of his estate. The defender, who had been housekeeper to the testator for twenty-one years down to the date of his death, averred that the £500 sued for had been paid to her by the testator in recognition of her services as housekeeper.

After a proof, the Court held, reversing the judgment of the Lord Ordinary (PEARSON), that the alleged donation had been proved, assoilzied the defender, and found her entitled to expenses.

The defender, who was one of the testator's residuary legatees, moved the Court to find that no part of the expenses of the litigation should be paid out of her share of the residue, and cited *Cameron* v. *Anderson*, November 12, 1844, 7 D. 92; *Adam & Kirk* v. *Tunnock's Trustee*, November 17, 1866, 5 Macph. 40; M'Laren on Wills, sec. 2328.

The pursuers objected.

LORD TRAYNER—I have looked into the authorities and I think that the rule is settled.

LORD MONCREIFF—I do not see my way to resist the motion.

The LORD JUSTICE-CLERK and LORD YOUNG concurred.

The Court pronounced this interlocutor:—

"Recal the interlocutor reclaimed against, and assoilzie the defender: Find the defender entitled to expenses, and remit, &c.: Declaring that no part of the expenses of the litigation are to be paid out of the share of the deceased Thomas Easson's estate falling to the defender."

Counsel for the Pursuers and Respondents—Solicitor-General (Dickson, K.C.)—Chisholm. Agent—David Milne, S.S.C.

Counsel for the Defender and Reclaimer — Campbell, K.C. — Wilton. Agent — William Cowan, W.S.

Tuesday, June 18.

SECOND DIVISION.

[Sheriff of Lanarkshire.

JACK *v.* M'GROUTHER.

Trust — Innominate Contract — Proof — Husband and Wife—Verbal Agreement Between Widow and Children as to Estate of their Deceased Husband and Father—Act 1696, *cap.* 25.

A woman died intestate survived by her husband to whom she had been married in June 1876, and by a son who was the issue of a former marriage, and who was decerned her executor dative *qua* next-of-kin. At the date of her decease she had standing in her name a deposit-receipt for £500. Her husband brought an action against her son as her executor dative, in which he claimed one-third of that sum as belonging to him *jure mariti*. The defender averred that this sum of £500 represented the estate left by his mother's first husband, his father, who died intestate in 1869; that before she was married to the pursuer she and the defender and another brother, who had since died unmarried and intestate, entered into a verbal agreement whereby she renounced her right to the third share falling to her *jure relictæ* in favour of her sons and the survivor, in consideration of her receiving the interest of the whole estate during her life; and maintained that in virtue of this agreement neither the said sum nor any part thereof belonged to her either at the date of her marriage to the pursuer or at the date of her death, and that it belonged to the defender. In support of this contention he led parole proof of the agreement, and produced a deed of assumption executed by his mother shortly after her marriage to the pursuer, and without his knowledge or consent, whereby upon a narrative of the agreement she assumed the defender and his brother into the trust created thereby. It also appeared that she had received the whole interest of the sum of £500 above-mentioned from the date of the alleged agreement until her death; that for fourteen years prior to her death she had lived separate from the pursuer; that he had not contributed anything to her support during that time; and that the defender and his brother had made contributions towards her maintenance.

Held (1) That the alleged agreement, if it constituted a trust at all, did not import a trust to which the statute 1696 cap. 25 applied, and that it was therefore proveable by parole evidence. (2) That the deed of assumption, although executed by the deceased without her husband's knowledge or consent, was competent evidence of the existence and terms of the antecedent agreement; (3) that the agreement was sufficiently proved by the evidence adduced. (4) That even if the pursuer's claim were well founded, he would be bound to repay the interest upon the two-thirds of their father's estate falling to the defender and his brother, which the deceased had received for twenty-six years on the faith of the agreement, and which would more than suffice to extinguish her husband's claim.

Thomas Jack, husband of the deceased Mrs Jane Horne or M'Grouther or Jack, brought an action in the Sheriff Court at Glasgow against James M'Grouther, executor-dative *qua* next-of-kin of the pursuer's said deceased wife, for payment of (1) a sum of £166, 13s. 4d., and (2) a sum of £60.

The sum first sued for was claimed by the pursuer as being the amount of certain funds which belonged to the deceased at the date of her marriage to him in June 1876, and which he accordingly claimed as belonging to him *jure mariti*.

The sum second sued for was the share which the pursuer claimed *jure relicti* of certain other funds belonging to the deceased at the date of her death in 1898.

The defender, who was a son of the deceased by her first husband James M'Grouther, averred that all the money and effects which were in the deceased Mrs Jane Horne or M'Grouther's possession or under her control at the date of her marriage with the pursuer was the estate of her said first husband, and was held in trust by the deceased for behoof of herself in liferent and her two sons, the defender and his deceased brother Andrew M'Grouther, in fee, in virtue of a verbal agreement made among them in or about 1872, prior to the pursuer's marriage to the deceased, that of the whole estate whereof the deceased died nominally possessed, the sum of £502, 15s. formed the estate of her deceased husband the late James M'Grouther, and that the balance consisted of the accumulation of monies contributed by the defender and his brother Andrew towards the maintenance of their mother during the period after the pursuer deserted her in February 1884, during which period he failed to support her, and that the sums so contributed more than extinguished any claim which the pursuer might have *jure relicti*.

Thereafter James M'Grouther, as an individual, and as sole surviving trustee under the trust above-mentioned, brought a counter action against Thomas Jack, in which he craved declarator of the said trust, and declarator that a sum of £500 standing in the name of Mrs M'Grouther or Jack on deposit-receipt with the Royal Bank of Scotland at the date of her death was the trust-estate under the said trust, and was now the property of the pursuer as sole surviving trustee foresaid or as an individual foresaid.

The actions were conjoined, and proof was thereafter allowed and led.

From the evidence it appeared that the deceased Mrs Jack was thrice married; first in 1849 to James M'Grouther, who died intestate in 1869; second in 1873 to William M'Bean, who died intestate and without issue in 1875; and third in 1876 to the party Thomas Jack. By her first marriage she had issue two sons, the defender, and Andrew M'Grouther, who died unmarried and intestate in 1890. She had no other issue. In 1884 she and the pursuer Thomas Jack separated and continued to live apart till Mrs Jack's death, which took place in 1898. After the separation Jack contributed nothing to his wife's support, but her sons both made contributions towards her maintenance. James M'Grouther, Mrs Jack's first husband, who died intestate in 1869, left moveable estate to the extent of £500. This sum continued thereafter under the control of Mrs M'Grouther or Jack. M'Bean, Mrs Jack's second husband, made no claim upon the funds belonging to her or in her possession. At the date of her death the deceased had £500 standing in her name on deposit-receipt with the Royal Bank of Scotland, and she had also in her possession certain other funds amounting to about £140. She died intestate. She had received the interest of the whole sum of £500 above mentioned from 1872 to 1898.

With reference to the alleged agreement, James M'Grouther deponed—"I remember some time after my father's death of my mother speaking to my brother Andrew and me. We knew M'Bean was coming about the house at that time. (Q) Did she say anything to you about your father's money?—(A) Yes. That was about 1872 or 1873, immediately after my father's death. She told us she had the money concealed about the house, but she was going to put it into the bank in the names of herself, Andrew, and me. She said the amount of the money was about £500. She put £391 in the bank at that time and kept the rest in the house for carrying on the shop with. She said Andrew and I had a right to a share of it because we had wrought for it the same as she had. She said it was only we who had a right to it. (Q) And did she say anything about living on the interest of it herself? (A) Yes, she said the money would be ours, but she would take the interest, and with whatever she could put past as the profits of the shop she would try and make it more. She asked us to allow her to have the interest of the money. She said that the money would be divided between my brother and me at her death, and if any of us happened to be taken away first, the one that remained would get it all. That conversation took place between my mother and my brother Andrew and I before she was married to M'Bean; it was bound to be before that. I did not notice M'Bean coming much about the house before the marriage; it was not a long courtship. My brother and I agreed to what my mother said, and after that she got married to M'Bean. . . . The arrangement that I say was made with my mother after my father's death was continued down to the end—until her death."

James M'Grouther was corroborated by several witnesses, who deponed to conversations with the deceased Mrs Jack, prior to her marriage to Jack, in which she told them of the arrangement spoken to by the defender.

James M'Grouther produced in evidence a deed of assumption and conveyance, executed by Mrs Jack, dated 11th December 1876, which was in those terms:—"I, Mrs Jane Horne or Jack, residing at No. 4 John Street, Bridgeton, Glasgow, considering that my late husband James M'Grouther, weaver, residing at Bridgeton, who died in the year 1868, was possessed of means and estate which now amount to the sum of £500; and considering that James M'Grouther, confectioner, and Andrew M'Grouther, plumber, both residing at 4 John Street, Bridgeton, aforesaid, are the only children of my marriage with the said deceased James M'Grouther, and that the said deceased James M'Grouther had no other children; and considering that since the death of my said husband I have held the said means and estate in trust for behoof of myself in liferent and my said sons in

fee; and now, seeing that in consequence of my said sons having attained majority, it is proper that they should be admitted into the trust, therefore I do hereby assume the said James M'Grouther and Andrew M'Grouther as trustees into the said trust, and dispone, assign, and convey to and in favour of myself, the said Mrs Jane Horne or Jack, and the said James M'Grouther and Andrew M'Grouther, and the survivors and survivor of me and them, and the heirs of the survivor, as trustees and trustee for the ends, uses, and purposes aftermentioned, I, the said Mrs Jane Horne or Jack, being during my life a *sine qua non* in said trust, and to the assignees of the said trustees and trustee All and Sundry the said means and estate possessed by my said husband the deceased James M'Grouther at the time of his death, and now amounting to the said sum of £500, with the rents, interest, profits, and produce, and writings, titles, and vouchers thereof; but these presents are granted for the ends, uses, and purposes following, *videlicet*:—In the first place, for payment of the expenses of executing the trust; in the second place, the said trustees shall pay to me during my life the whole annual interest, rents, and other revenue of said means and estate, which revenue shall be to me an alimentary provision, and as heretofore shall be exclusive of all rights of *jus mariti* and right of administration; in the third place, the said trustees shall hold the fee or capital of the said means and estate or the residue thereof for behoof of my said sons James M'Grouther and Andrew M'Grouther, equally between them, share and share alike, providing and declaring that in the event of either of my said sons dying before payment and intestate, and without leaving descendants, then his share shall fall to his surviving brother; and it is also provided and declared that the signatures of myself and one of my said sons allenarly shall at all times form a sufficient discharge to any person or persons dealing with the said trustees." This deed had annexed to it a docquet of even date, whereby James M'Grouther and Andrew M'Grouther accepted the trust thereby conferred upon them.

It was not disputed that the deed of assumption was granted without the knowledge or consent of Thomas Jack.

On 8th March 1900 the Sheriff-Substitute (SPENS) pronounced an interlocutor whereby, in the action *Jack* v. *M'Grouther*, he found, *inter alia*, that the pursuer was entitled under the Married Womens Property Act 1881 to one-third of the net moveable estate left by his wife, and decerned against the defender as executor-dative for £211, 2s. 2d. In the action *M'Grouther* v. *Jack* the Sheriff-Substitute found that the alleged trust had not been proved, and that the pursuer had not proved that the £500 in question was the moveable estate of the deceased James M'Grouther, and assoilzied the defender.

James M'Grouther appealed to the Sheriff (BERRY), who on 20th November 1900 pronounced an interlocutor whereby he found, *inter alia*, that the £500 in question was held by the deceased to the extent of two-thirds in trust for two sons by her previous marriage to James M'Grouther, but that to the remaining third, viz., £166, 13s 4d., the party Jack was entitled *jure mariti*; therefore, in the action *Jack* v. *M'Grouther*, decerned against the defender for that amount; found, in the action *M'Grouther* v. *Jack*, that the alleged trust had not been proved, and assoilzied the defender.

James M'Grouther appealed to the Court of Session, and argued—The £500 in dispute was intestate succession of James M'Grouther, the appellant's father, whereof one-third fell to his widow and the remaining two-thirds to his two sons. The question was whether the alleged agreement, whereby the widow got the liferent of the whole and her sons the fee on her death, had been proved; and the appellant maintained that it had. The agreement was not truly a trust at all, but merely a family arrangement, which might be proved *prout de jure*. But if it were a trust it did not fall within the limited class of trusts to which the Act 1696, cap. 25, applied, viz., those in which there was a written title in the person of the trustee, granted by or with consent of the truster—Dickson on Evidence, secs. 579–81 and 587. The respondent's alternative contention, that it was an innominate and unusual contract, and therefore proveable only by writ or oath, was equally unfounded. The agreement was in the circumstances a proper and natural one for the parties to make. Unless it could be said that it was so unusual as to be improbable, the limitation as to proof did not apply—*Taylor* v. *Forbes*, January 13, 1853, 24 D. 19; *Forbes* v. *Caird*, July 20, 1877, 4 R. 1141; *Moscrip* v. *O'Hara*, October 23, 1880, 8 R. 36. If the agreement was proveable *prout de jure*, it was established by the parole evidence, which was corroborated by the deed of assumption. That deed was competent evidence of the terms of the existing agreement alleged by the appellant. (2) Alternatively, if the respondent was entitled to disregard the agreement, and to claim the one-third share which fell to his wife, he could only do so on repayment to the appellant as in his own and his brother's right of the interest on their share of two-thirds which their mother had enjoyed since 1872. The amount of that interest would more than suffice to extinguish the respondent's claim. In either view, therefore, the appellant was entitled to succeed.

Argued for the respondent Thomas Jack—The alleged agreement was either (1) a trust, or (2) an innominate and unusual contract, and must therefore be proved by writ or oath. Mrs Jack, the alleged trustee, being dead, her oath, even if it could have availed to defeat her husband's rights, could not be obtained. The deed of assumption, which was executed without her husband's knowledge or consent, was not admissible as evidence against his claim. There was therefore no competent evidence of the alleged agreement, and it must be disregarded. (2) If the foregoing argument

were sound then the respondent was entitled to the one-third of the £500 which belonged to his wife. The fact that the appellant and his brother had allowed their mother to enjoy the income of their shares, which they might have claimed, did not now give rise to any claim on their part for interest. —*Wick* v. *Wick*, December 2, 1898, 1 F. 199.

At advising—

LORD JUSTICE-CLERK—The deceased Mrs Jack had on the death of her first husband a right to one-third of his estate, the rest going to her two sons, one of whom is the defender in this case. Jack, who was her third husband, claims his rights on what he alleges she had right to at the time of her death. It appears that some hundreds of pounds formed the estate of the first husband, who died in 1869, and the important question is how this was dealt with, in order that it may be ascertained whether it is open now to a claim by the last husband. This husband, the present pursuer, never lived with his wife for the last fifteen years during which she was alive, he contributed nothing to her support, and she carried on business on her own account, assisted by her sons.

It appears that after the first husband's death no inventory was given up, and that on her second marriage, her husband, Macbean, who only lived a short time, made no claim on the fund and left it with her, and presumably donated the sum to her so far as he might have rights. It appears that an arrangement was made between the mother and her two sons whereby she was to enjoy the liferent of the whole money left by Mr M'Grouther and the sons were to have the whole after her death. One of the sons, the present defender, who had been trained to the business, assisted his mother in the making of the confectionery which she sold. I think there is satisfactory evidence of this family arrangement. The deed of 1876, which was executed shortly after the deceased's marriage to Jack, is evidence under her hand that there was such an arrangement subsisting and carried on since the first husband's death, and this is confirmed by the defender's evidence which I see no reason to doubt. The deed is drawn in the form applicable to an existing trust, the purpose being to assume the sons into the management, but that fact does not I think raise any questions of difficulty as regards evidence. The mother and sons were quite competent to make a family arrangement such as this, and if they did make it and act upon it, it was a perfectly good and valid family arrangement among themselves, and the form which it took is of little consequence. If there was anything which could properly be called a trust, it was verbally established, and not by writing. I hold that the agreement is proved to have been made, and to have been acted on by all the parties to it. I see no incompetency in establishing the fact by such evidence as is here produced, including the writing signed by her; and being satisfied with the evidence, I have come to the conclusion that the pursuer's claim is excluded to any money coming to the deceased from her first husband, seeing that she parted with the right to any of it in consideration of her receiving a liferent of the whole, and that the capital was to go to her two sons and the survivor of them.

In that view of this part of the case it is unnecessary to consider the question whether the defender is not entitled to credit for the interest of the two-thirds of his father's estate which did not fall to the widow but was received by her, taking the case on the footing that there was no agreement whereby the widow got the liferent of the whole. It is plain that if this view were taken the defender's claim would completely swallow up any claim the pursuer could have. But, as I say, it is unnecessary to consider this.

In addition to the sum coming from her first husband, there is an additional sum of about £140 which was in her possession at her death. The pursuer claims his right of *jus relicti* on this sum. On the other hand, the defender contends that he and his brother for several years contributed from their own labour in the case of one, or from his earnings in the case of the other to the mother's support. This is I think satisfactorily shown, and I think it is a sufficient answer to the plea that this must have been done *ex gratia* and from filial pity, that these people were all linked together as regards their pecuniary interests by the family arrangement, and that the sons having given over the liferent of what they were entitled to to their mother, and assisting to support her when deserted by her husband, who contributed nothing to her maintenance, cannot be precluded by the deserting and defaulting husband from making a claim for advances made by them in respect of his having done nothing to fulfil his own duty to his wife.

The result at which I arrive is that the defender in Jack's action is entitled to absolvitor from the conclusions of the action. In the action of declarator against Jack, the pursuer is entitled to succeed, but the terms of the interlocutor will require consideration.

LORD YOUNG concurred.

LORD TRAYNER—The main question in this case is, what are the rights of the parties respectively in a sum of about £500. It appears that on the death of the defender's father (Mrs Jack's first husband) he left moveable estate to that amount. He left a widow and two sons, and having died intestate his estate fell to be divided in the proportion of one-third to his widow and two-thirds to his sons. The widow married a second time, but her husband (M'Bean), who only lived for about eighteen months after his marriage, did not claim or receive any part of the fund in question *jure mariti*. It must be held that he either abandoned any claim he had or made a donation thereof to his wife. On his death the widow married a third time, her husband on this occasion being the pursuer Jack, who now claims right to one-third of

the fund as falling to him under the assignation involved in his marriage. The defender resists this claim on the ground that after his father's death, and before the marriage of his mother with M'Bean, an agreement was come to between his mother, his brother, and himself (being the whole parties then interested in the £500), to the effect that instead of each taking their third of the fund, the interest of the whole should be received and drawn by the mother during her life, and that on her death the whole sum should belong to the sons, or on the death of one of the sons without issue then to the survivor—that is, that the mother instead of taking her third of the fee should get a liferent of the whole, and the sons, in return for surrendering the interest of two-thirds during their mother's life should on her death take the fee of the whole. This arrangement, if made, was not an unnatural one, or one to the disadvantage of the mother. The pursuer maintains that this is an allegation of a trust in the person of the late Mrs Jack which can only be proved by her oath according to the provisions of the Act 1696, cap. 25, and that as her oath cannot now be had the alleged trust must be disregarded. I think this contention cannot be sustained. The trust, if it was a trust, was not constituted by writing, and may therefore be established by parole proof. But while the right in the mother may, somewhat loosely, be called a trust, there was not, in my opinion, any proper trust. The sons trusted their mother with the custody and administration of the fund during her lifetime and in pursuance of the agreement they had made with her, but there was no trust beyond that. Now, I see nothing in the alleged agreement which could not be validly agreed to by the parties who alone had every right to the fund at the time the agreement was made; and if the agreement is established, then the right to the third which Mrs Jack succeeded to as widow of Mr M'Grouther was surrendered and assigned by her to her sons long before her marriage to the pursuer. At that date she had no right to any part of the £500, but only to the interest thereof during her life. That interest she got, and on her marriage there was no part of the £500 *in bonis* of her and consequently no right in it to which the pursuer could pretend *jure mariti* or otherwise. I think the agreement alleged by the defender is established, and in virtue of it the defender (his brother having predeceased without issue) is now entitled to the £500. So far therefore as the £500 is concerned, I think the interlocutors appealed against are wrong and should be recalled.

What I have said is sufficient for the decision of the case. But there is another view of it which equally goes to the exclusion of the pursuer's claim. The deceased Mrs Jack enjoyed for more than twenty-five years the interest derived from the £500 in question. Assuming that she (or the pursuer now in her right) was entitled now to go back on the agreement made with the defender and his brother, and claim one-third of the fee of the £500, that could only be done on repayment to the defender of the interest which Mrs Jack had received on the two-thirds which were not hers. That interest moderately estimated at 4 per cent. would amount to over £300, and therefore more than enough to sopite the pursuer's claim. The pursuer cannot say in reply that the interest was given to Mrs Jack *ex pietate* and therefore not claimable, because it is established, in my opinion, that the interest was not so given, but on the contrary was given as part of the agreement I have referred to, and for consideration.

LORD MONCREIFF—At the death of Mrs Jane M'Grouther or Jack in August 1898 there was standing in her name on deposit with the Calton branch of the Royal Bank of Scotland at Glasgow a sum of £500. The first question which we have to decide is to whom does that money belong. The party Thomas Jack, who married the deceased in June 1876, claims one-third of that sum—£166, 13s. 4d.—as belonging to him *jure mariti*. James M'Grouther on the other hand claims the whole of the £500 in terms of an alleged agreement between his mother Mrs Jack and himself and his brother Andrew M'Grouther, dated 11th December 1876.

I think it is sufficiently established that the £500 in question represents the succession or part of the succession of James M'Grouther, the first husband of Mrs Jack and the father of James and Andrew M'Grouther, who died in 1869. One-third belonged to the widow *jure relictæ*. The other two-thirds belonged to the sons James and Andrew.

So far there is no difficulty. The only serious question is whether it is proved by competent evidence that Mrs Jack before her marriage with Jack entered into a binding agreement with her sons James and Andrew, by which in consideration of their allowing her to draw the interest of their shares during her life they or the survivor should take the whole of the capital including her share on her death. I do not think that we have here a proper case of trust to which the provisions of the statute as to proof apply. But the arrangement alleged is of a complex and unusual character, and it would be difficult to hold it proved in the absence of the writing of 1876. That writing was executed by Mrs Jack after her marriage with Jack. It does not bind Jack in the sense of being conclusive against him, but I think it is competent evidence so far as it goes of the existence and terms of an antecedent agreement, and I find sufficient corroboration of the accuracy of the terms therein stated in the fact that throughout James and Andrew allowed their mother to draw and appropriate the interest upon their shares. Now, under the agreement as described in the writing it was provided and agreed as between James and Andrew that in the event of either of them dying before payment and intestate, and without leaving descendants, his share should fall to his

surviving brother. Andrew predeceased his mother intestate and without leaving descendants, and therefore James M'Grouther is entitled to the whole.

Alternatively I should have been prepared to hold that as the interest on the shares of James and Andrew was paid to their mother for about twenty-five years, not *ex pietate*, but on the faith of the alleged agreement, and as Jack paid nothing for her support, James M'Grouther would be entitled to set it off against any claim which Jack has; and that as the interest would extinguish Jack's claim, James M'Grouther would be entitled to absolvitor on this ground also.

The Court pronounced this interlocutor:—

"Sustain the appeal and recal the said interlocutor of 20th November 1900, as also the interlocutor of the Sheriff-Substitute dated 8th March 1900: Find in fact (1) that the late James M'Grouther, who died intestate on 16th June 1869, left moveable estate to the extent of £500, one-third of which fell to his widow Mrs M'Grouther as *jus relictæ*, and two-thirds thereof to his two sons, of whom the defender is one; (2) that prior to the year 1873 the said Mrs M'Grouther and her two sons had entered into an agreement whereby Mrs M'Grouther renounced her right to said one-third in favour of her sons and assigned such right to them and the survivor of them in consideration of her being entitled to the whole interest and proceeds of said £500 during her lifetime; (3) that said agreement was acted on, and the whole interests of said sum were paid to and received by Mrs M'Grouther from the date of said agreement until the date of her death on 9th August 1898; (4) that no part of said £500 belonged to or was *in bonis* of the said Mrs M'Grouther at the date of her marriage to the pursuer Thomas Jack, or at the date of her death; (5) that Andrew M'Grouther died without issue in the year 1890, and his share of said £500 thereupon fell to his brother the defender; and (6) that the pursuer lived apart from his wife and had not contributed to her support for fourteen years prior to her death, and that the defender had contributed to her maintenance during that period and had a claim therefor against the estate exceeding the amount of any claim which the pursuer could have *jure relicti* or otherwise: Find in law that the pursuer has no right to any part of said sum of £500 *jure mariti* or otherwise, nor to any claim against the estate of Mrs M'Grouther *jure relicti* or otherwise: Therefore assoilzie the defender James M'Grouther from the conclusions of the action at the instance of the pursuer Thomas Jack, and decern: And in the action at the instance of the said James M'Grouther against the said Thomas Jack and others, Find and declare that the sum of £500 contained in a deposit-receipt of the Royal Bank of Scotland, dated 14th April 1898, in the name of 'Mrs Jane Horne M'Grouther, No. 5 Silvergrove Street,' with all interest accrued thereon, is now the property of the said James M'Grouther, and that the said Thomas Jack has no right, title, or interest in or to the same: Authorise the said James M'Grouther to take possession of said deposit-receipt, and to uplift and receive payment of the contents thereof, with all interest accrued thereon, and decern."

Counsel for the Pursuer and Respondent Jack—W. Thomson. Agent—W. J. Haig Scott, S.S.C.

Counsel for the Defender and Appellant M'Grouther—W. Campbell, K.C.—Hunter. Agents—Gill & Pringle, S.S.C.

Tuesday, June 18.

FIRST DIVISION.

WILSON'S TRUSTEES *v.* WILSON.

Succession — Vesting — Vesting Postponed — Survivorship Clause — Division per capita in Uncertain Event.

A truster directed his trustees to hold the residue of his estate for behoof of his children equally in liferent for their respective liferent uses allenarly, and for behoof of their issue respectively *per stirpes* equally among them in fee; and failing any of his children by decease "without leaving issue who may attain to the age of majority or be married," then to the survivors or survivor of his children and their issue respectively *per stirpes*, who should attain majority or be married, in liferent and fee respectively, subject to the declaration that if the issue of his son A who should become major or be married exceeded in number the issue of his son B who should attain majority or be married, the shares falling to these two families were to be massed together and divided *per capita*. The truster's son B predeceased the truster leaving one child who attained majority. The truster was survived by his son A, who was survived by four children three of whom were major, and was predeceased by one child who died unmarried after attaining majority, and by one child who had attained majority and married and left one child.

Held that vesting in a share of the fee or capital destined in liferent to the truster's two sons took place in those of their children only who not merely attained majority or married but also survived their parent; but that, as issue of the truster, a share in the fee of said capital would vest in the great-grandchild of the truster whose parent had predeceased the truster's surviving son, on his attaining majority or being married.