

word in the English language.

I see no reason why the word "signed" in the statute we are considering should be construed differently from the same word in England; and I am therefore of opinion that the mode of authentication described in the special case is a sufficient compliance with the statute.

LORD TRAYNER and LORD KINCAIRNEY concurred.

The Court refused the appeal.

Counsel for the Appellants—Ure—James Mackintosh. Agent—J. C. Strettell Miller, W.S.

Counsel for the Respondent—C. S. Dickson—Pitman. Agents—J. & F. Anderson, W.S.

COURT OF SESSION.

Tuesday, November 28.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

STEVENSON v. STEVENSON AND FAIRIE.

Evidence—Hearsay—Precognition—Statement Taken from Person Deceased.

Held that a statement taken from a person for use in any subsequent legal proceedings that might arise, was of the nature of a precognition, although no action was then in dependence, and did not become evidence by the death of the person making such statement.

In June 1892 Matthew S. Stevenson, Annfield Place, Paisley, brought an action against Mrs Maria Martin or Stevenson, an old woman then in Gartnavel Asylum, and Thomas Fairie, Harrierville, Pollokshields, her *curator bonis*, to have it declared that he and the female defender were married upon 6th August 1888 by interchange of missives. He alleged that arrangements had been made for a regular marriage being solemnised on 10th March 1891, but that on 9th March the male defender had unjustifiably removed his ward to an asylum on the ground that she was insane.

At the date when the defender was removed to the asylum Fairie was not aware of the existence of the missives founded upon by the pursuer, nor that he claimed to have been previously married to the other defender. These facts were not known to Fairie or his agents till the service of the summons in the present action in June 1892.

In the course of the proof Fairie proposed to found upon a statement made by a servant of Mr Stevenson, named Bella Jamieson, who had since died. The evidence as to the taking of this statement was as follows—Fairie himself deponed—"Immediately after removing Mrs Stevenson to the asylum I thought it right to take a state-

ment from Bella Jamieson, and also from her sister Mrs Sinclair, and that was done in my presence in the office of Messrs Hill, Brown, & Company."

Mrs Sinclair deponed—"Mr Fairie asked Bella and me to go down to the office of Hill, Brown, & Company with him, and we went. The lawyers took a statement from Bella, writing down her story."

Mr Findlay, of Hill, Brown, & Company, deponed—"On 11th March Bella Jamieson and Mary Sinclair called at my office, either by themselves or along with Mr Fairie, I am not sure which. I did not send for them. Upon that occasion I took statements in writing from them both. I took those statements because of the very peculiar circumstances of the case, and in consequence of what I had heard as to the alleged intended marriage. I have with me the original of the statement made by Bella Jamieson. It is signed by her and dated the 11th March 1891. It was taken by me in her presence, and in presence of Mr Fairie, and it was reduced to writing at the same time on the suggestion of Mr Fairie. *By the Court*—The statement was the result of questions put by me and answers made by her."

The pursuer objected to the statement being admitted as evidence, and this objection the Lord Ordinary (KYLACHY) sustained.

"*Opinion*.—... It is perhaps proper to say a word with regard to the deceased servant Bella Jamieson, who was one of the witnesses to the alleged marriage. I have rejected as evidence the statement said to have been made by her to the agent for the curator after the defender had been removed to the asylum. I have done so on the ground that that statement, which is simply the agent's narrative of answers to questions put by him, was in effect a precognition, taken no doubt quite legitimately, and not directly for the purposes of this case, but yet a precognition taken for the purpose of fortifying the curator's position."

On this point the defenders, who reclaimed from the Lord Ordinary's interlocutor on the merits, argued—The statement had been very properly taken to preserve evidence of the true state of circumstances at that date. The person making it was now dead, and her written testimony was good evidence unless vitiated by being a precognition. It was only precognitions in cases then depending before the Court which were rejected. The leading cases on this subject were—*Dysart Peerage* case, 1881, L.R., 6 App. Cas. 489; and the *Lauderdale Peerage* case, 1885, L.R., 10 App. Cas. 692.

Counsel for the pursuer were not called on.

At advising—

LORD PRESIDENT—The evidence about this document is contained in three passages which were read by Mr Younger, and it appears that the occasion on which

the matter took place was this. The curator had taken a step—certainly a strange one—which manifestly involved future controversy with the present pursuer, for he had carried off the pursuer's intended bride to an asylum on the eve of the marriage, and in full knowledge of its imminence. He therefore thought it would be well to have on record something to justify this proceeding. Accordingly he thought it right, to use his own words, "immediately after removing Mrs Stevenson to the asylum, to take a statement from Bella Jamieson, and also from her sister Mrs Sinclair, and that was done in my presence in the office of Messrs Hill, Brown, & Company." The two women by arrangement were taken to the office, and there Mr Findlay, the curator's law-agent, took statements in writing from them both. He says he took these statements because of the very peculiar circumstances of the case, that Bella Jamieson's statement was the result of questions put by him and answers made by her, that it was reduced to writing at the same time, and was signed by her.

It thus appears that the document was the result of questions put by the agent of a gentleman wishing to prove that he had been right in acting as he had done. This I think brings the case within the rule cited, and renders the statement inadmissible as evidence.

LORD ADAM—This statement was not volunteered, but was the result of questions put by the agent of one of the parties to this action, and was then reduced to writing. I think that it was of the nature of a precognition, to which the objection is, that it is prepared on questions framed by a person interested to bring out a particular view of the case, and therefore unsafe as evidence.

This document was taken after Fairie had taken the strange step on the eve of the marriage of removing the woman to an asylum, which would necessarily lead to conflict with the present pursuer. To justify that proceeding it was needful to prove she was then of unsound mind, and that is the very issue before us in the present case.

LORD M'LAREN—I am of the same opinion. This is not strictly a precognition, because no action was then depending in which it was to be used as evidence, but in my view the objection to a precognition as hearsay evidence does not depend upon its being taken for use in a case actually in Court for which evidence is being got up, but upon this consideration, that it is the result of questions put by a party interested to establish his own case. Findlay was a person interested in one view of the case, and such a person is likely to put questions calculated to establish that view. In a statement so taken all the facts are not so likely to be brought out as if the person making it were emitting a purely voluntary declaration. There is no doubt that in the present case the statement was taken to

support an opinion the curator had already formed, and upon which he had acted.

I think the case is ruled not only by the opinions in the *Lauderdale Peerage* case, but also by those in the *Dysart* case in 1881, which related to statements made with regard to an irregular marriage, and which support the view that one-sided statements are not to be accepted in evidence.

LORD KINNEAR concurred.

The Court refused to admit the statement as evidence.

Counsel for Pursuer and Respondent—Comrie Thomson—Cosens. Agent—A Laurie Kennaway, W.S.

Counsel for Defenders and Reclaimers—H. Johnston—Younger. Agents—Webster, Will, & Ritchie, S.S.C.

Tuesday, November 28.

SECOND DIVISION.

[Lord Wellwood, Ordinary.]

ROBERTSON AND OTHERS (CAMPBELL'S TRUSTEES) v. THE SCOT-TISH UNION AND NATIONAL INSURANCE COMPANY AND LAW.

Trust-Disposition—Construction—Obligation to Maintain Road—Road becoming City Street—Whether Obligation Subsisted.

In a disposition of part of a trust-estate the trustees bound themselves to construct a road and footpath as an access to the land of the disponee, who was bound "to pay a proportion of the expense of maintaining said road" for a certain time. The road was formed and maintained as a good country road for some years, but was subsequently included in the extended boundaries of a neighbouring city, and the trustees were called upon by the city authorities to execute certain works on the road which practically resulted in re-forming it into a city street. The trustees did not deny their liability for this work, but sued the disponee, under the provision of maintenance, for a proportion of the expense incurred. *Held* that the obligation of the disponee did not cover the works required by the city, on the ground that these were neither of the character nor within the description of the maintenance contemplated by the disposition.

By disposition dated June 1875 the trustees of Sir George Campbell of Succoth, Baronet, sold and disposed to John Ewing Walker of Dalling Mhor, near Dunoon, in the county of Argyll, and his heirs and assignees whomsoever, all and whole part of the lands of Gilshochill and Lochburn, in Lanarkshire, containing 67 acres, but with and under the real burdens and provisions therein, *inter alia*—" (Fourth) our dis-