should be succeeded by the heirs-male of his own body—whom failing, by the heirs whatsoever of his own body,—before the succession should pass to the next younger heir-male of the marriage and his descendants.

Fourthly, that such is the true construction of the destination is corroborated by the fact that it gives a meaning to every one of the clauses in the destination, whereas the construction contended for by the pursuer would leave some branches of the destination altogether meaningless. In particular, it would deprive of any rational meaning the clause by which the destination to the heirs-male of the marriage of Sir William and Lady Forbes is qualified, as I have pointed out.

And finally, the meaning which it gives to all the branches of the destination is, that it interrupts the legal rules of succession *less* than that contended for by the pursuer. The intention which is indicated in the branches of the destination applicable to the entailer's descendants appears to be, that in every case when the right to the estate is provided to any party as a stirps, it is to go to the descendants of that stirps, in a certain order, so long as any of them shall exist; and that it shall never go out of his family until all his own descendants shall fail. This would not be the case according to the construction contended for by the pursuer. It is a principle which is of great importance in the construction of tailzied destinations, that the legal rules of successsion are not to be deviated from beyond what is directed by the entailer. In the case of *Largie*, Lord Jeffrey concludes his comments on the prior cases thus—"In all these cases, then, it was held clear that the rule is to interpret and read the destination as if it had made express reference to the legal order of succession, and that this is never to be excluded unless where the words do not at all admit of its adoption." In the present case the entailer's directions, according to my reading of them, proceeds upon this footing in so far as these relate to his descendants; and such will be their effect. And this is brought out prominently by a special provision which he made as to the only contingency in which the case might eventually have been different had the words of the destination itself been left unqualified. I allude to the clause in which it is "provided that the daughter of the heir who shall happen to be last in possession of the lands and heritages before mentioned (whether such heir was served heir of tailzie or not), succeeding always preferably to the daughters of any former heir, so often as the succession, through the whole course thereof, shall devolve upon daughters; and which I hereby declare to be my true meaning, notwithstanding of the aforesaid general destination of heirs whatsoever."

That clause shows clearly the granter's intention that the succession should never, according to the legal rule, be taken away from the descendants of any person who might actually have possession of the estate as its owner, except in those cases in which the ownership was expressly directed to pass to a different family; and so this clause secures that the legal rules of succession should not be deviated from in even such exceptional cases, unless some of the express provisions should direct such a deviation to take place.

The result is that, in my opinion, the title of Lady Clinton is not challengeable on the ground set forth in this action; and that she should be assoilzied from its conclusions.

The other judges concurred.

Agents for Pursuer—Skene & Peacock, W.S.
Agents for Defender—Mackenzie & Kermack, W.S.

Thursday, June 11.

SHEPHERD & CO. *v.* BARTHOLOMEW & CO.

(*Ante*, vol. iii, 170.)

Bill—Renewal—Security. For some years A supplied cotton on the order of C for the firms of C & Co. and B & Co., C distributing the cotton between the firms as he chose, and A being at liberty to draw bills on either firm for the price. A sued B & Co. on two bills accepted by them. They defended, on the ground that these bills had been superseded by a renewal bill accepted by C & Co., on whose estate A had already ranked for the amount of the renewal bill. Defence *sustained;* and *held*, after a proof, that in the circumstances A was not entitled to retain the two original bills as an additional security for the price.

The pursuers, who are merchants in Manchester, sued the defenders, merchants in Glasgow, for £4085, 1s. 9d., being the amount of two bills, one for £1706, 5s. 4d., dated 27th December 1864, and the other for £2378, 16s. 5d., dated 2d January 1865. In January 1867 the Court allowed the defenders a proof *prout de jure* of their averment that these bills had been superseded and extinguished. A proof was taken; and thereafter the Lord Ordinary (JERVISWOODE) pronounced an interlocutor finding "That, for some time prior to the raising of the present action, the pursuers on the one hand, and the defenders on the other hand, were engaged in a series of transactions, in the course of which the pursuers were in the habit of purchasing cotton on commission for the firms of John Bartholomew & Company (the defenders) and of John & Robert Cogan, merchants, Glasgow, of both of which firms Mr Robert Cogan and Mr Robert O Cogan were members: Finds that the said Mr Robert Cogan took the active management of the finance department of both of the said firms: Finds that, prior to the year 1865, the orders for the said purchases of cotton were made by, and the cotton so purchased invoiced to, the said firm of John & Robert Cogan, for behoof of their own firm, and also of that of the defenders, to be allocated according to the requirements of the said respective firms for the time: Finds that the pursuers drew bills from time to time on both of the said firms for the price of the cotton so purchased by them: Finds that such bills were not so drawn by the pursuers on said firms of John Bartholomew & Company and John & Robert Cogan, with special reference or in precise relation to the quantity of cotton which was actually allocated to each firm, but as a matter of mutual convenience, and having regard to the position of their respective pecuniary obligations and transactions at the time: Finds that, on the above footing, when the bills now sued on fell due, and were not retired by the defenders, the sums contained therein were included in a new bill, drawn by the pursuers upon, and accepted by, the said firm of John & Robert Cogan, for £5571, 8s. 7d., and bearing date 25th March 1865: And finds that the pursuers ranked on the bankrupt estate of the said John & Robert Cogan, and accepted a composition for the said bill for £5571, 8s. 7d., including therein the sums now sued for."

His Lordship therefore sustained the defences, and assoilzied the defenders.

The pursuers reclaimed.

LANCASTER for reclaimers.

ASHER for respondents.

At advising—

LORD PRESIDENT—I feel so satisfied with the interlocutor of the Lord Ordinary, and I believe your Lordships are of the same opinion, that it is not necessary to call for an answer. The Lord Ordinary has embodied the facts of the case in certain findings, and has deduced from them a legal conclusion which I think is fairly deducible from the findings.

It appears that Shepherd & Co. were in the habit of purchasing cotton for the two Glasgow firms of Bartholomew & Co. and J. & R. Cogan, but the transactions were conducted in this way, that Robert Cogan acted for both firms in the whole matters, and the goods were purchased for and invoiced to the firm of J. & R. Cogan. Robert Cogan, who acted for both, distributed the cotton, on its arrival, in such a way as to suit both houses. As to the arrangements for paying, it seems to have been understood that Shepherd & Co. were to be entitled to draw bills for the amount against both firms, and the distribution of that liability was made matter of arrangement, that arrangement being left a good deal to Mr Shepherd of Manchester, who appropriated the bills as he thought most desirable, according to the amount of paper current at the time. This mode of dealing continued for some time. The bills sued on are two bills, one for £1706, 5s. 4d., the other for £2378, 16s. 5d., amounting together to £4085, 1s. 9d. Now, these were bills granted respectively on 22d December 1864 and 2d January 1865 by the defenders Bartholomew & Co., as two of a set of bills for the price of cotton purchased at that time, or rather for the balance of the price of cotton previously purchased. The bills, it is admitted, were not paid by the defenders or retired by them when they came to maturity, but an arrangement was made for renewing them, and there was a bill granted on 25th March 1865—that is, just on the expiry of the first bill—by J. & R. Cogan for £5571, 8s. 7d., which, it is admitted, comprehended the amount of the bills sued on. The defenders say this was just a renewal bill in the ordinary course of business; and though it was accepted by J. & R. Cogan, whereas the two bills had been accepted by Bartholomew & Co., that did not make it less a renewal bill, for it was indifferent which firm stood debtor for the time, and was a matter in which Shepherd had been allowed to exercise his own discretion in appropriating liability. The pursuer Shepherd says, I retained these two bills, and I retained them as securities, additional securities, for the sum contained in the new bill for £5571, 8s. 7d., and I thus obtained two debtors for the amount, instead of one as before. The question is, whether he was entitled to do this? It was easy for him to retain the bills, for it appears to have been no uncommon occurrence for bills not to be given up; but Shepherd says, I retained them for the express purpose of having them as an additional security. That may be, but was he entitled to do so, or has he any authority to do so? I cannot find any evidence of that. He does not himself say he was authorised by Bartholomew or J. & R. Cogan to do this. It is admitted that it was something new, and therefore either the idea originated with himself, and he did not communicate it, or it has arisen *ex post facto*, and that is not a very unreasonable supposition. The footing on which the renewal was granted is obvious from two letters written by Cogan to the pursuers. His Lordship then quoted from the letters, and continued—It is obvious from these letters that Shepherd must have known that the thing he was asked to do was to draw a renewal bill in ordinary form, leaving him to draw either on the one Glasgow firm or on the other, but certainly not so as to alter the ultimate liability, and still less to create a double security for that for which Shepherd held a single security before. Therefore the Lord Ordinary says that Shepherd & Co., having already ranked on the estate of J. & R. Cogan for the bill of 25th March 1865, are not now entitled to sue on the expired bills of which it was a renewal, even to the extent of ranking on the estate of Bartholomew & Co. The one security acquired by the acceptance of J. & R. Cogan was intended to supersede the previous security of Bartholomew & Co. I am therefore of opinion that we ought to adhere.

The other judges concurred.

Agents for Pursuers—Murray, Beith, & Murray, W.S.

Agents for Defenders—Maconochie & Hare, W.S.

Thursday, June 11.

JURY TRIAL.

(Before Lord Jerviswoode.)

PATON *v.* CALEDONIAN RAILWAY CO.

Jury Trial—Reparation—Railway. Action of damages for injury by railway accident. Verdict for pursuer.

This was a case in which Robert Paton, commercial traveller in Glasgow, was pursuer; and the Caledonian Railway Company, were defenders.

The issue sent to the jury was as follows:—

"Whether, on or about 3d June 1867, and near the Uddingston station on the defenders' line of railway from Motherwell to Glasgow, the pursuer, while travelling as a passenger on said line, received severe injuries in his hip-joint and other parts of his body, in consequence of a van, placed on a truck forming part of a train in which the pursuer was travelling, coming into contact with a bridge over said line, through the fault of the defenders, to the loss, injury, and damage of the pursuer?"

The amount claimed as damages and *solatium* was £2000.

It appeared from the statement of the pursuer, that on the 3d June 1867 he was travelling between Motherwell and Glasgow in the first compartment of a third-class carriage, immediately behind a carriage truck, which was loaded with a van of panoramic views. While the train was passing a bridge near Uddingston station, the van, which was too large to clear the arch, came into contact with it, and was thus thrown against the end of the carriage in which the pursuer was sitting. The *débris* which fell upon him compressed him so tightly, until the broken pieces of the carriage were removed by lever power, as to produce an alarming dislocation of the hip-joint, a severe injury of the knee, and a variety of bruises and contusions, besides a serious shock to his whole system and great exhaustion of body.