

act, the consciousness of which he had become aware of after having committed it.

Dr Duncan, Dundee—I saw the prisoner first on the 28th October in a cell in the prison. I visited him in the ordinary course of duty, being surgeon for the prison. He was very much excited. He was walking about the cell, and appeared quite like a maniac. In conversation, he told me was in for assaulting his sister. I asked him why he had done so, and he said they were all much against him, and had put him in, the asylum without any cause. I asked him if he was sure it was a poker he used, and he said that he remembered quite well taking the poker and striking his sister with it. If she died, he said, he wished to be hanged; he gave himself up to the police for that purpose. I saw he was a complete maniac, labouring under delusions. One of his delusions was that he had been put into the asylum without any cause. He said that he had been carried to Lochee, and he said that he thought he was in his right mind, and he was despised and looked down upon by every one without cause, and that he was possessed of the devil. He said that the devil had taken possession of him, and that he could not get the devil out. I said I would send the chaplain to him, but he said the chaplain would do him no good, and that he wanted a revival preacher. I had no doubt whatever that he was under delusions. There was no feigning in him. I saw him again on the morning of the 29th. He was calmer, but still excited, and still under delusions. He was talking always about being hanged, and said he wished to be hanged. My opinion of him was such as to lead me to give a certificate that he was not fit to be examined at that time. I continued to visit him. I have seen him almost daily up till two days before he left the prison. My opinion of him up to last Tuesday is that he has come to his proper senses; that he knows the crime he has committed, and seems very sorry for it. His restoration has been gradual and progressive; it has been persistent. There have been no variations in his condition. There has been an improvement daily; but he is reluctant to enter much into conversation. He feels dull and melancholy—or rather morose; and he does not like religious topics alluded to now. I suspect that he has still some slight religious delusions.

Cross-examined—On the morning of the 27th I don't think he knew what he was doing. He committed the deed, I think, under a sudden impulse—such an impulse that he could not resist what he was doing. Such sudden impulses are likely to occur in a person subject to religious mania, or to homicide or suicide. They are generally very impulsive, and give no warning, and may occur at any time without any quarrel between the parties. Generally, their own relatives are the parties that they take the greatest dislike to.

John Guthrie Smith, Sheriff-Substitute at Dundee, examined for the defence, stated that the prisoner was brought before him on the 29th October, and that he received medical testimony as to whether he was fit to be examined. The state of the prisoner's mind was entirely a medical question; and the testimony was that he was not in a fit state to undergo examination, and accordingly he was not examined.

The SOLICITOR-GENERAL then briefly addressed the jury, stated that there could be no doubt that when the unfortunate young man at the bar committed this sad and melancholy crime he was not

a responsible agent. His insanity had been fully established, therefore the result would be that the prisoner would be acquitted; but at the same time the jury would find that the prisoner was not guilty because he was insane at the time the deed was committed. The terms of the verdict would be, that the things set forth in the indictment were done, but that the prisoner was insane; and that, in consequence of his insanity, he was not guilty.

The LORD JUSTICE-CLERK, addressing the jury, said they would, of course, find a verdict as had been suggested by the Solicitor-General. It must be obvious to them, from the overpowering evidence led to them, that the unhappy young man at the bar committed this great crime at a time when he was not in a sound state of mind, and therefore he must be acquitted, but under such a finding as should secure society from the repetition of the offence. They would therefore find the panel not guilty, and acquit him of the crime charged against him, on the ground that he was insane at the time the crime was committed. That was the verdict authorised by the Act of Parliament.

The Foreman of the Jury read the verdict as follows:—"The jury find the panel not guilty; therefore acquit him of the crime charged against him; and the jury specially find that the panel was insane at the time of committing the crime charged, and declare that he was acquitted by them on account of such insanity."

The Court pronounced sentence in the following terms:—"In respect of the above verdict, the Court find that the panel is not a proper object of punishment, and therefore assolvit him *simpliciter*; and farther, in terms of the provisions contained in the 88th section of the Act 20 and 21 of her present Majesty, chapter 71, order the panel to be held in strict custody in the prison of Dundee until her Majesty's pleasure be known. Meantime, grant warrant for his detention in the prison of Edinburgh till his transmission to the prison of Dundee aforesaid, for which likewise grant warrant to all concerned."

Crown Agent—T. G. Murray, W.S.

Agents for Panel—D. Milne, S.S.C., and J. A. Swanston, Solicitor, Dundee.

## COURT OF SESSION.

Tuesday, December 3.

### SECOND DIVISION.

WINK (SPEIRS' TRUSTEE) v. DOUGLAS  
SPEIRS.

*Trust—Act 1696—Ex facie absolute disposition—Creditors—Fraud—Writ or oath—Prout de jure.* Circumstances in which held (LORD COWAN diss.) that a latent trust could be proved contrary to the provisions of the Act of 1696 *prout de jure*, the Act binding one of the parties to the alleged trust himself, but not creditors alleging that the trust had its origin in a fraudulent attempt to defeat them of their rights.

This was an action at the instance of the trustee on the sequestrated estate of the late Robert Speirs, sometime plumber in Glasgow, against Douglas Speirs, brother of the said Robert Speirs; and the object of the action was to recover for the creditors of the deceased the *pro indiviso* half of certain subjects in Glasgow held under an *ex facie* absolute

title by the defender, but said to be so held by him in trust for the deceased.

The pursuer's allegation was, that in November 1856 the defender and the deceased purchased, as a joint adventure, certain house property in Richard Street, Glasgow, the price being paid between them in certain proportions; that when this purchase was made, Robert Speirs was to some extent involved with certain parties in Glasgow, who were engaged in building speculations attended with considerable risk; and that, for the fraudulent purpose of keeping the property from the creditors of the said Robert Speirs, in the event of his becoming bankrupt, it was arranged between him and the defender that the title should be taken in the meantime in the defender's name.

The defence was a denial of the pursuer's statement; an allegation that the money paid by Robert Speirs toward the purchase was a loan which had been long since repaid; and pleas, *inter alia*, to the effect that the pursuer's averments could only be proved by the writ or oath of the defender.

The Lord Ordinary (JERVISWOODS) held that, although in the general case an averment of latent trust could only be proved by writ or oath, as required by the statute of 1696, yet that where fraud was alleged, proof *prout de jure* was competent. His lordship, therefore, ordered issues.

The defender reclaimed.

YOUNG and SCOTT for him.

CLARK and SHAND in answer.

The Court adhered, substituting, however, an order for proof under the Evidence Act for the order for issues.

Their Lordships thought that, while the Act of 1696 was effectual against one of the parties to a latent trust who sought to prove that trust otherwise than by writ or oath, it was not effectual against creditors of such a party alleging that the trust had its origin in a conspiracy entered into for the purpose of defrauding them or their predecessors.

Lord COWAN dissented, holding that the Act of 1696 would have limited the proof in a question with the party himself; that creditors could have no higher right than their author in such a matter as the mode of proof; and, at all events, that whatever might be the rights and privileges of creditors at the time of the transaction, their rights and privileges could not extend to parties who did not become creditors till long afterwards.

Agents for Pursuer—Ronald & Ritchie, S.S.C.

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

Wednesday, December 4.

## FIRST DIVISION.

WHITE V. GRIEVE.

Auditor—Counsel's Fees—Agent—Jury Trial—Postponement of Trial—A. S. 16th Feb. 1841.

Where a trial was postponed on payment by defender of expenses incurred by pursuer in consequence of delay of trial in terms of A. S. 16th Feb. 1841, sec. 25, the Court allowed, as a proper expense—(1) consultation fee to counsel; (2) agent's fee for attending consultation; and (3) half fee to agent for preparing for trial.

This was a note of objections to the auditor's report on the pursuer's account of expenses incurred in

consequence of the delay of the trial by the defender. The case was set down for trial on 8th April 1867. It was called on 12th April, on which day this interlocutor was pronounced:—

“The Lord President having heard counsel for the parties on the defender's motion to postpone the trial in this cause, in respect the defender, from the absence of a material witness for him, cannot go on with the trial this day—Of consent of the pursuer's counsel postpones the trial, and discharges the notice of trial for the present sittings, upon payment by the defender to the pursuer of such expenses as shall have been incurred by him in consequence of the delay of the trial, in terms of the 25th section of the Act of Sederunt, 16th February 1841.”

An account of expenses was given in by the pursuer, and was taxed by the Auditor. The pursuer gave in a note of objections to the Auditor's report in so far as he had taxed off and disallowed—(1) a charge of 10s. on 26th February and 6th and 8th of March for informing the local agents of the notice of trial, &c.; (2) signed copy of the letters of first and second diligence to cite witnesses, 3s.; (3) letters to local agents and attendance on counsel as to consultation previous to trial, 10s.; (4) borrowing process to prepare for trial, and agent's fee for preparing for trial on 5th April, £3, 7s.; (5) the fees for instructing counsel for consultation with a view to trial, the fees sent them for consultation, and relative letters to local agents, £17, 9s. 8d.; (6) the fees for attending consultation, 13s. 4s., attendance in Court on 8th April and subsequent days, &c., in all, £2, 3s. 4d.; (7) fees to counsel for second consultation in respect of counsel returning papers and new counsel having to be instructed £16, 17s. 8d.; and (8) sums struck off fees sent to counsel for trial, £7, 14s. 3d. Objections were also taken to the disallowing of items connected with certain letters and payments to witnesses.

The Court, after hearing counsel for the pursuer on his note of objections, remitted to the Auditor to consider the note of objections and to report thereon, particularly with regard to any practice of allowing or disallowing such charges as are therein set forth.

The Auditor reported, *inter alia*, as follows:—

“4. Agent's fee for preparing for trial, including borrowing process, . . . . . £3, 7 0

“This charge has been disallowed *in toto*, on the ground that it must (according to the practice which has prevailed) be regarded as still available for the trial when that shall take place. It may be that if the trial be long delayed, the agent may require to some extent to renew his preparation; but were the Auditor taxing the expenses of process under a general finding of expenses, he could allow only one charge for preparing for trial at whatever stage the same might be entered. The charge in the table is:—“Perusing record, productions, and precognitions, &c., before trial, and preparing for same from 13s. 4d. to £3, 3s., according to the time occupied and importance of the case.” As a matter of taxation, the Auditor may remark that he does not regard this as a case for the highest charge which the agents have adopted.

“5. Consultation fees, including counsel's and agents' fees, and communications with Glasgow agents, . . . . . £17 9 8

“It is not usual to allow as against the unsuccessful party more than one consultation with counsel