continuous custody. The true question then is—If there is here sufficient evidence that an original grant or designation of a glebe took place, and whether that right subsists? On this matter, which is one of evidence, I am satisfied of these points—

1. That there was a designation.

2. That this designation not only must be presumed to have been a special designation of so much ground, but is actually proved to have been so. There would have been no need of a commissioner to designate unless there was a special designation.

3. That possession has taken place consistently with this view. Even before the designation I think the incumbent was in possession of a special extent of land to which the formal designation was made applicable. Subsequently the possession was modified that so far there was a promiscuous grazing of the minister's sheep and those of the tenant or heritor; and latterly the arrangement was of the nature of a lease by the minister to the heritor or tenant—a commodious and natural mode of possession.

4. I think the existence of a definite designation is strongly proved by the repute of definite boundaries which continued to within the memory of man, and even to the present time, and by which the glebe was known as a special subject, with no uncertainty as to its limits, except as to the watershed on the north.

5. An idea seems to have been entertained by Lord Traquair that he had succeeded in turning the minister's right to a glebe into a mere money payment. But this view did not prevail; and ever since the commencement of the present defender's right it has been held and assumed that the money paid was a variable sum according to compact, and was, as it bore to be, of the nature of rent due by the heritor of Kirkstead to the minister.

6. The same grounds, particularly in the immediately preceding article, preclude the plea of prescription as not supported by appropriate possession as proprietor.

I concur in the course proposed.

There being a difficulty in determining the northern boundary of the glebe as held to be designed, the Court remitted to a man of skill to report thereanent; and with reference to the expenses, they allowed the defender any expenses which had been caused by the pursuer's demand for a grass glebe, and *quoad ultra* they found the pursuers entitled to expenses.

Agent for the Pursuers—John Shand, W.S.
Agent for the Defenders—John Gibson, W.S.

Friday, November 12.

SANDS *v.* AULD.

Parent and Child—Filiation and Aliment—Proof of Paternity. Circumstances which *held* sufficient (*diss.* LORD BENHOLME) to corroborate the evidence of the mother of an illegitimate child as to its paternity.

This was an appeal from the Sheriff-Court of Stirlingshire in an action of filiation and aliment. The defender was an apprentice and the pursuer a domestic servant with a Mr M'Callum, a wright, near Gargunnock. The child was born on February 6, 1867, so that the conception must have taken place shortly before the May term 1866. At that term the pursuer quitted Mr M'Callum's service and went home to her parents. She swore that the defender had had connection with her on only two occasions, both within two or three weeks of her leaving. The defender swore that he never had had connection with her at all. The only corroboration of the pursuer's oath was proof of "tousling" on one occasion in spring or summer 1865, the witness being Mr M'Callum himself; and the conduct of the defender after he was charged with the paternity of the child shortly before its birth. The Sheriff-Substitute (SCONCE) decerned in favour of the pursuer; but the Sheriff (BLACKBURN) reversed and assoilzied.

The pursuer appealed.

GUTHRIE for appellant.

BURNET for respondent.

The Court returned to the Sheriff-Substitute's judgment; Lord Benholme dissenting. The majority founded strongly on the fact that when the defender was charged orally by the pursuer's mother, and in writing by herself, with being the father of the child, he had merely denied being the father, and had not also alleged, as was said to be the proper course in such circumstances, that he never had had any connection with the mother. It appeared farther that after denying paternity the defender had written a letter to the pursuer agreeing at her request to meet her. It was thought that if the women's charge against him were not true he must have known it to be concocted, and that it was not a proper answer to such a charge to travel some miles to see the pursuer; that an innocent man in such a case would have at once repudiated the charge as concocted, and would not have dallied and fenced with the question.

The Court observed that in the Sheriff-Court it was an infringement of the statute to adjourn diets of proof, as had been done here, without stating in the interlocutor the special reason of such adjournment; and Lord Cowan said there had been too many instances of such delays having been taken advantage of for the purpose of procuring fresh evidence. Further, it was a reprehensible practice to take down the evidence of the pursuer, the leading witness, merely as concurring with a previous witness (as had been done here in regard to the incident in spring 1865). In such a case as this the precise statement sworn to ought to have been taken down.

Agent for Pursuer and Appellant—N. M. Campbell, S.S.C.

Agent for Defender—A. J. Dickson, S.S.C.

Saturday, November 13.

FIRST DIVISION.

PETITION—ALLAN, FOR AUTHORITY TO INCREASE ANNUITY.

Trust—Power to Trustees to Increase Annuity—Judicial Factor—Thellusson Act. A truster having conferred on his trustees power to increase an annuity provided to his daughter, if his funds would admit and they should think proper. Circumstances in which *held* (1) that although the judicial factor could not exercise this discretion, it was competent to the Court to do so; (2) that a case had been made out warranting an exercise of it by the Court.