the time arrived. Now, the statute of 1661 which removed such obligations from the class of heritable to that of moveable, excepted the interest of the widow. No doubt our institutional writers continue to say that these obligations are moveable except as to the widow and the fisk. This is not quite correct. They are moveable by force of statute, but the widow and the fisk are excepted from the operation of the statute. Then in regard to the sum invested in Australia, on security there, if it had been invested on similar security in this country it would have been heritable, and it must be kept in view that Mr Downie was domiciled in this country. But it was not invested here, but in another country, and the principle has been recognised that the character of the subject is to be ascertained according to the law of the country where it is placed. The right to participate is to be decided by the law of this country, in which the subject falls to be distributed. Seeing that we have it fixed that by the law of Australia, in which the subject here is situated, it is regarded as moveable or personal estate, we must also hold it to be moveable and not heritable. I therefore agree with the Lord Ordinary on this point also.

Lord CURRIEHILL—I am of the same opinion. I have no difficulty at all about the £5000 mortgage. The other question is nicer, but I hold it to be settled by the cases. I don't go so much on the case of Ross, but I think that of Newlands is conclusive.

Lord DEAS—In regard to the mortgage for £5000, the only question is, whether it is a bond bearing interest. I think it is. It is one of those *quasi feuda* which are likened to land. If the question had occurred before the Act of 1661 passed, the sum would have been heritable in a question with the widow, and in regard to her the Act made no alteration in the law. On the other point I concur with your Lordship.

Lord ARDMILLAN concurred.

The Court therefore refused the reciaiming notes for both parties.

Counsel for Pursuer—Mr Young and Mr Balfour. Agents—J. & J, Gardiner, S.S.C.

Counsel for Defenders—The Solicitor-General and Mr Millar. Agents—J. & R. Macandrew, W.S.

SECOND DIVISION.

WESTERN BANK LIQUIDATOR *v.* BAIRDS

(*ante*, p. 172.)

Appeal to House of Lords—Leave to Appeal. Circumstances in which a motion for leave to appeal to the House of Lords *refused.*

In these cases, on 6th July, the Court, recalling interlocutors of Lord Kinloch, remitted to Charles Pearson, C.A., Edinburgh, to examine into the books of the bank in connection with the various accounts and transactions libelled in the summoms, with the view of simplifying the cases before sending to the jury the question of the defenders' negligence. On the intimation of this judgment, the pursuers asked for expenses, contending that the effect of it was to find that they had been substantially successful. Expenses were reserved. Thereafter the pursuers moved the Court for leave to appeal the judgment to the House of Lords.

The LORD ADVOCATE, MILLAR, and SHAND, in support of the motion, argued—It is a difficult question whether the judgment of the Court in holding these actions not to fall under the enumerated auses is well founded, and the pursuers are entitled to have the review of the House of Lords on that question, because upon it depends the competency of the peculiar step which the Court has adopted. Further, besides the danger of the remit proving unavailing, the carrying of it out will be attended with considerable delay and expense.

The DEAN of FACULTY (with him YOUNG, A. R. CLARK, GIFFORD, and LEE) contended that the motion should be refuted. It was certainly odd that the pursuers, having formerly claimed the judgment in their favour and asked for expenses, should now disavow it and ask leave to appeal it to the House of Lords.

The Court unanimously refused leave to appeal.

The LORD JUSTICE-CLERK said that the two grounds relied upon in support of the motion were just the considerations they had induced the Court towards the step they had followed. The Court were unanimous in holding that there was no doubt whatever that these actions did not fall within the enumerated causes; and they were quite satisfied that both delay and expense would be avoided by the remit which they had made.

Agents for Pursuers—Morton, Whitehead, & Greig, W.S.

Agents for Defenders—Webster & Sprott, S.S.C.

Tuesday, July 17.

FIRST DIVISION.

CUNNINGHAM *v.* SPIERS AND CO.

Jury Trial—Fixing Trial. Motion to have a case tried at the Glasgow Circuit *refused.*

This is an action of interdict for infringement of a patent for improvements in the weaving of shawls, in which issues have been adjusted. The pursuers gave notice of trial for the ensuing sittings which they countermanded, giving at the same time a new notice for the Christmas sittings.

GUTHRIE SMITH, for the defenders, now moved the Court to fix the trial to take place at the Glasgow Autumn Circuit. The proceedings were commenced in May 1865, and the defenders were entitled to have the case tried before Christmas. Besides, the case would be much more advantageously tried at Glasgow, where the jury might have a view of machinery such as used by both parties, which they could not have in Edinburgh.

WATSON, for the pursuers, opposed the motion.

The motion was refused. The Court did not think there was much in the suggestion of the advantage to be derived from a view, and similar cases had been often satisfactorily tried in Edinburgh with the assistance of models. They did not see any reason for interfering with the notice given for the Christmas sittings. But they fixed the trial to take place then.

Agents for Pursuers—Hamilton & Kinnear, W.S.

Agent for Defenders—Macnaughton & Finlay, W.S.

THOMSON *v.* ADAM (*ante*, vol. i. p. 27).

Process — Amendment of Issue — Clerical Error. Leave granted to amend a clerical error in an adjusted issue.

This case is set down for trial at the ensuing sittings. In the issue which had been adjusted, the wrong complained of was by a clerical error stated as having been committed on 17th October 1864, instead of 18th October 1864.

MACDONALD, for the pursuer, moved for leave to amend the issue.

The motion was not opposed, and the Court granted the leave asked.

Agent for Pursuer—W. C. Murray, W.S.

SECOND DIVISION.

LEVETT *v.* LONDON AND NORTH-WESTERN RAILWAY COMPANY.

Reparation — Breach of Contract — Cedent and Assignee—Relevancy. Held that an action by an assignee based on a breach of contract with his cedent must contain a statement (1) of loss incurred by the cedent; and (2) of the assignee's title to pursue. Action dismissed as not containing such statements.

Process—Amendment. A pursuer refused leave to amend a closed record in order to introduce a new ground of action.

The pursuer in this case is a commission agent in Edinburgh, and sues the defenders for damages to the extent of £200 sterling in the following circumstances:—It is part of the pursuer's business to organise concerts and exhibitions, and he had arranged that a concert should be given in Falkirk on 14th December 1865, at which he had engaged that Jem Mace, the champion prize-fighter of England, and Sam Hurst, "the Staleybridge Infant," should appear and display their trophies. The concert and exhibition were duly announced by bills and circulars in Falkirk and the surrounding districts. The pursuer states that about one o'clock A.M. on the 14th December, Mace and Hurst went to the station of the defenders' railway in Liverpool and requested tickets to Falkirk, and that they were informed by the booking-clerk that they could not be booked to Falkirk, but that tickets would be furnished which would carry them to the nearest station to Falkirk to which the defenders could book. The clerk thereupon supplied Mace and Hurst with tickets to Kirkcudbright, representing, as it is alleged, that that was the nearest station to Falkirk to which he could book them; while in point of fact, the nearest station to Falkirk to which they might have been booked was Larbert Junction. In consequence of being taken to Kirkcudbright instead of to Larbert, Mace and Hurst found it impossible to reach Falkirk in time for the concert, and having telegraphed to that effect, the entertainment was put off, at considerable expense to the pursuer. The ground of action, as stated by the pursuer upon record, was that the defenders contracted to carry Mace and Hurst to the nearest station to Falkirk, and that they wrongfully failed to do so. The pursuer then averred—

Cond. 13. By and through the gross negligence, default, or carelessness of the defenders, or of their clerks or servants, for whom they are responsible, in proffering and selling tickets to the said Jem Mace and Sam Hurst to Kirkcudbright, instead of to Larbert, or to Larbert Junction, and so misleading the said Jem Mace and Sam Hurst, by telling them that Kirkcudbright was the nearest station to Falkirk to which their company could book or sell tickets, in consequence of which the said Jem Mace and Sam Hurst were carried to Kirkcudbright, and the concert and exhibition could not take place at Falkirk, as advertised, the pursuer has suffered loss and damage to the amount of not less than £200 sterling.

Cond. 14. The pursuer had a legal claim of damage against the said Jem Mace and Sam Hurst for their breach of contract with him. He has settled his claim against them, in consideration of an assignation by them to him of their right to recover damages from the defenders, who were the authors of the wrong. The pursuer had made a claim upon the defenders, but they, by their manager, have written in reply, refusing to recognise the claim, or to admit liability on the part of the defenders, and the present action has become necessary.

The defenders denied the pursuer's averments as to what took place at the issuing of the tickets, and also pleaded that it was no part of their servants' duties to guide the public as to their routes, and that they were not responsible for any error committed in the circumstances stated. They also objected to the pursuer's title to sue, and to his statements as irrelevant.

The case came before the Court to-day upon issues (reported by Lord Jerviswoode), the defenders objecting to the pursuer being allowed any issue.

J. C. SMITH, for the pursuers, contended that the case was relevantly laid, and contained a good ground of action, but at the same time proposed to amend the record, should the Court be of opinion that that was required. The amendment proposed was to the effect of condescending upon loss as sustained by Mace and Hurst, and to narrate and produce the assignation previously referred to. With regard to the first of these matters, the pursuer proposed to say that "Mace and Hurst sustained loss and damage through the fault of the defenders. They lost the hire promised them by the pursuer, and were besides put to much loss and expense." With regard to the second, it was proposed to say that by virtue of the assignation (which was to be produced), the pursuer was entitled to recover all sums of damages which Mace and Hurst were entitled to recover before granting it. The cases of Inglis *v.* the Western Bank (22 D. 505) and Skae (19 D. 958) were referred to.

A. R. CLARK and JOHNSTON appeared for the defenders.

The Court dismissed the action as irrelevant.

The LORD JUSTICE-CLERK—This is a very clear case indeed. It is an action brought against the London and North-Western Railway Company for breach of a contract of carriage said to have been entered into between them and two persons of the names of Mace and Hurst. The contract, as alleged, was that the defenders undertook to carry Mace and Hurst from Liverpool to Larbert, and the statement is that by a mistake of the booking-clerk they were taken out of their way and carried to Kirkcudbright in place of Larbert. It is plain from this that the only ground of action on which the pursuer can insist is as assignee of Mace and Hurst to any claim of damage they had. To make a relevant case, two things were therefore necessary to have been alleged—(1) That damage was sustained by Mace and Hurst in consequence of the defenders' breach of contract; and (2) that the pursuer had by assignation obtained right to their claim for that damage. Now, as I understand the record, neither the one of these things nor the other has been set forth. It is said to be implied in the statement which has been made. I hope we shall never get the length of holding that it is enough that such things be matter of implication. All that the pursuer has stated upon record goes to show only that Mace and Hurst might have sustained loss and damage. It does not state that actual loss was sustained; and Art. 13 contains an allegation — not that Mace and Hurst suffered damage, but that the pursuer suffered loss and