enter on their office, I do not see how they could make the election. They may have had an opinion in their own minds that the election of the provisions of the father's settlement might be a good thing for the children, but a mere opinion existing in their minds will hardly be accepted as an equivalent to the discharge of the office of tutor in regard to so delicate a matter as making an election; and therefore I look on all the averments frcm the 6th to the 10th of the defenders' statements as being entirely irrelevant.

The only remaining matter regards the averment made as to what occurred on Mrs Ritchie's marriage. Her brother died in pupillarity, and Mrs Ritchie succeeded to her brother's share of legitim, and therefore she was entitled to the whole of it if she was entitled to any part of it. Mr Ritchie claims as assignee of his wife, and there is no doubt about his title. But it is said that in the marriage contract Mr Craig made a handsome provision in the shape of an annuity, and it is said that Mrs Ritchie and her husband could not take this without homologating the settlement of Mr Craig. That depends, in the first place, upon whether they knew their legal rights. My impression is that all parties were unaware of their legal rights; and in these circumstances it is impossible to hold the acceptance by the daughter of a free gift from the mother as a renunciation of her legal rights. I am therefore of opinion that we should repel the defences, and remit the case to the Lord Ordinary to proceed with the accounting. But as the case does not end here, and the interests of Mrs Craig may be involved, I think it is proper that the process should be intimated to her.

The other Judges concurred; and the case was remitted to the Lord Ordinary.

Agents for Pursuers—Hill, Reid, & Drummond, W.S.

Agents for Defenders—Wilson, Burn, & Gloag, W.S.

Wednesday, May 16.

WHOLE COURT.

CAMPBELL *v.* CAMPBELL.

Declinator.—A Judge having declined on the ground that the mandatory of one of the parties was his brother-in-law, the declinator sustained.

Lord KINLOCH stated that the advocator, Mr Campbell of Boreland, was his nephew by affinity, being the son of his wife's sister, but that, after the recent decision in regard to the declinator of the Lord President in the case of Gordon *v.* Gordon's Trustees, he did not suppose that this relationship would be sufficient to entitle him to decline. But there was another party to this case—namely, General Campbell, who was mandatory for the advocator. He was his Lordship's brother-in-law, being his wife's brother. This relationship, his Lordship continued, was a clear disqualification, for it was decided in the case of Ommaney *v.* Smith, 13th February 1851, 13 D. 678, not only that a mandatory's brother-in-law could not act as judge, but also that procedure which had taken place for seven years, the judge being so related, fell to be quashed. He therefore declined to judge in this case.

The LORD PRESIDENT said that as there was one good ground for sustaining Lord Kinloch's declinator, as settled by the case of Ommaney, it was unnecessary to say anything as to the other. He thought they must sustain the declinator.

The other Judges concurred.

FIRST DIVISION.

TEASDALE *v.* MONKLAND RAILWAYS COMPANY.

Issue.—Form of issue in an action of damages for injuries sustained by a station-master when travelling on a railway engine, the defenders, the railway company, denying that he had any right to be on the engine at the time.

In this case the following issue was proposed by the pursuer:—

"Whether, on or about the 23d day of April 1864, the pursuer, while proceeding to Airdrie on one of the defenders' engines, was severely injured by a quantity of steam and boiling water suddenly issuing from the firebox in connection with the boiler, in consequence of the defective state of the said engine, through the fault of the defenders, to the loss, injury, and damage of the pursuer?"

The pursuer was station-master at Slamannan, but he alleged that the defenders, through their manager, had stipulated with him, as part of their contract with him, that they were to convey him on one of their engines from Airdrie to Slamannan every morning, and back to Airdrie every evening. This was denied by the defenders, and they objected to the issue proposed, that it did not include this disputed matter. They founded on the case of Hamilton *v.* Caledonian Railway Company, 18 D. 999, and 19 D. 457.

The Court altered the issue to the effect of adding after the word "engines," the words, "with the leave of the defenders."

Counsel for Pursuer—Mr Scott and Mr F. W. Clark. Agent—Mr D. F. Bridgeford, S.S.C.

Counsel for Defenders—The Solicitor-General and Mr Mackenzie. Agents—Messrs A. G. R. & W. Ellis, W.S.

SECOND DIVISION.

GARDNER *v.* M'GAGHANS.

(*Ante*, vol. i., p. 205.)

Reparation—Slander—New Trial. Verdict of a jury in an action of damages for slander set aside as contrary to evidence, and a new trial granted.

This was an action of damages at the instance of John Gardner, joiner, residing in Home Street, Edinburgh, against Mrs Mary Keddie, now wife of Michael M'Gaghan, and the said Michael M'Gaghan for his interest. The ground of action was that the defender, within her own residence in Edinburgh, falsely and calumniously accused the pursuer of having stolen her late husband's watch, and thereafter caused him to be apprehended and taken to the Police Office. The following issues were sent to the jury:—

"1. Whether, on or about Monday the 24th day of July 1865, and in or near the female defender's house in Spittal Street, Edinburgh, the female defender, maliciously and without probable cause, apprehended, or caused the pursuer to be apprehended, and thence conveyed to the Fountainbridge station of the Edinburgh City Police, to the loss, injury, and damage of the pursuer?

"2. Whether, on or about the 24th day of July 1865, and on the way between the female defender's house in Spittal Street and the Fountainbridge station of the Edinburgh City Police, the female defender did falsely and calumniously, in the hearing of Mrs M'Gregor,