tice. Indeed, he would not have properly discharged his duty if he had not done so. The trustee was found liable in expenses.

OUTER HOUSE.

(Before Lord Barcaple.)

GUNN *v.* BREMNER.

Process—Default in Reporting Proof. Held (per Lord Barcaple) that after an interlocutor circumducing the time for reporting a proof had become final, the report of the proof could not be received—the opposite party not consenting.

Counsel for Pursuer—Mr J. M. Duncan.
Counsel for Defender—Mr W. A. Brown.

In this case parties were appointed to report a joint commission by the third sederunt day. The pursuer failed to lodge his proof by this date, and after the case had been several times on the roll, and dropped with the view of enabling the pursuer to proceed in the matter, the case was put to the roll by the defender, and, on his motion, decree of circumduction of the period for reporting the proof was pronounced by the Lord Ordinary. After expiry of the reclaiming days, within which a note might be boxed to the Inner House for reponement, the case was put to the roll by the pursuer, and the Lord Ordinary was moved to allow him to lodge proof which he had led in the cause. It was maintained for the pursuer that the interlocutor pronouncing circumduction of the period of reporting had been pronounced *per incuriam;* that the notice of motion sent to the agent, upon which it followed, was a notice of a motion to circumduce the term of proof; and that until the terms of the interlocutor were read by the clerk, his impression was that no other order had been taken. The defender refused to give his consent to the proof being received, and, the Lord Ordinary holding that he had no power to do otherwise, refused a motion for the pursuer, asking leave to lodge the proof within a week.

(Before Lord Kinloch.)

ANDERSON *v.* GLASGOW AND SOUTH-WESTERN RAILWAY COMPANY.

Process—Default in Lodging Issue—Act of Sederunt, July 12, 1865. Held (per Lord Kinloch) that an issue not having been lodged within the time appointed, it could not be received even of consent.

Counsel for Pursuer—Mr J. T. Anderson.
Counsel for Defender—Mr Donald Mackenzie.

The 12th section of the recent Act of Sederunt, July 12, 1865, enacts that all appointments for the lodging or adjustment of issues shall be peremptory. This case was on the motion roll of Thursday, for the purpose of moving his Lordship either to receive the pursuer's issue or to prorogate the time for lodging it. Although this had how expired, it had not done so at the date when the case was enrolled for prorogation, and both parties were willing to consent to the prorogation asked, or to the issues being lodged. But notwithstanding section 4 of the Court of Session Act (1850), which allows prorogation of the "time for lodging any paper by written consent of parties," his Lordship refused the motion, holding that the terms of the recent Act of Sederunt, were imperative.

Tuesday, Dec. 5.

(Before Lord Barcaple.)

MITCHELL *v.* BRAND AND DEAN.

Arbitration — Decreet-Arbitral — Reduction. Held (per Lord Barcaple) that an arbiter had not disposed of the subject-matter submitted to him, and had irregularly issued decrees-arbitral disposing of the claims of two of the parties without disposing of the claim of a third — Decrees therefore reduced.

Counsel for Pursuer—The Solicitor-General and Mr Burnet. Agent—Mr John Thomson, S.S.C.

Counsel for the Defender Brand—Mr Patton and Mr W. M. Thomson. Agent—Mr Alex. Morrison, S.S.C.

Counsel for the Defender Dean—Mr Adam. Agent—Mr J. C. Baxter, S.S.C.

The pursuer and defenders, and the late John Brebner, under the firm of Mitchell, Brebner, & Company, entered into a contract in 1855 with the Inverness and Aberdeen Junction Railway Company for the formation of a portion of their line of railway. The partners agreed among themselves that the work should be divided into four sections, of which each partner should execute one. The work was performed under this arrangement, the pursuer executing not only his own section but also, by arrangement, that of Mr Brebner, who died shortly after the contract was entered into. After the work was completed, the parties differed as to the true meaning of an agreement which they had made as to the payment of the expense of extra works. They accordingly entered into a submission to Mr Alexander Gibb, C.E., Aberdeen, and he issued an award in 1860, in which he decided what was the meaning of the agreement. After this they still differed as to the division of a sum of upwards of £5000, which remained over after dividing the greater part of the contract price which had been received from the railway company. The difference arose in consequence of disputes as to claims advanced by each partner for extra works. A second submission was accordingly entered into to Mr Gibb for the purpose of fixing the amounts of these claims. This submission fell by lapse of time, and in 1863 a third submission was entered into. Under it Mr Gibb issued one decreet-arbitral awarding a certain portion of the balance to the defender Brand, and another awarding a certain portion to the defender Dean. No decreet-arbitral was issued in favour of the pursuer, because, as the defenders explained, he had never called on the arbiter to pronounce such a decree. There had been a draft decreet-arbitral, in which a sum was proposed to be found due to all the parties; but this draft was admittedly never extended or executed.

The pursuer brought a reduction of the decrees pronounced in favour of the two defenders; and after a debate, the Lord Ordinary has pronounced an interlocutor, in which he "finds that the decreets-arbitral sought to be reduced are inconsistent with the terms of the submission and *ultra vires* of the arbiter, and ought to be set aside in respect that the arbiter has not disposed of the subject-matter referred to him, in so far as he has not by said decreets-arbitral, or by any previous award or finding in the submission, substantially fixed and determined the extent and amount of the claims of the parties to the submission respectively as individuals, and not as partners, for their shares of the company assets against the balance of money received by Messrs Mitchell, Brebner, & Company, from the Inverness and Aberdeen Junction Railway Company; and also in so far as the said decreets-arbitral only dispose of the interest of the defenders respectively in the said balance of money, while the arbiter has not pronounced any judgment upon the interests of the pursuer therein." His Lordship therefore reduces the said decreets-arbitral, and finds the defenders liable in expenses.

A note is appended to the interlocutor, from which we make the following extracts:—"Reduction of the decreets-arbitral is sought for on various grounds, some of which the Lord Ordinary thinks are not well founded. But he is of opinion that the arbiter has committed two fatal errors in the manner in which he has professed to give forth his award. It may be that these errors arose from ignorance as to the proper forms of procedure; but the Lord Ordinary is of opinion that the first of them, at least, essentially affects the justice of the case, as well as the validity of the alleged decrees.

"The pursuer and the two defenders are the surviving partners of Messrs Mitchell, Brebner, & Co.