

hearing of Mrs M'Gregor, wife of Donald M'Gregor, residing in Spittal Street, Edinburgh, say that the pursuer had stolen her late husband's watch, or did falsely and calumniously utter words to that effect of and concerning the pursuer—to the loss, injury, and damage of the pursuer?"

Damages were laid at £250.

The jury, after three hours' enclosure, returned a verdict by 11 to 1 for the pursuer—damages, £10.

Wednesday, March 7.

### FIRST DIVISION.

ANTERMONY COAL CO. *v.* BRUCE AND OTHERS (*ante*, p. 170.)

*Process—Mandatory.* In an action at the instance of a company with a descriptive firm, and its two partners, one of whom was in Australia, held (*aff. Lord Barcaple*) that the absent partner was not bound to sist a mandatory.

*Title to Sue.* Question whether a company with a descriptive firm can sue an action without the authority of all its partners or at least three of them.

Counsel for Pursuers—Mr Gordon and Mr Lamond. Agent—Mr Wm. Burness, S.S.C.

Counsel for Defender—The Solicitor-General and Mr Alex. Moncrieff. Agents—Messrs Lindsay & Paterson, W.S.

The pursuers of this action are "the Antermony Coal Company, Antermony, Dumbartonshire, and Auston & Company, coalmasters at Hamilton and Glasgow, and Walter Wingate, coalmaster at Shirva, in the county of Dumbarton, at present in Australia, or elsewhere furth of Scotland, being the individual partners of the said firm of the Antermony Coal Company." The defenders are "Walter Wingate & Company, coal masters at Shirva aforesaid, and the said Walter Wingate, and George Cadell Bruce, civil engineer in Edinburgh, the individual partners of that firm." The defender Bruce, who alone appeared to defend, moved that the pursuer Walter Wingate should be ordained to sist a mandatory. The Lord Ordinary (*Barcaple*) refused the motion.

The defender reclaimed, and argued—An action at the instance of a company with a descriptive firm is not competent unless at least three of the partners are parties to it. In this case one of the two partners, Mr Wingate, is in Australia. There are no means of knowing, except by production of a mandate, whether he has authorised the action, and without his authority the action cannot proceed. For all that appears on record, the interest of Mr Wingate in the company may be greater than that of Austin & Co. If it be the fact that Mr Wingate's address is unknown to the other pursuers, that circumstance may raise a special case which the Court will provide for by appointing a judicial factor or otherwise, for the purpose of enabling the company to recover its debts.

Answered for the pursuers—The Lord Ordinary has already by an interlocutor, now final, repelled the defender's plea of no title to sue. This motion is just a repetition of that plea. There is here, besides the company, a solvent partner in this country, responsible for the expenses and the proper conduct of the action. It is not in these circumstances necessary that the other partner should sist a mandatory.

The Court to-day adhered. The fact that Walter Wingate was abroad appeared on the face of the summons. The motion for a mandatory was a motion in the cause. It was not a plea against title. If the objection of want of authority was within any of the pleas it was within the first, which has been repelled. But if it had been intended to raise the

objection to title, which had been argued, there should have been a distinct statement on record that Wingate had not authorised the action. As to the motion otherwise the Court thought that looking to the circumstances, it was not a case where a mandate was necessary. There was a partner in this country whose solvency was not questioned.

### SECOND DIVISION.

HERITORS OF CARRIDEN *v.* DUGUID AND OTHERS.

*Churchyard.* Are all the heritors in a rural parish entitled to take part in the custody and management of the churchyard?

Counsel for Complainers—The Solicitor-General and Mr Cook. Agents—Messrs Duncan & Dewar, W.S. Counsel for Respondents—Mr Black. Agent—Mr Thomas Paddon, S.S.C.

This is an action of suspension and interdict at the instance of the heritors of Carriden. The note of suspension concludes with the following prayer:—

"May it therefore please your Lordships to suspend the proceedings complained of, and to interdict, prohibit, and discharge the said respondents, and all others, from molesting or interfering with the complainers in the management and custody of the old churchyard of the said parish of Carriden, by forcing the gate of the said churchyard, or otherwise effecting a violent entrance into the same, opening graves, and erecting or constructing headstones or other monuments or memorials of dead or living persons within or upon the ground of the said churchyard, without the leave of, or license granted by, the complainers or their predecessors, the heritors of the said parish, or by any other fact or deed inconsistent with the legal rights of the complainers as managers and custodiers of the said churchyard, or to do otherwise in the premises as to your Lordships shall seem proper."

After narrating the history of the closing of the old church and churchyard of Carriden, and the opening of a new church and burial-ground in 1776, and the rights of sepulture that had been granted by the heritors in the old churchyard as proprietors of it in consideration of a small sum of money paid by the parties applying for burial places to the kirk-session, and the steps taken to shut up the old churchyard, the heritors go on to state:—

"Until recently no attempt was made to interfere with the regulation and management of the old churchyard by the complainers in terms of the above resolution, but for some months back a disposition has been evinced by certain parties in the parish, and amongst others by the respondents, James and John Duguid and Andrew Waldie, to oust the complainers altogether from the management of the old churchyard, and to assert a right of property in the ground of the same to the exclusion of the complainers, and in some instances this had led to unseemly and violent and illegal acts upon the part of the said respondents and others.

"In particular, in the month of March last (1864), application was made to the beadle to give the key of the churchyard gate for the avowed purpose of exhuming and of reintering in the old churchyard the body of an infant child of a person named Balmer, which had previously been interred in the new churchyard, Balmer having no right of burial in the old churchyard. The beadle, after consulting the Rev. Mr Smith, the minister of the parish, having declined to give the key for the said purpose, a disorderly crowd of persons actually exhumed the body of the said child, and having forced or otherwise obtained an entrance to the ground of the old churchyard, they reentered the child in a burial place in that churchyard in which a person of the name of Ramage, who was said to be the maternal grandfather of the said child, claims a right of burial, but in which neither Ramage nor Balmer