decided in some competent action. But as regards this action, I do not understand the objection which is taken at this stage by the defender. The pursuers have right to these feu-duties. I asked more than once what the defender thought the pursuers should do, and I was told they must proceed against the vassals annually. But if it will save trouble and expense to give them a decree once for all, why should they not have it? It will be less expensive and more expedient. What interest have they that there should be an action brought against them annually rather than that an action should be brought against them now which would settle the question altogether?

An action of maills and duties no doubt has important effects when brought by a creditor of the owner of the *dominium utile*, and certain technical effects follow upon it. But suppose this action is regarded not as an action of maills and duties but simply as an action to have the vassals ordained to pay their feu-duties to the superior's creditor as they are bound to do, then I do not see what technical difficulties there are; but even if there were technical difficulties, I should be prepared to overcome technical difficulties to save expense.

The question with the vassal's creditor to which I have referred must arise some time, and it would arise and would have to be determined in this action, if it were allowed to go on, just as well as in the first of the annual actions which it is suggested the pursuers should bring against the vassals.

I think this action is perfectly competent and ought to be allowed to proceed. I cannot see any legitimate interest in any of the parties which requires that it should be dismissed at this stage.

LORD TRAYNER — I think the case of *Cheyne* has decided this question, and has decided it adversely to the reclaimer. I am not disposed to go back on that decision, and therefore I agree that this reclaiming-note must be refused.

LORD MONCREIFF was absent.

The Court refused the reclaiming-note, adhered to the interlocutor reclaimed against, and decerned.

Counsel for the Pursuers — Rankine — F. T. Cooper. Agents—Millar, Robson, & M'Lean, W.S.

Counsel for the Defender — Guthrie — Macphail. Agents—H. & H. Tod, W.S.

Thursday, July 9.

SECOND DIVISION.

STUART *v.* GREAT NORTH OF SCOTLAND RAILWAY COMPANY.

Process—Proof—Diligence and Recovery of Writs—Confidentiality—Reports by Railway Servants to Railway Company—Reparation—Railway.

In an action of damages against a railway company for the death of a passenger, at the instance of his widow and children, occasioned, as alleged, by the fault of the railway company's servants, the pursuers moved for a commission and diligence for recovery of reports made by the railway company's servants to the company with reference to the accident to the deceased. The Court *refused* to grant diligence, on the ground that such documents were confidential.

This was an action at the instance of the widow and the pupil children of the late Robert Stuart, farmer, Wraes, Kennethmont, Aberdeenshire, and the widow as guardian of the pupil children, against the Great North of Scotland Railway Company. The pursuers sought damages for the death of the said Robert Stuart, which was caused, as they alleged, by the fault of the company's servants, in allowing a train by which he was about to travel to start before he was safely seated, and in inviting and ordering the deceased to attempt to enter the train while in motion, in consequence of which he fell between the platform and the train, and sustained injuries from the effects of which he subsequently died.

An issue was adjusted for the trial of the cause by jury, and notice was given for the Summer Sittings.

On 9th July the pursuers moved for a commission and diligence to recover documents. The first article of the specification was as follows—"(1) The written reports made to the defenders by the stationmaster at Gartly Station, and by the guard and engine-driver of the 1.15 p.m. down train from Aberdeen to Huntly on 12th October last with reference to the accident to the deceased Robert Stuart at Gartly station, caused by said train, and the time of its arrival at and departure from said station."

Counsel for the Railway Company objected to this article, and argued—These reports were confidential, and the pursuers were not entitled to get a diligence for recovery of them.

Argued for the pursuers—These reports were not confidential. There was no distinction between them and the letters and reports for recovery of which a diligence was granted in the case of *Tannett, Walker, & Co.* v. *Hannay & Sons*, July 18, 1873, 11 Macph. 931.

At advising—

LORD JUSTICE-CLERK—This is practically a demand for confidential reports to the

Railway Company from their own servants. I think the pursuers are not entitled to a diligence for the recovery of such documents.

LORD YOUNG, LORD TRAYNER, and LORD MONCREIFF concurred.

The defenders having undertaken at the bar to give the documents asked for in the only other article of the specification without a diligence, no formal interlocutor was pronounced.

Counsel for the Pursuers—Crabb Watt —W. Brown. Agent—William Geddes, Solicitor.

Counsel for the Defenders—Balfour, Q.C. —Ferguson. Agents—Gordon, Falconer, & Fairweather, W.S.

Thursday, July 9.

FIRST DIVISION.

DUKE OF ARGYLL AND OTHERS, PETITIONERS.

Process — Petition — Intimation — Salmon Fisheries (Scotland) Act 1842 (25 *and* 26 *Vict. c.* 97), *secs.* 18 *and* 24—*Reconstitution of Lapsed District Board.*

In a petition presented for a remit to the Sheriff to reconstitute a district board, which had been constituted in terms of the Salmon Fisheries (Scotland) Act 1862, but which had lapsed upon the expiry of the three years' term of office of the original members without a new board having been elected, the Court *ordered* intimation in the common form, and also to the Secretary for Scotland, and advertisement in certain newspapers.

The Duke of Argyll and others, being the upper and lower proprietors of salmon fishings within the district of the rivers Baa and Glencoilleadar, Mull, qualified in terms of the 18th section of the salmon fisheries (Scotland) Act 1862 (25 and 26 Vict. c. 97), presented a petition for a remit to the Sheriff of Argyllshire to reconstitute the District Board in the said district.

The petition proceeded upon the narrative that, while the Salmon Fisheries (Scotland) Amendment Act 1864 (27 and 28 Vict. c. 118), sec. 3, and the Salmon Fisheries (Scotland) Act 1868 (31 and 32 Vict. c. 123), sec. 3, made provision for the case where no District Board has been constituted under the Salmon Fisheries (Scotland) Act 1862 before the passing of these Acts, there was no statutory provision for the case, which had here arisen, of a Board which had been constituted lapsing through failure to call a meeting of proprietors within the triennial period prescribed by sec. 24 of the Act of 1862.

The prayer of the petition contained no clause craving an order for intimation and advertisement.

The petitioners referred to the cases of *Campbells*, March 17, 1883, 10 R. 819; and *Brodie*, January 23, 1884, 21 S.L.R. 309.

The Court pronounced an interlocutor ordering the petition "to be intimated on the walls and in the minute-book in common form, and also to Her Majesty's Secretary for Scotland, and to be advertised once in each of the *Scotsman*, *Glasgow Herald*, and *Oban Times* newspapers," and appointing his Lordship and all parties interested, if so advised, to lodge answers within eight days.

Counsel for the Petioners — Burnet. Agent—James F. Mackay, W.S.

Saturday, July 11.

FIRST DIVISION.

SCOTTISH EMPLOYERS LIABILITY AND ACCIDENT ASSURANCE COMPANY, LIMITED, PETITIONERS.

Company—Resolution to Alter Memorandum of Association — Confirmation by Court — Companies (Memorandum of Association) Act 1890 (53 *and* 54 *Vict. cap.* 62)—*Change of Name—Intimation.*

A company carrying on the business of employers liability and accident insurance presented a petition for confirmation of a resolution to alter its memorandum of association so as to enable it to undertake sickness and guarantee insurance business. The advertisement of the petition ordered by the Court contained no indication of the nature of the petition, nor had intimation been made to the policyholders. *Held* (1) that the name of the company must be altered so as to give expression to the new branches of business proposed to be undertaken; and (2) that intimation of the alteration proposed in the petition must be made by advertisement.

Process—Petition—Intimation.

Observations (*per* Lord President) as to the desirability of greater attention being paid in preparing petitions to the question to whom intimation must be made.

The Scottish Employers Liability and Accident Assurance Company, Limited, presented a petition under the Companies (Memorandum of Association) Act 1800 (53 and 54 Vict. cap. 62) for confirmation of a resolution to make certain alterations in its memorandum and articles of association.

The objects for which the company was formed may be shortly stated to have been, under article 3 of the original memorandum of association, employers liability and accident insurance.

By special resolution passed and con-