which would disentitle the possessor to claim the coal under the description of a pertinent. Now, considering the impossibility of working the coal otherwise than by mines sunk in the adjacent lands, and taking account also of the necessary limitation from physical causes of the grantee's power of working the coal seaward, I think that the coal *ex adverso* of the barony is just such a subject as might very naturally be thrown in as a pertinent of the land with the coal contained therein. That being so, it follows, in my opinion, that the barony title is a sufficient title to which possession for the prescriptive period may be ascribed, and that Mr Wemyss has a good title to the sea coal *ex adverso* of the barony of West Wemyss.

I also agree with your Lordships that the effect of such possession cannot be extended to the lands of East Wemyss and Methil, and that the decree must be limited in the terms proposed.

LORD KINNEAR—I have had the advantage of reading the opinion delivered by your Lordship in the chair, and also that delivered by Lord Adam. I concur in these opinions, and I do not think it desirable, and it certainly is not necessary, to repeat reasons which have been already so fully explained.

The Court pronounced this judgment:—

"Recal the interlocutor of the Lord Ordinary: Find and declare (1) that the pursuers, as proprietors of the baronies of West Wemyss, East Wemyss, and Methil, have right to the foreshore (subject to the right of the Crown as trustee for public uses), and to the coal under the foreshore of the said lands; (2) that the pursuers, as proprietors of said barony of West Wemyss, have right to the coal lying under the sea *ex adverso* of the said barony so far as the said coal is workable from the said barony: Find and declare in terms of the declaratory conclusions relating to the lease libelled, and dismiss as unnecessary the reductive conclusions relating thereto: *Quoad ultra* assoilzie the defender from the conclusions of the action, and decern: Find the pursuers entitled to four-fifths of their expenses in the cause," &c.

Counsel for the Pursuers—Asher, Q.C.—Rankine—Ure. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for the Defender—Lord Advocate Graham Murray, Q.C.—C. N. Johnston. Agent—Thomas Carmichael, S.S.C.

Friday, November 6.

OUTER HOUSE.

[Lord Kincairney.

NISBET *v.* NISBET.

Husband and Wife—Separation—Cruelty—Separation for Cruelty of Wife.

Decree of separation may be obtained by a husband on the ground of cruelty on the part of his wife, on the condition of providing a reasonable aliment for her. *Observed* (*per* Lord Kincairney) that proof of cruelty to the children is an important element in such a case.

This was an action of separation at the instance of John Nisbet, miner, Galston, against his wife on the ground of her cruelty. No defences were lodged. Evidence was led, from which it appeared that the parties were married in August 1882, and had lived together up to the date of the proof. There were five children of the marriage, and the defender was now forty years of age. It was proved that the defender was addicted to drink; that she neglected her household duties, and kept the house and children in a filthy condition; and that she was habitually violent in her conduct towards her husband and her children. Their doctor deponed that in his opinion her conduct was likely to endanger the health of the children.

Counsel for the pursuer stated that this was the first instance in Scotland of an action of separation at the instance of the husband, but the competency of such an action was recognised by Lord Fraser—Husband and Wife (2nd ed.), p. 906; and in England — *Kirkman* v. *Kirkman*, 1807, 1 Hag. Con. Rep. 409; *Furlonger* v. *Furlonger*, 5 Notes of Cases, 422; *White* v. *White*, 1859, 1 Swab & Tris. 591; *Pickard* v. *Pickard*, 3 Swab. & Tris. 523; *Forth* v. *Forth*, 1867, 36 L.J., Pro. and Mat. 122. In the two most recent cases cited (*Pickard* and *Forth*) it had been made a condition that the husband should provide a reasonable aliment for the wife. In this case the husband's income was £37 per annum, and he was willing to undertake to allow his wife 3s. per week.

On 7th November 1896 the Lord Ordinary granted decree in terms of the conclusions of the summons.

Opinion.—"Actions of separation and aliment on the ground of cruelty are usually brought by a wife, but there is no doubt of the right of a husband to bring such an action. In this case it has, I think, been established that the conduct of the wife has been so violent to the pursuer and to the children as to entitle the pursuer to decree. It may be that the pursuer is able to take care of himself. But he could only protect himself from his wife's violence by retaliation, and his mere ability to retaliate cannot disentitle him to decree of separation. It has, in my opinion, been proved that the children, for whose safety the pursuer is bound to provide, have been endangered

by the defender's violence, and I consider I am entitled to take this into account in granting decree of separation. I think, however, that provision must be made for the maintenance of the wife, and decree has been granted on the pursuer's undertaking to afford his wife aliment at the rate of 3s. per week."

Counsel for the Pursuer—Dove Wilson. Agent—R. G. Bowie, W.S.

Tuesday, November 10.

OUTER HOUSE.

[Lord Stormonth Darling.

HONEYMAN *v.* DICKSON AND OTHERS.

Company — Directors — Fraudulent Concealment and Statements in Prospectus —Relevancy.

A party applied for and obtained shares in an insurance company on the faith, as he alleged, of the original prospectus, and afterwards, on a new issue being made, obtained further shares on the faith of a new prospectus, and on a third issue being made, obtained a third allotment on the faith of the first annual report by the directors and of a third prospectus. The company turned out a failure, and the shareholder brought an action of damages against the directors on the ground that he had been induced to take the shares by fraudulent misrepresentations made by them in the said prospectuses and report. Averments of fraud and concealment *held* (by Lord Stormonth Darling) irrelevant to support the conclusions of the action, as being either (*a*) of concealment of matters not affecting the truth of the statements made in the prospectus, (*b*) of sanguine prophecies as to the future of the company, or (*c*) criticism of the directors' system of bookkeeping in preparing the company's balance-sheet.

This was an action of damages at the instance of John Honeyman, Elmwood, Cupar, against James H. Dickson and others, directors of the Employers Assurance Company of Great Britain, now in liquidation, and concluding for damages to the amount of £4354, 19s. 5d., being the amount of calls paid by him on his shares in the company, with interest thereon, on the ground that he had been induced to become a shareholder by fraudulent misrepresentations made by the said directors in certain prospectuses and in a report of the company.

The company was registered on 6th July 1887 under the name of The Glasgow Employers Insurance Company, and assumed its present name by minute of the Board of Trade, duly registered on 20th July 1888. The capital was £250,000, divided into 50,000 shares of £5 each. In December 1888 a prospectus inviting application for these shares was sent to Honeyman, who applied for and was allotted 200 shares. With regard to this prospectus Honeyman alleged that it contained the statement that "From the auspices under which this company is formed . . . its shares are confidently recommended to investors seeking a safe and at the same time remunerative investment," and that "it concealed the fact that the company had been registered for nearly eighteen months, during which time it had changed its name and had been unable to place its shares, and led the pursuer to believe that the company had just then been formed under auspices favourable to success."

In August 1889 the directors of the company made a further issue of capital, in respect of which they issued a new prospectus, and of which Honeyman applied for 300 shares. With regard to this prospectus he founded on the statement—"The directors are satisfied that the business already secured is of a very profitable kind, and that it has been got at exceptionally low cost, while the loss ratio has been insignificant. As the business is now in full operation throughout the United Kingdom, and is being conducted on what the directors are confident is a sound and profitable basis, it has been decided to issue the additional shares at a premium of 3s. per share. The prospects of the company are of the best kind, and should make its shares an exceptionally good investment."

In May 1890 a third issue of shares was made. The prospectus which was sent to Honeyman referred to the first annual report of the company, which announced a dividend of 4 per cent., and contained general statements (which it is unnecessary to quote) with regard to the success and prospects of the company. Of this issue Honeyman applied for and obtained 500 shares. With regard to the report and prospectus he made the following allegations:—"The whole of the material statements contained in the said prospectuses and report and balance-sheet before referred to, on the faith of which the pursuer was induced to take shares as aforesaid, were untrue and misleading, and further were false and fraudulent, and the pursuer was deceived thereby. The directors of said company were aware of the falsehood of said material statements at the time of issuing the same, and, in any event, they made said statements recklessly and with culpable negligence, without sufficient or reasonable inquiry as to their truth, and had no reasonable grounds for believing them to be true. The recklessness and negligence with which the said statements were made were so gross as to amount to fraud upon the pursuer. The company did not earn the dividend of 4 per cent. paid in February 1890, for the ten months ending 31st December 1889, nor any dividend. The business had been carried on at a loss from the first, and the said dividend was paid out of capital. The revenue account and balance-sheet issued with said report for 1889 were grossly