country, and was duly registered. That being the state of matters, all objections taken by the pursuers on this part of the case clearly fail.

But it was further urged that this Court has no jurisdiction against the pursuers of this reduction, and that if the present defenders had brought an action against the pursuers in the Courts of this country it would have been thrown out on the ground of want of jurisdiction, and that no steps had been taken to found jurisdiction.

Now, this raises a rather important question under the Act of 1868.

If it is meant that such a decree of an English Court registered in Scotland can only be enforced against a domiciled Scotchman, or upon one over whom the Scottish Courts have otherwise jurisdiction, that would very much limit the operation of the statute.

It seems to me that the policy of the statute points to a much wider construction. It comes, I think, to this, that a person holding a decree pronounced by a competent Court in Great Britain can make this decree good both against the person and property of the debtor wherever found in Great Britain, and that any kind of execution which could lawfully follow a decree of this Court would also follow on the decree competently pronounced by another Court, and properly registered here. Upon that ground I think the arrestments here used were in proper form.

I am therefore for adhering to the Lord Ordinary's interlocutor, as I think that both the objections which have been taken to this decree are ill-founded.

Lords Mure and Shand concurred.

Lord Adam—One of the objections taken by the pursuers of the reduction to the proceedings in the English Courts was that the decree should have borne that it had been entered up at Westminster, and that the absence of this was fatal to it. I think, however, that the word "Westminster," in the Act of 1868, applies to the High Court of Justice, and that it does not apply to its locality, and upon that account I think there is nothing in the first objection taken by the pursuers.

As to the other point, that before a decree can be enforced in a country other than the one in which it is pronounced, there must be jurisdiction in that country, such a construction would in my opinion be to limit very much the operation of the statute, and I cannot adopt it.

The Court adhered.

Counsel for Pursuers — Comrie Thomson — Watt. Agents—Clark & Macdonald, S.S.C.

Counsel for Defenders—Darling. Agents—Dalgleish & Lumsden, S.S.C.

Tuesday, December 14.

FIRST DIVISION.

WILLIAMSON *v.* WILLIAMSONS.

Succession—Presumption of Life—Presumption of Life Limitation (Scotland) Act 1881 (44 *and* 45 *Vict. c.* 47), *sec.* 8

The Presumption of Life Act 1881 provides that where no presumption arises from the facts proved in a petition under it that the absentee died at any particular time, he shall be held, for the purposes of the Act, to have died at the expiry of seven years from the date of his disappearance. In a petition under the Act the petitioner established facts which showed a probability that the absentee died on a particular journey, but also left it quite a reasonable deduction from the facts that he did not. *Held* that the question not being one of mere probability, there was no "presumption arising from the facts" that he died on the journey in question, and *therefore* that the presumption of the Act, that he died seven years after his disappearance, must be applied.

By disposition dated 27th March 1844 Mrs Jessy Stewart Dingwall Fordyce, relict of Arthur Dingwall Fordyce of Culsh and Brucklay, disponed to and in favour of Dr Benjamin Williamson, physician in Aberdeen, in liferent, and to Arthur Stewart Williamson, his youngest son, in fee, a portion of the lands of Pulmuir, called Arthur-seat, on the north side of the river Dee, in the immediate vicinity of Aberdeen. Dr Williamson died on 23d August 1850, and Arthur Williamson entered into possession and enjoyment of the said heritable estate. In 1857 Arthur Williamson left Scotland for Australia, and was between 1862 and 1865 partner with his brother John Burnet Williamson in various sheep transactions, and other business. The brothers parted in July 1865 at Peak Down Mines, Northern Queensland, from which place Arthur Williamson intended to proceed with horses overland to Sydney, while John Williamson was to go to the same place by sea. John Williamson never saw or heard of his brother again, nor was he heard of again by any of his friends or relatives. Arthur Williamson was about twenty-six years of age when he disappeared. He was unmarried, and was aware of his rights. In these circumstances the present application was made by the said John Burnet Williamson, as the person entitled to succeed to the heritable estate, for authority to make up title to the estate of his brother under the Presumption of Life Limitation (Scotland) Act 1881. The heritage had been compulsorily taken by a public body under the Lands Clauses Act 1845, but the consigned price (£6000) remained heritable in a question of succession, and the petitioner, as heir-at-law, claimed it and also the accumulated rents. These had been accumulated by the agents for the absentee by a factor *loco absentis*.

The petitioner averred that at the time the absentee disappeared he knew that he was the owner of the heritable property above referred to, and also that he was entitled to certain moveable property. He also averred that the ab-

sentee corresponded with his relatives in this country down to 1864, and that he was on cordial and affectionate terms with himself (the petitioner) and the other members of his family. He further alleged that in these circumtances "a presumption arose from the facts that the said Arthur Williamson died in or about July 1865, having been lost in the bush in the course of the journey on which he was setting out when he last saw him," or alternatively, that the absentee must be presumed to have died not later than July 1872.

Answers were lodged by the relatives (other than the petitioner) who were next-of-kin of Arthur Williamson, assuming him to have died at the expiry of seven years from the time of his being last heard of, *i.e.*, in July 1872, and who were therefore interested in the accumulated rents. In these answers, while admitting generally the accuracy of the statements in the petition, they took exception to the averment that a presumption arose from the facts that Arthur Williamson died in or about July 1865.

They averred that no presumption arose from the facts that Arthur Williamson died at any definite date, and accordingly that under the 8th section of the statute it fell to be presumed that he died on the day which would complete a period of seven years from the time of his last being heard of. They accordingly maintained that a day in the month of July 1872 must be taken as the date of his death.

Parties were allowed a proof of their averments, and evidence was led on commission in Bathurst, New South Wales. Under this commission John Williamson, the petitioner, was examined. He stated that when he and his brother parted company in July 1865 they were on the best of terms, and his brother was in excellent health; that the cause of their parting company was an inability to longer carry on the business which they had been working together; that Arthur had when they parted some cheques—£80 or £90—and a watch; that he had no knowledge of the country through which he was going to travel; that he was not a good bushman, and that it was probable he had perished either from want of water or at the hands of the blacks. It also appeared from his evidence that though they parted in 1865, Arthur to go to Sydney by land and John by sea, John did not start for Sydney for some time, but engaged in various pieces of business, and did not reach Sydney until 1869, when he obtained no news of Arthur at the inn at which they were to meet. He did not then advertise or make inquiry for him elsewhere, and left Sydney, but in 1877 he took some steps by letter and advertisement to discover him. Other evidence was led of persons who knew the district through which Arthur was to travel, to show the probability of his having perished on the journey.

In addition to the evidence taken in New South Wales, evidence was also taken in Edinburgh and Aberdeen. Various letters were recovered under this diligence. Among others, one dated 16th September 1862 from the absentee to his mother, the last received by her or the family from him. Another letter recovered was a copy of one dated 22d February 1865, addressed to the absentee by Mr Cochran, his man of business in Aberdeen, acquainting him with the death of his brother William, and communicating certain business matters which required to be attended to. This letter was returned to Mr Cochran. In March 1865 Mr Cochran again wrote Arthur Williamson on business matters to an address he had given in his letter of 1862, but this letter was returned unclaimed. In 1867 further letters were written to him by Mr Cochran, and efforts were made through bankers in Australia to obtain a clue to his whereabouts, but without success. His relatives at home advertised for him in Australian papers in 1876, also without success. The proceedings as to his succession, now reported, were also advertised in 1885 and 1886, but no news of him was ever obtained.

At the discussion on the evidence it was argued for the petitioner—That the facts and circumstances showed that the absentee died in July 1865 in the course of the journey on which he was setting out when he was last seen.

Authorities—*Lapsley* v. *Greerson*, November 19, 1845, 8 D. 34; *Fairholme* v. *Pringle*, March 18, 1858, 20 D. 813; *Garland* v. *Stewart*, November 12, 1841, 4 D. 1; *Campbell's Trustees* v. *Campbell*, February 1, 1834, 12 S. 382; *M'Lay* v. *Borland*, July 19, 1876, 3 R. 1024; *Rhind's Trustees* v. *Bell*, January 15, 1878, 5 R. 527.

Replied for the respondents—There was only a probability that Arthur Williamson died on the journey in question, but the facts were not so clear as to raise a presumption under sec. 8 of the statute. July 1872 ought to be fixed as the date of the absentee's death.

At advising—

Lord President—The general rule of common law is that (within the ordinary limits of human life) a man is presumed to be alive until his death is proved, or until facts are proved sufficient to raise a presumption that he died at a certain specified date. The object of the Act of 1881 was to limit the presumption of life with reference to persons who have been absent from this country or have disappeared for a long period, and the benefits of the statute in this respect have been very generally recognised. By the old law property belonging to the absentee, or in which he had an interest, was often tied up for a generation without anyone being able to derive any benefit from it, whereas the effect of the statute has been to raise a presumption that after the lapse of a certain time the absentee is dead, and certain machinery is provided for enabling those entitled to succeed to the absentee to make good their claims. Various times are fixed by the different sections, depending upon whether the petitioner is seeking to deal with the property, heritable or moveable, of the absentee, or merely with the income of that property, but the principle upon which these different periods are fixed is the same in each case.

In each case, however, it is necessary to fix the precise time at which the absentee is to be presumed to be dead; for when a person has disappeared twenty years ago it may be a matter of considerable importance whether he is to be presumed to have died the year after he disappeared or not until nineteen years thereafter.

Seeing, then, that a time had to be fixed, the statute declares by section 1 that when a person has been absent from Scotland, or has disappeared for a period of seven years or up-

wards, and who has not been heard of for seven years, and who at the time of his leaving or disappearance was possessed or entitled to heritage or moveables in Scotland, or who has become entitled to such estate, then it is to be competent for anyone entitled to succeed to such absentee to take certain procedure to make good his claim to the yearly income of the absentee's estate, while by sec. 5 it is provided that where a person has been absent for twenty years without being heard of, his heirs may petition for authority to enter into possession of his heritage as if he were dead. Now, this seems a most reasonable provision, and following it up the Act goes on in section 8 to provide that, "for the purposes of this Act, in all cases where a person has left Scotland or has disappeared, and where no presumption arises from the facts that he died at any definite date, he shall be presumed to have died on the day which will complete a period of seven years from the time of his last being heard of at or after such leaving or disappearance."

In the present case the petitioner says that he has proved by the evidence which he has produced that the absentee died in July 1865. No doubt, even under the old common law, it was perfectly possible to rebut the presumption of life by facts and circumstances which demonstrated that the absentee had died at a definite date. The question therefore here comes to be whether or not the facts connected with the disappearance of the absentee raise the presumption that he died at the "definite date" fixed by the petitioner? I cannot say that I think from the facts the petitioner has proved that this is made out.

We know that the absentee left Rockhampton in 1865, and that in his journey to Sydney he had to pass through a perilous country. It is not improbable that he was murdered on his way to Sydney, as he is known to have had valuable property in his possession when he parted from his brother. That, however, is not sufficient evidence for the determination of the question now before us. We do not know for certain that the absentee did not arrive in Sydney—he was not known there, and indeed so little importance did his brother attach to not meeting him in Sydney, as arranged when they parted, that he does not seem to have made any special inquiries as to whether he had been seen in the town or district. Suppose that Arthur Williamson did reach Sydney in safety, and that, being unknown, he passed through it unobserved, he may have died elsewhere, and long after the date fixed by the petitioner.

It is not by a balancing of probabilities that a question like this is to be determined. In order to fix July 1865 as the date of the absentee's death we should require to be satisfied that he died in the course of his journey to Sydney, and the evidence upon that matter does not amount, in my opinion, to anything more than a probability. That being the view I take of the evidence, I do not think that the facts and circumstances here are sufficient to raise a presumption strong enough to overcome the old law. I do not in the present case attach any importance to the cessation of letters between the absentee and his relatives in this country, or think that the date of his last letter in any way helps us to determine the period of his death. In some cases the sudden cessation of correspondence is an important element, but in the present case I do not think it helps us in the least, for we happen to know that he had been made aware he was not to receive any further pecuniary assistance from home, and this may to some extent account for his giving up writing.

On the whole matter, I think that we are in the present case bound by the provisions of sec. 8 of the statute, and that as no presumption arises from the facts that the absentee Arthur Williamson died at any definite date, then he must be presumed to have died seven years after the day upon which he left Rockhampton.

LORD MURE concurred.

LORD SHAND—Both parties here appeal to the provisions of sec. 8 of the statute in one or other of its branches. It is of advantage to one of the parties if he can make out that a presumption arises from the evidence which he has produced that the absentee died at a date which he fixes as July 1865, because he will in that case succeed to a larger share of the accumulated rents of this heritable estate, and the question therefore comes to be whether that is satisfactorily made out.

Before the passing of the present Act there was by the old law a strong presumption in favour of life, and very clear evidence was required to overcome that presumption. It may be that proof of a less convincing character would now be sufficient. Upon that I give no opinion. All I desire to say is, that I agree in the construction which your Lordship has put upon the provisions of the statute. The facts and circumstances must come up to this, that we must be satisfied that the absentee died at the definite date fixed upon by the petitioner. In the present case the petitioner has in my opinion failed to make this out, and accordingly he can take the benefit of the Act only to this extent, that Arthur Williamson is to be presumed to have died at a time which makes seven years from the day upon which he set out on his journey to Sydney.

LORD ADAM—This Act provides (sec. 5) that when a person has been absent from this country or has disappeared for twenty years, if no presumption arises from the facts that he died at any definite date, then he is to be presumed to have died on a day which will make seven years from the day upon which he was last heard of.

In this case Arthur Williamson has disappeared for more than twenty years. Therefore he is to be presumed to have died seven years after he was last heard of, unless it can be shown by satisfactory evidence that he died at an earlier date.

I quite concur with what your Lordship said as to the character of the evidence upon which an earlier date than the se en years is to be determined, and if I were charging a jury in such a question I would put it to them thus—Is it, or is it not, beyond all reasonable doubt that the absentee died upon the journey?

This is not a question of probabilities, for many things may have happened to Arthur Williamson which are not excluded by the evidence. All that we can say is, that from the facts before us there is no presumption that the absentee died at the date fixed upon by the petitioner, and that being so, I agree in the result arrived at by your Lordship.

The Court accordingly pronounced an interlocutor directing the estate to be administered on the footing that the absentee had died at 31st July 1872, being the expiry of seven years from the year, 1865, when he was last heard of.

Counsel for Petitioner — Darling — Ferguson. Agents—Carment, Wedderburn, & Watson, W.S.

Counsel for Respondents—H. Johnston. Agents —Hagart & Burn Murdoch, W.S.

Wednesday, December 15.

SECOND DIVISION.

[Sheriff of Selkirkshire.

KEDDIE, GORDON, & COMPANY *v.* THE NORTH BRITISH RAILWAY COMPANY.

Reparation—Carrier—Railway—Duty of Carrier —Delay—Damages, Direct or Consequential.

A carrier to whom goods are consigned to be forwarded is entitled, if they are not securely packed, to refuse to receive them, and to return them.

Goods were delivered to a railway company, addressed to a shipping agent at a port, who was to forward them to Germany. On arrival he found the covering of them had been torn in the transit, and that some slight damage had been done, and sent them back to the sender. They were at once re-packed, and again despatched, but in consequence of the delay the customer in Germany rejected them, and they were returned and resold. *Held* that the railway company were liable in damages, and that the proper measure of these was the difference between the invoice price (with cost of carriage and insurance) and the sum for which they were resold on their being returned—the loss of that sum being the direct result of the delay due to the injury to them in transit.

On 16th January 1884 Messrs Keddie, Gordon, & Company, manufacturers, Galashiels, delivered to the North British Railway Company at their station at Galashiels a bale of tweed cloth enclosed in three wrappers. The bale was addressed to Messrs John Sutcliffe & Son, commission, shipping, and forwarding agents, Grimsby. The cloth contained in it had been sold by Keddie, Gordon, & Company to Oppenheimer & Grabowsky, Berlin, and it was being sent to Sutcliffe & Son for transmission by them to Messrs Oppenheimer & Grabowsky. Keddie, Gordon, & Company paid the carriage. On the same day Keddie, Gordon, & Company sent an invoice to Oppenheimer & Grabowsky, also a note to Sutcliffe & Son asking them to forward the bale with all speed as it was wanted urgently. When the bale, which travelled over the Midland and Manchester, Sheffield, and Lincoln Railway as well as the North British Railway, arrived at Grimsby, which it did without any undue delay having occurred, it was found by Sutcliffe & Son that the wrappers had been chafed and torn, and with the result that the cloth inside was damaged by a hole being made in one breadth of it which was next the wrapper. In consequence Messrs Sutcliffe & Sons, according to their custom in such a case, instead of sending it on by steamer, declined to send it, and intimated to the Manchester, Sheffield, and Lincoln Railway Company's agent at Grimbsy that it must be returned for repairs to the sender, and they also intimated that they would hold that company liable in case of a claim.

The bale was then sent back to Messrs Keddie, Gordon, & Company at Galashiels, where it arrived on the 25th January. It was by them re-packed, in the hope and belief that as the damage to the goods themselves was not serious Oppenheimer & Grabowsky would accept them even if the price had to be abated, as was sometimes done in their trade. They sent it back to Grimsby on the same day. On 4th February Messrs Oppenheimer & Grabowsky wrote to Messrs Keddie, Gordon, & Company that they had no notice of the bale having arrived at Hamburg, and that as it had been such a long time on the way they had now no use for the goods. The bale, after having been to Berlin, and come back as refused by Oppenheimer & Grabowsky, was redelivered at Galashiels on the 10th March 1884.

On 17th March, Keddie, Gordon, & Company sold the bale to Messrs Henry Lee & Company, merchants, Manchester, for £29, 14s. 9d., being the best price that could be got for it, as it had been specially made for Oppenheimer & Grabowsky, and did not suit the home market. On 21st January Messrs Keddie, Gordon, & Company had written to the North British Railway Company's station agent at Galashiels, stating that as the bale was urgently wanted by their customers they feared that in consequence of the delay in transmission it would now be of no use, and that they would hold the railway company responsible for any loss that they might incur by the delay. On 12th March they again wrote to him, stating that the goods had been returned to them, and that as the loss which they had incurred through having to sell the bale at a lower than contract price was occasioned by the fault of the railway company, they would hold them liable. They also enclosed a note of their loss. A correspondence ensued between the parties, as the railway company alleged that the Manchester, Sheffield, and Lincolnshire Railway Company were responsible for the damage done to the bale, but on 25th August the North British Railway Company's agent wrote to Messrs Keddie, Gordon, & Company stating that the English railway company had "definitely informed him that they cannot admit liability for the claim, for the reason that the damage by chafing referred to was not a sufficient cause for Messrs Sutcliffe & Son returning the bale, and as the claim is not for damage done, but for loss through delay that ensued, and as the Manchester, Sheffield, and Lincoln Company neither caused nor consented to the bale being returned they are not responsible for the consequences. Under these circumstances I regret I am instructed to decline the claim."

Messrs Keddie, Gordon, & Company brought this action in the Sheriff Court of Roxburgh, Berwick, and Selkirk against the North British Railway Company for the sum of £36, 1s. 2d., made up of £62, 1s., being the invoice