this we give no judgment either on the objectionableness of the deed without the amendment, or on the effect of the amendment to render it valid. We have no parties before us to render such a judgment effectual, and our present intervention cannot prejudice anyone not a party before us. All that is implied in the proceeding is that the case appears to us a fair one for the party being allowed to try the effect of the proposed amendment, and therefore obtaining from us the authority without which he would be excluded from the attempt.

At the same time, as what is proposed may as easily be done in the record office as without it, I concur in thinking it proper to avoid, as we should always do, the deed being removed from the register, by granting authority to the petitioner to obtain access to the deed within the record office, to make the alteration there. This will equally serve the purpose.

The Court pronounced the following interlocutor:—

"*Edinburgh, 28th November* 1871.—The Lords of Council and Session having considered the petition of Mrs Eliza Young or Caldwell, widow of the late George Caldwell, sometime stationer and printer, and afterwards residing at Sandyford, near Paisley, and David Semple, writer in Paisley, and having heard counsel for the petitioners and for the Lord Clerk-Register,—grant warrant and authority to the Keeper of the Register of Deeds, Probative Writs, and Protests, on receiving back from the petitioners the extract of the deed after mentioned already issued to them, to give the petitioners or their agent access to the disposition and settlement mentioned in the petition, *videlicet*, a disposition and settlement executed by the said deceased George Caldwell on the 19th March 1870, in the hands of the said Keeper, for the purpose of allowing the writer of the said disposition and settlement, at sight of the said Keeper, to add at the end of the testing clause thereof the words specified in the prayer of the petition, *videlicet*, 'Declaring that the witnesses hereto are David Semple, writer in Paisley, and David Smith Semple, his clerk, and writer hereof;' and appoint a copy of this deliverance to be added to every extract of the said disposition and settlement that shall be issued by the said Keeper, and to be authenticated by the said Keeper as part of the said extract."

Agent for Petitioners—A. Kirk Mackie, S.S.C.

Saturday, November 18.

HENDERSON *v.* CLARK AND OTHERS.

Reparation — Wrongous Imprisonment —Diligence— Overcharge—Personal Diligence Act, 1 *and* 2 *Vict. c.* 114—*Error.* In an action for wrongous imprisonment against (1) the incarcerating creditor; (2) the agent employed by her; (3) the sheriff-officer who executed the diligence; (4) the Sheriff-Clerk-Depute who signed a warrant of concurrence,—*held* that it was not a relevant ground of liability against the defenders, other than the creditor, that diligence had be done for a larger sum than was due, seeing that it was not averred that they were aware of the overcharge, or that they were in such a position that they ought to have been aware of it.

The execution of the charge was written partly on the extract-decree, and, as the paper was full, continued on a separate sheet, stitched up with the former, and connected by a catchword. On the latter sheet was written the minute of application for warrant to imprison, and the fiat thereon. *Held* that this was sufficient compliance with the terms of the Personal Diligence Act, §§ 11 and 14.

Held that a clerical error in the recorded execution did not invalidate the diligence.

This was an action of damages for wrongous imprisonment by Robert Henderson, baker at Stanley, Perthshire, against Elizabeth Clark; James Rollo, sheriff-officer, Perth; Adam Mackenzie, Sheriff-Clerk-Depute, Perth; and Robert Mitchell, solicitor, Perth, concluding against them, conjunctly and severally, for £200 damages.

The circumstances out of which the action arose were as follows:—

On 1st April 1868 Elizabeth Clark gave birth to an illegitimate child. She raised an action of filiation and aliment in the Sheriff-court of Fife against the present pursuer Henderson, and on the 10th February 1869 obtained decree against him for £2 of in-lying charges, and £4, 10s. yearly of aliment, payable quarterly and in advance, commencing the first quarter's payment at the 1st April 1868, and so forth until the child should attain the age of ten years complete. On the 16th March 1869 she obtained decree for £11, 10s. of taxed expenses.

The child died on 27th March 1869. Henderson appears to have left Scotland about the date of the decree. He came to Stanley in August 1870.

On discovering his residence, Elizabeth Clark instructed an agent in St Andrews to enforce payment. The St Andrews agent employed Mr Robert Mitchell, writer in Perth, to obtain the necessary warrant of concurrence from the Sheriff-clerk at Perth, and to charge Henderson on the decree. Mitchell employed Rollo to execute the charge, which was served on Henderson on the 27th January 1871. The schedule was in terms of the decree; it did not limit the amount of aliment to a certain sum as due at the date of the death of the child.

The execution of the charge, which was recorded in the Sheriff-court books at Perth on the 3d March 1871, contains an error,—the date of the decree for expenses being written "18th," instead of "16th" March. The execution was partly written on the last page of the extract-decree, and partly on a separate sheet, stitched up and connected with the former by a catch-word. Upon this latter sheet Mr Mitchell endorsed a minute of application for warrant to imprison, to which Mr Mackenzie, as Sheriff-Clerk-Depute, subjoined his fiat.

Henderson was unable to pay the sum contained in the charge, which, in consequence of the death of the child two years before, was £9 in excess of what was due. He was in consequence apprehended by Rollo on the 4th March 1871, and incarcerated in the prison at Perth, where he remained till he was liberated on the 9th.

On the 17th of the same month he raised the present action. He founded on the fact that diligence had been done for a sum in excess of what was due. He stated that he was not aware of the death of the child till his imprisonment, and that had the charge and incarceration been only for the amount due, he would, or at least might, have been able to pay. The sum due was in fact paid by him

to Elizabeth Clark in the course of the present action. He did not aver knowledge on the part of the defenders, other than Clark, of the death of the child.

He also founded on certain alleged irregularities in the diligence; and, in particular, (1) that the fiat on the application for warrant to imprison was not written on the extract-decree as it should have been, in accordance with what he maintained was the true construction of the Personal Diligence Act, §§ 11 and 14; and (2) that the recorded execution of the charge was disconform to the warrant on which it proceeded.

The Lord Ordinary (Jerviswoode) pronounced the following interlocutor:—

"1*st November* 1871.—Assoilzies the defender Adam M'Kenzie from the whole conclusions of the summons, and decerns: Finds him entitled to expenses: Farther, approves of the issue, No. 25 of process, as now adjusted and settled, and appoints the same to be the issue for the trial of the cause."

The issue was in the following terms:—

"Whether, on or about the 4th day of March 1871, the defenders, or any and which of them, wrongfully apprehended and incarcerated the pursuer, or wrongfully caused him to be apprehended and incarcerated, to the loss, injury, and damage of the pursuer?"

Damages laid at £200.

Rollo and Mitchell reclaimed.

Dean of Faculty and Scott, for them, argued that there was no relevant charge against them, and that they should be assoilzied as well as Mackenzie. An agent is liable only to his own employer, except for delict, or some irregularity on the face of the proceedings. There was no such irregularity as to invalidate the diligence.

Rhind, for the pursuer, referred to *Stewart*, July 6, 1784, M. 13,989; *Wilson*, July 23, 1847, 9 D. 7, and Session Papers; *Carne*, June 25, 1861, 13 D. 1253, see 5th issue.

At advising—

Lord President—As regards the first ground of action, the overcharge, that is certainly a perfectly relevant ground of damages against Elizabeth Clark. The money was due under a decree obtained before the Sheriff-court of Fife, and the pursuer was charged for aliment for a considerable period after the child who was to be alimented was dead. That is a matter on which there could be no mistake on the part of the woman. But whether the agent employed by her, and the Sheriff-officer who executed the charge, are liable because diligence was done for a larger sum than was due depends on whether they were cognisant of the overcharge, or at least were in such a position that they ought to have been cognisant. We must assume that they had not the slightest knowledge of the overcharge. I have heard of a client being responsible for his agent, but it is quite new to hold the agent responsible for the client, where it is not alleged that the agent was in the knowledge of the wrong. On the first ground, then, the action fails against Mitchell and Rollo.

The other grounds are purely technical. It is necessary to look minutely into the diligence. It became necessary for Elizabeth Clark to make her decree effectual within the Sheriffdom of Perth. Her agent proceeded, in terms of the Personal Diligence Act, to request the concurrence of the Sheriff of Perthshire. For this purpose he presents the extract-decree to the Sheriff-Clerk-Depute, and craves warrant of concurrence. That application is written immediately after the extract-decree, and then the fiat is subjoined. Then follows the execution of the decree. That execution contains a clerical error, one of the dates of the decree on which the charge was given being written 18th March instead of 16th March. The charge served on the pursuer has the date accurate. That no injury could arise to the party charged from a clerical error in a document which never comes to his notice, though a necessary step in the diligence, is perfectly clear. This objection fails.

The next point is this—The execution, and what follows thereon, viz., the minute craving caption and fiat upon it, are written upon a separate sheet of paper from the extract-decree. It is material to observe that the execution begins on the same sheet as the extract-decree. This sheet is exhausted, and the execution is contained on a second sheet, connected by a catch-word with the former, and stitched together. I do not see that there can be any room for misuse of the fiat. What the parties did was reasonable in itself, and not inconsistent with the provisions of the Personal Diligence Act.

The only matter which remains is the objection stated against the Sheriff-Clerk-Depute. This cannot be disconnected from what was done by the agent and messenger. If there is nothing to subject them in liability, still less is there anything to subject the Sheriff-Clerk-Depute in liability for merely proceeding on what had been done by them.

The whole defenders must be assoilzied except Elizabeth Clark.

The other Judges concurred.

The Court recalled the interlocutor of the Lord Ordinary, except in so far as it assoilzies the defender Adam Mackenzie; assoilzied the defenders James Rollo and Robert Mitchell, with expenses; and *quoad ultra* remitted to the Lord Ordinary.

Agents for Pursuer—Menzies & Cameron, S.S.C.
Agent for Defenders—George Begg, S.S.C.

Tuesday, November 21.

THE GREAT NORTH OF SCOTLAND RAILWAY CO. *v.* THE HIGHLAND RAILWAY CO.

Arbitration—Subject of Reference. Where two railways were authorised by Act of Parliament to maintain a joint station at their joint terminus, and to appoint a joint committee for its management; and where a question arose between them as to the payment of wages to an additional porter employed at the said joint station in terms of a resolution of the joint station committee, but which employment was averred to have been recalled by one of the Companies, by a letter from their secretary addressed to the manager of the other Company,—*held* that the question, Whether the recall had been validly made, and the consequent liability for wages, fell under a clause in the statute referring to arbitration all disputes arising in regard to the construction, arrangement, management, or use of the said joint station, or in regard to any agreement as to the matters foresaid, or any of them, or otherwise in relation thereto; and that consequently the action was excluded.