the ground that the verdict was contrary to evidence, refused.

This was a hearing on a rule with a view to a new trial. The pursuers were Messrs W. D. Young & Co., iron and wire fence manufacturers in Edinburgh, and the defender Mr W. H. Gillespie of Torbanehill. The following issues were adjusted for trial:—

"Whether, at various times, betwixt 16th April 1861 and 1st July 1864, the pursuers, on the employment of the defender, made the furnishings and performed the work specified in the five accounts, numbers 6, 7, 8, 9, and 10 of process, or any part thereof: and whether the defender is indebted and resting-owing to the pursuers the sum of £142, 9s. 7d. sterling, being the amount of said five accounts after deducting £140 paid to account thereof, and the sum of £13, 18s. 3d. sterling, being the interest due thereon on 31st December 1865, or any part of said sums, with interest on £142, 9s. 7d. from 31st December 1865? Or,

"1. Whether the pursuers failed to completely make and fit up the conservatory, specified in the account No. 7 of process, in a workmanlike manner?

"2. Whether, in consequence of the operations, and through the fault of the pursuers, in connection with the said conservatory, the defender has suffered loss, injury, and damage to the extent of £70, or part thereof?"

After the issues were adjusted, the defender paid all the pursuers' accounts, except one, for a conservatory erected at Stirling, for which £70 was charged. The only question before the jury had therefore reference to this charge. The trial took place on 8th and 9th April last, when the jury returned a verdict for the pursuers under the principal issue for £70 and interest. They also found for the pursuers on the first counter-issue, and for the defender on the second, assessing the damages at £12. The defender moved for a rule on the pursuers, to show cause why the verdict should not be set aside, as contrary to evidence, and a new trial granted.

A rule was granted.

Pattison and Asher for defender.

Gifford and Burnet for pursuers.

The Court discharged the rule.

The Lord President—In this case there are three issues. The two counter-issues embody the defences of Mr Gillespie. In regard to the first counter-issue, I think it very clear that it cannot be said that the pursuers failed to complete the conservatory, because it is plain from the correspondence in evidence that it was the defender who prevented them from completing it. Then, as to the second counter-issue, the pursuers have all along, in the correspondence and on the record, admitted their liability to repair the damage done by one of their men to the stonework of the house, and the jury have allowed a full sum according to the evidence on that head. But other imperfections in the work are alleged, some of which are remediable and others not. As to those which are remediable, it is the defender's own fault that they have not been remedied, and the jury have included in the £12 a sufficient sum to defray the expense of doing so. I include among the remediable imperfections the straightening of the astragals. But two things are said to be irremediable—the flatness of the roof and a want of parallelism in the erection. The flatness of the roof, however, could not be avoided, because the incline could not have been different in the place, which was prescribed by the defender himself. There is more delicacy about the want of parallelism, but that is always a matter of degree, and the question whether the deviation was sufficient to justify the rejection of the whole work was one peculiarly for the jury, with whose opinion I see no reason to interfere.

The other judges concurred.

Rule discharged, with expenses.

Agents for Pursuers—Macnaughton & Findlay, W.S.

Agent for Defender—Henry Buchan, S.S.C.

## *Wednesday, June* 12.

### ROBERTSON *v.* SWAN & SON.

*Jury Trial—New Trial.* Motion for new trial, on the ground that the verdict was against evidence, refused.

In this case, in which Thomas Robertson, flesher in Ardrossan, was pursuer, and John Swan & Son, cattle salesmen, Edinburgh, were defenders, the following issue was tried by Lord Barcaple and a jury in April last:—

"Whether, on or about the 11th August 1865, the defenders sold to the pursuer eight bullocks upon an agreement that they were to be delivered and paid for on 28th August 1865, and to be kept by the defenders in the meantime at their own risk; whether, while the said bullocks were being so kept by the defenders, they became infected with the cattle plague, or other serious disease, whereof one of them died while still in the defenders' custody and at their risk; whether on the 28th August the defenders, in the knowledge of the said facts, which they concealed from the pursuer, applied for and received from him payment of the sum of £100 sterling as the price, or part of the price, of the said eight bullocks; and whether the defenders are indebted and rest-owing to the pursuer the sum of £100, or any part thereof, with interest from 28th August 1865?"

The jury unanimously returned a verdict for the pursuer. The defenders obtained a rule on the pursuer to show cause why the verdict of the jury should not be set aside, as against evidence, and a hearing on the rule took place.

Watson and Burnet for pursuer.

A. R. Clark and Macdonald for defenders.

The Court unanimously discharged the rule.

Lord Curriehill said, that having heard this case fully argued by counsel on both sides, and having since carefully read over the evidence, he thought it came to be a case in which the difference depended on contradictory evidence and on the balancing of testimony. If he had been on the jury he confessed he would have had very little difficulty in making up his mind, but he was not on the jury, and the pursuer had got the verdict. It was peculiarly the province of the jury to see the witnesses as well as hear them, and to balance and weigh the credibility of the witnesses on both sides. The jury had come to a unanimous verdict, and he thought this was peculiarly a case in which the Court should not usurp the functions of a jury; and the conclusion he had come to was, that they should let the verdict stand.

Lord Deas was of the same opinion.

Lord Ardmillan said he entirely concurred in the great undesirableness and impropriety of interfering with the verdict of a jury, where there was a question entirely or almost entirely of the credibility of witnesses. Therefore he was not prepared to differ from the proposal made, to refrain from disturbing the verdict. But he thought it right to say that, after careful and anxious consideration of the evidence, he could not have concurred in the verdict; and he had the greatest possible doubt whether the verdict reached the truth of this case.

The Lord President said he concurred with their Lordships, but should like to express the state of his mind a little differently. He had his suspicion as to whether this verdict was just; and he would even go the length of saying that, if he were to make up his mind after consideration of this evidence put before him in writing, he should give a verdict for the defenders. But he did not think that his opinion, formed on the evidence in writing, was half so valuable as the opinion of the jury, formed after hearing the witnesses. Therefore he considered it was not within the province of the Court to disturb the verdict.

Rule discharged with costs.

Agent for Pursuer—John Thomson, S.S.C.

Agents for Defenders—Horne, Horne, & Lyell, W.S.

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*Wednesday, June* 12.

MUIR *v.* NORTH BRITISH DAILY MAIL.

*Jury Trial—New Trial.* Motion for new trial, on the ground that the verdict was against evidence, refused.

This was a motion by the pursuer for a new trial on the ground that the verdict was contrary to evidence. The circumstances out of which the trial arose were shortly as follows:—The defenders, on 27th February 1866, inserted in their newspaper a paragraph, headed "Railway Negotiations," having reference to the position of the Union Railway and the purchase of certain property belonging to Bailie Brown. On 1st March they expressed their regret that statements had appeared in their previous paper under the above heading, which, they were now informed, were in almost every essential particular at variance with fact. They stated that the information on which the paragraph had been founded had been vouched for by Mr G. W. Muir, and was inadvertently allowed to appear without proper authentication. Mr Muir wrote to the editor of the *Daily Mail* a letter, which was published on 5th March, contradicting the statement that he had vouched for the accuracy of the paragraph in question, and saying that he did not see it till published. He complained of the mention of Bailie Brown's name in connection with the proceedings in London, as being equally unjustifiable with the mention of his own, and objected otherwise to the account given by the reporter of his conversation with him. To this the *Daily Mail* appended a letter by their reporter, to the effect, that although Mr Muir had not seen the paragraph —and it was never said he did—he had vouched for the information on which it was written. That information was taken down in shorthand, word for word, from his own lips. Some information he had given, as to the abandonment of a high level station in Buchanan Street by the Caledonian Railway Company many years ago, was omitted as irrelevant; and the only addition made to his words, in transcribing them for publication, was the qualifying phrase, "we understand." The following note by the editor was added:—"We need hardly say which of the two versions of the above story we believe the true one, and have only again to apologise to our readers for the inadvertence by which any statement emanating from such a quarter found admission into our columns."

Mr Muir then brought an action of damages against the publisher and proprietors of the *Daily Mail*, on the ground that the said notices and paragraphs, the substance of which is given above, falsely and calumniously represented that he had communicated to the defenders' employees, for the purpose of publication in their newspaper, statements in every essential particular at variance with fact; that he was a person whose word was not to be believed; and that any statements he might make were unworthy of credit, and unfit for publication in a newspaper. Damages were laid at £1000.

The case was tried before Lord Barcaple and a jury in April last. The jury unanimously found for the defenders.

Scott, for the pursuer, moved for a rule on the defenders, to show cause why a new trial should not be granted, on the ground that the verdict was contrary to evidence.

The Court unanimously refused to grant the rule.

The Lord President said he did not think that there was any case here for granting a new trial. It was one of those questions more for the determination of a jury than for the determination of the Court; and that consideration in itself would be quite sufficient to render him very unwilling to interfere with the verdict. Of course one would be inclined to do so if it were shown that there had been the publication of a clearly calumnious statement not in any way justified. But that was not the case here. It was not wonderful that, when the editor of the *Daily Mail* came home and found that the publication of the paragraph had caused a great deal of annoyance to persons of respectability, and when he was told that he had been misled upon a somewhat delicate subject, it was not surprising that he should have felt annoyed, and should have inserted a withdrawal or retractation of the statements in his newspaper as early as possible, and that he should do so with some degree of irritation of feeling. Though the paragraph unquestionably did show that the editor was much annoyed, and though it was also somewhat unusual to disclose the name of the person from whom the inaccurate information was derived, still the paragraph did not, in his view of it, contain any actionable matter. It might have been so construed by the evidence as to be calumnious in its effect, because addressed to the public of Glasgow, who were acquainted with the railway matters; and it was for the pursuer to have satisfied the jury of that by evidence. But he led no evidence to show that the words used imported anything else than they might do if they were used in their fair and obvious meaning. All he could say was that they seemed to him to contain nothing actionable whatever. But then the pursuer's counsel said that the last parenthetical paragraph appended to the reporter's letter was much more bitter and clearly actionable, and that it must be held to give a colour and meaning to the first letter. Now, he thought there was one thing that the learned counsel put out of view al-