specified particular acts of unchastity in November and December 1865 and January 1866.

In the course of cross-examining the woman upon whom the crime was said to have been committed, the prisoner's counsel proposed to ask her—Have you ever asked men into your house at night during the last six or seven years?

The ADVOCATE-DEPUTE objected to the question, because the only particular acts of which notice was given in the defence were limited to three months before the crime charged.

Replied, That the question was asked in support of the general averment of bad character. The question would be incompetent if it related to an isolated act six or seven years ago, but the panels offered to connect any such act by a continuous course of unchaste conduct down to the date of the alleged crime—Reid, 18th December 1861, 4 Irv., 124.

Lords COWAN and JERVISWOODE refused to allow the question to be put. The proof of isolated acts of unchastity six or seven years ago was irrelevant, and the defence contained no averment excepting as regards acts within three months of the crime.

After the examination of some witnesses, the charge was withdrawn and the panels liberated.

COURT OF SESSION.

Tuesday, May 15.

FIRST DIVISION.

BROWN *v.* JOHNSTON.

Process—Reclaiming Note—Competency. A reclaiming note in a suspension presented without a full copy of the note and answers appended to it, refused as incompetent.

William Brown presented, in the Bill Chamber, a note of suspension of a decree of removing pronounced against him by the Sheriff of Edinburgh, which the Lord Ordinary officiating on the Bills (Benholme), after answers were lodged, refused. Brown reclaimed.

JOHNSTONE, for the respondent, objected to the competency of the reclaiming note (1) that there was not appended to it a full copy of the answers to the suspension, as required by sect. 75 of the Act of Sederunt of 11th July 1828, which enacts "that there shall be printed and appended to every such reclaiming note a full copy of the bill, or bill and answers, and no reclaiming note shall be received or advised without having such copy annexed thereto;" and (2) that there was not appended a print of the inferior court record, as required by sect. 6 of the Act of Sederunt of 24th December 1838, which enacts that there shall be appended to the reclaiming notes "in all suspensions of final judgments of inferior judges a copy of the note of suspension, with the statement of facts and note of pleas-in-law, and the answers thereto, and also of the summons and defences, or record (if any), in the inferior court." He cited the cases of Simpson *v.* Somers, 22d May 1852, 14 D. 773; and Dickson *v.* Shirreff, 9th June 1830, 8 S. 895.

W. N. M'LAREN, for the reclaimer, argued that the Act of Sederunt of 1838 was directory only, and that it was subsequent to, and must be held to have repealed, the previous Act of 1828. But, even if the latter Act were still in force, it only required the printing of the note and answers, which had been done in this case, although, by a printer's mistake, it had been omitted to print that part of the answers containing the respondent's counter-statement of facts. He cited Meldrum *v.* Crichton, 1st July 1841, 3 D. 1132, and Fairman *v.* His Creditors, 5th December 1840, 3 D. 192.

The LORD PRESIDENT—I think the provision of section 75 of the Act of 1828 is in force. No doubt, under the other Act, the provision is only directory and not peremptory, and if that Act had stood alone the question here would have been different. But in the Act of 1828 there is a sanction of nullity. The only answer made is that there has been an accidental omission. I hold the counter-statement to be a part of the answers. As to the omission to print it being accidental, I am not disposed to receive that as an excuse. It is an important omission. If it be the fact that the printer made a mistake, it was the duty of the agent to correct it; and if there has been negligence on the part of the agent, I think that is a thing which we should not encourage. It is therefore our duty to refuse the note.

Lord CURRIEHILL concurred.

Lord DEAS—There is here a degree of slovenliness that we should not encourage. In the table of fees there is a charge allowed to an agent for revising proofs.

Lord ARDMILLAN also concurred, and said that there should be no doubt left that section 75 of the Act of 1828 is still operative.

The reclaiming note was accordingly refused as incompetent.

Agent for Reclaimer—A. Hill, W.S.

Agents for Respondent—Scott, Bruce, & Glover, W.S.

DUFF, ROSS, AND COMPANY, AND ANOTHER *v.* KIPPEN AND ANOTHER.

Proof—Trust—Writ or Oath—Act 1696, *c.* 25—An averment that a conveyance of machinery was not absolute, but merely in security, can only be proved by writ or oath under the statute 1696, c. 25.

This was a suspension and interdict presented by Duff, Ross, & Company, engineers in Glasgow, and John Ross, residing there, against Richard Kippen, now or lately residing in Glasgow, and William Anderson, accountant there, his commissioner or factor. The complainers sought to have the respondents interdicted from advertising or otherwise offering for sale, and from selling or disposing of, and from removing or taking away, the moveable machinery, implements, apparatus, and utensils at present within the premises No. 289 Garscube Road, Glasgow, and known as the Oakbank Engine Works, and which premises are now occupied by the complainers.

It appeared that John Duff was, prior to 1861, proprietor of certain heritable subjects at 289 Garscube Road, Glasgow, in which he carried on the business of an engineer, and that in 1858 he burdened these subjects to the extent of £1700, granting a bond and disposition in security over them for that sum. In 1861 a further sum of £2000 was paid to Duff by the respondent Kippen, and Duff granted a disposition conveying to him "all and whole the foresaid subjects in Garscube Road, known as the Oakbank Engine Works, together with the whole machinery, implements, apparatus, and utensils situated therein, and specified in an inventory thereof, docqueted and subscribed as relative thereto."

The complainers averred that this disposition, although *ex facie* absolute, was in reality granted