by an inferior court. If, for example, the panel in this case had been imprisoned notwithstanding his having tendered payment of the fine, or if some other gross irregularity had occurred in the execution of the sentence, we should certainly have given redress. But it is quite a different thing to review the judgment of an inferior court either on the relevancy or on the merits. In every case it is an implied part of the duty of a judge to decide the question of relevancy. In the present instance the sheriff might have considered the complaint irrelevant and dismissed it accordingly. Does not that imply that he might consider it to be relevant and therefore sustain it? Of course he might decide the question wrongly; but that means no more than this—that he has no claim to infallibility. There may, indeed, be on the face of a criminal charge something so obviously and notoriously wrong that we should not hesitate to interfere. Thus, if in a prosecution under the Tweed Fisheries Act it was assumed (contrary to the ideas on geography which at least some of us possess), that the Trent or the Clyde was a tributary of the Tweed; or if a criminal libel was raised against a man for riding with a white hat on his head, I should probably suggest that the procurator-fiscal's health should be looked after by his friends. But except in such extreme cases, we ought not to interfere with the exclusive jurisdiction conferred by statute on inferior judges. When the relevancy of a complaint is a debatable point, it is only proper that it should be decided by the court before which it is brought. Now, the objection here being merely the want of specification, I think the case is peculiarly one in which we should not interfere. Had the prisoner stated the objection at the trial, an amendment might have been made under the Summary Procedure Act, to the effect of stating what place had been appointed by the Commissioners. I think, however, that such an amendment was scarcely necessary. The charge of neglecting to carry a net to a place appointed by the Commissioners necessarily implied, not only that there was a net to carry, but also that there was an appointed place to which it ought to have been carried; and I think that the general plea of not guilty entitled the prisoner to show that no place had been appointed by the Commissioners.

The Court, accordingly, refused the suspension, and found the suspender liable in expenses, modified to four guineas.

COURT OF SESSION.

Saturday, February 3.

SECOND DIVISION.

DRUMMOND *v.* HAY.

Entail.

A deed of entail contained a prohibitory clause, which concluded, "or to do any facts or deeds whereby the same or any part thereof may be apprised, adjudged, or any ways evicted, or the said tailzie and the order and course of succession frustrated or prejudged." The irritant clause began, "and in case any of the heirs of tailzie and provision foresaid shall contravene the premises, then, and in that case, not only shall such facts and deeds be null and void in themselves," &c. — *Held* that the entail was good, the words "such facts and deed" being applicable to all contraventions.

This was an action of declarator at the instance of the Honourable Arthur Drummond of Cromlix and Innerpeffrey against the Honourable C. R. Hay and the other heirs of entail to the lands of Innerpeffrey, &c. The object of the action was to have these lands declared not to be subject to the fetters of entail. The deed in question was dated 18th August 1773. It contained a prohibitory clause in the following terms:—"And sicklike it is hereby provided and declared that it shall not be lawful to any of the heirs of taillie and provision foresaid to break, infringe, or alter this nomination and the order and course of succession before specified, nor to sell nor dispone the lands and others above rehearsed, or any part thereof, or any annual rents furth of the same, or to sett tacks thereof for longer space than the lifetime of the granters, or to contract debts or sums of money, or grant any bonds or other obligements, or do any facts or deeds whereby the same or any part thereof may be apprised, adjudged, or any ways evicted, or the said taillie and the order and course of succession frustrated or prejudged."

The irritant and resolutive clause, or irritant and resolutive clauses, which follow the prohibitory clause, are in the following terms:—"And in case any of the heirs of taillie and provision foresaid shall contravene the premises, then, and in that case, not only shall all such facts and deeds be null and void in themselves, in so far as the same or any of them may anyways affect or burden the lands and estate before written, or prejudge or hurt the heirs of provision foresaid; but also the person or persons so contravening shall *ipso facto* amitt, lose, and forfeit all right, title, and interest which they had in virtue hereof to the said lands and estate, and the same shall become void and extinct, and the said lands and estate shall fall, accresce, and belong to the next heir of taillie hereby appointed to succeed, in the same manner as if the contraveener was naturally dead. And it shall be lawful to the next heir of provision having right to succeed to the lands and estate before mentioned, after the decease of the contraveener, to obtain themselves served and retoured heirs of provision to the foresaid contraveeners, with this declaration and provision to be contained in their services and retours, that they, their lands and estate above expressed, shall be free and liberate of the foresaid debts, bonds, and obligements, and other facts and deeds above written, and their serving themselves heirs of provision to the said contraveeners shall not make them liable to the same debts, or to perform these bonds and obligements or other facts and deeds above mentioned, or otherways it shall be in the option of the foresaid heirs of provision who shall have right to succeed after the decease of the contraveeners to obtain the lands and estate before written adjudged to pertain to them through and by reason of contraveening the provision and condition before mentioned."

The pursuer pleaded—"(1) According to the sound construction of the foresaid deed of entail, the irritant and resolutive clauses are not directed

against or applicable to the prohibitions against altering the order of succession, or selling or disponing the lands, and these prohibitions are therefore invalid and ineffectual. (2) The said entail being ineffectual in regard to the prohibitions against altering the order of succession, and against selling or disponing the lands, or one or other of them, is, in terms of the said Act 11 and 12 Victoria, cap. 36, section 43, invalid and ineffectual as regards all the prohibitions, and the pursuer is entitled to decree of declarator, in terms of the conclusions of the summons.

The Lord Ordinary (GIFFORD) repelled the objections stated by the pursuer to the entail, and assoilzied the defender, and added the following Note to his interlocutor:—"The ground of the present action is an alleged defect in the irritant clause of the entail. It was admitted, and indeed is pretty obvious, that the prohibitory clause is complete and sufficient, the heirs of tailzie being in apt enough terms prohibited, *first*, from altering the order of succession; *second*, from selling or disponing the lands; and *third*, from contracting debt.

"But the pursuer maintains that the irritant and resolutive clauses of the entail are so expressed that they only apply to the third of these prohibitions, that against contracting debt, and that, according to the strict construction of the words, they are not directed against, and are not applicable to, the two first prohibitions. Of course, if this be so, then under the statute 11 and 12 Vict. cap. 36, the entail would be invalid as to all its prohibitions.

"The Lord Ordinary had the benefit of a very subtle and able argument analysing the clauses in question; but after every consideration, and admitting that he is bound to apply the very strictest construction to such clauses, he has found himself unable to give effect to the contention of the pursuer.

"The turning point of the pursuer's argument was the alleged limited meaning which, he contended, the words 'facts and deeds' must receive both in the prohibitory and in the irritant and resolutive clauses. The argument started by endeavouring to show that these words in the prohibitory clause only applied to the contraction of debt, and then it was contended that the same limited meaning must be given to the same words in the irritant and resolutive clauses, and, consequently, that alterations of the order of succession and sales are not irritated, nor the right of the contravener of these two prohibitions effectually resolved.

"Without disputing that there is force as well as ingenuity in the pursuer's argument, the Lord Ordinary thinks it is not well founded.

"In the first place, it is not by any means clear that the words 'facts and deeds' in the prohibitory clause are to be limited to debts. The words are not debts and deeds, which in many of the reported cases have received the narrow interpretation; and although the words 'facts and deeds' in the prohibitory clause occur very awkwardly after the reference to debts, bonds, and other obligements, they are not necessarily coupled therewith. And then the effect of these 'facts and deeds' is not limited to apprising and adjudication, although these are mentioned first, but all 'facts and deeds' are prohibited whereby the lands or any part thereof may be first adjudged, second evicted, third whereby the tailzie may be frustrated, or fourth whereby the order of succession may be prejudged, that is, prejudiced. It is thought that these words must necessarily refer to more than the mere contraction of debt; and, indeed, the natural reading is that they apply to the whole three prohibitions, although the order of these prohibitions is very unskilfully inverted in describing the effect of the facts and deeds prohibited.

"But even supposing that the words 'facts and deeds' in the prohibitory clause have a somewhat limited meaning, the Lord Ordinary does not think that, even according to the strictest rules of interpretation, he is bound to give the same limited meaning to these words in the irritant and resolutive clause. For in the irritant and resolutive clause there is no reference to the facts and deeds as already described. The expression is not that the said 'facts and deeds' shall be null and void, or that the 'facts and deeds' foresaid or above mentioned shall be null and void, or any similar expression. On the contrary, the words 'facts and deeds' occur in a wider connection. The clause runs thus, and the whole of it must be carefully looked to:—'And in case any of the heirs of taillie and provision foresaid shall contravene the premises, then, and in that case, not only shall all such facts and deeds be null and void in themselves,' &c. Now, the Lord Ordinary thinks that the true question here is, What is the antecedent to the relative expression 'such'? The answer to this is, that the antecedent is 'contravene the premises.' The facts and deeds which are to be null are the facts and deeds which 'contravene the premises.' This is the only meaning which can be fairly given to the word 'such.' It is as if the clause had run, 'if any heir, &c., shall do any fact or deed contravening the premises, then such fact or deed shall be null.' The Lord Ordinary cannot read the word 'such' in any other way.

"If this be so, it was admitted in argument that the words 'contravene the premises' apply, not to the last prohibition only, but to all the prohibitions in the prohibitory clause, and thus the conclusion is necessarily reached that the irritant and resolutive clause is as broad and comprehensive as the prohibitory clause, and that therefore the entail is not defective in either clause under the statutes.

"The reported case which comes nearest the present is that regarding the Craigmillar Entail—*Gilmour* v. *Gordon*, 24th March 1853, 15 D. 587. In this case there was almost the same specialty as here, with this difference, that the words 'facts and deeds' occurred several times in the prohibitory clause, but the judgment of the Court did not go upon this specialty, but upon the rule of construction, that the antecedent to the relative 'such' was not the last member of the prohibitory clause, but the introductory words of the irritant clause, 'act or do in the contrary.' The present case is quite parallel, the irritant clause being introduced by the words, 'contravene the premises.'

"The case chiefly relied on by the pursuer was the case of the Overton Entail, *Lang* v. *Lang*, 23d Nov. 1838, 1 D. 98, H. L., M'Lean and Robinson, 871; but that was a very special case; and in the judgment in *Gilmour* v. *Gordon* it was expressly distinguished from such a case as the present. It appears to the Lord Ordinary that the present case is much nearer that of *Craigmillar* than that of *Overton*.

"Reference may also be made to the following cases—*Barclay* v. *Adam* (Blairadam Entail), 1 Shaw's Appeals, 24, and 8 Bligh, 275; *Rennie* v. *Horn*, 3 Shaw and M'Lean, 142; *Hay* v. *Hay*, 11th

March 1851, 13 D. 945; *Earl of Airlie* v. *Ogilvie*, 16th Dec. 1852, 15 D. 252; *Udny* v. *Udny*, 16th March 1858, 20 D. 796; *Kintore v. Lord Inverury*, 23 D. 1105, H. L., 6th April 1863, 4 Macq. 520.

"At the same time, in referring to decided cases, the remark in the *Balgowan* case, in the House of Lords (6 Bell, 441), must be kept in mind, that in these entail cases, precedents, while they may establish rules of principle, are not of very strong authority where the words are not identical. A very slight variation in expression may, under the strict rules which must be applied, alter the whole effect of the clauses.

"In the present case, accordingly, the Lord Ordinary rests his judgment on the fair though strict construction of the words of the present entail."

The pursuer reclaimed.

Solicitor-General (CLARK) and KEIR for him.

ADAM and RUTHERFURD for respondent.

At advising—

LORD COWAN—That this deed of tailzie contains an effectual prohibitory clause is not disputed. The heirs of tailzie are prohibited to alter the order of succession, to sell the lands or any part thereof, and to contract debt—the three cardinal prohibitions required to render every such deed effectual; but the phraseology of the clause requires to be carefully considered, because of its connection with the irritant clause which immediately follows it, and which is alleged to be defective—"and sicklike it is hereby provided and declared that it shall not be lawful to any of the heirs of tailzie" to alter the order and course of succession, "nor to sell nor dispose the lands and others," or any part thereof, &c., "or to contract debts or sums of money, or grant any bonds or other obligements, or to do any facts or deeds whereby the same or any part thereof may be apprised, adjudged, or any ways evicted, or the said tailzie and the order and course of succession frustrated or prejudged." There cannot be a doubt therefore that, as regards the prohibitory clause, this tailzie is not open to objection.

There follows the irritant clause, in these words —"and in case any of the heirs of tailzie and provision foresaid shall contravene the premises, then and in that case not only shall all such facts and deeds be null and void in themselves, in so far as the same or any of them may in any ways affect or burden the lands and estate before written, or prejudge or hurt the heirs of provision foresaid:" So far the irritant clause; there follows the resolutive clause, in these words—"but also the person or persons so contravening shall *ipso facto* amit, lose, and forfeit all right, title, and interest" to the said lands and estate, which are declared to accresce and belong to the next heir of tailzie, "in the same manner as if the contravener were naturally dead." The objection taken by the pursuer is that the irritancy applies to "all *such* facts and deeds," and that these words are of limited import, because of the relative "such," referring back for its antecedent to the "facts and deeds," which occur at the close of the prohibitory clause, and there the words, it is contended, are of limited import, applying only to facts and deeds, whereby the lands may be adjudged or evicted, and the order of succession frustrated.

The Lord Ordinary, who holds the deed of entail to be valid, has, in the note to his interlocutor, stated that it is not by any means clear that the words "facts and deeds" in the prohibitory clause are of limited meaning; but, on the contrary, that they must be held to refer, according to their natural reading, to the whole three prohibitions. If this view could be taken, there would be an end of the objection to the irritant clause. There would be no room for it, because the antecedent—assuming it to be the words "facts and deeds" in the prohibitory clause — would necessarily control the meaning of these words in the irritant clause, and fix upon them such generality of meaning as to make them applicable to the whole three prohibitions. I cannot adopt this view of the words in the prohibitory clause. They seem to me of limited import, and to apply only to facts and deeds, whereby, as in the case of contraction of debt, the lands may be adjudged, or any ways evicted. Apart from this view, however, the real question is, whether—in the hypothesis at the commencement of the irritant clause—there is not to be found a satisfactory antecedent to the word *such*, by which the facts and deeds irritated are qualified, so as to make the irritancy applicable to the whole prohibited acts.

It will be observed that the irritant clause of this entail is not brought into that immediate proximity or juxtaposition with the prohibitory which occurred in the case of *Balgowan*. Both this Court and the House of Lords held such proximity —the expression being the same in both clauses— to be fatal to the irritancy, as one generally applicable to all the prohibitions. The prohibitory clause in that entail, and the irritancy connected with it, was thus expressed—that it should not be lawful to the heirs of entail "to dispone, &c., the said lands, or any part thereof, nor to contract debts, commit treason, or to alter, innovate, or infringe the course of succession by any *fact or deed*, civil or criminal, omission or commission, whereby the said lands and estate may be adjudged, forfeited, evicted, or any ways lessened or impaired; declaring all such *facts and deeds*, omissions and commissions, to be void and null." I refer to this instance as shewing how inevitable the limited construction was which the Court held the words "all which facts and deeds" to be subject. The two clauses were brought into direct proximity, and the facts and deeds in the one could not but be held to be precisely those referred to in the other. The present deed does not bring the two clauses into any such proximity. On the contrary, after the close of the prohibitory clause there occur these important words, as introductory to the irritancy that follows—"*and in case any of the heirs of tailzie and provision foresaid shall contravene the premises*, then, and in that case, not only shall all such facts and deeds be null and void in themselves, in so far as the same, or any of them, may any ways affect or burden the lands and estate," and so forth. There is thus a distinct separation made between the prohibitory clause and what follows, and in the words, in case any of the heirs "shall contravene the premises," there is found what will satisfy the referential terms which follow—"all such facts and deeds." This is the view on which the Lord Ordinary has proceeded in sustaining the entail.

To estimate aright the ground upon which the judgment under review proceeds, it is proper to advert to the decision in *Lang* v. *Lang* (Overton), decided in House of Lords, 16th Aug. 1839, which is maintained by the pursuer to be an adverse authority. The prohibitory clause in that case was defective, inasmuch as it did not effectually debar alterations in the order of succession; but in other respects it was unobjectionable,—sales

being prohibited, and the following words occurring as regards contraction of debt—"nor to contract debt or do any other deed whereby the said lands and subjects may be adjudged or evicted from the succeeding members of entail, or their hopes of succession thereto in any measure evaded;" and there followed these words of irritancy, "and if they do in the contrary, it is declared, in the first place, that all such debts and deeds shall be intrinsically void and null, and of no force, strength, or effect." This Court, altering the interlocutor of the Lord Ordinary, held that the entail was good; but the House of Lords reversed the judgment, being of opinion that the words "such debts and deeds" could only be referred back for their antecedent to the "debts and deeds" at the close of the prohibitory clause, whereby the lands may be adjudged or evicted. And it is important to observe, that in the opinions delivered by the learned Lords great stress is laid upon the word "*debts*" occurring along with the "deeds" in the irritant clause,—the generality of the term *deeds* being held controlled by the term *debts*, so that "such debts and deeds" could be viewed only as those acts whereby the lands might be adjudged or evicted; and Lord Brougham, in especial, stating that, if "it had been all 'deeds,' that would have included (as well as 'debts') deeds alienating, disponing, and otherwise altering the order of succession." The Judges in this Court felt this to be the difficulty of the case, but they got over it, and altered the Lord Ordinary's judgment, because they held, as stated by the Lord Justice-Clerk, "the adjection of debts only infers that, *ob majorem cautelam*, the entailer desired to avoid the question, whether contracting debt would be held a 'deed;' and I do not think that it vitiates the plain effect of the word 'deeds.'" The House of Lords took a different view, holding that "such debts and deeds" could only apply to that limited character of deeds whereby, as in the case of debts, the lands could be adjudged or evicted contrary to the prohibition thereanent. And accordingly, as used in the *Overton* entail, that the intervening words, "and if they (the heirs of entail) do in the contrary," must be held as having a limited meaning, and being referential only to the same character of debts and deeds. I do not see any reason to doubt that, if the irritancy had applied to all such deeds without the adjection of debts, the irritancy would have been held to include all deeds done in the contrary of all or any of the Acts prohibited, whether alienation, contraction of debt, or alterations in the order of succession. The present case does not present the same peculiarity,—the words "*facts and deeds*" being both of them of general import, and the words by which the irritancy is introduced being also comprehensive and universal in their application to the whole premises, that is, the whole matters prohibited.

The Lord Ordinary refers to the case of *Gilmour* v. *Gordon* (Gilmerton entail), March 1853, as being nearest the present of all the decisions cited in the argument. In that case it was held, in contradistinction to the case of *Lang*, that the irritant clause was sufficient to cover all the prohibitions,—the antecedent to the relative "such" being, not the last member of the prohibitory clause, but the introductory words, "act or do in the contrary" of the irritant. After prohibiting deeds of alteration, or any other fact or deed whereby the succession might be altered, and sales and alienations of the lands, the prohibitory clause proceeded—"nor yet to contract debts, or to do any other fact or deed, either civil or criminal," whereby the lands might be adjudged or evicted,—and there followed these words, "declaring always that, in case the said heirs of tailzie shall act or do in the contrary, that not only all such facts and deeds, with all that may follow thereupon, shall *ipso facto* be void and null," and so forth. The Court held the irritant clause effectual as regards the whole prohibitions. The views taken by the Lord Ordinary (Lord Colonsay), and by Lords Fullerton and Ivory, are referred to for the grounds on which this entail of *Gilmerton* was to be distinguished from that of *Overton*. Lord Ivory, in particular, said that the expression "*debts* and deeds" did not occur in the irritancy, but the words used, "facts and deeds," were both of them general words, and were unquestionably to be held referential for their antecedent to the words introductory of the irritancy, "act or do in the contrary." These words were regarded by the Judges as meaning, "in the contrary of what is before described or prohibited, not of any particular part of it more than another, but of the whole or any part of it, in any respect in the contrary.

Other decisions have been pronounced recognising the importance of introductory words at the commencement of a distinct clause providing for the event of the heirs of tailzie acting in contravention of the prohibitions. Thus, in *Knight* v. *Knight*, Dec. 1, 1842, the words, if the heirs of entail "shall contravene or do in the contrary in any part of the premises, then not only shall all such deeds and debts be void and null," and so forth, were held an effectual irritancy as regarded all the prohibited acts; so that here even the word "debts" being added to "deeds" was not held to vitiate the irritancy. Again, in the case of *Maxwell* v. *Maxwell*, Feb. 24, 1852, where the prohibitory clause was complete, but closed with the words, "nor shall the said lands and others be subject or liable to any deeds contracted or done" by the heirs of entail, "or that shall happen to be contracted or done by such members of tailzie before their succession,"—the declarator of irritancy which followed was held effectual, the words being that, "if any of the heirs of tailzie shall do in the contrary, then and in that case all and every one of such acts and deeds shall be *ipso facto* void and null." That case came before me as Lord Ordinary, and in the note to the interlocutor sustaining the entail I explained the grounds on which it appeared to me that an irritant clause introduced by such words as occur in this entail, as in the case of *Maxwell*, and where the word "debts" did not occur in "the irritant" clause, ought to receive a general and not a limited construction. And, in adhering to the interlocutor, the Lord Justice-Clerk observed, in terms very significant as applicable to the present case, "There can be no doubt in this case; there is no difference between the terms used here and the ordinary expression 'contravene in the premises.' I avoid inquiring into the intention of the entailer; we must, as the Lord Ordinary says, take the fair grammatical construction of the deed."

The words used in this deed, "if any of the heirs shall contravene the premises," must thus be regarded as the usual phraseology employed to set forth contravention generally by the heirs of entail of any of the prohibited Acts. And there can be no doubt of their generality of meaning. "Contravene" is the word used in the statute 1685 as

applicable to all or any kind of contravention of the fetters, and the word "contravener" to designate the party so acting. And the word "premises" has general application to the whole of what precedes it, and cannot but be held to embrace all or any part of the prohibitory clause. The hypothesis implied in the terms is of universal application, and the only ground on which it is attempted to be limited is by the use of the relative *such* on the footing that it must be referred to those facts and deeds at the close of the prohibitory clause, which by their collocation are of limited import. I do not think that this can be held the fair grammatical meaning of the terms of the irritant clause. It is not reasonable so to limit the general meaning of the words, when in the hypothesis, as to contravention, we have sufficient antecedent to satisfy the term *such* without reverting to the terms at the close of the prohibitory clause. And this, accordingly, is the view taken in the cases to which I have adverted. All the more clear does this appear to me, in this case, from the limited meaning to which I hold the words "facts and deeds" in the prohibitory clause subject, *i.e.*, as applicable only to deeds of forfeiture, not including even debts. Assuming this, it would be quite unreasonable, and I think quite ungrammatical, to hold the words "such facts and deeds" in the irritant clause to be confined to the very limited class of acts to which, in this view, it must be referred.

I am not aware of any decision, either of this Court or of the House of Lords, at variance with the views which I have stated; but two cases were referred to, as if they were of a contrary tendency—I mean the cases of *Ogilvie*, March 1855, 2 Macq., and of *Udny*, March 24, 1858. But, however valuable the opinions which were delivered by the House of Lords and in this Conrt in the case of *Ogilvie*, with regard to the general principle of construction applicable to such questions, neither of the decisions at all conflict with the case of *Craigmillar*, and the other cases to which reference has been made. The decision in the case of *Udny* was indeed all but an echo of that in *Lang* v. *Lang*, and, in giving effect to that anthoritative precedent, this Court did by no means intend to go against the principles recognised in the case of *Gilmour*, only two years before. Had I thought this entail to be on all fours with *Overton* and *Udny*, I would have arrived at a different conclusion. It is because I concur with the Lord Ordinary in holding it to be distinguished from *Overton* by the same features as *Gilmerton* was held to be, that I concur in the judgment under review.

Lord Benholme and Lord Neaves concurred.

The Lord Justice-Clerk concurred, and stated that he had difficulty in distinguishing the present case from that of *Lang*, but that the mitigation of the law of entail generally had relaxed or coloured the practical application of the canon of construction. The words "such facts and deeds" meant all acts of contravention.

Agents for the Pursuer—Dundas & Wilson, W.S.
Agents for the Defender—Mackenzie & Kermack, W.S.

Friday, February 9.

FIRST DIVISION.

CARL SEITZ *v.* JAMES BROWN & CO.

Reparation—Breach of Contract.

Where the defenders agreed to adopt the pursuer's process (which was neither a patent nor an absolutely new invention) in a certain manufacture, if satisfied with it when seen working at a place where it was already in use,—*held* that, whether they were actually bound to adopt the process on being satisfied of its efficiency or not, they are not entitled to erect an apparatus similar to the pursuer's, and copied from him, by the hands of another person, and without employing him; and damages for breach of contract given accordingly.

This was an action of damages for breach of contract at the instance of Carl Seitz, practical chemist, against James Brown & Co., papermakers at Eskmills, near Penicuik.

The agreement on which the action was founded was as follows:—

"*Eskmills, Penicuik, 13th August* 1868.

"Messrs James Brown & Co.

"Dear Sirs,—I hereby agree to communicate to you and inform you of the method by which I boil down and otherwise manufacture the strong leys resulting from the boiling of esparto grass. To supply you with all general and working drawings requisite for the efficient construction and erection of the complete working-plant for your mill; to generally superintend the work during progress, and to teach your men the complete process, until all is in thorough working order; to at once communicate and show you my method for preventing the smell nuisance about the furnaces whilst drawing the charges, and incinerating the recovered ash in the heap, as it can be applied to your present plant.

"In consideration of the above you agree to pay to me the sum of £60 as soon as I have shown you how to avoid the smell nuisance from the charges during the time of drawing and incineration in the heap, and to adopt my complete process and manufacture of soda (if you are satisfied with the process when working at Messrs Young, Trotter, & Son's mill), on the following terms:—

"1*st*, You to pay me, my heirs, administrators, or assignees, one month after starting the complete process at your mill, for travelling and other incidental expenses, the sum of £50.

"2*d*, You to pay to me, my heirs, administrators, or assignees, quarterly or half-yearly (in your option), the net profit effected by the process and suggestions for the period of twelve months (one year) from date of starting the entire process, in full discharge of my claim for ever.

"3*d*, The net profit is to consist of the difference between what the boiling of your grass has cost you during the one year whilst my process has been in operation, and what it would have cost you by boiling the grass with 60 °/₀ caustic soda, at the rate of eighteen pounds of such soda per cwt. of grass, at the price of £16 (sixteen pounds), per ton of such soda. The recovery process is to be charged with ten per cent., 10 °/₀, for the wear and tear on the capital expended on the plant required for your process, with 5 °/₀ five per cent. for interest on foresaid plant, house, and