in the case of *Lochhead* v. *Graham*, 1883, 11 R. 201, it was decided that the letter may proceed immediately from an officer or enrolled agent of the Sheriff Court from which the citation issues even though it be addressed to the defender at a place beyond the sheriffdom. I think it was intended that so far as the Sheriff Courts are concerned this postal citation should be lawful and effectual in every case in which citation on an endorsed warrant would previously have been valid. I think therefore that it was competent here, and as there was pre-existing jurisdiction *ratione contractus* I am of opinion that the defender's first plea-in-law must be repelled.

"I therefore give judgment for the pursuer for the full amount of his claim."

The defender appealed to the Circuit Court of Justiciary held at Stirling, and argued—As he had no domicile within the county, he could only be amenable to the jurisdiction of the Sheriff *ratione contractus*, but for that personal citation was necessary—Ersk. i, 2, 20. The present case was the converse of *Logan* v. *Thomson*, 3 Irv. 323, where there was personal citation, but the action was not upon the contract. The same rule was laid down in *Sinclair* v. *Smith*, July 17, 1860, 22 D. 1475; and *Pirie & Sons* v. *Warden*, Feb. 20, 1867, 5 Macph. 497, *per* Lord Justice-Clerk Inglis, p. 499, and Lord Cowan, pp. 500–501. The citation by registered letter introduced by 45 and 46 Vict. c. 77, sec. 3, was merely declared to be "legal and valid," and could not be regarded as equivalent to personal citation; it was merely optional (sec. 6), and therefore the old form of citation being still competent, ought to have been resorted to in the present case. Jurisdiction had never been sustained by the Supreme Court without personal citation within the jurisdiction, and the judgment of Sheriff Gloag referred to in the judgments appealed from had been doubted and disapproved —Dove Wilson's Sheriff Court Practice, 3d ed., p. 78, note z.

The pursuer stated no objections to the competency of the appeal, and supported the Sheriff Principal's interlocutor on the grounds expressed in the note.

Lord Adam—Where the defender in an action in the Sheriff Court does not reside or has no domicile in the county, my understanding of the law and practice is that he must be cited personally within the sheriffdom. It is said here that there has been good service upon the defender in respect of the provisions of the Citation Amendment Act of 1882. It is at least doubtful whether the mode of service introduced by that statute can be held to be equivalent to personal service. But it is unnecessary to determine that point, for something more is required, viz., personal service within the jurisdiction. The Citation Amendment Act does not enlarge the Sheriff's jurisdiction, and I am of opinion in the present case that the Sheriff had no jurisdiction to pronounce the judgment appealed against.

Interlocutor of 9th April 1887 recalled with £4, 4s. of expenses to appellant.

Counsel for Defender and Appellant—G. W. Burnet. Agent—D. White, Solicitor, Stirling.

Counsel for Pursuer and Respondent—Wilson. Agent—A. C. Buchanan, Solicitor, Stirling.

COURT OF SESSION.

Monday, September 26.

OUTER HOUSE.

[Lord Fraser, Lord Ordinary on the Bills.

NORTH BRITISH RAILWAY COMPANY *v.* ASSESSOR OF RAILWAYS AND CANALS.

Valuation Cases—Plant and Tools—"Fixed or Attached to Lands or Heritages."

Held that the annual value of plant and tools not physically fixed or attached to lands or heritages should not enter the valuation roll.

This was an appeal by the North British Railway Company against the valuation for the year ending Whitsunday 1888, of their lands and heritages, made by the Assessor of Railways and Canals.

The appellant stated that the assessor had "erroneously dealt with the plant, tools, &c., of the value of £28,703 as per list and valuation produced. He has erroneously treated these as lands and heritages, and as adding to the gross value of the appellants' lands and heritages, and he has wrongly failed to deduct 25 per cent. of said value of £28,703 before fixing the yearly *cumulo* rent or value of the said lands and heritages, and he has wrongly added 5 per cent on said £28,703 in ascertaining the values of the lands and heritages belonging to the appellants in said parishes. . . . None of the said plant, tools, &c., are heritable, or lands and heritages in the sense of said Act, or fixed or attached to lands and heritages. They are all moveable."

A remit was made to Mr James Clinkskill, machinery valuator, Glasgow, to report as to the nature and description of the plant and tools in question, which were in the appellants' workshops at Cowlairs. Proof was also led. The description of the plant and tools appears from the note of the Lord Ordinary *infra*.

The appellants argued—The assessor had departed for the first time from the ordinary practice, and that on account of two English decisions—*Laing* v. *Bishopwearmouth*, 3 Q.B.D. 299; and *Tyne Boiler Works Company* v. *Overseers of Longbenton*, 17 Q.B.D. 651, *affd.* 18 Q.B.D. 81. Those cases however dealt with an English statute, and the construction of the word "hereditament." They were of no value in construing the Scottish Act by which it was provided (sec. 42) that lands and heritages should include "machinery fixed or attached to lands and heritages." The criterion was that which applied in questions between landlord and tenant, viz., physical attachment—*Thomson* v. *Assessor for Renfrewshire*, Jan. 25, 1883, 10 R. 500; *Chidley* v. *The Churchwardens of West Ham*, 32 L.T. 486; *Nisbet, &c.* v. *Mitchell Innes*, Feb. 20, 1880, 7 R. 575; *Syme* v. *Harvey*, Dec. 14, 1861, 24 D. 202; *Brand's Trustees* v. *Brand's Trustees*, Dec. 19, 1874, 2 R. 258, *revd.* March 16, 1876, 3 R. (H.L.) 16; *Ferguson, &c.* v. *Paul*, July 4, 1885, 12 R. 1222.

The assessor appeared in person and admitted

that the previous practice had been different, but relied on the two English cases of *Laing* v. *Bishopwearmouth* and *Tyne Boiler Works Company* v. *Overseers of Longbenton, supra cit.*

The Lord Ordinary (FRASER) pronounced this interlocutor:—"Having heard counsel for the appellants, and the respondent on his own behalf, and having considered the evidence led, Finds that the assessor has erroneously treated the plant, tools, &c., of the value of £28,703, detailed in the list No. 4 of process, as lands and heritages, and as adding to the gross value of the appellants' lands and heritages, and that he has erroneously failed to deduct 25 per cent of said value of £28,703 before fixing the yearly *cumulo* rent or value of the said lands and heritages, and that he has erroneously added 5 per cent on said £28,703, in ascertaining the values of lands and heritages belonging to the appellants, all in the City Parish of Glasgow and in the Barony Parish of Glasgow: Therefore sustains the appeal, and remits to the assessor to amend his valuation in accordance with this interlocutor.

"*Note.*—The question raised under this appeal is one important, not merely to railway companies who have machine workshops, but to every industry, whether carried on by a public company or by a private individual, in which machinery is used. Hitherto the assessors in Scotland have never held to be heritable estate, the annual value of which must enter the valuation roll, any machinery except engines, boilers, and great gearing or shafting. But now it is proposed to carry the matter a great deal further, so that the assessor would be entitled to value as part of the heritage,—in the case of a mill, not merely the engine, boiler and gearing, but also all the spindles, all the looms, and all the carding machines; and in the case of a shipbuilding yard there would be taken the hammers, the planes, the saws, the punches and the shears; and in the case of an ordinary joiner's shop, there would be included the planes of the general joiner and his tools. It is said that in consequence of two recent decisions in England this is the law in that country in regard to rating; and the assessor in the present case has taken these as precedents to be followed, and has dealt with the plant and tools of the North British Railway Company in their workshops at Cowlairs, in the City Parish, and in the Barony Parish of Glasgow, upon this footing.

"Before disposing of the appeal I was desirous of having a detailed report from a man of skill as to the character of the plant which the assessor has valued, and accordingly I made a remit to Mr James Clinkskill, consulting engineer in Glasgow, who returned a report dealing with each article, describing its uses, its position and its connection with or detachment from the building or land; and he supplemented this report by oral evidence. The general character of his report may be found in a few examples. It takes, for example, a grindstone and trough which are sitting on the floor with no bolts, and are not attached to the ground in any way whatever, but the motive power is a belt driven by an engine. Except in this latter particular it is the same kind of grindstone which is to be found in any smith's or carpenter's shop, which is turned not by steam but by the hand. A drilling machine is next mentioned by him, which sits on the floor without any bolts but without being attached to the floor. Other articles are more fixed. They are kept *in situ* by what are called "dog-bolts" to prevent vibration. There are sewing machines which are kept steady by screw nails which can be taken out, and in reference to these Mr Clinkskill stated that 'in principle there is no difference between that arrangement and the case of a seamstress in the house getting the leg of her table screwed down.' Other articles present a difference in the way in which they are dealt with. For example, an axle-turning lathe and a small punching machine are bolted to stone. The bolt has a screw nut on the top. It comes up through the stone and the nut screws the thing down. It is not a rivetted bolt, but one that could be unscrewed and the machine could then be lifted off. In short there was not with reference to any of the articles challenged any attachment by a rivetted bolt. The strongest case of attachment is that of these nuts, which however could be unscrewed and the machine taken away. Now, it is these articles that the assessor has here proposed to value. He has never done it before (except last year in the case of the Caledonian Railway) nor has any other assessor in Scotland. Two gentlemen of great experience were examined in this matter, viz., Mr James Henry, the assessor for the City of Glasgow, and Mr Robert Paterson, the assessor for the City of Edinburgh. Mr Paterson says—'During the 33 years since the passing of the Act I have acted on the principle of taking the engine, boiler, and great gearing, and avoiding tools and implements of trade. (Q) Are you aware that that has been the practice of your brother assessors throughout the country till Mr Munro's new departure?—(A) That has been the practice most strictly adhered to all over Scotland.' He further thinks that although a thing may be heavy and remains in position through its own weight, that is not a reason for treating it as heritage to be valued. 'The printing machines,' he says, 'in the newspaper offices in Edinburgh are very heavy. I believe some of them are 30 or 40 tons in weight. It has never occurred to me to call them part of the house and value them as part of the house, and I do not think that ought to be done."

"But the assessor in the present case holds himself bound by, or at all events entitled to follow, the principle of the two English decisions, the first of which was *Laing* v. *Bishopwearmouth* (L.R., 3 Q.B.D. 299), which referred to a ship-yard, and the articles dealt with sought to be rated were lathes, punching, shearing and planing machines and a steam hammer, all of which the Court held to be rateable, upon the ground that although they might be capable of being removed without injury to themselves or to the freehold, they were necessary to the shipbuilding business which was carried on, and must be taken to be intended to remain permanently attached to the premises so long as they were applied to the purposes of a shipbuilding yard. The second case relied upon by the assessor was that of the *Tyne Boiler Works Company* v. *The Overseers of the Parish of Longbenton* (L.R., 18 Q.B.D. p. 81), the rubric of which is as follows:—'In estimating the rateable value of premises used as a manufactory, machinery and plant placed thereon for the

purpose of making them fit as premises for such a manufactory are to be taken into account as enhancing the value of the hereditament, although such machinery and plant remains personal property and are not physically attached to the premises.'

"Now, it is quite clear that this is not the law of Scotland. The English Court had to construe the word 'hereditament,' and to find whether or not it was comprehensive enough to include all articles necessary for the trade, and so allowing the decision to turn upon a consideration of the adaptation of the tools or machinery to the premises. These decisions would be more in point here if the question turned merely on the construction to be put on the words 'lands and heritages' without any statutory definition of what these words mean. Under the English statutes relative to rating there is no express enactment in reference to machinery such as occurs in the Valuation Act, where we find the expression 'lands and heritages' to include a large number of various species of property therein described, and amongst others 'all machinery fixed or attached to any lands or heritages.' The enactment is not that all machinery that can be found to be adapted to the particular mill, or gas-work, or shipbuilding yard, shall be deemed heritage to be valued,—it must be machinery fixed or attached—fixed, that is to say, in such a manner that it cannot be detached from the building without destruction to itself or injury and destruction to the building. It is, moreover, clearly an abuse of language to say that an article, because it is very heavy, is to be held to be fixed or attached to the heritage when it rests there without bolt or screw or attachment of any kind. The reason for this special enactment as regards machinery is not far to seek. According to the Scottish mode of assessment for public burdens, the landlord pays a certain proportion and the tenant pays the rest. The assessments are laid on according to the annual value as contained in the valuation roll. "The 6th section of the Valuation Act enacts that where heritages are *bona fide* let under a a lease for twenty-one years or less, the rent shall be taken as the annual value, but if the lease shall be for more than twenty-one years, then the rent shall not necessarily be assessed as the yearly value, but such value shall be ascertained irrespective of the rent. Now, suppose the shipbuilding yard or joiner's premises, or any other premises wherein engineering works are carried on under a lease for more than twenty-one years, and the tenant brings all the plant (the rent received by the landlord being payable merely for the shell of the building), it would be a very hard case in such circumstances to enter in the valuation roll not merely the annual value of the building but also the value of the tenant's plant, and upon such value to lay an assessment upon the landlord who derives no sort of return from the plant which is not his. It would be different if the machinery which is valued, were fixed and annexed to the realty, because such machinery becomes a part of the realty, and will go to the landlord at the termination of the lease. It must have been upon some such ground that the special enactment in reference to machinery was made by the Valuation Act. But whether this be the true ground of such special enactment or not, effect must be given to the words employed according to their plain meaning and import. The word 'attached' may be more elastic than the word 'fixed,' but as to the latter it is thought that it can only have the meaning which I have already expressed, and which it must also possess though the premises be not let to a tenant but be in the occupancy,—as in the present case,—of the owner. This necessarily leads to the conclusion that the assessor here has gone wrong, and that the appeal of the Railway Company must be sustained."

Counsel for the Appellants—Balfour, Q.C.—Dickson. Agents—Millar, Robson, & Innes, S.S.C.

Counsel for the Assessor—Party.

Wednesday, October 19.

SECOND DIVISION.

M'EWEN (DOBIE'S TRUSTEES) *v.* PRITCHARD AND OTHERS.

Succession—Conditio si sine liberis—Will—Subsequent Birth of Child—Revocation.

A lady in her antenuptial marriage settlement directed her trustees in the event of there being no child of the marriage to pay the trust-funds to such person or persons as she should appoint by her will. Ten days afterwards she executed a will, and on the narrative that it was made "pursuant to the power reserved by or given to her in and by the said antenuptial settlement, and of all other powers enabling her in that behalf," she bequeathed her estate to two sisters and to her husband. Three years after a child was born of the marriage, whom the testatrix survived one month. *Held* that the *conditio si sine liberis* applied, and that the will was revoked by the subsequent birth of the child.

Per the Lord Justice-Clerk and Lord Craighill—that the antenuptial settlement and the will were only intended to take effect in the event of there being no child of the marriage.

By antenuptial settlement dated 11th August 1882, between Herbert Hallett of Chapel Street, Park Lane, London, of the *first* part, Jane Dobie of 33 Chepstow Place, Bayswater, of the *second* part, and Madalene Dobie and Samuel M'Millan of the third part, it was agreed that Madalene Dobie and Samuel M'Millan should hold certain stocks and funds belonging to the said Jane Dobie in trust as therein mentioned. The settlement contained this declaration—"And it is hereby declared that in case there shall be no child of the said marriage who, being a son, shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, the trustees shall stand possessed of the said trust-funds, or of so much thereof respectively as shall not have been applied under any of the trusts and power herein contained. Upon the trusts following—that is to say, upon trust