tute has stated the facts and the law in a very clear manner, and I am content to adopt the reasons he gives for his judgment.

Lord Deas was absent.

The Lords affirmed the judgment of the Sheriff.

Counsel for Appellant (Pursuer)—J. C. Smith—Nevay. Agent—R. Broatch, L.A.

Counsel for Respondents (Defenders)—D.-F. Macdonald, Q.C.—Scott. Agent—P. Morison, S.S.C.

Thursday, June 15.

FIRST DIVISION.

LIGHTBODY *v.* GORDON.

Reparation—Slander—Making False Accusation of Crime—Privilege—Malice and Want of Probable Cause—Evidence of Malice.

When it comes to the knowledge of any person that a crime has been committed, it is his duty to state to the authorities what he knows of the matter, and if he states only what he knows and honestly believes, he cannot be subjected to liability in damages for such statement if it afterwards turns out that he was in error.

A cheque bearing a forged endorsation was presented at a bank. The agent of the bank recognising, or believing that he recognised, the person who presented it as A B, the servant of a customer, whose name was that in the forged endorsation, paid the cheque. On it thereafter being discovered that a fraud had been committed, he called upon the customer whose name had been forged, and stated to him that the cheque had been presented by A B, and gave him a particular description of the person who presented it, which the master recognised as that of his servant A B. Thereafter he charged A B himself with the crime, and informed the police that the crime had been committed, and that the person who presented the cheque was A B, and the authorities having put A B upon his trial, he deponed that A B was the person who presented the cheque. A B having been acquitted of the criminal charge, raised an action of damages against the bank-agent for having falsely accused him of a crime to his master and to the police. *Held* that the statement being privileged, and having been made in the discharge of the defender's public duty, and in the belief of its truth, founded on what the defender believed that he had seen—there was no evidence of malice or want of probable cause to go to the jury, and a verdict which the pursuer had obtained should be set aside as contrary to evidence.

This was an action of damages for alleged slander, and for falsely accusing the pursuer of a crime to the criminal authorities. The pursuer Alexander Lightbody was a boy about 16 years of age, and was at the time of the events which led to this action in the employment of James Smith, a tailor and clothier in Dalry Road, Edinburgh. The defender was agent of the branch of the Commercial Bank at Grosvenor Street, Edinburgh, and he acted also as teller at that branch. For some months before the month of August 1881 the pursuer had been frequently sent by his master Mr Smith to the defender's branch of the Union Bank. There was a copy of Mr Smith's ordinary signature in the bank books.

On 4th August 1881 there was presented to the defender in the bank at Grosvenor Street (hereinafter called the "bank") a cheque on the Union Bank of Perth for £5 drawn by Mr John Ingram of Perth, dated at Perth August 3, 1881. This cheque was in favour of Holtum & Welsh, clothiers, Edinburgh, or bearer. It was crossed "generally" with the words "& Co." It was not endorsed by Holtum & Welsh, but on the back of it were the words "J. Smith." This cheque was cashed by the defender, and it was admitted that he afterwards, on it turning out that the endorsation was fraudulent and that the cheque had been stolen from Holtum & Welsh, stated to Mr Smith, the pursuer's master, that in his opinion the person who presented it and received the money was the pursuer, and that he made a similar statement to the police. It was also admitted that the pursuer had been apprehended and tried at the Sheriff Summary Court in Edinburgh on a charge of falsehood, fraud, and wilful imposition, and that he had been acquitted, the verdict being one of not proven. It was to recover damages for alleged injury to his character and reputation in consequence of these proceedings that the present action was raised. The cheque, as was ultimately admitted by both parties, had been stolen by a boy named Farquharson from a letter in which it was enclosed to Holtum & Welsh.

He pleaded *inter alia*—"(2) The actings complained of having been under privilege and *bona fide*, the defender should be assoilzied."

The Lord Ordinary (Adam) adjusted the following issues for the trial of the cause—"(1) Whether on or about the 11th day of August 1881, in the shop occupied by James Smith, tailor and clothier, Dalry Road, Edinburgh, the defender, in the presence and hearing of the said James Smith, falsely, calumniously, maliciously, and without probable cause, said of and concerning the pursuer that he presented to the defender a crossed cheque for £5, dated 3d August 1881, drawn by John Ingram upon the Union Bank of Scotland, Perth, payable to Messrs Holtum & Welsh, or bearer, with the writing 'J. Smith' across the back thereof, and obtained payment from the defender of the sum of £4, 19s. 6d. therefor; or did falsely, calumniously, maliciously, and without probable cause, use or utter words of the like import or effect of and concerning the pursuer, meaning thereby to represent that the pursuer was guilty of uttering a cheque which he knew to be forged, to the loss, injury, and damage of the pursuer? (2) Whether on or about the 15th day of August 1881 the defender falsely, calumniously, maliciously, and without probable cause informed, or caused information to be given to Robert Bruce Johnstone, Procurator-Fiscal of the City of Edinburgh, falsely accusing the pursuer of having uttered the foresaid cheque, in consequence of which the pursuer was apprehended, detained in the prison of Edinburgh for eleven days or

thereby, and tried before interim Sheriff-Substitute Baxter at Edinburgh on a charge of falsehood, fraud, and wilful imposition, which was found not proven—to the loss, injury, and damage of the pursuer? Damages laid at £200."

The evidence led, as recorded in the notes of the presiding Judge, was to the following effect:—The pursuer stated that he was sent to the bank on 11th August to pay in money; that the defender there said he wished to see him, and showed him a cheque, and asked him where he got it. That he said he had never seen it before. That the defender then said, "You passed that last Tuesday." That he (pursuer) replied that he had been away on holiday then; but that defender said he knew his face quite well, and that he had passed the cheque. He also deponed that he was taken to the bank several days afterwards by a detective, and that defender then said he had been wrong about its being Tuesday, as it was Thursday, and repeated that he was confident that pursuer was the person, and that he persisted in this notwithstanding pursuer's declaration that he was at Granton on the day in question. He then narrated the circumstances of his trial as above detailed. He denied knowing Farquharson, but admitted knowing him by sight. He denied having ever spoken to him in Princes Street Gardens, Edinburgh. He admitted also that he himself had a slight eruption on his face about the time when the cheque was presented, which arose from cold. He stated that his master always signed "James Smith," and that the "J. Smith" was neither like his writing nor his master's.

Mr Smith, the pursuer's master, deponed that there was a fac-simile of his signature "James Smith" at the bank, and that it was quite unlike the "J. Smith" on the cheque. With regard to the matter founded on in the first issue, he deponed—"The defender called on 11th August, and asked if I had sent pursuer with a cheque on the 4th. I think he said in whose favour it was. I said no. He seemed puzzled. I do not think he showed the cheque. . . . He came back again in about an hour. He said there was some mistake. He showed me the cheque. I had never seen it before. He said pursuer came and got it cashed. I said I had never sent it to the bank. He asked if pursuer was in, and I said no, but I would send him to the bank and he could speak to him. Defender described the boy, and referred to the mark on his face. He said it was he who presented the cheque. He seemed quite confident. . . . He said he would put it to the boy himself. He said he had a snouted cap and dullish eyes. This was to be sure it was the boy. That is the fact, and I said yes he had. He wanted to see the boy to face him with it."

The boy Farquharson deponed that he was the person who stole the cheque from Holtum & Welsh, with whom he was an errand-boy; that he wrote "J. Smith" on the cheque, intending it to pass for the signature of Mr Smith, the pursuer's master, whom he knew of through a boy called Chalmers; that he went into the defender's bank and presented the cheque; that the defender said to him "Is this Smith at Dalry?" and he said yes, and then got the money and spent it. He also deponed that he did not know the pursuer, though he had seen him before the events to which the trial related, and had heard his name. In cross-examination he admitted that at the police office he had in answer to questions stated that he and the pursuer had "made it up together;" that he (witness) should get the money on behalf of both; and that he met pursuer by arrangement after writing "J. Smith" on the cheque, and that waited till he came out with the money. He pursuer then went into the bank and he (witness) explained, however, that he had said this because the police would not believe anything else, and that it was not true, and was inconsistent with other accounts which he gave to the police.

Two boys who were called for the pursuer said that they had gone with him to Granton both on Thursday the 4th August and on the preceding Tuesday, and that they had been there the whole day from ten o'clock. Durham Greig, the officer in charge at the Central Police Office on 11th August, deponed that the defender called on the evening of that day and showed the cheque, and said it had been presented at his bank by a boy in the employment of Mr Smith; and that in answer to witness' questions he said that he knew the boy, because he had been in the habit of coming to the bank on Mr Smith's business. He deponed that this information was given and taken down in quite a usual and ordinary manner, and that the pursuer exhibited no temper or feeling in the matter.

Mr Baxter, advocate, who was interim Sheriff-Substitute of Midlothian in September 1881, deponed that at the trial, which took place before him, the defender exhibited not the slightest *animus* or desire to have the case pressed against the defender, but gave his evidence distinctly and calmly, saying nothing except in reply to questions. He distinctly swore then that the pursuer presented the cheque.

The defender was examined on his own behalf, and stated that from acting as teller at the bank he knew the pursuer perfectly well, and that he had come frequently to the bank for some months; that he remembered the presentation and cashing of the cheque on 4th August, and that it was sent to Perth the same day, whence it was in a few days returned with an intimation that something was wrong, and that inquiry must be made. He deponed that the pursuer was the person who presented it; that he handed it over the counter, and that he (defender) looked at it, and thought it peculiar "that one tailor (Holtum & Welsh) should deal with another" (Smith); that he looked a second time at the boy, and said "in my own mind at the time, I have no doubt that is Smith's boy;" that the cheque being payable to the bearer he was justified in cashing it; that he next heard of it on the morning of the 11th, and then in consequence of the intimation from Perth above mentioned called on Mr Smith at 9 A.M. He gave an account of his conversation with Smith somewhat as follows:—"I think I took the cheque with me. I said, 'There is a cheque which was cashed by your boy on the 4th,' and he said 'I got no cheque' (then). I said 'I have no doubt it was your boy; does he not wear a peaked cap, and have dullish eyes and a flabby sort of face?' He said 'Yes, that's the description of my boy.' I said 'This is very strange.' I returned home. I went back to Smith's at a quarter before ten. I said 'I am quite satisfied in my own mind it

was your boy.' He said the boy was not in just then. I proposed that he should send him to the bank with money, and I should ask him there about the matter. Smith sent him. There was no one else in. I went round with the cheque in my hand and stood beside him, and said 'What did you do with the money you got for that cheque?' and he said 'I never saw that cheque before.' I asked him to come into my private room, and I said, 'I have no doubt you got the money, and I explained to him that I had looked twice at him, and I said it was a serious matter, and that he had better confess it, and if he did not I would put it into the hands of a detective. He said he did not know anything about it, and had been at Granton on the day to which I alluded. I then went to Holtum & Welsh with the cheque, and saw Mr Welsh, and asked him if he had seen the cheque, and he said he had not, but that he had had some correspondence about it. He recommended me to go up to the lost-letter department at the Post Office, to see about the letter in which it came. I did so, and the official in charge recommended me to go to the detective department at the Police Office. I went there in the evening, and I gave information to Durham Greig. He said he would take a note of it and would send Detective Ferguson down. Ferguson came, and I showed him the cheque and said the boy who presented it was in the employment of Smith, and that I was satisfied on that point, but that the pursuer denied it, and there having been nobody else in the bank at the time I cashed it, it was for him to consider whether he would do anything. He said he would go to Holtum & Welsh and see if they had any boy who lived in the neighbourhood of Dalry. He ascertained that they had boys who lived there, but that they were away on holiday and would not be back till the Monday. I went and met him there on the Monday, and meantime the foreman had got the signature of two boys with 'J. Smith' below the signature, and on comparing these we agreed that the writing on the cheque was like the writing of a boy Farquharson. Farquharson being brought, the detective said to him, showing the paper signed by him, 'Is that your writing?' He said it was, and the detective then showed him the writing on the cheque, and asked if it was his. He said it was not, and we both said it was no use denying it, because the writing was nearly the same. He again said he knew nothing about it. The detective asked if he knew a boy Lightbody, and he said he did not. The detective said it was no use denying it, that he must know something of him, and he then said he knew him by sight, and he was then asked if ever he spoke to him. He said he had not, but being asked if he was quite sure of that, he said he once spoken to him in Princes Street Gardens. The detective then said he was to come with him to the police station. I heard nothing more of the matter till I was cited as a witness for the trial, when I attended and gave evidence as I was asked. That is my whole connection with the matter. I had remembered the mark on the boy's face, and Mr Smith also remembered the circumstance. Pursuer was brought to my office by the police, and I was asked if he was the boy and I said he was. Farquharson, whom I have seen to-day, is not the boy who presented the cheque." [It was stated by Lord Adam, and concurred in by the parties, that no one could mistake Farquharson for the pursuer.] On the averments in Cond. 7, above quoted *in extenso*, being put to pursuer, he deponed that they were altogether untrue, and that he had told the police what he had told them from motives of duty, that he had thought the pursuer a "pleasant boy," and had no wish to screen himself from the results of any irregularity. He deponed that he knew the Crossed Cheques Act 1876, which provides—(§ 7) "Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker;" and that he knew the rules issued by the bank to their agents relating to crossed cheques, one of which was that crossed cheques should go to a customer account. He said that if he had obeyed that rule the bank would have been protected, but explained that these rules are made for the protection of the bank, and that the cheque being crossed "generally," and payable to bearer, he was entitled to cash it, and that many customers of the bank always wished money for crossed cheques, and if a person was known to the banker and was respectable he might get the money. He admitted that Smith had shown him pursuer's handwriting, and that it was not like that which was on the cheque. He deponed also that Smith's signature was very variable, and that many people sign variously. In answer to pursuer's counsel he deponed—"My memory was the sole ground I had for charging him. I had no suspicion of him at the time. I do not think my memory could slip about the matter."

Ferguson, the detective who apprehended the pursuer, deponed that he showed the boy to the defender, who said that he was the boy who cashed the cheque, and that pursuer denied it. The defender said "Nobody saw him but himself. It was for me (witness) to judge how to act. I acted on my own responsibility." This witness detailed the story told by Farquharson at the Police Office as to his meeting the pursuer by appointment, and the pursuer cashing the cheque and dividing the money outside the bank, which is above recited.

Mr Gow, manager of the office of the Union Bank in Parliament Square, proved that many educated persons are somewhat variable in signing their names, and that many people who usually sign their names in full write the initial only of their Christian name in endorsing cheques—thus "J. Smith" for "James Smith."

The jury, by a majority of 9 to 6, found a verdict for the pursuer, damages £50.

The defender having obtained a rule for a new trial on the ground that the verdict was against evidence, since there was no evidence for the jury of malice or want of probable cause in the defender's statements:

Scott, for the pursuer, showed cause.—There was evidence for the jury of malice and want of probable cause. In the first place, as there was no issue in justification, it must be assumed that the charge was false and calumnious. Now, reckless and culpable disregard of the rights of others amounted in law to malice. *Cameron* v. *Hamilton*, Feb. 1, 1856, 18 D. 423; *Callendar* v. *Milligan*, June 20, 1849, 11 D. 1174; *Smith* v. *Green*, March 10, 1853, 15 D. 545; *Bayne* v. *M'Gregor*, March 14, 1863, 1 Macph. 615; *Denholm* v. *Thomson*, October 22, 1880, 8 R. 31.

There was a motive here, not, perhaps, for a cruel and wicked attempt to injure the pursuer for the purpose of hiding the defender's own fault (that was not imputed), but at least sufficient to bias his mind in making the charge, for to pay the cheque in cash was not only against the rules of the bank, but against the statute of 1876—§ 7 of Crossed Cheques Act, above quoted. [The LORD PRESIDENT referred to § 10—"Any banker paying a cheque crossed generally otherwise than to a banker . . . shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid."] No doubt § 10 declared the sanction laid down by the Act to be the loss of the value of the cheque, but that did not affect the argument. There was a motive which was recklessly allowed to influence the defender. It was not now maintained by any counter issues that the pursuer really was guilty of the fraud attributed to him by the defender, but the defender had admitted in his evidence that he had nothing to go upon in what must be held to be his mistaken opinion, except the accuracy of his own identification and his own memory. He chose recklessly to persist in this trial on his own opinion, without anything to corroborate it, and the verdict had rightly held him liable for the consequences.

ROBERTSON in support of the rule.—There was a clear absence of proof of malice or want of probable cause. The defender had merely given information, as was his duty to the public, and still more to the bank, of what he honestly believed on the testimony of his own eyes. His so-called persistence in his offence just amounted to this, that he being called upon by the public authorities to give evidence at a criminal trial he did not say (as would have been false) that he had changed his mind. He gave true evidence of what he believed. He showed caution rather than rashness in what he did, for when he gave information to the police he said—"You must decide for yourselves what to do. You have the boy's story and you have mine." The case of *Clark* v. *Molyneux*, 4 Dec. 1877, L.R., 3 Q.B.D. 237, was *a fortiori* of the present. Neither the Act of Parliament nor the rules of the bank had any relevancy to the matter. The defender was quite entitled to pay a customer of the bank the amount contained in a crossed cheque so far as either the Act or the rules went; the latter being a mere general rule for the convenience of the bank.

At advising—

LORD PRESIDENT—When it comes to the knowledge of anyone that a crime has been committed, a duty is laid upon that person, as a citizen of the country, to state to the authorities what he knows as to the commission of the crime, and if he states only what he himself knows and honestly believes he cannot be subjected to liability in an action of damages because it afterwards turns out that the person concerning whom he has given information is not guilty of the crime. It is necessary for anyone who raises an action of damages against a person who is in the position of having given information to the authorities in the discharge of his duty, to aver malice and want of probable cause. The meaning of those terms has been often explained in judgments of this Court, and it is needless for me now to enter into details regarding it. I may say, however, in one word, that in order to make out malice in the sense of such an issue as is now before us, it is necessary for a pursuer to prove not only that there is no ground for the statement that the person accused is guilty of a crime, but also that the statement was made, not in discharge of the public duty but from an illegal motive, and not only so, but that it must have been made on insufficient grounds, without reasonable belief, or, what is the same thing, probable cause.

The facts which have been commented on in argument in this case are simple enough. A cheque was presented at the defender's branch bank which was dated from Perth and was drawn in favour of Holtum & Welsh by a customer there for the sum of £5. The cheque was payable to Holtum & Welsh or bearer, but it was a crossed cheque, and it was contended that the defender had in some way compromised his position by making payment of a crossed cheque to the bearer instead of placing the amount to the credit of the account of the customer whose name it bore. I think that that suggestion entirely failed. Under the statute quoted a person paying a crossed cheque except through a bank is liable to make it good to the true owner, and a bank is, it may be, liable therefore for the amount if the money is paid away to a wrong person. But it is proved that the agent is authorised to pay small sums contained in crossed cheques if they are presented by persons whom he knows and payment is desired. It does not, however, appear to me that this matter is of any materiality here. After having heard the facts of the case I give to it no weight whatever.

This cheque having been drawn as I have described, and being intended to be paid to Holtum & Welsh or their banker, it was abstracted from a letter addressed to Holtum & Welsh. In these circumstances it was presented at the branch bank managed by the defender with the endorsation of Mr Smith upon it, and it was paid there. The first thing which he did on becoming aware that there was something wrong with regard to it was to go to Mr Smith, the apparent endorsee, and the customer on whose signature the cheque had been paid. As far as we can see from the evidence, the interview between Smith and the defender was as innocent and straightforward in its character as any interview can well be conceived. The defender told Smith that something was wrong about a cheque which had been presented by his boy. Smith said he had not got the money, and that is in substance all that passed. It is said that the statement which was then made was malicious and without probable cause. If it were proved that at the time of this interview the defender knew that this person who had presented the cheque was not Smith's boy at all, that would indeed have been a case of malice and want of probable cause. If it had been shown, for example, that the person who really presented it was so different in appearance from Smith's boy that no one could possibly mistake the one for the other—as, for example, that it was an old man who presented it, and that he had had some conversation with the banker about the cheque, then that would have been a foundation for a charge of malice. But there is nothing at all in the evidence to lead me to entertain any doubt that Mr Gordon, the

defender, honestly believed that Smith's boy did present the cheque. Therefore as to the first issue there is, I think, not a shadow of evidence of malice. As to the want of probable cause, the very same considerations apply. Mr Gordon stated that for which he believed he had the testimony of his own eyes. I cannot see how a man can have a more reasonable ground or probable cause for his statements than what he saw or believed he saw. As to the first issue, therefore, I think there is no more to be said.

Then as to the second issue, we find that after the defender left Smith he proceeded to find out the real circumstances connected with the cheque. He went to Holtum & Welsh, the payees, and found that they knew nothing of the matter. Then—I think it was on their suggestion (but that is immaterial)—he went to the Post Office to see whether he could there obtain any information on the matter, and thence he went to the Police Office. There he did nothing more than he had done when he called on Smith—that is to say, he explained that the cheque had been cashed, and that by the pursuer, adding—That is my belief, but the boy denies it, and you have his word against mine. You will just take what steps seem to you fit in the circumstances. Now, I understood Mr Scott to say, that if a man has nothing on which to rely in making a charge to the authorities but his own eyesight and his own memory, he is not entitled to give any information at all, but that it is his duty before giving any information to investigate the matter and to see whether he can find any evidence to corroborate what he himself believes he has seen and remembers. My opinion is that if a person in the defender's position had proceeded to make such an investigation he would have been stepping out of the line of his duty altogether. His duty is to go to the authorities with his own unaided statement, and then to leave the matter in their hands. That is what the defender did. I think that he gave his information to the police cautiously, without exaggeration, and from a direct motive of doing his duty. I am therefore clearly of opinion that we should set aside this verdict on the ground that there was neither malice nor want of probable cause.

Lord Mure—I am clearly of the same opinion, and after the distinct exposition of the whole case which has been given by your Lordship I have very little to add. The position of the defender was one in which he had a duty to the public, and a special duty to the person whose name was on the cheque, and in obedience to the requirements of that double duty he was bound to give information to the public authorities, if after full consideration and inquiry he had satisfied himself that there was something wrong with the cheque. If a person so placed as the defender was makes these inquiries and gives that information, he is privileged and is protected in an action of damages if he has acted fairly and temperately. The question therefore comes to be, whether there is any evidence for the jury of the defender having malice to the pursuer in making the investigations he did, and whether there was want of probable cause for what he said. I cannot see that there is any such evidence. There seems to me to be no ground whatever for thinking that he was influenced by any improper motive. The first person he went to see was Mr Smith, whose name was on the cheque, and who was the pursuer's master. In doing that, or in anything he said in his interview with Mr Smith, it cannot be said that he was doing anything which showed malice towards the pursuer. He was merely investigating with the view of seeing how the facts stood. There is no evidence of anything in his conduct from which malice can be inferred.

Then as to the second issue, which relates to his statements to the police. He stated to the police his belief that the cheque had been presented by the pursuer, but he also said that the pursuer denied that he had done so, and he left it to the police to make any investigations which they thought necessary. In doing that I think that he simply did what any bank agent ought in the circumstances to do. I think that there is no evidence of malice in making the statements he did, or want of probable cause for making them.

Lord Shand—I take exactly the same view of the case. I think it of the highest importance that a person who makes a charge to the authorities with regard to the commission of a crime should be protected in doing so, unless it is shown that in doing so he was not acting in the exercise of his right and from a sense of duty, but from improper feeling, and without, as the issue runs, probable cause for what he did. I say "not in the exercise of his right," for apart from that there is a public duty to tell the authorities what a man knows as to a crime which has been committed—as, for instance, when a man's property has been stolen, or he is a sufferer by a forged cheque. When a man suffers from a criminal act of another, he has undoubtedly a right to set the public authorities in motion. If the authorities are applied to, the law will *prima facie* assume that the information given them has been given in good faith and will shield the person giving it from an action of damages, unless the pursuer makes out malice and want of probable cause.

After what has been said by your Lordships, I am not going to enter into the facts of the case in detail. But as to the first issue, which relates to the occurrences of 11th August, I must say I think that the defender did what anyone would do in the circumstances. He was convinced, for reasons that were given by him, that the cheque was paid to the pursuer. He knew the boy, and being convinced that he was the boy who came with the cheque, he did what he should have done in going to the master to ask explanations as to the matter. I think it very material in the question of his *bona fides* in what he did to observe that he was able to speak on that occasion not only as to the general appearance and dress of the boy, but as to the temporary mark on his face, which was not there on any previous occasion when he was at the bank.

Now, what the defender said to Smith, the boy's master, was simply that he thought the boy had presented the cheque, and Smith replied that he never got the money. I ask myself whether in thus going to the master of the boy and speaking to him as he did, there is any evidence of malice or of want of probable cause for his statements on the part of the defender. If he had probable cause for what he did, there was certainly no

malice in it. The pursuer's counsel on being pressed to explain to us what there is to show malice on the part of the defender on that occasion, pointed to two circumstances, one of which is that the defender was so confident in his opinion on the matter, that even at the trial before the Lord Ordinary he spoke of the pursuer as the boy who presented the cheque. I cannot say that I see any evidence of malice in that. There was no malice in his suspecting, if he conscientiously thought that he was the boy, and I see no evidence to show that he did not really think so. The only other circumstance alleged in proof of malice is, that the defender paid a £5 cheque in cash, when he ought to have passed it to his customer's credit. I think it would be contrary to all human experience to say that a person such as the defender would in consequence of some trifling circumstance as that turn round upon a boy like the pursuer, of whom he says he always thought well, and deliberately accuse him of stealing the proceeds of the cheque in order to cover his own irregularities. An ingenious counsel may put that skilfully to a jury, but I for my part reject it at once as contrary to all human experience. Indeed, this matter of the crossed cheques seems to be rather in the defender's favour than against him in the question of the *bona fides* of his belief, for a banker will not pay a crossed cheque in cash to an utter stranger. That circumstance therefore seems to support the defender in concluding that he had all the more reason for being certain as to the boy who presented the cheque.

As to the second issue, I think that a fundamental error has been made in it. It is made to bear on what took place on the 15th August, while the first issue refers to the events of the 11th August. It appears from the evidence that what took place on the 15th was certainly not the preferring of a charge such as can give rise to an action of this kind, but that it comes to this, that as the defender could not give any sufficient information on the 11th, and felt that he must clear up the matter, he went to Holtum & Welsh, and from them to the Post Office, and thereafter I do not see that he had any alternative but to go to the police. The pursuer's counsel says that he ought to have made investigation as to the boy and seen whether his denial that he was the person who presented the cheque was true. That is a fair enough suggestion, but I do not think he was called on to do so in the least, and more particularly he was not called upon to do so when one thing which he wished to discover was how the cheque got out of the hands of Holtum and Welsh. Then at the Police Office he did exactly as he had done when he saw the boy's master; he told what he believed and that the boy denied it. From that time he was no longer in the position of one making a charge. What occured subsequently was that the police moved in the matter, made investigation, saw the pursuer, confronted him with the defender, while the defender leaves matters just as he had done from the 11th August. He is rather confirmed, indeed, in his belief by hearing the boy Farquharson say in presence of the police that he knew the pursuer by sight and had once spoken to him in Princes Street Gardens. The charge, however, was made on the 11th, and what took place on the 15th were proceedings more of the nature of precognition by the police than anything else.

On these grounds I think there was no evidence for the jury either of malice in defender's statements or of want of probable cause for them.

Lord Adam—I tried this cause and I am dissatisfied with the verdict. No one is more unwilling than I to disturb the verdict of a jury if there is really evidence for them, and I would never disturb a verdict unless on the ground that it was without evidence or against the preponderating weight of evidence. But I have thought all along not merely that this verdict was against the weight of evidence but that there was no evidence at all of malice or want of probable cause. I think it is an important case, for nothing could be worse for the administration of justice than that such a verdict should stand. Nothing would go further to prevent a man from doing his duty in giving information as to the commission of crime than that it should be felt that it must be done with the terror of an action of damages for making a false accusation hanging over him. I concur with your Lordships in the grounds which have been stated for the judgment.

The Court made the rule absolute.

Counsel for Pursuer—Scott—Watt. Agent—Andrew Clark, S.S.C.

Counsel for Defender—J. P. B. Robertson—Dickson. Agents—J. & F. Anderson, W.S.

Thursday, June 15.

SECOND DIVISION.

[Sheriff of Aberdeenshire.

WALKER *v.* OLSEN.

Reparation — Master and Servant — Defective Tackle—Damages.

A stevedore raised an action of damages in the Sheriff Court at Aberdeen against the master, on behalf of the owners, of a vessel on board of which he had been employed, in the following circumstances:—He was engaged in the hold along with another man in filling buckets or tubs with bones, which formed the cargo. These buckets were hauled up on deck and let down again when empty by means of a winch and gin or pulley, with a hook which passed through an iron thimble in a stock which was made fast to the trysail-gaff at the height of twelve feet above the deck. A chain passed from the winch through the gin, but for about nineteen or twenty feet at the end which went down into the hold the communication was of rope. At the close of the day's work, when the last bucket had descended, to remain there till work was resumed next day, the rope became unhooked from the tub—it was alleged, by the violence with which it was let down and bumped against the bottom of the hold—and before the pursuer's fellow-workman could seize it, or give notice to the mate above, whose duty it then was to have it secured to the deck, ran violently through the gin, which, in some way not satisfactorily explained, came loose,