of the said D. & W. Coutts, knowing that they were bankrupt or insolvent, and that the said articles were not sold to the said John Clarke in the knowledge of the defender that the said D. & W. Coutts were bankrupt or insolvent, with the purpose of paying her claim in fraud and to the prejudice of the other creditors, and that the sale of the said articles was not effected, and payment of the price thereof was not made, fraudulently or in collusion between D. & W. Coutts and Messrs Webster & Littlejohn acting for the defender: Therefore dismiss the appeal, affirm the judgment of the Sheriff-Substitute appealed against; of new assoilzie the defender from the conclusions of the action," &c.

Counsel for Pursuer—Dickson—G. W. Burnet. Agents—Boyd, Jameson, & Kelly, W.S.

Counsel for Defender—Pearson—Graham Murray. Agents—Duncan Smith & MacLaren, S.S.C.

Friday, July 9.

SECOND DIVISION.

[Sheriff of Aberdeen, Kincardine, and Banff.

HARPER *v.* NORTH OF SCOTLAND AND ORKNEY AND SHETLAND STEAM NAVIGATION COMPANY, THE GREAT NORTH OF SCOTLAND RAILWAY COMPANY, AND BAIN.

Reparation — Dangerous Animal—Bull—Ordinary Precaution in Removing.

A bull was being led through the streets in a town secured in the ordinary manner by a ring in its nose and a rope attached thereto, and by a halter upon its head. It was irritated by boys in the street, and struggled with the men in charge, the result being that the ring in its nose broke through a latent defect, and it escaped from the halter and injured a passenger on the street. *Held* (*diss.* Lord Justice-Clerk) that the animal having been secured in a usual and reasonably safe manner, neither the owner nor the carrier in whose charge it was, was responsible.

On 9th February 1884, George Bain, farmer at Mill of Tillyfour, Monymusk, purchased a young polled black Aberdeenshire bull from John Forbes, farmer, Mains of Brux, Kildrummy. The bull was bought on behalf of William Corrigall, farmer, Stonequay Walls, Orkney. Bain stipulated that before delivery a ring should be put in the bull's nose. There are two ways of doing this. By one the ring is put through the gristle of the nostril and then fastened, by the other a ring in two pieces is taken, and a portion of each is placed against the nostril, and then a rivet is passed through and the ring afterwards screwed tightly against, but not through, the nostril. The latter was the way taken. Forbes got a blacksmith to make a ring, which (after one ring had been rejected as unsuitable and another made) was riveted on to the bull's nose, and on 12th February Forbes and Bain took the animal to Alford Station on the Great North of Scotland Railway, and trucked him there to be taken to his destination in Orkney. There were some other cattle in the truck, but they were removed at Kittybrewster Station, where the truck still containing the bull was shunted. It was afterwards attached to another train and taken to Waterloo Goods Station, Aberdeen, where it was to be removed and put on board a steamer of the North of Scotland and Orkney and Shetland Steam Navigation Company for conveyance to Orkney. The bull arrived at Waterloo Station between three and four in the afternoon, and one of the railway company's servants, W. Sandison, informed Alexander Taylor, the Steam Navigation Company's foreman, of the fact, in order that he might be removed, it being the custom of the railway company to give delivery at the station, and not to remove animals therefrom by their own servants. Taylor asked Sandison to get the bull sent to the wharf. Accordingly Sandison and another of the railway company's servants, Andrew Simpson, after their day's railway work was done, took the bull out of the truck and proceeded with him that evening after seven towards the Steam Company's wharf. The bull when brought to Alford Station had a rope halter round his head and the ring in his nose, with a stout rope attached to it. The nose rope was then taken off the ring and put round the bull's neck, and therewith it was tied to the truck. In this condition the bull had arrived at Waterloo Station. The two men took the ring rope off the bull's neck, and attached it to the ring, leaving the rope halter as it was. While they were going through the streets of Aberdeen with the bull, each of them having hold of a rope, the bull was startled by the noise made by some boys, the ring in his nose broke, and he rushed off through the streets. The ring was not perfect. It was made in two pieces and then riveted, and the hole not being quite properly in the centre of the piece of iron, the ring was weaker than usual, and so gave way. In his rush the bull knocked down and injured two women, Mrs Harper, and Mary Walker, a domestic servant. Both brought actions for damages for the injuries caused, and called as defenders The North of Scotland and Orkney and Shetland Steam Navigation Company, the Great North of Scotland Railway Company, and George Bain as owner and consigner of the bull. The actions both in the Sheriff Court and in the Court of Session were argued on the record made up in the action by Mrs Harper.

She averred that when at Waterloo Station the bull was in a very wild state, and also that "the said accident occurred through the gross negligence and carelessness of the said defenders, or one or other of them, or of those for whom they are responsible, in so far as they did not see to the sufficiency of the rope and ring, nor in the excited state of the animal have it removed in the proper way."

The Steam Navigation Company pleaded—"(1A) The injuries alleged to have been sustained by the pursuer having been the result of a pure accident the defenders ought to be assoilzied. (3) The bull mentioned in the petition having been in charge of servants of the defenders, the Great North of Scotland Railway Company, at the time it injured the female pursuer, the said

railway company is the true party liable in reparation."

The railway company pleaded—"(3) The bull having escaped in consequence of the ring in its nose having broken through a latent defect, the carriers are not responsible. (4) The railway company being carriers of live stock only from station to station, and having conveyed the bull, in terms of their contract, safely to the Waterloo Station, are not liable for what happened after the animal left their station. (5) In any event the men in charge of the bull having been employed by the Steam Navigation Company, and having acted at the time as the paid servants and employés of that company, or of the owner of the bull, and not acting in any way as the servants of the railway company, the present defenders are entitled to decree of absolvitor, with expenses."

George Bain pleaded—"(1) This defender not having been the owner of the bull, and having only acted as the agent and mandatory of the owner in purchasing and forwarding the animal, the real owner, and not this defender, should have been called in this action, and this defender is entitled to be assoilzied."

The Sheriff-Substitute (W. A. Brown), after a proof, found (in Harper's action) that the pursuer had failed to prove that she was injured through the fault of the defenders or any of them, and assoilzied them. In his note the Sheriff-Substitute stated his opinion that the railway company had proved that they neither were in use to deliver cattle beyond their stations nor professed to do so; that the ring was put in in the way usual and proper for removing the animal; that it was proved that the bull was quiet at Alford when trucked, that the balance of evidence was that it was quiet at Kittybrewster and on arrival at Aberdeen, and was conveyed in an ordinary and safe manner; that the defect in the ring was latent; and that the cause of the bull's excitement was that it became excited owing to boys annoying it in the street. "A number of authorities were quoted by the pursuer as supporting her contention that there was fault on the part of the defenders, but it does not appear to me that the principle of these cases is applicable here. In *Burton* v. *Moorhead*, 8 R. 892, and *Hennigan* v. *M'Vey*, 9 R. 411, the Court gave damages for injuries caused by a ferocious dog and a boar respectively, but the reason of the judgment in both cases was that a person keeping such animals did so at his own risk, and that ineffectual precautions formed no defence to an action for injuries done under such circumstances. The case of *Phillips* v. *Nicol*, 11 R. 592, has a closer application, but that case was rested on the ground that special caution was shown to be necessary in the transit through the streets of the cow in question, whereas the conclusion at which I have arrived is based on the assumption that it has been established that the defenders sufficiently discharged themselves of their duty by using ordinary and reasonable precautions, and that there was nothing in the condition of the bull that called for special care and attention."

The pursuer appealed to the Sheriff (Guthrie Smith), who adhered to his Substitute's interlocutor.

"*Note.*—On the 12th of February 1884, about seven o'clock at night, while a bull was being taken from the railway station at Aberdeen to the Orkney steamer, it broke away from the men in charge of it, attacked the pursuer, who was passing along the street, and did her considerable injury. She now claims damages from the railway company, the steamboat company and Mr Bain, the owner and consigner of the bull. In defence it is maintained—(1) That no one is answerable at all, because the precautions taken exclude negligence, and it was a pure accident; (2) that if not an accident the person liable is not the carrier; (3) that if the carrier, it is not the railway company but the shipping company. As regards the railway company, I think the latter defence is complete. This contract with Mr Bain was to carry the bull to the railway station at Waterloo, and there deliver it to the steamboat company, whose duty it was to come and take it away. The latter company practically admit that this is so, but on this occasion when the railway porter went down to the steamer and informed the people there that there was a bull at the station going to Orkney, the foreman said—'Bring down the bull yourself, and I shall pay you for it, as I am busy to-night.' He says he meant that the railway company should send down the bull on their own responsibility, but evidently the porter could not make an arrangement of this kind so as to bind his superior, and in taking the bull from the station to the steamer as requested, it must be held that he was acting outside his proper duties, and as agent, not of the railway company, but of the steamboat company. His official superior so understood him at the time, and allowed him with the help of another of the railway porters to execute the commission which he had received, because his work for the day was over. At the time, therefore, of the accident the bull had passed out of the possession of the railway company into the possession of the steamboat company, and in no possible view was the railway company responsible. With respect again to the steamboat company, it appears that the bull was secured by a rope passed through the nose in the usual manner, and in charge of two men. In the opinion of the witnesses accustomed to handle cattle, this was the proper method of proceeding, and in the circumstances reasonably sufficient. The two men were enough, the rope was strong enough, and the ring ought also to have been strong enough to have held any bull if it had been well made. Unfortunately, however, this was not the case, because the hole in the ring through which the rivet passed was so much off the centre that when subjected to any strain at that point it almost necessarily gave way. I think the carrier was not responsible for the defect, because he was entitled to assume that the ring with which the bull had been furnished by the owner or consignee was sufficient for the journey which had to be performed; and inasmuch as at Waterloo he submitted to have the rope passed through the ring and went away quietly with the men, I can find no fault attaching to the carrier. In the circumstances he would certainly not have been responsible in a question with the owner. It was so held in the case of *Richardson* v. *The North Eastern Railway Company*, L.R., 7 C.P. 75, and in my opinion he is not responsible in a question with the public.

"There remains, however, the question of the owner's liability. The case of *Tillot* v. *Ward*, L.R., 10 Q.B.D. 17, shows that a person injured by a bull on the highway has no claim against the owner without proof of negligence on his part, and in *Phillips* v. *Nicol*, 11 R. 592, we have an explanation of what negligence in such a case is. It may consist (1) in allowing an animal to be driven along the highway when too excited to be suffered to be at large, and (2) if in its normal condition without the means of proper control. As regards the former point, the Sheriff-Substitute has fully examined the evidence, and I concur with him in the conclusion at which he has arrived. Some witnesses who saw him first at Kittybrewster judged that he was not in a good humour, but the preponderance of testimony is that he was both quiet at Alford, where he was put into the train, and quiet at Waterloo Station, where the railway journey terminated. I see nothing to discredit the railway officials, who say that there was no appearance of excitement about him when he was sent off to the steamer, and their evidence is confirmed by the fact that he allowed himself to be roped without trouble, and that he went quietly along the street until he was enraged by some mischievous boys. Nor can I hold the defender responsible for the latent flaw in the ring. The blacksmith employed was a competent tradesman. He received express instructions to make a good strong ring. The first ring supplied had actually been rejected, and a second made in order to insure complete safety. It was not the defender's fault that there was a defect in the workmanship not apparent to ordinary examination, and indeed discoverable only after the fracture. If it had been discoverable he would have been guilty of negligence in using it; but that not being so, I think this case must be treated as one of those accidents in carrying on the affairs of life where there is no blame or fault attributed to anyone, and for which therefore the law affords no remedy."

The pursuers appealed to the Court of Session, and argued—The ring used in this case in the bull's nose was not a proper one for the purpose; it ought to have been through his nose and not merely fixed on at the sides. It was not sufficient for the two companies who successively had charge of the bull to assume that the ring was a good one. Their servants ought to have examined the ring to see if it was all right. There was not sufficient care taken in leading the bull through the crowded streets of a town in the manner that was done here, more especially as the bull had been in a raised and angry state during the journey, which fact ought to have been known to the defenders. The risks of taking this angry bull were so great that the defenders ought to have taken some means which were not merely sufficiently safe in their opinion but absolutely safe—should have conveyed him in a float or covered waggon from the station to the wharf.—*Rylands* v. *Fletcher*, July 17, 1868, 3 App. Cases, E. and I. 330; *Fraser* v. *Fraser*, June 6, 1882, 9 R. 896; *Paterson* v. *Lindsay*, November 27, 1885, 13 R. 261. It is not a good defence for either of the companies to say that there was a latent defect in the ring, as that did not apply in the case of damages done to a stranger with whom there was no contract.—*Jackson* v. *Smithson*, June 5, 1846, 15 M. and W.

The Steam Navigation Company argued—The bull was not in a wild state when removed, and even if he was the company had had no notice of the fact and could not be expected to know it. In those circumstances the bull was removed in the ordinary and reasonable manner, and so the company were not liable.—*Phillips* v. *Nicol*, February 28, 1884, 11 R. 592; *Hennigan* v. *M'Vey*, January 12, 1882, 9 R. 411. Sending two men with the bull was indeed an extra precaution.—*Tillot* v. *Ward*, Nov. 27, 1885, L.R., 10 Q.B.D. But the Steam Company had not taken charge of the bull at the time he escaped; they only took delivery of goods at the wharf, and the persons who were bringing down the bull were servants of the railway company. If anyone was liable therefore it was the railway company.

The railway company argued—The only duty that the railway company undertook was to convey the bull safely from Alford Station to Waterloo Station, Aberdeen, and that they did, and there the obligation ended; they did not give delivery of goods except at their own stations. Although the persons taking the bull through the streets were servants of the railway company, at that particular time they were under the orders of the Steam Navigation Company. The bull was quiet all the time he was under the railway company's care.—*Clark* v. *Armstrong*, July 11, 1862, 24 D. 1315; *Richardson* v. *North-Eastern Railway Company*, L.R., 7 C.P. 75; *Burton* v. *Moorhead*, July 1, 1881, 8 R. 892.

George Bain argued—There was here no case against him at all. He fulfilled his obligation by seeing the bull trucked at Alford Station with a proper ring in his nose, and had nothing to do afterwards with him.

At advising—

Lord Justice-Clerk—The pursuer in this case complains that on an evening in the month of February 1884, between the hours of six and seven, she was attacked in the streets of Aberdeen by a furious bull, which lifted her from the ground, carried her for some yards, and very seriously injured her. It appears that this bull was in the custody of two men named Simpson and Sandison, who had been employed by the manager of the Orkney and Shetland Steam Navigation Company to bring the bull from the Waterloo Station in Aberdeen to the quay. It is said on the part of those who had charge of the animal that they received it from the Great North of Scotland Railway; that it was secured in the usual way by a ring through its nose which was attached to a rope and held by one of them, and by a rope round its neck which was held by the other. According to their account, they had no reason to suppose that the animal was anything but quiet, but on some noise made by boys in the street it grew restive, dragged the rope round its neck out of the hands of one man, and the ring through its nose breaking, it went off at full speed.

It turned out that after committing these injuries on the pursuer it assailed another woman—Mary Walker, who has a corresponding action—and that then rushing down the streets it escaped to the Links, and was ultimately found at a farmhouse in the neighbourhood. There it remained for a week, apparently still in a state of great excitement, and was ultimately brought to the quay

in a covered cart, which in Aberdeen is called a "float," and is constructed and used for such purposes.

It seems to have been doubtful on whom responsibility for these events rested, assuming that anyone was responsible. The bull itself had been the property of Mr John Forbes, a farmer at Mains of Brux, Alford, and had been purchased from him by a person of the name of Bain, who had undertaken to procure such an animal for an Orkney correspondent. It was of the Aberdeen breed—black and polled—a breed which is known to be excitable, and if excited, dangerous. Bain had trucked the animal at the Alford Station, consigning it to the care of the Steam Navigation Company, and it was accordingly delivered at the Waterloo Station under circumstances the details of which I need not mention at present, to two men, who had been employed by Alexander Taylor, acting for the Steam Navigation Company.

It is pleaded on behalf of the defenders, who are Bain, the railway company, and the Steam Navigation Company, that none of them are responsible. They say that the usual course was adopted to secure the animal from doing mischief; and that although in their hands these precautions failed, it is enough for them to show that they were the usual precautions adopted under such circumstances.

I am of opinion, first, that this is not a relevant defence; and secondly, that it is not well founded in fact.

I am of opinion that to introduce a dangerous animal like a bull into the streets of a crowded city such as Aberdeen is, as the events show, a very serious hazard, and so dangerous that the man who does so does it at his own risk and on his own responsibility. It is not enough that the precautions which he uses are usual. They must be absolutely efficient, and I think the case comes entirely within the case of *Moorhead* and of *Phillips* v. *Nicol*, which are referred to by the Judges in the Court below. One of these was the case of a dog; the other was the case of a cow; and no doubt in both of them the owner had warning that the animals had been known to be vicious; but when the animal is a bull, which is always known to be subject to paroxysms of sudden fury, and when furious so much more dangerous than the animals in question in those cases, I am of opinion that when allowed to go into the streets and crowded thoroughfares it can be considered in no other light than that of a wild animal, and that the person who brings it there is responsible that the conditions under which it is so brought shall render it absolutely safe. And, indeed, I cannot conceive that any other rule can possibly be applicable to a case of that kind. The history of this very event is quite sufficient to prove the propriety—nay, the necessity—of the rule. That he was unfit to be taken along the streets without precaution is proved by the fact that he had a ring through his nose, which indicated the danger its presence there necessarily implied. Secondly, it is clear that he was an animal liable to be excited by the usual noises of the streets, for the shouting and "booing," as it is called, of the schoolboys were enough to arouse him, although previously he had appeared to be quite quiet. That the precautions were insufficient is certain, for the first thing that happened was that the rope round the animal's neck was jerked out of the hand of one of the men who held it, and the next thing that happened was that the strain on the other rope, which held the ring, was so great that the ring snapped and the animal went off free. Not only so, but after doing the damage which I have explained the creature disappeared and was found at the farm which I have already mentioned. It was, however, in so great a state of excitement that it was not safe to meddle with him for a week, and he was ultimately brought to the quay in one of the "floats" which I have already mentioned, and in the manner in which he ought at first to have been transferred from the railway station.

That is the opinion I have formed on the lowest aspect of the case. I think it is proved in the evidence that a bull of the black polled breed of Aberdeenshire is a dangerous animal, and an animal which, although apparently quiet and continuing quiet until roused, is very easily roused and not easily quieted. And accordingly I think it immaterial what the history of the animal was, because necessarily he was not an animal that could without very different precaution be with propriety brought upon the streets of a city like Aberdeen, and there was a well-known and entirely safe mode of transit.

But, secondly, it is admitted on all hands that if the animal had shown any signs of temper or excitement it was not a proper mode of conducting it from the railway station to the quay. There was the mode I have just explained, which was notoriously the safe mode of carrying such an animal. It was said it had been ruled in different cases that it is no answer to say in a question of injury, through machinery or otherwise, that there was a safer and better method of performing the operation, but that is not the law of such a case as this. This is a dangerous animal. There was a mode of conveying it which would not have been dangerous to the lieges; and it is not putting too heavy a burden on those who run such risks to insist that they shall use the mode which is safest for the lives and limbs of the lieges. In the second place, and without enlarging upon it, neither the Steam Navigation Company nor the Great North of Scotland Railway Company, whichever of them may be responsible, made the slightest inquiry into the history of the animal, which, indeed, they were bound to do before they could come to the conclusion of leading it through the streets with only the precaution of the ring and the rope that I have already referred to. That was essential. They made no inquiry, and if they had inquired they would have found, thirdly, that in the transit between Alford and Kittybrewster, this animal had shown very great signs of excitement—so much so that it is very clearly proved by persons skilled in such matters that if such signs had been shown to them they would have thought it altogether wrong to lead the animal through the streets, and would have thought it necessary to bring the animal in a "float." I do not need to quote evidence upon this matter, but the evidence of Mr Cowie, who is a cattle-dealer, is to this effect—"In my opinion if the bull had been seen at Kittybrewster station playing with his feet, and swinging with his tail, it would not have been a safe thing to remove

him on his arrival in Aberdeen through the streets of the town by means of a halter and ring through his nose. If I had to remove him in this condition, I would have done so along with other cattle, or by means of a float." There is no evidence whatever in the whole course of the proof at variance with this manifestly sensible observation.

The Sheriff-Substitute appears to have had a suspicion of the truth or honesty of the evidence of some of the witnesses who had seen the creature in the course of its transit, and who spoke quite clearly to the amount of irritation and excitement which Mr Cowie has mentioned. Especially, there is a man of the name of Colin Mackenzie, who gives a description of having seen the bull at Alford which proves certainly that it was at that time in a nervous irritable state. But the Sheriff doubts if Colin Mackenzie was there—that is to say, whether he is not deliberately uttering falsehoods—because he says he was there in charge of certain cattle belonging to a person of the name of M'Kie, and that he had a pass in the name of M'Kie for those cattle. No questions are asked at Mackenzie in his own examination indicating the slightest doubt that the fact was that he had cattle belonging to M'Kie, or had a pass in that name. But when it comes to the turn of the other party, the books of the railway company are referred to to show that Mackenzie had no such pass. It certainly does not occur to me that it would be possible on such evidence to come to the conclusion that Mackenzie was not there, and there upon the errand he describes. If it had been intended to suggest that this was entirely a fabrication, nothing could have been easier than to have proved it by calling M'Kie, or someone who represented him, to state whether or not it was the case. I attach little weight to suggestions made now which were not made during the examination of the witness, when their truth or falsehood could have been conclusively established at the bar.

I have read the evidence over with great care, both of Mackenzie and of the three other men, who entirely corroborate him, and I see no ground for calling in question the honesty with which that testimony was given.

Lord Young—In regard to this case I have felt and still feel some difficulty, and that also in respect of the weight to be attached to the consideration to which your Lordship has referred. I think it is a very weighty consideration that where there is a method of taking a bull through the crowded streets of a town in almost complete safety, and that method is not taken, as it certainly was not taken here, it might be a most wholesome rule that if there is a safe method of taking a bull through the streets of a city, he who takes any other method is liable for any damage that the bull may cause.

Upon the whole matter, however, I have come to the conclusion that the judgment of the Sheriffs ought to be upheld. The first observation I would make in support of that view is that this action is laid upon *culpa* alone; there is no suggestion of any contract here; what is complained of is a delict or rather *quasi* delict, and there is no other ground stated. Upon the record I think the *culpa* is attributed to the use of an insufficient ring in the nose of the bull, although that was not the principal *culpa* alleged at the bar during the discussion, but that is the statement in the plea-in-law. But we are not in the habit of tying parties down too strictly to the matter stated upon the record, and if I had found in the case any *culpa* established sufficiently in law, I think we could have given judgment accordingly.

But, secondly, we have not the owner of the bull before us in this case. I do not know if the injured persons would have any remedy against the owner, but he is not here. There are three defenders to this action—the Great North of Scotland Railway Company, the North of Scotland and Orkney and Shetland Steam Navigation Company, and Mr Bain. Now, according to the evidence, and indeed it cannot be disputed, what Mr Bain did was to buy a bull for a friend of his—Mr Corrigal in Orkney—from Mr Forbes, and he desired Forbes to have a ring put in the bull's nose. Forbes went to a blacksmith to get a ring made, which was put in the bull's nose, but which was insufficient. But Bain was guilty of no fault up till that point, and when he went with Forbes to the railway station, and in his presence gave over the bull to the railway company for conveyance to his proper owner Corrigal, I still think Bain was guilty of no fault. There is no case against Bain at all, and he must be assoilzied on the ground that no *culpa* has been committed by him.

Then with respect to the Great North of Scotland Railway Company, they are not responsible for the damage done unless there is *culpa* alleged and established against them. They received the bull with an apparently good ring in its nose, and the railway company cannot be expected to examine all the rings in the noses of bulls brought to them for carriage, and in carrying it safely from Alford, where it was trucked, to Aberdeen they were guilty of no *culpa*. They were, I suppose, bound to receive the bull, and they carried it to their Aberdeen station, and delivered it over at the station to the Steam Shipping Company, to whom they were charged to deliver it. Because I believe that it is a fact that they are not bound to carry goods entrusted to them beyond the station. There is no evidence of *culpa* on their part here. There is some evidence that the bull reared up in the truck when the other cattle were taken out of the truck, but that is of no importance—the railway company are free of *culpa*.

Then we come to the Steam Shipping Company, and I think that the persons who were taking the bull from the station to the quay, although they were servants of the railway company, were then acting as servants of the Steam Shipping Company, and under their orders. The accidents to the pursuers happened when the bull was in their hands, and their hands were those of the Shipping Company, and if they were taking the bull through the streets in a culpable manner, then the Steam Shipping Company would be liable. Now, their case is this—their servants having received the bull, they were driving it through the streets in the usual way, that is, with a halter and a rope attached to the ring in his nose, and with two men in attendance. I agree that it is just here that my doubt and difficulty come in. They were not taking the bull in a manner that was perfectly safe, but my judgment upon the import

of the evidence is that they were taking it in the usual and a reasonably safe way. Now, I do not think that our law has gone any further in settling the responsibility of parties, where the action is laid on *culpa* in such services as carriage of goods, than requiring that the carriage shall be done in the usual and general way. Now, the men were doing that here, and I think they would have done it in safety if the ring had not given way, and the accident happened on account of the ring having given way from a latent defect. And I am the more satisfied in coming to that conclusion because both Sheriffs, and I think the majority of this Court, are of opinion that the men were taking the animal in what was the usual and safe method. I cannot hold that the Steam Shipping Company were liable for the breakage of the ring, and in that way the case fails against them also, although not in quite such a clear manner as it fails against the other two respondents. I think it would be a very reasonable provision in police bills, provisional orders, &c., that bulls should not be taken through crowded streets except in a covered cart. But I cannot hold the same view as to the carriage of bulls as to the presence of vicious dogs and wild animals, because as the world is at present constituted we cannot do without bulls, and therefore they must exist and be moved from place to place. But the presence of a dog known to be vicious is a very different thing. Upon the whole matter I have come to the conclusion that we must sustain the Sheriff's judgment and dismiss the appeal. I would merely wish once more to point out that the owner of the bull is not at present in this process. Perhaps there might be an action against the owner of the bull, and he might have redress against Forbes, who sold the bull, and Forbes again might have redress against the blacksmith who made the bad ring, but that would be a case on the ground of contract. No such case is presented to us here. I have stated the grounds on which I think no liability on the score of *culpa* can lie against any defender.

Lord Craighill and Lord Rutherfurd Clark concurred in Lord Young's opinion.

The Court pronounced this interlocutor:—

"Find in fact that on 12th February 1884, on a street in Aberdeen, the pursuer was knocked down and injured by a bull, the property of William Corrigal, Orkney, which was being led from the Waterloo Goods Station, Aberdeen, belonging to the defenders the Great North of Scotland Railway Company, to the wharf belonging to the defenders the North of Scotland and Orkney and Shetland Steam Navigation Company, in order to be carried by them to its owner in Orkney; (2) that the bull was at the time in the custody of the said Steam Navigation Company, and got loose in consequence of the ring in its nose breaking from a latent defect while being led by the said Steam Navigation Company's servants in the ordinary and in a reasonably safe manner; (3) that the defender George Bain purchased the bull for the said William Corrigal, and delivered it to the defenders the Great North of Scotland Railway Company at their station at Alford to be conveyed to the owner in Orkney, to whom it was addressed; (4) that the said railway company carried it in safety to the said Waterloo Station, and there delivered it to the said Steam Navigation Company, by whom it was removed and was being led when it got loose as aforesaid; (5) that no fault or neglect of duty by any of the defenders has been proved: Find in law that none of the defenders are liable in damages to the pursuer; therefore dismiss the appeal and affirm the judgments," &c.

Counsel for Pursuer — Kennedy — Wilson. Agent—John Macpherson, W.S.

Counsel for the Steam Navigation Company—Comrie Thomson—Guthrie. Agents—Henry & Scott, S.S.C.

Counsel for the Railway Company—Jameson—Ferguson. Agents—Gordon, Pringle, Dallas, & Co., W.S.

Counsel for George Bain—Rhind. Agent—William Officer, S.S.C.

Saturday, July 10.

FIRST DIVISION.

JAMES *v.* JAMES.

Diligence—Arrestment—Aliment—Future Debt—Recal on Consignation.

A wife who had obtained decree of separation and aliment against her husband used arrestments against his funds in respect of her claim for aliment. The husband presented a petition for recal of the arrestments, in which it was stated that all arrears had been paid. Circumstances in which the Court *recalled* the arrestments only on condition of the husband making consignation of a sum to meet future claims for aliment.

In 1882 Janet Sandison or James obtained decree of separation against her husband William James, and also decree for aliment at the rate of £25 per annum.

On 15th September 1884 James executed a trust-deed for behoof of his creditors, in favour of Mr John Irvine, Lerwick. The trustee entered into possession of his whole estate, and paid the creditors in full.

On 8th July 1885 an arrestment on the decree for aliment was used in the hands of the trustee for the sum of £100 more or less, and after that the trustee paid to the wife the arrears of aliment then due, with interest, and the half-year's aliment due and payable for the current period at Whitsunday 1886.

James then presented this petition for recal of the arrestments, stating there was no debt then due to his wife; that the trustee refused to deliver up the balance of the estate then in his hands—amounting to about £250—until the arrestments were withdrawn or recalled; and that this sum was the sole capital he had.

Mrs James lodged answers to the petition, in which she submitted that in the special circumstances of the case the arrestments should not be recalled except upon consignation of £100, or sufficient caution being found therefor.

The answers contained the following state-