the 101st section of the Court of Session Act of 1868.

"It therefore appears that there is no dispute as to the insanity of Donald Simpson, but that the only question is, who is to have the management of his estate? It was stated by the counsel for the petitioner that there are serious objections to the management being entrusted to the respondent Thomas Simpson.

"I am informed that a precept has been issued under the brieve, in terms of section 1 of the Act of Sederunt of 3rd December 1868, fixing the 18th inst. as the first diet of compearance. At that diet the claim of Thomas Simpson to the office of curator will, I apprehend, be brought up under section 2 of this Act of Sederunt.

"In these circumstances I doubt if it would be proper for me to appoint a curator; but as there is no question that Donald Simpson is insane, and as the cognition is only brought for the purpose of enabling Thomas Simpson to obtain the management of the estate, it appears to me that the best course is to report the case."

The petitioner lodged a note objecting to the appointment of her brother-in-law as tutor-at-law, on the ground that the business had not thriven in his hands, and that there were questions in dispute between him and her husband. Upon the competency of appointing a *curator bonis* in the circumstances, the cases of *Bryce* v. *Grahame*, January 25, 1828, 6 S. 425 (*espec.* p. 431), and *Irving* v. *Swan*, November 7, 1868, 7 Macph. 86, were referred to.

At advising—

LORD PRESIDENT—What I suggest is that we should appoint the nearest agnate, who is at present prosecuting a brieve of cognition, to be *curator bonis* in the meantime. I do not think any party interested can object, because all interests will be safeguarded, as caution will require to be found by the person we appoint.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

Counsel for the Petitioner—Blair. Agents—Forrester & Davidson, W.S.

Saturday, July 18.

FIRST DIVISION.

YATES, PETITIONER.

Sheriff Court—Proof—Accidental Destruction of Shorthand Writer's Notes—Remit to Take Evidence Anew—Nobile Officium.

The notes of evidence taken by a shorthand writer in the Sheriff Court having been accidentally destroyed, a petition was presented to the Court of Session craving for a remit to the Sheriff-Substitute to take the evidence of new. Petition *granted.*

Opinion indicated that the Sheriff-Substitute might have taken the evidence again without a remit.

After the evidence of the witnesses for the pursuer in an action in the Sheriff Court at Aberdeen, at the instance of John Yates, labourer there, had been taken down in shorthand in the usual way, the Sheriff-Substitute (HAMILTON GRIERSON) declared the proof closed and appointed the parties to debate. The notes of the shorthand writer who had taken down part of the evidence were destroyed by the children in the house where he resided before he had extended them, and the pursuer applied to the Sheriff-Substitute to allow the witnesses whose evidence had been lost to be re-examined. The Sheriff-Substitute refused the application, on the ground that there were no provisions in the statute—the Evidence Further Amendment (Scotland) Act 1874 (37 and 38 Vict. c. 64)—authorising him to take the evidence a second time, and that he had no power to act without a remit from the Court of Session. The pursuer thereupon presented a petition to the Court of Session to grant, in the exercise of its *nobile officium*, a remit to the Sheriff-Substitute to take the evidence of new. The defender in the action opposed the granting of the petition, on the ground that in the circumstances of the case it was unfair to him to have the witnesses re-examined, and unnecessary, as he was willing that the shorthand notes of a newspaper reporter who was present should be regarded as giving the evidence correctly.

At advising—

LORD PRESIDENT—I am inclined to think that this matter might have been settled in the Sheriff Court. A scruple, however, arose in the mind of the Sheriff-Substitute as to his power to order the evidence to be taken over again. Whether he consulted the Sheriff or not I do not know. I am not surprised at his scruple, because it was a rather extraordinary occurrence, but I cannot see any good objection to granting the prayer of the petition, and so removing the difficulty that has arisen in the Sheriff Court. Indeed, I know no better ground for this Court granting the remit asked than the fact that a practical difficulty has occurred in the Sheriff Court.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court granted the prayer of the petition.

Counsel for the Petitioner — Lorimer. Agents—Auld & Macdonald, W.S.

Counsel for the Respondent—Crabb Watt. Agents—Wishart & M'Naughton, W.S.

HOUSE OF LORDS.

Friday, June 19.

(Before the Earl of Selborne, and Lords Watson, Bramwell, and Morris.)

STEWART *v.* ROBINSON AND OTHERS.

(*Ante*, vol. xxvii., p. 819; and 17 R. 1060.)

Church—Glebe Boundaries—Decree of Presbytery — Ambiguity — Extent of Glebe Boundary—Excambion—Possession.

Held (*aff.* judgment of the First Division) that a decree of Presbytery drawn up for the purpose of fixing the boundaries of a glebe was unambiguous, and that therefore its limits could not be extended by evidence of possession of a larger boundary.

This case is reported *ante*, vol. xxvii., p. 819, and 17 R. 1060.

The defender Stewart appealed.

At delivering judgment—

EARL OF SELBORNE—My Lords, having heard the arguments on behalf of the appellant in this case, your Lordships do not think it necessary to call upon the respondents for further argument. So far as the law is concerned there seems to be no question about it. If in the minute of Presbytery the boundaries of the glebe in question are unambiguously defined, no evidence with regard to subsequent user will be available to enlarge or extend those boundaries. If, on the other hand, there is an ambiguity it may be removed by evidence, and for that purpose evidence of the actual enjoyment might be very material. In the present case if there were such an ambiguity I should, for my own part, have been prepared to hold that the evidence is sufficient to show an actual enjoyment up to what has been called the water-shed, and if evidence of such an enjoyment, taken in connection with the terms of an ambiguous minute of boundary, could fix the boundaries in a manner consistent with some reasonable interpretation of the minute and with those facts, that evidence might be very important, but I believe that the general opinion of your Lordships is that in this case there is no such ambiguity as to admit that evidence.

Now, my Lords, in the first place, when we speak of the presence or absence of ambiguity, and of a document being clear or not, and so forth, we mean all that in a reasonable way—that is to say, you must look at the proper construction of the document, and when you have got that, it will be apparent whether there is ambiguity or not. And I cannot help observing that the object of this document being to fix boundaries, and in the latter part of it the decerniture being that "the whole arable land, hill pasture, moss and muir, within the said boundaries is to be the exclusive property of the minister of Lochlee," it certainly would be a strange failure to accomplish the object in view if the minute did not so fix the boundaries that from its terms a competent surveyor might lay them down. Now, from the terms of this minute, as the Inner House have read it, and as, my Lords, I read it, it is perfectly possible for a competent surveyor to lay down the boundaries both upon the west and upon the east side (I call them so for shortness, although they are not exactly east and west), and that would result from two straight lines meeting at the point which is marked W on some of the plans, where there is a source or open spring of water, at certain times of the year at all events, running down to the burn of Glascourie, and which, according to the evidence, I have no hesitation in saying may well be "the source" mentioned in this minute, because it is the highest and furthest source, beyond which there is nothing which forms part of the open stream or burn. Well, as a matter of fact, a competent surveyor, taking the direction of this minute to be to draw two straight lines up to that source, would draw them so that they would meet there, and fulfil both the general purpose of the instrument and, as it appears to me, the natural construction of all its words; whereas, on the other hand, I think that would be absolutely impossible for any surveyor, or all the surveyors in the world, to lay down from this minute an irregular line which shall run round the water-shed in the manner contended for by the appellant's counsel.

When we come to the particulars of that part of the minute which deals with the boundaries (postponing for the moment all reference to what I may call its preamble—its introductory words), we find that what the Presbytery first do is "to fix the march stones for the new glebe." I should say that, *prima facie* at all events, the purpose of fixing the march stones is to place march stones in such a position that the boundaries of the glebe by means of them may be ascertained. These march stones are four in number, two at the foot of the glebe, the lower part of it on the west side, and two on the east, and in each case near to each other, but so fixed that a straight line drawn through them both on each side will, if prolonged, meet at the point afterwards mentioned and called "the source of the burn of Glascourie," if I am right in holding that upon the evidence the spring at the point W may be regarded as that source. Well, there being no other boundary stone so laid down, no other cairns or other means taken to mark the different points of deviation or departure of any irregular boundary, I should say that those march stones being sufficient to be the march stones for the new glebe, and not only for two very small pieces of land at two corners of it, that shows *prima facie* that the object is to lay them down in such a line as, if prolonged, will give the apex or terminus where the two lines intersect, and in point of fact we