building unprofitable or impossible. But for the purpose of construing or controlling the antecedent agreement, this clause is entirely unavailing. The essence of the complainer's case in reality is the supposed hardship which the plain words of the contract are said to imply, and some views of policy or expediency, which are more suited for the legislature than for a court of law. I cannot say that I am impressed by either consideration. I greatly doubt if there be any hardship. Building over mineral wastes is no novelty, and in this case an existing danger was disregarded, while the risk of future danger was foreseen and undertaken. Nor have we any evidence that the bargain, even under the most stringent construction of the clause, was not a good one for the feuar. As to the houses in Coatbridge, the rights of the feuars there must depend on the terms of their contracts, by which, like the complainer, they must be bound. I do not see that, even if we knew what they were, they could aid us in the construction of this agreement. But in Coatbridge, as elsewhere, we shall best protect property by seeing that parties fulfil their engagements. In the present case I look on these obligations to the mineral owner as part of the consideration for the feu, and I can see no reason for permitting the complainer, while he retains the benefit, to repudiate the conditions of his right.

Agents for Henderson & Dimmack—H. & G. Cairns, W.S.

Agents for Mr Buchanan—Duncan, Dewar, & Black, W.S.

Agents for Mr Andrew—J. & R. D. Ross, W.S.

Saturday, February 25.

FIRST DIVISION.

JOHNSTON *v.* BUDGE.

Process—Maills and Duties—Bankrupt—Trustee—Expenses. A heritable creditor of a bankrupt raised an action of maills and duties, concluding for expenses of process against the trustee on the sequestrated estate. The trustee in no way disputed the rights of the pursuer, but appeared to resist the conclusion as to expenses. *Held* that he was not liable in expenses, and the pursuer found liable to him for the expenses of his appearance.

This was an appeal from the Sheriff-court of Edinburgh. Miss Margaret Johnston held a bond and disposition in security, granted by Alexander Gordon Smith, over certain subjects in Edinburgh. Smith was afterwards sequestrated, and Mr Budge, C.A., appointed trustee on his estate. Miss Johnston raised a summons of maills and duties, in which she called as defenders the tenants and occupants of the subjects, and also Mr Budge, as trustee. The pursuer concluded for expenses against Mr Budge as trustee, and against the other defenders if they should appear to oppose. Mr Budge appeared, and objected to the conclusions in so far as expenses were craved against him as trustee. No appearance being made for the other defenders, the Sheriff-Substitute (CAMPBELL) decerned in terms of the conclusions, except as to the conclusion for expenses against Budge, and found the latter entitled to the expenses of his appearance.

Miss Johnston appealed, but the Sheriff (DAVIDSON) adhered, with additional expenses, and added the following note:—

"*Note*—The only conclusion against the defender Mr Budge, as trustee on the sequestrated estate of Smith, is that he be found liable in expenses. A distinction is taken between him and the other defenders, who are the tenants of the subjects covered by the bond. Expenses are asked against the tenants only if they appear as defenders. Expenses are concluded for against the trustee whether he appears or not. He does appear only to defend himself against this demand; and if he is not liable to pay the pursuer's expenses, he was entitled and bound so to defend himself.

"The pursuer has not been able to adduce any authority or practice for her demand. Her contention is, that as, if there had been no sequestration, and the debtor in the bond himself had been called, he would have been bound to pay the expenses of this decree, so he, being sequestrated, the trustee on his estate stands exactly in his place, and is equally bound to pay these expenses. But the trustee is not exactly in the position of the debtor. He has, no doubt, as trustee to regard the interests of the bankrupt, but he is trustee for his creditors, and the estate is vested in him for their benefit. The estate in the trustee, so far as heritable, is qualified and limited by all preferable securities existing at the date of the sequestration not null and reducible, and subject to an action such as the present. While the pursuer after sequestration is entitled to have such a decree as this, the statute which gives that right and limits its extent, does not provide that the trustee or the other creditors are to pay the expenses of obtaining it.

"The trustee has not disputed and has in no way interfered with the rights of the pursuer, and was not entitled to do so. It may be doubtful if anything more was required than an intimation of the action to the trustee, without his being called as a party. Be that as it may, he is not bound to pay the pursuer's expenses.

"Whether the pursuer, in virtue of the obligations in the bond, is entitled to be ranked as a creditor for the expense of getting her decree, is not now for consideration.

"If the trustee was entitled to appear and defend on the ground he did, and is right in his contention, he is entitled to his expenses."

Miss Johnston appealed to the Court of Session.

The SOLICITOR-GENERAL and WATSON for her.

SCOTT and STRACHAN for Mr Budge.

The Court adhered, with additional expenses.

Agents for Pursuer—Millar, Allardice, & Robson, W.S.

Agents for Defender—Watt & Anderson, S.S.C.

Saturday, February 25.

SECOND DIVISION.

IRVINE *v.* FIELD.

Landlord and Tenant — Verbal Lease — Wrongous Ejectment—Notice—Damages—Issue. A party was ejected from a piece of ground which he alleged he held under a sub-lease, but did not set forth any written title. Issue of damages for wrongous ejectment allowed.

This was an action by Alex. Irvine, gardener, Hawkhill, against Thomas Field, proprietor of the