attendant was Dr Dyce, of Aberdeen, and that Dr Dyce had, as such ordinary medical attendant, actually attended him five or six years before.

The foresaid declarations, subscribed by the deceased William Adamson, contained various statements and representations which were untrue. In particular, the statements and representations therein made by the said deceased to the effect that the said Dr Dyce was his ordinary medical attendant, and as such had, in fact, attended him during an illness which he had five or six years previously, were altogether untrue. The statements and representations therein made by the said deceased with regard to his health were also inconsistent with fact, and did not truly and fairly disclose the whole facts and circumstances relating to the said matter. The said deceased also unduly withheld from the defenders material information, and particularly touching his health and habits, which was calculated to render an assurance more than usually hazardous, and which ought to have been communicated to the defenders.

During the years 1858 and 1859, the said deceased laboured for a considerable period under illness of a serious nature. His nervous system was very much depressed, His mind was also to some extent affected, and he had occasional attacks of suicidal mania. Dr Dyce was not his medical attendant during his illness, and was not aware, at the time when the policies sued on were issued, that the deceased had been so affected. The deceased, however, was well aware of these circumstances at the time when he subscribed the aforesaid declarations; and he also knew that an uncle of his had committed suicide, having died by his own hand, but he concealed all of these facts and circumstances from the defenders. Said circumstances materially affected the risk of insuring his life; but the deceased, notwithstanding, withheld all information regarding them from the defenders, and failed to communicate to them the name of the medical men, Dr Sutherland and Dr Kilgour, whom he consulted during said illness.

The said Mr Adamson died by suicide on or about the 24th August 1866, he having, of that date, voluntarily inflicted severe wounds upon his own person, which caused death by hæmorrhage within an hour or two.

The pursuers proposed an issue in the usual terms, and the defender proposed the following counter issues.

"(1) Whether the declaration, No. 20 of process, referred to in the said policy, No. 6 of process, contains any untrue averment?

"(2) Whether, by concealment or non-communication of fact or facts, material to the risks undertaken in the said policy, No. 6 of process, the defenders were induced to grant the said policy?

The third and fourth issues were in similar terms, and were applicable to the other policy.

(5) Whether the said William Anderson died by suicide?

The Lord Ordinary (Mure) reported the case with this note:—

"The parties in this case differ as to the terms of the 1st, 2d, 3d, and 4th counter issues proposed for the defenders. With reference to the 1st and 3d of those issues, the pursuers maintain that they are too general, and also that the materiality as well as the truth of the averments should be put in issue; while the form of the issues is, on the other hand, supported by the defender on the authority of the case of *Anderson*, Clark's House of Lords Reports, 4844.

"As regards the 2d and 4th counter issues, the pursuers object to them also, as being too general in their terms, and as not putting specially in issue the nature of the fact or facts to which the attention of the jury is to be directed; and to the extent of having the words 'as to the health and habits,' of the said William Adamson inserted in the issue, their objection seems to be supported by the style of the issue frequently adopted in such cases."

Gifford for Pursuers.

Watson for Defenders.

The Court adjusted the following issues:—

"It being admitted that the defenders issued the policies of insurance, No. 6 and 7 of process, in favour of the said William Adamson on his own life, and that the premiums of insurance falling due thereon were all regularly paid:—

Issue for Pursuer.

"Whether the said William Adamson died on or about 24th August 1866; and whether, under the said policies, the defenders are indebted and resting-owing to the pursuers, as executors of the said William Adamson, the sums of £1000 and £5000, contained in the said policies respectively, or any part thereof, with interest at five per cent. from 30th November 1866?

Counter Issues for Defenders.

Or,

"(1) Whether, in the declaration, No. 20 of process, referred to in the policy, No. 6 of process, the said William Adamson falsely stated that Dr Dyce, therein mentioned, was his ordinary medical attendant; that as such he had attended him during an illness he had six years before, and that the said William Adamson never suffered from any disease or disorder tending to shorten life?

"(2) Whether in entering into the contract of insurance contained in the said policy, No. 6 of process, the said William Adamson wrongfully failed to disclose to the defenders facts material to the risk undertaken by them in the said policy?"

The third and forth issues were in similar terms, and related to the second policy.

"(5) Whether the said William Adamson died by suicide?"

Agents for Pursuers—M'Ewen & Carment, S.S.C.
Agents for Defenders—Cheyne & Stuart, W.S.

Saturday, February 15.

BOYD *v.* NORTH BRITISH RAILWAY CO.

Agreement—Arbiter—Access to sea-shore. Circumstances in which a railway company *held* bound to enter into a reference for determining as to construction of access to sea-shore, or compensation therefor to be paid to a proprietor.

In 1843 the pursuer, Mrs Waddell Boyd, purchased the property of Nellfield, lying along the sea-shore, in the vicinity of Burntisland. In the following year the Edinburgh and Northern Railway Company (now amalgamated with the defenders) applied for their Act of Incorporation. The railway was to pass along the shore, between the pursuer's house and the sea, and the company having

agreed to make and keep up for the pursuer's behoof a convenient access to the sea for bathing and boating, the pursuer did not oppose the bill. Various proceedings then took place between the parties, whereby in the end the pursuer obtained and secured to herself and her successors a convenient access, by a passage under the railway, to the sea and the seashore opposite her property. The pursuer alleged that matters continued in this state until May 1865, when she accidentally heard that the defenders had a bill before Parliament to authorise a great extension of their works at Burntisland, the effect of which would be, *inter alia*, entirely to exclude the pursuer from the sea-shore. A correspondence ensued between the pursuer's agents and the defenders, resulting, the pursuer alleged, in an agreement whereby, in consideration of the pursuer taking no steps in opposition to the defenders' "Additional Powers Bill," the defenders agreed to refer to two arbiters mutually chosen, or an oversman to be named by them (1), to fix and determine in what way an extended access to the sea, proposed to be given to the pursuer, should be made and maintained by the Company; (2) if such should be found impracticable, to fix the compensation due to the pursuer for loss of access to the sea; and to adjust certain other questions between the parties. The defenders obtained their bill in July 1865. The pursuer now brought this action to compel the the defenders to proceed with this reference, alleging that they had refused to proceed with it, and that they had commenced works different from those laid down in the plans lodged by them, and which would have the effect of completely cutting off the pursuer's access to the sea-shore; the passage under the railway would now open into the corner of a harbour or basin, into which all kinds of refuse would be floated by the tide, and would be of no use either for bathing or any other useful purpose. The defenders admitted their refusal to enter upon the reference, but contended that they were not bound to enter upon it, they not having carried out the plan at one time proposed by them, and the agreement having no reference to the existing circumstances.

The Lord Ordinary (Jerviswoode) sustained the defence.

The pursuer reclaimed.

Clark and Adam for reclaimer.

Young and Shand for respondents.

The Court reversed, and gave judgment for the reclaimer.

Agent for Reclaimer—James Steuart, W.S.

Agents for Respondents—Macdonald & Roger, S.S.C.

Saturday, February 15.

ROY *v.* HAMILTON AND COMPANY.

Summons—Supplementary Summons—Conjoined Actions—Additional Claim—Competency. A party raised an action against his employers for £4000 as amount of salary and commission. Having ascertained in the course of a proof in the action that he had understated his claim, he brought a supplementary summons, concluding for conjunction with the former action, and, whether conjoined or not, for payment of £6000, under deduction of the sum to be decerned for in the former action. Pleas by defender of *lis alibi* and incompetency repelled, and competency of the second action sustained; and observed, that though conjunction was inexpedient at present, it might become expedient, and that in the meantime the second action might stand alone as a separate and substantive action under its second conclusion.

The defenders are merchants in Glasgow, and are engaged in the African trade; and the pursuer is an African agent, and acted as representative of the defenders on the African coast from October 1857 till the spring of 1862. He was remunerated at first by a salary, and latterly by a commission on the gross proceeds of the produce traded for by him, as realised in this country. In 1865 he raised an action against the defenders for £4292 as salary and commission, founding his conclusions on accounts supplied to him by the defenders. A proof was taken, in the course of which the pursuer, having recovered the account sales, and bills of lading, found the accounts to be erroneous, his commissions being in consequence largely understated. He thereupon raised a supplementary summons, the conclusions of which were thus stated:—"Therefore this summons on being called in Court ought and should be remitted and conjoined with an action now in dependence between the pursuer and defenders before our said Lords, (Lord Kinloch) Ordinary, the summons in which was signeted the 23d day of May 1865; and the said summons being so conjoined, or whether the same shall be conjoined or not, the defender ought and should be decerned . . . . to make payment to the pursuer of sums amounting to £6260; but under deduction from the foresaid several sums and interest thereon, as the same became due and accumulated, of such sums as the defender can legally instruct to have been paid to account of the said sums and interest so accumulated at the dates of payment, or of such part of the foresaid sums as may be decerned for in the said action at the instance of the pursuer against the defenders raised as aforesaid on 23d May 1865."

The defenders pleaded,—(1) *Lis alibi pendens.* (2) That the action was incompetent, and ought to be dismissed in as much as the whole claims competent to the pursuer against the defenders in respect of services rendered by him to them on their employment were embraced in the action already raised against them at his instance; and (3) that the second action could only be pursued on the first being abandoned.

The Lord Ordinary (Kinloch) dismissed the supplementary action as incompetent, adding this note:—

"The present action has been raised, and is sought to be conjoined with the other, on the grounds, (1) that in the former action the commission due to the pursuer was under-estimated in consequence of his not being in possession of the due materials for rightly calculating its amount; (2) that in the former action he proposed to restrict and did restrict a certain charge to £100, and now, for what he thinks good reasons, departs from this restriction, and states the sum at a greatly larger amount.

"There appears to the Lord Ordinary to be no good ground for supporting a supplementary action to be conjoined with the former process. There are grounds for abandoning the former action, and raising a new one. They amount simply to a discovery of errors in the first action now sought to be corrected. They are amendments of the