and other matters connected with the ferrymen in the county in such manner as the situation of such ferries respectively shall appear to them to require," adopting certain procedure set forth in the section before making the rules. On 1st May 1867, the Trustees, at a meeting held at Inverary, issued the rules and regulations now complained of. The Magistrates of Inverary, proprietors of the ferry between Inverary and St Catherines, and claiming to have managed the ferry from time immemorial, now objected to these regulations on various grounds. The rules enacted, *inter alia*, that if a steamer be employed on the said ferry, the fare chargeable therein shall be one shilling for each passenger, and also that the said steamer shall leave Inverary twice in the day, viz., at 10·30 A.M. and 2·30 P.M. The complainers alleged that if these regulations were enforced, it was impossible that the said steamer could any longer be maintained on the ferry. The steamer would have to leave Inverary at a certain fixed hour; and the owner would be prevented from making any arrangement with coaches so as to lessen his expenses, and would otherwise be subjected to pecuniary loss. The complainers contended that the Trustees, in issuing these rules and regulations, had exceeded their powers under the Act 1864; that they had acted irregularly; and that the rules and regulations were to the prejudice of the public. They accordingly craved interdict.

The Lord Ordinary (MURE) passed the note of suspension, but refused interim interdict, adding this note to his interlocutor:—

"The power to regulate rates and other matters connected with ferries in question, even with the proprietors of those ferries, conferred on the respondents by section 75th of the Argyleshire Road Act, is very broad; and the Lord Ordinary, as at present advised, does not see that, when passing the rules and regulations in question, the respondents have, *ex facie* of the proceedings, failed to comply with the requirements of the statute as to the manner in which such rules and regulations are authorised to be passed, or have in that respect committed any excess of power. Whether they have interfered with the privileges of the complainers, as reserved by section 58th of the Act, depends upon the terms of their charter of erection; and the possession which they may be able to instruct has followed thereupon, and will be tried under the passed note. But while the Lord Ordinary has passed the note to try that question, he does not think it would be expedient to interdict the respondents from, in the meantime, carrying out the rules and regulations, which appear to be reasonable in themselves, as establishing uniformity of rates, and are alleged by the respondents to be necessary for the protection of the public, and must, *hoc statu*, it is thought, be presumed to have been adopted for their benefit."

The complainers reclaimed.

LANCASTER for them.

RUTHERFURD, for respondents, was not called on.

LORD PRESIDENT—I think the Lord Ordinary has disposed of this quite properly. There is a question behind, on which I not only give, but on which I have, no opinion, for it is a question of considerable difficulty under the Act of Parliament, and that will be tried under the passed note. But when we find statutory trustees acting as here, it would be unprecedented to grant interim interdict against these rules while the question of their legality is under discussion. The Lord Ordinary has not only done right as to this case but he has followed a good general rule.

The other Judges concurred.

Adhere.

Agents for Complainers—Murray, Beith & Murray, W.S.

Agents for Respondents—Maclachlan, Ivory, & Rodger, W.S.

Tuesday, November 19.

SECOND DIVISION.

MONEY *v.* HANNAN AND KERR.

Master and Servant—Contract of Service—Remuneration for extra Work. Circumstances in which *held* (Lord Neaves dissenting) that a clerk was not entitled to remuneration as for extra work, he having contracted to give his whole attention to the business of his master, and the work for which a claim was made falling within the contract of service.

In this action the pursuer sues Messrs Hannan, Kerr, & Co., of Glasgow, for £300 as remuneration for work performed for them abroad in the following circumstances:—In 1860 the pursuer entered into the defenders' service as clerk, cashier, and book-keeper, at a salary of £90 per annum. The engagement was made by letter, and the stipulation contained in it was—"It is understood that your whole attention is to be devoted to our business, and that you shall not have any other business to attend to." The pursuer continued in their service until March 1862, when he left Glasgow for Bergen, at the desire of Hannan, Kerr, & Co., to conduct an investigation for them at that place of the affairs of a firm which embraced the same partners. The defenders paid him his expenses to and from Glasgow, and a considerable sum to account of his expenses there. He returned to Glasgow in August 1862, and resumed his duties as clerk, book-keeper, and cashier, and he continued there until October 1862. He now claims £250 in this action, raised in January 1866, as remuneration for the extra work performed by him in January. In October 1862 the pursuer became clerk to the other defenders Kerr, Wilson, & Co., at a salary of £2, 2s. a week, and while in this service he was sent to London to arrange a lawsuit against the firm, and, on several other occasions, to pay debts and settle claims there; for these extra services he claims £50.

The Lord Ordinary dismissed the action, on the ground that the statements of the pursuer were not relevant or sufficient to infer the conclusions of the action. His Lordship added the following note to his interlocutor:—

"On 31st December 1860 the pursuer entered into the service of Messrs Hannan, Kerr, & Co., as clerk, cashier, and book-keeper, at a salary of £90 per annum. The period of service was indefinite. The engagement was made by letter, bearing date 8th November 1860, and the letter expressly stipulated—'it is understood that your whole attention is to be devoted to our business, and that you shall not have any other business whatever to attend to.'

"The pursuer was continuing in this service on 27th March 1862, when he left Glasgow for Bergen, on an employment described in a letter of that date, addressed to him by the Company, and running thus:—'You will proceed to Bergen, and there,

acting for our firm and Messrs Hannan & Kerr, proceed thoroughly to investigate the business and books of Wilson, Kerr, & Company, and have a balance struck. You will also get explanations of the many transactions of which we do not understand the merits, and see that they are legitimate and business-like, notifying your opinion to Mr Wilson if they are not so. You will also proceed to inquire into the reason of the very heavy balance at the debit of that firm in our books, and, in accordance with our private letter of that date, see that immediate steps are taken to bring it within the limits of three thousand pounds. Trusting that the result of your visit will be satisfactory and beneficial to all concerned, we are,' &c.

"It is explained by the pursuer that this Bergen firm of Wilson, Kerr, & Co., was composed of the same parties who formed the Company of Hannan, Kerr, & Co., though their interests were in different proportions, and the business of each firm was distinct from that of the other.

"The pursuer proceeded to Bergen, where he arrived, as he states, about the beginning of April 1862; he returned to Glasgow in August 1862, when he 'resumed the duties of clerk, book-keeper, and cashier.' He continued in the service, as he states, till 1st October 1862, when the firm of Hannan, Kerr, & Co. was dissolved.

"The pursuer seeks, by the present action (not raised till 24th January 1866) to make good a claim for extra remuneration, over and above his salary of £90, in respect of this employment at Bergen. He estimates the sum to which he is entitled at £250.

"It appears to the Lord Ordinary that the pursuer has not set forth relevant and sufficient grounds for this claim. It is not said by him that any contract took place between him and Hannan, Kerr, & Co., to the effect of his obtaining any amount of extra remuneration. The letter of 27th March 1862, last quoted, is silent on the subject. He says 'it was the pursuer's understanding that extra remuneration should be received.' He does not say that it was the understanding of Hannan, Kerr, & Co.—which would have been somewhat more to the purpose; there being thus no agreement on the subject, it would require something very peculiar in the nature of the employment to infer a right to extra remuneration in the absence of stipulation. The Lord Ordinary cannot discover anything having fairly or reasonably this effect. The work in which the pursuer was employed in Bergen—'acting for our firm'—as the letter bears, was, in substance, just the work of a clerk and book-keeper. Of course, when working at Bergen, he was not working at Glasgow, and the difference, in his position, was little else than that he was doing in Bergen the same kind of work which otherwise he would have been doing in Glasgow. The Lord Ordinary has paid every attention to the allegations of the pursuer as to what his work in Bergen was. He can find nothing of so different a character from the work in Glasgow as to make it incredible or unreasonable that the pursuer should go on at Bergen at the salary he held at Glasgow. The pursuer was, of course, not bound to go to Bergen against his will. But it may be very well supposed that he would go willingly enough, having his expenses paid, as the defenders admit they must be. The circumstances, as narrated by the pursuer himself, are such as, in the estimation of the Lord Ordinary, made it incumbent on the pursuer to make it a special stipulation for extra remuneration if he intended that his services should be on any other footing than that of his current salary. In the absence of any such stipulation, the Lord Ordinary conceives that no other conclusion can be arrived at than that, with mutual assent, the pursuer's services at Bergen were to be considered part of those which he was rendering to Hannan, Kerr, & Co. for his current salary of £90 per annum.

"On 2d October 1862, the pursuer entered into the service of the new firm of Kerr, Wilson, & Co., 'as cashier and book-keeper,' on a *minimum* salary of two guineas per week. He continued in this service, as he himself states, till July 1863. Between October 1862 and March 1863 he alleges he was specially employed in settling claims of various descriptions connected with the Bergen firm of Wilson, Kerr, & Co., and disposing of goods and merchandise that had belonged to them, in which the firm of Kerr, Wilson, & Co. had an interest.' He says that, 'further, on the 11th December 1862 he was sent by said firm of Wilson, Kerr, & Co. to London, for the purpose of arranging a lawsuit at the instance of John Leisk & Company, merchants there, against the said Norwegian firm.' For these services he now claims a sum of £50 over and above his stipulated salary. The same considerations as in the former case impel the Lord Ordinary to think that sufficient ground for this claim has not been laid. There is nothing in the character of the alleged services which might not fairly admit of his employers asking him to occupy in this way a part of the time in which he was to employ for their behoof, and his consenting to do so without thinking of additional remuneration. If he consented to the proposed work without any stipulation for extra payment, he must be assumed to have undertaken it as a part of his salaried employment. To enter such a case into a nice critical measurement of the two employments, so that wherever the one varies in a hairsbreadth from the other, extra remuneration is to be implied, however little thought of, still less stipulated at the time, would, it is conceived, be to introduce a new and inexpedient principle into the law of master and servant.

"The pursuer, besides concluding for the extra remuneration hitherto alluded to, also concluded for two specific sums in name of unpaid expenses. The defenders do not deny that the pursuer's expenses were to be fully paid;—what they say is, that they were so. There is here no objection as to relevancy, and the matter may be inquired into on its merits, if the pursuer thinks it advisable to press it further."

The pursuer reclaimed.

Watson and W. N. Maclaren for them.

N. C. Campbell in answer.

At advising—

The majority of their Lordships were of opinion that the stipulation of the pursuer when he engaged himself was to devote his whole attention to the firm, that he could not have been compelled to go to Bergen, but that, having consented to go without stipulating for extra remuneration, he could not now claim any. They considered his employment abroad to be of a nature intended when he was engaged as clerk. And, on the whole, they thought it unjust that the defenders should be put to the expense of a jury trial, when even if the pursuer proved all he alleged, he could not succeed in his claim.

Lord Neaves concurred so far as the claim of £50 was concerned, on the ground that the extra

employment averred was germane to the pursuer's proper duties as clerk to the defenders. But he dissented so far as regarded the sum of £250 claimed for the work done at Bergen. He said this was a service which was not intended in his engagement, and was for the benefit of another firm than that from which he received a salary, although composed of the same partners. His proper masters consented to his undertaking these duties, and he certainly had a right to demand payment for them, although he had stipulated for none at the time.

Agent for pursuer—J. M. MACQUEEN, S.S.C.
Agent for defenders—D. J. MACBRAIR, S.S.C.

Tuesday, November 19.

MACMILLAN *v.* PRESBYTERY OF KINTYRE, ETC.

Presbytery—Glebe—Minister's Grass—Act 1663, *cap.* 21—*Designation—Arable Land—Pasture Land—Reduction.* Circumstances in which *held* that a designation of a grass glebe for the minister was made from arable and not from pasture lands, and minute of designation accordingly reduced.

This was an action of reduction at the instance of John Gordon Macmillan, Esquire of Ballinakill, directed against the Presbytery of Kintyre and the Rev. James Campbell, minister of the parish of Kilcalmonell and Kilberry, and the object of the action was to reduce a resolution or minute of the said Presbytery of Kintyre, dated the 25th February 1865, whereby they designed a certain portion of the pursuer's lands as a grass glebe for the defender, the Rev. James Campbell.

The pursuer made the following averments:—"The glebe and minister's grass thus designed were, from the date of designation as aforesaid, bruiked by the successive ministers of the parish of Kilcalmonell as the glebe and minister's grass of the parish until about the year 1828, and soon after the Reverend John M'Arthur, now minister of the parish of North Bute, was inducted as minister of the parish of Kilcalmonell. Instead of sending his horse and cows to pasture on the outfield or hill of Ballinakill, as his predecessors had done from the period of designation, Mr M'Arthur made an arrangement with the proprietor of Ballinakill whereby he accepted an annual payment of £6, 6s. in lieu of pasturage. This arrangement was acted upon by the minister and the two proprietors who successively possessed Ballinakill before the purchase of that estate by the pursuer; and it was on the assurance and in the belief that such was the state of matters that he made the purchase. But soon after the pursuer entered into possession he was called on by the defender, the Reverend James Robert Campbell, then and now minister of the parish, to make payment of £10, 10s. as an equivalent for the grass which had been designated. This sum the pursuer declined to pay, but offered to pay £6, 6s. a-year, as his predecessors had done, or even to increase the payment to £8, with the alternative that the minister, if dissatisfied with the offer, should revert to the use of the pasturage designed by the Presbytery in 1699. The counter statement is denied."

After stating that Mr Campbell applied to the presbytery for the designation of a glebe, and that the presbytery did designate a glebe to him, the pursuer set forth—"This designation is not made out of the pasturage on the estate of Ballinakill before referred to, but, contrary to all reason, custom, and propriety, is made out of the very lawn or park lying immediately in front of the mansion-house of Ballinakill. The ground designated, in short, forms a main part of the pursuer's policy, used and inclosed as an adjunct to the mansion-house, and only accessible by the approach to the mansion-house, which has a handsome lodge and gate at the point of entrance from the highway. The use of the ground designated for the purposes of a grass glebe would destroy the privacy and amenity of the mansion-house, and greatly depreciate the value of the estate. There is abundance of grass land upon the estate from which a designation, if competent, could have been made without interfering with the pursuer's lawn; and the defenders, in making the designation complained of, have done so with a reckless disregard of the pursuer's rights and interests, and an undue favour for those of the defender, the said Reverend James Robert Campbell. The ground out of which the designation of 1865 has been made is in every sense arable, and has been so beyond the memory of man. It had been continually under cultivation as croft land for more than forty years, indeed for a period long beyond the memory of man. When the pursuer took possession of the estate in 1861 it was then under green crop, and was only put under grass in 1863. The counter statement is denied."

The defenders made the following statements:—"It appears from the presbytery minutes that, in February 1754, Mr Archibald M'Neill, then minister of Kirkcalmonell, 'petitioned the presbytery for a visitation in his parish, as he hath no church to preach in, and no manse or legal glebe;' and that accordingly there was a visitation of the presbytery at Kilcalmonell on 27th march 1754, when the presbytery, *inter alia*, annexed certain pieces of ground to the arable glebe formerly designed, so as to bring it up to the statutory extent, and, in reference to the pasturage, the minute bears, 'and the presbytery, considering the inconveniency of the grass presently possessed by the minister, they did, and hereby do, appoint and decern the four soums grass to be in the most commodious pasturage in the foresaid farm of Ballinakill; upon all which Mr Archibald M'Neill took instruments in the clerk's hands, and craved extracts.' The pasturage thus pointed out by the presbytery included the lands now designed, which were outfield pasture lands. The counter-statement is denied; and it is averred that, after the date of the minute, the minister enjoyed better and more convenient grass than he had previously done. Reference is made to the next article. Prior to the year 1828, or thereby, and for time immemorial, and indeed ever since 1754, the minister of the parish exercised a right of pasturage to the extent of four soums over the lands of Ballinakill and adjacent to the manse and offices, and most convenient to the minister. In particular, the minister exercised the right of pasturage on the slopes of the ridge lying towards the junction of the Loch Kiaran river with the Glen-Maodall river, and stretching down to the clachan, and bounded on the west and south by the road to Loch Kiaran, from the slope of which ridge the present designation has been taken. These were all outfield pasture lands, and included the lands now designed. Since 1828, or thereby, until a few years ago, the ministers have received, year by year, a pecuniary compensation in lieu of the pasturage, under temporary arrangements not