vide proper compensation for some of the company's servants who after long and faithful services had lost their situations from the extinction of the defenders as a separate company, and the sum which the directors proposed should be paid to the pursuer is stated; and in the 17th article of the condescendence various instances are given of other companies having acted in a similar way to their old servants. But all that is quite different from the present demand, which is not a claim for deprivation of offices, but for extra services for which the pursuer says he always expected to be paid. Without a more specific statement of the contract, and a statement to show how the extra services rendered by the pursuer stood out from his ordinary duties, this case could not be sent to trial. I think we must dismiss the action.

Lord CURRIEHILL concurred.

Lord DEAS—I am entirely of the same opinion. I think, at the same time, that if the resolution of the directors had been carried into effect it would have been a very fair and equitable thing. The only issue which could have been allowed would have been such as was suggested by the Dean of Faculty, but the averments of the pursuer do not lay a foundation for any issue with regard to the extra services for which the pursuer claims. To entitle the pursuer of such a case to an issue, there would require to be a specification of three things—(1) of the duties of the office for which the servant was originally engaged; (2) of the extra duties performed by him; and (3) of the agreement to give remuneration for the extra duties. Now, there is an absence of specific statement with regard to all of these things. With respect to the resolution of the directors to remunerate the pursuer for extra work, there is no very distinct averment about this. If there had been such, the question would have arisen, had they the power to bind the company? It only appears, however, that they recommended that the pursuer and others should have extra remuneration, but this recommendation was not adopted; on the contrary, it was rejected by the shareholders. I can't help regretting that this pursuer should have no compensation for his extra work; but at the same time, I think it quite impossible to sustain this action.

Lord ARDMILLAN concurred.

The Court therefore dismissed the action upon the ground that the pursuer had not set forth a relevant case, and found the pursuer liable in expenses.

Agents for Pursuer—Gibson-Craig, Dalziel, & Brodies, W.S.

Agents for Defenders—Webster & Sprott, S.S.C.

JAMIESON *v.* THE E. AND G. RAILWAY CO.

The Court pronounced the same judgment in this case, which was raised against the defenders under similar circumstances.

Thursday, July 19.

FIRST DIVISION.

LATHAM *v.* EDIN. AND GLAS. RAILWAY CO.

Arrestment on Dependence—Recal—Personal Diligence Act. Held that the Lord Ordinary cannot entertain an application for recal of arrestments used on the dependence after the merits of the action have been disposed of by the Inner House. *Question* whether he can do so at any time after he has decided the cause?

This case was dismissed yesterday as irrelevant. The pursuer had used arrestments on the dependence, and the defenders applied to-day, by petition in the Outer House, to have the arrestments recalled on caution, the pursuer having intimated his intention to appeal the judgment of yesterday to the House of Lords. The petition was presented under section 20 of the Personal Diligence Act (1 and 2 Vict. c. 114), which enacts that "it shall be competent to the Lord Ordinary in the Court of Session before whom any summons containing warrant of arrestment shall be enrolled as Judge therein, or before whom any action on the dependence whereof letters of arrestment have been executed has been or shall be enrolled as Judge therein, and to the Lord Ordinary on the Bills in time of vacation, on the application of the debtor or defender by petition duly intimated to the creditor or pursuer, to which answers may be ordered, to recal or to restrict such arrestment on caution, or without caution, and dispose of the question of expenses as shall appear just."

The Lord Ordinary (Kinloch) reported the application. He had difficulty in holding that he had power to entertain it, seeing that the action was no longer in dependence, having been dismissed, or at least was no longer in dependence before him.

SHAND appeared for the defenders, and

JOHNSTONE for the pursuer.

The Court, after some discussion, were of opinion that the Lord Ordinary had no power to entertain the application, and directed him, in respect of the dismissal of the action, to refuse it. The Lord President expressed great doubts whether a Lord Ordinary had power to deal with such an application after the case has gone to the Inner House. It appeared to him that section 20 of the Personal Diligence Act gave the Lord Ordinary power to deal with arrestments only while the case remained before him.

The Lord Ordinary accordingly dismissed the application, and found the defenders liable in two guineas of expenses.

Agents for Pursuer—Gibson-Craig, Dalziel, & Brodies, W.S.

Agents for Defenders—Webster & Sprott, S.S.C.

JAMIESON *v.* THE E. AND G. RAILWAY CO.

The same procedure took place in this case.

NOTE—CARMENT, IN PETITION HEPBURN.

Tutor ad litem—*Powers.* A tutor *ad litem*, appointed by the Court to a minor in a petition for disentail, having applied to the Court for advice as to how he should act, the Court refused to interfere.

This was an application to the Court by a tutor *ad litem* for advice under the following circumstances:—The applicant had been appointed tutor *ad litem* to one of the three nearest heirs called in a petition for the disentail of the estate of Riccarton. In the course of the correspondence between him and the petitioner in regard to the amount of consideration money to be paid by the latter for a consent by him on behalf of his ward, it was stated by the petitioner that he had been advised by counsel that the entail was defective. This being so, it came to be a question whether, in fixing the consideration-money for the consent, the alleged invalidity of the entall should be taken into account as an element, and upon that question the tutor *ad litem* now sought the opinion of the Court.

The Court declined to interfere, holding that

the tutor had under the Entail Amendment Act the most ample discretion, and in the exercise of that discretion the most ample immunity. He was entitled to come to what decision he pleased, and no one was entitled to know what the elements of his decision were. Unless he acted corruptly, his actings could not be called in question. The Court would be stepping out of its province to offer advice.

Counsel for Tutor—A. R. Clark. Agents—Patrick, M'Ewen, & Carment, W.S.

Counsel for Petitioner—J. M. Duncan. Agent—William Sime, S.S.C.

SECOND DIVISION.

WILLIAMSON *v.* M'LACHLAN.

Diligence—Charge—Sheriff Court Extract—Appeal. *Held* (aff. Lord Mure)—(1) That a charge on a Sheriff Court decree need not contain the date of the extract. (2) That the provisions of the Act 16 and 17 Vict. cap. 80, with regard to the time of appeal, applies only to interlocutors dealt with by that Act, leaving the A. S. of 10th July 1839 operative with respect to others.

Opinions (dub. Lord Neaves) that there is no statutory authority requiring a Sheriff Court extract to contain its own date.

Held by Lord Mure, and acquiesced in, that an extract need not refer to an interlocutor of a Sheriff adhering to that of his Substitute, and containing no decerniture.

On 15th January 1866 the Sheriff-Substitute of Lanarkshire at Airdrie assoilzied the respondent from the conclusions of conjoined petitions brought against him by the suspender and another, and found the respondent entitled to expenses. Warrant was also granted to the Clerk of Court to pay over to him a sum which had been consigned in the processes. The suspender and the other petitioner appealed against the interlocutor. The appeal, however, was dismissed by the Sheriff, who adhered to the Sheriff-Substitute's interlocutor. The Sheriff's interlocutor is dated 6th April 1866. The respondent having uplifted the consigned money obtained his account of expenses taxed, and upon 17th April 1866 (the suspender and the other petitioner not having lodged objections to the taxation) the Sheriff-Substitute approved of the auditor's report, and decerned against the suspender and the other petitioner for £29, 12s. 7d. An extract of the said decree was obtained by the respondent upon 21st April 1866. That extract began as follows:—"At Airdrie, the 15th day of January and 17th day of April, both in 1866, sitting in judgment, William Logie, Esq., Substitute of Sir Archibald Alison, Bart., advocate, Sheriff of the county of Lanark, in the conjoined actions, before the Sheriff Court of the said county, at the instance of," &c. It contained a statement of the actions, and of the two interlocutors referred to, and ended as follows:—"Extracted by me, Sheriff-Clerk-Depute of Lanarkshire. Four words being deleted, and two marginal additions being made before subscription.—THOMAS CLARK, *Sh-Clk-Dep.* Written and collated by THOMAS CLARK, Junr., *Dep.* Signed 21st April 1866."

Upon this extract decree the suspender and the other petitioner were upon 25th April 1866 charged to make payment of the expenses decerned for. The charge given to the suspender began as follows:—I, Thomas Twycross, sheriff-officer, by virtue of an extract decree of absolvitor from the Sheriff Court books of Lanarkshire, and warrant therein, dated at Airdrie, the 15th day of January and 17th day of April 1886, pronounced in favour of Henry M'Lachlan, after designed, in the conjoined actions before the Sheriff Court of said county, at the instance of,"—and concluded thus:—"Do hereby, in Her Majesty's name and authority, and in name and authority of the Sheriff of Lanarkshire, lawfully charge you, the said Robert Williamson, to make payment of the sum of £29, 12s. 7d. sterling of expenses of process, attour the sum of 8s. sterling as the expense of extracting said decree in said action, and of recording the same, conform to said extract decree and warrant, and that to the said Henry M'Lachlan, defender, within fifteen days next after the date of this my charge, under the pain of poinding and imprisonment, with certification. This I do upon the 25th day of April 1866, before Thomas M'Lachlan, residing in Coatbridge, witness.—T. TWYCROSS, *Sheriff-Officer.*"

The suspender thereafter brought this note of suspension, to which the respondent was allowed to give in answers. The suspension was presented upon several grounds, which may be stated as follows:—"1st, That the extract decree was null, as it did not give the date of the judgment of the Sheriff-Depute as well as those of the Sheriff-Substitute upon which it proceeded; 2d, that the charge itself was null upon the same ground, and also, as not giving the date of the extract decree; and 3d, that the extract was not a legal warrant to charge, in respect it was issued before the time for appealing had expired."

The Lord Ordinary on the Bills (Mure) refused the suspension, and found the suspender liable in expenses.

His Lordship in a note to his interlocutor explained the grounds of his judgment. The first objection and part of the second was held to have been decided by the case of Thomson *v.* M'Donnell, July 6, 1841, 3 D. 1167. With regard to the remaining part of the second objection, his Lordship said he had always understood that an extract decree bears the date at which the decree of which it professes to be an extract was pronounced, and the Personal Diligence Act did not require that a charge should specify any other date. With regard to the third objection, his Lordship said—"At the discussion before the Lord Ordinary it did not seem to be disputed on the part of the complainer that, if the provisions of the Act of Sederunt of 10th July 1839 were still in operation, there was no ground for the objection founded on the allegation that the extract was issued before proper time had been allowed to appeal. For the 109th section of that Act of Sederunt, which regulates the matter of the taxation of accounts and objections to auditor's reports, while it makes it competent for either party, within forty-eight hours after taxation, to lodge a note of specific objections to the taxation, at the same time expressly provides that no appeal shall be competent against any interlocutor dealing with such taxation 'unless lodged within forty-eight hours of its date.' Now, in the present case no specific objections were made to the auditor's report, which is dated 13th April 1866; and the forty-eight hours having expired without any objections having been lodged, the interlocutor of the 17th April was pronounced, approving of the report, and decerning for the expenses; and no appeal having been taken within the time prescribed by the Act of Sederunt, viz., forty-eight hours from the date of the interlocutor, the decree was, on