

matter by reason of the finality of the interlocutor of circumduction; and further, that even assuming the power of the Court to interfere, the pursuer was not in a position to appeal to its equitable jurisdiction, because on the face of the proceedings it was clear he was to blame, and until he had exhausted every remedy that was competent to him, the Court could give him no assistance. A remedy that was still open to him was to abandon his action. On the recommendation of the Court, the defender withdrew his opposition to the receiving of the proof, and the case was remitted to the Lord Ordinary to receive it, on condition of the pursuer paying all the expenses incurred in the action since the 1st of November. The question of the finality of the interlocutor was accordingly not disposed of.

SLOSS *v.* CATHCART.

*Reparation—Wrongful Interdict—Issue.* Form of issue in an action of damages for wrongful interdict.

Counsel for Pursuer—The Solicitor-General and Mr J. G. Smith. Agent—Mr Andrew Fleming, S.S.C. Counsel for defender—Mr Clark and Mr Adam. Agents—Messrs A. & A. Campbell, W.S.

This is an action of damages for wrongful application for interdict. The pursuer proposed to put in issue that the applications were made "wrongfully." This was the form of issue in the similar case of *Abel's Executors v. Edmond*, 10th July 1863. (1 Macp. 1061.) The defender contended that the pursuer should also put in issue that the applications were made "without probable grounds," as was done in the case of *Miller v. Hunter*, 23d March 1865. (3 Macp. 740.) It was explained by the Solicitor-General that in the latter case the terms of the issue were adjusted of consent. The Court approved of the issue as proposed by the pursuer, and found the defender liable in the expense of the discussion.

SECOND DIVISION.

PETITION—DAVIDSONS.

*Poor's Roll—Pupil.* In an application by a pupil for the benefit of the poor's roll, a *tutor ad litem* must be appointed.

Counsel for Petitioners—Mr Mackintosh. Agent—Mr R. C. Bell, W.S.

This was an application by certain pupil children for admission to the Poor's Roll in order to enable them to sue an action. The Court held that the petitioners had no *persona standi*, and before entertaining the application appointed a *tutor ad litem*.

Friday, Dec. 22.

OUTER HOUSE.

(Before Lord Kinloch).

KENNEDY *v.* MACDONALD.

*Title to Sue—Proving the Tenor.* Where a pursuer's title consisted of certain deeds, which she alleged the defender had fraudulently destroyed, held (per Lord Kinloch) that she must nevertheless raise an action to prove their tenor, and process sisted for that purpose.

Counsel for the Pursuer—Mr Mackintosh. Agent—Mr Wormald, W.S.

Counsel for the Defender—Mr Scott. Agent—Mr Galletly, S.S.C.

This is a reduction of the settlement of the late Mrs Macdonald of Lassintullich, the grounds of reduction being facility and circumvention, and that the testatrix was not of disposing mind. The pursuer is the daughter, and the defender the son of the testatrix, and the pursuer alleges a title to sue the action as being donee under certain previous settlements, which, she alleges, the defender fraudulently destroyed.

The defender denied the pursuer's title, and main-

tained that it could only be proved by a decree of proving of the tenor of the previous settlements founded on. The pursuer, on the authority of certain old cases, maintained that where a deed is alleged to be destroyed by the opposite party in a suit, a formal action of proving the tenor is not necessary, and the deed can be set up as against the party who destroyed it by a proof in the cause, either along with or separate from the proof on the merits. The Lord Ordinary having heard counsel upon the question of title has now issued an interlocutor sisting process to enable the pursuer to bring a proving of the tenor.

To this interlocutor the following note is appended:—

"The deeds in question constitute the pursuer's title in the present process. It appears to the Lord Ordinary that before the pursuer can insist in the action these deeds must be set up by their tenor being regularly proved. And it further appears to the Lord Ordinary that this must be done by a formal proving of the tenor carried through before the Court, not by an incidental jury trial in the present case. The deeds are not mere evidence, nor is Mrs Kennedy a defender, but a pursuer. The deeds are essentially and indispensably the title of Mrs Kennedy, and must, as such, be raised up in the formal manner required by law."

SIMPSON *v.* EDINBURGH AND GLASGOW RAILWAY COMPANY.

*Statute—Construction.* Held (per Lord Kinloch) that by the statute amalgamating the Edinburgh and Glasgow Railway Co. with the North British Railway Co., the former company may be sued for a claim of damages arising before the date of amalgamation.

Counsel for Pursuer—Mr John Burnet. Agents—Messrs G. & H. Cairns, W.S.

Counsel for Defenders—Mr Blackburn. Agents—Messrs Hill, Reid, & Drummond, W.S.

This is an action of damages for injuries received by the pursuer in consequence of a collision which took place at Haymarket Station on 22nd June last. The defenders in their defences admitted that the collision took place through their fault, but pleaded that they were not liable in damages, in respect all such claims were transferred against the North British Railway Company by their amalgamation with it on 1st August last. Lord Kinloch has repelled this defence, holding that by section 12 of the Amalgamation Act, 28 and 29 Vict., c. 308, the company still subsists for the purpose of enforcing payment of debts due to it and paying debts due by it prior to the date of amalgamation.

LEABURN *v.* BASSET, ETC.

*Arrestment ad fundandam jurisdictionem.* An arrestment against one owner of a ship who was named and others not named, held (per Lord Kinloch) sufficient to found jurisdiction against them all.

Counsel for Pursuers—Mr J. G. Smith. Agents—Messrs Ferguson & Junner, W.S.

Counsel for Defenders—Mr W. M. Thomson. Agents—Messrs J. & W. C. Murray, W.S.

This is an action against the owners of an English vessel, the *Cognac*, of Sunderland. The defenders themselves are Englishmen. Jurisdiction was said to be founded against them by arresting the ship at Dundee. The arrestment was used against Mr Basset "and the other owners," who were not named. The cause of action was an alleged breach of contract entered into by the pursuers and the mate of the vessel. The defenders, other than Basset, pleaded that no jurisdiction had been founded against them, because they were not named in the arrestment. Lord Kinloch has repelled this defence, holding that the arrestment is good enough for the purpose of founding jurisdiction against all the defenders, whatever may be its effect otherwise.