Counsel for Defender—Mr William Watson and Mr W. M. Thomson. Agent—Mr George Wilson, S.S.C.

In this case Mrs Jane Thomson or M'Lachlan, residing in Hillhead, Kirkintilloch, in the county of Dumbarton, widow of the now deceased William M'Lachlan, some time fireman in the coal-mine or pit known as the Solesgirth Colliery, near Kirkintilloch, and William M'Lachlan, Elizabeth M'Lachlan, and Mary M'Lachlan—all residing at Hillhead, Kirkintilloch—children of the said Mrs Jane Thomson or M'Lachlan and the now deceased William M'Lachlan, were pursuers; and James Gardner, coalmaster, Solesgirth, near Kirkintilloch in the county of Dumbarton, was defender. The following was the issue sent to the jury:—

"It being admitted that the defender is proprietor or tenant of the coal-mine or colliery known as the Solesgirth Colliery, near Kirkintilloch:

"Whether, on or about the 6th June 1865, the said William M'Lachlan was in the service of the defender as a fireman in the said mine or colliery, and while in the course of being drawn up the pit shaft was killed by being thrown out of the cage, owing to the defective machinery for working the said cage, through the fault of the said defender—to the loss, injury, and damage of the pursuer?"

Damages laid at £400 to the said Mrs Jane Thomson or M'Lachlan, and at £250 to each of the pursuers, the said William M'Lachlan, Elizabeth M'Lachlan, and Mary M'Lachlan.

The LORD PRESIDENT, in summing up said the question was whether this loss of life was caused by machinery which was defective through the fault of the defender. It was the duty of persons such as the defender to have machinery properly fit for the purpose for which it was destined. It was impossible to foresee and prevent all accidents; and therefore when the law required that a master should provide proper and suitable machinery, it meant that all due and reasonable care should be taken that the machinery be of a proper kind. The case for the pursuers was that the machinery was defective. Their theory was that the rope had got over one of the spokes; that that was the cause of the accident; and that this took place because the pirn was not properly constructed or properly furnished. It was alleged that some of the spokes were altogether awanting, and that some were broken. Then the defender affirmed that the pirn was of the ordinary construction, and furnished in the ordinary way, and that none of the spokes were broken or awanting. As to the question whether spokes were wanting or displaced, which seemed to be the great contention in the case, there were witnesses on both sides. His Lordship then went over the evidence of several witnesses, showing that some said that the machinery was all right, and others that it was not right. It was impossible to hold that all these witnesses could be giving true testimony, and the question was which of them they were to believe; and whatever witnesses they believed, they would give their verdict accordingly.

The jury, after a short absence, returned a verdict for the pursuers, assessing the damages at £100 to Mrs M'Lachlan, £5 to William, £10 to Elizabeth, and £20 to Mary M'Lachlan, the children.

Monday–Thursday, April 9–12.

(Before Lord Mure.)

STEVEN *v.* M'DOWALL'S TRUSTEES.

Partnership — Reduction — Fraud In a reduction of a signed balance-sheet by a person against the representatives of his deceased partner—verdict for the defenders.

Counsel for Pursuer—Mr Rutherfurd Clark, Mr Shand, and Mr Bannatyne. Agents—Messrs Hamilton & Kinnear, W.S.

Counsel for Defenders—The Lord Advocate, Mr Gordon, and Mr Gifford. Agents—Messrs J. & A Peddie, W.S.

This is a case in which Thomas Steven, ironfounder in Glasgow, is pursuer; and Mrs Anne Morris or M'Dowall, residing in Glasgow, relict of the deceased John M'Dowall, ironfounder, Glasgow; William Anderson, accountant in Glasgow; John Brown, jun., cotton-broker there; William Walls, oil merchant there; Alexander Allan, ship-broker there; the Rev. Dr John Eadie, minister of the gospel there; the Rev. Peter M'Dowall, minister of the gospel in Alloa; John Stewart, clothier in Kilmarnock; and Anthony Hannay, cotton-broker in Glasgow—the accepting trustees and executors of the said deceased John M'Dowall, acting under a trust-disposition and deed of settlement executed by the said deceased John M'Dowall, with consent of his wife, upon the 22d day of August 1861—are defenders. The issue sent to the jury was in the following terms:—

"It being admitted that the defenders are the accepting trustees and executors of the said deceased John M'Dowall, ironfounder in Glasgow:

"It being admitted also that the pursuer and the said John M'Dowall carried on the business of ironfounders in Glasgow, as partners of the firm of M'Dowall & Company, prior to the 1st January 1861:

"Whether the pursuer was induced to subscribe the docquet to the balance-sheet on pages 66 and 67 of the private ledger and journal, No. 82 of process, and the contract of copartnership, dated 21st and 22d August 1861, of which No. 83 of the process is a copy, by the fraud of the said John M'Dowall?"

The pursuer, Mr Steven, was the nephew of the late Mr M'Dowall, ironfounder, Glasgow. In 1850 he entered into partnership with his uncle, and was to receive for the first two years a fourth of the profits and subsequent to that one-third. The business, it was maintained for the pursuer, was practically conducted by him, with the exception of the financial department, which Mr M'Dowall took into his own hands: and, in addition to his share of the profits, it was arranged that the pursuer should get £100 of salary. In the beginning of 1861 two brothers of the pursuer were taken into partnership along with him, and at that time the balance-sheet and contract of copartnery referred to in the issue were drawn out. In this balance-sheet the assets of the firm were valued at £42,000, and the pursuer said he then understood that it was an exhaustive and complete balance-sheet, and that Mr M'Dowall had averred that nearly the whole of his means was his proportion, being two-thirds of that sum. In September 1861 Mr M'Dowall died, leaving personal estate to the value of £63,000, in addition to heritable property worth £15,000. The pursuer maintained that on investigation it was found that no allowance was made in the balance-sheet for his share of the profits of the company for the ten years from 1850 to 1860, which he had allowed to lie in the concern, having only drawn during that time his salary of £100 a year, while Mr M'Dowall had drawn larger sums from the concern, which did not appear in the balance-sheet. On making application for this share to which he was entitled, he was met with the argument that he had signed the balance-sheet, which represented his share as a third of the £42,000. But he argued that the balance-sheet was only made up for the purpose of settling the affairs between the old company and the new company, and that the accounts of the partners had not been taken into view there, nor were they necessary for that purpose. The sums which Mr M'Dowall had withdrawn during the period of the partnership, as shown by the books and receipts, amounted in all to £30,000, and the present action was raised for the purpose of enabling the pursuer to get the question of his share of that sum thoroughly sifted.

The defenders, on the other hand, emphatically denied that the late Mr M'Dowall was guilty of the

fraud imputed to him. They maintained that the pursuer had ample opportunity of challenging the balance-sheet, and that it was his duty to have examined and tested it before he affixed to it his signature.

Lord MURE, in charging the jury, said that the first question involved was this—Was the balance-sheet referred to in the issue an incorrect and false balance-sheet? The second question was whether, assuming on the evidence that the balance-sheet was false and incorrect, it was made use of by the late Mr M'Dowall in the knowledge of its falsehood and incorrectness? and thirdly, whether having been so used by the late Mr M'Dowall in the knowledge of its inaccuracy the pursuer was induced by that falsehood and fraud to sign the balance-sheet? There had been produced gentlemen skilled in figures who told them that they were agreed in taking the books of the company as the sole materials on which they were to test the accuracy of the balance-sheet. The results they arrived at were certainly very different, and the question the jury had to decide was which of these results was the correct one. Mr Jamieson estimated the assets of the company in 1861 at £83,000, and the proportion of the balance due to the pursuer at £24,000, instead of £14,000, as stated in the balance-sheet; and according to his view the balance-sheet in August 1861 should have shown a much larger sum as the value of the works at that time held between the partners. That was concurred in by Mr Brown, and the question was, whether this view of Mr Jamieson was the correct one, or whether the statement of Mr Guild, concurred in by Mr Mackenzie, was the more accurate view of the matter, which, compared with the other, showed a difference of £30,000. His Lordship went over the evidence which had been led on both sides at considerable length, and the jury retired to consider their verdict.

The jury, after an absence of three-quarters of an hour, returned a unanimous verdict for the defenders.

AYR SPRING CIRCUIT.

Thursday, April 12.

(Before Lord Deas.)

BROWN *v.* BROWN'S TRUSTEES AND OTHERS.

Counsel for Pursuer—Mr Fraser and Mr J. G. Smith. Agents—Messrs Macgregor & Barclay, S.S.C.

Counsel for Defenders—Mr Watson and Mr Deas. Agents—Messrs Duncan & Dewar, W.S.

This case was set down for trial at the Ayr Circuit. Hugh Brown, lately farmer in Milton, now residing at Gatehead, near Kilmarnock, is pursuer; and James Barr, farmer in Monkland, and Thomas Fulton, writer in Kilmarnock, trustees of the deceased Allan Brown, residing at Beanscroft, in the parish of Fenwick, and Allan Barr, son of the said James Barr, and Mary Brown, both residing at Beanscroft foresaid, are defenders; And the following were the issues:—

"It being admitted that the pursuer is heir-at-law of the late Allan Brown, who died at Beanscroft on the 28th July 1856:

"I. Whether the disposition and settlement, being No. 8 of process, dated 18th May 1855, is not the deed of the deceased Allan Brown?

"II. Whether the codicil, dated 8th December 1855, appended to the said deed, is not the deed of the deceased Allan Brown?

"III. Whether the trust-disposition and settlement, dated the 18th December 1855, being No. 17 of process, is not the deed of the said Allan Brown?"

Before the jury was sworn, the case was compromised. The defenders agreed to pay the pursuer £350 on the death of the defender, Mary Brown, who liferented the estate, and each party is to pay his own expenses.

HOUSE OF LORDS.

March 5, 6, 8, *and April* 20.

MAGISTRATES OF GLASGOW *v.* PATON AND OTHERS.

Process—Church—Disjunction and Erection—Intimation to Heritors—Stat. 7 and 8 Vict., c. 44. Terms of an intimation to heritors of the dependence of a summons of disjunction and erection of a district into a parish, under the Act 7 and 8 Vict., c. 44, which held *(rev. Court of Teinds, diss. Lord Chelmsford)* not to be sufficient compliance with section 4 of the statute.

Counsel for Appellants — The Lord Advocate (Moncreiff) and Sir Hugh Cairns, Q.C. Agents—Mr B. Maconochie, W.S., and Messrs Loch and Maclaurin, London.

Counsel for Respondents—The Attorney-General (Palmer), Mr Jessel, Q.C., and Mr Will. Agents—Messrs Jollie, Strong, & Henry, W.S., and Messrs W. & R. P. Sharp, London.

This is an appeal from an interlocutory judgment pronounced by the teind Court as to the sufficiency of "a special intimation" to heritors under the 7th and 8th Victoria, cap. 44, entitled "An Act to facilitate the disjoining or dividing of extensive or populous parishes, and the erecting of new churches in that part of the kingdom called Scotland." By an Act passed in the Parliament of Scotland in the year 1707, entitled "Act anent Plantation of Kirks and Valuation of Teinds," the Court of Session are authorised, empowered, and appointed to judge, cognosce, and determine in all affairs and causes which by the ancient laws and practice of Scotland were referred to, and pertained and belonged to, the jurisdiction and cognisance of the commissioners appointed for the plantation of kirks and valuation of teinds, as fully and freely as the said Court did or might do in other civil causes; and particularly, *inter alia*, to disjoin too large parishes, to erect and build new churches, to annex and dismember churches as they should think fit, conform to the rules laid down and powers granted by the 19th Act of the Parliament 1633, the 23d and 30th Acts of the Parliament 1690, and the 24th Act of the Parliament 1693, in so far as the same stood unrepealed; the transporting of kirks, disjoining of too large parishes, or erecting and building of new kirks, to be always with consent of the heritors of three parts of four at least of the valuation of the parish whereof the kirk was craved to be transported, or the parish to be disjoined and new kirks to be erected and built. By the construction put upon this clause of the Act, it came to be the rule that no process for the purpose mentioned could be competently brought into Court without the consent of three-fourths of the heritors having been previously obtained. Subsequently, however, in the year 1844, another Act was passed upon the subject (7 and 8 Vict. cap. 44). The preamble of that Act narrates the previous statutes, and in particular that of 1707, and then proceeds to declare that whereas it was expedient to afford facilities and to make further provision for the disjoining or dividing of extensive or populous parishes, from and after the date of the Act so much of the Act of 1707 as required the consent of the heritors of three parts of four at least of the valuation of the parish whereof the kirk was craved to be transported or the parish to be disjoined and new kirks to be erected and built, should be repealed, and that the consent of the heritors of a major part of the valuation of any parish should be necessary and sufficient in all cases in which the consent of the heritors of three parts of four of the valuation of such parish was required by the said Act except as thereinafter provided. The second section provides that a parish may be