this action. Whether the pursuer might have taken proceedings against the defender to force her to exhibit the document, and, having got it into his possession, have taken steps to get the defective testing clause remedied, I will not say. I can see many strong grounds on which such an action for exhibition might have been resisted, at all events, to the effect of the pursuer being allowed to alter and remedy the statutory defect. No such course was followed by him. The writing was judicially produced, and its defect judicially found, After that I apprehend it to have been at once unsupported by practice and contrary to the statute to make any alteration on it. In all essential respects I concur in the interlocutor and note of the Sheriff. I shall only add that the case of *M'Pherson*, 1855, proceeded entirely upon specialties, and cannot be held in any respect to trench upon the principles fixed by the other decisions.

LORDS BENHOLME and NEAVES concurred.

Appeal dismissed.
Agent for Appellant—James M'Caul, S.S.C.
Agents for Respondent—Henry & Shiress, S.S.C.

Wednesday, December 7.

CAMERON *v.* SCOTT.

Master and Servant—Notice of Dismissal. Held that a yearly farm-servant had received a timeous notice of dismissal forty days before the actual termination of his engagement (26th May), and that he was not entitled to notice forty days before the legal term of Whitsunday (15th May).

William Cameron sued his late master, John Scott, farmer, Lochslin, Ross-shire, for £38, 6s. 8d., being his wages, &c., for the year from Whitsunday 1870 to Whitsunday 1871, the pursuer alleging that he was, from the term of Whitsunday 1869, cattle-man or cattle-herd to the defender, down to the term of Whitsunday last, when he was, on the requisition of the said defender, obliged to leave his said service, on account of a warning to that effect received by him from the defender on the 8th day of April 1870, but which warning was not timeously made or given to the pursuer.

The letter dismissing the pursuer was as follows:—

"Mr William Cameron. *Lochslin, 8th April* 1870.

Dear Sir,—I hereby give you notice that I do not require your service past the 26th day of May 1870.—Yours truly, JOHN SCOTT."

The Sheriff-Substitute (TAYLOR) pronounced the following interlocutor:—"In respect the pursuer admits that notice was given to him on the 8th of April last that his services would not be required by the defender after the 26th of May following, when his engagement admittedly expired—Finds that the contract between the parties was thus legally terminated, and therefore assoilzies the defender from the conclusions of the action, and decerns: Finds him entitled to his expenses.

"*Note.*—If the law is correctly found in the interlocutor, it is unnecessary to consider the defence that all parties have not been called, or to require proof of the defender's averment that the pursuer had earlier notice of the termination of his engagement than that admitted to have been given on the 8th of April.

"The pursuer's contention is, that the notice given to him on the 8th of April was too late, though forty-eight days before his term, the 26th of May; and that he was entitled to consider himself re-engaged on the 4th of April, forty days before 15th May, the legal term of Whitsunday, because notice had not, as he alleges, then been given to him. He pleads that, notwithstanding that his engagement ran from Whitsunday to Whitsunday old style, custom entitled him to forty days' notice of its termination, counting from Whitsunday new style.

"The length of the notice required to terminate a servant's engagement is not prescribed by any statute, but practice has fixed it at forty days, on the ground that that is the notice required between landlord and tenant for terminating the contract of lease. The Act of 1555, regulating the warning of tenants, required the notice to be given forty days before Whitsunday, even though the term of removal were at a different term—*e.g.*, Martinmas, or the separation of the crop from the ground. Whitsunday in that Act meant Whitsunday old style—the only style then observed. It is true that from the introduction of the new style in 1752, it was held that the terms of the Act by which the change of style was effected required that warning of removal to tenants should be given forty days before Whitsunday new style, though the term of removal was Whitsunday old style, or some other term; and it has been said that custom extended this rule to notices between master and servant. It is believed, however, that there never was a decision of the Court to the effect that notice between master and servant given forty days before the actual term to which the engagement ran was not sufficient. But, however this may be, the rule as between landlord and tenant, requiring warning to be given in every case forty days before the legal term of Whitsunday, has now been altered by statute, the Sheriff Courts Act of 1853 allowing a summons of removal to be raised at any time forty days before the actual term of removal, so that when the 26th of May is the term of removal, it is now competent to terminate the tenancy by a summons of removing served on or before the 15th of April. That being so, it follows that if the former rule, requiring forty days' notice before Whitsunday new style to be given between landlord and tenant, though that should not be the actual term of removal, was by custom applied also to master and servant, the change of the rule as regards the former must extend to the latter also, and that it is now sufficient to give a servant, whose term is, as here, the 26th of May, notice on or before the 15th of April. If it were otherwise, a tenant warned by a summons served on the 15th of April to remove from his farm on the 26th of May would be left with all his servants on his hands, though having no farm on which to employ them, if he did not give them notice on the 4th of April, a time when he may have had no knowledge that he was not to be continued in his farm. This would not be a desirable state of things for either master or servant, and cannot be assumed to be the law."

The pursuer appealed.

TRAYNER for him.

M'LENNAN in answer.

At advising—

The LORD JUSTICE-CLERK—In this case I concur

in the interlocutor of the Sheriff-Substitute. I think that the servant's right to warning rests upon equity and custom, and has been fixed from the analogy of the warning required between a landlord and tenant. The law of landlord and tenant has been changed by the Act of 1853, so that now it is sufficient if a removing be intimated forty days previous to the actual term of removal; and I agree with the Sheriff-Substitute that the analogy should rule the question between master and servant. It seems to have been laid down that reasonable notice is sufficient, and custom has fixed that what is sufficient in the case of a tenant should be reasonable for a servant. The inconvenience to a servant pointed out in the note of the Sheriff-Substitute is also important.

With regard to custom, I do not think that we have any sufficient averment of a custom to justify us in allowing a proof. I am of opinion that we should decide the case on the same grounds as the Sheriff-Substitute.

LORD COWAN—I should not wish that we should interfere with any local custom, but we have here no allegation of such custom, and it appears to me that we ought not to allow a proof of such local custom when it has not been averred. The contract was specially covenanted in writing, but Wm. Cameron agreed to act as cattle-herd from Whitsunday to Whitsunday. There was a difficulty as to what was meant by Whitsunday, whether it was 15th May or 26th May. But it seems to me that the letter of 8th April makes it clear that the parties understood Whitsunday to be 26th May. The notice which the pursuer got on 8th April was enough. It was a reasonable time, and beyond the forty days which has always been recognised as the time at which such notice should be given. It has been observed that by the Act of 1853 the forty days' notice are counted from the actual term of removal in the case of landlord and tenant. The same rule may reasonably be applied to the case of master and servant. On this point the reasoning of the Sheriff-Substitute is very satisfactory. There being no allegation of local usage or hardship, I am clearly of opinion that we ought to affirm the judgment of the Sheriff-Substitute.

LORD BENHOLME concurred.

LORD NEAVES—I think your Lordships are quite right. Forty days has been held enough. I do not say that if there had been systematic arrangements for hiring servants, such as a feeing market, it might not be unreasonable for the master to allow that time to pass. I do not think that contracts with yearly servants are to be judged of on the same principle as those engaged only for half a-year. But in this case I am quite satisfied that there is no case calling for us to interfere.

Agent for the Pursuer—Wm. R. Skinner, S.S.C.
Agent for the Defender—Æneas M'Bean, W.S.

Tuesday, December 6.

SPECIAL CASE—EWART AND COTTOM.

Executors—Intestate Succession Act, 1855—18 *Vict., cap.* 23, § 1. By mutual disposition and deed of settlement, dated in 1849, two spouses disponed their whole estate to the longest liver in fee, declaring that, in the event of the survivor executing no conveyance of the estate or any part of it, a certain share should belong to "the executors of the deceased A B," and a certain other share should belong to the executors of C B, who was alive in 1849, but predeceased the surviving testator in 1851. The survivor made no alteration in the destination of the estate, and died in 1867. *Held* (1) that "the executors of the deceased A B" meant not those persons who were his executors in 1849, the date of the deed, but those who were so in 1867, when the succession opened, under the provisions of the Intestate Succession Act of 1855; and (2), on the same principle, that the "executors of C B" meant, not those persons who were so at her death in 1851, but her executors, according to the law as it stood in 1867, when the succession opened.

This was a Special Case presented for the opinion of the Court by the following parties—viz., Mr Ewart, factor and commissioner for James Hawkins, eldest son of the deceased Robert Hawkins senior, and also factor and commissioner for the eldest son, and executor of Samuel Proudfoot Hawkins, another son of Robert Hawkins senior, of the first part; and Mrs Cottom and others, granddaughters, grandnephews, and neices of the said deceased Robert Hawkins senior, of the second part.

The following were the facts agreed on by the parties:—"The said parties respectfully submit the following statement of facts, adjusted and agreed upon by them, for the opinion of the Court, upon the questions after stated:—The late William Bell of Sinclairburn, in the county of Dumfries, surgeon in the Royal Navy, and Mrs Janet Hawkins, residing at Sinclairburn, his wife, by their mutual disposition and deed of settlement, dated 1st September 1849, gave, granted, assigned, disponed, and made over from them, their respective heirs and successors, to and in favour of the longest liver of them, and the disponees and assignees of such longest lives, all and sundry lands, heritages, and heritable subjects then belonging to them or either of them, or which might belong to them or either of them, at the death of the first deceaser of them; also all and sundry goods, gear, and effects in communion then belonging, or which might at the death of the first deceaser belong to them or either of them; and declaring that the longest liver of said William Bell and Janet Hawkins should have full and uncontrolled power to dispose of the foresaid subjects or any part of them, at pleasure, by any disposition and assignation, gratuitous or otherwise; and should the longest liver of them execute no disposition and assignation of the foresaid subjects, heritable and moveable, generally and particularly thereby conveyed, or should such longest liver execute a disposition and assignation of part of them only, then they thereby declared that on the death of such longest liver one-half of the said subjects, or of what of them might not have been disponed and assigned by the longest liver of them, should belong to and be the property of . . and the other half thereof should, in equal portions, one-third to each, belong to and be the property of the executors of the deceased Robert Hawkins senior, sometime blacksmith in Lockerbie, father of her, the said Janet Hawkins, the executors of the deceased John Hawkins senior, sometime blacksmith in Glasgow, uncle of the testators, and Jean Hawkins, wife of