the time arrived. Now, the statute of 1661 which removed such obligations from the class of heritable to that of moveable, excepted the interest of the widow. No doubt our institutional writers continue to say that these obligations are moveable except as to the widow and the fisk. This is not quite correct. They are moveable by force of statute, but the widow and the fisk are excepted from the operation of the statute. Then in regard to the sum invested in Australia, on security there, if it had been invested on similar security in this country it would have been heritable, and it must be kept in view that Mr Downie was domiciled in this country. But it was not invested here, but in another country, and the principle has been recognised that the character of the subject is to be ascertained according to the law of the country where it is placed. The right to participate is to be decided by the law of this country, in which the subject falls to be distributed. Seeing that we have it fixed that by the law of Australia, in which the subject here is situated, it is regarded as moveable or personal estate, we must also hold it to be moveable and not heritable. I therefore agree with the Lord Ordinary on this point also.

Lord CURRIEHILL—I am of the same opinion. I have no difficulty at all about the £5000 mortgage. The other question is nicer, but I hold it to be settled by the cases. I don't go so much on the case of Ross, but I think that of Newlands is conclusive.

Lord DEAS—In regard to the mortgage for £5000, the only question is, whether it is a bond bearing interest. I think it is. It is one of those *quasi feuda* which are likened to land. If the question had occurred before the Act of 1661 passed, the sum would have been heritable in a question with the widow, and in regard to her the Act made no alteration in the law. On the other point I concur with your Lordship.

Lord ARDMILLAN concurred.

The Court therefore refused the reciaiming notes for both parties.

Counsel for Pursuer—Mr Young and Mr Balfour. Agents—J. & J, Gardiner, S.S.C.

Counsel for Defenders—The Solicitor-General and Mr Millar. Agents—J. & R. Macandrew, W.S.

SECOND DIVISION.

WESTERN BANK LIQUIDATOR *v.* BAIRDS

(*ante*, p. 172.)

Appeal to House of Lords—Leave to Appeal. Circumstances in which a motion for leave to appeal to the House of Lords *refused.*

In these cases, on 6th July, the Court, recalling interlocutors of Lord Kinloch, remitted to Charles Pearson, C.A., Edinburgh, to examine into the books of the bank in connection with the various accounts and transactions libelled in the summoms, with the view of simplifying the cases before sending to the jury the question of the defenders' negligence. On the intimation of this judgment, the pursuers asked for expenses, contending that the effect of it was to find that they had been substantially successful. Expenses were reserved. Thereafter the pursuers moved the Court for leave to appeal the judgment to the House of Lords.

The LORD ADVOCATE, MILLAR, and SHAND, in support of the motion, argued—It is a difficult question whether the judgment of the Court in holding these actions not to fall under the enumerated auses is well founded, and the pursuers are entitled to have the review of the House of Lords on that question, because upon it depends the competency of the peculiar step which the Court has adopted. Further, besides the danger of the remit proving unavailing, the carrying of it out will be attended with considerable delay and expense.

The DEAN of FACULTY (with him YOUNG, A. R. CLARK, GIFFORD, and LEE) contended that the motion should be refuted. It was certainly odd that the pursuers, having formerly claimed the judgment in their favour and asked for expenses, should now disavow it and ask leave to appeal it to the House of Lords.

The Court unanimously refused leave to appeal.

The LORD JUSTICE-CLERK said that the two grounds relied upon in support of the motion were just the considerations they had induced the Court towards the step they had followed. The Court were unanimous in holding that there was no doubt whatever that these actions did not fall within the enumerated causes; and they were quite satisfied that both delay and expense would be avoided by the remit which they had made.

Agents for Pursuers—Morton, Whitehead, & Greig, W.S.

Agents for Defenders—Webster & Sprott, S.S.C.

Tuesday, July 17.

FIRST DIVISION.

CUNNINGHAM *v.* SPIERS AND CO.

Jury Trial—Fixing Trial. Motion to have a case tried at the Glasgow Circuit *refused.*

This is an action of interdict for infringement of a patent for improvements in the weaving of shawls, in which issues have been adjusted. The pursuers gave notice of trial for the ensuing sittings which they countermanded, giving at the same time a new notice for the Christmas sittings.

GUTHRIE SMITH, for the defenders, now moved the Court to fix the trial to take place at the Glasgow Autumn Circuit. The proceedings were commenced in May 1865, and the defenders were entitled to have the case tried before Christmas. Besides, the case would be much more advantageously tried at Glasgow, where the jury might have a view of machinery such as used by both parties, which they could not have in Edinburgh.

WATSON, for the pursuers, opposed the motion.

The motion was refused. The Court did not think there was much in the suggestion of the advantage to be derived from a view, and similar cases had been often satisfactorily tried in Edinburgh with the assistance of models. They did not see any reason for interfering with the notice given for the Christmas sittings. But they fixed the trial to take place then.

Agents for Pursuers—Hamilton & Kinnear, W.S.

Agent for Defenders—Macnaughton & Finlay, W.S.

THOMSON *v.* ADAM (*ante*, vol. i. p. 27).

Process — Amendment of Issue — Clerical Error. Leave granted to amend a clerical error in an adjusted issue.

This case is set down for trial at the ensuing sittings. In the issue which had been adjusted, the wrong complained of was by a clerical error stated as having been committed on 17th October 1864, instead of 18th October 1864.

MACDONALD, for the pursuer, moved for leave to amend the issue.