he got an interlocutor against him, and then to receive an objection against the judge that he was corrupt. The presumption, if he knew it from the first, was that he had passed from it; but in any view, as in the case of an objection to a witness, it must be taken at the commencement. His Lordship said this was an inflexible rule of the Canon Law. He further pointed out the reasonableness of the law, showing also how the rule as observed in the Canon Law was illustrated in "Henryson's Fables," in the story, founded on Æsop, of a lawsuit before the wolf, in which the sheep, one of the litigants, stated the objection of "judge suspect."

HALL, for the appellant, then moved the Court to allow him to lead proof on the merits of the cause. It would be hard that, because he had proposed a declinature which he believed at the time to be good, but which had been found bad, he should be excluded from the benefit of the proof he would otherwise have led. He submitted that the Court had power to grant the application in terms of the powers conferred by the 72d section of the Court of Session (Scotland) Act 1868.

LEE objected. The only ground on which the defender appealed was the plea of declinature he had stated, and that had been repelled. It followed that if he was unsuccessful in that he lost his cause. It was moreover a proper penalty of the course he had followed.

The Court, after considerable hesitation, granted the application, but on the condition precedent of the appellant paying all costs incurred by the respondent in this Court.

Agents for Appellant—Lindsay & Paterson, W.S.
Agents for Respondent—Tods, Murray & Jameson, W.S.

Thursday, December 16.

FIRST DIVISION.

CHRISTIE *v.* M'DONALD.

Lease—Interdiction—Rent. The heir in possession under an entail which prohibited leases for longer than seven years at reduced rents, being of facile mind, granted a bond of interdiction which was not published nor registered. Without the consent of his interdictors he granted to the person with whom he resided leases for nineteen years of certain parks. These parks had been let at a considerably higher rent to a tenant who was induced to renounce the remaining six years of his lease. The Court, at the instance of the succeeding heir of entail, reduced these leases.

By disposition and deed of entail, dated 20th January 1789, John Christie, Esq., executed an entail of the lands of Baberton; and this deed was recorded on the 11th July following. By this deed of entail it was provided that "it shall not be lawful to, nor in the power of, the said Captain Alexander Christie or other heirs of tailzie, nor any of them, to set tacks or rentals of any part of the said tailzied estate for a longer space than twenty-one years, and that no heir of tailzie shall have power to set any tacks with a diminution of the rental, except in case of necessity, in which case it shall be lawful to set tacks for any space not exceeding seven years at the best and highest rent which can be got at the time, and without taking any grassum or entry-money."

In 1861 the late Alexander Christie succeeded to Baberton; but being of facile mind, granted, in December 1864, a bond of interdiction in favour of John Sibbald Ritchie, accountant in Edinburgh, and David Currie, merchant there, by which he bound, obliged, and interdicted himself to them not to set tacks or rentals of his lands and heritages without the special advice and consent of the persons therein before named had thereto in writing, and declared that all such tacks or other deeds subscribed by him without their consent should be void and null. This bond was never published nor registered; but the pursuer alleged that it was acted upon.

On 5th December 1865 the late Mr Christie, without the consent and concurrence of his interdictors, let to the defender, with whom he then resided, certain parks at a rent of £65 for nineteen years; and, on 26th November 1867, certain other parks at a rent of £25 for nineteen years.

Mr Christie died on 17th August 1868; and the pursuer, as heir of entail now in possession, sought to have these leases reduced, alleging that the rents were unfair and illusory, and to the lesion of Mr Christie and himself, and that the leases had been granted without the consent of the interdictors.

The defender maintained that by the Roseberry Act he was entitled to grant these leases, as the rent was a fair rent. This statute enacts "that, notwithstanding any prohibitory, irritant, and resolutive clauses contained in any entails already made and established, or which may hereafter be made and established, pursuant to the directions of the said Act, passed in the Parliament of Scotland in the year 1685, it shall be lawful for the respective heirs of entail in possession to grant tacks of any part of the lands, estate, or heritages therein contained, for the fair rent of such lands or heritages at the period of letting, either by public roup or private bargain, and notwithstanding any prohibition against diminution of the rental, for any period not exceeding twenty-one years." The defender admitted that the bond of interdiction was granted, but asserted that it had never been published nor registered in consequence of Mr Christie's health and habits having gradually improved. He also alleged that the leases were onerous and rational, and that he had expended about £2000 in building, draining, manuring, &c.

A proof having been ordered, various witnesses were examined as to the value of the lands. Mr Bruce, civil engineer and land valuator in Edinburgh, valued the fields at about £136; while other valuators assigned higher values, the highest being about £163. Mr Dickson of Saughton Mains, who valued the fields for the defender, considered about £100 as a proper rental. Laurie, the last tenant, valued them at £141, and said he had only been induced to renounce his lease, while there were six years of it to run, because of the unpleasant treatment he met with from the defender. One or two witnesses spoke to the poverty of the land at the time Laurie gave up his lease; one of them, Mr Brownlee, in consequence considering £90 a fair rental. The defender, who is a butcher and grazier at Juniper Green, stated he had put great quantities of manure on the land, and was thereby some hundreds of pounds out of pocket, and that the leases were rational, and carefully gone about.

The Lord Ordinary (BARCAPLE) found that the rents for which the leases sought to be reduced

were granted were unfair rents, and therefore reduced the leases. He added the following

"*Note.*— The Lord Ordinary has had difficulty in coming to a satisfactory conclusion in this case. The evidence is very conflicting. Mr Dickson, the most important witness for the defender, values the arable land at £97, 15s. 6d., and the strip which was cleared of trees for pasture at £5, 10s., making in all, £103, 5s. 6d. This is his valuation of the lands in their present state, and the Lord Ordinary does not doubt that they have been more or less improved by the defender, though to what extent does not clearly appear. He is inclined to think that the evidence on both sides in regard to that matter is exaggerated. Mr Dickson's opinion is materially confirmed by the witnesses Kidd and Stuart, though neither of them appear to have made an examination of the lands for the purpose of putting a value upon them. If the case had stood upon this evidence, with the fact that the former lease was renounced by the tenant of the adjoining farm, the Lord Ordinary would not have held that the new leases were not let for a fair rent. But there is a strong body of evidence on the other side, putting the value of the lands at a much higher sum than that at which they are valued by Mr Dickson, and at fully as much as the rent at which they were held by Laurie, the late tenant. In such a conflict of evidence the Lord Ordinary cannot throw out of view the fact that they were taken by Laurie in 1852 for 19 years at a rent of £130, being £40 more than the rent under the leases in question. He is not satisfied on the evidence that the former lease was renounced on account of the lands being over-rented.

"In estimating the value of the pursuer's evidence as to the fair rent of the lands, the Lord Ordinary has not taken into account the views brought forward by the witnesses as to a rental to be derived by letting the lands from year to year as grass parks. Throwing that element entirely out of view, and having regard to the evidence of Mr Dickson and the other witnesses for the defender, and to the probable difficulty of getting a suitable tenant for such a subject, without houses of any kind, he would have been disposed to hold a rent materially lower than that at which the former tenant held the lands to have been a fair rent, in terms of the statute. But looking to the whole evidence, he does not think there is ground for putting it so low as £90."

The defender reclaimed.

LORD ADVOCATE and MACDONALD for him.

DEAN OF FACULTY and MACKENZIE in answer.

The Court adhered to the Lord Ordinary's interlocutor. There was no evidence that Laurie had renounced his lease from inability to pay his rent; and the renunciation had been granted six years before its natural termination. Though a reduction of the rental was by no means conclusive that the leases were irrational, yet it was an important element in coming to a decision. Here the leases had been granted in spite of the bond of interdiction, and as the most important and favourable estimate for the defender assigned a value of £13 above the rent at which they were let, the leases ought to be set aside.

Agent for Pursuer—Thomas Sprot, W.S.

Agents for Defender—Ferguson & Junner, W.S.

Thursday, December 16.

NEILSON & OTHERS *v.* BARCLAY.

Issue—Breach of patent—Counter issue—Place. An issue to try whether there has been a breach of patent ought to contain the name of the place where the breach is alleged to have been committed. And a counter issue is unnecessary where the question it raises is in reality the same as that raised in the pursuer's issue.

In the beginning of last year Alexander Morton, engineer in Glasgow, obtained a patent for fourteen years, under the Great Seal, for the invention of "Improvements in the lateral action or induction of fluids, and in the apparatus or mechanism employed therefor." In November 1868 Mr Morton assigned this patent and his rights under it to Walter Montgomerie Neilson, engineer in Glasgow, and James Wood, residing at Troon; and in the action now brought they alleged that the defender Andrew Barclay, founder and engineer in Kilmarnock, had infringed their patent.

The issue as adjusted before the Lord Ordinary (JERVISWOODE) was as follows:—

"Whether, during the currency of the said letters-patent, the defender did wrongfully, and in contravention of said letters-patent, use the invention described in the said letters-patent and specification?"

The first counter issue was as follows:—

"Whether the invention described and claimed in the final specification above mentioned is not within the title of the said letters-patent?"

Both parties reclaimed.

LORD ADVOCATE, SOLICITOR-GENERAL, and MACKINTOSH, for the complainers, objected to admission of the first counter issue, as it just raised the same question as the issue.

WATSON and BALFOUR, for the respondent, objected to the want of specification in the issue of the place where the breach of contract was alleged to have been committed.

The Court approved of the objections. The first counter issue was struck out; and the issue was thus amended:—

"Whether, during the currency of the said letters-patent, the defender did, at Addiewell Oil Works, near West Calder, in the county of Linlithgow; at Fauldhouse Pit, in the county of ; and at the defender's works, Caledonian Foundry, Kilmarnock, in the county of Ayr, or at one or more of said places, wrongfully, and in contravention of said letters-patent, use the invention described in the said letters-patent and specification?"

Agents for Complainer—Hamilton, Kinnear, & Beatson, W.S.

Agents for Respondent—Macnaughton & Finlay, W.S.

Thursday, December 16.

SECOND DIVISION.

NICOLSON *v.* DALLAS.

Proof—Act 31 *and* 32 *Vict., c.* 100, *sec.* 72. Circumstances in which the Court refused to allow additional proof under the 72d section of the Court of Session (Scotland) Act 1868.