get the principal document delivered up, to be sent to New York.

The Sheriff-clerk of Lanarkshire, in whose custody the document was, did not object, but pointed out that the petitioners were not parties to the deed. They were not the only parties interested therein. The factor might have granted other obligations, and the creditors therein had a material interest in the safety of these documents. Besides, the affidavit did not show that an office copy would not be competent in New York if the principal could not be obtained. Reference was made to the cases of *Young*, 4 Macph. 344; *Jolly*, 2 Macph. 1288; *Dunlop*, 24 D. 107; *Duncan*, 4 D. 1517.

At advising—

Lord President—I am clearly of opinion that this application cannot be granted. This is a deed in which a great many people not only may be but are, in point of fact, interested, and the petitioner is in no greater degree interested than many others. Now I know no case in which the Court granted authority to take a deed out of the country on grounds so slender as are here alleged. The cases referred to have very little application. The case of *Jolly* received great consideration in the other Division, and it was not without much hesitation that we granted the application. The question in the Court of Dublin related to the signature of a very old man who very seldom signed his name at all. The last signature he had been known to make was to this deed, and it was said that by production of this deed it would be demonstrated that the signature founded on by the other party was a forgery. That was a strong reason for allowing the deed to be transmitted out of the country. In the circumstances a copy would have been of no use. Nothing but the deed itself was of any avail. In the last case the authority is all the other way. In the present case there is no ground for the application. The affidavit is framed in the most meagre way. The attorney in New York says that an office copy of that document will not be competent evidence by the law of the State of New York. Now I don't know what that means. If it means that, by the law of New York, when it is impossible to get the principal deed, the contents cannot be proved in any other way, all I shall say is that I don't believe that to be the law either of New York or of any civilised country. Therefore I am for refusing the petition.

Lord Curriehill—I am very clearly of the same opinion. When a deed is put on record for preservation, parties having an interest in it trust that it will be found there when it is wanted, and nothing would have a greater tendency to shake the confidence of the public in our records, that, if when they went to find the deed, they were to discover that it had been sent across the Atlantic as is here proposed. No precedent has been shown for our granting the prayer of this petition, and if there had, I should have submitted that the matter required very careful consideration. The modern practice is, that when the production of a deed is indispensable, an official is sent with it, in order that he may produce it when required.

Lord Deas—I am of the same opinion. It has not been shown to me that this document could not be made competent evidence. All that is shown is that an office copy will not be competent evidence. That may be quite true, but it may be easy to make an office copy competent by parol evidence, and there would be nothing out of the way in that, for it would be just what we do ourselve in many cases.

Lord Ardmillan—I concur. This is not like the case of *Dunlop*. Many parties are interested in this deed, and one of them asks to have it sent accross the Atlantic, and merely because of this affidavit. Supposing it to be true that the copy, *per se*, is not competent evidence, the question is, whether, if it is proved in the Court of New York that the principal document will not be transmitted, and if the authenticity of this copy is proved, and our judgment refusing to send the principal is produced, the copy will not be received as sufficient evidence? I should be surprised if in that case the proved copy would be of no avail. The case of *Jolly* was an exceptional case, and has no application to the present circumstances.

Agents for Petitioner—Hamilton & Kinnear, W.S.

Agents for Sheriff-clerk—Neilson & Cowan, W.S.

Friday, March 20

TAYLOR & CO., *v.* MACFARLANE & CO.

(*Ante*, vol. iv., p. 33).

Interest—Liquid and Illiquid Claims—Verdict—Bill of Exceptions—Appeal. Motion by holder of a verdict—in a case which was carried to the House of Lords by appeal on a Bill of exceptions and against interlocutor settling the issues, and in which the appeal was dismissed, —for interest from date of the verdict, *refused.* Observed that the Court had a discretion to award interest in a case of unreasonable litigation.

In this case, which was an action to recover damages for breach of contract, in consequence of the defender having used logwood for colouring a cargo of spirits shipped to the West Coast of Africa, (thereby injuring the marketable quality of the spirits), the pursuers, in January 1867, obtained a verdict, and the damages were assessed at £3000. The defenders presented a bill of exceptions to the judge's charge, which was unanimously disallowed, but the case was considered one of some difficulty, and the judges delivered separate opinions. An appeal was then presented to the House of Lords against the interlocutor disallowing the bill of exceptions, and also against the interlocutor settling the issues, but both the interlocutors were affirmed and the appeal was dismissed.

Gifford, for the pursuers, now moved to have the verdict applied and decree pronounced for the damages awarded, with interest from the date of the verdict, founding upon the case of *Lenaghan* v. *The Monklands Iron & Steel Co.*, 20 D. 848

J. M'Laren, for the defenders, contended that interest ought only to be given from the date of the interlocutor applying the verdict, citing *Hurlet & Campsie Alum Co.* v. *Earl of Glasgow*, 13 D. 370.

The Court were of opinion that they had a discretion, under the last mentioned case, to give or withhold interest. Strictly speaking, the claim could not be held to be liquidated until the verdict was applied, because, until then, the decision of jury was not final; but where a party created delay by improper litigation, interest might be given from the date of the verdict in which he ought to

have acquiesced. In the present case there had been no delay in taking the appeal, and the exceptions were attended with difficulty; interest, accordingly, would not be allowed.

Agents for Pursuers—Henry and Shiress, S.S.C.

Agents for Defenders—White-Millar & Robson, S.S.C.

Friday, March 20

CREDITORS OF THE LOCHFINE GUNPOWDER CO. (LIMITED), PETITIONERS.

Liquidation—Winding-up of Company—Companies Act 1851, *sec.* 147—*Removal from Office.* In this petition for winding-up, subject to supervision of the Court, certain creditors appeared and craved removal of the liquidators already appointed, but the Court held that no sufficient ground of removal had been alleged.

This petition was presented by creditors of the Lochfine Gunpowder Company (Limited), At a meeting on 22d January last, it had been unanimously resolved that the business of the company should be voluntarily wound-up. At a subsequent meeting this resolution was confirmed, and Mr George Shand, writer, Denny, and Mr James Weir, commercial traveller, Airdrie, were appointed liquidators. These gentlemen proceeded to realise the funds, with a view to distribution. Various actions and diligence, however, were threatened against the company, and accordingly this petition was presented, under section 147 of the Companies Act 1862, craving the Court to make an order directing that the voluntary winding-up of the company shall continue, but subject to the supervision of the Court, and with such liberty for creditors, contributories, and others to apply to the Court as the the Court thinks just. Answers were lodged for Martin, Turner, and Co., creditors of the company, objecting to the company being wound up under the present liquidators, and craving the Court to order a meeting of the creditors, to ascertain their views as to the appointment of liquidators by whom the winding-up might be carried on. Similar answers were lodged by two other creditors. Counsel were heard on the petition and answers.

Balfour for petitioner.

A Moncrieff and D. Marshall for respondents.

At advising—

Lord President—I don't think the respondents have made out a case either for removing the liquidators or for appointing additional liquidators. The power of the Court to remove liquidators is under the 141st section of the Act; but it contemplates it being done only "on due cause shown." No sufficient cause has here been shown forgremoving the gentlemen who were appointed unanimously to the office of liquidators; and as to the appointment of additional liquidators, that is an unnecessary expense to incur in so small a concern. It does not appear that there is so much complication in the winding-up of this company that greater skill must be possessed by the liquidators than may be presumed to be possessed by these gentlemen, one of whom held the position of traveller to the company while it carried on business, and the other of whom is a writer and bank agent. As a matter of judicial discretion, I am against interfering.

Lord Curriehill—If this proposal were to remove the present liquidators, or appoint additional liquidators, I should be against that course. The present proposal seems rather to be that we should appoint a meeting of creditors, that they may express their views. I am against allowing this. I think that no case has been made out for interfering with the liquidation.

Lord Deas—I am of the same opinion. Nothing has been stated to authorise the removal of the present liquidators, or the calling of a meeting of creditors, which would be attended with expense and trouble to all parties. No ground has been suggested at all, except that a certain number of creditors would prefer some one else. If they see ground for thinking that the interests of the creditors are not attended to, they may come, and if they are able to state some tangible ground for removal, they may be listened to then.

Lord Ardmillan concurred.

Agents for petitioner — Maclachlan, Ivory, & Rodger, W.S.

Agents for respondents—Cheyne & Stuart, W.S., A. R. Morison, S.S.C., and W. G. Roy, S.S.C.

Friday, March 20.

SECOND DIVISION.

GREIG *v.* MACKENZIE, ETC.

Heritable and moveable—Trust—Succession. Circumstances in which a beneficiary's interest in a trust fund was declared to be moveable, and held to be *quoad* succession in a question with the beneficiary's representatives.

This is a multiplepoinding brought by Mr George Greig, W.S., sole surviving accepting trustee and executor of the late Miss Margaret Mackenzie. The fund, *in medio*, consists of the free proceeds of a house in Princes Street, Edinburgh. There are three claimants on the fund—Mrs Teresa Margaret Mackenzie, &c., John Alexander Cochran Mackenzie, and Miss Helen Teresa Mackenzie.

The late Miss Margaret Mackenzie, of Princes Street, Edinburgh, died on 4th November 1847, leaving a trust-disposition in favour of certain trustees, of whom the raiser, Mr Greig, is now the surviving acceptor.

By this disposition, Miss Mackenzie conveyed to her trustees her whole property, real and personal, and particularly her house in Edinburgh, No. 143 Princes Street. She authorises her trustees to collect all debts due to her so soon as they should think fit; "and they are likewise hereby authorised and empowered, at such period or periods as they may think most advisable for fulfilling the foresaid purposes, to sell and dispose of, and convert into cash, the whole estate, heritable and moveable, belonging to me at the time of my death, excepting always the articles hereinafter specially bequeathed by me, or such articles as by any writing under my hand I may direct my said trustees to make over and deliver to any person or persons, and that either by public roup or private sale, or in such other manner as my said trustees shall think proper, and to invest the proceeds thereof as they may consider advisable, so far as may be necessary to carry into effect the purposes of this trust."

By the third direction of the trust, the trustees are instructed to pay to the sister of the testatrix, Mrs Bayley, the rents and annual produce of the subjects in Princes Street, "so long as the said subjects should remain unsold," and the deed afterwards proceeds:—"Declaring always hereby, that