wards, but it could be swung round so as to act as a lever having as its fulcrum the corner of the gate-post. Thus when it was swung outwards with the weight of several boys upon it, it had a strong tendency to wrench the bolt out of its fastening. That indeed was what happened. It was said that the fastening of the gate was defective owing to the screws which held it to the gate-post not being sufficiently tightly screwed up, and that may have been so, but the really important fact is that the bolts could be taken off by being wrenched out when the gate swung round, and that was what was done here.

In my opinion the defenders are responsible for this deficiency. If the gate had been kept reasonably safe then the accident would not have happened. It is no answer to say that if the children had not swung upon it the gate was safe. It is so natural for children to swing on a gate that I think the School Board should have anticipated it. I think that we must reverse the Sheriff's judgment, and revert to that of the Sheriff-Substitute.

LORD YOUNG, LORD RUTHERFURD CLARK, and LORD LEE concurred.

The Court pronounced this judgment:—

"Find in fact (1) that the pursuer's son, while a pupil at the Pulteneytown Academy, a school belonging to the defenders, was injured by the falling of part of the gate at the entrance to the school; (2) find that the gate was insufficiently hung, was not provided with a stop, and consequently on the occasion libelled swung outwards against a pillar, thereby breaking the hinge and causing part of the gate to fall on the boy; (3) find he did not by negligence on his part contribute to the accident: Find in law that it was the duty of the defenders to keep the gate in a safe condition, and that they are liable in damages to the pursuer as guardian of his son for the injury done to him: Therefore sustain the appeal: Recal the judgment of the Sheriff appealed against: Affirm the judgment of the Sheriff-Substitute: Of new assess the damages at forty pounds sterling," &c.

Counsel for the Appellant—Low—M'Lennan. Agent—Thomas Liddle, S.S.C.

Counsel for the Respondents—Comrie Thomson—Watt. Agent—William Gunn, S.S.C.

Wednesday, June 26.

FIRST DIVISION.

[Lord Wellwood, Ordinary.

ROSS *v.* MACKENZIE.

Process—Jury Trial—Abandonment of Action—Judicature Act 1825 (6 *Geo. IV. cap.* 120), *sec.* 10—*Act of Sederunt*, 16*th Feb.* 1841, *sec.* 46.

The Judicature Act 1825, sec. 10, provides, *inter alia*—". . . The pursuer has it in his power to abandon the cause on paying full expenses or costs to the defender, and to bring a new action if otherwise competent." . . .

The Act of Sederunt, 16th February 1841, sec. 46, provides—"If it shall be made to appear to the Court that a party has abandoned his suit, . . . the Court shall proceed therein as in cases in which parties are held as confessed." . . .

The pursuer of an action lodged a minute in process abandoning "the cause in terms of the statute," but he failed from poverty to pay the taxed amount of the defender's account of expenses. On the motion of the defender, and on the pursuer's consent, the Court *assoilzied* the defender from the conclusions of the action.

In an action of damages by Hugh Ross, Balchaggan, Ross-shire, against John Mackenzie, innkeeper, Milltown, Ross-shire, an issue was settled by Lord Wellwood on 25th January 1889, and the case was set down for trial at the jury sittings in March 1889. Shortly before the date of the trial the pursuer lodged a minute in the following terms:—"FORSYTH, for the pursuer, hereby abandons the cause in terms of the statute." Thereafter the Court, on the motion of the defender, allowed the defender to lodge an account of his expenses, and remitted the account to the Auditor for taxation. It was not stated that the pursuer had failed to pay the defender's expenses as taxed, and that his agent had advised the defender's agent by letter that the pursuer was unable to pay the expenses, and did not object to decree passing therefor, and to the defender being assoilzied. The defender moved for the amount of the expenses, and for absolvitor.

Reference was made to the Judicature Act (6 Geo. IV. cap. 120), sec. 10; the Court of Session Act 1868, sec. 39; the Act of Sederunt, 16th February 1841; and to *Lawson* v. *Low*, July 1, 1845, 7 D. 960.

The Court assoilzied the defender from the conclusions of the action.

Counsel for the Pursuer—Forsyth. Agent—David Barclay, Solicitor.

Counsel for the Defender—Wilson. Agent—Robert Cunningham, S.S.C.

Friday, June 28.

FIRST DIVISION.

[Lord Fraser, Ordinary.

TENNENT *v.* WELCH.

Husband and Wife—Foreign—Wife's Heritable Estate—Effect of Sale—Surrogatum—Donation.

The wife of a domiciled Scotsman after her marriage, with concurrence of her husband, sold a heritable estate belonging to her in England. She duly acknowledged the conveyance thereof before two of the commissioners appointed under the Act for the Abolition of Fines and Recoveries (3 and 4 Will. c. 74), and "declared that she did intend to give up her interest in the said estate without having any provision made for her in lieu thereof." Part of the price