1861, or during part thereof, wrongfully interfered with the management of the said sugar-refinery, to the loss, injury, and damage of the pursuer?

"Whether, in or about the month of May 1861, the said deceased John Ferguson wrongfully shut up the said sugar-refinery, and wrongfully excluded the pursuer therefrom, to the loss, injury, and damage of the pursuer?

"Whether, in or about the month of May 1861, the said deceased John Ferguson wrongfully shut up in said sugar-refinery a quantity of sugars and goods belonging to the said firm, which thereby became deteriorated in value, to the loss, injury, and damage of the pursuer?"

Against the interlocutor approving these issues the defender reclaimed.

MILLAR, Q.C., and MARSHALL, for him.

SOLICITOR-GENERAL and WATSON for the pursuer and respondent.

At advising—

LORD DEAS—It is quite plain that this case consists of two branches, the one applying to the period from 1852 till the stoppage of the business in May 1861; and the other to the period from May 1861 onwards. We have certain allegations made by the pursuer as to the position of parties prior to May 1861, while the business was being prosecuted, and all that the pursuer can say against his brother is, that during part of that time he interfered in the management of the concern, of which he was a partner, and that, having no knowledge theoretical or practical of the business, he yet dismissed competent, and employed incompetent workmen, and generally by his unskilfulness caused great loss to the concern. Consequently, in the very face of the first issue, the incompetency of the action so far as we have gone manifestly appears. Nobody ever saw such an issue as that sent to trial. If an action was to be countenanced upon such grounds, without any allegation of fraudulent intent, or other competent averment, the result would be most disastrous to the business relations of the country. There would be nothing to prevent any partner bringing such an action, and his copartner bringing a counter action, upon any the most trivial grounds of misunderstanding between them.

The only plausible case made out by the pursuer, is as to what happened in and after 1861, when it is said that his brother closed the working of the business, locked him out of the premises, and refused him admittance ever after, while he himself, the pursuer, carried off the key of the safe containing all the firm's books, title-deeds, &c. Thus they let matters stand for more than a year. The first who comes into Court is John Ferguson, demanding to have access to the safe; and then the pursuer does (what he might have, and should have done long before) apply for the appointment of a judicial factor on the firm's estate. Those proceedings are in dependence at this very time, and, so far as I can see, the parties are at issue still, and the pursuer has never exerted himself to get the firm's affairs wound up, or even taken the proper measures for coming to a settlement with his brother or his executor or the judicial factor on his estate. There is no statement therefore on record which can, after this lapse of time, and while the proper proceedings are still in dependence, be made the foundation of an action such as this, or the ground of issues such as the Lord Ordinary has approved. I am therefore for dismissing the action entirely as irrelevantly laid.

LORD ARDMILLAN concurred.

LORD KINLOCH—I am of opinion that the averments here made are irrelevant to support such an action. There is nothing involved but differences of opinion betwixt partners, a little too strongly and energetically expressed. Even assuming the best possible case for the pursuer—suming, for instance, that he was in the right in all the questions in dispute between him and his brother, and was justified in all he did—still I think that an action of damages is out of the question. The law provides other and appropriate remedies for cases of this kind. Judicial management may, for instance, be sought. Any want of access to company premises or papers may be overcome by application to the Judge Ordinary. Were we to sanction the present action, we should be opening a door to an indefinite number of similar suits, as such questions must be of constant occurrence.

LORD PRESIDENT—I quite agree with your Lordships, and have no doubt that, where partners quarrel there are legal remedies open to them. Fortunately these are summary ones, and easily taken advantage of by any person who desires to do so. They either end in a winding-up of the concern, or in the appointment of a proper manager. This course of proceeding was apparently at one time in the mind of the pursuer in the present case, though, having commenced upon it, he did not follow it up and carry it out. Instead, he lets things stand for years. Now, under the circumstances, the idea of a partner bottling up an action of damages for years in this way, and then bringing it against the executor of his co-partner, is one of most doubtful competency, whatever his averments are; and, upon the present record, it cannot be listened to for a moment.

The Court accordingly recalled the Lord Ordinary's interlocutor, and dismissed the action.

Agents for the Pursuer—Dalmahoy & Cowan, W.S.

Agents for the Defenders—Adam & Sang, S.S.C.

Saturday, December 24.

SECOND DIVISION.

MACFARLANE *v.* ROBB.

Bankrupt — Preference — Act 1696, *cap.* 5—*Prior Debt.* A. & Co. under a charter-party agrees to pay a certain sum as an instalment of the freight to B. & Co., when the vessel should leave the port of lading. Shortly before this sum was due, they granted to B. & Co. their acceptance for £1000, inclosed in a letter to the following effect, viz.—"As you have requested that some security should be given you for fulfillment of the charter per "Asia," we now tender you our acceptance of this date in your favour for £1000 at fourteen days' date, which, when retired by us, shall be imputed *pro tanto* in payment of chartered freight by said vessel." The bill was retired, and thereafter, and within sixty days of the date of said letter, A. & Co. were sequestrated. *Held*, in an action by the trustee

on the sequestrated estate of A. & Co., that the said bill, being granted in security of a prior debt by an insolvent within sixty days of bankruptcy, was reducible both under the statute 1696, cap. 5, and at common law.

This was an action at the instance of Mr Macfarlane, C.A., Glasgow, trustee on the sequestrated estate of Messrs William Marshall & Co., shipbrokers, Glasgow, for the purpose of reducing a bill for £1000, dated 3d September 1869, drawn by the defenders Messrs Robb & Co., ship-owners, Glasgow, on and accepted by Messrs Wm. Marshall & Co., on the ground that, being granted by an insolvent in security of prior debt within sixty days of bankruptcy, it was reducible, both at common law and under the statute 1696, c. 5.

The pursuer alleged— "On 23d August 1869 the said William Marshall & Co. chartered from the defenders the ship 'Asia' for a voyage from Glasgow to Melbourne. The vessel was of the burden of 2000 tons register, and was then lying in Port-Glasgow. The freight to be paid for the use and hire of the said vessel, in respect of the said voyage, was, by the charter-party agreed to be a guaranteed slump sum of £4500, and any excess beyond £4750 gross freight to be equally divided between owners and charterers, in full of all port charges and pilotages as customary; payment whereof to become due and be payable as follows, namely, by so much thereof as might be payable by freight of goods and merchandize by bills of lading at port of discharge, not exceeding £3250 at current rate of exchange, on unloading and right delivery of such goods and merchandize, and the balance to be paid in Glasgow in cash on final departure of vessel from the Tail of the Bank, Greenock, less one and one-fourth per cent. discount, on receipt of which charterers' responsibility concerning the charter to cease. The charter-party farther fixes thirty-five days, Sundays and holidays excepted, if not sooner dispatched, for loading said ship, to be computed from the day the vessel was placed at a loading quay berth at Glasgow, purchase rigged for taking in cargo and ready to load, notice whereof to be given in writing to the charterers. On the 3d day of September 1869 the defenders having, from information which they had received, become doubtful of the credit of the said William Marshall & Co., urged upon them to give them, the defenders, security for the fulfilment of the said charter-party, and the said William Marshall & Co. accordingly, as such security, gave the defenders their acceptance for £1000, dated the 3d day of September 1869, and payable fourteen days after date. Along with the said acceptance the said William Marshall & Co. delivered to the defenders a letter setting forth the terms of the transaction as follows:—'*Glasgow, 3d September* 1869.—Messrs John Robb & Co., Port-Glasgow.—Dear Sirs,—As you have requested, in consequence of letters sent by Messrs Allan C. Gow & Co. to the shippers per 'River Jumna,' that some security should be given you for the fulfilment of the charter per 'Asia,' dated 23d August 1869; we now tender you our acceptance of this date in your favour for £1000 at fourteen days date, which, when retired by us, shall be imputed *pro tanto* in payment of chartered freight by said vessel.—We are, dear Sirs, yours faithfully, W. Marshall & Co.' This letter was acknowledged by the defenders in the following terms:—'*Port-Glasgow, 3d September* 1869.—Messrs Wm. Marshall & Co., Glasgow.—Dear Sirs,—We have your favour of this date, copy of which is annexed, and we confirm and agree to its contents, and hereby acknowledge receipt of your acceptance to us for One thousand pounds (£1000) at fourteen days from this date. Yours truly, John Robb & Co., 3d September 1869.' The pursuer further alleged—"The said bill was given by the said William Marshall & Co. to and received by the defenders in security of the obligations in the charter-party, eleven days after the contract of charter-party of the 'Asia' had been definitely executed, at the time when the said William Marshall & Co. were under no obligation either to grant such a bill or to make any payment in cash to account of freight. Marshall & Co. were insolvent at the time this transaction was gone into."

A charge having been given on the bill, it was paid by Marshall & Co. on 27th September 1869.

On 26th October 1869 the estates of William Marshall & Co. were sequestrated.

It was admitted that after the contract of affreightment had been broken by Marshall & Co., the defenders, to save farther loss, advertised the "Asia," completed her loading, and dispatched her about the beginning of December 1869. The sole partner of William Marshall & Co. had left Scotland without authorising any one to act for him with whom the defenders could communicate, and heavy loss was daily accruing from his breach of contract.

The defenders stated that "by the breach of the contract of charter-party of the 'Asia,' libelled on by the pursuer, the defenders have suffered loss, injury, and damage to the amount of not less than £3000."

The Lord Ordinary (ORMIDALE) pronounced this interlocutor and note:—

"*Edinburgh, 5th July* 1870.—The Lord Ordinary having heard counsel for the parties, and considered the argument and proceedings (including the proof), Finds it established—(1) That, by the charter-party libelled, entered into between William Marshall & Co. and the defenders on 23d August 1869, the former chartered from the latter a ship called the 'Asia;' and in respect thereof, besides other obligations, bound themselves to pay to the defenders the sum of £4500 of freight, partly at the port of discharge and partly at Glasgow, on the final departure of said ship from the Tail of the Bank, Greenock; (2) That on 3d September 1869, before any part of said freight had become due, William Marshall & Co. granted their acceptance to the defenders for £1000, payable fourteen days after date, as a security towards the fulfilment of their (William Marshall & Co.) pecuniary obligations under said charter-party; (3) That William Marshall & Co. were not under any obligation to grant said acceptance, or make any payment to account of their obligations under said charter-party; (4) That William Marshall & Co., on or about the 27th of September 1869, retired said acceptance by paying to the defenders £975, and granting to them an I O U for £25; and that at this time the payments which William Marshall & Co. had undertaken to make to the defenders under said charter-party had not to any extent become due; (5) That William Marshall & Co. and the defenders, in letters which passed between them at the time the said acceptance was granted, expressly referred to it as a security, and, when retired, as a payment *pro tanto* of the freight for which the former had become bound to the latter under the said charter-party; (6) That in

this state of matters, and within sixty days of the date when said acceptance was granted, viz., on the 26th October 1869, William Marshall & Co. became bankrupt, and their estates were sequestrated in terms of the Bankruptcy Acts; (7) And that the pursuer is trustee confirmed on the sequestrated estates of William Marshall & Co., and as such represents parties who were creditors of that Company prior to the 3d of September 1869, when the acceptance above mentioned was granted by them to the defenders as aforesaid: Finds in these circumstances, that in law the said acceptance, and the transaction whereby the same was granted to the defenders, and afterwards retired as aforesaid by the bankrupts William Marshall & Co. are null and void, or at least reducible under the Act 1696, c. 5, as having been voluntarily made and entered into by the said William Marshall & Co. within sixty days of their bankruptcy for the satisfaction or security of the defenders in preference to other creditors: Therefore, Reduces, Decerns, and Declares in terms of the reductive and declaratory conclusions of the summons; and also decerns against the defenders for payment to the pursuer of the foresaid sum of £975, with interest at the rate of 5 per cent. per annum from the 27th of September 1869 till paid: Finds the pursuer entitled to expenses, allows an account thereof to be lodged, and remits it, when lodged, to the auditor to tax and report.

"*Note.*—Upon a full and careful consideration of the circumstances of this case, the Lord Ordinary has been unable to arrive at any other conclusion than that the transaction challenged is of the nature of an illegal preference under the Act 1696, c. 5, against which the pursuer, as representing Marshall and Company's creditors, is entitled to be restored.

"At the date when the bill or acceptance in question was granted to the defenders they were creditors of the bankrupts Marshall and Company, under the charter-party libelled, to a large amount, no part of which, however, was then due, and that the granting of the acceptance was a voluntary act on the part of the bankrupts, in the sense of the statute 1696, c. 5, cannot well be disputed, for they were under no antecedent obligation to grant such an acceptance. That the acceptance was granted for the satisfaction or security of the defenders seems clear enough, and, indeed, is so expressly acknowledged in the letters which passed between the parties at the time, and which are set out in article 3 of the pursuer's condescendence. Not only so, but Mr Somerville, the partner of the defender's firm who managed the transaction for them, after stating in the course of his examination as a witness for the defenders that the bankrupt William Marshall, after failing to find such a security as was at first contemplated, goes on to say, 'On 3d September he (Marshall) granted a bill for £1000 at fourteen days' date. He himself proposed that as a substitute for the security.' That the transaction was and must also be held to have been of the nature of a preference in favour of the defenders over others of their creditors appears also to the Lord Ordinary to be sufficiently established, for, by and in consequence of the transaction the defenders succeeded in obtaining payment to the extent of £975 of their claims, in place of being left to their ranking in the bankrupts' sequestration along with the other creditors. And that this preference was conferred within sixty days of the bankrupts' sequestration, and therefore within the period of Marshall and Company's constructive bankruptcy, is plain enough. It has been proved that, at the date when the acceptance was granted Marshall and Company had creditors who continued to be their creditors at the date of their sequestration. It was moreover in consequence of the fears entertained of Marshall and Company's solvency, or ability to meet their engagements, which fears turned out to be well-founded, that the transaction was entered into and completed.

"There thus appears to be in this case all the elements necessary to make out such a preference as is struck at by the Act 1696, c. 5. Nor does it bring the case from under the operation of the statute that the transaction took the shape of a bill or acceptance by the bankrupts in favour of the defenders, which was retired and paid at maturity, for it has been repeatedly held that such a mode of effecting a preference may be equally a contravention of the statute as any other, where, as in the present instance, the bill and payment were not granted aud made in the ordinary course of trade, but resorted to expressly for the purpose of securing to the defenders payment or security *pro tanto* of a debt not then due to them, and payment of which they could not then have demanded and enforced.

"But, on the part of the defenders it was contended, as the Lord Ordinary understood the argument of their counsel, that the transaction in question was of the nature of *novum debitum*, and so is not struck at by the Act 1696, c. 5. In support of this view, it was explained, with reference to the proof, that the defenders, unless they had obtained the acceptance of Marshall & Co. for £1000, would have refused to implement their part of the charter-party, and brought it to a termination; that they were entitled to have taken this course, and would have done so if the acceptance had not been granted to them; and that, as it was in consideration of their having received the acceptance, they for the time allowed the contract of charter-party to stand, there was thus a new contract, of which the acceptance, and payment of its contents, were merely fulfilment by Marshall & Co., and not a preference struck at by the statute. The Lord Ordinary does not think that this is a sound or maintainable view of the transaction. It appears to him that in substance and reality the prior contract of charter-party, after the bill was granted to the defenders, remained just as it had ever been, and therefore that the transaction challenged cannot be said to have constituted a new contract, or altered the relative positions of the bankrupts and the defenders. According, indeed, to the defenders' theory, the granting of a security by a bankrupt in favour of a prior creditor might, in many cases to which the Act 1696, c. 5, has been held clearly to have applied, be said to displace the original by a new debt. And it is a somewhat singular, and, as the Lord Ordinary ventures to think, fallacious, plea for avoiding the operation of the statute, to maintain that the transaction challenged was gone into by the bankrupts in order to prevent the defenders violating or breaking their engagements under the charter-party.

"Disposing of the case as the Lord Ordinary has done, any consideration of the defenders' plea of retention, or set-off in respect of alleged damages sustained by them, was unnecessary, or rather has been excluded. The defenders may or may not have such a claim of damages which they may or may not be entitled to make effectual by a ranking

in the sequestration or otherwise, and, in regard to that matter, the Lord Ordinary determines nothing. Neither has the Lord Ordinary determined anything in regard to the I O U for £25, as it has not been brought under challenge in the present action, and does not appear to have been paid."

Robb & Co. reclaimed.

HORN and HARPER for them.

WATSON and LANCASTER in answer.

At advising—

LORD NEAVES—The question in this case is one of some importance and novelty, and I have therefore considered it with care and anxiety. The decision depends on facts, as to which the parties are not much at variance. The summons, though somewhat peculiarly framed, is quite intelligible. The trustee on the sequestrated estate of Marshall & Co. demands back a sum of £1000, which was paid by one of the bankrupts a few days before insolvency, and a month or so prior to sequestration. He also concludes, in the event of that being necessary, for reduction of the transaction under which the £1000 was paid by the bankrupts.

The Lord Ordinary has sustained the pursuer's claim, and has decerned in terms of the reductive conclusions of the summons, finding that the transaction was null and void, or at least reducible under the Act 1696, c. 5, as having been voluntarily made and entered into by Marshall & Co. within sixty days of their bankruptcy, for satisfaction or in security of a prior debt due to the defenders in preference to other creditors. I am of opinion that we should adhere to the Lord Ordinary's judgment.

The material circumstances of the case are these:—Robb & Co. entered into a somewhat complicated arrangement with the bankrupts to furnish them with a ship which was to be sent to Melbourne, Marshall & Co. undertaking to find the cargo, in the expectation of making what profit they could out of the difference between what they received as freight and what they paid to Robb & Co. Certain other stipulations were contained in the charter-party, and it was agreed that a payment should be made to account of freight on the vessel leaving the Tail of the Bank, and the rest of the freight on its arrival at Melbourne. Before this contract had been implemented at all, circumstances occurred which tended to throw discredit on the business character of Marshall & Co. It is not necessary to enter into any detail upon this matter; it is sufficient to say that, from some cause or other, there certainly was excited some suspicion in the minds of Robb & Co., who seem to have thought that they were entitled to demand security as a condition of their proceeding with the contract. Marshall & Co. seem also, to some extent, to have admitted that such a demand was reasonable, and this led to the transaction now sought to be reduced. It appears that Marshall & Co. at first offered to obtain for Robb & Co. the personal guarantee of a third party for their implement of the contract, but having failed to do so they agreed, in place of finding personal security, to grant their own acceptance within fourteen days for £1000 in anticipation of the sum of £1250, that being the first instalment of the general freight due to Robb & Co. under the charter party. The nature of the transaction is made plain by a letter of Marshall & Co., sending their acceptance. In that letter, which is dated 3d September 1869, they say—"Dear Sirs,—As you have requested, in consequence of letters sent by Messrs Allan C. Gow & Co. to the shippers *per* "River Jamaica," that some security should be given you for fulfillment of the charter *per* "Asia," 23d August 1869, we now tender you our acceptance of this date in your favour for £1000 at fourteen days' date, which, when retired by us, shall be imputed *pro tanto* in payment of chartered freight by said vessel." Marshall & Co. therefore placed their acceptance for £1000, at fourteen days' date, in the hands of Robb & Co. on the footing that the contents of the bill when retired should be imputed *pro tanto* in extinction of the first instalment of the frieght due under the charter party, amounting to £1250, although that sum did not fall due until some time afterwards. The advantage thus secured to Robb & Co. was to afford them *parata executio* for so much of their debt, and the question is, whether, that advantage having been obtained within sixty days of the bankruptcy of Marshall & Co., it was of the nature of a preference, struck at by the Act 1696.

Now, I shall assume that the difficulties of Marshall & Co. were such as justified the defenders in withdrawing altogether from their contract with Marshall & Co.; and that being so, the question comes to be whether they were, in these circumstances, likewise justified in taking a security from their debtors, and going on with the transaction. Now, I cannot doubt that a party to a contract, who threatens proceedings to secure implement, must, if he obtains security for its due performance, be held to have taken that security in respect of a prior debt. But that is really the whole case, the determination of which seems to me to depend upon these two points—viz., (1) Whether Robb & Co. were prior creditors at the time the advance was made? and (2), Whether the advance so made was given in security or in satisfaction of a prior debt? In the first place, I think it is quite plain that at the date of the transaction Robb & Co. were creditors. Marshall & Co. were creditors for fulfillment of the contract. Robb & Co. were creditors for the £1250, which was to become due in a certain event, the fulfillment of which was in their own power. A man is a creditor who holds a bill at three months, although he cannot enforce the obligation till the three months expire. It does not alter the case that a condition is added to the obligation. He is still a creditor, and if he gets his position improved by means of a security he is taking away from the funds available to the general body of creditors, and where this has been done on the eve of bankruptcy the law presumes that it has been done fraudulently.

In the next place, was this a security for a pure debt? I cannot doubt that it was. Payments of cash are privileged under the statute, but only in so far as made in the ordinary course of business. Now, it is not the ordinary course of business for a man to grant a bill at fourteen days for a sum which does not become due for some time afterwards. Cash paid down in implement of a totally new transaction would be quite different. There is then a *novum debitum*, payment of which is not struck at by the Act. But it is clear that this payment was not intended to be imputed to any new debt from the words in the letter of Marshall & Co. to which I have referred—viz., that the contents of the bill "shall be imputed in payment of the chartered freight," &c. I am of opinion therefore that this being a payment or security

given in satisfaction *pro tanto* of the obligation prestable under the prior contract between the parties, is of the nature of a preference liable to be set aside under the the Act 1696. The case of *Speir* v. *Dunlop* goes far to support this view, for there the indorsee of a bill, having within sixty days of the acceptors' bankruptcy obtained from him a sum of money as a provision for payment of the bill when it fell due, the House of Lords, notwithstanding the verdict of a jury, which negatived an issue of direct fraud, remitted the case to the Court of Session, to consider whether, independently of that, the transaction was not struck at by the Act 1696.

Now, here the bill was accepted in security of the freight to become due. It is not the case of a sum of money paid down by Marshall & Co. as a price for not completing the contract *simpliciter*, but as a prepayment—a payment by anticipation—to make Robb & Co. safe in going on with the transaction. It was not, therefore, in any sense a *novum debitum*. The money was truly deposited in the hands of Robb & Co. till the period of payment under the contract arrived, and if they broke their contract, they would have had to repay the money. The object of the statute, no doubt, was to protect all transactions in the ordinary course of business. But the demand for security was just a means of concussing the debtor, and, whether justifiable or not, I cannot regard it as a transaction in the ordinary course of business. On these grounds, I think we should adhere to the Lord Ordinary's interlocutor.

If I could take any other view of the case, it would be that the £1000 was paid for a debt not due. It was plainly not given as a present or as a bribe. It was given to be imputed towards the payment which was to become due on the vessel leaving the Tail of the Bank. On that event not occurring, a claim for repetition would have arisen.

In conclusion, I may add that I have not said anything in regard to the defender's alleged claim of damage, because, if they have such claim, I am of opinion that it must be vindicated in some other process.

The other Judges concurred.

Agent for Pursuer—Alexander Morison, S.S.S.

Agents for Respondents—J. W. & S. Mackenzie, W.S.

Saturday, December 24.

STEWART, PETITIONER.

Parent and Child—Custody of Child. Circumstances in which *held* that a delicate child of five years of age, whose parents lived separately under a voluntary deed of separation, should be allowed to remain under its mother's care.

This was a petition by a father for the custody of a male child, who was born in August 1865, brought in the following circumstances—By a voluntary deed the petitioner and his wife had agreed in 1867 to live apart, and that the wife should have custody of the child of the marriage, and receive a certain sum as aliment, "under reservation of the petitioner's claim at any time to the custody of his child in terms of law." The wife alleged that her husband had come to her home, and in the most violent and abusive manner demanded that his child should be given up to him. She further alleged that the child was in delicate health, and should be allowed to remain in her custody. She produced a certificate stating —"I hereby certify, on soul and conscience, that John Paxton Stewart, presently residing at 50 King Street, Tradeston, now aged five years, had, when six months old, an attack of bronchitis with severe ophthalmia (inflamation of eyes), which weakened and reduced him very much. From the protracted character of the bronchial affection, and its frequent recurrence since that time upon slight exposure to cold, he has never regained strength. Besides, when about three years of age, he suffered long and severely from hooping-cough with bronchitis, which so shattered his slender and tender constitution that until he was three and a-half years old he was unable to walk alone. In addition, he has always been liable to stomach derangements, frequently accompanied with cerebral (brain) irritation, often followed by convergent strebismus (squint), as well as inability to speak, which even now he cannot distinctly, plainly and too strongly indicating his delicate, sensitive, and easily irritated brain. Having been in attendance at his birth, and having watched him in his numerous ailments, I have no hesitation in giving my decided opinion that to remove him from his mother, who has nursed him so carefully and tenderly, and place him under the care of a stranger, totally unacquainted with his upbringing and his delicate frame, would prove very prejudicial, and might even be dangerous to his life—A. L. KELLY, *M.D., F.F.P.S., Glasgow.*"

She also produced a medical certificate from Professor Gairdner, to the effect—"There are sure signs that he is well taken care of at present by his most natural nurse and protector, and I think it would be a manifest injury to remove him from that protection. These things I certify on soul and conscience—"W. G. GAIRDNER, *M.D., F.R.C.P., Edinburgh.*"

The petitioner, on the other hand, produced a certificate from S. J. Moore, M.D., F.R.P.S., Glasgow, medico-legal examiner for Glasgow, to the effect—"The boy is apparently about five years of age, and very well developed for his years. After a most careful examination, I am of opinion that he is of good constitution, and at present in the enjoyment of excellent health; and I cannot see any reason why his health should be affected by his removal from the custody of his mother to that of his father."

The Court remitted to Professor Lister to visit the child, and report to the Court whether in his opinion the child would be injured by removal from the care of his mother. Professor Lister's report was that he found the child of delicate constitution, and much in need of careful tending.

SOLICITOR-GENERAL (CLARK) and MACLEAN for petitioner.

MACDONALD and LANG in answer.

The Court unanimously refused the prayer of the petition, in respect of Professor Lister's report, but suggested that means should be afforded to the petitioner to visit the child at reasonable times and places.

Agents for Petitioner—J. & R. D. Ross, W.S.

Agents for Respondents—Crawford & Guthrie, S.S.C.
