the parties should not be encouraged to continue the litigation. Duncan *v*, Morrison, 16th January 1863 (1 Macph. 257), was in point. It was stated that the petitioner was twenty-two years of age and unmarried, had one child, earned elevenpence a day, and neither she nor her parents had any property of any description.

The Court refused the application.

STOBIE *v.* MELVIN.

Process—Act of Sederunt 1841—*Court of Session Act—Failure to Proceed to Trial.* Circumstances in which held that sufficient cause had been shown why a motion for absolvitor in respect of failure to proceed to trial should be refused, *Question*—Whether such a motion should be made in the Inner or Outer House?

Counsel for Pursuer—Mr Skelton. Agents—Messrs Trail & Murray, W.S.

Counsel for Defender—Mr Thoms. Agents—Messrs G. & H. Cairns, W.S.

Issues were adjusted in this case by the Inner House on 6th February 1864, when the case was remitted to the Lord Ordinary. The defender moved the Lord Ordinary under the Act of Sederunt of 1841 for absolvitor in respect of the pursuer's failure to proceed to trial within twelve months after the adjustment of issues. The Lord Ordinary reported the motion in consequence of a difficulty having occurred as to whether the motion should be made in the Outer House or in the Division. The Act of Sederunt of 1841 provides that after issues are engrossed all motions in the cause shall be made in the Division to which such cause belongs. By the Court of Session Act adjustment of issues is made equivalent to engrossment. The Second Division found, in the case of Ferguson *v.* Ferguson, 13th July 1861 (23 D. 1290), that such a motion as the present should be made in the Inner House, on the ground that the intention of the Court of Session Act was to send cases to the Lord Ordinary for the purposes of trial only, and that to all other effects the former practice remained in force. On the contrary, the First Division, in the subsequent case of Hornel *v.* Gordon, 19th February 1864 (24 D. 551), had decided that a motion for a diligence after the adjustment of issues should be made before the Lord Ordinary.

The Court adhered to the opinions they had formed in Hornel's case, but stated they would consult with the other Division on the subject. In the meantime they would deal with this case on the report of the Lord Ordinary.

It was then urged for the pursuer that although twelve months had elapsed since adjustment of issues, there was sufficient cause for the delay to justify the motion being refused. The case involved a complicated accounting, extending from 1855 to 1861. Immediately after issues were adjusted the pursuer had applied for and obtained a diligence from the Lord Ordinary, which, after various delays and adjournments, many of which were caused by the defender, was ultimately reported on 26th January 1865. Shortly thereafter, and on 18th March, the pursuer's agents wrote to the defender's agents asking them how long they would require for an examination of the documentary evidence which had been recovered. To this letter no answer was returned. The defender had therefore changed his agents. In fact the pursuer was ready to go to trial, but was delaying for the convenience of the defender and his new agents, and in the hope, too, that the case might be arranged without jury trial, for which it was not very well suited.

The Court, after asking the opinion of the Lord Ordinary, who thought that possibly the pursuer might have been misled by the abrupt close of the correspondence, the letter of 18th March not having been answered, refused the motion.

Thursday, Nov. 23.

OUTER HOUSE.

(Before Lord Kinloch.)

WILLIAM HAMILTON *v.* ALEXANDER TURNER AND OTHERS.

Reparation — Culpa — Minerals. Held (per Lord Kinloch) that every tenant of minerals is bound so to work them as to afford sufficient support to the surface, and action at the instance of the proprietor of buildings on the surface for injuries caused through failure of tenants so to work the minerals sustained as relevant against them, but dismissed as irrelevant against the proprietor, he not being responsible for the acts of his tenants.

Counsel for Pursuer—Mr Pattison and Mr Guthrie Smith. Agent—Mr James Paris, S.S.C.

Counsel for Mr Turner—The Lord Advocate and Mr Gifford.

Counsel for the Monkland Iron and Steel Company—The Solicitor-General and Mr Watson. Agents—Messrs Davidson & Syme, W.S.

By feu-disposition, dated August 12, 1856, Alexander Turner, one of the defenders in this action, disponed to the pursuer William Hamilton a piece of ground and certain houses thereon. The right to minerals was reserved by the disposition to Turner as superior, and he became bound to indemnify the disponee for any damage which might be occasioned by working them. The disposition contained, however, this qualification, that if at any time the minerals should be let, the lessee and not the superior should be liable for such damage, and the superior engaged so to bind the lessee. Prior to the pursuer's disposition by nearly two years, by a lease dated 25th April and 10th May 1854, these minerals had been let to the Monkland Iron and Steel Company, the other defenders in this action, and under this lease they became liable to pay all damages which might be occasioned by the working of the minerals, both above and below ground. The pursuer now brought an action of damages against both of the defenders on the allegation that in working the minerals no proper supports had been left for the surface ground, and thereby great damage had been occasioned to his houses and buildings. The case having been heard on the question of the relevancy, the Lord Ordinary dismissed the action as against Turner, but found it relevant as against the other defenders. In the note to his interlocutor, after narrating the facts of the case, his Lordship goes on to say—"The Lord Ordinary has had no difficulty in holding this action relevant against the mineral tenants. He considers it is as undoubted that every mineral tenant is bound so to conduct his workings as to afford sufficient support to the surface, and whatever has been lawfully placed thereon anterior to the working taking place. He is as much bound to do so as the proprietor of an under storey is bound so to conduct any operation on his property as not to injure the support afforded to the storey above."

But the pursuer also insists in his claim against his superior Mr Turner as responsible for the acts of his tenants, the Monkland Iron and Steel Company. The Lord Ordinary is of opinion that no sufficient ground has been laid for his claim in the present record. Generally speaking, a landlord is not bound for a wrongful act committed by his tenant. If, indeed, it shall appear, either indirectly or by necessary implication, that the lease was granted with the object of the tenant's working wrongfully, and to the possible injury of the surface proprietor, the landlord will be liable as an accessory to the wrong, being in that case held to act through the tenant acting without his authority.