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

other evidence. It appeared that the pursuer joined the newspaper in 1856, when he went into a partnership with a Mr M'Cormick. Each partner was to put £500 into the concern, and afterwards to add £150 more. The pursuer put in his £650, and drew an average income of £120 a-year, which was not paid out of capital, because he has since sold his interest to his partner for upwards of £700. But beyond the matter of emolument derived from the paper, the jury really had nothing to do with all the evidence that had been led as to its success or otherwise. If they were satisfied that the pursuer had been incapacitated from earning his income by reason of his injuries, then his income was an important matter, but for any other purpose the evidence was of no consequence. The pursuer says that he is still suffering seriously from the injuries, and in this he was corroborated by Dr Moore, who said he should not hereafter engage in any exciting work, and that he should not advise an insurance company to have anything to do with insuring his life; by Dr Purdom, who said he should not undertake any work involving continuous effort of the brain; and by his friend Mr Steel, a clergyman who had not seen him since before the collision until yesterday, and who said that he was so much struck with the change in his appearance since he had last seen him that he burst into tears. As to the pursuer's mental attainments they were said to have been not very high; but, however that might be, he was able enough to do his work as editor of the newspaper, such as it was. His Lordship concluded by telling the jury that the question as to how they were to estimate the damages depended upon a consideration of various elements, which might strike different persons in different ways, and of which they were the best judges; but the case they had to consider was that of a clergyman, who had no charge, and had gone into a secular kind of life, who was earning £120 a-year by his personal exertions, and who has now been, if the medical men are right, thrown into poverty through the admitted fault of the defenders.

The jury, after an absence of about half an hour, returned a verdict for the pursuer, and assessed the damages at £1500.

Friday, Saturday, and Monday, March 23, 24, and 26.

PROUDFOOT *v.* LECKY.

Reparation—Master and Servant—Wrongful Dismissal—Justification. In an action by a servant against his master for damages for wrongful dismissal, the master pleading justification—verdict for the pursuer—damages a farthing.

Counsel for Pursuer—Mr Gifford and Mr Alex. Moncrieff. Agents—Messrs Wilson, Burn, & Gloag, W.S.; and Messrs Moncrieff, Paterson, Forbes, & Barr, writers, Glasgow.

Counsel for Defender—The Lord Advocate, the Solicitor-General, and Mr G. H. Pattison. Agents—Mr R. P. Stevenson, S.S.C.; and Mr W. R. Buchan, writer, Glasgow.

In this case George Proudfoot, merchant in London, and residing at St Paul's Place, Canonbury there, is pursuer; and Moncrieff, Paterson, Forbes, & Barr, writers, Glasgow, are his mandatories; and Francis Boyce Lecky, linen merchant in Glasgow, and residing there, and also carrying on business in London under the firm of Lecky & Jennings, is defender. The following is the issue:—It being admitted that the pursuer was employed and acted as manager of the defender's business in London, in terms of agreement, No. 7 of process:

"Whether, on or about 5th August 1864, the defender wrongfully and illegally dismissed the pursuer from his service—to his loss, injury, and damage?"

Damages laid at £1500.

By an agreement between the pursuer and defender, dated the 22d of November 1859, the pursuer bound and obliged himself to enter upon the service and employment of the defender as manager of his business in London, and faithfully and diligently to manage and conduct the same for and on behalf of the defender for the full space of seven years from and after the 1st November 1859, during which space the pursuer engaged to devote his whole time and attention to the business, and to prosecute the same to the utmost of his ability, and also engaged not to be concerned in any other business or employment whatever, directly or indirectly. In consideration of the services thus stipulated for, the defender bound and obliged himself not only to make payment to the pursuer of a salary of £200 per annum, to be payable quarterly, "but in case in any period of six months the profits arising from the said business shall be found to exceed £300, after paying the said salary, interest on capital, and all other expenses, then the said George Proudfoot shall also receive, by way of additional salary, a commission of 25 per cent. on the excess of profits over and above that sum, and which profits shall be ascertained once every six months by a balance to be then made up by the said George Proudfoot under the inspection of the said Francis Boyce Lecky." The business was that of disposing in London of linen goods. The defender purchased the goods chiefly in and around Belfast, from whence they were forwarded to London. As the pursuer's remuneration over and above his fixed salary depended on the amount of the profits, he had an interest to be satisfied that the purchase price of the goods was correctly stated by the defender, and that the profit was correctly ascertained, as provided for by the agreement. Accordingly, on 28th November 1859, within a week after the date of the agreement, the defender wrote to the pursuer—"I have arranged that all invoices come here, and that I charge you with them; but to make matters satisfactory to you, that when all accounts are chequed off each six months, that the original invoices will be compared with those you get from me. As I will have to settle all accounts, and may be buying from the same manufacturer for this and the London account, it will be necessary for original documents to be kept here." To this the pursuer replied on the following day—"Your arrangements as to invoices quite satisfactory."

Under this arrangement the parties acted harmoniously together until 1863, the pursuer having such confidence in the defender that he docquetted the half-yearly balances without examining his books and invoices. In 1863, however, a coolness arose betwixt them; and when the balance was made out in April 1864 the pursuer declined to docquet it, on the ground that it was not satisfactory to him. The pursuer proceeded to Glasgow on 26th July 1864, and next day saw the defender in his office in Glasgow. The pursuer admitted that he had left London without telling the defender of his intention to visit Glasgow, his explanation of this being that he believed the defender would have kept out of his way if he had done so. At the interview which took place, the defender at first expressed his readiness to exhibit his books and invoices, but in conversation they got upon the old cause of quarrel in 1863, and according to the defender's account the pursuer told him that he did not believe what he said in regard to it. The pursuer denied having said that he did not believe the defender, but admitted that he implied as much in what he did say. The result was that the defender told the pursuer that he had to go to Belfast until the following Wednesday, and that he would not show him the books and invoices at that time. The defender returned from Belfast unexpectedly on Sunday the 31st July; and on Wednesday, 3d August, wrote the pursuer, in answer to a letter which he had written, desiring him to return to his duties in London, otherwise