hand, supposing the wife predeceased, then there are provisions still that will require to be fulfilled, but the wife's heirs or assignees would certainly be entitled to come in and demand payment of this money. In short, it is impossible to read this clause except *applicando singula singulis*. The trust shall not come to an end, so far as concerns any portion of the funds invested in the trust, until the purposes for which that portion is conveyed have been fulfilled and come to an end. That is the only consistent and reasonable meaning of the words. I think my brother Lord Deas was a little mistaken in his reading of the clause immediately preceding the one of which I have been speaking, where the liferent provision in favour of Mrs Stewart or Laidlaw is declared to be for her liferent aliment and maintenance. She has no liferent provision of any kind in the second part of the marriage-contract. The liferent provision there mentioned is a liferent of the proceeds of the policies of insurance in the event of her surviving her husband, and therefore these two clauses do not seem to me to affect the general principles in the slightest degree. I think this lady and her husband quite entitled to take this money—the proceeds of the claim for legitim and the balance of Mr Stewart's succession—and that the trustee is bound on demand to pay over that money. We shall therefore alter the Lord Ordinary's interlocutor and give judgment for the pursuers after the accounting has been made.

The Court recalled the interlocutor reclaimed against, decerned in terms of the declaratory conclusions of the summons, and remitted to the Lord Ordinary.

The Court was then moved to find the trustee (defender) personally liable in expenses on the ground that the point in question had already been decided.

Lord President—I think Mr Newlands has been doing nothing but his duty. I should like it to be distinctly understood that Mr Newlands is to go out of Court *indemnis*, and clear of all personal expense, and we will find him entitled to his expenses out of the fund up to this date.

Counsel for Pursuers—Lord Adv. Balfour, Q.C. —Rhind. Agents—Ferguson & Junner, W.S.

Counsel for Defender—J. P. B. Robertson—Gillespie. Agents—Davidson & Syme, W.S.

Friday, February 1.

SECOND DIVISION.

[Sheriff of Lanarkshire.

MONTGOMERIE *v.* DONALD & COMPANY.

Trade-Mark — Trade Name — Infringement—Name of Natural Product used in a Manufacture.

A person who, together with his predecessors for a long period, had manufactured hones from a quarry on his estate, which was bounded by the river Ayr, sought to interdict the lessees of a quarry on a neighbouring estate, also bounded by the river Ayr, from applying to hones manufactured by them there the trade name "Water of Ayr Stone," by which he averred his hones were widely known for their excellence in the commercial world, and to which he had acquired the exclusive right by long and continued use. The Court being satisfied on a proof that the name was the ordinary trade name of an article known in commerce as a natural product of the valley of the Water of Ayr, and not identified with the particular output of the complainer's quarry, *refused* interdict.

John Cunninghame Montgomerie carried on a business of over ninety years' standing as a manufacturer, producer, and finisher of stones and hones for sharpening edged tools and for polishing purposes, at Dalmore, which is in the parish of Stair, and is bounded by the river Ayr. James A. Donald & Company carried on at the date of this action a similar business for the sale of stones and hones produced from the estate of Barskimming, which is also bounded by the river Ayr, and only separated from Dalmore by the glebe lands of the parish church. Montgomerie presented this petition in the Sheriff Court of Lanarkshire praying the Court to interdict James A. Donald & Company, and their agents and servants, "from selling, or advertising, or offering for sale, any stones or hones as of the pursuer's manufacture, production, or finish, or as bearing his trade name or trade-mark, having thereon as the most prominent and distinctive feature the words 'Water of Ayr Stone,' . . . which have not been manufactured, produced, or finished by the pursuer, and from representing as the manufacture, production, or finish of the pursuer, or as bearing his trade name or trade-mark, any stones or hones which are not of the pursuer's manufacture, production, or finish, and from selling, or advertising, or offering for sale any such stones or hones not manufactured, produced, or finished by the pursuer, to which the pursuer's said trade name or trade-mark, or any trade name or trade-mark similar thereto, or only colourably different therefrom, shall be affixed, and from affixing to any such goods any label or other mark having the words 'Water of Ayr Stone' thereon."

The complainer averred that the Dalmore stones had been always known in the trade, and generally to the public, as "Water of Ayr Stone"—a name which was purely arbitrary and distinctive, and not descriptive, and was first and had hitherto been exclusively used and applied to Dalmore quarry stones by him and his predecessors. He had by himself for five years and upwards continuously manufactured, advertised, and sold whetstones and hones under the title of "Water of Ayr Stone"—a designation which had been for that period his trade name or trade-mark. In addition, he had for the last three years used in connection with them a distinctive label or trade-mark consisting of a group composed of a hand grasping a hone, in the centre of which group was a wheelstone with four blocks bearing conjointly the words "Water of Ayr Stone," and disposed on each side of the group. This he had registered on 7th February 1883 by virtue of the Trade-Marks Registration Act 1875, "but independently of such registration he had by the long and continued use of the name acquired the sole and exclusive right to use the same as a

trade name or trade-mark in connection with the manufacture, production, finish and sale of stones and hones manufactured for sharpening edged tools and polishing purposes." By reason of skill and experience in their manufacture, and of their general good qualities, the stones at Dalmore had become widely known at home and abroad as a valuable article. He further averred that the respondents were advertising and selling stones under the name of "The Water of Ayr Stone" of a greatly inferior quality to those sold by him under that name, and in consequence were injuring his business.

The respondents averred, that in the parish of Stair, and more particularly in the lands situated to the north and south of the river Ayr, there were numerous beds of a superior stone admirably adapted for sharpening edged tools and for polishing purposes, which was known as Water of Ayr Stone. "The name 'Water of Ayr Stone' is the only name by which the stone in question is known, and it is not confined to the stone worked from any particular quarry in the locality. The stone has been worked, described, and sold by the same name without challenge on the part of anyone at different intervals during the last fifty years from the quarries situated on the estates of Stair Bridge, Enterkinholm, Barskimming, and Knockshoggle, all in the vicinity of the Water of Ayr." The stone from which their goods were manufactured was, they also averred, pure Water of Ayr stone, and could not be described in any other way than by that term. Stones manufactured from Water of Ayr stone were sometimes called snake stone from its spotted appearance, and also Scotch Hone. The complainer had attempted to incorporate these names into his alleged trade-marks, as well as the name of the stone itself, with the result, that if his contention were given effect to, they would not be able to sell their goods at all by any descriptive term.

The complainer pleaded—"(1) By the continued use of the trade name or trade-mark in question, and also by the registration thereof under The Trade-Marks Registration Act 1875, the pursuer has acquired a right of property, or at least of exclusive use therein. (2) The use by the defenders of pursuer's trade name or trade-mark complained of being calculated to deceive purchasers into the belief that the goods of the defenders bearing the same are the goods of the complainer, the latter is entitled to interdict as craved. (3) The pursuer's right of property in or exclusive use of his said trade name or trade-mark having been infringed by the defenders, the pursuer is entitled to have the same protected by interdict."

The respondents pleaded—"(2) The goods sold by the defenders being made from 'Water of Ayr Stone,' they are entitled so to describe them. (3) The pursuer having no exclusive right to use the term 'Water of Ayr Stone' in describing his goods, interdict should be refused."

The Sheriff-Substitute (GUTHRIE), after a proof, the import of which fully appears in his note and in the opinion of the Lord Justice-Clerk, pronounced this interlocutor:—"Finds that it is not proved that the defenders have infringed the pursuer's trade-mark: Finds that the pursuer is not entitled to the exclusive use of the words 'Water of Ayr Stone' as descriptive of the whetstones or hones produced in his quarry at Dalmore, in Ayrshire, and manufactured by him: Therefore refuses the interdict craved, and decerns."

"*Note.*—The complainer is proprietor of a hone quarry and manufactory at Dalmore, in the parish of Stair, in Ayrshire, and he asks in this petition that the respondents, who are agents for the lessee of another hone quarry in the same neighbourhood, shall be interdicted in the usual terms (1) from infringing his registered trademark, of which he avers that the words 'Water of Ayr Stone' are the most prominent feature, or his trade name (presumably the same words); and (2) from affixing to any goods not manufactured, produced, or finished by the complainer any label or other mark having the words 'Water of Ayr Stone' thereon. There is no attempt to prove a violation of the complainer's rights in his trade-mark, except so far as the respondents use the phrase 'Water of Ayr Stone' in describing the hones or whet-stones which they produce and sell; and the real question to be decided is, whether the complainer has acquired right to the exclusive use of these words as descriptive of the hones produced in his quarry? The evidence adduced is sufficiently copious; but the facts may be shortly stated. The kind of whet-stone in question was originally found, according to the tradition reported by some of the witnesses, in the channel of the river Ayr a hundred years ago, and for a great part of the century it has been an article of commerce as wrought in quarries, chiefly at the quarry now belonging to the complainer. The stone has a specific character different from other whet-stones and polishing stones, and has a specific use in various manufactures. For a good many years at different times during the present century, and certainly from about 1868-9 till 1882, the complainer's was the only quarry in operation where this stone was produced. But frequently quarries have been wrought at various places in the vicinity, beyond the complainer's boundaries, and the geological map and other evidence show that rock of the same description prevails over a considerable area of this portion of the valley of the Ayr. The quarries have been in operation at Knockshoggle at various dates, especially from 1830 to 1840, when that quarry almost seems, according to the important witness Dickie, to have taken precedence of Dalmore, at Enterkine on the other side of the river from Dalmore, at Quilkieston, where the respondents' quarry now is, about 1852, and at Bridgend about 1868-9, all within a mile or little more from the complainer's property. No endeavour has been made to obtain documentary evidence from the books of the proprietors or their factors and agents as to the dates and terms on which these various quarries were worked. It is certain, however, that Dalmore has all along, or almost always, been the most important quarry, and that at various periods besides the years from 1868-9 to 1882 it has been the only quarry in the neighbourhood actually producing whet-stones. These facts make it natural that the complainer should imagine that he has a peculiar right to the distinctive name by which this kind of hone has been best known, and that many witnesses should be found who say that by Water of Ayr stones

they understood hones produced at Dalmore quarry, and those only. That, however, if it stood alone and uncontradicted, would not suffice to give the complainer a complete right to the remedy he asks. And it is here that a saying of Lord Blackburn in the *Singer Manufacturing Company* v. *Wilson* [cited *infra*] has an important application. While he sees no difference in the wrong done by passing off goods as the plaintiffs' which are not his, whether that be done by using a fraudulent trade-mark or by advertising under a trade name which is his, 'yet the inferences as to the facts and the relief to be given may depend upon whether the case is one of a trade-mark or of an advertisement'—*i.e.*, by a trade name. I take it that the only question here is whether the complainer has a property in the trade name 'Water of Ayr Stones.' The exclusive use of a trade-mark for 12 or 14 years, or for a much shorter time, if it be merely a trade mark distinguishing the complainer's goods from others, even if the same mark had previously been used and then disused by others, would be enough to give an exclusive right. But in the case of a trade name which was formerly used by many, and has come to be used by one alone, and that one for the time the sole producer of the article, it is a very natural and probable inference that the name has been used both by the many and the one to indicate the specific quality or character of the article, and not its origin or manufacture. Accidental circumstances gave the owners of Dalmore a temporary monopoly of Ayrshire or Water of Ayr hones; but it does not follow that they acquired by that accident a monopoly of the name by which such hones are known. If all the breweries in Alloa or Edinburgh except one at each place were for some years to be given up, the surviving breweries would not easily be held to acquire a right to the exclusive use of the title Edinburgh or Alloa Ale; and so, to use a more cognate illustration, if all the granite works at Aberdeen or Dalbeattie were to cease with one exception at each place, these would not, without some very strong and peculiar evidence of user, become sole proprietors of the names Aberdeen or Dalbeattie granite. I do not go so far as to say, in such cases as this or those which I put, that such a trade name might not by possibility be acquired by an individual to the exclusion of other traders subsequently beginning business in the same place and dealing in the same article. But the presumption is against such a monopoly, and the evidence here is not sufficient to overcome the presumption. In fact, till 1879, when I presume there was some prospect of opposition from the present respondents, or from the Messrs Macpherson, it does not appear that the complainer made any very special use of the name Water of Ayr. He did not treat it as a trade name or trade-mark till then, but, like other people, used it as he would have used any other name which happened to be the accepted and understood name of the hones in which he dealt. Nor does it appear ever to have come to denote to the outside public buying the hones that they were the product of any particular quarry or manufactory. Had this been distinctly proved it might have evercome the presumption referred to. But one peculiarity of the witnesses for the complainer is, that they consist almost entirely of quarrymen and labourers, very few or none of a superior grade, living in the neighbourhood, and whose ideas may be easily accounted for by the superior importance of Dalmore quarry, and the occasional or frequent cessation of all other quarries. Another is the paucity of evidence of outside traders coupling the name with Dalmore. And perhaps the most striking peculiarity of all is the absence of anyone who can tell us by what name the goods were sold by the Manchester agency of Messrs Goldsworthy, so often referred to, who seem to have supplied consumers, not only in England but in Scotland, more largely than any other house. I cannot doubt that the complainer would have brought forth any evidence of theirs, or of their books or papers, which would favour his contention. Upon the whole, and keeping in view the principles followed in such cases as *Wotherspoon* v. *Currie* (*Glenfield* case), *Singer Company* v. *Wilson*, *Cheavin* v. *Walker*, 46 L.J. Ch. 686, L.R. 5 Ch. D. 857, and the very similar American case of *Canal Company* v. *Clark*, 13 Wall. 311, I am clearly of opinion that the respondents are entitled to succeed."

On appeal the Sheriff (Clark) adhered.

The complainer appealed, and argued—The complainer's business memoranda, labels, letter paper, &c., all bore the words "Water of Ayr Stone," and also the name of his property Dalmore. It was clear on a consideration of the evidence that the name had been for about a century identified with the distinctive output of his quarry at Dalmore, and had acquired a commercial value. The attempt therefore to adopt the name made by the respondents had only been made in order to get the benefit of the reputation in the market, both at home and abroad, which the Dalmore stones had acquired on account of their excellence both in respect of their material, manufacture, and finish. After an article had acquired a high character in the market under a particular name—even though that name were that of a natural product such as a seam of fire-clay—the Court would not allow another trader to make use of the name.—*Lochgelly Iron & Coal Company* v. *Lumphinnans Iron Company*, January 15, 1879, 6 R. 482; *Dunnachie & Co.* v. *Young & Sons*, May 22, 1883, 10 R. 874. This rule had been carried so far that where the competing manufacturer made the article in the same locality he had been restrained—*Wotherspoon* v. *Currie* (*Glenfield Starch*), April 18, 1872, L.R. 5 E. & I. App. 508; *Seixo* v. *Provezende*, January 22, 1866, L.R., 1 Chan. App. 192; *Braham* v. *Beachim*, February 12, 1878, L.R. 7 Ch. Div. 848. This rule applied as well to the superiority of the manufacture as to the material principle or process made use of—*Singer Manufacturing Company* v. *Kimball & Morton*, January 14, 1873, 11 Macph. 267, 45 Scot. Jur. 201; *Singer Manufacturing Company* v. *Wilson*, December 13, 1877, L.R. 3 App. Ca. 376.

Replied by respondents—The proof clearly showed that the name was not confined to the output of any particular quarry in the locality. It was in fact the name applied to a natural product, and derived from the district where it was found. It was used in this sense by the respondents, and with no desire to infringe on any supposed rights of the complainer. The name of such a natural product could not become the exclusive property of any one manufacturer so

long as the product used in the manufacture was, as here, really the same in both cases, and the articles made equally good—*Canal Company* v. *Clark* (*Larkawanna Coal* Case), December, 1871, 13 Wallace's Amer. Rep. (S. Ct. of U.S.), p. 311; Sebastian's Digest of Trade-Mark Cases, p. 196; "*Loch Katrine Whisky*" Case, *ibid.* p. 271; *Young* v. *Macrae*, March 21, 1863, 9 Jur. (N.S.) 322—and there was no attempt to pass the articles off as made by the original manufacturer —*James* v. *James*, February 23, 1872, L.R. 13 Eq. 421.

At advising—

Lord Justice-Clerk — The present case raises a question on the law of trade name under rather unusual and interesting circumstances. The material facts are not doubtful. It appears that the pursuer and his predecessors have for nearly a century carried on business at a quarry on the estate of Dalmore, near Stair Bridge in Ayrshire, on the bank of the river Ayr, as manufacturers of hones for sharpening edge tools. The material used in making these hones is a kind of stone called Water of Ayr Stone which has been a well-known article of commerce under that name. It seems to have been originally found in the bed of the river Ayr, and was a natural mineral product of a peculiar rock formation, which occurs in the vale of the water of Ayr.

It is not clearly proved when these stones first became known for the properties in question. I am disposed to think that their qualities were known in the trade during the first half of last century, for in a statement made for the proprietor of the estate of Dalmore, in a process against a former tenant of the hone quarry, it is said that they had been known as Water of Ayr Stones for a century prior to 1828. It does not appear, however, that any regular or systematic trade was carried on in them until 1789, when a lease was granted to two persons of the name of Smith, of the quarry of Dalmore, on the banks of the river Ayr. It was found that stones were to be had there in great number, and of good quality, and this quarry has been worked with profit from that time until now.

There can be no doubt that the main celebrity of Water of Ayr Stones in the market was owing to the discovery of this quarry on Dalmore, and the trade carried on there. It is also proved that for a considerable number of years the Dalmore quarry had a substantial monopoly of the market. But I do not think it has been proved that the name by which the substance was known had any special reference to the Dalmore quarry. On the contrary, I am satisfied that the name "Water of Ayr Stone" was the ordinary trade name of an article of commerce known to be a natural mineral product of the vale of Ayr, which I take to be the meaning of the "Water of Ayr" in its usual and popular acceptation. The name does not indicate that it is the product of any particular or exclusive locality in the district so named, and indeed it is quite certain that stones of precisely the same nature and quality are found, not only in the bed of the river, but at various places on the banks, or in the vicinity of the stream. It is proved that at more than one place in the Vale of Ayr stones were quarried for the market at various periods since 1789, in one instance for nearly five years consecutively, and at a place called Knockshoggle one of the witnesses says that the stones produced were finer than those of Dalmore. I think it also proved by analysis that the stones produced at Enterkine were the genuine Water of Ayr Stone.

I have come therefore to the conclusion that this designation was the generic trade name of this article of commerce, as being the natural product of the Vale of Ayr. I am strongly confirmed in this view by the fact that in every popular book treating of the mineral products of Scotland published during the century, which I have been able to consult, this Water of Ayr Stone is referred to under the name of "Water of Ayr Stone." In three instances—Sir John Sinclair's statistical account of the parish of Stair (1793), in the Encyclopædia Britannica, and in the National Gazetteer, 1868, Dalmore is also mentioned as a place where they are found. But in Brewster's Encyclopædia (1808), in the Popular Encyclopædia (1862), in the Gazetteer of the World (1856), it is mentioned simply as a product of the county under the generic name. The last-mentioned work says (Art—Ayrshire)—"In several parts of the county that species of whetstone known by the name of Water of Ayr Stone abounds." I think therefore that this commodity has never been sold by the pursuer or his predecessors by any distinctive or exclusive name, bearing any specific reference to them, or to the Dalmore works, but that the product is found in many places on the banks of the Ayr; that it has been frequently dealt in by other persons, and always under the same designation.

Neither is there any sufficient evidence—indeed any evidence at all—to show that the term was ever considered in the trade as denoting exclusively the hones prepared by the pursuer. On the contrary, one of the witnesses for the pursuer states the matter very clearly and conclusively. William Murdoch senior, a witness much relied on by the pursuer, says—"I do not know what the commercial public out of Ayrshire understand by Water of Ayr Stone. We know perfectly well in the locality where we live what they are and what they are called. Each quarry has its own name—that is, Barskimming, Enterkine, Knockshoggle, and Dalmore, have each their own name. These are the names we know them by."

It thus becomes unnecessary to consider the decisions on the subject of trade name in cases of manufactured articles. This is a natural product found in many places within a certain district. It has a distinct descriptive name, which has no reference to any person or trader in particular, but which is universally used by all to express the same commodity. I do not think that such a designation can be acquired by an individual trader as an exclusive trade name, merely because from some cause he may have been fortunate enough to have a substantial monopoly in the market.

Lord Craighill—I concur. This appears to me to be a very plain case, and is not governed by any one of the principles to which effect has been given in the cases relied on by the appellant. This Water of Ayr stone is not only a natural product, but has long been known under that name in the market.

Lord Rutherfurd Clark concurred.

Lord Young was absent.

The Court pronounced this interlocutor—

"Find that the name 'Water of Ayr Stone" has never been used as a trade name in commerce to denote exclusively the stone taken from the pursuer's quarry: Find that the pursuer is not entitled to the exclusive use of the name of 'Water of Ayr Stone': Find that the defenders have not infringed the pursuer's trade-mark: Therefore dismiss the appeal, and, subject to the foregoing findings, affirm the judgment of the Sheriff-Substitute and of the Sheriff appealed against: Find the defenders entitled to expenses," &c.

Counsel for Complainer (Appellant)—Mackintosh—Pearson. Agents—Cairns, Mackintosh, & Morton, W.S.

Counsel for Respondents—J. P. B. Robertson—Graham Murray. Agents—Dove & Lockhart, S.S.C.

Friday, February 1.

SECOND DIVISION.

[Sheriff of Selkirkshire.

MOFFAT *v.* BOOTHBY.

Master and Servant — Reparation — Wrongous Dismissal—Order to do Work outwith Duty for which Servant was Engaged.

A lad was engaged by a farmer to act as a shepherd and to give assistance in farm work at busy seasons, such as the harvest. After being some time in the service he was ordered, in addition to his work as a shepherd, to tend some cattle which were being wintered at the steading. He refused to obey the order as not being any proper part of his duty, and was dismissed. *Held* (*dub.* Lord Rutherfurd Clark) that the dismissal was unjustifiable and that he was entitled to damages.

In January 1879 William Moffat, a youth of about 15 years of age, was engaged by C. Boothby, tenant of the farm of Hyndhope, as one of his shepherds for the period from Whitsunday 1879 to Whitsunday 1880, at the yearly wage of £22, permission in addition being given to him to graze one ewe on the farm, his master also to pay for his board. At Whitsunday 1880 he remained in the service without any new agreement, and so continued till 13th November 1882, when he refused to obey an order given him on the 11th by Mr Boothby to attend to the cattle at the steading during the winter, on the ground that it was no part of his bargain to do that work, and that it was impossible for him to perform both it and his duty as a shepherd satisfactorily, and was accordingly dismissed. In this action he sued his master for £36, 8s., being a year's wages, less a sum of £5 paid to account, board wages from the day of his dismissal to Whitsunday 1883, and the value (10s.) of a sheep's grazing from 13th November to Whitsunday, on the ground that his dismissal was in the circumstances wrongous.

The defender averred that the dismissal was justifiable, and that the pursuer had been engaged to do farm work as well as that of a shepherd, his duties as such being only such as to occupy him during much of the year for about three hours a day.

A proof was led from which the following facts appeared:—When the pursuer was engaged he was informed by the defender that he would have to attend to the sheep on a hill known as the Dodhead, and assist in the operations of cutting hay and corn, and (according to defender) singling turnips, and other farm work, without specifying what work; nothing was said about cattle. He was boarded with the upper shepherd Beattie, whom he was told to consult as to the management of the sheep. Beattie was present when the pursuer was engaged, and gave evidence in this action that the duties mentioned by the defender, apart from those as a shepherd, were assistance at the corn and hay harvests. At the time of the proof he also was leaving the defender's service. In November 1882 the order was given to attend to the cattle at the steading during the winter. These cattle were ten in number and were in the sheds at the steading. This he was advised by Beattie not to undertake, because in his opinion as a shepherd it was impossible for him to attend to that work in addition to his duties as shepherd. From the time of his entering on the service he had done such work as singling turnips, herding the cattle when they were on Dodhead along with the sheep, and carrying hay to them when necessary, "turniping" the sheep at certain seasons, and cutting turnips for them at others. In 1882 the whole of Hyndhope was sown in grass, so that the pursuer had no more work at turnips. The pursuer deponed that he went over the hill, which carried twenty four score sheep, twice a day, which took three hours each time. Beattie as well as the pursuer deponed that the work of attending to the sheep could not be done in three hours. Besides those on Dodhead the pursuer had to see to two score of sheep in the parks. The defender and another farmer deponed that, except at busy seasons, three hours a day was sufficient for the work in good weather. It was admitted that at busy times, such as lambing time and the stormy weather, the pursuer's whole time would be occupied. He was told when the order to attend the cattle was given, that this would not be required of him at such times.

The Sheriff-Substitute (Milne), after findings in fact to the effect just stated, pronounced these findings in point of law:—"Finds in point of law that there is no evidence to show that when the pursuer was engaged by the defender as shepherd he was told that he would be expected to make himself generally useful on the farm, or that any other farm duties would be required of him besides his proper duties as shepherd, than to assist at hay-time and harvest, and that the pursuer undertook to perform none other: Finds, therefore, that he was wrongously dismissed by the defender on 13th November, and that he is entitled to wages and board wages accordingly: Finds, further, that there is no evidence to show that the charge of sixpence per week for grazing his ewe on another farm, from 13th November 1882 to Whitsunday 1883, is excessive; therefore decerns against the defender for £36, 8s. sterling, as concluded for."