offence and bodily harm from the respondent, to all which the petitioner is ready to depone."

He thereafter deponed that his statement was true, and the Steward-Substitute thereupon *ex parte* ordained the complainer to find caution of lawburrows under a penalty of £50.

The complainer then suspended, on the ground chiefly that the proceedings had been taken by the respondent maliciously and without probable cause. No caution was offered. Lord Mure refused the note, for the reasons stated in the following

"*Note.*—The Lord Ordinary has refused this note, in respect of the decisions in the case of Barbour, March 11, 1825, 3 S. 647; and Baxter, June 16, 1827, 5 S. 752, in both of which it was ruled that it was not a relevant ground for suspending a charge on letters of lawburrows regularly obtained, to allege that they have been taken out maliciously. The cases are very shortly reported, but the Lord Ordinary has examined the session papers, and he finds that in the case of Barbour the decision was pronounced upon written argument, and that, although the note was presented on caution, the petition was refused without answers. Nothwithstanding, therefore, of the older case of Smith *v.* Baird, January 26, 1799, M., 8043, relied on by the complainer, the Lord Ordinary has considered himself bound, in obedience to these later authorities, in which the case of Smith appears to him to have been brought under the consideration of the Court to refuse the present note. "D. M."

The complainer reclaimed.

YOUNG and WATSON for the reclaimer.

MONRO and SHAND for the respondent.

The following authorities were cited :—Ersk. 4, 1, 16; Bankton 1, 10, 157; Stair 4, 48, 2; Barclay's M'Glashan, p. 408–9; Stat. 1424, c. 2; 1449, c. 113; 1581, c. 117; 1661, c. 38; Barbour and Others *v.* Hogg, 11th March 1825, 3 S. 453 (647); Taylor *v.* Taylor, 25th June 1829, 7 S. 794; Gadois *v.* Baird, June 1856, 28 Jurist, 682.

After discussion, the complainer stated that he was willing to find caution of lawburrows binding him to keep the peace towards the respondent in common form under a penalty of £50 sterling *ad interim*, and until the suspension shall be finally disposed of.

On this offer being made, the Court recalled the Lord Ordinary's interlocutor, and remitted to him to pass the note. The Lord President observed that this case on the passed note would form a very fitting opportunity for considering the whole law on the subject, and putting it on a proper footing.

Agents for Complainer—Jardine, Stodart, & Frasers, W.S.

Agents for Respondent—Ronald & Ritchie, S.S.C.

PET.—DARLING.

Diligence — Inhibition — Husband and Wife — Aliment. Question—whether an inhibition by a wife against her husband, founded on a claim of aliment, under a decree of separation and aliment, is competent, the aliment having been regularly paid, and the husband not being *vergens ad inopiam*.

This was a petition for recal of an inhibition which had been used against the petitioner by his wife, who had, in the year 1865, obtained decree of separation and aliment against him, the aliment awarded being £55 yearly during the joint lives of the parties. The petition prayed for absolute recal, and made no offer of caution, and it was therein alleged that the aliment had been regularly paid to the petitioner's wife in terms of the decree. In her answers, the wife did not dispute this fact, but alleged that her husband was in course of disposing of his heritable property (which formed his sole source of income), and that he had, just before the inhibition was used, advertised his dwelling-house with its fixtures for sale. She alleged that he also desired to dispose of his furniture, and that it was his intention to remove to some place abroad, *animo remanendi*, and to place his person and effects beyond the jurisdiction of the Courts of this country. On behalf of the petitioner, it was denied that he was about to go abroad, but it was conceded that he had disposed of a considerable part of his property, and that he was in course of disposing of other portions when the inhibition was used—with the explanation that he was so acting for the purpose of making a more profitable investment of his money.

FRASER and SCOTT, for the petitioner, argued that the inhibition was incompetent :—1. The wife's claim was a future debt, and inhibition cannot proceed upon a future debt unless the debtor is *vergens ad inopiam*, which is not alleged here; 2 Bell's Com. 144. 2. A wife should not be allowed in this way to tie up her husband's property.

SOLICITOR-GENERAL and MACLEAN, for the wife, cited Stair, 1, 4, 15; Glenbervie, 16th July 1638, M. 6053; A. *v.* B., 15th June 1678, M. 6054; Geddes *v.* Geddes, 14th March 1862, 24 D. 794.

Some of the Judges regarded the question raised by the petitioner as one of great importance, but the petitioner offered to find caution to pay the aliment in all time coming, and it became unnecessary to decide it.

The inhibition was recalled on caution being found, and the wife was found entitled to expenses.

Agents for Petitioner—Watt & Marwick, S.S.C.

Agent for Respondent—John Leishman, W.S.

Tuesday, March 19.

SECOND DIVISION.

MURRAY *v.* STEWART.

Sale—Delivery—Implement—Abandonment of Contract. Circumstances in which held that a contract for sale of potatoes, after there had been partial delivery, had been abandoned by mutual agreement of parties, and accordingly that farther implement could not be enforced.

This is an advocation from the Sheriff Court of Forfarshire. On November 2, 1861, the respondent's husband, David Stewart, purchased from the advocator the potatoes, both regents and rocks, which he had on the farm of Ingliston, at the price of £4 per ton, the whole potatoes to be carried away by the 26th of the said month, and to be paid for in cash when weighed over the steelyard. Stewart took delivery of certain quantities of the potatoes, but after the 7th of December of the same year he ceased to take further delivery. The parties then had a litigation as to the price of the potatoes, and when it was ended, and when the price of potatoes had considerably risen in the market, the respondent, on 4th April 1862, intimated that he proposed to take delivery again on the following Thursday. The defender then refused to give such delivery, on the ground that the contract had come to an end by the previous