that written documents and other articles referring to and connected with said conspiracy and threatening letters are in the possession of the said John Bell, William Black, schoolmaster, Barbara Honeyman or Black, George Black, and William Black, and also in the possession of the said David Nelson; and as it is necessary for the purposes of said precognition to recover and take possession of the same, the present application for warrant to search becomes necessary.

"May it therefore please your Lordship to grant warrant to officers of Court, and their assistants to search the dwelling-house, repositories, and premises at Glenduckie occupied by the said John Bell, the premises at Dunbog occupied by the said William Black, schoolmaster, and the repositories there belonging to him, or the said Barbara Honeyman or Black, George Black, and William Black, and also the dwelling-house, and premises, and repositories at Glenburnie, occupied by the said David Nelson, for the said written documents, and all other articles tending to establish guilt, or participation in said crimes, and to take possession thereof, to be produced before your Lordship; or otherwise to do in the premises as to your Lordship shall think proper.

"According to justice, &c.

(Signed) "ALEX. BLACK.
"WM. MORRISON."

This action arose out of the circumstances connected with the presentation of the Rev. James Pitt Edgar to the parish of Dunbog in 1862. It appeared from the evidence that on the 25th December 1864 the defenders presented a petition to the Sheriff of Fifeshire, craving warrant to search the houses of the parties therein named, among whom were the present pursuers, for documents or other articles tending to establish their participation in a conspiracy to murder the Rev. Mr Edgar and John Ballingall, farmer, Dunbog, and to set fire to their houses; and also of writing and sending threatening letters to the said persons. This warrant was executed the following day upon the pursuer, and various writings were carried away. The pursuer thereupon brought a suspension of the warrant, and on 30th January 1865 the Court of Justiciary suspended it. Thereafter, on the 15th February 1865, the pursuer raised an action of damages for illegal search. To this action defences containing the statement which is the foundation of the present action were lodged on the 21st March. The statement complained of did not appear in the draft prepared by junior counsel, but was inserted by senior counsel on being sent to him for revisal. The record was then closed on the 19th May 1865, and subsequently the action was taken out of Court, on a tender by the defenders of the sum of £201 and expenses.

The LORD JUSTICE-CLERK, in charging the jury, observed—The thing complained of is that in the defences to the action of damages for the use of an illegal warrant, the defenders stated that the statements in the petition for the warrant were true, and were made in good faith and on probable grounds. The question here is not whether the statements in the petition were justifiable at the time they were made, but whether the repetition of them in these defences when they were lodged in March 1865 was justifiable. In the issue there is very little matter remaining in dispute between the parties—because, first, there is no doubt the statement complained of was inserted in the defences; and, second, there can be no doubt that the statement had the meaning ascribed to it in the issue. The sole question, therefore, is whether it was maliciously inserted by the defenders. I am bound to say at the outset that the defenders are answerable in law for the statements lodged in these defences. It is a different and ulterior question in determining whether they acted maliciously, to consider if the form in which the statement was put was suggested not by them, selves but by their counsel; but in so far as regards mere legal responsibility for the statement, there is no doubt whatever that the defenders are answerable. On the other hand, a party to an action has a certain privilege. He is entitled to say anything that is pertinent to his cause, no matter whether it is slanderous or libellous either against his opponent, or, to a certain extent, other persons. His statement is privileged on two conditions—first, that it should be pertinent to the cause; and, second, that he does not act from malice. I have, therefore, to direct you in point of law that the statement was not impertinent, and therefore the only question which remains is whether the pursuer has offered sufficient proof of malice. It was true that the statement as it stood was prepared not by the defenders but by counsel. It must, however, be obvious that the materials which the counsel had in framing the statement were supplied by the defenders; and it had not been shown that the materials supplied by the defenders were such as to make it unjustifiable on the part of counsel to state the defences in that form. With regard to the imputation of malice, that is a thing not to be surmised but proved. Direct evidence is not necessary to establish malice; it might be enough for the pursuer to prove facts and circumstances from which it might be reasonably inferred. Against all the evidence relied on by the pursuer to prove malice, it must be remembered that it is always to be presumed in the case of such respectable and high officials as the defenders, that their only object was to discharge their duty aright. Zeal in the performance of their duty was a most commendable quality, and even although it might sometimes outrun discretion, it was not to be imputed as malice. A little over-zeal was not malice, and must never be mistaken for it. It might be a want of calmness and temper, but it was not malice. Malice must be a feeling of ill-will of some kind actuating the party against the individual who complained. Undoubtedly the circumstances under which the petition in question was granted were such as to excuse the defenders for showing an unusual amount of zeal. But the whole matter turned on the evidence of malice, and that was a matter peculiarly for the jury.

Mr MONRO, for the pursuer, excepted to the ruling of the Court on the point of pertinency.

The jury, after an absence of half an hour, returned a unanimous verdict for the pursuer, assessing the damages at £100.

Thursday and Friday, March 29 and 30.

INGLIS *v.* INGLIS (*ante, p.* 183.)

Reparation—Slander. In an action of damages for written slander—verdict for the defender.

Counsel for Pursuer—Mr E. S. Gordon and Mr A. B. Shand. Agent—Mr J. Renton, Jun., S.S.C.

Counsel for Defender—The Solicitor-General, Mr Clark, and Mr J. T. Anderson. Agents—Messrs White-Millar & Robson, S.S.C.

The pursuer in this action is William Allan Inglis, flour merchant in Musselburgh, and the defender is John Inglis, flour merchant, Steam Mills there; and the issue sent to trial is as follows:—

"Whether the defender, in or about July 1865, wrote and circulated among the pursuer's customers a letter in the terms set forth in the schedule hereunto annexed? And whether the said letter is of and concerning the pursuer, and falsely and calumniously represents that the pursuer, having without right or title obtained a number of the defender's empty sacks, dishonestly retained said sacks, and dishonestly refused to give them up to the defender—to the loss, injury, and damage of the pursuer?"

Damages laid at £500.

SCHEDULE.

Letter referred to in the preceding issue.

"Steam Mills, Musselburgh, July 1865.

"Dear Sir,—William A. Inglis, who recently acted as agent for the sale of my flour in your district, inti-

mates to me that he has got a number of my empty sacks into his possession, for which he demands payment, or as many of his sacks in lieu thereof. Presuming that these sacks must have come into his hands by some irregularity of some of my customers, I now beg to request you to be careful, when returning my sacks, to put on the full name and address, John Inglis, Steam Mills, Musselburgh. Should you not be careful on this point, it may lead to trouble in settling up.—Yours truly,

(Signed) "JOHN INGLIS,
p. ROB. LAMBERT."

The LORD JUSTICE-CLERK, in summing up, observed that although the words of the circular complained of might appear innocent in themselves, still if the jury were convinced that they contained any hidden meaning by which the character of the pursuer had been injured, they were entitled to bring in a verdict in his favour. But they must also consider, in coming to the conclusion whether such a hidden meaning existed, whether the terms complained of were not precisely those which had been used by the pursuer himself in his correspondence with the defender.

The jury unanimously returned a verdict for the defender.

Friday, March 30.

MUIRS *v.* COLLETT.

Counsel for Pursuers—Mr Fraser and Mr Scott. Agent—Mr John Walls, S.S.C.

Counsel for Defenders—Mr Watson. Agent—Mr James Buchanan, S.S.C.

In this case Messrs J. & R. Muir, some time shawl manufacturers in Paisley, are pursuers, and Arnold Burrows Collett, merchant in Bombay, is defender; and the issue is as follows:—

"Whether, in or about the year 1845, the pursuers consigned for sale to the firm of Hubbard, Collett, & Company, merchants in Bombay, of which the defender was then a partner, 117 lace shawls and 240 lace handkerchiefs, or any part thereof? And whether the defender is resting owing to the pursuers the sum of £106, 2s, 6d., as the proceeds or value of said goods, or any part of said sum, with interest?"

Or,

"Whether the said goods were consigned to the defender's said firm through Thomas Risk, merchant in Paisley, as agent for the pursuers? And whether the proceeds of said goods, when sold, were duly paid and accounted for to the said Thomas Risk, as agent foresaid?"

It appeared from the evidence that the goods in question, which had been selected by Mr Collett while in Paisley in 1845, were consigned by Messrs J. & R. Muir to the firm of Hubbard, Collett, & Co. on sale and return. On their arrival at Bombay, a sale of them was effected at the price of £29, 15s. 7d.—a sum very much lower than that stated in the invoices. No return thereof appears to have been made, either directly to the pursuers or through Mr Risk. The evidence of Mr James Muir, one of the pursuers, which had been taken by commission, was allowed to be received, owing to the enforced absence of the witness on the ground of ill-health, the defender's counsel admitting that his absence was unavoidable.

The jury, without retiring, returned a unanimous verdict in favour of the pursuers on the first issue, to the amount of £29, 15s. 7d., the price of the goods sold, with interest from the 1st December 1846, the date of the sale, and also for the pursuers on the defender's issue.

Saturday, March 31.

GOOD *v.* CHRISTIE.

Reparation—Culpa—*Master and Servant.* In an action of damages by a father for the loss of his son through the alleged fault of the defenders—verdict for the defenders.

Counsel for the Pursuer—Mr Watson and Mr Bannatyne. Agent—Mr John D. Bruce, S.S.C.

Counsel for the Defender—Mr Shand and Mr Maclean. Agent—Mr John Leishman, W.S.

This was an action of damages at the instance of William Good, collier, residing at Pathhead Ford, Crichton, Edinburgh, against John Christie, coal-master, Arniston, Cockpen, Edinburgh, for loss and injury sustained by him by the death of his son, Charles Colt Good, while engaged in assisting his father in the working of a crane in the defender's coal-pit. The issues sent to trial were as follows:—

"1. Whether, on or about the 16th day of March 1865, the now deceased Charles Colt Good, son of the pursuer, was, in the employment of the defender, engaged in the working of a crane in the defender's coal-pit, known as the Edgehead Engine Pit, in the parish of Cranston, and county of Edinburgh; and whether, while so employed, the said Charles Colt Good was killed in consequence of improper construction of said crane, by and through the fault of the defender—to the loss, injury, and damage of the pursuer?"

"2. Whether, on or about the 16th day of March 1865, the now deceased Charles Colt Good, son of the pursuer, was, in the employment of the defender, engaged in the working of a crane in the defender's coal-pit, known as the Edgehead Engine Pit, in the parish of Cranston, and county of Edinburgh; and whether, while so employed, the said Charles Colt Good was killed in consequence of the failure of the defender to provide a cranesman to work the said crane, by and through the fault of the defender—to the loss, injury, and damage of the pursuer?"

Damages laid at £500.

The LORD JUSTICE-CLERK, in charging the jury, observed that the principle of law was undoubted that all ordinary and reasonable care must be taken by masters of those engaged in their employment, and where this had not been done they were responsible for the consequences of this neglect. When, however, an accident occurred through the carelessness of the workman himself, he could not claim reparation for the injury occasioned to him. Further, he directed the jury that if they were satisfied on the evidence that the deceased, a boy of twelve or thirteen years of age, was killed in consequence of his father, the pursuer, exposing him to a sure and known danger to which it was improper to expose a boy of that age, and to which it was not necessary to expose him in the performance of his (the pursuer's) contract with his employer, then the defender is not in law responsible to the pursuer for the injury sustained by him in the loss of his son. If a workman exposes himself to a sure and known danger to which it was not incumbent upon him to expose himself, he could not claim damages from the defender; and the same doctrine applies to the present case.

The jury, after a short absence, unanimously returned a verdict for the defender on both issues—the chancellor observing that the jury thought it their duty to express a strong opinion that the practice of employing boys of so tender an age in work of so tender a character was very blameable.

The LORD JUSTICE-CLERK—That is a very just expression of opinion, and I entirely concur with you.

Monday, April 2.

FIRST DIVISION.

SPRING SITTINGS.

(Before Lord Ormidale).

STEUART *v.* MOSSEND IRON COMPANY.

Counsel for the Pursuer—Mr Gordon and Mr A. Broun. Agent—Mr Thomas Sprot, W.S.