tories" be something beyond all law and reason, that is one kind of illegality. If, on the other hand, it be merely illegal to search them in the way asked and granted here, that is a different kind. The one illegality touches the substance of the proceedings; the other points to some error or omission in the same, or want of caution in carrying them out. Were the illegality of the first kind the pursuer might be entitled to an issue without malice and want of probable cause; but if the illegality be of the second order I am of a different opinion. I think this case comes under the latter class. Under this application it was competent to the Sheriff to have granted a legal warrant. For example, had he limited the search to particular documents, or appointed it to be carried out under his own eye, I am not prepared to say that that would have been an illegal warrant. Now, although that has not been done, I do not think that the defenders' application was out and out and in substance contrary to law. Therefore I am of opinion that the pursuer must take upon him the burden of showing that the defenders' statements were made maliciously and without probable cause. As regards the second issue, it is laid, not upon the petition, but upon the warrant, and is proposed as a separate demand. The pursuer had some difficulty in explaining what injury had been sustained by him other than through the slander, by reason of the warrant having been taken out and kept up against him—it having never been executed against him. The only way in which the granting of the warrant was said to have entailed a separate injury upon him was that he had been put to the expense of preparing a suspension of the warrant before its withdrawal had been intimated to him. I do not think grounds have been laid for that pecuniary claim. The pursuer does not say that the taking out of the warrant was intimated to him. He came to hear of it through its having been executed against the other persons affected by it. Before incurring the expenses of preparing a suspension of it he ought to have applied to the defenders to know the meaning of it, when in all probability its withdrawal as against him would have been intimated. But there is something of a different character in this issue. It is said that the pursuer sustained injury from the publication of the warrant. This publication may give greater cogency to a claim for damages for the calumny. The calumny involved here is of a peculiar kind. It is more of the nature of a judicial slander than anything else. The pursuer will be allowed an opportunity of amending the issues in conformity with the views now expressed, and of considering how the second issue is to be framed if put separately, or whether the whole matter might not be embodied in one issue founded upon slander done maliciously and without probable cause.

The other Judges concurred, Lord DEAS remarking that he did so with the qualification that as the Court held that the defenders' application was not in substance incompetent, it was not necessary to consider or determine whether the protection accorded by law to judicial statements would apply to proceedings taken by fiscals.

PRINGLE *v.* BREMNER AND STIRLING.

Reparation—Public Officer. Question as to the relevancy of an action of damages against police officers for searching a person's repositories and apprehending him without a warrant.

Counsel for Pursuer—Mr Watson and Mr MacLean. Agent—Mr W. Miller, S.S.C.

Counsel for Defenders—The Lord Advocate and Mr A. Moncrieff. Agents—Messrs Murray & Beith, W.S.

This is an action at the instance of James Pringle, millwright, near Newburgh, in the county of Fife, against J. F. Bremner, chief constable, and James Stirling, serjeant, in the Fifeshire constabulary. The grounds of action are two in number—(1st) That on 24th December 1864 the defenders came to the pursuer's house, stating that they had a warrant to search the same, which they accordingly did. They, it is alleged, also searched the pursuer's repositories, examined all his private books and papers, and seized and took away a number of the same. The pursuer says that they had no warrant for these proceedings. (2) That the pursuer was, on the same day, apprehended by the defenders, and lodged in the Police Office at Cupar; all without warrant. For these proceedings he sues the defenders for damages. In defence the defenders do not say that they had a warrant for the examination and seizure of the pursuer's papers, or for his apprehension; but that, holding a warrant to search his premises for other articles, they accidentally came upon a number of papers which seemed to them to throw light upon a matter which was then under investigation by the Procurators-Fiscal and police, and which was connected with the matter in regard to which they were making a search. They therefore thought it their duty to take possession of the documents, and to take the pursuer into custody, and take him to Cupar for examination before the Sheriff; which, however, in respect of the lateness of the hour, had to be delayed till the following day. It was not disputed by the pursuer that the after proceedings were regular and legal. But the pursuer says on record that the defenders did not accidentally come upon his papers in the course of their search for other articles, but that they in the beginning of their search proceeded to examine his books and papers.

The case was before the Court on Tuesday on a report by Lord Ormidale as to issues. The pursuer proposes to put two issues to a jury—1st, Whether this search for and seizure of his papers was wrongful and illegal? and 2d, Whether his apprehension and incarceration were wrongful and illegal?

The pursuer has no allegation that the actings of the defenders were malicious and without probable cause, and he contended that he was not bound to allege this, in respect this case was *a fortiori* of Bell *v.* Black and Morrison (37 Jurist, 257 and 543), when such a search as had been here made was pronounced illegal, though done by warrant of a sheriff, and in which it had been decided that it was enough to put in issue that it was wrongous and illegal. With regard to the apprehension, the pursuer was lawbiding, and was apprehended without warrant in reference to occurrences which had happened a considerable time before. The pursuer referred to Dunbar *v.* Stoddart, 11 D. 587, to show that where a case of privilege was not admitted by him on record he was entitled to get to a jury without putting malice and want of probable cause in issue, leaving this to be ruled upon the trial.

The defenders contended that a case of privilege was raised by the admissions on record. This was not like the case of Bell. Here the officers were lawfully in the pursuer's premises making a legal search, and had they not seized the papers they found the evidence would have been lost. The pursuer had been afterwards committed for trial upon a charge of sending a threatening letter. The defenders were entitled to apprehend the pursuer in the circumstances without warrant.

The Court to-day, considering that it was important to know the way in which the search for papers had been begun and executed—parties being at issue thereupon—and the record not supplying the information required, before pronouncing any judgment as to issues, appointed pursuer to state specifically what he alleged with regard to these matters.

Thursday, Dec. 21.

SECOND DIVISION.

HATTON *v.* CLAY AND M'LUCKIE.

Landlord and Tenant—Removing. Objection to the relevancy of a summons of removing repelled, and decree of removing granted.