

without specifying the time and place of seduction, or two issues specifying different occasions, one in 1860 and the other in 1863.

SCOTT for pursuer.

SOLICITOR-GENERAL and THOMS for defender.

The Court observed that the time at which a woman is seduced is a definite point, and must be well known to her, and so with regard to the place. There cannot be two different occasions. It is an essential part of the pursuer's case, though it is no longer the practice to put it in issue, that up to the time of seduction she was a virtuous woman. If she was seduced in 1860 it is impossible that she could have been seduced in 1863. The occasion in 1860 is well and relevantly stated in her condescendence. She must take a single issue, and that occasion must be embodied in it.

Agent for Pursuer—D. F. Bridgford, S.S.C.

Agents for Defender—Lindsay & Paterson, W.S.

*Saturday, February 4.*

FORBES v. THE MINISTERS OF OLD MACHAR.

(*Ante*, Vol. V, p. 335, and Vol. VI, p. 726.)

*House of Lords—Petition to apply Judgment—Expenses.* Where the House of Lords has pronounced a judgment exhausting a cause, and not containing any finding as to expenses before appeal, the Court will not dispose of the question of expenses.

In the process of augmentation and locality of Old Machar a question arose between the ministers and certain heritors, of whom Mr Forbes was one, as to the validity of certain decrees of valuation of teinds. The Court of Session held the valuations bad, and found the heritors liable to the ministers in expenses. On appeal, the House of Lords reversed and ordered the expenses paid by the appellants to the respondents to be repaid, but made no order as to the appellants' expenses in the Court of Session. In a petition for applying the judgment of the House of Lords, Mr Forbes now moved for his expenses previous to the appeal.

FRASER for him.

ASHER in answer.

The cases of *Stewart v. Scott*, 11 March 1836, 14 S. 692, and *Railton*, 12 June 1846, 8 D. 812, were referred to.

LORD PRESIDENT—This is a question on a closed record. It arose in a process of locality, but every question on which a record is made up and judgment pronounced is for all practical purposes a separate cause. The House of Lords exhausts the case, and while it orders the expenses paid by the appellants to the respondents to be repaid, it says nothing farther as to expenses. The rule laid down in *Stewart v. Scott* is directly applicable, that where a judgment of the House of Lords exhausts a cause and contains no finding as to expenses, it is not intended that we should dispose of them.

The other Judges concurred.

The Court applied the judgment, but refused the prayer so far as it prayed for expenses in this Court previous to the appeal.

Agents for Petitioner—Henry & Shiress, S.S.C.

Agents for the Ministers—H. & A. Inglis, W.S.

*Wednesday, February 8.*

GOWANS v. BRATHWAITE CHRISTIE AND ANOTHER.

*Landlord and Tenant—Lease—Sterility—Clause—Process—Reduction—Competency.* Circumstances in which a tenant, under a lease of freestone and other minerals, was held not entitled to insist in an action of reduction of his lease upon the ground of "sterility" or "non-workableness to profit," there being in the contract of lease a special machinery devised which was manifestly intended by the parties to obviate all such questions.

Observed by the Lord President, that the question of sterility in mineral leases was quite different from what it was in agricultural ones, for the former were now-a-days viewed much more in the light of contracts of hazard than the latter.

This was an action of reduction at the instance of James Gowans, railway contractor, against Mr Brathwaite Christie of Baberton and Mrs Agnes Mossman or Christie, widow and sole executrix and heir *in mobilibus* of the late Alexander Christie of Baberton. There was sought to be reduced a certain lease of the whole freestone and minerals, and all materials and substances lying under the lands and estate of Baberton, entered into in February 1866 between the said Alexander Christie of Baberton, as heir of entail then in possession of the said estate, and the said James Gowans, the pursuer.

The more important clauses of the said lease were as follows:—"The said Alexander Christie has set, and by these presents, in consideration of the rents or tack duties, and other prestations after-mentioned, lets to the said James Gowans and his heirs and assignees, all and whole the freestone and minerals, and all materials and substances, of what nature soever, lying in and under the lands and estate of Baberton, which are in the parishes of Currie and Colinton, and sheriffdom of Edinburgh, and that for the space of twenty-one years from and after the term of Candlemas Eighteen hundred and sixty-six, which is hereby declared to be the commencement of this lease, and the entry of the said James Gowans to the premises, in virtue hereof; with full power to the said James Gowans and his foresaids, at their own expense, to search for, work, win, raise, and carry away the freestone, and all minerals, materials, and substances of what nature soever, lying in and under said lands, as fully and freely as the said Alexander Christie could do himself. (then follow clauses regulating the working). Which tack, under the conditions and reservations above-written, the said Alexander Christie binds and obliges himself, and his heirs and successors, to warrant at all hands, and against all mortals, as law will: For which causes, and on the other part, the said James Gowans binds and obliges himself and his heirs, executors, and successors whomsoever, to pay to the said Alexander Christie, and his heirs and successors, for the said freestone, minerals, and substances, and materials hereby let, the sum of two hundred pounds sterling of fixed money rent per annum, and that half-yearly, at the terms of Lammas and Candlemas; and it is hereby agreed that the said fixed rent shall not be exacted for the year or period