vide proper compensation for some of the company's servants who after long and faithful services had lost their situations from the extinction of the defenders as a separate company, and the sum which the directors proposed should be paid to the pursuer is stated; and in the 17th article of the condescendence various instances are given of other companies having acted in a similar way to their old servants. But all that is quite different from the present demand, which is not a claim for deprivation of offices, but for extra services for which the pursuer says he always expected to be paid. Without a more specific statement of the contract, and a statement to show how the extra services rendered by the pursuer stood out from his ordinary duties, this case could not be sent to trial. I think we must dismiss the action.

Lord CURRIEHILL concurred.

Lord DEAS—I am entirely of the same opinion. I think, at the same time, that if the resolution of the directors had been carried into effect it would have been a very fair and equitable thing. The only issue which could have been allowed would have been such as was suggested by the Dean of Faculty, but the averments of the pursuer do not lay a foundation for any issue with regard to the extra services for which the pursuer claims. To entitle the pursuer of such a case to an issue, there would require to be a specification of three things—(1) of the duties of the office for which the servant was originally engaged; (2) of the extra duties performed by him; and (3) of the agreement to give remuneration for the extra duties. Now, there is an absence of specific statement with regard to all of these things. With respect to the resolution of the directors to remunerate the pursuer for extra work, there is no very distinct averment about this. If there had been such, the question would have arisen, had they the power to bind the company? It only appears, however, that they recommended that the pursuer and others should have extra remuneration, but this recommendation was not adopted; on the contrary, it was rejected by the shareholders. I can't help regretting that this pursuer should have no compensation for his extra work; but at the same time, I think it quite impossible to sustain this action.

Lord ARDMILLAN concurred.

The Court therefore dismissed the action upon the ground that the pursuer had not set forth a relevant case, and found the pursuer liable in expenses.

Agents for Pursuer—Gibson-Craig, Dalziel, & Brodies, W.S.

Agents for Defenders—Webster & Sprott, S.S.C.

JAMIESON *v.* THE E. AND G. RAILWAY CO.

The Court pronounced the same judgment in this case, which was raised against the defenders under similar circumstances.

Thursday, July 19.

FIRST DIVISION.

LATHAM *v.* EDIN. AND GLAS. RAILWAY CO.

Arrestment on Dependence—Recal—Personal Diligence Act. Held that the Lord Ordinary cannot entertain an application for recal of arrestments used on the dependence after the merits of the action have been disposed of by the Inner House. *Question* whether he can do so at any time after he has decided the cause?

This case was dismissed yesterday as irrelevant. The pursuer had used arrestments on the dependence, and the defenders applied to-day, by petition in the Outer House, to have the arrestments recalled on caution, the pursuer having intimated his intention to appeal the judgment of yesterday to the House of Lords. The petition was presented under section 20 of the Personal Diligence Act (1 and 2 Vict. c. 114), which enacts that "it shall be competent to the Lord Ordinary in the Court of Session before whom any summons containing warrant of arrestment shall be enrolled as Judge therein, or before whom any action on the dependence whereof letters of arrestment have been executed has been or shall be enrolled as Judge therein, and to the Lord Ordinary on the Bills in time of vacation, on the application of the debtor or defender by petition duly intimated to the creditor or pursuer, to which answers may be ordered, to recal or to restrict such arrestment on caution, or without caution, and dispose of the question of expenses as shall appear just."

The Lord Ordinary (Kinloch) reported the application. He had difficulty in holding that he had power to entertain it, seeing that the action was no longer in dependence, having been dismissed, or at least was no longer in dependence before him.

SHAND appeared for the defenders, and

JOHNSTONE for the pursuer.

The Court, after some discussion, were of opinion that the Lord Ordinary had no power to entertain the application, and directed him, in respect of the dismissal of the action, to refuse it. The Lord President expressed great doubts whether a Lord Ordinary had power to deal with such an application after the case has gone to the Inner House. It appeared to him that section 20 of the Personal Diligence Act gave the Lord Ordinary power to deal with arrestments only while the case remained before him.

The Lord Ordinary accordingly dismissed the application, and found the defenders liable in two guineas of expenses.

Agents for Pursuer—Gibson-Craig, Dalziel, & Brodies, W.S.

Agents for Defenders—Webster & Sprott, S.S.C.

JAMIESON *v.* THE E. AND G. RAILWAY CO.

The same procedure took place in this case.

NOTE—CARMENT, IN PETITION HEPBURN.

Tutor ad litem—*Powers.* A tutor *ad litem*, appointed by the Court to a minor in a petition for disentail, having applied to the Court for advice as to how he should act, the Court refused to interfere.

This was an application to the Court by a tutor *ad litem* for advice under the following circumstances:—The applicant had been appointed tutor *ad litem* to one of the three nearest heirs called in a petition for the disentail of the estate of Riccarton. In the course of the correspondence between him and the petitioner in regard to the amount of consideration money to be paid by the latter for a consent by him on behalf of his ward, it was stated by the petitioner that he had been advised by counsel that the entail was defective. This being so, it came to be a question whether, in fixing the consideration-money for the consent, the alleged invalidity of the entall should be taken into account as an element, and upon that question the tutor *ad litem* now sought the opinion of the Court.

The Court declined to interfere, holding that