cordingly, the respondents presented a summary petition to the Sheriff craving that the advocator be ordained to take delivery, and, in the event of his failing or refusing, craving a warrant of sale of the ice. The advocator opposed, and pleaded (1) that by the agreement he was not bound to take the ice otherwise than as he chose, and in such quantities of not less than a ton at a time, and at such times as he chose, whether a year had elapsed or not from the winter of 1865; (2) that he was entitled to parole proof of a subsequent verbal agreement, which modified and explained the written contract. The Sheriff-Substitute (GALBRAITH) and the Sheriff (BELL) held that the winter began on 1ts November 1865; that the advocator was bound is have the ice-house cleared of all ice placed there between 1st November 1865 and 1st November 1866; and, failing his taking delivery of the whole ice stored at the date of the petition, that the respondents were entitled to a warrant of sale. The Sheriff also held that there was no room for parole proof of a subsequent verbal arrangement, but this, for what the Court deemed an unsound reason, viz., that because the terms and dates intended were clearly fixed by the written agreement, such proof would have been incompetent.

GIFFORD for the advocator.

SHAND and D. BRAND for the respondents.

The Court substantially adhered, holding that the respondents were entitled to have the ice-house cleared in one year to make way for the next season's ice. It never could have been intended that the whole ice of one year might, if the advocator chose, be left there for ten years; that the 1st November was a reasonable time from which to date the commencement of the year, but without holding that winter must be taken to begin at 1st November, more especially as the time was now come and byegone—the 1st January—when, by the advocator's own showing, the ice-house should have been cleared. The Court also held that parole proof was inadmissible, as no subsequent verbal arrangement had been properly averred. The reasons of advocation were therefore repelled, and the cause remitted *simpliciter* to the Sheriff, with expenses in this Court.

Agents for the Advocator—Wotherspoon & Mack, S.S.C.

Agents for the Respondents—Campbell & Smith, S.S.C.

Monday, March 23.

JURY TRIAL.

CUNNINGHAM *v.* DUDGEON.

Wrongous Sequestration—Landlord and Tenant—Jury Trial. Action of damages for wrongous sequestration of tenant's effects. Verdict for pursuer.

In this case, which was tried before Lord Ormidale and a jury, the pursuer was Alexander Fairlie Cunningham, Esq., residing at Cargen House, in the parish of Torqueer, and Stewartry of Kirkcudbright; and the defender was Patrick Dudgeon, Esq., of Cargen, presently residing in Edinburgh.

The issue submitted to the jury was in the following terms:—

"It being admitted that, by lease dated 15th and 18th May 1865, the defender let on lease to the pursuer, for three years from and after Whitsunday 1865, the mansion-house of Cargen, together with the household furniture and furnishings therein, garden, offices, pleasure-ground, three lodges, cow park of 14 acres or thereby, orchard field, and the exclusive right to the game and shootings and fishings on the estate of Cargen:

"Whether, on or about the 29th of October 1867, the defender wrongfully and oppressively sequestrated the books, pictures, plated articles, horses, carriages, cattle, and other effect belonging to the pursuer, in or upon the said mansion-house of Cargen and others, or any part thereof, in security of the half-year's rent of the said mansion-house and other subjects let by the defender to the pursuer, to fall due at Martinmas, 1867, and the half-year's rent to fall due at Whitsunday, 1868, or either of them—to the loss, injury, and damage of the pursuer."

Damages were laid at £500.

SOLICITOR-GENERAL and BLAIR for pursuer.

CLARK and J. MARSHALL for defender.

After a lengthened proof had been adduced, and counsel for the pursuer and the defender and Lord Ormidale had addressed the jury, the jury retired, and after an absence of about forty minutes returned with the following verdict:—"The jury find unanimously for the pursuer, and assess damages at £250."

Agents for Pursuer—Hunter, Blair, & Cowan, W.S.

Agents for Defender—Scott, Bruce, & Glover, W.S.

Tuesday, March 24.

FIRST DIVISION.

ROBERTSON AND OTHERS *v.* SALMON AND OTHERS.

Churchyard—Heritors—Expenses—Interdict. Held, that the property of a parish churchyard is in the heritors, subject to certain uses of burial by the parishioners, but the heritors having power to alter the level, and perform such other operations on the subject as may be necessary for proper administration of it. Petitioners, although found entitled to expenses of bringing a suspension and interdict against the heritors on the ground of improper interference with lair, yet found liable in expenses after date of lodging of defences, the respondents having offered therein certain terms of arrangement, which the petitioners ought to have accepted.

In April 1860, a meeting of the heritors of the Abbey Parish of Paisley was held for the purpose, *inter alia*, of taking such measures as might be approved of for securing the church from damp and cold. A committee was appointed to inquire into the circumstances. The committee instructed Mr Salmon, architect, to inspect the church, and to report. Mr Salmon reported that it would be necessary, *inter alia*, to remove the soil from the outer face of the church walls, particularly from the west and north walls. At a subsequent meeting of heritors in 1861, Mr Salmon's report was considered, along with a minute of meeting of the general subscribers to the fund for improving and restoring the abbey, and the heritors agreed to contribute £600 in full of all demands that might be made upon

them arising out of Mr Salmon's report, the other expenses of improvement to be borne by the subscribers. A committee was appointed to carry out this resolution. The committee then took steps to remove an accumulation of soil from the interior of the church; and having thus reduced the level of the floor of the church by some three or four feet, they then proceeded to remove the soil which had accumulated on the outside of the walls. A dispute then arose between the committee and Dr George Robertson and others, the latter parties complaining that their lairs in the churchyard, where several of their relatives were buried, were being improperly interfered with in the course of the operations by the committee; and in July 1861 Dr Robertson presented a petition in the Sheriff Court of Renfrew against the architect, contractor, and committee, craving interdict against the respondents interfering in any way with the petitioners' lair, or excavating the adjoining lairs, and craving to have them ordained to restore the petitioners' lair to the condition in which it was prior to the commencement of the operations complained of. The defenders, in their answers, offered to remove the remains in the petitioners' lair to a new lair, or to lower them where they then were, and to restore the grave-stones and dress up the graves.

Interim interdict was granted by the Sheriff, and a proof was allowed. After a long proof the Sheriff-Substitute (Campbell) found, *inter alia*, that the defenders had removed a considerable quantity of earth from the top of the pursuers' lair, and removed the top-stone and three of the corner stones, but that the remains of the pursuers' relatives were not disturbed by their operations, and that, though the lair was in an unsightly state, it was still capable of being adapted to the purposes of future interment; that the petitioners were, in the circumstances, entitled to apply for a remedy as they had done, but that such interdict and restorative conclusions could not in law supersede the right of the heritors in regulating the churchyard, consistent with the petitioners' right of maintaining inviolate the remains of their relatives interred in their lair; recalled the interim interdict, but of new interdicted the defenders from further interfering with the petitioners' lair, except as far as might be necessary for the proper dressing of the churchyard, and remitted to an architect to report on the best way of adjusting matters between the parties. The Sheriff (Fraser), on appeal, adhered. Mr Brown, the architect appointed by the Sheriff, gave in a report. Objections were stated for both parties, and thereafter the Sheriff-Substitute (Cowan) sustained certain of the objections stated by the defenders to the plan proposed in the report; approved of the plan submitted with the said note of objections; appointed the lair to be dressed as proposed in the plan, and remitted to Mr Brown to see that operation carried into effect; found the pursuers entitled to their expenses up to the date of lodging the defences, and the defenders to the expenses since that date, except such as were necessary for completing the operations on the lair. The Sheriff, on appeal, adhered.

The petitioners advocated.

Watson and R. V. Campbell for them.

Clark and Adam for Respondents.

The Court adhered.

They held it to be clear that the churchyard was the property of the heritors, subject, no doubt, to certain uses by the parishioners, but the heritors being clearly entitled to improve it, if necessary, by lowering the level or otherwise. In the present case, looking to the accumulation of earth both inside and outside the church, these operations were quite proper in their nature, although, no doubt, they had been executed with a want of proper discretion. But that did not alter the legal rights of the parties, and it was the duty of the petitioners to have put an end to the case long ago by coming to an arrangement upon the basis of one or other of the proposals made by the respondents in their defences. A long, expensive, and unnecessary proof had been led, for which the petitioners were mostly to blame, and which did nothing to advance the cause. The Sheriffs were, therefore, right in laying most of the expense upon the petitioners, and the expenses of the advocation must also be borne by them.

Agent for Advocators—J. Ross, S.S.C.

Agents for Respondents—M'Ewen & Carment, S.S.C.

Thursday, March 26.

FIRST DIVISION.

DALHOUSIE *v.* CROKAT.

Legitim — Executor—Debtor and Creditor—Agent—Mandate—Realized Funds—Negligence. In a claim by a son against a father's executor for legitim, *held* that the amount of the legitim was not diminished by a loss of executry-funds in consequence of the failure of the executor's agent with the funds in his hands, the funds being lost after realisation. The child and the executor stand in the relation of creditor and debtor. Lord Deas *diss.* from the judgment, on the ground that the funds lost had never been actually realised. *Observed*, that executry-funds in the hands of the executor's agent, are, in law, in the executor's hands, and are realised funds.

This was a question between the Earl of Dalhousie and General Crokat as to the amount of legitim payable to the former out of the estate of his father, the late Lord Panmure. General Crokat was appointed by the late Lord Panmure to be his sole executor and one of his residuary legatees, by a letter which contained this passage:—"The papers referable to the disposal of what personal property and assets I may die possessed of, are put up together in a drawer in my business-room. These were prepared by Mr John Blaikie, advocate in Aberdeen, and you will communicate with him with respect to all professional details applicable to the executry, which he will conduct."

After Lord Panmure's death, General Crokat wrote to Mr Blaikie, stating that he had opened the letter which he had received from Lord Panmure, nominating him executor, and, "so far as I am concerned, either as executor or in reference to the instructions contained in that letter, I authorise you to act for me as fully and amply as I could myself do." Mr Blaikie having failed, and a portion of the executry funds collected by him having been thereby lost, the question now arose whether the loss fell to any extent upon the legitim.

Clark and Rutherfurd for the pursuer argued—The pursuer is creditor for his legitim in a question with the free estate of his father. The executor is debtor for the full amount of the legitim. He has the sole right to ingather the estate, and the creditor for legitim cannot interfere with the re-