which interlocutor the petitioners, on the same day, lodged an appeal, which has not yet been disposed of.

"There is thus no one, and until confirmation is expede there can be no one, in a position to take charge of, recover, and administer the moveable estate left by Mr Russell, which amounts, including the value of his household furniture and the debts due to him, to about £4000. According to the view which the Lord Ordinary takes of the writs founded on by the respondent, the respondent must prove, before he can obtain confirmation, that his substitution as executor in room of the party originally nominated is holograph of Mr Russell, and that the writs as altered are the last will of a free and capable testator.—*Anderson* v. *Gill*, H. L., 3 Macq. 180. See also appeal case for opinions of Judges in Court of Session. If this view be correct, some time may elapse before a final decision is pronounced on the petitions now depending in the Commissary Court, as was the case in *Anderson* v. *Gill*, which originated in somewhat similar circumstances. The appointment, therefore, of a judicial factor to take charge of the moveable estate until confirmation is obtained appears to the Lord Ordinary to be right and proper."

Mr Molleson reclaimed.

M'Laren, for him, maintained that there was no room for the appointment of a judicial factor, Mr Molleson being executor-nominate under the will of the deceased.

Campbell Smith for the petitioners.

At advising—

Lord President—I have no doubt of the propriety of the course taken by the Lord Ordinary. There is a serious dispute as to whether Mr Molleson is the executor-nominate of the deceased. If he be executor-nominate, it must be because the document produced is the last will of the testator. And if it is, then he is also universal legatee. What is at issue is his right not only to administer, but to the beneficial enjoyment of the estate. All that I say is that this seems *prima facie* a serious question, and it is in accordance with our practice to appoint a judicial factor.

The other Judges concurred.

The Court adhered.

Agent for Petitioners—J. B. W. Lee, S.S.C.
Agents for Respondent—Henry & Shiress, S.S.C.

Saturday, February 3.

LOGAN *v.* WEIR.

Reparation—Breach of Contract—Lease—Sub-Lease.

An agricultural lease for nineteen years reserved power to either party to terminate the lease at the end of ten years. The tenant sub-let a portion of the farm by missive of lease "to the end of my own lease." The landlord having taken advantage of the break in the principal lease, and evicted the sub-tenant, the latter brought an action of damages against the principal tenant for breach of contract—*Held*, on a sound construction of the missive of lease, apart from any separate undertaking by the principal tenant, that he merely undertook to give the sub-tenant the same tenure which he enjoyed himself.

This was an action of damages at the instance of James Logan, lately wood merchant, Wester Mugdock, near Milngavie, against John Weir, lately farmer at Wester Mugdock. The pursuer concluded for £1000 damages (in all) on two distinct grounds —1st, judicial slander; 2d, breach of contract. The circumstances out of which the action arose were as follows:—

By lease, dated 3d March 1859, William Brown let to the defender's father, the late James Weir, the farm of Wester Mugdock for nineteen years, from Martinmas 1859. The lease contained a clause reserving power to either party to terminate the same at the end of ten years from the commencement thereof, by giving notice in writing to the other party at least three months prior to Martinmas 1867. Assignees and sub-tenants were excluded, without the landlord's consent in writing.

At Whitsunday 1861 James Weir let to the pursuer a house and piece of ground forming part of the farm of Wester Mugdock. The pursuer continued to occupy the subjects from year to year till August 1867, when the defender, who had succeeded to the lease of the farm of Wester Mugdock on the death of his father in 1865, granted to the pursuer the following holograph missive of lease:—

"*Mugdock, 9th August* 1867.

"I, John Weir, do hereby let to James Logan a house and stables, and byre, garden, £7, 10s., for a lease of, to the end of my lease. "I, John Weir."

According to the averment of the pursuer, the defender stated to him that the missive would ensure possession of the subjects for eleven years to come, and on the faith of the missive the pursuer executed certain improvements on the premises.

On 25th March 1869 the defender raised an action of removing against the pursuer in the Sheriff-court of Stirlingshire, to have him decerned to remove at Whitsunday 1869. In answer the pursuer founded upon the missive of lease. The Sheriff-Substitute decerned against the pursuer (Logan), and the Sheriff adhered.

The decree of removing was brought under review of the Court of Session by a note of suspension, which was passed upon juratory caution. The result of the litigation was that it was found by the Lord Ordinary (Mure) that the missive constituted an effectual lease, and his Lordship accordingly suspended the threatened charge of removing. This interlocutor became final.

In the condescendence in the Sheriff-court, and also in the answers to the note of suspension in the Court of Session, Weir denied that the missive in question was in his handwriting, but in the course of the proceedings in the Court of Session he put in a minute consenting that the case should be disposed of on the footing that the missive was genuine, and holograph of and signed by him.

In July 1869 Mr Brown, the proprietor of Wester Mugdock, intimated to Weir his intention of taking advantage of the break in the lease, and gave him notice to remove himself and his sub-tenants. Weir afterwards took a lease of the farm for a year, from Martinmas 1869.

The pursuer averred that this was part of a collusive and fraudulent scheme between the landlord and the defender to render nugatory the missive of lease granted by the latter to the pursuer.

On 30th June 1871 Mr Brown presented a petition to the Sheriff for the ejection of the pursuer from the subjects. The pursuer intimated to the defender that he looked to him to protect him in possession of the subjects, and would hold him liable in damages in the event of his being ejected. Decree of ejection was pronounced on 7th July

1871, which was not brought under review, and on 12th September the pursuer quitted the premises.

The pursuer now raised the present action of damages, on the ground (1) that the defender had falsely and calumniously represented in the proceedings referred to that the pursuer had fabricated, or caused to be fabricated, the missive of lease which had been produced and founded on by him, or at least that he had used the same knowing it to be fabricated; (2) that the defender, by granting the missive, and otherwise, having undertaken that the pursuer should not be disturbed in the possession of the subjects till Martinmas 1878, was bound to make reparation to the pursuer for the loss sustained by him through his being ejected.

The Lord Ordinary (MURE) allowed the pursuer two issues, the first on the question of slander, the second in the following terms:—

"Whether, on or about the 9th day of August 1867, the defender undertook to give the pursuer possession till Martinmas 1878 of the subjects at or near Wester Mugdock, which at the date of said missive were tenanted by the pursuer; and whether the defender failed to implement his said undertaking, to the loss, injury, and damage of the pursuer?" Damages claimed under each issue £500.

The defender reclaimed.

WATSON and BALFOUR, for him, argued that there was no relevancy in the pursuer's statements to entitle him to the second issue.

SOLICITOR-GENERAL and RHIND for the pursuer.

The Court having intimated that the construction of the missive was a question for the Court, and not for a jury, parties were heard thereon.

At advising—

LORD PRESIDENT—The question before us is, in form, Whether a certain issue be sent to trial? But the substantial question is, What is the construction of the missive of lease? The defender, the tenant of Wester Mugdock, has a formal written lease for nineteen years, with a stipulation that either party may terminate it at the end of ten years, on three months' notice. In these circumstances, he lets to Logan a house and other subjects at £9, 10s. a-year, "for a lease of, to the end of my lease." The missive is a very informal document, but it contains the elements of a lease. For one of the essential elements of a lease, the ish, it refers to the defender's own lease. When you go to that lease you find that it is to end after nineteen years, or ten, and that in the option of either party. The question is, Did that informal missive give the pursuer a lease for eleven years certain? I think not. It gave the grantee the same tenure as the granter himself had. I find it impossible to sustain the issue. There are other objections to it, but into these it is unnecessary to go, as the whole foundation is gone.

LORD DEAS—I think that by the terms of this missive the defender subsets the subjects on the same footing as he held his own lease. I entirely agree with your Lordship.

LORD ARDMILLAN—I concur. Had the tenant and not the landlord taken advantage of the break, the case would have been different.

LORD KINLOCH concurred.

The Court disallowed the second issue.

Agent for Pursuer—William Officer, S.S.C.
Agents for Defender—Webster & Will, S.S.C.

Saturday, February 3.

SIR WILLIAM STUART FORBES *v.* LORD CLINTON AND OTHERS.

(*Vide ante*, vol. v. p. 593).

Process—Transference—31 and 32 *Vict.* c. 100, §§ 96, 98.

Where the merits of a cause had been exhausted in the Court of Session by a decree assoilzieing the defenders, who were also found entitled to expenses,—

Held that the cause was still depending in this Court so long as the expenses were not modified and decerned for, and that the pursuer was entitled, with the view of appealing to the House of Lords, to crave a transference of the cause against the heir of entail of one of the defenders, who had died in the meantime, though he had no interest in the depending question of expenses.

This action was originally raised in 1867 by Sir William Stuart Forbes of Pitsligo and Fettercairn against the Right Honourable Harriet Williamina Hepburn Stuart Forbes or Trefusis, Baroness Clinton and Saye, and against Baron Clinton as her husband, and for his own interest. The Court on 11th June 1868 pronounced an interlocutor assoilzieing the defenders from the conclusions of the action, and finding them entitled to expenses. No farther step was taken by either party to the action, the expenses were never taxed or modified, nor was the decree extracted. In the meantime Lady Clinton died, and was succeeded by her son the Honourable Charles Trefusis, a pupil, in the entailed estates of Fettercairn and others which had been the subject of the action.

The pursuer now lodged a minute of transference under the 96th and 98th sections of the Court of Session Act 1868, craving to have the action transferred against the said Honourable Charles Trefusis, and against Lord Clinton, his father, as his administrator-at-law. It was admitted that the sole object of the pursuer in asking to have the case transferred, was to take an appeal to the House of Lords—the expense of a transference in the House of Lords being much greater than in the Court of Session.

Lord Clinton appeared, and objected to the warrant of service of the summons authorised by sections 96 and 98 of the Court of Session Act being granted, on the ground that the merits of the cause were decided in this Court, and that he, both for himself and *jure mariti* in right of his wife, was the only person who had any interest in the question of expenses.

FRASER for the pursuer.

SOLICITOR-GENERAL (A. R. CLARK) and LEE for Lord Clinton.

At advising—

LORD DEAS—This was an action of reduction and declarator at the instance of Sir William Forbes against Lady Clinton, and her husband for his interest, the object being to reduce the titles made up by Lady Clinton under a certain entail. It is not necessary to follow in detail the course of the cause. It is sufficient to say that it ended in a judgment of the Inner House assoilzieing the defenders, and finding them entitled to expenses, which were remitted to the auditor to tax and report in the usual way. Before this was done,