

fodder raised on the farm of Shangiemuir, of which he is tenant under a thirty years' lease. The farm appears to have been heath, and brought under cultivation by the respondent. There is no house or steading upon it, and no means, therefore, of separating the grain from the straw or consuming the fodder.

"It is said in the condescendence that the respondent is tenant of an adjoining farm on which there is a steading; and it seems to be inferred that the respondent may carry his crop to that farm, thrash it, and consume the fodder there, and cart the manure back to Shangiemuir. But the prayer of the petition, if granted, would prevent this; and the respondent by his lease was only bound, after improving the land, to keep it in good heart and condition, and under a regular system of rotation and cropping. It is not said that this has not been done; but it is alleged that by the rules of good husbandry the tenant is bound to consume the straw and fodder raised on the farm. This is true in the ordinary case, but how is it to be done when there is neither barn or byre on the place? The respondent has never been asked to do it till now; and as it cannot be done, the prayer of the petition must be refused."

The Sheriff (Davidson) on appeal adhered, and the Court to-day, after hearing Mr Clark for the landlord, refused an advocacy of the Sheriff's interlocutors.

Friday, March 30.

MACALISTER v. LIVINGSTON.

*Parent and Child.* Circumstances in which held that the pursuer of an action of filiation had failed to prove the paternity alleged by her.

Counsel for Pursuer—Mr Brand. Agent—Mr Alexander Thomson, S.S.C.

Counsel for Defender—Mr Trayner. Agent—Mr P. S. Beveridge, S.S.C.

This is an action of filiation and aliment advocated from the Sheriff Court of Lanarkshire. The Sheriff-Substitute (Logie) assoltized the defender, holding that the pursuer had failed to prove the paternity libelled, but the Sheriff (Alison) altered his Substitute's interlocutor. The Court to-day unanimously altered the Sheriff's judgment, and reverted to that of the Sheriff-Substitute.

The Lord President said—This is a case of filiation. The pursuer having given birth to an illegitimate child, asserts that the defender is the father. She says so on oath, and that the defender is the only person with whom she ever had connection. She had told a similar story to a person in whose house she was living at the time of the birth. But her own statement is not enough, and we have therefore to see whether she is corroborated. There is no doubt that the pursuer was living in the defender's house, and was often in his room at night rubbing his limbs, so that there was opportunity. But this is not sufficient, although when coupled with previous familiarity and the pursuer's evidence it is generally conclusive. The defender denies that he is the father, and states a number of circumstances which really form the strongest evidence we have of the opportunity I have referred to. These might be regarded as sufficient evidence of familiarity also had there not been explanations by the medical man examined as to the illness the defender suffered from, and for which he had prescribed friction. There were also circumstances in regard to the position of the parties which make it not very presumable that there was connection. The defender was a relation of the pursuer, and had given employment to different members of her family. He also seems to have taken a sort of charge of the pursuer and her sister, whose parents lived in the Highlands. The corroborative circumstances are very few indeed beyond the opportunity which, as I have said, is explained without reference to any improper design. The fact that the pursuer

has produced a child proves that she had connection with somebody, but nothing more. In regard to the pursuer's credibility there are circumstances disclosed which tend to shake in some degree one's confidence in her. There is a story about a person of the name of Ramsay being probably the father of her child. I don't say he was the father, but it is clear that the pursuer had represented that he had been in the house one night, and appeared close to her bed and given her a fright. Some witnesses go further, and say that she had said that he had been in her bed. It is also pretty clear that her father, mother, and sister had at one time been under the belief that Ramsay had been the author of her pregnancy. Whence did they derive that impression? It is said the father derived it not from the pursuer, but secondhand from her sister, and the sister says she only inferred it from what the pursuer told her. It is therefore clear, at all events, that the pursuer had given her family to understand that Ramsay was the father. She did so down to a comparatively late period. It is said there was no ground for making the accusation if another was really the father. It is difficult to get at a party's motives, but it is pretty clear that the pursuer and her friends were not on very good terms with the defender. She had had disagreements with him, and there was a strong feeling of enmity towards him on the part of her parents, not on account of his being the father, but because he allowed her when in his house to get into the condition she did. All this ultimately settled down into an accusation against the defender. On the whole, I think there is not sufficient corroboration of the pursuer, and that the case has not been established against the defender.

ROBERTSON v. THOMSON.

*Proof—Sheriff—Remit.* In an action for payment of a builder's account, the defence to which was that it was overcharged, held (1) that the Sheriff had competently remitted the account to an architect although the defender objected; (2) that the report was not conclusive; but (3) that it was just.

Counsel for Pursuer—Mr Patton and Mr Balfour. Agent—Mr Henry Buchan, S.S.C.

Counsel for Defender—The Lord Advocate and Mr Watson. Agent—Mr L. M. Macara, W.S.

This was an advocacy from Forfarshire. The pursuer sued for £26, os. 11d., being the balance of his account, amounting to £576, os. 11d., for executing the mason work of a house in Dundee for the defender, including extra work. The Sheriff-Substitute (Ogilvy) made a remit to Mr M'Laren, architect, to report what sum, if any, was due to the pursuer under his contract, the sole point in dispute being one as to actual measurement. This interlocutor was adhered to by the Sheriff (Heriot). The architect reported that there was an overcharge of £6, 19s. 4d., and that the sum due to the pursuer was £19, 1s. 7d., for which sum, with modified expenses, the Sheriff-Substitute decreed against the defender. In the course of making up the record the pursuer had admitted an overcharge to the extent of £6, 13s. 6d. The Sheriff adhered. The expenses were afterwards modified to £35, and to this also the Sheriff adhered.

The defender advocated, and pleaded that the remit to the architect having been opposed by him, was incompetent, or, at all events, that it could not be held as conclusive against him; and, further, that the modification of the expenses was insufficient in the circumstances. The pursuer argued that the remit was competent, and also that the report was conclusive.

The Court unanimously repelled the reasons of advocacy, holding that the case was a very proper one for making the remit which was made, but that the report was not necessarily conclusive. They found, however, that the report did ample justice to the defender. Additional expenses were found due.