Saturday, March 7.

THOMSON *v.* POLLOCK & COMPANY.

Plea to Exclude Action—Voucher—Adoption of Account. In an action of accounting, a plea that the action was excluded prior to a certain date by a letter of that date admitting the accounts to be correct, *repelled.* Observed that the document would have its proper effect in the accounting.

This was an action at the instance of the trustee on the sequestrated estates of The Bridgeton Silk Spinning Company, Glasgow, against James Pollock & Company, merchants, Paisley, the principal conclusion being for production of accounts of the yarns consigned to the defenders by the Company, and of the sales effected by the defenders as agents for the Company, from 1st August 1863 to 1st December 1865; and of the yarns returned by the defenders, and of the commission charged by them as agents. The defenders, in answer to averments by the pursuer as to inaccuracies in the defenders' accounts, stated: "The defenders have regularly rendered accounts, as stated by the pursuer, and to these accounts they refer. Prior to the sequestration, the bankrupt made no complaints of the accounts, which were periodically rendered by the defenders to them; and on the 11th February 1865, they wrote to the defenders the letter of that date, herewith produced, in which they stated that they had carefully examined the defenders' accounts, and compared them with the monthly account-sales and accounts-current, and adopted the balance shown therein as correct." Their first plea in law was: "The action, in so far as it is directed to opening up the accounts for the defenders' agency transactions prior to 31st December 1864, is excluded by the letter of the Bridgeton Silk Spinning Company to the defenders, dated February 11, 1865."

The Lord Ordinary (JERVISWOODE) pronounced this interlocutor: "*11th February* 1868.—The Lord Ordinary, having heard counsel on the 1st plea in law stated for the defenders, and made avizandum, and considered the record and whole process, repels the said 1st plea in law for the defenders, and appoints the cause to be enrolled with a view to further procedure."

The defenders reclaimed.

SHAND for reclaimers.

LAMOND, for respondent, was not called on.

LORD CURRIEHILL—The defenders have thought proper to state a defence going to exclude the action, in respect of this document, contending that it is an incompetent action, and ought to be excluded prior to the date of the document. The Lord Ordinary was called on to deal with that plea as a plea to that effect. He has repelled it, and I think he was right in doing so. The document will have its full effect in the accounting.

LORD DEAS—I have no doubt that the Lord Ordinary was right. This is an action of count and reckoning between these parties from one particular date to another. The ordinary course of such an action is, that it goes on to the end, and, at the end, when the cases of both parties are completed, the accounting is disposed of, and proper effect given to each voucher. A plea of title to exclude is well understood as a prejudicial plea in certain circumstances; but to found upon the production of a particular voucher as a title to exclude is something altogether new. The whole reason why this judgment has been pronounced is that the defender has stated the plea in this particular form. All that the Lord Ordinary has done is to repel the plea as stated; and the defender admits that he asked a judgment upon that matter. He says no doubt that the other party did not object. But it very often happens that both parties are desirous that the Lord Ordinary should, at an early stage of the cause, decide a point which ought not to be decided at all. The result of which is, that a number of reclaiming notes are presented, and much time lost.

LORD ARDMILLAN concurred.

The LORD PRESIDENT absent.

Agents for Reclaimers—J. W. & J. Mackenzie, W.S.

Agents for Respondents—Neilson & Cowan, W.S.

Saturday, March 7.

FRASER *v.* MACNEE.

Jury Trial—Change of Place of Trial—Nature of Evidence. Place of trial changed from Inverness to Edinburgh, it appearing that the evidence would mostly consist of evidence of skilled medical witnesses, better procurable at Edinburgh than at Inverness.

The pursuer of this action was Catherine Fraser, Munlochy, in the county of Ross, and the defender was Dr James Macnee, surgeon, there.

The following issue was adjusted:—

"Whether, on or about the 7th February 1867, the defender, maliciously and without probable cause, communicated or caused to be communicated to the procurator-fiscal of the western district of Ross-shire, false information or representation concerning the pursuer, to the effect that she was guilty of concealment of pregnancy, in consequence of which the pursuer was apprehended on a charge of concealment of pregnancy, and incarcerated in the prison of Dingwall, from 8th to 21st February 1867, to the loss, injury and damage of the pursuer?"

Damages laid at £300.

The case was set down for trial at the Spring Circuit at Inverness, but the defender applied to have the place of trial changed to Edinburgh, on the ground that the case would mainly turn on medical evidence, which would be more easily and cheaply procured at a trial in Edinburgh than at a trial in Inverness. The pursuer objected, on the ground that she ought not to be compelled to bring her witnesses from Ross-shire to Edinburgh.

WATSON for defender.

STRACHAN for pursuer.

The Court held that, in the circumstances of the case, it was expedient to grant the defender's motion. The material inquiry in the case would be whether, as a matter of medical skill, the defender was or was not justified in the view which he took of the pursuer's condition. If the pursuer's case was good, it was, in fact, her own interest to have the best evidence possible, and that would be had with greater ease and with less expense in Edinburgh than in Inverness.

Agent for Pursuer—J. Barton, S.S.C.

Agents for Defender—Adam & Sang, S.S.C.