which it was her special duty to restrain. There might be perfectly sound testing capacity and yet undue influence. If the pursuer had gone to a jury in *Gray* v. *Binny* with an issue of facility and circumvention only, he must have failed. In *Munro* v. *Strain* there was no averment of undue influence.

At advising—

LORD PRESIDENT—In my opinion the pursuer's case on record is a case of facility and fraud or circumvention, pure and simple. The story is that this testatrix had got into a debilitated condition of body and mind, and was not in the full possession of her normal faculties; that a nurse was got to attend her; that this nurse, taking advantage of the patient's craving for alcohol, plied her with drink, and by this means and by false stories got the patient to make a will in her own favour. This is, on the face of it, a very plain-sailing case of facility and circumvention.

The general issue of weakness and facility and fraud or circumvention is, in its terms, and according to our practice, applicable to a great variety of circumstances and relations, and to the manifold forms in which facility and circumvention appear and meet. In a large proportion of cases the success of the circumvention implies the establishment of influence; and this influence often arises from some more or less specific relation between the testator and the person impetrating the will. But the element of undue exercise of legitimate influence does not make it necessary to take a separate issue.

The pursuer claimed the second issue on the ground that even if she failed to prove weakness and facility she was entitled to prevail. This is not the view of the Lord Ordinary, who thought that the pursuer, even under the second issue, would have to prove "weakened will bordering on facility." But the answer to the pursuer's demand is that the case which she has on record is one of which facility is the basis.

I am for recalling the interlocutor, and I think we should refuse the second issue and approve of the first issue as the issue for the trial of the cause.

LORDS ADAM and KINNEAR concurred.

LORD M'LAREN was absent.

The Court disallowed the second issue.

Counsel for the Pursuer—Comrie Thomson—Hunter. Agents — Dalgleish, Gray, & Dobbie, W.S.

Counsel for the Defender — G. Watt — Macaulay Smith. Agent—William Alston, Solicitor.

Tuesday, June 5.

FIRST DIVISION.

CLYNE, PETITIONER.

Trust—Trustee—Sale of Heritage without Authority of Court—Nobile Officium—Petition for Confirmation of Sale.

Petition by a testamentary trustee, who had no powers of sale, for confirmation of a sale of heritable property belonging to the trust-estate which he had effected, *refused.*

This was a petition by James Clyne, sole acting trustee under the trust-disposition and settlement of George Sinclair Waters, wherein he craved the Court to approve, ratify, and confirm the sale of the lands of Thuspister, part of the trust-estate, which had been sold by public auction on 17th November 1893 to Alexander Clyne.

The petition was presented with the consent of all the parties interested in the trust-estate, who were in majority, but there were other beneficiaries who were in minority.

The petition stated that the sale had been carried through by him in ignorance that he had no power of sale, and that he had not yet granted a disposition to the purchaser, and that the latter declined to pay the price until the petitioner could give him a good and unexceptionable title.

At advising—

LORD PRESIDENT—It is impossible for us to grant the prayer of this petition for the reasons which have been indicated in the course of the argument. But while I think that we should refuse the petition, it may be open to the parties, if they can free themselves of the existing contract, to come back to the Court with an application for authority to sell.

LORD ADAM concurred.

LORD M'LAREN—I agree with your Lordship that we must refuse the prayer of this petition for the reason that, *ex facie* of the deeree which we are asked to grant, all objections to the sale founded on grounds distinct from the question of power to sell would be excluded. That being so, it appears to me that the confirmation which we are asked to grant would itself be reducible at the instance of a beneficiary who might wish to challenge the sale on extrinsic grounds. I agree with the suggestion made by your Lordship that the only way of working out the remedy desired is probably for the parties to make an application for authority to sell, when it might possibly be given in such terms as would enable the trustee to give a valid and otherwise sufficient title.

LORD KINNEAR—I agree with your Lordships. The Court may enlarge the powers of trustees by authorising them to sell, and this appears to be a case in which we should have had little difficulty in giving that authority. But the validity of any

sale which they may have carried through in the exercise of their powers may depend upon other considerations. We cannot in this form determine that a sale which trustees have already carried into effect is good or bad.

The Court refused the petition.

Counsel for Petitioner—Cooper. Agents—Auld & Stewart, S.S.C.

HOUSE OF LORDS.

Thursday, June 7.

(Before the Lord Chancellor (Lord Herschell) and Lords Watson, Ashbourne, and Shand.)

LESLIE *v.* YOUNG & SONS.

(*Ante*, July 20, 1893, vol. xxx. p. 910, 20 R. 1077.)

Copyright — Infringement — Railway Monthly Time-Table—Interdict.

The proprietor of a monthly local railway time-table complained that the proprietors of a rival time-table had published (1) the same tables of trains between the same selected stations, in the same order, and in some instances the same statements of mileage; (2) four pages of information regarding excursions, which, with slight alterations on one page, he had copied literally from the complainer's time-table.

Held (1) (*aff.* the decision of the First Division) that the respondents' train tables were not in all respects a copy of the complainer's work, but represented a certain amount of original labour, and therefore, in view of the nature of the complainer's compilation, there was not such appropriation of his work as to warrant interdict; (2) (*rev.* the decision of the First Division) that the complainer's guide to excursions was a compilation resulting from a considerable amount of original trouble in collecting and abridging information useful to the locality, and being independent work was protected by the copyright law; and interdict granted against the four pages complained of.

This case is reported *ante*, July 20, 1893, vol. xxx. p. 910, and 20 R. 1077.

The complainer appealed.

At delivering judgment—

LORD CHANCELLOR—My Lords, this is an appeal from a judgment of the Inner House which recalled an interdict of the Lord Ordinary (Low) and assoilzied the defenders. The action was brought in respect of an alleged infringement by the defenders of the copyright claimed by the pursuer in certain time-tables which were published by him at Perth. The work alleged to have been pirated contains time-tables, and certain other information to which I will more particularly allude presently. The piracy complained of consisted of an alleged improper use of certain time-tables published by the pursuer in his monthly time-table relating to railway trains and also relating to ferries and steamers and coaches. The Lord Ordinary came to the conclusion that the defenders had pirated a part of the pursuer's work in which he had a copyright, in the matter contained in pages 40 to 52 or 53 of the defenders' work, with the exception of a certain time-table, and also in certain other pages which he specified, and in respect of those he granted an interdict. The Inner House, as I have said, recalled that interlocutor, coming to the conclusion that there had been no piracy at all.

The time-tables which are to be found on the earlier pages which I have mentioned, namely, 40 to 52 and part of 53, consist of tables in the usual form which are found in all railway time-tables, taking Perth in the main as the starting point, this being a periodical published at Perth for the information of persons coming to or going from (more particularly going from) that place. The information in these time-tables was of course derived by the pursuer from a source which was as open to the defenders as to himself, and he does not and cannot claim any right to the information as such; he can only claim copyright in them if they are the result in some respect or other of independent work on his part, and if there has been an advantage substantially taken by the defenders of that independent labour. The mere publication in any particular order of the time-tables which are to be found in the railway guides and the publications of the different railway companies could not be claimed as a subject-matter of copyright. Proceedings could not be taken against a person who merely published that information which it was open to all the world to publish and to obtain from the same source.

My Lords, as regards some of these tables there is really nothing more to be said against what the defenders have done than that they have published the same table between the same stations in the same order as the pursuer; but then those tables with all those stations and all those times of the trains are to be found in the companies' books, and neither party would have anything more to do than to copy them in order to arrive at the information which is to be found in both books. It is true that in some cases the mileage has been taken, and is admitted by the defenders to have been taken from the pursuer's book. As regards other of these tables, it is said that they were not mere copies of tables to be found in the railway guides, but that there was a certain selection of stations, the smaller stations being omitted and a selection of trains, some of the trains also being omitted. That applies no doubt to some of the tables. But, my Lords, looking at these tables as a whole, and having regard to the fact that it is admitted that the defenders' work is, as regards these tables, not in all respects by