Lord Deas—I am clearly of opinion that this claim does not fall within the 103d section of the statute. The words cannot be repeated without seeing that. This single ground disposes of the case, and I am not inclined to go into the point raised by the Lord Ordinary in his note, without necessity. The question is a very serious one, but until it is properly raised on the merits I do no say what my opinion on it is.

Lord Mure—I am of the same opinion. It is a difficult question how far salaries like the present are assignable or attachable, but it is not necessary to determine it here, because this bankrupt was teacher in the school at the date of the sequestration, while the 103d section contemplates new estate only. I am quite clear therefore that the present petition is not within the 103d section.

Lord Shand—I am of the same opinion. The bankrupt was teacher at the date of the sequestration. It is not disputed that he held office *ad vitam aut culpam*, and had the right to draw all future emoluments. Therefore, if the trustee has any claim he has it in virtue of the sequestration and not in virtue of the 103d section. But if he goes further he will be met, in the first place with the difficulty dealt with by the Lord Ordinary, and secondly, there is the consideration whether, looking to the circumstances and position of the bankrupt, £200 a year is an excessive amount for the maintenance of himself and his family.

The Court adhered.

Counsel for Petitioner (Reclaimer)—Strachan. Agent—W. Officer, S.S.C.
Counsel for Respondent—Salvesen. Agents—Boyd, Macdonald & Co., S.S.C.

Saturday, July 9.

FIRST DIVISION.

[Lord Rutherfurd Clark, Ordinary.

MACPHERSON *v.* MURRAYS.

Process—Reclaiming—Decree Assoilzieing Defender where Pursuer is Absent and Defender has been Appointed to Lead in a Proof—Ill-health assigned as Ground of Absence.

This was an action of count and reckoning by a lady against her law agents, and related to certain sums of money which she alleged had come into their hands in order to carry on a litigation on her behalf. After a variety of procedure the Lord Ordinary (Rutherfurd Clark) pronounced this interlocutor:—"The Lord Ordinary having heard parties, Allows them a proof of their respective averments, the defenders to lead; grants diligence at the instance of both parties for citing witnesses and havers; and appoints the proof to proceed before the Lord Ordinary upon Thursday, the 16th day of June next, at 10 o'clock forenoon." Thereafter, on the 16th June, the following interlocutor was pronounced:—"The Lord Ordinary, in respect of no appearance made for the pursuer, Finds it unnecessary to proceed with the proof allowed by interlocutor of 13th May last: Therefore discharges the order for proof, assoilzies the defenders from the conclusions of the summons, and decerns." The pursuer reclaimed. Nevay for her produced a medical certificate, and stated that being an old woman, over seventy years of age, bedridden, and in poor circumstances, she had been unable to attend to her interests in the litigation. In any case, the defenders were appointed to lead the proof, and had failed to do so. [The Lord President observed that the defenders, as pursuers of the issue, might either lead proof or not, as they preferred]. The defenders replied—The medical certificates merely bore that the pursuer was an old woman, and, besides, her personal attendance at the proof was not necessary. The Court refused the reclaiming note.

Counsel for Pursuer (Reclaimer) — Nevay. Agent—R. Broatch, Solicitor.
Counsel for Defenders (Respondents)—Lang. Agents—*J.* & W. C. Murray, W.S.

Saturday, July 9.

SECOND DIVISION.

SPECIAL CASE—DUNCAN'S TRUSTEES *v.* DUNCAN AND OTHERS.

Settlement—Marriage-Contract.

A husband and wife in their daughter's marriage-contract bound themselves to pay to the marriage-contract trustees one-fifth of the free residue of the estate of each of them remaining after satisfaction of onerous obligations, the said share to be payable on the lapse of six months after the death of the longest liver of them. The husband thereafter died leaving to his widow a liferent of his whole estate. *Held* that the widow was entitled to a liferent of the whole estate, and that the daughter's marriage-contract trustees had no claim to the principal or interest of one-fifth of her father's estate till after the death of the widow.

James Duncan, W.S., Edinburgh, died on 27th September 1874, survived by a widow, two daughters, and one son, James Barker Duncan, W.S. He was also survived by three grandchildren, the family of a daughter Mrs Millar, who predeceased him. Mr Duncan had in 1865 been a party, as had also Mrs Duncan, to the marriage-contract of Mrs Millar. In that marriage-contract Mr and Mrs Duncan with mutual consent bound themselves to convey and make payment to the marriage-contract trustees acting for the time of "one-fifth part or share of the free residue of each of them remaining after satisfaction of onerous obligations, the said share to be payable on the lapse of six months after the death of the longest liver of the said James Duncan and Mrs Christian Duncan." It was then declared that the said share should be liferented by Mrs Millar and by her husband if he survived her, and that the fee should belong to the child

or children, if any, of the marriage. Dr Millar and Mrs Millar both predeceased Mr Duncan. There was no marriage-contract between Mr and Mrs Duncan. Mr Duncan left a trust-disposition and settlement by which he directed his trustees to deliver to his wife if she survived him all his furniture and effects in his dwelling-house absolutely as her own property. He also directed them to pay to her the free yearly produce of the residue of his whole estate, heritable and moveable, during all the days of her lifetime. The sixth purpose was as follows—"In the sixth place, on the lapse of six months after the death of the longest liver of me and my said spouse, my trustees shall implement the obligation undertaken by me in the antenuptial contract of marriage, of date 5th July 1865, entered into by and between John Millar, Esquire, doctor of medicine, then residing at No. 13 York Place, Edinburgh, now deceased, and John Millar, Esquire, of Sheardale, his father, on the one part, and Christian Duncanson Duncan, my eldest daughter, also now deceased, with consent of me and my said spouse, on the other part, to convey and made payment to the trustees or trustee acting for the time under the said contract, of one-fifth part or share of the free residue of my estate remaining after satisfaction of onerous obligations, subject to the conditions therein mentioned, and which provision I do hereby declare to have been in full satisfaction to the said Christian Duncanson Duncan of all claim of legitim, executry, or others whatsoever competent to have been demanded by her through my decease had she survived me." The trustees under Mr Duncan's settlement regularly paid to his widow the income of her husband's estate as directed by his settlement from his death in 1874 till the date of this Special Case. Doubts having arisen as to whether they were bound to pay to her the whole annual produce or only four-fifths thereof, retaining the remaining fifth and paying it either periodically to the marriage-contract trustees of Mrs Millar under the obligation in her marriage-contract, or paying to them the accumulations of it, six months after the death of Mrs Duncan, this Special Case was adjusted for the opinion of the Court. Mr Duncan's testamentary trustees were the first parties, Mrs Duncan was the second party, and Mrs Millar's marriage-contract trustees were the third parties. The opinion of the Court was also asked as to whether the provision of furniture and other effects in Mr Duncan's dwelling-house to Mrs Duncan in his settlement was an onerous obligation in the sense of the clause in Mrs Millar's marriage-contract above quoted, and, if not, whether the value of it ought to be taken into account in ascertaining the fifth part of the residue of Mr Duncan's estate falling to be paid to the marriage-contract trustees.

At advising—

Lord Justice-Clerk—I do not think there is any question here at all. The doubt which exists among the parties arises on the interpretation of the clause in the antenuptial marriage-contract between Dr John Millar and Miss Christian Duncanson Duncan, dated 5th July 1865, to which reference has been made:—"For which causes, and on the other part, the said James Duncan, and Mrs Christian Duncan, with mutual consent respectively bind and oblige themselves to convey and make payment to the trustees or trustee acting for the time under the contract, of one-fifth part or share of the free residue of the estate of each of them remaining after satisfaction of onerous obligations, the said share to be payable on the lapse of six months after the death of the longest liver of the said James Duncan and Mrs Christian Duncan; declaring that the said share is to be liferented by their said daughter, and if the said Dr John Millar be the surviving spouse, to be liferented by him after her."

Now, the wife is a party as well as the husband as far as her own separate estate is or may be concerned; and I cannot read that to mean anything but this, that while there is unquestionably a right to a share of the estate, both as that estate existed at the time of the testator's death, and as it will stand at the death of the longest liver, there is no right whatever until the death of the longest liver to interfere in any way with the directions that the husband has given in regard to the time at which it is payable. One-fifth part of the capital will eventually be payable under the marriage-contract. Except in regard to that, I can see no right whatever that the trustees have under the contract to interfere with directions which were quite within the power of the testator, and which did not constitute any infringement of the obligations undertaken by him or his wife.

As to the furniture, I doubt whether there is any ground whatever for raising this question. The queries put to us on that subject are entirely out of the question.

Lord Young—I am of the same opinion, and without any doubt or difficulty. The right and duty of the marriage-contract trustees depends upon the death of the widow. They are not to come into operation until then. Before that there is no right and no duty depending on the trustees of the deceased father and husband; and so far as I can judge, and I think we have the materials for judgment, they have acted with perfect propriety in handing over to the widow the property of the furniture, and the income of his whole estate. When the widow dies the marriage trustees of the daughter will be entitled to one-fifth share of the husband's estate, and of the wife's estate, not making any distinction whatever between the two. But before that they have no right to demand either principal or interest. There is nothing approaching to an implied, any more than an expressed, direction to set aside the interest of one-fifth of the estate for the benefit of the trustees so long as the widow is alive. I should therefore answer the questions as your Lordship proposes.

Lord Craighill—I am entirely of the same opinion. It is not possible to read this marriage-contract in any reasonable way without coming to the conclusion that until the death of the longest liver nothing can be exacted by the trustees of this marriage-contract. The estate of the husband may be now ascertained, but no portion of that estate, either as regards interest or principal, or income, can be claimed by the marriage-contract trustees.

The time will come for making the exaction once the widow dies, but not until then is even a

fifth part of this estate demandable. I am clearly of opinion that the only way in which we can deal justly in this matter is to answer the questions as proposed by your Lordship.

The Court pronounced this interlocutor:—

"The Lords having heard counsel for the parties on the Special Case, are of opinion and find, that in paying the income of the trust estate and in handing over the furniture to the second party, the trustees, parties of the first part, have acted in conformity with the legal rights of parties, and that the parties of the third part have no title or interest to interfere with their management to this effect."

Counsel for First Parties — A. J. Young. Agents—Duncan & Black, W.S.

Counsel for Second Parties—J. A. Reid. Agent —Alexander Matheson, W.S.

Counsel for Third Parties — Macfarlane. Agents — Duncan, Archibald, & Cuningham, W.S.

Tuesday, July 12.

FIRST DIVISION.

[Sheriff-Substitute of Lanarkshire.

ARROL *v.* TODD.

Master and Servant—Contract—Damages for Wrongous Dismissal.

George Todd, brickmaker, sued Wm. Arrol & Co. engineers and contractors, Glasgow, for £104, 14s. 1d. in name of damages for breach of contract. The defenders were contractors for the erection of the Forth Bridge at Queensferry, and the pursuer averred that they had engaged him for a year from 23d February 1880 at a salary of £150, and an additional commission on the output of bricks, to be manager of their brickwork at Inverkeithing in connection with the said contract. The defenders averred that his engagement was as a weekly servant, at a wage of £3 per week and the said commission. The pursuer worked at the brickwork until 14th August, when the defenders intimated to him that the undertaking had been abandoned, and that his services would no longer be required. He claimed damages for wrongous dismissal, the amount sued for consisting of £75 for the remaining half-year's salary of his alleged term of engagement, and a sum of £29 odd as the estimated amount of commission which would probably have become due and payable to him during that period. Proof was led, from which it appeared that the pursuer's engagement was made at an interview between him and Mr Arrol on 19th February, as to the terms of which the parties were at variance. A letter was produced, written by pursuer to defenders' firm on 20th February in the following terms:—"Referring to my conversation of yesterday with your Mr Wm. Arrol, I hereby offer for twelve months, from Monday 23d current, to take the management of the brickworks started by you at Inverkeithing . . . and that at a salary of £150 . . . payable either monthly or, at your option, shorter periods, with the addition of a premium of 1d. per thousand on the output, payable quarterly. . . . Your acceptance of this per return will oblige your obedient servant, GEORGE TODD." No acceptance was received. During the pursuer's stay at Inverkeithing he received £3 per week from Stewart, the defenders' cashier. The Sheriff-Substitute (LEES), after proof led, found the yearly engagement proved, and decerned in pursuer's favour for £90 of damages. The defenders appealed to the Court of Session, and the Lords affirmed the judgment of the Sheriff-Substitute.

Counsel for Pursuer (Respondent)—Mackintosh—Dundas. Agents — Mackenzie & Black, W.S.

Counsel for Defenders (Appellants) — D.-F. Kinnear, Q.C.—Jameson. Agents—J. & J. Ross, W.S.

Tuesday, July 12.

SECOND DIVISION.

[Lord Rutherfurd Clark, Ordinary.

CAMPBELL *v.* CAMPBELL & CO. AND OTHERS.

Partnership—Change of Name of Firm—Insufficient Interest to Support an Action on the part of a Landlord to Interdict a Firm of Distillers of which he had formerly been a Member from Changing the Name of the Firm during the Currency of the Lease.

In this case the complainer sought to interdict the respondents, who were tenants of the Tobermory Distillery in the island of Mull, under and in virtue of a lease entered into between him and the firm of N. Campbell & Co. and the then partners thereof for seven years from 1st October 1879, dated 14th and 16th October 1879, from carrying on the business of the said distillery under the name of M'Kill Brothers, or under any other name or firm than that of N. Campbell & Co., during the period of said lease, and also from selling in the market the whisky produced at the said distillery under the name of the "Mull Whisky," or under any other name than that of the Tobermory Distillery Whisky. It appeared that the complainer, who was the heritable proprietor of the Tobermory Distillery, in 1879 entered into a partnership with a certain John M'Kill, the duration of which was to be seven years from 1st October, and the purpose of which was to carry on the distillery business under the name and firm of N. Campbell & Co. In the contract of copartnery it was agreed (1) that M'Kill should manage the business; (2) that the firm of M'Kill Brothers, spirit brokers, Glasgow, should be sole agents for the sale of the whisky produced at the distillery; (3) that the partnership should take a lease from the complainer as an individual for the period of seven years from 1st October 1879 of the whole of the distillery buildings, &c. Accordingly the complainer executed a lease in favour of N. Campbell & Co. and M'Kill, in which there was, *inter alia*, a provision