

the Sheriff's judgment and admitting the claims of all the parties in this case. I see no distinction which can be drawn with regard to the four officers. I may add that in disposing of the *Crieff* case we were referred to certain English cases, and that I have again consulted them. They are in point here, and indeed some of them deal with the very question of soldiers, which has been settled in their favour, so that we are following in our judgment that of the English Judges.

LORD CRAIGHILL—I entirely concur.

LORD KINNEAR—I concur. I think the question here was directly decided in the case of *Atkinson v. Collard* in the Queen's Bench Division, to which we were referred.

The appeal was sustained and the judgment reversed.

Counsel for the Appellants—Ferguson. Agent—Andrew Ross, S.S.C.

COURT OF SESSION.

Wednesday, September 21.

OUTER HOUSE.

[Lord Fraser, Lord Ordinary
on the Bills.

HAY v. HAY.

Process—Procedure in Vacation—Decree in Absence—Power of Lord Ordinary on the Bills—Court of Session Act 1868 (31 and 32 Vict. c. 100), sec. 93.

Held that the authority given by sec. 93 of the Court of Session Act 1868 to the Lord Ordinary on the Bills to grant decrees in absence in vacation extends to actions of choosing curators.

Miss Catherine A. Halkett Hay and John T. Halkett Hay, children of the late Charles H. Halkett Hay of Balendoch, Perthshire, who were minors, raised on 5th July 1887 this action of choosing curators, calling as defenders their next-of-kin on their father's and mother's side respectively. No appearance was made for the next-of-kin, and the pursuers put into process a deed nominating a Mrs Yeats to be their curator during their minority. On 21st September 1887, on which day the Lord Ordinary on the Bills sat in Court, in virtue of the 93rd section of the Court of Session Act 1868, his Lordship was moved to sustain the deed of nomination by the pursuers.

It was pointed out by the Clerk that in practice in summonses of choosing curators such an order had never been granted, it being the understanding that such a decree as that moved for did not fall under the provisions of section 93 of the Court of Session Act 1868, which provides that " . . . on the fifth lawful day after each box-day, the Lord Ordinary officiating on the Bills shall sit in Court for the purpose of granting or recalling decrees in absence, and hearing and disposing of motions in any cause in reference to the preparation of the record, or for the granting

of commission and diligence for the recovery of writings to lie *in retentis*, or for any other purpose which the Court may specify by any Act of Sederunt which they are empowered by the Act to make."

The Lord Ordinary (FRASER) sustained the nomination, and in respect of the curator's acceptance of office, and of the failure of the next-of-kin to compare and concur in making up inventories, nominated a delegate at whose sight inventories in triplicate should be made up, and these being lodged at the bar approved thereof, and appointed two of them to be lodged with the Clerk, and the remaining one to be given up to the curator along with the act of curatory.

Counsel for the Pursuers—Hay. Agents—Reid & Guild, W.S.

Friday, November 25.

FIRST DIVISION.

[Sheriff of Aberdeen.

LEMON (INSPECTOR OF POOR OF THE PARISH OF EASTWOOD) v. WALLACE (INSPECTOR OF POOR OF THE PARISH OF ST NICHOLAS).

Poor—Settlement—Proof—Parish Register.

A child was born in Aberdeen, which consists of two parishes, St Nicholas, or the city parish, and Old Machar. Her father was a militiaman, and at the time of her birth his regiment was quartered in barracks which were in St Nicholas parish. There was no evidence as to whether he and his wife lived in barracks or not. There was an entry of the child's baptism in a register of baptisms kept in a church within St Nicholas parish, and a register of births and baptisms for the parish of St Nicholas also contained an entry of her baptism. Held that the evidence was sufficient to prove that the child was born in St Nicholas parish.

Beattie v. Nish, 5 R. 775, distinguished.

Isabella M'Farlane having for some time previous to her death in November 1885 been chargeable as a pauper in the parish of Eastwood, this action of relief was raised after her death at the instance of the inspector of poor of that parish against the inspector of poor of St Nicholas, Aberdeen, as the parish of her birth.

The facts of the case were these—The pauper was born in Aberdeen in the year 1811. There are two parishes in Aberdeen, St Nicholas and Old Machar. Andrew M'Farlane, the pauper's father, was a weaver and a soldier in the Fifeshire Militia, which was quartered in the barracks at Aberdeen, in St Nicholas Parish, from August 1810 to March 1812. There was no evidence that the pauper's mother had lived in barracks with her husband, and no evidence that she had ever lived in Old Machar.

There was produced this extract from the register of births and baptisms for the city parish of Aberdeen, *i.e.*, St Nicholas parish—"Aberdeen, 11th April 1811.—Andrew M'Farlane,

soldier, Fifeshire Militia, and his spouse Janet Mackie, had a daughter born named Isabella, baptised by the Rev. James Paull, in presence of Janet Boyne and Mrs Smith." There was also this entry in the register of baptisms in Greyfriars' Church, in the parish of St Nicholas, Aberdeen, in the handwriting of the Rev. Mr Paull—"14th April 1811.—Andrew M'Farlane, Fifeshire Militia, had a daughter baptised." Mr Paull was chaplain of the forces. A declaration by the pauper before one of the Justices of the Peace for the county of Renfrew, taken shortly before her death, dated 26th October 1885, to the following effect, was also produced—"My name is Isabella M'Farlane, and I am seventy-four years of age. My father's name was Andrew M'Farlane, and I was informed that he was in the militia in Aberdeen, in which city I was told, and have always believed, I was born. My mother's name was Janet M'Kay or Mackie."

The Sheriff-Substitute (Brown) on 12th February 1887, after proof, pronounced this interlocutor—"Finds that the pursuer has failed to prove that the pauper in question was born in the defender's parish, assoliszes the defender from the conclusions of the action, &c.

"*Note.*—This is a perplexing case, but after much consideration I have come to be of opinion that no satisfaction in connection with it can be obtained otherwise than by rigorously confronting the pursuer with the burden of proof which the law lays upon him. To the admissibility of some of the evidence, by which the question in dispute falls to be settled, there is possibly in strictness some legal objection, but the parties have agreed to introduce all the light that can be thrown into the case, even where that does not present itself in regular form, and in doing so it seems to me they have acted reasonably. My view, however, is that, with all the materials that have been collected the issue is unsolved.

"1. I hold there is legal evidence that the pauper was the daughter of Andrew M'Farlane, a weaver, who was in the Fifeshire Militia, and of his wife Janet Mackie. The pauper herself said so, the regimental documents produced show that there was an Andrew M'Farlane, a weaver, in that regiment between the years 1807 and 1813, and the baptismal certificate produced proves that spouses of the above names had a daughter baptised in Aberdeen on 11th April 1811, a date corresponding with the age which the pauper assigned to herself. There is the further corroborative evidence of the witness Mrs Scott, who was acquainted with the pauper's parents, and states their history in connection with Aberdeen, the father more particularly being a weaver and a militiaman.

"2. I also hold it to be, by sufficient evidence, established that the Fifeshire Militia was embodied and stationed in Aberdeen from about August 1810 until March 1812. It is a more doubtful point, but I also consider it to be proved, that that regiment occupied the barracks during their residence in this city.

"3. If the identity of the pauper, as the daughter of Andrew M'Farlane of the Fifeshire Militia, is made out, it is undoubtedly proved by the extract above referred to, and by the register of baptisms in the handwriting of the Rev. Mr Paull, of the College Church, afterwards of Tullynessle, spoken to by his son, Mr Paull, ad-

vocate, Aberdeen, that the pauper was baptised in the parish of St Nicholas.

"4. Beyond these three propositions I am unable to find anything that can be said to fall within the category of proof. They no doubt in themselves present an unusual combination of circumstances, and there are other facts from which the probability of the pursuer's case may be very forcibly argued. There is evidence that a certain proportion of the wives and married soldiers lived in the barracks, and I impute the same rule to militiamen in residence; and apart from any special reasons assigned for it, I think there is an inherent probability resting on the gregarious habits of soldiers, that married men unable to find quarters in the barracks would look for them in the immediate neighbourhood. But disturbing elements here cut into the case, with the result, as it seems to me, of placing the pursuer within the action of the principle, which is a rule at once of logic and of law, that when the circumstances of a case are explicable by either of two hypotheses, these are mutually destructive and neither can receive effect. The following facts may be referred to in illustration of this position. The register of baptisms kept by the Rev. Mr Paull is really only a congregational record, and accordingly it contains numerous entries of persons residing out of the parish of St Nicholas, but resorting to the College Church from the adjoining parish of Old Machar. It is a well-settled principle of evidence that a baptismal register proves nothing beyond the fact of baptism, and that indeed was strongly emphasised by the present Lord President in the case of *Beattie v. Nish*, 5 R. 775, where he rejected a statement of the place of birth occurring in a certificate of baptism as any evidence that the birth took place as stated; but here the inconclusiveness of the register for anything but baptism stands established not only by presumption but proof. The pursuer urges the tradition in Mr Paull's family, of his father's connection as chaplain with the forces; but that is a consideration which seems to me to tell quite as much in favour of the defender, for within reasonable limits that would be an inducement for soldiers to take their children for baptism to his church in whatever parish they resided. Even on the assumption that the Fifeshire Regiment occupied the barracks, and that none of the troops were in billets, the residence of the pauper's father within the parish of St Nicholas, he being a married man, is only a matter of more or less probability. But the distinct weight of the evidence appears to me to be, that married soldiers, who had not accommodation provided for them in the barracks, were not placed under any military restriction as to where they should find quarters, and there is nothing therefore to make it an unreasonable supposition, destructive of the hypothesis on which the pursuer's case is built, that the pauper's father resided out of the parish of St Nicholas. . . . I think it is fairly in evidence that in 1811 the most of the town of Aberdeen was included in the parish of St Nicholas, but College Street, Jack's Brae, Hardgate, and other places in the parish of Old Machar were well built upon, and I think it cannot be held that the distance between these places, or some of them, and the barracks, was such as to proscribe a militiaman,

especially one who had leave to prosecute his trade, from finding a residence there. Upon what thin lines, no doubt unavoidably so, the case on both sides is built is shown by the attempt to prove the character of the houses in College Street, one of the nearest points in Old Machar to the barracks as regards ownership or occupancy. But without entering further upon the details of the evidence it appears to me to be impossible with reasonable certainty to affirm that the pauper was born in the parish of St Nicholas, and that entitles the defender to prevail. . . .

“5. In these circumstances I think it follows that the pursuer is directly within the principle of the case of *Marykirk v. Liff and Bervie and Dundee*, December 16, 1884, 3 Macph. 253, that the parish of chargeability if unable to show that the birth of a pauper took place in one of two adjoining parishes fails to discharge the burden of proof that rests on it, although it may be a necessary inference that the birth occurred in one or other of the two parishes. In that case the Lord Justice-Clerk stated the rule of law to be, and he subsequently repeated it as Lord President in the case of *Nish*, that such a claim as is here made is exactly in the position of a criminal charge against two accused persons, and that the case fails against both—both not being implicated, as is necessarily the case here, if the evidence does not determine on which of the two liability falls.” . . .

The pursuer appealed to the Sheriff (GUTHRIE SMITH), who on 12th April 1887 recalled the interlocutor of the Sheriff-Substitute, and found that at the date of her application for relief to the inspector of Eastwood the pauper had a settlement by birth in the parish of St Nicholas, and granted decree for the sum of aliment due from the 14th of June 1882, when the pursuer gave notice of his claim.

“*Note*.—I cannot help thinking that in this case the Sheriff-Substitute has been too strict. The time has gone by for evolving legal riddles out of the work of relieving the poor. It is a business of a very practical kind, and while no parish is to be held liable for advances without reasonable evidence that the pauper truly belongs to it, it is really too much to expect inspectors to be able to trace, as exactly as if they were claiming some rich succession, the early history of the unfortunate persons who in their old age, and after spending often a wandering life in the humblest ranks of society, find an asylum in the poorhouse. The only interest the public have in the question is, that it shall be made reasonably certain that the pauper was born in the parish somewhere, where or in what particular spot is of no moment, unless, as curiously enough has sometimes happened, the house is exactly on the line which divides two parishes.

“The pauper Isabella M'Farlane applied to Eastwood for relief in October 1877, she was then sixty-six years of age, and according to her own declaration her father's name was Andrew M'Farlane, who was in the militia in Aberdeen; her mother's name was Janet Mackay or Mackie, and she had always believed that she was born in the city of Aberdeen. The defender observes that this statement does not prove much, for the city of Aberdeen is a wide term, and although in 1811, when the pauper was born, the barracks

were occupied by the Fifeshire Militia, and there was in it a soldier of the name of Andrew M'Farlane, who is abundantly identified as the pauper's father, it by no means follows that being a married man he would live in the barracks, and if not in the barracks, who can tell that he did not live outside of the parish of St Nicholas altogether. Old Machar Parish was then indeed not so populous a part of Aberdeen as it is now, but it is not proved that the pauper was not born there. I think that the practical answer to this ingenious reasoning is, that this would have involved a considerable walk to and from the barracks, and the probabilities are that M'Farlane lived either at or near the scene of his occupation. Further, in the Register of Births and Baptisms kept for the City Parish of Aberdeen, there is this entry under date 11th April 1811—“Andrew M'Farlane, soldier, Fifeshire Militia, and his spouse Janet Mackie, had a daughter born named Isabella, baptised by the Rev. James Paull in presence of Janet Boyne and Mrs Smith.” Dr Paull was then the minister of Greyfriars in the parish of St Nicholas. There is a similar entry in his own private register of baptisms—“11th April, 1811, Andrew M'Farlane, Fifeshire Militia, had a daughter baptised,” and it contains about thirty entries of the baptism of children born in the regiment, which came to Aberdeen in 1810, and occupied the barracks till 18th March 1812.

“It is true that an entry in a baptismal register proves nothing but the fact of the baptism, and if the entry bears that the child was born in another and distant parish, it has been rejected as proof of the place of birth, because the registrar must have got his information on that point at second hand. This was held in the case of *Beattie v. Nish*, which is referred to by the Sheriff-Substitute (5 R. 775). But in that case the Lord President pointed out wherein the probative value of such an entry consists when the place of birth is the matter in issue. ‘It will be presumed,’ he said, ‘in the general case, from the terms of the entry in such a register that the child baptised was born in the parish.’ It is, however, a presumption only, or, as has been said in an English case, the register of baptism *per se* is not evidence of the place of birth. If the child were then very young the register would be presumptive evidence that it was born in that parish where it was baptised, but if the child were not then young the circumstances of its having been baptised in a particular parish would afford no presumption that it was born there—*R. N. Petherton*, 1826, 5 B. & C. 508. Applying these principles to the evidence adduced by the pursuer, I think it is reasonably certain, in the absence of any circumstances leading to a contrary inference, that the pauper was born in the parish of St Nicholas.” . . .

The defender appealed to the First Division of the Court of Session, and argued.—It was not proved that the pauper was born in the parish of St Nicholas. It was most probable she was born in Old Machar. The Rev. Dr Paull's register was only a congregational record. The entry in the baptismal register proved nothing but the fact of baptism—*Beattie v. Nish*, March 19, 1878, 5 R. 775; *Anderson v. Mackenzie & Jack*, December 16, 1864, 3 Macph. 253; *Petherton*, 5 B. & C. 508. The pursuer's evidence would not be enough in

a case of succession, and was not enough here.

Argued for the respondent—Questions such as the present depended on a balance of probabilities. The entry of baptism, taken along with the pauper's declaration, was sufficient—*Hay v. Murdoch*, January 19, 1854, 16 D. 364; *Parish of Lady v. St. Outhberts*, November 20, 1873, 11 S.L.R. 78. There was reasonable certainty that the pauper was born in St Nicholas Parish. The written evidence was more satisfactory than the Sheriff-Substitute allowed, for the register for the City or St Nicholas Parish was one of births and baptisms. This shifted the *onus*. Evidence was satisfactory in such a case which would not be held sufficient in a case of propinquity—*Hay v. Murdoch*, *supra*.

At advising—

LOED PRESIDENT—In this case we have very elaborate opinions from the Sheriff-Substitute and the Sheriff—the one holding that the pursuer has not made out his case, *i.e.*, that the pauper was not born in the parish of St Nicholas, and the Sheriff holding that the pursuer is entitled to a judgment in his favour. I can hardly say that the Sheriff has a clear opinion that the pursuer's case is proved, for he seems to hold that something short of legal evidence is all that is required in order to make a parish liable in a case such as the present. I cannot agree in that opinion. If a relieving parish seeks to make the birth parish of a pauper liable, the pursuer in such an action must establish that as matter of fact by competent legal evidence. It is simply a jury question. I differ therefore from the Sheriff in the first paragraph of his note.

But I am satisfied that the Sheriff has come to a right conclusion, and that, although the case is a narrow one, there is sufficient evidence to justify the decision against the parish of St Nicholas. The pauper was undoubtedly born in Aberdeen, and, if it were not that Aberdeen may be said to consist of two parishes, *viz.*, St Nicholas and Old Machar, that would be an end of the case. Therefore the question resolves itself into this—Whether the pauper was born in the parish of St Nicholas or Old Machar? And that matter comes to be determined in a case where the latter parish is not represented. There is no doubt a preponderance of evidence in favour of the view that the pauper was born in the parish of St Nicholas, and I do not think there is any evidence whatever that she was born in Old Machar parish. There is no evidence that the mother of the pauper was ever in the parish of Old Machar in her life. If there had been anything to show that the mother had been living in Old Machar that would have created greater doubt. All we know is that the father came to Aberdeen as a private in the Fifeshire Militia to serve there. The barracks in which the regiment apparently lodged were in the parish of St Nicholas. Neither the father nor the mother are shown ever to have been in Old Machar at all. In these circumstances there are two pieces of real evidence adduced—one is the register or list of baptisms kept by the Rev. Mr Paull, then minister of the parish of St Nicholas, in which he enters the pauper as being baptized by him, and that is a piece of evidence tending to show that the natural place for her to be baptized was the parish of St Nicholas. It is suggested—and with some reason—that the two parishes were so mixed

that it was not uncommon for the minister of St Nicholas parish to baptise those born in Old Machar; and therefore if the list of Mr Paull is evidence it is very imperfect, for it is evidence merely of the fact of the baptism of the pauper having been performed by the minister of St Nicholas.

But we have another register worthy of greater respect and credit as regards the matter of fact in dispute, *viz.*, the Register of Births and Baptisms for the city parish of Aberdeen. This book is now deposited in the Register Office. It has been produced, and we have examined it, and it bears to be a register of births as well as of baptisms. The words of the register are:—“Aberdeen, 11th April 1811.—Andrew Macfarlane, soldier, Fifeshire Militia, and his spouse Janet Mackie, had a daughter born named Isabella, baptised by the Rev. James Paull in presence of Janet Boyne and Mrs Smith.” That is a distinct affirmation in words that that daughter, *i.e.*, the pauper, was both born and baptised in the parish of St Nicholas, which is the same as the City Parish of Aberdeen. It occurred to me to be doubtful whether this register was one for both births and baptisms; but on examination it cannot be treated as anything else than what it calls itself. It is to be observed that it is the defender's book, and it is very difficult for him to escape its effect. This register is very like the writ of the parish, and ought to be conclusive.

The case in this respect differs essentially from that of *Beattie v. Nish*, in which the register appealed to was the register of another parish, and in which it stated that the pauper was born in a parish which was not even adjoining. Of course that statement could not be given effect to, because there was no means of ascertaining the source of information of the person who kept the register; but when the person who keeps the register says that the child was born and baptised in the parish to which the register applies, that is a very different question, and I think that the proof here of the facts sought to be established is complete.

Upon this ground I agree with the interlocutor of the Sheriff, although, for the reasons I have stated above, I cannot put my opinion on the same ground in law.

LOED MURE—I agree with your Lordship. I do not agree with the Sheriff that in a case of this kind you can do with less evidence than in an ordinary action. I think the facts must be distinctly proved. I should not have thought it necessary to say anything further but for the case of *Beattie*, which has been referred to, and which is distinguishable from the present. In the present case the pauper was born in Aberdeen, and the question is, whether the birth took place in the city parish, *i.e.*, the parish of St Nicholas, or in that of Old Machar. The father, who was a militiaman, came to Aberdeen with his regiment, which was quartered in the barracks in St Nicholas parish. Now, we have no evidence whether the father and mother lived in barracks or not. If they lived out of the barracks at a little distance therefrom they would still be within the parish of St Nicholas. The baptism is proved to have taken place in the city parish. Mr Paull gives evidence as to the matter. Well, that goes a certain way to lead one to infer that

the child was probably born in the same parish.

Then, there is the city register, which bears that the baptism takes place in the city parish. That is evidence of the defenders. The entry shows that the baptism took place in that parish, and the language used conveys the meaning that the child was also born there. There is no evidence to the contrary to show that the father and mother ever lived in the parish of Old Machar.

Viewing it as a jury question, I hold it proved that the child was born in the parish of St Nicholas.

In *Beattie v. Nish* we refused to give effect to the register because it was not evidence, not being the register of the defending parish.

On the whole matter I agree with your Lordship.

LORD ADAM—The Sheriff-Depute seems to think that poor law cases relating to pauper settlements are to be decided upon a different footing from other cases. He says in his note—"The time has gone by for evolving legal riddles out of the work of relieving the poor." That may be very good advice to parochial boards, but if parochial boards choose to evolve legal riddles and bring them before the Court, the Court must solve them, and I know of no other way in which they can do this than by applying to them the ordinary principles and practice applicable to all cases. Does the Sheriff mean that we are to admit evidence in these cases which would not be admissible in other cases, or that we are entitled to betake ourselves to surmise and conjecture instead of confining ourselves to the legal and rational presumptions which arise from proved facts? If that is the Sheriff's meaning, I totally differ from him. We must, I think, adhere in these cases, as in others, to the well-known principles of the law of evidence. It is no doubt true that, looking to the somewhat remote dates to which we have to go back in these cases, and to the fact that the persons concerned belong for the most part to the poorest classes of the community, and that they leave few or no traces behind them in the shape of writing, the evidence to be had is sometimes very scanty. It may be, also, that in the absence of direct proof we may have to betake ourselves to presumptions more frequently than in other cases. But that is what would be done in any case where better evidence could not be looked for.

There does not seem to me to be any difficulty in dealing with this case. It raises the simple issue of fact, whether it is proved that the pauper was born in the parish of St Nicholas? That issue falls to be decided by the ordinary rules of evidence. The evidence is narrow, but it appears to me to be sufficient. The pauper was undoubtedly born in the town of Aberdeen, the town consisting of two parishes—the parish of St Nicholas and the parish of Old Machar. In which of these two was the pauper born? I think it is proved that the pauper's father was quartered in the barracks of Aberdeen, which are situated in the parish of St Nicholas, in the year 1811, but I do not think that that fact helps the pursuer much, because it is not proved that his wife resided with him. I think that it is more probable than otherwise that, whether the husband lived inside the barracks or not, his wife lived out of

them—it is very likely she lived in the neighbourhood and in the parish. But that is conjecture. There is, however, an important item of written evidence which has been appealed to, viz., the register kept by Mr Paull of the College Church, now Greyfriars' Parish Church, but I do not think it helps the pursuer much. If it had been a parish register it would have been very important. The College Church, however, in those days was a mere chapel of ease, with no territory attached to it, and as Mr Paull was chaplain of the Fifeshire Militia, that sufficiently accounts for the child having been baptised by him, altogether irrespective of the fact whether the child was born in St Nicholas or Old Machar. That register, therefore, goes a very little way towards proving the pursuer's case. But the other register, an extract of which has been produced, is very different. It is the city parish Register of Births and Baptisms, the city parish being the parish of St Nicholas. Perhaps it is not altogether free from criticism, for it is open to the observation that under date April 11, 1811, it bears to record the fact of the child's baptism by Mr Paull, which, however, did not take place till the 14th, three days afterwards. That excludes the notion that it was written up from day to day. But having looked at the register, and in view of the fact that the date is not material, I see no ground for doubting its authenticity. If it is to be taken to be, as it bears to be—and I do not see why it should not—a register of births as well as of baptisms, I think it would have proved the birth of the child. But it is said by the defender to be only a register of baptisms, and, taking it to be so, I think it is enough. I think that if it is proved by the appropriate register that an infant was baptised in a particular parish, that raises a legitimate presumption, in the absence of any proof to the contrary, that it was born there, and in this case there is not a particle of evidence that the pauper or her mother ever was in the parish of Old Machar, which is the only other possible parish. In the absence of any competing testimony, I am quite prepared to give effect to the presumption in question.

The case of *Beattie v. Nish*, in which my interlocutor in the Outer House was reversed, has been referred to. The present is a very different case. The register was referred to there for the purpose of proving an extrinsic fact, viz., that the child in question was born in a different parish some twenty years before. But the register of another parish is not the appropriate evidence of such a fact. Here we are appealing to the register for the purpose of proving a fact for which the register is the appropriate evidence.

The Court pronounced this interlocutor—

"Of new find in terms of the findings in fact contained in the interlocutor of the Sheriff, of date 12th April 1887: Refuse the appeal: Adhere to the interlocutor appealed against, and decern," &c.

Counsel for the Appellant—J. C. Thomson—Shaw. Agent—Andrew Urquhart, S.S.C.

Counsel for the Respondent—Lorimer—Guy. Agent—F. J. Martin, W.S.