could be assumed to have anticipated or to have knowledge of, and it is not said they had any knowledge of it. With regard to the engagement of a manager, I should doubt whether that would be an act of sufficient importance to set up a lease of this kind, even if it had not been qualified. But it was a qualified engagement; it was an arrangement with a person to become manager, provided a lease was entered into, and the only lease entered into was set aside by this Court. I am accordingly of opinion that the *rei interventus* alleged was not of a character that will set up this invalid document to the effect of making it valid and effectual.

The Court adhered.

Counsel for Pursuer (Reclaimer)—Kinnear—Asher—Lorimer. Agents—H. & A. Inglis, W.S.

Counsel for Defenders (Respondents)—Balfour—J. P. B. Robertson. Agents—Tods, Murray, & Jamieson, W.S.

Friday, February 8.

FIRST DIVISION.

[Sheriff of Banff.

DUNCAN (INSPECTOR OF BANFF PAROCHIAL BOARD) *v.* FORBES.

Poor—Relief—Circumstances where a Father held bound to give Relief for Maintenance of Pauper Son.

A crofter had a large family dependent upon him, one of whom, owing to illness, was obliged to have partial relief from the Parochial Board. His father-in-law was also dependent upon him. In an action by the Parochial Board against him for relief of advances made on account of the pauper son—*held*, in respect it appeared that the father was contributing to the maintenance of a son who was earning a wage sufficient in itself for that purpose, and was therefore possessed of more means than was absolutely necessary for himself and his family, that the Board were entitled to relief.

Observed by the Lord President that a decree for aliment can never be made for all time coming.

This action was raised in 1874 by the Inspector of Poor of the parish of Banff, on behalf of the Parochial Board there, against James Forbes, and concluded, firstly for payment of a sum of £12, 2s. being the amount of alimentary advances furnished by the Parochial Board to James Forbes, son of the defender; and secondly, for decree against the defender obliging him to free and relieve the Parochial Board "in all time coming of all aliment and other advances" which the Parochial Board might thereafter make on account of his son.

The defender was a married man, and had six children. The pauper James Forbes, ever since his marriage in 1869, had been to a certain extent supported by his father, especially during illness, to which it appeared he was frequently subject. For the four years previous to the raising of this action his father had given him a house of the value of about £3 a-year, and he further did what he could to supplement the relief of 4s. 6d. allowed by the Board. The father was a crofter, having a croft of 26 acres, for which he paid a rent of £18 a-year. He had a son John Forbes, in Glasgow, serving an apprenticeship as an engineer, but his wages, it was said, were not sufficient to support him, and he was therefore to a certain extent dependent on the defender, who contributed to maintain him. His wages were from ten to twelve shillings a-week. It further appeared from the defender's evidence that he gave this son a pound every two months. The defender, it was proved, had for some time been very unfortunate in his agricultural operations, and had other drains upon his resources in addition to those already mentioned, among which was the maintenance of his father-in-law, of which he relieved the Parochial Board, and the education of his youngest son. He deponed, further, that he could not pay 20s. per pound of his debts.

The Sheriff-Substitute (GORDON) assoilzied the defender, but on appeal the Sheriff (BELL) reversed this decision in the following interlocutor:—

"*Edinburgh, 5th June* 1877.—The Sheriff recalls the interlocutor appealed against: Finds that the original pursuer advanced the sum of £12, 2s. sterling in the manner libelled: Finds the defender liable in repayment of the same, with interest from the date of citation: Finds him further bound to relieve the pursuer of all subsequent advances: Finds it unnecessary to subject him in expenses, and decerns.

"*Note.*—This is a very painful case; but it is impossible to doubt that it is quite possible, although perhaps not a little hard, for the defender to meet the strict, and it may be harsh, demand of the pursuer. The very efforts, however honourable, to support John Forbes in his apprenticeship is damaging to the defence. The discharge of the defender's obligation to the pursuer must take precedence of the defender's creditable desire to advance John Forbes in the world.

"At the same time, the defender had so much room for self-deception, the Sheriff ventures to hope that, between parties so differently situated, it may not in this case be incumbent upon him to award expenses."

The defender appealed to the Court of Session.

Defender's authorities—*Hamilton* v. *Hamilton*, March 20, 1877, 4 R. 688; *Moir* v. *Reid*, July 13, 1866, 4 Macph. 1060.

At advising—

LORD PRESIDENT—There are two distinct parts in the interlocutor of the Sheriff dated 5th June 1877, one in which he finds the defender liable to repay an advance of £12, 2s. made by the inspector of poor, the other in which he further finds the defender bound to relieve the pursuer of all subsequent advances—that is to say, in all time coming. In point of fact, this is a finding in terms of the second conclusion of the summons. As regards the second part of this interlocutor, I consider it to be entirely unfounded in point of law, for it will depend on the circumstances of the parties at the time whether the defender will be liable for aliment, and it is quite impossible for an interlocutor to decide that a

decree of aliment can obtain for all time coming, and it is just as clear that no one can by a decree be relieved in all time coming. That part of the interlocutor must clearly be recalled.

As regards the other part, I do not know whether it is considered judicial to express regret when deciding a point of law, but I do feel regret now when I am obliged to find this poor man liable to pay this £12, 2s. I do so because I am satisfied that the defender had more money than was absolutely necessary for himself and his family. I fear I cannot class with those who had claims on the defender the son at Glasgow who was earning wages enough to keep him, and every advance made to him must be looked upon as a debt. Further, the whole evidence goes to show that the defender was not in that pauperised state that he is entirely unable to pay. I must add that the question for us is not to settle whether he was unable to pay at the time that the aliment was paid, but whether he is able to do so now. For the Parochial Board, when it aliments a person, always has a continuing claim for the sum against anyone who is bound to maintain the pauper. On the whole, I find it impossible to alter the first part of this interlocutor.

Lords Deas, Mure, and Shand concurred.

The Court pronounced the following interlocutor:—

"Find that the Parochial Board of the parish of Banff made the advances for the maintenance of the pauper James Forbes, sued for: Find that the said pauper was a proper object of parochial relief: Find that the defender (appellant) is the father of the pauper, and is not unable from his pecuniary circumstances to relieve the parish of the said advances: Therefore recal that part of the Sheriff's interlocutor of 5th June 1877 that 'finds him' (defender) 'further bound to relieve the pursuer of all subsequent advances:' *Quoad ultra* adhere to the said interlocutor and refuse the appeal, and decern: Find no expenses due to or by either party."

Counsel for Pursuer (Appellant)—Mair. Agent—W. Officer, S.S.C.

Counsel for Defender (Respondent)—Balfour—Pearson. Agent—A. Morison, S.S.C.

Saturday, February 9.

FIRST DIVISION.

[Sheriff of Renfrew.

RALSTON *v.* CALEDONIAN RAILWAY COMPANY.

Process—Expenses—Sheriff Court—Proof.

In a cause in which it appeared to the Court that the evidence led by the successful party had been needlessly long, the Court refused to allow him more than half the cost of the proof, although he was defender in the action, and although the evidence led by the pursuer had been of greater length.

Observations on the practice of taking evidence in Sheriff Courts.

This was an action brought by William Ralston, farmer at Denny, against the Caledonian Railway Company for damages in respect of injury suffered by a horse belonging to him while travelling in a horse-box on the defenders' line without an attendant. The injury complained of was inflicted in consequence of the horse, a Clydesdale, 15 hands high, and measuring 28 inches from the withers to the chest, having passed through the feeding-window or door, 25 inches square, in the end of the horse-box in which it was travelling, and cut itself on the glass of the window of the coupé into which it got. The Court held, reversing the judgment of the Sheriff (Fraser) and Sheriff-Substitute (Smith), that the facts did not show that there had been any such carelessness or want of proper precaution on the part of the Railway Company as to render them liable for the result of such a singular and unexpected accident.

A very long proof had been led in the Sheriff Court, the pursuer's evidence extending to 64 pages of print, the defenders' to 50. Thirteen witnesses were examined for the pursuer, and the same number for the defender. Several of these witnesses were called to speak to the habits of horses, three of the defenders' witnesses being veterinary surgeons. These witnesses were examined at great length as to the proper length of halter for tying a horse, and as to their opinion whether it was necessary that an attendant should travel with a horse or not. The latter point was not argued by either side before the Court.

In the course of their opinions, in which they were unanimous in holding that the Railway Company could not on the facts be held liable, the learned Judges made the following observations on the length of the proof:—

Lord Deas—We have had a very long proof laid before us on the question as to whether there was such neglect or default on the part of the Company's servants as to make them liable for the injuries sustained by this horse. The facts, if given with sufficient precision, would have been quite sufficient to determine that question. There was no use for such expressions of opinion as we have had in the evidence of the so-called skilled witnesses. It is very unsatisfactory to see a Sheriff Court case carried on at such length and at so great an expense.

Lord Mure—I quite concur in what Lord Deas has said about the length to which the evidence has extended. To try to get anything out of it is like looking for a needle in a bundle of hay. It seems to have been taken down by a shorthand writer without any dictation. That is quite improper, and whether it is to have any effect on the question of expenses, I do not say at present.

Lord Shand—I find that the proof here extended to 467 pages of manuscript. Whether there is to be some mark of our sense of the inordinate length of that proof by a finding as to expenses is a question for the consideration of your Lordships. I must say I think there should be some steps taken to check the length to which these proofs are sometimes allowed to run. Often they are admirably taken, but we