I understand that the parties do not desire an answer to the remaining questions, having arranged the matters therein referred to.

LORD M'LAREN—I have had the advantage of reading Lord Adam's opinion and concur therein. I only wish to add one general observation as to the question whether under a power of appointment it is lawful to the appointer to sever out a liferent for one person. That would entirely depend on how the fee is disposed of. If it is lawful to give £5 to one of the appointees and the balance to the others, it could hardly be held to be objectionable to give so much a year to one party if the capital is divided among the objects of the power. But that case is unlikely to occur, because a testator generally wishes to give the fee to the children of the person to whom he gives the liferent, as in the present case. I think the only ground of objection is that children are introduced who are not objects of the power of distribution, and that of course is fatal to the deed, which is an attempt to exercise that power.

LORD KINNEAR concurred.

The LORD PRESIDENT was absent.

The Court pronounced this interlocutor—

"The Lords having considered the Special Case and heard counsel for the parties, in answer to question 1 (*a*) of the case, find and declare that the appointment of Mrs Neill in her trust-disposition and settlement of her share of her father's estate is wholly invalid, and in answer to question 1 (*b*) find and declare that the fee of one-third of the said share vested in the second party on his attaining twenty-one years of age, and that a fee of one-third of the said share will vest in each of the third parties on their respectively attaining twenty-one years of age: In answer to question 2 (*a*), find and declare that the third parties are not entitled now to payment of their presumptive shares, but 2 (*b*) that the fourth parties are entitled to make advances of interest or of capital to the third parties out of their presumptive shares."

Counsel for the First Parties—W. Campbell, K.C.—Craigie. Agent—W. B. Rainnie, S.S.C.

Counsel for the Second Party—Sol.-Gen. Dickson, K.C. — Macmillan. Agent — J. Pearson Walker, S.S.C.

Counsel for the Third Parties—Guthrie, K.C.—Crole. Agent—A. H. Glegg, W.S.

Counsel for the Fourth Parties — Ure, K.C.—M'Clure. Agents—Ronald & Ritchie, S.S.C.

COURT OF TEINDS.

Friday, March 7.

(Before the Lord President, Lord Adam, Lord M'Laren, Lord Kinnear, and Lord Low.)

CLARK *v.* GRANT.

Teinds—Process—Augmentation—Pending Application for Decree of Approbation of a Report of Sub-Commission—Clause of Reservation in Decree of Augmentation.

In a process of augmentation certain heritors stated that they had discovered a report of the Sub-Commissioners of Teinds and were about to take steps to obtain a decree of approbation of that report, and maintained that either the process of augmentation should be sisted or a clause reserving the rights of the heritors should be inserted in the decree of augmentation.

The Court *granted* decree of augmentation and *refused* either to sist the process or to insert an express reservation of the rights of the heritors in the decree, in respect that an express clause of reservation was unnecessary, because the *de plano* decree of augmentation would not affect the rights of the heritors.

The Reverend J. S. Clark, minister of Dunbarney, brought a process of augmentation. The augmentation asked was five chalders. On the cause being put out in the teind roll to fix the amount of augmentation, certain heritors appeared to oppose the application on the grounds (1) that there was no free teind, and (2) that in any view the augmentation asked was excessive.

The last augmentation was in 1863. In that year certain heritors opposed the augmentation on the ground that the teinds were exhausted, and in support of this contention produced an extract decree of valuation of the Commissioners, of date 26th July 1635. In *Kirkwood* v. *Grant*, November 7, 1865, 4 Macph. 4, it was held by the Court of Teinds that this decree of valuation of teinds was not an effectual valuation of the teinds in a question with the minister of the parish, in respect that it appeared that the minister had not been called and was not a party to the process. This judgment of the Court of Teinds became final. But in a later case (*Heritors of Old Machar* v. *The Minister*, July 26, 1870, 8 Macph. (H.L.) 168, 7 S.L.R. 726) the House of Lords held that such a decree of valuation was not invalid although the minister of the parish had not been cited as a party to the process in which the decree had been pronounced. This later decision was precisely contrary to the decision of the Court of Teinds in *Kirkwood* v. *Grant*, *supra*.

Since the date of the decision in *Kirkwood* v. *Grant*, *supra*, the heritors had discovered a report by the Sub-Commissioners dated 1635, and were about to take steps to obtain a decree of approbation of that report.

Counsel for the heritors moved the Court in these circumstances either to sist the process of augmentation, as was done in the *Glenluce* case (*Farrel* v. *Earl of Stair*, November 9, 1874, 2 R. 76, 12 S.L.R. 56), or at all events, if the augmentation was granted, to introduce into the interlocutor a reservation in the form inserted in the case of *Minister of Morvern* v. *The Heritors*, November 22, 1865, 38 Scot. Jur. 49. This form of reservation in that case had now crystallised into the regular form of reservation in use in similar cases—*Minister of Bonhill* v. *Orr Ewing*, February 22, 1886, 13 R. 594, 23 S.L.R. 406; *Minister of Peebles* v. *Heritors of Peebles*, January 8, 1897, 24 R. 293, 34 S.L.R. 294.

The Court granted an augmentation of five chalders and refused either to sist the process or to insert in the decree a reservation of the rights of the heritors, in respect that if the heritors got a decree of approbation of the report of the Sub-Commissioners it was in their power to surrender if it was found that there was no free teind. The Lord President observed that, as the decree of augmentation would not affect the rights of the heritors, the reservation asked for in the decree of augmentation was unnecessary for the protection of their rights.

Counsel for the Minister — Anderson. Agents — Turnbull, Kitchen, & Stevens, S.S.C.

Counsel for the Heritors — Macphail. Agents—Lindsay, Howe, & Co., W.S.

COURT OF SESSION.

Wednesday, March 12.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

MORRISON *v.* RITCHIE AND COMPANY.

Reparation — Slander — Newspaper—Averment of Circumstances Rendering Words Published Defamatory — False Birth Notice—Date of Marriage.

A married couple raised an action of damages against the publishers of a newspaper for slander alleged to be contained in a false birth notice which announced that twins had been born to the pursuers at a date which they averred to be about a month after their marriage. The notice was inserted at the request of a person giving a fictitious name and address, whose identity was not ascertained.

Held (*aff.* judgment of Lord Kincairney) that the pursuers were entitled to an issue in respect that the birth notice though not in itself defamatory was highly so when read in the light of the circumstances averred by them, that they were entitled to put the date of their marriage in issue in order to show that the notice was defamatory, and that the defenders must be held to represent the unknown and untraceable sender of the notice.

Opinion (*per* Lord Moncreiff, concurred in by the Lord Justice-Clerk and Lord Adam) that in every case in which the words uttered are not *prima facie* defamatory, it is competent to consider the circumstances in which they are said to have been uttered.

This was an action at the instance of George Morrison, manager, Caledonian Hotel, Ullapool, and Mary Tuach Mackenzie or Morrison, his wife, against John Ritchie and Company, publishers and proprietors of *The Scotsman* and *Weekly Scotsman*, in which the pursuers claimed damages for slander alleged to be contained in two unauthorised and untrue birth notices.

The pursuers averred that they were married on 12th July 1901; that for some time previous to his marriage the pursuer George Morrison had carried on business at 33 South Back Canongate, Edinburgh; that he was presently manager of the Caledonian Hotel, Ullapool; that the pursuer Mrs Morrison was a native of Ross-shire; and that her family had for long been connected with the Caledonian Hotel at Ullapool. "(Cond. 2) On 15th August 1901 the following notice appeared among the notices of births in the issue of *The Scotsman* of that date, viz.—'Morrison: At the Caledonian Hotel, Ullapool, on the 11th inst., the wife of George Morrison, of 33 South Back Canongate, of twin sons. Ross-shire papers please copy.' The same notice also appeared in the issue of *The Weekly Scotsman* of 17th August 1901. (Cond. 3) Neither of the pursuers instructed or authorised the said notice to be inserted. There was in point of fact no foundation for the statements therein made, no such event having taken place. The said notice was not received by the proprietors of *The Scotsman* in the ordinary course of business, or at all events in the usual way in which such notices are received by them. It is believed and averred that the said notice was enclosed in an envelope addressed as if in answer to an advertisement marked No. 2348 Scotsman Office. The advertisement No. 2348 was one applicable to the sale of a residential estate in Mid-Lothian, which appeared in the issue of *The Scotsman* on 10th August 1901. In ordinary course the said envelope was handed to the person who had inserted advertisement No. 2348 in *The Scotsman*, who returned it to the defenders, when its contents were found not to relate to the said advertisement. The envelope contained a sheet of paper on which was written the following, viz.—'Mrs Sutherland, 7 Albert Street, would like to insert in *The Scotsman*: At the Caledonian Hotel, Ullapool, on the 11th inst., the wife of George Morrison of 33 South Back Canongate, of twin sons. Ross-shire papers please copy.' This was accompanied by an order for two shillings and sixpence. On receiving the above from the advertiser of advertisement No. 2348, the defenders, without making any