pany gave notice to the Keeper of the Rolls of their intention to move for a rule.

On the case being called in the Single Bills, counsel for the pursuer objected to the competency, and argued that the provisions of the Act of Sederunt had not been complied with, in respect that the notice given in July was not given to the Keeper of the Rolls, and the notice given in October was more than ten days from the date of the trial of the cause. The notice to the Keeper of the Rolls was indispensable, otherwise there was no provision whereby the case could be brought promptly before the Court, and the ten days referred to were the ten days ensuing—*Henderson* v. *Henderson*, October 17, 1888, 16 R. 5. If the A.S. had meant sederunt-days, it would have said so.

Argued for the appellants—The notice given in July was sufficient, because it was given to the opposite party, which was the essential thing. If not, the notice given in October was good, as it was within ten sederunt days of the date of the trial—*Cockburn* v. *Hogg*, February 16, 1897, 24 R. 529. In any event, the provisions of the Act of Sederunt were directory and not peremptory, and the Court might dispense with their observance—*Boyd, Gilmour & Company* v. *Glasgow and South-Western Railway Company*, November 16, 1888, 16 R. 104.

LORD PRESIDENT—I think the second notice has no plausible claim to competency. This trial took place in session, and it is provided that notice of appeal must be given within ten days—that is, not ten sederunt days but the ten days next ensuing. Accordingly I pass to a consideration of the first notice. Now, it happens that the requirements on a party desiring to appeal are contained in two sections of the Act of Sederunt 16th February 1841. Section 36 prescribes the period during which notice of appeal may be given, and section 44 provides that "when the motion is to be made before the Division a copy of the notice must also be lodged with the keeper of the Inner House rolls." Now, it seems to me that there is no reason for holding section 36 to be merely directory unless we are also to hold that the provision of section 44 is one which may also be dispensed with at our discretion. I think that is out of the question, and when we consider the use of the provision which has been violated we see that the reason for it is perfectly obvious. The object is to secure that the case should come before the Court promptly. Now, the Act of Sederunt might have imposed on the dissatisfied party the duty of bringing the appeal before the Court within a specified time, but what it does is to provide that he shall give notice to the keeper of the Inner House rolls, whose duty it then is to bring the case before the Court. If the lax view which is now urged upon us were sound, there is no saying when a case might come before the Court, because there would be no machinery for bringing it on which could be brought into action. At present the procedure is automatic.

I therefore think that the notice to the keeper of the rolls is an integral part of the provision for the disposal of appeals, and those provisions in the Act of Sederunt have by the antecedent statutes the effect of rules statutorily authorised.

LORD ADAM—I concur.

LORD M'LAREN—This is a case where ten days' notice of motion for a new trial, and not six, is prescribed, and therefore the argument for the appellant could only succeed if we were to hold that the days of vacation were not to be counted, but it is quite clear that the provision in the Act of Sederunt means days in the ordinary sense and not sederunt-days, because this provision applies in terms to cases tried at sittings to be held immediately before the commencement of the Session. In such a case we necessarily begin by counting the days of vacation. Accordingly, if the notice to the Keeper of the Inner House Rolls is a condition of the right to move—and I agree that it is—the motion cannot now be sustained. In this respect it is impossible to distinguish that provision from the other provisions in the same sections of this Act of Sederunt, and if we were to hold that it was merely directory we should be obliged to hold that all the provisions of the Act of Sederunt were merely directory and might be dispensed with at our discretion.

LORD KINNEAR concurred.

The Court refused the motion.

Counsel for the Defenders—Deas. Agents—Hope, Todd, & Kirk, W.S.

Counsel for the Pursuer—Jameson, Q.C.—Constable. Agent—Andrew Gordon, Solicitor.

Thursday, October 26.

FIRST DIVISION.

BANKIER DISTILLERY COMPANY *v.* YOUNG'S COLLIERIES, LIMITED.

Process—Transference of Action—Interdict.

Where a party had been found not entitled to pollute a stream by pumping water from his coal mine into it, a motion by the complainer to have an action of interdict against him transferred against his singular successor in the coal mine *refused*, on the ground that the action was rested upon wrongful acts committed not by that singular successor but by his author.

This was a sequel to the case of *The Bankier Distillery Company* v. *Young & Company*, July 20, 1892, 19 R. 1083, *aff.* July 27, 1893, 20 R. (H.L.) 76. In that case the Court found that the defenders were not entitled to discharge into the Doups Burn water pumped from their coal-workings to the injury of the pursuers, and continued the

cause in order to allow the defenders, if so advised, to make arrangements for obviating injury to the pursuers.

On 12th July 1898 Young's Collieries, Limited, was incorporated, and acquired the business of Young & Company, including the lease of the coal mine from which the water had been pumped into the burn.

On 24th June 1899 the Bankier Distillery Company lodged a minute in which they averred that, in spite of the judgment of the Court, neither Young & Company nor Young's Collieries, Limited, had taken the necessary precautions to obviate injury to them, and that consequently water was still finding its way from the coal-workings into the burn in question. They therefore moved the Court, *inter alia*, to have the cause transferred against Young's Collieries, Limited, and for interdict against Young & Company and Young's Collieries, Limited, as craved in the original action.

Young's Collieries, Limited, lodged answers, submitting that the complainer's averments were irrelevant and unfounded, and that the application for interdict was premature and unnecessary.

Argued for the complainers—The complainers had an absolute right to interdict, whether the wrongdoers were taking steps to mitigate the injury or not—*Seafield* v. *Kemp*, Jan. 20, 1899, 1 F. 402. Unless the action were transferred against Young's Collieries, Limited, and interdict granted, the complainers would be deprived of their remedy, and would have to fight their case through again from the beginning.

The argument for the respondents sufficiently appears from the opinion of the Lord President.—Stair, iv. 34, 3; and Act 1693, cap. 15, referred to.

At advising—

LORD PRESIDENT—The petition in the action in which this present question arises originally contained a conclusion for payment. That conclusion was exhausted by the interlocutor of 20th July 1892; and the action is now solely an action for interdict. The ground upon which interdict was sought in the action was certain acts of pollution committed by the original defenders years before the present defenders acquired or had anything to do with the collieries. The Court, by a finding in the interlocutor of 20th July 1892, negatived the right of the defenders to discharge into the burn in question water pumped from their coal-workings to the injury of the pursuers. Instead, however, of pronouncing interdict, the Court, according to a well-established practice, continued the cause in order to allow the defenders, if so advised, to make arrangements for obviating injury to the pursuers. The pursuers now complain that the arrangements made are not effective; and they in their minute state that Young's Collieries, the new proprietors, who came into possession in 1898, are now polluting the stream. The important point is, that the pursuers' demand is for interdict against the new proprietors, and indeed it could be nothing else if the action is to be transferred against them, and a decree taken under the existing petition.

I am of opinion that the action cannot be transferred against Young's Collieries, the new proprietors. The action is rested not on pollution by them but on pollution by their predecessors, to whom they are singular successors, and according to our law interdict is only granted against any person on the ground of acts done by him constituting an infringement or menace of the rights sought to be protected. The fact that the pollution complained of was done from the property now belonging to Young's Collieries does not subject them to be interdicted — interdict being a purely personal remedy directed against the person who is said in the action to have violated or threatened the pursuers' rights. The new company is not the heir of its predecessors, and did not by acquiring the collieries subject itself to liability for illegal acts done by its authors. Nor can the pursuer now ask the interdict concluded for in the action because of acts done by Young's Collieries years after the record was closed. If they have any case of this kind it must form the ground of a separate action.

I am for refusing the motion to transfer the cause.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court refused the motion to have the cause transferred against Young's Collieries, Limited.

Counsel for the Complainers—Campbell, Q.C.—J. Wilson. Agent—G. Monro Thomson, W.S.

Counsel for the Respondents — Clyde. Agents—Webster, Will, & Co., S.S.C.

Thursday October 26.

SECOND DIVISION.

[Lord Stormonth Darling.

MACKIE & COMPANY *v.* GIBB.

Expenses—Fees to Counsel—Jury Trial—Case Settled before Trial Begun.

An action of damages for slander, which stood second upon the roll of cases set down for trial upon a particular day, was settled upon the day of the trial, while the case before it upon the roll was proceeding, and in conseequence the trial did not go on. By the terms of settlement the defenders agreed to pay the pursuers' expenses. Upon taxation of the account the Auditor reduced the counsel's fees for the trial from twenty and fifteen guineas to fifteen and twelve guineas respectively. The pursuers objected to this reduction, and the defenders did not appear to support it. *Held* (*diss.* Lord Young) that the Auditor ought not to have reduced the fees in