the appeal, in the manner proposed by the Lord Chancellor.

Interlocutor of 10th July 1874 varied; with this variation, case remitted to the Court below. Appellants to pay to respondents the costs of the appeal.

Appellants' Counsel—H. Cotton, Q.C.; C. J. Pearson (Scotch Bar). Agents—Gibson-Craig, Dalziel, & Brodies, W.S.

Respondents' Counsel—John Pearson, Q.C; Gloag (Scotch Bar). Agents—Gillespie & Paterson, W.S.

COURT OF SESSION.

Thursday, March 18.

FIRST DIVISION.

JARVIE *v.* CALEDONIAN RAILWAY CO.

Railway—Negligence.

In a case where a block on the railway made it necessary for the passengers to change from one train to another at a place where there was neither station nor platform,—*held* that failure by the company to give notice of the block to intending passengers was negligence.

The pursuer in this action was injured on the railway between Glasgow and Greenock on September 19, 1873. A block had occurred on the line near Paisley, and the pursuer was obliged to leave her train in the dark and change to another at a place where there was neither station nor platform. In doing this she fell and was injured, and in respect of her injuries obtained from a jury damages to the extent of £100. The company obtained a rule on the pursuer to show cause why a new trial should not be granted, but the Court, after hearing counsel, refused to disturb the verdict.

At advising—

Lord President—My Lords, the circumstances of this case are somewhat peculiar, and raise a question of some novelty and importance. The verdict of the jury is challenged on two grounds, (1) that there is no evidence of fault on the part of the defenders, and (2) that assuming fault on their part, that there was contributory fault on the part of the pursuer. On the 19th December 1873 there was a block on the line, caused by an accident which is not attributed to any fault on the part of the railway company, but which produced great disturbance of the traffic. I am not disposed to hold that the block disabled the company from carrying on their passenger traffic. I think it would be dangerous and inconvenient to hold that the company was not entitled, or I might even say bound, to carry it on, for its entire cessation would cause great public loss, but it is quite obvious that they would have to carry it on at great risk, and that implies the necessity of unusual care. It seems to me, in the first place, that if the company started a train from Glasgow to Greenock, they were bound to let intending passengers know the extra risk attending the journey, a risk necessarily connected with getting out of one train at a place where there was neither station nor platform, walking along the line, and getting into another train. There must be considerable risk in that, and many people necessarily travel by railway who are very ill-fitted to encounter that risk, and most of them, if they were sensible of weakness, would probably decline to encounter it. I think it was the duty of the company in the first place to make the passengers aware that they were not starting on an ordinary railway journey from Glasgow to Greenock, but on one which was unusual and dangerous. Now, it is proved by Mrs Jarvie and the porter that she was not made aware of it. I do not say that the porter represented that the line was clear, but it is quite plain that he did not inform her that it was blocked. The line, however, was blocked, and there was extra risk in passing from one train to the other. Mrs Jarvie says that if she had known this she would not have gone, and it is proved that she had the option of staying with her sister. Now, I think that failure to give information was negligence on the part of the company which exposed Mrs Jarvie to unusual and quite unnecessary risk. It seems to me, further, that if it is proved that in encountering that risk Mrs Jarvie was injured, the company must be held responsible, because, but for their failure, she would not have been there at all. There was another duty incumbent on the company, and that was, at the place where the block took place, to use all means in their power to insure the safety of the passengers in going from one train to another. It was dangerous to get out and in at a place where there was no platform, especially for women and old people, and so the company was bound to give assistance, but so far as that is concerned I do not think the verdict wrong. The case depends then on the evidence of the pursuer. There are no witnesses or circumstances corroborating her testimony as to the invitation to jump, and the jump was made. The presiding Judge was not asked to direct the Jury that the evidence of one witness was insufficient. It is not every fact that requires two witnesses to prove it. Again, it may be doubted whether there was anything so far wrong in the porter's advice. The place was dark, the lights not steady, and to get out of the carriage was necessarily attended with risk, and it may be a question whether it was safer to jump or to try to climb down. It might have raised a different question if the former had been necessary. The ground on which I hold that there was fault on the defenders' part was their failure to give the pursuer warning of her risk. It has been said that there was contributory negligence on the part of the pursuer, but unless the jump was a great mistake there could be no contributory negligence; but it is not necessary to enter into that question, for the only evidence on that point is the pursuer's own statement, and it will not do to extract from that the one fact that she did jump, without taking the whole facts together. I am satisfied that no case has been made out for challenging the verdict of the jury.

The other Judges concurred.

The Court pronounced the following interlocutor:—

"The Lords having heard counsel for the parties, Discharge the rule formerly granted, and refuse to grant a new trial."

Counsel for Railway Company—Dean of Faculty

(Clark), Q.C. and Johnstone. Agents—Hope, Mackay, & Mann, W.S.

Counsel for Jarvie—Macdonald and Millie. Agent—T. Lawson, S.S.C.

Friday, March 19.

SECOND DIVISION.

[Lord Craighill, Ordinary.

JOHN FERGUSON & OTHERS *v.* CHARLES FERGUSON & OTHERS.

Fee and Liferent—Heir-male of the Body.

Held that under a destination to A in liferent, and the heirs-male of his body in fee, the liferenter and his eldest son were not entitled to dispose of the estate, the father's heir-male of the body not being ascertainable till the father's death.

This action was rised by John Ferguson and his son John Maxwell Ferguson, as liferenter and fiar respectively of the lands of Easter Dalnabreck, for the purpose of having it declared that they were "entitled to sell and dispose of the same either gratuitously or for onerous considerations, as they may think fit, and to grant valid and irredeemable dispositions and conveyances thereof to purchasers or others." The action was defended by Charles Ferguson, the elder pursuer's only other son. The disposition under which the property was held was as follows:—"I, the Reverend James Ferguson, of Easter Dalnabreck, presently residing at Bridge of Allan, do hereby, with and under the reservations after mentioned, give, grant, and dispone to and in favour of John Ferguson, colonial surgeon at Perth, Western Australia, my brother, and the heirs-male of his body, whom failing, to the Reverend Donald Ferguson, minister of the Free Church, my brother, in liferent, for his liferent use allenarly (and which liferent shall be strictly alimentary, and exclusive of his debts and deeds and the diligence of his creditors), and the heirs of his body in fee, whom all failing, my own nearest heirs whomsoever, heritably and irredeemably, All and Whole the town and lands of Easter Dalnabreck."

The following codicil was appended to the disposition:—"I, the Reverend James Ferguson, within designed, in virtue of the powers reserved to me by the foregoing disposition and settlement, do hereby restrict the interest of John Ferguson, within designed, my brother, in the lands and others within disponed to an alimentary liferent in the same manner, and to the same effect as if the said lands and others had been disponed to the said John Ferguson in liferent, for his liferent use allenarly (such liferent being strictly alimentary, and exclusive of his debts and deeds, and the diligence of his creditors), and to the heirs-male of his body in fee, whom failing, to the substitutes within mentioned, and subject to the burdens and declarations within specified: Moreover (in lieu of the precept of sasine contained in the foregoing disposition, which I hereby recall), I desire any notary public to whom these presents may be presented to give to the said John Ferguson, and the heirs-male of his body, in liferent and fee respectively, whom failing, to the within designed Donald Ferguson, and the heirs-male of his body in liferent and fee respectively, whom all failing, to my own nearest heirs whomsoever, sasine of the lands and others within disponed, but always with and under the burdens, declarations, and restrictions specified in the foregoing disposition and in these presents."

The Lord Ordinary (CRAIGHILL) pronounced the following interlocutor:—

"*Edinburgh, 26th November* 1874.—The Lord Ordinary having heard parties' procurators on the closed record and productions, and considered the debate and whole process—Repels the defences, and finds, decerns, and declares in terms of the conclusions of the summons: Finds no expenses due to or by either party, and decerns.

"*Note.*—This action has been raised to have it found that the pursuer John Ferguson, and his eldest son, John Maxwell Ferguson, representing themselves to be respectively liferenter and fiar of the lands of Easter Dalnabreck, are entitled to dispose of that property at their pleasure. Of course, if both possessed the characters to which they severally lay claim, their right is undeniable. That the pursuer John Ferguson is liferenter the defenders admit, but they deny that the pursuer John Maxwell Ferguson is fiar, and contend that neither he nor any brother of his can be fiar till their father's death. This is the dispute now presented for the decision of the Court.

"The question is raised upon the dispositive clause of a testamentary disposition of the late Reverend John Ferguson, read in connection with a codicil endorsed upon the principal deed. By the principal deed the disponer disponed to the pursuer John Ferguson his brother, and the heirs-male of his body, whom failing, to the defender the Reverend Donald Ferguson, another brother, in liferent, for his liferent use allenarly (and which liferent was declared to be strictly alimentary and exclusive of his debts and deeds and the diligence of his creditors), and the heirs-male of his body in fee, whom all failing, to the disponer's own nearest heirs whomsoever, heritably and irredeemably, All and Whole the town and lands of Easter Dalnabreck. By the codicil the disponer restricted the interest of the pursuer John Ferguson, 'in the lands and others within disponed, to an alimentary liferent, in the same manner and to the same effect as if the said lands and others had been disponed to the said John Ferguson in liferent, for his liferent use allenarly (such liferent being strictly alimentary, and exclusive of his debts and deeds and the diligence of his creditors), and to the heirs-male of his body in fee, whom failing, to the substitutes within mentioned.' The effect of the clause in the disposition, and of the clause in the codicil, which have now been presented, when these are read, as they must be read, together, is, in the opinion of the Lord Ordinary the same as it would have been if in the principal deed the disposition to the pursuer John Ferguson and the heirs-male of his body had been engrossed in the very words employed in the codicil. The pursuers' counsel at the debate demurred to this result, though rather faintly; but upon this point the Lord Ordinary's opinion has been formed without any hesitation, and is now expressed without any doubt. The other question debated, which is truly the question in this case, is far more difficult, and the Lord Ordinary has felt some anxiety as to the decision which ought to be pronounced. His reasons for the judgment he has given will now be explained.

"The question upon which parties are at issue