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.

This was an appeal against a judgment of the Sheriff of Inverness-shire, refusing a motion made by the appellant for an adjournment of a diet of proof. The reason urged for the adjournment was that the appellant (who was the defender in the action) had been entitled to expect the attendance of the pursuer at the diet of proof, and had therefore not cited him, and that the pursuer had not appeared at the diet. The Sheriff-substitute found that the reason assigned was no reason, and the Sheriff adhered. The appellant now brought the present appeal, and craved to be allowed further proof under the 72d section of the recent Act.

STRACHAN for him.

KERR in answer.

The Court dismissed the appeal, holding that no case had been made out for the allowance of proof asked.

Agent for Appellant—James Barclay, S.S.C.

Agents for Respondent—Murdoch, Boyd & Co., S.S.C.

Thursday, December 16.

ROBERTSON *v.* DUKE OF ATHOLE.

Contingency—Proof—31 *and* 32 *Vict., c.* 100, *sec.* 72 *—Appeal.* (1) Motion to remit an appeal to the First Division, on the ground of contingency, refused in respect of no contingency; (2) Circumstances in which, after final judgment, party allowed to lead proof in terms of the power conferred by sec. 72 of the Court of Session (Scotland) Act 1868.

This was another appeal from the Sheriff-court of Perthshire, brought by Mr Robertson, Dundonnachie. The proceedings in the Court below originated in a petition presented by the Duke of Athole, craving the Sheriff to ordain the appellant instantly to restore the turnpike gate at Dunkeld Bridge, which he had violently thrown down, and to interdict the appellant from unlawfully entering upon or destroying any part of the bridge, &c. To this petition the appellant entered appearance in the usual form; but at the first calling in Court he appeared personally, and stated that he declined to state any defence. The Sheriff-substitute thereupon held him as confessed, and granted decree in terms of the petition, and thereafter allowed the petitioner to restore the gate at the appellant's expense.

The appellant thereupon brought the present appeal.

SCOTT for appellant.

SOLICITOR-GENERAL and LEE in answer.

The appellant contended, in the first place, that this appeal should be remitted to the First Division, where the declarator as to the Duke's right to levy pontage at the bridge was now pending. This motion the Court refused, as the affirmance of the contention of the public in that case by no means involved that the appellant was right in this case. The appellant then moved to be allowed to state his defences on the merits now, and in this Court. This the Court, in the peculiar circumstances of the case, allowed, holding that they had power to do so under the 72d section of the recent Court of Session Act, The appellant was, however, found liable in the whole expenses, both in this Court and the Court below, since the date of the interlocutor holding him confessed in respect of his declinature to lodge defences, and payment of the inferior court costs was declared to be a condition precedent of the proof allowed.

Agents for the Appellant—Lindsay & Paterson, W.S.

Agents for the Respondent—Tods, Murray, & Jameson, W.S.

Friday, December 17.

FIRST DIVISION.

MORRISON *v.* DOBSON.

Marriage—Consent—Promise sub. cop. A for some years courted B with a view to marriage, and lent her a sum of money. Connection took place between the parties, and on the faith of it, and a supposed interchange of consent, A spoke of B as his wife. She however repudiated the relationship, and denied it to several parties. Some time later, being pressed by A to return the money, she refused to do so, and claimed to be his wife. This he now denied. *Held* there was no marriage, as the *copula* was not conceded by B on the faith of A's promise to marry her, though his promise was held proved.

This was an action of declarator of marriage brought by Isabella Morrison, to have it found and declared that, either by deduction *de præsenti*, or by promise *subsequente copula*, she had become the wife of Thomas Dobson, lately supervisor in the Inland Revenue at Leith. Both parties belong to the Methodist persuasion, and in his capacity as a collector in connection with the chapel the parties became acquainted in 1863. Dobson formed an attachment to her, and repeatedly solicited the pursuer to become his wife. She alleged that eventually she agreed to marry him, but that he insisted the marriage should be kept private; that on the 4th or 5th of July 1864, in the house of her brother-in-law, with whom she resided, the two parties solemnly acknowledged each other as husband and wife, and that on the faith of it intercourse took place that night. He however alleged that there was no such declaration made, and that the intercourse took place at her request. He asserted that he had lent her £305, and that, believing the intercourse constituted marriage, he repeatedly, but in vain, claimed her as his wife.

A proof was led, and a great number of letters were lodged in process. It was proved that in the expectation of their marriage he had taken a house, that she had in December 1864 acted as bridesmaid to one of her brother-in-law's servants, and that Mr Blanshard, minister of the chapel they went to, had remonstrated with her on her illicit intercourse with Dobson, had refused her church privileges, and pressed her to return the £305 to Dobson; but that her reply was "that if she had been a young girl of eighteen she might have done it, but that as she was a woman of forty, and a native of Aberdeen into the bargain, it was more than perhaps" Mr Blanshard "ought to expect of her." All Dobson's overtures to her were most scornfully received, and on various occasions she denied that she was his wife. None of the letters were addressed to her as Mrs Dobson, but to Miss Morrison; and she was not called Mrs Dobson by her own relations. In many of the letters he addressed her as his wife, and spoke of their private marriage; but he now contended that this meant only his affianced wife, and that he meant betrothal by