Friday, January 15.

FIRST DIVISION.

MONTEITH *v.* WANDS.

Appeal—Court of Session Act 1868—*Personal Intimation to Appellant.* Under section 71 of the Court of Session Act 1868, when an appellant does not move in his appeal, and the other party, after intimation to the appellant's agent, moves that the appeal be dismissed, the Court will not in general grant the motion, except on certificate that a registered letter containing notice of the motion has been posted to the appellant, at his known residence.

This was an appeal from the Sheriff-court of Clackmannan. After the appeal was taken, the inferior court process was transmitted to the Court of Session and marked as received by the clerk. The appellant did not further move in the case. The appeal was then put to the roll by the respondent, who moved the Court, under the 71st section of the Court of Session Act 1868, to dismiss the appeal, with expenses. Due intimation had been made to the appellant's agent, and no appearance was made for the appellant.

BROWN for respondent.

LORD PRESIDENT—It is desirable to have some general rule in such cases, which appear to be of not unfrequent occurrence. Dismissing an appeal when not insisted in would be an interlocutor of this Court which, if it were found out that the non-appearance of the appellant was founded on a mistake, could probably only be got the better of by an appeal to the House of Lords. That is undesirable. Perhaps the safest course is to require that in all such cases there shall be a registered post letter, containing intimation of the motion, addressed to the appellant himself at his known residence and, a certificate of that being lodged in process, the Court will then have safe grounds upon which to proceed.

Agent for Respondent—Alexander Morrison, S.S.C.

Tuesday, January 19.

ARBUTHNOTT *v.* ARBUTHNOTT.

Entail—Destination—Devolution—Special Case. An entailer, in order to preserve his estate of H. distinct from his estate of A., as a permanent property to the second son of his only son J. A., whom failing, to his other sons and their heirs-male in their order, entailed the estate of H. on H. A., second son of J. A., and the heirs-male of his body who shall not have succeeded or become next in succession to the estate of A.; whom failing by death, or by succeeding or standing next in succession to A., to R. A., third son of J. A., similarly, and so on to J. A. and D. A., fourth and fifth sons; whom failing by death, or by succeeding or standing next to A., to the other heirs-male of the body of J. A. who should not have succeeded or become next in succession to A., and the heirs-male of their bodies who should not have succeeded, &c., respectively and successively in their order. Other sons were born to J. A. besides those existing at the date of the entail. On the death of the entailer, H. A. took the estate. After his death without issue, *held*, in a competition for the estate of H. between W. A. (immediate younger brother of H. A. now in life, and one of the sons of J. A., born after the date of the entail) and D. (the second son of the eldest son of the eldest son of J. A.), that the entailer meant to exhaust all the younger sons of J. A. and their issue male before calling any of the issue male of J. A., and therefore that the estate of H. descended to W. A.

This was a special case presented for opinion of the Court under section 63 of the Court of Sssion Act 1868. The facts, as stated in the special case, were as follows:—John, sixth Viscount of Arbuthnott, executed on the 2d day of November 1786 a deed of entail which was recorded in the Register of Entails on the 20th day of July 1787, and in the Books of Council and Session the 16th day of May 1791, and which ran thus:—"I, John Viscount Arbuthnott, Lord Inverbervie, &c., heritable proprietor of the lands and estate of Halltown and others aftermentioned, for the more effectually preserving the same distinct from my lordship and estate of Arbuthnott, as a permanent property to the second son of my only son and future representative John Arbuthnott, whom failing, by death or otherwise, as aftermentioned, to his other sons and their heirs-male in their order, subject to the provision aftermentioned, and for other good causes and weighty considerations, Have Given, Granted, and Disponed, as by these presents, but always with and under the conditions, provisions, burdens, declarations, restrictions, limitations, prohibitions, clauses irritant and resolutive, and reservation after expressed, Give, Grant, Convey, and Dispone to and in favour of Hugh Arbuthnott, second lawful son of the said John Arbuthnott, now my only lawful son, and the heirs-male of his body who shall not have succeeded or become next in succession to the lordship of Arbuthnott, in manner aftermentioned; whom failing, by death or by succeeding or standing next in succession to the lordship of Arbuthnott, to Robert Arbuthnott, third lawful son of the said John Arbuthnott, and the heirs-male of his body who shall not have succeeded or become next in succession to the lordship of Arbuthnott; whom failing, by death or by succeeding or standing next in succession to the lordship of Arbuthnott, to Francis Arbuthnott, fourth lawful son of the said John Arbuthnott, and the heirs-male of his body who shall not have succeeded or become next in succession to the lordship of Arbuthnott; whom failing, by death or by succeeding or standing next in succession to the lordship of Arbuthnott, to Duncan Arbuthnott, fifth lawful son of the said John Arbuthnott, and the heirs-male of his body who shall not have succeeded or become next in succession to the lordship of Arbuthnott; whom failing, by death, or by succeeding or standing next in succession to the lordship of Arbuthnott, to the other heirs-male of the body of the said John Arbuthnott who shall not have succeeded or become next in succession to the lordship of Arbuthnott, and the heirs-male of their bodies who shall not have succeeded or become next in succession to the lordship of Arbuthnott, respectively and successively in their order; whom failing, to my own nearest heirs-male whomsoever; whom all failing, to my own nearest heirs and assignees whomsoever, heritably and irredeemably; But with and under this express provision and declaration, as it is hereby expressly provided and declared,—That in case the succession to the lordship of Ar-

buthnott shall devolve upon the said Hugh Arbuthnott, or in case he, or any of the other heirs and substitutes before named and appointed, shall come to stand next in succession to the said lordship of Arbuthnott, then, if either of these events shall happen before the succession to the lands and others after disponed by virtue of these presents shall have opened to him, or any of the other heirs of tailzie before specified in their order, the succession shall devolve under these presents upon the next immediate heir in the above order of succession, passing by the person so succeeding or standing next in succession to the lordship of Arbuthnott, and which next immediate heir shall make up titles thereto, by service or otherwise, to the person last infeft and seised therein, passing by the person so succeeding or becoming next in succession to the lordship of Arbuthnott; And in case either of these events shall happen after the succession to the lands and others after disponed shall have opened to the said Hugh Arbuthnott, or any of the other heirs of tailzie herein before specified in their order, then the said Hugh Arbuthnott, or such other heir so succeeding or standing next in succession to the lordship of Arbuthnott shall, throughout the whole course of succession, be bound and obliged to divest himself of, and convey the lands and others after disponed to the next immediate heir or substitute who shall not stand next in succession to the lordship of Arbuthnott, and the heirs-male of his body; whom failing, to the other heirs and substitutes next after him and his said heirs-male in the above order of succession, subject always throughout the whole course of succession to the like obligation upon each of the said heirs and substitutes succeeding to the same, in the event of his thereafter succeeding or becoming next in succession to the lordship of Arbuthnott as aforesaid, All and Whole the town and lands of Halltown, &c."

The said John, sixth Viscount of Arbuthnott, died on the 20th day of April 1791, and was succeeded in the peerage and in the Arbuthnott estates by his only son John, the seventh Viscount.

The said seventh Viscount had nine sons, viz:—(1) John Arbuthnott, who afterwards became eighth Viscount, and who is dead, leaving issue as hereafter stated. (2) Hugh Arbuthnott, afterwards General Sir Hugh Arbuthnott, K.C.B., who died without issue on the 11th day of July 1868. (3) Robert Arbuthnott, who died without issue before Sir Hugh Arbuthnott. (4) Francis Arbuthnott, who died without issue before Sir Hugh Arbuthnott. (5) Duncan Arbuthnott, who died without issue before Sir Hugh Arbuthnott. The said Hugh, Robert, Francis, and Duncan Arbuthnott are specially named in the destination in the said entail. After the execution of the entail the following sons were born:—(6) William Arbuthnott, now Lieutenant-General Arbuthnott, one of the parties to this special case; he was born on the 5th day of June 1788. (7) James Arbuthnott, born 3d November 1790, and died without issue. (8) Marriott Arbuthnott, who died without issue. (9) Alexander Arbuthnott, who is alive; Alexander Arbuthnott was born in or about 1794.

The said John Arbuthnott, who afterwards became eighth Viscount, had issue, viz., John Arbuthnott, the present Viscount, and other sons.

The present Viscount has issue alive, viz.:—(1) The Honourable John, Master of Arbuthnott, his eldest son. (2) The Honourable David Arbuthnott, one of the parties to this special case. He has attained majority, but is of unsound mind; and his father, the present Viscount, was appointed *curator bonis* to him. (3) Other sons, whom it is unnecessary to name.

On the death of John, the sixth Viscount, the said Hugh Arbuthnott, afterwards Lieutenant-General Sir Hugh Arbuthnott, second son of John, the seventh Viscount, succeeded as institute under the destination in the entail to the estate of Hatton, being the estate entailed. He made up titles thereto, and possessed the same till his death on the 11th day of July 1868.

The question for the opinion of the Court was, Whether, under the destination in the entail, the said Honourable David Arbuthnott, the second son of the present Viscount Arbuthnott, or the said Lieutenant-General the Honourable William Arbuthnott, sixth son of John (seventh Viscount), the eldest son of the entailer, is entitled to succeed as heir of entail to the estate of Hatton.

FRASER and WATSON for the Hon. General Arbuthnott.

CLARK and GIFFORD for the Hon. David Arbuthnott.

At advising—

LORD PRESIDENT—The object of this special case is to obtain the opinion of the Court on the construction and effect of the destination contained in a deed of entail settling the estate of Hatton, executed by John, sixth Viscount of Arbuthnott, on the 2d November 1786, and recorded in the Register of Tailzies on the 20th July 1787. At the date of this deed the entailer had only one son in life, whom he describes as "my only son and future representative," and, in another place, as "now my only lawful son." From these expressions, as well as from the general scope of the deed, it clearly appears that the entailer did not expect any farther immediate issue of his own body.

But his son John, afterwards the seventh Viscount, had in existence at the date of the entail five sons—John (afterwards eighth Viscount), Hugh, Robert, Francis, and Duncan. Other sons were born to the seventh Viscount, but all subsequent to the execution and recording of the entail, and two of them after the death of the entailer.

Hugh Arbuthnott, the second son of the seventh Viscount, was the institute of tailzie, and succeeded as such on the death of his grandfather, the entailer, on the 20th of May 1791. He became a General in the army and a Knight Commander of the Bath, and continued to possess the estate till his death on the 11th July 1868.

The question for the Court is, Whether, on the death of this Sir Hugh without issue, the estate of Hatton descends, in terms of the destination, to Lieutenant-General William Arbuthnott, the immediate younger brother now in life of Sir Hugh, or to his grandnephew David, second son of the present (ninth) Viscount, who was the eldest son of John, eighth Viscount, who was the eldest brother of Sir Hugh, and eldest son of John, seventh Viscount, who is described by the entailer as his only son and future representative.

The destination is, in the first instance, "to and in favour of Hugh Arbuthnott, second lawful son of the said John Arbuthnott, now my only lawful son, and the heirs-male of his body who shall not have succeeded or become next in succession to the lordship of Arbuthnott, whom failing by death, or by standing next in succession to the lordship of Arbuthnott," to each of the other younger sons then in existence of the entailer's only

son—viz., Robert, Francis, and Duncan—successively, and the heirs-male of their bodies respectively, under the same condition of not succeeding or being next in succession to the lordship of Arbuthnott. Robert, Francis, and Duncan having all died without issue previous to the death of Sir Hugh, the institute, who died also without issue, the whole of the above part of the destination is exhausted, and the succession therefore necessarily depends on the meaning of the immediately following words—"whom failing by death or by succeeding or standing next in succession to the lordship of Arbuthnott, to the other heirs-male of the body of the said John Arbuthnott (the entailer's son), who shall not have succeeded or become next in succession to the lordship of Arbuthnott, and the heirs-male of their bodies who shall not have succeeded or become next in succession to the lordship of Arbuthnott, respectively and successively in their order: whom failing, to my own nearest heirs-male whomsoever; whom all failing, to own nearest heirs and assignees whomsoever."

The contention of David Arbuthnott is, that all the younger sons of the entailer's son specially called in the destination having failed without issue, he is the nearest heir-male of the body of the entailer's son, with the exception of his father, who is disqualified as having succeeded to the lordship of Arbuthnott, and his eldest brother, who is equally disqualified as standing next in succession to the lordship. Now, David unquestionably is (with these exceptions), according to the ordinary laws of succession, the nearest heir-male of the body of the entailer's son, because he is the son of the eldest son of the entailer's son.

On the other hand, it must be observed that the words under which he claims—"the other heirs-male of the body of the said John Arbuthnott," which standing alone would seem to be conclusive in David's favour—are followed by other words which may somewhat vary their meaning—viz., "and the heirs-male of their bodies respectively and successively in their order." If the words founded on by David are to have their ordinary legal signification these latter words were not intended to have any separate meaning or effect, which it is difficult to suppose, for the condition of non-succession to Arbuthnott is attached expressly not only to the other heirs-male of the body of the entailer's son, but also separately to the heirs-male of their bodies. On general principles of construction, too, when an entailer calls *nominatim* the presently existing sons of A B, and the heirs-male of their bodies in their order of seniority, and then proceeds to call not *nominatim* the other heirs-male of the body of A B, and the heirs-male of their bodies, he may fairly be presumed by the heirs-male of the body of A B to mean the sons of A B.

Dealing with the construction of the clause of destination without any aid from other parts of the deed, there would thus arise a question of considerable difficulty. But the difficulty, I think, disappears when the clause of destination is read in the light of certain introductory words at the beginning of the deed, which are inserted for the very purpose of declaring the entailer's general intention in making the settlement of the estate of Hatton. He declares his object to be "for the more effectually preserving the same distinct from my lordship and estate of Arbuthnott, as a permanent property to the second son of my only son and future representative John Arbuthnott, whom failing by death or otherwise as after-mentioned" (*i.e.*, by succession or standing next in succession to Arbuthnott), "to his other sons and their heirs-male in their order."

It certainly was not the intention of the entailer that, failing the second son of John without issue, the nearest heir-male of the body of his eldest son (not succeeding or standing next in succession to Arbuthnott) should take Hatton, for he expressly provides otherwise by the clause of destination, and calls after the second son and the heirs-male of his body all the younger sons of John then in existence, and the heirs-male of their bodies in the order of seniority. Therefore, when, after the second son and the heirs-male of his body, he in the introductory clause expresses his purpose of calling the *other* sons of John, we are naturally led, if not almost forced, into construing the "other sons" as meaning other *younger* sons.

It is contended, however, on behalf of David, that the expression "his other sons and their heirs-male *in their order*," refers to the order prescribed in the clause of destination, and that if the true legal construction of that clause is to call the descendants of the eldest son after the younger sons then existing and their male issue, there is nothing here repugnant to such construction.

But to this several answers occur. In the first place, if by "their order" the entailer did not mean simply the order of seniority, he surely would have said not "in their order" but "in the order hereinafter prescribed." In the second place, if he intended to prescribe so artificial an order as that, after the younger sons named and their male issue, there should be a break in the descent to younger sons hereafter to be born, and an interpolation as it were of the nearest heir-male of the body of his son,—being a descendent of that son's eldest son,—he would surely have expanded that idea in the clause of destination and have expressly called male descendants of the eldest son immediately after Duncan Arbuthnott and the heirs-male of his body. In the third place, it was most natural that he should omit from the succession all male descendants of the eldest son so long as there should be any younger son or male descendants of younger sons of his son's body, for his expressed desire was effectually to preserve Hatton distinct from the lordship of Arbuthnott "as a permanent property to the second son of my only son and future representative John." Suppose that, prior to the entailer's death, the younger sons of John called *nominatim* had all died without issue, John, the entailer's son, would have succeeded to Arbuthnott, and would then have had in life three sons, John the eldest, William the second, and James the third. How would Hatton have descended in terms of the destination? According to the contention of David, the eldest son would have taken Hatton but for his being next in succession to Arbuthnott, and of course as soon as he had a son he must have taken Hatton in preference to William, who was then in the position of being the second son of the entailer's eldest son John. But how would that have been reconcileable with the declared purpose of the entailer to preserve Hatton "as a permanent property to the second son of my only son and future representative John Arbuthnott," as the *persona predilecta?* Lastly, the words "other sons and their heirs-male in their order," as used in the introductory clause, cannot by possibility include the eldest son, for the "eldest son and his heirs-male in their order" is precisely descriptive of the order of succession to the lordship of Arbuthnott, with which succession it is

carefully provided that the succession to Hatton shall never be coincident.

If, then, it be established that "other sons" occurring after "second son" in the introductory clause, means other *younger* sons and excludes the eldest, we not only have a plain general declaration of the meaning of the entailer, favourable to the claim of Lieutenant-General William Arbuthnott, but we go with new light to re-examine the words of the clause of destination. After the existing younger sons have all been *nominatim* called with their male heirs in the order of seniority, the destination is "to the *other* heirs-male of the body of the said John Arbuthnott and the heirs-male of their bodies respectively and successively *in their order.*" Taking the two portions of the deed together, it seems to me unnatural and against the fairly expressed purpose of the entailer to read these words as meaning anything else than the words in the introductory clause, "the *other*" (younger) "sons" of John Arbuthnott "and their heirs-male *in their order.*"

After this examination of the deed, the question, as I stated it at the outset with special reference to the two competitors before us, may now be resolved into this more abstract question—Whether the entailer meant to exhaust all the younger sons of John, the seventh Viscount, and their issue male. before calling any of the issue male of the said John?

I answer that question in the affirmative, and am of opinion that the issue male of the said John, seventh Viscount, were intended to succeed for the first time under the penultimate clause of the destination "to my nearest heirs-male whomsoever."

I am therefore in favour of the claim of Lieutenant-General William Arbuthnott, and am prepared to find and declare that, on the decease of his brother, the late Sir Hugh, the estate of Hatton descended to him in terms of the tailzied destination.

Lord Deas and Lord Ardmillan concurred.

Lord Kinloch—I am of opinion that Lieut.-General William Arbuthnott, the sixth son of John, seventh Viscount Arbuthnott, is now entitled to succeed to the entailed estate of Hatton.

I think it clear that the principle of construction applicable to the question now raised is not that principle of strict interpretation applied in the case of fettering clauses. In now determining who is entitled to succeed under the destination in the entail, the only legitimate inquiry is, What shall be held to have been the intention of the entailer, on a sound construction of the words used by him? There is no question raised with creditors, or with the public at large. The question is entirely confined to the heirs of provision *inter se;* and there is no ground for holding, as to this question, any different principle of construction in regard to entailed estates from what applies to property held in fee-simple.

In the ontset of the deed of entail the entailer declares it to be his purpose to preserve the estate of Hatton separate from that of Arbuthnott, "as a permanent property to the second son of my only son and future representative John Arbuthnott, whom failing, by death or otherwise, as after mentioned, to his other sons and their heirs-male in their order." The other contingency besides death, here referred to, is afterwards explained to be their "succeeding or standing next in succession to the lordship of Arbuthnott." In the event of either contingency occurring in the case of the second son of John, and, as afterwards explained, the heirs-male of his body, it is the declared intention of the entailer that the succession to Hatton should pass to the successive sons of his son John, younger than his second son, in the order of their birth, and their heirs-male. The term "other sons," plainly indicates the younger sons, posterior in birth to the second. The eldest son of John, who would succeed to the title and lands of Arbuthnott, never could be intended under this designation.

On this declaratory preamble, the deed proceeds to dispone the lands "to and in favour of Hugh Arbuthnott, the second lawful son of the said John Arbuthnott, now my only lawful son, and the heirs-male of his body who shall not have succeeded or become next in succession to the lordship of Arbuthnott in manner aftermentioned; whom failing, by death or by succeeding or standing next in succession to the lordship of Arbuthnott, to Robert Arbuthnott, third lawful son of the said John Arbuthnott, and the heirs-male of his body who shall not have succeeded or become next in succession to the lordship of Arbuthnott." Failing these, the same destination is made in favour of Francis and Duncan, the fourth and fifth sons of John, and the heirs-male of their body. These were all the sons of John at that time born: and the destination proceeds—"whom failing, by death or by succeeding or standing next in succession to the lordship of Arbuthnott, to the other heirs-male of the body of the said John Arbuthnott, who shall not have succeeded or become next in succession to the lordship of Arbuthnott, and the heirs-male of their bodies who shall not have succeeded or become next in succession to the lordship of Arbuthnott, respectively and successively in their order; whom failing, to my nearest heirs-male whatsoever; whom all failing, to my own nearest heirs and assignees whomsoever."

The second, third, fourth, and fifth sons of John Arbuthnott having died without issue, the question is now raised whether the succession descends to the sixth son, Lieutenant-General William Arbuthnott, born after the date of the deed, or to David, the second son of the present Lord Arbuthnott, coming in as in law the present heir-male of the body of John the seventh Viscount.

I feel no hesitation in preferring Lieutenant-General William Arbuthnott. The general tenor of the deed, and the declaration contained in the preamble already quoted, render it, I think, plain that the intention of the entailer was to call to the the succession all the younger sons of John the seventh Viscount in their order, and the heirs-male of their bodies. I think it clear that had Lieutenant-General William Arbuthnott been then in existence he would have been called in the same terms as his brothers Hugh, Robert, Francis, and Duncan. When the deed goes on to call after Duncan, "the other heirs-male of the body of the said John Arbuthnott, and the heirs-male of their bodies," I think it is the undoubted meaning of the entailer in these phrases to call all the younger sons of John, born after Duncan successively. The terms "other heirs-male of the body of John respectively and successively in their order" seem to me reasonably capable of no other construction. And when the entailer speaks of "the other heirs-male of the body of John (successively), and the heirs-male of their bodies," the matter seems put

beyond doubt; because these are just the terms to be naturally employed in calling the sons successively, and the heirs-male of their bodies. Had it been the intention of the entailer, as is contended on the other side, to depart from the line of John's younger sons in their order, and to call the legal heir-male of the body of John whoever he might be, the language used would have been entirely different. The entailer would have simply said "whom failing to the heir-male of the body of the said John," without further particularisation, or repetition of words. The destination to "the *other* heirs-male of the body of the said John Arbuthnott (successively), and the heirs-male of their bodies," cannot, I think, be otherwise satisfied than by giving the succession to the younger sons after Duncan successively, and the heirs-male of their bodies.

With regard to the competing candidate for the succession, David the second son of the present Lord Arbuthnott, I think that he does not come in under the destination to the "other heirs-male of the body of John Arbuthnott." He comes in under the next destination to the entailer's "own nearest heirs-male whatsoever." But this destination does not take effect till the previous destination has failed.

Agent for the Hon. General Arbuthnott—Stuart Neilson, W.S.

Agent for the Hon. David Arbuthnott—J. N. Forman, W.S.

Tuesday, January 19.

COURT OF LORDS ORDINARY.

CRON *v.* GREAT NORTH OF SCOTLAND RAILWAY COMPANY.

Railway Company—Carriage of Goods—Agreement. Held, on a proof, that certain perishable goods had been delivered to a railway company to be forwarded by them as goods in the ordinary way, and being so forwarded without any undue delay, the railway company were not liable for loss to the owner through deterioration of the goods in transit.

This was an action at the instance of Patrick Cron, fishmonger, against the Great North of Scotland Railway Company; the alleged ground of action being, that the defenders having ageed to forward certain consignments of herrings by special or passenger train to London, and having committed a breach of that agreement by delaying the forwarding of the herrings until they were unfit for human food, were liable to the pursuer in the price of the herrings and in the loss of profit. It appeared that on 14th July 1864 certain barrrels of herrings were delivered by the pursuer's agent to the defenders at the Ladysbridge station of the Banffshire Railway, addressed to a fishmonger in London. The pursuer alleged that the defenders' agent specially undertook that the herrings would be forwarded by special or passenger train to London, so as to be delivered to the consignee on the morning of Saturday, 16th July. This was denied by the defenders, who alleged that they received along with the herrings a forwarding note headed "goods department," signed by the pursuer, whereby it was contracted that the defenders should carry the herrings in question at special reduced rates below their ordinary charges, in consideration of their being freed from certain risks in connection with their transmission, and that a special contract was signed, agreeing, in consideration of the defenders so accepting the goods, that the herrings should be received, forwarded, and delivered at the pursuer's risk, and relieving the defenders of all liability "for any loss, delay, or damage of, to, or in respect of the goods, from whatever cause arising, except from the felonious act of any of their servants." Admittedly the herrings were not delivered to the consignee until the morning of Monday, 18th July. The pursuer denied that he was bound by the forwarding note, and contended that that document was struck at by the Act 17 and 18 Vict., cap. 31, sec. 7. Similar allegations were made with respect to another lot of barrels forwarded two days later.

The Sheriff-substitute (GORDON), after a proof, held that the herrings had been delivered to the defenders with instructions to forward them by passenger train, and that the defenders were bound so to forward them; that instead they had forwarded them by goods train, and were accordingly liable for the loss occasioned thereby.

The Sheriff (B. R. BELL) reversed, and assoilzied the defenders: finding it not proved that the defenders' agent undertook to send the herrings by special or passenger train: finding that the herrings were carried at reduced rates, the pursuer's agent signing a special written contract thereanent; and that, having regard to the option allowed of sending fish at the ordinary rate and at the company's risk, the conditions attached to the reduction of rate were just and reasonable.

The pursuer advocated.

SCOTT and BRAND for advocator.

CLARK and ASHER for respondents.

The Court adhered in result to the interlocutor of the Sheriff. They thought that the preponderance of parol evidence was in favour of the Railway Company, and that was, moreover, confirmed by the real evidence in the shape of the forwarding notes, from the heading of which it was evident that the herrings were sent to the Railway Company to be forwarded as goods in the ordinary way. They were so forwarded, without any undue delay on the part of the Railway Company, and it was therefore not necessary to consider any of the other questions raised in the case.

Agent for Advocator—D. F. Bridgeford, S.S.C.

Agents for Respondents—Henry & Shiress, S.S.C.

Wednesday, January 20.

FIRST DIVISION.

CAMERON *v.* MORRISON.

Bill—Blank Bill—Summary Diligence—Mercantile Law Amendment Act — Issued Bill. A bill stamp containing the sum, the signature and address of the acceptor, and the words "four months after date," but otherwise blank, was sent by the acceptor C. to M., who took it to a bank, got it filled up, and signed it as drawer, and discounted it. In a suspension by C. of a charge at the instance of M., *held* (1) that the bill was a sufficient warrant for summary diligence.

Held (2) (Lord Deas dis.) that the bill did not fall under the provisions of the Mercantile Amendment Act with regard to bills "issued without a date."