possession and charge of the said John Hood, the articles of furniture and others, her property, specified in the schedule hereunto annexed? And whether the said articles, or some of them, were not delivered to the said Miss Helen Pringle, or to the said pursuer as her assignee, or to any one for her or his behoof? And whether the said articles were of the value of £50, or of what value?"

After the jury were sworn the case was compromised, the defenders agreeing to pay to the pursuer £140, and to give up the articles of furniture referred to in the third issue, each party paying his own expenses.

MUNRO *v.* CALEDONIAN BANKING COMPANY

(*ante*, p. 108).

Subscription of Deed—Testamentary Witnesses. Verdict of a jury that testamentary witnesses had not seen a bond of caution subscribed.

Counsel for Pursuer—Mr Watson. Agent—Mr L. M. Macara, W.S.

Counsel for Defenders—Mr Gordon and Mr Millar. Agents—Messrs Adam & Sang, S.S.C.

In this case, in which James Munro, tenant, Kincardine, is pursuer, and the Caledonian Banking Company are defenders, the issue submitted to the jury was—

"Whether Peter Gray and Donald Munro, two of the alleged witnesses to the bond No. 19 of process, or either of them, did not see the pursuer subscribe the same, and did not hear him acknowledge his subscription?"

The instrumentary witnesses were both examined. They had no distinct recollection on the subject, but rather thought that they did not see the pursuer sign or hear him acknowledge his subscription. The pursuer, however, and the bank agent, Mr Clark (the document was a bond of caution for a cash credit), both gave positive evidence on the subject; but they flatly contradicted each other. Lord Kinloch told the jury that it was for them to judge as to which was speaking the truth. But the pursuer and Mr Clark were more or less interested witnesses. But in order to find for the pursuer they must be satisfied that the witnesses did not see the bond subscribed or hear the subscription acknowledged. If they thought the matter involved in doubt, then their verdict should be for the defenders.

The jury, after an absence of a few minutes, found for the pursuer.

MACINTYRE *v.* CALEDONIAN BANKING CO.

(*ante*, p. 108).

Counsel for Pursuer—Mr Watson. Agent—Mr L. M. Macara, W.S.

Counsel for Defenders—Mr Gordon and Mr Miller. Agents—Messrs Adam & Sang, S.S.C.

The pursuer of this action was also a party to the bond of caution referred to in the previous case, and a similar issue had been adjusted. A minute was lodged for the pursuer consenting that the defenders should be in the same position as if a verdict had been returned for them upon the issue, when the question of law which now arises, comes to be discussed—viz., whether, in consequence of Munro, one of the cautioners, being now freed, the pursuer, the other cautioner, is entitled to be free also?

KNOX *v.* MACARTHUR (*ante*, p. 100).

Counsel for Defender—Mr Watson and Mr J. H. A. Macdonald. Agents—Messrs J. & J. Turnbull, W.S.

In this case, in which Andrew Knox, quarryman, residing at New Monkland Poorhouse, in the county of Lanark, is pursuer; and John Macarthur, parochial schoolmaster at New Monkland, and residing there, in the said county, is defender, the following is the issue—It being admitted that the pursuer was, on or about the 13th of September 1864, an inmate of the poorhouse of New Monkland, in the county of Lanark, and that the defender was, at the date mentioned, a member of the Visiting Committee of said poorhouse:

"Whether, on or about the 13th September 1864, within the said poorhouse of New Monkland, the defender did attack and assault the pursuer—to his loss, injury, and damage?"

Damages laid at £250.

The pursuer failed to appear by himself or by his counsel or agent; and the Judge granted a certificate to that effect, in order to entitle the defender to obtain a dismissal of the action.

Thursday, March 29.

MACLEAN *v.* COLTHART.

Counsel for Pursuer—The Solicitor-General and Mr W. M. Thomson. Agent—Mr Wm. Burness, S.S.C.

Counsel for Defender—Mr Gordon and Mr H. J. Moncreiff. Agents—Messrs Cheyne & Stuart, W.S.

In this case Roderick Maclean, sometime merchant in Stornoway, now in Glasgow, is pursuer; and Robert Colthart, sometime wine and spirit merchant in Stornoway, afterwards residing at Abington, in Lanarkshire, Wanlockhead in Dumfriesshire, and Auchintinney of Ardnamurchan in Argyllshire, is defender. The issues were—

1. "Whether, on or about 3d November 1862, the pursuer was, on a warrant obtained against him as *in meditatione fugæ*, at the instance of the defender, wrongfully apprehended on board the steamer Clydesdale, on her voyage from Stornoway to Glasgow, and was removed from said vessel and taken to Stornoway, and kept in custody there until the following day—to his loss, injury, and damage?
2. "Whether, on or about 4th November 1862, the pursuer was, on a warrant of imprisonment, until he should find caution *de judicio sisti*, granted by the Sheriff-Substitute at Stornoway, on the application of the defender, wrongfully imprisoned in the prison of Stornoway, and detained in said prison until on or about 23d November 1862—to his loss, injury, and damage?"

Damages laid at £2000.

The case was set down for trial to-day, but was compromised, the defender having made a tender of £105 of damages, with expenses, which the pursuer accepted.

Thursday, Friday, and Saturday, March 29, 30, *and* 31.

BATEYS *v.* DYKES (*ante, p.* 146).

Reparation—Wrongous and Malicious Arrestment of a ship—Wrongous Exaction of Money not Due. Jury trial, in which verdict for the pursuers.

Counsel for Pursuers—Mr Gifford and Mr Trayner. Agent—Mr P. S. Beveridge, S.S.C.

Counsel for Defender—Mr Mackenzie and Mr H. J. Moncreiff. Agent—Mr A. D. Murphy, S.S.C.

In this case, John Batey, shipowner, lately residing in Leith, now in Newcastle-upon-Tyne, and Francis Batey, shipowner, also lately residing in Leith, and now in Newcastle-upon-Tyne, registered owners of the steam-vessel Montrose, afterwards called the Lord Aberdour, of Newcastle-upon-Tyne, and lately plying between Leith and Aberdour as a passenger boat, are pursuers; and James Dykes, coal merchant and shipowner, residing in Leith, is defender. The issues were—

1. "Whether, on or about the 15th day of July 1865, the defender wrongously, maliciously, and without probable cause, and for a debt not due by the pursuers, arrested the steamship or

vessel called the Montrose, and sometimes called the Lord Aberdour, of Newcastle-on-Tyne, the property of the pursuers, while lying in the harbour of Leith, and caused her to be dismantled, and detained in the said harbour of Leith—to the loss, injury, and damage of the pursuers?"

2. "Whether, on or about the 18th day of July 1865, the defender wrongously exacted and received from the pursuers the sums of money specified in the schedule hereto annexed, in order to have the said arrestment loosed and discharged? and whether the defender is resting and owing to the pursuers the said sums, or any part thereof, with interest at the rate of five per centum per annum from said 18th July 1865 till paid?"

Damages laid at £300.

SCHEDULE.

1. Amount of account sued for in the summons raised at the instance of the said James Dykes against the said John Batey and Francis Batey (which was signeted on or about the 15th July 1865), and in reference to which account the arrestment mentioned in the foregoing issues was used, which amount was advanced or paid under protest by the pursuers to the defender on or about 18th July 1865 . . . . . £31 10 0

2. Amount of account of expenses incurred to Mr A. D. Murphy, S.S.C., Leith, law agent for the said James Dykes, in reference to the said summons and arrestment, also paid under protest by the pursuers to the defender on or about said 18th July 1865 . . . 9 8 8

£40 18 8

The case chiefly turned on the question whether the account in respect of which the action was raised and the arrestments were used was one for which Messrs Batey, the owners, were responsible. The account was due to the defender for coal supplied for and used in the vessel, and for the hire of the defender's steam-tug Pet; but the pursuers maintained that the account was incurred solely on the credit and responsibility of a Mr Gibb, who had chartered the vessel.

The jury to-day returned a unanimous verdict for the pursuer on both issues, and assessed the damages at £50.

Tuesday, March 27.

FIRST DIVISION.

EXTENDED SITTINGS.

HENDERSON AND OTHERS *v.* NORRIE.

Trust—Denuding. Circumstances in which held (alt. Lord Jerviswoode, diss. Lord Curriehill) having regard to the nature of the trust, that a trustee was bound to denude.

Counsel for Pursuers—Mr Patton and Mr Gloag. Agents—Messrs Wilson, Burn, & Gloag, W.S.

Counsel for Defender—Mr Clark and Mr Marshall. Agents—Messrs Maconochie & Hare, W.S.

This action is sued by Mr Clayhills Henderson of Invergowrie, Mr Christopher Kerr, town clerk of Dundee, and Mr David Halley, merchant in Dundee, against Mr Charles Norrie, merchant in Dundee. The object of the action is to have Mr Norrie ordained to resign his office as a trustee, or otherwise to concur with the pursuer, Mr Kerr, who was the only other surviving trustee, in granting a deed of denudation of the trust.

The trust was of a very peculiar nature, as will be seen from the opinions of the Judges at advising. The Lord Ordinary (Jerviswoode) held that the defender was not bound to resign or denude, but to-day the Court, Lord Curriehill dissenting, recalled the Lord Ordinary's interlocutor, and held that he was bound to denude.

The LORD PRESIDENT said—This is a case of very considerable nicety and peculiarity. On the one hand it involves questions as to the principles and conditions on which a trustee may be required to denude an estate held in trust, and, on the other hand, it involves questions as to the interests of the parties substantially entitled to a trust-estate. It appears that in the year 1839 a feu-contract was entered into betwixt Mr David Hunter, jun., and the present defender and others, by which they acquired certain property therein described; and, according to the feu-contract, the right was given to them as trustees, but the clause is very peculiarly expressed. It is "to and in favour of the said Charles Norrie, David Halley, Christopher Kerr, and John Kerr, and himself, the said David Hunter, jun., and the survivors or survivor of them, and the heirs of the last survivor, as trustees or trustee for behoof of the said Charles Norrie, David Halley, Christopher Kerr, John Kerr, and David Hunter, jun., and that in proportions following, viz.:—One-third part or share thereof *pro indiviso* for behoof of the said Charles Norrie and David Halley equally between them and their heirs and assignees; another third part or share thereof *pro indiviso* to the said Christopher Kerr and John Kerr equally between them, and their heirs and assignees; and the remaining third part or share thereof *pro indiviso* to the said David Hunter, jun., and his heirs and assignees, and to the disponees and assignees of the said trustees or trustee, heritably and irredeemably." That mode of expression *pro indiviso* is very curious; but as I read the deed, it means that the whole property is to be held by all in trust, and that a third share *pro indiviso* is the interest of each of the specified parties. There is no division of the property at all. The parties are trustees for themselves as *pro indiviso* proprietors. Then the obligations undertaken by them to Mr Hunter are thus expressed:—"For which causes and on the other part the said Charles Norrie, David Halley, Christopher Kerr, John Kerr, and himself, the said David Hunter, jun., as trustees or trustee foresaid, and also as individuals, bind and oblige themselves, their heirs and successors, conjunctly and severally, to pay to the said David Hunter, jun., and his heirs and successors, and to his or their factors, the sum of £335, 14s. 9d. in name of feu-duty yearly," &c. That was the nature of the right as originally granted, and of the interests of the parties in it. It appears that sub-feus have been granted by these trustees, and that there have been several changes in the interests of the parties. Mr Norrie has conveyed his interest to Mr Kerr, and some of the trustees have died. Mr Kerr and Mr Norrie are the only trustees surviving. Some feus were granted before Mr Norrie made over his interests, and in some of these the trustees, including Mr Norrie, bound themselves in absolute warrandice to the feuars, both as trustees and as individuals. Mr Norrie himself is a feuar from the trustees in virtue of two feu-rights granted to him, and it appears that some disagreement has arisen betwixt him and the parties now interested in the estate. The question now raised is whether Mr Norrie is bound to resign or to denude in favour of the beneficiaries. He says he has no objection to put an end to the trust, but he insists on being relieved of the obligations he has undertaken in regard to the feu-duty payable to the superior, and in regard to the warrandice granted to the sub-feuars. He says he is entitled to have a discharge from the over superiors of his personal obligation for payment of the feu-duty, and that is a thing which seems cannot be got, because the persons now in right of the feu-duty are a committee of the General Assembly of the Church of Scotland, who very properly say that they will not interfere. The result is that Mr Norrie cannot get what he asks; and if he is right, that the trust must subsist in him and Mr Kerr till the death of one of them, and then in the survivor of them till his death, when it will pass to the heir of the survivor. It