

Supposing that were done, does it simply mean that they are to be called before him in order that they may state how far they are prepared to agree on certain matters of fact or not? Is there any reason for calling on the Court to give such a direction? Is it not necessary that a party who desires that there shall be such a meeting with such a purpose, should ask Mr Pearson to direct such a meeting to be held? Nay, more, I think that in such a case if a party considers that admissions may be made which will go greatly to save time and trouble, he should tender the form of the admissions which he requires the other party to make, and specify those matters on which, with a view to facilitate the further progress of the cause, he thinks they may be fairly called on to make admissions. So far as I understand, nothing of that kind has been done here, and we are asked to prevent what must be assumed to be a wrong course, and to call on Mr Pearson to do what would probably not facilitate matters, but which may be done otherwise without our interference. With respect to the proposition to conjoin an accountant with Mr Pearson, your Lordships have already expressed your opinions in terms which make it totally unnecessary for me to say anything; and on the whole matter I quite concur with your Lordships in thinking that in the circumstances there is nothing calling for this note, and that it should be refused.

Note accordingly refused.

Agents for Pursuers—Morton, Whitehead, & Greig, W.S.

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

Thursday, July 9.

#### SWAN'S EXECUTORS v. M'DOUGALL.

*Donation—Deposit-Receipt—Indorsation.* Circumstances in which held that donation had been proved of the contents of a deposit-receipt.

In this action the executors of the deceased Miss Swan of St Andrews, seek to recover from the defender, her nephew, the sum of £829. The following are the material averments of parties. The pursuers say:—

“The defender for a considerable time before the death of the testatrix resided with her at St Andrews. He was a grand-nephew of the deceased; and from that relationship, and from his residence with her, he was intrusted by her occasionally with the transaction of business on her account, the deceased being unable, from age and infirmities, to attend personally to her own affairs. The defender, in particular, on several occasions during his residence with deceased, did, upon her employment and on her account, draw the interest upon the sum held by her on deposit-receipt as after mentioned, and re-deposit the principal, or part thereof, upon new receipts, in her name. The deceased, in 1866, held a deposit-receipt for the sum of £815 granted in her favour by the Bank of Scotland, and payable at the branch of that bank in St Andrews. The sum in said deposit-receipt had been originally, in 1862, £1000; but the original sum had, with the interest thereon, been frequently uplifted, and had been re-deposited upon new receipts in name of the deceased, under deduction of interest and of certain sums of principal, so as ultimately, in 1866, to reduce the principal sum to the said amount of £815.

On or about the 7th day of September 1866, the defender uplifted and received from the said branch at St Andrews the contents of the said deposit-receipt, being £815 of principal and £14 of interest—in all £829—the amount now sued for. The defender was, on the date last mentioned, residing with the deceased as aforesaid. The deceased had, on or shortly before the said 7th day of September 1866, indorsed her said deposit-receipt, and intrusted the defender with the same, to be used by him as her mandatory, solely on her account, and for her own behoof, and not for the purpose of making any gift, transference, or bequest of the contents to the defender. The deceased's intention, as the defender well understood was that her right of property in the contents of the said deposit-receipt should remain unaffected by the said indorsation and delivery to him. The particular object which the deceased had in view in so indorsing her deposit-receipt, and her instructions to the defender were, that he should transact for her the business of uplifting the contents, principal and interest, of the said deposit-receipt, and re-depositing the same in a new deposit-receipt in her favour for the accumulated sum. If the interest or any part of the contents of the said receipt were not so re-deposited, the deceased expected and instructed the defender to pay her the sum retained, and to procure and hand her a new deposit-receipt in her favour for the balance.”

The defender, on the other hand, made the following statement:—“Besides the heritable properties referred to, Miss Swan held a deposit-receipt in her favour by the Bank of Scotland for the sum of £815, and this sum she resolved to transfer to the defender during her life. Accordingly, on or about 7th September 1866, she indorsed the said deposit-receipt, and delivered it to the defender as a gift to him. She told him to uplift the amount, and put it into the bank in his own name; and she at the same time expressed her regret that she had not more to give him. The defender went thereafter to the bank; and having obtained payment of the contents of the receipt, he re-deposited the amount in his own name. He then showed Miss Swan, at her own request, the deposit-receipt in his favour, when she expressed her satisfaction at what had been done. The money so transferred to the defender thereby became, and was thereafter exclusively dealt with as, his own property. Miss Swan, on various occasions, informed her friends and neighbours that the transference had been made by her.” And he pleaded:—“The foresaid deposit-receipt in favour of Miss Swan having been indorsed and delivered by her to the defender as a gift to him, the said receipt and the contents thereof were thereby transferred to him and became his property. The amount of the said deposit-receipt having been received and uplifted by the defender, and re-deposited on a receipt in his own name, at the desire and with the knowledge and sanction of the deceased, as a gift to him, a complete and irrevocable right thereto was thereby acquired by the defender.”

The Lord Ordinary (ORMIDALE) pronounced the following interlocutor:—“The Lord Ordinary, having heard counsel for the parties, and considered the argument, the proof, and whole proceedings, finds it proved as matter of fact, that on the 7th September 1866, the sum of £815, belonging to the now deceased Ann Swan, lay deposited with the branch of the Bank of Scotland at St Andrews, on deposit-receipt by said bank in her favour; and that, on or about

said date, said sum was drawn and uplifted by the defender, along with £14 of interest which had accrued thereon, making together the sum of £829, the amount now sued for, and has ever since been retained by him, and not accounted for either to Miss Swan or any party in her right. Finds that it is alleged by the defender that Miss Swan authorised and directed him so to draw and uplift said sums, and to retain the amount as a gift or donation by her to him, but finds that this has not been proved: Finds, therefore, in these circumstances, that the defender is bound and liable to pay to the pursuers, as executors of Miss Swan, the said sum of £829, with interest as libelled, and decerns against him therefor accordingly in terms of the conclusions of the summons. Finds the pursuers entitled to expenses, allows an account thereof to be lodged, and remits it when lodged to the Auditor to tax and report."

*Note*—"On the assumption that the sum sued for was given by Miss Swan to the defender as alleged by him, she must have thereby divested herself of everything she had in the world—of her whole means of support. There is certainly no presumption, in the absence of evidence on the subject, that she or any one else would so act. Every reasonable and natural presumption is the other way. But it is possible that Miss Swan may have given away the money referred to, notwithstanding that she had no other means of subsistence; and as she had the right to do so, if she pleased, the question whether she actually did so depends for its solution on the proof, of which a good deal has been adduced for both parties.

"The Lord Ordinary has, notwithstanding the able argument addressed to him on behalf of the defender, come to the conclusion that Miss Swan did not make over her money as a gift or donation to the defender, as alleged by him; and, having regard to the whole proof and the position and appearance of the witnesses, he has no doubt that the same result would have been come to, probably without much difficulty, had the case been tried by a jury.

"The evidence bearing on the disputed question favourable to the defender consists—besides his own and Mrs Arbuckle's testimony, to the effect that Miss Swan deliberately indorsed the deposit-receipt and handed it to the defender, telling him to change it into his own name as a present or gift from her—of proof that she always entertained great affection for him, in return for his devoted attention to her, that she often expressed her determination that he should have all her means and estate of every description, and that she stated to various persons during the time between the 7th of September 1866 and her death on 30th August, 1867, that she had actually given him all her money. On the other hand, the case and evidence relied on by the pursuers consists—besides the improbability that Miss Swan would during her life divest herself of everything that she possessed in favour of the defender or any one else—of statements made by her to various persons, to the effect that she had never given her money to the defender, but that he, taking advantage of her inability to protect herself, being ninety years old and bed-ridden, had most improbably uplifted the money she had deposited in bank, and taken a new receipt for it in his own name. And the pursuers also rely much on the real evidence arising from the acts and conduct of Miss Swan, as well as of the defender himself, subsequent to the time when it was

said the latter had got all her money, and especially on the real evidence arising from the terms of the settlement or codicil executed by Miss Swan on 2d October 1866, and which are to some extent irreconcilable with the notion that she had about three weeks previously divested herself of her whole means and estate, and had in reality nothing left that could be the subject of such a codicil or settlement.

"The Lord Ordinary thinks that the evidence adduced for the pursuers greatly preponderates in weight and influence over the evidence for the defender.

"Without entering into any minute analysis of the proof, the Lord Ordinary may notice the following features of it, which appear to him to be of importance. The evidence for the defender is exposed to the observation of being inconsistent in itself, and in several essential particulars directly contradicted by witnesses for the pursuers on whom reliance may be placed. For example, while the defender himself says (print of proof, pp. 32, 33) that Miss Swan gave him the deposit-receipt in order that he might get it changed into his own name, and that the contents might be wholly his, he goes on to state that he brought some of the money, £29, and gave it to Miss Swan, that she took it, and afterwards gave him back £5. Pringle again, who framed the codicil, makes a variety of statements about Miss Swan's money (printed proof, p. 51) which it is impossible to reconcile. Forbes, besides other objections to the weight of his testimony, exposes himself to the observation, that while he is quite positive (printed proof, p. 56) that Miss Swan had a paralytic shock before her death, which distorted her features, and rendered her totally unfit for business of any kind, he is in this respect completely contradicted by Dr Bell, her medical attendant, as well as other witnesses adduced both for the pursuers and the defender. Mrs Mitchell, while she says (print of proof, p. 64) that Miss Swan told her she had given to the defender 'all her money, and that she was not worth a sixpence,' also says (p. 65) that she had not seen Miss Swan for about a twelvemonth before her death; although it was within a twelvemonth previous to her death that the defender uplifted Miss Swan's money. Then there is Hugh Macleod, who says that both the defender and Miss Swan had some conversation with him the very day she had given her money to the defender, and yet he states that the harvest was then nearly finished, and that it was dark at seven o'clock in the evening, which it could not have been on the 7th of September. Several of the defender's witnesses also, besides Forbes, concur in stating that Miss Swan was insensible, and unfit for business, at a time when her medical attendant, Dr Bell, her agent, Mr Woodcock, and the attesting witnesses to her last deed of settlement directly contradict them.

"Having regard to these considerations, taken in connection with the evidence adduced for the pursuers, and the presumptions and probabilities fairly arising in the case, the Lord Ordinary has been unable to arrive at any different conclusion from that given effect to in his interlocutor.

"The Lord Ordinary has only further to add, that his judgment has proceeded on a consideration of all the circumstances of the case as they have been disclosed in the proof on both sides, without being much influenced by the question on whom the *onus probandi* lay. At the same time, however, that question may be held to have been treated by him

in the present case, as it appears to have been determined in the somewhat analogous cases of *Henderson v. M'Callum*, 12th June 1839, 1 D. 927, and *Mackellar v. Hunter*, 5th March 1858, 20 D. 761."

The defender reclaimed.

FRASER and STRACHAN for him.

GIFFORD and R. V. CAMPBELL for defender.

At advising —

LORD JUSTICE-CLERK—We have in this case to determine the matter of fact, whether on the 7th September 1866 the deceased Miss Ann Swan made a donation to the defender of the sum of £800, previously deposited in her name in the Bank of Scotland Branch at St Andrews.

The statement of the defender is, that on the morning of that day the deceased, who was lying bedridden in a part of a room where there was scarcely any daylight; called for a candle, indorsed a deposit-receipt in her name, which was for a sum of £815, and on which £14 of interest was due, gave him the receipt, and said to him, "There it is to you, to yourself;" and directed him to go and put it in his own name. That he did so; replacing the £800 in the Bank, on a deposit-receipt in his own name. That he took the odd money, which may be assumed to have been required for the house, and gave it to Miss Swan. That, on his return, she asked him if he had done what she had told him to do. That immediately upon his return from the bank, she called for a candle, looked at the receipt, handed it back, saying, "There is a present for you, and I am sure you will never see me want;" and he further states that after receiving his assurance to that effect, she expressed her regret that she had not more to give.

This statement of the defender is substantially corroborated by Mrs Arbuckle, the person then acting as Miss Swan's housekeeper. The bringing of the candle; the signing of the deposit-receipt; its delivery, with words of direction to deposit the money on a receipt in his own name; her examination of the receipt on his return from the bank, and her distinct approval; are all sworn by this witness. Her statement as to the words of approval is not the same as that spoken to by the defender. Nor does she speak to the defender's affirmation of her assurance that he would never let her want. But the statements are substantially the same, and the variations in the narrative are not greater than might be looked for from truthful witnesses, while the fact of the variation occurring gives fair reason for the inference that the parties are not telling a concocted and false story.

This evidence, clear and consistent as it is, is open to observation from the plain interest of one witness, and the probable partiality of the other. A transaction of such a nature, in order to be satisfactorily made out, requires, from its very nature and its inherent improbability, to be substantiated by strong corroborative testimony. The defender affirms that he has done so by establishing both of two propositions. First, that before making this gift, Miss Swan expressed her intention and resolution to make it; and secondly, that after the date on which it is said to have been made, she did repeatedly and distinctly state to numerous parties that she had in point of fact done the act, and done it under the clear consciousness of its effect upon her own financial condition.

The expression by Miss Swan of an intention previous to the actual gift to make that gift to the defender, and the statement of the intention having been actually carried into effect, are spoken to

by three witnesses—Forbes, Mitchell, and Hay—with more or less of circumstantial detail. The first of these persons was a gardener, who was employed to work on the ground that belonged, or had belonged, to Miss Swan, and saw her, he says, almost daily; the second is a shoemaker, a friend and visitor of the deceased; and the third a miller, also a friend and visitor. The evidence of Hay, so far as concerns Miss Swan's intention having been expressed to make the gift before actually making it, comes out on the examination by the Lord Ordinary, and dates the period of the expression of intention at a time in the summer of 1866, when the defender was absent on a visit to his friends in Argyleshire,—coinciding in this particular with Forbes, who says that she expressed her intention to him at that very time. Mitchell speaks to the frequent expression of intention, but is unable to fix the time with precision. I am unable to resist the conclusion that the defender has proved the first proposition, and that the deceased had, prior to the date of the alleged gift, actually expressed her previous intention to make the gift. It is difficult to refuse credence to a statement made by three witnesses naturally thrown into communication with the deceased,—having no apparent tie to the defender,—and having no conceivable motive to tell what is untrue.

The fact of Miss Swan having stated, after the alleged gift, that she had given the defender the money, is attested by a very numerous body of witnesses. Besides the defender, fourteen witnesses are called for the defence, and of these fourteen, thirteen attest the fact that the deceased told them that she had given the defender this money. An observation was addressed to us by Mr Campbell deserving much consideration, that "giving," in a popular sense, did not mean, or might not mean, an actual gift, but a gift by way of bequest. I find that the observation is inapplicable to the actual testimony given. The case of the defender does not stand upon the use of the isolated expression given; but upon its use, so explained in the context, as to make it clear that she spoke to an actual *de presenti* making over of her funds. Miss Richards, an intimate friend of the deceased, and against whom there is not only no ground for insinuation, but an actual reference by the most important witness for the pursuer as one having the best opportunities of knowledge, says that when she (the deceased) spoke of having given all her money to M'Dougal, she (the witness) said she had done very wrong, and "that she might have served herself with it before giving it away." Pringle, who at Miss Swan's desire prepared a codicil to her will, did so, he says, in order that a will which gave the very money in legacies which she had given to the defender might be revoked—"She had none left to pay these legacies." Mrs Fairful says, "that she had given him (the defender) all her money, and would have given him more if she had it." Mrs Mitchell says, "that she had given him (the defender) all her money, and was not worth a sixpence." George Bruce and Henry Bruce both speak to her stating that the result of the gift to the defender had beggared her; so also do Wm. Duncan and Hugh M'Leod. I think the effect of such statements is not liable to be obviated by a suggestion that she merely expressed an intention to make him her legatee.

Assuming the two facts to be established,—of a statement by the deceased of her intention pre-

viously to make the donation; and after its alleged date, of her having repeatedly stated that she had done so; and taking that evidence together with the testimony of the defender and of Mrs Arbuckle as to what did take place, I find it impossible to suggest any theory reconcilable with the supposition of the fact not having taken place. I cannot hold that such a body of unconnected independent testimony could be the result of a conspiracy to impose a falsehood upon the Court. If not wholly false, how can we suppose the deceased to have made so often the statement as to her having done so, and even stated its consequences, and invited observations as to its propriety.

It is of little importance, I think, in the face of such a body of testimony, to say that the act was in itself improbable. It is certainly unusual to make such a gift, especially if it practically reduces the giver to a dependent condition. But how can we doubt that she actually did it, if she herself continually affirmed that she had done it. It may be further remarked that this lady herself had already made over to him one of two small properties belonging to her, and disposed to him the other *mortis causa*; and placed £200 at his disposal.

It is quite true that there is a body of evidence for the pursuer establishing that the deceased did say within a few weeks of her death, over and over again, that she had not given the money to the defender, and that he had dealt fraudulently with the deposit-receipt. It appears that Mrs M'Intyre, who had previously lived with the deceased, and had been at one time an intended legatee of £400, resumed her residence with the deceased about that time, and during these three weeks expressions were unquestionably used by her imputing forgery and fraud to the defender. In fact, she may be said to have on her deathbed made that affirmation. But with the exception of one witness for the pursuer—Mrs M'Donald—no such statement is said to have been made except within that short period before her death. I think it clear that at that time she repented of the gift, that her feelings towards the defender had changed, and that she made these statements under the influence of that changed feeling. That she desired to give Mrs M'Intyre the half of that sum is clear; that Mrs M'Intyre had regained an influence which she had at one time possessed is also clear. She was during the period in question occasionally in an excited state—from what causes soever induced—seems made out. I can account for statements made under such circumstances without feeling myself bound to give credence to them. I do not find that her statements were consistent. David Scott, the first witness for the pursuer, says that she said to him that he (the defender) "was a villain or a blackguard, had forged her name, and had drawn £100 more of the capital sum than she wanted," and that she appeared distressed about the loss of her money, and constantly harped on it. That is, I must presume, she constantly harped upon a loss of this £100. So also Mrs Scott, who makes her say, "that she had given the documents to the defender to uplift the interest, and that he had taken £100 besides." She (the deceased) said, "Was not this forgery?" This witness speaks to the clearness of Miss Swan's understanding at the time when she is said to have made the statements to her, and the impression on the witness' mind was distinct as to what she said. If so, her complaint at that time is not of the same act which is now made the foundation of the pursuer's plea. Her statements to Mr Woodcock and

his clerk were to the effect that the receipt was put into the defender's name without her authority, and that the money was misapplied. Mrs M'Donald, though making in the earlier part of her deposition a statement quite in concurrence with these witnesses, speaks, in answer to a question at the close of the examination in chief, as to Miss Swan's having no knowledge at first of the fact of the conversion of the money; she says, "It appeared so to me, and that it was to save legacy-duty. They had persuaded her it would save £50 of legacy-duty."

The statement is not very clear, but it seems to point to a condition of matters which would place the funds in the hands of the defender by assent of the deceased, subject to a trust for the two legatees under the will, if then subsisting, or of himself if the codicil was then executed. It would be unsafe to rely upon statements in themselves so essentially different—an appropriation of an excess of £100 and a conversion to the uses of the defender of £800 materially differ.

Mr M'Donald's statement, that she desired Provost Milton and Captain Richards to be sent for in order to get her money back again, can scarcely be true, if Miss Richards, the near relative of Captain Richards, speaks the truth. If the deceased desired protection from Captain Richards, how can we suppose that she not only failed to ask his cousin, who was her intimate friend, and constantly in communication with her, to get him to aid her? If Mrs M'Donald does really refer to any time antecedent to Mrs M'Intyre's return, the statement is wholly inconsistent with the then condition of the deceased's views, as spoken to by very numerous witnesses, and must, I think, be disregarded.

Miss Swan is stated to have complained of maltreatment by the defender, and, in particular, to her having been on one occasion deluged with water; it is even said that she declared herself a murdered woman, intending to represent the defender and her housekeeper as having used her barbarously. I cannot see that the fact of maltreatment, or even neglect, is substantiated by any one who was in the house, or by anything seen by any of the parties who make the statement as to Miss Swan having made the complaint. If there had been ground for such complaints, I can scarcely think that it would have escaped the notice of the many parties who were constantly in the house.

The evidence of Mr Woodcock, to which attention is certainly due from his knowledge of the affairs of the deceased, as to what she said as to the £800, are limited to the period shortly before her death previously spoken to. Mr Woodcock had ceased to visit her because he found her often subject to an influence stronger than his own. There is a good deal of evidence as to her having been told by him, in very coarse language, that she was an idiot for putting off her clothes before she went to bed. I assume that Mr Woodcock did not use the expression as given, but he says that he is aware he may have used the expression in conversation with the deceased, as a caution—a fact, if true, which shows his views as to the effect of influence in altering the views of Miss Swan. We are not in an inquiry as to influence procuring the act done, in which this view of the deceased's disposition might be material. No reduction is brought on that ground; and in the present inquiry, if the fact be that the deceased did truly make a gift to the defender, the surmise that the result was

brought about unduly by influence operating upon a facile disposition is irrelevant.

The conclusion to which I come is, that the deceased did make the gift, but, repenting of it and desirous of undoing her act, and under strong and excited feelings, made statements that it had not been made.

I have not failed to give consideration to the views of the evidence stated by the Lord Ordinary in his note, nor to the fact that the proof was led before him. In a case of nicely-balanced testimony, or where the substantiation of certain facts depended on the credit to be given to the conflicting statements of witnesses speaking to those facts, the consideration that a decision has been come to by a judge who saw the witness should have great weight. But here the material facts, so far as the evidence goes, other than that of the defender and Mrs Arbuckle, are independently made out. The question is one which mainly turns on the inference to be drawn from facts proved by the parties. Certain facts are unquestionably proved, as I think, on both sides, and the application of our own judgment as to the ultimate facts to be deduced from premises which are proved.

The Lord Ordinary has rested his judgment, besides the improbability of the fact of a gift at all, as to which I have had occasion to make observations already, partly on what he considers as real evidence. On the 2d October 1866, three weeks after the date of the alleged gift, the deceased executed a codicil by which she recalled the legacies bequeathed by a former will to Mrs M'Donald and Mrs M'Intyre, the combined amount of which was equal to the sum gifted, and constituted the defender her general donee of personal and moveable estate. The observation was, that she cannot be supposed to have made a codicil which became of no avail by the giving away of all her funds. I think that the inference properly deducible is the other way. If she did give away the money which formed the only fund out of which the intended legacies were to have been paid, it was right that these legacies should be recalled. She told Pringle, before preparing the deed, that she had no money to pay these legacies, and he prepared the deed to her instructions accordingly. Further, the deed proves the position at that time held in her affections by the defender. The Lord Ordinary finds pursuer's statement on this point irreconcilable. I fail to see the inconsistency when explained by reference to her own statement as a cause for executing a deed.

The Lord Ordinary finds inconsistencies between the defender's allegation of a gift of the receipt, and his bringing back £29, of which he gets a return of £5. I do not see much in that observation. Her gift of a receipt for £815, with interest due, is not inconsistent with his bringing back the odd money, and its application to Miss Swan's use. As to Forbes and others, who describe the appearance of the deceased differently from the medical gentleman who was called in to see her, I think it must be held that she was not always in a quiet or undisturbed condition, but in a state in which excitement must have been followed by prostration, which would account for the different impressions formed as to her appearance. It is said that Mrs Mitchell speaks to an acknowledgment at a time before it is alleged to have been made, because she says she had not seen her for a year before death. This presents a difficulty certainly in the way of crediting her, although forgetfulness of, or mis-

takes as to, date are not infrequent. Hugh M'Leod speaks to a conversation on the day of the gift, being about seven in the evening and gas-light, a fact which is said to disprove his testimony. I do think M'Leod was giving a false oath, because he described gas-light as having been observed on that particular evening. It was, he says, about seven. I do not see how we may not hold that the hour was somewhat later, or that in that dark chamber, or, it may be, on that specially dark night, there was gas lighted when he conversed with the deceased. Further, abating every witness as to whose evidence the Lord Ordinary makes any special observation, there are still nine witnesses left attesting, as made to them, the very statements spoken to by these four.

I come therefore to the clear conclusion that the defender has proved donation. Had the facts or pleadings admitted of it, I should have readily come to a conclusion that the donation was *mortis causa* and revocable. But neither the statements of the witnesses nor the pleadings admit of the case being dealt with on that footing.

In conclusion, I may say that having reached the conclusion to which I come, I am glad that the result of it is a complete vindication of the very serious series of charges of fraud, perjury, and subornation of perjury on the part of the defender, to which an opposite view of the evidence must have led. I think it right to say that I hold that the defender is in my judgment free from the suspicion of having been guilty of these acts, and that there is nothing proved inconsistent with his having acted fairly and properly in his dealings with the deceased.

LORD COWAN differed, and held donation not proved.

LORD BENHOLME and LORD NEAVES concurred with the LORD JUSTICE-CLERK.

Agent for Pursuers—James Buchanan, S.S.C.

Agent for Defender—Andrew Beveridge, S.S.C.

Friday, July 10.

#### WEIR v. CRAIK AND OTHERS.

*School—Agreement—Breach of Agreement—Kirk-Session.* Averments which held irrelevant to infer any obligation or breach of agreement on the parties called as defenders.

*Observed,* per LORD JUSTICE-CLERK, that personal liberty does not attach to members of a kirk-session on account of acts done by their predecessors in office.

The pursuer in this action is Alexander Campbell Weir, teacher, Glasgow, and the defenders are the Rev. Dr Craik and Others, members of the Kirk-Session of St George's Church, Glasgow, and, as such, managers of the school called the Brownfield Boys Industrial School, Glasgow. The pursuer concluded for payment of the following sums:—  
“(1) Of the sum of £11, 5s., being balance of salary due to him for the year 1863, with interest thereon at the rate of five per cent. per annum from the 1st day of January 1864 till paid; (2) Of the sum of £15, being salary due to the pursuer for the year 1864, with interest thereon at the said rate from the first day of January 1865 till paid; (3) Of the sum of £13, 1s. 7d. due to the pursuer for teaching poor children, conform to account to be produced herewith, and which is referred to, with interest thereon at the said rate from the 1st day