Mr Bell now presented this appeal against the interlocutor of 12th November 1862, and fifteen subsequent interlocutors.

Sir ROUNDELL PALMER, Q.C., and COTTON, Q.C., for appellant.

At advising—

The LORD CHANCELLOR said that he was sorry to observe that the date of the summons in this case was so far back as 1858, and that no less then sixteen interlocutors would be overturned if the house were to reverse the judgment of the Court of Session. A claim was made in the present case by a daughter of Mr Bell of Enterkin for a share of the goods in communion of her parents at the death of her mother. Whether she was entitled to this depended on the domicile of the mother at the date of her death, which took place in 1838, and this, again, depended on the domicile of the claimant's father. It was a curious and unusual duty the House had to perform—viz., to determine what was the domicile of a person who was still alive. Mr Bell, the claimant's father, had been born in Jamaica, had gone to Scotland for education, travelled, and then returned at the age of 22 to Jamaica, where he succeeded to and continued for many years to manage his father's estate of Woodstock. He became custos of the parish of St George, and a member of Assembly, and resided in the island till 1837. It was evident, therefore, that Jamaica was the domicile of his birth, and his undoubted domicile up to that time. In 1834 the emancipation of the slaves and his failing health caused Mr Bell to think of leaving the island, and about this time he purchased two small estates in Scotland; but as it is clear that he never meant to live on these, and was at the date of the purchase a Jamaican, these facts could not affect the question. The expressions used by him in his correspondence at this time, such as coming home, were merely the language of a colonist when speaking of the mother country. In these circumstances the *onus* of proof was on those alleging a change of domicile. There was every presumption in favour of the domicile of birth; and the question was, Had Mr Bell acquired a Scotch domicile before the death of his wife? When he came to Edinburgh from Jamaica he lived with his mother-in-law, and paid part of the home expenses, and was looking out for an estate in Scotland. He had evidently a preponderating desire to settle in Scotland. His wife and her mother and all their friends desired it. It is further undoubted that he has since become a domiciled Scotsman, but up to his wife's death in 1858 all this only amounted to an intention which might have been altered had an eligible property in England appeared in the market. That he thought of this appears from the fact that his family dreaded it. The evidence of the family servants on the question of intention was a mere matter of opinion on their part, and worthless unless they could point to something said or done by Mr Bell which indicated the state of his mind on the subject. His Lordship then examined the correspondence which was in evidence, and showed from it that, three months after Mr Bell's arrival in Scotland, he complained seriously of the climate, and spoke of settling in Canada or Australia; that three months after, he wrote that he had not bought an estate in Scotland, and was not likely to do so. At two months later, in March 1858, he wrote about returning to Jamaica, and leaving a country which was stormy, and a people who were always bragging about their great-grandfathers; and that, two months after, he leased Rochrigg for a year, but still complained of the cold climate. All this showed that if he had got a property he might have stayed in Scotland, but if not, then he would not have stayed; so that it could not be held that he was settled there, or that he had acquired a new domicile at this time, which was the date of his wife's death. He therefore advised their Lordships to sustain the appeal, and reverse the judgment of the court below.

LORD CRANWORTH said it was true that, *prima facie*, a man's domicile was where he resided, and so it had been argued that Mr Bell's residing at Rochrigg, in Scotland, raised the presumption of his Scotch domicile; but then there was a prior and stronger presumption created by the fact that there was a domicile of origin, and that was in no doubt. Mr Bell desired to domicile himself in Scotland, but his subsequent letters showed a change in his desires, and there was no fact following upon the *animus* which would create the new domicile.

LORD WESTBURY said the question in the present case was, had Mr Bell the settled purpose to make that change? The only thing which indicated this was his going to Scotland; but then this was explained by the natural desire he had to visit his wife's relatives. Residence was not domicile, though often confounded with it. The circumstances indicated only a resolution, but no fixity of purpose; and he therefere concurred in holding that no Scotch domicile had been acquired at the date of Mrs Bell's death. His Lordship concluded by expressing deep regret at the expense and time wasted in this suit, when it was clear from the very commencement that the only point which ought to have been discussed was that of domicile.

LORD COLONSAY said he thought the case a very nice and difficult one on the evidence, but on the whole concurred with the other noble Lords.

Judgment reversed, with costs.

Agents for Appellant—J. W. & J. Mackenzie, W.S., and Graham and Wardlaw, Westminster.

Agents for Respondents—George Cotton, S.S.C., and Uptons, Johnston, and Upton, Austin-Friars.

Thursday, May 28.

M'LAREN *v.* CLYDE NAVIGATION TRUSTEES.

Lands Valuation Act, 17 *and* 18 *Vict., c.* 91, *sections* 6, 33, *and* 41—*Parish Church—Assessment.* In an action raised by the collector of an assessment imposed upon heritors for the purpose of rebuilding a parish church, against tenants under leases for more than twenty-one years, who appeared on the valuation-roll as proprietors, *held* that tenants, not being subject to the assessment apart from the valuation-roll, were not rendered liable by its terms.

M'Laren, collector of an assessment imposed by the heritors of the parish of Renfrew for the purpose of rebuilding the parish church, brought an action against the respondents for payment of £107, 2s. as the proportion of the assessment due by them as proprietors, entered in the valuation-roll, of certain subjects on the river Clyde. Those subjects, it appeared, were held by the respondents under leases of ninety-nine years, dated in 1788 and 1795. The respondents pleaded that, not being heritors, they were not liable to the assessment; that the burden of building a new church fell on heritors,

and no part of it on tenants; and that the Valuation Act gave no authority to impose the assessment on them. The appellant, on the other hand, relying upon the 6th and 33d sections of the Lands Valuation Act 1854, pleaded that the leases held by the defenders being for more than twenty-one years, the defenders were owners or proprietors of the subjects for all purposes, not only of valuations under the Land Valuation Act, but also of assessment when such is imposed according to the real rent of lands and heritages. The Second Division of the Court sustained the defences, and assoilzied the defenders.

The pursuer appealed.

At advising—

Lord Chancellor—My Lords, I should have been very glad in this case, and no doubt there would have been considerable convenience, if I had been able to advise your Lordships to go somewhat further than is necessary for the actual decision of the case brought before you, and to express an opinion upon various points which have been argued at your Lordships' Bar with reference to certain contingencies, as to the assessment of other property and other persons, which may hereafter arise. But I think your Lordships will agree with me, that it is always the most safe course, and perhaps the only proper course, to deal with the case which has been brought up for your Lordships' decision, and not to express opinions which might be held to operate in other cases which at present had not arisen for judicial decision.

Now, looking at this case in that point of view, the case appears to me to be an extremely simple one.

The respondents in this appeal are the Trustees of the river Clyde. They are the possessors of certain leasehold property, of which they have leases for a long term of years, which will not expire for several years to come. Those leases were in existance at the time of the passing of the Valuation Act for Scotland 1854, and at that time the Clyde Trustees were the possessors of the leases, and it has been admitted by the counsel for the appellant in their argument, before the passing of the Act of 1854 the Clyde Trustees, as the possessors of those leases, would not have been liable to an assessment of the character of that which the present appellant has been appointed to levy from those who are subject to it.

In that state of things, the Act of 1854 no doubt introduced considerable alteration in the mode of valuation and of assessment in Scotland, but the whole of the enactments of that Act are governed by one clause, which is extremely important with reference to the present argument. The clause to which I refer is the 41st, and it is only necessary that I should read the latter part of it. "Nothing" (says that clause) "contained in this Act shall exempt from or render liable to assessment any person or property not previously exempt from or liable to assessment."

Now, as I have already stated, the respondents were persons not previously liable to assessment. Their leases (treating the leases as property) were property not previously liable to assessment; therefore if we accept the whole of the argument at your Lordships' Bar (it is only necessary to accept it for the purpose of argument and not for decision), that by the joint operation of the 6th and the 33d sections, in ordinary cases, the owner of a leasehold exceeding twenty-one years in duration would properly be put upon the valuation-roll as a proprietor, and would properly have assessed upon him the amount of the tax in question as a proprietor—I say, if we assume the whole of that, yet, in reading the 6th and the 33d sections, we should be obliged to read in at the end of either or of both of those sections the words that I have already read, which appear to me to be a saving clause, for the benefit of any person standing in the position of the present respondents. I think it would be violating the letter and the spirit of the Act if, with reference to persons so situated, who were lessees at the time when the Act was passed, and who had made their bargains on the footing of the law as to assessment as it then stood, we were to hold that they, notwithstanding these express words of the 41st section, were now to be liable to an assessment from which they were previously to the passing of the Act exempt. Upon this short and simple ground, my Lords, I would advise and suggest to your Lordships that the interlocutor of the Court below is correct, and this appeal should be dismissed, with costs.

Lord Cranworth—My Lords, I have very little to add to what has been said by my noble and learned friend. The object of the Act, as stated in the preamble, was simply to obtain authority in all time coming for making up a valuation-roll, which should show what was the real value of the lands in Scotland,—a matter which no doubt before the passing of the Act had often given rise to great discussion. It would be a strong thing, indeed, to construe the Act so as to make persons liable to pay the valuation assessment who were not liable to pay it before. I do not think there is any necessity for so construing it. I almost think that, even if there had not been the 41st section, looking at the object of the Act as stated in the preamble, and the object of the 6th section as stated in the first line, that in estimating the yearly value of lands and heritages, such and such a course shall be taken, your Lordships would have felt, even without the 41st section, that you were at liberty to say, that it could not be the intention of the Legislature to do anything so unjust as to make liable to this assessment a class of persons who were not previously liable. But the 41st section, which, as it appears to me, must be read as if introduced into every clause of the Act, makes it abundantly clear.

Lord Westbury—My Lords, I entirely concur in the judgment proposed.

Lord Colonsay—My Lords, I also concur in what has been said.

Interlocutors affirmed and appeal dismissed, with costs.

Agent for Appellant—J. & H. G. Gibson, W.S.

Agents for Respondents—Simon Campbell, S.S.C., and Connell & Hope, Westminster.

Friday, May 29.

WILSON *v.* MERRY AND CUNNINGHAM.

(*Ante*, vol. iv, 53.)

Master and Servant — Collaborateur — Manager — Fault—Negligence—Mines Inspection Act, 23 & 24 *Vict.*, *c.* 151—*Reparation. Held* that a coal-master, to whom no personal fault was attributed, was not liable in damages for injury to a miner in his employment through the fault of the pit manager.

Per Lord Chancellor—What the master is bound