Lord CHELMSFORD—The Lord Advocate read the whole of the evidence and Mr Anderson part of it.

Sir HUGH CAIRNS said he would not follow their example. but must refer to it for the purpose of showing that the valid will was not made subsequently to the time at which he submitted the gift of the £6000 bill was made. He submitted, in conclusion, that the endorsement conferred a legal title which there had been no evidence produced to invalidate.

The LORD ADVOCATE then briefly replied upon the part of the appellant.

Judgment was given to-day (March 23).

The question decided is that not only endorsement, but also delivery, is requisite to the valid transfer of a bill of exchange, and that in the particular case no delivery was made.

The LORD CHANCELLOR said—The respondent in this appeal, upon his mother's death, paid succession duty upon the sum of £198, 16s. 1d., which he alleged to be the value of her estate. In addition to that sum, however, the officers of Inland Revenue allege that Mrs M'Neill was at the time of her death possessed of £6000, the contents of a bill of exchange dated 22d November 1838, drawn by her upon Lachlan M'Neill Campbell, and accepted by him. The respondent denies that that was so; but he paid duty on the sum of £1300, which was part of the £6000. Two actions were brought—one on the part of the Crown to recover the amount of stamp duty due upon this sum of £6000, and the other by the respondent against the Crown to obtain repayment of what he alleged he had paid in excess as duty upon the succession of Lachlan M'Neill Campbell. It was admitted, however, that the question at issue in both actions was simply whether this £6000 formed part of Mrs M'Neill's estate at her death. If it did, then succession duty was exigible upon it. That Mrs M'Neill was at one time entitled to the bill is not denied; but Dugald alleges that she had subsequently endorsed it to him. Now, endorsement is not sufficient to transfer the property in a bill of exchange, if by that is meant the mere writing upon its back; it is further necessary that it should be delivered to the endorsee. Now Dugald has utterly failed to show that he ever had possession of this bill in his mother's lifetime, and its being in his hands now is as much attributable to the fact that he is his mother's executor as that he is an endorsee. The bill was produced, and it was argued for Dugald that the markings of payment of interest upon its back, as being against his interest, went to show that he was its real owner. But then there is nothing to show that those markings were made at the time they profess to be. They are all in Dugald's handwriting, and all apparently written at the same time, and with the same ink. It is improbable, too, that the interest would be paid for so many years with such perfect regularity as the dates would denote, and I observe that one payment bears to be made upon a Sunday, which is hardly credible. I beg, therefore, to advise your Lordships that there never was any delivery of this bill of exchange; and if that is so, then the question as to what presumption arises from its endorsement it is unnecessary to decide. I move your Lordships to reverse the interlocutors appealed against, and to affirm that of the Lord Ordinary.

Lord CHELMSFORD concurred; observing, however, that in a question so purely one of fact, he would not have differed from the learned Judges in the Court below, had he seen a majority of them upon one side or other.

Lord KINGSDOWN also concurred, remarking that all the facts and probabilities in the case were against the respondent. He was the person who could have given the most evidence upon the subject, but had excused himself by pleading a total loss of memory. The matter had, however, been under discussion for years; the respondent had consulted law agents upon it, and had also sworn several affidavits. His impression was it was an arrangement between Mrs M'Neill and the respondent to defeat the Revenue.

Interlocutors reversed.

COURT OF SESSION.

Monday, March 26.

FIRST DIVISION.

HAMILTON *v.* TURNER AND OTHERS (*ante*, p. 52).

Reparation—Minerals—Wrongful Working. In an action by a feuar directed against his superior, who was proprietor of the minerals in the ground feued, and also against the mineral tenants, for damages caused by alleged wrongful working of the minerals, proof allowed before answer as to the liability of both or either of the defenders.

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

Counsel for Defender Turner—Mr Gordon and Mr Gifford, Agents—Messrs Maconochie & Hare, W.S.

Counsel for Monkland Company—Mr Clark and Mr Watson. Agents—Messrs Davidson & Syme, W.S.

This is an action of damages for injuries caused to property by mineral workings. The pursuer holds a feu-right of his property from Mr Dennistoun, the predecessor of the defender, Mr Turner of Barbauchlaw, which was granted on 12th August 1865. The superior reserved to himself the property of the minerals—"I and my foresaids paying to my said disponees and their foresaids all damages the subjects belonging to them may sustain in and through my working or taking away the same." This qualification was added—"But declaring always that should said minerals be let by me or my foresaids, my said disponees and their foresaids shall have recourse against the lessee thereof for all damages which may be occasioned by the working thereof, and not against me or my foresaids, farther than that I and my foresaids shall be bound to oblige our tenants to settle said damages with our said disponees and their foresaids in manner above mentioned."

The other defenders, the Monkland Iron and Steel Company and their trustees, are tenants of the minerals lying beneath the pursuer's subjects, by virtue of a lease granted by Mr Dennistoun in 1854—two years prior to the date of the pursuer's feu. By the lease, it is stipulated that the tenants "shall annually satisfy and pay all damages done by their operations, whether above or below ground;" and it also contains this clause—"Farther, the said second parties (the tenants) bind and oblige themselves and their foresaids to free and relieve the said first party (the superior) of all claims and demands whatsoever which may be made against him and his foresaids by the tenants of said lands, arising in any way out of the operations of the said second parties in working, raising, storing, carrying away, or disposing of the minerals hereby let."

The pursuer avers that the minerals "have been improperly and wrongfully dug out and removed, without proper and sufficient support being left for the surface ground and land, and the said house and buildings thereon, whereby the pursuer's said subjects have sunk and given way, and his said houses and buildings have been weakened, the walls cracked and rent, the door-posts and window lintels broken, and the whole structure has been totally and permanently injured, and there is fear of the same falling."

The Lord Ordinary (Kinloch) held the action relevant as against the mineral tenants, but dismissed it as against Mr Turner, on the grounds (1) that he was not responsible for his tenants; and (2) that the claim was excluded by the terms of the pursuer's feu-charter. The mineral tenants re-

claimed, and so did the pursuer. In the course of the argument the following authorities were cited:—Bald's Trustees *v.* Alloa Colliery Company (16 D. 870); Caledonian Railway Company *v.* Sprot (16 D. 559, 19 D., H.L. 3, and 2 Macq. 449); Harris *v.* Ryding (12 Q. B. 739); and Humphries *v.* Brogden (5 Mee. and Welby 60).

The case was argued last week, and advised to-day. The interlocutor of the Lord Ordinary was unanimously recalled, and a proof before answer allowed as to both defenders.

The LORD PRESIDENT said—The pursuer of this action says he has a claim against the superior and the mineral tenants, or at least against one or other of them. It appears that the feu was granted in the year 1856 in favour of a Mr Livingstone, and that in 1857 it was acquired by the pursuer. The feu had been granted by Mr Dennistoun, and his successor, as superior, is the defender Mr Turner. Mr Turner says there is no claim against him, because he, or rather his anthor, stipulated in the feu-right that there should be no claim against him, but only against the mineral tenants; and all that his author obliged himself to do was to take the tenants bound to settle the damages. The mineral tenants say they came under no obligation, and that there was no restriction on their mode of working the minerals; and farther, that in 1854, when they leased them, there were no houses on the surface. At common law I apprehend that a proprietor of minerals is bound to respect the rights of the proprietor of the surface, and is not entitled to work them out so as to injure these rights. That is the law irrespective of stipulation. There is a stipulation in regard to this matter in the feu-right which was obviously granted as a building feu, for it contains obligations on the feuar to build houses so as to secure the payment of the feu-duty. The clause on which the superior founds occurs in the clause reserving the minerals. The pursuer says that it puts him under no obligation. I do not understand the superior to say that he has given literal compliance with it, and there may be a question also as to whether the superior's obligation in the feu-contract referred only to future leases, or embraced also this one which had been already granted. We do not yet know the nature of the working which was permitted to the mineral tenant, whether it was the long wall system, or what it was. In short, until we have all the circumstances before us, I do not see how it would be proper at this stage to assoilzie Mr Turner. Then in regard to the mineral tenants they say they only bound themselves to pay damage caused to the ground if it remained in its natural state, and without the houses being built upon it. I am not satisfied that they should be assoilzied either until the facts are ascertained. There is here an allegation of damage to land as well as to houses, irrespective of buildings; but even in regard to buildings there may be a question as to the tenant's liability. I am not at present prepared to say that a mineral tenant is entitled to pull down by his operations houses on the surface, although these have been erected after the date of his lease.

The other Judges concurred; and the Court therefore recalled the interlocutor of the Lord Ordinary, and of consent allowed a proof before answer of the averments of all the parties.

Wednesday, Thursday, and Friday, March 21, 22, and 23.

JURY TRIALS.

FIRST DIVISION—SPRING SITTINGS.

(Before Lord Barcaple.)

DUNLOP *v.* SCOTTISH NORTH-EASTERN RAILWAY CO. (*ante* p. 102).

Reparation—Culpa. In an action for personal injuries received in a railway collision, verdict for the pursuer—damages £1500.

Counsel for Pursuer—The Lord Advocate and Mr Mackenzie. Agents—Messrs G. & H. Cairns, W.S.

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

In this case the Rev. David Dunlop, residing in Belfast, is pursuer, and the Scottish North-Eastern Railway Company are defenders. The following is the issue which was laid before the jury:—

"Whether on or about 1st September 1864 the pursuer, while travelling as a passenger by railway from Aberdeen to Glasgow, in virtue of a ticket purchased from and issued by the defenders, sustained, near the General Station at Perth, severe bodily injuries through the fault of the defenders, or of some person or persons for whom the defenders are responsible—to the loss, injury, and damage of the pursner?"

Damages laid at £6500.

It appeared from the evidence, the leading of which occupied two entire days and a part of a third, that the pursuer, who is a licentiate of the Irish Presbyterian Church, and was editor and part-proprietor of the *Banner of Ulster*, a newspaper published in Belfast, was in Aberdeenshire on a missionary tour in the month of August 1864. On 1st September 1864 he purchased a third-class ticket at Aberdeen from the defenders, which entitled him to travel by rail to Glasgow on his way home to Ireland. When near the General Station at Perth, the train in which he was travelling came into collision with the train from Inverness, which had arrived at the station a few minutes before. This collision was proved to have been caused through the fault of persons for whom the defenders were responsible. A great deal of evidence was led for the purpose of proving this fault, the nature of the injuries received by the pursuer, the extent of his interest in and income from the *Banner of Ulster*, and his previous bodily vigour and mental attainments, but the only question which was ultimately left for the jury to decide was the amount of damages to be awarded. The company had made a tender of £1050.

Lord BARCAPLE said that it was now admitted that the pursuer had sustained injury, and that damages were due to him. It was also admitted that the defenders were the parties responsible. (There had been a plea that the only party liable was the joint-committee of the Scottish Central, North British, Dundee and Perth, and Perth and Inverness Railway Companies, under whose control the portion of railway where the collision occurred was, which plea was given up). But the only question now was, what amount of damages the pursuer was entitled to. The Solicitor-General said that he thought it right that the jury should have before them the nature of the accident, and it was quite true that the circumstances of this case did not present a case of fault on the part of the company's servants of so aggravated a character as to warrant their being found liable in what was called exemplary or inflamed damages. The pecuniary loss which the pursuer had sustained was after all only one of the elements in the case. A very good case for damages would have existed although the person injured had been making no income at all. Mr Dunlop's connection with the *Banner of Ulster* had figured largely in the case, but it really had not a great deal to do with it. It had been, however, brought forward by the pursuer himself, and he cannot complain that it has been so thoroughly investigated. It is said that because the pursuer has made misrepresentations or exaggerations as to the extent of his interest in the newspaper, and his income from it, he is not to be relied on. But then there have been examined five medical gentlemen from Belfast of great intelligence and most remarkable candour, and although the pursuer's exaggerations may afford a reason for not believing him when he is unsupported by other witnesses, they afford no reason for disbelieving the