period sufficient to rear up the plea of prescription. I do not in this view consider the supplementary action as necessary or as available to the pursuer in this question. I think that the institution of such an action could scarcely remove the objection to the libelling of the accounts if that objection were well founded.

I would propose, therefore, in reference to this objection, that we should allow the pursuer a proof so as to show continuity in the employment of the deceased—a previous specification being given in of the special acts of employment. The individual accounts from 1852 should be found not to be prescribed, and the company accounts to have fallen under the operation of the triennial prescription.

The other judges concurred.

Agents for Pursuer—Wotherspoon & Mack, S.S.C. Agents for Respondents—Morton, Whitehead, & Greig, W.S.

Saturday, July 18.

connal & co. v. daunt & co. and others.

Foreign—Iron Warrant—Indorsation—Bankruptcy—Intimation. (1) Circumstances in which held that the law of Scotland was to be applied that certain warrants were transferable documents, but that their indorsation required to be followed by intimation to the warehouse keepers to perfect the right of an indorsee as in a question with competing rights constituted by arrestment or otherwise. (2) Held, in accordance with the opinion of English Counsel, that the inspectors on Daunt's estate had not by the deeds in their favour any right which could compete with that of Loder; but, as Loder's averments as to the way in which he had become possessed of the warrants as to intimation were not admitted, proof allowed.

This is a competition as to a quantity of pig-iron situated in the stores of Connal & Co., warehouse-keepers in Glasgow. In December 1865 Connal & Co. received into their stores in Glasgow 45,000 tons of pig-iron, for which they granted to W. H. Daunt & Co. of Liverpool a variety of acknowledgments or warrants in the annexed form:—

"Connal & Co., warehouse-keepers, Iron Yards, General Terminus and Green Bank, south side of Broomielaw; Hyde Park, north side of Broomielaw,

and Port Dundas.

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"Glasgow, 19th December 1865.

"We have received into our stores and entered in our warehouse books in the name of Messrs W. H. Daunt & Co.; and we now hold to their order five hundred tons pig-iron of numbers one and three, and we will deliver to their order by endorsement hereon, 'free on board' here, from our stores, that quantity of pig-iron—same number and brand, on payment of the charges noted at foot and return of this warrant. (Signed)—CONNAL & Co.,

Warehouse-keepers.

"Charges,

Rent at 3d. per ton per month.

Agency 1s. per hundred tons if transferred.

Exd. and entd. by A. Young."

Daunt & Co. are alleged to have obtained from Mr Giles Loder, merchant in London, an advance of £150,000 on the security of this iron; and in order to constitute that security, they are said to have delivered to Mr Loder, along with their promissory notes for the amount, the acknowledgments or warrants which had been granted to them by Connal & Co., and which W. H. Daunt & Co. blank indorsed. These acknowledgments or warrants, when thus endorsed, were delivered to Loder on and prior to 27th February 1866. The indorsation or delivery was not intimated by Loder to Connal & Co. prior to 9th July 1866, but they are said to have been intimated to them on that day. In the meantime, on 5th May 1866, Daunt & Co., having become insolvent, executed for behoof of their creditors a deed of arrangement for winding up their affairs, under inspectorship, in virtue of the English Bankruptcy Acts. The iron is now claimed by Mr Loder, on the one hand, under the indorsed acknowledgments or warrants delivered to him, and by the inspectors of Daunt & Co.'s affairs, on the other hand, under the registered deed of arrangement which had been executed. There are also creditors of Daunt & Co. claiming under arrestments used in the hands of Connal & Co. subsequent to July 1866.

The Lord Ordinary had allowed parties gener-

The Lord Ordinary had allowed parties generally a proof of their averments. Among others, a great variety of statements were made by Loder as to English law and usage, which he maintained fell to be applied in the determination of the rights of parties. On the other hand, Daunt & Co's inspectors and the arresting creditors contended that the effect of the indorsation and the necessity of intimation to complete Loder's rights, were to be fixed

by Scotch law.

Parties reclaimed.

Young and J. Mair for Loder.

 $G_{\mbox{\scriptsize {\bf IFFORD}}}$ and Maclean for Daunt & Co.'s Inspectors.

D.-F. Moncreiff and Watson for arresting creditors.

The Court, after argument, took the opinion of English counsel on the title of Daunt & Co.'s inspectors under the foresaid deed of arrangement. The following were the queries put:—

"I. Supposing the warehouse-keepers' warrants import an obligation to deliver the specific iron re-

ceived-

"1. What is the effect of the deed of arrangement, according to the law of England, as to vesting in the inspectors whatever movable subjects may then have been the property of the bankrupts, or as to entitling them to recover and take possession of such property from the custodiers of the same; and if it would be thus vested, or might be thus recovered, for whose benefit and behoof would it be so?

"2. What is its effect as to giving any preference in regard to moveable subjects in competition with other parties holding prior completed rights of pledge over the same, or parties holding prior rights in reference thereto depending entirely on personal contract?

"II. Supposing the warehouse warrants to import merely an obligation to deliver the like quantity of similar iron—

"1. What is the effect of the deed of arrange-

ment, according to the law of England, as to entitling the inspectors to demand delivery of the iron due under those warrants, and for whose behoof

could they so demand it?

"2. What is its effect in competition with a prior assignment from the bankrupts in security or absolutely, not followed by intimation of that assignment to the warehouse-keepers, where such intimation is necessary in law to complete the right of the assignee?"

The following opinion was returned by Sir Roundell Palmer and Mr de Gex, the counsel con-

sulted:-

"1. On this supposition, we think that the deed of arrangement has no effect, according to the law of England, as to vesting in the inspectors whatever movable subjects may have been the property of the bankrupts, or as to entitling them to recover and take possession of such property from the custodiers of the same under such circumstances as are stated in the case, or as to giving any preference in regard to moveable subjects in competition with other parties holding prior completed rights of pledge over the same, or parties holding prior rights in reference thereto, although depending entirely on personal contract.

"2. On this supposition, we think that the deed has no effect, according to the law of England, as to entitling the inspectors to demand the delivery of the iron due under the warrants, or in competition with a prior assignment from the bankrupts in security or absolutely, although not followed by intimation of that assignment to the warehouse-

keepers."

The Court unanimously held that the law of Scotland was to be applied in determining the rights of parties over the iron in question; that the warrants in question were transferrable documents, but that their indorsation required to be followed by intimation to the warehouse-keepers to perfect the right of an indorsee as in a question with competing rights constituted by arrestment or otherwise. They also held, in acordance with the above opinion of English counsel, that the inspectors on Daunt's estate had not by the deeds in their favour any right which could compete with that of Loder; but as the averments made by Loder as to the way in which he had become possessed of the warrants, and as to his having intimated to Connal & Co. that he held them, were not admitted, they allowed him a proof thereof, and to the competing claimants a conjunct probation.

Agent for Loder-John Wright, W.S.

Agent for Daunt & Co.'s Inspectors—Andrew Beveridge, S.S.C.

Agents for Arresting Creditors—Neilson & Cowan, W.S.

HOUSE OF LORDS.

Thursday, June 25.

HUNTER v. LOTHIAN. (4 Macph. p. 216.)

Partnership — Profits— Dividend — Title to Sue— Fraud. L, by the settlement of his deceased wife C, acquired right to certain shares of a joint-stock company, from which, and their profits, his jus mariti had been excluded. He sold the shares to the company. After his death his executor sued the company for reduction of the sale, count and reckoning for the profits subsequent to the sale, and damages, alleging that L had been fraudulently deceived by the company as to the true value of the shares. The action was compromised, the company paying a sum of money to L's executor, and getting an assignation of his claim. The executor of C now raised an action against the company for the undivided profits which had accrued during C's life. The company pleaded, inter alia, that the pursuer had no title to sue for undivided profits, these having been carried, with the shares, to L by his wife's settlement. Plea sustained.

Per Lord Chancellor—Any right of C was a right by virtue of, and attached to, the shares of which she was the owner, and if her settlement passed the shares it passed along with them every incident that properly belonged to them.

The Carron Company was established in the year 1760, and it received a grant of a royal charter in 1773. At that time, and from that time onward, it was regulated by a contract of copartnery, which was dated in the year 1771. As to the constitution of the Company, it is sufficient for the present purpose to say that it was a company of the nature of an incorporated joint stock company. The shares were transferable; but before any transfer or sale they had to be offered to the Company, which might, on certain terms as to price, become the purchasers of the shares. Provisions were made as to the capital and stock of the company, and as to the mode of ascertaining and declaring the dividend; and other provisions such as are usual in similar cases.

In the year 1828 there was a Mrs Caldwell, a widow, who held ten shares in this Company. She was about to be married to Mr Lothian, and by her marriage-contract these ten shares were settled, in substance, upon her for liferent, and then upon her husband for liferent, then upon the children of the marriage, if there should be any; and failing children, one-half of the corpus or fee in the shares was to belong to her husband, and the other half was to go as the widow, Mrs Lothian, should dispose of by instruments of the kind described in the contract. In pursuance of this marriage-contract, and of the power contained in it for Mrs Lothian, she made a settlement in the year 1837, and by that settlement, after giving various specific benefits to different persons named in it, which were to be satisfied out of her property, as to the residue of her property she expressed herself thus-I "direct and appoint my trustees to invest the whole residue of my means and estate remaining, after satisfying each and all of the foregoing provisions and appointments, in heritable bonds or such other securities as they may approve of, and that for behoof of my sister Mrs Mary Hunter or Philp, spouse of Charles Philp, merchant, Bonnington, in liferent, for her liferent use allenarly, exclusive of the jus mariti of her present or any future husband; and to Charles, Mary, and Jane, the children procreated of my said sister, equally amongst them in fee." Under this residuary gift the respondents in this appeal claim.

To this settlement by Mrs Lothian she added a codicil in the year 1843; upon the construction of which the question in the present case in a great measure turns. In that codicil she made this provision for the benefit of her husband, Mr Lothian. "In the third place, as my said hus-