authority to Mr Wormald, as his law-agent, to invest that money in heritable security for him. And in order to enable Mr Wormald to carry out his instructions Mr Donaldson endorsed in his favour certain deposit-receipts which he held for the money. Now, the duty of a law-agent in these circumstances clearly was to seek for an heritable security, and when he had found one, then to uplift the money from the bank and pay it to the borrower. But he certainly had no authority in the circumstances disclosed in the indictment to uplift the money until he had obtained an heritable security. Therefore, when he uplifted the money without having obtained the heritable security, he did an act which was not authorised by Mr Donaldson at all; and the statement was, that in such circumstances he uplifted the money on the 8th September 1871, and on that day stole the money. Now, in these circumstances, I am driven to the conclusion that this is a relevant charge of theft.

The case afterwards went to trial, and the jury returned an unanimous verdict of guilty of breach of trust and embezzlement.

Sentence of penal servitude for the period of five years was pronounced upon the prisoner.

Counsel for the Crown—Solicitor-General—Gloag. Agent—Crown Agent.

Counsel for Panel—Fraser—Mair. Agent—W. Officer, S.S.C.

Saturday, January 3.

OUTER HOUSE.

[Lord Shand.

DICKSON *v.* BUCHANAN.

Ship—Freight—Cargo—Actual and Constructive Loss —Liability.

A shipped on board B's vessel, which was about to sale from Liverpool to Brisbane, in Queensland, 880 bundles of wire, to be carried to Brisbane and delivered there. The vessel sailed on her voyage, and while in the English Channel was seriously damaged by collision with an unknown ship. In consequence of these injuries the vessel put into Falmouth for repair, and after being repaired she continued her voyage to Brisbane. When the cargo was examined at Falmouth it was found that the wire was so damaged by sea-water that two-thirds of it was in such a state that no treatment could restore it, and that it was permanently reduced to a state of rusty scrap-iron. The remaining third could, by being treated at great expense, be restored to wire fitted only for making small articles such as sieves, and not for fence-wire, for which purpose the whole had been originally intended. A obtained delivery of the wire from the captain of the vessel at Falmouth, under reservation of B's claim for freight for the whole voyage. —*Held* that there was an actual, or at all events, a constructive loss of the whole wire, and that there was accordingly no claim for freight.

This was an action at the instance of James Anderson Dickson, shipowner in Arbroath, against Edward G. Buchanan, merchant in Leith, for payment of £73, 3s. 11d., being the freight averred by the pursuer to be payable by the defender for the carriage of a quantity of wire from Lilverpool to Brisbane, in Queensland.

The circumstances of the case are fully set forth in the following interlocutor and note of the Lord Ordinary (Shand):—

"*Edinburgh, 3d January* 1876.—Having considered the cause—Finds that on or about 17th February 1872 the defender shipped on board of the pursuer's vessel 'Woodville,' then lying at Liverpool, and about to sail on a voyage to Brisbane, in Queensland, 880 bundles of wire, to be carried to Brisbane and delivered there: Finds that on the shipment of the wire the captain of the vessel granted to the defender the bill of lading No. 74 of process, and the portion of the freight therein mentioned applicable to the said wire amounted to £73, 3s. 11d.: Finds that the 'Woodville' sailed from Liverpool on her voyage to Brisbane on or about 27th February 1872, and while in the English Channel on her voyage, during the night of 12th March 1872, was run into and seriously damaged by an unknown ship, which immediately afterwards bore away, and was not again seen: Finds that in consequence of this collision, and the injuries which the ship and cargo thereby sustained, the vessel put into Falmouth, where a survey took place both of the ship and cargo: Finds that the surveyors reported that considerable repairs on the ship were necessary in order to fit her again for sea, and these repairs having been made, the ship, in pursuance of her voyage, on 3d June 1872 sailed from Falmouth to Brisbane, at which latter port she arrived on or about 19th September 1872: Finds that the cargo having been landed at Falmouth, the wire shipped by the defender was examined by surveyors, who reported that it was damaged by sea-water, and unfit for exportation, and recommended that it should be sold, and the defender, or others acting for him, obtained delivery thereof from the captain of the vessel, under reservation of the pursuer's claim for freight for the whole voyage, which claim the defender undertook to satisfy if he should be held liable therefor: Finds that when the wire was landed at Falmouth it was so much damaged by the action of sea-water, which had found its way into the ship in consequence of the collision, that it was not practically possible to send the wire, or any part thereof, to its place of destination—Brisbane—in a marketable state: Finds that a total loss of the wire occurred from the perils of the sea as at the said port of Falmouth, and the contract of carriage between the pursuer and defender thereby came to an end at that port, and the defender is therefore not liable for the freight sued for: Assoilzies the defender from the conclusions of the article, and decerns, and finds him entitled to expenses; allows an account thereof to be given in, and remits the same when lodged to the Auditor to tax and to report.

"*Note.*—The claim for payment of freight made in the present action raises a question of much importance and interest in the law of merchant shipping. The defender shipped a quantity of wire on board of the pursuer's vessel

'Woodville' at Liverpool, to be carried to Brisbane, in Queensland, at the agreed-on freight of £73, 3s. 11d., to be paid on delivery of the goods at the port of destination. The vessel sailed in the end of February 1872, and a few days afterwards, while in the English Channel, was run into during the night by a strange ship, which immediately bore on her course, and was not again seen. The 'Woodville' sustained serious damage from this collision, and was compelled to run to Falmouth, where she was laid up for repairs until the beginning of June, when she again sailed on her voyage, which was completed by her arrival at Brisbane on 19th September 1872. At Falmouth the defender took re-delivery of the wire which had been shipped. It was not returned to the vessel, nor was any substituted cargo given in its place. The 'Woodville' accordingly made her voyage to Brisbane with an empty space in the hold in place of the defender's goods, and the pursuer now claims the stipulated freight of these goods, or, alternatively, damages for failure to furnish the cargo as agreed on for the voyage. The pursuer intimated when the goods were given up that he claimed the freight, and the defender undertook to pay any sum for which he was legally liable. The parties have differed, however, as to whether there is liability for freight or damages in the circumstances.

"At Falmouth the cargo, as well as the ship, was made the subject of a survey. The surveyors reported that the wire in question was damaged by sea-water, unfit for exportation, and should be sold; and throughout a correspondence of considerable length which took place between the parties, or others acting for them, it does not appear to have been ever suggested by or on behalf of the shipowner that the goods were fit for exportation. The further evidence as to the condition of the wire and its treatment was given by Mr Turner, managing partner of the Cardigan Steel Company at Sheffield, at whose works the wire had been manufactured, and in whose behalf it rather appears that the shipment was made by the defender. The wire seems to have been shipped in coils or bundles, each containing considerable lengths, and although not directly stated in the evidence, it appears to have been manufactured for fencing or similar uses. After having been surveyed, the damaged wire was taken back to the Cardigan Company's works at Sheffield, apparently in the view that it might be softened by fire and redrawn, and Mr Turner describes its appearance thus:—'It was all bound together in consequence of the action of the salt water, so that we could not open it. It had solidified into a mass.' He immersed it in oil, so as to loosen it. He also explains that it was deeply pitted with rust. He explains, that as regards about two-thirds of the entire quantity, all attempts to loosen or separate the wire were ineffectual, that this large portion did not admit of being redrawn, and could only be used as scrap-iron, worth about £3 a ton, being a mere fraction of the shipment as wire. In regard to this portion, he explains that the action of the rust would have rendered it useless by the end of the voyage, not only as wire, but as scrap-iron; and he is not able to say that anything would have been got for it. In regard to the remaining third, after considerable expense had been laid out in labour on it, he explains that the wire became very tender, incapable of bearing a strain, and unfit for any purpose beyond that of making common goods, such as sieves or short articles, where no lengths were required. His evidence as a whole proves, I think, that the goods in the state in which they were landed were certainly unfit for shipment in consequence of the sea damage they had sustained; that the greater part of them had lost the character of wire, having been converted into scrap-iron, and could not be restored again unless in the same way as scrap-iron might be manufactured into wire; and in regard to the remainder, that the expense of the operations necessary to fit them again for shipment exceeded the worth of the goods themselves, and even after treatment the wire was no longer suitable for fencing, for it could not bear any strain, or be employed for anything except articles requiring very short lengths. In his estimate Mr Turner has not included the cost of carriage of the goods back to Sheffield from Falmouth, and of reshipment there, but even without these items the cost of railway carriage and treatment of the goods exceeded the amount which they realised. This evidence is uncontradicted. It has not been suggested that the goods might have been treated at Falmouth as they were at Sheffield, thus saving the carriage, and probably the Cardigan Steel Company's works at Sheffield was the place nearest Falmouth at which the machinery required for the process of redrawing could be got, and at which, therefore, the work could be most satisfactorily done; and at least I must assume this to be so on the evidence.

"In this state of the facts, I am of opinion that the defender is not liable for the freight claimed, and the ground of this opinion is, that there was a total loss of the goods from perils of the sea before the voyage was concluded, which brought the contract of affreightment to an end. The admission of parties excludes any suggestion of fault on the part of the shipowner or his servants as leading to the collision which occurred. The ship and cargo were both injured by a peril of the sea which those in charge could not have avoided.

"The defender maintains that as the ship arrived at the end of her voyage without his goods, there can be no claim for freight, because freight was only payable under the bill of lading on delivery of the goods at the foreign port. The pursuer answers that delivery at the end of the voyage was frustrated by the defender having insisted on taking delivery of his goods at Falmouth, and this having been given under reservation of the claim for freight, the defender must justify his right to demand delivery there free of freight. It appears to me the pursuer is right in this view, but that, on the other hand, the defender has proved facts which establish his right in law to have delivery of what remained of his goods free of freight. The correspondence in process shews that the pursuer had effected an insurance on the freight, and assuming that the policy covered loss of freight caused by collision, it follows (although that cannot be directly decided in this action) that the pursuer is entitled to recover the freight under his insurance in the same way as if the goods had been irrecoverably lost at sea. The

considerations which should determine the right of the shipowner to recover under an insurance on the freight are practically the same as must regulate the decision of this question. If the freight was lost because of the loss of the goods from a peril of the sea before the completion of the voyage, the underwriter is liable. The question here, as it would be in a question of insurance on the goods themselves, or on the freight, is whether there was a total loss of the goods?

"If the defender's goods had entirely perished, or had been washed or thrown overboard in consequence of a storm, although the vessel was afterwards able to complete her voyage, it is plain that there could be no claim for freight, but there would be a valid claim for insurance on freight. The right to demand freight depends on the service undertaken being performed, and in the case supposed it would be no reason for claiming freight that the vessel was fit to carry the cargo. If the cargo had perished by perils of the sea, the obligation of the shipper for freight would have come to an end just as the obligation of the owner to carry the cargo would have terminated if the vessel had been completely disabled, though the cargo was uninjured. The misfortune of a lost ship or lost cargo in the first instance falls on the owner of the ship, but it is a joint misfortune also, for the party who has suffered this loss is no longer bound to fulfil his obligation under the contract of carriage, and to that extent the other party to the contract also suffers. In this case, the cargo was lost in the sense of having entirely perished. The pursuer alleges that it was damaged only, and the defender having taken delivery of it for his own advantage, must pay the freight. The defender maintains that the damage was so great as to amount to a total loss.

"The criterion by which the question whether a total loss of goods by perils of the sea has or has not occurred, so as to relieve the shipper from all liability for freight, is, I think, nowhere better stated than in the judgment of the Court of Common Pleas, delivered by the late Mr Justice Willes in the case of *Dakin* v. *Oxley*, January and February 1864, 33 Law Journal, C. P. 115. In that case, after a statement that freight is earned though the goods should arrive in a damaged state, the judgment proceeds—'In the case of an actual loss or destruction by sea-damage of so much of the cargo that no substantial part of it remains, as if sugar in mats, shipped as sugar and paying so much per ton, is washed away, so that only a few ounces remain, and the mats are worthless, the question would arise whether, practically speaking, any part of the cargo contracted to be carried has arrived. . . . . . . Where the quantity remains unchanged, but by sea-damage the goods have been deteriorated in quality, the question of identity arises in a different form, as, for instance, where a valuable picture has arrived as a piece of spoilt canvas, cloth in rags, or crockery in broken shreds, iron all or almost all rust, rice fermented, or hides rotten. In both classes of cases,—whether of loss of quantity or change of quality—the proper course seems to be the same, viz., to ascertain from the terms of the contract, construed by mercantile usage, if any, what was the thing for the carriage of which freight was to be paid, and by the aid of a jury to determine whether that thing, or anything, and how much of it, has substantially arrived.'

"In the leading case of *Roux* v. *Salvador*, January 1835, 1 Bingham (N. C.), p. 526, and on appeal in the Exchequer Chamber, November 1836, 3 Bingham (N. C.), p. 266, it was held that there was a total loss of a cargo of hides which had been the subject of insurance, and which were sold at an intermediate port. The hides had been so much damaged by sea-water, that they were in a state of decomposition, and if carried to the end of the voyage, would have lost the character of hides before their arrival at the port of delivery. The Court of first instance considered the case one of constructive total loss, but in the Court of Appeal, on the grounds explained in the judgment of Lord Abinger, it was held that an actual total loss had occurred, and that the assured was consequently entitled to recover without notice of abandonment. In the recent case of *Duthie* v. *Hilton*, 16th November 1868, Law Reports, 4 C. P., p. 138, a quantity of Portland cement, shipped in casks, had been so affected by sea-water that it had hardened into solid masses, and was no longer capable of being used as cement,—it was admitted by the present Lord Justice Mellish, who was counsel for the shipowner, in accordance with the clear opinion of the Court, that a total loss of the goods had occurred, and that consequently there was no claim for freight, unless it could be sustained on the very special terms of the bill of lading. Again, the rule as to the ascertainment of total loss is thus stated, with a reference to the authorities by Arnold on Insurance (4th Edition, p. 895), 'If perishable goods, by reason of being sea damaged in the course of the voyage, are necessarily unshipped at an intermediate port, and found to be reduced either to such a state of absolute putridity that they cannot with safety be reshipped into the same or any other vessel, and are consequently then and there thrown overboard, or to be in such a state of rapidly progressive decay that if sent on to their port of destination their species itself would disappear before arriving there, and are therefore sold where they lie,—in such cases there is an absolute total loss within the meaning of the policy, the assured being entitled to the whole amount of the insurance without notice of abandonment, and the underwriters to the benefit of any salvage that may ultimately come to hand;' and similar statements are to be found at page 950.

"The result of these authorities, as applicable to the present case, appears to be, that if the wire shipped by the defender had been damaged only so far as greatly to diminish the profit of the adventure, or even to make the adventure very unprofitable, freight would still be due. But if the wire was in such a state when the vessel left Falmouth, owing to sea damage, that it was clear it would have lost its character of wire by the end of the voyage, there was a total loss of the goods, and consequently an end of the adventure, with the result that there was no liability for freight, and that, on the other hand, the shipowner might recover under his policy on freight in respect his freight was lost by the perils of the sea.

"It might be, however, that the wire admitted of being so treated on being landed that the damage could be repaired, though at considerable expense, and the wire thereafter sent on and de-

livered as wire at the end of the voyage. In that case a total loss could have been averted in the same way as grain, which, having been damaged by sea-water, would have become so putrified if left in the hold as no longer to have the character of grain at the port of delivery, might by being kiln-dried or otherwise treated be rendered fit for the voyage, although at considerable expense. In that case the settled rule of law appears to be, that if the expense of treating or 'conditioning' the cargo should exceed its actual worth, the loss is total; but if less, the loss is partial only. The rule is the same in ascertaining whether a ship is a total loss. If the cost of repair should exceed the value of the ship when repaired, the loss is total. The leading authorities on this subject appear to be the cases of *Farmworth* v. *Hyde*, 29th November 1866, Law Reports, 2 C. P. 204; *Rossetto* v. *Gurney*, May 1851, 20 Law Journal, C. P. 257; and *Moss* v. *Smith*, January 1850, 19 Law Journal, C. P. 235. The opinion of the full Court is thus stated by Baron Channell in the case of *Farmworth*—'We are all of opinion that where goods are in consequence of the perils insured against lying at a place different from the place of their destination, damaged, but in such a state that they can at some cost be put into a condition to be carried to their destination, the jury are to determine whether it is practically possible to carry them on, that is—according to the well-known exposition in *Moss* v. *Smith*—whether to do so will cost more than they are worth, and that in determining this the jury should take into account all the extra expenses consequent on the perils of the sea, such as drying, landing, warehousing, and reshipping the goods, but that they ought not to take into account the fact, that if they are carried on in the original bottom or by the original shipowner in a substituted bottom, they will have to pay the freight originally contracted to be paid, that being a charge to which the goods are liable when delivered, whether the perils of the sea affect them or not.'

"In the case of a total loss of the goods, either actual or constructive, arising before the termination of the voyage from perils of the sea, the contract of carriage is resolved, because there can be no delivery of the thing shipped, and the commercial speculation or adventure entered into between the shipper and shipowner has been brought to an end by causes beyond their control. This principle is well illustrated by the decision in the case of *Jackson* v. *The Union Marine Insurance Co. (Limited)*, December 1874, Law Reports, 10 C. P., p. 125, in which it was held, that where a ship was disabled by perils of the sea from completing the voyage within a reasonable time, the contract of carriage came to an end.

"Applying the principles now explained to the present case, I am of opinion that there was an actual total loss of the goods in question, and that in any view, if that be doubtful, there certainly was a constructive loss. In either case it follows that there was an end of the claim for freight. The wire which was shipped must, I think, be regarded as of the nature of perishable goods, because it was liable to damage from sea-water to an extent that would destroy its character as wire. It is clear on the evidence that if the goods had been sent out to their destination without being treated or conditioned at Falmouth, they would have arrived at Brisbane, not as wire, but as so much rust, (one of the very cases put in the judgment in the case of *Dakin* v. *Oxley*), with a small part of them possibly in such a condition that it might have been used as scrap iron. It was clear that the only possibility of saving the wire was to have it landed at Falmouth, and there subjected to operations which might restore its condition. But then as regards two-thirds of it, no treatment could restore it, for it was permanently reduced to a state of rusty scrap iron; and in regard to the remainder, the result of treatment was not to produce wire for fencing such as had been shipped, but an article totally different in kind, fitted only for making small articles such as sieves and the like. The expenses of the operations necessary even for this purpose exceeded the value of the goods operated upon, and there was thus, I think, an actual total loss, and, at all events, a constructive total loss, which put an end to the adventure and resolved the contract of carriage.

"The authorities to which I have referred were not cited or discussed in the argument; and had the case involved a larger stake, I might have thought it right to allow the pursuer's counsel an opportunity of being further heard, but as the sum in dispute is not large, and I have had a full opportunity for consideration of the case, I have thought it better at once to give effect to the opinion I have formed.

"The cases of *Vlierboom* v. *Chapman*, 1844, 13 Mason and Welsby, p. 320; and *Notara* v. *Henderson*, May 1870, Law Reports, 5 Q.B. 346, referred to by the defender, do not appear to have a direct bearing on the question in dispute. In the former case a claim to freight *pro rata itineris* only was insisted in, and an obvious ground for refusing to sustain any claim to freight is stated towards the close of the judgment, viz., that the shipowner was not ready to carry forward the cargo to the port of destination in his own ship, which was disabled, or in another. The decision in the case of the *Notara*, which was a claim of damages, proceeded on the ground that a master was not entitled to carry on the cargo in an unfit state for carriage for the purpose of earning freight. The cargo in that case was certainly not a total loss. The case is not a decision on the question what freight, if any, is due where the cargo has been so damaged by the sea that it has to be landed and left to be 'conditioned' for the intended voyage, in order to avert serious loss. That question seems to me to be attended with much difficulty, and I am by no means satisfied that even in that case, where the carriage is necessarily or properly stopped at an intermediate port in consequence of the perils of the sea, there is a legal claim to freight to any extent, though it may be that equity would give a right to freight *pro rata itineris*, a view which is indicated in the closing sentences of the judgment, and in support of which much can be said.

"The authorities referred to by the pursuer, in which the shipowner was held entitled to freight when the voyage was not completed, had all reference to cases in which the failure to complete the voyage arose entirely from something affecting the cargo only, which rendered the cargo incapable of carriage, and which was fairly attributable to the act or default of the shipper, and

not to perils of the sea; as, *e.g.*, where the cargo became heated or subject to decomposition from internal defect, or consisted of goods which could not be landed at the port of destination because of a prohibition by the government of the place. The case of *Luturge* v. *Grey and Others*, 1732, Elchies, *voce* Mutual Contract, No. 3, Mor. Dict. 10,111, and on appeal 17,341, 1 Paton's Appeals, 119, was founded on as a direct authority in favour of the pursuer's claim. That case is however to be distinguished from the present in this respect, that the tobacco landed at Youghal, the intermediate port of distress, was damaged only, and was not a total loss. The quantity forwarded to Bristol after the owners, or insurers on their behalf, intervened and took delivery was all in this position. As to the remainder forwarded to Glasgow, it is true some of it 'was damnified and burnt there,' and yet freight *pro rata itineris* was found due on the whole. The ground of this appears to me to have been that the quantity taken as a whole was damaged only. The shipper accepted it as damaged—not lost or destroyed by the sea—and so far as appears from the reports, there was no separate argument maintained that the particular part of the goods which was burned at Glasgow being totally lost was free from freight. The case, in short, does not appear to me to have raised the question now presented for decision.

"I have only to add that no claim for freight *pro rata itineris* can be made here, because the voyage from Falmouth to Brisbane is practically the same as that from Liverpool. The case is the same as if the vessel had put back to Liverpool in place of Falmouth. But, further, no contract to pay such freight can be implied from the actings of the parties when the goods were landed or received by the defender.'

This judgment was acquiesced in.

Counsel for Pursuer — Trayner. Agents—Webster & Will, S.S.C.

Counsel for Defender—Mackintosh. Agent—Alexander Morison, S.S.C.

Tuesday, March 9.

OUTER HOUSE.

[Lord Shand.

PARKER *v.* MATHESON & OTHERS.

Testament—Cancellation of Deed—Revocation—Unsigned Codicil.

A testator deleted from his settlement certain provisions which he had made in favour of the family of one of his sons, but the deletions left the original wording still visible and legible. He afterwards prepared a codicil, in which he made certain other provisions for his sons, but this codicil was left unsigned by him at the time of his death.—*Held*, in an action of multiplepoinding brought to establish the rights of various parties interested in his succession—(1) that the settlement continued a valid deed notwithstanding the clauses which had been deleted, as the deletions could only have the effect of a partial revocation; (2) that no effect could be given to the unsigned codicil; but (3) that as the deletion of part of the deed and the making of the codicil must be regarded as one continuous act for one object, and as the testator had failed to complete the act by making an effectual codicil, the act as a whole had failed, and the settlement must receive effect in the same way as if no part had been deleted.

This was an action of multiplepoinding, brought for the purpose of settling certain disputes relating to the succession of the late Angus Matheson. The pursuer and real raiser was Mr Parker, the judicial factor upon the deceased's estate.

The case came before Lord Shand, (Ordinary) who, after a proof had been taken, issued the following interlocutor and note, in which the details of the case are very fully stated:—

"*Edinburgh, 9th March* 1875.—Having considered the cause, Finds that the trust-disposition and settlement, dated 27th January 1868, by the deceased Angus Matheson, No. 8 of process, is the sole effectual testamentary deed or writing left by him to regulate the disposal of his estate and effects: Finds that the deletion in said deed by the testator of the names and designations of Robert White, John M'Allister, and John Campbell, therein mentioned, who had been nominated as trustees therein, was effectual as a revocation of the appointment of these gentlemen as trustees: Finds that the deletion by the testator of the words and passages in the said deed relating to the provisions in favour of the late Colin Matheson and his children, was ineffectual as a cancellation or revocation of these provisions, and that the deed must receive effect as regards these provisions in the terms in which it was originally written, and in the same way as if no part thereof had been deleted; and with these findings appoints the cause to be put to the roll that effect may be given thereto with reference to the claims of parties; reserves in the meantime all questions of expenses, and grants leave to any of the parties interested to reclaim against this judgment.

"*Note.*—This case raises questions of much importance. Besides heritable estate, the late Mr Matheson left personal means to an amount exceeding £20,000, and the questions to be decided are important, not merely because of the amount of property at stake, but because of the general principles in regard to the testing and cancellation of testamentary writings which are involved.

"Mr Matheson died on 16th November 1872, survived by his wife and a son and daughter. There were four children of the marriage, John Campbell Matheson, Mrs Eliza Matheson or Stewart, Colin Matheson, and Marion Matheson. The two first named survived their father. Colin Matheson, who had settled in Australia, died there about seven months before his father, leaving a widow and six children. Marion had predeceased her father some years before 1868, in minority and unmarried. On 30th August 1874, after the present action was raised, Mrs Stewart died, leaving a family of several children, who are claimants in the process.

"In February 1855 Mr Matheson, with con-