decree of aliment can obtain for all time coming, and it is just as clear that no one can by a decree be relieved in all time coming. That part of the interlocutor must clearly be recalled.

As regards the other part, I do not know whether it is considered judicial to express regret when deciding a point of law, but I do feel regret now when I am obliged to find this poor man liable to pay this £12, 2s. I do so because I am satisfied that the defender had more money than was absolutely necessary for himself and his family. I fear I cannot class with those who had claims on the defender the son at Glasgow who was earning wages enough to keep him, and every advance made to him must be looked upon as a debt. Further, the whole evidence goes to show that the defender was not in that pauperised state that he is entirely unable to pay. I must add that the question for us is not to settle whether he was unable to pay at the time that the aliment was paid, but whether he is able to do so now. For the Parochial Board, when it aliments a person, always has a continuing claim for the sum against anyone who is bound to maintain the pauper. On the whole, I find it impossible to alter the first part of this interlocutor.

Lords Deas, Mure, and Shand concurred.

The Court pronounced the following interlocutor:—

"Find that the Parochial Board of the parish of Banff made the advances for the maintenance of the pauper James Forbes, sued for: Find that the said pauper was a proper object of parochial relief: Find that the defender (appellant) is the father of the pauper, and is not unable from his pecuniary circumstances to relieve the parish of the said advances: Therefore recal that part of the Sheriff's interlocutor of 5th June 1877 that 'finds him' (defender) 'further bound to relieve the pursuer of all subsequent advances:' *Quoad ultra* adhere to the said interlocutor and refuse the appeal, and decern: Find no expenses due to or by either party."

Counsel for Pursuer (Appellant)—Mair. Agent—W. Officer, S.S.C.

Counsel for Defender (Respondent)—Balfour—Pearson. Agent—A. Morison, S.S.C.

Saturday, February 9.

FIRST DIVISION.

[Sheriff of Renfrew.

RALSTON *v.* CALEDONIAN RAILWAY COMPANY.

Process—Expenses—Sheriff Court—Proof.

In a cause in which it appeared to the Court that the evidence led by the successful party had been needlessly long, the Court refused to allow him more than half the cost of the proof, although he was defender in the action, and although the evidence led by the pursuer had been of greater length.

Observations on the practice of taking evidence in Sheriff Courts.

This was an action brought by William Ralston, farmer at Denny, against the Caledonian Railway Company for damages in respect of injury suffered by a horse belonging to him while travelling in a horse-box on the defenders' line without an attendant. The injury complained of was inflicted in consequence of the horse, a Clydesdale, 15 hands high, and measuring 28 inches from the withers to the chest, having passed through the feeding-window or door, 25 inches square, in the end of the horse-box in which it was travelling, and cut itself on the glass of the window of the coupé into which it got. The Court held, reversing the judgment of the Sheriff (Fraser) and Sheriff-Substitute (Smith), that the facts did not show that there had been any such carelessness or want of proper precaution on the part of the Railway Company as to render them liable for the result of such a singular and unexpected accident.

A very long proof had been led in the Sheriff Court, the pursuer's evidence extending to 64 pages of print, the defenders' to 50. Thirteen witnesses were examined for the pursuer, and the same number for the defender. Several of these witnesses were called to speak to the habits of horses, three of the defenders' witnesses being veterinary surgeons. These witnesses were examined at great length as to the proper length of halter for tying a horse, and as to their opinion whether it was necessary that an attendant should travel with a horse or not. The latter point was not argued by either side before the Court.

In the course of their opinions, in which they were unanimous in holding that the Railway Company could not on the facts be held liable, the learned Judges made the following observations on the length of the proof:—

Lord Deas—We have had a very long proof laid before us on the question as to whether there was such neglect or default on the part of the Company's servants as to make them liable for the injuries sustained by this horse. The facts, if given with sufficient precision, would have been quite sufficient to determine that question. There was no use for such expressions of opinion as we have had in the evidence of the so-called skilled witnesses. It is very unsatisfactory to see a Sheriff Court case carried on at such length and at so great an expense.

Lord Mure—I quite concur in what Lord Deas has said about the length to which the evidence has extended. To try to get anything out of it is like looking for a needle in a bundle of hay. It seems to have been taken down by a shorthand writer without any dictation. That is quite improper, and whether it is to have any effect on the question of expenses, I do not say at present.

Lord Shand—I find that the proof here extended to 467 pages of manuscript. Whether there is to be some mark of our sense of the inordinate length of that proof by a finding as to expenses is a question for the consideration of your Lordships. I must say I think there should be some steps taken to check the length to which these proofs are sometimes allowed to run. Often they are admirably taken, but we

have had occasion several times to remark that the evidence is allowed to be taken down at needless length.

Lord President—I concur in the opinion of your Lordships on the facts of this case. With regard to the question of expenses, I shall be glad to hear what parties have to suggest.

The defenders asked for their expenses, on the ground that their evidence, while it might no doubt have been considerably abridged, was not so long as that of the pursuer, and that they were obliged to meet the skilled evidence of the pursuer by skilled evidence on their side.

Lord President—The Court are of opinion that one-half of the cost of the proof should be disallowed. We wish it to be understood that this is a precedent that will be followed in similar cases.

Counsel for Pursuer (Respondent)—Balfour—J. P. B. Robertson. Agents—Lindsay, Paterson, & Co., W.S.

Counsel for Defenders (Appellants)—Johnstone—Mackintosh. Agents—Hope, Mann, & Kirk, W.S.

HOUSE OF LORDS.

Tuesday, February 12.

THE LORD ADVOCATE *v.* EARL OF ZETLAND.

(Before Lord Hatherley, Lord Selborne, Lord Blackburn, and Lord Gordon.)

(*Vide ante*, Dec. 5, 1876, vol. xiv. p. 137, 4 Rettie 199.)

Succession—Succession-Duty Act 1853 (16 *and* 17 *Vict cap.* 51), *sec.* 2—*Predecessor—Disposition—Devolution by Law—Entail.*

An entailed estate, destined to A "in life-rent, and to the heirs-male procreated or to be procreated of his body in fee," passed in terms of the destination to B, who was served as nearest heir-male of tailzie and provision to C, his uncle, the immediately preceding substitute. *Held* (*aff.* judgment of Court of Session) that in the sense of the Succession-Duty Act, B took not by disposition but by "devolution of law;" that accordingly C, and not A, was his predecessor, and that he was therefore liable to pay a duty of three per cent.

This was an action in which the Lord Advocate maintained that the Earl of Zetland, having succeeded his uncle as next heir-male to certain estates under entails executed in 1768 and 1823, was liable to pay succession-duty at the rate of three per cent. Lord Zetland maintained that the estates were not derived by him from his uncle, the previous Earl, as "predecessor" in the sense of the Succession-Duty Act 1853, but from the makers of the entails, who were his lineal ancestors, and that consequently he was liable in succession-duty only at the rate of one per cent.

On 5th December 1876 the Court of Session (sitting as a Court of seven Judges) held that the "predecessor" of the Earl of Zetland was his uncle, and that he took from him by "devolution of law," and that therefore he was liable to pay succession-duty at the rate of three per cent.

Lord Zetland appealed to the House of Lords.

The respondent was not called upon.

At delivering judgment—

Lord Hatherley—My Lords, in this case the question arises upon the amount payable by the Earl of Zetland as succession-duty under the Succession-Duty Act, regard being had to the mode in which the estate of which he is in possession, and which is undoubtedly a succession, came to the Earl as successor according to the language of that Act. The question is—What, under the circumstances of his being so possessed of the succession, is the proper duty to be paid? The last taker of the estate to which he succeeded was his uncle, and if that uncle was his "predecessor," from whom the estate devolved upon him by law, according to the provisions of the Act he would have to pay three per cent. upon the value of the succession, ascertained in the way which the Act prescribes. If that was all, it would then be an ordinary succession to an uncle; but the peculiarity of the case is this, that he becomes such successor partly by virtue of an entail created in 1768 by Sir Lawrence Dundas, and partly by virtue of an entail created in 1813 by Thomas Lord Dundas, the liferenter under the original settlement of 1768 made by Sir Lawrence Dundas.

Now, my Lords, the title stands thus—The destination in the original deed of the 25th of May 1768, by Sir Lawrence Dundas, was in favour of his son Thomas, afterwards Lord Dundas, in liferent during the days of his life, and after his death to the heirs-male lawfully procreated or to be procreated of his body in fee, whom failing to certain substituted heirs who are specified in the deed. The deed of 1813, which was executed by Thomas Lord Dundas when he was in possession, and under the provisions of a certain private Act of Parliament granting him authority so to do, limited the estates in substantially the same manner—namely, to the same Thomas Lord Dundas in life-rent and then to the heirs-male of his body in fee, with remainder over.

My Lords, the question which arises in this case has been comparatively recently discussed in the case of *Lord Saltoun*, in your Lordships' House (April 1860, 3 Macq. 659), and the decision which was there come to is undoubtedly one which must have great effect, as it appears to me, in guiding your Lordships to a decision in the present case. In that case the question was, whether Lord Saltoun was entitled to say that he claimed the succession, as regarded his predecessor, through the medium of his immediate ancestor, or through the medium of the entail which had been created by, I think, his grandmother, and which entail pointed to him as the substitute *nominatim*, instead of including him, by virtue of the disposition therein contained, in the description of "heirs-male of the body" of either the institute or one of the substitutes? The question arose therefore, whether the author of the entail was the predecessor in that state of circumstances where the successor had been named in the instrument, and had taken the