

of no consequence as regarded the the question of insanity. Nothing but mental disease, clouding and dethroning the mind, could excuse from the commission of an act of murder.

The jury, after an absence of fifty minutes, returned a verdict unanimously finding the prisoner guilty as libelled, while a minority of the jury added a recommendation to mercy.

Sentence was delayed until Wednesday, Jan. 10, when the prisoner was sentenced to be executed at Montrose, on 31st January, betwixt the hours of two and four o'clock P.M.

## COURT OF SESSION.

Wednesday, Jan. 10.

### FIRST DIVISION.

#### PETITION—HUGH SWAN.

*Process—Minor.* The Court will not appoint a curator *ad litem* to a minor who does not enter appearance.

Counsel for Petitioner—Mr Skelton. Agents—Messrs Trail & Murray, W.S.

This was a petition for the removal of a trustee and the appointment of a factor on a trust estate. No answers were lodged or appearance made for the trustee, and in respect thereof the prayer was granted. The counsel for the petitioner proposed that before disposing of the petition a *curator ad litem* should be appointed to a minor, to whom the petition had been intimated, but who did not appear. The Court refused to make the appointment because the minor did not appear, although he might have done so.

### SECOND DIVISION.

#### ADV.—WOLSKI v. M'INTYRE.

*Building Contract—Clause of Reference.* A clause of reference in a building contract of "all disputes and differences" does not embrace a claim of damages arising to one of the parties from the failure of the other to perform his part of the contract.

Counsel for the Advocate—Mr A. B. Shand and Mr R. V. Campbell. Agent—Mr Alex. Cassels, W.S.

Counsel for the Respondent—Mr Patton and Mr N. C. Campbell. Agents—Messrs Patrick, M'Ewan, & Carment, W.S.

This is an advocacy from Lanarkshire. Mr M'Intyre sues Mr Wolski for the balance of the contract price of building the Ladies' Institution in Bath Street, Glasgow. Mr Wolski defends on the pleas (1) that the building is not finished according to plan, and that damages are therefore due; and (2) that certain deductions fall to be made from the account. The pursuer admits that the buildings are not exactly according to plan, but avers that he had the architect's sanction for the deviations, and he denies any right to the deductions claimed. In the building contract there is a clause of reference of "all disputes and differences" to Mr Salmon, the architect of the building. The pursuer, in suing for the balance of the contract price, urged upon the Sheriffs that the questions raised by the defender properly fell to be decided under the clause of reference. The defender, Mr Wolski, on the other hand, moved that a proof should be allowed. Sheriff Bell held the arbiter disqualified *personali exceptione*, and allowed a proof. On appeal, Sheriff Alison altered, held the submission operative as to the questions raised, and, notwithstanding the defender's opposition, remitted to Mr Salmon to decide. The pursuer went before Mr Salmon, but the defender refused to ap-

pear. Mr Salmon, in the defender's absence, reported to the effect that the building was not according to plan, but that the deviation did not, in his opinion, lessen the intrinsic value of the building. He did not say that he had authorised the deviation. Sheriff Bell refused to give decree upon this report, holding that if the questions fell under the submission the action should have been dismissed. Sheriff Alison, on appeal, gave decree for the balance sued for. Mr Wolski, the defender, now brought this advocacy, and moved that the Sheriff's interlocutors should be recalled, and that a proof should be allowed. After hearing junior counsel on each side the Court to-day advocated the cause, recalled the interlocutors in the Court below, and ordered issues, in order that the whole case might be proved before a jury. The Court held that the clause of reference was a merely ancillary or executorial clause for the decision of practical difficulties during the execution of the contract, and that a claim of damages such as the defender set up did not fall under such a reference. They found Mr Wolski, the defender, entitled to expenses in the Court of Session and also in the Sheriff Court, from and after the interlocutor of Sheriff Alison remitting to the arbiter.

Thursday, Jan. 11.

### FIRST DIVISION.

#### KNOX v. MACARTHUR.

*Jurisdiction—Poor Law Amendment Act.* Issues in an action of damages disallowed in respect the questions proposed to be tried under them could only be tried in the Sheriff Court under section 86 of the Poor Law Amendment Act.

Counsel for Pursuer—Mr Scott. Agent—Mr D. F. Bridgeford, S.S.C.

Counsel for Defender—Mr Watson. Agents—Messrs J. & J. Turnbull, W.S.

The pursuer was, on 13th September 1864, an inmate of the New Monkland Poorhouse. The defender is schoolmaster of the parish and a member of the Visiting Committee of the Poorhouse. The pursuer alleges (1) That on said date the defender assaulted him; (2) That he thereafter falsely and maliciously gave information to a police constable that the pursuer had assaulted him, in consequence of which the pursuer was apprehended; and (3) That he falsely and maliciously gave information of the said assault to the Procurator-Fiscal in consequence of which the pursuer was imprisoned and detained for two days. He now proposed for trial three issues, embodying these separate grounds of action.

There were originally two actions of damages in regard to this matter—one against the present defender, and the other against Alexander Montgomery, also a member of the Visiting Committee of the Poorhouse. Both defenders pleaded that the actions were incompetent in the Court of Session in respect the 86th section of the Poor-Law Amendment Act (8 and 9 Vict. c. 83) provides that all actions on account of anything done "in the execution of the Act" shall be brought before the Sheriff Court. Lord Kinloch repelled the plea in both cases, but on reclaiming notes the Court, on 7th June 1865, dismissed the action against Montgomery, and in this case repelled the defender's plea-in-law only in so far as it imported that the action should be *in hoc statu* dismissed. The chief difference betwixt the two cases was that in this case the defender was said to have assaulted the pursuer, whereas in the other case it was only averred that Montgomery was present and saw the assault upon the pursuer committed.

The defender did not object to the issue founded on the assault; but he said that in regard to the other two issues the case was in precisely the same position as that of Montgomery, which had been