in respect that they have been put on said roll by the authority of the Sheriff, who is exclusively empowered to make up the roll, and to decide without review all questions arising in regard to the qualification of proprietors of salmon fisheries under the said Act.

"2. *Separatim*, the action is incompetent—(1.) In respect that the Sheriff has decided that the defenders are qualified in terms of the Act, and his judgment is not subject to review. (2.) Or otherwise, in respect that the pursuer was directed and bound by the Act to obtain a judgment from the Sheriff in the first instance upon the question of the defenders' qualification. (3.) Or otherwise, in respect that the Sherift in making up the roll proceeded ministerially in the discharge of a duty entrusted by the Legislature exclusively to him, with his performance of which, in the circumstances set forth by the pursuer, this Court has no jurisdiction to interfere either under the Act or at common law.

"6. The pursuer is barred *personali exceptione* by his recognition of the rights of the defenders, and his concurrence in the election of the defender, Mr Buchanan, as a member of the district board from insisting in the action."

Section 18 of the statute is as follows:—"The Sheriff shall direct the sheriff-clerk to make up a roll of the upper proprietors, and also a roll of the lower proprietors in each district, and the qualification of an upper proprietor shall be the property of a fishery entered in the valuation roll as of the yearly rent or yearly value of £20 or upwards; or if such fishery be not valued on the valuation roll, of half-a-mile of frontage to the river, with a right of salmon-fishing; and the qualification of a lower proprietor shall be the property of a fishery entered in the valuation roll as of the yearly rent or yearly value of £20 or upwards; and the Sheriff shall have power to decide summarily any question arising on any claim to such qualification."

The Lord Ordinary (Jerviswoode) being of opinion that these pleas could not be disposed of without some inquiry into facts, ordered issues. The defenders reclaimed, but the Court to-day adhered.

The LORD PRESIDENT said the case stated here was that one at least of the defenders was not a proprietor of salmon fishings at all. On the other hand he said he *was;* that he had a title to "fishings;" and that that title, fortified by the use of fishing for salmon, constituted a prescriptive right to salmon fishing. But he also maintained that the question could not now be raised, that the statute gave the Sheriff a power which he had exercised, aud that his decision was not reviewable. His Lordship thought the plea as to the Sheriff's judgment being final under the 28th section was altogether untenable. There was a finality only as to matters such as were referred to in that section. But, farther, it did not appear that the Sheriff had pronounced any judgment at all. He had never been called on to exercise any power given him by the Act. No doubt, under section 18, it was provided that if any dispute should arise while the Sheriff-Clerk was making up the roll the Sheriff should have power to dispose of it; but it did not appear that any such dispute arose here. Still there was a plea that there was no way of getting over the judgment of the Sheriff-Clerk but by going to the Sheriff. The Act does not give any appeal from the judgment of the Sheriff-Clerk to the Sheriff. The Sheriff-Clerk is not bound to consult anybody in the course of making up the roll. If he refuses to put anyone claiming on the roll the party may take the judgment of the Sheriff, or a party objecting to a claim may bring it before the Sheriff. That the other heritors had an interest to insist in such an action as this was beyond question; for one object of the Salmon Fishery Act was to assess proprietors for the expenses of management, and a party had surely an interest in regard to the appointment of the body that was to assess him. It was impossible to sustain an objection which amounted to holding that there was no redress against a mistake such as that alleged here, and that the Sheriff-Clerk's procedure could not be corrected. If a party having no title were put on the roll, was not the statute violated? His Lordship could not see why in such circumstances there should be no redress by reduction. As to the plea of homologation by subsequent proceedings, it was said that a mandatory of the present pursuer was present at certain meetings where the defenders appeared and took part in the business, and made no objection to their acting. His Lordship thought that would not constitute a personal bar, the mandate not extending to challenging the right of parties to be members of the Board or to be entered on the roll. On the whole, his Lordship thought it was necessary to inquire whether these parties had the right required by the statute to entitle them to be entered on the roll. What had the Sheriff-Clerk done here? A party produced a title, according to which, *ex facie*, he had no right. The Sheriff-Clerk said he was informed that, though that title was only a title to fishings, the defenders had really been exercising for the prescriptive period a right of salmon fishing. If the Sheriff-Clerk were to take such a matter on the mere statement of a party, anyone might be enrolled. There was nothing before the Sherifi-Clerk, so far as could be seen, to show that the title constituted a right of salmon fishing. Hence the matter should be inquired into. The Lord Ordinary had ordered issues; but the pursuer wished proof by commission, and it seemed better that the proof should be taken in that way.

Lord CURRIEHILL and Lord ARDMILLAN concurred.

Lord DEAS concurred to the extent of refusing the reclaiming note and adhering to the Lord Ordinary's interlocutor, but thought he was not called on to give any opinion at this stage as to several important questions disposed of by their Lordships. There were difficulties arising from the vagueness of the Act. It was not easy to discover what were the functions of the Sheriff-Clerk, or how they were to be exercised. Were his powers judicial or ministerial? It was difficult to see how these questions were competently before the Court, if they were not before him; and it was just as difficult to see how the Sherift-Clerk was to take a proof as to forty years' possession before making up the roll. As to the question of personal bar, it was also desirable to know the facts.

MITCHELL *v.* ADAM.

Landlord and Tenant. An application by a landlord for interdict against his tenant removing from his farm or selling the straw and fodder raised and grown on it *refused*, there being no steading or offices on the farm.

Counsel for Advocator—Mr Patton and Mr Clark. Agents—Messrs Baxter & Mitchell, W.S.

Counsel for Respondent—Mr Fraser and Mr Harry Smith. Agent—Mr John Henry, S.S.C.

This was an advocation from the Sheriff Court of Aberdeenshire. The advocator, Mr Mitchell of Thainston, applied by petition to the Sheriff to have the respondent, George Adam, who was his tenant, interdicted from selling and disposing of or removing from the ground of his farm, during the currency of his lease, the straw and fodder raised and grown on the farm or any part thereof. The ground of the application was that the tenant was bound to consume the straw and fodder grown and raised on the farm in conformity with the rules of good husbandry, and not to sell it, which he threatened to do. The defence was that as there was no steading and offices on the farm whereby the grain might be manufactured and the fodder consumed, the application for interdict was unwarranted. The Sheriff-Substitute (Watson) refused the petition. In his note he observed:—

"The petition prays that the respondent may be interdicted from selling or removing, or allowing anyone to carry away or remove, the straw and

fodder raised on the farm of Shangiemuir, of which he is tenant under a thirty years' lease. The farm appears to have been heath, and brought under cultivation by the respondent. There is no house or steading upon it, and no means, therefore, of separating the grain from the straw or consuming the fodder.

"It is said in the condescendence that the respondent is tenant of an adjoining farm on which there is a steading; and it seems to be inferred that the respondent may carry his crop to that farm, thrash it, and consume the fodder there, and cart the manure back to Shangiemuir. But the prayer of the petition, if granted, would prevent this; and the respondent by his lease was only bound, after improving the land, to keep it in good heart and condition, and under a regular system of rotation and cropping. If is not said that this has not been done; but it is alleged that by the rules of good husbandry the tenant is bound to consume the straw and fodder raised on the farm. This is true in the ordinary case, but how is it to be done when there is neither barn or byre on the place? The respondent has never been asked to do it till now; and as it cannot be done, the prayer of the petition must be refused."

The Sheriff (Davidson) on appeal adhered, and the Court to-day, after hearing Mr Clark for the landlord, refused an advocation of the Sheriff's interlocutors.

Friday, March 30.

MACALISTER *v.* LIVINGSTON.

Parent and Child. Circumstances in which held that the pursuer of an action of filiation had failed to prove the paternity alleged by her.

Counsel for Pursuer—Mr Brand. Agent—Mr Alexander Thomson, S.S.C.

Counsel for Defender—Mr Trayner. Agent—Mr P. S. Beveridge, S.S.C.

This is an action of filiation and aliment advocated from the Sheriff Court of Lanarkshire. The Sheriff-Substitute (Logie) assoilzied the defender, holding that the pursuer had failed to prove the paternity libelled, but the Sheriff (Alison) altered his Substitute's interlocutor. The Court to-day unanimously altered the Sheriff's judgment, and reverted to that of the Sheriff-Substitute.

The Lord President said—This is a case of filiation. The pursuer having given birth to an illegitimate child, asserts that the defender is the father. She says so on oath, and that the defender is the only person with whom she ever had connection. She had told a similar story to a person in whose house she was living at the time of the birth. But her own statement is not enough, and we have therefore to see whether she is corroborated. There is no doubt that the pursuer was living in the defender's house, and was often in his room at night rubbing his limbs, so that there was opportunity. But this is not sufficient, although when coupled with previous familiarity and the pursuer's evidence it is generally conclusive. The defender denies that he is the father, and states a number of circumstances which really form the strongest evidence we have of the opportunity I have referred to. These might be regarded as sufficient evidence of familiarity also had there not been explanations by the medical man examined as to the illness the defender suffered from, and for which he had prescribed friction. There were also circumstances in regard to the position of the parties which make it not very presumable that there was connection. The defender was a relation of the pursuer, and had given employment to different members of her family. He also seems to have taken a sort of charge of the pursuer and her sister, whose parents lived in the Highlands. The corroborative circumstances are very few indeed beyond the opportunity which, as I have said, is explained without reference to any improper design. The fact that the pursuer has produced a child proves that she had connection with somebody, but nothing more. In regard to the pursuer's credibility there are circumstances disclosed which tend to shake in some degree one's confidence in her. There is a story about a person of the name of Ramsay being probably the father of her child. I don't say he was the father, but it is clear that the pursuer had represented that he had been in the house one night, and appeared close to her bed and given her a fright. Some witnesses go further, and say that she had said that he had been in her bed. It is also pretty clear that her father, mother, and sister had at one time been under the belief that Ramsay had been the author of her pregnancy. Whence did they derive that impression? It is said the father derived it not from the pursuer, but secondhand from her sister, and the sister says she only inferred it from what the pursuer told her. It is therefore clear, at all events, that the pursuer had given her family to understand that Ramsay was the father. She did so down to a comparatively late period. It is said there was no ground for making the accusation if another was really the father. It is difficult to get at a party's motives, but it is pretty clear that the pursuer and her friends were not on very good terms with the defender. She had had disagreements with him, and there was a strong feeling of enmity towards him on the part of her parents, not on account of his being the father, but because he allowed her when in his house to get into the condition she did. All this ultimately settled down into an accusation against the defender. On the whole, I think there is not sufficient corroboration of the pursuer, and that the case has not been established against the defender.

ROBERTSON *v.* THOMSON.

Proof—Sheriff—Remit. In an action for payment of a builder's account, the defence to which was that it was overcharged, held (1) that the Sheriff had competently remitted the account to an architect although the defender objected; (2) that the report was not conclusive; but (3) that it was just.

Counsel for Pursuer—Mr Patton and Mr Balfour. Agent—Mr Henry Buchan, S.S.C.

Counsel for Defender—The Lord Advocate and Mr Watson. Agent—Mr L. M. Macara, W.S.

This was an advocation from Forfarshire. The pursuer sued for £26, os. 11d., being the balance of his account, amounting to £576, os. 11d., for executing the mason work of a house in Dundee for the defender, including extra work. The Sheriff-Substitute (Ogilvy) made a remit to Mr M'Laren, architect, to report what sum, if any, was due to the pursuer under his contract, the sole point in dispute being one as to actual measurement. This interlocutor was adhered to by the Sheriff (Heriot). The architect reported that there was an overcharge of £6, 19s. 4d., and that the sum due to the pursuer was £19, 1s. 7d., for which sum, with modified expenses, the Sheriff-Substitute decerned against the defender. In the course of making up the record the pursuer had admitted an overcharge to the extent of £6, 13s. 6d. The Sheriff adhered. The expenses were afterwards modified to £35, and to this also the Sheriff adhered.

The defender advocated, and pleaded that the remit to the architect having been opposed by him, was incompetent, or, at all events, that it could not be held as conclusive against him; and, further, that the modification of the expenses was insufficient in the circumstances. The pursuer argued that the remit was competent, and also that the report was conclusive.

The Court unanimously repelled the reasons of advocation, holding that the case was a very proper one for making the remit which was made, but that the report was not necessarily conclusive. They found, however, that the report did ample justice to the defender. Additional expenses were found due.