stating what is not true. It was also explained that the writing in the will was for the purpose of giving effect to his assent to the settlement, and his renunciation of his right of challenge. It was not intended to have, and it could not have, any other effect, and therefore I think the evidence disproves the whole case of the pursuer on record.

But there are still two points remaining, and they are points of some delicacy. The first is, that Mr Murray, the only person of legal knowledge concerned with this affair, took from the pursuer this renunciation of his legal rights without giving him any opportunity of consulting with any new agent. As a general rule that is certainly not a right course, and it is not a course to which we must appear to give any countenance. It would have been much better if Mr Murray had refused to take this renunciation from the pursuer until he had an opportunity of consulting a man of business on his own account, and I think that if that had been done this deed would nevertheless have been executed, and in that case challenge would have been hopeless. As the case stands, it only lays a more severe burden on the persons holding the deed to show that it was executed by the pursuer when he knew his legal rights, and the question here is, whether that burden on the defender is discharged?

The second point is, whether there was not a misunderstanding as to the effect of the renunciation? If we believe the pursuer, he thought he was still to be entitled not merely to administer the property for his son, but to draw the rents for his own behoof. And some passages in the other evidence have been referred to for showing that that was the impression of the other witnesses also. But except John Hannah, I don't think any of the witnesses came up to this in their depositions. It is undoubtedly the case, that before the will was read at all, John Hannah, the defender, whose evidence in this matter is extremely candid, stated to the pursuer that he understood that, notwithstanding the settlement of the property on his son, the pursuer would be left in the beneficial enjoyment of the rents. But that was before the pursuer's rights were explained by Mr Murray, and it does not follow that the previous impression remained the same after the reading of the will and the explanations by Mr Murray. Taking the whole evidence together,—that of Mr Murray on the one side, who says he explained distinctly that the pursuer would be entitled to collect the rents for his son; and the evidence of the pursuer on the other hand, who says he was told he was to have the rents for his own behoof,—and looking to the independent evidence, I think the balance of probability is in favour of the defender against the statement of the pursuer. I think nothing was said to him calculated to convey the impression that he was to have these rents for his own behoof, and I do not believe that he did draw that inference, although he says he did. It is no doubt a hard thing to say that one disbelieves a statement so positively made, but, looking to his averments and his evidence, I cannot resist the conclusion that what he says as to his own understanding is not consistent with fact. I have no doubt that he knew perfectly well that the rents belonged to his son, and also knew with sufficient accuracy that while his son was a minor, and living with him, he would probably get the whole benefit of the rents. But that was not inconsistent with the rule of law, that, as administrator for his son, he was entitled to apply the rents for behoof of his son whom he boarded in his house. The notion that he could have been unaware of the arrangement of his father's succession is further disproved by the minute of meeting, which is dated 17th March, and signed by the pursuer. There is nothing technical in the language of that minute. It was impossible that it could have been misunderstood. When the pursuer signs that minute after Mr Murray's explanation, it is impossible to allow him to get behind the renunciation, which in law has no greater effect than this minute.

The other Judges concurred.

Agents for Pursuer—Duncan, Dewar, & Black, W.S.

Agent for Defender—L. M. Macara, W.S.

Tuesday, February 16.

ROSS *v.* MEIKLE.

Possessory Right—Interdict—Removal of Fence. Circumstances in which the Court held a party entitled to a possessory judgment.

This was a question between Sir Charles W. A. Ross of Balnagown, and John Meikle, printer, residing at Grantfield, near Tain, arising in a petition presented by Meikle in the Sheriff-court of Ross-shire. The petitioner alleged that he was proprietor of certain lands at Grantfield, in virtue of a charter from the magistrates of Tain to George Mackie, dated in 1800, and a disposition by Mackie to the petitioner's father in 1801, and that he and his father had had uninterrupted possession of the subjects from 1801 until recently, when Sir Charles Ross had claimed a part of the subjects and put up a paling on a part thereof. The petitioner craved interdict and removal of the paling.

The Sheriff-substitute (TAYLOR), after a proof, pronounced this interlocutor: "*Tain, 1st July* 1868.—The Sheriff-substitute having considered the proof led by the parties, with the documents produced by them, and the whole process: Finds as matter of fact, *first*, That the petitioner is proprietor of the lands of Grantfield, under a title which describes them as bounded by 'the road leading from Tain by the King's causeway to Balnagown, until it goes to the rivulet running from Logie to Pitmaduthie Moss, dividing the ground hereby feued from Balnagown's property at the west and south, with the parts, pendicles, and pertinents thereof;' *Secondly*, That the respondent, Sir Charles Ross, is proprietor of the estate of Balnagown, including the property referred to in the petitioner's title as divided by the rivulet therein mentioned from the petitioner's lands of Grantfield; *Thirdly*, That the respondents, on the day on which this petition was presented, erected a wire fence along the side of a channel in which a stream, known by the name of 'Durack,' formerly ran, but from which the water has been diverted; the fence being designed to exclude the petitioner from the land west and south of the channel, and to put the respondent, Robert Ross, in possession thereof as the tenant of the other respondent Sir Charles Ross; *Fourthly*, That the respondents have not proved their averment that the stream which formerly ran in the said channel was the rivulet mentioned in the petitioner's title as dividing the lands of Grantfield from the estate of Balnagown; and *Fifthly*, That the petitioner has, for a period exceeding seven years, had the exclusive possession, as part of his lands of Grantfield, of the pasture land west and

south of the said channel, in so far as lying between the channel and a house occupied by Margaret M'Kenzie, and that the said wire fence divides the pasture land from the remainder of the petitioner's lands of Grantfield lying on the opposite side of the said channel: Finds, in point of law, that in the aforesaid state of the facts the petitioner is entitled to be maintained in possession of the said pasture land west and south of the said channel lying between the channel and the said house occupied by Margaret M'Kenzie, until the right of property be determined in the competent Court, and therefore continues the interdict, and decerns the respondents to remove the said wire fence: Finds the petitioner entitled to expenses of process," &c.

On appeal the Sheriff (COOK) recalled the 4th finding, but *quoad ultra* adhered.

Sir Charles Ross advocated.

CLARK and RUTHERFURD for advocator.

MILLAR and J. C. SMITH for respondent.

The Court adhered, holding it to be clear that the respondent held a title to which his possession, which was sufficiently proved, might fairly be ascribed, while the advocator produced only a title which did not expressly include the ground, and on which no possession followed.

Agents for Advocator—Maclachlan & Rodger, W.S.

Agent for Respondent—W. R. Skinner, S.S.C.

Tuesday, February 16.

SECOND DIVISION.

STEWART & M'DONALD *v.* M'CALL.

Master and Servant—Contract of Hiring for a period of Years—Missive Letters—Probative—Rei interventus—In re mercatoria. *Held* that a contract of hiring for any period exceeding a year, where no *rei interventus* has taken place, can be proved only by a probative writing, the privilege of mercantile transactions not applying to such a contract.

This was an advocation from the Sheriff-court of Lanarkshire of an action at the instance of Stewart & M'Donald, warehousemen in Glasgow, against John L. M'Call, salesman there. The summons concluded as follows:—"Therefore, the defender ought to be decerned to enter and continue in the service of the pursuers, in the capacity of a salesman, for the term of two years from and after the 1st day of February current, 1868, in terms of an engagement entered into by the parties, and embodied in missive letters, upon the 20th day of December 1867; or otherwise the defender ought to be decerned to pay to the pursuers the sum of £200 sterling as damages, and in compensation of the loss and inconvenience sustained by the pursuers through the defender's breach of the said engagement, by failing and refusing to enter and continue in the pursuers' service as a salesman, in terms of the engagement and contract constituted by the said letters, with the interest thereof, at the rate of 5 per cent. per annum, from the date hereof till payment; in either case with expenses."

The following defence was stated to the action:—(1) A denial that the engagement libelled was ever entered into, or that the pursuers sustained the loss sued for; (2) That the missives founded on were not binding, that they were neither holograph nor tested, and that when subscribed by the defender they were blank *in essentialibus*, and he never authorised their completion; and (3) That before the missives were signed by the pursuers the defender withdrew from the proposed engagement, and so intimated to the pursuers.

The following writings passed between the parties, and were founded on by the pursuers:—

"(5) Agreement between the Advocators and the Respondent, dated 1st February 1868 and 20th December 1867.

"Glasgow, 1*st February* 1868.

"Messrs Stewart & M'Donald.

"Gentlemen,—I hereby become bound to serve you in the capacity of *salesman* to the best of my ability, for the term of *two years* from the date hereof, at a salary of £160 *and* £170 per annum, it being understood that in the event of any gross impropriety of conduct occurring on my part, the right will be conferred on you to break this engagement.—I am, gentlemen, yours respectfully,

"JOHN L. M'CALL.

"The services of *Mr John M'Call* are accepted by us on the terms above expressed.

"STEWART & M'DONALD.

"20*th December* 1867.

"(6) Letter, Respondent to Advocators, dated 20th December 1867.

"102 *Brunswick Street, Glasgow*, 20*th December* 1867.

"Messrs Stewart & M'Donald.

"Gentlemen,—I beg to state I regret having been so hasty in applying and accepting your kindness for giving me the chance and engagement. After reconsidering the matter, and taking all into consideration, changing my position, &c., I have arranged to accept a re-engagement with my present employers. I confess I made a great mistake in accepting so hastily, but hope you will excuse me when you know my position in which I am placed, and will make any apology you may require, if you will please look over this, and oblige, yours very respectfully, "J. M'CALL."

Some further correspondence took place which is not material.

The Sheriff-substitute (GALBRAITH) repelled the second plea in law stated in defence, in respect the missives founded on were writings *in re mercatoria*, and allowed a proof.

The Sheriff (BELL), on appeal, altered, and pronounced the following interlocutor and note:—"Having heard parties' procurators on the defender's appeal, and thereafter made avizandum with the cause, recals the interlocutor appealed against: Finds that a contract of hiring for any period exceeding a year, where no *rei interventus* has taken place, can be proved only by a probative writing, that is a writing which is either holograph of the contracting parties or executed with the statutory solemnities: Finds that the missive letters, No. 5-5, referred to and founded on in the summons, are *ex facie* and admittedly not holograph, being partly lithographed and partly written, and are not tested or otherwise probative, and bear no intelligible date or dates, the acceptance being apparently anterior to the offer: Finds that said missives are not documents *in re mercatoria*, and are not privileged as such: Finds that it is admitted by the pursuers that no *rei interventus* followed on these missives, the defender never having entered into