The defenders (with the exception of Bailies Stirling and Somerville) reclaimed.

SOLICITOR-GENERAL and HALL for them.

SCOTT for pursuer.

W. F. HUNTER for defenders Stirling and Somerville.

The Court adhered, finding the reclaimers liable in expenses.

Agents for Reclaimers—Maconochie & Hare, W.S.

Agent for Pursuer—Wm. Officer, S.S.C.

Agent for Defenders Stirling and Somerville—John Galletly, S.S.C.

Saturday, July 9.

SECOND DIVISION.

MORE, PETITIONER.

Process—Appeal—Service. Procedure under section 41 of the Titles to Land Consolidation Act 1868, where competing petitions for service have been appealed to the Court of Session.

Alexander, Agnes, and George More died infeft in the lands of Monkrigg and others, in Haddingtonshire, intestate and unmarried. Alexander, the last survivor, died on 19th June 1869. His nearest relation was the petitioner James More, of the custom house, Kirkcaldy. He accordingly came to Monkrigg, took possession of the house, and acted as chief mourner at the funeral. At the meeting of relations of the deceased thereafter, his agent claimed for him, without dispute, the characters of heir of line and of conquest to the deceased, and his brother and sister George and Agnes. Careful searches were made in the repositories of the deceased, and various family papers, certificates of births, &c., were found. The petitioner was decerned and confirmed executor of the deceased Alexander More in September following, and for several months continued in undisturbed possession of the property. On presenting petitions for service to the Sheriff of Chancery, it was found competing petitions to all the estates had been lodged by a claimant John More. Both claimants were agreed, and the family papers and birth registers proved, that William More, grandfather of Alexander, George, and Agnes More, had six sons and one daughter, viz., George, Isabel, James, William, David, John, and Thomas. George, the oldest son, came to Edinburgh, and became a baker in West Richmond Street. He amassed considerable property, which was increased by his children, and as they all died, as above stated, intestate and unmarried, the competition for their property arose.

James More senior, father of the petitioner, went to reside at Pathhead towards the end of last century; and the petitioner claimed the heritage and conquest of the Mores of Monkrigg, on the ground that they were the children of the oldest son of William More of Common Park, and that he was the only surviving son of the second son, viz. James More senior. John More was grandson of David the fourth son, and he opposed, asserting that James More senior was older than George More senior; that the petitioner was not a son of James More senior; and that the relatives of Alexander More nearer in blood than himself were all dead. On his application the estates were sequestrated. The Sheriff of Chancery conjoined the respective petitions, and granted both parties a proof, but before the proof began John More took the case, by appeal under the 41st section of the Titles to Land Consolidation Act of 1868, to the Second Division. The Court appointed a proof to be taken before one of themselves on June 27th, and appointed John More, as the earliest petitioner and as appellant, to lead in the proof. On June 22d John More lodged a minute, withdrawing from the competition.

The proof accordingly proceeded in absence, before Lord Neaves.

GLOAG and LEES for the petitioner.

The proof, after certification, appeared in the single bills on July 7th, and was sent to the Summar Roll, the case being already in it. Counsel having been heard, the Court unanimously held the petitioner's case fully made out, and in terms of the 41st section of Titles Act of 1868, remitted to the Sheriff of Chancery to serve the petitioner in the characters craved for.

Agents for Petitioner—Gillespie & Bell, W.S.

Tuesday, July 12.

FIRST DIVISION.

BOYLE *v.* HUGHES.

Agreement—Sale—Special Warranty. A agreed to supply kelp to B of the same kind and quality as he had supplied to him in a previous year. *Held* that this special warranty did not import that the kelp must contain an equal quantity of iodine, but merely that it was gathered on the same shore and treated in the same manner as the former cargo.

This was an action at the instance of Manus Boyle of Dungloe, Ireland, against F. H. Hughes, manufacturing chemist at Borrowstounness, to recover the sum of £329, 15s. 10d., being the balance due for kelp supplied to the defender.

The parties have had several previous dealings in kelp, and in 1868 Boyle supplied Hughes with a cargo of kelp per a vessel called the "Flora Kelso." By letters dated in March and July 1868, the pursuer agreed to furnish to the defender cargoes of "such kelp as you supplied per 'Flora Kelso' last year," at the price of £6, 14s. per ton of 21 cwts., to be delivered at Borrowstounness. Accordingly the kelp was delivered and certain sums paid to account of the price, and the present action is for the purpose of recovering the balance due.

The defence was that the kelp was disconform to order, and was of no value to the defender, in respect that it did not contain a sufficient percentage of iodine.

The defender alleged, "in point of fact, the kelp sent by the pursuer in August and September 1869 by the 'Albion,' 'Flora Kelso,' and 'Ada,' was entirely disconform to contract, and was not nearly equal in quality to that sent by the 'Flora Kelso' in 1868, as stipulated for. The value to the defender, as already explained, consists in the iodine yielded. The kelp per 'Flora Kelso' of 1868 yielded 20½ lbs. of iodine per ton of 20 cwts., whereas the kelp above mentioned sent in 1869 yielded only, as shewn by analysis, as follows:—

Kelp, per 'Albion,' . . .	10·67 lbs.
Do. per 'Flora Kelso,' of 1869	12·29 ,,
Do. per 'Ada,'	8·93 ,,

thus yielding on an average only one-half the amount of iodine yielded by the sample or pattern