masters, and it was very apt to suffer from transshipment; from hot weather; and from various other contingencies. In the present case the cargo was trans-shipped; and, undoubtedly, when it arrived in this country it had suffered a good deal. It had run together, so that it had to be broken up before it could be got out of the hold, and it had got mixed up partially with cargo shipped by another house, for which the Gladstones were not responsible. The cutch, on its arrival, was examined, and the suspenders' witnesses say it was bad, and they say, moreover, that it was bad independently of the damage arising through the voyage. That might be so; but it was more satisfactory to have evidence of the quality of the goods when shipped at Rangoon, and such evidence as there was was favourable to the shippers. But then there was a report by Mr Baker, for the suspenders, on the quality of the cutch after arrival; and the impression left on the mind after reading this report, and seeing the value put upon the several piles of cutch, after making allowance for sea damage, was decidedly favourable to the respondents. And this favourable impression was confirmed on considering these valuations, together with what one of the suspenders expected to be the value of the cargo on its arrival here. There had been some misapprehension as to the nature of the liability of the respondents. It was not the liability of a mere seller of goods under an ordinary contract of sale, in which the seller undertook to furnish goods of a particular quality manufactured by himself, or by some one else, but then in his hands. This was the liability of a commission agent, and was a question in the law of agency; and the question was, whether the agent had failed in the performance of his duty. It did not appear that he had so failed. Cutch was a very peculiar kind of article, and an agent acting under an order such as here was vested with a considerable discretion to do the best he could, and there was no evidence to show that he did not do the best possible in the circumstances. As to the sale by the respondents, no doubt the goods realised less than they might have done if they had been sold otherwise; but if the rejection of the goods was unwarrantable, the suspenders must bear the loss. They said, no doubt, that the sale was unwarrantable, because it was without judicial warrant. If the proceedings had taken place in Scotland, there might have been a good deal in that objection, for it was the practice here to have a warrant of the Judge Ordinary before sale, in order that the other party might have due notice to attend to his interests. But this all took place in England, and it was not proved that the sellers were not following the usual course in acting as they did. If the chargers would restrict the charge for the balance now due to them, after deducting payments already make, judgment would be given in their favour.

The other Judges concurred, and the charge, as restricted, was found orderly proceeded, and the suspenders found liable in expenses.

Agents for Suspenders—H. & A. Inglis, W.S.
Agent for Respondents—A. Howe, W.S.

Friday, March 27.

SECOND DIVISION.

MULLER *v.* BOLLAND.

Sale—Repetition—Over-payment—Fraudulent misrepresentations. Circumstances in which *held* that there had been an over-payment upon a transaction of skins, and action of repetition sustained.

This was an action of repetition brought by Hermann Magnus Muller, residing at 34 Cockburn Street, Edinburgh, against Patrick Bolland, skin-dealer, Hawkhill, Dundee, and the summons concluded for the sum of £66, 13s. 4d., alleged to have been over-paid by the pursuer's wife to the defender in settling for the price of certain skins. The pursuer's allegation was that he bought a quantity of skins from the defender on 19th December 1866; that on counting them over, in the presence of his own servant, and the defender, the number was found to be 441 dozen; but that, on the defender coming to the pursuer's shop to receive payment, he represented to the pursuer's wife that the number was 841 dozen, and received payment as for that number. The defender's allegation, on the other hand, was that the number of dozens, as counted over in his presence, was truly 841, and that the pursuer's allegation that he had only received 441 dozen was false and fraudulent.

After a proof, the Lord Ordinary (KINLOCH) found for the pursuer.

The defender reclaimed; but the Court adhered.

Counsel for the Pursuer—Scott and Brand. Agent—D. F. Bridgeford, S.S.C.

Counsel for the Defender—Gifford and Balfour. Agent—Henry Buchan, S.S.C.

Monday, March 30.

FIRST DIVISION.

THOMS *v.* THOMS.

(4 Macph. 452; *ante*, iii, 35; i, 254.)

Conveyance—Entail—General Disposition and Settlement—Special Destination—Proof—Intention. A party holding an estate as institute under a deed of entail which was defective in the prohibitions, executed a general conveyance of his whole property, heritable and moveable. *Held*, by majority of whole Court, that the estate was carried by the general conveyance, that deed being habile and effectual to carry it and evacuate the special destination in the deed of entail, provided such was the true intention of the conveyance, and, there being here no proof of an intention on the part of the testator, to exclude the estate from the general conveyance.

The late Mr Alexander Thoms possessed the estate of Rumgally as institute under a deed of entail executed by his father in 1805. In this deed the prohibitions against sale and alienation were not directed against the institute. In 1861 Mr Thoms executed a general disposition and settlement in favour of his natural daughter, Miss Robina Thoms. In 1864 Mr Thoms died, and Miss Thoms made up a title to Rumgally on the assumption that the entail was invalid, and that the estate of Rumgally was carried by her father's general disposition and settlement.

John Thoms, brother of Alexander, who would have succeeded Alexander in the estate if the entail had been valid, brought an action against Miss Robina Thoms, concluding for reduction of the conveyance by Alexander, so far as it affected or might be held to affect the estate of Rumgally, and for declarator that the general conveyance did not comprehend the estate of Rumgally, and that the