land shall take by operation of law the same share and interest in her moveable estate which is taken by a widow in her deceased husband's moveable estate according to the law and practice of Scotland, and subject always to the same rules of law in relation to the nature and amount of such share and interest." Nothing can be clearer than these words to show that the *jus relicti* is to be of the same nature as the right of a widow in her deceased husband's moveable estate, and also that the deceased wife's moveable estate is to be subject to bipartite or tripartite division according as she dies without leaving issue or not, and the only other words in the section have reference to the "exclusion, discharge, or satisfaction" of this right of the husband in his wife's moveable estate. But we have here no suggestion, either in the marriage-contract or otherwise, that the husband's right has been excluded, discharged, or satisfied, and therefore as there are no issue of the marriage the amount to which the surviving husband is entitled extends to one-half of the moveable estate in which his wife was vested at the time of her death. It appears to me that the first party here has to make out "two propositions," if I may adopt the language I am reported to have used in *Fotheringham's* case: "first, that the estate was the absolute property of the wife; and second, that there was nothing done by him to discharge the right which would otherwise have belonged to him"—and I think that the first party in this case has made out these two propositions successfully.

LORDS ADAM, M'LAREN, and KINNEAR concurred.

The Court answered the question in the affirmative.

Counsel for the First Party—D.-F. Balfour—Jameson. Agents—J. & J. Ross, W.S.

Counsel for the Second Party—Murray—Dickson. Agents—Webster, Will, & Ritchie, S.S.C.

Friday, November 21.

FIRST DIVISION.

BARR & SONS *v.* THE CALEDONIAN RAILWAY COMPANY.

Railway Company—Common Carriers—Innominate Contract—Haulage.

A railway company by a schedule issued to traders offered to convey coals upon their railway system at certain specified rates in their own waggons, and at certain lower rates in the private waggons of the traders. Without further or special agreement the company conveyed a consignment of coals in a trader's private waggons, loaded by the owner, but thereafter under the exclusive charge and control of the company, from a colliery adjoining their system to a seaport for shipment. The coals were duly delivered, but upon the return journey, for which no charge was made, the waggons were injured without fault upon the part of the company, owing to a latent defect in the waggon of another trader, which made part of the same train. *Held* that the company were not liable as common carriers for the safety of the waggons.

Question — Whether they would have been liable as common carriers for safe delivery of the coals?

This action was brought by William Barr & Sons, coalmasters, Glasgow, against the Caledonian Railway Company, to obtain payment of the sum of £141, 3s. 3d., and interest thereon from 10th August 1888. This sum represented the value of three waggons belonging to the pursuers which were destroyed, and the cost of repairing two others which were injured, while being conveyed upon the defenders' railway from the general terminus at Glasgow, where the coals which the waggons contained had been delivered, to the Allanton Collieries belonging to the pursuers. The said waggons were at the time empty, and formed part of a composite train the vehicles in which belonged in part to the defenders and in part to the pursuers and other traders; and the accident which occasioned the injury to the rolling stock of the pursuers was the direct consequence of a latent defect in the spring of a waggon belonging to another trader. It was matter of admission that there was no fault imputable to the railway company, and the question raised for decision in the case was, whether the railway company were under the obligation of a common carrier with respect to the private waggons in which the pursuers had their goods conveyed. The pursuers maintained the affirmative of the proposition, while the defenders averred and pleaded that their contract with the pursuers was merely one of haulage of the waggons, and consequently that they were not liable for injury to the waggons, unless such injury resulted from the defenders' negligence.

The contract was concluded by correspondence upon 21st May 1888, and under it the railway company undertook to deliver coal into the steamship "James Groves," then lying ready to receive cargo at the general terminus in Glasgow, at certain rates which were specified in a schedule issued by the railway company to the pursuers and other colliery owners. The correspondence did not embody any special agreement, but consisted merely of a request for facilities of transport by the pursuers, and an intimation by the defenders that the request was acceded to. The schedule, which offered to the pursuers alternative rates according as the coal was conveyed in the waggons of the company or of the trader, was in these terms—

"Caledonian Railway.—Rates for the conveyance of *coal and dross* in waggon loads

of *four* tons and upwards from *Allanton Colliery.* 13*th April* 1885.

To	Per ton. Coy's Waggons.	Per ton. Traders' Waggons.	Per ton. Coy's. Waggons.	Per ton. Traders' Waggons.
	s. d.	s. d.		
Carlisle . .	4 0	3 6		
Rockcliffe . .	4 6	4 0		
Floriston . .	4 6	4 0		
Gretna . . .	4 6	4 0		
Kirkpatrick . .	4 9	4 3		
Cove Quarry .	4 9	4 3		
Kirtlebridge . .	4 9	4 3		
* *	*	*	*	*
Stobcross . .	2 2	1 9		
Do. for shipment	1 11	1 6¾		from 14/1/89
Bothwell . .	1 3	1 0¼		
* *	*	*	*	*
Port-Glasgow .	2 7	2 1	2/1/88	
Do. for shipment	2 2½	1 9½	14/1/89 (*exclusive*	
Genreal Terminus	2 0	1 7½	*of crane dues*),	
Do. for shipment	1 11	1 6¾	from 14/1/89."	

In accordance with this contract the five waggons in question were handed over to the defenders upon 22nd May at a siding near Ross Junction, where a private branch line from the pursuers' collieries joins the Caledonian Railway. The traffic upon this branch line was worked by the pursuers by means of engines belonging to themselves, but after the waggons, which were loaded by the pursuers, reached the Caledonian line the entire charge and control of them was undertaken by the defenders, and no person representing the pursuers accompanied the said waggons upon their journey. The services rendered by the company with respect to the conveyance of coals were the same identically whether the coals were carried in a waggon belonging to the company or in a trader's waggon, and it was given in evidence that the company did not charge under the toll clauses in respect of said services. The accident occurred upon 24th May while the waggons were upon the return journey.

A proof, in which these facts were elicited, was led before the Lord Ordinary (TRAYNER) upon 3rd June 1890, and upon 11th June his Lordship issued an interlocutor assoilzieing the defenders from the conclusions of the summons.

"*Opinion.*—I think this case is in no material respect distinguishable from the case of *Watson* v. *North British Railway Company*, 3 R. 637. It is true that in *Watson's* case the pursuer averred that his contract with the railway company was a contract of haulage, while in this case the pursuers aver that the defenders undertook the employment of conveying the waggons of coal in question 'as common carriers.' The difference in averment can make no difference in the result, unless the difference alleged is proved to have existed in fact, which in my opinion has not been proved. The contract proved in this case cannot be better described than in the words by which Lord Shand described the contract in *Watson's* case, viz.—'The railway company undertook to carry coals for the pursuer in his own waggons at certain rates.' That is the whole contract in both cases. That being so, and the pursuers not having proved (or even averred) that the damage for which they sue was occasioned by any want of reasonable care or diligence on the part of the defenders, the defenders are entitled, on the authority of *Watson's* case, to absolvitor.

"The pursuers contended that the defenders having contracted to deliver the coals in question on board the 'James Groves,' a vessel lying at the general terminus, Glasgow, distinguished this case from *Watson's*, and that such obligation to deliver showed that the contract between the parties to this action was one for carriage, imposing upon the defenders a carrier's responsibilities. I am not of that opinion. Even under a contract of haulage the defenders would be bound to deliver or hand over the coals conveyed under that contract to some person at the terminus or station to which they were addressed. That they tipped the coals out of the waggon into the hold of a vessel does not seem to me to make any difference in the obligations of parties. Suppose, instead, the defenders had tipped the coals out of the waggon on to the road or siding to which under the contract of haulage they had been brought? That fact would not have converted a contract of haulage into a contract of carriage. In loading the vessel the defenders were acting as stevedores, not carriers, and I suppose they may act as stevedores in supplement of a contract of haulage just as well as in supplement of a contract of carriage. The contract under which the coals were to be conveyed to the general terminus was completed before the tipping began.

"I was referred to the case of the *Aberdeen Commercial Company*, 6 R. 67, as affecting the authority of the decision in the case of *Watson*, but I do not see that it does so in any way, or that in that respect or otherwise it has any bearing on the present case.

"The defenders will only be allowed expenses subject to modification, because they led a good deal of evidence to show that the damage sued for was not occasioned by their fault. But no such fault was alleged by the pursuers."

Against that judgment the pursuers reclaimed, and argued—As regards both coals and trucks the contract was one of carriage. *Watson* v. *North British Railway Company* (referred to by the Lord Ordinary) was not an adverse authority, as it was decided upon fault, and the *dicta* touching the present point were *obiter*. The company here held themselves out as common carriers, and they could not, apart from special bargain, divest themselves of their liability as such. There was here no special exemption, and the duties they undertook were exactly those of a common carrier, including delivery, which was not extraneous, as the Lord Ordinary appeared to think, but incidental to the contract of carriage. The company would be responsible for the safe delivery of a package containing goods, but a waggon is a mere package running upon its own wheels instead of on the company's wheels, and no mere difference of packing (which is the occasion of differential rates here) can

evacuate the company's responsibility. The ground of liabilility as a common carrier under the edict *nautæ caupones* was the fact of custody or control—Bell's Comm. i. 467, or 495 (M'Laren's ed.); Bell's Prin., secs. 169 and 235; Smith's Leading Cases, i. 199, Here the entire control is with the company. In *Johnson* v. *North-Eastern Railway Company*, 5 Times' Law Rep. 68, where an engine was entrusted to the company to deliver, and it broke down, the Court would have held the company liable as common carriers but for a special contract that the engine should use its own steam in transit. That was an indirect authority in favour of the reclaimers, and a direct authority was *Mallory* v. *Teoga Railway Company*, 39 Barbour's American Reports. But further, the company here charged as common carriers under section 79 of the Railways Clauses Act 1845, and not as tolltakers under sections 86-90. (The corresponding sections of the private Act were section 43, and sections 38, 39, and 40 of the Caledonian and Scottish Central Railways Amalgamation Act 1865.) It was admitted by the goods manager of the company in evidence that the reclaimers were not charged a toll for use of the line, and the only remaining authority under statute for making any charge at all was section 79. The company are therefore liable as carriers — *Highland Railway Company* v. *Jackson*, 3 R. 850; *Scottish North-Eastern Railway Company* v. *Anderson*, 1 Macph. 1056; *Aberdeen Commercial Company*, 6 R. 67.

Argued for the respondents — By the private Act the company was empowered (1) to levy tolls for use of the road by traders' vehicles, (2) to levy such tolls with an addition for locomotive power supplied, or (3) to make charges for carriage of goods. In the last instance the company provided everything and insured safe delivery, and to that case section 79 of the general Act applies. The present case fell under the second power conferred by the private Act, and there was no principle by which to extend the company's liability to it. *Watson's* case was an authority to the contrary, for although the question was not raised on record, it was argued, as Lord Deas' opinion shows, and the *dicta* cover the present case. In *Richardson* v. *Great Eastern Railway Company*, 1 C.P.D. 342, again, where a trader's waggon broke down and caused an accident, the company was held not liable, without fault, for injury to a passenger; and although in *Great Western Railway Company* v. *Bunch*, 13 App. Cas. 31, the company was held liable for a passenger's luggage, the liability for a truck was different. The fact that the locomotive was the company's was immaterial, and the only obligation of the company in respect of the truck was that the road should be safe for its passage. Nor did the edict *nautæ caupones* help the reclaimers. It applied only to goods, and imposed liability upon the person providing the vehicle; here the vehicle was the reclaimers', and there were no goods at all. The "control or custody" by which it was said liability should be tested was not complete. The trader loaded or packed his own waggon, and the company could not interfere; the waggon came to the company ready for the journey, and the service which the company performed was the same whether the waggon be loaded or empty. The edict would not apply to a truck in which goods had not been. Why should it apply to one previously loaded but actually empty at the time, the company's contract being the same? But it was said that delivery was an incident of carriage, and being undertaken here showed the contract was not one of haulage merely. This left the argument where it was, for even if the trader provided his own locomotive and waggons, and was merely charged for use of the way, the company could still undertake the delivery of the goods, which, like cartage of goods, was an entirely separate service. The case of the *Aberdeen Commercial Company* had no bearing, and the facts in *Mallory* v. *Teoga Railway Company* were unknown, as no report is forthcoming; so the *dicta* in *Watson's* case should be applied.

At advising—

LORD PRESIDENT—The material facts in this case may be stated very shortly.

The pursuers are in the habit of sending coals from their colliery at Allanton along the defenders' line of railway to various places of delivery. The coals are loaded at the colliery by the pursuers in waggons belonging to themselves, and the waggons so loaded are delivered to the defenders at the junction of the siding which connects the colliery with the defenders' main line. From that point the waggons are under the control of the defenders, who attach them to a general goods or mineral train, consisting of waggons belonging partly to other traders and partly to the defenders, and they are conveyed by the defenders' servants and by means of the defenders' engines to the place of destination, where the coals are delivered, and the pursuers' empty waggons are returned by the railway to the pursuers' colliery as part of a train consisting as before partly of waggons belonging to other traders and partly of waggons belonging to the railway company. The charge for the conveyance of coals is at a certain rate per ton per mile. But the rate is considerably smaller for coals conveyed in the coal owners' waggons, the reduction corresponding to the cost to the owners or the company of providing and maintaining the waggons.

The complaint of the pursuers is that on the 24th of May 1888 part of a train composed of five empty waggons belonging to the pursuers, which were being returned to the pursuers' colliery, and of other waggons belonging to other coal owners and to the defenders, left the rails. It is proved that the cause of the disaster was a faulty waggon belonging to another coal owner, and the result was that three of the pursuers' waggons were destroyed and two others were injured. It is not, and in the circumstances could not be alleged that any part of the coals in the pursuers' waggons was lost or injured. These coals were all safely delivered at the place of destination.

The accident occurred after the delivery of the coals had been completed, and while the empty waggons were on their home journey. The claim of the pursuers is limited to £136, 10s. as the cost of replacing the three waggons which were destroyed, and £3, 13s. 3d., which will be required to repair the other two.

The pursuers do not allege or attempt to prove any negligence or fault on the part of the defenders, but rest their case entirely on the ground that the defenders are liable as common carriers for the injury to the pursuers' waggons.

It is not necessary for the decision of this case to consider whether the defenders were acting as common carriers of the coals contained in the pursuers' waggons, or whether in the circumstances they would have been liable as such for loss or injury of the coals in transit to the place of destination without any allegation of fault. The simple question is, whether in the conveyance of the waggons as distinguished from the coals they undertook or were under the liability of common carriers.

Now, it is an essential element in the contract of carriage, whether by sea or land, under the edict, that the carrier shall be entitled to some remuneration or return for the obligation of safe carriage which he undertakes. But in the present case the railway company, so far as I can see, receives no price or consideration for conveying the waggons along the line of railway. They are willing to assume the position and liabilities of common carrier if the trader will pay them, say 4s. per ton, for the journey, and then they will convey the coals in their own waggons. But if the trader prefers to use his own waggons, and to load his goods in them in his own premises, the carrier gives the trader a deduction of say 6d. per ton for the journey. Thus the carrier, so far from making any charge for the conveyance of the trader's waggons, makes a deduction from his ordinary charge for conveyance of coals in consideration of the trader furnishing waggons of his own. If these goods had been conveyed in waggons of the carrier he would have got a return for the use of these waggons, but that claim for a return or hire is abandoned in the existing contract, and the trader has his coals carried for 3s. 6d. in place of 4s. per ton for the journey. Further, the obligation of safe carriage which in any view the defenders may have undertaken was in my opinion fully performed when the coals were delivered at the place of destination. The obligation of a common carrier is to deliver the goods entrusted to him in the like good order and condition in which he received them. Conveying the empty waggons back to the collieries and there placing them on the coal owners' siding is not an act of delivery in the sense of the edict, but the performance of an incidental obligation of the particular contract (a mixed and innominate contract), and so not part of the common law obligation of a common carrier or of his obligation under the edict.

The case of the *Great Western Railway Company* v. *Bunch* was cited by the pursuers as inconsistent with the opinion I have thus expressed. No doubt the judgment in that case assumed that a railway company is liable as a common carrier for passengers' luggage. But the ground of that assumption plainly was that the company regulated their charges for conveying passengers on the footing that each passenger should be entitled to have carried in the same train with himself luggage up to a certain weight, and so the railway company not only charged for the conveyance of the luggage, but also took the entire possession and control of it during the journey.

I am of opinion with the Lord Ordinary that this case must be decided in conformity with the principle which lies at the foundation of *Watson* v. *The North British Railway Company*, a principle which was adopted by all the members of the Court who took part in its decision.

LORD ADAM—This is an action brought by Messrs Barr & Sons against the Caledonian Railway Company to recover the amount of damage sustained by five waggons belonging to them, which were injured on the defenders' railway on 24th May 1888.

The parties have assessed the damages at £55, 12s. 10d.

The pursuers are proprietors of the Allanton Collieries. These collieries are connected by branches or sidings belonging to them with the Caledonian Railway. The five waggons in question had been sent by the defenders, loaded with coal, to the general terminus, Glasgow, for delivery into a ship lying there called the "James Groves." At the time the accident happened the coal had been duly delivered, and the waggons were being taken back empty to the Allanton Collieries. They formed part of a train of forty empty waggons belonging partly to the Caledonian Railway and partly to other coal owners.

The accident happened in consequence of a latent defect in a waggon belonging to another coal owner.

It is not maintained that there was fault on the part of the railway company, but liability is sought to be enforced against them on the ground that at the time of the accident the waggons were being conveyed by them as common carriers, and that therefore they were bound to re-deliver the waggons in the like good condition in which they had received them. The railway company, on the other hand, maintain that they were not acting as common carriers at the time, and that is the question for decision in this case.

The manner in which the work is carried on would appear to be that the waggons are brought down loaded from the pursuers' pits by their servants to the company's line, and are there handed over to the company, and remain in their entire custody and control until they are again returned empty to the pursuers.

The coal, as a rule, is unloaded from the waggons by the consignees. But this rule

is not invariable, more especially when the waggons are sent to shipping ports, and in this particular case the company undertook to deliver the coal into the ship "James Groves" at the general terminus.

But whatever the services might be which the company were to render, one charge only was made, which embraced everything.

This charge was fixed by the railway company sending to the owners of collieries having connections with their lines a schedule of rates per ton which they were to charge for the conveyance of coal, in waggon loads of four tons and upwards, from the owners' colliery to a list of places on their line specified in the schedule.

The schedule sets forth two rates—one when the coal is to be conveyed in the company's waggons, and the other when it is to be conveyed in traders' waggons.

The schedule in force at the time in question would appear to be that dated 13th April 1885. In it the rate per ton for conveying coal in the company's waggons to the general terminus is 2s., and in traders' waggons 1s. 7½d. The difference—4½d.—clearly represents the charge made by the company for the use of their waggons, because it appears from the evidence that the other services rendered by the company were in each case the same.

But although only one charge is made, I think it is quite competent to analyse the charge in order to ascertain in respect of what services it is in point of fact made. An example of this will be found in the case of *The Great Western Railway Company* v. *Bunch*, L.R., 13 App. Cas. 31, where a passenger's fare was held to cover a charge for his luggage, so that the company were held liable as common carriers for its safety, although of course they were not liable as common carriers for his safety.

Now, in this case the services which the company undertook to render were to haul the waggons and their contents to the place of delivery, to deliver the contents to the consignees, to return the waggons to the owners, and to give the use of their line. We have not to decide whether the company would be liable as common carriers for injury to the contents of the waggons while *in transitu;* we have only to deal with the waggons; and it certainly appears to me that an undertaking by the company to haul waggons to a particular place, not to be delivered there, but to be hauled back when empty and re-delivered to the owners, is not an undertaking of the nature of a contract of carriage which would make them liable for their safety as common carriers. I do not think that these services can be treated as merely incidental to the delivery of the coal. I think that the contract is essentially one of haulage and not of carriage, and therefore that the company are not liable as common carriers.

In point of fact, the coals had all been duly delivered before the accident happened.

The case most analogous to this which occurs to me is that of a person bringing a carriage to a public road and hiring horses to have it dragged to a particular place. The horse-hirer in such a case would clearly not be liable as a common carrier. I do not see that it would make any difference in his liability in this respect whether or not he was left in sole charge of the carriage, or whether or not he undertook to deliver its contents; and the fact that the road in the one case is a public road and in the other the property of the company does not appear to me to make any difference.

But there is another ground on which I think the company are not liable, and that is, that they do not hold themselves out to the public as common carriers as regards such waggons. Mr Bell defines a common carrier thus—"A common carrier is one who for hire undertakes the carriage of goods for any of the public indiscriminately from and to a certain place." It is obvious that it would be inconsistent with the working of the traffic of a railway, and the safety of the public, were a railway company to admit—or to be compelled to admit—to the use of their railway any carriage that might be brought to it indiscriminately, as Mr Bell says, by any of the public. The matter is, as might be expected, the subject of statutory regulation, and is provided for by the 110th and subsequent sections of the Railways Clauses Consolidation (Scotland) 1854. By the 110th section it is provided that no carriage shall pass along or be upon the railway unless it be of the construction and be in the condition which the regulations of the company for the time being shall require, or in case of dispute, as shall be settled by arbitration. The pursuers aver on record that the five waggons in question are of a construction approved by the defenders, and suitable for running on their line. That may be so, but it is no answer to the fact that in the matter of the use of the railway by waggons other than the company's own, both the company and the owners are under statutory regulations. It appears to me that when waggons are admitted and used on a railway only subject to statutory regulations, that the common law liability of carriers with respect to them is necessarily excluded.

The Lord Ordinary in deciding the case has not distinguished between the waggon and its contents, holding that in both cases the contract was a contract of haulage and not of carriage, and I am disposed to think he is right, Two elements essential to fix liability on the company as common carriers would appear to be absent in a case like the present, viz., entire responsibility for the soundness of the carriage, and for the packing of the goods, and the effect of that would have to be considered. It is not, however, necessary to decide that question in this case. I may remark, however, that the loading of such waggons as those in question is also made matter of statutory regulation by the 115th and subsequent sections of the Railways Clauses Act. In conclusion, I have only to say that I think that the law laid down by the Lord President and Lord Deas in the case of *Watson*

v. *North British Railway Company* is right, and that it rules this case.

LORD M'LAREN—Whatever view may be taken of the legal character of the contract between Messrs Barr and the Caledonian Railway Company, it is evidently a complex contract, and not an ordinary contract of carriage of the coal and the waggons taken together. My view of the contract may be best illustrated by supposing the case of a railway company which, instead of running its own waggons, hires them from a waggon-builder at so much per month or so much per train-mile. The charge which the company would make for the carriage of coal in their hired waggons would then be calculated on an estimate of the total cost of the carriage, one of the elements being the hire of the waggons. For the conveyance of coal in the coalmaster's own waggons the company would be able to make an abatement from the carriage commensurate with the hire of the waggons, and its profit would then be the same whether the coal was carried in waggons provided by the company or in waggons provided by the coalmaster. In the present case the Caledonian Company provides its own waggons, but these waggons can only be provided and maintained at a certain annual cost, and the company is therefore able to make an abatement from the price of the carriage of coal to coalmasters who provide at their own cost waggons suited for its transit by rail.

Such being the relations between the railway company and the coalmaster, it is reasonable to conclude that the responsibility of the railway company to the coalmaster for the safety of his waggons, is similar in character and degree to the responsibility incurred by a company hiring waggons to the lessor. In other words, the obligation is to take due care of the vehicles, and the responsibility is for negligence. The difference between the two cases is that in the case first supposed the company pays rent or hire for waggons received on a contract of location, while in the second case the coalmaster receives a consideration for providing the waggons which are necessary for the carriage of his coal in the shape of an abatement of the price of that carriage. I think it is a just and convenient rule, and it is certainly in accordance with the best traditions of our jurisprudence, that in the case of innominate contracts the obligations of the parties and the responsibility for negligence should be the same as in the case of the nearest known contract.

This principle would lead to two conclusions—(1) That the railway company is responsible for the safe carriage and delivery of the coal as under a contract of carriage; (2) that the company is responsible for the care of the waggons as under a contract of location. I do not mean that the contract is that of location, but the responsibility is the same, because the obligations of the parties are identical with those which would arise if the waggons were hired from a third party for a like purpose. The first conclusion is not necessary for the decision of this case, but I cannot in my own mind come to a satisfactory decision of the case without analysing the contract and endeavouring to ascertain under what separate obligations the railway company received these waggons and their contents. It is to be kept in view that the waggons were being regularly run to and from the mines with coals for exportation, and while so used these waggons were taking the place of the rolling stock of the Caledonian Company. The waggons were not being carried, but were being used as a part of the apparatus for the carriage of goods over the company's line. This is quite different from the case of a railway carriage or waggon received by a railway company for delivery at a distant place, and for which freight is paid. In such a case, if the waggons were injured on the journey, the question of the liability of the railway company would not be governed by our decision in the present case.

The Court found that the railway company were not responsible as common carriers for the safety of the waggons.

Counsel for the Reclaimers—Lord Adv. Robertson—Low—Dickson. Agents—Drummond & Reid, S.S.C.

Counsel for the Respondents—D.-F. Balfour—Guthrie. Agents—Hope, Mann, & Kirk W.S.

Friday, November 21.

FIRST DIVISION.

WILSON *v.* SCOTT.

Jurisdiction — Review in Small Debt Actions—Small Debt Act 1837 (1 *Vict. c.* 41), *sec.* 30.

A person whose effects had been poinded under a small-debt decree for £12 of rent, applied to the Court to suspend the decree and interdict a certain sale of her effects, on the ground that the respondent had admitted, since he obtained the decree, that the £12 had been decerned for as "a half-year's" instead of a years' rent of premises let to her. *Held* that the suspension and interdict was incompetent under section 30 of the Small Debt Act.

On 4th June 1890 William Scott, commission agent, Lauder, brought a summons in the Small Debt Court at Greenlaw, Berwickshire, against Mrs Lilias Wilson for payment of £12, which was described in the note of claim annexed to the summons as the "half-year's rent due by the defender, payable in advance, for current half-year of house and small garden plot in Lauder belonging to the pursuer, and let under a verbal lease for one year from Whitsunday 1890." . . . On 26th June the Sheriff granted decree for the sum sued for with expenses.

On 28th June Mrs Wilson's agents wrote