missed." It is unnecessary to advert to the other pleas, because they go to the merits of the joint adventure. Now, it is impossible not to see that the questions raised by the pleas are of a very embarrassing and serious character. It may be also that they may prove to be extremely troublesome. But then the question is, whether the inconvenience of a *forum*—for that is the idea involved in the plea of *forum non competens*—is only that it is inconvenient for the Court to try the question. If that were the meaning of the plea, I would only be too happy to get rid of the whole matter. But that is not the meaning. I think the plea means that the questions raised are of such a character that, for the interests of parties and the interest of justice, it is desirable they should be tried elsewhere. Now, I cannot concur with the Lord Ordinary that these questions would be more suitably tried elsewhere. It is nothing to the purpose to say that we may have occasion to inquire into foreign law. But I will say that, so far as at present appears, foreign law will have very little to do with the solution of these questions, because by foreign law I understand the municipal law of some particular State; and the questions raised here do not appear to be municipal at all, but to lie in the *jus gentium*, or in international law. The questions are difficult to be tried anywhere, but so far as I can see they may be tried in the Supreme Court of any country. Now, that being the nature of the plea, have we any precedent for sustaining the plea of *forum non competens?* There is one class of cases in which foreign executors are called to account for the executry estate in this country. In these cases the question always is, whether it is more for the interests—the true and legitimate interests—of the executry estate that the distribution should take place in the courts of the country where the executors administered it. There is a strong presumption in favour of that, and accordingly in most of these cases the plea has been sustained. The grounds of these judgments are not far to seek. The law of the executry estate is the law of its administration. The executors are there, the papers there. There have been other cases of a different class, and that class may be described generally as cases of partnership accounting. Here, again, there is a manifest expediency in having the accounting in the place of the partnership domicile, where the business was carried on, where the books are, and where the partners concurred in carrying on the business; and in that class of cases the Court have listened to this plea also. There may be other cases, and there has been such a case between principal and agent, but the agency was carried on in a foreign country, and that led to the plea being sustained against the principal; but there are many exceptions to the rule. (His Lordship here referred to the case of the Edinburgh and Glasgow Bank against Ewing, and said that the question raised was always a mere balance of convenience or inconvenience.) He continued—In the present case there is a total want of materials for the judgment of the Lord Ordinary. I cannot see what tribunal it is that his Lordship supposes will be more suitable for the trial of the question. There is no partnership in the case. A partnership has a local situation, but a joint adventure has no *locus*. This is a kind of contract that may be tried in any court where the parties are and jurisdiction arises to try the question. No doubt, questions as to the legality of the contract give this case a peculiar complexion; but still it cannot but be said the illegality of the contract depends, in the first place, on a matter of fact which can be ascertained here as well as anywhere else. That fact is whether the so-called Confederate States were a belligerent power, or merely a gang of rebels; and I cannot see that could be better inquired into in Texas than here. If the parties are rebels the illegality of the contract is plain on the public law of the world. If they are not rebels, but belligerents, still it is a question of public law; and therefore however difficult the question may be, we are not entitled to sustain this plea, because it must never be forgotten that a Court which has jurisdiction is bound to exercise it at the suit of any litigant. *Judex tenetur impertiri judicium suum.* The other Judges concurred.

Saturday, March 17.

FIRST DIVISION.

MORRIS *v.* GUILDRY OF DUNFERMLINE

(*ante*, p. 165).

Expenses. Charges for obtaining evidence of a statement denied on record objected to on the ground that an admission would have been given if it had been asked, but *allowed.*

Counsel for Pursuer—Mr W. M. Thomson. Agent—Mr George Wilson, S.S.C.

Counsel for Defenders—Mr John Hunter. Agents—Messrs Morton, Whitehead, & Greig, W.S.

This was a point reserved by the auditor for the consideration of the Court. The defenders had been assoilzied with expenses. Their account of expenses included a charge of £4, 4s. for searching some old registers, and another of £21, 4s., being a sum paid to registrars for extracts from them. The pursuer now stated that this was an unnecessary proceeding, because if he had been asked he would at once have admitted the practice which the extracts were intended to prove. But it appeared that the practice had been averred on record by the defenders, and denied by the pursuer, and the Court held that the pursuer having been thus called upon by the defenders to admit the matter, it was his business to tender an admission, and not to wait until it was asked for, if it was intended afterwards to retract his denial. The charges were therefore allowed.

M'NEILL *v.* SCOTT.

Process—Remit ob contingentiam—48 *Geo. III. c.* 151. An interdict having been granted in the Bill Chamber, and the passed note having been called and enrolled as a Second Division cause, a petition and complaint was thereafter presented to the First Division. *Held* (diss. Lord Deas) that it was not incumbent on the First Division to remit the petition and complaint to the Second Division.

Jurisdiction—Breach of Interdict. Held (diss. Lord Deas) that a petition and complaint for breach of interdict is incompetent before a Lord Ordinary, and must be presented to the Inner House.

Penalty — Breach of Interdict. Circumstances in which held (diss. Lord Deas) that a second breach of interdict had been committed, and the person complained against fined.

Counsel for Complainer—Mr Patton and Mr Cook. Agent—Mr William Sime, S.S.C.

Counsel for Respondent—Mr Gordon and Mr Scott. Agent—Mr J. G. C. Peebles, S.S.C.

This is a petition and complaint presented by the Right Honourable Sir John M'Neill, G.C.B., residing at Granton House, with concurrence of the Lord Advocate, for Her Majesty's interest, against Mr James Scott, merchant, Grassmarket, Edinburgh, and manufacturer of chemical manures at Granton. Sir John complains that in July, August, and September 1865 Mr Scott had been guilty of contempt of Court and breach of an *interim* interdict granted by Lord Mure on 8th June 1865, whereby Mr Scott and his firm of James Scott & Company were interdicted, prohibited, and discharged from using their works at Granton "for the manufacture of chemical manures in any way which shall be a nuisance to the complainers (Sir John and others), or which shall affect the health, or