at such time or times and in such manner as he may deem most expedient in the interests of the society, and for the speedy liquidation of its affairs, and, under reservation of all questions as to the liability of borrowing members in their capacity as members or contributories, to discharge the bonds and dispositions in security of borrowing members on receiving payment of the respective advances, less the contributions (including profits) standing at the credit of the shares assigned in the bonds, interest at the rate of five pounds per cent. per annum to be charged and allowed as follows—viz., To be charged on the full amount of each advance until 14th January 1884, and on the other side interest to be allowed on the sums at the credit of the shares assigned in the bonds at and from time to time since 30th November 1882 until said 14th January 1884, and from and after the last mentioned date interest to be charged on the balances due by the said borrowing members arising after deducting the sums at the credit of the shares assigned in the bonds from the amount of the said advances until payment;" (9) and (10) To authorise the liquidator to appoint a law-agent, and to pay out of the funds of the society the cost of his appointment and of the winding-up of the society.

Answers were lodged for several members of the society, but it is only material to notice those lodged for David Agnew and others, and for James Glen.

Agnew represented the class of borrowing members of the society, who maintained that they could only be placed on the list of contributories for payment of the balance of the advances made to them by the society. They stated their belief that a call would be unnecessary, and that in any event there was no information before the Court to warrant the liquidator in asking the powers craved under the third head of the prayer. As regarded the eighth head, these respondents contended that the borrowers could not be compelled to pay their loans otherwise than by monthly instalments or subscriptions, as provided in the rules and the bonds and dispositions in security, unless their contributions fell into arrear; that they were not in arrear, and therefore submitted that they could not be called on to pay their advances otherwise or sooner than contracted for. Further, these respondents concurred with the liquidator that in the event of its being necessary for them to make payment of their balances, power should be given to him to accept payment at such times and in such manner as they might mutually arrange.

James Glen was entered on the list as an investing shareholder in respect of seven shares, and a borrowing shareholder in respect of eight shares, which were assigned to the society in respect of a loan for £200.

The respondent stated that he had offered to pay the sum due under the bond, under deduction of the instalments on all the fifteen shares already paid by him, with interest, and submitted that the liquidator was therefore not entitled to enter him in the list of contributories, or to make any call upon him; or otherwise, that his name should be taken out of the list of investing members and inserted in the list of borrowing members in respect of his whole fifteen shares.

The Court on 24th June fixed the 4th of July as the date by which the creditors must prove their debts or claims, and granted the prayer of the note *quoad* the fourth, fifth, and ninth branches thereof, and thereafter on 25th June, after hearing counsel, pronounced this interlocutor, which was signed on 3d July:—

> "The Lords having heard counsel for the official liquidator and the respondents Agnew and others and Glen, allow the official liquidator to amend the 6th and 8th heads of the prayer of his note as proposed at the bar, and grant the prayer of said note in terms of said two heads as amended: . . . . . *Quoad ultra* settle the list of contributories of the Greenock Property Investment Society *quoad* the respondents named and designed in the answers Nos. 35 and 36 of process, and that in the manner specified in the list appended to the said note, and find no expenses due to or by either party, and decern."

Counsel for Liquidator — R. V. Campbell. Agent—W. B. Glen, S.S.C.

Counsel for Agnew and Others — Strachan. Agents—Miller & Murray, S.S.C.

Counsel for Glen—Dickson. Agents—Duncan & Black, W.S.

Thursday, July 3.

SECOND DIVISION.

[Sheriff of Stirling, Dumbarton, and Clackmannan.

MUIRHEADS *v.* NORTH BRITISH RAILWAY COMPANY.

Reparation—Railway—Train Overshooting Platform—Contributory Negligence.

A passenger train in drawing up at a station where it was necessary to change carriages for a branch line, slightly overshot the platform. It was the rule of the company that in such a case the train should be put back, but some of the passengers having begun to descend, this was not done. A passenger for the branch line, in the part of the train which overshot the platform, after waiting to see if the train was to be put back, but without asking that that should be done, descended from the train, but in doing so miscalculated the distance and severely sprained her ancle. The place at which her carriage had stopped was a level-crossing over a road which was hard and level and flush with the rails. In an action by her for reparation for the injury—*held* that the injuries resulted from pure accident, and were not due to the fault of the defenders.

Mrs Jane Muirhead and her husband raised this action in the Sheriff Court of Clackmannanshire against the North British Railway Company for compensation for injury sustained by her from an accident on their line at Cambus Station, which she alleged to have occurred by their fault or negligence. The company denied fault, and maintained that assuming fault on their part there was contributory negligence on the part of the female pursuer.

The facts of the case as admitted or proved were as follows:— The pursuers were third-

class passengers by an afternoon train from Causewayhead to Menstrie, on Friday 28th September 1883. In order to reach Menstrie it was necessary to change at Cambus. When the train drew up at Cambus it slightly overshot the platform, and the carriage in which the pursuers were seated, which was in the front of the train, stopped opposite the gates of a level-crossing which immediately adjoined the end of the platform. The carriage was one divided into compartments. In the pursuers' compartment of the carriage, besides a son who was travelling with them, and themselves, there was only another person—a man named Knox. When the train stopped, the passengers, including some from the other compartments of the third-class carriage in which the pursuers were, commenced to get out of the train. The pursuers and Knox waited a short time before beginning to get out, to see if the train would be moved back, but they did not call out to any of the officials to have that done or for assistance in alighting. Knox then stepped first out of the carriage, and was followed by the male pursuer, who on reaching the ground turned round to help his wife, who was following him. She came out of the carriage with her face turned outwards. She put one foot on the first footboard and then the other foot on the lower one, and then stepped on to the ground. In making the last step she miscalculated the distance, and sprained her ancle on coming to the ground. The height from the floor of the carriage to the ground was 4 feet 3 inches, and that from the lower footboard to the ground 26 inches. The ground where she came out was a smooth and level road, and the rails were flush with the ground. There was no bank or ditch. The train moved off on its journey immediately after the pursuers had left it. The female pursuer was in consequence of the accident confined to bed, and was unable to walk or go about for six weeks.

At the station there was a board erected with "Change for Alloa and Menstrie;" and as the train was drawing up at the platform a porter called out these words on the arrival of every train. He did so while walking from the head of the train towards the van at the other end. On this occasion he was heard to do so by the female pursuer but not by her husband.

It was proved that when a train overshot the platform it was the duty of all the officials present to warn the passengers to keep their seats till the train was moved back. This was more particularly the office on this occasion of the ticket-clerk, whose duty it was to cross over from the other side where the booking-office was, and be on the platform when the train came in. On this occasion he was, however, late in crossing, and came through between the carriages after the train had stopped and the people were beginning to get out. When the train stopped the engine-driver called out to the passengers to keep their seats. He was not heard by the pursuers. The engine-driver could not put back the train without a signal from the guard, which was not given, because passengers had begun to get out, which would have made it dangerous to do so. There was only one servant of the company, the porter, on the platform when the train arrived, who could be recognised by his uniform. The ticket-clerk was not in uniform. The engine-driver attributed his having overshot the platform to the fact that some waggons containing draff had been shunted over the rails shortly before, and that the drippings from them had made the rails slippery. All the company's witnesses united in saying that had the pursuers requested to have the train put back it would have been done.

The Sheriff-Substitute (TYNDALL BRUCE JOHNSTONE) found that the level-crossing was not a safe or convenient place at which to alight; that the defenders were in fault in not obeying their own rule to warn passengers to keep their seats till the train was put back, but that there was contributory negligence on the part of the female pursuer in leaving the carriage in the manner in which she did, and in doing so without calling for assistance. He therefore assoilzied the defenders, but without expenses.

"*Note.*—The first question raised by the pursuer's claim is, whether or not there was negligence on the part of the defenders on 28th September last, in the management of the train by which pursuer travelled? The Sheriff-Substitute has come to the conclusion that there was. Part of the defenders' implied contract with the pursuer was, that the pursuer should have reasonable facilities given to her for alighting at Cambus Station, where she required to change carriages. The train, however, or rather that part of it in which the pursuer was travelling, overshot the east end of the platform and came to a stand above a level-crossing. That circumstance did not of itself necessarily infer negligence, but it imposed an immediate and important duty upon the defenders, viz., to inform the passengers in the overlapping part of the train that it would be put back to the platform, and to warn them to keep their seats until that was done. The reason for this is obvious, for this crossing, while it might not perhaps be a dangerous place for some people to alight at, was certainly not a convenient or safe place for the pursuer or any woman to get out, the ground being over 4 feet below the level of the carriage floor. Mr M'Laren, general manager of the North British Railway Company, stated in his evidence that there is a general order given to the servants of the company at every station on the defenders' system to the effect that when part of a train overshoots a platform, the passengers in that part are to be warned to keep their seats until the train is put back. A similar rule is spoken to by Mr Gillespie, general manager of the Caledonian Railway, as being in force on that Company's system. The order is a very proper and necessary one, but on this occasion it was not complied with, the reason apparently being that the person who usually performed the duty (Macintosh) was too late in reaching the north platform. In his examination he says—'It was also part of my duty to tell the passengers to keep their seats if any of the carriages overshot the platform. I did not do so on this occasion, because when I got across the passengers were getting out of the train. Nobody was there to tell the passengers to stop in. I was a little late in getting to the north platform on this occasion.'

"Primrose, the engine-driver, also says—'He (Macintosh) was not in time to tell the passengers to keep their seats, as he was a little late.' The

Sheriff-Substitute cannot regard the warning said to have been given by the engine-driver as an equivalent to proper notice from the station authorities, even if it was heard by the pursuer, and the Sheriff-Substitute thinks it evident that it was not heard. The pursuer therefore, although invited by the defenders to change her carriage at Cambus (for she swears that she heard the porter call out as usual to change for Alva and Menstrie), received no intimation from them that the train would be put back, and she received no offer of assistance from them in her attempt to alight at the crossing. This, in the Sheriff-Substitute's opinion, constituted sufficient negligence on the part of the defenders to make them liable, provided there was no contributory negligence on the part of the pursuer herself; and this leads to the second question, viz., whether such contributory negligence existed? The Sheriff-Substitute has come to the conclusion, though not without difficulty, that contributory negligence has been proved against the pursuer, and that therefore she cannot recover damages. Her negligence, he thinks, consists in the fact, that although she saw or might have seen that her carriage had passed the platform, she did not make any effort to have this mistake rectified by calling out, or by getting her husband or some one else to communicate with the station officials. It was argued that no official seemed to be within hail, there being nothing to distinguish the ticket-clerk from an ordinary traveller. That no doubt is true, so far as the ticket-clerk's dress was concerned, but he was engaged within a few yards in taking tickets from the other passengers, and that ought to have sufficiently identified him as a servant of the company. The Sheriff-Substitute can hardly doubt that a request to him, or even to the engine-driver, would have prevented the train starting until it had been put back, and an opportunity given to the pursuer of alighting at the platform, but however this may be, had such a request been made it would have put the pursuer in a different position in bringing this claim of damage. The pursuer, moreover, does not appear to have used proper precautions in leaving the train. Neither she nor her husband appear to have made a remark even to each other on the position of the carriage before getting out. In her cross-examination she says—'My husband opened the carriage-door and got out without saying anything to me. I went out after him. I thought it was the place to get out, and I did not look for any assistance.' 'I miscalculated the height of the lowest footboard from the ground. I thought the step would have been quite easy. I never thought on the distance I had to step.' Now, the pursuer from her own account was not a novice in railway travelling, and she states that she had herself been asked on one occasion to keep her seat till the train in which she was travelling was put back to the platform, though it does not appear whether or not this occurred at Cambus.

"On the whole case, the Sheriff-Substitute is not satisfied that the pursuer used all the means within her reach to enable her to leave the defenders' train safely. It was no doubt incumbent on the defenders to give her an opportunity of alighting from the train at the station platform and not on the level-crossing, but that did not relieve the pursuer herself from using all reasonable precautions to ensure her own safety. The Sheriff-Substitute does not think she did so. It is not without some hesitation and regret that the Sheriff-Substitute has come to this conclusion. It is evident that pursuer has suffered very considerably from the accident, and she appears to have received but scant courtesy from the defenders' servants at Cambus after she was injured. It is also a circumstance not to be lost sight of, that rustics like the pursuer and her husband are not apt to assert themselves so as to command the attention of railway officials in the same manner as some other classes of the travelling public, and on this account, no doubt, their wants do not receive the same attention.

"The cases quoted at the debate, on which the defenders chiefly relied, were English, and although some of the facts bear a striking resemblance to those of the present case, there are also important points of difference.

"The first of these cases is *Siner* v. *The Great Western Company*, February 9, 1869, 4. L.R. Exch. 117, also reported in Cox's Joint Stock Companies Cases, iii., 205.

"In that case the Court held that the accident was the result of the voluntary act of the plaintiffs themselves. Although similar to the present in many respects, the passengers do not appear to have been invited to leave the train, and there is no evidence that the railway company had given any instructions to their servants which had been disregarded.

"In *Owen* v. *Great Western Railway Company*, May 12, 1876, 36 Law Times, Queen's Bench, page 850, the circumstances were again somewhat similar, but it was held that there was no evidence of negligence on the part of the company. In that case it was pointed out, that had the pursuer called for assistance and been refused, the company might have been held liable.

"The case of *Potter* v. *The North British Railway Company*, June 7, 1873, 11 Macph. 664, seems to be the most recent Scottish authority applicable to this case, and the Lord President's opinion there contains important *dicta* on the subject of negligence. The case, however, differs from the present case in one important point, viz., the accident occurred in the dark, and the pursuer presumably did not know that the train had overshot the platform." . . .

The pursuers appealed to the Court of Session, and argued—The defenders were in fault in not putting back the train, and in default of having done so in not rendering assistance to pursuers in alighting. The invitation to alight was given in the call to "change," and even without that, by the display of the board bearing notice to change. Having made the mistake of overshooting, they were bound to take every precaution against accident arising from their own mistake—*Potter* v. *North British Railway Co.*, June 7, 1873, 11 Macph. 664, *per* Lord President, 667. The pursuers were bound to descend to avoid being carried beyond their destination. This distinguished the circumstances from those in *Siner* v. *Great Western Railway Co.*, L.R., 4 Ex. 117, and brought them under *Foy* v. *London and Brighton Railway Co.*, where the company was held liable for a similar accident in weaker circumstances than the present, for the station there was a terminus.—*Foy* v. *L. B. and S. C. Ry. Co.*, 18 C.B. N.S. 225, and Brown & Theobald on Railways, 309.

Defenders' counsel were not called upon.

At advising—

LORD YOUNG—We do not think it necessary to call for any answer in this case. It has been very distinctly and ably stated by Mr Shaw; and I am of opinion that no negligence has been established against the defenders. I am not disposed to proceed on the ground of contributory negligence inferring legal liability for this unfortunate accident on the part of the pursuers. Railway companies are, as a rule, reasonably attentive to the safety and convenience of their passengers; they provide platforms and other luxuries and conveniences previously unknown, and they are usually very attentive to see that a train stops at the platform in order that their passengers may have the benefit of the convenience which they have provided. On this occasion the train overshot the platform, and, as always happens in such cases, passengers meaning to leave the train then immediately proceeded to descend. I suppose experience has taught those in charge of trains that it is better to let them do so than to bring the train back to the platform, for the latter course involves putting the train in motion when the people are getting out. The female pursuer here saw no danger in alighting—and apparently there was none—and her husband, who was with her, saw none, but unfortunately in doing so she miscalculated the distance and sprained her ancle. But it is possible to do that in descending from a railway carriage in circumstances of quite reasonable safety without fault on the part of the railway company, and the pursuers must show that she did so in circumstances which were not those of reasonable safety. But it is the case that they appeared so to herself and her husband. I should be the furthest in the world from saying that railway companies should not continue to do as they have been doing in taking care that trains do stop at the platform, so that the safety and convenience of passengers may be provided for, and accidents, if possible, prevented, for I think it only reasonable that they should do so. The question before us is, Is there here negligence leading to liability on the part of the company under these circumstances? I am of opinion that there is not, and in arriving at the same conclusion as the Sheriff-Substitute—that is, liberating the defenders from liability—I would put it, not on the ground of contributory negligence, but on the ground that the accident was not attributable to fault on the part of the defenders.

LORD RUTHERFURD CLARK and LORD KINNEAR concurred.

The LORD JUSTICE-CLERK and LORD CRAIGHILL were absent.

The Court pronounced this interlocutor—

"Find that the injuries sustained by the pursuer are not attributable to the fault or negligence of the defenders: Therefore assoilzie the defenders from the conclusions of the action, and decern," &c.

Counsel for Pursuer (Appellant)—Brand—Shaw. Agent—David Barclay, Solicitor.

Counsel for Defenders (Respondents)—Comrie Thomson—MacWatt. Agents—Millar, Robson, & Innes, S.S.C.

Friday, July 4.

FIRST DIVISION.

[Lord Fraser, Ordinary.

THE LORD ADVOCATE (ON BEHALF OF THE COMMISSIONERS OF INLAND REVENUE) *v.* TAYLOR AND OTHERS (MILLER'S TRUSTEES).

Revenue—Legacy—Duty Free—Special Fund—Act 36 Geo. III. cap. 52, sec. 21.

A testator directed the whole of the legacies bequeathed by his settlement to be paid free of legacy-duty. There was no special fund out of which he directed legacy-duty to be paid, and the estate did not prove sufficient, after meeting all claims, to pay the legacies in full. There was thus no residue. The trustees in settling for legacy-duties, paid duty on the amount of the composition available for legacies after deducting the duty itself, but the Crown maintained that the duty ought to have been calculated on the whole composition available for legacies, without deducting the amount paid for legacy-duty, and therefore claimed legacy-duty on the sum deducted for legacy-duty. *Held* that the principle contended for by the Crown was *right*, and that the claim must therefore be *sustained*.

Legacy-Duty—Evasion of Duty.

A widow whose husband had made certain provisions for her by his settlement claimed her legal rights, but ultimately agreed to discharge them on the footing of receiving the testamentary provisions and a sum in addition thereto. The amount she thus took was less than her legal rights. *Held*, that while all the widow took was free of duty, the benefit of her transaction with the estate was not available, in a question with the Crown, to relieve the legatees from any of the legacy-duty payable on the remainder, since the legatees took by the bequest and not by any gift from the widow.

Crown—Plea in Bar.

The Crown is not exposed to a plea in bar founded on the error of its officers.

This was an action at the instance of the Lord Advocate on behalf of the Commissioners of Inland Revenue against Henry Taylor and others, trustees and executors of the late Dr Hugh Miller, Helensburgh, to recover (1) a sum of £228, 12s. 6d. with interest from 28th October 1879; and (2) a sum of £208, 5s. with interest from 15th June 1883, these sums consisting of legacy-duty alleged to be due by the defenders as trustees.

Dr Miller died on 11th February 1879. He left a widow but no children. He left personal estate given up in the inventory thereof as £74,475. He left heritage consisting of a villa called Broomfield. By his trust-disposition and settlement he conveyed his whole estate, heritable and moveable, to the defenders as trustees. To his widow he bequeathed, besides interim aliment till the first term after his death, his household furniture and plate, and an annuity of £1000. He also directed that she should, if she chose, occupy Broomfield for her life, unless the trustees should decide