the child's father, nor the child's mother, ever had any such right."

The heritors then say that they ordered a lock to be put on the gate of the churchyard, and the gate to be locked; and that on the 12th of October 1864 it was forced open by the respondents, in consequence of which the present action is brought.

The following statement is then made by the heritors: — "The present proceedings were instituted in pursuance of the resolution of the heritors, convened at the meeting of 22d July 1864, narrated in article 9, *supra*. The complainers represent the whole heritors of the old valuation of the parish, and, along with his Grace the Duke of Hamilton, who by interlocutor of this date was allowed to withdraw his instance, are the whole heritors who pay the cess leviable within the parish, the assessments imposed for the maintenance and repair of the church and churchyards therein, as well as the schoolmaster's salary, and other heritor's assessments leviable upon the old valued rent of said parish."

It is thus answered by the respondents:—"The minute of meeting is referred to for its terms. Admitted that the Duke of Hamilton was allowed to withdraw his name from the instance. Denied that the complainers represent the heritors of the old valuation. Not known, but believed to be true, that the complainers pay a share of the cess, and of the other assessments here referred to. *Quoad ultra* denied. Explained and averred, that besides the complainers and the Duke of Hamilton, there are many heritors in the parish having real rent.

The Lord Ordinary pronounced the following interlocutor:—"The Lord Ordinary having heard counsel for the parties, and considered the closed record, productions, and whole process, repels the first plea in law for the respondents, sustains the reasons of suspension, and suspends, prohibits, interdicts, and discharges, in terms of the note of suspension and interdict, in so far as regards the interdict prayed for against molesting or interfering with the complainers in the management and custody of the old churchyard of the parish of Carriden, by forcing the gate of the said churchyard, or otherwise effecting a violent entrance into the same, and decerns: And with reference to the interdict craved against erecting or constructing headstones or other monuments or memorials of dead or living persons without the leave of, or license granted by, the complainers or their predecessors, the heritors of the parish of Carriden, allows the respondents a proof of their averment that, besides the complainers and the Duke of Hamilton, there are many heritors in the parish having real rent; Appoints the cause to be enrolled, that the parties may be heard as to the mode of proof: And as to the remaining portions of the prayer for interdict, repels the reasons of suspension, refuses the interdict, and decerns, and reserves all questions of expenses."

And his Lordship observed in his note:—"After the judgment of the House of Lords in the Peterhead case, 4 Paton, 356, and of this Court in Boswell *v.* Hamilton, 15 S. 1148, and the application of the principle of these decisions to the case of a manse, which the Lord Ordinary understands to be implied in the opinions of the Judges in the case of M'Farlane *v.* Monklands Railway Company, 2 M'Ph. 519, he is not prepared to hold it clear that the whole owners of lands or houses in a rural parish are not entitled to take part in the custody and management of the churchyard. The question is one of public importance, and before any judgment is given upon it, the fact as to the existence in the parish of heritors not paying cess should be ascertained. The Lord Ordinary suggested at the debate that [this might be made matter of admission, but the parties did not so arrange it. This may perhaps still be done, if the complainers are to insist in the remaining branch of the prayer for interdict."

The heritors reclaimed. To-day the Court, without pronouncing on the question raised in the note of the Lord Ordinary, whether owner of houses or lands in a rural parish are entitled to take part in the custody and management of the churchyard, in respect it was admitted that there were other heritors in the parish paying real rent in addition to those who paid valued rent, recalled the interlocutor of the Lord Ordinary, but granted the interdict craved, except in so far as it applied to the opening of graves.

Thursday, March 8.

FIRST DIVISION.

CAMERON *v.* MURRAY AND HEPBURN.

Master and Apprentice—Indenture. Held (aff. Lord Mure) that an indenture which bore to be entered into by an apprentice with the advice and consent of his brother was binding on the apprentice, although the brother had not signed it.

Master and Apprentice—Desertion of Service—Common Law Procedure—Civil and Criminal. An apprentice having deserted his service, his masters presented a petition to the Sheriff praying for an order on him to return and for warrant to imprison him until he should find caution to remain in his service till the expiry of his indenture, and the Sheriff ordered the petition to be served on the apprentice and appointed him to enter appearance, under certification that if he failed the prayer of the petition would be granted. *Held* (aff. Lord Mure) that as this was a civil proceeding the Sheriff was entitled to proceed in absence and without proof to grant the prayer of the petition.

Counsel for Suspender—Mr F. W. Clark. Agent—Mr David Forsyth, S.S.C.

Counsel for Respondents — Mr G. H. Pattison. Agents—Messrs H. & H. Tod, W.S.

The suspender, who is seventeen years of age, bound himself as an apprentice to the respondents, who are blacksmiths in Galashiels, for four and a half years from and after 15th May 1865. A deed of indenture was drawn out, and signed by the suspender and respondents in November 1865. On 23d December 1865 the suspender deserted his service, and on 6th January 1866 his masters applied to the Sheriff of Selkirkshire to ordain the apprentice to return to his service, and to grant warrant for his imprisonment until he should find caution to return, and to remain in his service until the expiry of his apprenticeship. On 30th January the Sheriff-Substitute (Milne) held the apprentice as confessed, ordained him to return to his service, and granted warrant to apprehend and imprison him in the prison of Selkirk, therein to remain until the expiry of his apprenticeship, or until he should find caution to return to his service and remain therein. The apprentice was apprehended under this warrant and imprisoned. He thereupon presented a note of suspension and liberation, which was refused by the Lord Ordinary (Mure).

He now reclaimed and argued—(1) No indenture was ever entered into by the suspender, because, although the deed was signed by him, yet it bore to have been entered into with the advice and consent of his elder brother, Hugh Cameron, and with him as cautioner; and Hugh had not signed it; (2) it was not competent to grant warrant to imprison him until caution was found, which was, in his case, *factum imprestabile;* (3) at all events it was illegal to grant such a warrant in the absence of the suspender. The following authorities were cited in the course of the discussion—viz., Wright *v.* M'Gregor, 28th June 1827 (5 S. 794); Stewart *v.* Stewart, 21st June 1832 (10 S. 674), and 21st May 1833 (11 S. 628); Raeburn *v.* Reid, 4th June 1824 (3 S. 104); Gentle *v.* M'Lennan & Co., 9th July 1825 (4 S. 163); White

v. Watson, 21st November 1836 (1 Swinton 344), and 2 Fraser 683. The Court to-day adhered.

The LORD PRESIDENT said—This application was presented to the Sheriff on the allegation that the apprentice had deserted his service. The Sheriff appointed the petition to be served on him, and ordained him to enter appearance within four days after service, under certification in case of failure of being held as confessed, and the prayer of the petition being granted. He did not enter appearance, and the Sheriff, in his absence and without proof, held him as confessed, and granted the prayer of the petition. The first ground of suspension is that there was truly no indenture, the document not having been signed by the apprentice's brother. I don't think that objection is sufficient to set aside the obligation which was undertaken by this young man, and which he was legally capable of undertaking. The masters may be in consequence *minus* a cautioner; but I see no other consequence of the want of the brother's subscription. But there is another objection of a more important kind. It is said that the sentence is illegal because it imprisons the suspender until he finds caution, which he cannot do, and because it was passed in his absence and not in his presence, when he might have had an opportunity of explaining to the Sheriff the cause of his absence from his work. Now, this application is a common law one, and not under the statute. It is presented for the purpose of obtaining implement of a contract which the apprentice had entered into, and which he was capable of entering into. I am therefore of opinion that this was a civil process, and that it was competent for the Sheriff to pronounce his first deliverance under the certification expressed in it. It appears that the apprentice was aware of the service of the complaint and of the certification, for although there was not personal service upon him, he states in his suspension his reasons for not appearing to answer. The next question is whether the Sheriff was entitled in his absence to ordain him to be imprisoned. It follows, from what I have said, that he was. Then comes the sentence itself. It is not a warrant to imprison him until he finds caution to fulfil all the conditions of the indenture, but only until he finds caution to return to his service and remain in it. It is not sufficient that he should return, because his having already deserted renders it probable that his return may just be the preliminary to another act of desertion. In the cases which were cited it is nowhere maintained that imprisonment until an apprentice finds caution to return and remain in his service is incompetent. I therefore think that the sentence complained of was competent and legal, and ought not to be suspended.

The other Judges concurred.

Lord DEAS observed that the only novelty or difficulty in this case arose from the fact that the apprentice was cited and proceeded against in his absence, instead of being apprehended in the first instance. The sentence passed might appear startling, but it could not be pronounced illegal without overturning the law, which has been settled by a series of decisions extending over a century. In regard to the question as to whether it was proper to cite or apprehend a deserting apprentice, his Lordship thought that it depended on the circumstances of each case which course should be followed. In most of the recent cases the deserter had been apprehended, and it would be perilous, after what has been done, to say that it was incompetedt to do so. In some cases, such as where there was a combination among the workmen, or where they were in hiding, apprehension was absolutely necessary. Any other course would be useless or impossible. On the other hand, there is nothing to show that what has been done in this case is incompetent. Each case must be dealt with as it occurs. In this case, it is substantially admitted that there was desertion, and the same warrant would have been granted although the apprentice had appeared or been taken before he Sheriff.

All the Judges concurred in saying that if the complainer was willing to return to his service, the Sheriff would be justified in accepting the smallest possible caution, if he was satisfied that the apprentice was not in a position to find caution to any greater amount.

SECOND DIVISION.

SCOTT *v.* MITCHELL.

Cautioner—Relief—Liberation. A having bound himself to relieve B of any loss he might sustain by reason of his becoming security for *an advance* of £150 by a bank to C, and B having become security for *a credit account* allowed by the bank to C, through which he sustained loss, *held* that he had no claim of relief against A.

Counsel for Advocator (Defender)—Mr Gordon and Mr Clark. Agent—Mr David Crawford, S.S.C.

Counsel for Respondent (Pursuer)—Mr Gifford and Mr Balfour. Agent—Mr George Cotton, S.S.C.

This is an action for relief of a guarantee granted by the pursuer to the Clydesdale Bank for £150, which it is contended the defender (Mitchell) by a letter became bound to relieve him of, and the defence is that the document on which the pursuer founds is not one which entitles him to that relief. The original guarantee is contained in a letter granted by the pursuer to the bank, dated 22d June 1853, requesting the bank to give James Wood, watchmaker in Glasgow, a credit account to the extent of £150; and binds the subscriber to pay any balance that may arise due to the bank under the guarantee to that extent. The letter addressed by the defender to the pursuer was dated 15th June 1853, and is in these terms:—"As you have become security to Clydesdale Bank for £150 on account of Mr James Wood, for the purpose of assisting him in his business, I hereby guarantee you against any loss by your so doing." At the date of this letter the pursuer had not interposed his security to the bank for Wood, but had arranged, or was in the course of arranging, to do so. On 22d June, seven days after the date of the defender's letter, the pursuer addressed to Mr Readman, manager of the Clydesdale Bank, the following letter:—"Sir,—I request you will allow Mr James Wood, watchmaker, West Nile Street, Glasgow, a credit account with your bank to the extent of £150, and I bind and oblige myself to see you repaid the balance due, with interest thereon." After receipt of this letter, a credit account was opened in the bank books in Wood's name on 28th June 1853, on which Account Wood continued to operate by drawing and lodging monies to 12th June 1861. At the latter date there was a balance due to the bank of £151 odds. Wood being unable to pay this balance, the bank obtained decree against the pursuer for £150 in virtue of his cautionary obligation. The pursuer then brought his action of relief against the defender, who pleaded—(1.) The guarantee having reference to a specific existing debt, for which the pursuer, as was represented, had at its date "become security" to the bank, and no such debt being then really existing, and no such security having been then granted by the pursuer, the guarantee was inoperative and not binding, and cannot now be enforced. (2.) The defender's guarantee, even although it was otherwise binding, must be strictly interpreted, and cannot be construed to extend to transactions subsequently entered into, to which it has no reference. (3.) The obligation granted by the pursuer to the bank being of a date subsequent to the date of the guarantee subscribed by the defender, and the pursuer's obligation being for a credit account with the bank, which was not contemplated by the defender's guarantee, the guarantee does not apply to the obligation of which the pursuer seeks to be relieved. Before answer, the Sheriff-Substitute (Bell) allowed the defender a proof of his averments, to which interlocutor the Sheriff