shareholders, as well as with the obligation to devote the building to perpetual dramatic uses—an obligation which almost requires for its fulfilment that the heirs of entail also combine the character of theatrical managers. Taking into view the provisions of the deed of settlement as to clearing the estate of debt anterior to the execution of a deed of entail, and the instruction to the trustees to purchase with any surplus out of properties sold for this purpose additional lands in Perthshire to add to the entailed estates, I think it not impossible so to construe the settlement as to authorise the theatre to be sold, and the price to be employed in the purchase of such lands. But I think that so to hold would involve a somewhat strained interpretation of the words employed. And considering the very explicit direction to entail "my whole property, held by me heritably, wherever situated," I consider it to be the only safe reading of the deed to view the instruction to entail as comprehending the Theatre-Royal. When I look to the history of Mr Brown's acquisition of the theatre, I am by no means sure that he was not as desirous to send this down in the form of a family estate as any of his other properties.

With regard to the premiums of insurance expended in insuring the theatre against fire, and in connection with these the sum of £15,000 received from the insurance office and expended in rebuilding the theatre, I entertain no difficulty. So long as the theatre remained in the hands of the trustee, I think it was a proper, if not absolutely incumbent step on his part to insure the building against fire. And the premiums fell to be paid out of the rent derived from the theatre, as part of the expenses of management. The theatre was destroyed by fire, and the trustee, by force of payment of these premiums, received from the insurance company a sum of £15,000, which he applied in rebuilding the theatre. In this, I think, he acted rightly. It would have been, in my estimation, against duty had he acted otherwise. And I hold that the rebuilt theatre must be now considered as simply standing in place of the original fabric, to be made the subject of entail. Mr Allan M'Laren Brown will be entitled to a conveyance of the theatre, as the first person called in the entail; but this, I think, is the full measure of his rights; and no other claim appears to me to lie in his person in connection with the expenditure of the premiums, or the receipt of the money from the insurance office.

The remaining question regards the sum of £2000 advanced out of the income of the trust-estate, with consent of Mr Allan M'Laren Brown, in order to make up to £17,000 the sum laid out in the erection of the theatre. Mr M'Laren Brown contends that this must be held a loan by him to the trust-estate out of what was income belonging to him, and that he is creditor of the trust-estate for repayment. If this contention were well-founded, it would simply result in this, according to the statements of the Special Case, that the theatre could not be entailed, but must be sold for payment of this alleged debt, in direct contradiction of the very purpose for which this advance was made.

I am of opinion that this claim by Mr M'Laren Brown is untenable. I think it must be held to have been his intention, when allowing the application of this sum of £2000, to make it a contribution towards the re-erection of the theatre; with no other return in view than what lay in the increased value of the theatre, as the subject of entail in his favour. By this outlay the theatre received an additional value of £2000; and more than probably the yearly return was enhanced much beyond what would be represented by ordinary interest on this amount. I do not think that it was competent to the trustee and Mr M'Laren Brown in conjunction, the one to borrow and the other to lend a sum on the security of the theatre, to the effect of constituting a debt for repayment of which forthwith to sell the theatre. They could not lay their heads together so to control the natural course of proceedings under the trust. I do not believe they had the slightest intention of doing so. And I consider no claim to lie in Mr M'Laren Brown's favour to repayment of the sum of £2000, or to anything else than a conveyance, under the fetters of an entail, of the theatre in its condition of enhanced value.

The questions put to us must, I think, be answered in conformity with these views.

Agents for Mr Brown—W. & J. Cook, W.S.

Agents for Mr Sutar—H. & H. Tod, W.S.

Tuesday, March 15.

SECOND DIVISION.

CAMPBELL *v.* CAMPBELL.

*Husband and Wife—Desertion—*Saevitia*—Aliment—Separation. Held* that an action of aliment at the instance of a wife, on the ground of cruelty and desertion, was not incompetent in respect there was no conclusion in the summons for judicial separation.

A husband having offered, in answer to an action of aliment on the ground of cruelty and desertion, to receive his wife back to his house, action superseded till his offer should be tested. The wife having returned, and the husband having in consequence thereof moved for *absolvitor*, motion refused, and the action still further superseded, on the allegation by the wife that the cruelty complained of was still continued.

This is an action at the instance of a wife, concluding for aliment against her husband, on the ground that he had deserted her for upwards of twelve months, and had also treated her with cruelty, although the cruelty was not of a nature *per se* to warrant judicial separation. In his defences the husband, while he denied the desertion and cruelty, judicially offered to receive the pursuer into his house, and to maintain her as his wife. He pleaded that, in respect of this offer, the action should be dismissed, and also that the action was incompetent in respect there was no conclusion for judicial separation.

The pursuer maintained that the action was competent, on the ground of desertion, and that the offer to receive her to his house, which was made for the first time in the defences, was not a genuine *bona fide* offer, but a device resorted to by the defender to throw out the action, and to get quit of an inhibition raised on the dependence. The Lord Ordinary (JERVISWOODE), after hearing parties on the relevancy, allowed a proof before answer, and decerned against the defender for payment to the pursuer of a sum towards the expenses of process.

M'Kie for pursuer.

Fraser and Muir in answer.

The defender reclaimed against the interlocutor.

The cause was heard in December last, when the Court refused to hold the action incompetent, but, in respect of the offer made by the defender, superseded farther consideration of the cause to allow the pursuer to test the sincerity of the defender's offer by returning to his house. To-day the defender again moved for *absolvitor*, on the ground that the parties were now living together as husband and wife; but this motion being opposed by the pursuer, and it being stated to the Court that though the pursuer had returned to the defender's house he still continued his cruel treatment, they refused to grant *absolvitor*, and superseded further consideration of the cause.

Agents for Pursuer—Wormald & Anderson, W.S.

Agent for Defender—William Officer, S.S.C.

Tuesday, March 15.

SPECIAL CASE—WRIGHT'S TRUSTEES AND OTHERS.

*Trust—Heritage—Construction of Trust-Deed—*Falsa Demonstratio—*Special Case.* Terms of a trust-deed under which two sisters of a truster *held* entitled to succeed to his whole heritable property.

Donation—Deposit-Receipt—Delivery—Indorsation—Upliftment. A gentleman who had received great attention and care from one of his sisters during a serious illness, for which he expressed his gratitude, intimated to her that he wished to make her a present. He deposited in bank, in a deposit-receipt, a sum of £500 in her name, and the deposit-receipt was delivered to her by the bank during his lifetime. Upon his death it turned out that the sister had indorsed the receipt, and that the brother had uplifted the contents. The sister had no recollection of subscribing the indorsement, and she was in the habit of signing documents for her brother, without knowing the purport thereof, having full confidence in his integrity. She did not intend by the indorsement to relinquish her right to the deposit-receipt. *Held* that there was no donation.

Observations by the Court on the rule applicable to the question of expenses in special cases.

This was a special case between the trustees and four sisters of the deceased John Wright, Esq., sometime merchant in Naples, thereafter residing at Largs Castle, Largs. The facts were as follows:—The said John Wright died on 26th December 1866, leaving heritable property of the value of £5450 or thereby, and moveable property of the value of £19,000 or thereby. He left a trust-disposition and settlement and codicil. The said John Wright was survived by four sisters, viz., the said Margaret Wright, Mary Wright, Mrs Agnes Wright or Howie, and Ann Wright. The said John Wright was, at the date of the said trust-disposition and settlement, and thereafter until his death, possessed of heritable property at Seamill or Kinningbrae, part of the lands of Kirktonhall in Ayrshire, which heritable property consisted of a piece of ground, extending to an acre and three-quarters or thereby, and having two cottages thereon, each cottage having attached thereto a portion of the said piece of ground extending (including the space occupied by the cottage) to fully three-quarters of an acre or thereby. The said heritable property was held on two leases granted to authors of the said John Wright—the ground on which one of the cottages was built being, with the relative portion of ground attached to the cottage in one of the leases, and the ground on which the other cottage was built being, with the relative portion of ground attached thereto, in the other lease. One of the said leases is dated 27th July 1807, and was for 354 years from 12th May 1807, and the other is dated 25th April 1808, and was for 361 years from Martinmas 1805. The said John Wright, on May 29, 1847, acquired right to the whole of the property foresaid (as held under the said leases respectively) by a deed of translation or assignation. The subjects contained in the said lease of 1807 are contiguous to those contained in the said lease of 1808, and the lessor in the lease of 1807 was the same as the lessor in the lease of 1808, viz., Francis Caldwell Ritchie, Esquire, of whose lands of Kirtonhall, the subjects contained in both of said leases formed part as aforesaid. The said Mary Wright and Agnes Wright or Howie were, at the date of the said trust-disposition and settlement, as they had for some years proviously been, and as they continued until the death of the said John Wright to be, in the personal occupation and possession of the cottages and relative ground contained in the said leases. They so occupied and possessed rent free. The truster had, some years before his death, taken away from said cottages any household furniture, silver plate, plenishing and effects which belonged to him. The whole of the said John Wright's said heritable property at Seamill or Kinningbrae is claimed by the said Mary Wright and Agnes Wright or Howie, on the ground that it falls under the direction in the fourth purpose of the said trust-disposition and settlement. The trustees admit that this claim is well founded, so far as regards that portion of the said heritable property which is contained in the lease of 27th July 1807; but they maintain that it is not well founded so far as regards the remaining portion of the said heritable property, viz., the portion which is contained in the lease of 25th April 1808.

The above-mentioned purpose is as follows:—"Fourthly, To hold for behoof of, and if and when required, to assign, dispone, convey, and deliver to my sisters Mary Wright and Agnes Wright or Howie, and their heirs and assignees, my heritable property at Seamill or Kinningbrae, part of the lands of Kirktonhall in Ayrshire, and tack thereof between Francis Caldwell Ritchie of Kirktonhall and John Boyd, weaver of Kinningbrae, near Kilbride, dated the twenty-seventh day of July Eighteen hundred and seven, as described in the translation or assignation thereof, granted by James Howie, sometime merchant in Glasgow, in my favour, with my whole household furniture, silver plate, plenishing, and effects therein and thereupon."

Mr Wright returned from Naples to Scotland in 1849, and went to live with his said sister Margaret at Glasgow, she having a house there. They lived together at Glasgow till 1852, when Mr Wright, who had purchased Largs Castle at Largs, went there along with his sisters Margaret and Ann, and they kept house for him there until his death in 1866. Mr Wright was in bad health for some years before his death, and required constant and