Macgregor & Co. were only the sellers' agents to forward the goods to their destination. Now, the question is, had these goods reached their destination, or had the buyer ended their destination and substituted another before they were stopped? I am clearly of opinion on the evidence that the goods were stopped before they reached their destination and while on their way, and that they were therefore stopped *in transitu.* The idea is very well expressed in the bill of lading granted for the goods, and which the Lord Ordinary gives as a specimen in his note—"To be delivered in the like good order and condition at the aforesaid port of Riga, unto the agent of the Riga Dunaburg Railway Company, or to their assigns, to be by them forwarded in transit to Messrs William Blews & Sons, Moscow, freight for the said goods, Leith to Moscow, including Riga charges, being hereby agreed upon to be 30¾ cops per pood, to be paid in Moscow with primage and average accustomed, and charges as stipulated." And it was while the goods were being thus forwarded in transit to Blews & Son, Moscow, that they were stopped. It would have been a different case if Blews & Son had changed their order and instructed their agent at Riga to keep them there as their destination, and we allowed the defenders time to enable them to make a statement to this effect and put it on record. But we have got no such statement, but only an account of what must necessarily happen in one way or other to all goods on their way from Leith to Moscow by Riga. With respect to the allegation that the goods were sent to the Dunaburg Railway Station on the assurance of Helmsing & Grimm that they would not be stopped, the averment is not made properly. An averment which goes to bar a party of a legal remedy otherwise competent, ought to be precise and substantial; and further, it is an averment which raises a new issue, and is only important on the assumption that the defender has failed on his original issue that the law of transit did not apply. I do not think the defenders would be entitled to lead evidence on the new issue without paying all previous expenses, and as the estate is originally a small one it is scarcely likely they would deem it worth while to go further into the matter, even if the averment were precise enough to induce us to admit it.

I therefore concur that the additional amendment ought not to be allowed, and that the Lord Ordinary's interlocutor should be affirmed.

The Court therefore affirmed the Lord Ordinary's interlocutor.

Counsel for Appellant—Asher—Keir. Agent—John H. Lindsay, S.S.C.

Counsel for Respondent — Kinnear—Rhind. Agent—W. Pasley Stevenson, S.S.C.

Tuesday, December 7.

SECOND DIVISION.

[Sheriff of Forfar.

FLEMING *v.* BURNS.

Heritable and Moveable as between Landlord and Tenant.

A person who had been yearly tenant for a period of ten years of a house and garden, removed at the expiry of his period of occupancy a number of small trees which he planted in the garden, a quantity of turf which he had laid down on the terraces in the garden, and a quantity of gravel, which he had also laid down, from the walks. *Held* that he was not entitled to remove the bushes or turf.

Question, Whether he was entitled to remove the gravel?

Tuesday, December 7.

FIRST DIVISION.

[Lord Curriehill, Ordinary.

BUCHANAN *v.* STEVENSON AND OTHERS.

Process—Expenses—Caution for Expenses in a Reclaiming-Note where Fraud Alleged—Reduction—Bankrupt.

In an action of reduction on the ground of fraud the Lord Ordinary gave decree against a defender. Both parties reclaimed. On the reclaiming-notes appearing in Single Bills counsel for the pursuer moved that the defender should be ordained to find caution for expenses, in respect that his estates were in sequestration, and that the trustee thereon had not appeared. The Court *refused* the motion, with three guineas of expenses, observing that the general rule, as laid down by the House of Lords in *Taylor* v. *Fairlie's Trustees*, March 1, 1833, 6 W. & S. 301, was against a defender in such a position as this being obliged to find caution for expenses of process, and that in this case, where the bankrupt's character was challenged, fraud being alleged, he should be allowed to proceed in the action without doing so.

Counsel for Pursuer—Mackintosh. Agent—Alex. Morison, S.S.C.

Counsel for Defender—Robertson. Agent—James Coutts, Solicitor.

Thursday, December 9.

SECOND DIVISION.

[Sheriff-Substitute of Midlothian.

SETON *v.* PATERSON.

Hiring—Liability of Hirer—Breach of Implied Condition of Contract of Hire.

If the subject of hire suffer injury while the hirer is dealing with it in a way not contemplated by the contract, it lies upon him