

Of course there is a presumption in favour of a probative deed; but that presumption may soon be removed. Mere age is of no importance. A man may be vigorous, both bodily and mentally, though he is old. But it is of importance in connection with an illness like this. This was a very severe illness for an old man to suffer from; and he required to take copious doses of opium. On the Sunday and Monday he was comatose. And the question is, whether, this being so, it is not incumbent on the defender to show the old man was in a condition to execute a will?

I think the onus has been transferred to him; and I think he has failed to show the capacity of the old man. He was comatose on the Monday forenoon. And that is the time when the will was read.

It is an important circumstance, also, that Laidlaw never had the will in his possession to study it, and become acquainted with it. A will found in a testator's repositories is in a very different position from a will that he had only heard read. But Paterson had the will the whole time. Now I do not wish to be severe on Paterson. I think he seems to have got it pretty severely as a sort of poacher on the ground of learned parties who are bred to the law, and earn their bread by it. I shall only say of him that he seems to be a very incorrect observer, or else a very unsatisfactory witness. He says it was his "impression" Laidlaw understood the will when it was read to him. But an impression is not a good test. And he says Laidlaw was as strong in his mind as usual. Now it is quite certain that was not the case. Then, again, old Laidlaw never read the will. Perhaps he could not. But Paterson says Janet was present when the will was read. Now Janet was not called by the pursuers; and the reason, they say, is because she was intoxicated on the occasion, and knows nothing about it. And it has been urged against them that they should have called her at any rate. But it was equally open to the defender to call her, and it was his interest to call her if she heard the will read.

Another point of importance is the nature of the will. The provisions are such that they would have to be explained. And Paterson says he did so. But his explanations do not seem to have been very lucid. The will is said to have been in existence for months. But I think the law should look very sharply into the will of a person who intends to make it, but refuses to do so while he is in health.

Agent for Pursuers—Thomas Paterson, W.S.  
Agents for Defenders—Philip & Laing, S.S.C.

Saturday, June 18.

### FIRST DIVISION.

WRIGHT v. LLOYD AND OTHERS.

(*Ante*, p. 216).

*Cessio bonorum.* *Cessio* granted where, of consent of parties, the debtor agreed to assign one-third of his income, whatever it might be, to the trustee in his sequestration.

The estate of the pursuer having been sequestrated, he presented a summons of *cessio bonorum*. The defenders, who are creditors, thought they had been harassed by an unsuccessful litigation at the pursuer's instance, already reported, and op-

posed his discharge except upon his assigning a proportion of the salary he earns. They thought as he was unmarried and had a salary of £200, he should assign a third of it to the trustee. As the Court indicated approval of this proposition, time was allowed, that the parties might come to an agreement in the matter. On the case being called to-day,

SHAND, for the pursuer, read a letter from his employer, stating his engagement was only temporary, that his salary had been at first £100, and had gradually been raised to £200, but that latterly, from depression of business, it had been considerably reduced. He stated the pursuer was willing to assign or pay a third of his salary.

CAMPBELL, for the creditors and trustees acquiesced, on condition of the pursuer's granting an assignation of one-third of his income to the trustees.

*Cessio* granted.

Agents for Pursuer—Grant & Innes, W.S.

Agent for Defenders—W. B. Hay, S.S.C.

Tuesday, June 21.

### HALL v. COLQUHOUN.

*Agreement—Delegation—Implied Discharge—Sequestration.* On D's order, B supplied coals to a vessel of which C and D were joint-owners—C acting as captain, and D as ship's husband. C sold his share in the vessel to D by an agreement in which C was freed from past liability. *Held*, on a proof (diss. Lord Kinloch), that B had not been aware of this agreement, and had not liberated C by implied discharge, and that therefore he could come on C for the debt, D having been sequestrated.

David Hall, coal merchant in Glasgow, sought payment from Duncan Colquhoun, master-mariner, residing in the island of Tyree, of the sum of £402, 16s. 10d., being the cost of coals supplied to the steam-ship "Argyle," after deduction of certain cash transactions in which the pursuer was debtor. The defender and William Dick, ship-owner in Glasgow, were joint and equal proprietors of the vessel in 1865, 1866, and 1867. The coals were ordered by Dick in the capacity of ship's husband, the pursuer said; and on 12th December 1867 the defender sold his share in the vessel to Dick. This sale, the defender said, took place at the pursuer's instigation; but the pursuer did not admit any knowledge of this agreement between Dick and the defender. The agreement was in the following terms:—"This agreement, executed by and between William Dick, merchant in Glasgow, in the county of Lanark, on the first part, and Duncan Colquhoun, shipowner, also of Glasgow, on the second part, witnesseth—that whereas the parties hereto stand registered as the owners of the screw-steamer 'Argyle' of Glasgow, each to the extent of 32-64th; and whereas the said Duncan Colquhoun paid £375 to account of his half of the cost of building the said screw-steamer, but has not paid the full amount of his half; and the said William Dick is in advance on account of the said Duncan Colquhoun's half; and whereas the first party has acted as the agent of the said screw-steamer, and has received her earnings, and paid her disbursements, but has not as yet furnished to the second party any statement thereof; and whereas the second party is now desirous of disposing of