

must be substituted in the issue for the word "procure."

The LORD PRESIDENT said—It was a different question whether what was done was according to mercantile procedure. The pursuers must take the risk of that if they go to trial under this issue. We will not at this stage determine the point. The pursuers' statement is that the defender ordered them to purchase, and that is tantamount to an admission.

The other Judges concurred, Lord DEAS observing that it seemed to him that what the pursuers averred, and what they proposed to put in issue, formed two quite different grounds of action.

#### MACDONALD'S TRUSTEES v. MUNRO.

*Master and Servant—Accounting—Issues.* Issues in an action by a master's trustees against his servant, in which it was alleged that the latter had uplifted money from bank for his master and failed to account for it.

Counsel for Pursuers—Mr Clark and Mr Shand.  
Agent—Mr J. T. Mowbray, W.S.

Counsel for Defender—Mr Gifford and Mr Deas.  
Agent—Mr John Robertson, S.S.C.

The pursuers are the trustees and executors of the deceased Captain Ronald Macdonald, who resided in Portobello, and they sued the defender, Archibald Innes Munro, who was the captain's servant for twenty years before his death, for payment of £500, with interest since 28th July 1864, when Captain Macdonald died; and the summons concluded alternatively that "the defender ought and should be decreed and ordained to exhibit and produce before our said Lords a full and particular account of the whole sums of money received by him for or on account of the said Ronald Macdonald, or delivered and entrusted to him by the said Ronald Macdonald between 2d May and 28th July 1864, and of the application of the said sums, whereby the true balance due by him to the said Ronald Macdonald at the time of his death may appear and be ascertained." This was followed by a conclusion for payment of the said balance.

It appeared that Captain Macdonald had by his settlement, executed in April 1864, left to the defender his wearing apparel and a legacy of £100; and after looking into the deceased's affairs his trustees found that there had been drawn from his account at the Royal Bank in Portobello, betwixt 2d May 1864 and 8th July 1864, four sums amounting to £600. It was averred by the pursuers that these sums had all been drawn by the defender, and that the deceased had no occasion for so much money for his own use, because he was bedridden from April until his death in July; at all events, that at the utmost he did not require for his own uses more than £150. It was also averred (Cond. 8), "Of the said sums the defender retained and still retains £450 or thereby, and the said sums so retained belonged to the said Ronald Macdonald, and now belong to the pursuers." And also (Cond. 14), "The defender intruded with the said sums drawn as aforesaid. He made certain small payments out of these sums, but he never accounted for these sums to the deceased. If he handed the monies drawn from bank by any of said cheques to the deceased, he afterwards obtained possession of these monies to be held for behoof of the deceased, and he now retains possession thereof." The defence to the action is that although the defender was occasionally sent to the bank for money, he always instantly handed over the same to his master to be disposed of at his pleasure. There was no averment or plea that the money or any part of it had been gifted to the defender by the deceased; but before adjusting issues to-day, the pursuers intimated that they consented to the question of donation, if raised at the trial, being tried under the issues.

The pursuers proposed an issue putting the simple question whether the defender uplifted the

four different sums, and is resting-owing to the pursuers the sum of £450, part thereof, with interest. They founded upon the cases of Mackenzie v. Brodie, 19th March 1859 (21 D. 804), and Byres v. Forbes, 5th December 1865, in which cases issues had been adjusted in similar terms.

The Court thought the case was a very peculiar one, and should be tried under two issues, which were adjusted in the following terms:—

"I. It being admitted that at the dates after-mentioned the defender was a servant in the employment of the said deceased Ronald Macdonald—Whether, of the dates after-mentioned, the defender, by virtue of cheques granted by the said deceased Ronald Macdonald on his account with the Royal Bank of Scotland, uplifted from the branch of that bank at Portobello the following sums—viz.,

On or about 2d May 1864.....	£150
On or about 12th May 1864.....	200
On or about 2d July 1864.....	50
On or about 8th July 1864.....	200

£600

And whether the defender failed to account for, and is resting-owing to the pursuers, the sum of £450, part of the said sums, with interest since 28th July 1865, or any part thereof?

"II. It being admitted that during the period after-mentioned the defender was a servant in the employment of the said deceased Ronald Macdonald—Whether, during the period between 1st May and 28th July 1864, the defender obtained from the said deceased Ronald Macdonald part of the sums drawn under the said cheques, and amounting to £450, or any part thereof, for behoof of the said deceased, and whether the defender retains and is resting-owing to the pursuers the said sum of £450, or any part thereof, with interest since 28th July 1864?"

#### SECOND DIVISION.

##### DUKE OF BUCCLEUCH AND OTHERS v. COWAN AND OTHERS.

*Process—Conjunction.* Circumstances in which three processes having reference to the same matter, but in which the pursuers and defenders were not the same, were conjoined.

Counsel for the Pursuers—Mr Patton, Mr Shand, and Mr Johnstone. Agents—Messrs J. & H. G. Gibson, W.S.

Counsel for the Defenders—The Lord Advocate, the Solicitor-General, Mr Gordon, Mr Clark, Mr Gifford, and Mr A. Moncrieff. Agents—Messrs White-Millar & Robson, S.S.C.

This is an action at the instance of the Duke of Buccleuch, Lord Melville, and Sir William Drummond, proprietors of land on the banks of the river North Esk, and is directed against Alexander Cowan & Sons, William Somerville & Sons, and Alexander Annandale & Sons, papermakers, all of whom have mills on the banks of the river. The action concludes that the defenders should be prohibited and interdicted from discharging into the Esk from their respective paperworks any impure stuff or matter of any kind, whereby the water of the Esk, in its progress through the property of the pursuers, may be polluted or rendered unfit for domestic use, or for the use of cattle, or its amenity in angling diminished. There is an alternative conclusion that in the event of the defenders being found entitled to use the stream, they must filter the water after they have used it at their works in such a manner as to return it to the stream in as pure a state as possible. The defenders deny the pollution, and among other pleas maintain the acquiescence of the pursuers and their predecessors in the use made of the river by the defenders and former occupiers of the mills. They further say that the river North Esk having for time immemorial received the drainage and sewage of the adjacent towns and villages, and of the district gene-