Wednesday, February 22.

SECOND DIVISION.

[Sheriff of the Lothians and Peebles.

FERRIER *v.* MACKENZIE.

Pactum illicitum—Granting Bill to Compound Felony—Proof of Bargain.

In defence to an action upon a promissory-note, the granter of the note pleaded that it had been granted in implement of an agreement with the payee that he should abstain from instituting criminal proceedings against the granter's brother, who was alleged to have embezzled sums belonging to the payee.

Evidence which held insufficient to prove the alleged agreement.

Opinion reserved by Lord Trayner whether an engagement to refrain from criminal proceedings in consideration of a payment by way of reparation for the loss sustained by the alleged criminal act, would be illegal by the law of Scotland.

James Ferrier, commission agent, Glasgow, raised in the Sheriff Court at Linlithgow an action for £35 against John Mackenzie, painter and decorator, Linlithgow, a partner of Mackenzie Brothers, painters and decorators there.

The pursuer averred—"(Cond. 2) The defender's brother Alexander Mackenzie was at one time a traveller in the employment of the pursuer, and towards the end of 1897 he got into financial difficulties, and was unable to square his accounts with the pursuer. The defender came forward and agreed to be responsible for his brother's indebtedness to the amount of £50, and on or about 17th November 1897 he granted a promissory-note in favour of the pursuer for that sum, payable two months after date, which is herewith produced and founded on. He signed the note with the name of his firm, but his copartners disclaim liability. (Cond. 3) The defender paid on or about the 18th day of January 1898, £10 to account of said promissory-note, and on or about 25th February following a further sum of £5, thus reducing the promissory-note to the principal sum sued for."

The defender averred that on 17th November 1897 the pursuer represented to the defender that the defender's brother Alexander Mackenzie "had embezzled a large sum of pursuer's money, and that unless a cash payment of from £100 to £150 was immediately made to the pursuer the said Alexander Mackenzie would be there and then placed in custody of the police for criminal prosecution, and under pressure from the pursuer, the defender, who was greatly agitated and had the matter sprung upon him without notice, signed the promissory-note founded on. This document was asked by pursuer, and granted by defender, to induce pursuer to drop a threatened criminal prosecution of the said Alexander Mackenzie for embezzlement, and is void and without legal consideration."

The defender pleaded—"(1) The promissory-note founded on being signed by the defender under pressure from pursuer, in circumstances constituting a *pactum illicitum*, is void, and defender should be assoilzied, with expenses."

Proof was led before the Sheriff-Substitute (MACLEOD). The result of the proof sufficiently appears in the opinions of the Sheriff-Substitute and the Sheriff.

On 21st July 1898 the Sheriff-Substitute pronounced the following interlocutor:—"Finds in fact (1) that on the date which it bears the defender granted to the pursuer the bill founded upon for £50; (2) that the defender has paid to the pursuer £15 and no more, due thereunder; (3) that very shortly before the said bill was granted, the defender's brother, Alexander Mackenzie, had confessed to his employer, the pursuer, that he (the defender's said brother) had embezzled large sums of money belonging to the pursuer; (4) that when the defender signed the said bill he was in a very nervous and agitated state of mind, having been induced, by the representations made to him by the pursuer, to believe that the pursuer would prosecute his (the defender's) said brother for embezzlement unless he (the defender) granted the said bill; (5) that the defender signed the said bill under pressure from the pursuer, and to induce the pursuer to refrain from prosecution for embezzlement: Finds in law that the pursuer having thus traded upon the fears of the defender and induced him to sign the said bill, and the defender having signed the said bill to induce the pursuer to refrain from prosecuting the defender's said brother for embezzlement, the pursuer cannot maintain an action upon the said bill: Therefore sustains the first plea-in-law stated for the defender: Assoilzies the defender from the conclusions of the action, and decerns."

Note.—"This action is founded upon a bill granted to the pursuer by the defender in the name of the firm of which the defender is a partner. The only defence stated is that the pursuer obtained the defender's signature to this bill under such circumstances that the Court ought not to give the pursuer a decree upon it, it being the outcome of a *pactum illicitum*. Such a defence, to be successful, must be substantiated by evidence of a more than ordinarily clear and emphatic nature.

"It is common ground that shortly before this bill was granted the defender's brother Alexander had confessed to the pursuer that he had embezzled several hundred pounds which he ought to have handed to the pursuer, and that the defender's brother Alexander did, on Saturday 13th November 1897, sign the agreement of that date, by which he undertook, *inter alia*, to pay at the end of November 1897 £100 in cash, to grant a bill on his two brothers for £50 at two months, and further, to repay the pursuer at the rate of £25 a quarter till the amount of the defalcations had been made

up. But on the following Tuesday (the 16th November 1897) further misappropriations came to light, and the pursuer (who was himself liable to his own principals for these large sums of money) insisted on something more definite being done. The defender's brother Alexander finding himself in this trouble appealed to the defender, and on Wednesday the 17th November 1897, as the result of this appeal, the defender and his brother Alexander and the pursuer were closeted together in the pursuer's private office in Glasgow. The only other person who was present at any part of this interview was the pursuer's cashier, Mr Ayre (whom the defender, honestly enough I think, took to be a sheriff-officer), and he was not present all the time. At the end of that interview the bill had been signed. The four men present at the interview were called and very minutely examined as to all that preceded the signing of the bill. I cannot think that any useful purpose would be served by my entering into a minute criticism of the evidence. It is not to be expected that any one of the four men would give exactly the same account of what took place as any other of the four. My view of the evidence can be stated very shortly.

"It does not occur to me that I can give any assistance to the Court of Appeal by making any remarks upon the behaviour and demeanour of the witnesses. In this case one can, I think, judge of their credibility as easily (or rather with the same difficulty) by reading the notes of evidence as by having heard the evidence given.

"There are three points in the evidence given by defender himself—all of some materiality—which make one look very keenly before proceeding to weigh it. (1st) Defender says that when his brother came to Linlithgow and, telling him he was in trouble, begged him to accompany him to Glasgow to see the pursuer, he made no inquiry of his brother as to the nature of the trouble, and that he did not know its nature until told by the pursuer in the pursuer's office. I could not have readily believed this even had it been uncontradicted, but it is contradicted by his brother, who says he told him he was behind in his money; and still further contradicted by the pursuer, who is positive the defender said he understood £400 was the amount of the deficiency. The defender's motive in this inaccuracy (which can hardly be ascribed to imperfect recollection) is to make his surprise appear as great as possible. (2nd) The defender says that in the course of the interview in the pursuer's office the pursuer rang the bell to summon someone to prepare the bill for signature before he (the defender) had given any indication that he was going to consent to sign it. This, again, is a very unlikely thing, and he is contradicted by his brother and by the pursuer, and the evidence of these two latter witnesses is supported by the pursuer's cashier, who says that on entering the room in response to the bell he was told that defender had agreed to sign a bill. Again the defender's motive is obvious. (3rd) The defender is positive that no allusion was made to the bill being signed in the name of the firm of which he was a member. In this he was contradicted by his brother, by the pursuer, and by the pursuer's cashier.

"But after duly discounting the defender's evidence I am quite clear that when he signed this bill he was in a very nervous and agitated state of mind, and did so under a sense of fear that his brother was in imminent danger of being prosecuted for embezzlement, and in the hope and belief that the bill and the cash payment of £100 would remove that danger. This is indeed the only intelligible motive he could have had for signing the bill and procuring the £100 from his bankers (for there was no civil indebtedness between him and the pursuer). He signed the bill to keep his brother out of prison. Even the pursuer is constrained to admit that defender's motive may have been partly 'to relieve any feelings that he might have had in his mind as to any proceedings I might take.'

"I must now consider the part played in this matter by the pursuer. On the 2nd February 1898 the pursuer wrote and sent to the defender's firm the letter which contains the following very important sentence—'I need not point out that it was on the strength of your granting this bill that I stayed proceedings against your brother.'

"This reference to the staying of proceedings has given me a good deal of anxiety. I find it very difficult to believe that it does not involve a reference to criminal proceedings. The pursuer explains that it refers only to his intention to sell up what the defender's brother had represented to be his flourishing business in Broxburn and Linlithgow. I find it difficult to believe that any business man of ordinary shrewdness—and pursuer is well above the average—would in the circumstances, without making any inquiry, take for granted, what he says he was surprised to hear, that the defender's brother had any business which was worth selling up. But really the pursuer destroys his own credibility on this point, for in his evidence he says regarding this business of defender's,—'I understood it was a lucrative thing, and if I had wound him up I would have got nothing at all, and by staying proceedings I had an idea that by giving time I would get paid.' Clearly therefore he had no intention of taking civil proceedings at the time when the granting of the bill was under discussion, and the question still remains, 'What were the proceedings which were stayed by the granting of the bill by defender, who, be it observed, had no connection with his brother's business?' As the defender's brother very naively remarks, 'It could'nt very well be civil proceedings, because I had nothing to take.'

"The answer to that question is to be found in the frequent references 'to having him arrested,' 'standing the consequences,' Peterhead Prison,' 'young man in Leslie & Hall's who had been prosecuted for embezzlement,' 'six years,' 'seriously punished,' which are to be found in the proof.'

"The witnesses contradict themselves and each other in the most puzzling manner as to whether these references were made by the pursuer to the defender just before the defender agreed to sign the bill, or just before he signed it, or after he signed it. But beyond a doubt all these expressions were used by the pursuer in the course of the interview at which the bill was signed. That by itself is a fact which cannot be overlooked, irrespective of the precise part of the interview at which they were used. Further, leaving out of account altogether what the defender and his brother say as to the pursuer's use of these expressions, let me advert to what the pursuer admits being said, and what his cashier admits having heard him say. The pursuer, who was angry, and as he says himself 'in rather an awkward position for money,' and saw that the defender was in a nervous condition, admits that after the defender had promised to sign a bill, and while the bill was being got ready for signature, the defender thanked the pursuer for his leniency, and thereupon the pursuer, as he himself admits, (1) said that many such had been seriously punished; (2) that he had been advised to take proceedings; (3) mentioned the case of a young man who had been recently prosecuted for a similar offence; and (4) made a reference to Peterhead Prison (though not the reference alleged by the defender). It was after all this that the defender signed the bill.'

"Then the pursuer's cashier, Ayre (whom the defender mistook for a sheriff-officer), who appears to have been present at a greater part of the interview than the other witnesses led one to expect, heard the pursuer tell the defender and his brother of the young man in Leslie & Hall's who had been recently prosecuted for embezzlement, and the cashier's belief was that the pursuer in saying this wanted to impress upon the defender's brother the seriousness of the position he had placed himself in. In cross-examination the cashier said that this reference was made by the pursuer before he (the cashier) went out to prepare the bill. That I believe to be the truth, although it may be that he inclines to go back from it a little when at the very close of his examination he says,—'To the best of my recollection the arrangement was entirely completed before that matter came up in conversation, but also, according to my recollection, it was made before the bill was actually signed.

"Parties to such a transaction do not as a rule speak out or write down their real motives in plain words. One has to infer the reality of the transaction from what is said and done. The negotiations between these parties proceed upon the footing that embezzlement has been committed by defender's brother, and that he was liable to a criminal prosecution. The fears of the defender (known to the pursuer) were stimulated and operated upon the pursuer to his own advantage. In other words the pursuer traded with the crime. This is no reproach upon the pursuer. He did what was quite natural, and in his eyes no doubt quite legitimate. The only question is, whether the result is one which the Court can uphold. It was an implied term of the agreement that there should be no prosecution. There was a tacit understanding that criminal proceedings should not be taken.

"Now, what is the law applicable to these circumstances? It is surprising how little is to be found in our Scottish books, but there are many interesting English cases, and specially so are *Williams* v. *Bayley* (1866), L.R., 1 H.L., 200, and *Jones* v. *Merionethshire Permanent Building Society* [1891], 2 Ch. 587.

"There may on the one hand be circumstances in which, when a man is guilty of embezzlement, his friends may come forward and enter into valid and binding obligations with the view of reducing his civil indebtedness, though a practical result may be that their friend is thereby saved from a prosecution. That I do not at all doubt. But on the other hand there have undoubtedly been cases where the Court has declined to uphold agreements whose object has been the stifling of a criminal prosecution. The facts here compel me to put this bill upon the illegal side of the line, nor do I find that its proper place is anywhere near the line."

The pursuer appealed to the Sheriff (RUTHERFURD), who on 21st November 1898 pronounced the following interlocutor: — "Recals the Sheriff-Substitute's interlocutor of 21st July 1898: Finds in fact and in law that the defender has failed to prove that the promissory-note was granted in consideration of an agreement by the pursuer to refrain from giving information to the criminal authorities which might result in the prosecution of the defender's brother Alexander Wood Mackenzie on a charge of breach of trust and embezzlement: Therefore sustains the appeal, and decerns against the defender for payment to the pursuer of the sum of £35 sterling, with interest thereon in terms of the conclusion of the libel," &c.

Note.—"This is an action to recover £35, the balance, after deducting payments to account, of a promissory-note for £50 granted by the defender to the pursuer on the 17th of November 1897, and payable two months after date.

"The defence to the action, as set forth in the defender's statement of facts is that on the 17th of November 1897 the pursuer represented to the defender that his (defender's) brother Alexander Mackenzie 'had embezzled a large sum of pursuer's money, and unless a cash payment of from £100 to £150 was immediately made to pursuer, the said Alexander Mackenzie would be there and then placed in custody of the police for criminal prosecution, and under pressure from the pursuer the defender, who was greatly agitated, and had the matter sprung upon him without notice, signed the promissory-note founded on. This document was asked by pursuer, and granted by defender, to induce pursuer to drop a threatened criminal prosecution of the said Alexander Mackenzie

for embezzlement, and is void and without legal consideration.'

"At the debate before the Sheriff the defender's agent stated that the defence was not rested upon the defender's having been subjected to undue pressure or influence in granting the promissory-note in question, but his contention was that it was granted in consideration of an illegal agreement, whereby the pursuer was to abstain from giving information to the authorities which might lead to a criminal prosecution of the defender's brother.

"The Sheriff concurs with the Sheriff-Substitute in holding that such a defence to be successful requires to be supported by very clear evidence, but it appears to him that in the present instance the evidence is singularly inconclusive and unsatisfactory.

"It would serve no purpose to make a minute analysis of the proof, which if the case goes elsewhere must speak for itself. But the Sheriff observes that in many material points (some of which were noticed by the Sheriff-Substitute) the defender's statement is contradicted, not only by the pursuer and his cashier Mr Ayre, but also by the defender's own witness, his brother Alexander.

"It appears that after Alexander's defalcations had been discovered he made a proposal contained in the document (No. 10 of process) with a view to repaying the pursuer to the best of his ability. This letter, which is dated 13th November 1897, contains, *inter alia*, an undertaking to pay the pursuer by the end of the month £100 in cash, along with a bill on his two brothers for £50 at two months' date, and a regular payment of £25 per quarter.

"At the time when this proposal was made Alexander stated to the pursuer that he thought he might gethis brothers to come to his assistance, and it was for this purpose he called on the defender on the 17th of November, and induced him to accompany him to Glasgow to talk the matter over with the pursuer. Now, Alexander states in evidence that the pursuer told him from the very first that he did not intend to take proceedings with a view to his prosecution although his (pursuer's) friends were of opinion that he was taking too lenient a view of the case. This statement is repeated several times in the course of the proof. Being interrogated—'Did Mr Ferrier (pursuer) say he would do anything or do nothing?' He replied—'Do you mean to give me in charge? No, he never said anything about that. He never said he was going to take his friends' advice. From the very start he said he was not going to take any criminal proceedings against me.' Alexander also states that the pursuer did not press the defender to sign the promissory-note. He merely asked him if he would sign it and he assented.

"A great deal has been made of certain allusions in the course of the interview between the parties on the 17th of November to the serious nature of Alexander's offence, and the punishment which he might have had to undergo if convicted of embezzlement. It is not unnatural that allusions of this kind should be made on such an occasion, and everything depends on the time at which and the purpose for which they are made. The pursuer, no doubt, made an allusion to the convicts that he had seen at Peterhead, and referred to the case of a young man in the employment of Messrs Leslie & Hall, who had been imprisoned for a similar offence to that committed by the defender's brother, but it appears to the Sheriff that all this was said, if not after the defender signed the promissory-note, at all events after he had agreed to do so, and was not in any way intended by way of a threat. The defender's brother says—'Mr Ferrier did not press him to sign. He merely asked him if he would sign it, and he assented. When he had signed the bill Mr Ferrier made the allusion to Peterhead. He referred to the time he was in business, and said he had seen the convicts up there. That was after the bill was signed.'

"The defender himself says—'It was when I was going away that he (the pursuer) spoke about Peterhead. There were two conversations about the risks of embezzlement. He said first of all that if he had taken his wife's and his friends' advice he would have had my brother arrested long ago. The second time was about seeing the young men working up in Peterhead, and that he would work the fingernails off his hand before he would see a brother of his up there.'

"Reference has been made to a letter dated 2nd February 1898, addressed by the pursuer to the defender's firm, in which he says—'Dear Sirs,—I am sorry I did not see you when I called at your shop to-day. Some arrangement must be come to in regard to your bill for £50 due on 20th January last. I need not point out that it was on the strength of your granting this bill that I stayed proceedings against your brother, and you should not have undertaken such an obligation unless you saw your way to meeting it.' . . .

"It was maintained that the word 'proceedings' used in this letter refers to a criminal prosecution, but the Sheriff does not think that is what the pursuer meant. According to the defender's brother—'I told Mr Ferrier that I had a good going business in Linlithgow and Broxburn, and he naturally inferred I had money. Mr Ferrier did not know I had no money at all.' The pursuer states that the defender's brother told him that he had a good business, and that he had taken £150 out of it the previous year to liquidate his indebtedness arising from his defalcations, and he explains that at the time he wrote the letter he believed that the defender's brother still had the business. 'I understood it was a lucrative thing, and if I had wound him up I would have got nothing at all, and by staying proceedings I had an idea that by giving him time I would get paid.' It seems to the Sheriff that this is a natural explanation of the paragraph referred to in the letter. Had the pursuer done diligence against the defender, or caused his estate to be sequestrated, he

would have recovered nothing of the debt due to him, whereas by staying his hand there was a possibility of his receiving something out of what he was led to believe was a good going business.

"On the whole matter the Sheriff is of opinion that the defender has failed to discharge himself of the burden of proof which was incumbent upon him, and that the pursuer is entitled to decree with expenses."

The defender reclaimed, and argued—There was no doubt that in the present case the clear understanding of parties was that this bill was given in order to prevent criminal proceedings being taken against the defender's brother. Where a bill was given for the purpose of stifling a criminal prosecution or compounding a felony, the obligation was *pactum illicitum*, and the bill was void—Bell's Principles, sec. 41; *Kennedy* v. *Cameron*, February 7, 1823, 2 S. 192; *Wallace* v. *Hardacre*, 1807, 1 Campbell's Nisi Prius Cases, 45; *Williams* v. *Bayley*, 1866, L.R., 1 H.L. 200, opinions of L.C. Cranworth, 209, and Lord Westbury, 218; *Brook* v. *Hook*, 1871, L.R., 6 Exch. 89; *Jones* v. *Merionethshire Permanent Benefit Building Society* [1892], 1 Ch. 175.

Argued for pursuer—The judgment of the Sheriff was well founded. In order that the defender could succeed in his defence of *pactum illicitum* he must show (1) that a threat of criminal prosecution had been used by the pursuer, and (2) that a bargain had been come to between the pursuer and the defender that in consideration of a cash payment of £100 being made and a promissory-note for £50 being given to the pursuer by the defender, the pursuer would refrain from instituting a criminal prosecution against Alexander Ferrier. Neither of these two propositions had been made out. There was no proof that the pursuer had threatened criminal proceedings before the promissory-note was signed, and there was absolutely no proof whatever of any bargain. There was no averment of force or fear having been used. It was admitted that the debt to the pursuer were very much in excess of the sum he had received, and the amount of the promissory-note, and no compounding was suggested. For one brother to help another in circumstances like the present was natural and creditable, and a transaction of this kind was not to be set aside as *pactum illicitum*. The pursuer had made no agreement express or implied with the defender and was entitled to succeed—*Ward* v. *Lloyd*, 1843, 6 M. & S. 785; *Flower* v. *Sadler*, 1882, L.R., 10 Q.B.D. 572. In any event the English cases quoted on the other side were scarcely applicable, as in England criminal prosecutions were as a rule instituted by private individuals, while in Scotland they were always instituted by the Crown.

Lord Justice-Clerk—The conclusion that I have come to is, that there is no ground for disturbing the Sheriff's judgment. The ground of that judgment is that there was between the parties no legal pact that the granting of the promissory-note would prevent the pursuer initiating a criminal prosecution against the defender's brother. In a case such as this there is generally a natural desire on the part of the relative of the delinquent to make reparation for the loss sustained, quite apart from the question whether the person at fault acted criminally or not. Any evidence in this case as regards paction is of the vaguest kind, and the evidence led for the pursuer is not consistent with itself. It comes out quite distinctly in the evidence of the unfortunate man that the pursuer from the first clearly told him that he did not intend to take any proceedings of a criminal nature against him. That puts this case in a very different position from one in which criminal proceedings have been threatened in order to extort money. A great deal has been made of the expressions used by the pursuer in speaking of Peterhead and of his seeing the convicts working there. But it appears from the evidence that Peterhead was only spoken of after the agreement to pay had been come to. Such talk is therefore quite consistent with the conclusion at which I have arrived, that nothing was stated at the meeting about criminal prosecution in order to induce the granting of the promissory-note.

Lord Young—I am of the same opinion. There have been various matters brought under our notice which it is unnecessary to decide. It appears to be clear enough that the defender's brother Alexander was in the employment of the pursuer as a travelling agent, and that in accounting for money received by him from the pursuer's customers he was behindhand to a large amount. Whether this occurred under such circumstances that the law would esteem his conduct an indictable offence, I am not in a position to determine. The particular facts of this particular case might have raised the question in a criminal court whether it was or was not a criminal offence, but that question is not before us. I can quite understand that when Alexander Mackenzie came to realise his position he was very nervous and apprehensive, both as to losing his employment and his character, and also from fear of punishment. It was therefore natural that he should desire to make reparation to the pursuer whose money had disappeared. This was a proper thing for Alexander to do, and it was a proper thing for Mr Ferrier to require. Alexander endeavoured to make reparation, and in the course of his search for aid he asked his brother to give money. If we came to the conclusion that the promissory-note for £50 was given by the defender to the pursuer as the result of a bargain or paction between the defender and the pursuer that there should be no criminal prosecution set on foot against Alexander by the pursuer, or that a felony should be compounded, then we would have to determine whether a criminal offence had been committed. But I am of opinion that there was no paction at all. John might think

confidently that if a sum was paid and the promissory-note granted to Mr Ferrier he would not give information against Alexander, but there is an important legal distinction between a natural hope that if payment is made no prosecution will follow and a deliberate bargain to that effect. I think that while there was a sanguine expectation and confident belief that if there was reasonable reparation made to the pursuer by the defender and his brother to the best of their ability, there would be no prosecution, there was no paction or bargain to that effect. The present defence, I must admit, is one with which I have no sympathy, and without serious difficulty I have come to be of opinion that the Sheriff's judgment should be adhered to.

LORD TRAYNER—I am of the same opinion. The plea-in-law stated for the defender is of a somewhat composite character. It is this—"The promissory-note founded on being signed by the defender under pressure from pursuer, in circumstances constituting a *pactum illicitum*, is void." No question of pressure has been submitted to us, and it appears from the Sheriff's interlocutor that it was not pleaded before him. I think the pursuer was well advised in not pleading this, because in the proof there is no evidence of force or fear sufficient to overcome the will of anyone of ordinary strength of mind. But it was strongly contended that the bill was granted for an illegal consideration and was therefore void. I think that defence has also failed. I abstain from saying anything on the question as to whether an engagement to refrain from criminal prosecution in return for payment of the loss incurred through the alleged crime would amount to a *pactum illicitum*. That is a delicate question. No reference has been made to any Scotch case upon the subject, and it is difficult to apply English authorities because of the distinction recognised in English law between felony and misdemeanour, a distinction which we do not recognise. But in my opinion the defender has failed to establish that there was any *pactum illicitum* entered into between the parties.

LORD MONCREIFF—I am of the same opinion. I think that the only defence is that the bill was obtained as part of a *pactum illicitum*. I think it is sufficient for the judgment to hold that the defender has not proved that the bill was obtained in return for an agreement to abstain from a criminal prosecution against his brother. I think that there is no doubt that the defender had fully in view the danger of his brother being proceeded against criminally, but that falls short of proof that any agreement to that effect was made with the pursuer. I even think that the defender signed the bill in order to ensure his brother not being prosecuted, but, as I have said, there is no proof of any bargain, The defender's case depends entirely on his own evidence and that of his brother, and in my opinion their evidence entirely fails to substantiate the defence.

The Court pronounced the following interlocutor:—

"Dismiss the appeal: Find in fact and in law in terms of the findings in fact and in law in the said interlocutor appealed against: Of new decern against the defender for payment to the pursuer of the sum of £35 sterling with interest thereon in terms of the conclusion of the action."

Counsel for Pursuer—Hunter. Agents—Patrick & James, S.S.C.

Counsel for Defender—Baxter—Sandeman. Agent—David Dougal, W.S.

Thursday, February 23.

SECOND DIVISION.

LESLIE PARISH COUNCIL *v.* GIBSON'S TRUSTEES.

Parent and Child—Aliment—Aliment of Granddaughter.

Held that the aliment of a lunatic granddaughter, whom the grandfather supported during his lifetime, constituted a good charge against his estate after his death.

Isabella Gibson was born in the parish of Leslie on 13th September 1862. She was the daughter of George Gibson, sometime joiner in Leslie. George Gibson deserted his wife and family prior to 1869, and no trace was afterwards found of him. He had no means or estate.

For some time previous to 1878 Isabella Gibson was of unsound mind, and in February 1878 she became chargeable as a pauper lunatic to the parish of Leslie as the parish of her birth. On 22nd February she was removed to the Fife and Kinross District Lunatic Asylum, Springfield, near Cupar.

George Gibson was a son of Robert Gibson, flax and waste merchant in Kirkcaldy. The latter had previously supported the wife and family of his son George before Isabella Gibson's illness. After she became a lunatic he was applied to by the Parochial Board of Leslie Parish for payment of the sums disbursed for her maintenance in the asylum. After some correspondence he on 4th December 1878 repaid to them the sums disbursed by them from 22nd February of that year, and down to the date of his death he continued to repay the sums thereafter disbursed by them for her maintenance. These payments were at the rate of £21 a-year, under deduction of the lunacy grant.

Robert Gibson died on 13th May 1891, predeceased by his wife and by all his children, except George Gibson, as to whom it was not known whether he was alive or dead. Robert Gibson left a trust-disposition and settlement dated 8th November