

HOUSE OF LORDS.

Friday, June 19.

(Before the Earl of Selborne, and Lords
Watson, Bramwell, and Morris.)STEWART v. ROBINSON AND
OTHERS.

(Ante, vol. xxvii., p. 819; and 17 R. 1060.)

*Church—Glebe Boundaries—Decree of Pres-
bytery—Ambiguity—Extent of Glebe
Boundary—Excambion—Possession.**Held* (aff. judgment of the First
Division) that a decree of Presbytery
drawn up for the purpose of fixing the
boundaries of a glebe was unambigu-
ous, and that therefore its limits could
not be extended by evidence of posses-
sion of a larger boundary.This case is reported ante, vol. xxvii., p.
819, and 17 R. 1060.

The defender Stewart appealed.

At delivering judgment—

EARL OF SELBORNE—My Lords, having heard the arguments on behalf of the appellant in this case, your Lordships do not think it necessary to call upon the respondents for further argument. So far as the law is concerned there seems to be no question about it. If in the minute of Presbytery the boundaries of the glebe in question are unambiguously defined, no evidence with regard to subsequent user will be available to enlarge or extend those boundaries. If, on the other hand, there is an ambiguity it may be removed by evidence, and for that purpose evidence of the actual enjoyment might be very material. In the present case if there were such an ambiguity I should, for my own part, have been prepared to hold that the evidence is sufficient to show an actual enjoyment up to what has been called the watershed, and if evidence of such an enjoyment, taken in connection with the terms of an ambiguous minute of boundary, could fix the boundaries in a manner consistent with some reasonable interpretation of the minute and with those facts, that evidence might be very important, but I believe that the general opinion of your Lordships is that in this case there is no such ambiguity as to admit that evidence.

Now, my Lords, in the first place, when we speak of the presence or absence of ambiguity, and of a document being clear or not, and so forth, we mean all that in a reasonable way—that is to say, you must look at the proper construction of the document, and when you have got that, it will be apparent whether there is ambiguity or not. And I cannot help observing that the object of this document being to fix boundaries, and in the latter part of it the decerniture being that “the whole arable land, hill pasture, moss and muir, within the said boundaries is to be the

exclusive property of the minister of Lochlee,” it certainly would be a strange failure to accomplish the object in view if the minute did not so fix the boundaries that from its terms a competent surveyor might lay them down. Now, from the terms of this minute, as the Inner House have read it, and as, my Lords, I read it, it is perfectly possible for a competent surveyor to lay down the boundaries both upon the west and upon the east side (I call them so for shortness, although they are not exactly east and west), and that would result from two straight lines meeting at the point which is marked W on some of the plans, where there is a source or open spring of water, at certain times of the year at all events, running down to the burn of Glascourie, and which, according to the evidence, I have no hesitation in saying may well be “the source” mentioned in this minute, because it is the highest and furthest source, beyond which there is nothing which forms part of the open stream or burn. Well, as a matter of fact, a competent surveyor, taking the direction of this minute to be to draw two straight lines up to that source, would draw them so that they would meet there, and fulfil both the general purpose of the instrument and, as it appears to me, the natural construction of all its words; whereas, on the other hand, I think that would be absolutely impossible for any surveyor, or all the surveyors in the world, to lay down from this minute an irregular line which shall run round the water-shed in the manner contended for by the appellant’s counsel.

When we come to the particulars of that part of the minute which deals with the boundaries (postponing for the moment all reference to what I may call its preamble—its introductory words), we find that what the Presbytery first do is “to fix the march stones for the new glebe.” I should say that, *prima facie* at all events, the purpose of fixing the march stones is to place march stones in such a position that the boundaries of the glebe by means of them may be ascertained. These march stones are four in number, two at the foot of the glebe, the lower part of it on the west side, and two on the east, and in each case near to each other, but so fixed that a straight line drawn through them both on each side will, if prolonged, meet at the point afterwards mentioned and called “the source of the burn of Glascourie,” if I am right in holding that upon the evidence the spring at the point W may be regarded as that source. Well, there being no other boundary stone so laid down, no other cairns or other means taken to mark the different points of deviation or departure of any irregular boundary, I should say that those march stones being sufficient to be the march stones for the new glebe, and not only for two very small pieces of land at two corners of it, that shows *prima facie* that the object is to lay them down in such a line as, if prolonged, will give the apex or terminus where the two lines intersect, and in point of fact we

find that they do so if you draw straight lines through them.

It might be said, and perhaps with some force, that if nothing were said about straight lines, such an inference, though a natural one, might not be a necessary one. But the instrument goes on to speak of straight lines—on the east side unequivocally—because having got up to the source of the burn of Glascurie on the western side, the instrument proceeds “and from thence in a straight line to Scot’s Well.” About that there can be no doubt. In fact the appellant is compelled to ask your Lordships to treat a line which is anything but straight at the time there intended, on the ground that it had some sort of previously ascertained existence, and that a man standing on that apex on the water-shed and looking towards Scot’s Well might possibly confound it with a straight line. But is that the way in which the instrument is intended to be expounded or is to be construed? An infinitesimal deviation from straightness, arising from putting a particular stone an inch or two too much on one side of the line, may easily be overlooked and reconciled with the practical meaning of the words. But I think that on this east side the appellant’s argument cannot possibly be maintained.

Well, but is there nothing said about a straight line upon the west side? On the contrary, although it is put in a rather clumsy manner, so as perhaps to raise some immaterial question as to the exact construction of the words in that context, yet it is put in, and I cannot for the life of me imagine why it should have been put in at all if it were not material and necessary for the purpose of the instrument. “They proceeded to fix the march stones for said new glebe as follows, viz.,” first, the lowest of them—that is, on the west side—“on a hillock at the foot of the Broad Pool of Dalhowan, and then proceeding on a straight line to the source of the burn of Glascurie, another stone near the foot of the hill.” Now, for my own part, I think the words “to the source of the burn of Glascurie” are to be taken as defining the particular straight line in which they were proceeding; but I venture to think that it was intended first to proceed to the second boundary stone, and then to go on to the source of the burn of Glascurie, which was already defined when the second boundary stone had been placed; and if that is so, there is an end of the question, because it goes on—“from thence passing by the prop of Greenbush to the source of the said burn of Glascurie”—not reasonably admitting of the idea of any deviation from the straight line already described as “a straight line to the source of the burn of Glascurie.”

Therefore, without going out of the instrument, I should have said that it was unambiguous. But I agree with what was argued on the part of the appellant, that to this extent you might go further—you might incorporate by way of reference in the instrument so much of the earlier recorded proceedings of the Presbytery as

would enable you to know what was the line of march formerly specified which they proceeded to view, and from which, at all events, apparently there was no intention of departing. If for that purpose you look back to the proceeding of the Presbytery, where they do apparently finally (for there is no indication of any departure from it afterwards) determine what shall be the line of march, you will see that the words are unequivocal—they are between F and G, “the exclusive property of the hill pasture marched off by a straight line drawn from the Broad Pool of Dalhowan to the source of the burn of Glascurie,” so that if we are to look at that—and I think we may if we can derive any assistance from it—it is clear that the previous specification had been of a western boundary marched off by a straight line between those very same points which we find indicated in the minute itself.

My Lords, I think that under these circumstances it is impossible to treat this minute as having failed of its evident object, which was to fix the boundaries upon the land. To me that seems to have been done in a very effectual and proper manner, and therefore I cannot help advising your Lordships to affirm the interlocutor of the Inner House and to dismiss the appeal with costs.

LORD WATSON—My Lords, the first, and in my opinion the only question which it is necessary to decide in this appeal relates to the construction of a minute of the Presbytery of Brechin, dated June 21, 1803, designing the new parochial glebe of Lochlee, and fixing the line of hill boundary between the glebe and the estate of Brechin now belonging to the young Earl of Dalhousie, whose tutors-nominate are respondents.

The case set up by the appellant, the present minister of the parish of Lochlee, is that the description of the hill boundary on the north-west, north, and north-east of the glebe is characterised by such ambiguity as to justify a reference to the actual state of possession since the date of the minute for the purpose of ascertaining the true line of march which it was meant to describe. It was conceded in argument, and it does not admit of dispute, that if the description is in itself unambiguous, and is capable of being applied to existing localities, the actual possession, however long-continued, is of no relevancy according to Scotch law.

The disputed boundary at each of its extremities starts from a straight line clearly indicated by two march stones set at some distance from each other. At the north-west end that straight line is admittedly protracted to a cairn known as Green Bush Prop, and at the east end to Badadarrach cairn. Between these cairns the march, according to the appellant, runs in an irregular line along the rigging or watershed of the hills enclosing the burn of Glascurie, which runs through the glebe until it enters the Water of Mark. According to the construction of the minute for

which the respondents contend, the two straight lines already mentioned are prolonged until they intersect each other on the north at a point which is described in the minute as "the source of the burn of Glascurie." I entirely concur in the construction put by the learned Judges of the First Division upon the language of the minute itself. By its terms the north-eastern boundary is expressly stated to be a straight line from the source of the Glascurie Burn to its southern extremity, such line passing through the two march stones already referred to. As regards the north-western boundary, its terms are not so precise, but it certainly appears to me that, according to their primary and natural signification, they indicate a straight line of march from Green Bush Prop to the source of the burn in extension of the admitted line of boundary from the Broad Pool of Dalhowan to the Prop. So far there appears to me to be no ambiguity, but in such a case a latent ambiguity may be disclosed if the march described is found to be irreconcilable with the natural features of the ground. In this case no such discrepancy is to be found. The proof is to my mind conclusive that the highest source of the Glascurie Burn is a perennial well-head or spring from which it issues for the first time in a definite water-course, and that such well-head or spring is the very point at which converging straight lines drawn through the initial march stones have their intersection. In other words, the natural features of the ground are consistent with and support what I conceive to be the natural meaning of the minute of Presbytery.

Having regard to the terms of the minute, and to the nature of the localities to which it applies, as these appear from the evidence, the ambiguities suggested in argument for the appellant appear to me to be quite inadmissible. In the first place, it is suggested that the boundary on the north-east, which is described in the minute as a "straight line," may and ought to be taken to be an irregular crooked line. In the second place, it is suggested that the source of a burn is not the spot at which it has its genesis as a definite stream, but must be taken to mean the whole catchment area which can possibly feed the burn by means of rain-water percolating downwards to the point at which it emerges into existence as a burn. I do not wish to go the length of saying that in no possible context can the expression "source of a burn" signify its catchment area. But I am of opinion that such is not the natural interpretation of the words of the minute, and also that there are circumstances in this case which make that interpretation impossible in any reasonable sense. In the minute "the source of the burn" is obviously used to denote a fixed point at which the north-western and north-eastern boundaries of the glebe meet each other. According to the ingenious suggestion of the appellant, it would not be a point of that kind, but a tract of territory which determines by far the larger part of the boundary, both on

the north-west and north-east. The appellant seems to have been conscious of that difficulty, and he has accordingly sought to avoid it, both in his written pleadings and in his argument, by representing the source of the burn to be, not its catchment area, but the highest point in that area. It is sufficient to say that the argument compelled him to fix as the source of the Glascurie burn a dry stone cairn on the top of the highest hill in its vicinity.

The appellant maintained that in construing the minute which refers to "the line of march formerly specified," it is competent to go back to previous minutes for the purpose of ascertaining what the boundary formerly specified was, and in my opinion the reference back is to that extent legitimate. I do not think that if a different march had been previously specified, that circumstance would qualify the terms of the ultimate designation by the Presbytery, if those are plain and unambiguous. But there is really nothing in the antecedent proceedings which can aid the appellant's case. On the contrary, in the immediate preceding minute of 6th October 1802, the north-west march is described as "a straight line drawn from the Broad Pool of Dalhowan to the source of the burn of Glascurie," which is the same boundary with that laid down in the minute of 21st June 1803.

In these circumstances I have had no difficulty in holding that the interlocutor appealed from ought to be affirmed with costs, and I therefore concur in the judgment which has been proposed by your Lordship in the chair.

LORD BRAMWELL.—My Lords, I must say I think that this is a very plain case. It seems to me that the intention of the minute of Presbytery may be concisely stated in this way. The southern or south-western or south-eastern boundaries were to be the streams which are mentioned. The other boundaries were to be two straight lines, which were to meet at a source, and were to start from places designated, and their direction was indicated by two march stones which were placed down, and it does, as I have said, seem to me the very plainest thing that ever was that the lines were to be straight and in the direction of the march stones. The space comprised between those two straight lines and the streams below was to be the glebe. The minute says—"They proceeded to fix the march stones, viz., on a hillock at the foot of the Broad Pool of Dalhowan, and then proceeding in a straight line to the source of the burn of Glascurie." That, to my mind, indicates one stone clearly, and a straight line from it to the source of the burn of Glascurie. But in order to see in what direction that straight line was to go, they say, "another stone near the foot of the hill, from thence passing by the prop of Greenbush." It was said, what necessity was there to say that if it was to be a straight line indicated by the direction of a line drawn from one stone to the other? Perhaps there was

no necessity to do it, but it was not an unreasonable thing, and where things are otherwise plain, to urge that a needless expression is to alter the meaning I think is erroneous. Then it goes on, "passing by the prop of Greenbush to the source of the burn of Glascurie, and from thence in a straight line to Scot's Well, in which line there are two march stones planted." Now it appears that if a straight line was drawn in the line of the two stones on the western side it would not go to anything which could properly be called a source, because it would go to a place, it is said, 115 yards below the source now relied on. To my mind that is immaterial. The discrepancy is fairly attributable to this—that the western stones were not put down with that precision with which they probably would have been if it could have been contemplated that such a dispute as this would arise, but what one may say is practically a straight line in the direction of the line between those two stones reaches to this spring. Well, as I say, the stones may not have been very accurately put down, or one of them may have sunk a little or been knocked in some way or another out of its position. I therefore hold that the course of the two straight lines is indicated practically, and where they are to meet is indicated by the words that they are to meet at the source of the burn.

I think this source is properly called a source. If there was a much greater quantity of water at that collection of springs which is a little to the south-west of the particular source that I am dealing with, I do not say but what those might have been called the source, and the spring from this might have been called a tributary. I do not say that that would have been wrong, but I am quite certain it is not wrong to call this, from which the longest course of the burn issues, a source. Well, I cannot help thinking that one does have a very plain indication that two straight lines are to be drawn in the lines of the march stones, and are to meet at the source, and that is what the respondents contend for.

Now, my Lords, just let us see what construction it is that the other side contend for. What they say is—"And then proceeding in a straight line to the foot of the hill, and thence round by the watershed." That is what they read into this minute, and that is what they say we ought to attribute as the meaning of the words used, that the western straight line is to go no further than the foot of the hill, and that then for some reason or another we are to put into the minute that it is to go round by the watershed. But then comes this difficulty, where is it to go to? This, which is not a straight line, is to stop where? I think that construction is impossible, because the only way to deal with it in that case would be to say, "to go along the watershed somewhere and then in a straight line to Scot's Well." But where is the place from which a straight line is to begin to run? It is suggested that it is to begin to run, not from a source,

but from a thing which may be ascertained in this way—it is some spot on the ridge which is the highest point of the watershed. Well, but why—why is it to go there? What is there in this minute to indicate that it is to go there? Absolutely nothing.

Now, my Lords, just one word upon this other point. It was said that this is a very inconvenient sort of boundary, because you have to go down into the corrie or glen and up again, and it would be much more convenient to have it somewhere else. But the boundary of an estate is not objectionable merely because if you were walking along the boundary you would have to go down precipitately on one side and to go up again on the other. People do not want their estates bounded so that it is convenient to walk along the boundary, and I suppose for practical purposes, except for one thing which I am going to mention, this boundary is as good and convenient as any other, and it could be as well fenced off by a wire. If this dispute had been contemplated I have no doubt that more boundary stones would have been placed along these straight lines.

But there is certainly one very remarkable thing. I hold that there is very good evidence from which we may conclude that as soon as this boundary was elaborately put down, in what I think are very plain terms, everybody disregarded it and looked upon the watershed as the boundary by some arrangement between the shepherds on the one estate and the shepherds on the other. Well, if there were an ambiguity about it, if there were a rational way, as it seems to me, of holding that what the shepherds did was in conformity with some interpretation of this minute, I should have been very much impressed by some of the evidence which has been given, and should have been strongly inclined to think that the appellant had a case. But there is no possibility of reconciling what the shepherds did with the minute, or, I suppose I might say, what the owners of the estate did, though the shepherds appeared to have looked upon it as very much a matter between the shepherds on the one estate and the shepherds on the other. I should have been very much impressed with that if there had been an ambiguity, but there is no possibility of reconciling what the practice was with the clear and intelligible minute, and I can very well understand how the shepherds came to do what they did. I dare say no one of them ever saw the minute.

It appears to have been only recently discovered by the agents for the respondents. Probably none of the people on the estate ever saw the minute, and it does appear that it is a convenient thing that the watershed should be a boundary, because I suppose when a watershed is a boundary the boundary is obvious and known to the persons concerned, and there is not the same chance of people trespassing as there otherwise would be.

My Lords, I must say I do think that this is a very plain case, and I doubt

whether I ought to have laboured it as much as I have done.

LORD MORRIS—My Lords, I regret very much that I cannot concur in the judgment proposed. There does not appear to me to be any difference between the learned Judge Ordinary and the Judges of the First Division on appeal as to the general principle of law applicable to the case, nor does it appear to me that there is any difference between the law of Scotland and the law of this country in this matter. I apprehend that it is elementary that if the minute of Presbytery of the 21st of June 1803 is explicit in its description of the boundaries so as not to be fairly susceptible of ambiguity, it cannot be varied or controlled by evidence of actual possession of a contrary import. On the other hand, if it is ambiguous, it can be construed by evidence of possession and user.

My Lords, I entertain a strong opinion that it is not explicit in two points, but is ambiguous. First, I am not at all satisfied that it explicitly or clearly states that the boundary of the straight line B to C, which it is admitted is to be a straight line, is to continue in a straight line from that point C to the source of the burn of Glascurie. It appears to me to be clear that the march stones to be fixed are, first “on a hillock at the foot of the Broad Pool of Dalhowan,” namely point B, and another at the foot of the hill, namely point C. From that point the boundary is not stated to go in a straight line, but it is stated that it is to pass “by the prop of Greenbush to the source of the burn of Glascurie.” Why necessarily in a straight line? It does not say so in terms. If it was intended that after proceeding from thence it was to be in a straight line, they could have said “from thence in a straight line passing by the prop of Greenbush to the source of the burn of Glascurie.” It appears to me that the dropping out of the words “in a straight line,” as applicable to the boundary described by the words “from thence,” and so on, was intentional. At all events, that is fairly arguable, and it appears that the introduction of the words “passing by the prop of Greenbush” corroborates that view; for what necessity was there for introducing them if the intention was that it was to go from thence, that is, from C to the source of the burn of Glascurie in a straight line. Again, the words “in a straight line” are introduced where they proceed to give a description of the north-eastern boundary from the source of the burn to Scott’s Well.

I am also satisfied that there is much ambiguity in the meaning of what is to be interpreted as “the source of the burn of Glascurie.” Mr Cunningham, a witness examined for the pursuers, says that the spring at W is the source—as he describes it, the true source—of the burn, while Mr Bett, a gentleman of apparently equal experience, examined on the part of the appellant, says that the source is the highest point from which water supplies the burn. My own experience, which is

not inconsiderable in that class of country, would lead me rather to agree with Mr Bett, but suffice it to say that the matter is arguable. And in my opinion, the phrase used in this minute requires interpretation by an observation of the locality. In giving a meaning to the words “the source of the burn,” I cannot arrive at the conclusion that when these perambulators, who were not engineers with theodolites or other instruments, and were not laying down mathematical lines to meet at mathematical points, used the words “the source of the burn,” they intended to specify any place on which you could plant your foot. They meant, practically speaking, the higher ground from which this rivulet or burn took its source.

My Lords, my own observation leads me to the conclusion that these mountain streams or burns come quite as often from a spongy head where little rills—little channels of water—ooze out from the sponge and join together with accessions which they receive afterwards from the mountain streams, and that they do not always arise, as it were, instantaneously, springing up from any one particular point of earth which can be ascertained. It would appear that in this case the pursuers, the respondents in your Lordships’ House, did not originally fix upon the spring which it is now said is admittedly the source of the burn; they fixed upon another point altogether, viz., point D, when they raised the action in the Courts in Scotland, as being the point at which these two boundaries were to intersect. It was the engineer who fixed upon this as the true source of the burn, as if he was discovering the true source of the Nile or some other great river instead of a little mountain rivulet, of which it is very hard indeed to say what its exact source is except in the immediate neighbourhood.

Then it has been said, how does the appellant fix upon the point? Well, he fixes upon it, as Mr Bett describes it, as the highest point of the watershed which supplies water to the stream in question. They appear to have had no difficulty in defining it, because it has been fixed, according to the evidence, for nearly ninety years, and acquiesced in. There is the clearest evidence of a possession for over sixty years under this minute, according to which the point A, as fixed upon by the appellant, has been fixed upon as the northern point at which these two lines of boundaries were to meet. That is a possession which has been acquiesced in; and while in deference to your Lordships’ opinion I regret very much that I am obliged to dissent from the judgment proposed, on the other hand I rather feel satisfied that I am able to come to a conclusion in favour of a possession which has been proved, and proved conclusively by living witnesses to have existed for over sixty years. This being an ancient document nearly ninety years old, there is evidence to prove that during the whole period of the ninety years which have elapsed since the instrument was entered into

there has been possession according to the contention of the appellant.

My Lords, my opinion entirely concurs with that of the learned Lord Ordinary. I do not detain your Lordships longer, because I adopt in its integrity, both in result and in argument, the opinion of the learned Lord Kinnear, whose interlocutor has been appealed to the First Division and reversed there, and will also be reversed in your Lordships' House.

Their Lordships affirmed the interlocutor and dismissed the appeal with costs.

Counsel for the Appellant—Sir C. Pearson, Q.C., Sol.-Gen. for Scotland—W. C. Smith. Agents—John Graham, for Menzies, Black, & Menzies, W.S.

Counsel for the Respondents—The Lord Advocate—H. Johnston. Agents—Loch & Goodhart, for Mackenzie & Kermack, W.S.

Thursday, June 25.

(Before Lords Herschell, Watson,
and Morris.)

DEWAR v. DEWAR.

(*Ante*, November 8, 1890, 28 S.L.R.
p. 85, and 18 R. 90.)

Incapacity—Partial Insanity—Curator Bonis—Appointment on Petition—Opposition of Alleged Lunatic—Necessity of Cognition—No Absolute Title to Cognition.

In a petition at the instance of a wife for the appointment of a *curator bonis* to her husband, who was a medical man of considerable property, and at the time was confined in an asylum under warrant of the sheriff, it was proved by medical certificates that the husband had a clear and intelligent comprehension of business matters, and in particular of his own financial affairs, but that he suffered from delusions with regard to spiritualism, and entertained groundless feelings of mistrust regarding members of his own family, which might affect the propriety of his directions respecting the management of his own property.

Held (*aff.*) the decision of the First Division (1) that the Court of Session had jurisdiction to entertain the petition; (2) that in spite of opposition, the Court had discretion to determine the nature of the inquiry to be made; and (3) that the certificates produced were sufficient to justify the Court in appointing a *curator bonis*.

This case is reported *ante*, vol. xxviii. p. 85, and 18 R. 90.

The respondent in the Court of Session appealed.

At delivering judgment—

LORD HERSCHELL—My Lords, this is an appeal from a judgment of the Court of

Session affirming an appointment made by the Lord Ordinary of a *curator bonis* in the case of the appellant, who at that time was under detention in an asylum as a person of unsound mind. He was so detained in conformity with the law, by reason of the certificates which were given by two medical men with reference to his mental condition. He being thus under confinement as a person of unsound mind, an application was made by his wife for the appointment by the Court of a *curator bonis*. The appellant opposed any such appointment being made, and those who were acting for him, after putting before the Court the certificates which had been given by various medical gentlemen, to whom I will refer in a moment, "submitted his case to the consideration of the Court" and prayed that "after making such further inquiry as shall appear to the Court to be necessary or desirable in the circumstances, the Court, in the event of considering it necessary that a *curator bonis* should be appointed to the respondent, may be pleased to appoint such person as the Court in its wisdom may select." And then objection is taken to the appointment of the person whose name had been suggested by the petitioner.

Now, my Lords, it appears that on the 20th of May of last year, the appellant, having been confined in the lunatic asylum in the month of April, was examined by two medical men, Dr Stewart and Dr Watson, and that they gave this certificate—"While we should not recommend it as safe that Dr Dewar should be relieved from a restraint which has acted most beneficially in favouring recovery, and is, we believe, fitted to secure the best prospect of ultimate restoration to health, we feel it impossible at the present moment, from facts observed by ourselves, to grant a certificate for the appointment of a *curator bonis*. What we do recommend is delay; and we beg to advise that after the lapse of a month or six weeks a further examination of Dr Dewar should be held for the purpose of deciding upon the necessity of appointing a curatory."

A few days after that, a little more than a week, Dr Dewar was examined by two other medical men, Dr Balfour and Dr Littlejohn—the one on the 28th of May, and the other on the 31st. On the 28th of May Dr Balfour certified that he had "seen and examined" Dr Dewar, and was "of opinion that he is of unsound mind and incapable of managing his own affairs or of directing their management." And on the 31st of May a similar certificate was given by Dr Littlejohn.

My Lords, if the matter had rested only on those certificates it might have been open to some possible question, regarded from a medical point of view, whether Dr Dewar was incapable of managing his affairs, by reason of the terms of the certificates given in the first instance by Dr Stewart and Dr Watson. But naturally enough those who were acting for Dr Dewar as his law agents secured the services of two medical gentlemen in whom Dr