This was the ground of the decision in the case of Bald *v.* Earl of Mar, cited to the Lord Ordinary. In the present case the Lord Ordinary can perceive nothing in the least empowering the tenant to work otherwise than legally; and the tenant's wrongful act, if such occurred, can therefore only bind himself.

But the Lord Ordinary is further of opinion that the claim against Mr Turner is excluded by the terms of the feu-disposition. He considers it to be matter of express contract binding both upon superior and vassal in every after transmission of the right, that any claim of damages for wrongful working shall not lie against the superiors, in the case in which he has let the reserved minerals, but against the tenant only. The superior's only obligation is to take his tenant bound in his lease to answer to such claim. The Lord Ordinary is of opinion that the superior has sufficiently fulfilled the obligation. It is true that the lease to the Monkland Iron and Steel Company is prior in date to the feu-disposition, but this appears to the Lord Ordinary in nowise to alter the legal condition of things. It affords, indeed, the argument to the superior that no lease was afterwards granted without the stipulated condition, for none was afterwards granted at all. In fair construction, however, the guarantee by the superior to the vassal applied to previous tenants as well as subsequent. It appears to the Lord Ordinary that the Monkland Company has been sufficiently taken bound to answer to such a claim. The Lord Ordinary has found them liable to do so, the claim of course being always supported by sufficient proof."

Saturday, Nov. 25.

OUTER HOUSE.

(Before Lord Barcaple.)

BRUCE *v.* SMITH.

Process — Mandatory. A Scotchman residing in England, and having no home, though his domicile may be in Scotland, is bound to sist a mandatory.

Counsel for the Pursuer—Mr Monro. Agents—Messrs Ferguson & Junner, W.S.

Counsel for the Defender—Mr Scott. Agent—Mr W. Wotherspoon, S.S.C.

The defender moved that the pursuer should be ordained to sist a mandatory. It was objected that the pursuer was not bound to do so, he being a domiciled Scotchman, at present stationed at Dover as a private soldier, and liable any day to be ordered to proceed to Scotland. In support of this objection, Scott *v.* Gillespie, 29th January 1823, 2 S. 165, and Barclay's M'Glashan, p. 123, were cited. In Scott's case, a sailor born in Jamaica, but who had resided the greater part of his life in this country, and whose family resided in Greenock, was held not bound to sist a mandatory when away on a voyage. Mr M'Glashan says this rule applies to officers in the army and all others having their domicile in this country who are necessarily obliged to be occasionally absent. It was answered that in this case the pursuer had already, without objection, sisted a mandatory, who had become bankrupt; and that the authorities cited were not applicable to the case of this pursuer, who had no home in this country, and had been absent for 15 or 16 years.

LORD BARCAPLE ordained the pursuer to sist a mandatory in fourteen days.

Tuesday, Dec. 5.

FIRST DIVISION.

GRAHAM *v.* WESTERN BANK (*ante*, p. 40).

Process—Jury Trial. The Court will not discharge a notice of trial which a party may himself countermand.

Counsel for Pursuer — Mr Donald Mackenzie. Agent—Mr M'Brair, S.S.C.

Counsel for Defenders — Mr Shand. Agents — Messrs Davidson & Syme, W.S.

In this case the Court lately refused a motion by the defenders to fix the trial for the Christmas sittings, and also a motion by the pursuer to fix the trial to take place within a certain fixed time after the decision of the appeal to the House of Lords in the similar case of Addie *v.* The Bank. The pursuer has given a notice of trial for the Christmas sittings, which he has it in his power to countermand; but he was afraid that if he did so the defenders might move for the dismissal of the action under the Act of Sederunt in 1841, in respect of his failure to proceed to trial within twelve months after 8th March last, when the new trial was allowed. He therefore now moved the Court to discharge the notice of trial for Christmas, and appoint the trial to take place at the sittings next July. The defenders refused to consent to the motion; but their counsel stated that after what had on previous occasions fallen from the Court, it would not have occurred to them to make the motion which the pursuer dreaded. The Court refused the motion, the Lord President observing—"If we are asked before the 8th March to fix a time for the trial, I don't think the pursuer will be within the Act of Sederunt."

Wednesday, Dec. 6.

OUTER HOUSE.

(Before Lord Barcaple.)

GOOD *v.* CHRISTIE.

Process — Issue. Form of Issue in an action of damages for the loss of a son killed when in the defender's employment, the employment being denied.

Counsel for Pursuer — Mr Scott and Mr F. W. Clark. Agent—Mr D. F. Bridgeford, S.S.C.

Counsel for Defender—Mr Shand and Mr MacLean. Agent—Mr John Leishman, W.S.

William Good, collier, sued John Christie, coalmaster, for damages sustained by reason of the death of his son, a boy aged between twelve and thirteen years, which he alleged took place through the fault of the defender, or those for whom he is responsible, when his son was in the defender's employment. Various defences were stated, and *inter alia* it was denied that when the deceased met his death he was in the employment of the defender. The case was in the roll to-day for the adjustment of an issue. The defender maintained that the pursuer was bound to put the question of employment directly in issue. The pursuer's proposed issue only alluded to this matter parenthetically. It was stated that this question had arisen in the case of Crop *v.* Brown & Rennie on 8th March 1864, and that Lord Ormidale had in that case adjusted an issue in which the question of employment was put directly before the jury. Lord Barcaple thought that this should be done in this case also; and the issue was accordingly adjusted as proposed by the defender.

Monday, Tuesday, and Wednesday, Dec. 4, 5, 6

JURY TRIAL.

(Before Lord Jerviswoode.)

LONGWORTH *v.* HOPE AND COOKE.

Reparation—Slander — Newspaper Privilege — Fair Criticism. A jury directed per (Lord Jerviswoode) that a newspaper publisher is entitled to report and comment upon proceedings in a public court of justice, but he has no special privilege in this matter, and if he makes comments which are not fair, he is liable in damages. The fairness of the comments is a question for the jury to consider.