quired is only one of ten days. And there is nothing said in the Act about specification of purposes. And it would be very unreasonable if such specification were required where there is no carrying off of the property from the owner. The purposes of temporary occupation are so varied, and must often change so frequently during the occupation of the ground by the Company or their contractors, that it would be almost impossible for a railway company to specify in their notice all the uses to which the ground may, in the course of the prosecution of their works, be put. It may be used for the purpose of depositing materials of all descriptions, and it may be used for the purpose of manufacturing and working up these materials, or for the erection of sheds, workshops, and other buildings, and a great many other purposes. How could it be possible for the Company to specify beforehand to which of all these uses they may require to put the ground? It therefore appears to me that there is no obligation laid on them to specify in their notice the uses and purposes to which they intend putting the ground, and consequently that the complainer's first ground of objection is unfounded. Secondly, with regard to the portion of the line for the use of which the Company is allowed thus temporarily to occupy ground. This objection, especially as stated by Mr Smith, acquires great significance in the present case. For the line in question consists almost entirely of a bridge across the river Tay. If the Company's contention is sound, it would be impossible for the Company to get possession of any land for the purposes of their bridge works, for all the land passed through or over by this part of the line is sea. But the truth is, that the 27th section is not so expressed as to limit the right of the Company in the way contended for by the complainer. The clause gives power "to occupy the said lands so long as may be necessary for the construction or repair of that portion of the railway, and to use the same for any of the following purposes," &c. But construing this reasonably, and I see no rule to lead us to construe it otherwise, the clause gives power to occupy temporarily for the purpose of making that part of the line in the neighbourhood of the land occupied. Nothing unreasonable is authorised. It would not, for instance, be permitted under this clause to erect a great workshop to assist in the construction of the whole of a long line. The Court would soon put a stop to any such abuse as that. But nothing of the sort is intended here by the Railway Company. They want a portion of land at the south end, and I presume at the north end also, for the construction of their bridge, and having taken temporary possession of the land at these points, they mean to construct the bridge between them. For this contention, therefore, of the complainer I see no good ground. On the third point, it is said for him that the construction of a pier, or rather, as Mr Smith grandiloquently puts it, the construction of a harbour, is not one of the uses contemplated by the Act, I expect that if the Company were to construct a harbour there, and the Crown made no objection, Mr Wedderburn would make none either, seeing that he would have the reversion of it. But what is really meant to be made is merely a pier or landing stage for the purpose of embarking and disembarking materials for the construction of the bridge. Now, although that is not a purpose specially mentioned in the 27th section, it is still a most reasonable use to which to put the ground, when the object is to aid in the construction of the railway. If it is not covered by the words "other buildings of a temporary nature," I am at a loss to understand them. On every point, therefore, I think that the complainer has failed in establishing his case for an interdict, and the Lord Ordinary's interlocutor must therefore be adhered to.

Lords Deas, Ardmillan, and Kinloch concurred.

Agents for the Complainer—Morton, Whitehead, & Greig, W.S.

Agents for the Respondents—Dalmahoy & Cowan, W.S.

Saturday, June 24.

SECOND DIVISION.

MORRISON *v.* WALKER.

Process—Reponing—Appeal—Sheriff—Sheriff-court Act 1853, § 16. After a proof had been led in the Sheriff-court, the Sheriff-Substitute appointed the case to be enrolled in the Debate Roll. No appearance was made for the pursuer at the debate, and on the defender's motion the Sheriff-Substitute *held* the pursuer as confessed, and assoilzied the defender. The pursuer failed to apply to the Sheriff to be reponed within seven days, under the 16th section of the Act, and appealed to the Court of Session. The Court reponed him on payment of £10, 10s. of expenses, but expressed dissatisfaction with the irregularity of the procedure, and indicated opinions that it was not contemplated by the Sheriff-court Act that cases should be brought up for review from the Inferior Court *causa non cognita.*

This was an appeal from the Sheriff-court of Lanark.

The Sheriff-Substitute (Murray) pronounced the following interlocutors:—

"*Glasgow, 25th March* 1871.—On defender's craving, no appearance having been made for the pursuer at the debate yesterday—Holds pursuer confessed as not insisting in this action, and assoilzies the defender from the conclusions thereof: Finds the pursuer liable in expenses; allows, &c."

"*Glasgow, 30th May* 1871.—Approves of the auditor's report on the defender's account of expenses, and decerns against the pursuer for the taxed amount thereof."

The pursuer appealed.

Pattison for him.

W. A. Brown for respondent.

Lord Justice-Clerk—I think the proper course is to repone the appellant on condition of payment of £10, 10s. of expenses. I have considerable difficulty on the competency of doing so in the present state of the case, but as there appears to be no distinct rule of process, and no statutory provision against our reponing a party who has not taken the usual course of going to the Sheriff, I think that we ought to grant his application. I do not see any objection to our hearing the parties on the proof, and so acting as a court of original jurisdiction, after the proof has been led and the case is ready for judgment. To send the case back to the Sheriff-court would be putting a penalty on the respondent.

Lord Neaves doubted whether the proper course would not be to remit the case to the Sheriff-court on condition of the appellant paying ex-

penses, and hoped that this case would not be a precedent.

LORD COWAN and LORD BENHOLME concurred with the Lord Justice-Clerk; and the Court reponed the appellant on condition of paying £10, 10s. of expenses, and delayed the case for a week till the expenses should be paid.

When the case was again called on the roll the expenses had not been paid, and the Court dismissed the action.

Agent for the Appellant—J. Y. Pullar, S.S.C.

Agents for the Respondent—J. & R. D. Ross, W.S.

Friday, June 16.

ABERDEEN TOWN AND COUNTY BANKING CO. *v.* JOHN DEAN & SON.

Judicial Factor—Power to submit. *Held* that a judicial factor cannot submit to arbitration, so as to bind the factory estate, a claim of damages arising out of his own personal delinquency.

Question, whether in the ordinary case it is *ultra vires* of a judicial factor to submit?

Opinion, per Lord Justice-Clerk and Lord Neaves, that a reference to arbitration under an executorial clause of submission in a contract is within the power of a judicial factor.

Mr John Brebner, railway contractor in Aberdeen, died on 2d January 1857. At the time of his death he was possessed of a large number of railway shares. He had also entered into various railway contracts, and, among others, one for the construction of the Alford Valley Railway. This contract, which was dated 11th January 1856, contained a clause of reference to Alexander Gibb, civil engineer in Aberdeen, as sole arbiter of all disputes and differences between the parties regarding the meaning of the contract or the execution of the works. Shortly after the death of Mr Brebner, Mr Charles Graham Monro, writer, Stonehaven, was appointed judicial factor on his intestate estate, with the usual powers; and he thereafter, with consent of the Alford Valley Railway Company, entered into a sub-contract with John Dean & Son, railway contractors in Aberdeen, for the construction by them of the railway and relative works which Mr Brebner had undertaken to execute. By this sub-contract Messrs Dean & Son became bound to execute the works for considerably less than Mr Monro, as representing Mr Brebner's estate, was to receive from the railway company. Mr Monro and Messrs Dean & Son also entered into a supplementary contract with the railway company for the execution of works not embraced in the original contract between Mr Brebner and the railway company. Both the sub-contract and the supplementary contract contained a clause of reference to Mr Gibb, similar to that contained in the original contract.

Mr Monro, as judicial factor on Mr Brebner's estate, received the instalments payable by the railway company for the works executed by the sub-contractors, Messrs Dean & Son. The balance due by the railway company to Mr Monro and Messrs Dean & Son at the completion of the railway works was settled under a reference to Mr Alexander Gibb, who found Messrs Dean & Son entitled to £6000, with interest. That sum was accordingly paid by the railway company.

At the time the contracts above referred to were entered into, Mr Monro was the law agent and adviser of Messrs Dean & Son, and he continued to be so until after the railway was completed. He did not furnish them with any account of the sums he had received and paid on their account. In 1858, when they applied for payment out of the funds which he had been receiving from the railway company, he represented that he had paid away all the money belonging to them in his hands. Messrs Dean & Son's own funds having become exhausted, they were unable to provide workmen and materials sufficient to carry on the works of the contract, in consequence of which the works were taken entirely out of their hands. Messrs Dean & Son alleged that at this time Mr Monro had in hand a balance of their funds amounting to upwards of £13,000, which he illegally withheld from them, and they claimed damages for the loss and injury which they thereby suffered. Various disputes also arose between Mr Monro and Messrs Dean & Son, with reference to questions of accounting under the supplementary contract. It was ultimately arranged that these disputes should be settled by arbitration; and accordingly, by submission dated 15th December 1865, and 17th, 23d, and 25th January 1866, between "Charles Graham Monro, writer in Stonehaven, as judicial factor on the estate of the now deceased John Brebner, late railway contractor in Aberdeen, on the one part, and John Dean & Son, sometime railway contractors in Aberdeen," and the individual partners of the said firm, and the North of Scotland Banking Company, on the other part, the parties thereto submitted and referred "all demands, claims, disputes, questions, and differences depending and subsisting between them upon any account, occasion, or transaction whatever in relation to the Alford Valley Railway, and specially in relation to the railway and other works executed in connection therewith, to the amicable decision, final sentence, and decreet-arbitral to be pronounced by George Marquis, accountant in Aberdeen, as sole arbiter chosen by the said parties." Mr Marquis accepted of this submission, and on 10th June 1868 issued a decree-arbitral, whereby he *inter alia* found Messrs Dean & Son entitled to damages for the loss and injury suffered by them in consequence of the retention by the judicial factor of monies due and payable to them for works executed by them, and he modified the damages to the sum of £4159, with interest at 5 per cent. from various dates.

In the meantime several claims were made against the Aberdeen Town and County Bank with reference to a large number of railway shares belonging to the factory estate, which Mr Monro had transferred to the bank for a nominal consideration, for the purpose, as was alleged, of reducing a debt due by the firm of Kinnear & Monro, of which he was a partner. On 1st December 1868 Mr Monro's appointment as judicial factor was recalled, and Mr Adam Gillies Smith, C.A., Edinburgh, appointed in his room. In consequence of the competing claims the present action of multiplepoinding and exoneration was raised by the Aberdeen Town and County Bank. On 3d July 1869 it was conjoined with a process of reduction, at the instance of Messrs Dean & Son, of certain of the claimants' grounds of debt. In the course of the competition the question was raised, whether the decree-arbitral pronounced by Mr Marquis was binding on the factory estate.