This was the ground of the decision in the case of Bald *v.* Earl of Mar, cited to the Lord Ordinary. In the present case the Lord Ordinary can perceive nothing in the least empowering the tenant to work otherwise than legally; and the tenant's wrongful act, if such occurred, can therefore only bind himself.

But the Lord Ordinary is further of opinion that the claim against Mr Turner is excluded by the terms of the feu-disposition. He considers it to be matter of express contract binding both upon superior and vassal in every after transmission of the right, that any claim of damages for wrongful working shall not lie against the superiors, in the case in which he has let the reserved minerals, but against the tenant only. The superior's only obligation is to take his tenant bound in his lease to answer to such claim. The Lord Ordinary is of opinion that the superior has sufficiently fulfilled the obligation. It is true that the lease to the Monkland Iron and Steel Company is prior in date to the feu-disposition, but this appears to the Lord Ordinary in nowise to alter the legal condition of things. It affords, indeed, the argument to the superior that no lease was afterwards granted without the stipulated condition, for none was afterwards granted at all. In fair construction, however, the guarantee by the superior to the vassal applied to previous tenants as well as subsequent. It appears to the Lord Ordinary that the Monkland Company has been sufficiently taken bound to answer to such a claim. The Lord Ordinary has found them liable to do so, the claim of course being always supported by sufficient proof."

Saturday, Nov. 25.

OUTER HOUSE.

(Before Lord Barcaple.)

BRUCE *v.* SMITH.

Process — Mandatory. A Scotchman residing in England, and having no home, though his domicile may be in Scotland, is bound to sist a mandatory.

Counsel for the Pursuer—Mr Monro. Agents—Messrs Ferguson & Junner, W.S.

Counsel for the Defender—Mr Scott. Agent—Mr W. Wotherspoon, S.S.C.

The defender moved that the pursuer should be ordained to sist a mandatory. It was objected that the pursuer was not bound to do so, he being a domiciled Scotchman, at present stationed at Dover as a private soldier, and liable any day to be ordered to proceed to Scotland. In support of this objection, Scott *v.* Gillespie, 29th January 1823, 2 S. 165, and Barclay's M'Glashan, p. 123, were cited. In Scott's case, a sailor born in Jamaica, but who had resided the greater part of his life in this country, and whose family resided in Greenock, was held not bound to sist a mandatory when away on a voyage. Mr M'Glashan says this rule applies to officers in the army and all others having their domicile in this country who are necessarily obliged to be occasionally absent. It was answered that in this case the pursuer had already, without objection, sisted a mandatory, who had become bankrupt; and that the authorities cited were not applicable to the case of this pursuer, who had no home in this country, and had been absent for 15 or 16 years.

LORD BARCAPLE ordained the pursuer to sist a mandatory in fourteen days.

Tuesday, Dec. 5.

FIRST DIVISION.

GRAHAM *v.* WESTERN BANK (*ante*, p. 40).

Process—Jury Trial. The Court will not discharge a notice of trial which a party may himself countermand.

Counsel for Pursuer — Mr Donald Mackenzie. Agent—Mr M'Brair, S.S.C.

Counsel for Defenders — Mr Shand. Agents — Messrs Davidson & Syme, W.S.

In this case the Court lately refused a motion by the defenders to fix the trial for the Christmas sittings, and also a motion by the pursuer to fix the trial to take place within a certain fixed time after the decision of the appeal to the House of Lords in the similar case of Addie *v.* The Bank. The pursuer has given a notice of trial for the Christmas sittings, which he has it in his power to countermand; but he was afraid that if he did so the defenders might move for the dismissal of the action under the Act of Sederunt in 1841, in respect of his failure to proceed to trial within twelve months after 8th March last, when the new trial was allowed. He therefore now moved the Court to discharge the notice of trial for Christmas, and appoint the trial to take place at the sittings next July. The defenders refused to consent to the motion; but their counsel stated that after what had on previous occasions fallen from the Court, it would not have occurred to them to make the motion which the pursuer dreaded. The Court refused the motion, the Lord President observing—"If we are asked before the 8th March to fix a time for the trial, I don't think the pursuer will be within the Act of Sederunt."

Wednesday, Dec. 6.

OUTER HOUSE.

(Before Lord Barcaple.)

GOOD *v.* CHRISTIE.

Process — Issue. Form of Issue in an action of damages for the loss of a son killed when in the defender's employment, the employment being denied.

Counsel for Pursuer — Mr Scott and Mr F. W. Clark. Agent—Mr D. F. Bridgeford, S.S.C.

Counsel for Defender—Mr Shand and Mr MacLean. Agent—Mr John Leishman, W.S.

William Good, collier, sued John Christie, coalmaster, for damages sustained by reason of the death of his son, a boy aged between twelve and thirteen years, which he alleged took place through the fault of the defender, or those for whom he is responsible, when his son was in the defender's employment. Various defences were stated, and *inter alia* it was denied that when the deceased met his death he was in the employment of the defender. The case was in the roll to-day for the adjustment of an issue. The defender maintained that the pursuer was bound to put the question of employment directly in issue. The pursuer's proposed issue only alluded to this matter parenthetically. It was stated that this question had arisen in the case of Crop *v.* Brown & Rennie on 8th March 1864, and that Lord Ormidale had in that case adjusted an issue in which the question of employment was put directly before the jury. Lord Barcaple thought that this should be done in this case also; and the issue was accordingly adjusted as proposed by the defender.

Monday, Tuesday, and Wednesday, Dec. 4, 5, 6

JURY TRIAL.

(Before Lord Jerviswoode.)

LONGWORTH *v.* HOPE AND COOKE.

Reparation—Slander — Newspaper Privilege — Fair Criticism. A jury directed per (Lord Jerviswoode) that a newspaper publisher is entitled to report and comment upon proceedings in a public court of justice, but he has no special privilege in this matter, and if he makes comments which are not fair, he is liable in damages. The fairness of the comments is a question for the jury to consider.

Counsel for Pursuer—The Lord Advocate, Mr J. C. Smith, and Mr J. F. Maclennan. Agent—Mr James Sommerville, S.S.C.

Counsel for Defenders—The Solicitor-General, Mr Millar, and Mr Shand. Agents—Messrs Morton, Whitehead, & Greig, W.S.

In this case, in which "the Hon, Maria Theresa Longworth or Yelverton, "residing in Edinburgh, is pursuer, and Alexander James Beresford Beresford Hope of Bedgebury Park in the county of Kent Esq., and John Douglas Cooke, Esq., of the Albany, in the county of Middlesex, and both residing in or near London, or elsewhere furth of Scotland (against whom arrestments have been used *ad fundandam jurisdictionem*) are defenders, the following issue was submitted to the jury :—

It being admitted that the defenders are proprietors and publishers of the *Saturday Review*, and that in that paper, on the 30th July 1864, an article was published by them entitled "The Yelverton Case," and expressed in the terms contained in the schedule annexed :

"Whether the whole or any part of the said article is of and concerning the pursuer, and falsely and calumniously represents the pursuer as being a disreputable and immodest person—to the loss, injury, and damage of the pursuer?"

Damages were laid at £3000.

The following is the substance of the article complained of :—

"THE YELVERTON CASE."

"More than three years ago we ventured, on the very first blush of the Yelverton case, to hint that, whatever sympathies might be attracted by the romance of Miss Theresa Longworth's love story, she was in something more than the Scotch legal sense the pursuer. The House of Lords, as the court of final appeal, decided on Thursday by a majority of three to one — or, counting Lord Brougham's opinion, of three to two — that the alleged Scotch marriage was not a marriage, even in the lax sense in which some Scotch jurists understand the term. . . . But if Lords Wensleydale, Kingsdown, and Chelmsford had shown themselves susceptible as the Chancellor and Lord Brougham, we are not sure that it (the validity of the marriage) might not have been successfully maintained. There is no knowing what Lord Westbury might not have said or done had he, like the Irish Jury, been personally under the fire of Miss Longworth's dangerous eyes. We remember in what a practical way an Athenian lady of doubtful fame enlisted the feelings of her judges. Lord Westbury has shown himself to be a critic in amatory effusions, and can see nothing inconsistent with chastity and purity in Miss Longworth's remarkable letters. Throughout the cause he has certainly exhibited a familiarity, not to say something of personal sympathy, with very warm writing; and, on the whole, we may congratulate the British Themis that in this case of appeal there is no personal examination of appellant or respondent. What might have been the consequences had Miss Longworth appeared before the woolsack like Helen among the Trojan greybeards, it would be alike difficult and improper to forecast. . . . [After referring to the ceremony at Rostrevor, and denying the pursuer's statement that there was no previous intercourse, the article proceeds]—The result seems to be this—that, as far as the events in Scotland and Ireland are intelligible, both Major Yelverton and Miss Longworth managed every step with as much caution, and careful wary deliberation, as though each had taken counsel's opinion upon it beforehand, but that Miss Longworth had the worst legal advice of the two. Miss Longworth all but managed to get a legal Scotch marriage out of it, but she did not quite succeed. Major Yelverton, on the other hand, was as nearly as possible inextricably hung up in the very fine meshes of a Scotch marriage, but he just managed to escape. It was a very admirable piece of finessing on both sides; but the gentleman had the best — that is, the legal best — in this contest of skill. . . . . For Major Yelverton but little can be said. . . . . At any rate he gave the lady warning. He pointed out that her ruin could only be the result of a renewal of their acquaintance, and he gave her the choice of renewing it or not. That renewal was her act, not his. . . . . He felt it to be of no use struggling against the strong will of Theresa Longworth; but he all along made up his mind that, as he was to be the lady's victim, it should be on his own terms, not hers. . . . . As to Miss Longworth, we would now say as little as we can. When all the world was on her side—when she was the triumphant object of what are called Irish ovations—when all Scotland made her virtues as much an article of faith as Queen Mary's innocence, and when nearly the whole of England echoed their salutations — we expressed ourselves intelligibly on this lady's life and character. The highest English tribunal has now fully accepted that view which four years ago was both uncommon and unpopular. It were ungenerous to press heavily on any one who is down; doubly ungenerous in the case of a woman of very remarkable powers, great intellectual accomplishments, and now labouring under the heavy burthen of failure and humiliation. To say that, in our judgment, she fully deserves her fate, may sound harsh; but to say much less were to compromise the interests of truth and morality. She has a thorny bed to lie on, but she has made it for herself. And if we express ourselves strongly, it is chiefly because the Lord High Chancellor of England has thought proper in his judicial capacity, not only to pronounce a high eulogium on the intellectual capacity displayed in Miss Longworth's letters, but to declare that their tone is consistent with 'honourable courtship.' The interests of morality would, we think, be seriously compromised were this judgment to rest on any higher grounds than Lord Westbury's opinion of what may be the proper style of correspondence between unmarried—or, for the matter of that, between married —persons. To right thinking persons, there is much in these terrible letters which is simply loathsome. We have no notion of making a heroine of such a person as Miss Longworth. She is out of keeping with Society, both as it is, and as it ought to be. She is an adventuress, launched out into the world nobody knows how, with a previous history which has never been told. She is a *Sœur de Charite*, but she meets and courts adventures little in keeping with her semi-conventual dress and office. She sinners it and saints it by turns or at once. She is made up of passion and prudence, of hard intellectual vigour, and sensuous thoughts and feelings. She writes as no modest woman writes; and she schemes as no modest woman would scheme. She has religious scruples, but they do not restrain her from provoking at least to sin. The best that can be hoped for her is that she will abandon that world which will act most kindly by forgetting her, and forgiving her offence against society."

The pursuer in her condescendence sets forth that the *Saturday Review*, whose articles are for the most part written with great ability and in a style indicating that their authors are educated gentlemen, is much read by the more intelligent classes, and has an extensive circulation in Great Britain and in the British colonies, and is read in foreign countries also, as a leading exponent of British public opinion. She avers that the article complained of is, as a whole, and particularly in certain passages cited, "false and calumnious, and calculated and intended to represent the pursuer as an immoral, disreputable, and immodest person, who was 'out of keeping with' or unfit for society, both as it is and as it ought to be; whose conduct was inconsistent with her religious profession, and was such that she fully deserves 'failure and humiliation' and 'ruin;' whose letters were in their tone inconsistent with honourable courtship, and were such as no modest woman would write, and were of

a style improper, either for married or unmarried parties, and were 'simply loathsome' to right-thinking persons from their immodesty and immorality; or it makes one or more of these false and calumnious representations or insinuations. Although the history of her whole life from childhood was fully investigated, in order that her character might be assailed, and was made the subject of lengthy evidence in the proof in the conjoined actions upon which the House of Lords gave judgment, the said article falsely asserts that 'she is an adventuress, launched into the world nobody knows how, with a previous history that has never been told,' insinuating, and intending to insinuate, by these false and calumnious assertions, that her previous history had been of so disreputable a character that it could not be told without shocking public decency; or making some similar insinuations prejudicial to the pursuer's moral character." She further states that the said article contains statements for the making of which there was and is no probable cause, and the said statements are malicious, and are not justifiable as fair newspaper comments upon proceedings taking place in a court of justice.

The defenders' pleas, so far as affecting the jury trial, were as follow:—

3. The article complained of is not defamatory of the pursuer, and is not actionable at her instance,

4. This action cannot be maintained, and the defenders are entitled to be assoilzied, in respect the article complained of is within the limits of fair criticism.

LORD JERVISWOODE charged the jury that a newspaper was entitled to report the proceedings in a court of justice in the ordinary case where the court was open; and they all knew that that was done every day. But while a newspaper and the publishers of a newspaper were entitled to report the proceedings of a court, if they went beyond the mere report of these proceedings, and if they made comments on the report of the proceedings of the court of justice, then he had to state in law that they had no special privilege in that matter. If they made comments on the conduct of the parties, and if any individual conceived he was injured by these comments, then it was a question for the jury to determine whether these were fair and right comments, and whether the publishers were justified in making them. That was the question for the jury, and the publishers had no privilege as regarded that particular matter. He had no doubt that the jury would be of opinion that the article set forth in this schedule as taken from the newspaper was an article which *prima facie* —that was to say, at the first blush of reading it—detracted from the pursuer's character. He need not read the article fully, but there were statements in it which would probably strike them as in some degree detracting from the pursuer's character. There might be something in this article against Major Yelverton as well as against Miss Longworth; but with that neither he nor the jury had anything to do. The case had reference to Miss Longworth alone. Now, the defence made on the part of the newspaper on this subject was that this was a legitimate comment on the proceedings in this case, and these proceedings were so far before the jury for the purpose of this action. His Lordship proceeded to quote various passages from the correspondence which had taken place between the parties, and the opinions of the judges upon them, both in the Court of Session and the House of Lords. He concluded by saying—Gentlemen, it is for you to say, with reference to the whole of these letters, whether you think the newspaper was warranted in using these expressions as to the "interests of morality," and so forth. I think it would be wrong in me, after the very long and able addresses you have heard, to detain you by going through all the documentary evidence which has been submitted to you at so great length. The question which you have to consider is whether the comments made by this newpaper are fair, looking to the whole circumstances of the case, the position of the parties, and the public discussion of the case within the courts of justice, or are they the reverse? Are they unfair comments—such comments as you think the publisher or conductors of this paper ought not to have made? If you think them fair, you will give effect to that view. If you, on the other hand, think the newspaper has gone beyond that line, and has published remarks on the pursuer's character which are not warranted in the circumstances, then it will be your duty to return a verdict for the pursuer.

After an absence of nearly six hours, the jury, by a majority of nine to three, returned a verdict for the defenders.

Thursday, Dec. 7.

FIRST DIVISION.

PETITION—JAMES COLLIE.

Process. Form of procedure under the "Companies' Act 1862."

Counsel for Petitioner—Mr Fraser. Agents—Messrs Murray & Beith, W.S.

The Petitioner was appointed by the Court, on 5th March 1864, official liquidator of the Fraserburgh Arctic Seal and Whale Fishing Company, which company the Court ordered, on 24th February 1864, should be wound up under the Companies Act, 1862. The petitioner having after his appointment investigated into the affairs of the company, found that there was an apparent defficiency of £838, 13s. 3d. He therefore, on 9th June 1865, presented a petition for powers to proceed with the winding up, and *inter alia* to settle a list of contributories, and to make a call on each of them at the rate of £9 per share. This power having been granted, the petitioner made the call authorised, which has been paid by some of the contributories but not by others, and he now prayed the Court, in terms of section 121 of the Companies Act, to pronounce decree against those who had failed to pay the call, for the sums due by each, with interest, "in the same way and to the same effect as if they had severally consented to registration for execution on a charge for six free days, of illegal obligation to pay such sums and interest, and to grant warrant for extracting the said decree immediately, and to declare that no suspension thereof shall be competent except on caution or consignation, unless with special leave of the Court or the Lord Ordinary."

The Court granted the prayer of the petition.

UNIVERSITY OF ABERDEEN *v.* IRVINE.

Trust—Mortification—Annual Rent—Positive and Negative Prescription.

Counsel for Pursuers—The Solicitor-General, Mr Patton, and Mr John Hunter. Agents—Messrs Patrick, M'Ewen, & Carment, W.S.

Counsel for Defender—Mr Gordon and Mr Gifford. Agent—Mr Arthur Forbes Gordon, W.S.

This is an action of declarator and reduction at the instance of the University of Aberdeen, the Lord Provost, Magistrates, and Town Council of Aberdeen, as managers and patrons of the Grammar School of Aberdeen, the masters of the said Grammar School, and certain bursars in the University and Grammar School, against Mr Alexander Forbes Irvine of Drum. The object of the action is to declare the pursuers' right to the Lands of Kinmuck in Aberdeenshire, which are said to be worth about £700 a year.

It appears that an ancestor of the defender, Alexander Irvine of Drum, made the following provisions by his testament and last will, dated in 1629, viz.:—

"For the maintenance of letters, by thir presents, I leave, mortify, and destinate ten thousand pounds