junct probation; Finds that, except the lands before mentioned, none of the lands which are the subject of this action are valued in either of the said decrees of valuation under the names by which they are described in the summons, but that the defender avers that they were included in the decree of valuation of 3d February 1773 under other names, as specified in the list produced by him: Allows to the defender a proof of his averments thereanent contained in the fourth article of his statement of facts, and to the pursuer a conjunct probation: Appoints the cause to be put to the Motion Roll on the first sederunt day in May next, to fix the time and mode of taking such proof; and reserves the question of expenses.

"*Note.*—1. It being now admitted that the lands of Easter Muilzie, Mulzie Riach, and Eilean Aigas are unvalued, decree in terms of the conclusions of the summons will fall to be pronounced in regard to them.

"2. The only lands, or portions of lands, of Ardnagrask, Tomich, and Barnyards, mentioned in the decree of 1773, are there valued as in the united parishes of Urray and Gilchrist. The Lovat estate was then in the hands of the Commissioners of Forfeited Estates, and it appears from the proof that these lands were entered in their rental as being in the parish of Kilmorack. But the witnesses deponed that they believed them to lie in the united parishes of Urray and Gilchrist, as they paid stipend to the minister there. In the grand decerniture the whole lands contained in the decree are valued separately as lying in the several parishes there specified, and these particular lands as in Urray and Gilchrist. The effect of lands being valued as in a parish different from that in which they are locally situated was the subject of decision in the recent case of the minister of *Rescobie v. Carnegie*, decided 5th February 1869. In that case, though the lands were libelled in the summons of valuation as lying in particular parishes, the particular lands in question being misdescribed in that respect, the ultimate decree of valuation did not refer to the parishes. On that ground the present Lord Ordinary held the valuation to be effectual, and his judgment was adhered to by the Second Division. But the Lord Ordinary feels himself precluded from taking that view in the present case by the judgment of the Court in the unreported case of *Kilmalie* in 1826, referred to in the case of *Rescobie*. The objection seems to be entirely technical, as the ministers of all the parishes were called, though they did not appear, and there is no reason to suppose that the fairness of the valuation would be in any way affected by the error as to the parish in which the lands lay.

"The defender denies that any portion of these lands lie in Kilmorack. The pursuer must prove that they do so, in order to entitle him to decree of declarator in regard to them.

"3. The question as to the remaining lands is, whether they were valued by the decree of 1773 under names different from those which they now bear, and by which they are described in the conclusions of the present action. It lies upon the defender to prove that they were so, and he has been allowed a proof, in which he must take the lead."

Lord Lovat reclaimed.

GIFFORD and RUTHERFURD for him.

CLARK and WATSON in answer.

The Court recalled the Lord Ordinary's interlocutor, so far as relating to the lands in question, and held the said lands to have been effectually valued, notwithstanding the mistake as to the parish. The ground of judgment was that there was no question as to the identity of the lands, and that a mere misdescription of their locality was of no importance, more especially as the minister of Kilmorack was called in the valuation along with the ministers of the adjoining parishes, and had thereby been duly certiorated. It was also important that the process in which the minister was called was a valuation of teinds and not one to fix boundaries merely.

Agents for the Pursuer—M'Ewen & Carment, W.S.

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

Friday, June 25.

FIRST DIVISION.

M'DOUALL *v.* CAIRD.

Landlord and Tenant—Game—Rabbits—Action of Declarator—Subjects embraced in lease—Regulations. Held, on construction of missives of lease and possession, that a tenant of a country house and grounds, including some fields let for agricultural purposes, had a right to kill rabbits over the estate generally by shooting or by such other means as might be necessary for keeping them down, and not merely on the agricultural subjects.

Circumstances in which the Court held it to be inexpedient to pronounce judgment in certain declaratory conclusions, on the ground that they were more fitly dealt with in an Inferior Court, if the rights sought to be declared were infringed.

From 1854 to 1856 the defender, Alexander M'Neel Caird, occupied the house and grounds of Genoch, belonging to Colonel M'Douall, of Logan, whose law-agent the defender has been for many years. In 1856 the defender obtained a lease of the premises "for five years from Whitsunday 1856, at the yearly rent of £40 sterling, viz., Genoch House, grounds, and offices, game, fishings, and pertinents as heretofore possessed by the said Alexander M'Neel Caird, with the addition of the garden, orchard, and the premises and pertinents occupied by the gardener and under-gardener, the lodge, and grounds behind it, and ground between sheep park and public road, with the rabbits in these grounds (which have not been in use to be let with the grass lands). The landlord to keep the buildings externally in repair, and replace any inner wood-work that from decay may be or become unsafe or untenantable. . . . Liberty is reserved for Colonel M'Douall or any member of his family, or any friend in company with him or them, or any friend staying at Logan House and having Colonel M'Douall's permission, to hunt, shoot, and fish in or upon the lands hereby set. Mr Caird to have possession of the Dovecot Park during the currency of this lease, on condition of his expending, during currency of said lease, twenty-five pounds sterling in top dressing said park with bone-dust," &c., &c. Certain other stipulations were contained in the lease, which was continued for five years by agreement dated 25th April 1860. On 14th January 1865 a memorandum of renewal was executed, which bore *inter alia* that "Mr Caird takes, and Colonel M'Douall lets to him, (1) the Blackground and Nine Acres, at £2 sterling per

Scotch acre—Colonel M'Douall making the drains therein work; and (2) Culmanbog, at the rent of £22, 10s. per annum. The lease of these is to be for nineteen years from Whitsunday 1866, and Mr Caird is to have immediate possession of these fields, paying in proportion for the time of his occupancy till Whitsunday 1866. (3) In the lease with these, and for nineteen years from Whitsunday 1866, are also included the houses and whole lands, game, and others, as heretofore possessed by Mr Caird, and at the present rents; also the possessions occupied by James Thorburn, William Fowler, Mrs Linwood, the Martins, and vacant house at the Square, at the rents at present derived therefrom. Mr Caird is also to have the farm-offices at Genoch, and Colonel M'Douall is to put them into a satisfactory state—Mr Caird paying 6½ per cent. interest on his outlay, and leading the tiles and paving-stones necessary. Colonel M'Douall reserves right to take clay from any part of the lands, allowing deduction for all land cut up or injured, until the same shall be filled up and made as good as it was before. And in the extension of the existing lease the plantation from the lodge to Droughdool Bridge is to be reserved. And Mr Caird is to kill out the rabbits in the ground behind the lodge, and not use the same for pasturing cattle. And, under the new lease, Mr Caird is to keep the buildings which were included in the original lease in repair; they being first put in good order, the expense of which is to be equally borne. (4) Mr Caird is not to preserve rabbits so as to increase them unduly; and if he does, Colonel M'Douall may send a person to kill them, on giving a week's notice on each occasion before doing so. . . . (8) The conditions in the former lease as to top dressing the Dovecot Park, and as to the expenditure of £80 by Mr Caird in improvements, have been fulfilled, and, with the stipulation as to gardener's services, are discharged."

Disputes having arisen between the parties, proceedings were instituted in the Sheriff-court of Wigtonshire, in the course of which a remit was made for examination and report on the drains, and this action was brought in the Court of Session by M'Douall, concluding "that under the memorandum of lease entered into between the pursuer and defender, dated the 14th January 1865, the pursuer is not bound to lay down new drains or to construct a new system of drainage on the lands called the Black-ground, and the nine acres let to the defender by the said memorandum of lease, nor to erect new buildings at the farm offices of Genoch, but that the pursuer's sole obligation in reference thereto was to put the drains which existed in the said lands at the date of the said memorandum of lease in working order, and to put the farm-offices then existing in a satisfactory state, and further, that the pursuer's obligations to that effect were not exigible until the term of Whitsunday 1866: And further, it ought and should be found and declared by decree foresaid that the pursuer was not and is not bound to put in a satisfactory state, or into a state of tenantable repair, the houses or possessions on the said estate, described in the said memorandum of lease as the possessions occupied by James Thorburn, William Fowler, Mrs Linwood, the Martins, and vacant house at the Square; but that the defender is bound to put and maintain in repair the said possessions, and the house, garden-houses, and houses, not being farm-houses, on the lands let to him, and that the pursuer is not liable for the expense of such repairs, except to the extent of £10 sterling; and further, it ought and should be found and declared by decree foresaid that the defender has no right to shoot or otherwise kill or take game or rabbits on the plantation between Genoch Lodge and Droughdool Bridge, reserved to the pursuer by the said memorandum of lease, and the defender ought and should be interdicted, prohibited, and discharged by decree foresaid from shooting or otherwise killing or taking game on the portion of the said estate not possessed by him under the said memorandum of lease, and from shooting or otherwise killing or taking game or rabbits on the said plantation; and it ought and should be found and declared that the pursuer or any member of his family, or any friend in company with him or them, or any friend staying at Logan House and having the pursuer's permission, have right and liberty to hunt, shoot, and fish on the lands over which the defender's right under said memorandum of lease of hunting, shooting, and fishing extends: And it further ought and should be found and declared by decree foresaid that the pursuer, as proprietor of the said estate of Genoch, has right to kill or destroy the rabbits thereon; and that the defender has no right to shoot, or otherwise kill, or take rabbits on the said estate, excepting and reserving his right to destroy rabbits on the lands let to him by the said memorandum of lease to the extent necessary for the protection of his crops and the due cultivation of the said lands: And the defender ought and should be interdicted, prohibited, and discharged from shooting, or otherwise killing or taking rabbits on the said estate, except to the extent foresaid: And further, it ought and should be found and declared by decree foresaid that the pursuer has right to the woods and plantations on the estate of Genoch, and is entitled by himself, or his servants, or others with his written authority, to thin the said woods and plantations when necessary, and to remove branches and brushwood therefrom; and to sell the said trees, branches, and brushwood, or otherwise dispose thereof as he may think proper, and to pasture cattle, and cut the grass in the said woods and plantations, and on the river banks on the estate of Genoch; And it should be found and declared that the defender has no right or title to the said woods or plantations under the said memorandum of lease, and that he has no right or title to cut trees, or remove shrubs, branches, or brushwood from said woods and plantations without the pursuer's consent, nor to take wood therefrom, excepting and reserving the defender's right to get from the pursuer wood from the plantations of Genoch so far as may be necessary to maintain fences and bridges on the lands let to him; and that he has no right to pasture cattle or cut grass in the said woods or plantations, or on the river banks, or on the ground behind the lodge of Genoch, being part of the lands let to the defender: And the defender ought and should be interdicted, prohibited, and discharged from cutting or removing the said trees, shrubs, branches, or brushwood from the said woods or plantations, or removing wood therefrom, excepting and reserving the defender's foresaid right to get from the pursuer wood for the said fences and bridges, and from pasturing cattle or cutting grass on the said woods, plantations, or river banks, or ground behind the lodge: And further, it ought and should be found and declared by decree foresaid that the defender has no right to rear, feed, or keep poultry, geese, guinea-fowls, tame or silver pheasants, pea-

fowl, and other domestic or domesticated birds in the woods and plantations of the estate of Genoch; and the defender ought to be interdicted, prohibited, and discharged from so rearing, feeding, or keeping the said birds in the said woods and plantations: Further, it ought and should be found and declared by decree foresaid that the defender has no right to occupy or possess, or to convert into cottages or otherwise alter, the mill in the corner of the sheep-park known as the Old Mill, and he ought to be interdicted, prohibited, and discharged from so possessing or interfering with the said Old Mill: Further, it ought and should be found and declared by decree foresaid that the park called the Dovecot Park, being part of the estate of Genoch, is not included among the subjects let to the defender by the said memorandum of lease, and that the defender has no right to occupy or possess the said park or otherwise, and if it shall be held that the said Dovecot Park does form part of the subject so let to the defender, it ought and should be found and declared by decree foresaid that the defender is bound to pay to the pursuer therefor during the currency of his lease a yearly rent of £15 sterling, or such other rent as shall be ascertained to be the true and just rent thereof; And it further ought and should be found and declared by decree foresaid that the annual rent payable by the defender during the currency of his present lease, for the lands or field called Longriggs, being part of the estate of Genoch, amounts to the sum of £71, 8s. sterling: And further, it ought and should be found and declared by decree foresaid that the defender is bound, in the cultivation of his said lands, to conform to conditions and regulations for the cultivation of the pursuer's estates, contained in a general form of lease prepared by the defender as the pursuer's agent, except in so far as the said conditions and regulations are inconsistent with the said memorandum of lease, and that he is liable to pay the proportion of supply, road money, and schoolmaster's salary falling on the said lands in terms of the said general form of lease."

The Lord Ordinary (KINLOCH) pronounced this interlocutor:—

17*th July* 1868.—"The Lord Ordinary having heard parties' procurators, and made avizandum, and considered the proceedings, conjoins with the present process a process of advocation between the same parties now before the Lord Ordinary, and advocated by interlocutor of this date: In the declarator finds and declares that, according to the sound construction of the minute or memorandum of lease between the parties, dated 14th January 1865, the pursuer is not bound to construct a new system of drainage on the Black-ground and Nine Acres fields, but is bound to put the drains existing on the said fields at the date of the said minute into efficient operation, even though at a cost exceeding that of reparation strictly considered, and involving a certain amount of new construction in the way of providing sufficient outfall or otherwise, whether within the said fields or beyond the same: Further, finds and declares that, according to the said minute or memorandum of lease, soundly construed, the pursuer is not bound to take down the then existing farm offices at Genoch, and to erect a wholly new farm-steading, but is bound to put the whole of said farm-offices into a tenantable and sufficient state, even though the cost of doing so should be greater than that of simple reparation, and should involve a certain amount of rebuilding or new erection: Finds and declares that the pursuer's obligations aforesaid took effect as at the date of the said minute or memorandum of lease: Finds and declares that by the said minute or memorandum of lease the pursuer let to the defender for the same space of time as the Black-ground, Nine Acres and Culmanbog, thereby leased, the house of Genoch, grounds, offices, and others, with the game, fishing, and other pertinents, as the same were possessed by the defender at the date of the said minute or memorandum as tenant of the pursuer under certain previous leases, but under exception of the plantation from the lodge to Droughdool Bridge, which was thereby reserved to the pursuer: And finds and declares that the defender had thereby conferred on him a right to shoot rabbits, not merely over the lands of which he became agricultural tenant, but over the whole grounds over which he had the right of shooting the same under his immediately previous lease of Genoch house and pertinents; but subject always to the qualification that the defender was not to preserve rabbits so as to increase them unduly, and that if he did so the pursuer should be entitled to send a person to kill them on giving a week's notice on each occasion before doing so: In the advocation, recalls the interlocutors of the Sheriff complained of, and decerns, and appoints the cause to be enrolled in order that the preceding findings may be carried duly into effect, and also the other points in the case disposed of by means of such inquiry or evidence as may be suitable."

Both parties reclaimed.

WATSON and GLOAG for M'Douall.

CLARK and BALFOUR for Caird.

The Court, on 18th December 1868, pronounced this interlocutor:—"Recall the interlocutor of the Lord Ordinary submitted to review, except in so far as it conjoins the advocation with the declarator: In the advocation, remit to the former reporter, Alexander Jardine, to report—(1) Whether the drains in the Nine Acres field could have been made to work efficiently by means of the old outfall, or without the new outfall recommended by and executed at the sight of the reporter; and (2) What was the cost of making the new outfall, and what would have been the expense of putting and keeping the old outfall in proper working order: Appoint each of the parties to lodge in process by the third sederunt day in January a plan, specification, and estimate of the operations which he considers necessary to put the farm offices at Genoch into a satisfactory state, in terms of the obligations in the lease: In the declarator, allow the pursuer a proof of the possession by the defender as tenant under the lease dated 28th March 1856, and the renewal thereof, dated 28th April 1860, in so far as regards the shooting of rabbits by the defender as tenant, and to the defender a conjunct probation, and oppoint the said proof to be taken before Lord Deas on a day to be afterwards named by his Lordship, reserving in the meantime all questions of expenses."

A proof was taken, and counsel were heard thereon.

At advising—

LORD PRESIDENT—When this case was last before us, on 18th December, we pronounced an interlocutor in which we disposed of some points in the advocation; and as to the declarator we allowed a proof of possession by the defender as tenant under the lease of 28th March 1856, and renewal of 25th April 1860, in so far as regards the shooting

of rabbits by the defender as tenant. The object of this was chiefly to clear up an ambiguity in the lease under which Caird held the subjects as to his right to shoot rabbits. The ambiguity arose in this way. The original lease of 1856 let to him, at a rent of £40, Genoch House, grounds and offices, game, fishing, and pertinents, as formerly possessed by him. The lease there being a lease of game, without mention of shooting and without mention of rabbits, it was a question whether Caird was entitled to a right to shoot rabbits co-extensive with his right to shoot game. But in this lease there was a reference to previous possession. This lease of 1856 having been renewed for a second period of five years in 1860, was about to come to an end when the existing lease was entered into on 14th January 1865. There again there is a reference to the former possession by Caird, and the missives let to him certain fields as an agricultural subject for nineteen years from 1866, which was the date of the expiry of the former as extended by the memorandum, and the third head runs thus—(*reads ut supra*).

The contention between the parties was, on the part of the defender, that he was entitled to kill rabbits on the estate of Genoch, and not merely on the subjects let to him for agricultural uses, just as he was entitled to kill game on that estate. On the other hand, M'Douall contended that the defender was not entitled to kill rabbits except on those lands let to him for agricultural uses, and it was for the purpose of clearing up these matters that the proof was allowed, in order to see what Caird's possession was under the previous lease, an appeal having been made in the missives of lease to that previous possession. The result, in my opinion, is to show that Caird had full right to kill rabbits all over the estate just as he had to kill game, as far as possession is concerned—that is, he was entitled, as to rabbits, to the whole rights of a sporting tenant in Genoch. I have no hesitation in holding that, under this lease of 1865, his right continued the same. Apart from possession, that is the more natural construction of the writing, but the possession put the matter beyond doubt. One thing was suggested, namely, whether, although Caird may be entitled under this lease of 1865, as explained by possession, to shoot rabbits all over the estate, he is entitled also to kill rabbits in any other way than by shooting. If such a distinction were made, it would be very serious. A sporting tenant, while never comtemplating killing game in any other way, must kill rabbits in some other way unless he is prepared for very serious results. He must keep down the rabbits, else he may expose himself to liability for damages, and no one can keep them down merely by shooting. Keeping down rabbits is a very difficult task. But there is no room for such a construction on the fair construction of the writing, and we must read the third head in this way—that there is let to the defender a right to the shooting, including rabbits, —and that puts him in the same position as any other sporting tenant under the lease. Then, he is not to preserve the rabbits so as to increase them unduly, and that must apply to the whole estate; and therefore there is here expressly laid on Caird, as tenant of the shootings, that which would lie on him without any express stipulation—an obligation of keeping the rabbits under on the whole estate. The rabbit warrens are in a peculiar position. It is not mentioned that this right to shoot rabbits extend over the warrens; but it may not be necessary to say anything as to this. The result of my opinion is, that the defender is entitled to be assoilzied from this conclusion.

Lord Deas and Ardmillan concurred.

Lord Kinloch—I am of opinion that, apart from the conclusions which regard the pursuer's personal privilege of shooting, by himself, his family, or friends having his permission (which has not been disputed), the pursuer Colonel M'Douall has failed to make good any of the conclusions of his summons as to shooting game or rabbits. I think it clear that the defender's right to game is not confined to the lands of which he is agricultural tenant. I have from the first considered the terms of his lease itself fairly to imply as much; and the inference becomes conclusive when the proof led is found to establish the possession previously had by him, which was very obviously not a possession confined to his own proper farm. By the express terms of his right to the game, it is declared that "Mr Caird is not to preserve rabbits so as to increase them unduly; and if he does, Colonel M'Douall may send a person to kill them, on giving a week's notice on each occasion before doing so." And this stipulation not only confirms the conclusion that the defender had right to the game beyond the bounds of his own farm, but fairly implies the most extensive power of killing rabbits, whether by gun or otherwise, necessary for keeping them down. The defender admits that over some parts of the estate—such as the rabbit warrens, and the cow and sheep parks, which were in use to be let with the rabbits—his privilege does not extend. And in some points of view it might be desirable to fix precisely his bounds. But the pursuer's summons raises no question of excess in an admitted right; it concludes for an absolute exclusion. If any question of excess occurs (which it is not to be anticipated will happen), the present judgment will not affect its determination.

After farther argument as to other points of the case,

The Lord President, after stating that the matter of the drains was still in the hands of the reporter, and that the houses had been put into tenantable repair by the defender, who did not claim to be reimbursed for that outlay—said that, as regarded the wood on the estate, he had from the first been satisfied that the disputes about cutting wood and brushwood were not suitable to be tried in a declarator. He spoke not of the competency, but of the expediency. It would be out of the question to give a declaratory judgment on all those disputes, which would in fact be to draw up a set of regulations for landlord and tenant during the lease. If one of the parties was aggrieved, he might apply to the Judge Ordinary to have the matter adjusted, and, if actual damage was sustained, the ordinary courts were open to the party suffering the damage. The conclusion as to the poultry was one of the same kind, and, with the others, must be dismissed. On the question as to the old mill, it would be necessary to have proof.

As to Dovecot Park, that stood in this position—that it was undoubtedly embraced in the lease of 1856, and was given without any separate rent, but with a stipulation that the tenant should spend £25 in top-dressing. That was done, though at what time did not appear. When the lease was renewed in 1860, this park continued in the lease

down to 1866, and the question was, whether in renewing the lease in 1865 it was meant to exclude the Dovecot Park, or to include it among the others? If nothing was said of it at all, it was difficult to say that it was not included in the subject let, looking to the terms of the document itself. No doubt it was said that it was impossible to include land at the present rent, when it had no present rent at all; but that was too critical—and what was meant was plainly this—that the whole subjects formerly possessed for 10 years were to be possessed for 19 years more, at the same rent as formerly. The 8th head of the missives made that more clear, for it said that the condition as to top-dressing was fulfilled and discharged, and that would have been unnecessary if the Dovecot Park was to be given over to the landlord and excepted from the lease.

On the question of Longriggs, it was necessary to have more proof. As to the final clause, this was not a set of regulations in the ordinary sense, —not a set of regulations to which leases were to refer, and which were to be incorporated in the leases. On the contrary, this was a form of lease to be adopted in cases where it was applicable, but not to be adopted into other contracts; and, looking to the clauses of the document, it was plain that they were not applicable to a case like this. This was a mixed lease, the agricultural part being a small part of the subjects let, the house and game being the principal portion. Therefore the defender must be assoilzied from the last conclusion.

The other judges concurred—LORD ARDMILLAN observing that the regulations bore to apply only to the estate of Logan, and plainly had nothing to do with Genoch.

Agents for Pursuer—Tods, Murray & Jameson, W.S.

Agent for Defender—G. Cotton, S.S.C.

Friday, June 25, 1869.

SECOND DIVISION.

METZENBURG *v.* THE HIGHLAND RAILWAY COMPANY.

Liability of Carriers—Conveyance of Goods—Second Carrier—Agent. Held (1) that a Railway Company or other carrier of goods, receiving goods to be carried beyond their own line, are responsible to the consigner for the safe conveyance of such goods by the second company or carrier in whose hands they are placed by the first; (2) that the liability of the first company does not cease by the goods reaching their destination, or being offered to the consignee; (3) that the second carrying company, on the consignee's refusal to take the goods, is bound to hold them for a reasonable time at the disposal of the consigner, giving him notice and an opportunity of taking them up, and that the carrier first receiving the goods is liable for any fault in these respects on the part of the second carrier to whom they are entrusted.

This action was brought in the Sheriff-court of Inverness-shire by Abraham Metzenburg, rag merchant, Inverness, with concurrence of Alexander Mowatt, rag merchant, Aberdeen, for his interest, against the Highland Railway Company, for £65, 7s. 7½d., being the value of thirty bales or bags of rags delivered by Metzenburg through his servant Fraser Rennie, at Inverness, to the defenders, on September 3, 1866, and addressed to Mowat to be delivered by them to Mowat at Aberdeen; and for £2, 10s. 7d., being the expense of sending Rennie to Aberdeen to endeavour to procure delivery of said goods, which was refused. It appeared that the goods were sent in the name of Rennie to Mowat, in the expectation that he would buy them; that on their arrival at Aberdeen, the Great North of Scotland Railway Company, upon whose line they had been carried from Keith to Aberdeen, offered them to Mowatt, who refused to take delivery of them; that the Railway Company then stored them in a warehouse of their own, and communicated the fact to the consigner and the defenders; that an arrestment was then, on 6th September, used in the hands of the Great North of Scotland Railway Company, at the instance of Pirie & Sons, of all goods, &c., in their hands belonging to William M'Donald, rag and stoneware merchant, Inverness; that the Railway Company, believing the said thirty bales to be truly the property of M'Donald, refused, on account of said arrestment, to give them up to Rennie, who called at the office of the company in Aberdeen to demand re-delivery, with a delivery-order from Mowat; that the rags were afterwards sold under a warrant obtained by the company from the Sheriff. It was pleaded for the defenders in the Inferior Court that the defenders were under no liability, in respect that they had performed their part of the contract between them and the pursuer by delivering the goods to the Great North of Scotland Railway Company at Keith, or, at all events, by that company's tender of the goods to Mowatt, and his refusal; and that that company having stored the goods, not as proper agents of the defenders, but as independent warehousemen, at the risk and expense of all properly liable, the defenders were released from responsibility; further, that they were entitled, before parting with the goods, to be released from the arrestment. The Sheriff-substitute (W. H. THOMSON), after finding in fact as above stated, held in law that the Great North of Scotland Railway, in carrying the said goods from Keith to Aberdeen, acted as the agents of the defenders; that an obligation still lay on the carrier in whose hands the goods were at the time of rejection by the consignee to take charge of said goods and redeliver them to the consigner or his representative on demand, the consignee persisting in his rejection of them; that the Great North of Scotland Railway Company were still in this respect agents of the defenders; and that, they having wrongfully refused re-delivery to the pursuer, the defenders are liable to pursuer in the value. He accordingly decerned against defenders for £65, 7s. 7d.

He added the following note:—

"The Sheriff-substitute has no doubt, on the proof (1) that the goods in question were *bona fide* purchased from M'Donald by the pursuer, and were his property, although sent by rail in name of his servant, Fraser Rennie. Apart from the general proof of purchase by the pursuer, the said Rennie, at an early stage of the case, lodged a minute in process repudiating any right of property in them.

"There can be little doubt, in the second place, that the Great North of Scotland Company acted wrongfully in refusing to give up the *goods* to Rennie. He, in whose name they had been sent, appeared at their office, stating that he possessed written authority from Mowatt, the consignee, to