private funds or shares, contribute such sums of money, or give such shares, as each may think fit towards creating a gratuity to reward such persons."

BLACK AND CO. *v.* BURNSIDE.

Proof—Bank Cheque. Held that a holder of a bank cheque has not the same privileges as the holder of a bill, and circumstances in which an averment of non-onerosity held proveable *pro ut de jure.*

Counsel for the Pursuers — Mr Fraser and Mr Gebbie. Agents — Messrs Macgregor & Barclay, S.S.C.

Counsel for the Defender—Mr Gordon and Mr J. C. Smith. Agent—Mr Alex. Morison, S.S.C.

This was an action at the instance of David Black & Co., woollen drapers in Glasgow, against William Burnside, grocer and spirit dealer, Wishaw, for payment of £170, "being the amount of the defender's draft or order on the Royal Bank of Scotland, Wishaw branch, dated 29th April 1861, and payable to himself or bearer, and which was delivered to the pursuers as the equivalent of £170 sterling of cash paid by the pursuers therefor." The pursuers averred that on 30th April 1861 the draft in question was presented to them by James Nisbet, coalmaster, Hamilton, he (Nisbet) alleging that he required the money immediately, and as the cheque was payable in Wishaw he could not get it cashed in Glasgow without the endorsation of some person known to the banks there. Nisbet led the pursuers to believe that he had given value for the cheque, and they were induced to endorse it, and the Clydesdale Bank handed over the contents to Nisbet. The cheque was presented thereafter at Wishaw, and payment was refused—there being "no funds" of the defender to meet it. The cheque was returned dishonoured, and the pursuers were obliged to pay the amount to the Clydesdale Bank.

The defender averred that the cheque was originally signed blank by him, and given to Nisbet for his accommodation, and that he was not owing Nisbet anything at the time, or at least not more than a few pounds of an unascertained balance, which has since been paid. He also averred that this was known to the pursuers when they got the draft from Nisbet; that Nisbet had not endorsed the draft to them; and that it was actually paid by Nisbet himself

The Lord Ordinary (ORMIDALE), on 30th June 1864, found that the allegations and pleas in defence, to the effect that the pursuers are not onerous and *bona fide* holders of the draft or order libelled on, can be competently proved by their writ or oath only. He held that such a draft must be viewed and dealt with as being of the nature of a promissory-note or inland bill of exchange, and was transferable by delivery. The defender reclaimed, and on 29th November 1864 the Inner House recalled the Lord Ordinary's interlocutor, and remitted to him, before answer, to grant a diligence for the recovery of writings. Several documents were recovered which did not materially affect the case, and the Lord Ordinary, on 27th May last, reported the case.

It was now urged for the defender that he was entitled to a proof *pro ut de jure* of his averments. This was resisted by the pursuers, not so much on the ground that the draft was in the same position as a bill of exchange as on the ground that it constituted an obligation in writing by the defender the effect of which he could not remove by parole evidence.

The Court was unanimously of opinion that before answer a proof should be allowed. A bank cheque was different in many respects from a bill. It did not require a negotiation, had no days of grace, was not transferable by endorsation, and did not prescribe in six years. Nor could it be said, except inferentially, that this was an obligation by the defender. It might have been, for all that appears on the face of it, a mandate to the bank to pay to the defender himself. This was the usual purpose for which bank cheques were used. If proof were refused, then any person who found a cheque might sue the drawer for payment, and compel him to pay unless non-onerosity was proved by his own oath. It might turn out in this case that the defender's statements were unfounded, but it would be satisfactory before disposing of it to know how the facts stand.

INVERNESS AND ABERDEEN JUNCTION RAILWAY CO. *v.* GOWANS AND MACKAY.

Expenses. Objection to the auditor's report, allowing the expense of an Edinburgh agent attending the examination of a witness in London, repelled.

Counsel for Pursuers—Mr Lancaster. Agents—Messrs H. & A. Inglis, W.S.

Counsel for Defenders—Mr Moncrieff. Agents—Messrs Lindsay & Paterson, W.S.

This was an objection to the auditor's report. He had allowed a charge of £54, 2s. to the pursuers' agent for proceeding to London and attending the examination of a witness for the defenders, whose evidence was allowed by the Court to be taken to lie *in retentis.* The examination lasted for four days. It was objected for the defenders that it was unnecessary for the Edinburgh agent to attend the examination, and that a London agent should have been employed. The defenders founded in support of their objection in the case of Armstrong's Trustees (12 S. 510) and Lumsden *v.* Hamilton (7 D. 300). It appeared that the Edinburgh agent for the defenders had also gone to London to attend the examination,

The Court repelled the objection.

The ordinary rule undoubtedly was that a party was not entitled as against his opponent to the expense of such a charge as was objected to. It lay upon the pursuers to justify the charge. In this case the importance and propriety of having an Edinburgh agent was shown by what the defenders had themselves done; and it also appeared from the nature of the examination of the witness, who was a witness for the defenders, that the presence of the Edinburgh agent for the pursuers was necessary.

STODDART *v.* CARRUTHERS.

Parent and Child. Circumstances in which the paternity of an illegitimate child held not proved.

Counsel for Pursuer—Mr Strachan. Agent—Mr James Barton, S.S.C.

Counsel for Defender—Mr Johnstone. Agent—Mr John Galletly, S.S.C.

This was an advocation from the Sheriff Court of Dumfries, of an action of filiation and aliment at the instance of Alice Stoddart against Christopher Carruthers, both residing in the parish of Johnstone, Dumfriesshire. The Sheriff-Substitute (Trotter) decided in favour of the pursuer, but the Sheriff (Napier) altered and assoilized the defender.

The pursuer deponed that the defender was in the habit of visiting her at night, coming into her bed-room by the window, and that he had connection with her in her bed-room twice in July 1863. Her child was born in April 1864. She said that the defender's visits continued with frequency up to November, but that there was no connection after July. There was no proper corroboration of the pursuer's evidence. A man named Robert Jardine deponed that he saw the defender twice go in at the pursuer's window—"at least he was in with his head when he came away and left him." Jardine said he had gone specially to watch the defender, and that he himself had gone in at the pursuer's window and been alone with her in her room about eighteen months before. Another witness, Jessie Thorburn, deponed that she had seen the defender, with his arms around the pursuer one night on the way from Moffat fair. This the defender de-