sterling, including a sum of £31, 5s. sterling, charged as commission. The respondents (pursuers) brought an action to recover.

The Sheriff-Substitute (BELL) and the Sheriff (ALISON) both held that the defender was liable.

The defender advocated.

SCOTT and BRAND for him argued—(1) That the pursuers held themselves out as stockbrokers in the transactions which took place between them and the defender and the actual brokers in these transactions; but that, as they were in point of fact not brokers, and had delegated the making of the purchases and sales to others who were brokers, but whom the defender did not employ, they were not entitled to recover in respect of the said alleged losses. (2) That the defender instructed the pursuers to buy on the 27th February double the quantity of shares of each stock required for the engagement to deliver on that day, and 200 more; and that if the pursuers had obeyed these instructions, he would have had a profit upon the new shares equal to or greater than the loss upon the others, and that as the sum sued for is the loss arising from the pursuers' failure to fulfil the whole order, they are not entitled to recover. (3) That the defender was not liable for losses on transactions between the stockbrokers and the pursuers, but with which the defender personally had no concern, seeing that he did not employ the stockbrokers nor was any party to transactions between the pursuers and them. (4) That, not being brokers, the pursuers were not entitled to charge commission on the said transactions.—(*Cope* v. *Rowlands*, 2 M. & W., p. 149. Keyser, Law of the Stock Exchange, p. 267; 6 Anne, cap. 16.)

WATSON and TRAYNER, for the respondents, were not called upon.

The Court adhered to the judgments of the Sheriff and Sheriff-substitute, and found the pursuers entitled to expenses both in this and in the inferior court.

Agent for Advocator—John Walls, S.S.C.

Agents for Respondents—Neilson & Cowan, W.S.

Friday, December 13.

DAVIDSON *v.* CLARK AND OTHERS.

Vitious Intromission—Statute 1695, *cap.* 41—*Renunciation of Succession—Expenses.* Next of kin charged under the Act 1695, cap. 41, having neither renounced nor confirmed, and being sued as vitious intromitters, renounced the succession when the case was in the Inner-House upon a reclaiming note; the Court found them liable in expenses of process, under deduction of the expense of the minute of renunciation.

This was an action brought against the next of kin of the deceased Mary Clark, at the instance of a person who had alimented her illegitimate child, for the amount of aliment expended and to be expended upon it. Before bringing the action, the pursuer charged the defenders under the Act 1695, cap. 41, to obtain themselves confirmed executors *qua* next of kin of the deceased Mary Clark within twenty days, "with certification to them if they fail either to get themselves confirmed as executors foresaid, or to renounce their right in the moveable effects of the said Mary Clark, they shall be liable to the complainer (pursuer) as vitious intromitters with the said Mary Clark's moveable effects."

The defenders did not confirm, and the present action was brought against them as vitious intromitters under the Act, and concluded that they should be decerned against, conjunctly and severally, in the premises. The defenders denied that they had had any intromission with Mary Clark's estate, which, they alleged, consisted entirely of a claim under a settlement of her father, which was not presently exigible. They did not renounce the succession, but were willing that the pursuer should have decree against Mary Clark's estate, provided she did not ask expenses against them, contending that she was bound to constitute her claim against them at her own expense, just as if they had been confirmed executors. The pursuer refused to agree to this, and defences were lodged upon the matter of expenses. The pursuer contended that the defenders were bound either to confirm or to renounce the succession; that, as they had done neither, they were vitious intromitters under the Act, and could not plead the privileges of duly confirmed executors, nor require a constitution of the pursuer's claim at her own expense.

The Lord Ordinary (KINLOCH) decerned against the defenders, with the declaration that the decree should only be enforceable to the extent of the succession of Mary Clark devolving on them, and found the defenders entitled to the expenses of process.

The pursuer reclaimed.

MACLEAN (with him GIFFORD) for her, and THOMSON, for the defenders, were heard.

In the course of the hearing, the defenders offered to renounce the succession, and were allowed to give in a minute to that effect, the pursuer not opposing.

Upon this being done, the Court, in respect of the minute, assoilzied them from the passive titles libelled, but decerned against them *cognitionis causa tantum*, to the effect that the pursuer might attach the moveable estate of the deceased Mary Clark, and found the pursuer entitled to expenses, under deduction of the sum of £2, 2s., as the expenses of the minute of renunciation put in by the defenders.

Agent for the Pursuer—W. Miller, S.S.C.

Agent for the Defenders—A. Morrison, S.S.C.

Saturday, December 14.

FIRST DIVISION.

GRANT, PETITIONER.

Ship—Register—Arrestment—Real Owner. A ship, formerly the property of B, stood registered in names of A and the pupil children of B. A creditor of B raised a petitory action against him; arresting the ship *ad fundandam jurisdictionem*, and on the dependence. He also raised a declarator and reduction against the pupil children, to reduce the bill of sale to them, and declare that B was the true owner of the share in the ship standing in name of his pupil children, and arrested the ship to found jurisdiction. On petition of B, as administrator-in-law for his children, the arrestments *recalled.*

This was a petition for recal of arrestments, presented by John Grant, timber merchant, Cardiff, county of Glamorgan, South Wales, as administrator-in-law for Catherine Flora Grant and others, his pupil children.

The petition bore that in 1855 the petitioner purchased a vessel, named the Skylark, and was registered as sole owner: that in February 1864 he sold the vessel to a person named Macdonald, conform to bill of sale, which was entered in the registry of vessels at Liverpool: that on 29th August 1864 Macdonald sold 32-64 parts of the vessel to one Mackenzie, and, on 1st September, the remaining 32-64 parts to the children of John Grant: and that the petitioner's children had, since November 1861, been the sole registered owners of the half-share of the vessel, while Mackenzie was the sole registered owner of the other half. It appeared, further, from the petition, that on 29th June 1866, the respondent Alexander Murdoch Grant brought an action against the petitioner in the Court of Session for payment of a sum of money found due by the petitioner to the respondent in certain proceedings in the Court of Chancery; and, in order to found jurisdiction against the petitioner, arrested the vessel, then lying at Dunvegan, in Skye, *ad fundandam jurisdictionem*, in virtue of letters of arrestment, dated 23d June 1866. On the dependence of this action the vessel was arrested, at the respondent's instance, on 13th September 1866. In December 1866 the respondent raised an action of declarator and reduction in this Court against Macdonald and the petitioner's children, for the purpose of having it declared that the bill of sale by John Grant to Macdonald was solely for behoof of John Grant, and that the bill of sale by Macdonald to Grant's children conferred on them no right in the vessel, and that John Grant was sole owner of a half share in the vessel; and for reduction of the bills of sale. The respondent, in order to found jurisdiction against the petitioner's children, arrested the vessel on 11th December 1866, *jurisdictionis fundandæ causa*. The petitioner now craved recal of these arrestments.

Answers were lodged by Alexander Murdoch Grant, in which it was alleged that the bill of sale by John Grant to Macdonald was a mere device to protect the vessel from the respondent and John Grant's other creditors; that, after John Grant had raised money on the vessel by a sale of one-half share to Mackenzie, a re-conveyance of the vessel was made in favour, not of John Grant, but of his children; but these children were all in pupilarity, residing with their father; they had no means to purchase any part of the vessel, nor was any price paid by or for them to Macdonald; and, as Macdonald held the vessel merely in trust for Grant, any payment by Grant's children to Macdonald would just have been a payment to Grant himself.

Counsel were heard on the petition and answers.

W. N. Maclaren (Gifford with him) for petitioner.

The case of *Duffus and Lawson* v. *Mackay*, 13th February 1859, 19 D., 430, was cited.

Pattison and A. Nicolson in reply.

Lord President—I think it is necessary to distinguish between the arrestments in this case. There are arrestments, in the first place, against John Grant, the father of these children, for the purpose of founding jurisdiction, and there are other arrestments on the dependence of the petitory action against him, and the subject arrested is the ship Skylark. On the face of the register, the Skylark does not belong to that person either in whole or in part, and that appears to be conclusive in so far as regards these arrestments. They are null because they arrest a vessel which is not the property of the person against whom the arrestments are directed.

But then we come to the arrestments for founding jurisdiction against the defenders in the declarator and reduction. I must take that action, and the arrestments on which it is founded, as standing alone, for the other arrestments being ineffectual, the action founded on them is gone also for want of jurisdiction, and, therefore, there is no competent process in this Court or in this country, except the declarator and reduction. Now, what is the object of that action? It is to reduce, set aside, and declare invalid the title to the ship which stands in the petitioner's children, who are called as defenders in the reduction. The arrestments are laid on for the purpose of giving jurisdiction to pronounce decree of reduction; but the very decree of reduction takes away the ground of jurisdiction, and therefore the whole thing is absurd. It has no meaning or substance. There are strong allegations of fraud made against the petitioner and other parties, and it may be that these allegations are well founded. It may be quite true that this ship does not belong to these children, but to their father; but we are not shutting out the creditors of the petitioner from a remedy by recalling these arrestments. There are courts in England open to them, and by refusing to entertain these proceedings, we only tranfer the solution of these questions to England, which is not only legitimate, but also most expedient; and, therefore, I am not disturbed at being led by authorities and principle to recal these arrestments.

Lord Curriehill concurred.

Lord Deas concurred. He had dissented in the case of *Duffus*, and would be inclined to dissent again if the point were open; but he must hold the case to be binding, and to rule the present case.

Lord Ardmillan concurred.

Arrestments recalled, with expenses.

Agent for Petitioner—J. M. Macqueen, S.S.C.

Agent for Respondent—James Somerville, S.S.C.

COURT OF JUSTICIARY.

Monday, December 16.

HER MAJESTY'S ADVOCATE *v.* M'DONALD.

Murder—Culpable homicide—Premeditation—Malice aforethought—Verdict. A verdict by a jury, finding a panel guilty of murder, but recommending him to mercy on the ground of want of malice aforethought, *held* to be a verdict of murder.

Charles M'Donald was charged with the murder of his wife.

Lord Advocate (Gordon) and Montgomerie, A.-D., for the Crown.

D. Crawford and Maitland for panel.

Evidence was led.

Lord Advocate addressed the jury for the prosecution.

Crawford for the panel.

Lord Justice-Clerk summed up, directing them *inter alia* as follows:—"They would have to consider whether, in the infliction of these injuries, the panel had really before him a deliberate or forethought