culty. I perceive no difference in this respect between the Crinan Canal and the Caledonian. But it is only as to the Crinan Canal that our opinion is asked.

The question is one not now to be discussed on principle merely. There are certain recent well-known judgments by which the matter must be held ruled. It is settled, as I think, by these authorities, that an exemption from public taxation is not possessed merely in respect of the property sought to be assessed being under the charge of public trustees, or used, in a general sense, for the benefit of the public. It is necessary to this exemption that the property be in the occupancy of the Crown for the purposes of the Crown; or, as it has been otherwise expressed, occupied by Government for Government purposes. A familiar illustration is derived from the case of buildings occupied as Government offices—the Post-Office, the Admiralty, the Horse Guards, and the like. The present case does not come within this category. The Crinan Canal is no doubt vested in public Commissioners, for public uses, that is to say, it is so vested for the purpose of any of the public who choose to take advantage of the navigation, doing so on payment of the fixed rates and duties. Therein it is not used by or for behoof of the whole public, but only of a certain portion of them, who pay for the benefit. I consider it to be now firmly established that this is not equivalent to Crown occupancy for Crown purposes, but something entirely different; and that property so held is liable to rating; and the rates just form part of its ordinary outgoing charges. I need not more specifically refer to the decision in England regarding the Mersey Navigation, or the judgments in this Court and the House of Lords with regard to the Leith Docks and Glasgow Harbour, and latterly the University of Edinburgh. These are familiarly known.

The specialty which has been supposed to exist in the present case lies in the amount of debt owing (as is assumed) to the Treasury, on account of the Crinan Canal, which places, as was argued, the Commissioners of the Caledonian Canal in the position, *quoad* the Crinan Canal, of trustees for Government, for repayment of this debt. But I think there is here a twofold error. According to the course of the transactions, I conceive that the debt previously incurred by the Crinan Company was substantially wiped away by the canal being taken in lieu of it, under the Act 11 and 12 Vict. c. 54. The canal, no doubt, thus came in room of the money debt. But in place of its being kept in the form of a security for debt, it was statutorily made over to the Commissioners of the Caledonian Canal, not as trustees for the Treasury, but as holding both in property and administration, for the purposes of navigation, with an obligation on these Commissioners to employ all the proceeds of the canal in maintaining and improving the subject of their trust. Such being the case, the prior debt incurred for the canal becomes, in my apprehension, of no sort of relevancy in the present question. Indeed, even if there still were debts on the Crinan Canal, payable to Government, it would not, as I think, affect our present conclusion. For the hinging point in the case is the use which is made of the canal, and that this is not a use for Crown or Government purposes. Few things of public utility, like the Crinan Canal, have come into existence without aid from the public purse, either afforded by a vote of Parliament amongst the supplies of the year, which does not infer repayment, or by means of a statutory loan sanctioned by Parliament. But this is of no moment towards exempting from taxation, if the occupancy is not for Crown or Government purposes, but, as here, for the purposes of navigation on the part of those who pay for the benefit by statutory rates. This circumstance I consider decisive against any plea of exemption.

I am therefore of opinion that the first question should be answered in the affirmative; the second in the negative.

The third and remaining question is, whether the valuation of the canal and its appurtenances is to be regulated by the Act 39 Geo. III. c. 27, or, which is the only alternative, by the General Valuation Act for Scotland, 17 and 18 Vict. c. 91. I can have no doubt on this question. I consider the Valuation Act, 17 and 18 Vict., to have superseded and set aside any previous enactments on the subject, and this very emphatically in the case of railways and canals. I am therefore of opinion that this question should be answered in the negative.

Agents for the Commissioners of Supply—Maclachlan & Rodger, W.S.

Agent for the Caledonian Canal Commissioners—James Hope junior, W.S.

Tuesday, March 19.

LOGAN *v.* WEIR.

Jury Trial—Lead—Unpaid Expenses.

Where the pursuer, having failed in one part of his case, had been subjected to the payment of a sum of expenses, on the third last sederunt day of the Winter Session, the defender moved to have the notice of trial given for the Spring Circuit Court discharged, on the ground that the pursuer was unable to pay these expenses. The expenses not having been paid nor caution found, the Court, in respect of the Session being at an end, discharged the notice of trial.

The pursuer having raised an action of slander, said to have been committed judicially, against the defender, failed in certain points, and decree for £33 of expenses was, on 16th March, pronounced against him. Notice of trial at the ensuing Stirling Circuit, on the remaining issue, was given by the pursuer; and the defender now moved to have this motion discharged.

BALFOUR, for him, stated that the expenses had not been paid, and that the pursuer's agent had stated to the defender's agent that the pursuer was unable to pay them. In these circumstances it was unfair to compel the defender to litigate in a doubtful case, where it would be impossible for him to get his expenses if successful. If the trial were deferred till May the pursuer would be charged to pay the expenses decerned for, and would either have paid them or become bankrupt. Authority referred to—*Wright* v. *Ewing*, 12 Shaw 535.

MAIR and RHIND, for the pursuer, objected to the lead being thus taken from the pursuer.

The Court continued the case till the following day, to give the pursuer time to pay the expenses, or find caution for them, intimating that if one or other was not done, the notice of trial would be discharged. The Court intimated that if it had not been the second last day of Session, they would have

waited till the expenses had been paid by the pursuer, or he had become bankrupt. But in these special circumstances the Court would take the lead out of the pursuer's hands, as by May one or other of these events would have occurred; and if the expenses were not paid it would be the defender's fault.

The expenses not having been paid or caution found, the Court, on the following day, discharged the notice of trial.

Agent for Pursuer—
Agents for Defender—Webster & Will, S.S.C.

Wednesday, March 20.

SIR GEORGE DOUGLAS CLERK, BART., *v.* GEORGE EDWARD CLERK & OTHERS.

Entail—Prohibition—Lease—Minerals.

Where the heir in possession of an entailed estate was prohibited from letting the coal under a certain portion of the entailed lands, and from communicating the level of the said coal to any neighbouring colliery, but the said restriction did not apply to the ironstone or other minerals under the said lands or their levels; and where, in virtue of the Act 6 and 7 Will. IV. c. 42, a lease of the whole minerals under the said lands had been let for the period of thirty-one years, and it was sought for the purpose of beneficially working the coal as well as other minerals under one part of the lands to communicate the said coal levels to a neighbouring colliery:—

Held that the heir of entail in possession was entitled to do so, notwithstanding the said restriction, provided the doing so was beneficial and not prejudicial to the enjoyment of the mineral estate, and that provision was made for restoring matters to their former condition whenever this should cease to be the case, it not being a prohibition which was necessary for the preservation of the entailed estate, or its transmission to the succeeding heirs of entail.

This action of declarator was raised by Sir George Douglas Clerk, Baronet, heir of entail in possession of the estate of Penicuick, and by John Clerk, Esq., Q.C., his curator, against George Edward Clerk and Others, the substitute heirs of entail to the said property.

The summons sought to have it declared that "the pursuers, Sir George Douglas Clerk and John Clerk, have full and undoubted right and power to communicate the level of the coal of Lasswade, belonging to the pursuer, Sir George Douglas Clerk, to the neighbouring colliery of Dryden, belonging to Colonel Robert Archibald Trotter of Castlelaw and Dryden, notwithstanding any prohibition contained in a deed of entail executed by the deceased Sir James Clerk of Penicuik, Bart., bearing date the 14th, and registered in the Register of Tailzies 12th June 1782, and in the books of Council and Session 26th April 1798; and in particular, it ought and should be found and declared, by decree foresaid, that the pursuers have full and undoubted power and authority to permit the Shotts Iron Company, tenants of the minerals under the pursuers at Loanhead, in the parish of Lasswade, to communicate the coal workings and coal levels within the said field to the neighbouring estate of Dryden, belonging to the said Colonel Robert Archibald Trotter, so as thereby to enable the said Shotts Iron Company to make use of the said coal workings and levels for carrying off the water from the mineral field, so as to facilitate and admit of raising minerals from the said estate of Dryden."

The deed of entail under which the estate of Penicuik was held by the pursuer contained the following prohibitory clause:—"And with this limitation and provision also, that it shall not be lawful to, nor in the power of my said heirs of taillie, or any of them, to sett tacks (for any periods whatever) of the whole or any part of the coal lying under and beneath the whole lands and barony of Lasswade, for any term whatever, nor to communicate the level of the said coal of Lasswade to any neighbouring colliery."

In virtue, however, of the Act 6 and 7 Will. IV. c. 42, a lease was entered into in 1866, whereby the late Sir George Clerk and his *curator bonis* let to the Shotts Iron Company, for thirty-one years as from 1865, the whole coal, cannal coal, bituminous shale, ironstone, limestone, and fire-clay, lying under certain parts of the lands of Lasswade in the neighbourhood of Loanhead. This lease contained a clause in the following terms:—"And it is hereby expressly provided and declared that the lessees and their assignees and sub-tenants shall on no account communicate any of the coal workings *or levels* within the foresaid lands to any adjoining proprietor; but this prohibition is not intended to apply to their works for raising and manufacturing *iron*, and that the said lessees may communicate their works for raising and manufacturing *iron, but not coal*, to neighbouring lands, the minerals of which may be let to them; and should the lessees also become lessees of the minerals in any of the adjoining properties, they shall have liberty to use the pits, hill-grounds, and railways, &c., on the foresaid lands, in so far as that can be done in conformity with the provision and declaration above written, for similar purposes, upon their satisfying the said Sir George Clerk or his foresaids that the minerals raised from the different properties will be properly distinguished, and upon paying to the said Sir George Clerk or his foresaids *one penny sterling* per ton of twenty-two and a-half hundred weight for all other minerals that shall be raised from the pits in lands belonging to other parties and carried over the lands belonging to the said Sir George Clerk."

The lands of Lasswade are bounded on the west by the estate of Dryden, belonging to Colonel Trotter of Castlelaw and Dryden. The Shotts Iron Company became in the year 1869 lessees of the minerals under the lands of Dryden in the neighbourhood of their Loanhead workings or the estate of Lasswade. In January 1870 the Shotts Iron Company applied to the late Sir James Clerk, then heir of entail in possession of the estate of Penicuik, for leave to communicate the level in the Loanhead estate to the workings in the Dryden field, so as to economise labour and expense by working the two fields with the same level and from the same pits. Their application was in the following terms:—

"*Shotts Iron Works, 21st January* 1870.

"Stuart Neilson, Esq., W.S., Edinburgh.

"Dear Sir,—The Shotts Iron Company's mineral workings in the lands of Loanhead, which have been carried on for some time from pits and mines on the east side of the village of Loanhead, are