

sample taken. I consider that this is not a sound interpretation of the Acts, and arises from mixing up section 3 of the 1879 Act with section 13 of the 1875 Act. Under section 13 it is provided that an inspector "may procure any sample of food or drugs, and if he suspects the same to have been sold to him contrary to any provision of this Act" shall take the proceedings there-after narrated.

It is quite clear that this applies to purchases made by inspectors for the purpose of procuring samples of foods or drugs. But section 3 of the Act of 1879 is in wholly different terms. Not a word is said about selling or buying to or by an inspector. On the contrary, it only authorises him to procure at the place of delivery any sample of any milk in course of delivery to the purchaser, who plainly is not the inspector himself, and although it provides that proceedings shall be taken and penalties enforced in like manner as if the inspector had purchased the sample himself, yet that does not assimilate his taking as many samples as he might think necessary to the case of a number of purchases made by him from ordinary retail sellers of foods. It is noticeable that apparently the Act contemplates not many samples but one sample of milk in a case of this description.

Accordingly I am of opinion that though, perhaps, for the sake of testing the milk it might be lawful for an inspector to take several samples, yet the wording of section 3 of the Act plainly shows that it never contemplated the delivery of adulterated milk at the same time and place and under the same contract as anything else than one, and not many, offences against the statute. To hold anything else would be to put it in the power of any inspector to multiply unnecessarily and unjustly prosecutions for what was one and the same act.

I am accordingly of opinion that we should answer this question as I have suggested, and quash the conviction.

With regard to the fourth question on which we heard a discussion, I am of opinion that the form of conviction being taken from the schedule of the Summary Procedure Act of 1864, although it contains some surplusage, is protected in so far as it does so by the provisions of section 34 of the same Act.

LORD LOW—I concur.

LORD JUSTICE-CLERK—I agree, and only desire to add one word, as the judgment proposed is not in accordance with a decision in England which was quoted to us. I fully recognise the general principle that it is desirable that the interpretation of an Act of Parliament applying to the whole kingdom should, where possible, be uniform, and that principle should not be departed from unless the case be strong for doing so. In this case the grounds for declining to accept as a ruling decision the case quoted to us are irresistible. The judgment of Mr Justice Day seems to me to be quite erroneous, on the grounds stated by Lord Ardwall.

The Court answered the second question in the case in the negative and the fourth in the affirmative, found it unnecessary to answer the remaining questions, sustained the appeal, and quashed the conviction.

Counsel for the Appellant—Cooper, K.C.—Lippe. Agents—Erskine Dods & Rhind, S.S.C.

Counsel for the Respondent—Morison, K.C.—M. P. Fraser—Crawford. Agents—Campbell & Smith, S.S.C.

COURT OF SESSION.

Friday, June 12.

SECOND DIVISION.

[Lord Johnston, Ordinary.

BROCK v. BROCK.

Writ—Attestation—Witness's Knowledge of Subscriber—Act 1681, c. 5.

A codicil bore to have been signed by the testator J. B. before two witnesses. The one witness was the law agent who had prepared the deed. The other witness had no knowledge of the testator's identity, save that the testator was introduced to him by his acquaintance the law agent as "Mr B.," and subsequently acknowledged the signature. *Held* that the witness had sufficient and credible information that the person to whom he was introduced was the person designed in the writ to justify him in subscribing as witness, and therefore that the requirements of the Act 1681, c. 5, was satisfied.

The Act 1681, c. 5, enacts, *inter alia*—"That no witness shall subscribe as witness to any partie's subscription unless he then knew that partie and saw him subscribe, or saw or heard him give warrant to a nottar or nottars to subscribe for him, and in evidence thereof touch the nottar's pen, or that the partie did at the time of the witnesses subscribing acknowledge his subscription; otherwise the said witnesses shall be repute and punished as accessorie to forgerie. . . ."

In this action at the instance of Alexander Brock, joiner, Motherwell, against his brother John Brock, the pursuer sought to reduce a codicil executed by the parties' deceased father, on the ground (1) that the signature to the codicil was forged, and (2) that the execution of the codicil was defective, seeing that one of the two witnesses thereto, John Allan Wilson, did not know the late John Brock, and had no sufficient information as to his identity.

The question as to the forgery turned solely upon the facts of the case.

With reference to the signature of the codicil the facts were as follows:—The codicil bore to have been written by David Barclay, solicitor, Edinburgh, and subscribed at Edinburgh on 24th September

1896 in presence of the witnesses, the said David Barclay and John Allan Wilson.

Mr Barclay deponed that the codicil was signed in his office; that when the deceased John Brock called to sign the codicil, he (the deponer), not having any clerk in his office, went down to the street and met there his acquaintance Mr Wilson, who came to the office to witness the signature. Mr Barclay further deponed—"Mr Wilson went upstairs with me. When I went upstairs I introduced Mr Wilson to Mr Brock—"This is Mr Wilson, Mr Brock, this is the witness," and they just bowed to one another, and I just looked at the deed and I said—"Oh, you have signed this." I took the deed up, and he said—"Yes." "Well," I said, "I would have preferred if you had not done that before Mr Wilson came in." He said, "Oh, it's all right, that is my signature." I said, "Mr Wilson, look at that; is that your signature, Mr Brock?" and Mr Brock said "Yes." (Q) Did Mr Brock at that time distinctly acknowledge his signature in the presence of the witness?—(A) I made him do so most distinctly. That is in accordance with my ordinary practice. I signed as a witness first, and Mr Wilson followed, and I thanked him and he immediately went away. After the codicil was signed I completed the testing clause, and the deed remained with me. . . ."

Mr Wilson in his evidence corroborated Mr Barclay's evidence, and added that he had never seen the man he was introduced to before, and did not know if he would know him again if he saw him.

On 20th June 1907 the Lord Ordinary (JOHNSTON) granted decree of reduction of the codicil on the head of forgery. His Lordship found it unnecessary to decide the question as to the execution of the codicil.

The defender reclaimed, and submitted an argument solely on the question of forgery.

The pursuer argued—The codicil was invalid in respect that the requirements of the Act 1681, c. 5, had not been complied with. There were two decisions as to the knowledge required in the witnesses as to the identity of the person signing the deed witnessed. In *Campbell v. Robertson*, 1698, M. 16,887, it was laid down that "distinct, particular, antecedent knowledge" was not necessary, but in that case the deed was held null because one of the witnesses was called off the street and did not know the person whose signature he witnessed. In *Walker v. Adamson*, 1716, M. 16,896, the deed was sustained because the witness, although he did not know the party signing the deed, obtained information from the neighbours as to his identity. In the present case the witness Wilson did not know the deceased John Brock, and his only information as to his identity was derived from what he was told by Barclay. Hence the attestation came to rest solely upon Barclay, and this was not enough to satisfy the statute. Both witnesses must have knowledge or credible information.

LORD JUSTICE-CLERK—[*After discussing the question of forgery*]—With regard to the attestation I have never understood that it was necessary for a witness to be in any other position than that he should be told, if he does not know already, whose signature it is that he is to witness. If the granter is introduced to him, that is sufficient, because what he is to witness is the fact that he saw the signature adhibited or heard the granter acknowledge it. A simple introduction by name is all that is necessary if the witness does not know the granter personally.

LORD STORMONT DARLING—I concur.

LORD LOW—[*After discussing the question of forgery*]—I should like to say a single word as to the argument that was addressed to us for the pursuer founded on his fourth plea-in-law, which is to the effect that "the said codicil in respect that it was not executed in accordance with law should be reduced."

That plea is founded on the allegation that one of the instrumentary witnesses neither knew Mr Brock nor had any sufficient evidence of his identity.

The question depends on the construction of the Act of Parliament 1681, cap. 5, which, *inter alia*, enacts that "no witness shall subscribe as witness to any partie's subscription unless he then know that partie and saw him subscribe . . . or that the partie did at the time of the witnesses subscribing acknowledge his subscription." There are two decisions on the question what is required under that enactment by way of knowledge on the part of the witnesses of the identity of the party whose signature they are to witness, and these decisions have been held to rule the law ever since. The first is the case of *Campbell v. Robertson*, M. 16,887. There the sufficiency of the attestation of a bond was challenged on the ground that one of the witnesses was a boy of fourteen who was called off the street to be a witness, and who deponed that he did not know the granter. The Court held that that was not a good attestation, but they laid it down that the knowledge of the party required by the Act "cannot be understood of a distinct, particular, antecedent knowledge, but only that he called himself so to the witnesses." According to that decision, therefore, a statement by the person whose signature is to be attested that he is the granter of the deed is sufficient to warrant the witness to subscribe as witness. The second case is *Walker v. Adamson*, M. 16,896, where the circumstances were different. The deed challenged was a disposition granted by one Janet Handyside, and one of the witnesses deponed "that he never saw the subscriber of the disposition before, nor knew that there was such a person till the neighbours in Hastie's Close declared to the deponent that she was the daughter of John Handyside, merchant in Edinburgh, and at her subscribing the said Janet declared to the deponent and two of the neighbours then present that she was the daughter of the said John Handyside, upon

the faith whereof the deponent subscribed as witness." In these circumstances the report bears "that the Lords found that the witnesses had such credible information that the subscriber was the true person designed in the writ that they might lawfully sign as witnesses to a subscription."

The result of these decisions seems to me to be that when a deed is challenged on the ground that the witness did not know whose signature he was attesting, the question is whether he had credible information that the person whose signature he attested was the granter of the deed.

Now, the present case stands thus—Mr Barclay says that having no clerk in the office he was in the habit of obtaining the services of a neighbour, a Mr Keenan, and that he had arranged that Mr Keenan should be present on the occasion in question; Keenan, however, did not appear and could not be found, and, accordingly, the services of Mr Wilson, who happened at the time to call for Barclay, were utilised. Barclay introduced Wilson to Mr Brock, and the latter acknowledged his signature, and Wilson signed as witness, Barclay being the other witness.

I am of opinion that Wilson had sufficient and credible information that the person to whom he was introduced was the person designed by the writ to justify him in subscribing as witness. Wilson knew Barclay well and was aware that he was a qualified law agent and carried on business. When, therefore, Barclay introduced a gentleman to him as a client by the name of and as being the person designed in the writ as granter thereof, and when that gentleman tacitly assented to Barclay's statement by acknowledging the introduction, and then acknowledged his signature, I think that Wilson had such credible information as to the identity of the person whose signature he witnessed, as is required by the statute as construed by the judgments to which I have referred. I am therefore of opinion the codicil cannot be set aside on the ground of insufficient authentication.

LORD ARDWALL—I agree with Lord Low as to the requirements of the Act 1681.

The Court recalled the interlocutor of the Lord Ordinary and assoilzied the defender.

Counsel for Pursuer (Respondent)—Constable—Hamilton. Agent—J. F. Macdonald, S.S.C.

Counsel for Defender (Reclaimer)—M'Clure, K.C.—Mercer. Agents—Cunningham & Lawson, Solicitors.

Thursday, July 2.

FIRST DIVISION.

[Lord Johnston, Ordinary.]

STEVENSON v. GLASGOW CORPORATION.

Reparation—Negligence—Burgh—Stream in Public Park—Accident to Child—Relevancy.

A father brought an action against a corporation for damages for the death of his infant son, who, while playing in a public park belonging to a corporation, fell into a river adjoining the park and was drowned. He averred that his son's death was due to the fault of the defenders in failing to fence the river at the place where his son fell in; that the bank there was worn away by the action of the water; that though the river in its normal condition was about 1½ feet deep, it was subject to sudden and violent floods, when its depth was between 3 and 4 feet; that when in flood it was swift and violent, and was so on the occasion in question; and that in such conditions it was extremely dangerous to the public, and particularly to children, and should have been fenced.

Held (rev. judgment of Lord Johnston, who had allowed an issue) that the pursuer's averments were irrelevant, and action dismissed.

Hastie v. Magistrates of Edinburgh, 1907 S.C. 1102, 44 S.L.R. 829, followed.

On 3rd February 1908 Duncan Stevenson, 17 Rolland Street, Glasgow, brought an action against the Corporation of the City of Glasgow, in which he claimed £250 as damages for the death of his infant son, who, while playing in the Botanic Gardens, Glasgow, fell into the river Kelvin "near the iron footbridge which crosses the river Kelvin below Kirklee Railway Station," and was drowned. The defenders were proprietors of the Gardens, which adjoined the river Kelvin, and were used as a public park.

The pursuer averred—" (Cond. 3) The said accident was due to the fault and negligence of the defenders in failing to have the bank of the river Kelvin fenced at the spot in question, where the bank has been worn away by the action of the water. The river Kelvin in normal conditions is about a foot and a half in depth at the place in question. Said river, however, particularly during the winter season, is subject to sudden and violent floods, during which the depth of water at said place is between 3 and 4 feet. The said river, particularly when in flood, is swift and violent, and was so on the occasion of the accident to and drowning of pursuer's said son, and in these conditions the place where the accident happened is one of extreme danger to members of the public, and particularly to children resorting there. There is an iron railing which