

his documents of value, and that no other will of the deceased has been discovered. It is suggested that the jottings which were found in the deceased's pocket indicate a change of intention by the deceased as to the disposal of his estate. We can, however, ascribe no effect of any kind to these jottings, which, in the first place, are neither signed nor dated, and in the second place, appear *ex facie* to be merely jottings for further consideration; and it is to be remarked that while the will was kept in the safe these jottings were found after the death of the deceased in one of his pockets.

On the whole, I am satisfied that the petitioners have established the draft as the final settlement of the deceased, and that it should be given effect to.

The Court granted the prayer of the petition.

Counsel for the Petitioners—Campbell, K.C.—Sandeman. Agent—William B. Rennie, S.S.C.

Counsel for the Respondents—Ure, K.C.—George Brown. Agents—Macpherson & Mackay, S.S.C.

Tuesday, December 17.

SECOND DIVISION.

[Lord Kincairney, Ordinary.]

GRAY v. MILLER.

Reparation — Seduction — Averments of Seductive Acts—“Threats, Solicitations, Masterful Ascendancy.”

In an action of damages for seduction brought by a domestic servant, twenty one years of age, against her master, a married man living with his wife, the pursuer averred that the defender seized hold of her, forced her down on a bed, and succeeded, partly by threats, partly by solicitations, partly by his masterful ascendancy over her, both as being her employer and as being so much her superior in years and position, in inducing her to allow him to have connection with her. *Held* that the action was relevant.

This was an action at the instance of Nellie Gray, domestic servant, against John Miller, hotelkeeper, Ayton, in which the pursuer claimed damages on the ground of seduction.

The pursuer averred that she was an orphan, twenty-one years of age, and had been in the service of the defender, who was a married man, from October 1897 till March 1901.

The pursuer further averred—“(Cond. 2) Prior to going to Ayton the defender carried on a wine and spirit merchant's business in Kirkintilloch, his dwelling-house being situated above his business premises. (Cond. 4) The defender was frequently the worse of drink, and on such occasions his wife, who assisted him in his shop, sent him

up to his house to sleep off the liquor. On these occasions the defender made lewd and improper suggestions to her. He attempted to kiss the pursuer both in his house and in his shop, situated in Kirkintilloch aforesaid, but was always repulsed by the pursuer, who regarded his advances with disgust. The pursuer, who was young and inexperienced, did not fully realise the object of the defender's conduct, but she preserved her chastity. (Cond. 5) The defender persisted in his improper conduct, and finding that his devices were unsuccessful, he proceeded to exercise his authority over the pursuer as her employer. Accordingly about the middle of the month of August 1900, the defender, when in his house alone with the pursuer, who had not at the time attained majority, insisted on having connection with her. The pursuer became alarmed, and informed the defender that she would tell his wife unless he left her alone. The defender thereupon threatened to kill the pursuer if she did anything of the kind, and acted towards her in a masterful manner. The defender seized hold of the pursuer, forced her down on a bed, and succeeded, partly by threats, partly by solicitations, partly by masterful ascendancy over the pursuer, both as her employer and as being so much her superior in years and position, in inducing her to allow him to have connection with her. The pursuer only surrendered herself to the defender with great reluctance, and in great anguish and distress of mind, but the defender paid no attention to her tears and expostulations. The defender also made professions of love to the pursuer, and made pretence that no harm would ensue from what he did, and succeeded in inducing her to allow him to have sexual connection with her. The pursuer was afraid to tell the defender's wife what happened, and she had no friend to consult, her parents, as aforesaid, being both dead. The defender maintained his masterful ascendancy over the pursuer, and in his said house in Kirkintilloch in the end of the same month, and on several subsequent occasions, the pursuer yielded to his demands, and allowed the defender to have sexual intercourse with her, being induced so to surrender herself through fear of the defender, and by reason of his continued and anxious solicitations, and through the dominating character and the influence exercised by the defender over her, both as her senior and as her employer, to yield to his demands. The defender thus by artful practices, continued solicitations, and the exercise of authority and force over an inexperienced and dependent female, seduced the pursuer. . . .

The pursuer also averred that as the result of the acts of connection averred she became pregnant, and was delivered of a child on 18th May 1901.

The pursuer pleaded—“(1) The defender having seduced the pursuer as condescended on, is liable in reparation as concluded for.”

The defender pleaded—“(1) No relevant case.”

The Lord Ordinary (KINCAIRNEY) on 5th November 1901 approved of the following issue:—"Whether between October 1897 and March 1901 the defender seduced the pursuer, and prevailed upon her to permit him to have carnal connection with her, to her loss, injury and damage? Damages laid at £500."

The defender reclaimed, and argued—The pursuer had not set forth a relevant case. The essence of seduction was fraud. It was therefore necessary for the pursuer to aver that she had been induced to surrender her virtue relying upon a promise of marriage, or at least that the defender had professed honourable love towards her leading her to expect marriage—Fraser on Husband and Wife, i. 503; and opinion of Lord President Campbell in *Bennett v. Ninian*, *ibid. cit.*; *Linning v. Hamilton*, 1748, M. 13,909; *M'Candy v. Turpy*, March 3, 1826, 4 S. 520; *Stewart v. Menzies*, June 27, 1837, 15 S. 1198; *Kay v. Wilson's Trustees*, March 6, 1850, 12 D. 845; *Walker v. M'Isaac*, January 29, 1857, 19 D. 340; *Gray v. Brown*, June 19, 1878, 5 R. 971, 15 S.L.R. 639. The pursuer's case was that the defender had overcome her resistance partly by solicitation and partly by force. But that was not in law a relevant averment of seduction.

Counsel for the pursuer were not called upon.

LORD JUSTICE-CLERK—I have no doubt that the pursuer is entitled to an issue. I cannot assent to the view that there can be no seduction except under promise of marriage. The defender is charged with having used various arts to overcome the pursuer's chastity—some of them seductive arts, and some of a compulsory nature. But that the averments which she makes constitute a relevant ground of action I entertain no doubt whatever.

LORD YOUNG—I agree.

LORD TRAYNER — I agree. Seduction means, according to our law, that a girl has been induced by various arts to surrender her virtue. Here the girl has been said to have been led away by the ascendancy of the defender over her as her master, by his ascendancy as her senior, by professions of affection towards her on his part, and by threats of violence towards her by him. All these things are just the arts or practices which the defender used to deprive the pursuer of her virtue, and I think the pursuer is entitled to the issue which she asks.

LORD MONCREIFF—I concur.

The Court adhered.

Counsel for the Pursuer and Respondent—Watt, K.C.—Spens. Agents—Macpherson & Mackay, S.S.C.

Counsel for the Defender and Appellant Crabb Watt — R. B. Pearson. Agent—William Geddes, Solicitor.

Wednesday, December 18.

SECOND DIVISION.

[Sheriff of Lanarkshire.

CALDWELL v. M'CALLUM.

Lease—Damages—Insecure Condition of Subject—Liability of Landlord—Reparation—Negligence—Known Danger.

In an action brought by the tenant of a house to recover damages from the landlord for injuries sustained by the fall of a portion of the ceiling, the pursuer averred that on re-taking the house in February 1900 the attention of the factor was called to the insecure state of a certain beam, as shown by a crack in the plaster; that the pursuer was afraid the plaster might fall; that he accepted the assurance of the factor that there was no danger; and that in consequence of the landlord's failure to repair the beam, part of the ceiling fell down on 10th August 1900.

Held (diss. Lord Young) that the action was relevant.

Hall v. Hubner, May 29, 1897, 24 R. 875, 34 S.L.R. 633, *approved and followed*; *Webster v. Brown*, May 12, 1892, 19 R. 765, 29 S.L.R. 631, *explained and distinguished*.

This was an action raised in the Sheriff Court at Glasgow by William F. Caldwell, clothier, against Robert M'Callum, house factor, Glasgow, in which the pursuer concluded for £25 in name of damages.

The pursuer averred that he had been tenant and occupant of a house in Glasgow, (No. 10 Corunna Street), for which the defender was factor, since February 1899, and that the defender had agreed to accept full responsibility on behalf of the proprietor.

The pursuer averred further—" (Cond. 2) The pursuer re-took the house 10 Corunna Street in February 1900 for the ensuing year from Whitsunday 1900 to Whitsunday 1901. When doing so pursuer stipulated that some repairs and painting and papering should be done. The defender sent one of his assistants to pursuer's house to confer as to what was to be done, who met two of pursuer's daughters. One of the things pointed out to the defender's assistant by them was the apparently insecure condition of one of the beams in the drawing-room. The plaster was cracked, and there was a wide space between the edges of the crack, and pursuer was afraid it might fall. The defender's assistant said that it was all right, and pursuer accepted this assurance that there was no danger. In March the defender painted and papered the room, and painted the said cracked beam without repairing it. (Cond. 3) On 10th August 1900 the plaster-work of the said beam came down without any warning, and the furniture in the room was all more or less damaged by dust or falling pieces of plaster. The fall of said plaster-work, and the consequent damage, was due to the failure of the defender, or those for whom he is