by the defender, but by the defender's wife, and the question is, whether the defender is liable for the making of it by his wife, assuming the facts to be as set out on record? The Lord Ordinary is of opinion that he is not, and I think rightly so. It has been decided, that according to the law of Scotland a husband is not liable for slanderous statements made by his wife. The law may be different in England, as we are told it is, but it is settled in Scotland that against a husband such an action will not lie. This is not properly a case of slander, though it partakes of that character, for a false accusation of a crime made maliciously involves slander of the grossest kind, and not less so because it is made to the police, who act upon it and take the accused person into custody. There is no authority for the proposition that a husband is liable for his wife's misconduct in a matter such as this. I therefore agree with the Lord Ordinary on that point.

I suggested during the argument that the pursuer might bring the case within the rule that a man is responsible for what is done in the course of the conduct of his business, even if what is done is prompted by the malignity of the person who has been entrusted with the duty of representing him. The suggestion was not very warmly followed up, and I am not surprised at that, because I do not see how the rule that a man is responsible for what is done in the course of his business could be applicable to malicious accusation of a crime. That is not a matter of business at all, like the granting of an obligation in the course of business. The only case cited bearing on the point was in that category. A man who carried on the business of a distiller in the country, kept a lodging house in Edinburgh which his wife managed for him, and she granted an obligation for the value of some goods which had been stolen, and for which she was answerable, in consequence of the responsibility the law attaches to persons in that business. On that strictly business obligation the husband was held responsible. So if a business be conducted fraudulently, and a customer be injured thereby, I do not doubt that the principal would be liable for the fraud of his representative. But making a false accusation of a crime is not a matter of business. It may be made in the course of business, but is in no other way connected with the business than that it is made in the shop, and therefore is not within the rule to which I have referred.

I am therefore of opinion that the interlocutor of the Lord Ordinary should be adhered to.

The LORD JUSTICE-CLERK and LORD CRAIGHILL concurred.

The Lords adhered.

Counsel for Pursuer — J. Campbell Smith. Agents—T. & W. A. Maclaren, W.S.

Counsel for Defender—Hon. H. J. Moncreiff. Agent—J. W. Moncreiff, W.S.

Friday, May 13.

FIRST DIVISION.

SCLATER *v.* ODDIE.

Mora—*Acquiescence—Silence for Thirty Years.*

Where the proprietor of two adjoining plots of ground sold one in 1850, and himself assisted the purchaser in 1851 to erect a building thereon without making any objection at the time or for thirty years after—*held* barred by *mora* and acquiescence from proving that the building so erected encroached upon his property.

This action was brought in the Sheriff Court of Orkney by Mrs Wilson or Sclater, the liferentrix of a dwelling-house in School Place, Kirkwall, against Peter Oddie, the proprietor of an area of ground immediately to the north of her property. The prayer of the petition was to ordain the defender "to remove the front and back walls of a dwelling-house presently in course of erection by him in School Place, Kirkwall, northwards, so as to leave a clear space between the same and the northern gable of the petitioner's dwelling-house, also situated in School Place, Kirkwall, aforesaid, and adjoining the defender's said house in course of erection."

The averment made directly to support this prayer was contained in Condescendence 3, which as it originally stood was in the following terms:—"The defender is presently in course of erecting a dwelling-house, &c., on said space or plot of ground immediately to the north of the pursuer's said dwelling-house, but without building a gable of his own he has so built the side walls of his house as to cause them to abut close upon the northern gable of the pursuer's house and has founded the end portion of said walls upon the scarcement or foundation of the pursuer's gable, which is her exclusive property, and thereby wrongfully; but has not only failed to erect a wall or end gable for his said dwelling-house, but has made, and persists in making, the northern end or wall of the pursuer's dwelling-house the southern end or wall of his said dwelling-house, and so encroaching on the rights and property of the pursuer."

The Sheriff-Substitute (MELLIS) granted the prayer of the petition, but on appeal the Sheriff (THOMS), in respect that there were no relevant averments in the petition to support its prayer, dismissed the petition with expenses against the pursuer.

The pursuer appealed to the First Division. The case was heard on Thursday, 17th Feb., when the Court allowed both parties to amend their record. The pursuer accordingly altered Cond. 3, so that it read as follows:—"The defender is presently in course of erecting a dwelling-house, &c., on said space or plot of ground immediately to the north of the pursuer's said dwelling-house; but without building a gable of his own, he has so built the side walls of his house as to cause them to abut close upon the northern gable of the pursuer's house, and has founded the end portion of said walls upon the scarcement or foundation of the pursuer's gable, which is her exclusive property, thereby wrongfully encroaching on the rights and property of the pursuer."

The defender also amended his record so as to introduce an averment that the north gable of the pursuer's house was "built up to the verge of the northern boundary of the said area, so that the scarcement of the gable encroaches and is built on the defender's property."

The area of ground upon which the pursuer's house stood had been sold to her husband by the defender and his wife by a disposition dated 7th November 1850, and the defender had been engaged in the building of the house erected after the purchase.

As regarded the matter of fact, the Court held that the pursuer had proved her averment. With reference to the defender's amended statement (quoted above), which he desired to substantiate by proof,

At advising—

LORD PRESIDENT— . . . With reference to the allegation that the pursuer encroached on the property of the defender, it is to be noted that at the time of the building nobody took any objection. The defender, who was engaged as one of the tradesmen in building the pursuer's house, took no sort of objection, although as proprietor of the adjoining land he, and he alone, had a right to object if there was anything of the nature of an encroachment made by the pursuer's husband at the time. It is nearly thirty years at all events since that was done, and during the whole of the intervening period not a syllable has been said on the part of the defender to the effect that an encroachment has been made. I am very clearly of opinion that the defender cannot at this time of day be allowed to advance for the first time an averment inconsistent with his original record in this case, and contradicted by his own conduct for all this time, to the effect that the pursuer's husband in building his house advanced the scarcement of his north gable wall so as to make an encroachment on the land remaining in the hands of the defender. Taking the matter as a demand now made to be allowed to prove as matter of fact that such an encroachment was made, I think that the Court would be quite wrong to encourage anything of the kind. I think that even if the defender could succeed in establishing some small encroachment—and the Court is dealing with inches in the whole of this matter—it would be quite impossible to allow that to receive effect after the lapse of so long a time.

I therefore take it as clearly established that the scarcement of the pursuer's gable wall is within the lines of her own property. I think that is the true import of the evidence before us.

LORD DEAS and LORD MURE concurred.

Counsel for Pursuer (Appellant) — Guthrie Smith—Donaldson. Agents—Morton, Neilson, & Smart, W.S.

Counsel for Respondent—Robertson—Young. Agents—Nisbet & Mathieson, S.S.C.

Saturday, May 14.

FIRST DIVISION.

SINGER MANUFACTURING COMPANY *v.* JESSIMAN.

Jurisdiction — Appeal from Sheriff — Value of Cause—Competency.

A summary petition in the Sheriff Court craved decree for delivery of a certain article, or failing delivery for payment of £6, 10s. *Held* that the alternative demand being for a definite sum less than £25, an appeal to the Court of Session was incompetent.

This was a petition in the Sheriff Court of Aberdeen presented by the Singer Manufacturing Company against John Jessiman, praying the Court "to ordain the defender to deliver to the pursuers a medium sewing machine, No. 2,891,385, with its accessories, and failing delivery within a short specified time, to be fixed by the Court, to grant a decree against the above-named defender, ordaining him to pay to the pursuers the sum of £6, 10s. sterling as the value of the said machine and accessories, and to find the defender liable in the expenses of process."

The Sheriff - Substitute (DOVE WILSON) assoilzied the defender, but on appeal the Sheriff (GUTHRIE SMITH) recalled his Substitute's interlocutor and repelled the defences.

The defender appealed to the First Division.

The pursuers objected to the appeal on the ground that it was incompetent under the 22d sec. of 16 and 17 Vict. c. 80, which enacts that "it shall not be competent, except as hereinafter specially provided for, to remove from a Sheriff Court . . . . any cause not exceeding the value of twenty-five pounds sterling." . . .

The following authorities were referred to—*Shotts Iron Co.* v. *Kerr*, Dec. 6, 1871, 10 Macph. 195; *Aberdeen* v. *Wilson*, July 16, 1872, 10 Macph, 971; *Henry* v. *Morison*, March 19, 1881, 18 Scot. Law Rep. 438.

At advising—

LORD PRESIDENT—I am of opinion that this appeal is incompetent under the 22d sec. of 16 and 17 Vict. c. 80, which by very express negative words excludes the jurisdiction of this Court in every case whose value does not exceed £25.

The case of *Aberdeen* v. *Wilson* is of course the great authority on the question, and if Mr Shaw had been able to show that it applied, we should have been prepared to follow it.

In this case the prayer of the petition is for delivery of a sewing machine, or failing delivery for payment of £6, 10s. as the value of the sewing machine and its accessories.

In the case of *Aberdeen* v. *Wilson* the conclusion was for delivery of an article, or failing delivery for payment of a sum of money or "such other sum as shall be ascertained to be the true value." It was on these words that the judgment of the majority of the Court was rested. The opinion of Lord Mure seems to me a very valuable one, dealing as it does with the authorities which have determined the rule of practice, and he clearly holds that appeal is incompetent unless under the conclusions of the application the Sheriff could pronounce decree for more