construction to such exceptions. In coming to the conclusion that the exception was properly disallowed, it is satisfactory to think, that, from all that appears, the plaintiff Jeffreys was clearly the proprietor of this copyright; and though the objection to the exception is formal, still the result is in accordance with the justice of the case. In England we have very much abandoned these bills of exceptions, and I hope that a similar course will be followed in Scotland, so as to enable the real merits of the case to be fully brought out. A much better course consists in adopting special verdicts and special cases; and if these are not yet competent in Scotland, I will be ready to assist in any change which may require to be made in order to effect so great an improvement.

LORD BROUGHAM.—My Lords, I agree with my noble and learned friend on the woolsack. It is very important that so long as bills of exceptions continue to be adopted, they should be dealt with very strictly. The exception in this case is loosely drawn, and it would have been better if learned counsel in Scotland attended more to the course of practice in England, where jury trial is much better understood. It is clear that an exception ought, as Lord Mansfield once said, to hit the bird in the eye. It must shew what part of the ruling or of the Judge's observations it was that is excepted to. If, in the present case, the whole charge of the learned Judge had been set out, we could have seen whether anything wrong had been laid down. But, as far as we can see, the charge was unexceptionable. I think it is very desirable that the practice of having special cases should be introduced into Scotland: I do not recollect whether the late Court of Session Act allows them, at least it ought to have done so. In conclusion, I do not regret at all that the exception should fail in the present instance on a point of form, for the justice of the case seems to be with the respondent.

LORD CRANWORTH.—My Lords, I only remark, that whether or not special cases may be had in Scotland, there may, at all events, be special verdicts, of which we have had lately some examples. That would have been a better course here than to have dealt with the case as seems to have been done. I entirely agree with my noble and learned friends on the point now before us.

LORD WENSLEYDALE.—My Lords, I also am of opinion that the appellant has lost nothing by not having taken his exception properly. I quite agree with LORD ST. LEONARDS in the view which he expressed as to the construction of the statutes in the case of *Jeffreys* v. *Boosey*, in this House.

LORD CHELMSFORD.—My Lords, I am also glad of the opportunity of shewing the necessity of adhering to great strictness in dealing with bills of exceptions, which ought always to raise the precise point in question; and here the justice of the case is fully met by the decision we come to on the informality of this exception.

Interlocutors affirmed.

Appellants' Agent, J. Leishman, W.S.—*Respondents' Agent*, J. Robertson, S.S.C.

JUNE 30, 1859.

SCOTS MINES CO. and WILLIAM GEDDES BORRON, *Appellants*, *v.* THE LEADHILLS MINING CO. and Others, *Respondents*.

Appeal to House of Lords—Process—Competency—Interlocutory judgment—*A plea involved the whole merits of the cause, but was so disposed of in the Court of Session as merely to establish the pursuer's title to sue; and the case was then ordered to be proceeded with.*

HELD, *This interlocutor was not subject to appeal, being merely interlocutory within the meaning of* 48 *Geo. III. c.* 151, § 15.[1]

The Scots Mines Co. appealed against the interlocutors of the Court of Session, and maintained (in their appeal case) that they should be reversed, because,—1. The respondents had no title to pursue, and, in particular, they had not the title libelled on. 2. The alleged assignation by Thomas Horner, of the lease of 1808, and agreement of 1817, upon which the respondents founded, was invalid, in respect he was not in right of the lease or agreement. 3. Even if the respondents were in right of the lease of 1808, no right was given by it to the water or water-course in question; at least, no right which could compete with that of the appellants. 4. By virtue of written titles, which the respondents could not controvert, the right of

[1] See previous reports 18 D. 594; 28 Sc. Jur. 107; S. C. 3 Macq. Ap. 743: 31 Sc. Jur. 567.

the water and water-course belonged to the appellants. 5. The respondents had no right from the Earl of Hopetoun, at least none which he could competently and effectually grant, in a question with the appellants. 6. It having been finally decided, in a submission between the Earl of Hopetoun and the appellants, as landlord and tenant, and it being further the just and legal position of matters, that the appellants were entitled, by virtue of the Earl's grant, to the exclusive use of the water, it was incompetent for the respondents, as alleged, to derive right from the Earl subsequently to that grant, to dispute the appellants' title to the water. 7. The alleged agreement with the Earl of Hopetoun, upon which the respondents founded, having been entered into during the dependence of the submission between the Earl and the appellants, in regard, *inter alia*, to the water, and in the full knowledge by the respondents of the proceedings in that submission, the respondents could not take advantage of a right so acquired; and the alleged agreement could not affect the appellants' right to the water, as determined under the submission. 8. The respondents, not being in right of the agreement of 1817, by any competent or effectual title, had no claim on that agreement. 9. The agreement of 1817 never having been fully acted on, and having been broken and at an end for many years, in consequence of the violation or non-implement thereof by the Leadhills Mining Company, could not now be founded upon as giving any right to the respondents, as alleged to be in room of that company. 10. The title of the respondents was, besides, defective, in respect they had obtained no right to the water from Mr. Irving of Newton.

The respondents having objected, before the Appeal Committee of the House of Lords, to the competency of the appeal, the objection was ordered to be argued in *printed cases*, and to be heard at the bar at the hearing of the appeal. The objection was—"that the interlocutors appealed from by the appellants are interlocutory judgments, and, as such, the said appeal is incompetent under the statute. That the interlocutors so appealed from are not judgments on the whole merits of the cause, (the merits or questions at issue between the parties not being reached by such interlocutors at all,) nor was leave given (although applied for on two separate occasions) by the Judges of the Division pronouncing such interlocutors, nor was there any difference of opinion among the Judges pronouncing the same."

The 15th section of 48 Geo. III. c. 151, enacts—"That hereafter no appeal to the House of Lords shall be allowed from interlocutory judgments, but such appeals shall be allowed only from judgments or decrees on the whole merits of the cause, except with the leave of the Division of the Judges pronouncing such interlocutory judgments, or except in cases where there is a difference of opinion among the Judges of the said Division, nor shall any appeal to the House of Lords be allowed from interlocutors or decrees of Lords Ordinary which have not been reviewed by the Judges sitting in the Division to which such Lords Ordinary belong: Provided that, when a judgment or decree is appealed from, it shall be competent to either party to appeal to the House of Lords from all or any of the interlocutors that may have been pronounced in the cause, so that the whole, as far as it is necessary, may be brought under the review of the House of Lords."

The respondents further objected, in terms of the 4th section of the Statute 55 Geo. III. c. 42, (confirmed by 59 Geo. III. c. 35, § 15, and 6 Geo. IV. c. 120, § 33,) with reference to interlocutors pronounced by the Lord Ordinary or by any of the Divisions of the Court granting or refusing a trial by jury. The 4th section of the Act 55 Geo. III. c. 41, provides—"That it shall not be competent, either by reclaiming petition or appeal to the House of Lords, to question any interlocutor granting or refusing such trial by jury."

R. Palmer Q.C., and *Young*, for the appellants.—The argument is, in the first instance, to be confined to the question of the competency of the appeal. The appeal is competent though the interlocutor appealed against has not exhausted the whole merits of the case, if, on being decided one way, it might have put an end to the case. Such is the construction which has been put on the Statute 48 Geo. III. c. 151, § 15, in several cases—*Downe* v. *Edinburgh and Leith Co.*, Macq. Pract. 303; *Clyne's Trustees* v. *Clyne*, 1 M'L. and Rob. 72; *Geils* v. *Geils*, 1 Macq. 36; *ante*, p. 1; *North British Bank* v. *Collins*, 1 Macq. Ap. 369; *ante*, p. 186; *Melrose* v. *Hastie*, 1 Macq. Ap. 698; *ante*, p. 315; *Warrender* v. *Warrender*, 1 Macq. Ap. 43; *Breadalbane* v. *MacGregor*, 7 Bell's App. 43. This case comes within the same class, for here the respondents' title was objected to on several grounds, each of which, if sustained, would have disposed of the merits of the case.

Attorney-General (Bethell), and *Anderson* Q.C., for the respondents.—It is no doubt difficult to draw the line so as to define what merits of a cause must be exhausted, before an appeal is competent. All that can be done is to look to the words of the statute and the circumstances of each case. It is clear that the test is not, whether, if the particular plea had been decided one way, the cause would have been at an end, for, where a dilatory plea is disposed of, there is no right to an appeal. The statute says, there shall be no appeal where the whole merits have not been exhausted, unless there is leave of the Court. The sole question then is, Is this an interlocutory judgment, or one which is final and exhaustive of the merits? The first five pleas were mere preliminary pleas, the seventh is the plea on the merits, and is not yet inquired into. The

cases all turn on their individual circumstances, and can be no safe guide on this question; but it will be found that the test of an interlocutory judgment is where something more was required to be done before the merits were exhausted—*Irvine* v. *Kirkpatrick*, 7 Bell's App. 186; *Montgomery* v. *Boswell*, M'L. and Rob. 136; *Fraser* v. *Fraser*, 14 S. 89; *Ferrier* v. *Mowbray*, 7 W.S. 147. The course of practice in all cases has been to hold that leave of the Court to appeal is necessary, even though, if the interlocutor had been decided in one way, the cause would have been out of Court. Paton's Practice of the House of Lords refers to *Magistrates of Dundee; Magistrates of Wigton;* and other cases there cited. In *Clyne's case*, cited on the other side, the merits had been exhausted; and so it was in *Warrender* v. *Warrender*, 1 Macqueen, 43.

Cur. adv. vult.

LORD CHANCELLOR CAMPBELL.—I am of opinion that this appeal ought to be dismissed as incompetent. The statutes on this subject, by which we must be governed, seem to me to divide cases in the Court of Session, with respect to the appeal to the House of Lords, into three classes—*first*, cases in which an appeal is expressly and absolutely forbidden; *second*, cases in which an appeal is competent with the leave of the Court, and not otherwise; *third*, cases in which, without the leave of the Court, and even after the refusal of leave by the Court, the parties may appeal *de jure*. The question is, whether this appeal is to be referred to the second or the third class.

As the interlocutors appealed against were pronounced by the Court without any difference of opinion among the Judges, they can be referred to the third class only, on the ground that they are not "interlocutory judgments," and that they are "judgments or decrees on the whole merits of the cause."

It has been said that a decree, against which there may be a right to appeal, need not necessarily exhaust the merits of the cause; neither is it necessary that it should be an extractable decree. I assent to this if the decree be on the whole merits of the cause. Although it need not technically dispose of every point which may have been raised upon the record, it may substantially decide all the questions in controversy between the parties.

A most ample opportunity is given to bring before the House of Lords every interlocutor pronounced in every cause, except interlocutors with respect to which there is an express and absolute prohibition to appeal, such as interlocutors directing or refusing a trial by jury, or interlocutors granting or refusing a new trial on the facts. With these exceptions, there is an immediate right of appeal where the Court is divided. The Court, although unanimous, may give leave to appeal immediately; and when a final judgment or decree is appealed from, in the words of the act of parliament, "it is competent to either party to appeal to the House of Lords from all or any of the interlocutors that may have been pronounced in the cause,—so that the whole, so far as it is necessary, may be brought under the review of the House of Lords." In some of the discussions on the subject, the counsel have argued as if the question had been, whether *any* appeal was competent against the interlocutors complained of, forgetting that, with leave of the Court, the appeal would be competent as soon as the interlocutor complained of has been pronounced; and that, at all events, after the final decree, this interlocutor may be brought before the House of Lords, and, if erroneous, will be reversed. The only question is as to the time when the appeal shall be taken. The legislature, vesting an ample discretion in the Court to give leave for an immediate appeal against what is only "an interlocutory judgment," has considered that, if this leave is refused, it would, upon the whole, be for the ends of justice and the suitors, to forbid an appeal till the cause has been substantially decided.

In this case I am of opinion that the interlocutors appealed from are "interlocutory judgments," and not judgments and decrees on the whole merits of the cause. The 5th plea in law has not been touched by the interlocutors, except as to directing an issue to try the truth of the allegations which it contains,—"that the agreement of 1817 never having been fully acted on, and having been broken and at an end for many years in consequence of the violation or non-implement thereof by the Leadhills Mining Company, cannot now be founded on as giving any right to the pursuers as alleged to be in room of that company." I agree with the Lord Justice Clerk, (and the other Judges concurring with him,) who expressed an opinion that the truth of these allegations may be most material, and I think that the 5th plea, on which no judgment has been given, is a part of the merits of the cause,—so that no judgment has yet been given "on the whole merits of the cause." The Court might, nevertheless, have granted leave to appeal. It is not for me to say now whether I think they were right or wrong in refusing leave; but they, in the exercise of the discretion vested in them, have refused leave, and I am of opinion that the appeal is incompetent. I do not consider it necessary to examine or comment on the cases cited on either side during the argument at the bar. They all profess to proceed upon the same *ratio decidendi*, and the question was, How that applied in each particular case? If it should not have properly applied in any particular case, that decision cannot lay down a rule by which the House is now bound. In most of the cases relied upon by the appellants' counsel it will be found, that the interlocutors appealed against substantially disposed of all the questions in

controversy between the parties. In the *Marquis of Breadalbane's case*, for example, the decision that the usage established the right for all cattle travelling on the road to pasture on the stances, if correct, finished the controversy; and when this House held, that such a right could not be acquired by usage, the cause was at an end, as it would have been had the interlocutor been affirmed.

Allusion was made during the argument to the inconvenient consequences which may arise from the improper exercise of the discretion of the Judges, if in such cases they may effectually refuse leave immediately to appeal against their decisions. But the law assumes that the Judges will exercise this discretion wisely and discreetly; and if they should occasionally make a mistake, the inconvenience produced would be infinitesimally small, compared with that which must arise if either party might appeal to the House of Lords against every interlocutory judgment, whereby all proceedings in the Court below would be suspended till the appeal was disposed of, and litigation might be ruinously protracted. To avoid a great and certain evil, a discretion is often vested in public functionaries, although it may be liable to be abused. In England no writ of error can be brought in a criminal case without the *fiat* of the Queen's Attorney-General, because, if a writ of error, delaying the execution of the sentence, might be brought by every man convicted of crime, an end would be put to the administration of justice; and if he were to refuse his *fiat*, where there is any reasonable ground for alleging error, although *mandamus* does not lie to compel him to grant his *fiat*, he might be questioned and punished for his misconduct.

By the act of parliament (11 and 12 Vict. c. 78) establishing the Court of Criminal Appeal in England, the presiding Judge or Judges "may, in his or their discretion, reserve any question of law for the consideration of the Court of Appeal." But no appeal is given to this Court without the consent of the Judge or Judges; and, since the Court was established, I have never heard a single complaint of any Judges having refused to reserve any question for the consideration of the Court of Appeal, which was fit to be reserved.

It would be casting a most undeserved slur upon the Judges of the Court of Session, to suppose that they would not permit an appeal against their decision to be presented with as much celerity as is consistent with the proper conduct of the suit and the attainment of justice between the parties.

For these reasons, my Lords, I must advise your Lordships to dismiss this appeal as incompetent. But, as considerable laxity seems to have been introduced into the practice on this subject, and the question was by no means free from doubt, I think the appeal should be dismissed without costs.

LORD BROUGHAM.—I entirely agree with my noble and learned friend in the conclusion at which he has arrived, for the reasons which have been so clearly and luminously stated by him as the ground of that opinion. As to the right of appeal there are three classes of cases—1*st*, cases in an appeal which are absolutely and peremptorily excluded; 2*d*, cases in which an appeal is absolutely and peremptorily admitted; and a third class of cases, in which a discretion is reserved to the Court, and in which an appeal, though otherwise incompetent, may be had by the leave of the Court. Of those three classes of cases, in my clear opinion, this comes within the last. It is not a case in which an appeal is excluded, as in the instance of a refusal to grant an issue, or of the granting of an issue. It is not a case in which, as in the event of a difference of opinion among a Court, an appeal is absolutely of right. But it is a case in which it is excluded as of right, because the judgment is not upon the whole merits of the cause; but still power is reserved to the party of appealing with the leave of the Court.

There is, no doubt, some little discrepancy in the cases upon this subject, but I think it is not a discrepancy upon principle, but upon the particular circumstances of the case. Whether the judgment, in any case, is upon the whole merits of the case, or an interlocutory judgment, must depend upon the circumstances of the case. There are one or two as to which I might perhaps entertain a doubt, whether it was a judgment upon the whole merits or interlocutory; but, as to others, I have no doubt whatever; as, for instance, the case of *Lord Breadalbane* v. *Macgregor*—the case respecting the right of feeding cattle by the sides of the roads, which I well remember here, and where really the judgment was substantially upon the whole merits of the case.

As to the exercise of this discretion, I entirely agree with my noble and learned friend, that there is no risk whatever in leaving it to the Court. We must assume that the Court will exercise a sound discretion. The two instances that have been given by my noble and learned friend of the discretionary power vested in the Attorney-General, and the discretionary power vested in the Court of Appeal in Criminal Cases, are really satisfactory illustrations of the little risk which you run in such case. I may remind your Lordships of another instance—the refusal of the Court to grant a new trial in matters of fact; that is no subject of appeal. It is not matter of error. The consequence of which is, that the Court may, no doubt, by erroneous decision, subject parties to very great inconvenience and to no little expense. Nevertheless, that is a discretion which is exercised by all Courts of common law, and exercised without any risk of gross injustice between the parties. Upon the whole, I am of opinion, with my noble and learned friend, that this appeal must be dismissed as incompetent.

LORD CRANWORTH.—My Lords, my noble and learned friend on the woolsack has stated the view which he has taken of this case so clearly, that I should hardly feel it necessary to add a word, were it not that a simple acquiescence by silence might lead to an impression that one, at least, of your Lordships doubted the propriety of that decision. Now, to exclude that supposition, I rise for the purpose of saying that I entirely concur in the conclusion at which he has arrived. The sole question is this, Whether or not this is an appeal against an interlocutor on the whole merits of the cause?

I felt very much the truth of the position that was put before us by the Attorney-General, when this matter was last under discussion, namely, that in all these questions we are put to a choice of difficulties. Where there are two defences, as it were, to any claim of a pursuer—first, that the pursuer has no title to sue; and, secondly, if he has, the defender, for some reason, is not accountable—a decision against the pursuer upon the first ground may, in one sense, be said to go to the whole merits of the case; and that is the course which is adhered to in the Court of Chancery in England. Because, if a bill was filed by a party, to which there was a demurrer, upon the ground that the plaintiff had not shewn any title to sue, and that demurrer were overruled, the defender might proceed by appeal to this House, concurrently with the proceedings that would be going on upon a judgment in the nature of what would be at common law a judgment of *respondeat ouster*.

Now these acts of parliament, which regulate the course of appeals in Scotland, were framed either by Lord Eldon, or, at all events, in the time of Lord Eldon; and I cannot help thinking that this provision, excluding the right to appeal upon interlocutory proceedings, may have originated from that very learned Judge being of opinion that the course in England was attended with very great difficulty. No doubt, sometimes an appeal, immediately after a decision upon a point which, if decided one way, goes to the whole merits of the case, may be extremely convenient, and it may be extremely inconvenient; and in order, therefore, to meet the case, and to give an opportunity of such appeal in cases where it is likely to be expedient, and at the same time to refuse it as a matter that the party might insist upon *ex debito justitiæ*, an intermediate state of things is introduced by the enactment in question, namely, that there may be an immediate proceeding where the Court sanctions it.

I confess I was surprised at some expressions that were read from some cases which fell from the learned Judges in Scotland, in which the inference seemed to be, that they thought they ought not to allow the appeal, when the proceeding was not final. The truth is, that that is the only case in which they ought to allow it, not that they always ought to allow it in those cases; but the circumstance that the proceeding is not final is the very reason why they ought to exercise a discretion as to whether the appeal should be allowed or not. I dare say, that that observation might have been inaccurately reported, because it was open to this remark upon the surface, that if you only wait till the proceeding is final, then their consent is not necessary.

Upon the whole, I entirely concur in the judgment which has been delivered by my noble and learned friend on the woolsack. As to the costs, it would have been a matter of doubt in my mind whether they might not be reserved in the suit. But I think, that sufficient doubt has been thrown upon the question by the cases to make it very reasonable that this decision should be, independently of the rest of the case, a decision without costs on either side. I will just add, as my noble and learned friend LORD WENSLEYDALE is not now in his place, that I had an opportunity of speaking to him yesterday, and he desired me to state that he entirely concurred in the view which we have taken of this case.

LORD CHELMSFORD.—My Lords, after very full argument, I have no difficulty in agreeing in the opinion expressed by all my noble and learned friends who have preceded me. It appears to me to be most desirable that the House should adhere closely to the words of the act of parliament, which express the intention of the legislature. The meaning of the 48 Geo. III. cap. 151, § 15, seems to me to be very clear. It is, that no appeal shall be allowed from interlocutory judgments—except with leave of the Judges, or where there is a difference of opinion amongst them—unless the judgments or decrees are on the whole merits of the cause. Then, are the interlocutors appealed from of this description? They are judgments upon pleas which involve the whole merits of the cause. But they are not judgments on the merits. If the pleas in law for the defenders, and especially the 1st, had been decided in their favour, there would have been a judgment on the merits, for it would have put an end to the cause by negativing the pursuers' right to maintain it; but the interlocutor, being in favour of the pursuers, only established their title to sue, and the cause thereupon proceeded. An issue has been approved by the Court of Session, and has been appointed to be the issue for trying the cause. I say nothing as to the terms in which that issue is framed, or as to the effect which will be produced on the ultimate result of the cause by the finding of this issue one way or the other; but as the matter stands upon the interlocutors previously pronounced, it is impossible to say that it does not raise a question which may be of great importance, or that the whole merits of the case will be exhausted while it remains undecided. I cannot help expressing a wish that the Judges of the Court of Session had given leave to appeal against these interlocutors; because a

decision upon them one way would have prevented the necessity of trying the issue, by rendering the question it involves immaterial. But as they have refused to allow an appeal, your Lordships are bound to give an effect to the act of parliament, which was intended to protect parties from harassing and vexatious appeals, which might otherwise have been interposed in every step in the cause, leaving at the same time to the discretion of the Judges the power of permitting them where it is in their judgment just and right that they should be permitted; and that no erroneous judgment which might be given in the progress of a cause should go uncorrected, the legislature has provided, that when a judgment or decree is appealed from, it shall be competent for either party to appeal from all or any of the interlocutors that may have been pronounced in the cause. Authorities upon the subject are of little use, as the question to be determined in each case must be, whether the interlocutor is on the whole merits of the cause? It is therefore unnecessary to consider the cases which were most pressed upon your Lordships by the appellants—I mean those of *Clyne's Trustees* and of the *North British Bank* v. *Collins*—further than to remark, that in the former case Lord Cottenham, admitting that there was not a judgment exhausting the whole merits, uses the expression "merits of the whole case," instead of the words of the act, "whole merits of the case." And that, in the latter, the reference to the accountant seems to have been preliminary to all discussion upon the merits of the case, and for the purpose of enabling the Court of Session to ascertain whether the company had sustained a loss of a certain declared amount. The summons was not for an account, but for a declaration that the company had ceased to exist in consequence of their having suffered a loss exceeding that specified in their deed, and the order of reference to the accountant was to obtain evidence upon which the merits might be ultimately decided. This case, however, must be determined upon its own circumstances, and not upon these authorities. The appellants' attention was directed to the question of the competency of the appeal by their application to the Court of Session, and the refusal of the Court to grant the requisite leave. And I should have thought that if they afterwards chose to take the premature step of appealing, it ought to be at their own peril with respect to the costs; but as my noble and learned friends think that there should not be any costs in this case, I must acquiesce in their view of the matter.

LORD CHANCELLOR.—With respect to the costs, I propose that there be no costs, because the question appeared to have been considered as by no means free from doubt; but if your Lordships are of a different opinion as to the costs, I will not press it.

LORD CHELMSFORD.—I withdraw any doubt I entertain in reference to the opinion expressed by my noble and learned friend.

LORD BROUGHAM.—The ground of my noble and learned friend's doubt was the appellant having had notice of the objection by the refusal of the Court of Session to grant leave to appeal.

LORD CHELMSFORD.—That was the ground of my doubt.

LORD CRANWORTH.—I do not know whether we should make any special provision that this decision will not exclude the question which has been raised upon the competency of an appeal against the ultimate decision.

Mr. Attorney-General.—That will be clear, my Lord.

LORD CHELMSFORD.—I think it will be clear upon the words of the 48 Geo. III. that that will lie open.

Appeal dismissed as incompetent.

Gibson-Craig, Dalziel, and Brodie, W.S. *Appellants' Agents.*—Sang and Adam, S.S.C. *Respondents' Agents.*

JULY 4, 1859.

THE SCOTS MINES CO. and WILLIAM BORRON, *Appellants, v.* THE LEADHILLS MINING CO. and Others, *Respondents.*

Water, running—Mines and Minerals—Interdict—Lease—Construction—*A lessee of minerals having applied for interdict against the lessee of a neighbouring mine, possessing under the same landlord, to prevent him from interfering with a stream of water.*

HELD (affirming judgment), *That each mine owner is entitled to work his own mine in the manner most beneficial to himself, when neither his nor the adjoining mine is subject to any servitude in favour of the other, though the natural consequence may be to prejudice such adjoining mine.*