

"Whether, on or about the 25th day of November 1863, the deceased Henry Wilson, miner, Haughhead, the son of the pursuer, while engaged in the employment of the defenders as a miner in said pit, was killed by an explosion of firedamp, through the fault of the defenders—to the loss, injury, and damage of the pursuer?"

Damages laid at £400.

Evidence having been led on both sides, the jury, after an absence of two hours, returned a verdict for the pursuer—damages, £100.

*Friday, Saturday, and Monday, April, 6-9.*

(Before the Lord President).

SKINNER AND MACDONALD *v.* MUNRO.

*Restitution—Master and Servant—Bank Cheque—Donation.* In an action at the instance of a person's representatives against his servant for payment of two bank cheques, which the servant alleged had been given to him by his master, verdict for the pursuers in regard to one of them.

Counsel for Pursuers—Mr Patton 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.

This was a case in which Allan Maclean Skinner, Esq., Barrister-at-Law and Queen's Counsel, and residing at Brocton Lodge, in the county of Stafford, in England, and Major Alexander James John Macdonald, sometime Fort-Major of Edinburgh Castle, and residing in Edinburgh, trustees and executors of the deceased Ronald Macdonald, formerly Captain in her Majesty's 12th Regiment of Foot, thereafter residing at No. 2 Sandford Street, Portobello, in the county of Edinburgh, and the said Alexander James John Macdonald, as mandatory for the said Allan Maclean Skinner, were pursuers; and Archibald Innes Munro, residing at No. 82 High Street, Portobello, aforesaid, and sometime servant to the said Ronald Macdonald, was defender. The following were the issues:—

"I. It being admitted that at the dates aftermentioned the defender was a servant in the employment of the said deceased Ronald Macdonald:

"Whether, of the dates aftermentioned, 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	0	0
On or about 12th May 1864....	200	0	0
On or about 2d July 1864.....	50	0	0
On or about 8th July 1864.....	200	0	0

£600 0 0

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 1864, or any part thereof?"

"II. It being admitted that during the period aftermentioned the defender was a servant in the employment of the said deceased Ronald Macdonald:

"Whether, during the period between 1st May and 28th July, both 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?"

The LORD PRESIDENT, in charging the jury, stated that the question which they had to decide

had only reference to the two cheques for £200 each, the cheque for £150 and £50 having, according to the arguments which were submitted, been substantially accounted for. It was not alleged by the defender that he gave the two £200 cheques to the late Captain Macdonald, or that he gave them away to any other person by his desire, and the executors were demanding that he should pay the sums to them. The defender maintained that he was entitled to retain the sums, and said that his master, Captain Macdonald, made him a present of them, first of the £200 cheque, drawn on the 12th of May, and at a subsequent period of the £200 cheque, drawn on the 8th July. The question then came to be whether this was or was not a true statement in the circumstances, and whether the jury believed or did not believe that the money was so given to him. The defender, in support of his views, referred to the position in which he was placed in reference to the deceased. He said that he was servant to Captain Macdonald for twenty years, that he was very attentive to his master and had gained his confidence, and it was natural and reasonable to say that the deceased would have acknowledged his faithful services. He further said that the above sum of £400 which he got in addition to £100 left by will was not unreasonable. Second, he said the cheques were written out by Captain Macdonald and the money drawn, and that no other use or purpose of drawing that money was suggested, and that the defender was allowed to retain the money during Captain Macdonald's life without any question about it. The third thing the defender said was that there were certain documents he founded on, one of them signed, and two of them written and signed by Captain Macdonald. That was the sum of the case for the defender. Then on the part of the pursuers it was said in substance that Captain Macdonald was a gentleman of limited income—£360 being proved to be the amount of his annual income; that at the period in question he was an old gentleman in his eighty-fourth year, and in bad health; that the defender was constantly about him, and might in these circumstances have easily deceived him; and that the captain had not been unmindful of the services of the defender, because he had left him in his will a legacy of £100. Then again, the pursuers said they were not about Captain Macdonald to hear from him what his purpose was in drawing the money, nor could they know what instructions he might have given to the defender as to the application of the money. Then they said further, that the documents on which the defender founded were suspicious in themselves, and that his own account of the matter, and the statements and the evidence they had heard, showed that he was not speaking the truth and telling a true story. It was for the jury to deal with these views respectively, as to which was the one that ought to be believed. His Lordship then entered at length into the evidence led on both sides, and concluded by stating that the second issue was not insisted in, as it related to the same amount as was referred to in the first issue, and was only put there that the pursuers might ascertain how the money had been got.

The jury, after an absence of three hours, returned a verdict, by a majority of ten to two in favour of the pursuers for £200.

*Monday and Tuesday April 9 and 10.*

M'LACHLANS *v.* GARDNER.

*Reparation—Culpa—Master and Servant.* In an action by the widow and children of a fireman at a colliery who lost his life in consequence of defective machinery—verdict for the pursuers.

Counsel for Pursuers—Mr Macdonald and Mr Strachan. Agents—Messrs Macgregor & Barclay, S.S.C.