difficulty in Glasgow in finding agents to take up the matter on the same footing as himself."

Moscrip having appealed, the Sheriff-Principal (CLARK) adhered to the judgment appealed against, adding this note:—"The result at which the Sheriff-Substitute has arrived appears to be substantially in accordance with the facts as brought out in evidence, and the law applicable to them. If either of the parties are not satisfied with the result, they have themselves to blame for not making the contract more specific. When parties choose to employ a gentleman who does not possess the legal qualifications of a law-agent, and if he chooses to accept employment involving the necessity of his employing a person duly qualified, there is great risk that the real intention of parties may be misunderstood on one side or the other—perhaps on both sides—and therefore their contract requires to be made so very specific as to exclude the necessity of interpretation or construction."

Moscrip appealed to the Second Division of the Court of Session, and argued—(1) The agreement could only be proved by writ or oath.—*Taylor* v. *Forbes*, Jan. 13, 1853, 24 D. 19. (2) He was entitled to charge his principals in his capacity of notary-public.—*Aitken* v. *Kirk*, Mar. 15, 1876, 3 R. 595; *Winton* v. *Airth*, July 17, 1868, 6 Macph. 1095.

At advising—

LORD JUSTICE-CLERK—In this case we have thought it right to read the evidence, and the result at which we have arrived is that we see no reason to differ from the Sheriffs in the Court below.

The case, however, is not without difficulty and delicacy. There are two actions—the one at the instance of this money-lending firm against their collector—because that is truly the position in which Moscrip put himself—for certain sums of money which they say he collected on their behalf; the other action is at the instance of the collector against his employers for payment of professional services alleged to have been rendered by him to them in the course of recovering or of endeavouring to recover various sums of money due to them.

In regard to the first action I need say nothing, but with respect to the second the defenders plead that it was agreed between them and Moscrip that he was to give his professional and personal services for nothing, except what he might manage to extract from the debtors while collecting the debts. The collector denies this agreement, and pleads in addition that any such qualification of the contract of employment can only be proved by writ or oath.

Moscrip is not a law-agent, but only a notary-public; the business, however, in which he was principally engaged was not a notary-public's work, although I am not to be understood as saying that a notary-public who pays attorney-tax is not entitled to recover remuneration for his services, *quantum meruit*. Then I think the nature of the services rendered makes a difference in the strength of his claim for remuneration.

Although I am not disposed to interfere with or differ from Lord Rutherfurd's dictum in the case of *Taylor* v. *Forbes*, which has been referred to, still I am not inclined to follow it in this case. That was the case of a duly qualified practitioner suing for payment for professional services rendered in the ordinary course of his business. This is not a case of that kind at all. It is the case of an ordinary individual without any peculiar qualification undertaking certain business under a certain contract. The next question which arises is, whether the contract is proved, and what it was? I think it is proved that Moscrip was to carry on the legal and other business of these money-lenders on the footing that he was to look for his remuneration solely to the persons opposed to him, and that, of course, only in the event of success. From the evidence I hold that to be the contract. Three partners of the firm speak to that as being the arrangement. True, Moscrip denies that that was the agreement, and that is not the least unpleasant part of this case, because the case turns on simple averment and denial. The real evidence of the case shows, however, that that was the real nature of the contract. The exceptions from the ordinary course of dealing which were so strongly pressed upon us are the very cases which prove the defenders' case. They are all cases where the debtor paid the debt and expenses direct to the lenders, and the lenders then at once paid over the sum recovered in name of expenses to Moscrip. There is also the suspicious fact that the collector kept no books in which to enter his various transactions and services rendered to his employers.

On the whole, no case has been made out to us to show that the Sheriffs have been in error.

LORDS GIFFORD and YOUNG concurred.

Their Lordships therefore adhered.

Counsel for Appellant—Kennedy. Agent—Thomas Carmichael, S.S.C.

Counsel for Respondent—Brand. Agent—John Gill, S.S.C.

Tuesday, October 26.

SECOND DIVISION.

LENNOX *v.* ALLAN & SON.

Master and Servant—Contract for Definite Period—Usage of Trade.

A contract of service, written or verbal, for a year, does not, in the absence of usage in the particular employment, to the effect that such engagements are yearly in their nature, undergo tacit relocation if notice of its termination be not given within forty days of the expiration of the year, and reasonable notice is in such a case all that need be given.

A strike in the shoemaking trade having occurred in the beginning of 1879, the defenders James Allan & Son, in order to induce the pursuer, a journeyman shoemaker, to work for them instead of coming out on strike with his fellow-workmen, offered him constant work for a year at 28s. a-week, and on 24th February engaged him for one year at that rate of wages. The engagement was in writing, and was to the following effect:—

"MEMORANDUM

"*From* "JAMES ALLAN & SON, "Bootmakers, "42 Leith Street, | *To* MR HUGH LENNOX.

"*Edinburgh, 24th Feby.* 1879.

"DEAR SIR,

"I bind & oblige to give you constant work for the Period of twelve months from this date at the rate of 28/ per week.

"JAMES ALLAN & SON."

Such an engagement is very rare in that trade. The pursuer entered on the service and worked for the defenders for the whole year to which the engagement applied. On 25th February 1880, in consequence of their having received a letter from the pursuer's law-agent, the defenders intimated to him that the special arrangement under which he had been engaged was not to be renewed, but offered him work on the ordinary terms. The pursuer, however, contended, that inasmuch as he was a yearly servant, and had not received forty days' warning that his engagement would not be renewed, he must be held to have been engaged for another year at the same terms by tacit relocation. He therefore declined the work offered, and on 28th February 1880, after working four days beyond the year for which he had been engaged, left the defenders' employment. He then brought this action for payment of £72, being wages for the period from 28th February 1880 to 24th February 1881. He pleaded—"The defenders' agreement with the pursuer having been renewed by tacit relocation, they were not entitled during its currency to terminate the same without fault or consent on his part." The defenders denied that notice was necessary, but alleged that in any view sufficient notice had been given. The Lord Ordinary allowed a proof, in which the facts above narrated were brought out, and which by agreement of parties was held to be the proof in two other actions against the same defenders at the instance of other workmen engaged on agreements similar to the pursuers.

On the 24th July 1880 the Lord Ordinary pronounced this interlocutor:—"Having considered the debate, proof, and whole cause, Finds that the pursuer was engaged by the defenders as a shoemaker for the period of twelve months from 24th February 1879, at the rate of 28s. per week, in terms of the memorandum, and that at the end of that period he was informed by the defenders that his engagement was terminated, and that if he remained it would be on the same terms as other workmen daily engaged: Finds that he was not dismissed, and that he was not entitled to hold his said engagement renewed for another period of twelve months: Finds also, that having been offered continued employment upon the usual terms, he had no claim to wages in room of notice: Therefore assoilzies the defenders from the conclusions of the action, and decerns: Finds the defenders entitled to expenses; and remits to the Auditor to tax the account when lodged, and to report.

"*Note.*—By agreement of parties the proof in this case was held to be the proof also in two other actions against the same defenders; and the Lord Ordinary was desirous to go over the evidence before disposing of any of them. The result, however, has been, that the Lord Ordinary is unable to find in any of the cases ground for a judgment in favour of the pursuers.

"In the present action at the instance of Hugh Lennox, the pursuer's engagement took place on 24th February 1879, under the special circumstances described by him. It was embodied in a memorandum in the following terms—[*quoted supra*].

"According to the Lord Ordinary's view of the proof, no warning was given to the pursuer, prior to 24th February 1880, that his services were to be discontinued. The defenders evidently thought no warning was needed. But when they heard on the morning of 25th February, by the letter which they then received from the pursuer's agent, they caused notice to be given to the pursuer and other workmen similarly engaged, that their engagements were not to be renewed, and that if they remained after the expiry of their engagements (as apparently they might have done), it would be upon the same terms as the other workmen daily engaged. The pursuer was told that he might work out his week, and have continued employment upon the ordinary terms, but he insisted that he would work under a continued yearly engagement or not at all; and at the close of the week he accordingly left, intimating his claim to a renewed service for another period of twelve months upon the ground of tacit relocation.

"The Lord Ordinary is of opinion that the engagement in question was not one to which the doctrine of tacit relocation is applicable. It was quite a special engagement entered into under exceptional circumstances, and unaccompanied by any stipulation, express or implied, that the service was to continue at the end of the twelve months for another period of the same duration if no notice was given. In substance, it was, in the Lord Ordinary's view, an engagement by the week, with a guarantee on the part of the employer that it should endure for twelve months. It does not follow that at the end of the period either party might terminate the employment without any notice whatever. The Lord Ordinary inclines to think that some notice was necessary, and that a week's notice would have been held to be reasonable in a question either of desertion by the servant or dismissal by the master. In the present case, however, he has come to be satisfied that there was no dismissal. He thinks it proved that the pursuer was offered further employment, and refused to take it except upon the condition of his being accepted as a yearly servant engaged by tacit relocation for a second period of twelve months.

"Some attempt was made on the part of the defenders' foreman to prove that forty days' warning was given, or at least something equivalent to forty days' warning, and was accepted by the pursuer as such. Of this the Lord Ordinary would only say that the proof was not at all satisfactory to his mind, and that in pronouncing the foregoing interlocutor he does not proceed to any extent upon the evidence as to what passed between the pursuer and Mr Dewar in the second week of January.

"The Lord Ordinary has found the pursuer liable in expenses, because in his view there was no justification for raising the present action in the Court of Session, excepting the pursuer's

desire to try the question of right as to whether the engagement was of the character which he ascribes to it. Upon that question the pursuer, in the Lord Ordinary's view, has failed; and as his mistake upon that point has been the cause of the whole litigation, in which he has been unsuccessful, the usual consequences must follow."

The pursuer reclaimed, and argued—When there is agreement of service for a year, and warning is not given, relocation takes effect by course of law. This was laid down by Lord Robertson in *Maclean* v. *Fyfe*, Feb. 4, 1813, F.C.; Ersk. iii., 3, 16, Lord Ivory's note; Lord Selborne in *Lord Advocate* v. *Drysdale*, 1 R. (H.L.) 27; *Campbell* v. *Fyfe*, June 5, 1854, 13 D. 1041; *Thomson* v. *Allardice*, June 27, 1823, 2 Shaw (o.e.) 434.

At advising—

Lord Justice-Clerk—I think that the foundation of Mr Smith's argument fails entirely. The law as to tacit relocation which has been pleaded to us applies to specific classes of servants—agricultural, domestic, and the like. Mr Smith does not dispute that the rule as to them depends on custom, but yet he seeks to import it into contracts between master and workmen where there is no usage at all, and the reason why there is no usage is that the transaction in question—that of hiring a shoemaker for a year—was a very unusual one. I therefore come to the result that the whole foundation of the case fails. There is no authority for extending this artificial rule, which is dependent on social conditions, and created by and growing out of ordinary usage, to circumstances to which it might not be applicable and in which it might be excessively inconvenient. I therefore come to the conclusion that an engagement for twelve months, viewed according to its terms, lasts for twelve months and then ends, and that notice of its termination need not be notice of forty days, but only reasonable notice. Now, there is no question here as to that point, for there was no dismissal. The master was willing to continue the services of the workman if he had chosen to remain.

Lord Gifford—I am of the same opinion. The rule of forty days' notice necessarily depends on custom, and customary law once established regulates itself. Now, custom being the foundation on which the rule rests, a proof of custom is implied in it, and so if there had been an allegation of custom of trade here such allegation would have been relevant, and would have been remitted to probation. But as to shoemakers there is no allegation of a custom introducing a right to forty days' warning—nay, it is admitted that there is no custom—but that this is an exceptional case. This was a special case intended to meet a strike; the pursuer was guaranteed twelve months' work if he would break with his fellow-workmen. That exempts the case from any general rule, and therefore no warning of forty days was needed. That leaves open the question what would have been reasonable notice. I concur with the Lord Ordinary that this is a special case, and that there is no room for the application of the custom here contended for.

Lord Young—I am of the same opinion. The only question on which I wish to guard myself is the question whether there is any occasion for notice at all where the obligation is for a precise period. On that point I give no opinion, but my impression is in accordance with what I understand to be your Lordships' views—that where there is no usage and an agreement is entered into for a precise period, the agreement itself contains the notice, and the engagement terminates at the end of the period. I therefore wish to say nothing that may be construed as approval of the argument that where a man is engaged for a year his engagement is not terminated at the lapse of that year. I think that in such a case each sees that the agreement is coming to an end and can make a new one if he pleases. If there be room for inquiry at all, I think that there was in this case reasonable notice. I think that what the defender did was entirely reasonable, and that the pursuer when offered work on the new footing had no ground to complain.

The Court adhered.

Counsel for Pursuer—J. Campbell Smith. Agent—D. Turner, S.L.
Counsel for Defender—Keir—Dickson. Agent—Geo. Andrew, S.S.C.

HIGH COURT OF JUSTICIARY.

Friday, October 29.

(Before Lord Young, Lord Craighill, and Lord Adam.)

LAWRIE AND OTHERS *v.* M'ARTHUR.

Justiciary Cases—2 and 3 Will. IV. c. 68, *sec.* 1 *—Day Trespass Act—Farm Servant employed to set Snares.*

A farm servant employed to set snares for rabbits on his master's farm, while visiting these snares set his dog at a hare which had been caught and wounded in one of them, and captured it. Circumstances in which *held* (*diss.* Lord Adam) that he was rightly acquitted of breach of sec. 1 of the Day Trespass Act.

Charles M'Arthur, farm servant on the farm of Carston, in the parish of Killearn, was on 23d July 1880 charged under the Summary Procedure Act 1864, at the instance of Archibald Campbell Lawrie and others, proprietors of the estate of Moss, on which the farm is situated, before the Sheriff-Substitute of Stirlingshire at Stirling, with a breach of section 1 of the Day Trespass Act (2 and 3 Will. IV. c. 68), "by entering or being on the 11th of July 1880 (Sunday) on a hay-field known by the name of Harry's Moss, on the said farm of Carston . . . in search or pursuit of game or conies."

The facts proved, as stated in the Special Case, were, that "the respondent is a farm servant to the tenant of the farm of Carston, and the hay-field named Harry's Moss is one of the fields of the said farm. On the day libelled the respondent (M'Arthur) was in the said field. He held a young child in his arms. He had a dog with him. He went to a snare set in the field and took a hare out of it, and the hare being