Tuesday, May 14.

PETER ROBB AND ANOTHER (ROBB'S TRUSTEE) *v.* THOMAS ROBB.

Trustee—Title to sue—Titles to Land Consolidation (Scotland) Act, 1868 (31 *and* 32 *Vict. c.* 101) § 20.

A holograph deed, bequeathing heritable subjects, and containing a nomination of trustees, though without any conveyance of the subjects to them, or statement of their powers and duties, *held* to be a valid *mortis causa* settlement of the said subjects, and to confer a title to sue for the same on the persons named as trustees.

The late James Robb, who was a grocer in Dundee, left a writing which purported to bequeath eight houses which belonged to him to his grandsons, and a certain other tenement to an adopted daughter in liferent, and the trustees of a Wesleyan Chapel in fee. The writing also contained the words, "My wish is, that Peter Robb be one trustee and Alexander Smith be the other." Mr Robb died in March 1871, intestate as to his moveable estate, to which his only son, Thomas, obtained himself decerned executor-dative *qua* nearest of kin.

Peter Robb and Smith, as trustees under this writing, sued Thomas, as his father's heir-at-law, and other defenders, who did not appear, to have it found and declared, *inter alia*, that the writing constituted a valid and effectual conveyance of the heritable subjects therein mentioned, and that the heir-at-law was bound to make up a title to these subjects and convey them to the pursuers for the purposes of the trust. There were also conclusions in the summons relating to the rents of the properties, and other matters depending on the decision of the main question.

Thomas Robb defended the action, on the ground, first, that the pursuers had no title to sue, because the writing, even if it constituted a valid conveyance of the subjects, must be treated as creating certain specific bequests which could only be sued for by the beneficiaries themselves. He further denied that the writing was holograph, and averred that it was not expressive of the true and final intention of the granter, but was handed to his agent in order that a will might afterwards be written out, for which, however, instructions were never given.

The Lord Ordinary (GIFFORD) allowed a proof, which was taken on 23d November last. His Lordship thereupon pronounced an interlocutor, *inter alia*, repelling the defender's objection to the pursuers' title to sue, and finding in favour of the writing as a holograph *mortis causa* settlement of the whole subjects.

The defender reclaimed.

SCOTT and J. P. B. ROBERTSON for him.

CRICHTON and R. V. CAMPBELL, for the respondents, were not called on.

The Court adhered.

Their Lordships held that the defender had not made any averment which ought to have been remitted to probation except his denial of the writing being holograph; and that having been satisfactorily established, it must receive effect. On the objection taken to the title to sue, they were of opinion that the settlement constituted a valid conveyance of the heritable subjects under the titles to Land Act, 1868, sect. 20, to the persons named as trustees, for the purposes of the trust. If the objection were good, it would follow that the trustees could not have defended an action of reduction. However slight the duties of the trust might be, it was sufficient to give a title to sue.

Agent for Pursuers—James Young, S.S.C.
Agent for Defenders—D. F. Bridgeford, S.S.C.

Friday, May 17.

ROGERSON *v.* ROGERSON AND OTHERS.

Entail—Prohibition to entail debt.

A prohibition against "burdening the lands in whole or in part with debts or sums of money, infeftments of annual rent, or any other servitude or burden whatsoever" *held* to be a sufficient prohibition against the contraction of debt.

*Entail—Provisions to Wives and Children—Locality —*11 *and* 12 *Vict. c.* 36 (*Entail Amendment Act*), § 43

An entail gave power to the heirs in possession to secure and infeft their wives and husbands and also their younger children with liferent provisions, payable out of the rents of the entailed estate, not exceeding a certain amount, by way of locality, the liferent provisions to younger children being redeemable at the option of the heir in possession, at their majorities or marriages, by payment of ten years' purchase thereof. *Held* that the power so given did not render the entail defective in regard to the prohibition against alienation, in the sense of 11 and 12 Vict. c. 36 § 43.

This was an action at the instance of James Alexander Rogerson, heir in possession of the entailed estate of Wamphray, to have it found that the entail of the said estate, executed by Dr John Rogerson, in 1824, was ineffectual, and that the pursuer was entitled to deal with the estate as unlimited fiar.

The action was defended by the substitute heirs of entail.

The objections taken by the pursuer to the validity of the entail were two in number.

The first objection was in reference to the clause prohibiting the contraction of debt, which was in the following terms:—"And with and under this restriction and limitation also, that it shall not be lawful to or in the power of the said Dr John Rogerson, my son, or of any of the said heirs of taillie, to sell, alienate, wadset, impignorate, or dispone the said lands and estate hereby disponed, or any part thereof, either irredeemably or under reversion, or to burden the same, in whole or in part, with debts or sums of money, infeftments of annual-rent, or any other servitude or burden whatsoever, excepting as hereinafter mentioned, or to do or commit any act, civil or criminal, or to grant any deed, directly or indirectly, whereby the said lands and estate, or any part thereof, may be affected, apprized, adjudged, forfeited, or become escheat or confiscated, or in any other manner of way evicted from the said heirs of taillie, or this taillie prejudged, hurt or changed: And it is hereby expressly provided and declared that the said lands and estate before disponed shall not be affected or burdened with or subjected, or liable to be adjudged, apprized, or any other way evicted, either in whole or in part,