of such grave importance as to be far beyond, in its operation and effect, a mere ordinary act of administration. On these grounds, after considering the able argument addressed to us for the pursuers, I have reached the conclusion that the interlocutor of the Lord Ordinary is right.

The other judges concurred.

Agent for Pursuers—John Thomson, S.S.C.

Agent for Defender—John Ross, S.S.C.

Friday, December 13.

ROBERTSON *v.* MACKINTOSH BROTHERS.

Minor — Bill — Lesion — Charge — Suspension. Circumstances in which *held* that a bill had been accepted by a minor, not for his own behoof, but as manager for his father, and charge on the bill *suspended* on the ground of minority and lesion.

This was a suspension of a charge on a bill, the suspender being John Robertson, residing at Carrbridge, Inverness-shire, and the chargers Messrs Mackintosh Brothers, merchants in Leith. The grounds of suspension were that the bill in question was granted by the suspender while only seventeen years of age; that it was granted by him as manager for his father, who was a shopkeeper at Carrbride and Kingussie; and that it was so granted by him at the solicitation of the chargers, who were at the time in course of accepting a composition from his father on all the claims against him, and who wished to obtain the contents of the bill in addition to the composition, with a view to obtaining a preference over the other creditors.

The answer for the chargers was that the defender had carried on, or represented himself as carrying on, business on his own account at Kingussie; that he was, or represented himself as being, major while he did so; and that the bill in question was granted by him, not for behoof of or for any debt due by his father, but for a debt properly due by himself.

A proof having been led of a somewhat conflicting character, the Lord Ordinary found for the suspender, on the ground that he was a minor; that the goods for which the bill was granted were ordered by him as his father's manager; that, therefore, he had no interest personally in the value received for the bill; and that that being so, the same must be held to have been granted to his lesion.

The Lord Ordinary explained the grounds of his judgment as follows:—The Lord Ordinary has had little hesitation, also, on consideration of the whole proof, in arriving at the conclusion that the goods for which the bill charged on, and the prior one of which it was a renewal, were accepted by the complainer for goods ordered by him as the assistant or servant of his father, and in reference, not to any business of his own, but to the business of, and carried on for, his father alone. There are many and various pregnant circumstances established by the proof which have satisfied the Lord Ordinary in regard to this matter. (1) The complainant was little more than seventeen years old when the goods were ordered and furnished. (2) The business at Kingussie, for the purposes of which the goods were ordered and furnished, was carried on in a shop, having outside and above the door, not the complainer's name, John Robertson, but the name of his father, William Robertson. (3) The invoices or accounts for goods sold in the shop were made out and rendered in the name, not of the complainer, but of his father, William Robertson. (4) Actions in the Small Debt Court against customers were prosecuted in the name and at the instance, not of the complainer, but of his father. (5) The attempted sales in the summer of 1863, by public advertisements in the newspapers, and by printed handbills, of the business and stock-in-trade, were in the name, not of the complainer, and as for him, but in the name and as for his father. (6) The general repute and understanding in Kingussie were that the business was the father's, and not the complainer's. (7) The positive testimony to that effect of both father and son. And (8) The fact that on the insolvency of the father, the whole stock-in-trade of the business in Kingussie, and cash balances in the shops and in bank connected with that business, were taken possession of by the trustee for the father's creditor's, including the respondents, who ranked upon his estate, composed in part of said stock-in-trade and cash balances, and received dividends therefrom on the express footing that the business at Kingussie was the father's. His Lordship also held that the respondents had failed to prove their counter case—that the complainer had represented himself as being major and as being in business for himself.

The chargers reclaimed.

GIFFORD and ASHER for them.

SOLICITOR-GENERAL and MACLEAN in answer.

At advising—

Their Lordships held that it was proved that the minor had no interest in the Kingussie business except as manager for his father; and that, that being so, there was here proved that absence of consideration which constituted lesion, and was sufficient to let in the plea of minority. With regard to the alleged misrepresentation by the minor, it was necessary that such a case, if it was to be made at all, should be made out clearly. There was here some conflict of evidence on that subject; but, on the whole, the charge of misrepresentation was not made out; and it rather appeared that the chargers had themselves to blame for their misapprehension of the suspender's position, if such misapprehension existed.

Agent for Complainer—W. B. Glen, S.S.C.

Agents for Respondents—Murdoch, Boyd, & Co., W.S.

Friday, December 13.

WATT *v.* BENSON & CO.

Employment—Railway Stock—Balance of Loss on Transactions. Circumstances in which *held* that a party who employed merchants in London to buy and sell railway stock for him, was liable under his employment to relieve the sellars of a balance of loss on the transactions.

This was an advocation from the Sheriff-court of Lanarkshire. The facts are these:—In February 1866 Watt, the defender and advocator, employed the respondents, who are merchants in London, to buy and sell on speculation certain American railway stocks, which they accordingly did, and on which transactions, extending from 12th to 27th February 1866 inclusive, there arose a loss or difference against the advocator of £516, 17s. 6d.

sterling, including a sum of £31, 5s. sterling, charged as commission. The respondents (pursuers) brought an action to recover.

The Sheriff-Substitute (BELL) and the Sheriff (ALISON) both held that the defender was liable.

The defender advocated.

SCOTT and BRAND for him argued—(1) That the pursuers held themselves out as stockbrokers in the transactions which took place between them and the defender and the actual brokers in these transactions; but that, as they were in point of fact not brokers, and had delegated the making of the purchases and sales to others who were brokers, but whom the defender did not employ, they were not entitled to recover in respect of the said alleged losses. (2) That the defender instructed the pursuers to buy on the 27th February double the quantity of shares of each stock required for the engagement to deliver on that day, and 200 more; and that if the pursuers had obeyed these instructions, he would have had a profit upon the new shares equal to or greater than the loss upon the others, and that as the sum sued for is the loss arising from the pursuers' failure to fulfil the whole order, they are not entitled to recover. (3) That the defender was not liable for losses on transactions between the stockbrokers and the pursuers, but with which the defender personally had no concern, seeing that he did not employ the stockbrokers nor was any party to transactions between the pursuers and them. (4) That, not being brokers, the pursuers were not entitled to charge commission on the said transactions.—(*Cope* v. *Rowlands*, 2 M. & W., p. 149. Keyser, Law of the Stock Exchange, p. 267; 6 Anne, cap. 16.)

WATSON and TRAYNER, for the respondents, were not called upon.

The Court adhered to the judgments of the Sheriff and Sheriff-substitute, and found the pursuers entitled to expenses both in this and in the inferior court.

Agent for Advocator—John Walls, S.S.C.

Agents for Respondents—Neilson & Cowan, W.S.

Friday, December 13.

DAVIDSON *v.* CLARK AND OTHERS.

Vitious Intromission—Statute 1695, *cap.* 41—*Renunciation of Succession—Expenses.* Next of kin charged under the Act 1695, cap. 41, having neither renounced nor confirmed, and being sued as vitious intromitters, renounced the succession when the case was in the Inner-House upon a reclaiming note; the Court found them liable in expenses of process, under deduction of the expense of the minute of renunciation.

This was an action brought against the next of kin of the deceased Mary Clark, at the instance of a person who had alimented her illegitimate child, for the amount of aliment expended and to be expended upon it. Before bringing the action, the pursuer charged the defenders under the Act 1695, cap. 41, to obtain themselves confirmed executors *qua* next of kin of the deceased Mary Clark within twenty days, "with certification to them if they fail either to get themselves confirmed as executors foresaid, or to renounce their right in the moveable effects of the said Mary Clark, they shall be liable to the complainer (pursuer) as vitious intromitters with the said Mary Clark's moveable effects."

The defenders did not confirm, and the present action was brought against them as vitious intromitters under the Act, and concluded that they should be decerned against, conjunctly and severally, in the premises. The defenders denied that they had had any intromission with Mary Clark's estate, which, they alleged, consisted entirely of a claim under a settlement of her father, which was not presently exigible. They did not renounce the succession, but were willing that the pursuer should have decree against Mary Clark's estate, provided she did not ask expenses against them, contending that she was bound to constitute her claim against them at her own expense, just as if they had been confirmed executors. The pursuer refused to agree to this, and defences were lodged upon the matter of expenses. The pursuer contended that the defenders were bound either to confirm or to renounce the succession; that, as they had done neither, they were vitious intromitters under the Act, and could not plead the privileges of duly confirmed executors, nor require a constitution of the pursuer's claim at her own expense.

The Lord Ordinary (KINLOCH) decerned against the defenders, with the declaration that the decree should only be enforceable to the extent of the succession of Mary Clark devolving on them, and found the defenders entitled to the expenses of process.

The pursuer reclaimed.

MACLEAN (with him GIFFORD) for her, and THOMSON, for the defenders, were heard.

In the course of the hearing, the defenders offered to renounce the succession, and were allowed to give in a minute to that effect, the pursuer not opposing.

Upon this being done, the Court, in respect of the minute, assoilzied them from the passive titles libelled, but decerned against them *cognitionis causa tantum*, to the effect that the pursuer might attach the moveable estate of the deceased Mary Clark, and found the pursuer entitled to expenses, under deduction of the sum of £2, 2s., as the expenses of the minute of renunciation put in by the defenders.

Agent for the Pursuer—W. Miller, S.S.C.

Agent for the Defenders—A. Morrison, S.S.C.

Saturday, December 14.

FIRST DIVISION.

GRANT, PETITIONER.

Ship—Register—Arrestment—Real Owner. A ship, formerly the property of B, stood registered in names of A and the pupil children of B. A creditor of B raised a petitory action against him; arresting the ship *ad fundandam jurisdictionem*, and on the dependence. He also raised a declarator and reduction against the pupil children, to reduce the bill of sale to them, and declare that B was the true owner of the share in the ship standing in name of his pupil children, and arrested the ship to found jurisdiction. On petition of B, as administrator-in-law for his children, the arrestments *recalled.*

This was a petition for recal of arrestments, presented by John Grant, timber merchant, Cardiff, county of Glamorgan, South Wales, as administrator-in-law for Catherine Flora Grant and others, his pupil children.