Lord Ardmillan said he entirely concurred in the great undesirableness and impropriety of interfering with the verdict of a jury, where there was a question entirely or almost entirely of the credibility of witnesses. Therefore he was not prepared to differ from the proposal made, to refrain from disturbing the verdict. But he thought it right to say that, after careful and anxious consideration of the evidence, he could not have concurred in the verdict; and he had the greatest possible doubt whether the verdict reached the truth of this case.

The Lord President said he concurred with their Lordships, but should like to express the state of his mind a little differently. He had his suspicion as to whether this verdict was just; and he would even go the length of saying that, if he were to make up his mind after consideration of this evidence put before him in writing, he should give a verdict for the defenders. But he did not think that his opinion, formed on the evidence in writing, was half so valuable as the opinion of the jury, formed after hearing the witnesses. Therefore he considered it was not within the province of the Court to disturb the verdict.

Rule discharged with costs.

Agent for Pursuer—John Thomson, S.S.C.

Agents for Defenders—Horne, Horne, & Lyell, W.S.

Wednesday, June 12.

MUIR *v.* NORTH BRITISH DAILY MAIL.

Jury Trial—New Trial. Motion for new trial, on the ground that the verdict was against evidence, refused.

This was a motion by the pursuer for a new trial on the ground that the verdict was contrary to evidence. The circumstances out of which the trial arose were shortly as follows:—The defenders, on 27th February 1866, inserted in their newspaper a paragraph, headed "Railway Negotiations," having reference to the position of the Union Railway and the purchase of certain property belonging to Bailie Brown. On 1st March they expressed their regret that statements had appeared in their previous paper under the above heading, which, they were now informed, were in almost every essential particular at variance with fact. They stated that the information on which the paragraph had been founded had been vouched for by Mr G. W. Muir, and was inadvertently allowed to appear without proper authentication. Mr Muir wrote to the editor of the *Daily Mail* a letter, which was published on 5th March, contradicting the statement that he had vouched for the accuracy of the paragraph in question, and saying that he did not see it till published. He complained of the mention of Bailie Brown's name in connection with the proceedings in London, as being equally unjustifiable with the mention of his own, and objected otherwise to the account given by the reporter of his conversation with him. To this the *Daily Mail* appended a letter by their reporter, to the effect, that although Mr Muir had not seen the paragraph —and it was never said he did—he had vouched for the information on which it was written. That information was taken down in shorthand, word for word, from his own lips. Some information he had given, as to the abandonment of a high level station in Buchanan Street by the Caledonian Railway Company many years ago, was omitted as irrelevant; and the only addition made to his words, in transcribing them for publication, was the qualifying phrase, "we understand." The following note by the editor was added:—"We need hardly say which of the two versions of the above story we believe the true one, and have only again to apologise to our readers for the inadvertence by which any statement emanating from such a quarter found admission into our columns."

Mr Muir then brought an action of damages against the publisher and proprietors of the *Daily Mail*, on the ground that the said notices and paragraphs, the substance of which is given above, falsely and calumniously represented that he had communicated to the defenders' employees, for the purpose of publication in their newspaper, statements in every essential particular at variance with fact; that he was a person whose word was not to be believed; and that any statements he might make were unworthy of credit, and unfit for publication in a newspaper. Damages were laid at £1000.

The case was tried before Lord Barcaple and a jury in April last. The jury unanimously found for the defenders.

Scott, for the pursuer, moved for a rule on the defenders, to show cause why a new trial should not be granted, on the ground that the verdict was contrary to evidence.

The Court unanimously refused to grant the rule.

The Lord President said he did not think that there was any case here for granting a new trial. It was one of those questions more for the determination of a jury than for the determination of the Court; and that consideration in itself would be quite sufficient to render him very unwilling to interfere with the verdict. Of course one would be inclined to do so if it were shown that there had been the publication of a clearly calumnious statement not in any way justified. But that was not the case here. It was not wonderful that, when the editor of the *Daily Mail* came home and found that the publication of the paragraph had caused a great deal of annoyance to persons of respectability, and when he was told that he had been misled upon a somewhat delicate subject, it was not surprising that he should have felt annoyed, and should have inserted a withdrawal or retractation of the statements in his newspaper as early as possible, and that he should do so with some degree of irritation of feeling. Though the paragraph unquestionably did show that the editor was much annoyed, and though it was also somewhat unusual to disclose the name of the person from whom the inaccurate information was derived, still the paragraph did not, in his view of it, contain any actionable matter. It might have been so construed by the evidence as to be calumnious in its effect, because addressed to the public of Glasgow, who were acquainted with the railway matters; and it was for the pursuer to have satisfied the jury of that by evidence. But he led no evidence to show that the words used imported anything else than they might do if they were used in their fair and obvious meaning. All he could say was that they seemed to him to contain nothing actionable whatever. But then the pursuer's counsel said that the last parenthetical paragraph appended to the reporter's letter was much more bitter and clearly actionable, and that it must be held to give a colour and meaning to the first letter. Now, he thought there was one thing that the learned counsel put out of view al-

together, which was of the greatest possible importance for the consideration of the jury, and that was the circumstances under which the last paragraph note of the editor was written, because matters were then in a different state. The pursuer and the reporter came into a direct conflict, and there was a mutual charge of want of veracity by the one towards the other. In looking to the two letters between Mr Muir and the reporter, laid before them as part of the case, were the jury not bound to consider whether they were applicable to the facts in reference to the conclusion they should come to? He thought that most undoubtedly they were; and what conclusion could they come to but that the statement in the letter of the pursuer was not true, and that the statement in the letter of the reporter was true. Now, they came under these circumstances to read the note, in which certainly pretty strong language was used, and it was for the jury to say whether it was in the circumstances actionable or not. The meaning of the paragraph was just this—"We are satisfied that our reporter is stating a matter of fact truly, and we are satisfied that Mr Muir was not stating it truly." His Lordship gave no opinion on that point, but he thought the jury were quite entitled to say that the pursuer was not entitled, in the circumstances, to recover damages. Therefore he was not prepared to give the slightest countenance to disturbing the verdict.

Lord Curriehill said that his opinion was very much influenced by this element in the case—that the newspaper publishers did not commence the series of papers complained of. He thought it was the duty of the publishers of the newspaper to put themselves right in this matter, and that they were entitled to give their own opinion as to the accuracy of the statements. He therefore entirely concurred with his Lordship.

Lord Deas said that a practice prevailed very extensively among newspapers of publishing letters anonymously. He was not sure if it would not be very wholesome if everybody who wrote letters to the newspapers had their names put at the end of them; but certainly when newspapers were misled by wrong information given to them, it was a wholesome thing that the name of the party who gave the erroneous information should be published by them, when they thought the circumstances fairly warranted that being done. He concurred with his Lordship in refusing to disturb the verdict.

Lord Ardmillan concurred.

Agents for Pursuer—D. Crawford & J. Y. Guthrie, S.S.C.

Agent for Defenders—John Ross, S.S.C.

Wednesday, June 12.

SECOND DIVISION.

FLEMING *v.* BURGESS AND ROLES.

Bankruptcy—Trustee—Debt—Offer of Payment—Lease—Registration of Leases Act 1857—*Petition—Assignation*—Lis Pendens. A party who had acquired right to a lease in security of a debt, and applied, by petition, to the Sheriff to be put in possession under the Registration of Leases Act, was offered payment of his debt in full by the debtor's trustee on condition of his granting an assignation of the lease to him. He was willing to grant a discharge, but refused to grant the assignation, on the ground that he held the subjects in security of another debt, to which he had acquired right after the date of the sequestration and of his application to be put in possession. Held that he was bound in equity to grant the assignation, and that he could not plead counter-equity as applicable to a debt acquired *pendente lite*, and after judicial demand for the assignation was made.

Burgess had granted to Fleming an assignation of a lease of heritable subjects in security of a debt. Burgess afterwards became bankrupt in 1864. Fleming presented the present petition to the Sheriff of Inverness, under the Registration of Leases Act 1857, craving to be put in possession of the subjects of lease. Subsequent to the sequestration, the petitioner acquired right to another debt, secured by a decree following upon an adjudication which had been led against the same subject in 1862. Roles, the trustee in the sequestration, offered payment of the first debt, which was preferable, upon assignation of the security; but the petitioner maintained that the trustee must be satisfied with a simple discharge. He said that it would be to his prejudice to grant the assignation asked by the trustee, because he was entitled to hold the lease as preferable security for both debts. The Sheriff-substitute (Thomson) and the Sheriff (Ivory) held that the petitioner was not bound to grant the assignation, holding that the trustee had no higher right than Burgess had, who would not have been entitled to claim the assignation; and that the assignation of the decree of adjudication in favour of the petitioner was of itself a sufficient answer to the respondents' demand for an assignation; for no creditor can be compelled to assign a right to his own prejudice. The trustee advocated. The Lord Ordinary (Barcaple) recalled both these interlocutors, holding that, the petitioner not having acquired right to the decree of adjudication until after he presented his petition, he could not thereby *pendente lite* deprive the trustee of his right to demand an assignation of the lease, in the interest of the other creditors, upon his making full payment of the debt.

The respondents reclaimed.

A. R. Clark and H. Smith for them.

Watson and Trayner in answer.

At advising—

Lord Justice-Clerk—The case presented to us is that of a party having a security over a lease, and desirous of entering into possession under his security, to whom payment of the sum contained in his security is tendered by the trustee on the sequestrated estate of his debtor, and the question is whether he is bound to grant an assignation of the debt, or is justified in offering a discharge. Considering the numerous transactions in which such questions arise, there is surprisingly little authority to be found in our institutional writers on the subject. Mr Erskine's doctrine on the subject is stated with reference to cases in which the party paying is actually bound along with the debtor. But there can be no question that that equitable remedy is in much more extensive operation, and, as laid down in the case of *Smith* v. *Gentle*, is applicable to all cases in which the creditor is putting diligence in force in order to recover payment. It is daily in operation in cases in which a creditor in an heritable security demands payment of his bond; and the same principle would seem to be applicable where a