SECOND DIVISION.

DUKE OF BUCCLEUCH *v.* COWAN AND OTHERS (*ante*, pp. 141, 163).

Appeal to House of Lords. Leave to appeal interlocutors—(1) repelling preliminary pleas, (2) conjoining processes, (3) adjusting issues, and (4) repelling a plea of acquiescence, *refused.*

Diligence to Recover Documents. Circumstances in which a diligence to recover the private books of the defenders, and plans and sketches of their property, *refused;* but diligence to recover excerpts from their books, to a limited extent, *granted.*

Counsel for the Pursuers—Mr Patton, Mr Shand, and Mr Johnstone. Agents—Messrs J. & H. G. Gibson, W.S.

Counsel for the Defenders—The Lord Advocate, the Solicitor-General, Mr Gordon, Mr Clark, Mr Gifford, and Mr A. Moncrieff. Agents—Messrs White-Millar & Robson, S.S.C.

This case came before the Court to-day, on a motion by the defenders for leave to appeal to the House of Lords against—(1) The judgment disposing of the preliminary pleas; (2) the interlocutor by which the two actions had been conjoined; (3) that settling the form of the issues; and (4) that disposing of the plea of acquiescence.

The defenders referred to the case of Losh *v.* Martin, 20 D., 721; and Western Bank *v.* Douglas, 22 D., 447; and the pursuers to Longworth *v.* Hope, 3 M'Ph., 1049; Gordon *v.* Davidson, 2 M'Ph., 758; and Carron Company *v.* Jardine's Trustees, 2 M'Ph., 1372.

The SOLICITOR-GENERAL, for the defenders, argued that no general rule could be deduced from a consideration of the authorities. Every case depended on its own circumstances—the question always being whether, on a balance of all considerations, it was more expedient to have a trial before the appeal or not. The question generally arose in cases destined to trial by jury, but it might also arise in ordinary cases. The present was a peculiar case. One reason commonly urged against the leave being granted was that the party opposing was interested in dispatch; that his interests might suffer by the delay which the appeal would occasion. The pursuer could not urge that here, for the first action was begun in 1841, and the second was brought in 1864, and the dilatory pleas stated in the first action did not come up for discussion till June 1863. The question of delay, therefore, was laid out of sight. But this action was unprecedented in the combination of pursuers and defenders which it presented, and in its conjunction of processes, and would present a novelty in jury trial. The trial would be of a most embarrassing and of a most expensive description, and it would be matter of grave regret that it should take place at all if it could in any way be avoided. That was why he wished to go to the House of Lords at this stage of the case.

The LORD JUSTICE-CLERK observed that he could not subscribe to the doctrine advanced by the defenders that previous cases were not to be taken into view. From these cases he deduced the general rule of practice, never to grant leave to appeal at this stage of a case unless there was great and pressing expediency to recommend it. The sort of argument to support motions of this kind never varied, and the speech the Solicitor-General had delivered was just a reproduction of that which he had made in Gordon *v.* Davidson. What was the result of that case? The case went to trial. It certainly occupied a considerable time, but it resulted in a verdict for the defender — the Solicitor-General's own client. There was no bill of exceptions there. No appeal was taken, and the case was at an end. With regard to the preliminary defences, his Lordship did not think they were attended with great difficulty; and as to the plea of acquiescence—the only plea disposed of since the preliminary defences had been decided—it had no ground to rest upon at all. The only other matter that had been disposed of was the judgment conjoining the processes and fixing the form of the issue. That was a matter on which, with the greatest possible respect for the Court of Appeal, he thought the Court here were better judges than they. His Lordship concluded by saying he had never seen a clearer case for refusing the motion.

The other judges concurred; and leave to appeal was therefore refused.

A motion was then made on the part of the pursuers for a diligence to get access to the books of the defenders, that excerpts might be taken therefrom relative to the materials of the mills, the expenditure on buildings, returns of paper manufactured, accounts of sale, notes and invoices showing the nature and extent of the materials employed therein, and all plans and sketches of mills and works belonging to, or in the possession of, the defenders.

Mr PATTON, for the pursuers, explained that the object of this diligence was to ascertain the kind and extent of the materials employed in the works, in order to arrive at specific conclusions as to how far these entered into the pollution of the river. With regard to the expenditure on buildings, that was to show the extent to which the value of the property had increased on account of these buildings.

The LORD JUSTICE-CLERK—The defenders, you will see, will prove this. To make an impression upon the jury you are entitled to prove that the mill at such and such a place had been doubled in value, but you are not entitled to get access to the private books of the defenders. You can put one of the defenders in the box to prove this. With regard to the demand for plans and sketches of the mills, I suppose this is made on the analogy of plans for coal workings; but that is a very different matter. I think as regards these plans the demand is out of the question; and, with regard to the other documents required, we must limit the diligence to such excerpts from the books of the defenders as show the nature and quantities of the whole of the materials used in the various mills. A diligence is a valuable instrument, but it is liable to abuse as overlaying cases with irrelevant matter; and this is one of the reasons why jury trials are so tedious and expensive.

Mr GORDON, for the defenders, then asked what period should be embraced by the diligence?

The LORD JUSTICE-CLERK—We must give it for the whole period of forty years embraced in the issue. Both parties are to blame for the extent of that period.

GRAHAM *v* M'LELLAND.

Joint Stock Companies Acts — Winding-up—Contributory—Trustee. Held (1) That a trustee who held bank shares under a transfer subscribed by him is not distinguishable, as regards liability, from one who has signed the contract of copartnery; (2) That a contributory may be compelled to pay the sum for which decree has passed against him, although the debts of the company have all been paid, the object being not only to pay the debts, but also to equalise the losses; but (3) Note of suspension passed to try the questions whether one of two trustees, who have both subscribed the transfer, can be made liable *in solidum*, and whether he had been so decerned against.

Counsel for the Suspender—Mr Hamilton Pyper and Mr D. Mackenzie. Agent—Mr D. J. Macbrair, S.S.C.

Counsel for the Respondent—The Solicitor-General, Mr Shand, and Mr J. T. Anderson. Agents—Messrs Davidson & Syme, W.S.

This was a suspension of a charge, upon a decree pronounced on 15th March 1859, in a summary appli-