

The Court pronounced the following interlocutor:—

“Recal the judgment of the Sheriff: Sustain the first plea for the defender Wright, and assolvie him from the conclusions of the action.”

Counsel for Appellant—Guthrie Smith—Shaw.
Agent—John Gill, S.S.C.

Counsel for Respondent—Lang—Ure. Agent
—Thomas Carmichael, S.S.C.

Wednesday, May 20.

SECOND DIVISION.

[Sheriff of Lanarkshire.

MURRAY v. STEEL & SONS.

Process—Appeal—Removal to Court of Session—
Employers Liability Act 1880 (43 and 44 Vict.
c. 42), sec. 6.

The pursuer brought an action in the Sheriff Court against the defenders, his employers, concluding for £1000 in respect of bodily injury sustained, as he alleged, owing to their fault. On the record being closed he appealed for jury trial. The verdict was for pursuer, damages £150. On motion to apply the verdict with expenses, the defenders moved that only Sheriff Court expenses be allowed, on the ground that pursuer had (as was admitted) been successful on the grounds introduced by the Employers Liability Act, and the Legislature by providing that all actions under that Act should be brought in the Sheriff Court, contemplated their decision by that tribunal. The Court overruled the defenders' motion, and applied the verdict with the usual expenses applicable to an appeal for jury trial.

Counsel for Pursuer—Rhind—Gunn. Agent
—R. Stewart, S.S.C.

Counsel for Defender—Jameson—Ure. Agents
—Cuthbert & Marchbank, S.S.C.

Wednesday, May 20.

SECOND DIVISION.

[Lord Kinnear, Ordinary.

DOIG AND ANOTHER v. BUCHAN.

Parent and Child—Bastard—Aliment.

A woman gave birth in 1851 to a bastard child. The alleged father, while paying a share of her inlying expenses, refused to acknowledge the paternity of the child, and she supported it entirely herself till 1857, when they entered into an agreement, by which she renounced all claims on him for past aliment of the child, and he acknowledged the paternity, and promised in future to support the child, so far as he was able, till it could support itself. He entirely failed to implement this agreement, and in 1884 she raised an action against him for his share of the child's aliment at the rate of £8 per annum from the

date of its birth. The Court awarded £40 as the amount due in the circumstances by him to her from the date of the agreement till 1865, when the child attained minority.

Father's Offer to Provide Suitable Home for Bastard Child—Aliment.

Observations (per Lord Young) as to the effect which the rejection of the father's offer to provide a suitable home for his bastard child has in extinguishing the mother's claim on him for the child's aliment.

Margaret Law, who was formerly a domestic servant, on the 19th May 1851 gave birth to an illegitimate male child, of which she alleged that Walter Buchan, market gardener at Muirhouses, Linlithgow, was the father. The latter refused at the time to acknowledge the paternity, and she alone continued to support the child herself till 1857. In August of that year, however, they executed a deed of agreement and discharge, in which she renounced and discharged all claims against him for bygone aliment of the child, or for repayment of any money disbursed by her for the maintenance, clothing, and upbringing of the child; in consideration of which, and, on the other part, he thereby acknowledged the child as his son, and engaged and promised thenceforth to aliment and support the child, so far as he might thereafter be able to do so, while the child was unable to earn his own subsistence. He did not after the agreement pay anything for the child's aliment. He paid 30s. for inlying expenses. The child attained minority on 19th May 1865. The mother in November 1873 married John Doig, surgeon at Bathgate, and with consent of her husband, in 1884, raised this action against Buchan to have him ordained to pay the sum of £152, 18s. 5d., as the balance of inlying expenses attending the birth of the child, and aliment at the rate of £8 per annum from the date of the birth until the child arrived at minority on 19th May 1865.

In defence the defender stated that he had never admitted that he was actually the father of the child, and he made no such admission now. As to aliment prior to the agreement, he founded on the discharge. He stated that in 1857 he had been rendered incapable of regular work through his hand being shattered by the bursting of a gun, and was unable till the winter of 1859 to resume his employment; that in 1880 he became, for the first time after his injury, able to contribute towards the aliment of the child; that in and about that year he made offer to the pursuer to take custody of and maintain the child, which was then about nine years of age, and to aliment him in family with himself, and also offered to have the child bound as an apprentice to any trade which the pursuer might choose; that these offers were declined by the pursuer, who absolutely declined to part with the boy. “In respect of said offers and refusal, the defender's liability to contribute anything towards the support of the child ceased and determined; and this was well understood and acquiesced in by the pursuer.”

He also stated that for nearly a year before he offered to take the child the boy was working in the pottery works at Bo'ness, and earning about a shilling a-day; that he was always a strong, healthy lad, and was able to earn his own subsistence from an early age; that he (defender)