observe here in Edinburgh. We see carriages always passing tramway cars on the left, and obviously the rule has been introduced for the public safety. But while this is so, I repeat that I think that there was fault on the part of defenders' servant, in that he was, as the Sheriff-Substitute has found, guilty of recklessness in the manner in which he drove. He says he stopped till the lady crossed, and I am satisfied that he must have seen that Mr Ramsay was preparing to alight also. I take it on the evidence of the conductor. He says that when the pursuer made preparations to descend, Thomson's horse was only three yards from the car. If the driver had been looking ahead as he ought, he could not but have seen the pursuer descending, but instead of paying attention he proceeded just as if there was no passenger in his way. But while this is so, I am of opinion that there was also fault on the part of the pursuer. Passengers owe a duty to themselves to see that the way is safe when they cross the street, and they can and ought always to go to the side if the way is not clear. There are two periods at which the pursuer ought to have looked about him—(1) when he was preparing to leave the car, and (2) when he reached the street. At both these periods he neglected proper and ordinary precautions, and hence the accident. It is impossible to relieve him of this charge. It is quite possible that if the driver of the waggonette had been cautious no accident would have occurred, but the pursuer had no right to trust to others taking that care which he was himself neglecting to take. On the whole matter I agree that the defenders must be assoilzied.

The Lords therefore sustained the appeal, recalled the judgment of the Sheriff, and assoilzied the defenders.

Counsel for Appellants — Trayner — Lang. Agents—Smith & Mason, S.S.C.

Counsel for Respondent — Solicitor-General (Asher)—Pearson. Agents—J. & J. Galletly, S.S.C.

Tuesday, November 22.

SECOND DIVISION.

(Before the Lord Justice-Clerk, Lord Craighill, and Lord Rutherfurd Clark.)

WATERSON *v.* SIR A. D. STEWART AND OTHERS.

Landlord and Tenant—Lease—Terms of a Renunciation importing Discharge of Landlord's Obligation—Executor—Mora.

A tenant held a farm from an entailed proprietor under a lease in which the latter "bound and obliged himself to put the buildings on the farm in a proper state of repair." The tenant subsequently renounced his lease, and on vacating the farm he entered into an agreement with the succeeding heir of entail in which "he renounced all claims under the lease, with the whole claims and obligements therein contained." No claim for repairs was made during the currency of the lease, nor until two years after the expiry of the lease. In an action of damages by the tenant for non-implement of the landlord's obligation, raised against the heir in possession and the executor of his predecessor, the Court *held* (1) that he was barred by the renunciation in a question with the heir, and (2) in a question with the executor of the original landlord, by the general terms of the renunciation, and his failure to give timeous notice of his claim.

Question (*per* Lord Justice-Clerk and Lord Rutherfurd Clark) as to whether the discharge granted to the heir in possession could be competently pleaded by his predecessor's executor, on the footing that the heir had treated with the tenant for himself and for the executor.

John Waterson became tenant of the Garth Farm of Airntully under a lease for nineteen years from Martinmas 1870, granted by the late Sir William Drummond Stewart, Bart., of Murthly, Grandtully, and Strathbraan. The lease was never signed, but a draft of it was adjusted, and in the renunciation afterwards mentioned that draft was treated, and the parties agreed that it should be held, as a duly settled lease. This draft lease contained the following clause:—"The proprietor binds and obliges himself to put the whole buildings, fences, hedges, and ditches on the farm in a proper state of repair."

Sir William Drummond Stewart died on or about the 28th of April 1871, and was succeeded as heir of entail in the estates of Murthly, Grandtully, and Strathbraan, of which the farm of Garth of Airntully forms a part, by Sir Archibald Douglas Stewart. The latter recognised the lease and took payment of the rent under it from the date of his succession.

In March 1879 Waterson fell into arrear with his rent, and sequestration was applied for against him. After some negotiation it was arranged that he should renounce his lease and right in the lands in favour of Sir Archibald Douglas Stewart as at the term of Martinmas 1879, and a deed of renunciation was accordingly prepared and executed of date 30th March 1879. The said deed, after narrating the holograph offer, acceptance, and draft lease, proceeded in the following terms:—"And now seeing that I find I have not capital to enable me to continue the profitable possession of said farm, and have requested Sir Archibald Douglas Stewart of Grandtully, Baronet, now heir of entail in possession of said lands and others, to take said farm off my hands, and have proposed to him that, I should renounce all right of possession competent to me under the said holograph offer and acceptance and draft tack as from the term of Martinmas next, 1879, and that the present year 1879 should in all respects be treated as the last year of the tack, and that all the provisions and stipulations therein contained applicable to the year of expiry should apply to it as if the said tack had come to its natural termination, and that the said request and proposal have been acceded to by the said Sir Archibald Douglas Stewart: Therefore I have renounced and overgiven, as I hereby renounce, *simpliciter* upgive and overgive, to and in favour of the said Sir Archibald Douglas Stewart, his heirs and successors, the said tack, and my possession of the lands and others foresaid in virtue thereof, or in virtue of the said holograph offer and acceptance,

and all claim, interest, or advantage I could have or pretend therein, with the whole clauses and obligements contained therein, and all that has followed or may be competent to follow thereupon, for ever, from and after the term of Martinmas 1879." It was further provided "that the said Archibald Douglas Stewart by his acceptance hereof does discharge me of the whole prestations incumbent on me by the said draft tack and holograph offer and acceptance, for the period thereof still unexpired subsequent to the said term of Martinmas 1879."

On 9th June 1879 Waterson, whose creditors were pressing for payment of their debts, granted a trust-deed for their behoof in favour of George Kyd, auctioneer in Perth. On 6th and 9th December a submission was entered into between Mr Kyd, as trustee foresaid, and Sir Archibald Douglas Stewart and Mr Joseph Gold, farmer at Home Farm, Murthly, in these terms:—"Considering that by his tack of the said farm the said John Waterson bound and obliged himself to maintain the whole buildings, fences, hedges, and ditches on said farm in a good state during the currency of said tack, and to leave them so at its expiry, and that by the renunciation of said tack, dated 30th May 1879, the said John Waterson bound and obliged himself to implement and fulfil the whole obligations and conditions by said tack made incumbent upon him in the last year of his possession of said farm; and now seeing that it is right and proper that a person of skill should be appointed to inspect said buildings and others, do hereby nominate and appoint Joseph Gold, farmer at Home Farm, Murthly, as sole arbiter and valuator, to fix and determine whether the said buildings, fences, hedges, and ditches on the said Garth Farm of Airntully have been left by the outgoing tenant in a good state as provided by said tack; and whether any stone dykes upon said farm have been erected by the said John Waterson at his own expense which are a permanent improvement upon and enhance the present value of said farm—and to state what sum the landlord might fairly allow the said George Kyd, as trustee foresaid, in respect thereof."

Under this award the arbiter found Sir Archibald Douglas Stewart entitled to be paid by the trustee the sum of £48, 5s. 8d., and for this sum he was ranked on the bankrupt's estate accordingly, and received a dividend of 10s. 2½d. per £ on his claim.

Waterson raised the present action against Sir Archibald Douglas Stewart, as heir in possession of the entailed estates of which his farm formed a part, and also against Franc Nichols Steuart, as executor and universal disponee of the deceased Sir William Drummond Stewart, for the sum of £800 sterling, as damages for losses he had suffered in consequence of the non-fulfilment of the obligations undertaken by Sir William Drummond Stewart to put the farm-holdings, &c., into proper repair. He averred that he had lost a number of valuable horses and cattle owing to the ruinous state of the buildings, and the unwholesome straw (rendered so by exposure to the weather) which they had to eat. His men, he averred, frequently went through the floor when carrying grain, and he had been himself compelled to make repairs to the stable-doors, fences, and ditches.

He pleaded—"(1) In respect of the obligations contained in the pursuer's lease of the farm of Garth of Airntully, the pursuer was from and after the term of Martinmas 1870, and during all the years that his said lease continued in force, entitled to have the buildings, fences, hedges, and ditches on the farm put in a proper state of repair. (2) The defender Sir Archibald Douglas Stewart was liable to make reparation to the pursuer for the loss which he sustained in consequence of the said repairs not having been made as stipulated in the contract—(1st) in respect of the provisions of the said lease; (2d) in respect that he adopted and homologated the said lease and exacted rent under it; (3d) in respect that Sir William Drummond Stewart died soon after the commencement of the lease; and (4th) in respect that the repairs in question were only necessary repairs proper to be made for the due management of the estate, and incumbent upon the heir of entail in possession to make. (3) The defender Franc Nichols Steuart was also liable in damages as above set forth, in respect that the obligation to make the said repairs was binding on the late Sir William Drummond Stewart and his heirs and successors, and in respect that the said Franc Nichols Steuart was the representative of the said Sir William Drummond Stewart. (4) In the circumstances of the case the pursuer was justified in raising this action, as he could not otherwise obtain the damages to which he was entitled, and in order that the defenders might determine among themselves which (if not both) of them was liable in the said damages."

The defenders, on the other hand, averred that the pursuer had made no application to have the obligation in the lease implemented, and had regularly paid his rent till the date of sequestration, and took receipts therefor without reserving any claim for damages upon any ground whatever.

The defender Sir Archibald Stewart pleaded —"(2) The pursuer's statements were irrelevant, and insufficient to support the conclusions of the summons. (3) The defender having come under no obligation to the pursuer to put the said farm buildings, &c., in repair, was entitled to absolvitor. (4) If any obligation was constituted against Sir William Drummond Stewart, the same fell to be met by his executor and universal legatory, and the present defender was entitled to be assoilzied with expenses. (5) The pursuer having made no timeous intimation or complaint as to the claims now raised, *et separatim* these claims being unfounded in fact, the defender should be assoilzied. (6) The pursuer having by said renunciation renounced all claims competent to him under the said offer and acceptance and draft lease, the defender should be assoilzied. (7) The pursuer having paid rent and taken receipts without any reservation of the claims now made, must be held to have passed therefrom, and the defender was entitled to absolvitor."

The other defender Nichols Steuart adopted similar pleas-in-law, with the addition of one to the effect that no binding obligation having been constituted against Sir William Drummond Stewart to repair the farm, and *separatim* such obligation, if constituted, falling to be met by his successor in the lands of Murthly, he was entitled to absolvitor.

The Lord Ordinary (FRASER) assoilzied the defenders from the action. He delivered the following opinion on the case:—"The pursuer

became tenant of the Garth Farm of Airntully under a lease for nineteen years from Martinmas 1870 granted by the late Sir William Drummond Stewart. The lease was never signed, but a draft of it was adjusted, and in the renunciation afterwards mentioned that draft was treated, and the parties agreed that it should be held, as a duly settled lease. This draft lease contained a clause in the following terms:—'The proprietor binds and obliges himself to put the whole buildings, fences, hedges, and ditches on the farm in a proper state of repair.' The pursuer avers that this obligation upon the part of the landlord was never implemented, and that in consequence he suffered great loss and damage (which he estimates at £800), and the details of which he has set forth upon the record.

"This claim cannot now be competently made by the pursuer, for on the 30th of May 1879 he entered into an agreement with Sir Archibald Douglas Stewart, who had succeeded the granter of the lease as heir to the estate, whereby, on the narrative that he (the pursuer) had not capital to enable him to continue the profitable possession of the farm, he had requested the landlord to take the farm off his hands, and had proposed to him that he should renounce all right of possession under the lease, and that the year 1879 should be treated as the last year of the tack; and that this request and proposal had been acceded to by the landlord. The deed then proceeds as follows:—'Therefore I have renounced and overgiven, as I hereby renounce, *simpliciter* upgive and overgive, to and in favour of the said Sir Archibald Douglas Stewart, his heirs and successors, the said tack, and my possession of the lands and others foresaid in virtue thereof, or in virtue of the said holograph offer and acceptance, and all claim, interest, or advantage I could have or pretend therein, with the whole clauses and obligements therein contained, and all that has followed or may be competent to follow thereupon, for ever, from and after the term of Martinmas 1879.'

"No reservation is here made of any claim of damages for breach of contract, and it is difficult to see how such a claim can now be made in the absence of such reservation when the tenant expressly renounces all claims he could have or pretend to under the lease, and 'the whole clauses and obligements therein contained.' It is upon one of these clauses that this action of damages is rested, and the words employed would have no meaning if this action would still be competent. There is a decision shortly reported very similar in its circumstances to the present, where the Court held that after a renunciation of the lease the tenant could not bring an action for the value of meliorations made by him which would have otherwise been claimable—*Jenkin* v. *Younger*, 10th March 1825, 3 S. 639.

"But it is said that the landlord here, notwithstanding the renunciation, has enforced certain obligations under the lease against the pursuer, in virtue of an award under a submission entered into between the landlord on the one part and George Kyd, the trustee acting under a trust-disposition executed by the pursuer for behoof of creditors, on the other part, and if the landlord is to be allowed to enforce such claims, so also, it is said, should be the tenant. The difference, however, lies here,—that by the deed of renunciation it was expressly agreed that although the lease was renounced, the pursuer must 'fulfil the whole obligations and conditions of said draft tack made incumbent upon me in the last year of my possession of said farm, and without prejudice to the foresaid generality I bind and oblige myself,' &c., and thereupon the pursuer undertakes a number of specific obligations. The ascertainment of what was the extent of the obligations of the pursuer under this clause constituted the subject of the submission, which proceeds upon the narrative—[*His Lordship here stated the terms of the submission*].

"Under this submission the arbiter awarded a sum of £48, 6s. 8d. as due by the pursuer to Sir Archibald Douglas Stewart. All this was within the agreement come to under which the lease was renounced. Had the pursuer reserved his claim of damages in the manner in which the landlord stipulated that the pursuer should perform certain obligations incumbent on him by the lease, he would have been in a more favourable condition for prosecuting such an action as the present. But it was no part of the bargain that any such claim should remain behind. The pursuer was anxious enough to get rid of the lease of a farm which he was unable from want of capital to cultivate, and accepted from the landlord as a sufficient return for all he renounced a discharge 'of the whole prestations incumbent on me by the said draft tack and holograph offer and acceptance for the period thereof still unexpired subsequent to the said term of Martinmas 1879.'"

The pursuer reclaimed, and argued—That he was entitled to have the buildings, &c., on the farm put in a proper state of repair from the date of his lease. The obligation to do this was binding on Sir William's successor, who adopted the lease, as well as on his personal representative.—*Davie* v. *Stark*, July 18, 1876, 3 R. 1114; *Learmonth* v. *Sinclair's Trustees*, January 23, 1878, 5 R. 548.

The defender Nichols Steuart replied—That the tenant was barred (1) by the terms of his renunciation—*Jenkin* v. *Younger*, March 10, 1825, 3 S. 639; (2) by having made no reservation of his rights—*Broadwood* v. *Hunter*, Feb. 2, 1855, 17 D. 340; (3) by having paid his rent and taken receipts—*Baird* v. *Mowet*, November 19, 1876, 2 R. 101. Assuming, however, that some one was liable to fulfil the obligations on which the damages were laid, the claim was against the heir in possession, who was bound at common law to repair the buildings, &c., as *inter naturalia* of the lease—*Barclay* v. *Neilson*, June 12, 1878, 5 R. 909. The obligation could on no possible ground be enforced against the personal representative of Sir William.

Sir Archibald Douglas Stewart argued that he was discharged by the tenant's renunciation, on the principle of the case of *Jenkin* v. *Younger*.

At advising—

LORD JUSTICE-CLERK—Many narrow questions might arise here, but I am of opinion that the broad ground of our judgment makes it unnecessary to go into the more recondite questions raised in the case, and I am satisfied that the interlocutor of the Lord Ordinary is right. I am of opinion that the renunciation of the lease by the tenant operated substantially as a discharge of all claims competent to him under it, and was

the condition of his surrender of the lease being accepted, and if that is so, I do not think the question as to the obligation resting on the landlord's personal representatives need trouble us. The question as to whether succeeding heirs of entail are liable, supposing the debt has not been discharged, might possibly be argued on both sides. It is said that where the obligations are *inter naturalia* of the lease, the heir who succeeds to the estate cannot take benefit therefrom without implementing obligations which are essential conditions of his occupation of the farm. I do not, however, consider it necessary to say whether this is so or not, for I am satisfied here that the heir of entail in possession (supposing he were liable) was discharged by the renunciation from all claims of the kind contemplated in this action. Therefore, on the main question, whether it did or did not operate as a discharge as regards him, I am of the same opinion as the Lord Ordinary. But then it is suggested that the Lord Ordinary is in error in imagining that the landlord had by the terms of the renunciation reserved his right to proceed against the tenant, in respect of the latter's obligations under the lease, when he entered into the submission with the tenant's trustee. This is not so. The submission was only entered into to carry into effect the tenant's obligation to fulfil the stipulations of the lease incumbent on him in the last year of it. The submission proceeded expressly on the narration of the said renunciation, which contained a reservation by the landlord of his right to enforce against the tenant the obligations under his lease therein set forth. With regard to the renunciation, the tenant gives up everything in the lease, and he and his landlord are, except for the landlord's reservation above mentioned, quits under its terms. This, then, is the substantial character of the relation of the parties, and now after the tenant is out of the farm he raises this action of damages against the succeeding heir of entail and the personal representative of his landlord, on the ground that the landlord has failed to make repairs which were stipulated for years before in the lease. I am satisfied, quite apart from the case of *Hunter* v. *Broadwood*, February 2, 1855, 17 D. 340, and the class of cases to which it belongs, that as regards the heir of entail in possession (assuming him to be liable), the tenant is barred from his claim by the renunciation. But then it is said that may be so as against him, but is it true as against the personal representatives of Sir William, who are no parties to the renunciation? On the general question I am not so clear that they could take benefit from the discharge, but apart from this, in the first place, this is an obligation incumbent on some one during the currency of the lease. It cannot be maintained that it was incumbent on the personal representatives during that time, and, in the second place, I am satisfied that if the tenant gives no notice to the personal representatives after the landlord's death, but chooses to enter into an *ex parte* renunciation of the lease with the succeeding heir of entail, he is not therefore entitled to come against the personal representatives of his landlord to enforce such an obligation as the present. On these grounds I am of opinion that we should adhere to the Lord Ordinary's interlocutor without forming an opinion on the more delicate questions raised.

Lord Craighill—I am of the same opinion. If the pursuer is right that the heir in possession is liable to him, then the heir of entail in possession is discharged of his liability by the pursuer's renunciation. But I am prepared to go further. I think the heir of entail in possession contracted, not for himself only in the matter of this renunciation, but for the personal representatives also of the preceding heir of entail. That is the view which the Lord Ordinary seems to have taken, and I agree with it. I think that what was discharged was the claim itself, and not the claim against any particular heir of entail. The tenant having all along looked to his present landlord, the heir of entail in possession, must be held, in my opinion, to have discharged all in discharging him. I think the case is in the same position as if the lease had come to its natural termination, and I also agree with the view on which your Lordship proceeds as regards the claim against the personal representative of his landlord who undertook the obligation. If the pursuer was entitled to look to the representative in moveables of the last heir, then he was certainly bound to intimate his claim to him, that he might have an opportunity of avoiding a claim of damages by giving specific implement. Not having done so, he is now barred by his own taciturnity.

Lord Rutherfurd-Clark—I agree with your Lordships in the ultimate result of our judgment, though I should approve of a slight alteration on the Lord Ordinary's interlocutor. I entertain no doubt that the pursuer's renunciation imports a discharge of all claims of the nature embraced in this action so far as Sir Archibald Douglas Stewart is concerned. But whether that discharge is one of which the other defenders can take advantage depends on this other question—Whether Sir Archibald is to be taken as transacting for his own benefit only, or for himself and also for the personal representatives of his predecessor Sir William Drummond Stewart? I do not think it can be held that he was transacting for the heirs *in mobilibus* as well as for the heir of heritage, unless both sets of representatives are bound to perform the obligations and become liable in damages for their non-implement. Now, the question as to whether a claim of damages would arise against Sir Archibald Douglas Stewart in respect of the obligations contained in the lease by his predecessor Sir William Drummond Stewart is a troublesome one, and in its consideration we should require to enter on a very delicate chapter of the law. But I am of opinion that in the present circumstances it is not necessary to entertain it. I do not therefore decide the case, so far as regards the claim against Nichols Steuart, on the ground that he is entitled to take benefit from the discharge, but I do think that he is entitled to plead it on the other grounds referred to by your Lordships. Assuming him to be liable to implement the obligation, and to pay damages in the event of their non-implement, it was the duty of the pursuer to have called on him to implement them. It has been explained at the bar that no claim was ever made against Nichols Steuart from the time of Sir William's death to the date of the action. In these circumstances it would be out of the question to sustain an action of this kind

against him, and to hold him liable for injuries sustained by the cattle and other agricultural produce of the farm in consequence of the condition of the buildings, of which he knew nothing, and to repair which he was never asked to furnish the means. I am therefore of opinion that Sir Archibald was discharged of all such obligations by the pursuer's deed of renunciation; and, on the other hand, I am of opinion that there is no relevant case against the other defenders.

The Lords adhered to the Lord Ordinary's interlocutor.

Counsel for Reclaimer—J. C. Smith—Rhind. Agent—R. H. Miller, L.A.

Counsel for Sir A. D. Stewart—J. P. B. Robertson—Dundas. Agents—Dundas & Wilson, W.S.

Counsel for Nichols Steuart—Solicitor-General (Asher)—A. Graham Murray. Agents—Tods, Murray, & Jamieson, W.S.

Thursday, November 24.

SECOND DIVISION.

[Sheriff of Renfrew and Bute.

LINDSAY *v.* STEEL.

(Before the Lord Justice-Clerk, Lord Craighill, and Lord M'Laren.)

Jurisdiction—Domicile—Absence for Educational Purposes.

In an action of filiation and aliment raised against a forisfamiliated minor whose home was in Renfrewshire, the summons was there served and accepted by his agent while the defender was absent from home to attend classes at the University of Glasgow. The Court being satisfied that there was no evidence to show that he had by this absence severed himself *factis et animo* from his home, *repelled* a plea of no jurisdiction against the competency of the Sheriff of Renfrewshire to entertain the action.

Mary Ann Lindsay, residing in Johnstone, presented a petition in the Sheriff Court of Renfrew and Bute against William Steel junior, a student at the University of Glasgow, residing at Elderslie, to have him ordained to pay inlying expenses and aliment for an illegitimate child of which she averred he was the father. The summons was served and accepted by the defender's agent on the 7th December 1880. The ground of action was that the defender had seduced her in January 1880, when she was in his father's service as bar-keeper at Johnstone, and that in consequence of her intercourse with him she had been delivered of an illegitimate child on 27th October 1880.

She pleaded—"(3) The pursuer having been delivered of an illegitimate child, of which the defender is the father, is entitled to recover from the defender the inlying expenses connected with the birth of and aliment for said child."

The defender had assisted his father as clerk, and this took him to the shop where the pursuer was serving; but he denied the pursuer's averment as regards his intercourse with her. He further averred that he was eighteen years of age, and was at the date of citation attending the Arts Classes in the University of Glasgow, and resided in Glasgow. He had left Elderslie for good, and this fact had been intimated to the pursuer through her agent prior to the raising of the present action; and accordingly pleaded—"The defender having left Renfrewshire, and having acquired a new domicile, and these facts being known to the pursuer, he was not subject to the jurisdiction of this Court, and was entitled to absolvitor with expenses." On the merits he pleaded that "The defender not having seduced the pursuer, he was entitled to absolvitor."

The Sheriff-Substitute (COWAN) allowed a proof before answer on the defender's preliminary plea, and found "In fact, that the principal defender at the date of the present action being raised, 7th December 1880, was resident in Glasgow, where he still resides; that he went to live in Glasgow on 23d October preceding; that prior to said date he lived with his father, the other defender, at Elderslie, in Renfrewshire, and that he never has had any residence of his own, or carried on any business in Renfrewshire, with the exception that for a month or two in the summer of 1880 he was a clerk in an office in Paisley; that he was a student attending the University of Glasgow; that he had no intention of returning to live in Renfrewshire, and that his father, the other defender, had, partly on account of the present case, and partly on account of disagreements with his stepmother, intimated to the principal defender that he must not return to live in his house: And in law, that the principal defender having before the institution of the present process removed from Renfrewshire, was not subject to the jurisdiction of the Courts of Renfrewshire: Therefore sustained the first plea-in-law stated in the defence, and dismissed the action."

On appeal the Sheriff-Principal (MONCREIFF) sustained the appeal, recalled the interlocutor appealed against, and found "that the defender William Steel junior was a minor, and that it was not disputed that until 23d or 27th October 1880 he resided in family with his father William Steel senior, at Elderslie, in Renfrewshire, except when he was attending college or absent for some temporary purpose; that previously to October 1880 the defender William Steel junior had attended classes at the University of Glasgow, and that on 23d or 27th October 1880 he returned to Glasgow to attend classes at the University there; that at the raising of this action, on 7th December 1880, the said defender was living in Glasgow, in lodgings taken for him there by his father; that he was then attending classes at the University as a student, and was following no trade or profession, and that it was not proved that he had any means of subsistence other than what he received from his father; that the said defender said that when he so returned to Glasgow on 23d or 27th October 1880 he did not intend to return to his father's house in Renfrewshire, and that the defender William Steel senior said that he told his son that he was not to come back; but that it was not proved that at the raising of the action the defender William