On 16th November 1882 the Lord Ordinary (KINNEAR) reported the petition to the First Division.

"*Note.*—The Lord Ordinary would have been disposed to dismiss this petition as unnecessary, holding that in the administration of a permanent trust for charitable purposes trustees are entitled, without obtaining the authority of the Court, to feu out mortified lands—*Merchant Company of Edinburgh* v. *Heriot's Hospital*, Mor. 5750. But it is stated that although there is no reported case to that effect, similar petitions have been entertained, and that power to feu has been granted under the Trusts Act 1867; and as the point is one of general importance, affecting the administration of charitable trusts, the Lord Ordinary has thought it proper to report the petition."

At advising—

LORD PRESIDENT—I daresay that it was very right for these magistrates to present this petition for the purpose of satisfying themselves whether they are entitled as trustees under this charitable trust to grant feus of the lands mortified without the authority of the Court, and no doubt it will be satisfactory to them to have a judgment on the point. I have no doubt on the subject, and I think that the trustees of every charitable institution have power at common law to feu out the lands belonging to the institution. It was so decided in 1765 in the case of the *Merchant Company of Edinburgh*, and it has been the practice ever since. I am for refusing this petition as unnecessary.

LORD DEAS concurred.

LORD MURE—I concur, and will only say that I think it would have a pernicious effect to throw doubts on the power of a body of this kind to feu by granting the petition.

LORD SHAND—I am of the same opinion, and that being so, I have nothing to do with the restrictions to be inserted in the feu-rights granted to the respondent. That rests with the administrators of the trust; they will judge whether there should be any restrictions inserted. I only make this observation, that as the Court have found they have power to grant feus without special authority, that throws the responsibility on them as trustees.

The Court dismissed the petition as unnecessary.

Counsel for Petitioners—Orr. Agents—Boyd, Macdonald, & Jameson, W.S.

Counsel for Respondent—Hay. Agents—Rhind, Lindsay, & Wallace, W.S.

Saturday, December 9.

FIRST DIVISION.

LUMSDEN, PETITIONER.

Parent and Child—Guardianship and Custody.

In a petition by a father for custody of his son, a year old, who had been removed by the petitioner's father-in-law, the Court, pending intimation, *granted* interim interdict against the father-in-law parting with the child.

This was a petition presented by John Dunlop Lumsden, cooper, residing at Boddam, in the county of Aberdeen, for the custody of Andrew Buchan Lumsden, the only child of the marriage between him and Margaret Smart Buchan or Lumsden, daughter of Andrew Buchan, salmon-fisher, Boddam. The petitioner set forth that he was married on 5th November 1880, and that the child was born on or about 26th September 1881, and on 26th December 1881 his wife deserted him. He further set forth that on the same date Andrew Buchan and his wife removed the child from the petitioner's house in his absence, and took it to their own house at Boddam; that he had endeavoured to get back his child, but that Andrew Buchan refused to give him up; that he was apprehensive that when Andrew Buchan became aware of the presenting of this petition that he would hand over the said child to the petitioner's wife; that in this way a new and expensive application would be rendered necessary; and that for the prevention of this he was anxious that the said Andrew Buchan should be interdicted from parting with said child to the petitioner's wife or anyone else.

The Court ordered intimation to be made on Andrew Buchan and on the petitioner's wife, and granted interim interdict against Buchan as craved.

Counsel for Petitioner—D. J. Mackenzie. Agent—William Officer, S.S.C.

HOUSE OF LORDS.

Tuesday, December 5.

ORR EWING *v.* JOHN ORR EWING & CO. AND ORR EWING'S TRUSTEES.

(*Ante*, Feb. 7, 1882, vol. xix. p. 613.)

Succession—Payment—Interest—Instalment.

A contract of copartnery provided that in the event of the death of any of the partners the surviving and solvent partners who should continue the business should pay out to the representatives of the deceased the amount at his credit in the books of the firm, by ten biennial instalments, "with interest thereon at the rate of 5 per cent. per annum from the date of the balance." *Held* (*aff.* decision of Second Division—*diss.* Lord Watson) that at each payment interest must be paid upon the whole balance of the debt then remaining unpaid, and not upon the instalment.

This case is reported *ante*, Feb. 7, 1882, vol. xix. p. 613. The defenders John Orr Ewing & Co. appealed to the House of Lords.

At delivering judgment—

LORD BLACKBURN—My Lords, the solution of the question in dispute between the parties in this appeal depends entirely on what is the true construction of a few words—I might almost say