rities, that the doubt has no sufficient foundation. I think it clear—(1) That the Court has not, in the case of the manse, applied the rigorous rule, on which they have largely acted in the case of the church—viz., that they cannot order an enlargement, unless repairs are necessary of such an extent as would cost nearly as much as the construction of a new church. (2) That they have considered the fact of extensive repairs, though not rising to this magnitude, being necessary in order to make the manse habitable, as sufficient to let in consideration of the question whether additions, greater or smaller, should not at the same time be ordered. The necessity of structural renovation in one or other part of the building is naturally an important element; but I do not consider this indispensable to admit the interposition of the Court, provided the repairs necessary are of a substantial and extensive description. The jurisdiction thus originated is necessarily of a discretionary character; but this element imbues, to a large extent, our whole jurisdiction in this matter.

The principle to which I have alluded, besides being exemplified in other cases, is substantially the ruling ground of decision in the case of *Kingoldrum*, 24th January 1863; and although this was only the decision of a Lord Ordinary, the judgment has been approved of in other cases. The more recent case of *Elliot* v. *Hunter*, 12th July 1867, does not conflict with the other; because in that case the repairs necessary were estimated to cost only £17; and the case was therefore clearly outside the legal category.

In the present case the repairs necessary to make the manse habitable are of an extensive description, including to some extent structural renovation. They are estimated to cost upwards of £200. And it is by no means to be left out of view that only about nine years ago repairs and alterations at the cost of £270 had been found necessary on this manse. The fact speaks volumes as to the character of the fabric. And it warrants the Court in stating on the one side of the account more than the mere amount of repairs falling to be laid out at the moment. I am satisfied that, applying soundly the principle applicable to the case, the Court is entitled in ordering repairs to order additions also. In this way the main reason of suspension of the Presbytery's decree entirely falls to the ground.

It would have been with much regret had I found myself compelled to come to any other conclusion. It is of great importance that the residence of the minister of the parish should be suitable to his position, and comfortable for his family; not merely as a tribute due to a most valuable and useful class of men, but with reference also to those moral influences, which are very closely connected with suitable and comfortable dwellings. The manse of the minister should be the dwelling-house of a gentleman. This is very properly attended to in the construction of new manses. But there survive too many old fabrics like that in the present case, which, utterly unfit as they are for comfortable or even decent residence, have strongly built walls, and obstinately refuse to go into decay. These often resist, and resist successfully, the judicial hand which would amend them. It is fortunate if, when unable to order a new manse, we can at least authorise those additions and alterations, which will to some lesser extent enable the old building to discharge its proper function, and exhibit the true character of a clerical residence.

Agent for Heritors—William Mitchell, S.S.C.
Agent for Minister—John Robertson jun. S.S.C.

Friday, December 17.

SECOND DIVISION.

SPECIAL CASE—REV. SHOLTO CAMPBELL DOUGLAS AND OTHERS.

Entail—Provisions to Younger Children—Average Rental—Mineral Lordship. Held, in accordance with the decision in *Wellwood*, that in the case of a mineral lordship an average of years must be taken in order to ascertain the fair annual rent or value of the estate, with the view of fixing the value of a provision to younger children, but, in the special circumstances stated, that average fixed at three instead of seven years.

General Monteath Douglas, succeeding under an entail conferring powers to execute provisions in favour of younger children, executed a bond of provision in the following terms:—"And further, considering that I have two daughters, viz., Amelia Murray Monteath of Kepp, and Augusta Emmeline Monteath Douglas, neither of whom is the next existing heir or substitute in the entail of the said estate of Rosehall called to the succession of the said entailed estate after me, and that, therefore, in the view of my said daughters not succeeding to the said estate upon my death, I am desirous to exercise the power competent to me, as heir of entail in possession thereof, of granting provisions to them in manner afterwritten, and that in the contract of marriage executed or to be executed *simul ac semel* with the execution hereof in contemplation of the marriage about to be solemnised between William Scott, Esq., younger of Ancrum, and the said Amelia Murray Monteath, my eldest daughter, I have bound myself to grant and secure to the said Amelia Murray Monteath, if she shall not be the heir of entail succeeding to the said estate of Rosehall at my death, such a provision, payable to her from the said estate of Rosehall, or by the heirs of entail succeeding thereto, as my powers will admit of my granting to her on the footing of, and without prejudice to, my giving to each of my children not succeeding to the said estate, an equal share of the total amount of the provisions which I am entitled to grant to or for behoof of all my children not succeeding to the said entailed estate. Therefore, and in the exercise of the powers competent to me under the entail of the said estate of Rosehall, and also in implement of my obligation before mentioned contained in the said contract of marriage, I do hereby bind and oblige the heirs of entail succeeding to me in the said entailed estate of Rosehall and others, to make payment to the said Amelia Murray Monteath and Augusta Emmeline Monteath Douglas, equally between them, and their respective heirs, executors or assignees (subject to the provisions and declarations hereinafter written) of the sum of £25,000 sterling, at the first term of Whitsunday or Martinmas after my death, with interest of the said principal sum of £25,000 at the rate of five per cent. per annum from and after my death to the said term of payment, and thereafter during the not payment of the said principal sum: Providing and declaring always, in terms of the limitation before mentioned, contained in the said

deed of entail, that in case the said sum of £25,000 shall exceed three years' free rent of the said entailed estate, in so far as the same shall not be affected at my death with liferent infeftments (if any such shall be existing), and after the deduction of the yearly interest of former debts and provisions and burdens to which the said entailed lands may be subjected, the said provision shall be restricted to such a sum as shall be equal to three years' free rent of the said entailed estate, and the provision and obligation before written shall be valid and effectual to my said daughters only for payment to them of the sum so restricted, and shall be held to be extinguished as to any excess beyond the amount of three years' rent: But in case the said sum of £25,000 shall not be equal to the amount of three years' free rent of the said entailed estate, then I bind and oblige the heirs of entail succeeding to me in the said entailed estate to make payment to my said two daughters, equally between them, or their foresaids, of such further sum as will, with the said sum of £25,000, make up to them a provision from the said entailed estate equal to three years' free rent of the said estate, bearing interest from my death, and payable at the first term of Whitsunday or Martinmas thereafter, in the same manner as is herein before provided with reference to the said sum of £25,000."

At the date of the death of the said General Sir Thomas Monteath Douglas, the minerals on the estate were let on a lease for thirty-one years, commencing at Whitsunday 1866. Previous to the commencement of the new lease the minerals had been worked under a lease dated in 1837, two years of which had yet to run, but which was renounced when the new lease was entered into. In the old lease the minerals are described as "all and whole the seam or seams of coal and ironstone." In the new lease the subject let is described as "all and whole the coal, ironstone, bituminous shale, and fire-clay." The fixed rent under the old lease was £700; under the new lease it is £1500. There was under both leases the alternative of a lordship, the rates of which were largely increased under the new lease, and lordships imposed on a variety of products not mentioned in the old lease

The rental of the estate for the year during the currency of which General Monteath died was £7238, 2s. 11d., three years of which amounts to £21,714, 8s. 9d.

The average rental calculated on the seven years including and preceding the year of death was £6240, 14s. 0d., three years of which amounts to £18,721, 2s. 0d.

The average rental calculated on three years as £6991, 5s. 6d., three years of which amounts to £20,977, 16s. 6d.

The questions of law for the opinion and judgment of the Court were—

"(1) Whether, in calculating the free rent of the said estate, with a view to fix the amount of the provisions due to the said marriage-contract trustees, under the said bond of provision, the rental derived from lordships on minerals in the estate is to be taken at £21,714, 8s. 9d., being the amount of such rental due for the year ending Whitsunday 1869, being the year current at the death of the granter of the Bond? or,

"(2) Whether, in calculating the free rent of the estate for the purpose foresaid, the amount of the rental derived from the foresaid minerals is to be taken at the sum of £18,721, 2s., being an average of the seven years including and immediately preceding the death of the granter of the bond? or,

"(3) Whether, in calculating the free rent of the estate for the purpose foresaid, the amount of the rental derived from the foresaid minerals is to be taken at the sum of £20,973, 16s. 6d., being an average of the three years including and immediately preceding the year of the death of the granter of the bond, and being the period of the currency of the new lease? or,

"(4) Whether, in calculating the free rent of the estate for the purpose foresaid, the amount of the rental derived from the foresaid minerals is to be estimated on any other footing, and fixed at any other sum, and, if so, what other footing or sum, than as referred to and specified in the preceding questions?"

GIFFORD and J. M. DUNCAN for the Rev. Sholto Douglas.

SOLICITOR-GENERAL and MACKAY for the Marriage-Contract Trustees of Mrs Yorke and Mrs Monteath Scott.

The Court unanimously held that the decision in *Wellwood*, 20th December 1848 (11 D. 248), settled that, in the case of a mineral lordship, an average must be taken in order to ascertain the fair annual rent or value of the estate; but as in this case a new lease had been granted, with a greatly increased lordship two years before the year current at the date of the granter's death, that the proper average to be taken was that of the last three years' lordship, and not of seven years, as had been done in the case of *Wellwood.*

Agent for the Rev. Sholto Douglas—John Gibson jun., W.S.

Agent for the Marriage Contract Trustees of Mrs Yorke and Mrs Monteath Scott—Alexander Howe, W.S.

Tuesday, November 31.

HAMILTON *v.* LINDSAY, BUCKNELL, AND OTHERS.

Entail—Irritant Clause—Erasure—Evidence of Experts. Held, on advising a proof, that the words "or any" in the irritant clause of a deed of entail were not proved to be written on an erasure.

Observations per Lord Cowan on the policy of extending the provisions of Lord Murray's Act of 1835 as to erasures in instruments of sasines.

Entail—Prohibitory Clause—Irritant Clause—Omissions of, and inaccuracies in, the fettering clauses in first Investiture—Act 1685—Jus crediti *of succeeding Substitutes.* (1) A deed of entail containing substantive prohibitions against alienation and against contracting debt sufficient and effectual in themselves, *held* that a prohibition in a subsequent part of the clause to grant "any right or security either heritably or irredeemably" was to be read as an additional prohibition, and not as qualifying the preceding conditional prohibitions. (2) The irritant clause declaring that if the institute and heirs of tailzie "shall act and do in the contrair of the particulars above mentioned, or any of them, or neglect to fulfil the conditions above specified, or any of them, then and in that case all and every one of such