The intention of the parties to the transfer was to keep up the debts and securities. The form of the transaction is assignation, not receipt. This may not be conclusive, but it is an element in the question. But that there has been a confusion seems to me made out by this, that at the time of the acquisition of the right to the real security there are adverse interests which prevent the absolute identity of debtor and creditor. The suspender has a personal right to the property contingent upon fulfilment of the simple condition of paying £100 of the price. The suspender says that he has purified the condition, and is entitled to delivery of the disposition which has been executed; at all events, he has a personal right to the property, and his feudal right may be at any time completed. The respondents in acquiring a right to a security over the property, acquire a right which, if the suspender should complete his will, would be instantly available as a burden on that right. There is no concurrence therefore of the full right, real and personal, to the property, and to the burden of the real security over it. There are different rights in the subject which may be brought almost immediately into conflict, and thus I hold the doctrine of *confusio* inapplicable. The consignation may obviate the sale, and on this and the terms on which it is offered, parties should be heard.

The other judges concurred.

The following interlocutor was pronounced:—

"*Edinburgh, 28th Jan*, 1868.—The Lords having heard counsel on the reclaiming note for Robert Imrie, &c., recal the interlocutor reclaimed against; repel the reasons of suspension, except in so far as they regard the consignation set forth in the record; and continue the cause that parties may be heard in reference thereto. Meanwhile reserve all questions of expenses.

(Signed) "GEORGE PATTON, *I.P.D.*"

The case was to-day taken up on the question of consignation and expenses.

After hearing parties, the Court were unanimously of opinion that there was no proper consignation, nor sufficient tender to stop proceedings, and that it could not be dealt with to the effect of stopping the sale. The complainer might now pay the bond and interest due, and render the sale unnecessary.

The respondents were accordingly found entitled to expenses.

Agents for the Complainer—Duncan, Dewar, & Black, W.S.

Agents for the Respondents—D. Crawford and J. Y. Guthrie, S.S.C.

Wednesday, February 12.

FIRST DIVISION.

GLASGOW GAS LIGHT CO. *v.* BARONY PARISH PAROCHIAL BOARD.

Agreement—Poor-rates — Assessments—Repetition—Interest. Circumstances in which *held* that a public company had paid poor-rates assessed by a parochial board, on the footing that the board should repay such part of the assessment as might, according to a decision to be ultimately pronounced in an action then depending between the Company and another board, be found to be illegally imposed. *Held* that interest was due by the board on the sums overpaid. Opinion as to rate of interest.

These were conjoined actions of suspension and interdict and repetition, at the instance of the Glasgow Gas Light Company against the Parochial Board of the Barony Parish of Glasgow, the collector of parochial assessment, and the inspector of poor of that parish. It appeared that the Gas Light Company having appealed against an assessment imposed upon them by the respondents for poor-rates for the year from May 1855 to May 1856, on the ground that, in estimating the annual value of their lands and heritages, sufficient allowance had not been made to them for the annual average cost of the repairs, insurance, and other expenses necessary to maintain their property in their actual state, and all rates, taxes, and public charges payable in respect of the same, in terms of the 37th section of the Poor Law Act, 8 and 9 Vict., c. 83, and the respondents having dismissed the appeal, and threatened to enforce payment by poinding or otherwise, the Company threatened a suspension and interdict. A similar question was then depending in Court between the Company and the City Parish of Glasgow under a note of suspension and interdict at the instance of the Company against the Board of the City Parish, in which the Lord Ordinary had passed the note upon payment in the meantime of the rates charged for, and the charger undertaking to repeat the whole of the rates or such part as might be found to have been illegally imposed. In order to avoid unnecessary litigation, the Company and the respondents, in these circumstances, entered into an agreement dated 17th July 1856. That agreement narrated the assessment, the appeal to the Board, the dismissal of the appeal, the threats of litigation, the dependence of a similar question in Court between the Company and the City Parish of Glasgow, the interlocutor of the Lord Ordinary above set forth, and proceeded:—"And whereas it has now been agreed between the said first party and the Parochial Board of the said Barony Parish of Glasgow that the decision to be ultimately pronounced in the said action of suspension and interdict at the instance of the said first party against the Parochial Board of the said City Parish of Glasgow, shall be held as applicable to the assessment for poor-rates on the said first party within the said Barony Parish of Glasgow: therefore the said first party hereby agrees to pay to the collector of the poor-rates for the Barony Parish of Glasgow the foresaid sum of £361, 0s. 2d. sterling; and, on the other hand, the said John Meek, inspector foresaid, for himself, and as specially authorised by the said Parochial Board of the said Barony Parish of Glasgow, hereby agrees to hold the decision to be ultimately pronounced in the said action of suspension and interdict at the instance of the said first party against the Parochial Board of the said City Parish of Glasgow, as applicable to the assessment leviable on the said first party within the said Barony Parish of Glasgow, and as regulating and fixing the principles on which the allowances to be given to the first party for repairs, insurance, and other expenses necessary to maintain their property assessed, and the rates, taxes, and public charges payable in respect of the same, and the amount of such allowances are to be ascertained, and the assessable rental or value of the first party's lands and heritages fixed: And the said John Meek binds and obliges himself, as inspector foresaid, and the said

Parochial Board of the said Barony Parish of Glasgow, to repay to the said first party the said sum of £361, 0s. 2d. sterling, or such part thereof as may, according to the decision so to be pronounced in the said action of suspension and interdict, or principles thereby established, be found to have been illegally imposed on or overpaid by the said first party." The assessment for the year ending Whitsunday 1856 was paid, and a receipt granted, "subject to the agreement and conditions specified in the prefixed minute of agreement."

In the following year, ending Whitsunday 1857, an agreement to the same effect, though in somewhat different terms, was entered into, and payment was made and a receipt taken as in the previous year. In the following years there was no such agreement, but the receipt granted for the year ending Whitsunday 1858 contained this clause—"Received payment subject to the terms of the interlocutor of tbe Lord Ordinary, dated 30th May 1856," and the receipt for the following year had a similar clause. In the receipts for the years ending Whitsunday 1860, 1861, and 1862 there was no such clause. The assessments for the years ending at Whitsunday 1863 and 1864 were arranged on the footing of the Company paying only what they admitted was due, and binding themselves to pay whatever should be found to be payable in addition to what they paid.

A judgment was pronounced by the Lord Ordinary in the suspension and interdict between the Company and the City Parish on 13th May 1862, which was adhered to by the First Division on 23d March 1863, and an ultimate judgment was pronounced in March 1864.

The Gas Light Company now suspended a poinding at the instance of the Board for payment of the assessment for the year ending at Whitsunday 1865, and sued the Board at the same time for repetition of over-payments of assessment from 1856 to 1862. They pleaded *inter alia*—

"1. The assessments above set forth are erroneous and excessive, in respect that, in estimating the annual value of the complainers' lands and heritages within the Barony Parish for the purpose of poor-rate assessment, deduction was not made of the probable annual average cost of the repairs, insurance, and other expenses necessary to maintain such lands and heritages in their actual state, and all rates, taxes, and public charges payable in respect of the same.

"2. The respondent, as representing the Parochial Board of the Barony Parish of Glasgow, is, in respect of the agreement and obligation condescended on, bound to repay to the complainers, with interest from the respective dates of over payment, the whole sums which they paid to the said Parochial Board on account of poor-rates for the several years libelled on in the summons, over and above the amount justly due, according to the principles given effect to and decision pronounced in the process of suspension and interdict at the complainers' instance against the City Parish of Glasgow.

"3. The assessments made on the complainers for the said several years having been imposed on erroneous data, and having been illegal and unwarrantable, and the sums and interest concluded for in the summons forming the over-charge made by and through such illegal and unwarrantable assessment, and being justly due by the respondents to the complainers, they are entitled to decree in terms of the conclusions of the libel with interest and expenses."

The Parochial Board pleaded *inter alia*—

"1. The defender is not liable to repay to the pursuers any part of the assessments for the years ending 1860, 1861, and 1862, in respect these assessments were paid by the pursuers unconditionally, and without any obligation to repay.

"4. The pursuers are not entitled to interest on the sums which may be found to have been overpaid by them for the period prior to 4th March 1864, when the foresaid decision was pronounced."

The Lord Ordinary (BARCAPLE), after a *proof*, pronounced an interlocutor, in which, after findings of the facts of the case, he found "it proved that the pursuers paid the amount of said assessment for each of these years in the belief and on the understanding that the same was to be subject to correction according to the principles to be established by the judgment in the said action against the Parochial Board of the City Parish, and that any excess in the assessments so paid was to be repaid to them by the defenders under the arrangement and agreement contained in said minute of agreement: Finds that the defenders must be held to have received the amount of said assessments for each of these years, subject to the agreement expressed in said minute of agreement, that the decision to be ultimately pronounced in the action against the Parochial Board of the City Parish should be held as applicable to these assessments, and on the footing and understanding that the defenders should repay any part of said assessments which, according to such decision, should be found to have been illegally imposed, and that whether there was a separate obligation granted by them to repay any excess of assessments for each of the said years or not: Finds that interest is due on any sums which may be found to have been overpaid by the pursuers for any of said years: Repels the first and fourth pleas in law stated for the defenders: Reserves all questions of expenses, and appoints the cause to be enrolled for further procedure."

The defenders reclaimed.

BURNET (FRASER with him) for reclaimers.

YOUNG and MACKENZIE, for respondents, were not called on.

LORD PRESIDENT—I have formed a clear opinion on this case, and as I understand your Lordships have done the same, it is unnecessary to prolong the discussion.

It appears that a question of considerable importance and of general application as regards public companies had arisen in regard to certain allowances and deductions from the assessment to be paid by this company. And that question had arisen and had come into Court between this company and the Parochial Board of the City Parish. A note of suspension and interdict had been presented to the Lord Ordinary against the City Parish, and the Lord Ordinary had granted interim interdict as craved, on payment in the meantime of the rates charged for—the charger undertaking to refund whatever might afterwards be found to be illegally imposed. It was quite understood that that was a process brought for trying this question as a question of principle in which many parties were interested—companies on the one hand, and parochial boards on the other. In these circumstances, an agreement was entered into on 17th July 1856, and the terms of that agreement appear to be very important. I cannot accede to the plea that this is not a binding agreement, because sub-

scribed by only one of the parties, viz., the inspector. It was no doubt meant to be a concluded and complete agreement, and was acted on as such, and as this suggestion was made at a late stage of the case, and is not in the record, it cannot be listened to.

Taking this, then, as a concluded agreement, it sets out that the Parochial Board had charged the pursuers for poor-rates for the year ending May 1856 the sum of £361, 0s. 2d.; that the company had appealed against that on the ground that they had not been allowed sufficient deductions, but the Board would not listen to the appeal: that a similar question had been raised between the Company and the City Parish, in which the Lord Ordinary had pronounced an interlocutor on 30th May; that it had been agreed [reads agreement.] Now, as regards the payment to be immediately made by the pursuers, and the obligation of repetition contained in this agreement, these are no doubt confined to the £361 of rates due for the year ending May 1856, and could apply to nothing else, for there was nothing else then payable for which the defenders could come under any obligation of repayment. But it is impossible to read the rest of the agreement without seeing that it was an obligation on both parties to abide by the decision to be pronounced in the suspension and interdict, as fixing the principle on which this was to be settled for the future. If for the future—that is for all time after concluding this agreement—the principle there fixed was to apply, is it not plain that it must have been meant to apply to the years when this litigation was going on as well as after? It would be unjust if it were not so intended to apply, and therefore the agreement of 1856—whatever may be said as to the literal application—undoubtedly binds the parties to give full effect to the principle fixed between the pursuers and the City Parish, so soon as it was fixed.

The agreement was renewed in 1857, and I think that was unnecessary. It would have been sufficient to make some reference in the receipt to that arrangement of 1856. The repetition of this agreement year by year seems uncalled for. But it is worth while to observe, as to the agreement in 1857, that it is conceived in different terms from that of 1856, and that is very material, for it shows that it was merely a supplementary agreement carrying on the agreement of 1856 to 1857—the obligation of 1856 being the principal obligation. The parties apparently becoming more loose in their view as to the necessity of keeping up their stipulation, did not renew it in 1858 or 1859, but in these years the receipts of the collector bear reference, not to the agreement, but to the interlocutor of the Lord Ordinary in the case between the pursuers and the City Parish, on the basis of which the agreement had been constructed. The first receipt says [reads], and so in 1859. Now, in the three subsequent years the payments are made as usual, but in drawing out the receipts this reference is omitted, and it is because of the omission of that reference in the three years 1860, 1861, and 1862, that the defenders say they are no doubt bound to give effect to the judgment in so far as regards all the other years, but, in consequence of these stipulations not being inserted in the receipts for the last three years, they are not bound to give effect to the principle of the agreement as regards them. That is a plea which cannot be listened to. That it is a plea against the good faith of the agreement no one can doubt. It would have been very much to be regretted if we had been bound by the letter of the agreement to deny justice to the parties. But I think the agreement binds the parties in so many words to give effect to the principle of the judgment to be ultimately pronounced between the pursuers and the City Parish, and it is impossible that full effect can be given to that principle unless all monies paid in the meantime on an erroneous principle shall be repaid in conformity with the true principle as afterwards settled. And it is in reference to this view that the third plea of the pursuers is so important. In adhering to the interlocutor of the Lord Ordinary, and repelling the first plea of the defenders, I cannot leave out of view the principle of that plea, and I go the full length of saying that, if this agreement had been made in 1856, and then there had been no more about it, and if it had been in express terms limited to that year and incapable of being extended, I should have held that on the principle involved in that plea, the party was bound to repeat all payments made on an erroneous principle. On this ground I am clearly of opinion that we ought to adhere as to the first branch of the interlocutor.

As to the farther plea regarding interest, the matter is very simple. The Lord Ordinary has not determined that question, but he has found that repayment must be made with interest, and I see no reason to doubt that that is the true rule. A party receiving payment of money, reserving the question of his title to receive it, is surely bound to repay it with interest, when he is found to be in the wrong. There can be no clearer case of interest being due than that. A party may receive money in good faith, believing it to be his own, from a party who thinks he is bound to tender it, and in that case there may be good reason for the recipient saying, "I got payment from you on your offer of payment, and am not to be held answerable for the use of the money when it was in my possession." But here the party says, "I pay under the compulsion of diligence, but you are not entitled to the money and I am going to litigate the matter in order to determine your right." Surely a party found liable in such circumstances must repay with interest, and the fact that the party is a public board makes no difference. It may be argued that as the board must keep the money in bank—if it is said that they in fact did so—they should only be liable in bank interest, and there may be force in that contention. But we don't require to determine that at present. That, however, does not affect the principle of the judgment, that this repayment must be with interest. On the whole matter, therefore, I am for adhering.

Lord Curriehill—I concur, and have only a sentence or two to add. I think this agreement was in its whole nature prospective, and meant to subsist during the whole litigation. The document begins by narrating the litigation in the other case, and then sets forth that an agreement had been concluded between the parties to this agreement in the following terms:—"Whereas it has now been agreed between the said first party and the Parochial Board of the said Barony Parish of Glasgow that the decision to be ultimately pronounced in the said action of suspension and interdict at the instance of the said first party against the Parochial Board of the said City Parish of Glasgow shall be held as applicable to the assessment for poor-rates on the said first party within the said Barony Parish of Glasgow." Now here the ar-

rangement is not said to be an arrangement for one year, but an arrangement generally for poor-rates, the liability for which is to depend on the decision to be pronounced in the other case. Therefore the arrangement in that concluded bargain must be between the date of the agreement and the concluded judgment. That is clear. Had this agreement ended here, that would have been conclusive. But it goes on in the operative clause—"Therefore the said first party hereby agrees to pay to the collector of the poor-rates for the Barony Parish of Glasgow the foresaid sum of £361, 0s. 2d. sterling; and, on the other hand, the said John Meek, inspector foresaid, for himself, and as specially authorised by the said Parochial Board of the said Barony Parish of Glasgow, hereby agrees to hold the decision to be ultimately pronounced in the said action of suspension and interdict at the instance of the said first party against the Parochial Board of the said City Parish of Glasgow as applicable to the assessment leviable on the said first party within the said Barony Parish of Glasgow, and as regulating and fixing the principles on which the allowances to be given to the first party for repairs, insurance, and other expenses necessary to maintain their property assessed, and the rates, taxes, and public charges payable in respect of the same, and the amount of such allowances, are to be ascertained, and the assessable rental or value of the first party's lands and heritages fixed." I have read the whole of that clause, although your Lordship has read it, to show that in this, the operative part of the agreement, there is no allusion to one year's assessment more than another. And if the agreement had stopped there, there would have been no doubt, There is superadded an additional obligation to repay the £361, but that does not detract from the proper operative clauses of the agreement.

Lord Deas—There are some things which are very clear in this case. One is, that by this first agreement it was agreed the decision in the suspension and interdict then depending should be applicable to the Barony as well as to the City parish, as regulating and fixing the principle on which the deductions from the assessments are to be ascertained. That is an agreement that the decision in that depending action was to regulate the principle, and, though the case was against another parish, it was to be the same as if the case had been between the pursuers and the Barony Parish. Now the suspension and interdict was not a process in which the question of principle could be finally decided. Nothing could be decided but as to the sum charged for. And it is only this agreement that makes the decision determine the principle, not only for that year, but for after years. The only question could be, was it an agreement that the judgment should fix the principle after its date, as well as during the intermediate period? I have no doubt it was meant to fix the principle for the intermediate period as well as for the future. Had it not been so, it is plain that there might have been a suspension and interdict every year. I cannot account for that but on the supposition that it was understood to be a useless expense which was to be avoided by awaiting the result of that action. The minutes of the meetings of the Board are in favour of the view that the Board had no objection to have the principle fixed, because at the foot of page 58 the inspector is instructed to write to the secretary of the company that "the Board is ready to give a guarantee for repayment of any overcharge which the Gas Company may be able to show has been made upon them in the assessments." That is dated 1st July 1856. And there is a passage to the same effect on the following page, dated 23d July. This recognises their readiness to give a guarantee. There is nothing about a particular year, and the words may naturally be interpreted as extending to more than one. Then there is the reservation in the receipts for the years ending 1858 and 1859, "subject to the terms of the interlocutor of the Lord Ordinary in the action pending in the Court of Session," which is unintelligible except on the supposition that that reservation, which according to the words of it applied only to a particular year, was of general application. There is no other express authority to the collector to make the reservation except this minute of 1856. That is evidence of the meaning of parties. There is also that matter that, to say the least of it, it would have been a very important question whether, when this money was paid, in the circumstances there could not have been a claim for repayment without any agreement at all. This is not the same as the case of *Thomson*, lately decided in the other Division (*ante*, p. 68). There was no lawsuit there, or intimation of any claim. The money was paid without qualification. And if a party by his own fault pays on the footing that the Board is entitled to it, and to spend it for that year, I see no objection to that judgment. But this case is quite different. Here there is a suspension and interdict depending in 1856, in which the principle is made litigious.

As to the matter of interest, I agree that when money is paid on the footing of being repaid in a certain event, the natural result is that interest runs. It may perhaps be different in the case of a parochial board if they showed that they must pay away the money to the poor, but here they have not said that they have spent the money on the poor, and therefore they have not laid the foundation for such a claim. At the same time, I do not see how more than bank interest can be exacted from them. Whether that can be decided now or not, I think that is the limit of their liability.

Lord Ardmillan—I am very clearly of the same opinion. I do not think that the change of the form of receipt is of any importance. No benefit can be taken by the Board from the fact that the terms of reservation were dropped out of the later receipts. The whole payments were made under the protection of this agreement. Undoubtedly the process of suspension and interdict could only dispose of the payment for the year, but it was quite competent, and it was certainly prudent, that the parties should agree that the decision should be held to settle the case. I think this agreement settled two things—(1) that the parties should be bound by a decision in a case to which the Parochial Board of Barony Parish were not parties; and (2) that the principle of the decision in the suspension should settle the principle of the assessment. That is the meaning of both these agreements, and it is confirmed by what may be gathered from the actings of the parties. That being the case, I think the payments were made under the protection of this agreement that if the decision should be in favour of the Gas Company, there should be repayment on the footing of applying the principle of the decision. As to the interest, it is clear that where a sum of money is paid under such protection, there arises on payment an obligation to re-

pay with interest, if there is an obligation to repay at all.

Agents for Pursuers—A. G. R. & W. Ellis, W.S.
Agent for Defenders—John Thomson, S.S.C.

Thursday, February 13.

FIRST DIVISION.

WHITE *v.* CALEDONIAN RAILWAY COMPANY AND CRIEFF JUNCTION RAILWAY CO.

Prescription—1579, *c.* 83—*Stock Broker—Current-Account—Ordinary line of business—Writ or Oath—Proof.* A party designing himself "stock broker" sued a railway company for payment of work done by him for the promoters of the line, in the way of helping to start it, by obtaining subscriptions and otherwise. *Held* (1) that looking to the nature of the work done by him, as disclosed on record, the triennial prescription applied: and (2) that the documentary evidence founded on by him did not amount to a constitution of the employment, but was merely evidence of authority to do certain particular acts, given to a person who had already begun to be employed.

The pursuer of this action was James White, stockbroker, Edinburgh, and he sued the defenders for a sum of £347, conform to account commencing 24th September 1852, and ending 2d April 1855. The action was raised in January 1866. In the first article of the condescendence it was alleged, "the pursuer, who is a stock and share-broker in Edinburgh, and well acquainted with railway matters, and as such was employed on or about the day of September 1852, by or on behalf of the promoters and provisional committee of a proposed or projected company for making a railway from Crieff to join the Scottish Central Railway at Loaninghead, near Auchterarder, in the county of Perth." The pursuer went on to allege that the promoters and provisional committee had great difficulty in obtaining the requisite amount of subscriptions and number of subscribers to the contract, required by Parliament as a necessary preliminary to obtaining an Act, and accordingly were in danger of not being in a position to go to Parliament in the said year, and of being too late with the necessary arrangements for introducing a Bill, and obtaining an Act for the construction of the said intended railway. "In this emergency the pursuer was applied to, and employed by and on behalf of the said promoters and provisional committee, to get the stock or shares of the said proposed company brought out in the London, Liverpool, and other Exchanges, and to get advertisements and notices inserted in various papers and publications, and to assist them with advice, and to conduct various matters of detail connected with the carrying through of their subscription-contract and bill, in order to obtain an Act of Parliament authorising the formation of the intended company, and construction of the said intended railway. The pursuer acted on the employment so given, and conducted a voluminous correspondence with the solicitors of the promoters, and with brokers in London, Liverpool, Glasgow, and elsewhere, in obedience to the instructions of the promoters and their secretaries and solicitors acting for them, and with their authority. The pursuer gave the accommodation and use of his office for the purpose of obtaining signatures to the subscription contract, and he attended various meetings of the promoters and subscribers personally at Crieff and in Edinburgh. He also obtained a large number of subscribers to the contract, without whom it would have been impossible for the company to have succeeded with their bill.

"A committee of the promoters was appointed with powers to give instructions to carry out the purposes of the promoters, and to give instructions and directions to the secretaries and solicitors. The committee had full power to act for and bind the whole promoters. On or about the 30th September 1852, a meeting of the committee was held, at which instructions were given regarding the employment of the pursuer in the various matters connected with the formation of the company and the obtaining of its Act, and this minute was duly communicated to the pursuer by the solicitors on 30th September 1852. Farther, the pursuer was employed in the various matters relating to the intended company by the said secretaries and solicitors of the promoters, in virtue of powers granted them to that effect by the promoters and the committee thereof. On or about the 6th November 1852, a sub-committee of the promoters of the said Crieff Junction Railway Company authorised the said secretaries to employ the pursuer to carry out certain suggestions "for effectively bringing out the scheme in the London market." This was communicated to the pursuer by the said secretaries, or one of them, and the pursuer acted upon the instructions so given."

The last-named defenders obtained their Act of Incorporation in 1853. After that date the pursuer was, he alleged, employed by these defenders to act for the company in the same way as he had done formerly for the promoters. The Scottish Central and Crieff Junction Railway Companies were amalgamated in 1865, and, later in the same year, the Scottish Central Company was amalgamated with the Caledonian Railway Company. The account libelled on commenced as follows:—

"*The Crieff Junction Railway,*
"*To James White, Stockbroker, Edinburgh.*
"1852.
"Sept. 24. Having received instructions from the secretaries and promoters of the Crieff Junction Railway Company to act for them—
"To commission on shares obtained and applied for through me, as broker to the Coy., p. my letter of 12 Nov. 1852, 510 shares, less 80 thought bad—viz. 430 shares, at 2s. 6d. per share . . . £53 15 0"

The other items of the account consisted of charges for travelling expenses, obtaining of signatures, correspondence, general agency, &c.

The defenders pleaded, besides pleas on the merits, "the account libelled is prescribed."

The Lord Ordinary (Ormidale) pronounced this interlocutor:—"*Edinburgh, 2d March* 1867.—The Lord Ordinary finds that the plea of triennial prescription founded on the Statute 1579, c. 83, is inapplicable to this case in respect of the nature of the employment alleged by the pursuer; and also separately in respect the debt sued for is, according to the pursuer's allegations, founded upon written contract or obligation; therefore repels said plea, and before farther answer, and under reservation in the meantime of all questions of expenses, appoints the case to be enrolled, that parties may be heard on the remaining points in the cause."