make such an investigation as would satisfy him regarding a claim of this peculiar nature. That is beyond what is to be expected of him. It was plainly in the circumstances much better that the trustee should take the course of rejecting the claim, and so allow the appellants at once to bring it here and have it determined in the ordinary course. And why it should be supposed that an investigation here would be less satisfactory than one in the Court of Chancery I am at a loss to understand. I think I can take it upon me to say that the procedure here will be as expeditious and satisfactory as that in any other Court in the country. But whether that be so or not, we are not going to demit our undoubted jurisdiction because the appellants have chosen to institute proceedings in the Court of Chancery. I think it would be a dereliction of our duty were we to allow the proceedings in this sequestration to be obstructed on such an allegation. I say nothing about anything that may be done in the Court of Chancery upon the appellants' bill. I take it for granted that that Court has jurisdiction against all the defendants; but I entertain great doubt whether any decree of that Court could affect the proceedings in this sequestration. Even if that were otherwise, it is no reason for not allowing the sequestration to go on in common form, and the appellants to prove their claim as in any other case.

The other Judges concurred.

The Court adhered to the interlocutor of the Lord Ordinary.

Counsel for Appellants—Watson and Kinnear. Agents—Davidson & Syme, W.S.

Counsel for Respondents—Dean of Faculty (Clark) Q.C., and Mackintosh. Agents—Stuart & Cheyne, W.S.

Thursday, March 19.

SECOND DIVISION.

BARSTOW (MALTMAN'S FACTOR) *v.* COOK AND OTHERS.

(*Ante*, vol. iv. p. 207.)

Succession—Presumption of Death—Next of Kin.

A person died intestate, leaving heritable and other property. His only brother had not been heard of for twenty years; if alive, he would be in his 82d year, and all inquiry during many years had failed either to discover him or prove his death. *Held* that these facts were sufficient to justify an order on the judicial factor to divide the estate among the next of kin other than this brother.

This was an action of multiplepoinding and exoneration instituted in 1859 at the instance of Mr C. M. Barstow, C.A., judicial factor on the estate of the late William Maltman, of the East India Company's service, who died at Elie, in the county of Fife, in March 1854, leaving heritable and personal property to the value of £10,000 or thereby. Mr Maltman had several brothers and sisters, all of whom predeceased him with the exception of Gavin Maltman. Gavin Maltman was born in November 1792, and left this country in the year 1814. Inquiries which were set on foot elicited the fact that he had in the course of his life wandered over a considerable portion of the West Indian Islands and North America, and had last been heard of at Shediac, New Brunswick, in July 1854. Rumours of his death on several occasions reached this country, and in consequence of them a commission was twice sent to Canada by the Court to inquire into the truthfulness of these reports, but they turned out to be unfounded.

Application was now again made to the Court by the heirs-at-law and next of kin of William Maltman, seeking for an order upon the judicial factor to divide the estate among them.

At advising—

LORD JUSTICE-CLERK—My Lords, I am of opinion that this estate should now be divided, and that the judicial factor should be ordained to carry out the division. This conclusion I am led to by a consideration of the great age at which Gavin Maltman must now have arrived if he yet survives—he must be in his 82d year. Further than that, he has been now for 60 years away from this country, and during the last 20 years has been advertised for far and wide. No inquiry has been spared, and the best course now would appear to be that the estate should be divided among those persons, other than Gavin Maltman, entitled to claim it. If Gavin be still alive he has had a most ample opportunity of putting in an appearance and of claiming the succession of his brother.

The other Judges concurred.

The Court pronounced the following interlocutor:—

"The Lords having resumed consideration of the reclaiming note and the claims of the parties, and having heard counsel thereon, Find that the parties held entitled to certain expenses by the interlocutors of twenty-eighth January eighteen hundred and sixty-five, seventh February eighteen hundred and sixty-five, fifth June eighteen hundred and sixty-nine, and twelfth January eighteen hundred and seventy-one, have agreed to pass from all claim for said expenses except as regards the sums of five guineas and four guineas mentioned in said interlocutor of twenty-eighth January eighteen hundred and sixty-five: Find that the funds *in medio* fall to be distributed and paid in accordance with the following scheme of division, that is to say (1) the claimant James Cook, Berwick-on-Tweed, shall receive one-half share *pro indiviso* of the heritable subjects, with entry as at the term of Martinmas 1873, together with one hundred and fifty pounds sterling as his proportional share of the rents, and the claimants Ann Barclay or Burnside and Margaret Barclay or Scott shall each receive one-fourth share *pro indiviso* of the heritable subjects, with entry as at the said term of Martinmas 1873, together with seventy-five pounds sterling as a proportional share of the rents; (2) The raiser Charles Murray Barstow, as raiser and as factor *loco absentis* to Gavin Maltman, shall be entitled to expenses to be paid out of the funds *in medio*; (3) David Curror, solicitor, Supreme Courts of Scotland, as agent disburser shall receive out of the funds *in medio* the sum of four hundred pounds sterling on account of the expenses incurred by the parties whose adjusted revised condescendence and claims

are Nos. 200 and 201 of process respectively; and (4) the remainder of the funds *in medio* shall be divided into nineteen equal parts or shares, of which one share shall be paid to the said claimant Ann Barclay or Burnside and her husband for his interest, one share shall be paid to the said claimant Margaret Barclay or Scott, one share shall be paid to the claimant Duncan M'Carter, Edinburgh, as executor dative of his father the deceased claimant Duncan M'Carter, Bathgate, one share shall be paid to the claimant George M'Carter, one share shall be paid to the claimant Elizabeth Watt or Dodds and her husband for his interest, one share shall be paid to the claimant Edward Cook otherwise called Edward Elliot Cook, as an individual, one share shall be paid to the claimant James Cook, sometime warehouseman London, one share shall be paid to the claimant Mary Cook or Fletcher, one share shall be paid to the claimant Ann Cook or Horner, one share shall be paid to the claimant Alexander Ireland, as assignee of the deceased claimant Margaret Cook or Kelly, one share shall be paid to the claimant Eleanor Cook or Worth and her husband for his interest, one share shall be paid to the claimant John Barrow as executor to his deceased wife Jane Cook or Milner or Barrow, one share shall be paid to the said claimant James Cook, Berwick-on-Tweed, two shares shall be paid to the claimant Stephen Maxwell Cook, one share shall be paid to the claimant Isabella Cook or Taylor and her husband for his interest, one share shall be paid to the claimant Eliza Ann Cook or Wilson and her husband for his interest, and two shares shall be paid to the claimant James Cathie: and Find that, as regards the question of expenses reserved by the interlocutors of sixth March eighteen hundred and sixty-one and fourteenth March eighteen hundred and sixty-two, and also as regards the question of expenses referred to in the interlocutors of twentieth July eighteen hundred and sixty-five and twelfth February eighteen hundred and sixty-seven, and all other questions of expenses, no party shall be entitled to or liable in expenses except in so far as already paid out of the fund *in medio* as above provided for: Rank and prefer the parties above specified on and to the fund *in medio* in terms of the scheme of division foresaid: Grant warrant to and ordain the said Charles Murray Barstow to convey and make payment in terms of the said scheme of division: *Quoad ultra* repel the whole claims lodged in process, and decern."

Counsel for Judicial Factor — Macdonald. Agents—M'Neill & Sime, W.S.

Counsel for Heirs-at-law and Next of Kin to William Maltman—Black, Gloag, and M'Kechnie. Agents—D. Curror, S.S.C.; Burn & Gloag, W.S.; and Thomas M'Laren, S.S.C.

Friday, March 20.

SECOND DIVISION.

[Sheriff of Clackmannan.

MITCHELL *v.* STEELE.

Slander—Action of Damages.

Statements made as to the non-delivery of an article of dress *held* not libellous or sufficient to support the conclusions of an action of damages for slander.

The appellant and pursuer, Janet Mitchell, was employed in May last by Robert Philp, a draper, Mill Street, Alloa; and on Saturday, 17th of that month, she was sent by one of his employes with a cape to deliver to the defender, Miss Margaret Steele, Linden House, Walk, Alloa. She said that she had delivered the mantle in due course; but on the Monday following Miss Steele called at the shop and said the cape had not been delivered, as promised. The girl Mitchell was apprehended on the charge of theft; but the cloak having been shortly thereafter found by the defender in a drawer in her own house, the public prosecutor abandoned the charge.

Miss Steele, notwithstanding this, as the girl complained, repeated her accusations, in effect charging her with theft on several occasions and to several persons, of whom one was the United Presbyterian Minister, and repeated these accusations "falsely, injuriously, and calumniously." The girl accordingly, with consent of her father, a bottle-blower residing in Forth Street, Alloa, raised an action of damages, which were laid at £100, in the Sheriff Court against Miss Steele. In defence it was pleaded—(1) that the pursuer's whole material statements were unfounded in fact; (2) that, so far as the pursuer's statements were founded upon statements actually made by the defender, these latter statements were true; and (3) that the defender's statements were, in the circumstances, privileged, and that the pursuer was not entitled to prevail without averring that they were made maliciously.

The Sheriff-Substitute (CLARK), on 12th November, found generally for the pursuer, and gave her £5 damages, with expenses.

The defender appealed and on 24th December 1873 the Sheriff-Depute (MONRO) pronounced the following interlocutor and note:—"The Sheriff having heard parties' procurators orally, and made avizandum, and considered the whole process, recalls the Sheriff-Substitute's interlocutor of 12th November last; finds that the statements libelled, as made by the defender relative to the pursuer, although they may have been erroneous, were not uttered calumniously or injuriously, but were uttered in *bona fide*, and without malice, and do not infer liability in damages against the defender; therefore assoilzies the defender from the whole conclusions of the summons; finds the pursuer Janet Mitchell liable in the expenses of process, &c.

"*Note*—The calumnious acts found proved by the interlocutor under review are four in number, a fifth, included in the libel, being departed from.

"1. Regarding the first of these, the finding is, 'That on the forenoon of the following Monday (19th May last), the defender called at Philp's shop and complained to Agnes Young, the super-