turned round, it will stop a hutch moving at a moderate speed just as the loose rail would have done. But the drawers who are accustomed to the chamber never use these iron bars, which the pursuer calls check-blocks. They prefer taking the risk of not using them to taking the trouble of opening and shutting them.

The issue was:—

"Whether, on or about 8th January 1867, the deceased Archibald Hunter, when in the employment of the defender, while propelling a loaded hutch along one of the chambers of a coal-pit belonging to the defender, was killed by falling down the shaft of said coal-pit, owing to check-blocks, or other sufficient means for stoping the said hutch, not being provided, through the fault of the defender, to the loss, injury, and damage of the pursuer?

Damages laid at £500 sterling."

The jury, after an absence of three hours, returned a verdict for the pursuer by a majority of 9 to 3. Damages were assessed at £64.

Counsel for Pursuer—Mr Pattison and Mr W. N. M'Laren. Agent—J. M. Macqueen, S.S.C.

Counsel for Defender—Mr Fraser and Mr J. C. Smith. Agent—Alexander Stevenson, W.S.

Saturday, July 27.

SECOND DIVISION.

LONDON AND CALEDONIAN MARINE INSURANCE COMPANY *v.* THE LONDON AND EDINBURGH, AND THE DUNDEE, PERTH AND LONDON SHIPPING COMPANIES.

(*Ante*, p. 167.)

Ship—Loss of Goods—Breach of Contract—Liability of Carriers. Verdict for pursuer in an action of damages against a shipping company who undertook to carry certain goods and failed to deliver them. Verdict for defenders so far as action was directed against another company who had chartered one of their steamers to the company that undertook to carry.

In this case the London and Caledonian Marine Insurance Company (Limited) are pursuers, and the London and Edinburgh Shipping Company and the Dundee, Perth and London Shipping Company are defenders. The case arose out of the following circumstance:—Messrs Kinmond, Luke, & Co., Messrs Halley & Barne, Messrs Gilroy Brothers, and Mr William Young Hodge, all merchants in Dundee, had in February 1865 certain quantities of jute in London which they wished conveyed to Dundee. For this purpose they transmitted warrants to obtain the jute to the agent of the Dundee, Perth and London Shipping Company, and send it on to Dundee by one of their steamers. The jute was collected from the docks or ships in the river, but none of the steamers of the Dundee Company were in London, and arrangements were entered into with the London and Edinburgh Shipping Company to charter their steamship "Temora," then lying in the Thames. The "Temora" was chartered, the jute shipped on board, and the vessel sailed from London on Sunday the 19th February. All went well till the vessel reached Fifeness, when, in a fog, it ran on the Carr Rock, near Fifeness. The vessel and cargo, with the exception of a small quantity of jute, were lost. The merchants in Dundee, on being advised that the jute was shipped on board the "Temora," insured it to the total amount of £5639, 11s. with the London and Caledonian Marine Insurance Company, and this amount, after deducting £447, 15s. 8d. net savings from the wreck, was paid by the insurance company to the merchants, the latter giving the company an assignation of any claim they might have against the Dundee, Perth and London Shipping Company for breach of contract by their failure to deliver the jute to the consignees in Dundee. The London and Caledonian Marine Insurance Company therefore bring the present action against the shipping companies for restitution of the money they paid in insurances, alleging that the vessel and the cargo were lost, not through "the act of God, lightning, or the perils of the sea," but through the fault of those in charge of the vessel. The action is brought against the Dundee, Perth and London Shipping Company for breach of contract as public carriers, and against the London and Edinburgh Shipping Company for breach of an implied contract consequent on the company chartering their steamer to the Dundee, Perth and London Company. The Dundee Company held that they were not responsible for the wreck and consequent loss of the cargo, as it was not their vessel; while the Edinburgh Company maintained that the "Temora" was hired by them to the Dundee Company, but that there was no contract specified or implied between them and the owners of the goods, and that they therefore could not be liable.

The issue sent to the jury was as follows:—

"Whether, in or about February 1865, the defenders, the London and Edinburgh Shipping Company, received on board the screw steamship "Temora" the various quantities of jute mentioned in the schedule hereunto annexed, and undertook to carry the same from London to Dundee, and to deliver the same at Dundee to the parties entitled thereto? And whether, in breach of said undertaking, the said defenders failed to deliver the said jute, or part thereof, at Dundee, to the loss, injury, and damage of the owners and of the pursuers, as their assignees?"

There was a second issue applicable to the Dundee, Perth and London Shipping Company.

Amount claimed per schedule, £5191, 15s. 4d., with interest at five per cent. from 22d February 1865.

Evidence having been led and counsel heard, the Lord Justice-Clerk summed up. The jury then retired, and, after a short absence, returned the following verdict:—"The jury unanimously find for the pursuers on the second issue, and for the defenders, the London and Edinburgh Shipping Company, on the first issue; and find the Dundee, Perth and London Shipping Company liable in £5191, 15s. 4d. of damages, as sued for, with expenses."

Counsel for the Pursuers—Mr Gifford and Mr Shand. Agent—Mr James Webster, S.S.C. Local Agent—Mr J. W. Thomson, solicitor, Dundee.

Counsel for the London and Edinburgh Shipping Company—Mr A. R. Clark and Mr Duncan. Agents—Messrs Horne, Horne, & Lyell, W.S. Local Agent—Mr P. S. Beveridge, S.S.C.

Counsel for the Dundee, Perth and London Shipping Company—The Solicitor-General and Mr W. Watson. Agents—Messrs M'Ewen & Carment, W.S. Local Agents—Messrs J. J. & J. Ogilvie, Solicitors, Dundee.

Friday, July 12.

OUTER HOUSE.

(Before Lord Barcapel.)

MINISTER OF COLINTON *v.* FOULIS AND OTHERS.

Teinds—Valuation—Surrender—Minister—Titular. Circumstances in which, in a question between an heritor and a minister as to a proposed surrender of teinds in a locality, an objection by the minister to the valuation on which the surrender proceeded, founded on the allegation that it had been carried through without the presence or citation of the titular, repelled.

In the locality of Colinton, Sir James Liston Foulis of Woodhall, Bart., and his curators, lodged a minute of surrender of the teinds of the lands and barony of Woodhall, so far as not previously sold. The teinds of the whole barony were valued by a decree of valuation, dated 4th March 1631, at eight bolls bear, four bolls wheat, four bolls meal, and sixteen bolls oats.

The minister lodged objections to the proposed surrender, and stated the following pleas in law:—(1) The valuation founded on having been a mere transaction between the heritor of the lands and the tacksman of the teinds, the decree sustaining and allowing the same can have no operation after the termination of the tacksman's right; (2) There can be no permanent valuation of the teinds of a parish without the presence or at least the citation of the titular or party having right to the property of the teinds; and (3) There having been no intervention of the titular in the process in which the decree founded on was pronounced, and the right of the tacksman who appeared in the process as the sole party having right to the teinds having long ago expired, the said decree is no longer operative, and is null and void as a valuation of the teinds.

The Lord Ordinary repelled the objections for the minister, sustained the surrender, and pronounced the following interlocutor:—

"*Edinburgh, July* 12, 1867.—The Lord Ordinary having heard counsel for the parties, and considered the closed record in the question between Sir James Liston Foulis and his curators, minuters, and the minister, with the process and productions, repels the objections stated by the minister to the valuation founded on by the minuters; sustains the surrender tended by them, and decerns: Finds the minister liable in expenses; allows an account thereof to be given in, and when lodged, remits the same to the auditor to tax and report.

"E. F. MAITLAND.

"*Note.*—The objections stated by the minister to the valuation are founded solely on the allegation that it proceeded without the presence or citation of the titular. He pleads, first, that the valuation was a mere transaction between the heritor and a tacksman; and, secondly, that there can be no permanent valuation without the presence, or at least the citation, of the titular or party having right to the property of the teinds. These grounds of objection are not insisted or concurred in by the present titular, but are maintained only by the minister, whose predecessor in the benefice was present, and took part in the proceedings in the valuation. The Lord Ordinary, however, assumes that the present minister has a title to maintain the objection, which, if well founded in fact and law, would imply that there never was a statutory and valid valuation of the teinds in question. In the case of *Brydie* v. *Johnston* 11 S., 229, the minister was held entitled to object to a valuation to which his predecessor had been made a party, that it was led by the superior of the lands, though the objection was not sustained on the merits.

"The valuation founded on by Sir J. L. Foulis is contained in a decree of approbation by the High Commissioners, dated 4th March 1631. It appears from the extract-decree of approbation that a valuation of the parish of Hailes (now Colinton) had been led before the Sub-Commissioners, and was of that date presented to the High Commissioners and read in their presence, and sustained and allowed by them. In particular, the sub-valuation of the teinds of the lands of Woodhall and Bonally, part of which it is now proposed to surrender, was specially sustained and allowed.

"The form of procedure was peculiar, but such as is known to have been at that time practised by the High Commissioners in approving of sub-valuations. There does not appear to have been any summons of approbation, and apparently the proceedings were carried through by direction of the High Commissioners themselves, and not at the instance of any private party. Sir John Connell, i, 232, states that 'in 1631 and 1632 a number of the decreets of approbation simply bear that the Commissioners had heard, read, seen, or considered the report of the Sub-Commissioners produced, and that it was approved of after warning the parties to attend.' Among other instances of this practice he refers to the case of *Hailes* (Colinton) now under consideration. He gives an extract from the sederunt book of the Commissioners of an order by them for proclamation and warning to the titulars, tacksman, and heritors of the parishes of St Cuthbert's and Liberton to attend on 1st December 1630, 'for sighting of the valuations' of these parishes. He says further that 'about the same period, a practice became prevalent of the parties interested executing before the High Commissioners summonses of approbation of the reports of the Sub-Commissioners.' He cites as one of the earliest examples of this latter form of proceeding the case of *Achtertool* on 15th July 1631, which is after the date of the approbation in the present case. He also says, p. 233, that 'afterwards a form was introduced of issuing summonses in name of the Commissioners themselves,' which shows that they held themselves entitled to take the initiative in the approbation of valuation led before the Sub-Commissioners. The Lord Ordinary does not think it can be doubted that approbations carried through at that time in the first of these three forms were perfectly competent and effectual so far as regarded the mode of procedure.

"An approbation in that form of the lands in question, and the other lands in the parish of Colinton, was in point of fact carried through, as appears from the decree, an extract of which is produced. The first question which arises is,—whether any incompetency or nullity appears on the face of the decree. All extrinsic objections have been long cut off by the negative prescription. No defect which could be shown *aliunde* to have attached to the proceedings before the Sub-Commissioners, could, it is thought, have afforded an effectual ground of challenge against the validity of the decree of the High Commissioners sustaining and allowing the sub-valuation. But in point of fact no evidence what-