The Court therefore ranked and preferred Mrs Muir to the fund *in medio*, and found her entitled to expenses.

Agents for Mrs Muir—Neilson & Cowan, W.S.
Agent for Executors—George Cotton, S.S.C.
Agents for Next-of-Kin—Grant & Wallace, W.S.

UNION BANK *v.* ROSS.

Fixing Trial. A pursuer having given notice of trial for the July sittings, and the defender having moved the Lord Ordinary to fix a day for the trial before himself—trial fixed for the sittings.

Issues in this case were adjusted before the Lord Ordinary on 12th June. On the 14th the pursuers gave notice of trial for the July sittings. The defender to-day moved the Lord Ordinary to fix a day for the trial before himself. The Lord Ordinary reported the case.

MILLAR, for the pursuers (with him LEE), argued that they were entitled to the lead for ten days after the adjustment of issues. They had given notice for the sittings, which would take place in five weeks. He cited Faulks *v.* Park, 16 D. 93; and Bell *v.* Anderson, 24 D. 603.

PATTISON, for the defender (with him F. W. CLARK), answered—The case is a short one, and will be conveniently tried before the Lord Ordinary. The second meeting for the adjustment of issues took place on 6th June, when the Lord Ordinary pronounced an interlocutor reporting them; but the pursuers thereafter gave up an issue which they had proposed, and the issues were then approved of.

The LORD PRESIDENT—There is very little time to be gained by having the trial before the Lord Ordinary, and I think there is good reason for depriving the pursuers of their lead.

The trial was accordingly fixed to take place at the sittings.

Agents for Pursuers—Mackenzie & Kermack, W.S.
Agent for Defender—James Paris, S.S.C.

SECOND DIVISION.

BAIN *v.* MATTHEWS.

Agreement—Sale—Proof. The pursuer alleged that under a verbal agreement the defender had agreed to take from him at a valuation the furniture of a mill of which he was tenant, and brought an action for the value thereof—*Held* that the agreement was not proved.

This was an advocation from the Sheriff Court of Aberdeenshire, and involved a simple question of fact. The pursuer (advocator) sued the defender for £108, 16s. 6d. sterling, being the value of mill machinery, and gearing, mill and barn furniture, household furniture, implements, pailing, and other effects belonging to the pursuer, in and about the Mill of Sclattie, and cottage and office-houses attached thereto, and alleged to have been sold by the pursuer to the defender, on or about the 31st of May 1864, according to the valuation of parties mutually chosen. The pursuer was tenant of the Mill of Sclattie, under a sub-lease till Martinmas 1864. Previous to that, and at the preceding term of Whitsunday, the defender had obtained from the landlord a lease of the Mill of Sclattie for 19 years, commencing as at Martinmas 1864. The pursuer was willing that the defender should get possession of the mill at Whitsunday; and he says that he met the defender on the subject, and agreed with him that he should take the machinery, gearing, &c., of the mill, at a valuation to be put upon them by valuators mutually chosen. The pursuer alleges that this was done, and the subjects handed over to the defender. He accordingly sues the defender for the price of the valued subjects. The agreement set forth by the pursuer was denied by the defender, who said that the contract was that the defender should pay £15 for the use of the mill-gearing, &c., for six months, being the period of the pursuer's yet unexpired lease. A proof was led.

The Sheriff-Substitute (Watson) found the pursuer's case proved, and decerned.

The Sheriff (Davidson) altered. The pursuer advocated.

GORDON and MAIR supported the advocation.

A. R. CLARK and KEIR argued that the Sheriff's judgment was well founded.

The Court adhered to the judgment of the Sheriff.

Lord COWAN dissented, holding that the facts instructed the view of the case taken by the Sheriff-Substitute.

Agent for Pursuer—James Finlay, S.S.C.
Agents for Defender—Webster & Sprott, S.S.C.

SCOTT *v.* HOGG.

Parent and Child—Paternity—Proof. Circumstances in which held that the pursuer of an action of filiation and aliment had failed to establish the paternity.

This was an advocation from the Sheriff Court of Roxburghshire. The pursuer (advocator) sued the defender for the aliment of twins, of which she alleged he was the father. A proof was led in the course of which the pursuer swore that the defender was the father of her children, and the defender denied that he had ever had connection with her. There was no corroboration of the pursuer's testimony, and no evidence of familiarities. The defender produced with his defences a letter, which he said he had received from the pursuer in answer to one which he had written to her in consequence of rumours which had reached him that she was with child to him. The letter was dated six weeks before the birth of the children, and was as follows:—

"Sunlaws Mill, April 16.

"Dear Thomas,—It is with grief that I have to write to you, but I have to do it. You know as well as me I can't keep people from saying; but I never said it was yours, for I know different. My father was down, and he told me he would not let me home, so you need to believe what no one says; for I never said no such thing. I am to lodge in Heiton or Roxburgh, and my way will be paid without you; so you have nothing to do with me and my affairs.—Yours truly,

"MARY SCOTT."

The pursuer denied that she had written this letter, and alleged that it was a forgery.

The Sheriff-Substitute (Russell), chiefly on the ground that he was satisfied that the above letter was not written by the pursuer, found her case proved.

The Sheriff (Rutherford) recalled this interlocutor, and assoilzied the defender.

On advocation, the Lord Ordinary (Ormidale) adhered to the Sheriff's judgment, and explained his reasons in the following

Note.—Whatever may be thought of this case otherwise, and whatever doubt may be supposed to attend it, certain it is, at least, that one or other of the parties must have sworn falsely—unfortunately a too common feature of such cases as

the present. Without positively deciding where the truth lies, the Lord Ordinary is very clear that the pursuer has failed to establish her case. There is not only no corroboration in regard to any important matter, of her own testimony, but that testimony is in some material respects self-contradictory. Although the pursuer says that the defender very frequently visited her at her master's house during the period of upwards of six months, remaining for hours at a time, no person besides herself has spoken to any such visits, or appears to have been cognisant of them; and this is all the more remarkable, when the circumstances and manner in which the visits are said by the pursuer to have taken place are considered. It is all but incredible that none of her master's household. which consisted at least of himself, the mistress, their son, and servant man, should ever have had occasion to know of or suspect such visits. At any rate, if they did, there is no proof or attempt at proof of it. In regard to the pursuer's self-contradiction, the Lord Ordinary refers to in particular, her statement, clear and distinct in itself, in answer to a question by the Court at her first examination, that "she had connection with no person other than the defender, prior to the birth of the children," while afterwards, at her second examination, she admitted that she had previously given birth to an illegitimate child. Her explanation of this apparent contradiction is not satisfactory. The Lord Ordinary does not think it necessary to determine whether the letter which appears to have chiefly influenced the Sheriff-Substitute in deciding against the defender is or is not a forgery. He thinks it would be very unsafe to determine that matter on the evidence in process. The Sheriff seems to have relied very mnch on the circumstance of the pursuer's name Mary being commenced with a small "m" in the letter referred to, in place of a capital "M" as in the pursuer's signature at the end of her deposition. But he has, it is presumed, omitted to notice that in her letter to her father, the genuineness of which can scarcely be disputed, it having been produced by him, the pursuer subscribes "M. Scott," in place of "Mary Scott," as to her depositions. The Lord Ordinary could not, therefore, allow himself to be influenced in this case, one way or the other, by a *comparatio literarum*, which is seldom, if ever, much to be relied on, and certainly not where the individual whose handwriting is in dispute happens to be in the same station of life as the pursuer, and little practised in subscribing her name, or in writing of any kind. R. M'F.

The pursuer reclaimed.

J. CAMPBELL SMITH, for her, argued—The pursuer's evidence is more reliable than the defender's. The terms of the letter produced by the defender are such as to make it highly improbable that she ever wrote it.

BURNET, for the defender, was not called on.

The LORD JUSTICE-CLERK—In one aspect of it, this might have been a very serious case, because if there had been evidence that this letter was a forgery, the defender would have been liable to a criminal prosecution. The evidence, however, is obviously quite insufficient to prove the very serious issue which the pursuer undertook to establish. Further, I think that there is not only no evidence that the letter is a forgery, but I am of opinion, from a careful examination of it and the other letters written by the pursuer, admittedly genuine, which are in process, that it is not. The pursuer has a particular style of writing some words, and their similarity in all the letters is very great. If forgery had been committed it must therefore have been done with great pains, and in that case one would have expected to find traces of that sort of careful writing which often leads to the detection of a forgery; but there is, on the contrary, the same freedom of touch in all the letters. I think, therefore, there is no foundation for this serious charge, and, having that opinion, I think it is right, seeing that the charge has been made, that I should express it. But it is enough for the decision of the case to say that the charge has not been proved. If this element is taken out of the case the proof is quite insufficient to make out the pursuer's case. It stands entirely on her own statement, and there is no evidence of intimacy or familiarity.

The other Judges concurred, and the reclaiming-note was therefore refused.

Agent for Pursuer—James Somerville, S.S.C.
Agent for Defender—William Mason, S.S.C.

Saturday, June 16.

FIRST DIVISION.

ROUTLEDGE *v.* SOMERVILLE AND SON.

Jury Trial—Access by One Party to the Other's Premises. In a case having reference to the mode in which paper was manufactured in the defenders' premises, a motion by the pursuer to be allowed access to their premises in order to prepare for the trial, granted.

The issue for trial in this case is whether the defenders, in breach of an agreement with the pursuer, purchased esparto fibre otherwise than from the pursuer or his brokers. The defenders have taken a counter issue for the purpose of proving that the pursuer has failed to implement his part of the same agreement, by not imparting to the defenders full particulars of the method employed by him for the treatment of esparto fibre for the manufacture of paper.

GIFFORD and SHAND, for the pursuer, to-day moved for an order on the defenders to give access to their mills and works for the manufacture of paper at Dalmore to the pursuer and his agents, and Dr Stevenson Macadam, of Edinburgh, whom it was proposed to examine as a witness at the trial.

CLARK and LANCASTER, for the defenders, opposed the motion on the ground that it was not fair to give the pursuer, who was in the same business as the defenders, the means of knowing the secrets of their trade.

The LORD PRESIDENT—I rather think that from the nature of the statements on record and of the counter issue taken by the defenders, this is a motion which may be granted. There may be cases in which it may be dangerous to grant such a motion, but I do not anticipate any danger in the present case.

The other Judges concurred; and the motion was accordingly granted.

Agents for Pursuer — Leburn, Henderson, & Wilson, S.S.C.

Agents for Defenders—White-Millar & Robson, S.S.C.

BREADALBANE'S TRUSTEES *v.* CAMPBELL.

(*Ante*, p. 60.)

Process—Consigned Fund. Application for warrant to uplift a sum of money consigned in bank on the loosing of arrestments used on the dependence of an action, refused, in respect the decree in the action was not extracted.