going to let you go, we insist on your remaining till the end of the year, or we are not going to pay you a month's wages—they would not have been listened to for an instant. The pursuer would have been entitled to hold them to their bargain, to insist on his right to leave, and to demand the month's salary which the directors had agreed to pay. Now, both parties must be bound, or neither. If the directors were bound to the pursuer, the pursuer must be equally bound to the directors.

It is not for me to animadvert on the conduct of the parties. It is sufficient that there is noing here to show that there was *locus pœnitentiæ*, or such hasty words as cannot be construed into deliberate consent.

Lord Ormidale concurred with Lord Gifford.

Lord Justice-Clerk—I do not disguise that I should have been better pleased had your Lordships come to a different conclusion. At the same time, the case turns entirely upon evidence, and I do not think that in a question of fact it is desirable that I should enter a formal dissent.

The ground of my doubt is this—I do not think that the directors were in conscience to hold this man to his hasty word when after such a short interval as five minutes he took it back. If the proposition made by the directors to the pursuer as to his salary at the meeting of 12th May had been one which had been previously laid before him, I should have been inclined to agree with your Lordships. But the proposition had never been made before, nor had it ever been suggested to the pursuer that the alternative of accepting whatever offer the directors might make was to take a month's salary and go. This was never suggested or mentioned until the meeting of 12th May. According even to the defenders' evidence, all that the pursuer said at the meeting when the above alternative was placed before him, was, "Very well, gentlemen," and then he left the room. Now, I cannot take that as a deliberate consent to an agreement, and when the pursuer came back five minutes afterwards and retracted his hasty words, I do not think that the defenders were in conscience in insisting upon holding him to them. Undoubtedly the pursuer has brought all this upon himself. He exaggerated his own importance, and threatened from time to time to leave his situation and go elsewhere. This therefore takes away much of the feeling of sympathy with which one is inclined to regard him. Still it was never before proposed to him that he should go on a month's warning, or what is equivalent, with a month's wages. It is not shown that he had really made up his mind to resign or to ask to be allowed to resign previous to the meeting. What does appear is, I think, this, that the directors were not desirous of keeping him. They knew that he was discontented with his position, and they did not feel inclined in the circumstances to meet his views sufficiently to remove that discontent. They therefore somewhat eagerly caught at his hasty acquiescence in his dismissal, and refused to accept any retractation. This I have most serious doubts whether they were entitled to do. But, on the whole matter, I am not desirous of formally differing from your Lordships.

Lord Neaves was absent.

The Court adhered.

Counsel for Appellant — Asher — Scott-Moncrieff. Agent—John Martin, W.S.

Counsel for Respondents — Balfour — Vary Campbell. Agent— A. Kirk Mackie, S.S.C.

Friday, December 3.

FIRST DIVISION.

[Lord Shand.

MOLLESON (CORMACK'S TRUSTEE) AND OTHERS *v.* DAVIES AND OTHERS.

Domicile—Construction—Succession.

The wife of a domiciled Englishman (herself a Scotchwoman by birth) had a trust-disposition and settlement of a fund secured in Scotland, and subsequent deed of alteration, prepared and executed in Scotland by a Scotch lawyer, in Scotch legal form and phraseology. Both deeds were signed in Scotland, where judicial ratifications were also executed. *Held* that a question as to the construction and effect of the deeds fell to be determined according to the law of Scotland.

Heritable and Moveable.

Opinions (per Lords Deas and Ardmillan) that a power of disposal of money with a right to require heritable security therefor, followed by the grant of such security, constitutes the subject heritable.

This was a multiplepoinding, in which J. A. Molleson, C.A., Edinburgh, trustee on the sequestrated estate of the deceased David Cormack, S.S.C., Edinburgh, was pursuer and nominal raiser; and Charles Rowatt M'Millan, shipwright in Liverpool, and Mitchell & Baxter, W.S., Edinburgh, his assignees, were real raisers; and John Davies, the husband, and Edward Davies and others, the children of the deceased Mrs Davies, and Mrs Cormack, widow and executrix-nominate of the said deceased David Cormack, were defenders.

By disposition and settlement, dated 17th November 1826, Charles Rowatt, surgeon in Campbelton, *inter alia*, directed Charles Rowatt of Kilkivan, his grandson and universal disponee, to pay an annuity of £25 to Mrs M'Millan, wife of Peter M'Millan, then residing in Liverpool, and after the death of the survivor of her and of Mary Forbes (who predeceased her), to pay to the heirs, executors, and assignees of Mrs M'Millan the sum of £500, with interest from the first term of Whitsunday or Martinmas after her death. He further provided that his heir-at-law, on being required, was to give security for this sum over the heritable property which should be left at his decease. A heritable bond of annuity and bond and disposition in security was accordingly granted by Miss Flora Forrester Rowatt of Kilkivan, the testator's sister and heir-at-law, dated 21st September 1827, in favour of Peter M'Millan, David Campbell, W.S., and Edward M'Millan, as trustees for behoof of the heirs, executors, or assignees of Mrs M'Millan.

By trust-disposition and settlement, dated 2d and 9th July 1830, prepared in the Scotch form by a Scotch conveyancer, Mrs M'Millan assigned the principal sum of £500 to the Rev. William M'Millan, the said Peter M'Millan, her husband, and Edward M'Millan, S.S.C., as trustees for the purposes contained in the deed. Her husband was a consenter to this deed, which he signed in Liverpool, where he then resided. The testatrix signed it in Scotland, at Edinburgh, where she also executed a judicial ratification in the usual form.

The directions contained in this trust-disposition and settlement were recalled by a deed of alteration, also prepared in the Scotch form and by a Scotch conveyancer, dated in 1834. This deed Mrs M'Millan signed at Edinburgh, and her husband, who was designed "as presently mate on board the 'Magdalene' of Greenock," signed it at Campbelton. Mrs M'Millan further executed a judicial ratification of this deed at Edinburgh before a Justice of the Peace. By the deed there was, *inter alia*, bequeathed the principal sum of £500 to be divided amongst "the children to be procreate of the marriage between us share and share alike, or survivor of them, upon their respectively attaining the age of twenty-one." This payment was not, however, to be made to the children until either the death or the second marriage of their father.

In 1851 Peter M'Millan assumed David Cormack, S.S.C., and Alexander M'Millan, W.S., as new trustees under the heritable bond and bond and disposition in security. Mrs M'Millan died on 12th February 1860. In May following David Cormack prepared and sent to Peter M'Millan a discharge of the bond for £500, which was signed and returned by him, and at Whitsunday of that year David Cormack received the principal sum of £500 in the bond, and £12, 3s. 8d. as half year's interest. David Cormack died in August 1867, and having been predeceased by Alexander M'Millan, Peter M'Millan became the sole surviving trustee under the heritable bond and bond and disposition in security, as well as under Mrs M'Millan's trust-disposition and settlement—the Reverend William M'Millan and Edward M'Millan having also previously died. As sole surviving trustee under the latter deed, Peter M'Millan, on 26th June 1872, with concurrence of Charles Rowatt M'Millan, his son, raised an action of count, reckoning, and payment against Mrs Cormack, as executrix-nominate of David Cormack, her husband, in which decree in absence was pronounced against the defender, ordaining her to make payment to the pursuer of £500, held to be the balance of the intromissions of David Cormack with the trust-funds, with interest from the date of citation.

David Cormack's estates were, on 17th August 1872, sequestrated, Peter M'Millan being one of the creditors who applied for sequestration by virtue of his claim under the decree in absence. The pursuer and nominal raiser was confirmed as trustee upon the estate, and among other claims lodged was one by Charles Rowatt M'Millan, Mrs M'Millan's only son (his father having died in the interval) claiming the sum of £500, with interest. In making this claim Charles Rowatt M'Millan intimated his willingness to depart from the decree in absence, and to accept whatever sum might be found to be the balance of the trust-funds. He further admitted that Mrs M'Millan at her death had been survived not only by him, but by a daughter, Mrs Davies, wife of John Davies, residing in Liverpool. But he maintanied that as she had died before her father, her family were excluded from any interest in the trust-fund. The trustee however thought it right to call her representatives as defenders, for their interest.

Mrs Davies' children, four in number, and John Davies, their father and administrator-in-law, appeared and lodged a condescendence and claim, and *inter alia* pleaded—"The trust-disposition and settlement and relative deed of alteration executed by Mr and Mrs M'Millan fall to be construed according to the law of Scotland."

Messrs Mitchell & Baxter, Charles Rowatt M'Millan's assignees, pleaded *inter alia*—"(1) The trust-disposition and settlement having been executed by the husband in England, he being a domiciled Englishman, it and the relative deed of alteration must be construed according to the English law. (2) The succession under the trust-disposition and settlement and relative deed of alteration did not vest until the death of the husband. The parties having been domiciled in England at the date of the execution of the said deeds, and up to the time of their death, the succession must be ruled by English law."

The Lord Ordinary pronounced the following interlocutor:—

"*14th July* 1875.—Having considered the cause, Allows the claimants Edward Davies and others to add a statement and plea as to the law of England as affecting the construction of the deed in question: Finds that the deceased Mrs Alexander Rowatt Forbes or M'Millan, having been a domiciled Englishwoman from the date of her marriage to the now deceased Peter M'Millan in 1826 till her death, the effect of the provisions contained in the trust-disposition and settlement, and relative deed of alteration by her, dated in 1830 and 1835 respectively, bearing on the rights of the respective claimants to the fund *in medio*, must be determined according to the law of England; and directs the case to be enrolled for further procedure; reserving in the meantime all questions of expenses; and grants leave to the said claimant Edward Davies to reclaim against this interlocutor.

"*Note.*—The late Mrs Forbes or M'Millan had the power of disposal of a sum of £500, which the deceased Charles Rowatt, surgeon in Campbelton, by his disposition and settlement, bound his grandson to pay to her heirs, executors, and assignees, after her death; and the fund *in medio*, amounting to £280, is the balance of this sum which has been recovered, and which is now to be applied in terms of the provisions contained in the testamentary deeds executed by Mrs M'Millan, and which consist of a trust-disposition and settlement of 1830, and a relative deed of alteration of 1835.

"The competition arises between Messrs Mitchell & Baxter, W.S., as the assignees of Mrs M'Millan's only son, who claim the whole fund, and Edward Davies and others, claiming one-half of the fund, the children of a daughter of Mrs M'Millan, who survived her mother, but predeceased her father, at whose death the fund was appointed to be divided. By the fourth purpose of Mr and Mrs M'Millan's deed of alteration, she

directed that on her husband Mr M'Millan's second marriage or death "the said principal sum shall be divided among the children to be procreate of the marriage between us, share and share alike, or survivor of them, &c.

"Messrs Mitchell & Baxter claim the whole fund, as representing the sole survivor. The other claimants maintain that on a sound construction of the deed it was an implied condition of the bequest that in case a child should not survive the period of division, but should have issue, the children of such child should take their parent's share, and accordingly they claim the one-half of the fund to which their mother would have had right had she survived her father.

"If the effect of the testator's deeds were to be determined by the law of Scotland, the fund would be divisible, as the claimants Davies and others contend. The parties differ as to the legal construction of the deed according to the law of England; for while Messrs Mitchell & Baxter, as representing Charles M'Millan, allege that the deed must receive effect according to its literal interpretation, as a gift of the whole fund in favour of the survivor, the other claimants maintain that according to English law there is an implied condition in their favour which gives them right to the share their mother would have taken by survivance of their grandfather. They maintain, however, in the first place, that the deed must be construed according to the law of Scotland.

"I am of opinion that this contention is not well founded. It is admitted that the testator was domiciled in England, and some special ground must be established for the view that her settlements are now to be interpreted by the law of this country, with the effect of introducing as part of their provisions the *conditio si sine liberis decesserit*, an implied condition which is not expressed in the language used, and no such ground appears to me to exist. The deeds, though drawn in the Scotch form and executed by the testator during temporary visits to this country, are not expressed in technical language, which can only be properly understood or construed by a Scotch court. It was no doubt thought advisable to have the deeds prepared in this country, for they related to a fund secured in Scotland, and the right to which was vested in trustees, the majority of whom resided there; but the testamentary effect was simply to dispose *mortis causa* of estate with which the testator, a domiciled Englishwoman, was entitled to deal, and that not by the use of any technical legal phraseology peculiar to this country, but in language of plain ordinary signification. If the parties were agreed that the language used—which is of this character, and certainly not technical, at least in regard to the truster's directions as to the disposal of the fund in question—would be interpreted literally, and so receive its literal effect according to the law of England, it would follow, according to the rule settled in the case of *Thompson's Trustees*, 14 D. 217, that this Court should now settle the interpretation of the deed; but the parties differ as to this, for while Messrs Mitchell & Baxter allege that according to the law of England the provisions of the deed must be interpreted in accordance with the language used, the other claimants maintain that, according to English law, a condition in their favour is implied though not expressed, similar to the *conditio si sine liberis decesserit* of the Scotch law. It is thus necessary to ascertain the sound construction of the deeds according to the law of England."

Mrs Davies' children reclaimed, and argued—The subject in question was heritable, because (1) the power given was a power to dispose of money heritably secured; and (2) it was in fact so heritably secured. If so, the law of Scotland alone could rule. In any case the deeds were prepared and executed in Scotland and in Scotch legal phraseology, and so the presumption that the law of domicile prevailed was overturned.

Authorities—*Trotter* v. *Trotter*, 3 W. and S. 407; *Hardman* v. *Ronguet's Trs.*, 9 July 1845, 4 D. 1505; *Rainsford* v. *Maxwell*, 6 Feb. 1852, 14 D. 450; *Ferguson* v. *Marjoribanks*, 1 April 1853, 15 D. 637; *Sinclair* v. *Alexander and Others*, 18 Dec. 1851, 14 D. 217; Storey's Conflict of Laws, sec. 479; 4 Burge's Comms. 590; *Machargo* v. *Blain*, M. 4611.

M'Millan's assignees argued—Under the original settlement the subject was moveable, and no act of administration by the trustees could alter its character. The direction to secure, if required, did not operate a change. The fund was never in the possession of the trustees except as money. If the subject was moveable the *lex domicilii* alone could prevail.

Authorities—*Earl of Stair* v. *Dalrymple*, 29 Feb. 1846, 6 D. 904; *Purvis' Trs.* v. *Purvis' Exrs.*, 23 March 1861, 23 D. 812; *Anstruther* v. *Chalmer*, 2 Simon's Reports, 1; *Norton's Trs.* v. *Menzies*, 4 June 1851, 13 D. 1017; *Whyte* v. *Whyte*, 28 June 1860, 22 D. 1335; *Durie* v. *Coutts*, M. 4624; Westlake's International Law, sec. 329.

At advising—

Lord President—The fund *in medio* in this multiplepoinding amounts to a sum of £500, which was settled in the testamentary disposition of the deceased Charles Rowatt, surgeon in Campbelton, and the point now to be decided depends on the construction of a certain deed executed by Mrs M'Millan, by which she, in the exercise of her power of disposal, provided that the said sum should be divided in a particular way. The question before us however assumes this form—whether the deed executed by Mrs M'Millan is to be construed according to the law of England or of Scotland. The Lord Ordinary has found "that the deceased Mrs Alexander Rowatt Forbes or M'Millan, having been a domiciled Englishwoman from the date of her marriage to the now deceased Peter M'Millan in 1826 till her death, the effect of the provisions contained in the trust-disposition and settlement and relative deed of alteration by her, dated in 1830 and 1835 respectively, bearing on the rights of the respective claimants to the fund *in medio*, must be determined according to the law of England.'

Now, I confess that this interlocutor is not satisfactory on the face of it, because it deals with the question as if the domicile of the maker of the deed or of the two deeds was conclusive of the question. I don't think, however, that a question of this kind can be settled by the law of domicile alone to the exclusion of other circumstances.

The real question here is, as in all testamentary deeds, what is the intention of the testator?

In solving that question it is natural to inquire what law or system of jurisprudence the testator had in view. It does not follow of necessity that the law she had in mind was the law of her domicile. It might be intended that the settlement was to be construed by the law of a country different from that of the domicile, and such a direction might be inserted in the settlement, in which case the system of law pointed out by the testator would be that which would regulate. And if from other circumstances it be shown that the testator preferred the law of one country, I think that that law, though not the law of the place of her domicile, must be held to prevail.

What are the circumstances of this case so far as bearing on the present question? Old Mr Rowatt made a settlement in 1826, in which Charles Rowatt of Kilkivan, his grandson and universal disponee, and his heirs, were taken bound, *inter alia*, to pay to "the heirs, executors, and assignees of Mrs M'Millan" the sum of £500, with the lawful interest thereof from and after the first term of Whitsunday or Martinmas after her death. He appointed his heir-at-law Miss Flora Forrester Rowatt, his sister, to whom he left his heritable property, to give security for the payment of the £500, if it should be asked for. After his death a demand was made, and his heir-at-law, on the 21st September 1827, granted a bond and disposition in security of £500 over the heritable property to which as heir to her grandfather she had succeeded. This bond is conceived in favour of three trustees as trustees for behoof of the heirs, executors, and assignees of Mrs M'Millan. These trustees were infeft, and the bond was undischarged at the date of Mrs M'Millan's death on 12th February 1860. By her trust-disposition, the first deed she executed, Mrs M'Millan conveyed the bond and disposition in security to her testamentary trustees, and by the subsequent deed of alteration, executed by herself and her husband, they provided that the principal sum should be divided amongst their children, share and share alike, upon their attaining the age of twenty-one, or the survivor of them.

The deeds of Mrs M'Millan were testamentary deeds; the writer was a Scotch conveyancer, and the language was Scotch. Mrs M'Millan was a Scotchwoman by birth, and although her legal domicile may be in England from her being the wife of Peter M'Millan, who is designed in the first deed as residing in Liverpool, and in the second as mate on board of a vessel at that time lying in Campbelton harbour, there are other circumstances at which we must look. Both deeds were executed in Scotland; the first was signed by Peter M'Millan at Liverpool, and the second at Campbelton, where he was at the time with his vessel. The subject conveyed was a heritable bond and disposition in security, and the object was to dispone the sum secured, and to divide it among the children of the two spouses. In these circumstances Mrs M'Millan and her husband cannot have had any other but the law of Scotland in view in allocating this sum. They imagined that the money could not be disposed of except by a Scotch deed, and they accordingly put themselves in the hands of a Scotch conveyancer. If there were technicalities in this deed, no other law but that of Scotland could construe it; if it do not involve technicalities, there is no need of resorting to any other law.

But the argument has been used that this is a question of succession, and that the English law on that subject is that which must rule in this case. It is said that under our law of succession the claim of the children of the deceased Mrs Mary M'Millan, daughter of the testratrix, would be good, but that under the law of England these parties would not be entitled to take. But that is not a question in the law of succession; that is a question in the construction of deeds. The real question between the laws of England and Scotland in this matter is that the law of Scotland reads into a deed that which is not expressed there, and the law of England, we are told, does not. But the meaning of this Scotch deed is that the sum in dispute is to be divided among the children of the marriage, but in the event of anyone dying and leaving issue, that issue shall have the share of their deceased parent. That is just a question on the construction of the deed, and nothing else.

I am of opinion that the makers of this deed contemplated that the law of Scotland, and none other, was to construe it. The Lord Ordinary's interlocutor must therefore be recalled.

Lord Deas—I am clearly of opinion that there is no call for our going to the law of England to settle the question between the parties in this case. Charles Rowatt, a Scotchman in Campbelton, executed a deed of settlement, prepared by a Scotch conveyancer and in Scotch form, providing, *inter alia*, that £500 should go to the heirs, executors, and assignees of Mrs M'Millan, and that heritable security for this sum should be given by his successor over all his heritable estate conveyed by the deed of settlement. That heritable security was afterwards granted by the testator's heir-at-law, and was taken in favour of trustees, who were to be trustees for behoof of the heirs, executors, or assignees of Mr M'Millan. The trustees were mere hands and instruments for them. In 1830 Mrs M'Millan made a deed purporting to execute the power given her. That deed described the parties as then residing in Liverpool. It was prepared by a Writer to the Signet in Scotch form, like the previous deed.

But that first deed is of no moment, because the ultimate result of the case depends upon the deed of alteration of 1834, by which Mrs M'Millan and her husband directed £500 to be divided among her children, whom failing, her nearest heirs and executors. That deed bears that she was residing in Campbelton; she was the principal party to it, her husband was only a consenter. Her husband was then mate of a ship belonging to Greenock. The deed is further in Scotch form, and tested in the usual way. They had a son who survived both mother and father, and who is still alive, and an only daughter, Mrs Davies, who survived her mother, but predeceased her father, leaving children. The question now before the Court is—Whether the son is to take the whole sum, or whether their mother's share, had she been alive, falls now to her children?

It is to the intention of Mrs M'Millan, who executed this deed, that we must look. Did she or did she not intend that if one of her children should die, his or her share should be distributed

amongst the rest, to the exclusion of issue? This is a question of the construction of a deed, and is to be determined by the law of Scotland. It is quite a fallacy to rear up a question of the law of succession, in place of an inquiry into the intention, which beyond all doubt is the proper course. There are no technicalities in any of these deeds, and there is nothing which an English or Scotch lawyer could not understand.

If there be anything wanting over and above, I am further of opinion that the matter in dispute is one of heritable right. The original security was a security over heritable estate to trustees for behoof of the heirs and assignees of the beneficiary. It stood as a direct heritable security to them and to their successors. It was granted to these beneficiaries, to whom it was destined by Mrs M'Millan, and those who were in right of the £500 were in right of the security so long as the bond was undischarged.

Lord Ardmillan—There is some nicety in the first question which has been raised here. The elder Mr Rowatt made a settlement by which Mrs Alexander Rowatt or M'Millan became entitled to dispose of a certain subject, which under the deed the testator's heir-at-law was directed, if required, to secure upon the heritable estate. This was done, and I am inclined to think with Lord Deas that the subject was heritable, in which case there is no doubt that the law of Scotland is alone applicable.

But apart from that consideration, I am further of opinion that as the deed which is before us was prepared by a Scotch conveyancer in terms according to Scotch legal phraseology, and was executed in Scotland, it is to be construed according to the law of Scotland. The deed is to be read by the light of the law of that place where it was made. It is true that the party executing it had her residence in England; but in considering the effect of a domicile outwith the kingdom, we must not hold the fact of the place where the party lives as conclusive of his intention in a case like the present. It is here plain that a place was chosen in Scotland in order to have the deed made and administered there, and therefore, if this be a pure question of construction, I think the law of Scotland must be applied.

It is a delicate matter whether this is a question of pure construction or succession. Though I have felt that point attended with difficulty, it is to be observed that this is not a case of intestate succession, and a conclusion cannot be arrived at without reading the deed itself. The meaning to be given to the deed, if it is read by the light of the law of the country where it was made, is that the child of the child to be procreated of the marriage, shall take if the parent predecease. I go upon the mode of construing the deed, and the law imports into it the children and grandchildren of any child that dies. Ultimately, without much hesitation, on looking to the intention of the testator, I have come to be of the same opinion with your Lordships.

Lord Mure—I have arrived at the same conclusion with your Lordships. The misapprehension here has proceeded from this, that the rule that domicile must prevail has been taken in too abstract a sense. The law of domicile rules in cases of intestate succession, and it also forms an important element in testate succession. But in the latter it is not conclusive; there are other elements to be considered, as, for example, the *locus* where the deed was made, where administration is to take place, and who the parties are who are to administer. All these concurring show what the intention of the testator was.

This is a will which was made in Scotland, and has relation to an estate, apparently heritable, and situated there. The intention is strong in favour of the view that the law of Scotland is to govern in the construction of the deed. If the domicile and the place where the will was made were the same, they would operate a strong presumption that the law of the domicile was preferred in the testator's mind, but even in that case these facts alone would not be conclusive. If the import of the will does not depend on any technical rule of practice, and if it can be construed by anyone conversant with its language, that is a material circumstance. In the case of *Thomson's Trustees* v. *Alexander*, 18th December 1851, 14 D. 217, the testator was a domiciled Englishman, and as soon as the parties in that case were advised by the Solicitor-General of England that the question was one not depending "on any technical rule of English practice," but was one on which the judge of any Court might give judgment according to his understanding, it was held that it was open to the Courts here to put their own construction upon the will. That doctrine was not confined to the case of *Thomson's Trustees*, but was given effect to in the case of *Rainsford* v. *Maxwell*, 6th February 1852, 14 D. 450, and in other cases.

I think the Lord Ordinary's interlocutor should be recalled.

The following interlocutor was pronounced:—

"The Lords having heard counsel on the reclaiming note for Edward Davies and others, against Lord Shand's interlocutor of 14th July 1885: Recal the said interlocutor; Find that the question raised in the competition upon the construction and effect of the deeds executed by Mrs M'Millan and her husband in 1830 and 1834-1835, falls to be determined according to the law of Scotland, and remit to the Lord Ordinary to proceed accordingly: Find the reclaimers, Davies and others, entitled to expenses since the date of the interlocutor reclaimed against, and remit to the auditor to tax the account of the said expenses and report to the Lord Ordinary, with power to his Lordship to decern for said expenses when taxed."

Counsel for Mr M'Millan—Guthrie Smith—Sir Walter Simpson. Agents—Mitchell & Baxter W.S.

Counsel for John Davies and others—Fraser—Lorimer. Agent—D. J. Jackson, S.S.C.