from the only difficulty which stands in the way of his enjoyment of it. It is said he was only sisted for his interest. The interlocutor does not say so, but he has the very material interest which I have explained. I think therefore that the assignation fairly carries a right to maintain this action. The Lord Ordinary has stated another reason for dismissing the action. He says that under the statute such an action as this cannot be sued unless the party is registered as a holder of stock. The company refuses to register him, but is he not entitled to have the question betwixt him and it fully considered? It has not been made quite clear to me that he cannot maintain that the company have no right to throw this obstacle in his way. The disabilities referred to in the statute do not, I think, contemplate a case of this kind.

Lord CURRIEHILL concurred.

Lord DEAS said—The whole question is, whether the railway company's arrestment or Mr Watt's assignation is preferable. The latter surely has a right to try that in this action in which he has been sisted as a party. The general rule undoubtedly is that additional pursuers cannot be introduced without the consent of the defender. I don't know that that rule applies to the case of cedent and assignee; but here the thing has been done. He has been sisted "as in right of the stock." He might have tried the question in a separate action. Why not in this? The Companies Clauses Act does not touch this case.

Lord ARDMILLAN—The assignation to the stock without the right to clear it would not be worth having. As to the other point, surely the assignee of the stock cannot be turned out of Court merely because his opponent, the company, chooses not to register him? I think that, except in very exceptional cases, an assignation of a claim implies an assignation of an existing suit. Besides, here the party has been sisted.

SUSP.—MORGAN *v.* MORGAN.

Promissory-note—Stamp. Terms of two documents which held (aff. Lord Kinloch) not to be promissory-notes.

Counsel for Suspender—Mr Clark and Mr Birnie. Agents—Messrs G. & J. Binny, W.S.

Counsel for Respondent—Mr Adam. Agent—Mr Alexander Howe, W.S.

The question in this case was, whether the following two documents were promissory-notes. It was pleaded that they were, and could not therefore now be stamped. Lord Kinloch held that they were not promissory-notes, but that they were documents requiring to be stamped, and he sisted process that this might be done.

The one document is in the following terms:—

"Dear Will,—I have borrowed from you one thousand pounds sterling, which I hereby bind and oblige myself to repay to you at Whitsunday next, with interest at the rate which shall be paid on money lent upon first heritable security. And I also engage to grant you, if required, satisfactory heritable security for the above sum.—I remain," &c.

And the other is as follows:—

"Dear Will,—I was favoured with your letter of yesterday prefixing letter of credit on the Western Bank for three hundred and ninety-seven pounds, which, with the interest due to you at last Whitsunday by the Mumrill's family, and the interest thereon since that date, makes up five hundred pounds which I have received in loan from you, to be repaid in December next, but hope you wont be too strict as to the time of repayment, as it will depend much upon the price of Clydesdale Bank stock, as I am averse to sell at present prices.—Yours truly."

The suspender reclaimed, and argued that the documents had all the requisites of promissory-notes—viz. (1), a promise to pay; (2) the name of a payee; and (3) a definite term of payment. The case of Macfarlane *v.* Johnstone and others, 11th June 1864 (2 Macph. 1210), and other cases, were founded on.

The Court adhered.

The LORD PRESIDENT said—We must look at the whole character of these documents, and, doing so, it appears to me that neither of them was given as a promissory-note. They are acknowledgments of debt with an obligation to repay.

Lord CURRIEHILL—I am very clear that the first of these two documents is a bond, and not a promissory-note. It requires a bond stamp. The question about the other is more nice, but I think it is just an acknowledgment of a loan. The true import of the letter is that the writer of it will repay the loan "in December next," if he could not agree with his creditor that the period of payment should be extended. There is, however, a proposal that the term should be extended, and that takes from the document the character of a promissory-note, which is a liquid document. This letter contemplated a future agreement.

Lord DEAS also concurred as to both documents. What he proceeded upon in the case of the second was the fact that there was not in it a definite period of payment. There was no day in December named. When, therefore, could it be protested? It was quite true that in Macfarlane *v.* Johnstone and others, the period of payment was just as indefinite; but his Lordship thought that this fact must have been overlooked in the decision by the Judges, because the Lord Justice-Clerk distinctly laid down that one of the essentials of a promissory-note was that it should be payable "at a particular date," and Lord Neaves in the same way said that it was necessary that the time of payment must be "definitely ascertained or ascertainable from the document itself." But farther, the letter is one acknowledging receipt of a letter of credit, and could never be held to have the privileges of a promissory-note, in respect of which privileges the stamp duty is imposed.

Lord ARDMILLAN concurred. The first document was a personal obligation, with an intrinsic engagement to convert it into an heritable security. The second was not a promissory-note, because it had no definite date.

Tuesday, Jan. 23.

FIRST DIVISION.

PROUDFOOT *v.* LECKY.

Reparation—Relevancy. Issue to prove that a defender, took possession of property belonging to the pursuer, whom he had dismissed from his service, and which were in the defender's own premises, *disallowed.*

Counsel for Pursuer—Mr Clark, and Mr A. Moncrieff. Agents—Messrs Wilson, Burn, & Gloag, W.S.

Counsel for Defender—The Lord Advocate and Mr Pattison. Agent—Mr R. P. Stevenson, S.S.C.

George Proudfoot, merchant in London, sued Francis Boyce Lecky, linen merchant in Glasgow, for damages for having wrongfully and illegally dismissed him from his service on 5th August 1864. He proposed an issue to try this question, which was not objected to. But he proposed another issue in these terms—"Whether, after the dismissal of the pursuer by the defender, the defender, by another acting on his instructions, wrongfully took possession of certain property belonging to or in the possession of the pursuer, then in the business premises of the defender in London—to his loss, injury, and damage?" Lord Barcaple reported this proposed issue, expressing a doubt as to whether the mere taking possession of the articles referred to was a relevant ground for a claim of damage, and the Court to-day unanimously disallowed it. The defender could not lock up his premises without taking possession of the pursuer's effects which were there.