

advantage of his condition, caused him to make his will in their favour, to the exclusion of the pursuers, his father, brothers, and sister. It was admitted for the defenders that the deceased was afflicted with "paralysis of the insane;" that he was at one time of unsound mind, but that he so far recovered, bodily and mentally, as to be perfectly able to conduct his business, and to be quite competent to execute such a disposition as that in reference to which the action was raised. It was denied on their behalf that the defenders used any means to circumvent the deceased; and evidence was led to show that he had formerly expressed an intention to make a will in favour of his wife and her daughter. The following are the issues which were sent to the jury:—

It being admitted that the deceased James Anderson, farmer and carrier at West Fountainhall, Golspie, died on the 10th January 1867, and that the pursuers are the next of kin and nearest heirs:

- "1. Whether, at the date of the said general disposition and settlement, the said James Anderson was in a weak and facile state of mind, and easily imposed on.
- "2. Whether the defenders, or any of them, taking advantage of the said James Anderson's weak and facile state of mind, did, by fraud or circumvention, obtain from him the said general disposition and settlement to his lesion."

SHAND and ASHER for pursuer.

D.-F. MONCREIFF and MACDONALD for defender.

The Jury after being absent for six hours, returned with a verdict of 7 to 5.

LORD BARCAPLE intimated that he could not accept such a verdict, and he had no alternative but to discharge the jury.

Agents for the Pursuer—Renton & Gray, S.S.C.

Agents for the Defenders—Horne, Horne, & Lyell, W.S.

Saturday, January 25.

SECOND DIVISION.

CAMERON v. MENZIES.

(Ante vol. iv., p. 235.)

New Trial—Contrary to Evidence—Lease—Submission—Decree-Arbitral—Corruption—Failure to Hear Parties. Verdict of the jury for the pursuer set aside upon the first issue as contrary to the evidence, but sustained upon the second.

In this action, which concluded for reduction of a certain decret-arbitral pronounced by Alexander Duncan, farmer, Pusk, as oversman in a reference between the pursuer and defender, as incoming and outgoing tenants of the farm of Bullions, the following issues had been sent to the jury:—

- "1. Whether the said oversman acted corruptly in pronouncing the said decret-arbitral?"
- "2. Whether the said decret-arbitral was wrongfully pronounced by the said Alexander Duncan without hearing the pursuer in the matters thereby depending?"

The jury, at the last July sittings, found for the pursuer on both issues. The defender moved for a new trial on the ground that the verdict was contrary to evidence.

CLARK and WATSON for defender.

SHAND and ASHER for pursuer.

The Court granted a rule, and, having heard counsel (the Lord Justice-Clerk dissenting), set aside the verdict upon the first issue; but (Lord Benholme dissenting) refused to set it aside as regards the second issue. The result is that the pursuer may, if he pleases, proceed to a new trial on the first issue, or may give up the first issue, and claim decree of reduction in virtue of the second. In the meantime, all questions of expenses were reserved.

Agents for Pursuer—Adamson & Gulland, W.S.

Agents for Defenders—Curren & Cowper, S.S.C.

Tuesday, January 28.

LAING, PETITIONER.

Recal of Inhibition—Diligence on the Dependence—Discharge of Diligence—Decree of Absolvitor—Extract Decree—Extrajudicial Discharge—Register—Keeper—Expenses. Held, approving a report of the Auditor to whom a remit had been made to report upon the practice as to the recal of diligence used on the dependence of an action, and as to the party by whom the expense of the discharge was borne, (1) That a party using diligence on the dependence of an action, must himself bear the expense of discharging it if he has been found wholly unsuccessful. (2) That an extract decree of *absolvitor* will not authorise the keeper to score the inhibition on the register, and that it is necessary for that purpose to produce to him either an extrajudicial discharge or a warrant of the Court.

In April 1860, the Parochial Board of Denny raised an action of count and reckoning against Mr James Laing, writer, Denny, claiming a sum of £2000, or such other sum as should be found due to them as the balance on his intromissions as Inspector of Poor of Denny from September 1845 to August 1858. On the dependence of this action inhibition was used, attaching a considerable amount of heritable property belonging to the defender; and arrestments on the dependence were also laid in the hands of many persons his debtors. After a remit to an accountant in the said action, the Lord Ordinary (KINLOCH), on 23d January 1867, pronounced an interlocutor finding the defender entitled to *absolvitor* with expenses, and, after taxation of expenses, another interlocutor (20th March 1867) assailing and decerning for expenses. These judgments having become final, the defender Mr Laing applied to the Parochial Board for a discharge of the inhibition, which the Board refused to grant, except at his expense. He therefore presented this petition, praying the Court to recall the inhibition, to grant warrant to the keeper to mark the same as discharged in the register, and to find the Board liable in the expenses of the application. The Court, on 25th June last, before answer, remitted to the auditor of Court, as a man of business, to report at whose expense, according to the understanding and practice of the profession, the proceedings necessary to clear the record of an inhibition used by the pursuer, on the dependence of an action in which the defender has obtained decree of *absolvitor* with expenses, should be taken; and, in particular, to report (1) Whether an extract of the decree *absolvitor* presented to the keeper of the register of inhibitions will enable the defender to obtain the inhibition to be scored on the record; and, in that case