discharged? I confess I see nothing that leads me to the conclusion that the legal right of recourse which the late William Mitchell, as indorsee of the bank, had against the defender is lost. I don't concur with the Lord Ordinary in saying that the action is not laid on this ground. I think it is laid on two grounds — on the arrangement and on the recourse. The pleas in law distinctly show this; and without better evidence than we have that the legal liability has been discharged, I am of opinion that judgment should go against the defender.

The other Judges concurred; but Lord Deas agreed with the Lord Ordinary in thinking that the action was truly laid, and was meant to be laid, on the arrangement alone. The question, to his mind, was what that arrangement was. The evidence did not show, but his idea was that the late William Mitchell interposed for, and as the agent of, William Dingwall. William Mitchell's books were not inconsistent with this idea, and the fact that this action was not raised till after his death supported it. He did not think, however, that this was proved; and he thought the burden of proof was on the defender, because, although the action was not laid on the right of recourse, but on the arrangement, yet the bill and the indorsation of it, and the intimation to the defender of its dishonour, come out as facts in the case, and throw on him the *onus probandi.*

NELSON *v.* BLACK AND MORRISON (*ante* p. 83).

Reparation—Judicial Slander—Public Officer—Issue. In an action for judicial slander against procurators-fiscal, held that the pursuer must put in issue not only malice, but also want of probable cause.

Counsel for Pursuer—Mr Watson and Mr MacLean. Agent—Mr W. Miller, S.S.C.

Counsel for Defenders—The Lord Advocate and Mr A. Moncrieff. Agents—Messrs Murray & Beith, W.S.

The pursuer having lodged an amended issue in terms of the order pronounced after the discussion previously reported, the case came before the Court to-day. The pursuer proposed the following issue:—"It being admitted that the defenders prepared, and on or about 26th December 1864 presented, to the Sheriff-Substitute of the County of Fife, at Cupar, a petition containing the words and sentences set forth in the schedule annexed hereto, whether the said words and sentences, or any part thereof, are of and concerning the pursuer, and are false and calumnious, and were maliciously inserted in said petition by the defenders—to the loss, injury, and damage of the pursuer? Damages laid at £200 sterling." This schedule appended to the issue contained excerpts from the petition. The defenders took exception to this issue on the ground that it did not put also whether the defenders acted "without probable cause." The pursuer relied on the cases of M'Kellar *v.* The Duke of Sutherland, 14th January 1859 (21 D. 222), and M'Intosh *v.* Flowerdew, 19th February 1851 (13 D. 726), as fixing the form of issue applicable to a case of judicial slander, and in which malice alone was inserted. The defenders, in reply, contended that they as fiscals were entitled to a larger protection in virtue of their office than a mere private litigant.

The Court were of opinion that the pursuer must take the burden of proving that the defenders acted "without probable cause," and appointed these words to be inserted in the issue proposed after the word "maliciously."

SECOND DIVISION.

RICHMOND *v.* COMMON AGENT IN THE LOCALITY OF ORWELL.

Teinds—Minute of Surrender. Held that a minute of surrender of teinds by an heritor ought to be unconditional.

Counsel for the Reclaimer—Mr Patton and Mr Duncan. Agents—Messrs Jardine, Stodart, & Fraser, W.S.

Counsel for the Respondents—Mr A. R. Clark and Mr Shand. Agent—Mr Charles Henderson, S.S.C.

This is a case between Mr Thomas Richmond of Colliston and Strenton and his curators, and the common agent in the locality of Orwell, and the minister of Orwell. The question is whether the teinds of portions belonging to Mr Richmond of the divided commonties of Cuthill Muir and Beng Muir are to be held as having been included in a valuation obtained in 1630. The subjects contained in Mr Richmond's titles to his lands are described as "all and whole the lands of Colliston, or Colliston and Strenton, with houses, biggings, yards, parts, pendicles, and pertinents of the same whatsoever, lying within the barony of Cuthill-Gourdie, and sheriffdom of Perth;" and the titles of his authors since 1633 are in the same terms. The commonties were divided, and the portions in question allocated to the lands of Colliston and Strenton in 1774. In these circumstances, Mr Richmond maintains that the teinds effeiring to the right of commonty in the undivided commons, then belonging to the lands of Colliston and Strenton, must be held to have been included in the valuation, and he put in a minute surrendering the said teinds of the said lands and others, including the said part of Cuthill Muir, and protested that he and his successors shall not be liable for any further augmentation, or for any expenses in the present or any future process of locality in respect of the said lands and others. Answers to this minute were put in by the common agent and the minister, in which they denied that the valuations therein specified comprehend the teinds of the portion of the commonty of Cuthill Muir which belongs to Mr Richmond; and they pleaded that that being so, he is not entitled to surrender these teinds, or any part thereof, on the footing that they were included in the valuation. *Quoad* the teinds of the lands of Strenton and Colliston, they maintained that the minute of surrender should receive effect. The Lord Ordinary (Barcaple) held that Mr Richmond had failed to show that the teinds of the parts of the divided commonties of Cuthill Muir and Beng Muir belonging to him were valued by the valuation founded on, and therefore sustained the objection stated by the common agent and minister to the minute of surrender by Mr Richmond, in so far as it includes the teinds of the said parts of said commonties. Mr Richmond reclaimed. The Court to-day held that the record had been incompetently made up upon the minute of surrender. A minute of surrender should be simple and unconditional. It should be in the terms of the valuation founded on; whereas that in the present case involves the proposition, which is open to dispute, that the teinds of the lands in question were included in the valuation of 1630. That question ought to be raised in the form of objections to the interim scheme of locality, in which case it would be seen what other heritors are localled upon, and what they got under the decree of division. The Court recalled the interlocutor of the Lord Ordinary, and appointed the minute to be withdrawn.

Saturday, Jan. 27.

FIRST DIVISION.

HASTINGS *v.* M'CALLUM AND OTHERS.

Poor — Settlement — Residence. Circumstances in which held (alt. Lord Ormidale) that a residential settlement had been acquired.

Counsel for Penninghame—Mr Patton and Mr N. C. Campbell. Agents—Messrs Patrick, M'Ewen, & Carment, W.S.