ladders. If the defender undertook slater's work it was his duty to supply the proper and ordinary appliances for its execution—that is a scaffold or scaffolding. The ladder he supplied in place of scaffolding was scaffolding *pro hac vice*, and I demur to allowing the appellant to say it was not. The effect of the judgment which your Lordship proposes is to enable the appellant and everyone in his position to get rid of a liability which the statute has imposed. He undertakes work generally executed by means of scaffolding, but recognising that if that were used he might be liable to his workmen for the consequence of an accident, he refuses to give the ordinary appliances and provides ladders instead, because not being scaffolding he would not come within the provisions of the Act. Any judgment which could support such an argument is in my view directly against the meaning and intendment of the Act, giving that Act a fair and reasonable interpretation. In the special circumstances of this case, which I have already adverted to, I think the ladders used were equivalent to scaffolding, and I am therefore of opinion that the appeal should be dismissed.

LORD MONCREIFF—After anxious consideration I am unable to distinguish this case from the case of *M'Donald* (2 F. 3), in which we held that a ladder used in the ordinary way by a painter in painting beams in a building over thirty feet in height was not a scaffolding within the meaning of the Act. In considering this question it is important to notice the provisions of the Act. Section 7 defines what are to be considered "undertakings" in the sense of the statute, and provides, *inter alia*, that the Act shall apply to employment by the undertakers "on in or about any building which exceeds thirty feet in height, and is either being constructed or repaired by means of a scaffolding or being demolished."

I apprehend that the reason for inserting the words "by means of a scaffolding" is, that if a building exceeding thirty feet in height requires a scaffolding for its construction, repair, or demolition, that affords a certain criterion of the magnitude and danger of the operation. On the words of the statute I shall only add that if a building is being constructed, repaired, or demolished by means of a scaffolding, it is at once raised to the dignity of an undertaking, with the result that if a workman is injured or killed while engaged in an employment on in or about the undertaking, compensation will be due although his injuries may not have been connected with the scaffolding. This makes it all the more necessary that nothing should be regarded as a scaffolding that cannot fairly be brought within that category.

Now, in the present case all that we know is that the deceased workman fell from a ladder. We are not told from what height he fell, neither are we told what was the length of the ladder, beyond this, that it may have been sixteen or sixty feet in length. It is not said that the ladder was in any way fastened to the wall or to the other two ladders which were being used at the same time. Therefore what is said to have been "a scaffolding" was simply a ladder placed against the wall of a building upwards of thirty feet in height. If the ladder, which may have been only sixteen feet in length, is to be considered "a scaffolding," that would constitute the silicating or painting this house an undertaking, with the consequences which I have indicated.

It is said that work of this kind is generally done by means of a scaffold suspended from the roof, and that the ladder being substituted for such a scaffold must therefore be considered a scaffold in itself. I am not prepared to admit this. If the employer was in fault in failing to erect a scaffold, and improperly made his workmen do the work by means of a ladder, he may be liable at common law; but that is not suggested, and all that seems to have happened was this, that some portions of the building could be conveniently reached by means of a ladder, which course was accordingly adopted.

Now there may be as much risk of falling from a ladder as of falling from a scaffold, but a ladder placed against a wall is not "a scaffolding," and therefore in my opinion the Act does not authorise compensation to a workman who is injured while working on a ladder. On these grounds I am of opinion that the question put to us should be answered in the negative.

LORD YOUNG was absent.

The Court pronounced this interlocutor—

"Answer the question of law therein stated in the negative; therefore recal the award of the arbitrator, and remit to him to dismiss the claim; and decern."

Counsel for the Appellant—Salvesen, K.C.—Hunter. Agents—Millar, Robson, & M'Lean, W.S.

Counsel for the Claimants and Respondents—Clyde, K.C.—Christie. Agents—R. & R. Denholm & Kerr, S.S.C.

Tuesday, November 4, 1902.

SECOND DIVISION.

[Sheriff Court at Inverness.

MACNAUGHTON *v.* FINLAYSON'S TRUSTEES.

Writ—Document Acknowledging Indebtedness—Document neither Holograph nor Tested—Evidence to Prove Document Signer's Writ—Proof.

In support of a claim for money due as wages by her father, a daughter, after her father's death, produced a document acknowledging his indebtedness to the extent claimed. This document was signed by the father, but was

neither holograph nor tested, and except the signature was written by the daughter. The father could not read writing. *Held* that the daughter must prove that the document produced had been read over and explained to her father, and that he understood what he was signing, and *evidence* upon which *held* that she had failed to do so.

Master and Servant—Wages—Daughter Claiming Wages—Parent and Child.

Circumstances in which *held* (*following Miller* v. *Miller*, June 10, 1898, 25 R. 995, 35 S.L.R. 769) that a daughter of a tenant-farmer had not established a claim to wages for service in her father's house.

Mrs Isabella Finlayson or Macnaughton, wife of Donald Macnaughton, innkeeper, South Kessock, with the consent and concurrence of her husband as her curator and administrator-in-law, raised an action in the Sheriff Court at Inverness against the trustees and executors of her deceased father Alexander Finlayson, farmer, Knockbain, in which she craved decree (1) for £238, 10s., with interest at 2½ per cent. from 24th April 1896, and (2) for £78, with interest from the date of citation till payment.

The sum first sued for was the amount claimed by the pursuer as wages due to her as at 24th April 1896 for services rendered by her to her father as his servant and housekeeper for twenty-two years prior to that date. The sum second sued for was claimed by her as the amount of wages due to her for the period from 24th April 1896 to 8th September 1899.

In support of her claim the pursuer produced and founded on the following document:—"17 *Academy Street, Inverness, April 24th*, 1896.—This is to certify that my daughter Isabella receives at my death out of my estate the sum of £238, 10s. as wages worked for, with interest on said amount at the rate of 2½ per cent. Also her wages to be hereafter £24 a-year while she stays with me. Paid her in small sums by cash to the amount of £16, 10s.—A. FINLAYSON."

This document was neither tested nor holograph. Except the signature it was in the handwriting of the pursuer.

The pursuer pleaded—"(1) The pursuer having served the deceased as servant and housekeeper is entitled to payment of wages therefor. (2) The sum sued for being fair and reasonable, and acknowledged by deceased, the pursuer is entitled to decree as craved. (3) The deceased having undertaken to pay the pursuer the sum sued for, decree should be granted as craved."

The defenders lodged defences, and pleaded—"(1) The pursuer not having served the deceased as servant and housekeeper, or in any other capacity, is not entitled to payment of wages. (2) The deceased not having undertaken to pay the pursuer the sum sued for, the defenders should be assoilzied. (3) Prescription."

Proof was allowed and led.

Apart from the document produced there was no proof except the pursuer's own statement that there was ever any contract of service between her and her father. The pursuer, who was now forty-three, had lived as a daughter in her father's house nearly continuously from childhood down to 24th April 1896, and also thereafter until 8th September 1899, and rendered the domestic and other services usually rendered by a daughter living at home in her station of life. Her father was a tenant-farmer employing three hired men in addition to his son, and either one or two girls, working partly in the house and partly outside.

It was not disputed that the signature appended to the document produced was that of the pursuer's father. It was admitted that he could not write anything except his own name, and that he could not read writing.

With regard to this document the pursuer deponed— . . . "That paper has my father's signature to it. I saw him write it. That was written in Mr Sinclair, confectioner's shop, 17 Academy Street, Inverness, on the date it bears. Donald MacLennan, who is now dead, was present. . . . My father, myself, and Donald MacLennan were the only parties present. The girl, Miss Young, in Mr Sinclair's shop supplied the paper that No. 7 is written upon. . . . I often asked my father for wages. At last I met him in Union Street, Inverness, and wanted to leave home unless I could get my wages. He then said that he would secure my wages for me to stay as I was, for he could not want me. Donald MacLennan was going past at the time, and we three went into Mr Sinclair's and the paper was then written out in Mr Sinclair's. . . . Before filling up that document we figured out the sums in the shop. . . . After I married I heard that Donald MacLennan was ill. I went to his house one night and took the witness Duncan Cameron with me. (Q) Did you ask Donald MacLennan, in the presence of Duncan Cameron, whether the paper No. 7 of process, was signed in Donald MacLennan's presence by your father? [Question objected to. Objection repelled]." (A) MacLennan said yes. *Cross*. . . . My father dictated it to me. . . . I read it over to him. . . . MacLennan heard me read it over to my father, and he knew the whole thing."

Miss Young deponed that she remembered the pursuer and her father coming into Mr Sinclair's shop with another man; that she was asked by Mr Finlayson for notepaper, pen, and ink; that she supplied them, the sheet of notepaper being like the document now produced; and that she saw them using the pen and ink, but did not see the paper signed.

Charles Leighton, carter, brother-in-law of Donald MacLennan, deponed that MacLennan came to his house in the spring of 1896 in the evening on his way back from Inverness . . . "He told me he had been in conversation with Finlayson of Sligo and his daughter in Sinclair the

confectioner's shop in Academy Street; that Finlayson had signed an acknowledgment towards his daughter Bella for a sum something over £200, and also that he had given Bella from that date a rise in wage at the rate of £24 a-year. . . . MacLennan said he was present when Finlayson signed the acknowledgment."

Duncan Cameron, sheep contractor, deponed—"I was going to see Donald MacLennan one day when pursuer said she would go with me; he was very ill at the time. It was not expected that he would get better. Pursuer went with me. She put a question to him. She asked him if he remembered when her father signed an acknowledgment. Although I cannot remember the exact words, he said, 'Oh, yes.' . . . Pursuer told me where it was, but I cannot remember if she asked Donald MacLennan. *Cross-examined.*—I am not sure of the exact words used."

The pursuer's son Francis Finlayson, thirteen and a-half years of age, deponed that on 24th October 1899, while living with his grandfather Mr Finlayson, the latter had told him that his aunt and her husband had made a will to suit themselves, and added—"Tell your mother to keep the written paper I signed for her at Sinclair, the confectioner's, and she will come as well off as themselves."

Roderick Campbell, ferryman, deponed—"I knew Donald MacLennan. . . . One day I went with the pursuer to his house when he was ill. . . . The pursuer asked him a question if he minded the time when he was in her presence about the signature at Sinclair's, and he said, 'Yes, he was.' It was her father Mr Finlayson's signature. MacLennan said he saw him sign the paper for pursuer. I could not say what the paper was for."

The proof for the defence showed that none of the other children of Mr Finlayson had known of the writing till after his death. It was not disputed that the signature was that of Finlayson.

On 7th February 1902 the Sheriff-Substitute (Grant) pronounced the following interlocutor:—"Finds in fact that No. 7 of process is the writ of the deceased Alexander Finlayson, and in law that it is sufficient to constitute the debt now sued for: Therefore decerns against the defenders, as concluded for."

The defenders appealed to the Sheriff (C. N. Johnston), who on 2nd April 1902 pronounced the following interlocutor:—"Recals the Sheriff-Substitute's interlocutor of 7th February 1902: Finds in fact—(1) That from childhood down to April 1896 pursuer lived as a daughter in her father's house, and rendered the domestic and other services usually rendered by a daughter living at home in her station of life; (2) that it is not proved that during this period any contract of service existed between pursuer and her father; (3) that upon 24th April 1896 pursuer refused to remain longer at home unless for the future on the footing of receiving wages as a servant; (4) that on said date, in consequence of pursuer's refusal to remain longer unless on the footing aforesaid, her father signed the document No. 7 of process; (5) that said document was written by the pursuer, that her father could not read writing, and that it is not proved that the document was read over or explained to him, or that he knew that it did more than secure the pursuer in payment of future wages; (6) that the pursuer thereafter remained in the household and service of her father until 8th September 1899: Finds in law—(1) That the pursuer is entitled to wages at the rate of £24 per annum from 24th April 1896 to 8th September 1899, and repels the plea of prescription as regards these wages; (2) that pursuer is not entitled to wages for any period prior to 24th April 1896: Decerns against the defender for payment to the pursuer of £78 sterling, being the sum contained in the second conclusion of her petition, with the legal interest thereon from the date of citation until payment."

The pursuer appealed, and argued—The Sheriff-Substitute's decision was right and ought to be reverted to. If the question of wages was raised between a father and child in a distinct form during the period of employment, the presumption was in favour of the child's claim—*Miller* v. *Miller*, June 8, 1898, 25 R. 995, opinions of Lord Justice-Clerk, 999, and Lord Moncreiff, 1001, 35 S.L.R. 769, 773, 774. Here the document produced was clear evidence that this question had been raised between the pursuer and her father. There was no suggestion that this document had been got from Mr Finlayson by fraud, and it was admitted that the signature was genuine. It was therefore good as an acknowledgment of debt, a document of debt not requiring to be holograph or tested—*Paterson* v. *Paterson*, November 30, 1897, 25 R. 144, 35 S.L.R. 150; *Theim's Trustees* v. *Collie*, March 14, 1899, 1 F. 764, 36 S.L.R. 557. Further, if in order to make this document the writ of the pursuer's father it was necessary for her to prove that he understood its terms, the evidence led on her behalf conclusively did so.

Argued for the defenders — The only parole evidence in favour of the pursuer's claim was her own. Her testimony might be said to be backed up by this document, but there was enough in the case to show that this document had not been proved to be the writ of the pursuer's father. It had been concealed by the pursuer from all the members of the family until after the death of her father. The father could not read writing. There was no evidence that the document had been read over to him, or that he understood its import. It was therefore worthless and could not be regarded as his writ. Failing this document there was no evidence to support the pursuer's statements, and the case was ruled by *Miller*, *supra*. The Sheriff, however, had not been consistent in his judgment. He ought to have held that no wages at all were due. An interlocutor should be pronounced to that effect.

Lord Justice-Clerk — I have found myself unable to agree with either of the

interlocutors pronounced in the Court below. The pursuer has in my opinion failed to discharge the onus which lay upon her to prove her case. The document which she produces in support of her claim is neither holograph nor tested. It is written by herself, and the circumstances in which it is alleged to have been signed are very peculiar. She says that meeting her father in the street they had a conversation, as the result of which they went into a shop together, and obtaining writing materials she wrote out that paper and her father signed it. There is no evidence whatever as to what passed at the time; no evidence that what was signed was read over to the deceased, he being unable to read; no evidence that he knew its contents to be what they are. The only other person who was present is dead, and we have some general evidence as to what he said while alive to one of the witnesses, but I consider that evidence to be most unsatisfactory, and in no way sufficient to set up the pursuer's case. It relates to Finlayson having signed a paper and as to what was in it, but in no way indicates that it was from Finlayson that he got information as to what was in it. It may quite well have been the pursuer who told him. Then another witness is brought with whom the pursuer went to the house of the man who was said to have been present (which curiously enough she did while her father was still alive), and that on being asked if he remembered her father signing a paper in the shop, he said, "Oh, yes."

Such evidence is in my opinion insufficient to set up this paper as an obligation against her father's estate, and I would propose to your Lordships that the interlocutors be recalled and the defenders assoilzied.

LORD YOUNG—I concur in the result arrived at, and very much on the same grounds. This document is neither holograph nor tested, and I cannot say that I am favourably impressed with the evidence led to prove its genuineness and to show that the deceased parent signed it knowing what it contained. That has not been established to my satisfaction. It is admitted that it cannot be maintained as a will, although the first part is put in testamentary terms. This first part is sued on as establishing a debt, for it is not maintained that it establishes a contract. The debt alleged is wages for services for twenty-two years in her father's household. It is not alleged that these services were given under any contract, and I do not think there is any ground for the argument that this document establishes a contract under which the pursuer served her father for wages after 1896. I am of opinion that no contract has been made out. I am also of opinion that the document and the parole evidence put before us in support of the pursuer's case by no means establish it as a document of debt. I do not think there is any proof except that she lived in her father's house and rendered services, not as the result of a contract but such services as would be expected from the daughter of a man in the position of her father, who supplied her with food, lodging, clothing, and some pocket money. I am of opinion that the evidence before us by no means supports her case, and that she has failed to establish it.

LORD TRAYNER—If I were satisfied that the document No. 7 of process, on which the pursuer founds, was the writ of the now deceased Alexander Finlayson (the pursuer's father), I should be prepared to hold that it was an acknowledgment of indebtedness implying an obligation to pay. I do not regard it as a will or testamentary writing, because it states that the sum therein contained was to be received by the pursuer out of her father's estate on his death. Such a statement might not be sufficient to limit the pursuer seeking payment at an earlier date, if (as I have said) the document was one admitting indebtedness and implying obligation to pay. But I am not satisfied that the document referred to is the writ of Alexander Finlayson. The signature appears to be his genuine signature—the contrary has not been suggested. But the writ, except the signature, is in the handwriting of the pursuer. Her father, who signed it, could not read writing, and there is not sufficient evidence to show that he knew the contents of the writ or ever agreed to its terms. The pursuer does adduce certain witnesses to say that they were told by the now deceased Donald M'Lennan that Alexander Finlayson had told him that he had signed a document in practically the same terms as those expressed in the document No, 7 of process. But that evidence is open to adverse criticism, and it does not, in the most favourable view of it, satisfy me that the deceased Alexander Finlayson had knowingly acknowledged indebtedness to the pursuer. It is a circumstance in my mind unfavourable to the pursuer's case that she concealed the existence of such a document until after her father's death.

If the pursuer cannot succeed in her action in respect of the writ No. 7 of process, it appears to me that she must fail altogether. Her case (apart from the writ) is practically the same as the case of *Miller* referred to at the bar, and is ruled by it. I therefore think that the appeal, so far as maintained by the pursuer, should be dismissed, and, so far as maintained by the defender, should be sustained. The result will be decree of absolvitor.

LORD MONCREIFF—In the absence of evidence to the contrary we must hold the signature "A. Finlayson," appended to No. 7 of process to be genuine.

If the pursuer's father could have read writing that document would have been good evidence of indebtedness under his hand in recompense of services by the pursuer. If it is good at all, it is good to the full extent.

But admittedly he could not do so. It accordingly lay on the pursuer to prove

that it was read over and explained to him. Has she proved that he knew what he was signing?

I cannot say that there is no corroboration of her story, but in the circumstances I agree that it is not sufficient. The pursuer's story may be true. But if so, by her secretiveness—keeping this document concealed until her father was dead—she has defeated her own ends. The sum involved, £276 prior to 1896, irrespective of wages earned since 1896, is large for a family in such circumstances, and satisfactory proof was required, and that is not forthcoming.

Apart from the writing, the pursuer's claim for wages is not substantiated.

The Court sustained the appeal, recalled the interlocutor appealed against as well as the interlocutor of the Sheriff-Substitute dated 7th February 1902, found in fact that the pursuer had failed to prove that the writ No. 7 of process was the writ of the deceased Alexander Finlayson, and that she had failed otherwise to prove that the defenders were indebted to the pursuer in any part of the sum sued for; therefore assoilzied the defenders from the conclusions of the action, and decerned.

Counsel for the Pursuer and Appellant—Maclennan. Agent—Alexander Ross, S.S.C.

Counsel for the Defenders and Respondents — M'Clure. Agents — Strathern & Blair, W.S.

Saturday, May 30, 1903.

FIRST DIVISION.

[Lord Low, Ordinary.

LOGIE *v.* REID'S TRUSTEES.

Property — Boundary — Passage — Private Road — Right to Property in Solum of Private Road.

A, the proprietor of a piece of land intersected by a passage, disponed a portion of his land to B, the land conveyed in the disposition being described as bounded by A's property on the north, with free ish and entry by the passage. Subsequently A's successors disponed another part of the land to C, the land conveyed in the disposition being described as bounded by the passage on the south, with free ish and entry by the passage. The successors of C brought an action of declarator that they were proprietors of the *solum* of the passage *ex adverso* of their land, subject to a right in the successors of B to free ish and entry.

Held that under their titles the successors of C had no right of property in the *solum* of the passage, at any rate beyond the *medium filum* thereof.

Averments of possession for over forty years, upon which *held*, that even if the titles had furnished a basis for prescription, the averments of possession were not sufficiently specific to be relevant.

Opinions (*per* the Lord President and Lord Adam) that on their titles the successors of C had no right of property whatever in the passage.

Observed (*per* Lord Adam) that where in a conveyance the subjects are described as being bounded by a private road, there is no presumption that any part of the road is included in the conveyance.

Isabella Logie and Helen Logie, 15 High Street, Montrose, brought an action against John Balfour Alexander, shipowner, Montrose, and others, trustees under the antenuptial contract of marriage of John Reid, chemist, Montrose, concluding, *inter alia*, for declarator that the pursuers were proprietors of a lane or passage measuring 30 feet in length from Market Street, formerly known as East Backsides, Montrose, and lying between property on the north thereof belonging to the pursuers, and the property on the south thereof belonging to the defenders, subject to a right in the defenders, as owners of the property to the south of the lane, to free ish and entry by the lane to the back part of their said property; and that the defenders should be ordained to take up and remove from the *solum* of the said passage a water-pipe laid by them therein, and should be interdicted from inserting pipes therein or executing any other works thereon, or otherwise interfering therewith in time coming. The summons also concluded alternatively for declarator that the pursuers were proprietors of the *solum* of the said lane or passage *usque ad medium filum*.

The defenders did not dispute that the pursuers were proprietors of the *solum* of the passage up to the *medium filum* on the side adjoining their property, but they did dispute that the pursuers were proprietors of the whole *solum* of the passage.

Prior to 1700 the whole block of ground, including the properties of the pursuers and of the defenders, belonged to John Ferrier. In that year Ferrier disponed the subjects which now belonged to the defenders to David Lyell. In that disposition the subjects disponed were described as being bounded by "the other tenement of land lately pertaining to the deceast Patrick Guthrie" [Ferrier's predecessor in title], "and the yaird and tayll thereto belonging at the north," and the subjects were disponed with free ish and entry by the passage in question.

In 1774, after various transmissions, the remainder of the ground which had been retained by Ferrier became the property of William Burness, who in that year disponed to one Barclay that portion of the ground [marked No. 6 on the plan produced in process] *ex adverso* of which the part of the passage in dispute was situated. In the disposition by Burness to Barclay the subjects disponed were described as "All and whole that tenement of land . . . bounded with . . . the common passage from the said High Street to the