Friday, February 28.

FIRST DIVISION.

[Sheriff Court at Glasgow.

WILLIAMSON *v.* M'CLELLAND.

Parent and Child—Affiliation—Period of Gestation.

Held that 306 days was not an impossible period of gestation.

On 19th July 1911 Isabella Williamson, Albert Terrace, Ayr, *pursuer*, brought an action of affiliation and aliment against James M'Clelland, draper's assistant, Morrin Street, Glasgow, *defender*, in which, after a proof, the Sheriff-Substitute (BOYD) on 8th December 1911 granted decree as craved.

The defender appealed to the Sheriff (MILLAR), who on 29th February 1912 recalled his Substitute's interlocutor and assoilzied the defender on the ground that on the evidence it was more likely the pursuer had had connection with some other man subsequent to that with the defender, than that the period of gestation had been so prolonged as it must otherwise have been, viz., 306 days, and consequently that the pursuer had failed to prove her case.

The pursuer appealed.

Argued for appellant—*Esto* that the period of gestation was beyond the normal one, it was still within the maximum—Taylor's Medical Evidence (6th ed.), vol. ii, at pp. 43, 56-59, 60, and 93. That being so, and connection being admitted, the pursuer had proved her case—*Cook* v. *Rattray*, December 4, 1880, 8 R. 217, 18 S.L.R. 128; *Whyte* v. *Whyte*, March 17, 1884, 11 R. 710, 21 S.L.R. 470. The cases of *Gibson* v. *M'Fagan*, March 20, 1874, 1 R. 853, and *Boyd* v. *Kerr*, June 17, 1843, 5 D. 1213, were distinguishable, for there the fact of connection was disputed.

Argued for respondent—The normal period of gestation was 280 days, and where, as here, the period was four weeks beyond the normal the defender could not be the father of the pursuer's child. *Esto* that there was always a limit of error, the maximum of such limit of error was twenty-five days. Here the limit of error had been exceeded by three days. That being so, the presumption against the defender had been displaced—*Innes* v. *Innes*, February 20, 1837, 2 Sh. & M'L. 417.

At advising—

LORD PRESIDENT—In this case I have come to the conclusion that the interlocutor of the Sheriff-Substitute is right. There is no question as to the fact of connection between the pursuer and the defender; the proof of that is so overwhelming that it cannot be controverted, and both Sheriffs have taken that view of it. The only difficulty arises from the circumstance that it is necessary to hold that an unusually long period of gestation elapsed if the birth of the child is to be referred to the last proved act of connection. That period is one of 306 days.

There is only one witness examined in the case upon this matter—Dr M'Kenna—and I think the result of his evidence fairly comes to this, that he is unable to say that the period is so long as to make the paternity of the defender an impossibility. On a matter like this I think it would be unfortunate if we were to consider ourselves bound by the evidence of one witness in a case in which it was quite natural that there should not be a large amount of expert testimony led. I have therefore not felt myself to be restricted to the evidence of Dr M'Kenna, but have thought myself entitled to consider the matter in the light of what has been said by learned judges in other cases, and of what one knows to be the opinion of experts as disclosed in medical books.

It is absolutely clear that neither in law nor in medical science is it possible to fix an actual number of days as the extreme period of gestation. In certain systems of law the matter has been dealt with by statute, and a limit has been arbitrarily fixed, but in our system there is no such limit. That does not lead to the conclusion that a period might not be submitted to the consideration of the Court of such length that the Court would refuse to hold that the parentage had been proved. The Court is left free to deal with each case as it occurs. In the present case, although the period is unusually long, there is nothing that has led me to think that it would be beyond the province of the Court to hold that it is not impossibly long, Then we have the undoubted fact of connection, the birth of the child, and the absence of suggestion of any other man as the father. The result seems to me to be inevitable.

I am therefore of opinion that your Lordships should allow the appeal, recal the interlocutor of the Sheriff, and restore the interlocutor of the Sheriff-Substitute.

LORD KINNEAR—I concur.

LORD MACKENZIE—I am entirely of the same opinion. The learned Sheriff in his note puts the matter thus—"The question therefore is whether a woman of her character, according to her own account, is more likely to have had connection with some other man subsequently, or that the period of gestation of her child was so prolonged, as it must have been if her story is true? I think the first alternative is the more probable." Since the hearing I have gone through the evidence, and also through the letters which are produced, and I will content myself with simply saying that I cannot take the view which the Sheriff has taken. I am of opinion that the case for the pursuer is entirely proved.

LORD JOHNSTON did not hear the case.

The Court recalled the Sheriff's interlocutor and affirmed that of the Sheriff-Substitute.

Counsel for Pursuer (Appellant)—Fenton. Agent—Robert Gibb, W.S.

Counsel for Defender (Respondent)—J. A. T. Robertson. Agents—Henderson & Mackenzie, S.S.C.

VALUATION APPEAL COURT.

Thursday, March 6.

(Before Lord Johnston, Lord Salvesen, and Lord Cullen.)

INLAND REVENUE *v.* WALKER.

Revenue — Valuation — Increment Value Duty—Site Value on Occasion of Sale—Finance Act (1909-10) 1910 (10 *Edw. VII, cap.* 8), *secs.* 2, 12, *and* 25.

The original assessable site value of a property, consisting of buildings and land, was fixed in accordance with the provisions of the Finance Act (1909-10) 1910 at £20. In arriving at that figure the original total value was taken at £400, and a deduction of £380 was allowed as the value of the buildings. About six months thereafter the property was sold by a widow to her brother-in-law, who, a man up in years, had long occupied the premises partly for carrying on business as a draper and partly as a dwelling-house. The price paid was £650, and the Commissioners of Inland Revenue assessed the site value on the occasion at £270 (being £650, less £380—the amount of the original deduction for buildings), and claimed increment-value duty on £250 (being £270, less £20—the original site value). In an appeal it was contended that a part of the purchase price was attributable to personal considerations on the part of the buyer, which were unconnected with the value of the site. The Referee valued the total value of the property at £470, deducted £400 as the value of the buildings, bringing out the site value on the occasion at £70. He explained that he attributed £180 of the purchase price, under section 25 (4) (*d*) of the Act, to the personal considerations which he held had to that extent enhanced the price paid for the property.

Held that the Referee (1) had rightly valued anew the deduction to be made for buildings, "the like deductions" in section 2 (2) (*a*) not meaning the same amounts as in the original valuation, and (2) (*diss.* Lord Cullen) was entitled to attribute, and had rightly attributed, the part of the purchase price to personal considerations.

The Finance Act (1909-10) 1910 (10 Edw. VII, cap. 8), enacts:—Section 2—"(1) For the purposes of this part of this Act the increment value of any land shall be deemed to be the amount (if any) by which the site value of the land, on the occasion on which increment-value duty is to be collected as ascertained in accordance with this section, exceeds the original site value of the land as ascertained in accordance with the general provisions of this part of this Act as to valuation. (2) The site value of the land on the occasion on which increment-value duty is to be collected shall be taken to be—(*a*) where the occasion is a transfer on sale of the fee-simple of the land, the value of the consideration for the transfer . . . subject in each case to the like deductions as are made under the general provisions of this part of this Act as to valuation for the purpose of arriving at the site value of land from the total value."

Section 12—"A person shall not be entitled to claim any deduction for the purpose of ascertaining the site value of any land on any occasion on which increment duty becomes payable if the deduction is one which could have been, but was not, claimed for the purpose of ascertaining the original site value of the land."

Section 25—"(1) For the purposes of this part of this Act the gross value of land means the amount which the fee-simple of the land, if sold at the time in the open market by a willing seller in its then condition, free from incumbrances and from any burden, charge, or restriction (other than rates and taxes), might be expected to realise. (2) The full site value of land means the amount which remains after deducting from the gross value of the land the difference (if any) between that value and the value which the fee-simple of the land, if sold at the time in the open market by a willing seller, might be expected to realise if the land were divested of any buildings and of any other structures (including fixed or attached machinery) on, in, or under the surface, which are appurtenant to or used in connection with any such building, and of all growing timber, fruit trees, fruit bushes, and other things growing thereon. (3) The total value of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject to any fixed charges and to any public rights-of-way or any public rights of user, and to any right of common, and to any easements affecting the land, and to any covenant or agreement restricting the use of the land entered into or made before the 30th day of April 1909, and to any covenant or agreement restricting the use of the land entered into or made on or after that date, if, in the opinion of the Commissioners, the restraint imposed by the covenant or agreement so entered into or made on or after that date was when imposed desirable in the interests of the public, or in view of the character and surroundings of the neighbourhood, and the opinion of the Commissioners shall in this case be subject to an appeal to the Referee, whose decision shall be final. (4) The assessable site value of land means the total value after deducting—(*a*) The same amount as is to be deducted for the purpose of arriving at full site value from gross value; and (*b*) any part of the total value which is proved to the Commissioners to be directly attributable to works executed, or expenditure of a capital nature (including any expenses of advertisement) incurred *bona fide* by or on behalf of or solely in the interests of any person interested in the land for the purpose of improving the value of the land as building