to be an advance to Thomas Annand of £16, and therefore above the requisite amount. I do not think it alters the case that there might be several servants paid. The character of the advance is to be regarded, not with reference to the persons paid, but to him to whom the advance was made. In this view there was just one sum of £16 advanced (as alleged) at one time to the deceased. The rule, therefore, as to the admissibility of parol evidence does not here apply.

The following interlocutor was pronounced :—

"*Edinburgh, 17th February* 1869.—The Lords having resumed consideration of this cause, with the minute for the claimants John Annand's Trustees and John Annand, No. 62 of process, and the minute for the claimant Mrs Mary Ann Anderson or Annand, No. 63 of process, and heard counsel for the parties; Remit to the Lord Ordinary to grant diligence at the instance of the claimants respectively for recovery of the writings specified in the said minutes, and also to allow the claimants a proof *prout de jure* of the special facts proposed to be so proved in the said minutes with the exception of the facts stated in the 6th and 7th statements for Annand's Trustees, and, with the exception of the proposal in the 5th statement, to prove that the facts set forth in the documents to be recovered are true : Further, with the exception of the facts stated in the 1st, 2d, 3d, 5th, and 6th statements of the claimant John Annand, and with the qualification that the furnishing of board to be proved under the 4th head of his statement is to be limited to the period of ten weeks preceding the 23d October 1866 : Further, to allow the claimant John Annand to prove *prout de jure* the advance alleged to have been made by him of £1, 10s. for his deceased brother Thomas on the 23d March 1867 in payment of the price of 12 bushels of seed potatoes : And, as regards the minute for the claimant Mrs Mary Annand find that she is entitled to recover the writings specified in the 1st and 2d heads of her specification, and, *quoad ultra*, reserve consideration of her demand for proof, and reserve also to the Lord Ordinary hereafter to allow such further parol evidence as the writings recovered may show to be competent and necessary or proper : Find the claimant John Annand liable in two thirds, and the claimants Annand's trustees liable in one third, of the expenses incurred by the claimant Mary Annand since the date of the Lord Ordinary's interlocutor : Allow an account to be given in, and remit to the Auditor to tax the same when lodged, and to report to the Lord Ordinary, and remit to his Lordship to decern for the taxed amount."

Agents for John Annand & John Annand's Trustees—Mackenzie & Kermack, W.S.

Agent for Mrs Annand—Alexander Morison, S.S.C.

Saturday, Febuary, 6.

BLACKBURN *v.* GLASGOW CORPORATION WATER-WORKS COMMISSIONERS.

Possessory Right—Agreement—Servitude. A proprietor of land who had sold part to a water company, with right of access at all times to inspect the works, *held* not entitled violently to remove certain means of access erected by the company, and peaceably possessed by them for upwards of seven years.

In 1858 the appellant, Mr Blackburn of Killearn, disponed to the respondents (petitioners in the Inferior Court), for the purposes of their statutory works, a portion of the lands of Killearn, and a right of servitude or wayleave through certain other portions of the lands, "with right of access to the lands and works on all necessary occasions, for inspecting, maintaining, or repairing the said works," the respondents being bound to pay all surface or other damages caused by them exercising the right of access, besides restoring the land to its original state. The respondents alleged that prior to 1860 they erected certain stiles and gates, with the knowledge and consent of the appellant, and had possessed them without challenge for more than seven years, but the defender had recently, *brevi manu*, demolished these means of access, in order to exclude the inspectors of the corporation from inspecting the works. They petitioned in the Sheriff-court for restoration of their means of access, and for interdict.

The Sheriff-substitute (SCONCE) held that the petitioners were entitled to habitual access to their works, and remitted to a land-valuator to inspect the premises and report as to the facilities which should be afforded to the pursuer, the defender being bound to restore such facilities as might be found reasonable.

The Sheriff (MOIR) adhered.

After the report was given in, the Sheriff-substitute appointed certain works to be done in terms the recommendations.

The respondent appealed.

WATSON and MACDONALD for appellant.

MILLAR and BURNET for respondent.

At advising—

LORD PRESIDENT—If I thought there was anything before us except the possessory question, I should hesitate to affirm the interlocutor of the Sheriff-substitute, for there are a good many findings in law in that interlocutor which we are not bound to deal with, for they are not necessary for determination of the question before us. These findings may stand as innocuous in the possessory question, but I am not to be understood as affirming them. I take a simple view of the case. This Water-works Corporation obtained a permanent right of servitude over these lands, for the purpose of conveying their pipes through the defenders' lands, and they have a full right of access for inspecting their works. Now, it is perhaps difficult to determine what amount of possession of the ground is implied in such a right; but it is unnecessary to consider that, because, after the Waterworks Corporation acquired their right, they took a certain possession, and erected a number of stiles and gates, and other facilities to enable them to have communication on foot from one field to another along the line of works passing through Mr Blackburn's estate. This they did more than seven years ago. Mr Blackburn says he was not aware of these proceedings. But that is immaterial. At a recent date he has *via facti* removed these stiles, so as to prevent that amount of access and that kind of occupation that the Water-works Corporation had previously enjoyed for seven years, and this is the cause of the present application. This application asks restoration of these accommodation works, as they may be called, and interdict against Mr Blackburn interfering with the Corporation in the exercise of that right of access which they have hitherto enjoyed. There is no good answer to that. Mr Blackburn may be right on the

merits of his complaint, that the Corporation are carrying their occupation further than is necessary for their works, but this is not a process in which that can be determined, for this depends on whether there has been, on the part of Mr Blackburn, a violent inversion of the state of possession for the previous seven years. That being so, I see no reason for interfering with the judgment of the Sheriff.

The other Judges concurred, LORD KINLOCH expressing an opinion tha tthe seven years' possession by the respondents was longer than was necessary in the circumstances to support their case.

Agents for Appellant—Mackenzie & Black, W.S.
Agents for Respondents—Campbell & Smith, S.S.C.

Saturday, February 6.

SECOND DIVISION.

WARDROP AND OTHERS, PETITIONERS.

Parent and Child—Right of Administration—Factor loco tutoris. Circumstances in which the Court refused to interfere with a parent's right of administration, and to appoint a factor *loco tutoris* on a pupil's estate.

This is a petition by the trustees and executors of the late Henry Wardrop and certain others for the appointment of factor *loco tutoris* on a pupil estate. At the date of the execution of the trust-deed the truster had had two children by his marriage with Mrs Rosalie Wilhelmine Meyer or Wardrop, viz., Rosalie Augusta Wardrop and Frederick Meyer Wardrop. After specifying certain purposes, the trust-deed provided—"At the majority or marriage of the youngest of my children, the said trustees shall convey my subjects in Queen Street, partly herein conveyed in the sixth place, and partly held by the trustees under my antenuptial contract foresaid, and known by the name of Wardrop's Court, to or for behoof of my children, Rosalie Augusta Wardrop and Frederick Meyer Wardrop, equally, in the following manner, namely, they shall convey the one-half *pro indiviso* to my said son, Frederick Meyer Wardrop, and his heirs and assignees, and the other *pro indiviso* half thereof to my daughter, for her liferent use allenarly, exclusive of the *jus mariti* and curatorial right of any husband she may marry, and not attachable or assignable by or for their debts or deeds, or either of them, and to her children equally, and share and share alike, in fee; whom failing, to her nearest lawful heirs or assignees: Further, I direct my trustees to convey to my said son the following properties—*videlict*, my subjects in King Street and Saltmarket Street, above conveyed in the sixth place, and my lands of Bossfield, Orrfield, Crookedshiell, and my burial ground in the Necropolis; and to hold or convey to or for behoof of my daughter in liferent, for her liferent use alimentary allenarly, exclusive of the *jus mariti* and curatorial rights of any husband she may marry, and not attachable or assignable by or for their debts or deeds, and to her children equally, and share and share alike, in fee; whom failing, to her nearest lawful heirs or assignees, my properties of Alleysbank, shops in Argyle Street, and dwelling-house and attics in Oswald Street: And in order that the direction and appointment relative to my Queen Street properties may be more effectually carried out, I do hereby, in virtue of the powers of direction and apportionment reserved to me in my antenuptial contract foresaid, direct and appoint the trustees under said antenuptial contract to convey the *pro indiviso* half of said Queen Street property held by them equally to or for behoof of my said son and daughter, and their foresaids, as aforesaid, subject always to the liferent therein provided to my said spouse: Further, should my trustees deem it proper, they may either hold the portions of my heritable estate so provided to my daughter and her heirs, or they may convey the same to other trustees for behoof foresaid, or to herself and her heirs, according to the previous destination, and under the previous conditions and restrictions; and whichever of these courses they adopt, the discharge of my said daughter shall be a sufficient exoneration to them for the provisions to her and her children: And I likewise hereby expressly provide and declare that my said trustees shall have in their power to reduce the right and interest of my son in my heritable estates, before provided to him, in whole or in part, to a liferent alimentary interest and right allenarly, with a destination of the fee equally among his children; whom failing, to his nearest and lawful heirs whomsoever: And in order that this provision may have full effect, I do hereby declare and provide that my said son's right and interest in my means and estate shall not vest in him so as to be attachable for his debts, or assignable by his deeds, until six months after the period fixed for the conveyance of said estates, or until the said estates are conveyed, whichever shall first happen."

By the 7th purpose of the trust it was provided that the whole residue of the estates should be converted into money, and divided equally between the truster's children or their issue.

The truster died on the 9th December 1851, survived by his wife and the two children of the marriage. Rosalie Augusta Wardrop attained majority on 29th May 1864, and on the 17th of January 1868 was married to Barker Gossling, Esq., residing at Kilcreggan. An antenuptial contract was entered into between these parties. Among other purposes—"For payment, in the event of her predeceasing her husband and leaving children, of an annuity of £400, from the first and readiest of the annual income of the estate thereby conveyed by her to the said Barker Gossling, the said annuity to be restricted to £200 in the event of the said Barker Gossling marrying again. And it was farther declared that the said annuity, whether unrestricted or restricted, should be alimentary in its nature, and not be liable to or for the debts or deeds of the said Barker Gossling, nor subject to the diligence of his creditors, present or future, and should in no case be secured so as to form a burden on the heritable property belonging, or which might thereafter belong, to the said Rosalie Augusta Wardrop, or to others for her behoof."

The marriage between Barker Gossling and Miss Wardrop was dissolved by the death of the latter on the 17th of February 1868, and there were two children, issue of the marriage, who are the objects of the present application. The truster's son had not attained majority at the date of his sister's contract of marriage, or at her death. He is now major, and the time accordingly has arrived for the execution by the petitioners of the fifth and seventh purposes of the trust.

The petition then states—"The beneficial right to the heritable subjects, destined in the fifth pur-