

Miss Jean Robertson, who some time resided in Kirkcudbright, and died there on 14th October 1830. The object of the action was to recover payment, with interest since 1848, when the pursuer attained majority, of a legacy of £100, left by the said Miss Jean Robertson, in the following terms:— "To Jean Wood, daughter of the said George Wood, who was called for me, one hundred pounds, the interest of which is to be paid to her parents during the minority, but the capital to vest in her and her heirs, although not payable till she is of age." The pursuer's allegation was, that this legacy had never been paid to her, or otherwise discharged, and was now resting-owing by the defenders as representing Miss Robertson's trustees.

The defence was—(1) That the capital as well as the interest of the legacy was paid during the pursuer's minority to her father, and applied for her maintenance and education. (2) That the pursuer acquiesced in this arrangement at the time, and made no demand for payment for twenty years after she came of age. In support of these averments, the defenders asked to be allowed a proof.

The Sheriff-substitute (DUNBAR) allowed a proof before answer *habili modo*. The Sheriff (HECTOR) recalled, on the ground that the defenders' averment of payment to the pursuer's father was irrelevant, looking to the terms of Miss Robertson's settlement, which expressly provided against such a payment, and that the averment of acquiescence was too vague and unsubstantial. The pursuer having led proof in support of her case so far as necessary, the Sheriff-substitute thereupon decerned against the defenders for the amount claimed.

The Sheriff adhered.

The defenders thereupon advocated the whole interlocutors.

GIFFORD and SPENS, for them, maintained that they were entitled to a proof *prout de jure*—at least, a proof by writ or oath.

CATTANACH in answer.

The Court adhered in substance to the Sheriff's interlocutor—holding (1) that payment to the pursuer's father could only be proved by writ or oath of party; (2) that, even if proved, it was irrelevant, looking to the terms of Miss Robertson's deed; (3) that the averment of acquiescence was irrelevant, as being much too vague and general; but (4) that it was for the defenders to consider whether they should not refer the whole cause to the pursuer's oath, as to the competency of which course their Lordships expressed no opinion.

Agent for Pursuer—John Thomson, S.S.C.

Agent for Defenders—George Wilson, S.S.C.

Tuesday, March 17.

FIRST DIVISION.

TRIMBLE v. CITY OF GLASGOW FLAX SPINNING COMPANY (LIMITED).

Reparation—Contract of Service—Wrongous Dismissal—Conclusions of Summons—Relevancy—Issue.

A party suing for damages for wrongful dismissal from office of managing director of a trading company, concluded for (1) a sum in name of loss, and damages, and *solatium*; (2) the loss sustained by him in consequence of having to purchase shares of the company's stock as a condition of obtaining the appointment; and (3) the loss sustained by him

through having to remove from his former place of residence to the place of business of the company. *Held*, that he was not entitled to make separate and substantive claims under the 2d and 3d conclusions.

In October 1866, the pursuer, at that time resident in Belfast, entered into an agreement with the defenders, whose place of business is in Glasgow, to serve them as a managing director, for a period of three years, at a salary of £800 per annum, and a commission on profits. The pursuer entered upon the service of the defenders, and continued therein, until October 1867, when he was dismissed from office. He now brought this action, concluding for payment of—(First), The sum of £2000 sterling, or such sum, more or less, as may be fixed by our said Lords, by way of loss and damage, and as *solatium* for the defenders' wrongful dismissal of the pursuer from the office of managing director of the said company in or about October 1867; (Second), of the sum of £300 sterling, being the amount of loss sustained by the pursuer upon forty shares of the defenders' stock, bought by the pursuer as a condition of his appointment to the said office of managing director; or otherwise, of the sum of £400 sterling, being the price paid by the pursuer for the said shares; the pursuer always, *simul et semel*, assigning the said shares to the defenders at their expense on his receiving payment of said sum; and (Third), Of the sum of £150 sterling, being loss sustained by the pursuer in removing from Ireland to Glasgow, in order to fill the said office, with interest on said respective sums from the date of citation to follow hereon until paid," &c.

He proposed an issue, putting the question of engagement and dismissal, and annexing the following schedule of damages:—

Salary, 2 years at £800 per annum,	£1600	0	0
Loss sustained on 40 shares of the defenders' stock by the pursuer as a condition of his appointment to his said office,	400	0	0
Loss sustained by the pursuer in removing from Ireland to Glasgow,	150	0	0
General damage and <i>solatium</i> ,	400	0	0
	£2550	0	0

The Lord Ordinary (BARCAPLE) reported the case, adding in his note:—

"The subject of dispute between the parties was the schedule of damages. The defenders maintain that there is no relevant case to recover anything, except the salary for the two years of the period of his engagement subsequent to his dismissal, or such part of that salary as he may be found entitled to. If it were not that the different items in the schedule are separately concluded for in the summons, the Lord Ordinary would not have doubted that the damages might have been laid at a sum larger than the amount of the salary, and without any specification; but as the damages are specifically stated, it may be right to consider at this stage the relevancy of the claim for loss on shares of the defenders' stock purchased as a condition of the pursuer's appointment. The claim is made solely on the ground of the pursuer's dismissal, and not on any allegation that he was fraudulently or improperly induced to purchase the shares. But the loss on the shares must have been caused by their fall in the market, and not by the pursuer's dismissal. On the whole, the Lord Or-

dinary thinks there is not a relevant case stated for this part of the claim, and that it should not enter the schedule."

SCOTT and REID for pursuer.

YOUNG and SHAND for defenders.

The Court held that the pursuer was not entitled to make any separate or substantive claim under the second and third conclusions of his summons, although a proof of the averments upon which they were founded might have its proper effect with the jury in estimating the amount of general damage, and approved of this issue:—

"It being admitted that, on or about the 15th October 1866, the pursuer entered into an agreement with the defenders to serve them as a managing-director of their company, under the articles of association of the company, for three years from 1st November 1866, at a salary of £800 per annum, and a commission of 10 per cent. on the nett profits of the concern, after deduction of 6 per cent. on the paid-up capital, and a fair allowance for wear and tear, on the same principle as established in the York Street Flax-Spinning Company (Limited).

"Whether, on or about 7th October 1867, the pursuer was wrongfully dismissed from his said office of managing-director by the defenders, to the loss, injury, and damage of the pursuer?"

Damages laid at £2000.

Agent for Pursuer—J. Walls, S.S.C.

Agent for Defenders—J. N. Forman, W.S.

Wednesday, March 18.

CAMPBELL, PETITIONER.

(Ante, vol. iv, p. 84).

Title to Sue—Proof—Delivery of Document—Exhibition—5 & 6 Vict., c. 69—22 Vict., c. 20. A party having commenced in Chancery a suit for perpetuating testimony, alleging himself to be the immediate younger brother of a party who was entitled, to claim certain titles and estate, and having obtained an order appointing an examiner to take the examination of witnesses, petitioned in the Court of Session for an order on certain parties, custodians of the family papers, to search for and exhibit, before the examiners, certain documents referred to in the examination of one of the witnesses; *Held* that the petitioner had no title to make this demand.

The Court having, by interlocutor of 11th June 1867, appointed the trustees and law agents of the late Marquis to appear for examination as witnesses before the examiners, Lord Jerviswoode and Mr Thomas Syme were examined. Lord Jerviswoode stated in the evidence which he then gave that the document then produced, (marked A) was a list of documents and papers which he had been informed by Messrs Davidson & Syme the complainer desired to have then exhibited; that he had none of the documents or papers with him; that the Trustees would not search for or exhibit the documents and papers called for without judicial authority; and that the reason they would not do so was, because there was a question raised as to the party who had right to the documents in the Charter Room of Taymouth Castle, or connected with the family or estates, and that they, the Trustees, thought it proper to do nothing in the matter without judicial authority.

The petitioner then, on 26th November 1867, presented a petition to the court, setting forth the previous procedure in the case, and praying the court to order the late Marquis' trustees and law-agents to search for, and to exhibit before the examiner, at such times and places as the examiner should appoint for their examination, "the writings and other documents above-mentioned and described in exhibit A, referred to in the depositions of the said Lord Jerviswoode and Thomas Syme, already taken before the said examiner, or such of the said writings and documents as are in their custody, possession, or power; and if it should appear to their Lordships to be necessary so to do, in order to give due effect to the said order, or to the prayer of the petition, to grant diligence for the recovery of the foresaid writings, and warrant to cite the said Earl of Dalhousie, Lord Jerviswoode, Alexander Currie, Laurence Davidson, and Thomas Syme, as havers, to produce the same, but all for the purpose of exhibition before the said examiner, as prayed for." The petition was partly heard on 27th November, and further hearing was adjourned till 5th December.

On 30th November the petitioner presented a note of suspension and interdict against John Alexander Gavin Campbell of Glenfalloch, stating that his agent had received on that day a letter from the agent for the late Marquis' trustees to the following effect,—“Subsequent to the judgment of the House of Lords in the Breadalbane Succession Cause, the present heir in possession of the entailed estates of Breadalbane has made application to our clients, the Trustees of the late Marquess, for access to the Charter Room at Taymouth; but our clients did not think it their duty, in the circumstances, to accede to them. The Earl has now, through his agents, intimated that, failing our client's assent by Monday first to his obtaining access to the Charter Room in the manner proposed by him, he will, at his own hand, direct the room to be opened, and its contents ascertained and inventoried.”

The letter addressed to the agents of the Trustees by the Earl's agents contained this passage:—“We therefore suggest that the contents of the Charter Room should be examined, and, so far as thought necessary, inventoried by us as the Earl's agents, at the sight of yourselves, as agents for the Trustees, or of some one appointed by you to attend while this is being done, and we are quite ready to concur in arranging a convenient time for this purpose. If the reasonable proposal now made be declined, the Earl will direct the room to be opened, and the contents ascertained, and, so far as thought proper, inventoried by proper persons on his own responsibility.”

The Trustees' agents accordingly gave this intimation to the agents for the petitioner, who now presented this note of suspension and interdict, craving the Court to interdict the respondent from entering, “or in any way interfering with the Charter Room at Taymouth Castle, or with the titles, muniments, and other writings therein contained, relating to the earldom and other honours and dignities of the family of Breadalbane, or relating to that family.”

On the suggestion of the Court, after hearing parties, an arrangement was come to, on the basis of the proposal contained in the letter by the Earl's agents to the agents for the trustees, quoted above, as to an inventory to be made at sight of the latter, in respect of which the note of suspension and in-