than one decision of the Court below to be conclusive upon this point, and I adhere to the opinion which I expressed in those reported cases, as well as to the judgment pronounced in this case.

Agents for Appellants—Tods, Murray & Jameson, W.S., and Connell & Hope, Westminster.

Agents for Respondent—H. & A. Inglis, W.S., and Gregory, Rowcliffes & Co., Bedford Row, London.

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*Friday, May 6.*

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

(*Ante*, vol. v, p. 595.)

*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 They defended, on the ground that these bills had been superseded by a renewal bill accepted by C & Co., on whose estate A had already ranked for the amount of the renewal bill. The House of Lords *affirmed* the decision of the First Division, which sustained the defence, 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 In January 1867 the Court allowed the defenders a proof *prout de jure* of their averment that these bills had been superseded and extinguished.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 and 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.

On the pursuers' reclaiming to the First Division the Court adhered.

The pursuers appealed.

ANDERSON, Q.C., MELLISH, Q.C., and JORDAN for them.

LORD ADVOCATE and PEARSON, Q.C., in answer.

At advising—

The LORD CHANCELLOR said it would be unnecessary to trouble the respondents. In this case the appellants complained of certain interlocutors of the Court of Session. The respondents carried on business in Glasgow, and were sued for payment of two bills of exchange which had been given in the course of dealing between them and the appellants and another firm of Cogan & Co., relating to the purchase of cotton. The interlocutors complained of were divisible into two sets—one of which related to the mode of proof, and the other to the merits of the case. The appellants had been in the habit of dealing with the other two firms, of buying cotton for them on the order and directions of Cogan. Cogan had ordered large quantities of cotton from time to time, to be purchased partly on account of the firm of Cogan & Co., and partly on account of Bartholomew & Co.; and the appellants drew bills on these two firms, apportioning the amount of the respective bills as they thought fit, or according to specific directions; but part of the dealing was liable only on its own bills. At the time of the present bills being drawn and accepted, there had been numerous transactions and a series of bills passing between the parties. When the bills became due, the appellants, assenting to the course of dealing, drew new bills, altering the apportionment of the sums payable by the representative firms; and the question was whether those new bills were intended to be, and were treated by the parties concerned as, substituted securities for the old bills then falling due. The first question related to the mode of proof, and the appellant contended that the only mode of proving that the old bills were discharged was by writ or oath of the appellant. It was not necessary in the present case to go into the rule of law on the subject, for if any writing was necessary, then there was such writing in the present case; but on a view of the whole facts and circumstances, it was very clear that the old bills were intended to be superseded and withdrawn when the new bills were accepted. The appellants relied upon the circumstance that the old bills were not given up to the debtor and cancelled; but, however that might be, the parties certainly did not intend that these bills should remain in operation after the new bills were made. The Court of Session therefore have taken that view; the judgment was right; and this appeal must be dismissed with costs.

LORD WESTBURY concurred, and said there could be no reasonable doubt upon the facts of the case. At the time the bills now sued upon fell due one of the Glasgow firms owed about £8000, and the

other owed about £6000, and the new bills altered very much these relative proportions; but it was part of the course of business that the appellants should have power to alter these proportions from time to time. The appellants made a new division of the total amount due from the Glasgow firms, as they were fully authorised to do, and though they reduced the liability of one and increased the liability of the other firm, still it could not be questioned, on the facts of the case, that when the new bills were so drawn the old bills were at an end. That was the clear understanding of all the parties, and it was only by some ingenious afterthought of the appellants that they had thought of resorting to the old bills, and founding upon them the present claim. As to any supposed difference between the English and Scotch procedure as to the mode of proof, there was no foundation for such a contention.

Lord Colonsay said he also entirely concurred that the bills now sued upon had been superseded by the new bills. As to the rule about requiring the writ or oath of the creditor being necessary to prove that the bills were discharged, it was a misapplication of such a rule to think that it applied to the circumstances of this case, the issue to be proved being what was the course of dealing between these parties; and on the issue general evidence was clearly admissible.

Lord Cairns also concurred, and said there could be no reasonable doubt on the facts of this case that the course of dealing between the parties was that when new bills of exchange were drawn, the old bills were to be entirely withdrawn from circulation, and treated as discharged. It was only an afterthought of the appellants to bring this action, suggested by the fact that they had kept the old bills in their possession; but that made no difference. The appeal must therefore be dismissed, with costs.

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

Agents for Respondents—Maconochie, Duncan, & Hare, W.S.

## *Monday, May 9.*

### SCOTTISH NORTH-EASTERN RAILWAY CO. *v.* INSPECTOR OF ST VIGEANS.

(*Ante*, vol. v, p. 103.)

*Railway—Poor-Law Assessment—8 and 9 Vict., c. 83, § 91—Poors-rates.* By the Act incorporating a Railway Company, passed prior to the Poor Law Act of 1845, it was enacted that the Company should not be liable "for any feu-duties or casualties to the superiors, nor for land-tax, cess, stipend, schoolmaster's salary, nor any public or parish burden whatever, but the same shall be paid by the original proprietor of such lands or heritages." By the Poor Law Act of 1845 certain changes as to assessments were made, and enactments inconsistent therewith repealed. *Held*, reversing decision of the Second Division, that the Company were liable for poors-rates for the railway constructed entirely upon ground acquired by them under their Act.

This was a suspension in which the question was as to a right of exemption claimed by the Scottish North-Eastern Railway Company from poor's assessment, in respect of certain exempting clauses in their Acts. The clauses mainly relied upon were the 23d section of the Act 6 Will. IV., c. 32, and the 32d section of the Act 6 Will. IV., c. 33. By section 23 of cap. 32, it was enacted, "That the rights and titles to be granted in manner above-mentioned to the said company to the lands and heritages therein described shall not in any measure affect or diminish the right of the superiority of the same, but notwithstanding the said conveyances, the rights of superiority shall remain as before, entire in the persons granting such conveyances; and the lands and heritages so conveyed to the said company shall not be liable for any feu-duties or casualties to the superiors, nor for land-tax, cess, stipend, schoolmaster's salary, nor any public or parish burden whatever, but the same shall be paid by the original proprietor of such lands or heritages." By section 32, cap. 34, it is enacted, "That the lands or heritages to be acquired for the purposes of this Act shall not be liable in payment of land-tax, or any feu-duties, casualties of superiority, cess, stipends, schoolmaster's salary, or other public or parochial burdens, unless it be so stipulated in the conveyance thereof to the said company, but the same shall be paid by the original proprietors of such lands or heritages, except in case the said company shall purchase and acquire the whole lands or heritages belonging to any person within the said parishes, in which case the said burdens shall be paid by the said company for the whole of such lands or heritages which may be so acquired as aforesaid."

The Court had formerly decided, in an action at the instance of the Inspector of Coupar-Angus, that the claim of exemption was well-founded; but the present case was designed to bring up the merits of the Coupar-Angus case with a view to appeal, and also to enable the respondents to state certain additional pleas, to the effect (1) that the exemption only applied to the assessment attaching to *ownership;* and (2) that there were certain portions of the railway company's line in the parish of St Vigeans which were not under the exempting clauses.

The Lord Ordinary suspended *simpliciter*, holding that there was no distinction between this case and that of Coupar-Angus, and that the respondent had not condescended upon the portion of the line excepted from the exemption.

His Lordship pronounced the following interlocutor and note:—

"The Lord Ordinary having heard parties' procurators, and made avizandum, and considered the proceedings: Finds that the suspenders, the Scottish North-Eastern Railway Company, are not due to the respondent, the collector of poors-rates for the parish of St Vigeans, the sum of assessment for which warrant has been granted: Suspends *simpliciter* the warrants and proceedings complained of: Declares the interdict already granted perpetual, and decerns: Finds the respondent liable to the suspenders in the expenses of process: Allows an account thereof to be lodged, and remits to the auditor to tax the same, and to report.

"*Note.*—The present case must be ruled by the decision of the Court in the case of the *Scottish North-Eastern Railway Company* v. *Gardiner*, 29th January 1864, 2 M., 537. The collector of poors-rates for the parish of St Vigeans has avowedly disregarded that decision, and assessed the Railway Company, without giving effect, in any respect, to