of £1502, 14s. 10d., and previous to its date had drawn a bill on the company for part of the said sum, which bill was accepted by the company, and discounted by the pursuers; (3) that the said bill was renewed from time to time, and discounted by the pursuers, and is now represented by the bill sued for; (4) that when the bill last mentioned fell due, the defenders, being parties to the agreement, knew that the acceptors, being the managers thereby appointed, having no power to pay creditors otherwise than rateably, could not retire it: Find in law that the defenders are not entitled to plead that the bill was not presented to the acceptors for payment: Sustain the appeal: Recal the judgment of the Sheriff-Substitute appealed against: Repel the defences: Ordain the defenders to make payment to the pursuers of the sum of £740, 4s. 4d. sterling, with interest thereon at the rate of £5 per centum from the 6th day of April 1888 till payment: Find the pursuers entitled to expenses in the Inferior Court and in this Court," &c.

Counsel for the Pursuers (Appellants)—Sol.-Gen. Darling, Q.C.—Graham Murray. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for the Defenders (Respondents)—Low—C. K. Mackenzie. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Thursday, June 13.

SECOND DIVISION.

PARR *v.* MACLEAN.

Crofter—Right to Cut Peats—Landlord's Discretion as to Place.

A crofter's right to cut peats does not attach to any particular place. The place is in the landlord's discretion, provided he does not put the crofter to unreasonable inconvenience.

A crofter with a right to peats cut them at first from moss A, but at his own request he was allowed upon sufferance to take them from moss B. He and his son continued to do so for more than twenty years. The landlord then told the son, who had succeeded to the croft, to give up cutting at B, and to go for peats to A. *Held* that the crofter had no right to continue cutting at B, but must comply with the landlord's instructions.

Thomas Philip Parr of Killichronan, Mull, brought an action of interdict in the Sheriff Court of Argyllshire at Oban against Hugh Maclean, crofter, Kellon, one of his tenants, to have him interdicted from taking peat from the moss of Killichronan.

The pursuer pleaded that the defender had no right to enter or be on the farm of Killichronan for any purpose whatever. That a moss at Killiemore had been thirled by usage to the croft, was much nearer and as convenient for the defender, and being now, and having all along been, open to him without let or hindrance, any claim to peats which he had under the Crofters Act or otherways was satisfied.

The defender averred—"The pursuer himself about the year 1865 pointed out to defender's father the place where to cut peats on the farm of Killichronan, and the peats have each year been cut there ever since then by the tenants of Kellon Croft, and occasionally by pursuer himself and the tenants of Killichronan when it was let by pursuer. No objection or complaint was ever made to the exercise of the right of peat cutting until the pursuer's agents wrote the defender on 8th December 1887. . . . Explained that the moss at Killiemore is inaccessible to a cart, although geographically slightly nearer to defender's holding, and that the good peat in that moss has been exhausted. . . . The said right of peat cutting is a pertinent of the holding of the defender from which he is not legally to be debarred, in respect of the provisions of the said Crofters Holdings (Scotland) Act 1886. The defender's said right of peat cutting on Killichronan farm has been continuously exercised for a prescriptive period of time."

The defender pleaded—"(1) The right to cut peats being a pertinent of the defender's holding for time immemorial, he, as a crofter in the sense of the Act, cannot be deprived of the same by the present proceedings."

A proof was allowed, from which it appeared that the defender succeeded to the croft about 1877 on the death of his father Donald Maclean, who had possessed it with right to get peats from 1865. At that date the peats were cut at Killiemore, about one and a half miles off. There was then a mill on the croft, and in 1867 Donald Maclean asked the present pursuer if he might take peats from Killichronan, three miles off, as he was working in that neighbourhood and could fetch them in his cart, and also because the peats from Killiemore were spoiling the meal. Leave was given to take peats from Killichronan during the landlord's pleasure, and no rent was charged for this accommodation. The mill ceased to be worked during the year after Donald Maclean died, and on 8th December 1887 permission to cut peats at Killichronan was withdrawn by letter to the defender. There was a cart road to the moss at Killichronan, but only a horse with creels could be taken to the peats at Killiemore.

The Sheriff-Substitute (MACLACHLAN) on 7th November 1888 found as follows—"(First) that the defender's father Donald Maclean became tenant of a croft at Kellon, on the estate of Killichronan, at that time the property of the pursuer's father, on or about the year 1865; (second) that the holding of which the said Donald Maclean became tenant included the right of cutting peats on a moss on Killiemore Hill, part of said estate; (third) that the said Donald Maclean exercised the said right of cutting peats on said moss for two years or thereby, and thereafter applied to the pursuer, who had then succeeded to said estate, and obtained permission from him to cut peats on a moss at Killichronan, on another part of said estate, but that said permission was granted by the pursuer during his pleasure only, and no rent was exacted therefor, and that said permission has now been withdrawn: Finds that the pursuer was entitled to withdraw said permission, and therefore decerns in terms of the prayer of the petition."

On appeal to the Sheriff (IRVINE) this interlocutor was affirmed.

The defender appealed to the Court of Session, and argued—(1) This was an illegal attempt on the landlord's part to remove a crofter from part of his holding in face of the Crofters Holdings (Scotland) Act 1886. (2) The crofter had a right to peats as an incident of his holding, and the moss at Killichronan had been substituted for that at Killiemore. (3) The holding had been renewed from year to year for twenty years with right to cut peats at Killichronan, and the landlord had no right at mid-term to take away this pertinent of the croft. (4) It was an unreasonable alteration of the enjoyment of this croft. It put the crofter to serious inconvenience. The Killiemore moss being inaccessible with a cart was, although nearer the croft, much more troublesome to work, and contained inferior peats.

Argued for the respondent—The crofter's right to peats was merely to get them without being put to serious inconvenience, not to get them from any particular place. Killichronan moss was given during the landlord's pleasure and because of the mill, which was no longer in existence. There was no attempt here to deprive the crofter of his right to peats. The place assigned him was the ground his father had originally used, and was only half the distance from the croft. There was no hardship in having to go to a place where a horse with creels could be employed.

At advising—

Lord Justice-Clerk—The evidence has satisfied the Sheriffs that the change from Killiemore to Killichronan was a piece of grace on the landlord's part, and not a right of the tenant. There is no evidence to the contrary. It was argued that he had no right to get peats except from Killichronan. Such an argument is quite inconsistent with the universal rule and practice as we know it to exist, and would involve a hardship to crofters in the event of the peat at any particular place becoming exhausted. The privilege of being allowed to cut peats is not attached to any particular place. Crofters have a right to get peats, but the landlord has a right to point out where they are to go for them. If the landlord subjected the crofter to gross injustice by asking him to go to an extremely out-of-the-way place for his peats, we might interfere. Here, the distance he is asked to go is less than the distance he has hitherto gone. That advantage is, no doubt, counter-balanced by the fact that he can only use a horse, and must make more journeys than when he was able to employ a cart, but I think the Sheriffs were right in holding that this was within the landlord's discretion.

Lord Young, Lord Rutherfurd Clark, and Lord Lee concurred.

The Court pronounced the following interlocutor:—

"Find in fact (1) that the pursuer is proprietor of the lands of Killichronan in the Island of Mull, which includes the farm of Killiemore; (2) that the defender is tenant, under the pursuer, of a croft, part of said lands, with right to cut peats on the lands of Killiemore; (3) that in or about the year 1867 the pursuer gave leave to the defender's father, then tenant of the said croft, to cut peats during his, the pursuer's, pleasure, on the home farm of Killichronan instead of the farm of Killiemore, and that the tenants of the croft availed themselves of the privilege from that time till shortly before the institution of the present action, when the pursuer recalled the leave thus conditionally given: Find in law that the pursuer was entitled to recal the permission granted as aforesaid: Therefore dismiss the appeal: Affirm the judgments of the Sheriff and Sheriff-Substitute appealed against: Find and declare, interdict, prohibit and discharge in terms of the prayer of the petition: Find the pursuer entitled to expenses in the Inferior Court and in this Court," &c.

Counsel for the Pursuer—Sir Charles Pearson—Graham Murray. Agent—F. J. Martin, W.S.

Counsel for the Defender—Dickson—Salvesen. Agents—Gill & Pringle, W.S.

Friday, June 14.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

CROUCHER *v.* INGLIS.

(*Ante*, p. 541.)

Reparation — Slander — Privileged Statement—Minister of Parish—Probable Cause.

In an action of damages against the minister of a parish for alleged slanderous statements in two letters written by him to the inspector of poor of a neighbouring parish and the Board of Supervision respectively, and which challenged the pursuer's fitness as guardian of certain children boarded with him by the parochial board of the neighbouring parish, it was *held* that the defender was entitled to an issue of want of probable cause as well as of malice.

Opinion per Lord Shand, that a defender other than the minister of a parish would be entitled in similar circumstances to the protection of a similar issue.

This action was raised by Charles Croucher, general dealer, residing at Kirkton of Auchterhouse, against the Rev. William Mason Inglis, minister of the parish of Auchterhouse, for payment of £500 as reparation and *solatium* for alleged slanders.

The statements complained of were contained in two letters written by the defender to the Inspector of Poor of Dundee and to the Board of Supervision respectively, and which called in question the pursuer's fitness to have the charge of several pauper children boarded with him by the Parochial Board of Dundee.

The letters were in the following terms:—

"*Manse, Auchterhouse,*
"*16th October* 1888.

"Dear Sir,—You are aware of the fact that several children on your parochial board list are boarded out in this village under the guardianship of a man named Croucher, a hawker to trade. I have just seen this man engaged in fighting for a considerable time with another