twenty years. The tenant had the control of laying them down, and all the benefit during the lease, and he can only recover their value to the landlord at the end of the lease.

LORD COWAN—It is indispensable that we should construe the lease before sending it to a valuator. The meaning is not that the tenant should get the cost of the pipes, but their value to the landlord or an incoming tenant at the end of the lease. I should also say that I do not think this the value merely as old lead. If the tenant elected to lay pipes in order to bring water into the house, he was to be entitled to recover their value as they stood at the end of the lease. It may be that alternative views may arise on the estimate. The Lord Ordinary has overlooked the fact that the lease requires construction.

LORD BENHOLME concurred.

LORD NEAVES—I am of the same opinion. I concur with the Lord Justice-Clerk and Lord Cowan, that the intention was not that the pipes should be taken away to an old iron shop and sold. They were an *opus manufactum* which the tenant was entitled to make, and which was fairly and properly made. The benefit thereby arising is the thing to be valued, and if there has been no deterioration in the pipes the tenant will get the full value.

Agent for Pursuer—Thomas Spalding, W.S.
Agents for Defender—W. H. & W. J. Sands, W.S.

Thursday, November 23.

FIRST DIVISION.

M'GEORGE, COWAN & GALLOWAY *v.* STEELE.

Retention—Relevancy. A vague averment, that the pursuers had failed to restore certain letters entrusted to them, *held* not to constitute a relevant defence in an action for payment of a business account.

This was an action for payment of certain business accounts.

The defender stated that he was, and had been all along, willing to pay the accounts (with a trifling exception), as the same might be taxed, and upon the pursuers restoring to him certain letters and documents which he averred had been entrusted by him to their care.

With regard to these letters, the pursuers, who are writers in Glasgow, averred that they had been produced by them under diligence, and had formed part of the process in the action for which the accounts had been incurred; that they had been borrowed by the opposite agent; that they, the pursuers, had instructed their Edinburgh correspondents to adopt proceedings to enforce delivery, but after some steps had been taken, the defender intimated that he would not hold himself responsible for the expense, and that they accordingly ceased to carry out the proceedings they had commenced.

The answer of the defender to this averment was—"Admitted that the letters were handed by him to the pursuers in the course of his employment of them, and with reference to the matters upon which they were employed as his agents. The defender does not know what afterwards became of them; and does not admit the statements here made. Explained that the defender has lately repeatedly required the pursuers to restore the said documents, but they have failed and declined, and now decline, to do so."

He pleaded—"(1) The pursuers are not entitled to demand payment from the defender of the amount of their accounts against him while they refuse to deliver up the letters and documents belonging to him with which they had been entrusted on his behalf, and the defender should therefore be assoilzied. (2) The defender having offered, and been all along and being now willing, to pay to the pursuers the amount of their accounts as taxed, upon receiving back from them his said letters and documents, the present action was unnecessary, and ought to be dismissed, and the pursuers found liable in expenses."

The Lord Ordinary (JERVISWOODE) found "that the averments set forth on the part of the defender on the record, and on which the first and second pleas in law on his behalf are rested, are not relevant in defence against the conclusions of the present action."

The defender reclaimed, and shortly after consigned the sum claimed.

SOLICITOR-GENERAL and MACLEAN for him.

The LORD ADVOCATE and GLOAG, for the pursuers, were not called on.

Defender's counsel having taken time to consider whether they should amend the record, so as to make their averments more specific, declined to do so.

The Court observed that the defender's statements did not approach to relevancy.

Adhere, with expenses.

Agent for Pursuers—William Ellis, W.S.
Agent for Defender—Alexander Morison, S.S.C.

Friday, November 24.

BRITISH LINEN COMPANY *v.* STEWART AND OTHERS.

BRITISH LINEN COMPANY *v.* DAVIDSON AND OTHERS.

Process—Remit ob contingentiam—*Leading Cause*—48 *Geo. III*, 151, § 9—*A. S. 24th Dec.* 1838, § 6. In any remit *ob contingentiam*, under 48 Geo. III, c. 151, § 9, as the weekly Outer-House Roll of New Causes having been discontinued in terms of the Court of Session Act, 1868; and consequently the A.S. 24th Dec. 1838 being no longer applicable to the circumstances,—*Held* (after consultation with the whole Judges) that the time at which a cause comes before a Lord Ordinary, in the sense of that Act and the Act of Sederunt, must now be held to be the calling of the cause, and the cause first called must be held the leading cause.

John Stewart brought a multiplepoinding, in name of the British Linen Co. as nominal raisers, against himself and William Davidson, as defenders and claimants. A week after this summons was signeted and served, William Davidson brought another multiplepoinding, with conclusions for exoneration, in name of the British Linen Co., and of himself and other parties, against John Stewart, himself, and others, as claimants. Both actions related to two sums of £206, 12s. 7d. and £52, 15s. 2d., deposited