slander was calculated to destroy her reputation in that occupation in which she was engaged to earn her subsistence.

2. The statements of the appellant were irrelevant, in respect that the only matter truly at issue between him and Wight related to certain accounts which existed between them, not in the character of master and servant, but of partners in a joint adventure. Having thus no occasion to introduce the name of the respondent, his assertions in regard to her must be considered as altogether gratuitous, and to have been made from no other motive than malice.

3. The direction to the jury that a single witness corroborated by circumstances was sufficient, was perfectly correct; and the jury being satisfied that there were circumstances corroborative of the testimony of Thomson, their verdict is unimpeachable.

LORD WYNFORD.—My Lords, I beg leave to move your Lordships for judgment in a case in which William Ewing is the appellant, and Mrs. Helen Mackenzie or Cullen the respondent. This was an action for slander, for certain words imputing to the respondent, certainly, that she was living in an improper manner, and keeping very improper company. There would be no doubt that the words were actionable, provided they had not been used on the occasion on which they were; but it appears from the proceeding in this cause, that

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an action had been brought by the present appellant against a person of the name of Wight, to recover wages for services that were due, or supposed to be due, from the appellant to Wight; and that in answer to this action so brought, the appellant pleaded that slander which is the subject of the present action. He insisted that the action could not be maintained for the wages, for that he was justified in dismissing this person without giving him the warning he otherwise would have been obliged to give him, "because," as stated in his answer, "the said Archibald Wight was habitually "addicted to gambling and drunkenness, and frequently "spent days and nights in this and other kinds of pro-"fligacy; and having gone to reside with a married "woman of the name of Cullen (meaning the pursuer), "then living apart from her husband, that he fraudu-"lently supplied this woman," of the name of Cullen, "with coals from the defender's depôt, for which no "payment had been made by either." The same conversation is stated in different ways: "That the said "Archibald Wight had sold a quantity of coals to "Mrs. Cullen, a married woman, with whom he "cohabited during the whole period of his employment "in the defender's service." Then it further states the slander to have been used at different times, and under different circumstances,—"that he had stated to a per-"son of the name of John Thomson, slater in Edinburgh, "and others, that the pursuer kept an improper and "disorderly house, in which the said Archibald Wight "was living and cohabiting with her, and did otherwise "falsely and maliciously asperse the pursuer's charac-"ter." This being the complaint I have stated to your Lordships, the answer to it is, that all these

matters, except the last, were pleaded in the cause to which I have referred, — the last undoubtedly was not; the last was an attack on the character of this woman, not made in the course of a judicial proceeding. There was a point made with respect to this in the Court below, which I do not think it necessary your Lordships should decide, namely, whether this was sufficiently proved; it was only proved by one witness; and by the law of Scotland, a fact proved by one witness only, unless that witness is confirmed by other circumstances which have a tendency to give credit to that one witness, is not sufficiently established. I confess I should have great doubt on that point, whether there was sufficient confirmation or not, if it were necessary to decide that point; but I mention it merely for the purpose of showing it has not escaped the notice of your Lordships; at the same time I think it is not necessary for your Lordships to come to any opinion upon it; but there are two points on which it will be necessary for your Lordships to decide; the first is, whether, Mrs. Cullen being a married woman, and her husband not joining in the action, the action is maintainable by her or not? The Judges in the Court below have decided that the action is maintainable by her alone, and I think they have decided rightly; because it is perfectly clear that these damages to her personal character would, in the language of the law, have survived to her in the event of her husband's death, and she might have maintained an action for them after having, according to the practice in Scotland, obtained a curator ad litem. It appears to me that the Judges in the Court below decided perfectly right;—that there was no limit to this action, though brought in her own

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name, and not in the name of her husband. Your Lordships are not in the habit of giving more effect to points of mere form than the law, in its utmost strictness, requires you to do. Several cases were mentioned at your Lordships bar, in which this point appears to me to have been decided precisely as the Judges in the Court of Session have decided; therefore, if these were the only grounds of objection, I certainly should advise your Lordships to affirm the judgment. But it is my misfortune to differ from the learned Judges in the Court of Scotland on another, and a most material point, and on that I shall feel it my duty to advise your Lordships to reverse the judgment. The principle of the law of Scotland, and that of the law of England, appears to me to be precisely the same with respect to any thing stated in the course of judicature, and though it is false, though it is slander, yet if the party who offers it in evidence believes it to be true, and therefore does not offer it in evidence from motives of malice, it cannot be made the subject of an action. That doctrine of law, I am sure, your Lordships will perceive is founded on good sense. In ordinary cases, if I speak ill of another man, it is presumed I do that from malice, unless I show the contrary; but if I speak ill of a man in a course of judicature, it is not to be presumed I do it from malice, if it be pertinent to the cause, and if I tender it in evidence in my own defence; and therefore in those cases the law of England and the law of Scotland—for there are many authorities in the law of both countries—all concur in providing that in these cases you must prove the falsehood of the words, and that when they were spoken the person speaking knew the falsehoods; and so bringing

home to the party using the words, that he did not make use of them merely for the purpose of defending himself against the action brought against him, but that he made use of these words from a malicious desire to asperse the character of the person of whom they were spoken. There should, in my opinion, have been an inquiry in the Court below into that subject, and your Lordships will find, that there are several cases in which that inquiry has been made; but the two learned Judges who presided upon that occasion unfortunately prevented all inquiry upon that subject, by directing that a verdict should be found for the pursuer; because, they said, the words were not relevant to the issue in the cause in which they were uttered. The only question, therefore, for your Lordships is, whether these words were relevant to the cause in the defence of which they were made use of. Now, I confess it appears to me, it is scarcely possible for any man to hesitate to say they were relevant. What was the nature of the action against Ewing, the present appellant? It was an action for turning a man off without giving him sufficient notice, and paying him his wages. By the law of England and the law of Scotland, if a man conducts himself improperly in your service, he does that which gives you a right to dismiss him, without giving him any warning, or paying him any wages. What was the defence set up here, which it was said was not pertinent? That this man, who owed regular and faithful service to his employer, was absent from that service, was in a continual state of intoxication, and was living, and most improperly living, with a married woman. If it stopped here, surely this would be sufficient. What respectable person would consider a man deserving who so conducted himself, if

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it led to no bad consequences, if it did not affect his particular interest? Is there any respectable man who would keep a servant in his family who night by night left that family to commit the foul crime of adultery, and was in the day-time in a state of intoxication? I conceive every one of your Lordships would think that any decent and respectable man was justified in dismissing such a man, and that consequently its pertinency and relevancy to the question then to be decided is apparent. But this gentleman was a coal merchant,—he was selling coals; and the words impute that this man carried away to an improper house his employer's coal, which he was bound to take care of, no account whatever being kept of the quantity of those coals so taken; in fact, that his employer was night by night cheated out of his coals by this improper conduct; and really I cannot conceive how any one could for a moment suppose facts such as these were not relevant in the cause, and that, if true, he was not justified in using the words; but the Judges have (in my opinion unfortunately) directed the jury that all this matter was totally irrelevant to the point to be decided in the cause, and that therefore the jury were to consider the words spoken as without any justification or pretence of justification, and to give damages for the uttering them; and the jury under this direction thought proper to give damages to the amount of 200*l.* If these words had been spoken of a decent respectable woman, it does not appear to me that the damages were too much; but as that question has not been inquired into, is it proper that such a verdict as this should stand with damages to the amount of 200*l.*, given under the circumstances under which this verdict was given? I mentioned to

your Lordships that there was a difficulty as to whether the words were proved sufficiently, but that question I do not think it necessary for your Lordships to inquire into; and I will state why, because the jury have given damages upon the whole; for the jury have been directed to find damages for that which was spoken in a court of justice litigating, as well as that which was spoken not in a court of justice; so that your Lordships cannot know to what extent they estimated the damages for that spoken out of a court of justice and that spoken in a court of justice. If they had confined it to the words spoken out of a court of justice, your Lordships must then have decided whether that was sufficiently proved. Unfortunately the whole damages are put together. I cannot bring my mind to doubt that that stated on the pleadings was relevant to the cause, and that it could not, consistently with the law in England or Scotland, be permitted to be given in evidence against the appellant. It is necessary, therefore, if the view I have taken of that point be right, that the case should go back again, in order that, if the party is entitled to damages on the other part of the case, the Court may decide whether there is confirmatory evidence of that stated by one witness, and whether a jury will give the same damages for a loose declaration made by a man who admitted that he had stated that if he was not paid a debt due to him from the defender, he would not open his mouth in his favour. Probably, if the thing had been put straight to the jury, no credit would have been given to him unless he was considerably confirmed; but as lumping damages have been given for the whole, if your Lordships think that for a part no damages at

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all ought to have been given, then the verdict cannot stand. The learned Judges (certainly eminently learned in matters of Scotch law) are not at present very well acquainted with jury law. Your Lordships very well know that trial by jury has been introduced but a few years to any considerable extent in the courts of Scotland; it is not therefore wonderful that those learned Judges, most eminently learned upon those parts of law to which their minds have in early life been applied, should not come with that confidence to a decision of a matter of this description which the Judges would have done who had received a different education, and pursued a different practice from that which those learned Judges have done.

My Lords, I think the simple question upon which the whole depends is, whether these defences were relevant to the question to be decided in the cause of Wight v. Ewing? If they were, the judgment pronounced by the two learned Judges in the Court below is wrong. Upon this point there is a case which was determined some years ago, in which a similar error appears to have been fallen into; it came by appeal to this House, and Lord Eldon corrected that judgment by sending it back, as I am of opinion your Lordships must do in this case. In the case of Robertson v. Graham, the Court of Session ordered certain passages in a pleading of General Robertson reflecting on the conduct of a third person, not a party in the cause, to be expunged, and found the third party, who petitioned the Court to that effect, entitled to the expenses of the application. That was the only discussion, whether they ought to have been expunged from

the pleadings; and that, I think, ought to have been the only question made here. There was an appeal to the House of Lords, and the case was remitted to the Court of Session to review their judgment, Lord Eldon saying, "It is sufficient to justify the judicial use of the "language, that General Robertson and his counsel did "really believe what was stated." Now, my Lords, that decision is directly applicable to the present case, if the learned Judges had put it to the jury to inquire whether there was ground for believing that the appellant believed the fact to be as stated. This, my Lords, is the whole of the case. I am extremely sorry, on all occasions, when I have occasion to differ in opinion with the learned Judges in the Court below, and I never do it lightly. This case was discussed a fortnight ago; it is always a painful duty for one single Judge to object to the judgment of several Judges; and I have during the last fortnight considered it again and again, and as often as I have considered it the opinion I at first formed is strengthened. I cannot persuade myself, that if this course of proceeding is to be permitted parties will not be placed in a situation which will render it impossible that any cause can be properly tried. The parties in courts of justice must be free, or they cannot ascertain their rights in the manner in which they ought to do, and by which they are likely to obtain justice. It is not fit that any objection should be unnecessarily taken to that which passes in a court of justice. It is not necessary that the effect of words that pass in courts of justice should be watched with the same anxiety which applies to that which passes in other places. A much greater evil would be effected than

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can happen to the character of any individual whatever, if parties were prevented pleading that which they feel they ought to plead in a court of justice; at the same time, what I state does not preclude an inquiry, whether this was done premeditatedly with a view to injure the character of this individual, without the defender and his legal adviser having reason to believe it to be true. Under these circumstances, my humble motion to your Lordships is, that these interlocutors be reversed.

The House of Lords declared, That the words libelled on in the first four issues were relevant to the matter in issue in the process therein mentioned between the said appellant and the said Archibald Wight, and were privileged as used in a judicial discussion, unless it could be shown that the party so using them did in fact use them from motives of malice towards Mrs. Helen M'Kenzie or Cullen, and did not himself believe them to be true: And this House does therefore find, that The direction given by the Lord President to the Jury in this case was not correct in point of law, and that the bill of exceptions taken thereto ought to have been allowed. But this House is further of opinion, that an opportunity ought to be afforded for ascertaining by the verdict of a jury, whether the said appellant did use the said expressions and words out of malice towards the said respondent, and did not himself believe them to be true; and also whether the expressions and words libelled on in this action, or any, and which of them in particular, are sufficiently proved according to the law of Scotland: And it is therefore ordered and adjudged, That the said interlocutors, so far as complained of, be and the same are hereby reversed: And it is further ordered, That the said cause be remitted back to the said First Division of the Court of Session in Scotland, and that the Judges of that Division do allow the said bill of exceptions, and do give

the necessary and proper directions for submitting the case again to the consideration of a jury, upon such issues as shall be settled according to the course of the Court, having regard to this judgment and order; and further, to proceed in the said cause in such manner, and do make all such orders respecting expenses of process in the Court of Session and Jury Court, as shall be just and consistent with this judgment.

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J. BUTT—A. & R. MUNDELL, Solicitors.