must be let to different tenants; if so, that would have been expressly provided. Nor do I think it means that there must be different leases, for if that had been intended it would have been expressed.

Now, this house is undoubtedly divided into different tenements. From the stair which leads up from the street there is a separate entrance to the photographic studio, and that is an entrance into the studio and nowhere else. Nobody can get from the studio to the upper floors without coming back to the stair again. Then the dwelling-house, which is upon the two upper floors, enters from the stair, and is one undivided tenement, because there is external communication between the two floors, and only one door to the outer stair. Therefore these two subjects are divided from one another.

The only question that remains is, whether they are "let in," or, as Lord Adam put it during the discussion, "let as" different tenements? It appears to me that if it is not necessary that there should be separate leases or separate tenants, then they are "let in" different tenements, because they are separately described in the lease. That satisfies me that the principle of *Corke* v. *Brims* [*sup. cit*] applies, and that the determination of the Commissioners is right.

Lords Mure, Shand, and Adam concurred.

The Court affirmed the determination of the Commissioners.

Counsel for Inland Revenue (Appellants)—Moncreiff — Lorimer. Agent — David Crole, Solicitor of Inland Revenue.

Counsel for Crooke—W. Campbell. Agents—J. & J. Galletly, S.S.C.

Saturday, March 6.

SECOND DIVISION.

[Lord Lee, Ordinary.

MACRAE *v.* WICKS.

Reparation—Slander—Issue—Innuendo.

In an action of damages for slander, the slander complained of was contained in a newspaper paragraph which stated that the writer had supped at the pursuer's hotel, where he was charged a certain price, and the "quality was by no means consistent with the price." *Held* that the issue did not require to contain the innuendo that these words represented, that the pursuer charged extortionately, since the words were actionable, and needed no innuendo to interpret their meaning.

In the issue of a newspaper called the *Glasgow Evening News and Star*, for 10th August 1885, in a special "variety" column of the paper there appeared the following paragraph:—"I shall not sup again in the Albany Hotel. The other evening I was charged there 4s. 6d. for supper, consisting of an omelette with certainly not more than half-a-dozen eggs, and the quality was by no means consistent with the price."

In consequence of this paragraph, Macrae, the lessee of the Albany Hotel referred to, called on Wicks, the printer and publisher of the newspaper with reference thereto, and as a result of his visit, in the issue of the 11th August the following apology was inserted:—"I have been grossly deceived, and I have unwittingly maligned Mr Macrae, the proprietor of the Albany Hotel, Sauchiehall Street. A paragraph was inserted in this column yesterday, saying I supped at the Albany, and was charged 4s. 6d. for an omelette for one. I have never supped at the Albany, and the omelette in question was a supper for three, together with biscuits, cheese, bread, and butter, and the whole was charged only 4s. 6d.—that is, 1s. 6d. for each supper. I should like to know where so good a supper could be had as cheaply in all Glasgow."

This was an action by Macrae against Wicks for £500 as damages for slander alleged to to have been contained in the paper of 10th August, as above quoted. The pursuer alleged that the paragraph was of and concerning him and his hotel, and falsely and calumniously represented that he grossly overcharged his guests, supplied inferior articles, and kept a bad hotel, which did not merit public support, and should be avoided, and that the paragraph was intended and calculated to spoil his business.

The Lord Ordinary (Lee) sustained a plea-in-law that the action was irrelevant, and assoilzied the defender from the conclusions of the action, holding "that the paragraph in question was obviously of too absurd and trifling a nature to be capable of supporting any serious innuendo against the character either of the pursuer or of his hotel."

The pursuer reclaimed, and the Second Division recalled the Lord Ordinary's interlocutor, and remitted to him to proceed with the cause.

The following issue for the trial of the cause was approved of by the Lord Ordinary:—"Whether, in the *Glasgow Evening News and Star*, of 10th August 1885, the defender falsely and calumniously printed and published a paragraph of and concerning the Albany Hotel, Glasgow, of which the pursuer was then lessee, in the terms set forth in the schedule hereto annexed, representing thereby that the pursuer charged extortionately, to the loss, injury, and damage of the pursuer. Damages laid at £500."

The schedule set forth the paragraph above quoted.

The pursuer moved the Court to substitute the following issue for that approved of by the Lord Ordinary:—"Whether, in the *Glasgow Evening News and Star*, of 10th August 1885, the defender falsely and calumniously printed and published a paragraph of and concerning the Albany Hotel, Glasgow, of which the pursuer was the lessee, in the terms set forth in the schedule hereto annexed, to the loss, injury, and damage of the pursuer."

At advising—

Lord Justice-Clerk—I do not think that an innuendo is necessary here. I think that an innuendo is only twisting into another form the words as they stand upon the record. If they are not actionable in themselves, then they would not be actionable with an innuendo.

Lord Young—I think an innuendo would be

quite out of place here; there is nothing here to be interpreted. What words could the defender use to make it clearer that he meant that he had had supper at the Albany Hotel, and that he had been overcharged for it? This is not one of that class of cases where there is anything ambiguous in the words that are taken as the libel. I think it was the late Lord Cockburn who used the illustration that one person meeting another might libel that other person by saying "Good morning," or "How are you my fine fellow," in a particular way. He might have meant by these words to say "You are the greatest scoundrel unhung." The words might be innuendoed to mean that, and evidence brought forward to show that when the person used these apparently innocent words he meant something libellous, and that those who heard him understood the words so. That is "innuendoing a nod," but that is not the case here. I wish to make it quite plain that in my opinion no innuendo is needed.

Lord Craighill and Lord Rutherfurd Clark concurred.

The Court substituted the issue proposed by the pursuer for that approved of by the Lord Ordinary, and appointed the cause to be tried at the sittings.

Counsel for Pursuer — Comrie Thomson—Rhind Agent—William Officer, S.S.C.

Counsel for Respondent—Pearson—Dickson. Agents—Webster, Will, & Ritchie, S.S.C.

HOUSE OF LORDS.

Monday, March 1.

(Before Earl of Selborne, Lord Watson, Lord Bramwell, Lord Fitzgerald, Lord Halsbury, and Lord Ashbourne.)

HISLOP *v.* FLEMING.

(*Ante*, vol. xx. p. 298, 10 R. 426.)

Process—Appeal—Judicature Act (6 *Geo. IV. c.* 120), *sec.* 40—*Finding of Fact.*

Held that a finding "that the ignition of any heap or bing of 'blaes'" on certain lands "would cause material discomfort and annoyance to the pursuers" of a process of interdict, was a finding of fact within the meaning of the Judicature Act 1825, and not capable of being reviewed by the House of Lords on appeal.

Property—Neighbourhood—Nuisance — Superior and Vassal—Interdict.

The proprietor of an estate situated on the outskirts of a large city worked out the minerals and then proceeded to feu out the land for dwelling-houses of a superior class, there being left upon his land adjoining the feus large bings or heaps of mineral refuse or "blaes." After feuing had gone on to a considerable extent he proceeded to set fire to these bings, with the result of causing material discomfort to the feuars by the smoke thence arising. *Held* (*aff.* judgment of Second Division) that the feuars were entitled to interdict against the burning of the bings in such a manner as to cause material discomfort and annoyance to them.

This case is reported *ante*, vol. xx. p. 298, and (under date December 22, 1882) 10 R. 426.

The defenders, Fleming and another (Kelvinside Estate Company Trustees) appealed.

The interlocutor of the Second Division was as follows:—"Find that in the circumstances of the case it is unnecessary to pronounce any order in regard to the blaes-heap or bing of blaes on Semple's Farm, Kelvinside (Addie's pit, number 6): *quoad ultra*, find that the ignition of any other heap or bing of blaes of said farm, or in the vicinity of the pursuers' lands, would cause material discomfort and annoyance to the pursuers: Therefore sustain the appeal: Recal the interlocutor of the Sheriff of 13th July last: Affirm the interlocutor of the Sheriff-Substitute of 17th April last: Of new interdict the defenders from burning or calcining the said heaps or bings of blaes other than the heap or bing number 6 pit: Find the pursuers entitled to expenses."

At delivering judgment—

Earl of Selborne—My Lords, I believe all your Lordships are clearly of opinion that in substance the interlocutor appealed from is right. The sole question on which you thought it necessary to hear the Solicitor-General is one really of form and not of substance.

The first question which was argued was to what extent this interlocutor now under appeal was appealable under the Scotch Judicature Act. Now, by that Act it is laid down in the clearest possible terms that a judgment of this nature "shall be subject to appeal to the House of Lords in so far only as the same depends on or is affected by matter of law, but shall, in so far as relates to facts, be held to have the force and effect of a special verdict of a jury, finally and conclusively fixing the several facts specified in the interlocutor." The Act assumes, rationally I should say, that a finding must be either of fact or of law. Here you have a finding "that the ignition of any other heap or bing of blaes on said farm or in the vicinity of the pursuers' lands would cause material discomfort and annoyance to the pursuers," and upon that a conclusion introduced by the word "therefore" is founded. Is that fact or is it law? The appellants do not pretend to say that it is law, and if it be not law it would seem from the very terms of the Act which I have read that it cannot be the subject of appeal. It is suggested that it is neither fact nor law; not fact because it relates to something which it is said is prospective, future, not actually in existence. Well, it is very difficult to follow such an argument, especially if, as here, it is not an immaterial finding, but a finding most material for the conclusions built upon it. Nobody can say that without such a finding it would be right to grant an interdict. The thing had not actually happened in that particular case, and of course, therefore, the finding of a fact as a thing past was impossible. Well, then, it is a most strange proposition that a finding so material as to jus-