there is nothing which I can regard as amounting to an express agreement to keep open the offer.

The other Judges concurred.

The interlocutor of the Lord Ordinary was accordingly recalled.

Counsel for Pursuers—Watson and Maclean. Agents—J. & R. D. Ross, W.S.

Counsel for Defender—Solicitor-General (Clark) and Asher. Agents—J. W. & J. Mackenzie, W.S.

Saturday, November 22.

FIRST DIVISION.

[Sheriff of Lanarkshire.

FOULDS — APPELLANT IN LEISK'S SEQUESTRATION.

Bankrupt—Liberation—Caution.

Where, pending appeal against order for liberation, the opposing creditor had presented a petition for recall of the sequestration in which final judgment had not been pronounced,—*held*, the bankrupt was entitled to liberation, on condition of finding caution not only to appear but also to return to prison in the event of the sequestration being recalled.

The estates of Robert Leisk junior, formerly clerk in the National Bank, Glasgow, were sequestrated on the 10th September last by interlocutor of the Sheriff of Lanarkshire. The salary of the bankrupt had been at first £20, then £60, and for the last quarter of his service in the bank £80 a-year. These being his resources, he had speculated in railway and other shares to the extent of over £25,000, and the claims lodged in his sequestration were to a very small extent for ordinary debts, being chiefly founded on broking transactions and on I.O.U.s for loans of money. One of his brokers was John Christie Foulds of Glasgow; and a transaction in Caledonian stock carried through by him in March last resulted in a loss to Leisk of £369, 16s. 2d. Shortly after this Leisk received an appointment in the Bank of British North America at Montreal, but he lost this situation in consequence, as he alleged, of proceedings taken by Foulds to compel payment of his debt. These proceedings resulted in his incarceration in the North Prison, Glasgow, on the same day that sequestration was awarded.

The petition for sequestration had contained a prayer for liberation; and on 20th September the Sheriff-Substitute (GALBRAITH) pronounced the following interlocutor:—"Having heard parties' procurators and resumed consideration of this application, together with the minutes of meeting of creditors yesterday, from which it appears that by a large majority the creditors find the bankrupt entitled to protection for the period of six months—Finds, however, that liberation can only be granted on caution for appearance as afterwritten; therefore grants warrant to the keeper of the prison of Glasgow to liberate the said petitioner Robert Leisk junior, so far as detained under diligence at the instance of John Christie Foulds, sharebroker in Glasgow, acted in the Books of Court in common form, that he will attend all diets in the sequestration during the period of six months after the date of his liberation at which he may be required by the trustee to appear, or which he is bound to attend in terms of the Bankruptcy Statutes, and that under a penalty of fifty pounds sterling in the event of his failure to attend any such diets."

Against this deliverance Foulds appealed, and he shortly afterwards brought a petition for recall of the sequestration on two grounds—(1) that the bankrupt was not domiciled in Lanarkshire; and (2) that the two concurring creditors were conjunct and confident with the bankrupt, and not truly creditors of his at all. This petition was dismissed by the Lord Ordinary; but that interlocutor being subject to review, Foulds still insisted in the present appeal.

Argued for the appellant—That the caution offered was not sufficient, nor was it such as could be made available; (2) as the sequestration might still be recalled, and the application for liberation would in that event be inept, liberation ought not to be granted.

At advising—

LORD PRESIDENT—This is an application under the 45th section of the Bankruptcy Statute. The claim for the liberation of a sequestrated bankrupt stands on a different footing from the personal protection of a bankrupt not incarcerated. The latter is in the hands of the creditors; whereas the liberation from prison is entirely in the hands of the Sheriff, who accordingly has in this case ordered the liberation of the bankrupt. Now, I think it would require pretty strong reasons before we could set aside the judgment of the Sheriff in a matter so absolutely placed by statute in his hands. But one ground upon which the liberation of the bankrupt is opposed is, that an application was made to the Lord Ordinary for recal of the sequestration. True, the Lord Ordinary refused the application, but that judgment is not final, and accordingly some provision must be made for the possibility of the sequestration being recalled, in which case it would be impossible to liberate under the statute. I therefore agree with the Sheriff that the bankrupt should be liberated on condition of caution being found; but I would enlarge the order for caution by requiring caution that the bankrupt return to prison in the event of the sequestration being recalled.

The other Judges concurred.

Counsel for Appellant — Rhind. Agents — Ferguson & Junner, W.S.

Counsel for Respondent—Solicitor-General and M'Lean. Agents—J. & R. D. Ross, W.S.

Saturday, November 22.

SECOND DIVISION.

[Dean of Guild, Dundee.

BRADFORD *v.* MORE.

Jurisdiction—Dean of Guild Court—Dundee Police and Improvement Act, 1871, § 183.

Held that in conducting building operations where a question of possessory right or disputed boundaries was or might be raised or involved, the Dean of Guild Court at Dundee had a jurisdiction concurrent with that of the Police Commissioners, and that his warrant

was necessary to enable the proposed operations to be carried on.

This was an appeal from a judgment of the Dean of Guild of Dundee, upon a petition to him at the instance of the Fiscal of Court, concluding for interdict and fine against the respondent Bradford, on the ground that he had taken down and was rebuilding a large tenement within burgh, alleged to be dangerous, without the warrant of the Court. It appeared from the record that the back wall of the respondent's warehouse was beginning to be dangerous, and he resolved to pull it down partially and re-erect it. Accordingly he got plans of his proposed operations and submitted them to the Police Commissioners, who stamped their approval on them before commencing the works. When the new building had been erected to the height of two storeys, the Procurator-Fiscal of the burgh presented a petition to the Court, craving for interdict against the respondent from proceeding further until he should obtain a warrant from the Court, and to fine him for breach of the regulations of the Court, which was served on the respondent. Before judgment was given upon this petition, the respondent presented a petition to the Burgh Court, which stated "that the petitioner 'is proprietor of a warehouse on the south side of Baltic Street, Dundee, marked (A) on the plan herewith produced, which is bounded on the west by another warehouse belonging to him, on the north by Baltic Street, on the east by a tenement belonging to Thomas Miln, reedmaker, Dundee, and on the south by a tenement belonging to the petitioner, and another tenement belonging to Charles G. M'Nab, shuttlemaker, Dundee. The south wall of the petitioner's said warehouse having been partially swayed outwards, he resolved to take the same down in so far as faulty, and to repair and reconstruct said warehouse, carrying it to the height of three storeys, conform to said plan, which has been submitted to and approved of by the Dundee Police Commissioners. That the petitioner has accomplished the said work to the height of two storeys, but he has heard that the said Charles G. M'Nab has objections to his completing said work;' and therefore praying for warrant of service, and to appoint the said Thomas Miln and Charles G. M'Nab to lodge answers thereto, if they any had, in the hands of the Clerk of Court within a certain short induciæ, and upon again advising the petition, with or without answers, that it might please their Honours to grant warrant to the petitioner to complete the works referred to in said petition, according to the plan therewith produced, and to find any person appearing to oppose the said application liable in expenses, or to do further or otherwise in the premises as to their Honours should seem meet. The prayer of this petition, after some procedure, in the course of which the respondent M'Nab appeared and lodged answers, was granted.

The Dean of Guild pronounced the following judgment on the petition by the Fiscal:—

"*Dundee, 20th August* 1873.—The Dean of Guild having visited the premises and considered the whole process, both parties having renounced further probation, and dispensed with any hearing, finds that this is a summary application brought by the Procurator-Fiscal of Court, concluding for interdict and fine against the respondent, on the ground that the respondent had taken down and was rebuilding a large tenement within burgh —alleged to be insufficient or dangerous—without the warrant or authority of this Court; finds it admitted by the respondent in his answers No. 3 of process, that the building in question had been recently partially pulled down, and that he was in course of re-erecting it to the height of three storeys without having applied for or obtained any such warrant or authority; finds that since this action was raised the respondent has obtained and produced the extract decree No. 8 of process, bearing to be a warrant to the respondent to build his said tenement, and that it has now been completed; finds in law that the respondent was not entitled to execute the operations complained of without having previously obtained competent judicial authority; therefore repels the whole defences and pleas of the respondent; in the circumstances, and for the reasons in the annexed note, dispenses with any fine against the respondent; finds the respondent liable to the petitioner in the expenses of process, subject to modification, and appoints an account thereof to be lodged, and remits the same when lodged to the Clerk of Court to tax and report; finds the respondent also liable in the dues of extract, to be ascertained at extracting; and decerns."

"*Note.*—The respondent contended that having got the approval or sanction of the Commissioners of Police under the 'Dundee Police and Improvement Act, 1871,' to his building operations, it was unnecessary for him also to obtain a warrant or decree of lining from this or any other Court; and that at all events interdict was an inappropriate remedy, the imposition of a fine being sufficient to vindicate the authority of the Court.

"As is well established, however, the Dean of Guild Court of this, as well as of other royal burghs, by common law has, and constantly exercises, the sole jurisdiction in superintending the erection, pulling down, altering, and repairing of buildings within burgh; in preventing encroachments upon the property of the public, the streets, and thoroughfares; in causing the removal or repair of ruinous buildings and the like; so that without its warrant no building within burgh can be built, or demolished, or altered, either in whole or in part, and parties acting without such warrant are liable to be *summarily 'interdicted and fined'* at the instance of the Procurator-Fiscal—4 Bankton, tit. 20; 1 Juridical Styles, 580; 1 Erskine Inst. 4, § 24; *Edinburgh and Glasgow Railway* v. *Dymock*, Nov. 27, 1847, 20 S. J. 46.

"Now, as jurisdiction is neither given nor taken away by *implication* (see Erskine Inst. 1, 2, § 7, and *Edinburgh and Glasgow Railway* v. *Dymock*, above cited), it follows that the jurisdiction of this Court remains unaffected unless by the above Act its jurisdiction is *expressly abolished.* Accordingly, by that Act, while by § 75 it is enacted that 'no new building shall be commenced until the plans and sections have been approved of by the Commissioners,' § 183 provides that nothing contained in this Act shall prejudice or affect any jurisdiction now competent to the Dean of Guild of the Royal Burgh of Dundee; . . . . but where no question of possessory right, or disputed boundaries is, or may be raised or involved, ... it shall not be necessary for any proprietor or person to apply for, or to obtain any other approval or warrant than that of the Commissioners before erecting or altering any building within the burgh, or taking or using any part of any street temporarily for or in

connection with any erection or alteration of any such building.

"With the exception, therefore, of the necessarily very limited class of cases to which the Act expressly applies, viz., to those exceptional instances where the adjoining heritors cannot *possibly* have any interest, it appears to the Dean that the sound construction of the Act is, that it superinduces or imposes an additional requisite on proprietors seeking to build or make alterations, thus making it necessary for them now in all other instances to obtain both the approval of the Commissioners for the special and limited purposes of that Act, and also a warrant of lining from this Court,—to which Court still exclusively belongs the determination and vindication of the rights of conterminous heritors and the public, as well as the protection and safety of the lieges, in connection with all building operations within burgh.

"To enable the respondent, therefore, to prevail in his contention, that a warrant of lining was unnecessary in this case, it appears to the Dean that it was incumbent on the respondent clearly to show that in his operations 'no question of possessory right or disputed boundaries is or may be raised or involved,' and thus to bring himself within the privileged or exempted class where such warrant is rendered unnecessary by the above recited clause. But, however this may be, and upon whomsoever incumbent, it was appparent at the visitation, as well as from the statements and admissions on record, that the nature and situation of the respondent's building with reference to the conterminous heritors rendered it peculiarly and eminently a case in which a question of disputed boundaries might be raised or involved; and by the extract decree, No. 8 of process, produced by the respondent himself, it appears that not only might such a question be fairly raised, but that in fact it had actually been raised and discussed.

"As the respondent appears to have acted more from misapprehension than from any intentional contempt of Court, it has not been deemed imperative to inflict a fine, and as the petitioner's allegations of danger were, in the view which the Dean has taken of the case, unnecessary, and were not substantiated, it seems a case in which only modified expenses should be awarded."

The respondent (Bradford) appealed against this judgment.

At advising—

Lord Benholme said that, although the issue in the case was only with regard to expenses, yet there were considerations of considerable importance before they arrived at the judgment which they ought to pronounce. The Dean of Guild possessed a jurisdiction of great importance with reference to buildings within a Royal burgh, and it seemed pretty evident that, besides a jurisdiction with reference to questions where private rights were concerned—that was, rights which led to encroachments upon neighbours' property, or upon rights of possession founded upon what were called possessory rights, or seven years' possession—he had also a jurisdiction in questions which were in some degree combined with interests in which the public were involved. But recent legislation had so far separated these matters that now the Police Commissioners of Dundee under their local Acts seemed to engross in their jurisdiction almost all the questions in which the public were concerned with regard to the health and safety of the lieges, which he supposed were looked after by the Procurator-Fiscal on behalf of the public. Now that that species of jurisdiction was different from what related to the rights of private individuals in the neighbourhood was not quite clear, but it was quite evident that the distinction existed and was not to be overlooked. The rights of the public might very well be watched by a public officer without the citation or publication to the individual of that which was the subject of inquiry; but with regard to private rights they could not be ascertained, or whether there was any encroachment upon them, without something different from that—some statement in a public way of the thing that was to be done, so that all parties might have an opportunity of stating whether or not they had any objections. Their Lordships would accordingly find that by the 183d section of the recent Police Act that matter had been cleared up in this way—"Nothing contained in this Act shall prejudice or affect any jurisdiction now competent to the Dean of Guild of the Royal Burgh of Dundee in preventing encroachments upon the property of the public, or upon the property of any proprietor within the burgh, or in entertaining or disposing of possessory questions." That seemed to him to reserve entirely the jurisdiction of the Dean of Guild so far as it related to any private rights. "But where no question of possessory rights or disputed boundaries is or may be raised or involved, and subject to appeal as by this Act allowed, it shall not be necessary for any proprietor or person to apply for or to obtain any other approval or warrant than that of the Commissioners before erecting or altering any building within the burgh, or taking or using any part of any street temporarily for or in connection with any erection or alteration of any such building." Now, the point really for the Court to decide was this—Was the present a case in which no question of possessory right or disputed boundaries was or might be raised or involved? If this was such a case that no such question could be raised, then it was unnecessary to go to the Dean of Guild; but if, on the other hand, it was not such a case—if it was a case in which possessory interests might be involved, or questions of boundaries raised—then that was such a case as remained for the adjudication of the Dean of Guild just as before; and his jurisdiction, his Lordship thought, was explicated in this way, that it was necessary for any party who proposed to erect or alter buildings in that way to present an application to the Dean for his warrant. It might be that no question was raised—that no party opposed, and that no objection was stated—and then probably by a visitation the thing would be put an end to and the warrant granted, but that did not at all prevent the necessity for the party going before the Dean of Guild just to ascertain whether there was any such question. It was quite possible to imagine cases in which it would be impossible that any private right would be interfered with. The Solicitor-General had put the case of the operations being entirely within the parties' own bounds—interior erections; and in short he suggested that there might be cases in which it would be impossible that such questions should be raised. But there was a difficulty in ascertaining where the line was to be drawn; and he rather thought the safe rule was not to take for granted that there was almost any case in which a question might not be raised; and that, in fact, would just come to this

—that, whilst the Commissioners' warrant was required with reference to cases where the public interest was concerned; the warrant of the Dean of Guild Court was required in cases where private rights were involved. He thought that would be the result. Whether it would be a universal result it was of little consequence to inquire, for he was of opinion that in the present case it was quite possible, from the situation of the buildings, that some private right might be injured or affected, and thus there was a question which might possibly arise in the circumstances. Another circumstance which induced him to think that they ought to adhere to this judgment, which had regard merely to expenses, was this—that in explicating the jurisdiction of the Commissioners of Police there did not seem to be any warning given or any mode of intimating to the lieges that the erection was intended. He did not see any machinery for bringing it to the notice of the public that there was any intention of that kind, and consequently the building might have gone on for a considerable length before anybody knew what was intended. That was a reason why, in order to secure the integrity of private rights, there should be some machinery by which these rights were brought into force, and in which parties were certiorated that such a building was intended, and they were called upon, in short, to appear for their interest, if interest they had, to object to the building if they conceived it was to be at all prejudicial to them. That was to be secured only by the old plan of coming before the Dean of Guild and presenting an application for his warrant, which, if there were no objection, or if he saw no objection, after sufficient intimation, would then be added to the warrant of the Commissioners. It was not that the Dean of Guild had anything to do in controlling the action of the Commissioners, which might be given effect to by not objecting or by putting a stamp upon the building plans, although in that way it never could come to the knowledge of private parties; but the Dean of Guild, when the plans were submitted to him, had first to consider whether, the interest of the public being satisfied, there was any objection on the part of individuals in the shape of encroachments upon private rights; and if no person appeared to object, then he would just adhere to the ratification, or allow the Commissioners' deliverance to take effect. Therefore their Lordships' interpretation of these words, "where no question of possessory right or disputed boundaries is or may be raised or involved," was what must decide this case. What they had to put to themselves was this—Was this a case in which no such question was raised? He was of opinion that they could not find that that was the case. They could not say that this was a case in which it was impossible that some party might not think themselves aggrieved; and if it was not such a case, then it did not fall under the exception which alone could justify a non-application to the Dean of Guild. He was therefore of opinion that they should dismiss the appeal. There had been no penal consequences following upon the Dean's finding, but all that had been decerned against the respondent was the expenses. These, his Lordship thought, the respondent must suffer, because he had contravened what had been the regulations of the Dean of Guild Court from a very ancient period, as ascertained from various authorities, and which were not in this particular instance impeached or interfered with by the recent statute.

Lord Neaves said he concurred in the opinion expressed by Lord Benholme, and upon the same grounds. The question turned upon the meaning and effect of clause 183 of the new Act. There was an ancient and venerable and most useful jurisdiction existing in the Dean of Guild Court, and that clause dealt with it in this way—that it did not leave it altogether intact, but neither did it altogether abolish it. It drew a distinction between cases where private rights were involved and cases where the public interest was concerned —that interest being satisfied by the deliverance or non-deliverance, as the case might be, of the Commissioners of Police upon an application to them. A case, therefore, might present itself in two different and alternative aspects. It might be a case where no question of possessory right or disputed boundaries was or might be raised or involved. If that was the nature of the case, then the applicant who wished to build had the privilege given to him that it was not necessary for him to apply for or obtain any other approval or warrant than that of the Commissioners. But that implied that there might be other cases; and really it was not for the Court to determine which of these classes of cases was now likely to be the most numerous, or to say speculatively what would be the particular circumstances in all cases in which a case would fall under the one branch or the other of the contemplated alternatives. But if a case was not of the kind mentioned by the statute as privileged, then the jurisdiction of the Dean of Guild remained intact, for it was only by an applicant bringing himself under the positive category that was set forth in the statute as the privileged category that he could escape the usual form of process. There were two considerations which, in his Lordship's opinion, gave weight to that view. The first was, that an ancient jurisdiction, which was undoubtedly meant to be preserved, was not to be overturned except upon the clear condition of things that was contemplated by the Act; and, in the next place, that if that jurisdiction was not to be done away with altogether, the presumption was, that it was still to be exercised in the same manner as it had always been exercised, and that was by a party wanting to build going to the Dean of Guild Court, and there, in a judicial tribunal, getting warrant, after intimation to those neighbours whose interests might be affected—the object being to give these neighbours an opportunity of stating objections, if they had any to state, or otherwise to put to silence those objections if they were not well-founded. Now that seemed to be the question which was raised for the consideration of the Court—Was this a case in which the petitioner could call upon them to say that at the time when he got his warrant from, or rather when he got the approval of, the Police Commissioners—for there was no warrant—his operations were of such a nature that no question of possessory right or disputed boundaries was or might be raised or involved? If they could not affirm that proposition, they could not give to him the exemption which he claimed of dealing with the case in the ordinary and established manner. Upon that fact his Lordship had no doubt. They had parties here whose interests might be affected, and whose possessory rights might be involved. He did not think they required, if it were otherwise necessary to the presumption, any better evidence of that than the conduct of the petitioner himself, who went to the Burgh Court—somewhat irregularly no doubt, but,

still it sufficiently illustrated the nature of his position—and called the next neighbours to come into Court in order to fight the battle with them there—to make up a record, or something like a record, and objections were stated. There was discussion upon them, and ultimately, no doubt, the objections were withdrawn; but that state of matters showed that objections were possible, and therefore the petitioner was not entitled to say that this was a case in which no question of possessory right or disputed boundaries was or might be raised or involved. His course was to have gone on in the usual manner. Knowing that there might possibly be objections by these neighbours, he should have brought them into the field before the Dean of Guild, and have given them an opportunity of being heard. That view was very strongly confirmed by the fact which Lord Benholme had stated, that there were no other means of making people aware of such alterations. They were not advertised; they were not published in any way; they were not even edictally announced when before the Commissioners of Police. That was altogether a private thing, and it was a very proper thing for the purpose for which it was intended; but there being no intimation of any kind, he saw no reason why, in a case where objection was possible—and here it was manifestly possible—the party desiring to make the alterations should not go on in the usual way and obtain the concurrent warrant of the Dean of Guild, which he would have done under the old system, and the effect of which would be, not to dispose of those questions which the Commissioners of Police disposed of, but to dispose of every other question by settling the claims of coterminous proprietors who had objections on the ground of possessory right, and to have his decree of "lining" fixed in a manner that would be satisfactory to the end of time. On these grounds, his Lordship thought this proceeding was competent, and that it had been disposed of in the right way in the Court below.

Lord Mackenzie—I concur in the opinions of your Lordships. I consider that the jurisdiction of the Dean of Guild Court is not excluded by the provisions of the Dundee Police and Improvement Act, and of the Acts incorporated therewith, with reference to the operations of the respondent. By these Acts very extensive powers are committed to the Commissioners of Police for sanitary and police purposes with reference to buildings within the burgh, many of which the Dean of Guild had no right to exercise. And by the 183d section of the Special Act it is provided that "where no question of possessory right or disputed boundaries is or may be raised or involved," it shall not be necessary for any person to obtain any other approval than the approval of the Commissioners mentioned in the 74th section of that Act, before erecting or altering any building within the burgh. There is no express exclusion in the statute of the jurisdiction of the Dean of Guild, but this provision in the 183d section supersedes the necessity of obtaining his warrant in certain cases. Whenever any question of possessory right or disputed boundaries is or may be raised or involved, the jurisdiction of the Dean of Guild remains entire. In every such case it is, I think, incumbent upon the proprietor proposing to erect or alter a building to obtain the approval of the Commissioners, and also the decree o lining and warrant of the Dean of Guild. In the present case it appears to me that the respondent's operations involved a question of disputed boundaries, and that it was necessary for him to apply to the Dean of Guild for his decree and warrant. In all proceedings in the Dean of Guild Court the building plans of the proposed operations are lodged, and the co-terminous proprietors are cited for their interest, so that they may, by inspection of the plans, ascertain whether their boundaries will be encroached upon. In obtaining the approval of the building plans by the Commissioners of Police, the adjoining proprietors are not cited, so that they are in ignorance of the proposed operations. Whenever these operations are of such a nature as to raise or involve no question of possessory right or disputed boundaries—as, for example, where they are entirely within the limits of the applicant's property, and do not extend to his boundaries—it seems reasonable, having regard to the provisions of the statutes, and it is thereby provided, that the Commissioners' warrant shall be sufficient. But where such questions may be raised or involved, as is the case where the operations extend to the boundaries of the applicant's property, the rights of the adjoining proprietors require that they should receive notice of these operations, and, accordingly, the statutes leave the jurisdiction of the Dean of Guild entire in all proceedings before whom such notice requires to be given.

I am therefore of opinion that the respondent should have obtained the decree and warrant of the Dean of Guild before proceeding with his operations—that not having done so, the Procurator-Fiscal of that Court was entitled to present the petition now complained of against him—and that there are no sufficient grounds for sustaining his appeal.

Lord Moncreiff and Lord Cowan absent.

The appeal was therefore dismissed, with expenses.

Counsel for Appellant (Bradford)—Watson and Keir. Agents—Henry Buchan, S.S.C., and J. D. Grant, Dundee.

Counsel for Respondent (More) — Solicitor-General and M'Laren. Agents — David Milne, S.S.C., and More, Dundee.

Wednesday, November 26.

FIRST DIVISION.

[Lord Ormidale, Ordinary.

DAVID RANKINE *v.* WILLIAM ROBERTS.

Jury Trial—Bill of Exceptions—Act 55 *Geo. III., cap.* 42, *sec.* 6, 7; *Act* 13 *and* 14 *Vict., cap.* 36, *sec.* 45—*Proof in Replication.*

In a case where the presiding judge in a jury trial admitted proof of malice in replication to a defence of privilege, *held* that this was not matter for a bill of exceptions, being within his discretion.

David Rankine, parish schoolmaster and session-clerk, Bathgate, raised an action for slander against William Roberts, auctioneer, Bathgate. Issues were adjusted and sent to a jury, and were tried before Lord Ormidale on July 21st and 22d, 1873. The pursuer and defender led evidence, and on the conclusion of the defender's evidence, in which he