action is that they are liable to relieve the pursuers of the expense which they incurred in fulfilling their engagement to Messrs Owen. But when that assumption is displaced I can find no evidence of any special loss. It does not seem likely that if the ship had sailed on the last day of September and had arrived at Cardiff about the middle of October the shippers would have been in a better position to dispose of the cargo in the open market than they were when the ship actually arrived.

But as the charter-party was not punctually implemented, there must be an award of damages, and considering that this was a large transaction, that there is always inconvenience and trouble to a merchant when his goods do not arrive at the time expected, and generally some loss upon storage and interest of money, I think the justice of the case will be satisfied by an award of £50.

LORD ADAM—I agree.

LORD KINNEAR—I have come to agree with Lord M'Laren's opinion, although I have had some difficulty as to the amount of damages which he proposed to award. I do not think it necessary, and I do not desire to express an opinion as to whether the loss on the pursuers' contract with Owen & Company could in any case have furnished the measure of damages for the breach of the defenders' contract, because I think upon the authorities it is at least very doubtful whether either the loss on a special contract not intimated to the shipowner or the loss of a market can be taken into account in estimating the damage caused by an undue delay in delivering a cargo. But I do not think that question arises in this case, because the loss on the contract with Messrs Owen was in no sense a consequence of defenders' breach of contract, and therefore the loss occasioned through the failure to carry out the contract with Owen & Company is to my mind altogether irrelevant to the question which has to be decided between the parties to this case. The one loss has nothing to do with the other. But then the only evidence of damage which the pursuers have thought it necessary or desirable to lead is evidence of loss caused by their own breach of contract with Owen & Company, and therefore I have great difficulty in seeing that there is any evidence at all as to the damage caused by the breach of contract of which they complain. But then I agree that it would not be just to say that in respect of that absence of evidence there is no damage to be awarded at all, because it is quite certain that there was a breach of contract and some damage must have been occasioned. My difficulty is that any award we make must necessarily be to a certain extent speculative, and therefore I should have great difficulty myself in fixing on any sum; but on the other hand I think a mere nominal award of damages would not be doing justice to the pursuers, and I have therefore come to agree with Lord M'Laren, because I am certainly unable to suggest any better solution than that which his Lordship has made.

The LORD PRESIDENT concurred.

The Court assessed the damages at £50, and decerned against the defenders for said sum.

Counsel for the Pursuers and Respondents—Campbell, K.C.—J. Roberton Christie. Agent—James F. Mackay, W.S.

Counsel for the Defenders and Reclaimers—The Lord Advocate (Dickson, K.C.)—Spens. Agents—J. & J. Ross, W.S.

Tuesday, February 2.

SECOND DIVISION.

[Sheriff of the Lothians and Peebles, at Edinburgh.

LEE *v.* MAXTON.

Process — Appeal — Printing and Boxing Record—Act of Sederunt, March 10, 1870, sec. 3, sub-sec. 1.

In an appeal from the Sheriff Court the appellant printed and boxed the note of appeal without appending thereto a copy of the record; reference, however, was made to a print boxed in a former appeal in the same case to which was appended a copy of the record and of a minute setting forth certain amendments which the pursuer of the action had been allowed to make. There was no print of the defender's answers to the pursuer's amendments. *Held* that the appeal was incompetent in respect of the failure to observe the requirements of the Act of Sederunt of March 10, 1870, sec. 3, sub-sec. 1.

The Act of Sederunt of 10th March 1870 enacts (section 3 (1))—"The appellant shall . . . print and box the note of appeal, record, interlocutor, and proof, if any . . . and if the appellant shall fail . . . to print and box . . . the papers required as aforesaid, he shall be held to have abandoned his appeal, and shall not be entitled to insist therein except upon being reponed as hereinafter provided."

This was an action in the Sheriff Court at Edinburgh at the instance of J. B. W. Lee, S.S.C., Edinburgh, against John Maxton, plumber, 79 High Street, Portobello.

After various procedure, in the course of which the pursuer was allowed to make certain important amendments on his record, the Sheriff-Substitute (HENDERSON), on 7th September 1903, "having considered the closed record (as amended)," &c., assoilzied the defender and dismissed the action.

The pursuer appealed to the Sheriff (RUTHERFURD), who on 3rd December 1903 "having considered the amended record," &c., dismissed the appeal.

The pursuer appealed to the Court of Session.

At the calling of the appeal in Single Bills, counsel were heard on a note pre-

sented by the respondent craving the Court to dismiss the appeal in respect that the appellant had failed to print the record on which the judgment appealed against was pronounced.

An appeal had been taken by the pursuer at an earlier stage of the process, in which he printed and boxed the record as originally closed, and a minute containing the amendments which he had been allowed to make thereon. The defender's answers to the pursuer's amendments were not printed.

The print in the present appeal contained only the interlocutors from the date of the former appeal, the note of appeal, and proof which had been led. Reference was made to the print boxed in the former appeal.

Argued for the respondent—The record appended to the print in the former appeal was no longer the record in the case. The record upon which the judgment appealed from was pronounced not having been printed, the appeal should be dismissed—Act of Sederunt, March 10, 1870, sec. 3 (1).

Argued for the appellant—The print boxed in the former appeal containing the record and the pursuer's amendments satisfied the requirements of the Act of Sederunt, which should not be read strictly according to the letter—*Young* v. *Brown*, February 19, 1875, 2 R. 456, 12 S.L.R. 318: *Lattimer* v. *Anderson*, December 20, 1881, 9 R. 370, 19 S.L.R. 322; *Boyd, Gilmour, & Company* v. *Glasgow and South-Western Railway Company*, November 16, 1888, 16 R. 104, 26 S.L.R. 84.

LORD JUSTICE-CLERK—There appears to be no doubt that in the past considerable relaxations of the rule as to printing papers have been allowed to parties, and that the provisions of the Act of Sederunt have not always been literally enforced. But we do not require to consider the value as precedents of the cases which have been quoted to us, in all of which all the necessary materials for the decision of the case were before the Court when the competency of the appeal was discussed—for none of them touches the present case, in which at the present moment there is not before the Court the record on which the judgment was given which is submitted for review. That is so great an irregularity that it cannot be allowed to pass.

LORD TRAYNER—I am of the same opinion. I think the Act of Sederunt is imperative, and it has not been complied with. It is impossible for a Court of Appeal to deal with a judgment brought up on appeal unless they have before them the record on which the judgment appealed against was pronounced. That record is not before us here.

LORD MONCREIFF—I am of the same opinion. In some of the cases quoted by Mr Chree the Court showed great indulgence towards irregularities in the matter of printing and lodging papers in terms of the Act of Sederunt. But I think no settled rule of practice was laid down, and that each case must be considered on its own merits. In the present case I have heard no reasonable excuse or explanation of the failure to print an essential portion of the case. We see from the minute that the amendments proposed by the pursuer were of a very extensive character, but we have no means of ascertaining from the prints which have been lodged what answers were made by the defender to these amendments.

LORD YOUNG was absent.

The Court dismissed the appeal.

Counsel for the Pursuer and Appellant—Chree. Agent—Party.

Counsel for the Defender and Respondent—Mercer. Agent—John Baird, Solicitor.

Thursday, February 4.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

M'CORMICK *v.* CALEDONIAN RAILWAY COMPANY.

Railway—Carriage of Passengers—Passenger Leaving Train in State of Helpless Intoxication.

Held that a railway company is not bound to protect a passenger who has alighted from one of their trains in a state of helpless intoxication from perils to which he is exposed by reason of his condtion.

This was an action at the instance of Michael M'Cormick, Forth Street, West Calder, against the Caledonian Railway Company, in which the pursuer sought to recover damages in respect of the death of his son Joseph M'Cormick, who he alleged had been killed through the fault of the defenders.

The pursuer averred—"(Cond. 5) On 1st January 1903 Joseph M'Cormick travelled to West Calder by the defenders' train which left Edinburgh about eleven o'clock at night, and which arrived at West Calder Station about forty minutes thereafter. The said Joseph M'Cormick, who was generally a young man of temperate habits, had drink that evening, and when he entered the train for West Calder at the Caledonian Railway Station he was in a state of intoxication. His condition was quite apparent to the servants of the defenders who were on duty at the platform, and who had charge of the said train. In this state of intoxication he was received by the defenders as a passenger and conveyed by them to West Calder Station. When the train arrived at West Calder Station he was prostrate and quite helpless. (Cond. 6) The attention of John Coltart, the defenders' porter at the station, was called by some of the passengers to the helpless state of the said John M'Cormick that he might help him out of the carriage and see him safely off the platform. The said John Coltart, as the defenders' servant, under-