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 assoilzied 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.

Agents for Pursuer—Mackenzie & Kermack, W.S.

Agents for Defender—Hamilton & Kinnear, W.S.

OUTER HOUSE.

(Before Lord Kinloch.)

ADAMSON *v.* KNOX AND BEATTIE.

Poor—Settlement—Summons—Relevancy. A relieving parish sued the parish of a pauper's birth, and a parish in which the birth parish alleged that a residential settlement had been acquired. The pursuer did not himself allege that there was any settlement in the alleged parish of residence. Objection to the relevancy of the summons on that ground repelled (per Lord Kinloch and acquiesced in).

The inspector of the City Parish of Glasgow sued the inspectors of the parishes of St Ninian's and of Barony for relief of the support of certain paupers. He alleged in his summons that the husband and father of the paupers was born in St Ninian's, but he made no averment of a settlement of any kind in Barony. The condescendence, however, contained the following statement :—

"Cond. 5. It is admitted by St Ninian's that the deceased James Davie was born in that parish, but it is maintained that at the time of his death he was in possession of a residential settlement in Barony, which that parish denies. According as this fact shall be determined in the present process, either St Ninian's or Barony will be bound to repay the pursuer's advances, and relieve the City parish of Glasgow of the future support of the pauper. In no point of view has the pauper a settlement in the said City Parish. The pursuer does not think it necessary to give the details of the residence of the said James Davie prior to his death, as these will fall to be set forth by the defenders in their defences."

In these circumstances Barony stated the following plea-in-law:—

"The pursuer's action, as against this defender, is irrelevant, in respect the summons contains no averment to warrant its conclusions against him."

The Lord Ordinary (Kinloch) repelled the plea, observing in his note :—

"The present action is raised by the City Parish of Glasgow against the parishes of St Ninian's and Barony, for the purpose of fixing on one or other of them the support of a widow pauper and her children. It is clear that the City Parish is itself not chargeable. No ground of chargeability against that parish is suggested from any quarter. The settlement is admittedly that of the pauper's deceased husband. Admittedly he was born in St Ninian's; and if no other settlement appears, St Ninian's is his parish of settlement. But it is alleged by St Ninian's that anterior to his death he had acquired a residential settlement in Barony. The parish of St Ninian's offers to establish the fact. The question therefore lies between St Ninian's as the admitted birth settlement, and Barony as the alleged settlement by residence.

"The Lord Ordinary has no doubt that the question has been competently raised by the City Parish calling the two others into the field in order to dispute their liability. This is the convenient form which has been adopted in modern practice for now a good many years.

"But the Barony Parish pleads as a preliminary defence that the action has been irrelevantly directed against it, inasmuch as no positive statement has been made by the pursuer that the residential settlement was within that parish. What is averred by the pursuer is that it is 'alleged' that the residential settlement is within Barony; and accordingly St Ninian's not only avers this, but offers to prove it. It appears to the Lord Ordinary that this is enough. If the pursuer had committed himself to a positive statement that the residential settlement was in Barony, it might have been said with more justice that this was a reason for calling Barony and no other. What the pursuer does, and in the Lord Ordinary's view does properly, is to call the birth parish (admittedly liable if no other is), and also to call the other parish as that against which the birth parish avers a residential settlement. The matter will then be properly controverted between these two parishes."

Counsel for Pursuer—Mr Thomson. Agent—William Burness, S.S.C.

Counsel for St Ninian's—Mr Lamond. Agents—J. & J. Turnbull, W.S.

Counsel for Barony—Mr Burnet. Agent—John Thomson, S.S.C.

(Before Lord Ormidale.)

M.P.—ROBERTSON'S TRUSTEES *v.* M'LEAN AND OTHERS.

Heritable and Moveable—Legitim. A person died, having feued a piece of building ground on which he was in the course of erecting buildings which were not completed at the time of his death. Held (per Lord Ormidale and acquiesced in) that the cost of the whole buildings, when completed, formed heritable estate, out of which *legitim* was not payable.

This is an action of multiplepoinding raised by the trustees under the settlement of the late John Robertson, plumber in Glasgow. The testator died on 20th January 1864, a widower, survived by an only daughter, Mrs M'Lean, who refused her testamentary provisions and claimed legitim. The estate consisted of moveable goods, amounting to £2427, 10s. 7d., but the trustees contended that of this amount the sum of £1335 was to be considered heritable, and that legitim was not payable out of it. Some time prior to his death, the testator, intending to retire from business, had entered into missives of feu of a piece of building ground at Bridge of Allan. He had got plans and estimates of a proposed villa prepared. These had been submitted to the superior, and approved by him. He had instructed a builder to make out specifications of the whole work to be done in constructing the house, and these had been prepared, and contracts entered into to the extent of £934. At the date of the testator's death, the building was roofed in and nearly ready for the plasterer. These facts appeared from the evidence of certain witnesses examined upon commission, and the parties in addition made the following joint-minute of admissions :—

"1. There was a verbal set of the under flat of the house in question, conform to plan thereof, to Dr Gordon, Bridge of Allan, for the year from Whitsunday 1864 to Whitsunday 1865, at the rent of £48 sterling per annum.

"2. As the house was not erected at the time of the lease being entered into, the accompanying tracing was delivered to Dr Gordon, to show the size and arrangement of the house he had leased.

"3. The mason and joiner work were being proceeded with at the time of Mr Robertson's