the Victoria Dock into the river or fairway of the river she was out of the port of Greenock although merely on her way from one dock in the port to another, and if so, what meaning is to be given to the words "including all risk of shifting docks" in the policy. I should suppose that the very use of the term "shifting docks" in such a policy would convey to the mind of anyone thinking of a port on any river that the vessel must be taken out of one dock into the river, and along the channel or fairway of the river into the other dock, and if so, it is to me inconceivable that the parties should mean that the risk ceased and the vessel was unsecured in the river between the two docks because she was not in port, but that the policy should again revive as soon as she was taken inside of the stone breastwork of the harbour. This, however, is involved in the defenders' argument. Such changes of dock must occur daily in the port of London, and I cannot suppose that it has ever occurred to anyone that the vessel is out of the port when she sails along the fairway of the river from one dock to another. I have, on the grounds now stated, come to the conclusion that if the vessel had gone aground as she passed over the place in question on her way to the Victoria Dock, where she was discharged, the occurrence would have taken place in the port of Greenock. But she completed her discharge, was taken into Caird's Dock for repairs, took in ballast, and had emerged from the dock, starting on the passage to Glasgow to take in cargo there, when she capsized and went aground. It appears to me she was still insured, and that the defenders are liable under the policies. Engrafted on the voyage policy there is a time policy, "to any port of discharge in the United Kingdom, . . . and while in port during thirty days after arrival, including all risk of docking while in dock, and undocking and shifting docks, as might be required at any time during the currency of the policy." The Lord Ordinary expresses the opinion that the taking of the vessel into Caird's Dock destroyed the policy in the same way as if the vessel had gone to Ayr, or had made a voyage to Ireland and returned to the place of the accident before the thirty days had expired. In my view that is not so. It is true that the vessel when in Caird's Dock was not in a dock the property of the Greenock Harbour Trustees, nor paying harbour dues, but the question under the policy is, was she in the port of Greenock? If so, then the policy in its language covers the case. The parties must, I think, be taken to have had in view that the vessel might encounter severe weather, in which case repairs might be necessary, or the copper on the vessel's bottom might require to be cleaned, and if this were done in port within thirty days after arrival, I can see no ground for thinking that the risk did not continue. There are docks and shipbuilding yards in Greenock as in all other ports. Are not these in the ordinary sense of the term in the port if locally within the limits as generally understood? Caird's Dock is in the very centre of the harbour. If it is, as it seems to me, a dock or yard of and in the port of Greenock, so I hold the taking of the ship there for repairs did not bring the policy as a time policy to an end.

Finally, it is said that as the vessel left Caird's Dock on her passage to Glasgow, again the risk ended. That observation would be true if the vessel had left the port of Greenock, but not otherwise. In the case of the *Garston Company*, the vessel, which had cleared out at the Custom House and had proceeded towards the sea on her voyage to Bombay from Cardiff, had got down an artificial channel leading from the docks to the river Tarff, and about 300 yards beyond the junction of the channel with the river, when she came into collision with another ship. Lord Esher there said, referring to the case of *Rocklands* v. *Harrison*—"The final sailing from the port is not at the time when the vessel starts from the rivermost end of the port; it is not till she gets to the outer end of the port. Till then she has not sailed from the port; she is sailing *in* the port." So here, the parties in charge of the vessel had it in view to take her out of the port, and in a very short time, if no accident had occurred, she would have been out of the port, but she took the ground and was injured while she was still in the port, if I be right as to the meaning of that word in the policies. The loss occurred within thirty days after arrival. The vessel was still "in port," and the risk was therefore covered by the policy. It would be to add a new term to the policy, for which I see no warrant in its language, to hold that the risk terminated as soon as the vessel was unloosed and started from the dock to go to Glasgow though she was still sailing in the port of Greenock.

Accordingly I am of opinion that the pursuers are entitled to succeed in their demand, and that the case should be remitted to the average-stater to ascertain the amount of loss, under the minute of agreement of the parties.

Lord Adam—I concur in the opinion of your Lordship in the Chair and Lord Mure.

The Court adhered.

Counsel for Pursuers—Balfour, Q.C.—Salvesen. Agents—Boyd, Jameson, & Kelly, W.S.

Counsel for Defenders—Asher, Q.C.—Dickson. Agents—J. & J. Ross, W.S.

Friday, March 4.

SECOND DIVISION.

[Sheriff of Lanarkshire.

BRODDELIUS AND OTHERS *v.* GRISCHOTTI.

Bills of Exchange—Promissory-Note—Presentment without Stamp—Stamp Act 1870 (33 *and* 34 *Vict. c.* 97).

In an action for the value of a promissory-note granted abroad the note was produced duly stamped. The defender offered to prove it had been presented previously not stamped, and maintained that it was therefore null. Plea *repelled.*

Bills of Exchange—Sexennial Prescription—Promissory-Note Payable Three Months after Notice.

Where a promissory-note was made payable "three months after notice," *held* that the sexennial prescription did not begin to run until the expiration of three months after notice.

Alexander Edward Broddelius of Gothenburg, and M'Grigor, Donald, & Company, his mandatories, raised this action against Rudolph Grischotti, Glasgow, for the sum of £460, 7s. 8d., as the amount, with interest, contained in a promissory-note payable three months after notice for 6000 kroner (at the current exchange of the day, £330, 15s. 2d), granted by the defender in favour of Christian Marchion Grischotti, Gothenburg, and endorsed and delivered by him to the pursuer. The £460, 7s. 8d. was made up of that sum of £330, 15s. 2d., and interest said to have been unpaid since 1st May 1878. The promissory-note was in the following terms—"Three months after notice I promise to pay Mr C. M. Grischotti or order the sum of six thousand kroner (6000 kroner) with interest of five per cent. per annum until payment is made. Value received.—Gothenburg, the 1st May 1876. (Signed) RUDOLPH O. GRISCHOTTI." Formal notice requiring payment was given, it was alleged, on 8th June 1880. The action was raised on 3d March 1886.

The defender stated in defence that the document founded on, if a promissory note, was prescribed; that it was not a good note, because the term of payment was conditional on an event which need not happen; that, if a note, it was null, not having been duly stamped before it was presented for payment, or indorsed, transferred, or negotiated in the United Kingdom. In particular, it was not duly stamped when presented by the Bank of Scotland for and on behalf of the pursuer to defender for payment on or about 9th March 1881, nor when it was negotiated and payment demanded by Huth & Co, London, Mr Gray of J. Findlay & Co., Glasgow, both for and on behalf of the pursuer, and by the present agents of the pursuer. He further stated that a litigation was going on in Sweden between the pursuer and persons claiming right to the document, and that he had been interpelled from paying to the pursuer.

The pursuer denied this averment, or that the note had been negotiated before it was presented by his agents in 1886, when it was duly stamped.

The Sheriff-Substitute (GUTHRIE) repelled the defences.

On appeal the Sheriff (BERRY) adhered.

"*Note.*—The only questions raised before me related to the defences that the note is prescribed and that the note not being duly stamped is null. The question under the former of these pleas depends on whether the sexennial limitation of bills and notes, in the case of a note made payable a certain time after notice (which may be taken as equivalent to 'after demand'), runs from the expiration of the stipulated period after the date of the bill, or from that period after the date of demand. This depends on the construction of section 37 of the Act 12 Geo. III. cap. 72, providing that 'no bill or note shall be effectual to produce diligence or action, unless the diligence be raised or action commenced within six years from and after the terms at which the sums in the said bills or notes become exigible.' I am of opinion that the sum in a bill or note like this does not become exigible till the expiration of the period after the date of demand, and therefore that the prescriptive period does not begin to run till then. It was contended that the present case is governed by the principle of the decision in *Stephenson* v. *Stephenson's Trustees*, 1807, M. Bills of Exchange, App. No. 20, where it was held that in a bill payable on demand prescription runs from its date. Without entering into the grounds of that decision I think it enough to say that to make the period of prescription run from a certain time after the date of such a bill as that in the present case, and not from the expiration of that period after demand, would, in my opinion, be to make it run from a different date from that when the bill was exigible. The view I take is in accordance with the well-settled rule in England, and although I have proceeded simply on a construction of the Act of 1772 there is obvious expediency in having the rule in Scotland the same as in England.

"As regards the question of stamp the note as produced in process is duly stamped, and the fact, if it be one, that at some period of its currency it was not duly stamped would not render it null. If indeed the pursuer had received it in payment or otherwise not duly stamped, he might, under the 54th section of the Stamp Act, have been disabled from recovering on it, but no averment to that effect is made. The plea of nullity must therefore be repelled."

The defender appealed, and argued—(1) The bill was dated 1st May 1876, and was prescribed by reason of the sexennial limitation. The pursuer in support of his contention that prescription ran from the end of three months after notice could only found on English cases, viz., *Thorpe* v. *Coombe*, 1826, 8 Dowling & Rylands, 347, and *Clayton* v. *Gosling*, 1826, *ibidem*, p. 110; Byles on Bills, p. 358. The case of *Stephenson* v. *Stephenson's Trustees*, June 10, 1807, M. Bill of Exchange, Appen. Part 1, p. 25, was in point. In a bill payable on demand the period of prescription ran from its date—1 Bell's Com. 7th ed. p. 418. (2) He offered to prove that the note had been presented for payment to the Bank of Scotland without a stamp, and once that was shown then the note was null and void. If this were not so the result would be that foreign bills might be presented any number of times without any stamp at all. [LORD CRAIGHILL—One presentment kills the bill?]—Yes. Section 17 of the Stamp Acts 1870 made an unstamped instrument inadmissible or available in law or equity. By sec. 51, subsec. 4, a holder was not relieved from any penalty incurred by him for not cancelling any adhesive stamp (as provided in preceding section). Sec. 54 fixed a penalty of £10 for issuing or presenting for payment any unstamped note. Under these sections, then, the defender would have made himself liable in a penalty if he had negotiated the note in its unstamped condition.

Counsel for pursuer was not called on.

At advising—

LORD JUSTICE-CLERK—I do not think that the defender has made out that the bill is null under the statute. He says it was vitiated because when it arrived here, it being a foreign bill, it was presented for payment to the Bank of Scotland without a stamp. The fact is quite manifest that it was stamped thereafter, and it was probably that which brought it back to the pursuer's hands. It is said that the bill is in all its subsequent stages a nullity, and can found no action. I cannot find words in the Act to justify this contention.

Then, as to the question raised on prescription. The Sheriff says that the rule is fixed in England

that prescription runs from the date of payment. There is an old case in Morison—*Stephenson* v. *Stephenson's Trustees*—on our practice in the matter, and it was there held that the sexennial limitation will, in the case of a bill payable on demand, run from the date of the bill itself. Mr Bell in his Commentaries treats the *terminus a quo* in the case of a bill payable at sight as still a matter of question. My own impression is that the limitation introduced by the sexennial prescription should not begin to run till the date on which the bill is payable.

Lords Young, Craighill, and Rutherfurd Clark concurred.

Counsel for Pursuer—Low—Graham Murray. Agents—C. & A. S. Douglas, W.S.

Counsel for Defender—Jameson—Dickson. Agents—J. & J. Ross, W.S.

Friday, March 4.

FIRST DIVISION.

[Exchequer Cause.

THE TOWN AND COUNTY BANK (LIMITED), ABERDEEN *v.* RUSSELL (SURVEYOR OF TAXES).

Revenue—Income Tax—Income Tax Act 1842 (5 *and* 6 *Vict. c.* 35), *Schedule D, secs.* 100 *and* 101.

The manager and agents of a bank had as part of their emoluments dwelling-houses in the bank premises in the towns in which business was carried on, the bank paying income-tax on the whole premises under Schedule A, and the manager or agent not being charged with income-tax on the value of the dwelling-house. *Held* that the bank was not liable to pay income-tax under Schedule D on the annual value of the part of the premises used as dwelling-houses, because the providing of such houses to their officers as part of their emoluments was truly an outlay to be made before any profit assessable under that Schedule could be struck.

Opinion that the officials were liable under Schedule E to be assessed on the value of such houses as part of the emoluments of their offices.

At a meeting of the Commissioners of Income-Tax for the county of Aberdeen held in August 1886 an appeal was taken by the Town and County Bank (Limited) against an assessment on the sum of £1058, under Schedule D of the Income-Tax Acts, made on them for the year 1885-1886.

The circumstances in which the assessment was made were as follows—The premises used as the head office of the bank in Aberdeen, and the premises used as the branches of the bank in the different places where they carried on business, contained certain accommodation occupied as a dwelling-house by the manager or resident agent of the bank as the case might be. The manager or agent received this accommodation as part of their emolument in the service of the bank, but the annual value of this accommodation was not assessed to income-tax otherwise than under Schedule A of the Income-Tax Act 1842 (5 and 6 Vict. cap. 35), under which the whole premises of the bank paid income-tax. The £1058 was the aggregate annual value of the portions of the premises which were occupied by the officials or agents of the bank as their dwelling-houses, and did not include any portion used solely as counting-houses, the aggregate value of which (and upon which a deduction was allowed) did not exceed two-thirds of the value of the whole. The £1058 in question had been deducted from the bank's profits before these were returned to the Income-tax Commissioners for assessment under Schedule D.

It was contended on behalf of the bank that in the return submitted by them deduction had been properly made from the bank's profits of the sum representing the annual value of its premises occupied by its officials or agents as their dwelling-houses; that these dwelling-houses formed the official residences of the agents, and were necessary for the proper carrying on of the business of the bank; that owing to the nature of the bank's business it was essential that a responsible official should reside on the bank's premises, and that thus the whole premises belonging to and occupied by the bank or its officials or agents were used for the purposes of the bank's business. There was no necessity and no possibility for the bank as such having a dwelling-house merely for occupation. The whole premises were, for the purposes of the bank, business premises. The case was totally unlike one where a private banker both resided and carried on business in the same premises. The bank had no dwelling-house in the sense of section 101, quoted *infra*, which must, in terms of section 100 be a dwelling-house in part used for the domestic or private purposes of the trader, and not one wholly used for the purposes of such trader's business. A dwelling-house was necessary for the private trader unconnected with trade; *prima facie* therefore the dwelling-house must be considered as simply part of his private expenditure, and not as an incident of trade expenditure, and the fact that he used part of it in connection with his trade did not alter its character as his private dwelling-house. The provisions of section 101 obviated the hardness of this last conclusion. But it was not the province of any exception to enlarge the scope of the application of the rule. The exception must be confined to the cases where the rule itself operated. Now, in the case of the bank the general rule as for the private trader had no application. If a further duty were imposed on the sum of £1058, the bank would be charged on that sum twice over. It had already paid duty under Schedule A, and as the sum was for part of the value of the premises used by them for purposes necessary or incidental to their business as bankers, they were entitled to make the deduction in terms of rule 1, applicable to cases 1 and 2 (Schedule D), as being disbursements or expenses wholly and exclusively laid out or expended for the purposes of their trade as bankers in earning their profits; and the Commissioners of Income-Tax in Glasgow so decided in appeals at the instance of the Union Bank of Scotland (Limited) and the Clydesdale