Ross, blacksmith, Cupar, and Mrs Margaret Laing or Durie, Cupar, ... payable to either or survivor;' (11) That thereafter, and within a month of the said 16th November 1867, the said Margaret Laing or Durie uplifted the said sum of £70, contained in the said deposit-receipt, No. 18 of process, and which sum she retained and still retains; (12) That it is not proved that the pursuer gifted or made a donation of the deposit-receipt, or the contents thereof, to the defender Margaret Laing or Durie, or that he authorised the defenders or either of them to uplift or retain and appropriate to their own uses and purposes the money contained in or represented by the said deposit-receipt, or any part thereof; and in these circumstances finds, in point of law, that the defenders are not entitled to retain the money uplifted as aforesaid, or any part thereof; decerns and ordains the defenders to make payment to the pursuer of the sum of £90, 5s. 8d. sterling, with interest thereon at the rate of five per cent. per annum, from the 16th day of November 1867 until paid: Finds the defenders liable to the pursuer in expenses; allows an account," &c.

The defenders appealed.

The SOLICITOR-GENERAL (CLARK) and RHIND, for them, argued—That the delivery of the deposit-receipt, and the proof that it was delivered *donationis causa*, passed the property of the money contained in the receipt. *Kennedy*, 1 Macph. 1042; *Watt's Trustees*, 7 Macph. 930; *M'Cubbin's Executors*, 6 Macph. 310.

CAMPBELL SMITH and GUTHRIE SMITH, for the respondent, argued—Mere delivery of the deposit-recept would not pass the right. *Cruickshanks*, 16 D. 168; *Heron*, 14 D. 25.

At advising—

LORD JUSTICE CLERK—I am of opinion that we ought to adhere to the Sheriff's interlocutor. There are two principles in the law of Scotland which govern this case. The first is, that the mere possession of a deposit receipt by a party named therein does not confer an absolute right to the sum contained in it. It is merely a voucher. The money can only be transferred by the regular means of transference. Possession may enable the party holding the receipt to get the money; but if he does so, he does so presumably as a mandatory, and he holds the money in trust. This presumption no doubt may sometimes be overcome, when, for example, donation or an onerous consideration can be proved.

The second principle is, that donation must be proved, the *onus* resting upon the party alleging the donation. Now, here there is no evidence of an *animus donandi*. The evidence (and it is very meagre), so far as it goes, is against that being the nature of the transaction; for it appears that the pursuer, in the first place, lodged a sum of money in the bank, on a deposit receipt taken in his own and his wife's name, payable to the survivor. His wife having committed suicide, he then, on the day following his wife's suicide, when in a state of great excitement and distress, uplifted the deposit receipt, and redeposited nearly the whole sum on a new deposit receipt, and he substituted the defender Mrs Durie's name for that of his late wife. Now this does not look like an intention to make a donation. Besides, the pursuer was not in a fit state of mind, nor was that a time for making a donation. I do not find in the evidence for the defence the slightest account of the circumstances which immediately preceded and followed, to explain this transaction. I therefore cannot hold that donation has been made out.

Agent for Pursuer—William Milne, S.S.C.

Agents for Defenders—D. Crawford & J. Y. Guthrie, S.S.C.

Friday, July 7.

FIRST DIVISION.

KERMICK *v.* WATSON.

Process—Jurisdiction—Reparation—Slander. In an action of damages for slander, alleged to have been uttered within the territory of the Sheriff of Forfarshire by a person not subject *ratione domicilii* to any jurisdiction in Scotland—*Held* that the Sheriff of Forfarshire had jurisdiction to try the case, the *locus delicti* or *quasi delicti* being within his territory, and personal service of the summons having been made upon the defender while residing there.

This was an action of damages for slander brought before the Sheriff-court of Forfar, at the instance of William Lovat Kermick, residing at Kirriemuir, against William Watson, a banker's clerk, holding a situation in Manchester, but who at the time when the slander libelled was alleged to have been uttered was upon a visit to Kirriemuir. The summons was personally served upon him before he left Kirriemuir, which he did two days thereafter. Two acts of slander were libelled, both as occurring at Kirriemuir. It was admitted that the defender, though now resident in Manchester, was born in Forfarshire.

Against this action the preliminary defence of no jurisdiction was set up.

The Sheriff-Substitute (ROBERTSON) found, in point of law, that the defender being admittedly resident in Manchester, and having only been on a visit to Scotland when the summons was served, and having only resided in this country about a fortnight prior to the serving of said summons, was not within the jurisdiction of the Sheriff-Substitute; therefore dismissed the action.

Against this interlocutor the pursuer appealed to the Sheriff (MAITLAND HERIOT), who, considering that the case was ruled by that of *Crichton* v. *Robb*, 9th Feb. 1860, 32 Jur. 279, dismissed the appeal.

The pursuer then appealed to the First Division of the Court of Session.

NEVAY, for him, contended that (1) nativity and (2) personal citation in this country, are sufficient to found jurisdiction, especially when combined with the *locus contractus* (the *quasi delict* in this case inferring *quasi contractus*). Reference made to *Hog* v. *Tennent*, 1760, M. 4780; *Grant* v. *Pedie*, 5 July 1825, 1 W. and S. 716; *M'Arthur* v. *M'Arthur*, 12th Jan. 1842, 4 D. 354; *Ritchie* v. *Fraser*, 11th Dec. 1852, 15 D. 205; *Dickie*, 20th Sept. 1811, F.C.; *Crowder* v. *Watson*, 18th Nov. 1831, 10 S. 29, and 6 W. and S. 271.

WATSON, for the defender, referred to *Pirie & Sons* v. *Warden*, 20th Feb. 1867, 5 Macph. 497; *Bruhn* v. *Greenwaldt*, 2 Macph. 335; *Sinclair* v. *Smith*, 17th July 1860, 22 D. 1475; *Logan* v. *Thomson*, 24 Jan. 1859, 31 Jur. 174.

At advising—

LORD PRESIDENT—This is an appeal in an action of damages for slander raised before the Sheriff-court of Forfarshire, by William Kermick, a resident in Kirriemuir, against William Watson,

a banker's clerk, who is not resident in that part of the country, and has no domicile in Scotland. The slander complained of is said to have been uttered upon two occasions—First, upon 31st August, and second, upon 2d September 1870. Six days after the second case of alleged slander the summons was raised, and two days thereafter was served upon the defender personally. It being admitted that, *ratione domicilii*, the defender was not subject to any jurisdiction in Scotland, the question is whether there were sufficient other circumstances in the case to sustain the Sheriff's jurisdiction in this matter? There were two circumstances particularly relied upon as grounds of jurisdiction—(1) that the slander complained of was uttered in Forfarshire; and (2) that the service of the summons was made upon the defender personally. The question is one of great nicety as well as of general importance. But there are some questions of a similar kind which have already been determined in our courts, which advance us a certain length both in principle and authority towards the decision of this case. There is no doubt that a court has power to enforce a contract either made within its territory, or having its place of performance there, if to the action the defender has been lawfully summoned within the territory of the Court. This has been long settled as to the supreme courts, and the same rule was affirmed, as to the inferior courts, by the case of *Pirie & Co.* of Aberdeen against *Warden*, in which the Court refused to recognise any distinction between the superior and inferior courts as regards this ground of jurisdiction—I mean the *locus contractus* combined with due service within the limits of the Court's territory. But then this is not a case of contract, and therefore *Pirie* v. *Warden* does not apply. No doubt, if the slander complained of is established, the defender is under an obligation to make reparation to the pursuer. But it is not a contract obligation—it is an obediential obligation; and without anything like subtlety or over refinement of technicality, but simply as a matter of common sense, it may be affirmed that that obligation arose within the limits of the territory of the Forfarshire Sheriff-court. There is therefore a strong analogy to be found in the case of *Pirie* v. *Warden*. But the real difficulty in dealing with a case of this kind is to keep in view the distinction that exists between criminal and civil jurisdiction. Criminal jurisdiction rests upon the *locus delicti*. Where the crime has been committed, there, and there only, as a general rule, can a proceeding be entertained *ad vindictam publicam*. It is otherwise, however, in civil cases. Even in an action of damages for loss occasioned by the same crime, the civil court would not have jurisdiction merely on the ground of *locus delicti*. But if the delict or *quasi* delict, out of which the obligation of reparation arises, be committed within the territory, and the summons be personally served upon the defender within the territory, although the ground of jurisdiction be quite different from that in the criminal court, it has some resemblance, for it is the *locus delicti* combined with another element. I cannot help thinking that there are some *quasi* delicts for which I think it is clear that redress must be competently had at the place, if the offender can be found. Suppose, for instance, that a man commits a spulzie of goods within a judge's territory, it would be a most strange result to hold that one could not go to the judge for redress if the offender happened to be a foreigner. Again, suppose a persistent trespass be committed upon my lands by a person who is a foreigner, am I not entitled to go to the judge of the bounds and protect myself by an interdict? If this would hold good in an invasion of property, which I think there is hardly room to doubt, it is no great stretch to say that if a foreigner slander my good name, thereby probably doing me irreparable injury amongst my neighbours and those with whom I live, I am entitled to bring him before the Judge in whose territory I live, if I find him within its limits. Now that is the very case we have here to deal with; and after giving it my fullest consideration, and referring to principle and analogy of other cases, I think the sound conclusion is that the Sheriff had jurisdiction to entertain this action.

The other Judges concurred.

The Court accordingly recalled the Sheriff's interlocutor, and remitted to the Sheriff to sustain his jurisdiction, and proceed in the case as shall be just.

Agent for Pursuer and Appellant—J. Knox Crawford, S.S.C.

Agent for Defender and Respondent—W. M. Johnstone, S.S.C.

Friday, July 7.

ADAM MURRAY, WILLIAM MURRAY, AND OTHERS *v.* ADAM MURRAY AND OTHERS (CHILDREN OF JOHN E. MURRAY).

Succession—Heir and Executor—Relief. *Held* that, in the absence of clear and distinct implication of a testator's intention, the disponee under a trust-settlement of a particular estate is not entitled to call upon the trustees to relieve the estate of a heritable burden upon it out of the general residue.

Agreement — Clause. Construction of a special family agreement, in which *held* that the payment of a certain sum was contingent upon a party succeeding to the actual enjoyment of a liferent.

This was a competition arising out of a multiplepoinding, raised by the trustees of the late Robert Murray, Esq. of Dollarbeg, to determine certain questions which had arisen among the beneficiaries under the trust-settlement. Mr Murray died in 1861, leaving a trust-settlement, dated July 1859. By this deed he directed his trustees to pay over to his two sisters Elizabeth and Isabella, the free produce of his estates during their joint lives, and afterwards to the survivor during her life. After the death of his two sisters, the trustees are directed to hold the estate of Dollarbeg for his nephew John Murray (son of his deceased brother Adam) in liferent, and his children in fee, to be divided in certain proportions; the estate to be sold if a majority of the children expressed a wish to that effect. Legacies of £1000 are provided to his two nieces, the sisters of John Murray; and the free residue of his means and estate to his nephews Adam and William, the younger brothers of John Murray. Miss Elizabeth Murray died 12th February 1864, and Miss Isabella Murray 6th April 1868. John Murray died 20th March 1865, so that he never enjoyed the liferent of Dollarbeg provided to him by the truster.