discharged? I confess I see nothing that leads me to the conclusion that the legal right of recourse which the late William Mitchell, as indorsee of the bank, had against the defender is lost. I don't concur with the Lord Ordinary in saying that the action is not laid on this ground. I think it is laid on two grounds — on the arrangement and on the recourse. The pleas in law distinctly show this; and without better evidence than we have that the legal liability has been discharged, I am of opinion that judgment should go against the defender.

The other Judges concurred; but Lord Deas agreed with the Lord Ordinary in thinking that the action was truly laid, and was meant to be laid, on the arrangement alone. The question, to his mind, was what that arrangement was. The evidence did not show, but his idea was that the late William Mitchell interposed for, and as the agent of, William Dingwall. William Mitchell's books were not inconsistent with this idea, and the fact that this action was not raised till after his death supported it. He did not think, however, that this was proved; and he thought the burden of proof was on the defender, because, although the action was not laid on the right of recourse, but on the arrangement, yet the bill and the indorsation of it, and the intimation to the defender of its dishonour, come out as facts in the case, and throw on him the *onus probandi.*

NELSON *v.* BLACK AND MORRISON (*ante* p. 83).

Reparation—Judicial Slander—Public Officer—Issue. In an action for judicial slander against procurators-fiscal, held that the pursuer must put in issue not only malice, but also want of probable cause.

Counsel for Pursuer—Mr Watson and Mr MacLean. Agent—Mr W. Miller, S.S.C.

Counsel for Defenders—The Lord Advocate and Mr A. Moncrieff. Agents—Messrs Murray & Beith, W.S.

The pursuer having lodged an amended issue in terms of the order pronounced after the discussion previously reported, the case came before the Court to-day. The pursuer proposed the following issue:—"It being admitted that the defenders prepared, and on or about 26th December 1864 presented, to the Sheriff-Substitute of the County of Fife, at Cupar, a petition containing the words and sentences set forth in the schedule annexed hereto, whether the said words and sentences, or any part thereof, are of and concerning the pursuer, and are false and calumnious, and were maliciously inserted in said petition by the defenders—to the loss, injury, and damage of the pursuer? Damages laid at £200 sterling." This schedule appended to the issue contained excerpts from the petition. The defenders took exception to this issue on the ground that it did not put also whether the defenders acted "without probable cause." The pursuer relied on the cases of M'Kellar *v.* The Duke of Sutherland, 14th January 1859 (21 D. 222), and M'Intosh *v.* Flowerdew, 19th February 1851 (13 D. 726), as fixing the form of issue applicable to a case of judicial slander, and in which malice alone was inserted. The defenders, in reply, contended that they as fiscals were entitled to a larger protection in virtue of their office than a mere private litigant.

The Court were of opinion that the pursuer must take the burden of proving that the defenders acted "without probable cause," and appointed these words to be inserted in the issue proposed after the word "maliciously."

SECOND DIVISION.

RICHMOND *v.* COMMON AGENT IN THE LOCALITY OF ORWELL.

Teinds—Minute of Surrender. Held that a minute of surrender of teinds by an heritor ought to be unconditional.

Counsel for the Reclaimer—Mr Patton and Mr Duncan. Agents—Messrs Jardine, Stodart, & Fraser, W.S.

Counsel for the Respondents—Mr A. R. Clark and Mr Shand. Agent—Mr Charles Henderson, S.S.C.

This is a case between Mr Thomas Richmond of Colliston and Strenton and his curators, and the common agent in the locality of Orwell, and the minister of Orwell. The question is whether the teinds of portions belonging to Mr Richmond of the divided commonties of Cuthill Muir and Beng Muir are to be held as having been included in a valuation obtained in 1630. The subjects contained in Mr Richmond's titles to his lands are described as "all and whole the lands of Colliston, or Colliston and Strenton, with houses, biggings, yards, parts, pendicles, and pertinents of the same whatsoever, lying within the barony of Cuthill-Gourdie, and sheriffdom of Perth;" and the titles of his authors since 1633 are in the same terms. The commonties were divided, and the portions in question allocated to the lands of Colliston and Strenton in 1774. In these circumstances, Mr Richmond maintains that the teinds effeiring to the right of commonty in the undivided commons, then belonging to the lands of Colliston and Strenton, must be held to have been included in the valuation, and he put in a minute surrendering the said teinds of the said lands and others, including the said part of Cuthill Muir, and protested that he and his successors shall not be liable for any further augmentation, or for any expenses in the present or any future process of locality in respect of the said lands and others. Answers to this minute were put in by the common agent and the minister, in which they denied that the valuations therein specified comprehend the teinds of the portion of the commonty of Cuthill Muir which belongs to Mr Richmond; and they pleaded that that being so, he is not entitled to surrender these teinds, or any part thereof, on the footing that they were included in the valuation. *Quoad* the teinds of the lands of Strenton and Colliston, they maintained that the minute of surrender should receive effect. The Lord Ordinary (Barcaple) held that Mr Richmond had failed to show that the teinds of the parts of the divided commonties of Cuthill Muir and Beng Muir belonging to him were valued by the valuation founded on, and therefore sustained the objection stated by the common agent and minister to the minute of surrender by Mr Richmond, in so far as it includes the teinds of the said parts of said commonties. Mr Richmond reclaimed. The Court to-day held that the record had been incompetently made up upon the minute of surrender. A minute of surrender should be simple and unconditional. It should be in the terms of the valuation founded on; whereas that in the present case involves the proposition, which is open to dispute, that the teinds of the lands in question were included in the valuation of 1630. That question ought to be raised in the form of objections to the interim scheme of locality, in which case it would be seen what other heritors are localled upon, and what they got under the decree of division. The Court recalled the interlocutor of the Lord Ordinary, and appointed the minute to be withdrawn.

Saturday, Jan. 27.

FIRST DIVISION.

HASTINGS *v.* M'CALLUM AND OTHERS.

Poor—Settlement—Residence. Circumstances in which held (alt. Lord Ormidale) that a residential settlement had been acquired.

Counsel for Penninghame—Mr Patton and Mr N. C. Campbell. Agents—Messrs Patrick, M'Ewen, & Carment, W.S.

Counsel for Glencairn—Mr Fraser and Mr Johnstone. Agent—Mr John Galletly, S.S.C.

This action was raised by the parish of Kirkconnel against the parishes of Penninghame and Glencairn for payment of parochial relief furnished by it to Janet Geddes or Candlish, who became, in consequence of insanity, a proper object of parochial relief in May 1861. Her husband, James Candlish, a labourer, was born in Penninghame, but that parish alleged that he had acquired a settlement by residence in the parish of Glencairn for five years continuously from 1854 to 1859. It appeared that Candlish had gone to Glencairn on 18th July 1854, leaving his wife and family in another parish. After living in lodgings in Glencairn for some weeks, he left it on 7th or 8th September 1854 for harvest work in another parish. From July to September he was working in Glencairn as a surfaceman on the roads. He returned to Glencairn in October 1854, and his wife joined him there on 7th November 1854. On 3d May 1859 he left Glencairn, and went to work as a railway labourer in the parish of Kirkmabreck. His wife and family remained in Glencairn until 4th November 1859, when they left that parish altogether. Betwixt May and November 1859, the husband paid occasional visits to his wife and family in Glencairn.

The Lord Ordinary (Ormidale) held that the birth parish was liable. He thought that the residence in Glencairn could not be held to commence till October 1854, and must be held to have terminated in May 1859, when Candlish went to Kirkmabreck. There was not, therefore, in his opinion, a residence in Glencairn for the time necessary to acquire a settlement there. The parish of Penninghame reclaimed; and to-day the Court altered the decision of the Lord Ordinary.

The LORD PRESIDENT, who delivered the judgment of the Court, said—The question is whether Penninghame or Glencairn is liable for the aliment of this pauper. It appears that the husband is a native of Penninghame. On 18th July 1854, he went to Glencairn, remained there, living in lodgings, till the 7th September, when he left for harvest work in a neighbouring parish, and was absent for five weeks or so. He then returned, resumed his work, and went into the same lodgings. He was there joined by his wife and family, and with them went into a house which had been taken before he went to harvest work in September, thus showing clearly an intention to return. He remained in Glencairn until November 1859, when he, with his wife and family, left the parish finally. The law applicable to such cases is correctly stated by the Lord Ordinary. He states that constructive residence is not enough to establish a settlement; and, further, that every casual interruption is not sufficient to prevent the acquisition of a settlement; and that the question here is a sort of jury question whether the interruptions in this case were sufficient to prevent the acquisition of a settlement. There was more than five years' residence in Glencairn. But difficulties have been raised as to the character of the residence in Glencairn at the beginning and the end of the period. At first when he came to Glencairn he left his wife behind him. I don't think that the personal presence of an individual in a particular place is the sole test in such cases. We must look to the circumstances connected with the residence, and not only to the personal presence of the individual. The very fact that casual absence does not interrupt the settlement is a proof that individual presence is not always necessary. An important fact is the permanent character of his residence, and I think it important that he became a householder in the parish of Glencairn. The important event founded on here as dislocating his residence in Glencairn is his absence as a railway worker, in the parish of Kirkmabreck, for a period of several months at the end of the five years. But I do not think this is sufficient. He did not go away to hire himself for a term, he only took work from day to day. Upon the whole, I think that this absence was a mere incident in the life of a day-labourer, and that there is not enough here to dislocate the residence at Glencairn.

The parish of Glencairn was therefore held liable.

WATT *v.* MENZIES.

Reparation—Bodily Injury—Issue. Issue adjusted in a case in which the pursuer averred that she had been recklessly set down from one omnibus and knocked down by another coming up from behind.

Expenses. A pursuer refused the expenses of discussing an issue, because the one which she proposed had not been transmitted to the defender till the second meeting before the Lord Ordinary.

Counsel for the Pursuer—Mr Scott and Mr R. U. Strachan. Agent—A. Ellison Ross, S.S.C.

Counsel for the Defender—Mr Clark, and Mr R. V. Campbell. Agents—Messrs Hamilton & Kinnear, W.S.

This case came before the Court to-day on a report from the Lord Ordinary (Ormidale) as to a question on the adjustment of an issue. The pursuer sues Mr Menzies, omnibus proprietor in Glasgow, for personal injuries sustained in Argyll Street in being set down between the Cross and Anderston. She avers that, on asking to be set down, the guard, instead of stopping the omnibus, entered it abruptly, forcibly seized hold of her and jumped with her in his arms into the middle of the street. Before she recovered from her confusion she was knocked down by another omnibus (Macgregor's) coming up from behind, and received severe injuries on different parts of her body.

The defender proposed to put in the issue that the pursuer was injured in consequence of the violent and reckless manner in which she was set down by the guard. The Court, however, approved of the original issue, which was in these terms:—"Whether on or about 6th June 1865, and in or near Argyll Street, Glasgow, in consequence of the parties in charge of an omnibus belonging to the defender, in which the pursuer was travelling as a passenger, failing to take due precautions in setting her down from the said omnibus, she was knocked down and injured by another omnibus through the fault of the defender—to her injury, loss, and damage?"

MR SCOTT, for pursuer, asked for expenses, which, however, the Court refused, in respect that the issue now proposed and allowed had not been transmitted to the defender till the second meeting before the Lord Ordinary for adjustment. An issue in different terms had been transmitted previously, but the defender had had no opportunity of considering the one afterwards proposed.

HIGH COURT OF JUSTICIARY.

(The Lord Justice-Clerk, Lord Cowan, and Lord Neaves presiding).

SUSP. AND LIB.—DUFFUS *v.* WHYTE.

Suspension—Fraudulent Disposal of Property by a Bankrupt—Jurisdiction—Sheriff—Relevancy—Proof—Confidentiality—Admissibility of Parole. Suspension of a conviction of fraudulent disposal of property by a bankrupt, on the grounds—(1) that the Sheriff had no jurisdiction; (2) that no crime was relevantly charged; and (3) that incompetent evidence was admitted—*refused.*

Counsel for Suspender—Mr Millar and Mr J. C. Smith.

Counsel for Respondent—Mr D. Mackenzie.

The suspender was tried before the Sheriff-Substitute of Forfarshire and a jury on 28th December last, and having been convicted he was sentenced