inishes the free rent to him, ought to be deducted in ascertaining the free rent as the measure of the children's provisions."

Wednesday, February 16.

SECOND DIVISION.

[Sheriff of Sutherland.

CAMPBELL *v.* MACKENZIE.

Master and Servant—Dismissal—Wrongous Dismissal.

A master re-engaged a servant for a new term. Shortly afterwards, and before the new term had begun, there was a disagreement between them as to an allowance the servant was receiving under the original contract, and the master told him that if not satisfied he could leave. Thereafter, hearing that the servant had stated that he was leaving, and would on no account stay, he engaged another servant without further communication with him. *Held* that he was not justified in doing so, and was liable in damages for breach of the re-engagement.

John Campbell was engaged for the year from Whitsunday 1885 to Whitsunday 1886 as farm servant with the Rev. D. Mackenzie, minister of Lairg. Campbell's duties were to work upon the glebe, and his wages were £18 in money and certain allowances—house, meal, milk, &c.

In January 1886 Mr Mackenzie and Campbell had a conversation about a re-engagement, the result of which was that Campbell was re-engaged for the year from Whitsunday 1886 to Whitsunday 1887 at £20 in money and the same allowances as he had before. On 6th April there was a dispute as to the alleged failure of Mr Mackenzie to give Campbell the quantity of milk to which he was entitled, and in the course of it Mr Mackenzie told him he might leave if he was not satisfied.

In a few days thereafter Mr Mackenzie heard reports that Campbell had said that he would not stay with him, and that he had mentioned to more than one person that he was leaving the service. Mr Mackenzie then, without saying more to him on the matter, advertised on 11th April for a new servant, and engaged one shortly thereafter.

Campbell intimated to him that he would look to him for his year's wages. He failed to get a place before Whitsunday, when he left the service, though he endeavoured to do so at various markets in April. He raised this action for £43 (estimated as the value of his wages, house, and allowance for the year 1886 to 1887) as damages for wrongous dismissal, or as the amount to which he was entitled in respect of his dismissal.

The Sheriff-Substitute (MACKENZIE) found that the pursuer had been wrongously deprived of the situation for which the defender had so engaged him in January, and that the defender had not shown that he was justified in refusing to implement the re-engagement. He therefore decerned for £43 with expenses.

On appeal the Sheriff (CHEYNE) found "that on 8th or 9th April the pursuer applied to Mr Butters, hotel-keeper, Lairg, for employment, stating that he was leaving the defender, and that on 11th April he said to Mr Campbell, inspector of poor, Lairg, who was advising him to make it up with the defender, that he would not remain with the defender for any money: Finds that this, which was reported to the defender, amounted to a waiver on the part of the pursuer of his right to insist on the fulfilment of the arrangement entered into in January, which arrangement was thus departed from by mutual consent: Finds that the defender was accordingly free to engage, as he did engage, another servant to come to him in the pursuer's place at Whitsunday, and is not liable in damages for refusing to retain the pursuer in his service for the current year: Therefore assoilzies the defender from the conclusions of the action," &c.

The pursuer appealed, and argued—Both Sheriffs had found it proved, and it was clear, that there was a re-engagement. The statement by the defender that pursuer might go if he was not satisfied about the milk was not a dismissal, and the pursuer did not take it as such. It was only when he found the defender was getting another servant that he began to seek a new place, as was his proper course. His reported conversation as to leaving the defender was no good ground for the defender going on to engage another servant without speaking to him.

Authorities—*Maclean* v. *Fyfe*, February 4, 1813, F.C.; *Ross* v. *Pender*, January 8, 1874, 1 R. 352.

The defender argued—No re-engagement in January was proved. The defender had only said that he would keep on pursuer at increased wages if pleased with him. Even if he were re-engaged, the pursuer had waived his right to stay by the observations which he made to Mr Butters and to Mr Campbell, and these statements coming to the defender's ears, he was entitled to take it that the pursuer had made up his mind to leave at the Whitsunday term 1885. Even assuming that damages were due to the pursuer by the defender, the amount given by the Sheriff-Substitute was a great deal too large.

At advising—

LORD JUSTICE-CLERK—This is an unfortunate case, because although both parties regretted the condition into which affairs had got, neither party took means to avoid the result of their acting, and the consequence is this action. I entertain no doubt that there was a re-engagement by the defender of the pursuer, which under other circumstances would have gone on to its natural termination. But a quarrel arose between the parties on a very trivial occasion, and during the quarrel the master said to the servant that he was at liberty to go if he wished. That was not a dismissal at all. Unfortunately the master took no steps to find out what was really his servant's determination, but from communications made to him by other parties, made up his mind that he did not intend to remain, and took steps to engage another servant. I think he was sorry for what had happened, and when he found that the pursuer did not intend to remain in his service. The matter would have been

put to rights probably if another servant had not been engaged in the meantime. I think that as we must take it that there was a re-engagement of the servant, coupled with a liberty given afterwards to go if he wished, and in absence of any statement by the servant that he was going away, I think the present defence cannot be sustained. The result is that we must recal the judgment of the Sheriff and revert to the judgment of the Sheriff-Substitute, except as regards the amount of damages given by him, and I think we should limit the damages to £20 with expenses.

Lord Young, Lord Craighill, and Lord Rutherfurd Clark concurred.

The Court pronounced this interlocutor:—

"Find that in January 1886 the defender re-engaged the pursuer as his servant for the year ending at Whitsunday 1887, at a money wage of £18 with the allowances specified in the record: Find that in April following the defender intimated to the pursuer, on his making application regarding a supply of milk, that if he was not satisfied he might leave his service at the ensuing term of Whitsunday, and without further communication with the pursuer engaged another servant in his room for the year commencing at that term: Find that the defender was not justified in thus dismissing the pursuer either by what passed between them as aforesaid, or by the reports that subsequently reached him of statements said to have been made by the pursuer: Find that the defender is liable to the pursuer in compensation accordingly: Therefore sustain the appeal: Recal the judgment of the Sheriff appealed against: Affirm the judgment of the Sheriff-Substitute except as regards the amount thereby found due to the pursuer, assess the compensation due to him at Twenty pounds sterling: Ordain the defender to make payment of that sum to the pursuer: Find the pursuer entitled to expenses," &c.

Counsel for Pursuer—Rhind—Wilson. Agent—William Officer, S.S.C.

Counsel for Defender—Salvesen. Agent—J. Young Guthrie, S.S.C.

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*Tuesday, February 22.**

SECOND DIVISION.

[Lord M'Laren, Ordinary.

MACKINNON (MILLAR'S JUDICIAL FACTOR) *v.* KNOX AND OTHERS (MILLAR'S TRUSTEES).

Trust—Liability of Trustees—Personal Liability of Trustees for Imprudent Investments.

Circumstances in which family trustees, whom the truster declared not liable for omissions or errors or neglect of management, and on whom he had conferred full powers of investment in such securities, heritable or personal, as they should think proper, were made personally liable for the loss of a sum lent to a member of the family on insufficient security.

A draper in Glasgow who died in 1863, in his trust-deed directed his trustees to hold his estate for the purpose of paying his widow an annuity, and of dividing the residue amongst his children, with full powers to invest the estate "on such securities, heritable or personal, as they should think proper." The truster's eldest son, who subsequently carried on his business, in 1874 bought the business premises for £25,000, and after paying £13,000 of the price, applied to the trustees for a loan of the balance, viz., £12,000. He offered as security the premises themselves, on which he had already borrowed £17,000, and also other subjects which were already burdened. The margin of value of the whole heritable security offered was £12,150. He also offered the security of a policy on his life for £2160, the surrender value of which was less than £500, his share of a sum of £10,000 held by the trustees for security of the widow's annuity, and the personal security of his father-in-law, whose credit, like his own, was good at the time, and who was a merchant and possessed of subjects in which a large quantity of shale was believed to exist. The trustees accepted his offer, but did not communicate it to the beneficiaries, who on hearing of the loan wrote through one of their number protesting against it, but no notice was taken of their letter. In 1884 the debtor and his father-in-law became bankrupt, and the prior bondholders on the subjects contained in the securities entered into possession. In an action raised by the beneficiaries against the trustees for repayment of the loss sustained by the estate through the loan—*held* that the trustees were personally liable for the loss as having invested on insufficient and unsubstantial security contrary to the law and practice of trust administration.

John Millar, who carried on business as a wholesale and retail draper at No. 20 High Street, Glasgow, died in November 1863 leaving a trust-disposition and settlement in which he gave his trustees directions as to the disposal of his whole estate—directing them to pay his widow an annuity of £400, and to divide the rest of the estate among his children. The deed contained a clause providing that the trustees should not be liable for omissions, errors, or neglect, but each for his actual intromissions only, and should be entitled to appoint a factor for whom they should not be responsible, except that he be habit and repute responsible when appointed. It also gave power of sale of the estate when the trustees should think it necessary or expedient, and contained a clause empowering them "to lend out the proceeds and other funds of the trust, or such parts thereof as may not be otherwise required, on such securities, heritable or personal, as they shall think proper." The estate consisted mainly of the premises No. 20 High Street, in which the business was conducted, the truster's interest therein, and his capital embarked in it.

* This action was decided on November 2, 1886, but the Court did not pronounce a formal interlocutor till February 22, 1887.