titled to raise in the Chancery suit every point which she could have raised in this action.

The only question that has caused me difficulty is whether we should dismiss this action or sist it until the result of the Chancery proceedings is known, but I have come to be of opinion that our proper course is to dismiss it, and that will not prevent the pursuer raising a competent action in this Court afterwards.

LORD YOUNG—I am of the same opinion. The estate in question is the estate of a gentleman who went to Manchester in the year 1874, who lived there for a long time afterwards (although he died in Glasgow), and who left a will disposing of his estate drawn up in the English form and executed in England. No doubt this estate consisted of a sum of money placed to his credit in the books of a Glasgow commercial firm; but that does not matter; it is the estate of this gentleman in Manchester. In December last an administration suit was begun in the Court of Chancery in England, and a receiver was appointed upon 16th December 1888. In this suit Mr Justice Chitty directed, *inter alia*, that an inquiry should be taken as to the testator's domicile. Upon the 23rd December 1888 the pursuer brought this action, which originally contained reductive conclusions, but which has now been reduced to a declarator on the very question of domicile which was to be the subject of inquiry in England. I am of opinion that it is not fitting that we should entertain this action to the extent of allowing it to proceed for inquiry into this question.

I cannot doubt the competency of the Chancery suit; *prima facie* it is the proper and competent way of dealing with the estate of this gentleman who died at Manchester after living there a number of years, and who left a will drawn in the English form. I think that in these circumstances for us to entertain an action having for its sole purpose to ascertain what was really the domicile of this deceased gentleman would be an improper proceeding. I am therefore of opinion with your Lordship that this case should be dismissed, and with expenses.

LORD RUTHERFURD CLARK concurred.

The Court dismissed the action.

Counsel for the Reclaimers—Asher, Q.C. —A. S. D. Thomson. Agents—Simpson & Marwick, S.S.C.

Counsel for the Respondent — Guthrie Smith—Salvesen. Agents—Gill & Pringle, W.S.

Tuesday, November 18.

SECOND DIVISION.

[Lord Kinnear, Ordinary.

RAMSAY *v.* MACLAY & COMPANY.

Reparation—Slander—Issue.

A pursuer raised an action for slander, stating that his firm had formerly collected accounts for the defenders, and had collected and credited to them the account of a certain customer, but that thereafter the defenders had written to him this letter:—"Mr Robert Ramsay, Dunfermline.—Dear Sir—We are surprised at having had no reply to ours of the 3rd inst., regarding the a/cs of Wilson, Saline, which you collected and have not accounted for. It seems to us you do not realise the seriousness of your position in the matter, but should we be forced to insist on Mrs Wilson paying us the accounts she has already paid to you, and which is quite within our right, as she holds no receipt from us, and those she had from you are no legal discharge of a/cs due to MacLay & Co., she threatens to place the affair in the hands of her law-agent, and you may find yourself in an awkward situation, as he will in all probability report to the fiscal. If you wish to save yourself from unpleasant consequences you will let us hear from you without delay."

The pursuer stated that by this letter the defenders falsely, calumniously, and maliciously represented that he without defenders' authority had collected money due to them, dishonestly appropriated it, and been guilty of breach of trust and embezzlement.

Held (*aff.* Lord Kinnear) that the innuendo was admissible, and that the pursuer was entitled to an issue "whether the letter was of and concerning the pursuer, and falsely and calumniously represents that he had dishonestly appropriated moneys belonging to the defenders," to his loss, injury, and damage.

Lord Young *dissented*, holding (1) the letter was not slanderous; (2) that in any view the pursuer must take an issue of malice.

Robert Ramsay, bottler, Dunfermline, raised an action of damages for alleged slander against MacLay & Company, brewers, Alloa. The pursuer averred he was a partner of Ramsay Brothers, bottlers, that he and his brother were formerly the sole partners of Ramsay Brothers and also of Maclay & Company, that in 1888 they had assumed into the latter firm A. Fraser and J. Drummond, and that the firm of MacLay & Company was so carried on till April 1889; that Ramsay Brothers acted as agents for MacLay & Company, obtaining orders and discharging accounts in their name for that firm.

The pursuer further averred that on 4th April 1889 an agreement had been made by

which he and his brother were paid out of MacLay & Company, and that on 20th February 1890, with reference to two accounts due by Mrs Wilson, Saline, which Ramsay Brothers had by their cashier uplifted in 1889 and credited to MacLay & Company in their books, MacLay & Company wrote to him the following letter, which constituted the slander complained of:—"Mr Robert Ramsay, Dunfermline.—Dear Sir—We are suprised at having had no reply to ours of the 3rd inst., regarding the a/cs of Wilson, Saline, which you collected and have not accounted for. It seems to us you do not realise the seriousness of your position in the matter, but should we be forced to insist on Mrs Wilson paying us the accounts she has already paid to you, and which is quite within our right, as she holds no receipt from us, and those she had from you are no legal discharge of a/cs due to MacLay & Company, she threatens to place the affair in the hands of her law-agent, and you may then find yourself in an awkward situation, as he will in all probability report to the fiscal. If you wish to save yourself from unpleasant consequences you will let us hear from you without delay."

The pursuer averred—(Cond. 4) "The said letter is of and concerning the pursuer, and falsely, calumniously, and maliciously represented that the pursuer, without any authority from MacLay & Company, had collected money due by a customer to them, and had dishonestly appropriated the same, or part thereof, to his own purposes, and been guilty of breach of trust and embezzlement." (Cond 6) "The pursuer has been and will be much injured in his feelings, reputation, and prospects in life by the statements contained in said letter, but though the defenders have been called upon to apoligise and pay a suitable sum in name of reparation, they refuse to do either, and have in effect, through their law-agent, repeated the said statements. In these circumstances the pursuer has instituted the present proceedings for the purpose of vindicating his character and obtaining suitable reparation for the loss, injury, and damage he has sustained."

He pleaded—"(1) The defenders having slandered the pursuer falsely, calumniously, and maliciously, are liable to him in solatium and reparation."

The defenders pleaded—"(1) No relevant case. (2) The letter complained of will not reasonably bear the innuendo put thereupon by the pursuer, and the action should accordingly be dismissed."

The Lord Ordinary adjusted the following issue for the trial of the cause, viz.—"Whether the defenders wrote and sent . . . to the pursuer" the letter above quoted, "and whether the said letter is of and concerning the pursuer, and falsely and calumniously represents that he had dishonestly appropriated monies belonging to the defenders, to the loss, injury, and damage of the pursuer.

"*Note.*—The words of which the pursuer complains are not in themselves actionable; but the innuendo which he proposes is not inconsistent with their natural meaning. The case of *Mackay* v. *M'Cankie*, 10 R. 537, appears to me to be in point."

The defenders reclaimed. They also moved the Court to vary the issue (if any were allowed) by inserting the word "maliciously" after the words "whether the defenders" therein.

The defenders argued—There was here no relevant case of slander, and the action ought to be dismissed. The case of *Mackay* cited by the Lord Ordinary was not in point because there the defender had accused the pursuer of having done a criminal act and threatened him with a criminal prosecution. All that the defender said here proceeded upon the hypothesis that Mrs Wilson's solicitor might think fit to report the case to the Procurator-Fiscal. The only reasonable inference was that the defender said to the pursuer that if the matter was reported to the Procurator-Fiscal he might have some annoyance. There was no real slander because no misstatement. The pursuer did not deny that he had got the money, nor did he say that he had accounted for it, and therefore he could not get an issue—*Campbell* v. *Ferguson*, January 28, 1882, 9 R. 467. On the motion to vary issue, the word "maliciously" ought to be inserted because this occasion was privileged. It was a letter which the defenders were entitled to write and send in reasonable attention to their own business and affairs as stated by Lord Young in *Shaw* v. *Morgan*, July 11, 1888, 15 R. 865. When the case went to trial the pursuer would have to show as a matter of fact that the defenders had been actuated by malice in writing this letter, and therefore malice ought to be inserted in the issue —*M'Lean* v. *Adam*, November 30, 1888, 15 R. 175.

The pursuer argued—The case was relevantly stated, because it was averred a threat was made that the pursuer might have his conduct examined by the procurator-fiscal, and that was sufficient to ground an action for slander. It was not necessary to put malice in the issue if the pursuer wished to prove malice at the trial—*Fraser* v. *Morris*, February 24, 1888, 15 R. 455; *M'Bride and Williams* v. *Dalzell*, January 28, 1869, 7 Macph. 427.

At advising—

LORD JUSTICE-CLERK—The question is, whether this case is to be allowed to go to trial with the proposed issue, and with the innuendo which it is proposed to put upon the words complained of. The case is peculiar in this respect, that it is one where the pursuer complains not of some slander about him uttered in public or communicated to others, but of a slander uttered to himself, and which has no publicity unless he himself makes it public. The law, however, is quite clear upon the point, that if a person receives a letter addressed to himself containing slanderous expressions he is entitled to sue the writer of it for damages.

Now, the pursuer's case is this. The defenders through their cashier wrote to the

pursuer about some small sums of money alleged to have been collected by him as cashier, and never accounted for to them at the time when accounts between the parties were settled, and it is admitted that the defenders were entitled to receive the amount. It was not alleged that the money had been paid over or accounted for, and undoubtedly the defenders had grounds for making inquiry into the matter, and the question is whether the language they employed in their letter of inquiry was enough to justify the issue proposed.

The letter itself is in these terms—[*His Lordship read the letter*]. Now, that letter certainly suggested that if the pursuer did not take a particular course the matter would be handed over to the authorities, and it might be very uncomfortable for him, but it is clear that the words used are not actionable unless an innuendo be placed upon them. The question is, whether the innuendo proposed by the pursuer is sufficiently supported by the terms of the letter to justify him in bringing the action. The conclusion I have come to in that matter is that the innuendo proposed is an interpretation which may be quite fairly put upon the words of the letter, and that is the only question that we can decide at this stage. It will be for the jury to say at the trial, after they have found the slanderous letter proved, whether they consider the innuendo proved also. I think this is eminently a jury question. With regard to the question of whether malice should or should not enter the issue, I am of opinion that it should not. I think that the Lord Ordinary's opinion is right, and that we should adhere to his interlocutor.

Lord Young—Since we heard this case I have been disposed to hold that it is one of first-rate importance, although the matter between the parties is trifling, and the sums of money concerned are small. It is admitted that the letter complained of as slanderous does not contain any slander in itself, that it was not written by the firm who are here sued as defenders, but by their cashier or a clerk in the ordinary course of business, demanding from the pursuer the payment of a debt due to them. Now, it is a very strong thing in any case to make such a letter as that the subject of an action of damages for slander. I think it would require a very exceptional state of facts before we could allow an action to proceed upon such mere general epithets as we have here.

The facts are not in dispute. There were two debts due by a Mrs Wilson of Saline—one of £5, 5s., and the other of £5, 4s. to the defenders. These accounts had been uplifted, *i.e.*, payment of them had been received, one upon 28th December 1888, and the other on 5th March 1889. It is admitted that both the debts were due to defenders, and to no other, and that there was no title in the pursuer to uplift these sums in a question between him and the defenders. It is also clear that the receipts to Mrs Wilson were good, because they collected the money in the way that they had done before, and gave the receipts to a person who was not properly informed of the changes that had taken place in the firm. So that it is the case of a good discharge for a debt given by a person who had no title to uplift the money. Well, the defenders applied to Mrs Wilson for payment of these debts, and she at once showed the receipts granted by Ramsay Brothers, and a letter was sent by Mrs Wilson's son, in which he said—"Should any further trouble or annoyance be caused, I shall at once give the matter into the hands of my solicitor." After this some communications took place between the pursuer and defenders, but no payment on accounting was made, and the defenders' cashier wrote the letter complained of.

Now, does that letter contain one word that is untrue? These accounts had been uplifted with or without authority, and the money received, and there was no suggestion that the money had been accounted for to its true owners. I thought it right to call attention to that fact, and time was allowed for the pursuer to make any statement he could on the matter, but after delay his counsel told us that the money had been paid over by their cashier to them, but had never been paid or accounted for to the defenders. Does the letter complained of state more than that as matter of fact, and should we allow such a statement as that to be the ground for an action of damages for slander? No doubt in the letter an unfavourable view is taken of the pursuer's conduct, but it is not slanderous nor actionable to say that, or that in the opinion of other people the matter might well be looked into by the procurator-fiscal. I do not think it slanderous on the part of any man in the course of his business, when, misstating no facts, but writing to the man who knows all the facts, he says that he thinks his conduct unbecoming, and I do not appreciate the view that such a statement should be sent to a jury as the ground for an action of damages. Where are we to stop? A person who is asked for money says he paid it; the defender says you did not, and the answer is an action of damages for slander. I think therefore, and without any hesitation, that both sound law and considerations of justice call upon us to dismiss this action.

If, however, contrary to the opinion I have just expressed, your Lordships should think that the case should go to trial, I am of opinion that the word "maliciously," and even in this case the words "without probable cause" should be inserted in the issue.

Lord Rutherfurd Clark—I agree with your Lordship in the chair, and I do not think that we can withdraw this case from a jury. I therefore think we should adhere to the Lord Ordinary's interlocutor.

The Court adhered.

Counsel for the Pursuer—Wilson. Agent—William Officer, S.S.C.

Counsel for the Defender—Shaw—MacWatt. Agent—James Marshall, S.S.C.