hearing of Mrs M'Gregor, wife of Donald M'Gregor, residing in Spittal Street, Edinburgh, say that the pursuer had stolen her late husband's watch, or did falsely and calumniously utter words to that effect of and concerning the pursuer—to the loss, injury, and damage of the pursuer?"

Damages were laid at £250.

The jury, after three hours' enclosure, returned a verdict by 11 to 1 for the pursuer—damages, £10.

Wednesday, March 7.

FIRST DIVISION.

ANTERMONY COAL CO. *v.* BRUCE AND OTHERS (*ante*, p. 170.)

Process—Mandatory. In an action at the instance of a company with a descriptive firm, and its two partners, one of whom was in Australia, held (aff. Lord Barcaple) that the absent partner was not bound to sist a mandatory.

Title to Sue. Question whether a company with a descriptive firm can sue an action without the authority of all its partners or at least three of them.

Counsel for Pursuers—Mr Gordon and Mr Lamond. Agent—Mr Wm. Burness, S.S.C.

Counsel for Defender—The Solicitor-General and Mr Alex. Moncrieff. Agents — Messrs Lindsay & Paterson, W.S.

The pursuers of this action are "the Antermony Coal Company, Antermony, Dumbartonshire, and Auston & Company, coalmasters at Hamilton and Glasgow, and Walter Wingate, coalmaster at Shirva, in the county of Dumbarton, at present in Australia, or elsewhere furth of Scotland, being the individual partners of the said firm of the Antermony Coal Company." The defenders are "Walter Wingate & Company, coal masters at Shirva aforesaid, and the said Walter Wingate, and George Cadell Bruce, civil engineer in Edinburgh, the individual partners of that firm." The defender Bruce, who alone appeared to defend, moved that the pursuer Walter Wingate should be ordained to sist a mandatory. The Lord Ordinary (Barcaple) refused the motion.

The defender reclaimed, and argued—An action at the instance of a company with a descriptive firm is not competent unless at least three of the partners are parties to it. In this case one of the two partners, Mr Wingate, is in Australia. There are no means of knowing, except by production of a mandate, whether he has authorised the action, and without his authority the action cannot proceed. For all that appears on record, the interest of Mr Wingate in the company may be greater than that of Austin & Co. If it be the fact that Mr Wingate's address is unknown to the other pursuers, that circumstance may raise a special case which the Court will provide for by appointing a judicial factor or otherwise, for the purpose of enabling the company to recover its debts.

Answered for the pursuers — The Lord Ordinary has already by an interlocutor, now final, repelled the defender's plea of no title to sue. This motion is just a repetition of that plea. There is here, besides the company, a solvent partner in this country, responsible for the expenses and the proper conduct of the action. It is not in these circumstances necessary that the other partner should sist a mandatory.

The Court to-day adhered. The fact that Walter Wingate was abroad appeared on the face of the summons. The motion for a mandatory was a motion in the cause. It was not a plea against title. If the objection of want of authority was within any of the pleas it was within the first, which has been repelled. But if it had been intended to raise the objection to title, which had been argued, there should have been a distinct statement on record that Wingate had not authorised the action. As to the motion otherwise the Court thought that looking to the circumstances, it was not a case where a mandate was necessary. There was a partner in this country whose solvency was not questioned.

SECOND DIVISION.

HERITORS OF CARRIDEN *v.* DUGUID AND OTHERS.

Churchyard. Are all the heritors in a rural parish entitled to take part in the custody and management of the churchyard?

Counsel for Complainers—The Solicitor-General and Mr Cook. Agents—Messrs Duncan & Dewar, W.S.

Counsel for Respondents—Mr Black. Agent—Mr Thomas Paddon, S.S.C.

This is an action of suspension and interdict at the instance of the heritors of Carriden. The note of suspension concludes with the following prayer:—

"May it therefore please your Lordships to suspend the proceedings complained of, and to interdict, prohibit, and discharge the said respondents, and all others, from molesting or interfering with the complainers in the management and custody of the old churchyard of the said parish of Carriden, by forcing the gate of the said churchyard, or otherwise effecting a violent entrance into the same, opening graves, and erecting or constructing headstones or other monuments or memorials of dead or living persons within or upon the ground of the said churchyard, without the leave of, or license granted by, the complainers or their predecessors, the heritors of the said parish, or by any other fact or deed inconsistent with the legal rights of the complainers as managers and custodiers of the said churchyard, or to do otherwise in the premises as to your Lordships shall seem proper."

After narrating the history of the closing of the old church and churchyard of Carriden, and the opening of a new church and burial-ground in 1776, and the rights of sepulture that had been granted by the heritors in the old churchyard as proprietors of it in consideration of a small sum of money paid by the parties applying for burial places to the kirk-session, and the steps taken to shut up the old churchyard, the heritors go on to state:—

"Until recently no attempt was made to interfere with the regulation and management of the old churchyard by the complainers in terms of the above resolution, but for some months back a disposition has been evinced by certain parties in the parish, and amongst others by the respondents, James and John Duguid and Andrew Waldie, to oust the complainers altogether from the management of the old churchyard, and to assert a right of property in the ground of the same to the exclusion of the complainers, and in some instances this had led to unseemly and violent and illegal acts upon the part of the said respondents and others.

"In particular, in the month of March last (1864), application was made to the beadle to give the key of the churchyard gate for the avowed purpose of exhuming and of reinterring in the old churchyard the body of an infant child of a person named Balmer, which had previously been interred in the new churchyard, Balmer having no right of burial in the old churchyard. The beadle, after consulting the Rev. Mr Smith, the minister of the parish, having declined to give the key for the said purpose, a disorderly crowd of persons actually exhumed the body of the said child, and having forced or otherwise obtained an entrance to the ground of the old churchyard, they reinterred the child in a burial place in that churchyard in which a person of the name of Ramage, who was said to be the maternal grandfather of the said child, claims a right of burial, but in which neither Ramage nor Balmer

the child's father, nor the child's mother, ever had any such right."

The heritors then say that they ordered a lock to be put on the gate of the churchyard, and the gate to be locked; and that on the 12th of October 1864 it was forced open by the respondents, in consequence of which the present action is brought.

The following statement is then made by the heritors:—"The present proceedings were instituted in pursuance of the resolution of the heritors, convened at the meeting of 22d July 1864, narrated in article 9, *supra.* The complainers represent the whole heritors of the old valuation of the parish, and, along with his Grace the Duke of Hamilton, who by interlocutor of this date was allowed to withdraw his instance, are the whole heritors who pay the cess leviable within the parish, the assessments imposed for the maintenance and repair of the church and churchyards therein, as well as the schoolmaster's salary, and other heritor's assessments leviable upon the old valued rent of said parish."

It is thus answered by the respondents:—"The minute of meeting is referred to for its terms. Admitted that the Duke of Hamilton was allowed to withdraw his name from the instance. Denied that the complainers represent the heritors of the old valuation. Not known, but believed to be true, that the complainers pay a share of the cess, and of the other assessments here referred to. *Quoad ultra* denied. Explained and averred, that besides the complainers and the Duke of Hamilton, there are many heritors in the parish having real rent.

The Lord Ordinary pronounced the following interlocutor:—"The Lord Ordinary having heard counsel for the parties, and considered the closed record, productions, and whole process, repels the first plea in law for the respondents, sustains the reasons of suspension, and suspends, prohibits, interdicts, and discharges, in terms of the note of suspension and interdict, in so far as regards the interdict prayed for against molesting or interfering with the complainers in the management and custody of the old churchyard of the parish of Carriden, by forcing the gate of the said churchyard, or otherwise effecting a violent entrance into the same, and decerns: And with reference to the interdict craved against erecting or constructing headstones or other monuments or memorials of dead or living persons without the leave of, or license granted by, the complainers or their predecessors, the heritors of the parish of Carriden, allows the respondents a proof of their averment that, besides the complainers and the Duke of Hamilton, there are many heritors in the parish having real rent; Appoints the cause to be enrolled, that the parties may be heard as to the mode of proof: And as to the remaining portions of the prayer for interdict, repels the reasons of suspension, refuses the interdict, and decerns, and reserves all questions of expenses."

And his Lordship observed in his note:—"After the judgment of the House of Lords in the Peterhead case, 4 Paton, 356, and of this Court in Boswell *v.* Hamilton, 15 S. 1148, and the application of the principle of these decisions to the case of a manse, which the Lord Ordinary understands to be implied in the opinions of the Judges in the case of M'Farlane *v.* Monklands Railway Company, 2 M'Ph. 519, he is not prepared to hold it clear that the whole owners of lands or houses in a rural parish are not entitled to take part in the custody and management of the churchyard. The question is one of public importance, and before any judgment is given upon it, the fact as to the existence in the parish of heritors not paying cess should be ascertained. The Lord Ordinary suggested at the debate that [this might be made matter of admission, but the parties did not so arrange it. This may perhaps still be done, if the complainers are to insist in the remaining branch of the prayer for interdict."

The heritors reclaimed. To-day the Court, without pronouncing on the question raised in the note of the Lord Ordinary, whether owner of houses or lands in a rural parish are entitled to take part in the custody and management of the churchyard, in respect it was admitted that there were other heritors in the parish paying real rent in addition to those who paid valued rent, recalled the interlocutor of the Lord Ordinary, but granted the interdict craved, except in so far as it applied to the opening of graves.

Thursday, March 8.

FIRST DIVISION.

CAMERON *v.* MURRAY AND HEPBURN.

Master and Apprentice—Indenture. Held (aff. Lord Mure) that an indenture which bore to be entered into by an apprentice with the advice and consent of his brother was binding on the apprentice, although the brother had not signed it.

Master and Apprentice—Desertion of Service—Common Law Procedure—Civil and Criminal. An apprentice having deserted his service, his masters presented a petition to the Sheriff praying for an order on him to return and for warrant to imprison him until he should find caution to remain in his service till the expiry of his indenture, and the Sheriff ordered the petition to be served on the apprentice and appointed him to enter appearance, under certification that if he failed the prayer of the petition would be granted. *Held* (aff. Lord Mure) that as this was a civil proceeding the Sheriff was entitled to proceed in absence and without proof to grant the prayer of the petition.

Counsel for Suspender—Mr F. W. Clark. Agent—Mr David Forsyth, S.S.C.

Counsel for Respondents—Mr G. H. Pattison. Agents—Messrs H. & H. Tod, W.S.

The suspender, who is seventeen years of age, bound himself as an apprentice to the respondents, who are blacksmiths in Galashiels, for four and a half years from and after 15th May 1865. A deed of indenture was drawn out, and signed by the suspender and respondents in November 1865. On 23d December 1865 the suspender deserted his service, and on 6th January 1866 his masters applied to the Sheriff of Selkirkshire to ordain the apprentice to return to his service, and to grant warrant for his imprisonment until he should find caution to return, and to remain in his service until the expiry of his apprenticeship. On 30th January the Sheriff-Substitute (Milne) held the apprentice as confessed, ordained him to return to his service, and granted warrant to apprehend and imprison him in the prison of Selkirk, therein to remain until the expiry of his apprenticeship, or until he should find caution to return to his service and remain therein. The apprentice was apprehended under this warrant and imprisoned. He thereupon presented a note of suspension and liberation, which was refused by the Lord Ordinary (Mure).

He now reclaimed and argued—(1) No indenture was ever entered into by the suspender, because, although the deed was signed by him, yet it bore to have been entered into with the advice and consent of his elder brother, Hugh Cameron, and with him as cautioner; and Hugh had not signed it; (2) it was not competent to grant warrant to imprison him until caution was found, which was, in his case, *factum imprestabile;* (3) at all events it was illegal to grant such a warrant in the absence of the suspender. The following authorities were cited in the course of the discussion—viz., Wright *v.* M'Gregor, 28th June 1827 (5 S. 794); Stewart *v.* Stewart, 21st June 1832 (10 S. 674), and 21st May 1833 (11 S. 628); Raeburn *v.* Reid, 4th June 1824 (3 S. 104); Gentle *v.* M'Lennan & Co., 9th July 1825 (4 S. 163); White