doubt that these bills cannot be enforced. But they were discounted with the pursuers' banking establishment; and the question is, whether they were justified in discounting them in reliance on the procuration of Heyde for Behn, Möller, & Co.? That the power of accepting bills *per procuration* of Behn, Möller, & Co. was at one time held by Heyde there can be no doubt. In January 1869 the defenders opened a branch of their business in Dundee, and they granted a very full power of attorney to Heyde as their agent, and at the same time entered into an agreement specifying the conditions upon which he was to transact their business. That procuration or power of attorney was lodged with the Commercial Bank, and the whole of the legitimate business of the agency was transacted through that bank. In 1879 the agency came to an end, the precise date at which it was terminated being 1st September of that year, and it was quite well known that the agency was brought to an end, or was to be brought to an end, at that date, and among others it was quite well known to the pursuers. Any power of attorney containing this power to draw and accept bills *per procuration* of the defenders was granted exclusively in connection with the branch business or agency which the defenders had established, and of course the proper inference that anybody would draw was that when the agency came to an end the power to draw and accept bills *per procuration* of the defenders came to an end also, the object of granting that procuration having been terminated. If the matter stopped there, the conclusion would be inevitable that the North of Scotland Banking Company became aware that Heyde's representation of the defenders had come to an end, and that he was no longer entitled to act for them at all as their agent, and that being so they were clearly not justified in relying upon the procuration, which had been granted only for the purposes of that agency. But they say that while Heyde informed them that the agency had come to an end, he told them at the same time that he would continue to accept bills *per procuration* of the defenders for the purpose of winding-up transactions connected with the agency, and they chose to rely upon that representation. Were they justified in so doing? I think clearly not. There had been no business of this kind transacted with their banking establishment previously. The banking business of the defenders had been done with the Commercial Bank, in whose hands the power of attorney was lodged. And the very first bills that were negotiated at the pursuers' bank were the bills that are now sought to be enforced. It seems to me that upon these facts they were not entitled to rely upon the procuration or to hold that the acceptance of Heyde would be binding upon the defenders after he had ceased to be their agent, and upon that single ground I think it is clear that they are not entitled to enforce payment of these bills against the defenders. The cases relied upon by the pursuers as creating a kind of specialty that this power of signing *per procuration* still existed have been sufficiently noticed by Lord Shand, and I do not think they are sufficient to remove the general impression created by the evidence, that the pursuers had no right to rely upon this procuration as an existing procuration. I therefore agree with your Lordships that the interlocutor of the Lord Ordinary ought to be adhered to.

Lord Deas was absent.

The Court adhered.

Counsel for Pursuers (Reclaimers)—Trayner—Jameson. Agents — Carment, Wedderburn, & Watson, W.S.

Counsel for Defenders (Respondents)—Johnstone — Asher — Macfarlane. Agent—J. Smith Clark, S.S.C.

Saturday, January 22.

FIRST DIVISION.

[Sheriff of Lanarkshire.

WHYTE *v.* MILLAR & YOUNG AND DEVAUX FRERES ET CIE.

Contract—Deposit—Duration of Contract where no Stipulation as to Time.

Held that a depositary for hire who has made no stipulation as to the period for which the deposit is to endure is not entitled to terminate the contract and insist upon the removal of the deposited goods except for a reasonable cause.

Circumstances in which a petition by a depositary for warrant to sell goods deposited with him for hire, on the refusal of the depositor to remove them, *refused.*

The following were the averments of the pursuer in this case:—"The defenders Millar & Young, in or about the month of August last, consigned, in name and for behoof of Devaux Frères & Cie., in the warehouse of the pursuer James Whyte, 13,021 pounds of yarn. Arrestments were on the 25th and 31st days of August last laid upon the said goods in the hands of the pursuer, in connection with an action at the instance of the defenders Millar & Young against the defenders Devaux Frères & Cie. The pursuer has frequently applied to each of the defenders to remove the goods from his custody and pay the store rent thereon. Said applications having always been refused, the present action has become necessary."

The prayer of the action was for the Sheriff "to grant warrant of sale of 13,021 pounds of yarn, lodged in the pursuer's warehouse by the said Millar & Young, for behoof of the said Devaux Frères & Cie., in or about the month of August last, and that by public roup or otherwise, as the Court may ordain; the proceeds of sale, under deduction of warehouse rent, and all other claims incurred or to be incurred by the pursuer on account of the said goods, and of the expenses of this process, to be consigned in the hands of the Clerk of Court or otherwise."

Devaux Frères & Cie. admitted that the yarn was stored in their name, but they denied that this was done on their behalf. They explained that they had no interest in the yarn, and stated that they were about to raise an action against Millar & Young for the price. But neither they nor Millar & Young objected to the yarn being

removed to another store, provided that the removal did not invalidate the arrestments.

The pursuer pleaded—"The defenders having refused to remove their goods from his premises, the pursuer is entitled to decree of sale."

Millar & Young pleaded—"The pursuer having knowingly received the yarn into store, he is not entitled now to force a sale thereof."

Devaux Frères & Cie. pleaded—"The defenders Devaux Frères & Cie. having no interest in the yarns in question, this application, so far as they are concerned, is unnecessary, and they cannot be prejudiced by it."

The Sheriff-Substitute (ERSKINE MURRAY) pronounced this interlocutor—"Finds (1) that the defenders Millar & Young, yarn merchants, Glasgow, having ordered from the defenders Devaux Frères, manufacturers, Belgium, certain yarns, they were forwarded to this country, when Millar & Young, considering them not to be according to order, stored them with pursuer James Whyte, storeman, Glasgow, in name of Devaux Frères, wrote to Devaux Frères rejecting them, and raised an action against them in the Court of Session, on which they arrested the yarns in pursuer's hands: Finds (2) that pursuer, finding that the yarns are inflammable, and that questions arise with his insurers regarding them, has called upon the defenders to remove the yarns, which they refuse to do: Finds (3) that thereupon pursuer has raised this action to have the yarns sold, and the balance, after deducting charges, consigned in Court: Finds (4) that defenders Millar & Young urge that he ought to remove the yarns to another store, to be stored in his name, which he declines to do; while Devaux, though putting in a defence that they have nothing to do with the matter, have not appeared further: Finds (5) that for the purposes of the case between defenders it seems proper that a fair sample be taken from the yarn to be preserved, and that this can be done without prejudice to parties' rights: Finds on the whole case and in law, that in the circumstances pursuer is not bound to retain the yarns, or to remove them at his expense and keep them in another store in his own name, and that he is entitled to warrant of sale as craved: Therefore grants warrant to Mr H. S. Macpherson, yarn merchant, Glasgow, to sell to the best advantage (except as after provided) the yarns in question; and ordains him to consign the proceeds of sale in the hands of the Clerk of Court within fourteen days after the sale, after deduction of warehouse rent, expenses of sale, and expenses of process, said proceeds to be consigned as a surrogatum for the yarns in question, and subject to any legal nexus laid upon the yarns in question by the arrestment of parties Millar & Young: Further, grants warrant to Mr Macpherson to inspect the yarns in question, and draw therefrom fair samples to the extent of one hundred pounds (100 lbs.), and store the same for the purposes of the case between Millar & Young and Devaux Frères, said selection to take place within six days, and the sale not to take place till after said inspection and selection: Remits the accounts of expenses to the Auditor of Court to tax and report, and decerns; reserving to pronounce further."

The Sheriff (CLARK) adhered, adding this note—"The question here is, Is the pursuer bound to keep the goods for any time longer than he chooses to do so? I do not think he is. He has not undertaken to keep them for any specified period, and apparently for good reasons he now wishes to be relieved of their custody and to be paid his claim for storage. With this view he has required the defenders to take away their goods. This they have refused to do—in point of fact they refused to do anything. The pursuer has accordingly asked the Court to have the goods sold, the only alternative that remained to him. He seems fully entitled to this remedy; the sampling is a concession in favour of the defenders. I do not see that the Sheriff-Substitute could well have pronounced any other interlocutor than he has done."

The defenders Millar & Young appealed, and argued—The contract being one without stipulation as to time, was for the safe custody of the goods as long as the person placing them in the warehouse chose and paid the rent.

Devaux Frères & Cie. (who alone appeared) argued—Such a doctrine would be a most inequitable one, and impossible to carry out. It would put a practical stop to the utility of warehouses if the warehouseman must either stipulate for a definite period of deposit or be liable to retain the goods for an indefinitely long period, no matter what changes of circumstances might take place in his condition.

At advising—

LORD PRESIDENT—This is a very novel proceeding on the part of this warehouseman, who having received certain goods for the purpose of safe deposit and custody, purposes, at his own hand and without any particular reason, to insist on the person who has deposited these goods removing them. If the law laid down by the Sheriff were sound, it would certainly be attended with very startling consequences—if a warehouseman may at any time and without assigning any reason insist on a depositary removing his goods, that would to a great extent put an end to the object and the usefulness of such warehouses. The goods were deposited in August last. They were yarn, and though there is something in the Sheriff-Substitute's interlocutor about the danger arising from the inflammable nature of yarn, there is nothing in the record to justify such a suggestion. The goods were simply yarn—a very common subject of deposit. In the month of October the warehouseman insisted that the defender should remove the goods, and the question is, whether he is entitled to insist on that demand?

I do not think that the question is whether he is entitled to have the goods sold, because that question arises only when the defender refuses to remove them, and whether he is bound to do so or not depends on the nature of the contract between the parties. If the defender was not bound to remove the goods, then any pretence that the warehouseman is entitled to sell them is at an end.

Now, it may be observed, in the first place, that this is not a pure contract of deposit, because that is a gratuitous contract, and this is one for hire. As Mr Erskine says (iii. 1, 26)—"Depositation is a gratuitous contract on the part of the depositary. If any consideration is to be given him for his pains in keeping it, the contract re-

solves into *locatio operarum*." This is the nature of the contract we are dealing with here. In the ordinary case there can be no doubt that it is for the interest of the warehouseman that the goods should lie in his warehouse as long as possible, that he may thereby get as large a rent as possible; on the other hand, it is for the interest of the owner of the goods to turn over his goods as rapidly as possible, and to make his money out of them, and therefore to pay as little rent as he can. Accordingly, such a case as the present is very unlikely to arise.

But when a warehouseman has received goods for custody it must be obvious that very important legal consequences follow bearing on the rights of third parties, and not merely of the parties to the contract. The goods by being deposited become liable to certain diligences to which they are not open when they are in the hands of their owner. They may be the subject of sale without actual delivery. That contract may in such circumstances be made real by constructive delivery, which would not have been the case if the goods had continued in possession of the owner. Now, to say that the warehouseman may thrust the goods out at once and without any reason, so as to defeat all the legal consequences which flow from the deposit would be a very strong thing. I should be very slow to give any sanction to such a doctrine. But in the present case the pursuer has been unable to show any justification for the course he proposes to follow. There is no ground for it upon the record. In the cases suggested by Mr Lang, I can very easily understand that the defender may be entitled to be relieved of his contract. If his title to the warehouse comes to an end he may no longer be bound to perform the contract, because it has become impossible for him to do so. And there may be other cases in which there may be a reasonable and therefore a valid ground for the contract coming to an end, but there is no such case here. The goods are yarns. One sees their nature. They may be inflammable, and may create risks and damages, but the pursuer knew that when he received them. There is nothing which he did not know then which he has since come to know. There was no reason in October for removing the goods which did not exist in August. I am very clear, therefore, that the view taken in the Inferior Court is unsound, and that the Sheriff's interlocutor ought to be reversed.

Lord Mure—The statements in this record are of the most meagre description. The ground on which the Sheriffs have given effect to this application is that the pursuer is not bound to keep the goods any longer than he pleases. I cannot say this is a good ground in law. I cannot say that the goods can be so removed unless there has been a stipulation as to time. Neither can I concur in the view of the law laid down by Mr Jameson—that the defender is bound to keep the goods as long as the owner pays the hire and thinks fit to leave them there.

Here diligence has been used upon the goods within a month of the time when they were deposited. I do not very well see how the pursuer is to get rid of them. The Sheriff-Substitute proceeds on the ground that they are of an inflammable nature. This is not averred on the record, but if it had been averred, and were distinctly proved, I am not prepared to say that it would not have affected my view of the case.

Lord Curriehill—I entirely concur in the judgment proposed. I think it would be dangerous in a commercial community to sanction any such doctrine as the Sheriffs have laid down.

Lord Deas and Lord Shand were absent.

The Court recalled the interlocutors of the Sheriff and Sheriff-Substitute respectively, and refused the prayer of the petition

Counsel for Appellants (Defenders)—Jameson. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for Respondents (Pursuers)—Lang. Agents—Hamilton, Kinnear, & Beatson, W.S.

Saturday, January 22.

SECOND DIVISION.

[Lord Curriehill, Ordinary.

M'LARTY *v.* STEELE.

Foreign—Process—Lex fori—*Verbal Slander.*

In an action raised by a Scotchman, resident in Glasgow, in the Court of Session for alleged verbal slander uttered at Penang by another Scotchman who had subsequently returned to this country, the defender proposed an issue as to whether, according to the law of that place, reparation was due unless special damage was averred by the pursuer. The Court *refused* the issue, on the ground that the rights of parties must be determined as if the slander had been uttered in Scotland.

This was an action of damages in respect of verbal slander raised by Farquhar Matheson M'Larty, an engineer residing at Greenock, against David Scott Steele, also an engineer residing in that place, and it arose under the following circumstances:—In 1877 the pursuer and John Leith Wemyss, both at that time residing at Penang, in the Straits Settlements, and John Young Fox, residing at Hong-Kong, constituted the firm which carried on business at Penang under the name of the Penang Foundry Company. In July of that year they assumed the defender into the partnership. In May 1879 the said partnership was dissolved, and after an agreement had been signed by the parties with regard to the division of the profits made on the dissolution, the pursuer and Fox left Penang and returned to Scotland, the defender remaining at Penang. Soon after his arrival in Scotland the pursuer ascertained that the defender had on repeated occasions and in various companies made false and calumnious charges against the pursuer to the effect that the pursuer had been guilty of dishonest conduct in connection with the transfer of the business and the distribution of the price thereof among the partners. The defender soon returned to Greenock, but declined either to retract the above statements or to make any suitable reparation. As the pursuer had made arrangements since his return home for