contains. It would be difficult to make the distinction of not receiving this deposition, while we admit evidence of what the person said to Mr Crombie or any one else casually in conversation, and not on oath. Mr Crombie swears, that Davidson swore to these particulars, and if I could not reject evidence of what he swore, how can I reject this?

J. Gordon and *Jeffrey*, for the Pursuer.
Moncreiff and *Lumsden*, for the Defender.

PRESENT,

THE LORD CHIEF COMMISSIONER.

MACLEOD *v.* MACLEOD.

1824. June 21.

Finding that a person had not been put in possession of the whole of a farm let to him.

Incompetent to ask the opinion of a witness, except as a man of science.

THIS was an issue sent by the Court of Session to ascertain whether the pursuer had been put in possession of the whole of a farm let to him, and if not, what loss he had suffered by not being put in possession of the whole.

The first witness for the pursuer was asked, whether, in a Highland farm of several miles in extent, a hundred acres of arable ground was more valuable than the same number would be in the low country.

MACLEOD
v.
MACLEOD.

LORD CHIEF COMMISSIONER.—I doubt the propriety of that question, as such questions are only allowable to men of science. You ought to question the witness as to this farm.

A witness may explain the circumstances in which a contract was made, but cannot explain the terms of the contract.

A land-surveyor, who assisted in making the plan of the farm, was asked by the defender, whether he was present at the communing between the parties before the missives were entered into?

Robertson, for the pursuer.—It is incompetent to control the missives by parol evidence.

Jeffrey, for the defender.—I must show by facts and circumstances, which was the plan referred to in the missives.

LORD CHIEF COMMISSIONER.—It is objected that parol evidence is not competent to control a written agreement or instrument, and this is true where the meaning is clear on the face of the writing. This was fixed in England in the days of Lord Bacon, but, in this case, the question is, whether the witness was present at the letting? and, taking the whole matter together, I do not think it is calling on a witness to explain the writing, but to prove the *res gesta* to make the writing intelligible. The

MACLEOD v. MACLEOD.

evidence must be taken in reference to the subject to be tried, and, in the issue, the question refers to the missives of lease, and these again refer to a plan of the estate, not a plan of the particular farm; and how are we to find out this plan, except by the person who made it? The witness is not to explain the words of the contract, but the *res gesta* out of which the contract arose.

A plan ought not to be produced as evidence, but as explanatory of the testimony.

An objection was taken to a plan being produced.

LORD CHIEF COMMISSIONER.—If this was the plan said to be referred to, the missive would refer to what was not in existence, as this was not made till subsequent to the date of the missives. The rough plan on the table is the one which makes this intelligible; and if any one is to be evidence, that must be the one, or rather it may be shown to the witness to recal the circumstances to his mind, and you may then ask him, whether he afterwards made a complete plan, and whether he laid down upon it the division according to the pencil line upon the rough plan? You ought not to give the plan as evidence, but to make the witness describe the line, so that you can make the plan.

STRACHAN v. GRAHAM.

Copies of the plans were put into the hands of the Jury, his Lordship telling them, that they were not to consider the plans as evidence.

The case proceeded, and the Jury returned a verdict, finding that the pursuer did not get the whole land, and assessing the damages at L. 435.

Mathison and *Robertson*, for the Pursuer.
Jeffrey and *Marshall*, for the Defender.

PRESENT,

THE LORD CHIEF COMMISSIONER.

1824. July 12.

STRACHAN v. GRAHAM.

Finding for the defender in a reduction on the ground of usury.

AN action of reduction of a bond on the ground of usury.

ISSUE.

"It being admitted, that, on the 29th day "of November 1810, the pursuer, along with "Charles Gray, Esquire of Carse, granted to "the defender the bond in process, for the "sum of L. 2000 Sterling, lent by the de- "fender to the said Charles Gray, under con-