The pursuer appealed to the Second Division of the Court of Session, and argued—In the first action the executrix could only recover damages for injuries done to the dead man himself, while in the present one she claimed for injuries done to her through his death. She had suffered pecuniary loss for which she demanded recompense, as well as *solatium* for her wounded feelings. Even if her son's claim for damages had been settled in full, and he had subsequently died of his injuries, she would not have been barred from suing for damages for her loss. This case should therefore be conjoined with the first action, and remitted to the Lord Ordinary to be tried conjointly with it—*Eisten* v. *North British Railway Company*, July 13, 1870, 8 Macph. 980.

The defenders argued—The present action was incompetent and unnecessary. It was enough for the defenders to have to meet one action for the one injury. There was no authority for allowing a second action to be raised to obtain further damages for the same injury as was covered by the first. This was clearly established in England by Lord Campbell's Act—*Stevenson* v. *Pontifex & Wood*, December 7, 1887, 15 R. 125; *Macmaster* v. *Caledonian Railway Company*, November 27, 1885, 13 R. 252; Addison on Torts, 454.

At advising—

LORD YOUNG — The question argued before us in this case was represented as being one of interest and importance, and also of a novel character. I quite allow that it is so; I cannot, however, allow that it presents any difficulty. The facts are quite clear. Alexander Darling, a workman employed by Messrs William Gray & Son, builders, raised an action of damages against them for injuries sustained by him in their service, and, as he alleged, through their fault. He died in the course of the action—after the serving of the summons—and his mother, *qua* his executrix, sisted herself as pursuer, a proceeding quite within her rights. Thinking, however, it was a favourable opportunity, she brought a second action as an individual, on the view that she was a separate sufferer by her son's death, and as such was entitled to damages for her loss and her injuries apart from his. I am not considering the special facts of this case, but will take a general view. The question is quite a novel one, and I am clearly of opinion that the course adopted by the mother was incompetent, and that the action should be dismissed as incompetent, with expenses in both Courts.

The LORD JUSTICE-CLERK and LORD RUTHERFURD CLARK concurred.

The Court dismissed the action as incompetent.

Counsel for the Appellant—Rhind. Agent—D. Howard Smith, Solicitor.

Counsel for the Respondent—C. N. Johnstone. Agents—T. & W. A. M'Laren, W.S

Tuesday, July 14.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

M'KETTRICK (HAIRSTEN'S JUDICIAL FACTOR) *v.* M'GOWAN AND OTHERS.

Succession—Construction—"Survivors" as Equivalent to "Others."

A testator directed his trustees upon his decease to secure and lend out upon good and sufficient bonds payable to themselves the sum of £700 for behoof of each of his five daughters in liferent allenarly, and the lawful issue of each in fee, and provided that "in case any one or more of my said daughters shall die before me or without leaving lawful issue of her or their bodies, the sum or sums provided and intended for them and theirs as aforesaid, not only the original sum so provided, but the sum or sums accrescing to her or them by virtue of the present clause, shall appertain and accresce to the survivor or survivors of my said daughters in liferent, . . . and to their issue and children, share and share alike, in fee." He further provided that, if any of his daughters desired it, his trustees should invest her £700 in the purchase of lands or houses, and should take the titles to his said daughter in liferent allenarly and her issue in fee, "whom failing to my said other daughters in liferent, and their respective issue in fee, in case of their death or their dying without leaving such issue in manner before mentioned."

The last two survivors of the testator's daughters died unmarried, and the fee of the original and accrescing shares liferented by them was claimed by the issue of predeceasing daughters, and also by representatives of the residuary legatees named in the settlement.

Held (*following Forrest's Trustees* v. *Rae, &c.*, 12 R. 389) that the words "survivor or survivors" in the clause of accretion were to be taken in their natural meaning, and consequently that the issue of predeceasing daughters were not entitled to share in the fund in dispute.

Thomas Hairstens, tanner in Maxwelltown, Kirkcudbright, died 29th July 1827 leaving a trust-disposition and settlement dated December 22, 1822, and codicil thereto dated September 22, 1823.

By his trust-disposition and settlement he disponed to certain trustees his whole estate, heritable and moveable, for payment of his debts, sickbed and funeral expenses, annuities to his widow and a brother. In the fourth place he made certain provisions in favour of his five daughters by name, payable to them on their attaining majority, and in the sixth place he appointed his trustees, so soon

after his decease as should be thought most prudent and advantageous, and after payment of his debts, sickbed, and funeral expenses, and after payment had been made or proper security obtained for the provisions in favour of his daughters, to pay and convey the residue of his estate to and among his three sons Thomas, John, and James equally, always under burden of the annuities to his widow and brother.

By the codicil dated 22nd September 1823 the testator revoked the provisions previously made in favour of his daughters, with the whole conditions thereto attached, and in place thereof provided as follows—"I hereby direct and appoint my said trustees and their foresaids, immediately upon my decease, and from the first and readiest of my funds, to secure and lend out upon good and sufficient bonds payable to themselves the sum of £700 sterling in trust for the use and behoof of my said daughter Agnes Hairstens, and the like sum of £700 sterling for use and behoof of each of my other said daughters Jean Hairstens, Barbara Hairstens, Margaret Hairstens, and Ann Hairstens, and for each other daughter which may be procreated of my present marriage, in liferent respectively for their liferent use allenarly, and for the use and behoof of the lawful issue and children of each of my said daughters, share and share alike, in fee, with interest thereof from the first term of Whitsunday or Martinmas that shall occur after my decease, to which interest I hereby declare they and each of them shall be entitled: And in case any one or more of my said daughters shall die before me or die without leaving lawful issue of her or their bodies, the sum or sums provided and intended for them and theirs as aforesaid, not only the original sum so provided, but the sum or sums accrescing to her or them by virtue of the present clause, shall appertain and accresce to the survivor or survivors of my said daughters in liferent for their liferent use allenarly, and to their issue and children, share and share alike, in fee—that is, the issue and children of each daughter shall receive no more than an equal share of what would have fallen to the issue and children of the daughter or daughters predeceasing or dying without issue and children: . . . Providing and declaring nevertheless that my said trustees and their foresaids shall, when demanded, and at the request and with the advice and consent of my said daughters, or any of them, for their and their families' respective interest in the premises, be bound and obliged to invest each of the several principal sums provided to them and their aforesaids in the purchase of lands or houses, and that my said trustees and their foresaids shall be bound and obliged to take the rights and investitures of the lands or houses so to be purchased in liferent to my said daughter or daughters for her or their liferent use allenarly, and to her or their lawful issue and children in fee, and whom failing, to my said other daughters in liferent, and their respective issue and children in fee, in case of their death or their dying without leaving such issue and children, as in manner before mentioned."

The testator was survived by the five daughters named in the codicil, and after his death the provisions in favour of these daughters were invested on heritable security by the trustees, and the interest on these provisions was paid over to them as it fell due, in terms of the settlement.

The testator's daughters died on the following dates—Jean (Mrs M'Gowan) in 1846, Agnes in 1867, Margaret (Mrs Martin) in 1881, Barbara in 1889, and Anne in 1890. Mrs M'Gowan and Mrs Martin left issue. The testator's other daughters died unmarried. On the death of Mrs M'Gowan and Mrs Martin the shares of £700 liferented by them were divided among their issue. After the death of Agnes in 1867 the interest of her provision was paid equally among her three surviving sisters until Mrs Martin's death. Thereafter the interest of Agnes' provision was paid equally between the surviving sisters until Barbara's death, and thereafter the interest of the provisions to the three unmarried daughters was paid to Anne, the last survivor, till her death.

In 1890 David M'Kettrick, bank agent, Dumfries, was appointed judicial factor upon the trust-estate. On entering upon his duties he found that the trust funds consisted of the provisions which had been originally liferented by the testator's three unmarried daughters, amounting in all to £2033, 8s 7d., and he raised an action of multiplepoinding in order to ascertain to what persons this sum was payable.

Claims were lodged for the issue of Mrs M'Gowan and Mrs Martin on the one hand, and for certain representatives of the testator's sons, the residuary legatees under the settlement, on the other. The former claimants maintained that the fee of the shares liferented by the unmarried daughters was carried to them by the destination in the codicil. The latter claimants maintained that the fee was destined only to the issue of daughters who survived the predeceasing daughters, and that therefore the fee of the shares liferented by the testator's unmarried daughters fell into residue with the exception of one-third of the share of Agnes, which fell to the issue of Mrs Martin, who had survived Agnes.

On 20th May 1891 the Lord Ordinary (KINCAIRNEY) found that on a sound construction of the trust-disposition and codicil, the fee of the provision of a daughter of the truster dying without issue was destined to the issue of daughters of the truster surviving the daughter so dying, to the exclusion of the issue of daughters predeceasing her; therefore repelled the claim of the issue of Mrs M'Gowan; sustained the claim of the issue of Mrs Martin as regarded a third part of the provision of the truster's daughter Agnes, and repelled said claim *quoad ultra;* found that the fund *in medio*, except in so far as the claim of Mrs Martin's issue had been sustained, fell to be paid to the truster's three

sons, being his residuary legatees, and appointed the cause to be enrolled for further procedure; and granted leave to reclaim.

"*Opinion.*—This action of multiplepoinding has been brought by the judicial factor on the estate of Thomas Hairstens of Maxwelltown, who died in 1827 leaving a trust-disposition and a codicil.

"The questions raised depend almost entirely on the construction of the codicil, whereby the truster directed his trustees to invest in their own names £700 in trust for behoof of each of his daughters in liferent allenarly and of their issue in fee.

"He was survived by five daughters, who died on the dates following—Jean (Mrs M'Gowan) in 1864, Agnes in 1867, Margaret (Mrs Martin) in 1881, Barbara in 1889, and Anne in 1890. Mrs M'Gowan and Mrs Martin left issue. Agnes, Barbara, and Anne died unmarried.

"Two sums of £700 have been paid to the issue of Mrs M'Gowan and Mrs Martin. Other three sums of £700 provided to the unmarried daughters—Agnes, Barbara, and Anne—in liferent are now (under deduction of certain expenses) in the hands of the judicial factor, who has raised this action in order to ascertain to whom these sums are payable.

"The provision in the codicil applicable to the case is this—That in case any of the truster's daughters should die without leaving issue the sum provided for her and her issue 'shall appertain and accresce to the survivor or survivors of my said daughters in liferent for their liferent use allenarly, and to their issue and children, share and share alike, in fee.'

"The primary question raised is between the issue of Mrs M'Gowan and of Mrs Martin on the one part, and the representatives of the residuary legatees under the trust-deed—who were the truster's three sons—on the other part. The former maintain that under the above destination the fee of the several sums of £700 is carried to the issue of Mrs M'Gowan and Mrs Martin. The residuary legatees maintain that the fee is destined only to the issue of daughters who survived the predeceasing daughters, and that therefore the issue of Mrs M'Gowan, who predeceased Agnes, Barbara, and Anne, are wholly excluded, and that the issue of Mrs Martin, who survived Agnes but predeceased Barbara and Anne, are entitled only to one-third of the £700 destined to Agnes and her issue. They maintain that all the rest is carried by the residuary clause.

"I was at first strongly under the impression that the truster's intention was to secure the whole of the five sums of £700 to his daughters and their issue, and to exclude the residuary legatees from the whole sum of £3500 so long as there existed issue of any of the daughters. That appeared to me to be in accordance with the scheme of the trust-deed, of which the codicil is merely a modification; and it seemed *prima facie* reasonable to suppose that the testator would favour equally the issue of daughters predeceasing and the issue of surviving daughters. That impression has not been wholly removed; but on more careful consideration of the words of the codicil I have come to think that it is impossible to give effect to it consistently with any fair interpretation of the codicil.

"I think there can be no doubt that the term 'survivor' in the clause of accretion which has been quoted has reference to the unmarried daughter who is supposed to have died, and whose provision is in question. It is her survivor who is intended. But it seems to me that there is at first sight a possible or apparent ambiguity in the clause, because the antecedent to the latter relative, 'their,' may possibly be either the word 'daughters' or the words 'survivor or survivors of daughters,' and therefore it is not impossible to read the clause as importing either a destination to the survivors of the daughters in liferent and the issue of these survivors in fee, or a destination to the survivors of the daughters in liferent and to the issue of all the daughters, whether surviving or predeceasing, in fee. Out of that ambiguity the present question has apparently arisen. Had the words used been 'surviving daughters' instead of the survivors of daughters, there would have been no ambiguity at all, and perhaps this question might not have arisen.

"But on careful consideration I have come to think that there is no substantial ambiguity and no real doubt as to the manner in which the clause must be construed, and that the latter interpretation is really inadmissible.

"Although it is not wholly impossible to construe the destination 'to the survivors of my daughters in liferent and their issue in fee' as a destination of the fee to the issue of all daughters surviving and predeceasing, such a construction would be extremely forced and strained. According to any natural or ordinary construction, the words 'their issue' must bear reference to the individuals previously specified on whom the liferent had been conferred, that is to say, to the survivors of the daughters. The truster contemplated five separate investments, one in favour of each daughter, and it is plain from the codicil that he regarded the sums which would accresce on the death of a daughter without issue simply as additions to the original provision, and as falling under the destination which governed that provision. I think it clear that he meant that the sum, whether original or accrescing, of which a daughter should have the liferent, should stand destined to her issue in fee. But that could not happen if the liferents accresced to the surviving daughters only, and the fee to the issue not only of surviving daughters but of predeceasing daughters also. For example, there is no doubt that on the death of Agnes the liferent of her provision was divisible into three parts, and Mrs Martin was entitled to the liferent of a third, but the fee if not confined to the issue of surviving daughters would be

divisible into four parts. So that Mrs Martin would have the liferent of one-third, but her issue the direct right to the fee of a fourth only. That would be a result which appears inconsistent with the language of the codicil and with the idea that the accrescing funds should be simply an addition to the original provision. On the whole, I think that the exclusion of the issue of predeceasing daughters is expressed so plainly in this clause that that view of it must of necessity be adopted unless the indications of a contrary intention are unmistakeable.

"It was argued on behalf of the issue of Mrs M'Gowan and Mrs Martin that this was a case in which the word 'survivor' should be read as synonymous with 'other.' But I confess I have not been able to see the force or application of that suggestion. It is no doubt not only possible, but absolutely certain, that the words 'survivor' and 'other,' when used in this deed in reference to daughters, are absolutely synonymous, because what is conferred on a daughter is a liferent; but the effect of that identification is not to enlarge the meaning of the word 'survivor,' but to restrict the meaning of the word 'other.' It shows that daughters may, or rather must, mean surviving daughters, but it does not show that surviving daughters or other daughters can include daughters who were not survivors.

"Up to this point I can see no difference between this case and the case of *Forrest's Trustees* v. *Rae*, December 20, 1884, 12 R. 389, where the Court, dealing with a destination in all points similar, refused to hold that the words 'issue of survivors' could include issue of predeceasers. The reported argument in that case is almost the same as the argument which was addressed to me, and I would be bound to follow that case as a precedent unless this case could be distinguished.

"Counsel for the issue referred to the case of *Ramsay's Trustees* v. *Ramsay*, December 21, 1875, 4 R. 243, which also bears a very striking resemblance to this case, and where the Court preferred the issue of predeceasing legatees, notwithstanding that the destination was to the issue of surviving legatees in a question with parties pleading intestacy. In that case the provision dealt not as here with specific sums, but with the whole estate, and the only alternative against the claim of the issue was intestacy, which was said to be inconsistent with the manifest plan of the truster's settlement. Here, by reason of the residuary clause, there is no question about intestacy. It was said by the judges in *Forrest's* case that their judgment was not inconsistent with the judgment in the case of *Ramsay's Trustees*. I am not sure that I see the exact grounds on which the apparent conflict between the two cases is satisfactorily displaced. But I think that I must regard the case of *Forrest* as the more binding on me, both because it seems to me to come closer to the present case, and also for the simple reason that it is the later judgment.

"There are, however, two passages in the codicil in this case which did not occur in the settlement under consideration in *Forrest's* case. The one is a kind of explanatory clause which comes immediately after the clause of accretion, and it is as follows:—'That is, the issue and children of each daughter shall receive no more than an equal share of what would have fallen to the issue and children of the daughter or daughters predeceasing or dying without issue and children.'

"There was not much said in argument about this clause, which is certainly surprisingly obscure, and of which no very satisfactory interpretation was suggested. It is manifestly defective, because while the words 'no more than an equal share' imply a comparison with something else, the other term of the comparison is not expressed at all, and the clause has no meaning without supplying it. If it could be held to be intended that the share of the issue of one child should not exceed the share of the issue of any other child, such a construction would strongly support the case for the issue. But I am not prepared to read the clause in that way, and so to overbear the much more distinctly expressed clause of accretion. I think it is easier to suppose that the object of the clause was to provide that the family of one surviving daughter should take no more than the family of another surviving daughter, whatever difference there might be in the size of the families—in other words, to declare that the division should be *per stirpes*, which would be consistent with the clause of accretion."

"The other clause in the codicil is to the effect that if any of the daughters should desire it, the trustees should invest her £700 in the price of a house or in land, and if they did so, they should take the title to the daughter in liferent allenarly and her issue in fee, whom failing, to the truster's 'said other daughters in liferent, and their respective issue in fee, in case of their death without leaving such issue and children as in manner before mentioned.' That is to say, that if, for example, a house had been bought with the £700 provided for Agnes, the title would have been taken to Agnes in liferent allenarly, and to Jean (Mrs M'Gowan), Margaret, Barbara, and Anne in liferent, and to their respective issue in fee. It was argued that the case fell to be decided as if such investments had been made and titles taken; and in that I agree—and that under such a destination the issue of Mrs M'Gowan would have taken as well as the issue of Mrs Martin. But the whole codicil must be read together, and having regard to the distinct declaration in the primary clause of accretion in favour of the issue of survivors—to which this latter clause refers back—I am disposed to think that under such a clause the issue of Mrs M'Gowan could not have taken.

"On the whole, I am driven unwillingly to the conclusion that in this case I must follow the decision in the case of *Forrest*,

from which I cannot see that this case can be safely distinguished. I come to this conclusion with hesitation and some regret, because I cannot resist the suspicion that it may not be the conclusion which the truster himself would have reached. . . .

"I think it follows that the third part of the provision of Agnes which fell to Mrs Martin and her issue became part of the original provision for her and them, and was on Mrs Martin's death payable to her issue along with the capital of the original £700. I am, therefore, of opinion that Mrs Martin's issue are entitled to the one-third of the £700 provided for Agnes, deducting expenses, and to the sum of £58, 2s. 11d. mentioned in cond. 11."

The issue of Mrs M'Gowan reclaimed, and argued—The Lord Ordinary was mistaken in thinking that the case of *Forrest's Trustees*, 12 R. 389, compelled him to take the view he did. There was in *Forrest's* case no such clause as was to be found here at the end of the codicil. That clause must be read along with the clause of accretion, and favoured the view that the testator intended the issue of all his daughters to share in the fee of provisions liferented by daughters dying without issue. A more important distinction was that the competition in the case of *Forrest's Trustees* was not between the issue of predeceasing daughters and residuary legatees, but between the issue of surviving and the issue of predeceasing children—*Ramsay's Trustees* v. *Ramsay*, December 21, 1876, 4 R. 243. Jarman in his book on Wills summarised the result of an examination of the law on this subject by saying that the Court have sometimes felt themselves bound to give to the word "survivor" its strict sense, but have been eager to take advantage of special clauses in deed showing a contrary intention—Jarman, 2nd ed. 689–709, esp. 708 and 709. The issue of Mrs Martin concurred in the above argument.

Argued for the representatives of the residuary legatees—The last clause of the codicil must be read along with and was governed by the prior and fuller destination contained in the clause of accretion. There was no tangible distinction between the present case and *Forrest's Trustees*, and the word "survivors" must be given its natural meaning—*Benn* v. *Benn*, L.R., 29 Ch. Div. 839; *King* v. *Frost*, L.R., 15 App. Cas. 548.

At advising—

LORD JUSTICE-CLERK—Mr Hairstens of Maxwellton died in 1827, and directed the trustees under his trust-disposition and codicil to invest £700 in trust for behoof of each of his daughters in liferent allenarly and of their issue in fee.

The provision applicable to this, and which requires construction, is as follows:—"In case any one or more of my said daughters shall die before me or die without leaving lawful issue of her or their bodies," the sum provided for her and her issue "shall appertain and accresce to the survivor or survivors of my said daughters in liferent for their liferent use allenarly, and to their issue and children, share and share alike, in fee."

Now, what happened was this—One of the daughters, Mrs M'Gowan, died in 1864, leaving issue. Agnes died unmarried in 1867; Mrs Martin died in 1881 leaving issue; and two other daughters, Barbara and Anne, died unmarried in 1889 and 1890 respectively.

The question raised here is one between the issue of Mrs M'Gowan and Mrs Martin and the representatives of Mr Hairstens' residuary legatees under his trust-deed, these legatees being his three sons.

The former maintain that under the above destination the fee of the several sums of £700 is carried to the issue of Mrs M'Gowan and Mrs Martin, although these ladies predeceased their other sisters. On the other hand, the residuary legatees maintain that the fee is destined only to the issue of such of the daughters who survived the predeceasing daughters, and that therefore the issue of Mrs M'Gowan, who predeceased Agnes, Barbara, and Anne, are wholly excluded, and that the issue of Mrs Martin, who survived Agnes but predeceased Barbara and Anne, are entitled only to one-third of the £700 destined to Agnes and her issue; and they maintain that all the rest is carried by the residuary clause to the residuary legatees.

The real question is as to the meaning of the words "to the survivor or survivors of my said daughters in liferent for their liferent use allenarly, and to their issue and children, share and share alike, in fee." Do they mean what they express in language, "the survivors of predeceasing daughters," or do they mean that a fee is destined to the issue of all daughters whether surviving or predeceasing.

The Lord Ordinary has gone into the legal question in an elaborate judgment, and he has come to be of opinion that he is bound to follow the case of *Forrest's Trustees* v. *Rae*. That case was decided after full deliberation, and favours the view maintained by the residuary legatees as against that maintained by Mrs M'Gowan and Mrs Martin.

I agree with his Lordship that this case is ruled by *Forrest's Trustees*, and whatever may have been decided in the case of *Ramsay's Trustees* v. *Ramsay* does not in my opinion rule this case. The case of *Ramsay's Trustees* was earlier in date than that of *Forrest's Trustees*, and indeed it was referred to in the latter case, and was therefore before the Court, and was distinguished by the Judges from *Forrest's* case.

I am then for adhering to the Lord Ordinary's interlocutor, and I agree in the reasons contained in his opinion.

LORD YOUNG—I am of the same opinion. I think that the whole stands upon the very obvious fact that the last survivor of any number of daughters does not leave behind her a surviving sister.

LORD RUTHERFURD CLARK—I agree.

LORD TRAYNER was absent.

The Court adhered.

Counsel for Mrs M'Gowan's Issue—H. Johnston — W. Campbell. Counsel for Mrs Martin's Issue—F. Martin. Agents for the Issue of Mrs M'Gowan and Mrs Martin —J. & J. Galletly, S.S.C.

Counsel for the Representatives of the Residuary Legatees — Jamieson — C. N. Johnstone. Agents—Scott & Glover, W.S.

Wednesday, July 15.

FIRST DIVISION.

[Lord Low, Ordinary.

BAIRD *v.* BAIRD AND OTHERS.

Entail—Disentail—Entail (Scotland) Act 1882 (45 and 46 *Vict. cap.* 53), *sec.* 13—*Consignment in Bank of Amount Claimed by Heirs.*

The Entail Act 1882, sec. 13, provides that "In any application under the Entail Acts to which the consent of the heir-apparent or other nearest heir is required, . . . and such heir shall refuse or fail to give his consent, the Court shall ascertain the value in money of the expectancy or interest in the entailed estate of such heir with reference to such application, and shall direct the sum so ascertained to be paid into bank in name of the said heir, or that proper security therefor shall be given over the estate, and shall thereafter dispense with the consent of the said heir and shall proceed as if such consent had been obtained." . . .

In a petition for authority to disentail, the petitioner, with the object of preventing delay, and before the amount of the three next heirs of entail was ascertained, consigned in a bank a *cumulo* sum in excess of the amount claimed by them. *Held* that this was not such a compliance with the provisions of the statute as to enable the Court forthwith to dispense with the consent of these heirs.

In July 1889 a petition was presented to the Court by George Alexander Baird, for authority to disentail the lands of Strichen, Stitchell, and others, of which he was institute of entail in possession.

The petitioner was entitled to disentail these lands with the consent of the three next heirs of entail, and as they declined to give their consent, a remit was made by the Lord Ordinary to an actuary to report as to the value in money of the interests of these heirs. In his report the actuary estimated the value of the heirs' expectancies alternatively on a different footing in each case as to what was embraced by the expectancies. In the one case he brought out a sum of £36,000, and in the other a sum of £31,000, as the *cumulo* value of the interests of the three heirs.

Objections were lodged to this report, in which it was averred, *inter alia*, that £50,000 was the sum at which the value of these interests ought to be estimated.

The petitioner then lodged a minute offering to consign in bank "£50,000, or such other sum as may appear to the Court satisfactorily to fully secure the value in money of the next heirs' expectancies."

By the 13th section of the Entail (Scotland) Act 1882 it is provided—"In any application under the Entail Acts to which the consent of the heir-apparent or other nearest heir is required, and such heir or the curator *ad litem* appointed to him in terms of this Act shall refuse or fail to give his consent, the Court shall ascertain the value in money of the expectancy or interest in the entailed estate of such heir with reference to such application, and shall direct the sum so ascertained to be paid into bank in name of the said heir, or that proper security therefor shall be given over the estate, and shall thereafter dispense with the consent of the said heir, and shall proceed as if such consent had been obtained." . . .

On 18th June 1891 the Lord Ordinary (Low) pronounced the following interlocutor:—"Finds that the value in money of the interests or expectancies of the respondents John George Alexander Baird, James Douglas Baird, and Henry Robert Baird, the three next heirs of entail in the entailed estates mentioned in the petition, do not exceed the sum of £55,000 sterling in all; and in respect of the offer made by the petitioner in the said minute, No. 36 of process, and upon the petitioner consigning in bank in the joint names of the agents of the petitioner and the respondents, the three next heirs of entail, and subject to the future orders of the Court, the sum of £55,000 sterling, to meet the value of the said interests or expectancies of the said respondents in the said entailed estates, dispenses with the consents of the said respondents as next heirs of entail foresaid, to the disentail of the said estates: Finds that the procedure has been regular and proper, and in conformity with the provisions of the Acts of Parliament and relative Acts of Sederunt: Interpones authority to and approves of the instrument of disentail, No. 23 of process: Grants warrant to, and authorises and ordains the Keeper of the Register of Tailzies to record the same in said register in terms of the statute, and decerns *ad interim:* But supersedes extract and execution hereof until the said consignation has been made, and the receipt therefor lodged in process and transmitted to the Accountant of Court.

"*Note.*—I have carefully considered the motion which was made by the petitioner in this case, and I have come to be of opinion that in certain circumstances it is not incompetent for the Court to follow the procedure which was proposed by the Dean of Faculty.

"It is true that the Act of 1882, sec. 13, provides that where the consents of the next heirs are required to an application under the Entail Acts, and the next heirs have refused to give their consents, the Court shall ascertain the value of their interests or expectancy, and shall order the amount to be consigned in bank, or secu-