"*Note.*—The pursuer, as factor *loco absentis* to James Young, insists in this action in so far as regards the heritable subjects in Whitehall Close, which belonged to the deceased James Brown senior, on the ground that James Young has, under the disposition of the said James Brown, his grandfather, dated 29th April 1797, right to the one-fifth part or share thereof as heir of provision to his mother, Mrs Janet Brown or Young. Mr Brown senior died last vest and seised in the said subjects. By the said disposition he conveyed them to his wife in liferent, and to his lawful children 'equally among them, and to the survivors or survivor of them, and their heirs or assignees whomsoever in fee.' Mrs Janet Brown or Young survived her father, and also her mother, the liferentrix, and died intestate, and without having made up any title to the said subjects. James Young has not made up any title by general service to his mother, Mrs Janet Brown or Young, as heir of provision to her under the foresaid disposition, and he has, therefore, the Lord Ordinary is of opinion, no title to insist in the conclusions of the present action. The defenders are the testamentary trustees of James Brown junior, the son and heir-at-law of James Brown senior, who made up a title to and conveyed the subjects to them. They admit that they hold these subjects to the extent of one-fifth for the heir of Mrs Janet Brown or Young. When James Young has, by general service, become vested as heir of provision in the personal right conveyed to his mother by his grandfather's disposition, he will be entitled to call upon the defenders, the trustees of James Brown junior, to convey to him one-fifth share of the Whitehall Close subjects. But before making such a claim, or instituting an action to enforce it, he must complete his title as heir of provision."

Against this interlocutor the pursuer reclaimed.

Solicitor-General (CLARK) and MACKINTOSH, for him.

J. M'LAREN and MARSHALL, for the respondent.

Authorities referred to—*Mackintosh* v. *Munro*, 23d Nov. 1854, 17 D. 99; *Malcolm* v. *Dick*, 8th Nov. 1866, 5 Macph. 18; *Rutherfurd* v. *Nisbet's Trustees*, 12th Nov. 1830, 9 S. 3; *Cochrane* v. *Ramsay*, 11th March 1828, 6 S. 773-4; Bell's Prin. 1683.

The Court recalled the Lord Ordinary's interlocutor *in hoc statu*, and, on condition of payment of expenses since the date of the interlocutor reclaimed against, sisted process in order to enable the pursuer to mend his title to sue, by serving as heir of provision or otherwise, as advised.

Agents for the Pursuer—Hill, Reid & Drummond, W.S.

Agents for the Defenders—Fyfe, Millar & Fyfe, S.S.C.

Thursday, July 6.

SECOND DIVISION.

ROSS *v.* DURIE.

Donation—Deposit Receipt. A deposited money in a bank in the name of himself and B, payable to "either or survivor," and gave the deposit-receipt to B. *Held* that there was no presumption in favour of donation, and that the proof did not establish that A intended to make a donation to B.

This was an action in the Sheriff-court of Fife, raised by John Ross against James Durie and his wife, concluding for payment of a sum of £90, 5s. 8d., contained in a deposit-receipt. The facts are fully set out in the interlocutor of the Sheriff.

The Sheriff-Substitute (BELL) pronounced the following interlocutor:—"Finds, in point of fact, that on or about the 20th day of September 1867 the pursuer handed to the female defender the deposit-receipt mentioned on record; but that the pursuer has failed to prove, as averred by him, that he did so in order that it might be retained by her for the pursuer's behoof, and for her own behoof in case of his decease: Finds that, on the contrary, the pursuer, when handing the receipt to the female defender, said, "That is a present to you:' Finds, in point of law, that the defenders are not bound to restore said receipt, or to repay the money therein contained, to the pursuer; therefore assoilzies the defenders from the conclusions of the summons, and decerns: Finds them entitled to expenses, allows an account," &c.

The Sheriff (CRICHTON) recalled this interlocutor, and pronounced the following judgment:—"Finds, in point of fact (1), That on 10th May 1867 the sum of £100, belonging to the pursuer, was deposited in the Royal Bank of Scotland at Cupar, and that the deposit-receipt, No. 16 of process, was granted by the bank therefor in the names of the pursuer and his now deceased wife, 'payable to either or survivor;' (2) That the pursuer's wife, who was a sister of the defender, Margaret Laing or Durie, died on 19th September 1867, and on that day the pursuer went to live in family with the defenders; (3) That on 20th September 1867 the pursuer, accompanied by the defender James Durie, went to the Royal Bank at Cupar and uplifted the said sum of £100 contained in the deposit-receipt, and that the pursuer then proposed to re-deposit £90 of the said sum of £100 in his own name and that of the defender James Durie; (4) That the defender James Durie objected to the said sum of £90 being deposited in his name, and he advised the pursuer to re-deposit the money in his own name; (5) That thereafter the pursuer proposed to re-deposit the said sum of £90 in his own name and that of the defender Margaret Laing or Durie; (6) That the said sum of £90 was, on 20th September 1867, re-deposited by the pursuer with the Royal Bank of Scotland at Cupar, and that he then received from George Ramsay, the accountant of the said bank, the deposit-receipt, which is in favour of the pursuer and 'Mrs Margaret Laing or Durie, Cupar, ... payable to either or survivor;' (7) That on the said 20th day of September 1867 the pursuer handed to the defender Margaret Laing or Durie the said deposit-receipt for £90 sterling; (8) That the pursuer continued to live with the defenders for about six or seven weeks after 20th September 1867, when, in consequence of a quarrel with the defender Margaret Laing or Durie, he left the house; (9) That on 15th November 1867 the defender Margaret Laing or Durie called upon the said George Ramsay, and stated that she wished to uplift part of the money contained in the said deposit-receipt; (10) That on 16th November 1867 the said Margaret Laing or Durie received from the said George Ramsay £20 of the sum contained in the said deposit-receipt, which she retained and still retains; and that she re-deposited the balance of £70 on a deposit receipt in favour of 'Mr John

Ross, blacksmith, Cupar, and Mrs Margaret Laing or Durie, Cupar, ... payable to either or survivor;' (11) That thereafter, and within a month of the said 16th November 1867, the said Margaret Laing or Durie uplifted the said sum of £70, contained in the said deposit-receipt, No. 18 of process, and which sum she retained and still retains; (12) That it is not proved that the pursuer gifted or made a donation of the deposit-receipt, or the contents thereof, to the defender Margaret Laing or Durie, or that he authorised the defenders or either of them to uplift or retain and appropriate to their own uses and purposes the money contained in or represented by the said deposit-receipt, or any part thereof; and in these circumstances finds, in point of law, that the defenders are not entitled to retain the money uplifted as aforesaid, or any part thereof; decerns and ordains the defenders to make payment to the pursuer of the sum of £90, 5s. 8d. sterling, with interest thereon at the rate of five per cent. per annum, from the 16th day of November 1867 until paid: Finds the defenders liable to the pursuer in expenses; allows an account," &c.

The defenders appealed.

The SOLICITOR-GENERAL (CLARK) and RHIND, for them, argued—That the delivery of the deposit-receipt, and the proof that it was delivered *donationis causa*, passed the property of the money contained in the receipt. *Kennedy*, 1 Macph. 1042; *Watt's Trustees*, 7 Macph. 930; *M'Cubbin's Executors*, 6 Macph. 310.

CAMPBELL SMITH and GUTHRIE SMITH, for the respondent, argued—Mere delivery of the deposit-recept would not pass the right. *Cruickshanks*, 16 D. 168; *Heron*, 14 D. 25.

At advising—

LORD JUSTICE CLERK—I am of opinion that we ought to adhere to the Sheriff's interlocutor. There are two principles in the law of Scotland which govern this case. The first is, that the mere possession of a deposit receipt by a party named therein does not confer an absolute right to the sum contained in it. It is merely a voucher. The money can only be transferred by the regular means of transference. Possession may enable the party holding the receipt to get the money; but if he does so, he does so presumably as a mandatory, and he holds the money in trust. This presumption no doubt may sometimes be overcome, when, for example, donation or an onerous consideration can be proved.

The second principle is, that donation must be proved, the *onus* resting upon the party alleging the donation. Now, here there is no evidence of an *animus donandi*. The evidence (and it is very meagre), so far as it goes, is against that being the nature of the transaction; for it appears that the pursuer, in the first place, lodged a sum of money in the bank, on a deposit receipt taken in his own and his wife's name, payable to the survivor. His wife having committed suicide, he then, on the day following his wife's suicide, when in a state of great excitement and distress, uplifted the deposit receipt, and redeposited nearly the whole sum on a new deposit receipt, and he substituted the defender Mrs Durie's name for that of his late wife. Now this does not look like an intention to make a donation. Besides, the pursuer was not in a fit state of mind, nor was that a time for making a donation. I do not find in the evidence for the defence the slightest account of the circumstances which immediately preceded and followed, to explain this transaction. I therefore cannot hold that donation has been made out.

Agent for Pursuer—William Milne, S.S.C.

Agents for Defenders—D. Crawford & J. Y. Guthrie, S.S.C.

Friday, July 7.

FIRST DIVISION.

KERMICK *v.* WATSON.

Process—Jurisdiction—Reparation—Slander. In an action of damages for slander, alleged to have been uttered within the territory of the Sheriff of Forfarshire by a person not subject *ratione domicilii* to any jurisdiction in Scotland—*Held* that the Sheriff of Forfarshire had jurisdiction to try the case, the *locus delicti* or *quasi delicti* being within his territory, and personal service of the summons having been made upon the defender while residing there.

This was an action of damages for slander brought before the Sheriff-court of Forfar, at the instance of William Lovat Kermick, residing at Kirriemuir, against William Watson, a banker's clerk, holding a situation in Manchester, but who at the time when the slander libelled was alleged to have been uttered was upon a visit to Kirriemuir. The summons was personally served upon him before he left Kirriemuir, which he did two days thereafter. Two acts of slander were libelled, both as occurring at Kirriemuir. It was admitted that the defender, though now resident in Manchester, was born in Forfarshire.

Against this action the preliminary defence of no jurisdiction was set up.

The Sheriff-Substitute (ROBERTSON) found, in point of law, that the defender being admittedly resident in Manchester, and having only been on a visit to Scotland when the summons was served, and having only resided in this country about a fortnight prior to the serving of said summons, was not within the jurisdiction of the Sheriff-Substitute; therefore dismissed the action.

Against this interlocutor the pursuer appealed to the Sheriff (MAITLAND HERIOT), who, considering that the case was ruled by that of *Crichton* v. *Robb*, 9th Feb. 1860, 32 Jur. 279, dismissed the appeal.

The pursuer then appealed to the First Division of the Court of Session.

NEVAY, for him, contended that (1) nativity and (2) personal citation in this country, are sufficient to found jurisdiction, especially when combined with the *locus contractus* (the *quasi delict* in this case inferring *quasi contractus*). Reference made to *Hog* v. *Tennent*, 1760, M. 4780; *Grant* v. *Pedie*, 5 July 1825, 1 W. and S. 716; *M'Arthur* v. *M'Arthur*, 12th Jan. 1842, 4 D. 354; *Ritchie* v. *Fraser*, 11th Dec. 1852, 15 D. 205; *Dickie*, 20th Sept. 1811, F.C.; *Crowder* v. *Watson*, 18th Nov. 1831, 10 S. 29, and 6 W. and S. 271.

WATSON, for the defender, referred to *Pirie & Sons* v. *Warden*, 20th Feb. 1867, 5 Macph. 497; *Bruhn* v. *Greenwaldt*, 2 Macph. 335; *Sinclair* v. *Smith*, 17th July 1860, 22 D. 1475; *Logan* v. *Thomson*, 24 Jan. 1859, 31 Jur. 174.

At advising—

LORD PRESIDENT—This is an appeal in an action of damages for slander raised before the Sheriff-court of Forfarshire, by William Kermick, a resident in Kirriemuir, against William Watson,