

The Court therefore ranked and preferred Mrs Muir to the fund *in medio*, and found her entitled to expenses.

Agents for Mrs Muir—Neilson & Cowan, W.S.  
Agent for Executors—George Cotton, S.S.C.  
Agents for Next-of-Kin—Grant & Wallace, W.S.

#### UNION BANK *v.* ROSS.

*Fixing Trial.* A pursuer having given notice of trial for the July sittings, and the defender having moved the Lord Ordinary to fix a day for the trial before himself—trial fixed for the sittings.

Issues in this case were adjusted before the Lord Ordinary on 12th June. On the 14th the pursuers gave notice of trial for the July sittings. The defender to-day moved the Lord Ordinary to fix a day for the trial before himself. The Lord Ordinary reported the case.

MILLAR, for the pursuers (with him LEE), argued that they were entitled to the lead for ten days after the adjustment of issues. They had given notice for the sittings, which would take place in five weeks. He cited *Faulks v. Park*, 16 D. 93; and *Bell v. Anderson*, 24 D. 603.

PATTISON, for the defender (with him F. W. CLARK), answered—The case is a short one, and will be conveniently tried before the Lord Ordinary. The second meeting for the adjustment of issues took place on 6th June, when the Lord Ordinary pronounced an interlocutor reporting them; but the pursuers thereafter gave up an issue which they had proposed, and the issues were then approved of.

The LORD PRESIDENT—There is very little time to be gained by having the trial before the Lord Ordinary, and I think there is good reason for depriving the pursuers of their lead.

The trial was accordingly fixed to take place at the sittings.

Agents for Pursuers—Mackenzie & Kermack, W.S.

Agent for Defender—James Paris, S.S.C.

### SECOND DIVISION.

#### BAIN *v.* MATTHEWS.

*Agreement—Sale—Proof.* The pursuer alleged that under a verbal agreement the defender had agreed to take from him at a valuation the furniture of a mill of which he was tenant, and brought an action for the value thereof—*Held* that the agreement was not proved.

This was an advocacy from the Sheriff Court of Aberdeenshire, and involved a simple question of fact. The pursuer (advocator) sued the defender for £108, 16s. 6d. sterling, being the value of mill machinery, and gearing, mill and barn furniture, household furniture, implements, pailing, and other effects belonging to the pursuer, in and about the Mill of Sclattie, and cottage and office-houses attached thereto, and alleged to have been sold by the pursuer to the defender, on or about the 31st of May 1864, according to the valuation of parties mutually chosen. The pursuer was tenant of the Mill of Sclattie, under a sub-lease till Martinmas 1864. Previous to that, and at the preceding term of Whitsunday, the defender had obtained from the landlord a lease of the Mill of Sclattie for 19 years, commencing as at Martinmas 1864. The pursuer was willing that the defender should get possession of the mill at Whitsunday; and he says that he met the defender on the subject, and agreed with him that he should take

the machinery, gearing, &c., of the mill, at a valuation to be put upon them by valuers mutually chosen. The pursuer alleges that this was done, and the subjects handed over to the defender. He accordingly sues the defender for the price of the valued subjects. The agreement set forth by the pursuer was denied by the defender, who said that the contract was that the defender should pay £15 for the use of the mill-gearing, &c., for six months, being the period of the pursuer's yet unexpired lease. A proof was led.

The Sheriff-Substitute (Watson) found the pursuer's case proved, and decerned.

The Sheriff (Davidson) altered. The pursuer advocated.

GORDON and MAIR supported the advocacy.

A. R. CLARK and KEIR argued that the Sheriff's judgment was well founded.

The Court adhered to the judgment of the Sheriff.

Lord COWAN dissented, holding that the facts instructed the view of the case taken by the Sheriff-Substitute.

Agent for Pursuer—James Finlay, S.S.C.

Agents for Defender—Webster & Sprott, S.S.C.

#### SCOTT *v.* HOGG.

*Parent and Child—Paternity—Proof.* Circumstances in which held that the pursuer of an action of filiation and aliment had failed to establish the paternity.

This was an advocacy from the Sheriff Court of Roxburghshire. The pursuer (advocator) sued the defender for the aliment of twins, of which she alleged he was the father. A proof was led in the course of which the pursuer swore that the defender was the father of her children, and the defender denied that he had ever had connection with her. There was no corroboration of the pursuer's testimony, and no evidence of familiarities. The defender produced with his defences a letter, which he said he had received from the pursuer in answer to one which he had written to her in consequence of rumours which had reached him that she was with child to him. The letter was dated six weeks before the birth of the children, and was as follows:—

“Sunlaws Mill, April 16.

“Dear Thomas,—It is with grief that I have to write to you, but I have to do it. You know as well as me I can't keep people from saying; but I never said it was yours, for I know different. My father was down, and he told me he would not let me home, so you need to believe what no one says; for I never said no such thing. I am to lodge in Heiton or Roxburgh, and my way will be paid without you; so you have nothing to do with me and my affairs.—Yours truly,

“MARY SCOTT.”

The pursuer denied that she had written this letter, and alleged that it was a forgery.

The Sheriff-Substitute (Russell), chiefly on the ground that he was satisfied that the above letter was not written by the pursuer, found her case proved.

The Sheriff (Rutherford) recalled this interlocutor, and assozied the defender.

On advocacy, the Lord Ordinary (Ormidale) adhered to the Sheriff's judgment, and explained his reasons in the following

*Note.*—Whatever may be thought of this case otherwise, and whatever doubt may be supposed to attend it, certain it is, at least, that one or other of the parties must have sworn falsely—unfortunately a too common feature of such cases as