with the sum of £2496, and to pay over to the pursuers so much of the proceeds as shall correspond to the proportion of £1000 to £1496; and to hold the balance as part of the capital sum, under the provisions of the said contract. Further, in regard to the sum of £2000 which was lent on bond to Mr Grant of Glenmoriston, and subsequently paid up to the pursuers: Find and declare in terms of the second conclusion of the summons: *Quoad ultra* sustain the defences: Find both parties entitled to their expenses out of the share of the proceeds of the said stock falling to the defenders under the above findings, and decern, and remit to the auditor to tax the expenses now found due, and to report."

Agents for Pursuers—Adam & Sang, S.S.C.

Agents for Defenders—Horne, Horne, & Lyell, W.S.

Friday, October 29.

FIRST DIVISION

BREADALBANE *v.* BREADALBANE'S TRS.

Charter Room—Inventory—Trustees. The trustees of a deceased nobleman held possession of the key of the charter room of what was formerly his residence, but now that of the next heir of entail. The latter had in a previous action resisted the petition of an opposing claimant to get access to the documents in this room; but now sought to get the keys for himself. The Court *refused* to order the trustees to give up the key; but suggested the appointment of some one by the parties to inventory and separate the documents.

This was an action brought by the Earl of Breadalbane against the trustees and executors of the late Marquess, who are in possession of the key of the charter room of Taymouth Castle, craving that they should be ordained to deliver the key to him, and interdicted from allowing any of the documents to be changed, or the custody of the key transferred to other hands. At present there is under appeal, before the House of Lords, a decision of the Court refusing to Donald Campbell, one of the claimants to the Earldom, an order on the trustees to exhibit the documents and titles concerning the Earldom and estate of Breadalbane before an examiner appointed by the Court of Chancery. The present pursuer appeared in that action as a respondent, and resisted the application. In respect of the dependence of this appeal, the Lord Ordinary (BARCAPLE) reported the case to the Court without decision; but expressing a strong opinion that the pursuer should prevail.

LORD ADVOCATE and ADAM, for the pursuer, argued—The pursuer has been served heir of entail to the last proprietor, and is in possession of the title and estates, as well as of Taymouth Castle, in the charter-room of which the documents are. In such a position he is entitled to the key of the charter-room of his own dwelling; and the writs and documents are really in his custody. No question has yet arisen, and no averment been made, of any difficulty about the papers.

DEAN of FACULTY and WATSON, for the defenders, replied—A question may arise as to whose property the documents are. The other claimants must be called before the defenders are in safety to surrender the key to the pursuer. The defenders have an unimpeachable title to the custody of the documents in the charter-room; or, at least, to these documents other than those relating to the succession under the entail, and to the title and dignities. Authority—*Crawford* v. *Campbell*, 2 W. & S. 440.

At advising—

LORD PRESIDENT—We are none of us inclined exactly to agree with the views of the Lord Ordinary. We are not prepared to pronounce judgment in terms of the pursuer's conclusions. Nor are we prepared to pronounce a judgment at once transferring the control of the muniment room to the pursuer. The writings in it are of a very unusual kind and amount. They are of great historical value—a value not to be measured by money. There is therefore a great responsibility on the defenders, who, I think, are not unwilling to have this responsibility transferred to the pursuer. The only arrangement, I think, is to have a separation of the documents made; and my only regret is, that such a laborious undertaking was not begun long ago. If the parties do not choose to agree to it among themselves, I think there is no resourse but for us to take the matter into our own hands, and appoint an officer of the Court to do so. I think we should give them a reasonable time to make some such agreement; but if they do not, we must take the steps I have indicated.

LORD DEAS—I quite concur with what your Lordship has said; and would only say that it is a great matter for regret that seven years have elapsed without any steps being taken in this direction. And let me point out this, that if this is done by an officer of court there will probably be a far more minute inventory made than there would be if it is done by a gentleman of the parties' own choosing. He can, if he likes, inventory the documents in bundles.

LORD ARDMILLAN concurred.

LORD KINLOCH—I concur; and let me remark, the charter-room is just in fact a charter-chest, and that, though the defenders have the key of the charter-room, the pursuer has the key of the outer-door,—the door of the house, and thus he is quite safe.

The case was accordingly dropped, with the view of an arrangement being made.

Agents for Pursuer—Adam, Kirk & Robertson, W.S.

Agents for Defenders—Davidson & Syme, W.S.

Friday, October 29.

SECOND DIVISION.

LOGAN *v.* LOGAN & OTHERS.

Executry—Testament—Homologation—Jus relictæ *—Repudiation—Election. Held* that a widow could not be held to homologate her husband's testament so as to bar her from claiming her legal rights in lieu of the provision made for her by the will, without proof that she knew what her rights were under the will, and what her legal rights were apart from it.

This was an action of reduction brought by Mrs Cecilia Forrester or Logan, widow of the deceased John Logan, schoolmaster of the parish of Mordington, in the county of Berwick, against the executors of her late husband, and certain other parties interested in her husband's executry, for

the purpose of reducing her husband's will, so far as it interfered with her legal rights as his widow. The pursuer averred that the provision to her in her husband's will was grossly inadequate and unjust, and she elected to take what she was entitled to *jure relictæ*. The defence was that the pursuer had homologated the will in question by various acts, and particularly by expressing herself satisfied with the provisions made in her favour.

The following were the statements made by the defenders in support of the plea of homologation: —"(2) After the funeral, the will was read by the executor, in presence of the pursuer Mrs Logan, two of the sisters of the deceased, viz., Mrs Renton and Mrs Bonthron, Robert Renton, Mrs Renton's son, and the defender George Logan; and on said occasion, after being read, the said pursuer expressed her entire satisfaction with its terms, saying that nothing could be fairer, and she then and there acquiesced in and homologated the same. She at the same time stated that the payment of the interest oftener than once a year would suit her best, and hoped there would be no disagreement about it. The said pursuer repeatedly, on subsequent occasions, expressed her approval of and acquiescence in said will. (3) The executor remained in the deceased's house with the said pursuer for about a fortnight after the funeral, and, with her approval, discharged his duties as executor by looking over and balancing the deceased's books, and making out the accounts. During all that time the said pursuer stated no objections whatever to the will, but uniformly declared her satisfaction therewith and approval thereof. (4) On 1st November 1867 the executor, on the footing and in the belief that the said pursuer had acquiesced in and homologated the said will, obtained himself duly confirmed by the Commissary of Berwick. Before and after that date the said pursuer and the executor had considerable correspondence on the subject. In said correspondence the pursuer continued to express her acquiescence in the will, and her approval thereof; and, at her request, the executor paid her, in February and April 1868, two sums of £5 each, to account of the interest payable to her under the will, and for which she granted receipts as to account of said interest. On the night of the funeral, as well as subsequently, the pursuer was made acquainted with the amount of her husband's estate, as nearly as could be. (5) Prior to 16th November 1867, the said pursuer took certain articles of the deceased's furniture, and agreed to pay their value, by a writing which she granted of her own free will, and of which the following is a copy, viz.:—'*Mordington, 16th No.* 1867.—I, Cecilia Logan, hereby agree to take one eight-day clock and one bed with curtains, being part of the furniture of the late John Logan, my husband.

Value of clock,	£1	0	0
Bed and curtains,	1	10	0
	£2	10	0

which I promise to pay to Mr George Logan, executor of the said John Logan.' (Signed) 'CECILIA LOGAN.' (6) On 28th November 1867, on the footing and in the belief that the said pursuer had acquiesced in the will, the executor proceeded to administer and distribute the estate. *Inter alia*, he paid to the defender James Logan a sum of £100, in terms of the will; and he made up and carried through the residue-accounts of the estate with the Inland Revenue. (7) Notwithstanding that the said pursuer had all along approved of, acquiesced in, and homologated said will, and allowed the executor to act on that footing and understanding, she, about the beginning of May 1868, employed Mr Bowhill, solicitor, Ayton, who on her behalf wrote to Mr Watson, solicitor, Coupar-Angus, the executor's agent, on 6th May 1868, that she was 'clearly entitled to claim her *jus relictæ*, and that she is further entitled to claim the liferent of the remaining half of the deceased's moveable estate, excepting the bequest of £100 to James, under the second purpose of the will.' The said pursuer was not then entitled to repudiate the said will."

The defender maintained the following preliminary pleas against satisfying the production: —"(1) The pursuer is barred from now questioning or repudiating her husband's will, by *mora*, acquiescence, and homologation. (2) The pursuer Mrs Logan having approved of, acquiesced in, and homologated her husband's will, and the executor having acted on that footing, she is not now entitled to have the production satisfied; and the action should be dismissed, or the defenders assoilzied from the same, with expenses."

After proof, the Lord Ordinary (JERVISWOODE) found that the alleged homologation had not been proved.

The defenders reclaimed.

SCOTT for them.

J. MARSHALL in answer.

The Court adhered; holding that there was no evidence to show that the pursuer either knew what were her rights under the will, or what her legal rights were apart from the will. Without such knowledge there could be no homologation, even if the acts and expressions founded on by the defenders could in any case amount to that. It was observed by the Bench that in a case of this sort a reduction was unnecessary, as no will could be regarded as disposing of more than the *dead's* part of the executry.

Agents for Pursuer—Adam & Sang, S.S.C.

Agents for Defender—Lindsay & Paterson, W.S.

Saturday, Oct. 30.

FIRST DIVISION.

CLEPHANE AND OTHERS *v.* MAGISTRATES OF EDINBURGH.

(See *ante*, vol. vi, p. 471.)

Procedure—Kirk-Session—Sist—Site. A kirk-session, who were not parties to an action involving the money out of which their church was to be built, *allowed* to sist themselves in a discussion as to the locality of the church's site. Procedure in selecting the site.

This case came before the Court on a petition by the defenders, dated 21st May 1869, to apply the judgment of the House of Lords. The Kirk-session lodged a minute, asserting their interest in the matter, and craving to be sisted as parties to the discussion. This the defenders opposed, on the ground that the ministers had not been parties to the action and the remit of the House of Lords. But the Court held they ought to be sisted.

A scheme of division of the surplus revenue of the Hospital, prepared by the City Accountant as accountant to the Hospital, was lodged in consequence of the decision of the House of Lords,