George Cruikshank, who was a relative of the tenant) with a view to obtain an improving lease, and to represent the prospective state of the farm as it would be affected by the improvements in progress and contemplation. We have no materials for deciding with any certainty on this point. There is no evidence on the subject; and although duplicates of the plan are in process, the one produced by the landlord, and the other by the tenant, and although the landlord's factor was examined for the pursuer, the matter is left without explanation, and the maker of the plan is dead.

I cannot say that, in the absence of evidence, there is any presumption on which I can decide that this plan represented the actual state of the farm in 1850, and not the effect of intended improvements. Considering that it was prepared during the negotiations for a new lease, and by, or for, a tenant who was certainly contemplating and planning improvements, I cannot reject as impossible, or even very improbable, the supposition that it was a plan of the farm as it was proposed to make it. If the testimony of the Rev. Mr Walker is believed, and some effect given to the corroboration by Dr Bartlett, then the defender's view of the prospective character of this plan is confirmed.

In regard to Mr Walker, there appears no reason to doubt the meaning and import of his testimony, which is quite clear and distinct. The pursuer's counsel accordingly felt that he had no alternative but to challenge its truth. I do not think that the Rev. gentleman's evidence can be viewed as wilfully false; and, if not so, it cannot be set aside or disregarded, the more especially as he is to some extent confirmed by Bartlett, and as on several points he might have been contradicted by the factor, Mr Chalmers, whom the pursuer had the opportunity of re-examining if he thought fit. Therefore, I leave the plan, and the evidence given on assuming the pursuer's theory in regard to the plan, out of view.

We must seek elsewhere such proof as we can now get of the proportion of the farm which was arable in 1852, so as to reach the fair rent.

It is stated in the pursuer's rental and relative note that the arable acreage in 1866 was 436—(p. 33)—but adding a piece sub-let, it comes to about 470. And so says Mr Davidson—(D. Proof 4). Mr Whyte states it at 430 in 1855. But it is proved that between 1852 and 1855 there was in many ways active and extensive improvement, and, without going into details, I may say that I think it is sufficiently established that in 1852 there were not much above 340 arable acres on the farm. This is according to the opinion of Mr Geddes, a man of great skill and experience, and of Mr Wilson; and is, I think, the result of the evidence of nearly all the persons well acquainted with the farm and its course of improvement.

The testimony of Mr Whyte, who in 1855 valued for public purposes, is most important. He states the value, as in 1855, at £260 a-year, taking the rent at 12s. per acre, and in so stating it he was not acting for either party, but as an impartial valuator. There is no reason to doubt that he valued fairly as at 1855. But there were, according to some witnesses, about 90 acres less under cultivation in 1852 than in 1855, which reduces the value in 1852 to £206, corresponding exactly to Mr Geddes' evidence that £205 was a fair rent in 1852, while some other witnesses state it at £200. Even supposing that the extent of improvement between 1852 and 1855 was not so great as the defender maintains—take it at 60 acres instead of 90—still the rent in 1852, on Mr Whyte's calculation, would be £224 and no more. This is on the assumption that 12s. an acre was a fair rent, as Mr Whyte and Mr Geddes take it; and this is confirmed by comparing it with the farms and rents on the same estate, as explained by many witnesses. It seems to me that to ascertain the fair rent in 1852, we shall find it within a range varying between a minimum of £200 and a maximum of £240 or £250. The actual rent and prestations in the lease of 1852 was as near as possible £207.

In a case like this, and after the lapse of many years, exactitude of figures is not attainable. Much must be left to the judgment and discretion of the parties. The proprietor was entitled within reasonable limits to prefer the tenant whom he thought most desirable, and most likely to do justice to his land.

I cannot say that, under all the circumstances,—taking into consideration the character of the tenant and the nature of the farm,—the rent in 1852 was a rent so clearly inadequate as to be unfair and unreasonable, and inconsistent with the just and ordinary administration of the estate. I could well understand that a landlord unfettered by an entail, might prefer to accept £207 from a tenant of character and means whom he knew, rather than £220 or £240 from a tenant whom he did not know so well or esteem so highly.

This tenant expended a large sum in improving the land, in draining, fencing, reclaiming, manuring, and even building.

No offer to remunerate him, no recognition of his right to remuneration, for this expenditure has been made by the landlord who seeks to reduce the lease. To decern as craved against this defender would be to him ruinous.

On the whole matter, I have arrived at the same opinion as the Lord Ordinary, and I suggest to your Lordships that the defender should be assoilzied from the conclusions of this action.

Adhere.

Agent for Pursuer—John Auld, W.S.

Agent for Defender—Alex. Morrison, S.S.C.

Thursday, July 16.

SINCLAIR *v.* WEDDELL.

(*Ante*, p. 601.)

Lease—Issue. A missive of lease holograph of one of the parties and signed by both, but unattested, containing no term of entry, and not followed by *rei interventus, held* invalid as a lease, and an issue thereon *disallowed.*

Lease—Verbal—Issue. On a verbal agreement to let certain subjects "for seven years, or at least for one year from Whitsunday 1867," issue whether the subjects were let "for the period of one year from Whitsunday 1867" *disallowed.*

This was an action of damages at the instance of David Sinclair, a public-house keeper and flesher at Armadale, in Linlithgowshire, against James Weddell, farmer at Woodend, for non-implement of an alleged lease, which was in these terms:—"Woodend Farm, 28th January 1867.—It is agreed by David Sinclair and James Weddell for the public-house in Bathgate for seven years' lease, the public-house to be £18 yearly, the flesh shop

to be £6 yearly, and killing house and stable £4 yearly. (Initialed) J. W. (Signed) James Weddell." To this writing the defender affixed a penny receipt stamp, across which he signed his name. No possession followed. The defender pleaded that the writing was not signed by the pursuer, bore no date of entry, and was otherwise insufficient to constitute a concluded contract of lease for the space therein mentioned.

In January the case was reported to the First Division by the Lord Ordinary (MURE) with the following issue proposed by the pursuer:—

"Whether, on or about the 28th January 1867, the defender let to the pursuer, for the period of seven years from Whitsunday 1867, a public-house, flesher's shop, and slaughter-house in Bathgate, the property of the defender, at a rent of £28 or thereby? And whether the defender failed to put the pursuer in possession of the said subjects at Whitsunday—to the loss, injury and damage of the pursuer?"

Damages laid at £500.

His Lordship said in his note:—"On the more important question, whether the pursuer (having regard to the nature of his averments) is entitled to an issue to prove a seven years' lease, the defender maintains that as the only document founded upon by the pursuer is neither holograph nor tested, and it is not alleged to have been followed by possession, the case is not one for an issue, and that the issue should be refused, and the action dismissed, as was done in *Currie* v. *M'Lean*, 17th May 1864, 2 Macph. 1076. The pursuer, on the other hand, contends that the case of *Currie* has no application, as it was there admitted that no writing had passed between the parties; and that the proper course in the present case will be to allow an issue to go to trial, leaving the validity of the document to be dealt with as the judge who tries the case might direct. Should the Court be of opinion that this distinction is not well founded, the propriety of granting the issue will, it is thought, depend upon whether the document in question, having been admittedly written by the defender and only signed by the pursuer, though even that was not done until after the action was raised, can be held to be probative as a holograph writing and binding on both the parties concerned. And the Lord Ordinary, having regard to the decisions in the cases of *Sproul* v. *Wallace*, 24th Jan. 1809, Hume, p. 920, and *Millar* v. *Farquharson*, 29th May 1835, 13 S. 838, sees great difficulty in holding that it is."

The Court held that after the decision of *Sproul* v. *Wallace* there could be no doubt that the issue on the informal missive must be disallowed. As, however, there was a previous verbal bargain alleged to have taken place in October 1866, the Court allowed the pursuer to put in an amended issue upon it.

The relative statement in the pursuer's condescendence was as follows:—"On or about October 1866 the defender agreed with the pursuer to let to the pursuer for seven years, or at least for one year from Whitsunday 1867 (at which term the defender was to give the pursuer entry to his said property) at a yearly rent for the public-house, which was also to be occupied as a dwelling-house, of £18, for the flesher's shop of £6, and for the slaughter-house of £4." This agreement was made by the defender with the pursuer's wife, as acting for and on behalf of the pursuer, and duly authorised to do so, and in presence of three persons whose names were given.

The issue now proposed by the pursuer was:—

"Whether, in or about the month of October 1866, the defender let to the pursuer, for the period of one year from Whitsunday 1867, a public-house, flesher's shop, and slaughter-house in Bathgate, the property of the defender, at a rent of £28 or thereby? And whether the defender failed to put the pursuer in possession of the said subjects at Whitsunday 1867—to the loss, injury, and damage of the pursuer?"

Damages laid at £500.

THOMS for pursuer.

R. V. CAMPBELL for defender.

LORD PRESIDENT—I don't wish to throw any doubt on the rule of our law—that a lease bad for a term of years may be good for one year. But here the only allegation is, that the lease was for seven years, and though it is added "or at least for one year," it is a contract without a definite term. The issue says, "whether the defender let to the pursuer for the period of one year from Whitsunday 1867," but there is nothing in the record to warrant this. I am of opinion that the issue is a bad one, and that the writing founded on is invalid as a lease for any period whatever.

LORD DEAS—In the case of a lease such as the pursuer wishes to allege, it is always a question of circumstances whether there are any conditions in it as a seven years' lease incompatible with its being a one year's lease. That would be a question for a jury and would be put in some such shape as this—Whether the lease for seven years was good for one year? But this is not the way the question is proposed to be raised here. The question here put is, Whether there is a lease for one year? That is to say, whether the parties agreed on a lease for one year? This is an issue which the record does not warrant.

LORD ARDMILLAN—I am of the same opinion. There was no valid possession to give effect to the written document. I agree with your Lordships, that a lease "for seven years or at least for one year" is not valid. There is no definite issue.

Interlocutor.—That in respect there is no averment on record of a lease for one year disallow the issue; and in respect the document founded on by pursuer is not a valid lease, and was not followed by *rei interventus*, dismiss the action, with expenses.

Agent for Pursuer—Wm. Officer, S.S.C.

Agent for Defender—Alexander Wylie, W.S.

Monday, July 6.

JURY TRIAL.

(Before Lord Barcaple and a Special Jury.)

SIR COUTTS LINDSAY *v.* FISHERMEN OF ST ANDREWS.

Mussel-Fishing—Prescription—Exclusive Possession. In an action where the question put to the jury was, Whether the pursuers had had exclusive possession for forty years of certain mussel-beds? verdict for the pursuers.

This is a case in which Sir Coutts Lindsay of Balcarres and Leuchars, Bart., Colonel Samuel Long of Earlshall, in the county of Fife, residing at Bromley Hill, Kent, and George Colvill of Broughty, near Kinross, sometime tacksman of the mussel-bed,