of profit, and I think to deduct it would be contrary to the prohibitions laid down in Schedule D and in the 159th section of the same Act.

LORD ADAM—I confess I cannot see upon this case, and I do not think the case tells us, when the various sums of capital were repaid by the Copper Company to the Mortgage Company, and when the 10 per cent. bonus accresced and became due. I rather gather that the matter is one of adjustment in the Copper Company's books. But however that may be, I think the most favourable way to take the question for the Copper Company is to assume, as was assumed in the discussion, that this whole sum of £31,379, 11s. 9d. was paid within the year in which it is proposed to be assessed, although, I confess, I do not see that that appears upon the face of the case.

Now if that be so, my opinion is with your Lordship, that this sum of £31,379, 11s. 9d. is simply a debt due by the Copper Company to the Mortgage Company. So far as I can see, it is not a loss incurred in carrying on the business of the Copper Company in any way. If it were, it might or it might not be a proper sum to deduct before striking the balance of profit and gains even in a question with the Crown. But it is not a loss; it is merely a debt incurred in carrying on the business of the company. I do not see, if we were to allow a deduction of this debt on the ground that it was paid out of profits, where we should be able to stop. I find no authority in any of the Taxing Statutes for allowing such a deduction.

Now, if the amount of this bonus be not—as I think it very clearly is not—a sum which ought to be deducted before striking the balance of profits and gains on which this company falls to be assessed, I think there is no question in this case, because if it is not to be deducted in order to ascertain the balance of profits and gains, then to be deducted it must fall under some of the clauses of the statute which allow deductions to be made. But there is no clause allowing such a deduction as this. Therefore I agree with your Lordship.

LORD M'LAREN—I agree with your Lordship in the chair, and the only remark I would make is, that if this is not profit, then the amount of profit earned in a particular year must depend on the resolution of the company to pay off debt or not to pay off debt. Now, that seems to me to reduce the case contended against the Crown to the absurd proposition that the company should be entitled to fix what they consider profit, and be assessed upon that sum.

LORD KINNEAR concurred.

The Court affirmed the determination of the Commissioners.

Counsel for the Copper Company—Asher, Q.C.—Ure. Agents—Davidson & Syme, W.S.

Counsel for the Surveyor of Taxes—Lord Adv. Pearson—A. J. Young. Agent—David Crole, Solicitor of Inland Revenue.

Tuesday, November 17.

FIRST DIVISION.

SMITH & TURNBULL (LIQUIDATORS OF THE BENHAR COAL COMPANY, LIMITED).

Process—Authority to Correct Error in Note and Extract Decree.

The liquidators of the Benhar Coal Company presented a note to the Court setting forth that they had in 1882 sold the superiority of certain ground feued by the company to a Mr Renton under the authority of the Court; that after the sale was completed, it had been discovered by the purchaser's agents that in the note craving authority to sell, and in the extract-decree thereafter obtained, the date of the feu-contract, under which the ground was held by Mr Renton, had been wrongly stated as 24th and 29th September 1878 instead of 24th and 27th September 1878. The liquidators therefore prayed the Lord President "to move the Court to authorise the correction of the foresaid error in said note, and also to grant warrant to the Principal Extractor of Court to make the corresponding alteration on the extract of the decree thereafter pronounced, and to the Deputy Keeper of the Records to make the corresponding alteration in the record copy of the said decree, by substituting the date 24th and 27th September as the proper date of said feu-contract in place of 24th and 29th September. Reference was made to the following authorities:—*Hope* v. *Hamilton*, July 1, 1851, 13 D. 1268; *Small's Trustees*, July 5, 1856, 18 D. 1210. The Court *granted* the prayer of the note.

Counsel for the Liquidators — Pitman. Agents—J. & F. Anderson, W.S.

Saturday, November 21.

SECOND DIVISION.

[Lord Stormonth Darling, Ordinary.

WEIR *v.* THE INVERNESS COUNTY COUNCIL.

Process—Reparation—Damages—Proof or Jury Trial.

While a heap of stones on the side of a road were being broken for road-metal, a splinter of stone struck and injured a passer-by. He sued the road contractor for damages, and averred that the site of the heap was ill-chosen, that there was special danger from the kind of stone used, and from the proximity of a wall, which affected the flight of the splinters.

The Lord Ordinary having appointed

proof before answer, the Court *refused* to send the case to trial by a jury.

William Weir, cooper, near Fort William, sued the Lochaber District Committee of the Inverness County Council, and Neil Chisholm, their road contractor, for damages for personal injury sustained by him on 29th January 1891.

He averred that in passing a heap of stones which Chisholm's servant was breaking for road-metal he was struck by a splinter of stone, which destroyed the sight of his right eye. "The said accident was caused through the fault of the defenders. They were in fault in breaking stones at the place in question. It is a narrow strip of ground lying on the south side of said highway, and on the north side of the boundary wall of the Ben Nevis Distillery, between its main or cart entrance and the ice house. This strip of ground runs east and west, and is only 8 feet broad at the east end, and 7 feet 6 inches at the west end. It adjoins, and is in no way separated from the highway. Chips and splinters which flew off as the stones were being broken made the operation of breaking extremely dangerous to persons using the highway, which at this place is much used. The operation was attended with special danger at this place, because the stones were not the ordinary freestone which is usually broken up and spread upon roads, but were of peculiarly hard water-worn granite and whinstone, which is broken with difficulty, and is peculiarly liable to fly off in chips. Further, there was special danger from the proximity of the wall to the north, as the chips in flying off sometimes struck the wall and rebounded with great force at higher elevations than in their first flight, rising to the height of the eyes of grown-up people passing along, and even higher. These peculiar dangers were unknown to the pursuer, but were well known to the defenders. It was a duty incumbent upon the defenders accordingly to have obviated these dangers by selecting a site for breaking the stones at a safe distance from the highway, or at least by putting up a hoarding or some protection for the public. As matter of fact they took none of these precautions, nor any precautions whatever, and in consequence the accident in question was occasioned. The explanations in answer are denied. The danger of the practice of breaking stones close to the highway is now generally recognised, and in many districts in Scotland it has for the sake of safety been discontinued. The place above mentioned was selected by the defender Chisholm with the knowledge and consent of the other defenders, whose surveyor and other officials weekly inspected the road and the metal broken by Chisholm, and saw the operation of breaking it performed there, and yet made no objection, as they might have done and ought to have done, to its being broken there. If they had objected, Chisholm would have been bound to give effect to their objection under his contract with them."

Upon 7th November 1891 the Lord Ordinary (STORMONTH DARLING) allowed parties a proof before answer.

The pursuer appealed, and argued—This was an action for damages, and ought to be sent to trial by jury. No special cause was alleged for not sending the case to a jury—only the general cause of difficulty, which might be raised in almost every case of the kind—*Trotter* v. *Happer*, November 24, 1888, 16 R. 141.

The respondent argued — Besides the question of injury and damages to be tried in this case, there was an important legal question as to the relation between the County Council and Chisholm, the contractor. That was one special reason for refusing jury trial. Another was that the pursuer averred a custom of breaking stones different from that followed by the defenders, and there might be a legal question as to the necessity of the defenders to follow that custom if it was proved.

At advising—

LORD JUSTICE-CLERK — The Lord Ordinary has considered this matter, and allowed a proof of the parties' averments, and I think there has been nothing stated to us to-day that would lead us to alter his interlocutor. The Lord Ordinary has only allowed a proof before answer, and may decide the relevancy after he has heard the evidence.

LORD RUTHERFURD CLARK and LORD TRAYNER concurred.

LORD YOUNG was absent.

The Court adhered.

Counsel for the Reclaimer—M'Kechnie—A. S. D. Thomson. Agent—J. Stewart Galletly, S.S.C.

Counsel for the Respondent — Comrie Thomson — Tait. Agents — Forrester & Davidson, W.S.

Saturday, November 21.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

TURNBULL *v.* OLIVER.

Reparation — Landlord and Tenant—Wrongous Sequestration—Lease—Verbal Agreement—Relevancy.

A landlord sequestrated his tenant's crop for rent due under his lease. The tenant sued for damages on the ground that the sequestration was in breach of an agreement by the landlord to allow an abatement of rent, but he produced no evidence of the alleged agreement. *Held* that the lease could not be controlled by the alleged verbal agreement.

Reparation — Landlord and Tenant—Slander — Innuendo — "Dishonourable Conduct."