contended for the flars that, as the clay is *pars soli*, the right to these rents is in the flar, and not in the liferenters, who are bound to use the subject *salva rei substantia;* and they maintain that these rents must be capitalised, and that the interest only can be drawn by the liferenters.

The general rule, that the right to work coal or quarries does not pass with such legal liferent as terce, or with localities in lieu of terce, may be held as settled in our law, although the authorities are meagre, and our earlier writers, Craig and Stair, do not lay down the law quite so stringently. Stair rather seems to favour the liferenters' right when the minerals were in the course of being worked by the granter, and there was no danger of exhaustion. There is also a text in the civil law favourable to the right of a usufructuary to work mines which had been opened and worked by the father of the family; 7 D., 1, 13, 5. But probably the cases of *Preston* and the *Duchess of Roxburgh* may be held to decide that in such circumstances the liferenter has only a usufruct, and cannot appropriate the produce of mineral workings as being a diminution of the capital or substance of the land.

The case is different, however, with a liferenter by reservation, and it is also different, as was found in the case of *Waddell*, when a liferent is constituted not in specific lands, but in the *universitas* of the granter's estate. In that case the testator had granted to his sister a right in liferent to his whole means and estate. Prior to his death he had let a mineral field for 999 years. On a very deliberate advising, and a review of all the authorities, the Court sustained the liferenters' claim to the rent, not on any specialty, which was disclaimed by the bench, but on the intention of the testator as disclosed by the terms of such a settlement. The main ground relied on by the Judges was, that the minerals had truly ceased to be an adjunct or accessory of the land, and constituted a separate estate, bearing an annual money return, and that it could not be supposed that the testator intended to exclude his sister from this important source of income. I think Mr Bell in his Principles rightly states the authority of this decision as applicable to cases of general settlement, although, of course, in all such cases the intention of the granter must prevail. If a liferent of a mineral field were specifically given, or if the granter of the general settlement had no estate but mineral rents, I do not suppose the question would be doubtful. But, looking to the special facts in this case, I entertain no doubt that the liferenters must prevail.

The subject is one in the immediate vicinity of Glasgow, and within the municipality. The ground in question is building ground, which is rising rapidly in value, but cannot be so used pending the lease of the clay on the surface. The rent derived from the clay is more than a third of the whole free rental of the testator's property, but is less than the annual return which would arise from the building value of the ground. It is plain from the facts stated that even now the use of the ground as a clay field is not the most valuable to which it might be put. In two years the trustees will be entitled to sell the ground, and it is expected to bring about £10,000 as building ground. This would yield a return exceeding the clay rent by more than £120. I look therefore on the clay lease as being only a temporary mode of occupying the surface, which in no respect impairs the capital or substance of this estate, but leaves it as valuable as it was before; and that there is no ground for excluding the three ladies to whom this liferent has been left from a benefit which they were certainly intended to enjoy.

The other Judges concurred.

Agents for First Parties—J. & R. D. Ross, W.S.
Agents for Second Parties—J. & A. Peddie, W.S.

Tuesday, July 2.

FIRST DIVISION

MACALINDAN *v.* ADDIE & SONS.

Discharge—Reduction.

A workman was injured by the falling of a cage in the shaft of a pit, and he afterwards accepted £6 from his employers, and granted a receipt therefor, the receipt bearing to be "in full of all demands at that date." A proof having been led, the Court *held* that this payment had been made and received as full payment of all the workman's demands against the employers, and that he was thereby debarred from suing an action of damages against them.

This was an action of damages, brought in the Sheriff-court, for personal injury sustained by the pursuer Patrick Macalindan in June 1870, at one of the defenders' pits near Inchinnan, in the county of Renfrew, in consequence of the falling of a cage in which he was descending the pit, whereby he was precipitated to the bottom. The pursuer averred that the accident was the result of defect or insufficiency of the slides for the cage, consequent upon the culpable negligence of the defenders. The defence was, that after the accident the pursuer agreed to accept £6 in full of all demands against the defenders, and was thereby debarred from suing the action. In support of this defence two documents were produced. In the first place, an agreement (No. 7 of process) dated 2d December 1870, in these terms:—"I, Patrick M'Lundie, do hereby agree to accept of the sum of six pounds stg. for damages received in No. 1 Pit shaft on 10th June 1870, and this in full of all demands at this date. "PAT. M'LIENDEN.

"£6, 0s. 0d."

And in the second place, a receipt (No. 8 of process) dated 3d December 1870, in these terms:—"Received from Messrs Robert Addie & Sons the sum of six pounds stg. for damage received in No. 1 Pit shaft on 10th June 1870, and this in full of all demands at this date.

"*Signed on Stamp*,
"PATRICK M'LONDEN.

"£6, 0s. 0d."

The Sheriff-Substitute (COWAN) pronounced the following interlocutor:—

"*Paisley, 12th December* 1871.—Having heard parties' procurators, and considered the closed record and productions, before answer allows defenders a proof in support of their preliminary defence, and to pursuer a conjunct probation; grants diligence to parties; and appoints the proof to proceed upon the 11th January next, at 11 o'clock A.M.

"*Note.*—While the Sheriff-Substitute is of opinion that such a document as the alleged agreement of No. 7 of process does not require a stamp, it appears to him that in the case of the pursuer, who may be an illiterate and uneducated man, it

is proper that the documents Nos. 7 and 8 of process, being neither holograph nor tested, should be supported by parole testimony, not only as to the circumstances in which they were signed and handed to defenders, but also as to the real arrangement and compromises come to. He entertains no doubt of the competency of proving by parole such a compromise of a claim; and, while he does not consider that the documents as they stand are in themselves sufficient to bar the pursuer's claim, he is of opinion that they may prove to be important adminicles of evidence, along with the proof which may be led. The proof allowed at present is only as to the preliminary defence, for if that be true, there is a manifest expediency, both as regards time and expense, in not entering on the larger and costlier proof which would be required to ascertain the truth on the merits of the case."

On appeal, the Sheriff (FRASER) adhered, and remitted the case to the Sheriff-Substitute to be further proceeded with. The proof was taken, and the pursuer deponed that neither of the receipts were read over to him, and that he had not understood that they were in full of all claims against the defenders. The manager and the doctor stated, however, that it was distinctly understood that £6 was in full of all demands, and that the documents had been read to the pursuer before signing.

The Sheriff-Substitute pronounced the following interlocutor:—

"*Paisley, 6th February* 1872.—Having heard parties' procurators, and considered the closed record and proof adduced as to the preliminary defences stated, finds that the pursuer did, on or about 2d December 1870, deliberately and voluntarily agree to accept the sum of £6 from defenders in full satisfaction of all claim against them, and that upon the day following he was paid the said sum, and received it in full satisfaction of his claim; therefore sustains the preliminary plea stated on the part of the defenders; assoilzies the defenders from the whole conclusions of the action, and decerns; finds no expenses due to or by either party.

"*Note.*—The Sheriff-Substitute is quite satisfied not only that pursuer accepted the £6 in full satisfaction of his claim, but that he did so with his eyes quite open to the whole circumstances of the case. It might, perhaps, have been better for him if, instead of pressing for a settlement before the manager left, he had taken the legal advice on which he has more recently been acting. But that consideration cannot affect or detract from the concluded settlement of the claim which he deliberately made with the defenders."

The pursuer appealed to the Court of Session.

MAIR, for him, argued that the discharge was only of claims for such injuries as the pursuer thought he had sustained at that date, but that since then the injuries had assumed a more serious aspect, and the pursuer was permanently disabled. That the discharge was at all events ambiguous, and a proof at large should be allowed, or the action sisted, so as to enable the pursuer to bring a reduction of the discharge on the ground of error —*Dickson* v. *Halbert*, Feb. 17, 1854, 16 D. 586.

BALFOUR, for the defender, argued that the discharge was clearly a full discharge of all the pursuer's claims against the defenders.

At advising—

LORD PRESIDENT—The plea for the defenders in this case is, that the whole affair is discharged. I do not give much weight to the words of this discharge, viz., that the payment received was in full of all demands at the date, and if there was any ambiguity in the matter, I think that it was quite competent to bring evidence of what actually passed at the time. Now, looking at the proof which has been led, I think that there is no doubt as to what occurred, for from that proof it appears that the pursuer was very anxious to get his claim settled, and that after some dispute he took £6 as full payment of the claim which he had against the defenders. So, under these circumstances, I cannot doubt that the Sheriff-Substitute is right, and I am therefore of opinion that the appeal should be dismissed.

LORD DEAS concurred.

LORD ARDMILLAN—We have here two documents—first, an agreement by the pursuer to accept £6 as in full of all demands, and second, a receipt for the six pounds. Now, there would have been no occasion for parole evidence here, unless the pursuer had said that he could not read, and that the documents had not been read to him before signing. But evidence having been led, it has been proved that the agreement was read over to the pursuer before he signed, and also that the receipt was read in his presence, and it has also been sworn that the affair was understood by both parties to be an out and out settlement of the whole matter. So I cannot see any ground for reducing this settlement, and I entirely agree with your Lordship in the chair.

LORD KINLOCH—I agree with your Lordships. I think the proof makes it clear that the settlement was a final one. It may be that there was a miscalculation as to the extent of the injuries, and this may be a reason why Addie & Sons should consider whether they should not give the pursuer something in addition to the £6. But, of course, that is a topic which we cannot take into judicial consideration.

Agent for Pursuer—William Officer, S.S.C.
Agents for Defenders—Gibson-Craig, Dalziel, & Brodies, W.S.

Tuesday, July 2.

THOMAS LOCKERBY *v.* THE CITY OF GLASGOW IMPROVEMENT TRUSTEES.

Arbitration—Lands Clauses Acts—Decree-Arbitral —Reduction—Proof.

Circumstances in which, in an action of reduction of a decree-arbitral issued by arbiters appointed to assess compensation for land taken under the Lands Clauses Acts, the Court allowed the pursuer a proof of his averments that the arbiters had decided questions of law in their award, instead of merely fixing the value of the subject contained in the statutory notice.

The question raised in this case is as to the functions of arbiters appointed to assess compensation for land taken under the Lands Clauses Acts. The pursuer is a gasalier manufacturer, having premises in Buchan Street, Gorbals, Glasgow, held under a lease having about six years to run. A statutory notice was served upon him by the defenders on 7th June 1871, setting forth, in the usual form, that they required to pur-