

for the accumulation of interest, for which the adjudication had been led.

Lord BENHOLME concurred with the Lord Justice-Clerk, but reserved his opinion on the question of prescription.

Lord NEAVES concurred with the Lord Justice-Clerk, but desired to learn whether any of the other deeds sought to be reduced were now impugned.

It having been stated that the challenge was confined to the questions disposed of, the Court assailed the defender from all the reductive conclusions, and found him entitled to expenses from 6th December 1866, when the case was last in the Inner House, reserving all other questions, and remitting them to the Lord Ordinary.

Agent for Pursuer—W. Officer, S.S.C.

Agent for Defender—William Miller, S.S.C.

## SECOND DIVISION.

M'FARLANE AND SON *v.* TURNER.

*Issues—Reparation—Breach of Contract—Wrongful.* The pursuer of an action of damages for breach of contract is not obliged to put in issue that the breach was “wrongful.”

This was an action of damages for breach of contract. The defender had engaged to serve the pursuers for three years as a commercial traveller, during which he obliged himself to devote his whole time and attention to promote the interests of his employers, and not to “engage in any other business for himself or for behoof of any other person.” The pursuers were, on the other hand, to pay him a salary and allow him certain commissions on orders.

In September 1865 the defender left the service of the pursuers, who thereafter brought the present action against him, alleging that he had in breach of his engagement, and during its currency, deserted their service, and also that he had engaged in business in the same line and diverted custom from the pursuers.

The defence was a denial and a statement that the pursuers had themselves broken the agreement by failing to employ him as a traveller, and requiring him to perform duties different from those for which he was engaged, and also by not having paid him the stipulated commission.

The case was reported on issues by the Lord Ordinary (Kinloch).

The pursuers proposed the following issue:—

“It being admitted that on 3d May 1864 the pursuer and defenders entered into the argument No. 7 of process—

“Whether, during the currency of the said agreement, the defender did in breach thereof desert the service of the pursuers, and engage in business for himself, or for behoof of some other, to the loss, injury, and damage of the pursuers?”

Damages laid at £1000 sterling.

The defender at first proposed counter issues, but eventually withdrew them, and contended that the pursuers were bound to insert “wrongfully” in their issue. The pursuers objected, and the Lord Ordinary reported the matter to the Court. His Lordship indicated a view adverse to the defender's contention, and suggested that the time of the alleged desertion might be made more specific.

On the suggestion of the Court, the pursuers broke up the proposed issue into two, and fixed the date of the alleged desertion at September 1865. Their Lordships were unanimously of opinion that the pursuers were not bound to insert the word “wrongfully.”

The issues for the pursuers as finally adjusted are as follow:—

“1. Whether, in the month of September 1865, during the currency of said agreement, the defender did in breach thereof desert the service of the pursuers to the loss, &c.

“2. Whether, during the currency of said agreement, the defender did in breach thereof engage in business for himself, or for behoof of some other person or persons, to the loss, &c.”

The defender was found liable in expenses.

Counsel for Pursuers—Mr Young and Mr MacLean. Agents—White-Millar & Robson, S.S.C.

Counsel for Defender—Mr Fraser and Mr Strachan. Agent—J. S. Mack, S.S.C.

Thursday, March 7.

## SECOND DIVISION.

RICHARDSON *v.* FLEMING.

*Proof—Competency of Evidence.* Held (1) that a call for all titles and plans relating to the subject in question was too wide; (2) that a pursuer having anticipated the defender's case when leading his proof in chief, he was not entitled to ask questions in his conjunct proof which he had already put when leading his proof in chief; but (3) that he was entitled to lead conjunct proof in regard to matters which he had not so anticipated.

In this action, raised by Sir John Stewart Richardson of Pitfour against Mrs Fleming of Inchyra, for declarator of sole right to the salmon fishings opposite to Cairnie, part of the lands and barony of Pitfour, the defence set up is that, although there is no doubt of the existing boundary between the estates, the defender has possessed from time immemorial on a title of excambion a part of the river which is opposite to the pursuer's lands. The case was before the Court to-day on appeals taken by the parties in the course of leading the proof.

CLARK and LEE for pursuer.

YOUNG and GLOAG for defender. The following were the points decided:—

(1) That a call by the defender on the pursuer to produce all titles, plans, &c., relating to the fishings claimed by the defender was too wide, and was therefore inadmissible, it being necessary, before such a call should be acceded to, that a special case should be stated.

(2) That the pursuer having anticipated in great measure, when leading his proof in chief, the case of the defender, which was disclosed on record, he was not entitled, under his conjunct probation, to resume his examination in chief by putting questions to the witnesses which had already been put. He had led substantive proof to meet the defender's case, and he could not now be heard to plead that such proof was incidentally led.

(3) That, so far as the evidence taken under the conjunct probation related to matters which the defender had made subject of proof, and which the pursuer had not anticipated, it was admissible.