to the £8000. It was in anticipation that she might survive. It was part of the *mortis causa*, and therefore she meant that, at all events, her husband or his successors should have the £8000 if she survived, and if he survived, of course the £8000 would merge in the fee. Now, the mere circumstance of her providing for her own death is nothing very extraordinary; for, in the first deed, which was also probably partly a *mortis causa* deed, she appoints her husband her executor. Therefore she is looking to her own death in her husband's lifetime.

Your Lordships are not called upon to decide a question which might be one of some difficulty —Whether, if this deed would operate in no other way, the husband having consented to the exercise by the wife of what she deemed her power, and they both having a joint power—whether the deed would operate as an exercise of that joint power? That I should consider a very difficult question. Your Lordships are not called upon to decide that. But my strong impression is, that this was merely intended as an exercise of the power which she would have if she survived, and she not having survived, this deed has not the slightest operation. But, supposing it does operate, then, what is the effect of it? Why, nothing can be so clear, and I was quite surprised how any argument could have been raised upon it. The deed itself expressly only leaves the estates which were before given to the husband and wife precisely where it found them, although a great deal of stress has been laid on the words "after her death," as if that made a life estate.

Yet, even supposing that minute criticism to be correct, see what the effect is—see how it stands upon this deed. She appoints, dispones and conveys, and so on; and "failing the said John Maxwell my husband, and me, and the longest liver of us, I do here nominate and appoint Alexander Maxwell and the heirs of his body to take." It is, therefore, "failing us," which are the strongest words which can be used, following a general limitation by the law of Scotland to leave the fee in the granter. Then, what is the operation of that? After the failure of the limitation to the husband and wife and the survivor, then there should be a substitution. Then that left the fee exactly where it was before. It left the fee in the husband and wife and in the survivor of them, and the husband having survived, of course the substitution never took effect. Therefore, whether the deed of 1809 became a nullity because the husband survived, or whether it was operative, it did not affect the fee, because that was left untouched by the deed. So that, in either view of the case, the property remained in the husband, and his disposition was perfectly valid. My Lords, a part of the instrument, which was adverted to by my noble and learned friend on the woolsack, is also very strong as bearing upon this question. I mean the clause as to the name and arms, because it shews clearly that the parties understood that there might be a descent to the heirs general of the husband, which could not be, unless they considered that the fee remained in him.

A good deal has been said upon the question of warranty. But I think that much that has been said is entirely out of place here. The warranty would have the effect of warranting the property according to the limitations. But there is nothing to prevent the tenant in tail acquiring the fee and defeating the gift over, because the warranty is only, that the instrument shall have full operation, and the warranty here had its full operation. Upon the whole, I think I never saw an appeal with less foundation than that which has come before your Lordships, and I entirely concur that it should be dismissed, with costs.

Interlocutors affirmed, with costs.

Tatham, Upton, Upton and Johnson, *Appellant's Solicitors.*—Grahame, Weems and Grahame, *Respondent s Solicitors.*

JULY 6, 1854.

MARY MUIR or PATERSON and OTHERS, *Appellants*, *v.* M. WALLACE and COMPANY, *Respondents.*

Master and servant—Negligence of Master—Reparation—Question for Jury—*P., a miner, complained to S., the owner's manager, of a dangerous stone in the roof of the mine, and S. promised to remove it. While P. was working, and before its removal, the stone fell and killed him.*
HELD (reversing judgment), *That it was for a jury to say whether the stone was left by the negligence of the owner, and whether P. was killed by its falling, and not by his own rashness.*
A master is bound to protect servants employed in dangerous occupations against extraordinary danger.[1]

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[1] See previous report 16 D. 233; 26 Sc. Jur. 123. S. C. 1 Macq. Ap. 748: 26 Sc. Jur. 550.

This was an action of damages against the proprietors of a coal pit, at the instance of the widow and children of a workman, called Robert Paterson, who was killed, on 1st December 1851, by the falling of a stone from the roof of the pit.

The case went to trial on the following issues :—"It being admitted that the pursuer, Mrs. Mary Muir or Paterson, is the widow, and that the other pursuers are the lawful children, of the said deceased Robert Paterson and Mary Muir or Paterson :

"It being also admitted that the defenders are the proprietors of the coal pit at Easterhouse aforesaid, mentioned in the summons, and that they were in the occupation thereof during the year 1851 :

"Whether, on or about the 1st day of December 1851, the said deceased Robert Paterson, while engaged in the service of the defenders as a miner in the said pit, sustained injuries to his person, which shortly afterwards caused his death ; and whether the said injuries were occasioned by reason of the unsafe and insufficient condition of the road, or main road of the said pit, in which the said deceased was engaged as aforesaid, and of the roof, or part of the roof of the said road or main road, and by the fault, negligence, or unskilfulness of the defenders, or of any person or persons for whom they are responsible, to the loss, injury and damage of the pursuers?

"Damages laid at £1000."

Evidence having been led, the following procedure took place at the trial :—"The Lord Justice Clerk told the jury that, on this evidence, he directed them that the pursuers could not recover damages.

"The counsel for the pursuers *excepted*, and asked the Lord Justice Clerk to state to the jury in point of law—'that if Snedden, the defenders' manager, failed in his duty in timeously directing the stone in question to be removed, it would afford no defence to this action that Paterson continued to work after the orders for the removal of the stone had been ultimately given ; and and that if Paterson so continued to work in consequence of the directions of the roadsman, the defenders are responsible for such directions ;' which he declined, in the circumstances, to state, and the pursuers' counsel *excepted* as aforesaid.

"Thereafter the jury aforesaid, did then and there deliver their verdict, in favour of the said defenders, as follows :—'Find for the defenders. Whereupon the said counsel, learned in the law, for the pursuers, did then and there propose the aforesaid exception to the foresaid decision of the said Lord Justice Clerk.'" The Court of Session disallowed the exception.

The pursuers appealed, and in their *printed case* stated the following reasons :—"1. Because it was for the jury alone to determine what were the facts proved by the evidence ; and because it was incompetent for the Judge, on any views which he might himself take of the state of the facts, to withdraw the case from their consideration. The error committed in so doing was apparent on the face of the record. 2. There was miscarriage, inasmuch as the case was withdrawn from the jury ; although in point of fact, there was evidence to go to them in support of the issue. 3. The assumptions of fact, upon which the presiding Judge proceeded in withdrawing the case from the jury, were not supported by the evidence. 4. Even had those assumptions of fact been supported by the evidence, the direction by the Judge was unsound. 5. In the circumstances, the Judge was in error in declining to direct the jury in the terms in which he was called upon to do so by the appellants."

Hodgson, for appellants.—This was one of the actions enumerated in 6 Geo. IV., cap. 120, § 28, as proper to be tried by a jury. The evidence for the pursuers was such, that reasonable men might draw different conclusions from it ; and such being the case, it was obviously improper for the Judge to take upon himself to say that one conclusion only could be drawn from it.—*Per* Pollock, C.B., in *Taff Vale R. Co.* v. *Giles*, 2 E. & B. 822 ; *Fraser* v. *Hill*, 1 Macq. Ap. 382 ; 25 Sc. Jur. 391 ; *ante*, p. 232. As to the law of the case, there was no real dispute, it being admitted on both sides that it is not enough to disentitle the appellants to claim damages, merely that the deceased workman was guilty of negligence.—*Whitelaw* v. *Moffat*, 12 D. 434 ; *Rankin* v. *Dixon*, 14 D. 420. At least the negligence here alleged was a matter of fact which a jury alone could dispose of. As the Judge therefore improperly withdrew the case from the jury, the appellants are entitled to a new trial.

Sol.-Gen. Bethell, and *Bovill*, for respondents.—It was quite clear from the evidence of the pursuers themselves, that the accident was entirely caused by the deceased's own rashness. Neither the law of Scotland, nor any other law, could in such circumstances hold the master liable. There was nothing to leave to the jury. The workman was not bound to go on working if he had reasonable ground of believing there was danger from the stone falling, as was decided in a case precisely similar.—*M'Neill* v. *Wallace*, 15 D. 818. But if he chose, out of mere wantonness, to do so, he cannot complain of the consequences. Besides, the exception taken by the counsel for the pursuers was not sufficiently specific, for the proper ground of the exception ought to have been stated at the time, as was seen in *Bain* v. *Whitehaven and Furness R. Co.*, 7 Bell's Ap. 80. The exception pointed not, as it is now said that it did, to any conflicting evidence from which reasonable men might draw different conclusions, but to this, viz., that the Judge ought to have told the jury, in point of law, that if the stone was not timeously

removed, it made no difference whether the workman continued working. Now that was obviously bad law; for the question of timeous removal of the stone was only important where the workman was ignorant of the danger; but when, as appeared from his own evidence, he was quite aware of the danger, and voluntarily and rashly went into it, the master could not be liable. Besides, the case, in its merits, clearly shewed that the jury would not have come to a different verdict, even if the Judge had directed them, as was contended for by the exceptions; and if the result of allowing the exceptions would not, in the opinion of the Court, have led to a different conclusion, no new trial ought to be granted. 13 and 14 Vict., cap. 36, § 45.

LORD CHANCELLOR CRANWORTH.—My Lords, so much deference is always due to the opinions of the learned Judges in Scotland, that it is very rarely the practice of your Lordships' House to reverse interlocutors complained of, without taking time to deliberate upon the subject, in order that we may be certain of coming to a right conclusion. There are two reasons which induce me to advise your Lordships not to adhere to that rule in the present case. One is, that we have already had time to consider this matter since it was fully opened to us; and, secondly, because it relates to a subject with which, with all respect to the learned persons whose judgments are under review, it would be idle not to admit, because they themselves are continually stating it, that they are not so familiar as they are with the ordinary administration of the law. In Scotland, trial by jury, as has been stated by the learned counsel, is still to be treated as an exotic in that country. It does appear to me extremely clear, that the learned Judges have come to an erroneous conclusion in overruling these exceptions.

My Lords, this question arises upon an action which was brought by the representatives of a deceased workman to recover compensation, in consequence of the death of the deceased having been occasioned, as it is said, by the default of his master, under such circumstances as made the master responsible. The law of Scotland is admitted on all hands to be this—and I believe it to be entirely conformable to the law of England also—that where a master is employing a servant in a work, particularly work of a dangerous character, he is bound to take all reasonable precautions that there shall be no extraordinary danger incurred by the workman. A case has been put by Mr. Bovill of a rope going down to a mine. I take it, that in England, just as in Scotland, if the master of a man negligently puts a rope that is so defective that it will break with the weight of a man upon it, he is responsible to the workman, just as he would be responsible for his negligence to a stranger. It has been decided, according to my recollection, in England, that masters are liable to strangers for all accidents which occur by negligence on the part of their servants. The case is different where the master is employing several servants, and employing competent persons. In that case, suppose an accident happens to one of them, owing to the neglect of another servant, I think it has been determined in the Courts in England, that the master is not responsible. I thought this was a case of that sort, when I intimated that there might be a difference between the law of Scotland and the law of England upon this subject, but in the actual state of the case I do not believe there is any difference at all. I believe, by the law of England, just as by the law of Scotland, in the actual state of the case with which we have to deal here, a master employing servants upon any work, particularly a dangerous work of this sort, is bound to take care that he does not induce them to work under the notion that they are working with good and sufficient tackle, whilst he is employing improper tackle, and being guilty of negligence, his negligence occasioning loss to them. That, however, is generally admitted on all hands to be the law of Scotland.

My Lords, this action was brought upon this ground, that this unfortunate man had come by his death by reason of the masters, through their agents, having carelessly left a very large stone in the roof of a mine in so dangerous a position, that the workman, when engaged in digging out the coal, owing to their negligence, lost his life. There being no doubt that the poor man did lose his life by this great stone falling upon him, which killed him on the spot, in order to recover damages the family must establish two propositions. First of all, they must shew that that stone was in a position in which it was dangerous, owing to the negligence of the master; and next, that the workman whose life was forfeited lost it owing to that negligence, and not to his own rashness. It is said, that by the law of Scotland the master is bound to provide against the rashness of the workmen, and I see in one of the learned Judge's opinions an expression which might give countenance to such a notion. That is evidently a proposition which, as matter of law, can never be sustained. In England, in Scotland, and in every civilized country, a party who rushes into danger himself, cannot say—"that is owing to your negligence." As a question of fact, it may very well be laid down, that that which would be negligence, and reasonably treated as rashness, in other persons, may not be fairly treated as rashness in a workman, if his master knows that such conduct is what workmen ordinarily pursue. That is all the learned Judge could have meant. The pursuers here must make out that the deceased came to his death owing to the stone in question having been improperly left to remain where it was, being dangerous to the persons who should work in the pit. Secondly, that the party has come to his death in consequence of that negligence, and not by his own rashness.

Now, to establish these two propositions, several witnesses were called. The first witness was

William Paterson, the son of the deceased; and he says that Snedden was the under ground manager, and amongst other statements, it seems that first of all there had been some dispute about not going to work that day—the manager advised them to come back—they did come back, and then Paterson being amongst them, if you please, they all pointed to the roof as being in a very dangerous condition, particularly that stone. Snedden said "I was afraid of snow when none fell." The jury would clearly understand from that, or they might at least understand from it, that he meant to say—You are calling out before you are hurt, or some expression of that sort—there is no reason to apprehend anything—you are crying out before there is any real danger. Then Paterson, the deceased, remonstrated and said, "It is dangerous." Mr. Bovill says, that means the roof generally—the roof generally included this stone. The other side said it meant the stone in question, but whichever way that is, one way or the other they say it is dangerous. To which the manager said, "Why, Robin, you might make your bed below it"—evidently meaning to say, There is no danger. That is the way the matter is introduced, and afterwards there are further remonstrances, and Snedden agrees that it shall be removed, and sends down persons to remove it. In the mean time Paterson goes on working, and not waiting till the stone was removed. He gets a hutch or load of coal, and, passing under the stone, he is unfortunately killed by the stone falling at that very moment, just before they were going to re nove it.

What the pursuers had to make out were two propositions, as I have already stated,—*First*, That the stone had been negligently suffered to remain too long without being removed or being propped. They said it was not a stone that could be propped, and therefore it must be removed. *Secondly*, That Paterson lost his life, not by his own rashness in passing under that stone before it was removed, but by reason of the negligence of the master, or the negligence, we may say, of Snedden.

Now, my Lords, it is not for your Lordships or for the Court below to say what would be the conclusion at which the jury would arrive or ought to arrive upon that evidence. Upon those two propositions all that your Lordships have to say is, or the Court below had to say was—Is there evidence that may by possibility justly lead them to a conclusion in favour of the plaintiffs upon both these propositions? Is there evidence which might reasonably lead them to come to a conclusion that this stone was there improperly, owing to the negligence of the master? and, secondly, that there was no extraordinary rashness in Paterson's carrying his load of coals under it before it was removed? Then there was evidence of the stone being dangerously left, or rather improperly left, which is unfortunately too clear from the fact that it did fall and kill one of the workmen. There is abundant evidence on that subject. The only other evidence, therefore, which it was necessary for the plaintiffs to lay before the jury was, that the stone falling upon him and killing him was the result of his fairly trusting that all was safe, and not of his own rashness in going when he had been warned not to go. My Lords, it is sufficient to say upon that subject that there is a conflict of testimony. Lord Cockburn remarked that the Lord Justice Clerk, who tried the case, had the benefit of seeing the demeanour of the witnesses. He clearly had. But how do we know that, from the demeanour of the witnesses, the jury might not have come to the conclusion that all the evidence was concocted evidence—that it was not to be trusted? If the witnesses said anything about rashness on the part of Paterson, the jury might have come to the conclusion that Snedden had told him there was no real danger, but he would have it removed to satisfy all scruples. That is the conclusion to which the jury might have arrived—there was plenty of evidence of it—there was that evidence to which I have already adverted, and if there was any evidence, that is quite sufficient. If I were asked upon this case to come to a conclusion upon this written evidence, whether there was rashness or not, I believe the evidence in favour of rashness on the part of Paterson strongly preponderates. I am not the jury, and your Lordships now representing the Court are not the jury. The question is—What ought to have been said by the Judge to the jury after this evidence had been given? To my mind, it is perfectly clear that it was his duty to point out to them the evidence which bore upon those two propositions, whether there had been a want of timeous removal, as they call it, upon the part of the master? If you are satisfied that there was want of timeous removal, then are you satisfied that Paterson came by his death, not owing to his own extraordinary rashness, but owing to his having so implicitly relied upon the assurances which were given to him by Snedden? That is the direction which ought to have been given; then, whichever way the jury had found, probably there would have been nothing upon the face of the record to lead to the conclusion that the evidence was wrong either one way or the other. If there was anything wrong, it would have been set aside by a new trial, and not by a bill of exceptions. It appears to me, therefore, that that is the direction which ought to have been given. The only remaining question is—Whether there is such an exception as, in the first instance, fairly to bring the matter under the consideration of the Court below, and now before your Lordships? My Lords, upon that subject I confess I cannot entertain any doubt, and therefore I have the less scruple, because I have the satisfaction of concurring with both the learned Judges whose opinions are given at length. Lord Murray having concurred, or not having, so far as is reported, said anything to shew that

he did not concur with Lord Cockburn, who said—"Not without considerable difficulty, I agree with your Lordship. There are here two exceptions. I say nothing about the second one." That was the exception, that the learned Judge had not given the direction to which I will presently advert, and which the counsel for the pursuers said he ought to have given. "The difficulty of the case is on the other exception to your Lordship's direction to the jury, that on the evidence given the pursuers could not recover damages; that means that they could not in law—ought not to do so." It is quite clear that Lord Cockburn understood that exception as being two exceptions. Upon the trial the pursuer said—"I except to the direction of your Lordship saying there is no evidence for the jury; and I add, that your Lordship ought to have said" so and so. Now, that is the way Lord Cockburn understood it, and apparently the Lord Justice Clerk understands it in the same way, because he states—"The two facts upon which I proceeded, as raising in law a sufficient defence against the right to recover (that is, against there being no case for the jury) were" so and so. He clearly takes it as if there was an exception pointed to that direction; therefore, I think both the learned Judges seem so to have interpreted it; but if it had not been so, I confess I could not have the least doubt, that there was an exception to raise the question, whether the learned Judge was right in withdrawing the case from the jury? for the learned Judge at the trial says—"Gentlemen, there is no evidence upon the part of the pursuers." What can the Counsel do more than say—"I except to that"? His excepting means that there is a case for the jury. If he adds to that—Your Lordship ought to tell the jury so and so; really this Court is not bound—if that should be bad law—if it is bad law—to say that there was not a case for the jury. We must see that right is done, and if the exception was so pointed as to call the attention of the learned Judge to the fact that there was evidence for the jury, whereas he was telling them there was none, that is all that it is the province of an exception to do.

It appears to me, therefore, there was ample exception, simply upon the ground that the learned Judge was wrong in saying to the jury, that there was no case for them, and that they must find for the defendants. But if that had not been so, if you scan this second exception, though I think the latter part of it is wrong, the former part is not at all wrong, though we do not know whether or not it is bad law. This is what the pursuers' counsel says the learned Judge ought to have laid down (I do not know that it is necessary for him, but it is no bad law,) viz., "If Snedden, the defenders' manager, failed in his duty in timeously directing the stone in question to be removed, it would afford no defence to this action that Paterson continued to work, after orders for the removal of the stone had been ultimately given." I certainly think, my Lords, that is perfectly good law. Let me assume the master to have been guilty of negligence in not timeously removing this stone, then all the rest of the evidence being true, (and it was, in point of fact, the truth that Snedden told the man that he might go on safely,) it does not follow that he is excluded, or that his widow is excluded from relief, because he went on to work before it was removed. Then the exception goes on,—"If Paterson continued so to work in consequence of the directions of the roadsman, the defenders are responsible for such directions." That, I think, is wrong—at least we have no evidence what is the character of a roadsman; that would require further explanation. If a roadsman is, according to the rules and regulations of Scotch mines, a person whose province it is to direct the workmen whether they may safely work or not, that may be very good law. We have no explanation upon that subject, and it may be taken, if you please, to be good or bad law. I agree with Lord Cockburn, that what is alleged by the pursuers' counsel as being something which the learned Judge ought to have said, is totally immaterial. If the learned Judge said something which he ought not to have said, it has been excepted to by his case.

My Lords, it appears to me, upon the whole, with all deference to the learned Judges, quite clear, that they have misunderstood the province of a Judge in a trial of this sort. He ought to have laid down to the jury what were the propositions, in point of fact, which the pursuers ought to have proved, in order to entitle them to a verdict. That consisted in two facts—first, whether there had been negligence; next, if the accident was the result of that negligence, and not the result of unjustifiable rashness. If they were satisfied on both of those points, the pursuers were entitled to recover. If the pursuers failed to prove either of those points, the defenders were entitled to a verdict. He might have added his opinion, that the weight of evidence was irresistibly strong upon the part of the defenders, but that, after all, would be a question for them to decide.

LORD BROUGHAM.—My Lords, I take exactly the same view of this case as my noble and learned friend. No doubt, if I were to ask for a confirmation of my opinion that there was miscarriage in the Court below, I should scarcely go further than what fell from a very able and learned Judge in dealing with the case—I mean Lord Cockburn. It is impossible to read Lord Cockburn's statement without seeing that this was a case which ought to have been left to a jury. I think, if Lord Cockburn had applied his usual sagacity and acuteness to the whole matter, he must have seen that the very view which he took of it rendered it a case, where the Judge ought not to have withdrawn the matter from the jury.

My Lords, as it is the opinion of my noble and learned friend, that this interlocutor overruling

the exceptions should be reversed, I am loth to give any opinion on the facts of the case, because it must go to a new trial. That is unfortunately the result of the course which has been taken below. After the learned Judge had expressed his strong opinion against the pursuers, it could only have been with the consent of the other party, that the jury could have been called upon to assess the damages, if any, which ought to be given to the pursuers. It is greatly to be lamented that that course was not taken, for the purpose of avoiding a further trial upon the event which is now so likely to take place.

My Lords, no person can read the evidence of Bernard O'Neill, together with the rest of the evidence, and not have a very strong opinion as to the delay which was interposed by the company, or by Snedden, the manager of the company, for whom the company undoubtedly are responsible in this respect, though we, as my noble and learned friend has justly said, know too little of what a roadsman is, to accurately ascertain how far the company are responsible for what the roadsman did or omitted to do. Snedden was the manager of the company, and, beyond all doubt, for his negligence the company are answerable. It is clear to me, upon reading this evidence, that he did not take proper precautions with respect to the stone—that Bernard O'Neill, who had got directions, had not got such directions as to make him speedily remove it. He says—"I did not go to take it down—I got an empty hutch for him, (that is, for Paterson,) and both went in together. He yoked to fill hutch and take away coal. I told him to do so first—then when filled, I intended to take down the stone, but it fell first." It is quite clear that they had not seen the danger, as appears by what Snedden said to Paterson, in a right point of view; though what Snedden observed with respect to Paterson making his bed, did not apply to that stone in particular, it applied to the general state of the roof. They felt a great deal too much confidence in the roof to make them give the directions which they ought to have given. (His Lordship then said, he hoped what he had said would induce the defenders to avoid a new trial, by making a timely offer to the appellants.)

Hogdson asked for the costs which the appellants had incurred in the Court below, by reason of the exceptions being wrongly disallowed, and said that costs had been allowed in *Fraser* v. *Hill*, *ante*, p. 232.

Bovill, contra.—In case of bills of exceptions there are never any costs given, whether the party excepting succeeds or not. In *Fraser* v. *Hill* the Court below had allowed the exceptions, but this House disallowed them, the consequence of which was that then the verdict stood.

LORD CHANCELLOR.—Yes, that was so; upon the disallowance there may be costs, but there are no costs upon the allowance of the exceptions, because they question something which the Judge has done, and it is the fault of the Judge. The cause will be remitted back to the Court of Session, with a declaration that the exceptions ought to have been allowed.

Interlocutors reversed, and cause remitted with a declaration.

Alexander Simson, *Appellants' Solicitor.*—Robertson and Simson, *Respondents' Solicitors.*

JULY 20, 1854.

THE ABERDEEN RAILWAY COMPANY, *Appellants*, *v.* Messrs. BLAIKIE BROTHERS, *Respondents.*

Railway—Contract—Director selling to Company—Copartnery—Stat. 8 Vict., c. 17, §§ 88, 89.

Held (reversing judgment), *That a contract entered into by a manufacturer for the supply of iron furnishings to a railway company, of which he was a director or the chairman at the date of the contract, was invalid, and not enforcible against the railway company.*

A director of a railway company cannot legally enter into a contract either personally or as one of a firm to supply goods to such company, and nothing in the Companies Clauses Consolidation Act makes valid such contract.[1]

The summons in this case set forth—"That Alexander Gibb, civil engineer, Aberdeen, acting as resident engineer for or on behalf of the Aberdeen Railway Company, and as authorized by them, having prepared a specification of chairs required for the permanent road of the line of railway undertaken to be constructed by the said railway company, and having, on or about 19th January 1846, being the date of said specification, communicated the same to John Blaikie the youngest, residing in Aberdeen, as acting for and on account of the pursuers, with a view to the pursuers contracting for the manufacture and supply of the said chairs, the said John Blaikie the youngest, acting as aforesaid, on the 6th day of February 1846, addressed an offer to the

[1] See previous report 14 D. 66. S. C. 1 Macq. Ap. 461; 26 Sc. Jur. 628.