

bed, and the question then comes to be, whether there is any confirmatory proof?

"On that Saturday evening, Sarah Ritchie, the servant in the house, said, according to the defender, that her mistress had told her she was to give to the defender certain things on her arrival. But this did not take place on the Saturday evening because the servant had a washing and the defender was tired with her journey. On the following morning, being Sunday, the servant upon being questioned, 'What's this about papers and bank-notes that Mrs Stenhouse told me about yesterday?' replied, 'that this is Sunday, and you should not talk about such things to-day.' But she added, 'that Mrs Stenhouse had told her that as soon as ever I came she was to give me everything she had, but especially those papers.'

"The box was produced on the Monday to the defender in the presence of Dr Pride, but it was not opened until after the death, which took place on Thursday.

"Dr Pride's account is to the effect that Sarah did hand over the box to Mrs Stenhouse, with the key, and the box remained locked till after the Thursday.

"Now, Sarah Ritchie's account of the matter, given in the witness-box, is different from this. She denied that she ever got instructions from her mistress to deliver anything to the defender. She denied that she ever said that she had such instructions, either as regards the papers, or bank-notes, or anything else, and her story is, that out of her own conception of the fitness of things, she gathered the little jewels and trinkets that Mrs Stenhouse had, and put them in the box on the top of papers, and delivered them to the defender without instructions. The Lord Ordinary did not consider this woman to be a reliable witness. Until pressed very hard, she would scarcely admit that the deceased and the defender were on intimate terms. She grossly exaggerated the weak condition of her mistress, whom she represented as being incapable for ten days before her death of knowing what she was saying. Weak she was indeed, through old age, and incapable of sustaining a prolonged conversation; but there is the positive evidence of the doctor that on that Saturday, 7th October, she was quite intelligent, although now and then, through exhaustion, she made what she next morning called 'mistakes.' But furthermore, this witness is contradicted by the Messrs Pollock, bankers, as to what she said on the day after the death, in regard to the instructions which her mistress had given her. She was called in, in the presence of Mr Pollock and his son and Mrs Stenhouse, and the following conversation took place (as narrated by William Pollock), Sarah having been formally called into the room to give information about the affairs:—
'I asked her if her mistress kept papers anywhere else than in the box, and she said no. (Q) Did she say anything else about the box?— (A) Yes, she said that she had got the box with the papers and jewels from her mistress to hand to the defender as soon as she arrived from London, and she said to defender, "Which I did, did I not?" and defender said, "Yes, you did."' James Pollock, the son, states that Sarah said 'that she was to give it (the box) to defender immediately on her arrival, and I recollect her

asking the defender if she had done so, and the defender said she had. (Q) Old Mrs Stenhouse had told her to give the box to young Mrs Stenhouse?—(A) Yes.'

"Now this most positive evidence is flatly contradicted by Sarah Ritchie; nay, she makes the astounding assertion that she had not seen James Pollock for nearly two years, he being one of the questioners, along with his father, as to the state of Mrs Stenhouse's repositories. In what way this woman has come to be induced to make such contradictory statements does not appear from the evidence; but that she is speaking untruthfully in regard to her report of the instructions she received from her mistress the Lord Ordinary cannot doubt. The very fact that she did, on the Saturday night before her mistress was dead, offer to deliver up the box with the papers, can be explained rationally only on the footing that she had got orders to deliver the box to the defender immediately on her arrival. What right had she to meddle with her mistress' papers or her trinkets, in the way of delivering them to a stranger, other than having received a command so to do from her mistress?

"There are other circumstances in the evidence, which, taken along with the manner in which it was delivered, that impressed the Lord Ordinary very strongly with the opinion of this woman's untruthfulness, and lead him to the conclusion that such instructions were given to Sarah, and if so there is the needful corroboration of the defender's own evidence."

Counsel for Pursuer—R. V. Campbell. Agents—Miller & Murray, S.S.C.

Counsel for Defender—Darling. Agents—H. B. & F. J. Dewar, W.S.

Wednesday, October 17.

FIRST DIVISION.

[Sheriff of the Lothians.

MUNRO v. FIRST EDINBURGH AND LEITH
415TH STARR-BOWKETT BUILDING
SOCIETY.

Building Societies Act 1874 (37 and 38 Vict. cap. 42)—Jurisdiction—Liability of Officers of Building Society to Account—Sheriff.

The secretary of a building society registered under the Building Societies Act 1874 was required by the society to deliver over his books and papers to a person named by the society, and he having failed to do so a petition was presented to the Sheriff setting forth that he had been dismissed from office, and craving to have him ordained to deliver over the books and papers. He maintained that he had not been legally dismissed, and refused to give them up, and the Sheriff having allowed a proof in the petition, he appealed to the Court of Session. *Held* that the appeal was incompetent, because the society was entitled, whether he was dismissed

or not, to demand his books and papers, and in an application to enforce that right the Sheriff had privative jurisdiction under the Act.

Section 24 of the Building Societies Act 1874 provides that every officer of a society registered under the Act "shall, upon demand made, or notice in writing given or left at his last or usual place of residence, give in his account as may be required by the board of directors or committee of management of the society, to be examined and allowed or disallowed by them, and shall, on the like demand or notice, pay over all the monies remaining in his hands, and deliver all securities, and effects, books, papers, and property of the society in his hands or custody to such person as the society appoint; and in case of any neglect or refusal to deliver such account or to pay over such monies, or to deliver such securities, and effects, books, papers, and property in manner aforesaid, the society may sue upon the bond, or may apply to the Court, who may proceed thereupon in a summary way, and make such order thereon as to the Court in its discretion shall seem just, which order shall be final and conclusive."

The First Edinburgh and Leith 415th Starr-Bowkett Building Society raised an action in the Sheriff Court at Edinburgh against their secretary, Alexander Munro, accountant, East London Street, Edinburgh, to have him ordained to give in an account of his intrusions as secretary with the society's funds, and pay over the balance thereon, and deliver up all the titles, books, and documents in his possession as secretary to a person named. The condescence set forth that the defender having refused to obey the directions of the society had been removed from his office, but refused to give up an account or deliver the society's documents. The pursuers pleaded that the defender having been appointed secretary, and having been legally removed from office, they were entitled to decree as prayed for. The defender denied that he had been legally dismissed, and pleaded, *inter alia*, that being still secretary he was "entitled to have and hold possession of all the books, documents, and other effects of the society, in terms of the rules of the society." The Sheriff on 25th June 1883, on appeal from the Sheriff-Substitute, pronounced an interlocutor allowing to both parties a proof of their respective averments, and a diet of proof was fixed.

The defender appealed to the Court of Session, and upon the motion that the case be sent to the roll the respondents objected to the competency of the appeal, and argued that under sec. 24 of the Building Societies Act of 1874 the interlocutor of the Sheriff was final.

The appellant argued that this was not a dispute of the kind contemplated by the Act, from which there could be no appeal, and that the only reason alleged for demanding the books was his alleged dismissal, which, if it had happened, took the case out of sec. 24.

Authorities—37 and 38 Vict. cap. 42, secs. 4, 24, and 36; *Davie v. Colinton Friendly Society*, November 10, 1870, 9 Macph. 96; *Hamilton v. Hamilton*, March 20, 1877, 4 R. 688; *Rain v. Gill*, May 19, 1877, 4 R. 732.

At advising—

LORD PRESIDENT—I think that this is a very clear case. The prayer of the petitioner is that Alexander Munro be ordained to give in an account of his intrusions with the funds of the society as secretary, as at 30th April 1883, and to give up all the books, documents, and property of the society presently in his possession. Now, this is a proceeding under the 24th section of the statute, and it is a matter of no consequence whether he is still secretary of the society or not, or whether he has been legally dismissed or not. Under this section of the Act the society is entitled whenever it pleases to call for delivery of the books and papers in the hands of any of its officers, and being dissatisfied with Munro, and having made the demand in writing in terms of the statute the society was entitled to have what it claimed.

It seems to me that the averment that the appellant has been dismissed is irrelevant to the present action. The society desired that its books and papers should be delivered up, and the present petition has been presented in consequence of the appellant's refusal to deliver up the documents demanded. The Sheriff has acted summarily in the matter, and in my opinion within his jurisdiction.

The words "final and conclusive" in this section of the statute have the same meaning as the words "final to all intents and purposes without any appeal" in the Friendly Societies Act of 1855. We had occasion to construe these words in the case of *Davie v. The Colinton Friendly Society*, and we there held that the jurisdiction of this Court was excluded by sec. 41 of that Act, by which a privative jurisdiction in such cases was conferred upon the Sheriff.

I am therefore of opinion that the present appeal is incompetent.

LOKDS DEAS, MURE, and SHAND concurred.

The Court refused the appeal as incompetent.

Counsel for Pursuer—Brand. Agent—R. Ainslie Brown, S.S.C.

Counsel for Defender—Rhind. Agent—Robert Menzies, S.S.C.

Wednesday, October 17.

SECOND DIVISION.

[Lord Kinnear, Ordinary.

M'INTOSH v. CHALMERS.

Reparation—Force and Fear—Wrongous Imprisonment—Writ Granted in Prison.

An imprisoned debtor granted, while in prison, and as a condition of his release, certain writings, one of these being a letter of indemnity undertaking to free and relieve his incarcerating creditor of all liability in connection with his incarceration. The transaction was carried out by the creditor's law-agent, but the debtor was not represented by a law-agent, and had no opportunity of consulting one after the writings were presented to him for signature. The warrant of imprisonment was afterwards