Mr IVORY, for the Lord Advocate, asked the Court to pronounce a decree in special form. By section 2 of the Crown Suits Act (18 and 19 Vic., c. 90) it is enacted that where judgment is given against the Crown "the defendant or defendants shall be entitled to recover costs in like manner, and subject to the same rules and provisions, as though such proceeding had been had between subject and subject; and it shall be lawful for the Commissioners of Her Majesty's Treasury, and they are hereby required, to pay such costs out of any monies which may be hereafter voted by Parliament for that purpose." If decree was now pronounced against the Lord Advocate, he might be charged, and the rents payable to the Crown might be attached, and this had been done in a recent case. In England, in similar circumstances, the Court of Chancery had ordered that the costs should be paid in the manner directed by the Crown Suits Act, "with liberty for the defendants, or any of them, to apply to this Court as they may be advised with respect to the said costs." (Attorney-General *v.* Hanmer, 12th May 1859, 4 De Gex and Jones, 205.) Mr Ivory asked a similar order in this case.

The Court refused to pronounce any other than an ordinary decree against the Lord Advocate, as acting for the Commissioners of Woods and Forests. Of course such a decree did not make his Lordship personally liable. But if the Crown refused to pay expenses decerned for, their creditor was entitled to recover them in the ordinary way. The Act of Parliament placed the Crown in regard to this matter in the same position as a subject.

COMMERCIAL BANK *v* FORSYTH AND OTHERS.

Declinator. If a Judge declines on the ground of interest, he is bound to judge if the parties agree to waive the objection.

Counsel for Pursuers—The Solicitor-General and Mr Mackenzie. Agents—Messrs Melville & Lindesay, W.S.
Counsel for Defenders—Mr Gifford. Agents—Messrs H. & A. Inglis, W.S.

In this case Lord DEAS declined, on the ground that he was a shareholder in the bank.

The LORD PRESIDENT said—This declinator is offered on the ground not of relationship but of interest. This is a species of objection which may be waived by the parties; and I think if the objection is waived Lord Deas is bound to give his judgment.

The other Judges concurred, Lord CURRIEHILL mentioning a case of the Caledonian Railway Company in the House of Lords where this course had been followed by the Lord Chancellor.

The parties having waived the objection, and this having been minuted, the declinator was repelled.

Wednesday, Feb. 21, and Thursday, Feb. 22.

JURY TRIALS.

(Before Lord Ormidale.)

NELSON *v* BLACK AND MORRISON.

(*Ante*, pp. 83, 123.)

Reparation—Judicial Slander—Jury Trial. In an action against Procurators-Fiscal for maliciously and without probable cause slandering a person in a petition presented to a Sheriff—verdict for the defenders.

Counsel for the Pursuer—Mr Watson and Mr MacLean. Agent—Mr William Miller, S.S.C.
Counsel for the Defender—Mr Gifford and Mr A. Moncrieff. Agents—Messrs Murray & Beith, W.S.

In this case, David Nelson, turnpike surfaceman, Glenduckie, was pursuer; and Alexander Black and William Morrison, writers in Cupar, and Procurator-Fiscals for the eastern district of Fife, were defenders. The issue which was sent to trial, and the circumstances with regard to the adjustment of which have been already reported, was in these terms:—

"It being admitted that the defenders prepared and, on or about 26th December 1864, presented to the Sheriff-Substitute of the county of Fife, at Cupar, a petition containing the words and sentences set forth in the schedule annexed hereto:

"Whether the said words and sentences, or any part thereof, are of and concerning the pursuer, and are false and calumnious, and were inserted in said petition by the defenders maliciously and without probable cause—to the loss, injury, and damage of the pursuer?"

Damages were laid at £200 sterling.

The schedule containing the excerpts from the petition complained of was as follows:—

"That the petitioners are in course of taking a precognition against James Pringle, millwright, residing at Barley Mill, in the parish of Abdie and shire of Fife, present prisoner in the prison of Cupar, accused of having, along with other persons, whose names are to the petitioners unknown, during the years 1863 and 1864, or part thereof, wickedly and illegally conspired together for the purpose of taking the life of the Rev. James Pitt Edgar, minister of the parish of Dunbog, in the county of Fife, and of John Ballingall, farmer, Dunbog, aforesaid, or of doing them some grievous bodily injury; and for the purpose of wilfully setting fire to or attempting to set fire to their dwelling-houses or premises, or otherwise of doing serious injury and damage to their property and persons; as also, of wickedly and maliciously writing and sending, or causing and procuring to be written and sent, threatening letters to the said Rev. James Pitt Edgar and John Ballingall. That in the course of said precognition the petitioners have recovered various letters and other documents, showing that other persons than the said James Pringle have been engaged in said conspiracy, and in writing and sending said threatening letters, all which are herewith produced; and particularly that John Bell, farmer, Glenduckie; Barbara Honeyman or Black, wife of and residing with William Black, parochial schoolmaster, Dunbog; George Black and William Black, sons of and residing with the said William Black; and David Nelson, a roadman, residing at Glenduckie, have been engaged in said conspiracy, and in writing and sending said threatening letters. That the petitioners are informed and have reason to believe that written documents and other articles referring to and connected with said conspiracy and threatening letters are in the possession of the said John Bell, William Black, schoolmaster, Barbara Honeyman or Black, George Black, and William Black, and also in the possession of the said David Nelson; and as it is necessary for the purposes of said precognition to recover and take possession of the same, the present application for warrant to search becomes necessary.

This action arose out of the proceedings consequent upon the presentation of the Reverend James Pitt Edgar to the parish of Dunbog, and specially from the circumstances of the investigation undertaken by the defenders, as Procurators-Fiscal for the eastern district of Fife, to ascertain the authors of the various threatening letters addressed to that gentleman, and of the explosion of the bush of a cartwheel filled with gunpowder below the windows of the manse.

It appeared from the evidence that suspicion having fallen upon a millwright, named James Pringle, a search of his premises was instituted by the authorities, and on Saturday 24th December 1864 a number of documents were recovered, after perusal of which the defenders, on the 26th December, presented a petition to the Sheriff containing the statements complained of, and craving warrant to search the house of the parties therein named. This warrant was executed the following day on all the persons referred to except David Nelson, the

pursuer; the defenders, after consultation, having resolved to withdraw it as against him, The minute of withdrawal was not, however, adhibited to it till the 28th of December; and the pursuer now claims damages for the injury done to his character and feelings by the charge made against him in the publication of this warrant, by its having been served upon the parties named therein.

On behalf of the pursuer it was maintained that there was nothing in the letters and documents founded upon by the defenders to justify them in making the serious charge against Nelson which they did; that they had acted recklessly and without probable cause in the matter; and that the facts that Nelson was known to be an objector to the Rev. Mr Edgar's presentation, had used expressions on certain occasions similar to those found in the letters, and that his handwriting was supposed by the police authorities to correspond with that of the letter, did not afford reasonable grounds for the imputation preferred against him.

For the defenders it was argued that in trying to ascertain the author of the crimes averred in the petition, it was natural that they should look first among the most violent of the objectors to the Rev. Mr Edgar, of whom the pursuer was one; that there was much in the manner in which the explosion of the wheel-bush had been effected to lead to the suspicion that an old quarryman like the pursuer should have committed it; that Nelson had been known to use violent language towards Mr Edgar, and having been dismissed by that gentleman from the post of beadle to the parish, was unlikely to entertain very friendly feelings towards him.

Lord ORMIDALE said that although in one respect this case was of little importance, no great injury having been done to the pursuer, it involved considerations of the highest moment in connection with the protection accorded to public officers in the discharge of their duty, and the privileges they in consequence enjoyed. The issues in the cause had been framed in peculiar terms in order that the jury might take care that proper protection should be given to the defenders, and also so as not to preclude their responsibility for the consequences of their conduct, if the jury considered they had acted maliciously and without probable cause. The words complained of might be false and calumnious standing by themselves, or if spoken by any other persons than the defenders; but to hold them responsible for such statements the jury must be convinced that these words were uttered "maliciously and without probable cause." It was not necessary for him to define malice in the abstract, and he was not called upon to attempt that; but he did not think it was necessary in order to make out a case sufficient to entitle the jury to find that the defenders had acted maliciously that the pursuer should show by direct evidence that the defenders entertained personal ill-will towards him. Malice was not a thing that was tangible. It may be inferred from the acts and conduct of the party against whom it is alleged. To enable a jury to come to a conclusion of malice it was not necessary that some witness should be adduced to swear that he had heard the defender say he had ill-will against the pursuer. Malice could seldom be proved in that way. When a man wanted to do a malicious thing he would try to conceal his motives. Malice, therefore, might be inferred from the facts and circumstances; but then these facts and circumstances must be of such a character as to lead men of reasonable intelligence to the conclusion that the party against whom the charge of malice was made had been actuated by that motive. In the present action the official position of the defenders must be kept in view. It was both their right and their duty to discover the perpetrators of so atrocious an attempt at murder. It was for the jury to say whether they had acted in such a reckless manner as to infer malice on their part, and whether they had or had not probable cause for the course they had taken.

The jury, after being absent three hours, returned a verdict for the defenders, by a majority of nine to three. The Chancellor, in giving the verdict, accompanied it with the remark that the jury wished to express their opinion that the Procurator-Fiscals did not take proper precautions in issuing the warrant against Nelson.

Friday, Feb. 23.

(Before Lord Jerviswoode.)

WILSONS *v.* SNEDDONS.

Reparation—Culpa—Master and Servant—Foreman. (1) Direction to a Jury (per Lord Jerviswoode) that a master is responsible for injuries caused to his servant through the fault of his foreman or manager, acting in that capacity; (2) Verdict for pursuers in an action for personal injuries so caused.

Counsel for the Pursuers—Mr Guthrie Smith and Mr R. V. Campbell. Agent—Mr Alexander Wylie, W.S.

Counsel for the Defenders—Mr Shand and Mr MacLean. Agent—Mr John Leishman, W.S.

In this case, Mrs Agnes Russell or Wilson, residing in Young Street, Wishaw, and her children, were pursuers, and Thomas D. & J. Sneddon, coalmasters. Cambusnethan Collieries, Wishaw, and John Sneddon, coalmaster there, the only known partner of said company, were defenders; and the issue which was sent to trial was as follows:—

"It being admitted that the defenders are proprietors or lessees of the pit known as No. 6 pit on the Cambusnethan estates, near Wishaw: Whether, on or about the 31st day of March 1865, the deceased Andrew Wilson, the husband of the pursuer, Mrs Agnes Russell or Wilson, and the father of the other pursuers, while employed by the defenders in the shaft of said pit, was precipitated to the bottom and killed, in consequence of the breaking of the rope used for raising the workmen to the surface, from defect or insufficiency thereof, through the fault of the defenders, to the loss, injury, and damage of the pursuers?"

Damages laid as under:—To Mrs Agnes Russell or Wilson, £250. To each of James Wilson, William Wilson, Jane Wilson, and Andrina Wilson, £150.

After evidence had been led on both sides tending to explain the circumstances under which the occurrence in question had taken place,

Mr GUTHRIE SMITH addressed the jury for the pursuers. He contended that because the deceased and his fellow-workman, who also met his death on the same occasion, had examined the rope before going down the shaft, that was not enough to do away with all responsibility for the consequences on the part of the defenders. Masters were bound to provide their servants with materials suitable for their work. A master was still responsible if he supplied insufficient or defective materials either personally or by his foreman or manager—(Somerville *v.* Gray, 1 M'Ph., 768). Even actual knowledge of the insufficiency of the material was not necessary to be brought home to the defenders. It was sufficient if they had the means of knowing and did not make use of them.

Mr SHAND, for the defenders, contended that it had not been shown from the evidence that they had been neglectful of the interests of their workmen; that this occurrence had either occurred through accident, and was thus attributable neither to the fault of the defenders or of the deceased; or if there was fault anywhere, it lay with the deceased, who had himself suggested the employment of the rope in question—a rope which did not belong to the defenders, and with regard to the sufficiency of which the deceased and his fellow-labourer, being experienced and practical workmen, were perfectly capable of forming an opinion.

Lord JERVISWOODE said the first thing to be