tute of all right to salmon-fishing. It is trite that to a possessory judgment it is not necessary that a title absolutely complete should be established. It is enough that there is a *prima facie* title, followed by possession of not less than seven years; the judgment not having the force of a declarator of right, but merely the effect of maintaining possession in a question with a party who has either no title at all, or no sufficient right in competition. I am of opinion that Lord Galloway may competently obtain this judgment in the present process. The process is indeed properly a declaratory one, with the conclusions for removal and interdict only accessory to the others. The more correct form of judicial application would have been that of suspension and interdict. But I think it fully competent to the Court to separate the conclusions of the action, and give judgment in terms of these latter. It is evidently more expedient to do so than to dismiss the action, and to put both parties to the expense of other proceedings.

Further than to the extent now proposed, I think we ought not to pronounce in favour of Lord Galloway. With the burgh of Wigtown out of the field, there is now no proper contradictor before the Court, so far as concerns the declaratory conclusions of the summons. Lord Galloway had it offered to him to have the case superseded to give him an opportunity to call the Crown as defender, when the whole matter of title would have been competently and effectually gone into. He declined to avail himself of this offer, considering it sufficient if he could obtain a judgment of removal and interdict in the question with the burgh. Except therefore to the effect of giving this judgment, the action, I think, must be dismissed.

Agents for Pursuer—Russell & Nicolson, C.S.
Agent for Defenders—Robert M'William, S.S.C.

Friday, July 8.

FINLAY *v.* NORTH BRITISH RAILWAY COMPANY.

Railway and Canal Traffic Act 1854, *sect.* 7—*Railway—Just and Reasonable Conditions—Delay in Transit.* A railway company undertook to forward fish in time for the London morning market for a certain price, on condition that they should be relieved "from all liability for loss and damage by delay in transit, or from whatever cause arising." In an action to recover damages for loss caused by delay in transit, *held* (Lord Kinloch dissenting) that the contract was just and reasonable, and came under the proviso of section 7 of the "Railway and Canal Traffic Act 1854," and that, in terms of it, delay which was neither wilful nor wrongful did not render the company liable in damages.

Railway and Canal Traffic Act, 1854, *sect.* 7. Opinion *per* Lord President that the words "loss and damage," "from whatever cause arising," would receive no effect, and be null and void in a contract with a railway company under the above section.

This was an action at the instance of a fishmonger in Leith for £37, 10s., being the amount of loss and damage sustained by him in consequence of an alleged breach of contract by the railway company. The pursuer is in the habit of sending large quantities of fresh sprats from Leith to London, for sale in the Billingsgate market. The market commences about five o'clock each morning, and lasts till about nine; and it is important to the pursuer and other fishmongers in Leith and Newhaven, sending fish to London, to have their fish delivered in Billingsgate market, London, in time for the market of the morning after they are sent off from Edinburgh or Leith. The pursuer had been in the habit of sending his sprats to London by the defenders' railway, and they had been generally so sent by the passenger train, which leaves Edinburgh at ten minutes past two o'clock in the afternoon of each day, and is due in London at forty-five minutes past three o'clock on the following morning. The contract between the parties was contained in the following letters:—

"*North British Railway Company,*
Goods Manager's Office,
Edinburgh, 31*st December* 1866.

"Mr T. Finlay, Charlotte Street.

"Fish Traffic.

"(Carriage to be prepaid.)

"SIR,—I beg to inform you that to parties willing to free and relieve this company, and the other railway companies over whose lines fish may be forwarded from any of our stations, from all liability for loss or damage by delay in transit, or from whatever cause arising, the rate charged will be one-fifth lower than where no such undertaking as the annexed is granted.—I am, Sir, your obedient Servant,

(Signed) "WM. HARDIE, Goods Manager."

"1*st January* 1867.

"SIR,—In reference to the above, I request that you will forward all fish delivered by me, or on my account, at any of your stations, at the lower rate, and I undertake to free and relieve the company from all claims or liability for loss or damage.

"This undertaking to remain in force from the present date until 31st December 1867.—I am, your obedient servant,

(Signed) "T. FINLAY.

"To the Goods Manager,
"North British Railway Company."

On 14th November 1867 the pursuers alleged that they delivered to the defenders 55 barrels of fresh sprats, in order that they might be sent to London by the train leaving Edinburgh at 2·10 afternoon, and arriving in London at 3·45 A.M. next morning. They further alleged that by the gross carelessness of the defenders they were not delivered in London until the afternoon of 15th November.

On 21st November 1867 they sent another consignment of 84 barrels of sprats to go to London by this train, which did not arrive in London until the afternoon of 22d November.

Again, on 4th December 1867 they sent a consignment of sprats by a special train, which was to start 40 minutes before the 2·10 afternoon train, and ought to have arrived in London before it, and in consequence of several delays the train did not reach London till the afternoon of the 5th December.

They pleaded section 7 of the Railway and Canal Traffic Act 1854 (17 and 18 Vict., cap. 31) whereby it is enacted that "every such company as aforesaid shall be liable for the loss of, or for any injury done to, any horses, cattle or other animals, or to any articles, goods, or things in the receiv-

ing, forwarding, or delivering thereof, occasioned by the neglect or default of such company, or its servants, notwithstanding any notice, condition, or declaration made and given by such company contrary thereto, or in anywise limiting such liability; every such notice, condition or declaration being hereby declared to be null and void, provided always that nothing herein contained shall be construed to prevent the said companies from making such conditions with respect to receiving, forwarding, or delivering of any of the said animals, articles, goods or things as shall be adjudged by the Court, or judge before whom any question relating thereto shall be tried, to be just and reasonable." And further, "with reference to the pretended agreement referred to in the defenders' statement, it is explained and averred that said agreement is unjust and unreasonable, contrary to law and not binding on the pursuer. The pursuer was induced or compelled to sign it in consequence of the unreasonable demands and conduct of the defenders, who, unless he signed it, refused to carry his fish by passenger trains from Leith to London at a less rate than 4s. 8d. per cwt. or 93s. 4d. per ton; while at the same time they were carrying the same kind of fish, by the same trains, for other fish dealers who had not signed any such agreement, at the lower rate of 3s. 9d. per cwt. or 75s. per ton. The value of the fish in Leith is only about 18s. per ton; and if the pursuer and other fish dealers in Edinburgh and Leith were compelled to pay the higher rate of 93s. 4d. per ton, the cost of the fish in Leith and the higher rate of carriage demanded by the defenders would amount to more than the value of the fish in Billingsgate, and it would be impossible for the pursuer and others to carry on a trade with London. The fish in question were not carried by the defenders under the said pretended agreement—the pursuer never having recognised its legality; but they were delivered to the defenders and carried by them under the ordinary conditions attachable to or incumbent upon them as common carriers."

The defenders pleaded that under the contract they were relieved from liability for loss caused by delay in transit; and further, that the contract was just and reasonable; and that the delay which caused the damage had been beyond their control.

After a proof, the Lord Ordinary (JERVISWOODE) pronounced the following interlocutor:—

"*Edinburgh*, 1*st February* 1870.—The Lord Ordinary having heard counsel, and made avizandum, and considered the debate, with the proof, productions, and whole process, including the note of admissions, and joint minute for the parties, which form respectively Nos. 73 and 78 of process: Finds, as matter of fact, (1) that on or about the 31st December 1866, and 1st January 1867, the defenders entered into the agreement with the pursuer which is set forth in the first statement of facts on their behalf, in relation to the carriage of fish delivered by him, or on his account, at any of the stations on the line of the defenders (the railway company), whereby it was arranged, on the footing that the defenders were to forward all fish delivered by the pursuer, or on his account, at any of the stations of the defenders, at the lower rate mentioned in the letter of the goods manager of the defenders, dated 31st December 1866, and which is set forth in the first statement of facts on the part of the defenders, that the pursuer was to free and relieve the defenders (the railway company) from all claims or liability for loss or damage; (2) that under the said agreement the lots of fresh sprats to which the fifth and sixth articles of the revised condescendence for the pursuer have relation were delivered to and were despatched by the defenders on 21st November and 4th December 1867, respectively, as also therein set forth; but that the same arrived in London and were delivered there on the 22d November and on the 5th December respectively, at hours too late for sale on the said days—at least too late to secure the proper and due advantage of the market for sprats on those days—and in consequence of which the said lots of sprats suffered depreciation in value; (3) that the delay in the delivery of the said sprats was caused by the occurrence of various stoppages and obstructions to which the railway trains by which they were conveyed were subjected in the course of the journey to London, and which were owing to the pressure and extent of the general traffic then upon the lines over which the trains had to run: Finds, as matter of law, with relation to the preceding findings—(1) that the pursuer has failed to establish by evidence facts relevant and sufficient to support the third plea in law set forth on the record on his behalf, to the effect that the agreement, as above found, was unjust and unreasonable, and as such not binding on the pursuer; (2) that, under the terms of the said agreement, the pursuer must be held to have himself undertaken, and to be bound to free and relieve the defenders of all claim or liability on account of the loss and damage which is here sought to be enforced against them, the defenders, on his behalf: Therefore, and with reference to the above findings, assoilzies the defenders from the conclusions of the summons, and decerns: Finds the defenders entitled to expenses (except in so far as regards the expenses occasioned by the reclaiming note formerly presented by them, and which expenses were disposed of by the interlocutor of the First Division of the Court, dated 21st October 1868): Allows the defenders to lodge an account of their expenses, and remits the same to the auditor to tax, and to report.

"*Note.*—This case, which is one of considerable interest, has undergone full investigation, and has been discussed in a very satisfactory manner before the present Lord Ordinary, who, in the circumstances which appear from the course of the proceedings, has, at length, been called on to pronounce a judgment on its merits.

"Whether that judgment be well-founded or otherwise, is a question which may be very fairly brought under reconsideration elsewhere; and as the Lord Ordinary assumes that its merits can only be determined after consideration of the details of the proof and whole circumstances, he shall merely note here that, in his opinion, the pursuer entered into the arrangement with the railway company in relation to the transmission of fish into the London market, which is embodied in the correspondence on the subject, on the footing of taking a certain risk on himself, on the apparently fair, but speculative, expectation of thereby obtaining a higher profit on the sale of the fish than he could have expected had he paid the rate which the defenders would have demanded supposing no such undertaking to have been entered into, and, if this be so, the Lord Ordinary has been unable to see what risk was more apparent, or can be held to have

more clearly been within the contemplation of parties, than that of probable delay in the transmission of the fish, in consequence of obstructions caused by the extent of the general traffic on the lines of railway over which the fish train had to pass, and to which the delay which actually occurred is plainly to be attributed."

The pursuer reclaimed.

The SOLICITOR-GENERAL and JOHNSTONE for him.

SHAND and BALFOUR in answer.

At advising—

LORD ARDMILLAN—This is an action brought by Mr Finlay, fishmonger in Leith, against the North British Railway Company, for reparation of loss, injury and damage in the transmission of fish to London. The fish sent were sprats, and the object of sending them was their disposal in the Billingsgate market, where it was desired and expected that they would arrive at an early hour in the morning—probably before five A.M. It is to be observed that this is not an action for the loss or injury of goods sent by the Railway, but an action of damages for loss of market, in consequence, as is alleged, of the goods not arriving in time. In short, this is truly an action for too slow conveyance.

The law in regard to the liability of a common carrier is founded on the Praetorian Edict "Nantae Caupones et Stabularii;" it is now well settled, and it is of importance to observe precisely its nature and limits. There is no doubt whatever that a common carrier, such as a railway company receiving goods for safe carriage and delivery, is responsible for safe delivery unless that has been prevented by some inevitable act which no human care or skill could have provided against. The dictum of Chief-Justice Holt, that "the law charges the common carrier entrusted to carry goods against all events but acts of God and enemies of the king," has been accepted as law both in England and in Scotland. It is not necessary to prove fault or negligence against a common carrier in an action of reparation for loss or injury of the goods entrusted to him for carriage.

But an action, not for loss of goods, but for loss of market only, in respect of failure in rapidity of carriage and of delivery, is not altogether in the same position as an action of damages for loss or injury of the goods. The mere acceptance by the carrier of goods entrusted to him for carriage and delivery creates at once a responsibility for safe carriage and delivery in due course, and good order and condition. No special contract is necessary. Without any other contract than the trust committed to him, the carrier becomes at once responsible to the full extent which law recognises, and it is not necessary that any fault or negligence be instructed. But where the exigencies of a particular trade require unusually rapid carriage and prompt delivery, the responsibility of the carrier in regard to the particular matter of speed in transit is generally made a subject of contract, in which the carrier undertakes for a certain charge to transmit within a certain time.

In the next place, it is now clearly fixed by judicial construction of the recent statutes, particularly the Railway Traffic Act, that a carrier cannot by mere notice discharge himself of the responsibility for loss or injury of the goods, if there has been any fault or negligence whatever on his part; but though mere notice is not sufficient, a special contract may be made limiting the carrier's responsibility, and that contract will receive effect if it be just and reasonable. In the case of *Peek* v. *the North Stafford Railway*, in 1863 (32 Law Journal, Q. B., 241), the point was fully considered, and the distinction between mere notice and a written contract was clearly recognised. The question whether any such special contract, limiting the responsibility of the carrier, is just and reasonable, is for the judicial consideration of the Court in each particular case. A contract in terms of which the carrier is discharged of all liability whatever, even for loss arising from undoubted fault or negligence, would not be considered by the Court to be just and reasonable. But a contract would not be set aside as unjust and unreasonable if on fair construction it afforded protection where no actual fault or negligence has been instructed. It is obvious that, in the case which I have mentioned of a contract for particularly rapid transmission of goods, a limitation of responsibility for delay in such transmission, where no special fault or negligence is instructed, is more natural and more reasonable than in the ordinary case of the carriage of goods entrusted to a carrier without special arrangement, and lost or injured in transit.

We are here dealing with an action for loss of market only, and we have before us a written contract entered into between the pursuer and the defenders.

The railway company made this proposal to the pursuer, in a letter signed by their goods manager:—"I beg to inform you that to parties willing to free and relieve this company and the other railway companies over whose lines fish may be forwarded from any of our stations from all liability for loss or damage by delay in transit, or from whatever cause arising, the rates charged will be one-fifth lower than where no such undertaking as the annexed is granted."

This is the reply of the pursuer, addressed to the goods manager of the defenders:—"In reference to the above, I request that you will forward all fish delivered by me or on my account at any of your stations at the lower rate, and I undertake to free and relieve the railway companies from all claims or liability for loss or damage."

This agreement was in force when the sprats to which this claim relates were delivered by the pursuer to the defenders for carriage to London. The pursuer desiring rapid carriage of his fish had it in his power to choose between the higher price for carriage and the ordinary legal liability of the carrier on the one hand, and the lower price for carriage and the limited liability of the carrier on the other hand. He preferred the lower price and the limited liability. I use the word limited, because I do not read this contract as discharging all possible liability, even though the railway company might be clearly guilty of fault and negligence. I think the true meaning of the contract is, that the railway company shall do their best to carry the fish safely and expeditiously, and that unless their fault or negligence has caused the delay, they shall, in the words of the contract, not be liable "for loss or damage by delay in transit."

So reading this contract, I do not think it is unjust or unreasonable. On the contrary, I am of opinion that if there was no fault or negligence on the part of the Company, a contract discharging their liability for loss or damage arising from delay in transit is quite reasonable.

It is for the pursuer to establish that the con-

tract which he has subscribed, and under which he was acting, and of which he was getting the benefit in a lower rate of charge, was not just and reasonable. He has not done so to my satisfaction, unless he has proved fault or negligence.

If there were any attempt here to escape from liability for proved fault or negligence, even under the terms of a special contract, I should not be disposed to hold the contract just and reasonable unless the fault had been reduced to the lowest grade which the law recognises, and amounted only to *culpa levissima*. But if nothing amounting to fault or negligence has been instructed, then I think that this contract protects the defenders from liability for loss by delay.

The next question which arises is, Has the pursuer instructed as matter of fact that the railway company were guilty of any fault or negligence in the transmission of the sprats to London on the two occasions mentioned on the record, and to which the proof relates—namely, the 21st November and 4th December 1867? I do not intend to enter on the details of the proof, which I have carefully read. I do not think that there is much conflict of evidence. The result of my consideration of the proof is, that the pursuer has not instructed any such fault or negligence.

It does not appear to me that any special bargain in regard to rapidity of carriage, or in regard to the transmission of fish by any particular train, has been instructed. The only attempt to prove such a bargain is by reference to conversations said to have taken place between the pursuer and two men named Crookshank and Palmer, who are said to have been soliciting traffic on behalf of the defenders. Now it is proved that Palmer was not in the service of the North British Railway, and of course he could not bind them. Crookshank was only a porter or checker, and evidently was not in such a position as to entitle him to make a particular contract for conveyance of goods, without special authority given him to that effect. It is distinctly proved that Crookshank had no such authority.

In regard to the occasion of the 21st of November, it appears that 18 waggons laden with fish arrived at the station in Edinburgh for transmission. It was impossible, or nearly so, to attach these 18 waggons to the passenger train, and accordingly they were transmitted by a special fish train. The passenger train started at 2·15 P.M., and arrived in London at 4·31 A.M. next morning. The special fish train started at 3·12 P.M., and arrived in London at 11·10 A.M. next morning. No contract to send by that passenger train has been proved. If there was no contract or bargain made to transmit the fish by the passenger train, and since it has not been instructed, or even alleged that, apart from contract, there was any impropriety in sending them by the special fish train, or that there was any fault or negligence on the part of the defenders in the management of the fish train, I cannot see how the pursuer can escape from the terms of the written contract by which he undertook to relieve the railway company. Delay, and unavoidable delay, was within the reasonable expectation of the parties. In so long a journey there are sometimes accidental delays and obstructions which cannot be foreseen or prevented, and against liability for damage on account of such delay the contract or risk note signed by the pursuer affords sufficient protection.

The next occasion in which delay occurred was the 4th December 1867. On that occasion a special fish train was started just before the mail train; it was, as I think, not unreasonably shunted to let the mail train pass; but the pursuer alleges that it was started under an agreement that it should continue to run in front of the mail train to London. I am of opinion that no such agreement was made, and that Crookshank had certainly no power to make it. It is according to the practice and understanding of the defenders, and I presume of all railway companies, that other trains not carrying passengers shall be so conducted as not to impede or imperil the mail train. The public safety requires this, and it is quite reasonable that this rule and practice should be adhered to. That Crookshank could have made a bargain with the pursuer to the effect that this special fish train should keep its place before the mail train, and never be shunted to let the mail train pass it, is in my opinion quite out of the question. No particular fault or negligence in the conduct of that fish train has been proved, and accordingly, in regard to this occasion on the 4th of December, as well as on the prior occasion on the 21st November, I concur with the Lord Ordinary in thinking that fault or negligence on the part of the defenders has not been proved,—that the special contract between the pursuer and the defenders has not been proved to be otherwise than just and reasonable, and that therefore the defenders are not liable for loss occasioned by delay in transit as here concluded for.

LORD KINLOCH—I have arrived at a conclusion different from that which has been now expressed.

There are two several occasions on which the pursuer maintains there was a wrongful detention of his fish in their transport to London, on the part of the defenders.

The first was on the 21st November 1867. As to this occasion I think it proved that the pursuer sent his fish to Edinburgh to go by the 2·10 mail train, and that the defenders received them on this footing. I do not go into the question whether the canvassers for the company had power to bind the company by contract. The pursuer was entitled to select the train by which to send his fish, if it was a train in unstopped use to carry this commodity. It is proved that the 2·10 train was that generally engaged for this purpose; and I conceive that on this 21st November the pursuer specially sent his fish to Edinburgh for that train, and that the defenders received them as to be so sent.

The defenders did not send the fish by that train, nor did they do what might have been equivalent, viz., send them by a special fish train immediately afterwards, so as to have all the benefits of a clear road possessed by the 2·10 train. The special fish train did not depart till 3·20, and I cannot find in the evidence any explanation or justification of this delay. The engine-driver of this very train depones—"There was nothing, so far as I know, to have prevented the train from starting earlier than 3·20." This distance of time interjected between the two trains was sufficient to cut off the special fish train from all the benefits enjoyed by the mail; to expose it to the intervention of other traffic, and to cause such delay that in place of arriving with the 2·10 train in London at 4·30 A.M., it did not reach till 11·10, too late for the morning Billingsgate market which, according to the evi-

dence, begins about 5 o'clock, and is over by 9 o'clock. It is my opinion that this constituted a breach of contract on the part of the Company. I consider the arrangement for the sending on of these sprats on 21st November to amount to a special contract to send them by the 2·10 train, or by another one dispatched so quickly afterwards as to participate in the advantages of the 2·10 train; and this contract I think the company failed to fulfil.

The second occasion was on 4th December 1867. On this occasion it is not disputed that the fish were received to go by a special fish train, which was to start at least 20 minutes before the 2·10 mail train, and obviously for the purpose (no other purpose is intelligible) of keeping a-head of the 2·10 train, at least as far as York, at which place it is proved arrangements could have been made to send on the fish so as to arrive not later than half-an-hour behind the 2·10 train. This special train did accordingly start from Edinburgh with the fish 20 minutes before the 2·10 train. But in place of continuing its journey unimpeded, it was detained at St Margarets, one and a-half miles from Edinburgh, by the engine intended for it not being ready—a thing for which again I see no justification established by the company. The consequence was, that it did not start from St Margarets till between 5 and 10 minutes past 2 o'clock, and at Prestonpans, thirteen miles from Edinburgh, had to be shunted to allow the 2·10 train to pass. There appears to have been no notice sent along the line that this train was coming, so as to keep the way clear for it. And, at any rate, it lost all the benefits of the clear way kept for the mail train—was detained by other trains breaking in—and did not arrive in London till 11·20, again too late for the morning market. Here again I think the company made a special contract with the pursuer for the transport of his fish, and failed to fulfil the contract made by them.

The result, as I think, is that the defenders are liable in damages, unless they can make out a defence on the terms of the risk-note (as it has been called) signed by the pursuer, and by which he relieves the company "from all liability for loss or damage by delay in transit, or from whatever cause arising."

It is admitted that under the Railways Traffic Act, 17 and 18 Victoria, cap. 31, the contract contained in this note is only to be given effect to if the court shall think it "just and reasonable." Considered by itself and abstractedly, I would say that the contract is unreasonable if it imports that the company are thereby protected, in all cases, from the consequences of their own fault; but not unreasonable if it protects simply against the consequences of those accidents for which as common carriers they would be responsible, or those occurrences in the arrangement of their traffic which, although in one sense their own act, cannot be said to indicate a special injury done to the particular subject of transport. But the contract cannot be looked at abstractedly, but with direct reference to the particular occurrence to which it is endeavoured to apply its protection. For it has been well said judicially, "A reasonable condition may be applied to a state of facts which makes it unreasonable."

In the present case I think the contract fails to afford the company the protection claimed by them, for two reasons. In the first place, I think the company committed a fault and breach of contract towards the pursuer, directly causing damage to him, from which no protection is legally effected. Secondly—which is perhaps the same reason differently stated—I think it is by itself enough to destroy all application of the contract, that the Company did not send the fish by the train by which they undertook to send them, but by a different train, differently and much less advantageously situated. In the first instance they did not send them by the 2·10 train; but by a train not leaving till more than an hour afterwards. In the second instance they did not send them by a train keeping a-head of the 2·10 train, so as to reach London at the same time with that train or within a near approximation; but, although starting them by such a train, so delayed it as to throw it, when the journey was scarce begun, behind the other, and so to lose all the intended benefit. This, as it appears to me, affords a simple and conclusive ground for taking the case entirely from beneath the protection of the risk-note. The note would properly apply to protect against the consequences arising from the arrangement of the traffic, if the company had sent the fish by the stipulated train. But when they sent them by another and different train, I think all application of the contract fails. It does so as completely as does the right of one party to exact the conditions of a contract when he himself has broken the obligations on his own part. The contract formed by the risk-note was only applicable to protect the journey agreed on. It had no bearing on another and different journey, which the company substituted, contrary to arrangements. If the company, in place of sending the fish by a passenger or special train, sent them by a goods train, which was certainly not within the arrangement, I think they would very clearly have no defence on the risk-note. But the present case is, in my apprehension, ruled by the very same principle. The company alike substituted a different journey from the journey agreed on, and cannot apply to one journey a contract of relief only intended to be made applicable to another and a different.

I am of opinion that the Lord Ordinary's interlocutor should be altered; and the defenders found liable in damages. I cannot doubt for a moment that wrongful detention of goods beyond the arranged time of arrival is a valid ground for claiming reparation of any injury thereby occasioned. In the ordinary case of a common carrier, there might be difficulty in making out that any precise time of arrival was stipulated for; though even the constant use of the journey in times past might go far to imply an obligation. But no one can doubt that a special contract may be made, directly, or by clear implication, inferring a bargain that the goods should arrive by a particular hour, or in time for a particular market. I am of opinion that in the present case such a special contract was made and violated, and therefore that damages are due.

The Lord President concurred with Lord Ardmillan, and expressed an opinion that the words in the contract "from whatever cause arising" would be struck at by section 7 of the Railway and Canal Traffic Act 1854, and that such a condition or declaration would be null and void.

Lord Deas was absent.

Agents for Pursuer—Marshall & Stewart, S.S.C.
Agents for Defenders—Dalmahoy & Cowan, W.S.