ders are made up, advancing money should it be required. . . with power to advertise the mill for sale in such papers they may consider best; and should any offer be made, to call a meeting of the directors to consider and dispose of and wind up the same." This was agreed to, and these duties were undertaken by Messrs Brunton and Brown as directors of the company; and the present claim for remuneration is made by the respondent for work done under this appointment. Now, it is well settled in law that anyone standing in a fiduciary position, whether as director of a company or as a trustee, can obtain no remuneration for his services unless there be some special provision to the contrary in the deed under which he is appointed. If we apply this rule in the present case, as I think we are bound to do, then decree must be granted for the £42, but as there seems to be some doubt whether this sum does not include outlay actually incurred on behalf of the company, I think that we ought to reserve to the respondent any claim which he may have in that respect.

Lords Mure and Shand concurred.

Lord Deas was absent.

The Court granted the prayer of the petition, and ordained the respondent to make payment of the sum of £42, reserving to him any claim which he might have for outlay incurred on behalf of the company.

Counsel for Petitioner — Strachan. Agent —Alexander Gordon, S.S.C.

Counsel for Respondent — Rhind — Baxter. Agent—Thomas Sturrock, L.A.

Saturday, November 4.

SECOND DIVISION.

BROWNE AND OTHERS, PETITIONERS.

Succession—Foreign—Will—Informality of Execution—Conveyancing and Land Transfer (Scotland) Act 1874 (37 *and* 38 *Vict. c.* 94), *sec.* 39—*Titles to Land Act* 1868 (31 *and* 32 *Vict. c.* 101), *sec.* 20.

A person died domiciled in New Zealand possessed of heritable estate situated in Scotland, and leaving a trust-disposition and settlement, good according to the law of New Zealand, but not probative according to Scotch law. The trustees, in order to entitle them to make up a title to the heritable estate in Scotland, presented a petition under section 39 of the Conveyancing (Scotland) Act 1874 for declarator that the settlement was duly subscribed. The Court *granted* the petition, but *held* that the deed was already valid under sec. 20 of the Titles to Lands Consolidation (Scotland) Act 1868.

Section 39 of the Conveyancing Act 1874 provides that "No deed, instrument, or writing subscribed by the grantor or maker thereof, and bearing to be attested by two witnesses subscribing, and whether relating to land or not, shall be deemed invalid or denied effect, according to its legal import, because of any informality of execution; but the burden of proving that such deed, instrument, or writing so attested was subscribed by the grantor or maker thereof, and by the witnesses by whom such deed, instrument, or writing bears to be attested, shall lie upon the party using or upholding the same, and such proof may be led in any action or proceeding in which such deed, instrument, or writing is founded on or objected to, or in a special application to the Court of Session, or to the Sheriff within whose jurisdiction the defender in any such application resides, to have it declared that such deed, instrument, or writing was subscribed by such grantor or maker and witnesses."

This was a petition for declarator that the will and codicil thereto of George Junior Browne were duly subscribed. The petition was presented by the trustees and executors of Mr Browne. They stated that Mr Browne died domiciled in Dunedin, New Zealand, in March 1880, survived by a widow and a pupil daughter, who at the date of the petition were both resident in England, and that he left a will dated 21st February 1880, and a codicil thereto dated 5th March of the same year. By the said will and codicil the testator, after bequeathing certain legacies, directed his trustees and executors to pay the income of the residue of his estate to his widow during her life, and to hold the residue in trust for his children till majority, or marriage in the case of daughters. Their other statements were as follow:—Besides the real and personal estate in New Zealand possessed by the testator, he had a right to a share of certain heritable estate in Scotland still held by his father's trustees. The testator also had right to some personal estate in Scotland. The deed was deposited, in pursuance of the law of New Zealand, in the office at Dunedin of the Supreme Court of New Zealand, where it still remained. That Court would not allow the deed to be removed from its office, so that it could not be produced in Great Britain. The petitioners produced a *facsimile* of it, along with an affidavit by the registrar of the Court at Dunedin as to the description and deposit of the deed, and as to its not being removable, and also bearing that the *facsimile* was correct. Probate of the will and codicil was, on the 18th March 1880, granted in the Supreme Court of the colony of New Zealand to the three trustees, and confirmation in their favour of the Scotch personal estate was granted to them by the Commissary of Edinburgh on the 27th January 1881. The will and codicil were written on six separate sheets of brief paper, attached together at the corner by a silk thread. The will was written on five sheets, and the codicil partly on the fifth and partly on the sixth, only one side of each of the six sheets being written upon. The attesting witnesses to the testator's signature of the will, one of whom was also a witness to his signature of the codicil, signed on each sheet, except the fourth, of the will, adding their designations to their signatures on the last sheet, but the testator signed only on the last sheet at the end of the will. Neither the testator nor the witnesses to his signature of the codicil signed at the foot of the first sheet of the codicil, which was the fifth of the deed, but all signed the second sheet at the end of the codicil, which was the sixth and the last of the deed. The witnesses here also added their designations. The will was subscribed of the date it bore.

The deed, although written on six sheets, thus only bore the subscription of the testator on the fifth sheet at the end of the will, and on the sixth sheet at the end of the codicil.

The petitioners prayed the Court to allow them a proof of their averments, and thereafter to find and declare that the will and codicil above mentioned were subscribed by the said George Junior Browne as maker thereof.

No answers were lodged by any party.

The Court allowed a proof, and granted a commission to take evidence in New Zealand. The evidence bore out the statements above narrated, and contained the depositions of the instrumentary witnesses to the will and codicil, who also spoke to the truth of the *facsimile* of the will and codicil produced.

The Titles to Lands Consolidation (Scotland) Act 1868, by sec. 20, provides that a conveyance of heritage shall not, from and after the commencement of the Act, be invalid by reason of the absence of the word "dispone" or other words of *de præsenti* conveyance, "and where such deed or writing shall not be expressed in the terms required by the existing law or practice for the conveyance of lands, but shall contain, with reference to such lands, any word or words which would if used in a will or testament with reference to moveables be sufficient to confer upon the executor of the granter or upon the grantee or legatee of such moveables, a right to claim and receive the same, such deed or writing, if duly executed in the manner required or permitted in the case of any testamentary writings by the law of Scotland, shall be deemed and taken to be a general disposition of such lands within the meaning of the 19th section hereof, by the granter of such deed or writing in favour of the grantee thereof, or of the legatee of such lands, and shall be held to create, and shall create, in favour of such grantee or legatee, an obligation upon the successors of the granter of such deed or writing to make up title in their own persons to such lands, and to convey the same to such grantee or legatee; and it shall be competent to such grantee or legatee to complete his title," &c.

Argued for petitioners—The deed ought now to be regarded as a probative deed according to Scotch law. Owing to an informality in its execution it was not originally a probative deed, but the defect had now been cured by proof, in accordance with the provision of sec. 39 of the Conveyancing Act 1874. Sec. 20 of the Act of 1868, *supra cit.*, had no direct reference to foreign deeds, and so did not affect the law already in existence as to foreign deeds. It was therefore necessary to proceed under the Conveyancing Act of 1874.

Authorities—*M'Laren* v. *Menzies*, July 20, 1876, 3 R. 1151; *Studd*, Dec. 10, 1880, *ante*, vol. xviii. p. 177, 8 R. 249.

The Court, after hearing counsel, were of opinion that the will being valid according to the law of New Zealand, was effectual to convey Scotch heritage without any process under the Conveyancing Act of 1874, but granted the prayer of the petition, on the ground the petitioners being trustees were entitled to act with extreme caution.

Counsel for Petitioners—Macfarlane. Agents—Morton, Neilson, & Smart, W.S.

Tuesday, November 7.

FIRST DIVISION.

[Lord Adam, Ordinary.

NICOLSON AND NICOLSON & SON *v.* BURT AND PATERSON.

Cautioner—Liberation of Cautioner—Alteration in Agreement.

A person who binds himself as cautioner for the intromissions of a servant, in general terms, remains bound until he intimates withdrawal from the obligation, or until the servant ceases to be in the employer's service.

A cautioner for a traveller who had entered into an agreement with his employers for three years *held* not liberated by mere expiry of the term of three years, but bound as cautioner for a further term of service between the traveller and his employers, in respect the bond of caution did not import by reference or otherwise the terms of the agreement subsisting at its date, and therefore lasted during the period of service or until the cautioner withdrew.

Transaction—Giving Time.

Where a creditor made advances to his debtor to enable him to make good defalcations, and took bills payable at sight for the amount, *held* that he was not barred from recovering from the debtor's cautioner the amount of subsequent defalcations.

By an agreement, dated 16th December 1875, between David Nicolson and D. Nicolson & Son, brewers (of which firm the pursuer David Nicolson was sole partner), on one part, and Peter Burt, on the other, Burt agreed to act as traveller for the firm of D. Nicolson & Son, for the sale of their ales, &c., and undertook to find security for his intromissions to the extent of £300. The seventh article of said agreement was as follows:—"This agreement to commence on 1st March 1876, and to hold good for three years thereafter. Either party wishing to terminate it at the end of said three years may do so by giving three months' notice in writing to the other of his intention to do so." Burt offered as cautioner his father-in-law Robert Paterson, who on 25th March 1876 subscribed a bond of caution, which was in the following terms:—"For the due and punctual payment to David Nicolson, brewer, Edinburgh, by Peter Burt, presently of Glasgow, of all sums of money collected by him belonging to the said David Nicolson, but to the extent of £300 only, I, the said Robert Paterson, bind and oblige myself, my heirs and successors, as cautioners and sureties with and for the said Peter Burt, to make good any deficiency which may arise in his intromissions, and that within one month from intimation." On the expiry of the three years' period of service specified in the agreement between Nicolson and Burt, the parties appended a minute to it, dated 17th March 1879, to the effect that the same should continue for three years from 1st March 1879 to 1st March 1882, when it might be terminated in the same manner as the original agreement.

Burt having failed to account to the pursuer for certain sums of money collected by him, this action was raised against him, and against the