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."

A bill is not "issued" before it is made, and it is not made before it is signed by the drawer.

Opinion that the Act refers to the case where a bill issued without a date continues to have no date when sought to be enforced.

George Morrison, the respondent, supplied a quantity of hay to Ironside, for which Ironside promised him a bill, to be accepted by himself (Ironside) and the complainer Cameron, for £45, in terms of a certain arrangement.

According to the respondent's averments—(3) "On 5th October 1867 the respondent received a letter from Ironside, in which was inclosed a duly stamped acceptance by him and the complainer for £45, being the bill charged on. The said acceptance, when the respondent thus received it, bore the following figures at the left-hand corner:—

'£30 0 0 stg.
£15 0 0 stg.

£45 0 0 „

the words, 'Four months after date;' the address—'To W. Ironside, Portsoy, and John Cameron, City Hotel, Elgin;'

and the signatures, 'W. Ironside' and 'John Cameron'—all as these figures and words still exist on the said bill, which is herewith produced. (4) The respondent, believing from his inquiries that the complainer was good for the money, wrote Ironside acknowledging receipt of the said acceptance, and undertaking to pay him the difference above mentioned. The respondent then took the said acceptance to the Town and County Bank at Huntly, of the agent at which he had made inquiries relative to the complainer as aforesaid; the accountant or clerk, upon the information and on behalf of the respondent, filled in the words, 'Whitestones, Rothiemay, 5th October 1867,' as also the words, 'Pay to me or my order within the office of the Royal Bank of Scotland, Elgin, the sum of £45 sterling for value received.' The respondent signed as drawer, and the bill was discounted, the amount of the discount being 14s."

Cameron, being charged on the bill, suspended, and, besides a plea that his signature as appearing on the document was forged, he pleaded,—"(5) In any view, the bill charged on cannot be the foundation of summary diligence, and the charge ought to be suspended *simpliciter*, in respect of the condition of the said bill when it was received by the charger, of the circumstances in which he received it, and of the manner in which he dealt with it. (6) The said bill having been issued without date, summary diligence thereon is incompetent, in terms of the Act 19 and 20 Vict. cap. 60, sect. 10."

The Lord Ordinary (KINLOCH) repelled the 5th and 6th pleas, and, *quoad ultra*, allowed a proof, adding this

"*Note.*—The suspender pleads, preliminarily, that whether an obligation lies against him on the bill or not, yet, in the admitted circumstances of the case (he has renounced further probation), summary diligence is incompetent.

"The Lord Ordinary thinks the plea unfounded It is rested on the admission that when the bill was sent to the charger (the drawer) it had only on it the signatures and address of the acceptors, the sum, and the words "four months after date," being filled up afterwards, under the instructions of the charger, by a clerk in the bank where he discounted it. The suspender does not contend that the bill is altogether null. He admits the doctrine that a bill signed in blank may be filled up by the drawer with any sum within the stamp. But he contends that such a bill cannot be a warrant for summary diligence. The Lord Ordinary cannot perceive any sufficient ground for this position. If a bill signed in blank, and filled up by the drawer, be a good bill in itself, there is neither reason nor practice (so far as the Lord Ordinary knows) for denying to it any of the privileges of the document. The present is a more favourable case, in so far that the bill was not entirely blank, but its amount and currency precisely fixed on its face.

"The Lord Ordinary also thinks the plea unfounded which is rested on the enactment in the Mercantile Law Amendment Act, that 'Where any bill of exchange or promissory-note shall be issued without date, it shall be competent to prove by parol evidence the true date at which such bill or note was issued, provided always that summary diligence shall not be competent on any bill or note issued without a date.' The case pointed at by this enactment, as the Lord Ordinary thinks, is where the date remains throughout blank, capable only of being proved by parol. The suspender's inference is, that the enactment must equally apply where the date was inserted after issue,—which might possibly be, at any rate, a vitiating alteration at common law. But the application of the position fails in the present case from the suspender erroneously assuming that a bill is issued when sent in blank to the drawer. If this were so there could never be a valid obligation on a bill signed in blank; for to insert the whole bill after issue would be the largest possible alteration. But a bill cannot be rightly said to be issued till after it has assumed the form of a bill by the words of obligation being inserted; in the case of a bill signed in blank, perhaps not till the drawer uses it. In the present case the bill cannot be said to have been issued anterior to the time when, under the charger's instructions, it was filled up (date and all) by the bank clerk."

Cameron reclaimed.

ASHER for reclaimer.

BALFOUR and MACKINTOSH for respondent.

At advising—

LORD PRESIDENT—This suspension is presented on various grounds of fact and law, and, among others, that the bill charged on is forged, and on certain allegations of fraud, but the only pleas disposed of are the fifth and sixth pleas stated for the suspender. Now, in regard to these, it is important to observe that the parties have renounced probation, and we are therefore to consider whether these are relevant pleas in law with reference to the admitted facts of the case.

The bill charged on is a bill for £45, the terms of which are set out in the first article of the reasons of suspension. (*Reads bill.*) Certainly there is nothing irregular or even suspicious on the face of this bill; nothing to lead to the supposition that it does not fairly represent the transaction in which the parties were engaged; nothing to show that it was not granted for value, or that it is subject to any objection as a ground of summary diligence. The first plea we are to dispose of is—"(5) In any view, the bill charged on cannot be the foundation of summary diligence, and the charge ought to be suspended *simpliciter*, in respect of the condition of the said bill when it was received by the charger, of the circumstances in which he received it, and of the manner in which he dealt with if." The facts referred in that plea are

to be obtained entirely from the statement of the charger in the 3d and 4th articles of the respondent's statement—(*reads* ut supra). This is a blank acceptance, but not quite so purely a blank acceptance as often occurs in practice. A very common occurrence in practice is for an acceptor merely to sign his name on a bill-stamp, and send it to the drawer, and then the drawer is understood to be thereby empowered to fill up that paper with a bill for the largest amount that will be covered by the stamp; and it has not for many years been doubted that the obligation thereby in form constituted against the acceptor is a good obligation in law. The only difference in the present case is that, besides the signature of the acceptor on this stamped paper, there were in the corner figures indicating the amount of the bill to be drawn, whereby the party to whom it was sent was limited to draw a bill only to that amount. His power was also limited in another way, as to the currency of the bill by the words "four months after date." But except for these restrictions, the drawer was at liberty to do what he choose. What he did do was to put it into the condition in which it now stands, which is, a bill at four months for £45, payable within the office of the Royal Bank of Scotland in Elgin, drawn by George Morrison, and of course accepted by Ironside and the complainer Cameron. But it is important to observe how and where the body of the bill was filled in, and how the bill when completed was issued by the charger. That is given in the fourth article of the respondent's statement—(*reads* ut supra). It appears to me that there was nothing irregular or novel in the proceedings of the charger in this matter. And I have not been able to understand how a bill brought into existence in this way could not be the foundation for summary diligence. No good reason has been assigned by the complainer for such a proposition. It is said that the bill, being sent by the acceptor in this imperfect state, could not be the foundation of a charge, although it might found an ordinary action. But if this is a known and well recognised way of making a bill, beginning with the acceptor and ending with the drawer, instead of beginning with the drawer and ending with the acceptor, I can see no ground for refusing to allow it all the privileges of a bill.

The sixth plea is—"The said bill having been issued without date, summary diligence thereon is incompetent, in terms of the Act 19 and 20 Vict. cap. 60, sect. 10." It is said that this bill falls within the proviso at the end of the clause, and that it was issued without a date, and that therefore summary diligence is incompetent. It is obvious that the validity of this plea depends on what is meant by "issuing." The argument for the complainer is that the bill was issued as soon as Ironside sent it to the charger, because the acceptors were thus laid under an obligation. That is true. But was that the issuing of the bill? I apprehend not. It was the issuing by them of a certain obligation which could be made effectual against them by proceedings on the part of the charger, but not without these proceedings. By sending the document blank you grant authority to make a bill of which you shall be acceptor, and when it is made and used as a bill it is then "issued," but not till then. It is in vain to say that a piece of stamped paper with nothing on it but a man's signature can ever become an issued bill until something else is done on it, and therefore I think that this bill was not issued till it was taken to the Bank and filled up and discounted. That is the date of the bill, and therefore the date was filled in before or at the time of issuing. It was therefore not issued without a date, and accordingly the sixth plea for the complainer is also bad.

Lord Deas differed. He held that the bill was issued in the sense of the 10th section of Act when it passed out of the hands of the debtor into the hands of the creditor, and when the debtor no longer had any power over it. The question simply came to be, whether, when the drawer got the bill from the acceptor, there was or was not a complete obligation undertaken to him by the acceptors, which they could not afterwards get out of without the drawer's consent? He thought that the bill was issued when it came into the hands of the drawer, for from that moment the acceptors were bound in payment to the drawer of the £45. The foundation of the opposite view was that it was at first not a bill at all, and only became a bill by filling up the date and body of it. That raised the question, what was a bill? Now a bill was a contract, or evidence of a contract, to pay a certain sum of money, and it was neither less nor more. When did it become evidence of the contract? When the creditor got it into his possession and the party who became bound could no longer get out of the obligation. A bill was not a contract which always required to be signed by all the parties. Suppose A ordered B to pay to C a certain sum of money. A then signed as drawer, B signed as acceptor, while C, the creditor, did not sign at all. Or suppose A promised to pay to B a certain sum, A signs and sends it to B, who does not sign; and yet the contract is complete. Or again, suppose A orders B to pay to himself a certain sum of money, B signs and sends it back to A, who keeps it as his document. The contract is complete though A does not sign at that time, or does not sign at all. The power which the holder of a bill had was very great in the way of summary diligence, and the object of the statute was to restrain that power in some way. It did restrain it to some extent, preventing summary diligence in some cases, though not interfering with an ordinary action on the bill. But he rather thought that the judgment now to be given by the Court would go far to destroy the benefit of the statute, for if a bill was not to be held as issued when it came into the hands of a creditor, he did not see how the statute could have any practical effect at all. His Lordship then reviewed the authorities, and repeated his opinion that the bill was issued in the sense of the statute whenever it came into the hands of the drawer.

Lord Ardmillan—In this process of suspension a question of great interest and importance has been raised; and I have given to it a very careful and anxious consideration. The charge complained of is for payment of a bill for £45, bearing to be dated 5th October 1867, to be drawn by George Morrison, the respondent, and to be accepted by William Ironside, and the complainer, John Cameron. The bill, as now presented, and as it existed at the date of the charge, is altogether free from *ex facie* objection. It is dated, signed, stamped, and in all respects regular and complete; and the date expressed on the bill is *prima facie* evidence of the date when it was made.

The suspender denies his signature and alleges fraud; the charger alleges that the suspender's

signature is genuine, and denies the charge of fraud. These questions of fact remain to be ascertained. In the meantime the suspender separately pleads that on this bill summary diligence is not competent, in respect that the bill was issued without date. This plea I understand Lord Deas is prepared to sustain. There has been no probation, and on the point now before us probation has been renounced; but the suspender rests his case on the respondent's averments and explanation in the 3d and 4th articles of his statement of facts:—(*Reads* ut supra.)

Founding upon this statement of facts, the suspender pleads the following provision in the Mercantile Law Amendment Act.—"Where any bill of exchange or prommissory-note shall be issued without date, it shall be competent to prove by parole evidence the true date at which such bill or note is issued, provided always that summary diligence shall not be competent on any bill or note issued without a date." The suspender alleges that this bill was issued without a date, and pleads that summary diligence is therefore incompetent. The objection, that the bill was issued without a date, is the only serious objection with which we have now to deal, for I agree with your Lordships that the 5th plea is not well founded, and on that point I have nothing to add.

The qualities which the law holds essential to a bill of exchange are all now present in this document. That cannot be denied, and is not, as I understand, disputed by the suspender. It is a good bill as it stands. It was a good bill at the date of the charge. If it is now objectionable it can only be so on the footing that the suspender has proved it was issued without a date. The real question, therefore, is, When was this bill issued? As it is now dated, and there is no *ex facie* objection, the proof that it was issued without a date rests on the suspender; and the only proof offered is to be found in the respondent's statements on record. Do these statements prove that the bill was issued without a date?

A bill of exchange—one of the most important of commercial documents—is a mandate, a written order for payment of a specific sum unconditionally. As a foundation for summary diligence the bill must have a date. The drawer is mandant—the mandate is addressed to the drawee—if he accepts it he becomes the acceptor, if drawn in favour of another he is the payee, otherwise the drawer is himself the payee. The document now before us is a simple draft and acceptance. There is no payee other than the drawer; and till the drawer's name was subscribed there was no mandate.

Now the facts admitted on record—the whole facts on which the suspender's case rests—are as I have already read. Having received the blank bill-stamp with signatures of Ironside and the suspender attached thereto, the respondent took that stamp to the bank, and there, at his desire, the date was inserted, the words of the bill were filled in, the drawer's name was added, and, these things having been done, the bill was discounted. The whole proceedings occurred in one day. The suspender maintains that the bill was issued when the respondent received from Ironside the blank bill-stamp with the signatures attached; and that at that time it had no date. The respondent maintains that the bill was not issued till the name of the drawer was subscribed at the bank, and that at that time the bill was dated. It was immediately afterwards discounted, and it is not disputed that when it was discounted it bore a date, the date it still bears. In this position of matters the question of law arises. Unless the bill is held to have been issued before it was filled up at the bank and signed by the drawer, it was not issued without a date, because the date was certainly inserted before the drawer subscribed.

I am of opinion that the contention of the respondent on this matter is right; and that this bill was not issued without a date.

I cannot think that a bill ought to be considered as issued before it is made; and I do not think that in the estimation of law a bill is made before it is signed by the drawer. The date when the drawer signed this bill was the true time of making the bill, and the true time of issuing, and at that time this bill was certainly dated. Unless the issuing is thrown back to an earlier date than that at which the drawer signed, the suspender's plea is bad, because when the drawer signed the bill was dated, and it is not liable to any other objection (except of course the allegation of forgery, which is reserved).

In several English cases, mentioned in Smith's Mercantile Law and in Chitty on Bills, it has been found that the signing of a bill by the drawer is the act of making a bill; and where there is no separate payee other than the drawer, the bill is not made, and is not issued, till signed by the drawer. There must be a mandate, and there is no mandate where there is no mandant; there is no acceptance of a draft till there is a draft, and there is no draft till there is a drawer, and there is no drawer till he has signed the bill. A bill written and accepted in England, and then sent abroad for the drawer's signature, and there drawn, is a foreign bill, not requiring an English stamp, because it was made abroad. I am not speaking of obligations; I am speaking of bills of exchange, which are special privileged writings. A promise to accept may be a good obligation, but in Scotland it is not itself an actual acceptance; and a stamp bearing a promise to accept, or a signature equivalent to a promise to accept, is not a bill of exchange.

I am well aware that a person who signs a blank bill-stamp incurs a serious obligation. He makes himself answerable for whatever sum may be inserted within the limit of value which the stamp will carry. But I do not think that when he signs a blank stamp he then and there signs and makes and issues a bill of exchange. That the person so signing subjects himself to liability to the amount which the stamp will carry, I have no doubt. Nor do I doubt that the holder is entitled to make a bill by inserting a date, filling in the words of a bill, and signing his own name as drawer. All this may be done afterwards; and the blank acceptance may authorise the doing it, but the mere signing of the blank acceptance does not in my opinion create at once a bill of exchange. It only authorises the making of a bill which, when made, shall bind the subscriber. The making is a subsequent proceeding.

I entirely concur in the view which Lord Fullerton takes of this subject in the case of *Lyon* v. *Butter*, 7th December 1841; and I understand that the Lord President Boyle and Lord Mackenzie concurred in his opinion. He says: "The person signing the blank stamp confers a power or mandate on the party receiving the stamp so signed to pledge the security of the subscriber in any form of bill or note he chooses, and to the full amount of

the sum which the stamp will cover." This explanation of the legal effect of signing a blank stamp appears to me to be quite accurate. It is effectual as an obligation, and the writing may be converted into a bill by the subsequent filling up of the blank and the signature of the drawer. But it is incomplete; it is not at once, and in its blank state, a bill of exchange. It is not then made—it is not then issued—it is a good obligation, on which a bill of exchange may be engrafted, but, as it stands, it is not a bill. A letter promising to accept a bill is a good obligation; but it is not a present actual acceptance to the effect of making a bill from its date; and a blank acceptance is no more than a good obligation, the formal embodiment of which is in the bill when made, and the measure of which is to be found in the limit of value which the stamp will cover.

The case has been extremely well argued on both sides. I acknowledge fully the soundness of the argument of Mr Asher, which has received the authoritative approval of Lord Deas—and from which I do not understand that any of the Court differ—on the obligatory character and effect of the signing of a blank bill-stamp. The law on that point is settled both in England and in Scotland. But the point here involved is very different. Reserving the plea of denial of authenticity, which is quite separate, there is no doubt at present of the existence of a regular and complete bill, and no doubt of the extent of the obligation. The doubt is as to the date when the bill was made and issued. The suspender's case is, either that the bill was issued before it was made, or that it was made before it was drawn. I cannot adopt either of these propositions. There is in my humble opinion no principle to support them, and there is no authority for them. The cases referred to by the supender do not support either of the propositions which are essential to his case; and I must add, with great respect for my brother Lord Deas, that the cases which he has mentioned do not appear to me conclusive. I have read them all, and do not think them applicable to the question here involved. In some of the reported cases the word "bill" does seem to be inaccurately used in speaking of a blank bill-stamp. But there is no case to support the proposition that a blank bill-stamp bearing the signature is in itself, and before it is filled up—before there is a drawer's name, or a payee's name—notwithstanding its incompleteness, a proper bill of exchange made and issued. Lord Deas says, if A orders B to pay £100 to him, it is a good bill though not signed by A. But if it is a blank stamp, I ask, How does A order B to pay the amount of that bill before A signs the bill? There is no payee, and there is no order till the drawer signs. All the cases are explainable on the footing that the signature to the blank stamp is a good and effectual obligation with reference to a contemplated bill of exchange, but it is not then and there itself a bill of exchange. The blank stamp bearing the signature may be filled up at the pleasure of the holder. Any date may be inserted, any name may be subscribed as drawer, any sum within the limits of the stamp may be filled in; but until this is done the import and effect of the signature to the blank stamp is no more than an obligation that a bill shall be made, or may be made, and shall, when made, bind the party subscribing the stamp.

Accordingly, my opinion is that this bill, which was dated and signed by all parties before it was discounted, and before the charge, and which was dated before it was signed by the drawer, was not issued before it was drawn, and was not drawn before it was dated, and therefore is not within the provision of the Mercantile Law Amendment Act regarding bills "issued without a date." This bill was made after it was dated; it was not issued before it was made, therefore it was not "issued without a date."

It remains for the suspender to support his plea on the denial of the subscription; but the separate objection to the competency of summary diligence has been in my opinion rightly repelled by the Lord Ordinary.

Lord Kinloch—I retain the opinion embodied in my interlocutor and note.

I think the case of the bill now in question cannot be dealt with differently from that of a bill signed wholly in blank, and the entire of which is afterwards filled up by the drawer. The bill in question had the sum, the address, and the words "Four months after date" written on it, but in other respects was blank when transmitted to the drawer, with the signatures of the acceptors appended to it. I see no difference in principle between this case, and that where the whole bill is left blank. And I perceive no legal ground on which it is to be held, as the suspender contended, that summary diligence is incompetent on such a bill. Practice and authority are both against the supposition: and so I think is legal principle. The legal theory, in the case of a bill signed in blank, is that there is a mandate given by the acceptor to the drawer to fill up the bill; and the result, as to summary diligence, is to place the acceptor in the same position with any acceptor signing the bill as fully written out.

I further continue of opinion that the clause in the Mercantile Law Amendment Act is inapplicable to prevent summary diligence on this bill.

In the first place, I think that this Act, when it refers to a bill of exchange "issued without a date," must be held, on a sound construction of it, to apply to the case where a bill so issued continues to have no date when sought to be enforced. The Act either assumes that it is incompetent to insert the date after issue (which I am not prepared absolutely to say it is in such a case), or at all events deals with the case of the date continuing blank as that to which it applies a remedy. The remedy is the one appropriate to that case, viz., to allow the true date to be proved by parole. The object of the Act was to facilitate the recovery of bills of exchange; and not, as the suspender's argument implies, to afford an additional plea for cutting them down. The sole intendment of the Act, as I view it, was to afford the means of proving the date of a bill where that date did not appear on the face of the bill itself. But the Act rightly prohibited summary diligence in that case, as in every case in which extrinsic proof is necessary to clear the document.

If this view is well founded, it is sufficient for the disposal of the plea founded on the Mercantile Law Amendment Act. For the bill in question was not in the condition of having no date when execution was done on it. The date had been filled up sometime previous.

Secondly, I am of opinion that the bill in the present case was not in the statutory position of a bill "issued without a date." I conceive the bill not to have been issued, in a legal sense, when transmitted to the drawer; because, whatever may be

the case as to bills differently situated, I think a bill signed in blank is not issued when so transmitted. There may arise nice questions as to when such a bill shall be held to be issued; and questions which cannot be solved by laying down any absolute rule beforehand. In the present case, where the question is exclusively between the drawer and acceptors, I think the bill was not issued till the drawer filled it up in the bank with which he discounted it. The drawer, as already said, held a mandate from the acceptor to fill up the instrument. When he proceeded to fill up the bill with its necessary elements, including the date, he was in substance just the acceptor doing the same thing. The case must be held the same as if the acceptor had himself, in the presence of the drawer, filled up the date, and then handed him the bill. In that case there would be no ground for holding that the date was inserted after issue; and as little, I think, is there in the present case.

On this ground, also, I think, the Mercantile Law Amendment Act inapplicable to the present case.

Agents for Complainer—Leburn, Henderson, & Wilson, S.S.C.

Agent for Respondent—J. C. Baxter, S.S.C.

Thursday, January 21.

OLIVER *v.* WALLACE.

Bankrupt—Evidence of Claim—Trustee. When a trustee on a bankrupt estate thinks that evidence is required in support of a claim, he ought to give the claimant an opportunity of leading that evidence.

Where a claim has been rejected by a trustee as unsupported by evidence, and the claimant appeals, it is matter of discretion for the Court either to take the evidence or to remit to the trustee to take it.

The estates of James Orr were sequestrated on 6th September 1867, and the respondent was appointed trustee. Certain claims on Orr's estate, lodged by Oliver, were rejected by the trustee, he alleging that many of the items were manifestly unfounded, and that no evidence was offered in support of them.

Oliver appealed, and craved the Court "to recal and alter the decision complained of; and to ordain the trustee to rank the appellant in terms of his claim; and to make payment of the dividend corresponding to the debt for which the appellant claimed in his oath; to be ranked with bank interest on the dividend from the time the same shall be deposited by the trustee; and to find the appellant entitled to expenses."

The Lord Ordinary (MANOR) pronounced this interlocutor:—"Remits back to the trustee to require and receive evidence of the several items of the appellant's claim, and to dispose thereof as he shall see fit: Finds the appellant liable in expenses," &c.

"*Note*—It appears to the Lord Ordinary quite incompetent for the appellant to come to the Court and ask for a proof, which he might have had, and ought to have led before the trustee."

The appellant reclaimed.

SCOTT and REID for reclaimer.

BURNET for respondent.

At advising—

LORD PRESIDENT—The Lord Ordinary says—"It appears to the Lord Ordinary quite incompetent for the appellant to come to the Court and ask for a proof, which he might have had, and ought to have led before the trustee."

I understand all your Lordships to be of opinion that it is not incompetent for the appellant to ask for a proof here, or for the Court to allow it if they see cause; and it is matter of discretion in the circumstances, whether the course adopted by the Lord Ordinary should be followed, or a proof allowed in this Court.

I should desire, however, to add that I hope it will not be understood that if we take the course of allowing the proof to be taken here, that imports in any way an expression of opinion that a trustee is justified in not taking evidence, when necessary, in support of a claim, or that what we do here can have any effect on the decision in *Adam and Kirk*. As far as I am concerned, I adhere to what I said in that case. When a trustee considers that evidence is required in support of a claim, he should give the claimant an opportunity of leading that evidence, for generally that can be done more easily and more cheaply before the trustee than here. But in this case I think it would be most expedient to take the proof here.

The other Judges concurred.

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

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

OUTER HOUSE.

(Before Lord Manor)

GOW'S EXECUTORS *v.* GOW.

Approbate and Reprobate—24 *and* 25 *Vict. c.* 114—*Testament—Domicile*—Animus revertendi—*Construction of Will—Foreign Law.* A, a Scotchman, lived abroad in an English colony from 1842 to 1863. A few days before finally leaving the colony for Scotland he executed a will in the English form, giving certain legacies to his heir-at-law, and the whole residue of his estate to a nephew. After his return, he lived sometimes in Scotland, where he bought a piece of land and began building a dwelling-house, and partly in England, where, however, he had no fixed residence. He died a domiciled Scotchman. Admittedly his residence abroad had been merely for trading purposes, he always having an *animus revertendi*. *Held*, (by LORD MANOR) that the domicile at death being Scotch, the will must receive effect according to the law of Scotland; and that the principle of approbate and reprobate applied to prevent the heir from taking both the legacies and the heritage.

Remit to English Counsel *held* unnecessary, there being no technical terms in the deed requiring interpretation.

Opinion, that A's domicile at the date of the will was foreign.

In 1842 David Gow, a Scotchman, left Scotland for Singapore. After remaining at Singapore for three or four years he went to Hong Kong, where for many years he carried on the trade of a shipbuilder, in partnership with George Harper. About the year 1861 Gow proposed finally leaving Hong Kong and returning to Scotland, his partner Harper remaining to take charge of the business at Hong Kong, but Harper asked Gow to remain, in order that he, Harper, might first come to this country to see his