have the coal forward in good time (*i.e.*, for loading on that day), and again that the vessel must be loaded on the date indicated—that is, as I understand, the 13th.

Whether the contract is read as being "to load 12th to 16th April" or as merely mentioning 12th to 16th April as probable dates of loading, it did not, in my judgment, warrant the pursuers in not having a vessel at Grangemouth ready to receive the coal until the 23rd of April, and I consider that when on the 19th it appeared that the vessel could not arrive sooner than the 21st, and that probably, as the result proved, it would not arrive until later, they were entitled to cancel the contract as they did. I therefore think that the judgment of the Sheriff is right.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court pronounced this interlocutor—

"Recal the interlocutors of the Sheriff-Substitute and of the Sheriff dated 22nd February and 26th July 1899 respectively: Find (1) that the pursuers entered into a contract with the defenders by which they agreed to purchase from the defenders 740 tons of their splint coal to be shipped at Grangemouth by the steamer 'L'Avenir,' to load 12th to 16th April; (2) that 'L'Avenir' did not arrive at Grangemouth between 12th and 16th April, and that on the 19th April information was received by the pursuers and communicated to the defenders that she had sailed on that date from Antwerp for Grangemouth; (3) that the ordinary duration of the voyage of such a vessel as 'L'Avenir' from Antwerp to Grangemouth is about two or three days; (4) that 'L'Avenir' did not arrive at Grangemouth until 22nd April, and that she discharged her inward cargo during the day and night of 22nd April, and (5) that she was not ready to receive outward cargo until 23rd April; (6) that the time for having 'L'Avenir' at Grangemouth ready to receive the said coal was of the essence of the said contract, and (7) that on 19th April the defenders cancelled the said contract and refused to deliver under it; (8) that in the circumstances they were justified in doing so: Therefore of new assoilzie the defenders, and decern; Find the pursuers liable to them in expenses both in this and in the Sheriff Court, and remit," &c.

Counsel for the Pursuers—W. Campbell, Q.C.—A. S. D. Thomson. Agents—Carmichael & Miller, W.S.

Counsel for the Defenders—H. Johnston. Q.C.—Cook. Agent—Al. C. D. Vert, S.S.C.

Thursday, June 21.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

GIBSON *v.* M'KEAN.

Process—Reclaiming-Note—Material Error in Print of Interlocutor Prefixed to Reclaiming-Note — Competency — Court of Session Act 1825 (6 *Geo. IV. c.* 120) (*Judicature Act*), *sec.* 18.

In an action brought against two defenders the Lord Ordinary pronounced an interlocutor in these terms, "Sustains the first plea-in-law for the defender W, and the second plea-in-law for the defender M," and dismissed the action. In a reclaiming-note presented by the pursuers the interlocutor prefixed thereto was printed thus—"Sustains the second plea-in-law for the defender W."

The Court *refused* leave to correct the error, and *dismissed* the reclaiming-note as incompetent.

The Court of Session Act 1825 (6 Geo. IV. c. 120) (Judicature Act), sec. 18, provides—"That when any interlocutor shall have been pronounced by the Lord Ordinary, either of the parties dissatisfied therewith shall be entitled to apply for a review of it to the Inner House, . . . provided that such party shall . . . print and put into the boxes appointed for receiving the papers to be perused by the judges a note reciting the Lord Ordinary's interlocutor."

In an action at the instance of Mrs Jane Helen Gibson, with consent of her husband Robert James Gibson, S.S.C., against James Calder M'Kean and John Robert Weddell, defences were lodged for both defenders. The defender M'Kean pleaded (2) that the action was irrelevant. The defender Weddell pleaded—"(1) The action is irrelevant."

The Lord Ordinary (KINCAIRNEY) on 22nd February 1900 pronounced the following interlocutor;—"The Lord Ordinary having heard counsel for the parties in the procedure roll, *Sustains the first plea-in-law for the defender Weddell, and the second plea-in-law for the defender M'Kean:* Dismisses the action, and decerns: Finds the defenders entitled to expenses," &c.

The pursuers reclaimed.

In the interlocutor prefixed to the reclaiming-note, in place of the words printed in italics as above, were printed the words—"Sustains the second plea-in-law for the defender Weddell."

The respondents objected to the competency of the reclaiming-note, and argued—Section 18 of the Judicature Act provided that the reclaimer must lodge a note reciting the interlocutor reclaimed against. What was printed was not the interlocutor pronounced by the Lord Ordinary. It omitted all reference to one of the defenders, and in the case of the other it sustained the wrong plea. The Act was

peremptory—*Don* v. *Richardson*, March 16, 1859, 21 D. 751.

The reclaimers moved to be allowed to amend by substituting the correct words of the interlocutor, and cited *Milne's Trustee*, November 12, 1842, 5 D. 68.

LORD JUSTICE-CLERK—I do not see how it is possible to sustain this reclaiming-note. A fundamental part of the interlocutor pronounced by the Lord Ordinary has been left out in the print of the interlocutor prefixed to the reclaiming-note. It is not a case of printing the initials of one of the parties incorrectly or anything of that kind. The mistake is a mistake in regard to what is of the essence of the interlocutor. Nothing at all is said about one of the defenders, while as regards the other defender the plea-in-law which is mentioned is not the plea that the Lord Ordinary sustained. Regularity of procedure must be attended to. In the words of the Lord Justice-Clerk in the case of *Don* v. *Richardson*, 21 D. 751, to which we were referred, "The omitted passage constitutes the whole sting of the judgment. If the omission arose through a clerical error, it deserves to be visited by the severest penalty." Here not having the correct interlocutor before us we can do nothing but refuse the reclaiming-note.

LORD TRAYNER—I agree. The interlocutor prefixed to the reclaiming-note must be the interlocutor pronounced by the Lord Ordinary. I regard the provision of the Act of Parliament as peremptory.

LORD MONCREIFF—I think that we have no alternative but to sustain this objection. Even if the respondents had not taken it, I think that we should have been bound to take it ourselves.

LORD YOUNG was absent.

The Court refused the reclaimers' motion, and dismissed the reclaiming-note as incompetent.

Counsel for the Pursuers—A. M. Anderson. Agents—Ritchie Rodger & Wallace, S.S.C.

Counsel for the Defender M'Kean—Kennedy. Agents—Gordon, Falconer, & Fairweather, W.S.

Counsel for the Defender Weddell—Gunn. Agents—Mackay & Young, W.S.

Saturday, June 23.

SECOND DIVISION.

[Sheriff-Substitute at Glasgow.

M'KEEVER *v.* CALEDONIAN RAILWAY COMPANY.

Reparation—Negligence—Safety of Public—Unlighted Opening from Railway Platform leading to Dangerous Place—Invitation—Trap—Railway.

In an action of damages against a railway company the pursuer averred that having left a train at a station on the defenders' line, and having given his ticket to the collector, he passed through a wicket gate, near which the collector was standing, under the belief that said gate was the exit from the station, and fell over an unfenced stair and was injured. He averred that the lamp at the wicket-gate was unlighted.

Held that the action was relevant.

Robert M'Keever, provision merchant's manager, Glasgow, brought an action in the Sheriff Court at Glasgow against the Caledonian Railway Company for damages on account of personal injuries sustained by him. The pursuer averred that on 1st December 1899 he was a passenger by one of the defenders' trains from Glasgow to Garnkirk, and that on the arrival of the train at the latter station about 6 p.m. he alighted therefrom and proceeded to leave the platform. "(Cond. 3) The pursuer had reached a point opposite to a wicket-gate on the north side of said station, and not far from the east end of the station platform, being the platform at which the said train arrived, when a ticket-collector in the employment of the defenders, and whose name is to the pursuer unknown, took delivery of the tickets of the pursuer and his two fellow-passengers. It was intensely dark at the time, and the pursuer, in the belief (induced by the fact that the defender's said ticket-collector was standing at the entrance therefrom and near thereto) that the said wicket-gate formed one of the exits from said station available to the public, passed, accompanied by his said two fellow-passengers, through said wicket-gate, which at the time was open, and at which the defenders' said ticket-collector was stationed as aforesaid, and was suddenly and unexpectedly precipitated over an unfenced stair on the north side of and adjacent to said wicket-gate, and forming the exit therefrom. The pursuer fell, and thereafter rolled down an open embankment on one of the sides of said unfenced stair, some 5 feet or thereby, and sustained the injuries after mentioned. (Cond. 5) The defenders, or those for whom they are responsible, were in fault in allowing the said wicket-gate to remain open. It ought not to have been open at the time of said accident, and particularly in the darkness of the night. The said station was frequented by members of the public and others, and said gate, by being left open in