that is necessary to take up. If, however, we go farther, and consider the question of *condictio indebiti*, I think the argument of Mr. Clark would be entitled to very great weight, that an error in fact, arising from mere ignorance, is not enough to sustain a plea of *condictio indebiti;* the ignorance must be excusable. The only admission in the joint-minute is of ignorance; it is not admitted that it was excusable. We are accordingly left to gather from the circumstances of the case whether the ignorance of the consignee was excusable or not, that is, whether he had within his reach the means of knowing that of which he was ignorant. Looking to the bill of lading with the receipt on the margin, I think there can be very little doubt on that point. Accordingly, I should have very great difficulty in supporting the action on the ground of *condictio indebiti*. But I do not rest my opinion on that ground, but on the other. The measure of the lien is in the first charter-party, and the document called a sub-charter-party is only an assignation of the right of the charterer to the pursuer, Mr Youle, for a limited purpose. That does not interfere in any way with the owners' existing lien for freight over the cargo.

Agents for Pursuer—Wilson, Burn, & Gloag, W.S.

Agent for Defenders—L. Macara, W.S.

Wednesday, February 19.

OUTER HOUSE.

(Before Lord Mure.)

MACKAY *v.* ALLAN AND OTHERS.

Husband and Wife—Exclusion of jus mariti—*Mandatory. Held* (per Lord Mure) that a wife is entitled to sue in her own name in regard to a subject from which there is an exclusion of the *jus mariti*, and that, if she is resident in Scotland, she is not bound, in the absence of her husband, to sist a mandatory.

In this action Mrs Mackay, suing with the concurrence of her husband, Captain Mackay, sues the judicial factor on her father's trust-estate for £1500, as arrears of an annuity provided to her by his trust-deed, and expressly excluded from the *jus mariti* of her husband. When the action was raised, Captain and Mrs Mackay were resident in London, and a motion was then made by the defenders that Mrs Mackay should be made to sist a mandatory. She answered this by coming herself to stay in Edinburgh, but after a short residence here she returned to London. The defenders thereupon renewed the motion, and contended that it could not be satisfied merely by Mrs Mackay's residence here, because, even admitting, as maintained by Mrs Mackay, that the exclusion of the *jus mariti* gave her a good title to sue in her own name, and thereby the concurrence of her husband was rendered unnecessary, that did not relieve her of the duty of providing some one who might be liable for the expenses of process, if she were unsuccessful, for she herself would not be personally liable. The Lord Ordinary refused the motion, but ordered the appointment of a curator *ad litem*. His Lordship added the following note:—"The Lord Ordinary understands it to have been settled by the decision in the case of *Graham*, March 4, 1821, that when, as here, a wife sues for recovery of a fund from which the *jus mariti* of her husband is excluded, she is *in titulo* to do in her own name and for her own interest. It seems also to have been settled, in the case of *Gale*, March 7, 1857, that when a wife has an interest to sue separate and distinct from her husband, and sues with his concurrence as her administrator, it is not necessary that a mandatory should be sisted for the husband. In the peculiar circumstances of this case the Lord Ordinary sees no reason for applying a different rule; but, having regard to the state of the husband's health, it may be proper that a curator *ad litem* should be appointed to the pursuer, as was done in the case of *Gale*."

Counsel for pursuer—Mr Keir. Agents—H. & A. Inglis, W.S.

Counsel for other defenders—Mr Shand. Agent, A. Morrison, S.S.C.

Counsel for judicial factor—Mr W. A. Brown. Agent—James C. Baxter, S.S.C.

Thursday, February 20.

JURY TRIAL.

SYME *v.* EARL OF MORAY.

(Before Lord Barcaple.)

Landlord and Tenant—Excessive Preservation of Game—Reparation. In an action of damages on account of injury by game, verdict for pursuer.

In this case, Mr George Syme, residing at Couston, in the parish of Aberdour and county of Fife, tenant of the lands of Meikle Couston and Muirton Park, in the parishes of Aberdour and Dalgety, as also of the lands of Chester and Kirk Park, Hattonhead Park, and Barns Farm, also in the said Parish of Dalgety, was the pursuer; and the Right Hon. Archibald George, now Earl of Moray, and the Hon. George Philip Stuart, brothers of the late John Stuart Earl of Moray, trustees and executors appointed by, and acting under the trust-disposition and deed of settlement of the said John Stuart, Earl of Moray were the defenders.

The following is the issue sent to the jury:—

"It being admitted that the defenders' author, the Right Hon. John Stuart Earl of Moray, now deceased, was during the year 1865 proprietor of the lands of Meikle Couston and Muirton Park, in the parishes of Aberdour and Dalgety, as also of the lands of Chesters and New Kirk Parks, 'The Barns' Farm, and Hattonhead Park, also in the said parish of Dalgety; and it being admitted that the pursuer was during the year 1865 tenant under the said Earl of Moray of—(1) The said lands of Meikle Couston and Muirton Park, under agreement dated 3d June 1853; (2) the said lands of Chester and New Kirk Parks, under agreement dated 12th and 13th February 1855; (3) the said 'Barns' Farm, under agreement entered into shortly before Martinmas 1859; and (4) the said lands of Hattonhead Park, under an agreement entered into shortly before Martinmas 1862:

"Whether, during the year 1865, the said John Stuart Earl of Moray had upon the said lands, or any part thereof, an unreasonable and excessive stock of game, beyond what existed thereon at the dates of entering into the said leases respectively, to the loss, injury, and damage of the pursuer?"

Damages were laid at £270.

Balfour opened for Pursuer.

Evidence was led.