The following interlocutor was pronounced:—

"Recal the interlocutors of the Sheriff-Substitute and the Sheriff, dated respectively the 4th August and 31st December 1875: Find, in point of fact, (1) that on or about the 11th August 1873, while the pursuer's (respondent's) son, the deceased John Sneddon, miner, was engaged in the employment of the defenders (appellants) as a miner in their coal-pit known as No. 1 Orbiston pit, and at or near the place known as the causeway-top, and at or near a horizontal pivot-wheel at the top of an incline, the roof and sides of the place at which he was working gave way and fell upon his person, so that he was crushed to the ground and killed. (2) that the death of the said John Sneddon was caused by the support of the roof having proved insufficient; (3) that the defenders took no personal superintendence of the mining operations in the said pit, but devolved these entirely on James Munro as colliery manager, and his subordinates; (4) that the duty of providing for the support of the roof lay on the said manager, and John Gillies as oversman, and William Downie as roadsman; and (5) that these parties were experienced and skilful persons, quite competent to the discharge of the duties committed to them, and were furnished by the defenders with all the requisite materials to enable them to discharge their duties: Find in law, that if the roof fell through the fault of the said James Munro, John Gillies, and William Downie, or any one or more of them, the defenders are not answerable for such fault: Therefore assoilzie the defenders from the conclusions of the summons, and decern: Find no expenses due to or by either party in the Inferior Court, but find the appellants entitled to expenses in this Court; allow an account thereof to be given in, and remit the same when lodged to the Auditor to tax and report."

Counsel for Pursuer—Fraser—J. C. Lorimer. Agent—P. H. Cameron, S.S.C.

Counsel for Defenders — Dean of Faculty (Watson)—Pearson. Agent—John Gill, Solicitor.

Saturday, June 24.

SECOND DIVISION.

[Lord Shand, Ordinary.

RIDDELL *v.* POLWARTH.

Entail Amendment Act 1848, *sec.* 3—*Date of Deed of Entail*—Mortis causa *Settlement.*

An entail was constituted by *mortis causa* deeds executed prior to 1st August 1848, and the granter died in 1849.—*Held* that the date of the *mortis causa* deed was, with reference to the question of entail, the date of the execution of the deed, and not the date when the deed came into operation.

This was an action at the instance of George William Hutton Riddell, Esq. of Muselie, against the Right Hon. Lord Polwarth, to have it declared that the defender in October 1874 became purchaser of the lands of Dryburgh for the sum of £21,000, and of the lands of Prieston for the sum of £11,000, in virtue of holograph offers and acceptances therefor, and to enforce implement of the contract of purchase and sale thereby constituted. The said lands formed part of the estate of Muselie, which was entailed by two *mortis causa* deeds granted by Charles Riddell, Esq. of Muselie, the first being a disposition and deed of taillie, executed on 25th February 1836, and the second a deed of destination and alteration, executed on 1st July 1848. The said Charles Riddell died on 11th December 1849, without leaving heirs of his body, and on 12th April 1852, on the death of his mother, who had under the second deed a liferent of the estate, the pursuer entered into possession of the lands as institute of entail. The pursuer being desirous to acquire the lands in fee-simple, obtained the necessary consents from the three nearest heirs who were for the time entitled to succeed to the estates, and executed an instrument of disentail on 11th April 1873. On 21st April he presented a petition to the Court for warrant to record the said instrument in the Register of Taillies. The petition was reported by Lord Shand to the First Division of the Court, the question having been raised whether, under the third section of the Act 11 and 12 Vict. cap. 36, the date of the deeds should be held to be that which they bore or the date of the death of the granter. The Court decided that the date of the entail must be held to be that which the deed bore, and that being dated prior to 1st August 1848 the petitioner was entitled to disentail.

The report of the petition, which contains a full statement of the case, is referred to (11 Scot. Law Rep. 243).

The defence stated to the present action was that the pursuer could not grant a valid disposition of the subjects, in respect that he held them under deeds of strict entail; that these deeds being *mortis causa* deeds, constituted a valid entail only when they came into operation by the death of the granter, which occurred subsequent to 1st August 1848, and that therefore the disentail proceedings were invalid; that the proceedings in the petition were entirely *ex parte*, and not *res judicata* as against any of the substitute heirs of entail; and that for these reasons the validity of the title offered by the pursuer being open to serious doubt, the defender was not bound to accept it.

The Lord Ordinary issued an interlocutor, dated 1st February 1876, in which he repelled the defences, and decerned against the defender Lord Polwarth in terms of the conclusions of the original action, finding no expenses due to or by either party.

The following note was appended:—"The answer to the defence stated in the first three pleas in law for the defender is that the point raised has been decided—Petition, *Riddell*, 6th February 1874, 1 Rettie 462. That decision is not *res judicata* in a question with the defender, but it is a direct authority against the contention that the pursuer was not in a position to disentail the estates, and that the estates have not been validly disentailed. Even if the sound-

ness of the decision were in my opinion doubtful, I should give effect to it, although pronounced in a proceeding *ex parte*. But the case was very carefully considered, and although one of the learned Judges differed, I see no reason to change the view I entertained in the application to disentail the estates, and which was adopted by a majority of the Court.

"It was further urged that the validity of the title is at least open to such doubt and risk of future objection that the defender is not bound to accept it, even if the Court should be of opinion that the doubt is not well founded, and reference was made to the case of the *Duke of Devonshire* v. *Fletcher*, June 19, 1874, 1 Rettie 1056, and the other cases there mentioned in the opinion of Lord Ardmillan. That case was so special in its circumstances that it would be difficult, I think, to use it as an authority of general application. But however that may be, the present case differs from it and the other authorities referred to, in so far as the question said to raise a doubt in reference to the title has been expressly decided against the defender's view. This is a state of matters entirely different from the case which has hitherto occurred, in which a point of difficulty as to the title which the Court must consider and decide for the first time arises in the very litigation in which the question of the purchaser's liability to complete the contract of sale is raised. It appears to me that it cannot be properly represented that the question of validity of the title is doubtful, where, as here, there is a standing decision in a previous proceeding that the title was good; and on this point it cannot, I think, make any difference that the decision was in accordance with the view of a majority of the Judges only.

"Apart from this ground, which is, I think, sufficient to dispose of the defence, the case of *Dunlop* v. *Crawford*, 11 D. 1062, and 12 D. 518, seems to be a precedent directly in the pursuer's favour. In that case the Court gave an opportunity to all the persons called as heirs of entail to appear and oppose the sale of the property, and none of them having appeared, decree was given as concluded for. The pursuer having called all the heirs of entail, and taken decree against them, is in the same position as the pursuer in that case, and is entitled to decree, unless the defender, who has appeared, can succeed in showing that the title is bad."

The defender reclaimed.

At advising—

Lord Justice-Clerk—In this case I think that the judgment of the Lord Ordinary should be adhered to. I am of opinion that the word "dated" in the 3d section of the statute and in other sections means "bearing date," and that that is the only meaning which it can have; therefore the date of the deed is the date of the entail. I might have been tempted to shew how that meaning is the essential one—looking to the other sections of this Act, and to other statutes upon the same subject—but this has been done so fully by the Lord President in the former case that I would only be repeating what was then said.

Lord Neaves—I am of the same opinion. Were we to hold that anything but the date of the deed was intended it might give rise to much trouble. It would be necessary to find out the date of the granter's death, and this might often be extremely difficult or impossible. The date of the deed fixes a certain period, and I must hold that that was the intention of the statute.

Lords Ormidale and Gifford concurred.

The Court adhered, with expenses from the date of the Lord Ordinary's interlocutor.

Counsel for Pursuer—Rankine. Agent—John Romanes, S.S.C.

Counsel for Defender—Adam—Kinnear. Agent—George Bruce, W.S.

Saturday, June 24.

FIRST DIVISION.

[Sheriff of Lanarkshire.

WARDROPE *v.* THE DUKE OF HAMILTON AND OTHERS.

Master and Servant—Culpa—*Damage*—*Responsibility*—*Relevancy.*

Two gamekeepers were alleged to have fired at a man and his dog upon the high road, killing the dog and wounding the man. In an action for damages against the keepers and their employer, it was averred that the former were acting with the authority, or at least for the behoof, of the latter. —*Held* that this averment was not sufficient to infer liability, and that there was no relevant ground for an issue against the employer.

Observed (*per* Lord Deas) that where the act of a servant whereby damage is caused to any one is of a criminal nature, it is necessary to state something very specific indeed to infer liability against the master.

This action was brought by the pursuer, a tailor in Stonehouse, against the Duke of Hamilton and two of his gamekeepers, James Wood and John Tait, concluding for £200, as reparation for loss, injury, and damages for personal injuries and for the value of a greyhound belonging to the pursuer. He averred that the defenders Wood and Tait, then in the employment of the Duke of Hamilton, and acting with his authority, or at least for his behoof, fired at him (the pursuer) on the turnpike road near Stonehouse, killing his dog and wounding him.

The defenders Wood and Tait denied the pursuer's averments, and required the pursuer "to specify which one of the defenders he alleges fired the shot libelled, and to condescend upon the acts by which it is alleged that the defenders aided and abetted each other."

The Duke of Hamilton pleaded—"(1) There being no sufficient averment that the present defender either did the acts complained of or gave any instructions or authority to the other defenders to do them, the action, so far as directed against the present defender, is irrelevant. (2) The act complained of being, and being alleged to be, of a criminal character, the present defender cannot be made liable therefor merely on