is for him to consider. I think the cause as on record is irrelevant.

LORD BENHOLME—I think the Lord Ordinary has done full justice to the cause, and I am satisfied that he has pronounced an interlocutor which is quite correct.

LORD NEAVES—I am quite of the same opinion. In an action of this kind, a reduction setting aside certain proceedings, the lapse of time is a very material consideration—we cannot allow an investigation of this kind upon merely haphazard statements. Such a course would involve the granting of an inquisitorial right to go and enquire into other people's affairs. There is no statement here sufficient to ground an action of this nature.

The Court adhered, with additional expenses.

Counsel for Pursuer (Reclaimer) — Campbell Smith. Agent—R. Veitch, S.S.C.

Counsel for Defenders (Respondents)—Watson and Balfour.—Agents—Webster & Will, S.S.C.

[*R.*, Clerk.

Thursday, January 15.

SECOND DIVISION.

[Sheriff of Aberdeen.

DAVIDSON *v.* WEAR & COLLEY.

Contract—"Iron Scrap"—Disconform to Contract—Implement—Damages.

A firm in Aberdeen contracted to deliver 200 tons "heavy iron scrap" at Newcastle on a certain day. The English firm refused to take the goods as not of the contracted quality. *Held* that the scrap as delivered was disconform to contract, and damages awarded calculated on the mean between the contract price and the market price during the months of delivery.

This case came up by appeal from the Aberdeen Sheriff-court. The action was at the instance of James and Alexander Davidson, merchants in Aberdeen, and was directed against Wear & Colley, merchants in Newcastle-on-Tyne, and the summons concluded for payment of £230, as damages sustained by the wrongful failure of the defenders to deliver at Newcastle quarry, 200 tons of iron scrap, at £3, 17s. per ton, conform to contract entered into between the parties by letters of date September 20th, 1871, being letter of offer by the defenders, and letter of acceptance of the offer by the pursuers. The pursuers averred that certain of the iron delivered, but refused, was not of the contracted quality. The first shipment of iron scrap was on October 27th, 1871, and the defenders maintained that it was of the kind arranged for. The pursuers on arrival of the ship, after taking a few tons, objected to the iron on the ground that it was not of the quality contracted for. On November 13 the pursuers called on the defenders to supply them with the first 100 tons of the 200 contracted for, and this they refused to do. The defenders were by letter of 12th December reminded that the second supply of 100 tons was due on December 12, but this was not delivered. The market-price of this kind of iron rose by the month of December to £5 per ton. The counter statement asserted that "in consequence of the pursuers having refused to take delivery of the first instalment of the iron, the defenders declined to forward more unless the pursuers either paid for it in cash before it left Aberdeen, or would promise to honour the defenders' draft on demand. This the pursuers declined to do, and the defenders accordingly sent them no more iron. The defenders were all along willing and offered to fulfil their part of the contract on the pursuers fulfilling theirs."

The pursuers pleaded—"the defenders having failed to implement the contract libelled on, to the loss and damage of the pursuers, the latter are entitled to decree against the defenders for the amount of profit they have lost by the defenders' said failure."

The defenders pleaded—"1. The defenders having performed their part of the contract, and the pursuers having failed to perform theirs, the defenders were justified in refusing to furnish more iron, and in holding the contract at an end, and resiling therefrom. 2. In any view, the damages claimed are excessive. 3. The terms of the written bargain being ambiguous, the defenders are entitled to a proof of the surrounding and other circumstances to explain it."

The Sheriff-Substitute (DOVE WILSON) pronounced the following interlocutor and note:—

"*Aberdeen, 22d August* 1873—Having considered the cause; Finds, as matter of law, that the defenders were bound under the contract libelled to deliver iron of the kind denoted by the terms used, as such terms were understood at the place where the contract was made, and that they were not bound to deliver other or superior iron: and Finds, as matter of fact, that the pursuers have failed to prove that the iron tendered by the defenders for delivery was not such iron as was contracted for; therefore assoilzies the defenders from the conclusions of the libel, and decerns: Finds the defenders entitled to expenses.

"*Note.*—The pursuers claim damages from the defenders for having failed to deliver, in terms of their contract to that effect, 200 tons of a certain kind of iron. The contract is admitted. About 60 tons were tendered for delivery in terms of it, and these were rejected by the pursuers as not being of the kind of iron contracted for. The defenders maintained they were, and declined to deliver other iron. The question therefore comes to be, whether the iron which was tendered was of the kind specified in the contract.

"The kind of iron specified is 'good, malleable, heavy, rough, iron scrap.' Nothing turns on the signification of any of these words, except the word 'heavy.' The other words are used in their ordinary signification, but the word 'heavy' is a technical word in the trade, and the parties are at issue as to its import. The pursuers maintain that what the defenders tendered for delivery was not the kind of iron known in the trade as 'heavy scrap,' inasmuch as it contained too much of 'light scrap,' of nut iron, and of rubbish.

"In regard to the meaning of the term 'heavy scrap' in the iron trade, and to the way in which it is to be distinguished from other kinds, three sets of witnesses have been examined, who gave respectively the understanding of the trade in Aberdeen, Newcastle, and Glasgow.

"The Aberdeen witnesses made thickness the

principal element in distinguishing between light and heavy scrap. Mr Abernethy gives the lowest standard for heavy iron, classing as heavy all iron which is one-eighth of an incht hick or upwards. Mr Hall and Mr Russel class as light all cuttings from 'sheet' or hoop iron, and as heavy all kinds of scrap iron which are not to be classed as light. From the evidence of Mr Russel and of Mr Sams it appears that 'sheet' iron is to be taken, meaning iron of about three-sixteenths of an inch thick or less. Mr Brodie, of Messrs Blaikie Brothers, gives the highest standard of thickness given by the Aberdeen witnesses, as he does not class iron as heavy unless it is one-fourth of an inch thick or more. He also indicates that other things may be taken into account besides thickness, but he does not give any standard of size, leaving it to be inferred that it is very much matter of opinion. Two dealers in old iron who were examined give evidence to much the same effect as the other Aberdeen witnesses.

"There is some variety in the evidence of the Newcastle witnesses, but it will be at once seen that the Newcastle standard is much higher than the Aberdeen standard, the greatest thickness which any of the Aberdeen witnesses take as the least for heavy iron scrap is the smallest given by any of the Newcastle witnesses; and the latter take the other dimensions of the iron also into account. Mr Crawford gives, perhaps, the most moderate statement of the understanding of the trade in Newcastle, and his statement is that there should be 'no pieces less, say, than six inches long by from one to three inches flat iron broad, and not less than a quarter of an inch thick; round iron should be of the same length, and half an inch thick.' The highest standard given by any of the Newcastle witnesses seems that of Mr Downing, who makes the minimum length six to eight inches, the minimum breadth of flat iron two to three inches, with a minimum thickness of half an inch, and the minimum thickness of round or square iron, five-eighths of an inch. Two of the Newcastle witnesses, Mr Paley and Mr Thomson, give the reason of all the dimensions being taken into account, namely that iron is not considered heavy scrap unless it is suited for an operation called piling.

"It is not necessary to go into the details of the evidence of the Glasgow witnesses. The standard there may be described generally as being something intermediate between the Newcastle and Aberdeen standards.

"In this state of the evidence, it is difficult to give any determinate meaning to the words 'heavy scrap.' There is no recognised test, understood in the whole iron trade, for determining the line between heavy and light. In the nature of things, the line must be drawn in a more or less arbitrary way, and it abundantly appears that opinions as to where it should be drawn vary not only in different places, but among different persons in the same place. It is possible that the difference between Aberdeen and Newcastle is to be accounted for by the trade being less developed in the former place, and by the parties who deal in it there being usually more in the way of selling than of buying; but by whatever causes the difference may be occasioned, it seems beyond dispute that, judging from the evidence led in the present process, a substantial difference does exist. It seems equally clear that the fact that such differences exist is not a recognised fact in the trade. Although for convenience, now that the difference has been brought out, the expressions 'Newcastle standard' and 'Aberdeen standard' must be used, there are no such expressions known in the trade. This is a little remarkable, and leaves room for the suggestion that the mode in which the evidence has been led in this case has exaggerated the differences which in fact exist. The witnesses who speak to what is understood in Newcastle have been adduced entirely by the pursuers, and nearly all those who speak to the Aberdeen practice by the defenders. It is possible, however, that from the way in which the trade is conducted—the scrap iron being usually sold in bulk after it has been collected—great differences of opinion as to what was light or heavy might exist without causing inconvenience or even attracting notice. There is nothing more natural, however, than that in a contract like the present, where the iron was sold before collection, such differences of opinion should give rise to litigation. It seems plain that each party to the contract in question was under the impression that the term 'heavy scrap' was understood by both in the same sense.

"Here arises the important question, Whether, in interpreting the contract on which the action is founded, the expression 'heavy scrap' is to be understood as it would be in Aberdeen or in Newcastle. There is indeed one view in which it may be thought unnecessary to answer this question, because it might be said that, as the parties entered into the contract under an error as to the meaning of an essential term in it, the contract was void. But this view does not seem satisfactory, because the parties ought to have understood the contract they were making, and if either party committed an error through defective knowledge of facts which there was nothing to prevent him knowing, he ought to take the consequences.

"The law as to the interpretation of a contract made in one place and to be performed in another, is thus stated by Story:—'The general rule is, in conformity to the presumed intention of the parties, that the contract, as to its validity, nature, obligation, and interpretation, is to be governed by the law of the place of performance.' (Conflict of Laws, § 280). In support of this he quotes from the Roman law the maxim, '*Contraxisse unusquisque in eo loco intelligitur, in quo ut solveret, se obligavit.*'

"These doctrines are stated in such a way that they apply to matter of custom as well as to matters of law, and unless they are overstated, the argument which the pursuers submitted on this point must prevail. That the doctrines are generally correct, the high authority of Story places beyond dispute, and their general soundness has often been recognised. For example, had it been a question of measurement, and there had been, say, a different kind of ton in use at the place of delivery and the place of contracting, there could be no doubt that, in the absence of any specification to the contrary, the ton in use at the former place would rule. (See *Schnurmans* v. *Stephen*, 18th July 1832, 10 S., 839, and 25th June 1833, 11 S., 779.) But the doctrine seems to be stated somewhat too broadly when it is applied to all parts of every contract, without distinguishing that there are contracts which fall to be executed partly at the place of contracting and partly at the place of delivery, and without drawing any distinction between the parts which are to be executed at

the one and those to be executed at the other. The possibility of such distinctions is indicated by Addison, who (in his treatise on Contracts, chap. xvi., sect. 1) says that 'the fulfillment of a contract for the sale of goods, so far as it relates to the transfer and delivery of the goods to the purchaser, according to quantity, weight, or measure, will be regulated by the law of the country where the delivery is to be made.' This passage leaves it to be inferred that the parts of the contract which related to the kind or quality of the goods would be regulated by the place of making. The distinction, however, received effect in the case of *Munroe* v. *Scott*, 28th Jan. 1862, 31 L. J. (Q.B.), 81. In that case a contract was made in New York to accept bills in Liverpool, and it was held that the parts relating to what was to be done at Liverpool were to be regulated by the state of the law there, but that the other parts of the contract were to be governed by the law of New York. If this rule be sound as to matter of law, it applies if anything more strongly to what is matter of local custom.

"Applying this principle to the present case, it will be the standard understood in the trade in Aberdeen which will regulate the contract, and there will arise the question whether the cargo in dispute was good heavy scrap in the sense in which the term is understood in Aberdeen. The cargo consisted of about 62 tons, containing mainly what professed to be heavy scrap, but containing some light scrap in a separate compartment. The principal part of the heavy scrap, viz., 23 tons, came from Messrs Blaikie Brothers, and it seems to have been rather over the Aberdeen standard. It was bought at 75s. per cwt., which was about the highest price paid for such iron at the time, and from its contents, as described by Messrs Brodie and Topp, must have been at least quite up to the mark. The former describes it as 'heavy scrap,' and the latter as 'good heavy scrap,' and as being 'heavier than usual.' The next largest lot came from Mr George Stuart. It amounted to 15 tons 9 cwt., of which 3 tons 15 cwt. is described as light. This lot possibly was rather below the standard. The invoice for it is not produced, and it is in evidence that the heavy portion of it contained 'bone mill iron,' which is described by several witnesses as being inferior iron. However, Mr Stuart says that he sold similar iron to the pursuers as heavy without objection; but even supposing this lot to have been somewhat under the standard, as the first was somewhat over it, the one would counterbalance the other. The remainder of the cargo of iron was got in much smaller quantities. The next largest lot was one of about 5 tons, bought from the Messrs Pirie. It cost 69s., and is described by the witnesses Angus M'Donald and Keith, who were concerned in the selling of it, as heavy. The next largest lot was 3 tons 19 cwt. 2 qrs., bought from Messrs B. Reid & Co. As to this the evidence is somewhat contradictory. The defenders' letter requesting it, asks for heavy, but the foreman to Messrs Reid says that it would require sorting, inasmuch as it contained sheet iron; while one of the partners and the storekeeper, Fraser, says all the sheet was put aside.

"The remainder of the heavy part of cargo seems to have consisted of smaller lots, chiefly brought from defenders' store to the ship. With regard to these there is the same evidence as before as to the portion which came from Messrs Pirie, and with regard to the others there is only evidence which is not of any particular value, given by the defenders' labourers, carters, and seamen.

"The evidence given by the witnesses who judged of the iron by the Aberdeen standard, cannot therefore be said to leave the matter in an entirely distinct position, and it is possible that had this been an action in which the burden of proof had been on the defenders, they might not have succeeded. They have, however, not sought to enforce delivery; and in the present question of damages the burden of proof is on the pursuers, and it seems to the Sheriff-Substitute that, taking that view of the matter, their evidence is insufficient. From the pursuers' witnesses thinking of what was the standard in Newcastle, and applying that to what they saw, the great part of their evidence is inapplicable, and some of it certainly must be exaggerated. The statement that the cargo consisted largely of hoop or sheet iron and dirt, which is repeated by one or two of the witnesses, if meant to be applicable to the part sent as heavy iron, cannot be reconciled with the Aberdeen evidence. It is noticeable, also, that although the pursuers say in one of their letters that the purchaser of the cargo would be produced to show that it was light iron, he was not produced, and that thus the evidence of the Newcastle witness who had the most intimate acquaintance with the facts is awanting. The evidence given in Newcastle proves distinctly enough that the iron was below the Newcastle standard, but it does not seem sufficiently to show that it was below the standard understood in Aberdeen. The Sheriff-Substitute has therefore come to the conclusion that the pursuers have not made out their claim to damages. The contract has been too loosely framed for that purpose, for when practical witnesses have differed to almost any extent as to the meaning of a technical term used, it is hardly to be expected that a Court is to give it a strict meaning.

Against this judgment the pursuers appealed to the Sheriff-Depute (GUTHRIE SMITH), who, on 31st October 1873, pronounced the following interlocutor:—"The Sheriff having considered the reclaiming petition for the pursuers against the interlocutor of 22d August last, with the answers thereto for the defenders; and having also considered the record, proof, productions and whole process, sustains the appeal; recals the interlocutor of the Sheriff-Substitute: Finds it proved that the defenders having, on 20th September 1871, contracted to deliver to the pursuers at Newcastle 200 tons of good, heavy, rough, malleable, scrap iron, tendered for delivery iron not answering the said description, and the same having been rejected by the pursuers, the defenders wrongfully refused to implement their said contract: Finds, therefore, that the defenders are liable in damages; assesses the same at the sum of £8, for which decerns: Finds the defenders liable in expenses, &c.

"*Note.*—On the 20th September 1871 the defenders, merchants in Aberdeen, contracted to deliver at Newcastle-on-Tyne to the pursuers, who are merchants there, 200 tons of good, heavy, rough, malleable, scrap iron, at £3, 17s. The terms of the contract were arranged by the parties at Aberdeen, and it was then reduced to writing, the words "heavy rough" being inserted at the request of the pursuers.

"The first instalment of the iron, amounting to about 60 tons, was despatched by the steamer 'Venture' about the 12th October. Prices were then rising rapidly, but the pursuers declined to receive the cargo on the ground that it was not iron of the description contracted for, being a mixed assortment of heavy scrap, light scrap, and rubbish.

"The defenders maintain that the cargo was a fair enough compliance with their undertaking, being all good 'heavy scrap,' in the Aberdeen sense; and the Sheriff-Substitute, dealing with the question as one of international law, has decided that although it is proved distinctly enough that the iron was below the Newcastle standard, it is not sufficiently clear that it was below the standard understood in Aberdeen, and which, he is of opinion, ought to prevail as the measure of the defenders' obligation. The rule which should govern a contract between two persons dwelling in places apart, and using different dialects, is one of the questions discussed by Savigny in his System, vol. 8, p. 264. (The passage will be found in Mr Guthrie's translation at p. 196.) As is shown by that distinguished writer, the matter does not belong to the domain of international law at all. When a vendor sells an article by a particular description, it is a condition precedent to his right of action for the price that the thing which he has delivered, or offered to deliver, shall answer the description. If, from the looseness of the terms employed, a question does arise as to what was really intended by both parties as the subject matter of sale, the doubt must be solved by a consideration of the nature and substance of the contract, aided, it may be, by the usages of the particular business and the relations in which the parties stood to each other. And if it should appear that the two parties, speaking different dialects, have used the words in a different sense, the legal result is that there is *consensus in idem*, and no contract at all.

"But the Sheriff is not satisfied that there is any material difference in the meaning assigned to the terms used in this contract in different districts of the country. Heavy scrap is iron which will stand the furnace, and therefore should be one-fourth of an inch thick at least. Light scrap, such as hoops and sheet iron, being often much oxidised, is liable to be burnt up, and consequently usually sells at from 30s. to 40s. a-ton below the other. The distinction is one of thickness; and as it is all meant to be melted, iron thick enough to be thrown into the heavy class does not gain in value in proportion to the size of the pieces. The Sheriff-Substitute is therefore in error in supposing the more solid parts of the scrap compensated for the worthless parts. Indeed, there is no room for any compensatory theory in the case. The contract is that the iron furnished should all be of a certain class or kind, and the defenders had no more right to mix it with light scraps than a man who sells peas is entitled to mix them with beans.

"It may also be observed that although the evidence were more explicit as to the alleged variance between the Scotch and English use of the words, the defenders in this case must be held to have had in view the requirements of the market at the place of delivery. Newcastle, like Glasgow, is the centre of a great iron trade, which Aberdeen is not. Our branch of that trade being fed by the cast-off and useless bits of metal gathered in country districts, persons who, like the defenders, act as collectors, must be taken to know the meaning assigned to technical terms throughout the trade generally, and in particular at its great centres, where the business of recasting old metal is carried on. It would be absurd to allow the hawkers of, say Sutherlandshire or the Isle of Skye, to set up a 'commercial sense' of their own in their dealings in the iron market. When the defenders said they would furnish the pursuers in Newcastle with iron of a certain character, common sense requires that the metal sent should be such as is there understood under the description given it.

"Now, tried by this test, the case for the defenders wholly fails. The Newcastle witnesses, most of whom saw the cargo, are quite clear about it A large portion of it consisted of thin hoop and sheet, with a considerable admixture of rubbish and dirt. Allowance should of course be made for a small portion of light getting accidentally mixed, but it is difficult to understand how the three tons entered into No. 26 as part of the cargo sent, and bought according to No. 33 for 40s. 'as old light iron,' came to be shipped by the defenders as part of this contract. Another part, furnished by George Stuart, appears to have been composed to an undefined extent of 'bone mill iron' which is said to be much oxidised, and regarded as such bad stuff that it always goes by itself. The 23 tons which came from Blaikie Brothers was evidently quite up to the mark, but the evidence as to the character of what was contributed by Messrs B. Reid & Co. is contradictory, and not quite satisfactory. As to the quantity furnished from the defenders' own stores, it is an odd circumstance that the separation of the light from the heavy was left to the men who carted it to the steamer. Sorting of the iron into two different classes is too important an operation to be intrusted to carters; and no wonder they make the mistake of shovelling in old nails as heavy iron, which they certainly are not. It also appears from productions Nos. 36 and 42 that in settlingfor the quantity taken out of the 'Venture' by the pursuers, the defenders allowed them credit 2 cwt. of dirt, rather a large proportion for four tons of metal; but the defenders reply, as they are entitled to do, that the deduction claimed was too small a matter to justify the trouble of calling it in question.

"The defenders say that after the cargo was rejected by the pursuers they sold it elsewhere in Newcastle for 80s. for the heavy, and 55s. for the light. No particulars are given of how much was light and how much heavy. It is to be regretted that the purchasers were not examined as to these and other points, and in their absence the Sheriff is unable to say that any good answer has been made by the defenders to the strong evidence from Newcastle that the cargo was not due implement of the contract. He is therefore obliged to find them liable in damages, which have been assessed at 8s. a ton, being the mean between the contract price, 77s. and the market price in October and November, 82s. 6d. to 87s. 6d., and which it is thought is, in all the circumstances, a moderate estimate."

The defenders appealed against this interlocutor to the Court of Session.

The Court unanimously adhered to the judgment of the Sheriff-depute, and refused the appeal, with expenses.

Counsel for Respondents (Pursuers)—Watson and Trayner. Agents—Henry & Shiress, S.S.C.
Counsel for Appellants (Defenders)—Fraser and Reid. Agents—Renton & Gray, S.S.C.

Friday, January 16.

FIRST DIVISION.

[Lord Ormidale, Ordinary.

MANSON *v.* HUTCHEON AND OTHERS.

Deed—Construction—Representatives.

In a question between the executor-nominate and the next of kin of a deceased, *held* the designation "representatives" did not exclude the executor.

This was an action of multiplepoinding raised to try the question, what parties were indicated by the term "representatives" employed in an antenuptial contract of marriage entered into between Mr Leslie and Mrs Isobel Sheriffs or Leslie. By that deed, dated 1st November 1832, Mr Leslie disponed, assigned, and made over to and in favour of himself and the said Isobel Sheriff, his intended spouse, in conjunct fee and liferent, and to the children of the marriage equally in fee, whom failing to his own nearest heirs and assignees whomsoever, all and sundry lands, houses, heritages, tacks, heritable bonds, and other heritable property whatsoever then belonging to him or to which he might succeed or acquire right during the subsistence of the marriage; he also thereby assigned, conveyed, and made over to and in favour of himself and the said Isobel Shireffs in conjunct fee and liferent, and to the children of the marriage equally, whom failing, at the death of the longest liver of the spouses, "to be equally divided between the representatives of each of them, the whole moveable goods, gear and effects, debts, and sums of money then belonging to him or to which he may acquire right during the subsistence of the marriage." On the other part, the said Isobel Shireffs thereby assigned, disponed, conveyed, and made over to and in favour of Mr Leslie the whole subjects and effects, debts, and sums of money, whether heritable or moveable, then belonging to her, or to which she might succeed or acquire right during the subsistence of the marriage, with the whole vouchers and instructions of the said debts, and all that had followed or was competent to follow thereon.

It was further provided by said contract that on the dissolution of the marriage by the death of either of the parties without children, the survivor should be entitled to enjoy the liferent of the whole property, heritable and moveable, then belonging to them, "without interference on the part of the representatives of the predecessor, and that on the death of the longest liver the moveable property so liferented by him or her shall be equally divided between the representatives of both spouses, unless a different distribution shall have been provided by them as therein allowed. Reserving always full power and liberty to the said contracting parties to make any other settlement or distribution than herein provided of the estate and effects belonging to them, unless in so far as the same regards the liferent hereby provided to the said James Leslie and Isobel Shireffs themselves." No other settlement or distribution was made by Mr and Mrs Leslie.

Mr Leslie predeceased his wife, and there was no issue of the marriage. After his death Mrs Leslie was confirmed executrix *qua* relict of Mr Leslie, and gave up an inventory of his personal estate and effects, amounting to £1343, 5s. 10d. One half of this sum, with interest accruing thereon since Mrs Leslie's death, under deduction of debts and other preferable claims, formed the fund *in medio* in this case.

By her last will and testament, dated 12th April 1870, Mrs Leslie, "in order to regulate the management and distribution of my moveable means and estate," conveyed her whole personal means and estate to the claimant, Mr Manson, who was thereby appointed her sole executor. Mr Manson was directed to pay certain legacies and bequests, and thereafter the residue of the whole estate was bequeathed (subject to any future legacies) to Mr Manson, for behoof of such local, charitable, educational, and religious purposes in or connected with the parish of Meldrum as the testator should specify, or, in the absence of specification, as the said James Manson might select. No reference was made in Mrs Leslie's settlement to the estates falling under and dealt with by the marriage contract. At the time she executed her settlement she had separate personal estate of her own, which was sufficient to meet the bequests mentioned in her settlement.

The competitors for the fund *in medio* were,—1st, Mr Manson, who claimed the same in respect of his being Mrs Leslie's representative under her last will and testament; and 2d, Mr Walter Hutcheon, and others, who maintained that they were entitled to the fund as her representatives, in repect of their being her next of kin.

On 17th July 1873 the Lord Ordinary pronounced the following interlocutor:—"The Lord Ordinary having heard counsel for the parties, and considered the argument and proceedings, sustains the claim for James Manson, and ranks and prefers him in terms thereof, and decerns in his favour accordingly: Repels the competing claim for Walter Hutcheon and others, and decerns: Finds no expenses due to or by either party.

"*Note.*—. . . The disputed question turns upon the meaning and effect of the expression 'representatives' in the antenuptial contract of marriage of Mr and Mrs Leslie. If the sense in which Mr and Mrs Leslie themselves used the expression, and the effect they intended it to have, could have been collected from their antenuptial contract of marriage itself, taking it in all its clauses, the Lord Ordinary would have held himself thereby bound. But as he cannot find any indications in the marriage-contract sufficient to enable him to ascertain this, and as he is not aware that the term 'representatives' has any technical or fixed meaning, he thinks he is entitled, and indeed feels he has been left no alternative, but to interpret it and deal with it according to what he believes to be its natural, ordinary, and legal import. Now, in this view there appears to be no room for doubt that the claimant, Mr Manson, is the 'representative' of Mrs Leslie. He has come into her place in virtue of her last will and settlement, and by that deed he is entitled to the whole of her estate, whatever that may be, and represents her accordingly. By so representing her he has become liable, at least to the extent of her succession, for her legacies or bequests, and generally for all her debts and obli-