

as in point of law a condition precedent of his right. I am therefore of opinion that the interlocutor of the Lord Ordinary should be altered, that the claim of Mrs Paterson as her husband's donee should be repelled, and the claim of the factor *loco tutoris* for their only child sustained.

Agent for Factor—James S. Mack, S.S.C.

Agent for Mrs Paterson—David Forsyth, S.S.C.

Friday, January 21.

RATTRAY v. LANGLANDS.

*Affiliation.* Circumstances in which alleged paternity held not proved.

This was an appeal from the Sheriff-court of Forfarshire, in which the pursuer sued the defender for inlying expenses and aliment, as being the father of her child. The Sheriff-substitute (ROBERTSON) pronounced the following interlocutor:—*Forfar, 27th May 1869.*—The Sheriff-substitute having heard parties' procurators, and having made avizandum with the proof and whole process, Finds, in point of fact, that the pursuer has failed to prove that the defender is the father of her illegitimate child, born on or about 14th December 1868: Finds, in point of law, that the defender is not due the sums sued for; therefore assolzies him from the conclusions of the action; Finds the pursuer liable in expenses, of which allows an account to be lodged and taxed by the auditor; to whom remits and decerns.

*Note.*—The Sheriff-substitute thinks the pursuer has not made out her case. Her previous character cannot bear comparison with that of the defender. She has had two illegitimate children already; whereas the defender is an elderly married man, with a grown-up family, and of undoubted respectability. The antecedents of the parties being in this position, the proof has to be very narrowly inspected.

"It is remarkable, and significant also, that the only two persons who corroborate in any particular the pursuer's story, are man and wife. It certainly is very odd that this couple should happen to see corroborative evidence at different times and on separate occasions. There is no reason why these two people, more than any other two people, should happen to have seen corroborative evidence of the pursuer's story; but they both say that they did—and upon independent and separate occasions. No other person on the farm or in the neighbourhood sees anything between the pursuer and defender, and it is a suspicious fact that this couple agree in having seen independent and totally disconnected pieces of evidence. The pursuer's case would have been much stronger if the two corroborative witnesses had been parties in no way related to each other, and between whom no collusion could exist.

"The Sheriff-substitute is not satisfied that Mr and Mrs Stewart, the corroborating couple, are unbiassed parties. It is proved that Stewart and the pursuer were on terms of intimacy, and that the pursuer lodged with Mr Stewart after she left her service at the defender's. That the couple should stretch a point in the pursuer's favour is not unlikely.

"A kiss is what the witness Stewart sees: and a meeting at Arbroath is what the witness Mrs Stewart sees. And certainly if these witnesses

had been unconnected with each other—had their evidence been supported by third parties referred to by them—and had the defender been detected in any prevarications, the case against him might have assumed a serious aspect. But an examination of the evidence minutely strengthens his case.

"Stewart says he saw his master kiss the pursuer in the giraln-house. He had left that apartment and returned unexpectedly, as he said, for further orders. He got these, but was sadly at a loss to tell the Court what they were. His manner was that of a man who was decidedly at a loss for an answer. He says he mentioned what he had seen to his fellow-servant Nicol, and did so that very day, as was natural. Nicol does not bear this out. He says it was not until the rumour broke out that Stewart said a word about his master having been familiar with pursuer; and the kissing was not alluded to, it was 'gripping,' a familiarity which he never saw.

"Mrs Stewart says that she saw her master meet the pursuer in Arbroath, and go into the inn together. If this is true it is very suspicious, for by this time the pursuer had accused him of being the father of the child. They were shewn up to a room in this inn by Ann Callum, and if Ann Callum had corroborated this, the Sheriff-Substitute would have been much impressed by that fact. But Ann Callum has no recollection of this transaction, and says, if it ever had happened she must have remembered it. This shakes Mrs Stewart's evidence very much. The fact that the pursuer shewed Mrs Stewart money after this interview does not prove much.

"The only other corroboration which the pursuer's story meets with is from the witness Marr, who sees the bonnet of the pursuer crushed on one occasion. But this is not enough to justify a belief in her story throughout. Is it too much to believe that the man Cuthill, to whom the pursuer had yielded up her virtue once before—and also resided close by, who is seen visiting the house late at night—is it too much to believe that he is the father? The Sheriff-Substitute prefers to believe this rather than that the defender should have so far forgotten his position and his marriage vows as to commit fornication with his own maid-servant."

The Sheriff (HERIOT) adhered.

The pursuer appealed.

BALFOUR for her.

SOLICITOR-GENERAL and CRICHTON in answer.

The Court adhered.

Agent for Appellant—Charles S. Taylor, S.S.C.

Agents for Respondent—G. & J. Binny, W.S.

Saturday, January 22.

MACKENZIE v. CATTON.

*Title to oppose—Service—General Disposition—Heir of Entail—Notarial Instrument—Titles to Land Consolidation Act, 1868.* A party who possessed various heritable properties, and who also held certain lands as institute under an entail, executed a general disposition of his whole estate and effects, heritable and moveable, in favour of certain trustees, who assigned it to his daughter, the sole beneficiary under the trust. On the narrative of the trustee's infetment, general disposition, and