perfect knowledge, and feel at this moment, that they are most excellent men of business. But from what we know of the circumstances, there seems to have arisen an irritation which overcame a little that impartiality and high position which public prosecutors must have. It is out of our power to take the case from the hands of the jury. I don't say that I would have concurred in their verdict, but we are not entitled to withdraw it from them. I think a little animus did come out a little in the adherence by Mr Morrison to his belief in Bell's guilt, after another person had been convicted. Without going into the cutting upon the street, which is like the biting of the thumb in "Romeo and Juliet," there are indications that when they lodged their defences there was great temper. I cannot look on the defences except as their defences. They did not repudiate them at the time, nor in this record, and it was only at the trial in this case that they tried to make out that they were not their defences. The record was closed with these statements in the defences, and they are now interpreted by the jury as accusing Bell of that most serious conspiracy. Now, as Lord Cowan has said, Mr Bell was committed on nothing but sending threatening letters, when these defences were lodged. When the record was closed, besides the confession of Edmiston, the Crown had not taken a step to follow up the other charge, and the Procurators-Fiscal, whose duty was as much to prosecute as to put these statements on record, had not taken one step. They could not have put them on record without the intention of proving them, or without a blindness to the course they were to follow, and no evidence would have been sufficient to prove them except what would have been sufficient in a criminal charge. That is the rule whenever the *veritas* has to be proved. To some extent the feelings of the defenders seem to have lost their balance, and the jury were entitled to consider that there was some evidence of malice. Then there was the letter shown to Nicholson. I don't say whether there was any bad intention, but it is unexplained; and nothing can illustrate the danger of such warrants which set Procurators-Fiscal loose on all correspondence, than that letters slumbering in a private desk should be got out, promulgated, or shown to the agent of the injured parties, who before were quite uninjured, for I doubt whether anything said by Bell about Mr Hungerjaw, to the poet, could injure these parties. The injury was in promulgating what was said. Now the defenders injudiciously showed these letters to Mr Nicholson, the agent of the Ballingalls—and that gave rise to all the actions of damages at their instance. I cannot but say that that was most injudicious.

The Court discharged the rule formerly granted, with the expenses of discussing it.

Agents for Pursuer—Murdoch, Boyd, & Henderson, W.S.

Agents for Defenders—Murray & Beith, W.S.

OUTER HOUSE.

(Before Lord Ormidale.)

SIMS *v.* HAWES.

Expenses—Tender. A tender of a sum with expenses up to the date of it, includes the expenses of consulting counsel as to whether it should be accepted and of taking decree.

In this case the defender lodged a minute, tendering a sum of thirty guineas of damages, "with expenses up to the date thereof." The pursuer in his account made various charges for consulting counsel as to the propriety of accepting this tender, and also charges for obtaining decree. These charges were sustained by the Auditor; and to-day the Lord Ordinary repelled the objections stated to them by the defender. It was maintained by the defender that although in the general case a tender with expenses of process carried such charges as these, still that, as the minute here was limited to its expenses up to its date, such charges could not be allowed.

Counsel for Pursuer—Millar. Agents—Morton, Whitehead, & Greig, W.S.

Counsel for Defender—Rutherfurd. Agents—W. H. & W. J. Sands, W.S.

Wednesday, June 6.

FIRST DIVISION.

A, *v.* B.

Act of Sederunt 15*th July* 1865—*Time for Lodging Issues.* A party having, in consequence of a miscalculation, failed to lodge issues till the day after they were due, the Court, of consent, on the report of the Lord Ordinary, allowed them to be received.

Lord BARCAPLE reported a point which had arisen in this case for instructions from the Court. By the 12th section of the Act of Sederunt of 15th July 1865, it is provided that—"All appointments for the lodging or adjusting of issues shall be held to be peremptory; and if the issue or issues be not lodged within the time appointed it shall be competent to the opposite party to enrol the cause, and to take decree by default—which decree by default shall not be opened up by consent of parties, but only on a reclaiming-note." In this case the pursuer had, by a miscalculation of the day upon which the period for lodging issues expired, failed to present them to the clerk to the process till the day following—when the clerk refused to receive them—but marked them as too late. The defender did not desire to take advantage of the mistake on the part of the pursuer's agent, and did not move for decree, but concurred with the pursuer in requesting the Lord Ordinary to report the matter to the Court for the purpose of obtaining leave to have the issues received.

The Court, in the circumstances, granted leave.

BREADALBANE'S TRUSTEES *v.* CAMPBELL.

Entail—Improvement Expenditure—10 *Geo. III. c.* 51—11 *and* 12 *Vict. c.* 36. An entailed proprietor having expended certain sums of money in improvements, and having taken proceedings under the Entail Amendment Act, whereby he obtained authority to grant a bond of annualrent over the lands to the extent of £25,000, which power he exercised to the extent of £20,000, after which he lived for four years, and died without exhausting the power, *held* (*diss.* Lord Deas) that his executors were not precluded from exercising the rights which they had under the Montgomery Act, in order to recover the remaining £5000 from the succeeding heir of entail.

Entail—Decree of Declarator—10 *Geo. III. c.* 6. Objections to decrees of declarator of improvement expenditure which repelled.

This was an action at the instance of the surviving accepting and acting trustees and executors