

day lodged by Hill in his own account with the National Bank. The effect of these two facts is that £500 was transferred from Mackay to Hill, thus creating a debit against Hill in favour of Mackay. But if we give effect to the jottings in the cash-book a perfectly different result will be produced. The jottings represent certain intermediate transactions—(1) A payment of £500 by Mackay to the firm of Gowans & Mackay; (2) a payment of the same sum by the firm of Gowans & Mackay to Gowans; and (3) a payment of the same sum by Gowans to Hill. On these entries Mr Gowans relies, to show that on that day Hill received £500 from him. This depends on whether effect is to be given to these jottings as if they represented three different payments. It seems a very curious circumstance that so round-about a series of payments should have been made on that particular day. But if it can be shown from the whole circumstances of the case that it is against all probability that such payments should have been made, then no reliance can be placed on the jottings. Is it conceivable that on the 26th October 1867 Mackay should have paid £500 to the firm of Gowans & Mackay? We have evidence to show the condition of accounts between Mackay and the firm at that date. Gowans had drawn very largely on the account of the firm, and Mackay very moderately, although they were equally interested in it. The accountant has shown that down to October 1864 there had been drawn by Gowans £9000, and by Mackay about £300, and these drawings had gone on in the period from October 1864 to October 1867. In fact, at the time of this supposed payment by Mackay to the firm, Gowans had drawn £12,000, and Mackay only £1172; the one had drawn more than ten times the other. Yet it is represented that on 26th October 1867 Mackay thought fit to pay £500 into the concern. That is not credible, and as little credible is the next step, of transferring the £500 from the firm to Gowans. I have no hesitation in saying that these jottings do not represent real operations, and on that ground I am of opinion, with the accountant and the Lord Ordinary, that Mr Gowans is not entitled to credit for that sum of £500.

The next question regards a sum of income tax. The partners of Gowans & Mackay had agreed to dissolve the copartnership, and on May 26, 1869, they exchanged mutual discharges. Mr Gowans got endorsed to him a bill by the Highland Railway Company for £13,952, 12s. 4d., and Mr Mackay one by the same company for £8651. In consideration of these bills so endorsed to them, the one partner, Gowans, undertook to pay off all the outstanding debts and liabilities of the firm; while, on the other hand, Mackay assigned to his partner, Gowans, the whole other assets of the firm, and all rights he had or might have to them. Now, at the time that this arrangement was made there was due by the firm a sum of income tax amounting to £250. The question is, whether this is one of those payments which Mr Gowans undertook to discharge? Mr Gowans did pay the sum of £250 on 31st May 1869, but Mr Hill afterwards paid over to Mr Gowans what was called Mr Mackay's share of this—the notion being that this £250 was not a debt of the firm, but of the partners individually. Now, there is no doubt that this tax is payable by the beneficial recipients of income. If matters were always settled strictly, we should have fewer questions on this subject in Court. But this

principle is frequently lost sight of, and Mr Gowans, when he paid the £250 as above mentioned, was, I am persuaded, acting upon the real understanding between the partners. I think, therefore, that the point has been properly disposed of by the Lord Ordinary.

The only other disputed matter arises under date 14th May 1866. This relates to a sum of £100 lent by to George Gowans, the defender's brother. Mr Gowans and his brother had given a joint bond for the sum, which Mr Hill paid, and Mr Hill's trustee comes now on Mr Gowans to relieve him of the sum in this bond. But Mr Gowans very naturally says—I insist on an assignation. Now, there seems to have been a good deal of reluctance on the part of Mr Hill's trustee in granting this assignation. This is to be regretted, as it must be granted now, and till it is granted we cannot give decree for this sum. This is, however, sufficient to dispose of that question.

The matter of expenses remains for our consideration. There are a number of opposing things to be looked to. On the one side, the extremely loose and unsatisfactory state in which Mr Hill's books were kept has undoubtedly been a source of great expense and of much of the difficulty that has been experienced in clearing up some of the questions, which would otherwise have been free from doubt. On the other hand, there has been some misconduct of the litigation on the part of the defender. This has been more apparent indeed to the Lord Ordinary than to us, as it came more immediately under his notice. But I think that the modification which he has made is hardly sufficient. He has deducted one quarter from the pursuer's expenses. We are all agreed that it should have been one-half.

The rest of the Court concurred.

Agents for Pursuer—Lindsay, Paterson, & Hall, W.S.

Agent for Defender—Laurence Macara, W.S.

Tuesday, March 19.

SPECIAL CASE FOR THE COMMISSIONERS OF SUPPLY FOR THE COUNTY OF ARGYLL AND OTHERS.

Trust—Commissioners—Public Property—Assessment, Liability to—Valuation.

Held (in conformity with the previous decisions in the cases of the *Clyde Navigation Trustees* and the *Leith Dock Commissioners*), that the Commissioners of the Caledonian Canal were liable to be assessed for county rates, in respect of their ownership and occupancy of the Crinan Canal and its appurtenances; and that the valuation fell to be made under the General Valuation Acts, and not under the Special Act of 1799, passed when the canal was in the hands of a private company, and when such enterprises were not familiar to the law.

The parties of the first part to this Special Case were the Commissioners of Supply for the county of Argyll. Those of the second part were the Commissioners of the Caledonian Canal, in whom was also vested the Crinan Canal, which lies wholly within the said county of Argyll.

The question between these two parties which

was submitted for the adjudication of the Court, was, Whether the Commissioners of the Caledonian Canal were, in respect of their possession and occupancy of the Crinan Canal, liable to be rated for the various county assessments leviable by the Commissioners of Supply for the county.

From the statement of facts in the Special Case it appeared that the Crinan Canal had been commenced towards the end of the last century by a company of private individuals, who expended a capital of over £100,000 upon the undertaking. The said company was incorporated by the Act 33 Geo. III. c. 104, which, in respect of their outlay in making and maintaining the canal, authorised them to levy certain dues for their own behoof. By the Act 39 Geo. III. c. 27, the company were authorised to raise farther capital by borrowing on the security of their rates or otherwise. And the 18th section enacted certain regulations for the assessment of the property of the company for all public and parochial rates leviable from it. By a series of statutes passed between 39 Geo. III., and 11 and 12 Vict., the Government was authorised to advance to the company certain sums, amounting in all to £74,400, for the completion and repair of the canal, upon the security of the dues and tolls which the company was entitled to levy. These sums were advanced, but neither principal nor interest were paid when, in 1848, the Act 11 and 12 Vict. c. 54 was passed, "Incorporating the Commissioners of the Caledonian Canal, and vesting in them the undertaking of the Crinan Canal." This Act proceeded on the narrative that the public debt on the Crinan Canal amounted, exclusive of interest, to £74,400, and that the revenue derived therefrom had been, and still was, scarcely sufficient to defray the costs of maintaining the canal in efficient working order, "and there is no prospect of any augmentation of such revenue except by an adjustment of the duties leviable, and by the expenditure of large sums of money, as considerable repairs are still necessary to render this navigation safe and permanently useful;" and that, in the circumstances, "it is just and reasonable that the said canal and works connected therewith should be held at the disposal of the Commissioners of Her Majesty's Treasury, freed and discharged from all the right, title, interest, claim, and equity of the said company of proprietors, or of any person or persons claiming from or through them;" and that it would be of advantage that the Commissioners of the Caledonian Canal should be incorporated, and that it appeared essential that the Crinan Canal and works should be vested in the Commissioners of the Caledonian Canal. It was therefore enacted by section 2 that the Commissioners of the Caledonian Canal should be incorporated under the name of "The Commissioners of the Caledonian Canal," and by that name should and might sue and be sued, and acquire, hold, and enjoy, and also acquire and dispose of lands and property, heritable and moveable, real and personal; and by section 5, "that from and after the passing of this Act the tolls and rates arising from the Crinan Canal, and also the canal itself, and all the estate, right, title, and interest in and to the same, and all quays, houses, lands, privileges, easements, and appurtenances belonging or appertaining thereunto, shall be and become the property of, and the same are hereby transferred to and vested in the Commissioners, freed and discharged from all rights, equity, or claim of the said Company of proprietors of the

Crinan Canal, or of any person or persons claiming through them, except as hereinafter provided; and the Commissioners shall thenceforth have and enjoy all the rights, powers, and authorities for levying, taking, altering, and managing the tolls, rates, and duties, leviable on the Crinan Canal, and all other rights, powers, and authorities, now, or at any time heretofore possessed or enjoyed by the said Company of proprietors, and shall and may henceforth undertake and exercise the management and administration of the Crinan Canal, and of everything connected therewith, in as full and ample a manner as now appertains to them with regard to the Caledonian Canal, under or by virtue of the said last mentioned Acts, and of this Act; and from and after the passing of this Act all right of management or interference, and all interest of any other parties whatsoever, of or in the Crinan Canal, and the works and appurtenances thereof, or belonging thereto, and the tolls and rates arising therefrom, shall to all intents and purposes, except as hereinafter provided, cease and determine." And by section 6—"That if the said Company of proprietors shall at any time within twenty years from the passing of this Act pay, or cause to be paid, into Her Majesty's Treasury the said sum of £74,400, with legal interest thereon, and also all such sums of money as the Commissioners shall have expended in improving and keeping in repair the Crinan Canal, and works connected therewith, over and above the amount of the tolls and rates which shall in the meantime have been received from the said canal, then and in such case the tolls and rates arising from the said canal, and also the said canal itself, and all the estate, right, title, and interest in and to the same, and all quays, houses, lands, and privileges, easements, and appurtenances belonging or appertaining thereunto, shall revert to and again become the property of, and be vested in the said Company of proprietors, freed and discharged from all claims on the part of Her Majesty's Treasury, in as full and ample a manner, to all intents and purposes, as if this Act had not been passed." The said right of redemption had not been exercised, and the period of time within which it was competent had elapsed before the present case was brought. In 1860 the Act 23 and 24 Vict. c. 46, was passed, to amend and enlarge the powers of the Caledonian Canal Commissioners, and the provisions of the previous Act relating to the Caledonian and Crinan Canals. In this Act the Caledonian and Crinan Canals were dealt with as one.

The Special Case concluded thus—"The property now vested in the Commissioners of the Caledonian Canal under the said statutes, and held by them for the purposes thereof, consists, *inter alia*, of the tolls and rates of the said Crinan Canal, and also the canal itself, and all the estate, right, title, and interest in and to the same, and all quays, houses, lands, privileges, easements, and appurtenances thereunto, freed and discharged from all rights, equity, or claim of the said Company of proprietors of the Crinan Canal, or of any person or persons claiming through them as aforesaid.

"The superintendent of the Crinan Canal at Ardrishaig has an official residence and small park there, part of the canal property, and at Crinan there are an inn, coach-sheds, and stables, at present let by the Canal Commissioners to tenants unconnected with the working of the canal.

"The said Crinan Canal is entered in the valua-

tion roll for the said county of Argyll, made up in terms of the Lands Valuation Act, 17 and 18 Vict. c. 91, for the year from Whitsunday 1871 to Whitsunday 1872, at the yearly value of £1638. Said valuation includes the canal, and the whole subjects therewith connected, vested in the Commissioners of the Caledonian Canal as aforesaid.

The opinion and judgment of the Court were respectfully craved upon the following questions:—

“1. Whether the second parties are, as owners or occupiers of the said Crinan Canal and its appurtenances, liable to assessment in respect thereof under the said statutes mentioned on the second page hereof?

“2. Whether the said Crinan Canal and appurtenances thereof, now vested in the second parties, and the revenue thereof, are exempt from the assessments imposed by the first parties under the statutes mentioned on the second page hereof?

In the event of the first question being answered in the affirmative, and of the second being answered in the negative:—

“3. Whether the valuation at which the said Crinan Canal and appurtenances are to be rated for the assessments made or to be made by the said first parties, is to be regulated by the Act 39 George III., cap. 27 (1799)?”

WATSON and MACLACHLAN for the Commissioners of Supply.

SOLICITOR-GENERAL and MARSHALL for the Caledonian Canal Commissioners.

Authorities referred to—*Clyde Navigation Trustees*, 3 Macph. H. of L. 100; *Leith Dock Commissioners*, 4 Macph. H. of L. 14; and *Mersey Dock and Harbour Board*, 3 Macph. H. of L. 102; *Southampton Dock Commissioners*, 20 Law Journ. 155.

At advising—

LORD PRESIDENT—The Commissioners of Supply for the county of Argyll have imposed on the Commissioners of the Caledonian Canal, in respect of the ownership and occupation of the Crinan Canal, certain assessments for the years 1869–70 and 71, these assessments being imposed under the various Acts which confer these powers upon them. The Commissioners of the Caledonian Canal contend that they are not liable in such assessment. This is the dispute which is here submitted to our adjudication.

The Crinan Canal was originally commenced by a company of private individuals as a commercial speculation, and so long as it continued the property of such company it was liable to assessment to the full extent. Prior to the year 1848 this was the state of matters, though even before that year the proprietors had become very largely indebted to the Treasury. But in 1848 a statute was passed which made a very great change in the circumstances. The Act 11 and 12 Vict. c. 54, was passed for the purpose, in the first place, of incorporating the Commissioners of the Caledonian Canal, and for vesting the Crinan Canal in them, with a right of redemption to the proprietors within twenty years from the date of the Act; though the prospect of that being done seems to have been very slight. It was recited in the introductory clause that in the circumstance “it is just and reasonable that the said canal and works connected therewith should be held at the disposal of the Commissioners of Her Majesty’s Treasury, freed and discharged from all the right, title, interest, claim, and equity of the said company of proprietors, or of any person or persons claiming from or through

them;” and then, after the clause incorporating the Commissioners, it is added—“That from and after the passing of this Act the tolls and rates arising from the Crinan Canal, and also the canal itself, and all the estate, right, title, and interest in and to the same, and all quays, houses, lands, privileges, easements, and appurtenances belonging or appertaining thereunto, shall be and become the property of, and the same are hereby transferred to and vested in the Commissioners, freed and discharged from all rights, equity, or claim of the said company of proprietors of the Crinan Canal, or of any person or persons claiming through them, except as hereinafter provided.” While by section 6 the right of redemption within twenty years on payment of £74,400, with legal interest thereon, is secured to the proprietors.

Now, this effected a very great alteration in the proprietorship of the Crinan Canal. For, after the passing of that Act it no longer belonged to a commercial company, but came to be vested in statutory trustees for a public purpose. In short, the Crinan Canal was to become vested in them just as the Caledonian Canal had been. It has occurred to the Court, therefore, that if the Caledonian Canal were not properly subject to assessment, then it is probable that the Crinan Canal would not be so either. We therefore think it necessary to consider what was the position of the Caledonian Canal, as to assessment, before the passing of this Act of 1848. This is, no doubt, a question of very great importance. It seems to me, however, to be quite indispensable for us to consider it.

The existence of a power of redemption might have been a speciality of some importance, but it has now come to an end, and the canal has therefore vested in perpetuity in the Commissioners, and every shadow of a right in the old proprietors is extinguished. The question, whether the Caledonian Canal is possessed and occupied by the Commissioners, is one that depends on a different set of statutes from those which regulate the Crinan Canal. But it is quite unnecessary to go back into the history of the Caledonian Canal, except to state that it was not originally a private speculation, but was made by public money, and vested in the Commissioners for the purposes of a great public work. At certain stages of its existence the Caledonian Canal was, in fact, vested in a department of the Government, but its present condition has to be ascertained from a consideration of the Act of 1846, c. 46. The two canals are entirely amalgamated and made one in the hands of the Commissioners by that statute, so far as this had not been done by 11 and 12 Vict. c. 54. This Act of 1860 proceeds on a recital of all the Acts affecting either of the canals, and then it proceeds to grant authority to the Commissioners to support, maintain, and improve and use the said canals. They are also empowered to give off water to manufacturers. And for the purpose of enabling them to do all these things, the 10th section empowers them to levy certain rates and duties on vessels, goods, and passengers. They are farther authorised to make docks, &c. out of the rates so to be levied, or out of moneys to be borrowed on the security of the same. They are empowered in the same way to make graving docks, and to set up cranes, warehouses, &c., and to levy rates on those making use thereof. Under section 19 they are entitled to embark in the undertaking of carriers by water. They are also empowered to make bye-laws,

to license pilots, and to borrow money. Then by section 25 it is enacted that all rates "levied, and all rents received, and all monies borrowed, under the authority of this Act, shall be applied and expended on or in connection with the canals, or either of them, and in providing additional accommodation for the traffic thereon," &c. And, finally, by section 28, power is given to sell, lease, feu, or convey any surplus land. Now, it is impossible to read that Act without seeing that the position of the Caledonian Canal, in the hands of the Commissioners, is very clearly defined by it. These Commissioners are statutory trustees, for the purpose of maintaining and improving a very important public work. The locality of this public work is indeed rather an extensive one, and in that respect it probably differs from all others of the same kind. But, with that exception, I do not see how it is possible to distinguish the position of these Trustees or Commissioners from that of the Leith Dock or the Clyde Navigation Trustees. They are just entrusted with this property for purposes of public utility. But these purposes of public utility are of a totally different character from those which belong to property vested in the Crown, or in any servant of Government for the Crown, and the beneficial interest in which forms part of the national revenue. The Caledonian Canal may be termed a national undertaking in one sense; but it is only made and maintained for the sake of that portion of the public which uses it. Now, this distinction has been founded on as a ground of judgment in so many cases, both in this Court and in the House of Lords, that I do not think it necessary to dwell upon it here. It is enough to warrant us in holding that the Caledonian Canal, and if so, then the Crinan Canal also, is subject to all ordinary taxation, just as Leith Docks or the Clyde Harbour. It is not public estate in any proper sense of the term, and is not therefore entitled to the exemption which is conferred upon that, and on no other species of property. I therefore propose to answer the first question in the affirmative, and the second in the negative.

The third question is, Whether the valuation is to be regulated by an Act which was passed in George III.'s time, shortly after the canal was commenced, and intended to regulate the mode in which the assessment should be made at that time, when the canal was in the hands of private proprietors. It was necessary to pass such a statute at the time, because then such enterprises were little known, and less understood. But the assessment of that kind of property is now perfectly familiar to the law, and special legislation on the subject has been superseded by the General Act. I do not think, therefore, there can be any doubt that this assessment must be laid on in terms of this General Act, according to the valuation roll.

LORDS DEAS and ARDMILLAN concurred.

LORD KINLOCH—The leading question put to us is, whether the Commissioners of the Caledonian Canal are liable in county rates, in respect of their ownership or occupancy of the Crinan Canal?

This canal was formed towards the close of last century by a company incorporated by Act of Parliament for that purpose. It was found necessary to give this company large assistance, by loans from the public purse. A series of Acts were passed authorising these loans, and statutorily impleading the canal in security of their repayment.

Under this authority £25,000 were advanced by the Scottish Exchequer in 1799, £25,000 by the Treasury in 1805, £5000 out of the Consolidated Fund in 1811, and £19,400 by the Scottish Exchequer in 1816, making £74,400 in all. In security of these advances the canal was assigned over to the Scottish Barons of Exchequer; and in 1838, in connection with the arrangements for the abolition of the Court of Exchequer in Scotland, a transference of the security was made to the King's Remembrancer, and Auditor of Exchequer for the time being.

The advances seem to have outgone the value of the Crinan Canal; and, in the year 1848, an Act was passed, the 11 and 12 Vict. c. 54, which, on the narrative of the insufficiency of the canal to meet its burdens, and whereas (as the Act bears) "it appears to the Commissioners of Her Majesty's Treasury to be essential that the Crinan Canal, and works connected therewith should be vested in the Commissioners of the Caledonian Canal, in order that both navigations may be united under the same management," declared the canal, accordingly, to be so vested, in property and administration, "freed and discharged from all rights, equity, or claim of the company of proprietors of the Crinan Canal, or of any person or persons claiming through them, except as hereinafter provided." The after provision was that, if, within twenty years from the passing of the Act, the Crinan Canal Company should pay into the Treasury the above-mentioned sum of £74,400, and interest, and any other sum due by them in consequence of the charges on the canal exceeding its produce in tolls and rates, the right to the undertaking should "revert to, and again become the property of, and be vested in the said company of proprietors, freed and discharged from all claims on the part of Her Majesty's Treasury." This payment was never made; and no reversion of the right to the original company ever took place.

The substance of this proceeding was simply that the Crinan Canal was bodily taken over in payment of the advances made on its behalf. How, after being so taken over, it was ultimately disposed of, was fixed, first, by the Act 11 and 12 Vict., already quoted, which vested the Crinan Canal in the Commissioners of the Caledonian Canal; and still more fully by an after Act of 23 and 24 Vict. c. 46. This Act applied equally to the Caledonian and Crinan Canals, which were subjected to the same administration in the persons of the same Commissioners. These Commissioners were authorised to maintain the canals, and to charge specified rates and duties for the use of the navigation. They were empowered to construct docks and basins, and other incident works. They were authorised to borrow money on the security of the rates, and to apply it for the purposes of the Act. And the following express enactment, as to both canals, was contained in section 25—"All rates levied, and all rents received, and all monies borrowed, under the authority of this Act, shall be applied and expended on, or in connection with, the canals, or either of them, and in providing additional accommodation for the traffic thereon, or in making docks, basins, or slips, as aforesaid, as shall from time to time appear to the Commissioners expedient." The whole produce of both canals is thus devoted, in express terms, to expenditure on the canals.

In this state of things, I consider the liability of the Crinan Canal to assessability for the general taxation of the country to be not a matter of diffi-

culty. I perceive no difference in this respect between the Crinan Canal and the Caledonian. But it is only as to the Crinan Canal that our opinion is asked.

The question is one not now to be discussed on principle merely. There are certain recent well-known judgments by which the matter must be held ruled. It is settled, as I think, by these authorities, that an exemption from public taxation is not possessed merely in respect of the property sought to be assessed being under the charge of public trustees, or used, in a general sense, for the benefit of the public. It is necessary to this exemption that the property be in the occupancy of the Crown for the purposes of the Crown; or, as it has been otherwise expressed, occupied by Government for Government purposes. A familiar illustration is derived from the case of buildings occupied as Government offices—the Post-Office, the Admiralty, the Horse Guards, and the like. The present case does not come within this category. The Crinan Canal is no doubt vested in public Commissioners, for public uses, that is to say, it is so vested for the purpose of any of the public who choose to take advantage of the navigation, doing so on payment of the fixed rates and duties. Therein it is not used by or for behoof of the whole public, but only of a certain portion of them, who pay for the benefit. I consider it to be now firmly established that this is not equivalent to Crown occupancy for Crown purposes, but something entirely different; and that property so held is liable to rating; and the rates just form part of its ordinary outgoing charges. I need not more specifically refer to the decision in England regarding the Mersey Navigation, or the judgments in this Court and the House of Lords with regard to the Leith Docks and Glasgow Harbour, and latterly the University of Edinburgh. These are familiarly known.

The specialty which has been supposed to exist in the present case lies in the amount of debt owing (as is assumed) to the Treasury, on account of the Crinan Canal, which places, as was argued, the Commissioners of the Caledonian Canal in the position, *quoad* the Crinan Canal, of trustees for Government, for repayment of this debt. But I think there is here a twofold error. According to the course of the transactions, I conceive that the debt previously incurred by the Crinan Company was substantially wiped away by the canal being taken in lieu of it, under the Act 11 and 12 Vict. c. 54. The canal, no doubt, thus came in room of the money debt. But in place of its being kept in the form of a security for debt, it was statutorily made over to the Commissioners of the Caledonian Canal, not as trustees for the Treasury, but as holding both in property and administration, for the purposes of navigation, with an obligation on these Commissioners to employ all the proceeds of the canal in maintaining and improving the subject of their trust. Such being the case, the prior debt incurred for the canal becomes, in my apprehension, of no sort of relevancy in the present question. Indeed, even if there still were debts on the Crinan Canal, payable to Government, it would not, as I think, affect our present conclusion. For the hinging point in the case is the use which is made of the canal, and that this is not a use for Crown or Government purposes. Few things of public utility, like the Crinan Canal, have come into existence without aid from the public purse, either afforded by a vote of Parliament amongst the supplies of the year, which does not infer re-

payment, or by means of a statutory loan sanctioned by Parliament. But this is of no moment towards exempting from taxation, if the occupancy is not for Crown or Government purposes, but, as here, for the purposes of navigation on the part of those who pay for the benefit by statutory rates. This circumstance I consider decisive against any plea of exemption.

I am therefore of opinion that the first question should be answered in the affirmative; the second in the negative.

The third and remaining question is, whether the valuation of the canal and its appurtenances is to be regulated by the Act 39 Geo. III. c. 27, or, which is the only alternative, by the General Valuation Act for Scotland, 17 and 18 Vict. c. 91. I can have no doubt on this question. I consider the Valuation Act, 17 and 18 Vict., to have superseded and set aside any previous enactments on the subject, and this very emphatically in the case of railways and canals. I am therefore of opinion that this question should be answered in the negative.

Agents for the Commissioners of Supply—Mac-lachlan & Rodger, W.S.

Agent for the Caledonian Canal Commissioners—James Hope junior, W.S.

Tuesday, March 19.

LOGAN v. WEIR.

Jury Trial—Lead—Unpaid Expenses.

Where the pursuer, having failed in one part of his case, had been subjected to the payment of a sum of expenses, on the third last sederunt day of the Winter Session, the defender moved to have the notice of trial given for the Spring Circuit Court discharged, on the ground that the pursuer was unable to pay these expenses. The expenses not having been paid nor caution found, the Court, in respect of the Session being at an end, discharged the notice of trial.

The pursuer having raised an action of slander, said to have been committed judicially, against the defender, failed in certain points, and decree for £33 of expenses was, on 16th March, pronounced against him. Notice of trial at the ensuing Stirling Circuit, on the remaining issue, was given by the pursuer; and the defender now moved to have this motion discharged.

BALFOUR, for him, stated that the expenses had not been paid, and that the pursuer's agent had stated to the defender's agent that the pursuer was unable to pay them. In these circumstances it was unfair to compel the defender to litigate in a doubtful case, where it would be impossible for him to get his expenses if successful. If the trial were deferred till May the pursuer would be charged to pay the expenses decreed for, and would either have paid them or become bankrupt. Authority referred to—*Wright v. Ewing*, 12 Shaw 535.

MAIR and RHIND, for the pursuer, objected to the lead being thus taken from the pursuer.

The Court continued the case till the following day, to give the pursuer time to pay the expenses, or find caution for them, intimating that if one or other was not done, the notice of trial would be discharged. The Court intimated that if it had not been the second last day of Session, they would have