LORD JUSTICE-CLERK—Mr Watt frankly admitted that he knew of no case until very lately in which, where a woman complained of personal injuries and sued with consent of her husband in respect of these injuries, the question had been raised whether the husband was liable in expenses. Now, in this particular case I think we have all the circumstances which tend to show that the husband was active in the matter. He was present at the time the accident took place, and therefore knew the circumstances in which it took place. He joined with his wife in making a statement in regard to these circumstances, and I am satisfied from what I heard at the trial that that statement was not true, and therefore he joined with her in endeavouring—I do not say by perjured evidence, but by that exaggerated and untrustworthy evidence which is so common in such cases—to set up a case against the defenders, and was unsuccessful. Now the Lord President in the case of *Picken*, 4 Fraser 39, made use of words which I may read and use as my own—"It appears to me that the jury must have thought, and I am not in the least surprised if they did think, that there was really no substance in the case. They must have considered that the evidence as to the condition of the wife's health was exaggerated and could not be relied upon, and if the husband initiated, or was a party to initiating, and supported by his evidence as well as by his instance, a case which proved not to be a substantial one, it seems to me that he should be held liable to the opposite party in expenses." I think that expression is just exactly what my own view is, and I am in favour of granting decree here both against the wife and the husband.

LORD TRAYNER concurred.

LORD MONCREIFF—I am of the same opinion. It is a very difficult thing to dissociate a husband's liability from that of his wife. There may be cases where that can be done, and Mr Watt has referred to some of them, but where a husband either knows the facts or should know them, and the proof of the facts averred entirely fails, I see no reason for absolving him from joint liability with the wife for expenses.

LORD YOUNG was absent.

The Court applied the verdict, and found the pursuer and her husband jointly and severally liable to the defenders in expenses.

Counsel for the Pursuer—Watt, K.C.—Burt. Agents—M. J. Brown, Son, & Co., S.S.C.

Counsel for the Defenders—Clyde, K.C.—MacRobert. Agents—Hope, Todd, & Kirk, W.S.

Wednesday, March 11.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

GILLON'S TRUSTEES *v.* GILLON.

Husband and Wife—Postnuptial Provisions for Wife — Trust-Deed for Creditors—Revocability—Trust.

By trust-disposition *inter vivos* A conveyed his whole estates to trustees primarily for the purpose of payment of his debts. He directed that as long as his debts remained unpaid the deed should not be revocable by him. The truster directed the trustees to pay the whole free residue and remainder of the annual income of the trust estate for behoof of the truster in liferent, and after his death to his wife in liferent. These liferents were declared to be alimentary. The deed contained a clause declaring that the provisions in favour of the wife should not be held to be a donation *inter virum et uxorem*, but were granted in order to recoup her for advances made by her to the truster and to provide a suitable provision for her in the event of his death. It was also provided that these provisions in favour of the wife should not be revocable by the truster. A had married without a marriage-contract, and his wife had before the date of the trust-deed advanced considerable sums to him out of her separate estate.

Some time afterwards A, with the consent of his wife and all the creditors interested, executed a revocation of the trust, and called upon the trustees to denude.

The trustees brought a declarator that the trust-disposition was not revocable by A with the consent of his wife. *Held* (*rev.* judgment of Lord Stormonth Darling, Ordinary) that the provisions in favour of the truster's wife contained in the trust-deed could not be considered as a postnuptial provision for her, and were revocable with her consent, and that the trustees were bound to denude.

Question (*per* Lord M'Laren) whether a postnuptial contract containing reasonable and proper provisions for the wife, to take effect only on the dissolution of the marriage, is revocable with consent of all parties interested.

Process — Interlocutor — Substitution of Amended Interlocutor — Consent of Parties.

Circumstances in which the Court, with consent of both parties, substituted an amended interlocutor for an interlocutor pronounced by themselves, on the ground that the interlocutor originally issued did not correctly express the judgment of the Court.

In 1897 Henry Gillon of Wallhouse, who was then in embarrassed circumstances, granted a trust-deed by which he conveyed

his whole estate to trustees. The trust-deed, after a narrative of certain debts which were charged upon the estate of Wallhouse, and other debts which he had incurred, narrated that his wife Mrs Amy Hemans or Gillon, had advanced to him out of her separate estate the sum of £7000, of which the sum of £3300 had been repaid; and that the balance was secured by a bond and disposition in security in her favour over the estate of Wallhouse, but that she had agreed that it should be postponed to certain other loans. Mr and Mrs Gillon had married without an antenuptial marriage-contract.

The trust-deed, besides the usual powers of management, contained the following purposes:—"(2) The said trustees shall, as soon as funds can be realised for that purpose, liquidate and pay the personal debts due or incurred by me at or prior to the date hereof according to the rights and preferences of my several creditors. . . . (5) Repayment of loans out of capital. (6) The said trustees shall make payment to me, or in their option apply for my behoof during all the days and years of my life, or during the subsistence of this trust, the whole free residue and remainder of the rents, interests, and revenue of the said funds and estate, and that from time to time as there may happen to be surplus funds available in their hands, and in such manner and in such proportions and at such times as they shall think proper, and they shall balance their accounts as at the 31st day of December yearly, or at such other annual date as they may find convenient, and pay over to me at such times or time as may be arranged the whole sums of revenue then in their hands, and upon my death my said trustees shall in like manner pay or apply the whole of said free residue and remainder of the said free rents, interests, and revenue of the trust funds and estate, to and for behoof of my said spouse during all the days and years of her life in the event of her surviving me; and I do hereby specially provide and declare that the whole lands and others and the personal and moveable estate hereby conveyed and the annual income, produce, and revenue thereof have been conveyed by me and shall be held by my said trustees for the sole alimentary use, benefit, and behoof of myself and my said wife after providing for the other purposes hereinbefore and after expressed, and that neither the said real and personal estate nor the free residue and remainder of said rents, interest, and revenue nor any part thereof shall be assignable by me or my said wife, or arrestable or affectable in any way by my or her debts or deeds, or liable to the diligence of my or her creditors, but shall be a strictly alimentary provision in my or her favour allenarly during all the days of our respective lives as aforesaid, and shall during my life be payable to me alone on my own receipt allenarly, and after my death shall be payable to her on her own receipt allenarly. *Lastly*, the said trustees shall upon my death, or upon the death of my said wife in the event of her surviving me, dispone, assign, convey, and make over the whole trust estate then in their possession in such a way and manner as I shall direct by any will, *mortis causa* settlement, or other testamentary writing duly executed by me, and failing my having executed any such will, *mortis causa* settlement, or other testamentary writing as aforesaid, my said trustees shall dispone, assign, convey, and make over the same to my heirs whomsoever: And in respect that these presents have been granted, *inter alia*, for the purpose of providing a fund for the due and regular payment of the" premiums of insurance and interests due and to become due upon loans, "it is hereby specially provided and declared that so long as the sums" charged upon the estate or due upon said loans or others contracted in lieu of them "shall remain unpaid these presents shall not be revocable by me: . . . And it is further specially provided and declared that the foresaid direction to my said trustees conceived in favour of my said wife shall not be held to be a donation *inter virum et uxorem*, but has been granted by me in order to recoup her for the portion of her fortune which she has employed in paying debts due by me, and in order to provide a suitable provision for the alimentary support of my said spouse in the event of my death, and it shall not be revocable by me."

The trustees accepted office.

In 1900 Henry Gillon, with consent of his wife and certain creditors secured on the estate of Wallhouse, being all his remaining creditors, executed a deed of revocation of the trust-deed, and called upon the trustees to denude of the trust. James Russell, agent of the National Bank, Airdrie, and J. G. B. Henderson, W.S., Linlithgow, the surviving and acting trustees under the said trust-deed, brought the present action against Mr and Mrs Gillon, concluding for declarator "that the said trust-disposition above referred to is not revocable by the defender the said Henry Gillon with the consent of his said wife, and that the same has not been effectually revoked by him with consent aforesaid or otherwise," or alternatively "that the defender is not entitled to revoke said trust-disposition with consent aforesaid, and the pursuers are not bound to denude themselves of said trust until they are relieved of all obligations undertaken by them on accouut of the defender, or in the management and administration of the trust, and are reimbursed of all payments made and obligations undertaken by them in relation thereto."

The pursuers pleaded, *inter alia*—"(2) The said deed is irrevocable in respect that it confers an alimentary liferent upon Mrs Gillon, the wife of the defender. (3) *Separatim*, the said liferent being a provision for Mrs Gillon during her viduity, she is not entitled to discharge the same *stante matrimonio*."

On 5th March 1902 the Lord Ordinary (STORMONTH DARLING) pronounced an interlocutor by which he found that the said trust-disposition was not revocable by

the defender during the life of his wife even with her consent, and found, decerned, and declared in terms of the first alternative conclusion of the summons.

Opinion.—"It seems to me that the cases of *Low* v. *Low's Trustees*, 5 R. 185, *Peddie* v. *Peddie's Trustees*, 18 R. 491, and *Barras* v. *Scottish Widows' Fund Society*, 2 F. 1094, all proceed upon the principle that a postnuptial trust which secures to a wife a reasonable provision in the event of her surviving her husband is not revocable by the husband even with her consent, and that this rule applies just as much where the deed creating the trust is granted by the husband alone as where it takes the form of a postnuptial contract. In two respects this case is *a fortiori* of these—(1) because there is a declaration by the husband that the provision in favour of his wife shall not be revocable by him (whatever that may be worth); and (2) because the provision is declared to be strictly alimentary.

"It is said that the cases of *Low*, *Peddie*, and *Barras* all presented the feature that there were provisions in favour of children as well as of the wife, and that there are no such provisions here. That is true: in *Low* and *Peddie* no children had come into existence, and in *Barras* they had all attained majority and had consented to the revocation of the trust. But I think it is impossible to read the opinions in these cases without seeing that the real ground of judgment was the incapacity of the wife *stante matrimonio* to surrender a provision intended for her viduity.

"Here the trust-deed was executed by Mr Gillon a number of years after his marriage, and its primary purpose no doubt was to secure his creditors and prevent the further dilapidation of his estate. But it recited the fact of his solvency at the time, and his desire to provide for the aliment of himself and his wife and the survivor. In the operative part of the deed he directs his trustees to make payment to him, or for his behoof, of the whole free revenue of the trust estate remaining after payment of debts, and upon his death in like manner to pay or apply the free revenue to or for behoof of his wife if she survived him. There is, as I have said, a further clause making these provisions alimentary. Then there is a direction to the trustees after the death of both himself and his wife to convey the trust estate as he might direct by will, or else to his heirs whomsoever. And lastly, there is the declaration to which I have referred that the direction in favour of his wife shall not be held to be a donation *inter virum et uxorem*, and shall not be revocable by him, but is intended to make a suitable provision for her alimentary support in the event of his death.

"The deed is thus a combination of purposes which are merely administrative and of purposes which are properly matrimonial. As regards the first, if they had stood alone the deed would of course have been revocable. Even as it is, any new deed executed by Mr Gillon would take effect on his own reversion, and the attempt to make his own income alimentary would be ineffectual in a question with creditors, but that does not, as it seems to me, impair the protection with which the law surrounds the provision in favour of his wife. Nobody alleges that it is an unreasonable provision, although it extends to the free revenue of all that the husband has or may acquire. Indeed, it is the only provision which he has made for her, because there was no antenuptial contract. It is, I think, the result of the decisions that, *intra familiam*, a postnuptial provision, if reasonable in amount, is just as sacred as one made in an antenuptial marriage contract.

"I shall therefore find that the trust-disposition in question is not revocable by the defender Henry Gillon during the life of his wife, even with her consent, and I shall give decree in terms of the first alternative conclusion of the summons."

The defenders reclaimed, and argued—Even if the trust-deed were to be considered as a postnuptial provision in favour of the truster's wife, it was revocable if she consented to the revocation—*Smitton* v. *Tod*, December 12, 1839, 2 D. 225; *Eliott's Trustees* v. *Eliott*, July 13, 1894, 21 R. 975, 31 S.L.R. 850; *Watt* v. *Watson*, January 16, 1897, 24 R. 330, 34 S.L.R. 267. The cases on which the Lord Ordinary proceeded were complicated by the interests of children, which here were absent. The principle on which it had been decided that an antenuptial provision could not be revoked, even with the wife's consent, was that the wife was not in a position to contract as freely after marriage as before it. That principle did not apply to the case of a postnuptial contract. But on a sound construction of the trust-deed here it was not a postnuptial provision for the wife. The deed was a trust for creditors, and the wife was a creditor. The provisions made for her were made as an equivalent for her consent to the postponement of her bond and disposition in security. She was, therefore, in a question of a power to revoke, just in the position of a creditor. A statement by the granter of a deed that it should not be revocable did not make it irrevocable—*Byres' Trustees* v. *Gemmell*, December 20, 1895, 23 R. 332, 33 S.L.R. 236.

Argued for the respondents—A postnuptial provision in favour of a wife, assuming that it was reasonable in amount, and did not come into operation until the dissolution of the marriage, could not be revoked even with the wife's consent—*Low* v. *Low's Trustees*, November 20, 1877, 5 R. 185, 15 S.L.R. 111; *Peddie* v. *Peddie's Trustees*, February 6, 1891, 18 R. 491, 28 S.L.R. 336; *Barras* v. *Scottish Widows' Fund Society*, June 27, 1900, 2 F. 1094, 37 S.L.R. 831. It was true that these cases were complicated by provisions in favour of children, but in *Barras* all the children were of age and consented, and the decision went expressly on the ground that the wife had no power to consent to revoke. The cases in which it had been held that an antenuptial provision could not be revoked were also in

point—*Anderson* v. *Buchanan*, June 2, in 1837, 15 S. 1073; *Pringle* v. *Pringle's Trustees*, July 3, 1868, 6 Macph. 982; *Menzies* v. *Murray*, March 3, 1875, 2 R. 507, 12 S.L.R. 373; *Sanders* v. *Sanders' Trustees*, November 7, 1879, 7 R. 157, 17 S.L.R. 75; *Murray* v. *Macfarlane's Trustees*, July 17, 1895, 22 R. 927, 32 S.L.R. 715; *Ker's Trustees* v. *Ker*, December 13, 1895, 23 R. 317, 33 S.L.R. 212. Antenuptial and post-nuptial provisions, *quoad* the position of the wife, were in the same position. The trust-deed here, though primarily for behoof of creditors, was also a post-nuptial provision for the truster's wife. It was declared to be irrevocable, and her right was declared to be alimentary. In a question of her power to revoke it was irrelevant to consider the reason why the provision was granted, because the reason why she could not consent to a revocation was that during her marriage she was not free to contract.

At advising—

LORD M'LAREN—The question is, whether the defender Henry Gillon of Wallhouse is entitled, with the consent of all parties interested under his trust-deed, dated 25th November 1897, to revoke the trust and to discharge the trustees. The action is instituted by the trustees under this deed, and concludes (1) that it should be found and declared that this trust-disposition is not revocable by Mr Gillon with the consent of his wife; and (2) (as an alternative) that it should be found and declared that the defender is not entitled to revoke, and that the pursuers are not bound to denude until the pursuers are relieved of their obligations and are repaid their advances on account of the trust.

The Lord Ordinary has decerned in terms of the first alternative, and as it was not seriously disputed that the trustees are entitled to hold to the trust estate until relieved of liabilities lawfully undertaken, the question is narrowed to this, whether the decree should be in terms of the first or of the second alternative conclusion. Again, as the defender's mother, brothers, and sister, and the North British and Mercantile Insurance Company, being, as I understand, all the creditors secured on the trust estate (other than Mrs Gillon), have consented to the revocation of the trust and the execution of a new deed with which they are satisfied, the only ground on which the first conclusion can be maintained is that Mrs Gillon is incapable of giving an effective consent to a deed of revocation under which her interests in the existing trust may be prejudicially affected. It is maintained by the trustees that Mrs Gillon's interest under the trust is of the nature of a postnuptial provision, that a postnuptial provision when reasonable in amount and suitable in its character gives the wife the same degree of protection that is given by an antenuptial contract of marriage, and that the trust cannot be revoked or terminated during the lifetime of Mrs Gillon, or at least during the subsistence of the marriage.

The Lord Ordinary's first proposition is that a postnuptial trust which secures to a wife a reasonable provision in the event of her surviving her husband is not revocable by the husband even with her consent, and this is followed by the expression of his opinion that the rule applies just as much where the deed creating the trust is granted by the husband alone as where it takes the form of a postnuptial contract.

Now, it must be admitted that the decisions cited by the Lord Ordinary give a certain support to the first proposition, but I should desire to reserve my opinion on the question whether a postnuptial provision, even when secured by a trust constituted *eo intuitu*, can give the same protection to the wife's interests as is given by means of an antenuptial trust. It is not doubted that a reasonable postnuptial provision amounts to a *jus crediti* in the wife, and it seems to follow that such a provision, when secured over heritable estate either by a deed in favour of the wife or in favour of trustees for her, would operate as a preferential security in bankruptcy. I of course assume that the provision is one taking effect on or after the dissolution of the marriage. But I do not at present see on what principle such a deed should be held to be irrevocable by the joint act of the spouses. I do not think that the question has been considered by this Division of the Court, but we have lately had occasion to consider the reasons which led to the recognition of the principle of the irrevocability of an antenuptial provision secured by a trust, and I think the principle is that if the lady, before marriage and when she is free to contract, stipulates for a secured provision in case of her viduity, it is matter of contract that the trustees shall hold the estate during the subsistence of the marriage. The trustees cannot be divested *stante matrimonio* by the joint act of the spouses, because it is matter of contract that the trust shall subsist in view of the fact that the lady does not after her marriage stand in the same independent position towards the other contracting party which she held before the marriage took effect. Now, if this be the true principle which underlies the case of *Menzies* v. *Murray* and the decisions following upon it, it is difficult to see how it can be applied to the case of a postnuptial provision, even when put into the form of a contract, because in all such cases the wife is just as free to discharge the provision as she was to accept it, and the effect of a discharge is just to remit the parties to their legal rights as existing at the date of the marriage.

But I do not think it is necessary to express a definite opinion on this part of the Lord Ordinary's judgment, because I understand that your Lordships are all of opinion that the trust in favour of Mrs Gillon is neither in form nor intention a postnuptial provision. I therefore only wish for myself, and for any of my colleagues who may concur with me, to reserve our opinion on the question whether the wife's disability to revoke or surrender an antenuptial marriage provision can be

extended to the case of a proper post-nuptial provision.

Coming now to the terms of Mr Gillon's trust-deed as set forth in the condescendence, I note that Mrs Gillon is not a party to it, although she takes benefit under the trust. The deed is a unilateral deed, its primary purpose being, as the Lord Ordinary observes, to secure Mr Gillon's creditors, and to prevent the further dilapidation of his estate. The deed proceeds on the narrative of certain family provisions affecting the lands of Wallhouse, and that the defender had granted a bond and disposition in security over the estate, in favour of his wife, for the sum of £7000 borrowed by him from her out of her separate estate, of which £3300 had been repaid, and that by agreement with his wife certain other loans contracted by the defender should be preferable to the security in her favour. From this I should infer that the absence of an antenuptial contract of marriage was not necessarily an omission. More probably, as the lady had a private fortune, it was thought convenient that each of the spouses should retain his and her individual estate unfettered by any obligations in favour of the other.

It is not necessary to refer further to the primary purposes of the trust, which are just such as may be found in any trust constituted with a view to the payment of debts and the economical management of the truster's estate.

The sixth and seventh directions or purposes of the trust deal with the application of the reversion of the income and capital of Mr Gillon's estate. Such clauses are not unusual in trust deeds granted for the benefit of creditors, and in ordinary course they are considered to be outside the scope of the trust. They express, first, what has been called the radical right of the truster to deal with the reversion of his estate; and secondly, his present intention or wishes as to what is to be done with the reversion in case of his death or disability without leaving a will. It is, I think, a safe and sound construction of such a reversionary clause to hold that it does not bind the grantor in any way unless the intention to put himself under obligation is expressed. But I am unable to find in the sixth and seventh directions to the trustees of Mr Gillon's trust any clear evidence of an intention to make a provision for Mrs Gillon to supply the want of an antenuptial contract. In the sixth direction the trustees are instructed to pay or apply the income of the trust for the benefit of the truster, and after his death for the benefit of his wife. The two provisions are in identical terms, and then it is provided that the income of the trust estate is to be held by the trustees "for the sole alimentary use, benefit, and behoof of myself and my said wife, after providing for the other purposes hereinbefore and after expressed," and it is neither to be assignable nor arrestable. By a reasonable post-nuptial provision I understand a fixed sum or a specific estate, the value of which is known to the husband at least approximately when he makes it. But the specialty of this trust is that the wife takes under it an interest precisely similar to that which the husband reserves to himself—a general life-interest—which may or may not be reasonable and suitable as a provision according to the value of the estate at the truster's death. Passing to the seventh or last direction, which deals with the fee of the reversion of the estate in a purely testamentary spirit, the truster closes this subject by two declarations. The first is in favour of creditors, and is to the effect that so long as any debt or interest thereon shall remain unpaid "these presents shall not be revocable by me." The second declaration is to the effect that the foresaid direction in favour of his wife "has been granted by me in order to recoup her for the portion of her fortune which she has employed in paying debts due by me, and in order to provide a suitable provision for the alimentary support of my said spouse in the event of my death, and it shall not be revocable by me." Thus it appears that the chief motive of the grant to the wife is not provision but recompense. It is recognised that the wife's advances cannot be directly repaid—in fact, as I have already noted, the wife's claims as a creditor are postponed to those of other creditors. Therefore, to make up for the diminution of her estate she is to receive a liferent of anything that remains of the husband's estate at his death. I do not doubt that this was a perfectly fair arrangement between the spouses, and the fact that it was a fair arrangement (apparently a bargain, though that is not stated in words) may be an excellent reason for the declaration "it shall not be revocable by me." These are the identical words used with respect to other creditors in the passage already quoted, and it has not occurred to anyone that the other creditors may not waive their rights and consent to the trust being revoked. Mrs Gillon's right is fenced, so far as regards the possible revocation of the trust, exactly as the rights of other creditors are fenced, and on the narrative that she has advanced a part of her fortune to the truster. It follows, in my opinion, that if she accedes to the trust, she is within her rights in giving her consent to a revocation of the trust. We do not know what are her reasons for consenting, nor is it necessary that we should know. But it is at least possible that she may think that her interests will not suffer by the revocation of the present trust and the constitution of another, for the parties are agreed in stating that a new trust is to be executed.

Considering (1) that Mrs Gillon's right under the deed is not a right to a specific or definite provision, but is a liferent interest in the reversion of her husband's estate, whatever that may be; considering (2) that the cause of granting is stated to be recoupment or recompense for advances made by Mrs Gillon for her husband's benefit; and (3) that in the matter of revocation Mrs Gillon's rights are put on a par with those of other creditors, so that her husband

cannot revoke her security by his sole act—I am of opinion that the true effect of the last purpose is that the trust is not revocable without Mrs Gillon's consent. Now, as Mrs Gillon has given her consent to the supersession of the trust, and is here as a party supporting her husband, it follows that the defenders should be assoilzied on relieving the pursuers of their liabilities, or, which is the same in effect, that decree should be given in terms of the second alternative of the summons.

The LORD PRESIDENT, LORD ADAM, and LORD KINNEAR concurred.

The Court pronounced this interlocutor:—

"The Lords having considered the reclaiming-note for the defender Henry Gillon against the interlocutor of Lord Stormonth Darling, dated 5th March 1902, and heard counsel for the parties, Recal the said interlocutor: Find that the said defender is not entitled to revoke the trust-disposition of 25th November 1897 mentioned in the summons without the consent of Mrs Amy Anne Blanche Hemans or Gillon, his wife: Find that the said Mrs Gillon has consented to the revocation of said trust-disposition: Find, in terms of the second and alternative conclusion of the summons, that the pursuers, the trustees under said trust-disposition are not bound to denude themselves of the trust until they are relieved of all obligations properly undertaken by them on account of the defender or in the management and administration of the trust, and are reimbursed of all payments properly made and obligations properly undertaken by them in relation thereto: *Quoad ultra* assoilzie the defenders from the conclusions of the summons, and decern: Find the pursuers and respondents, the trustees, entitled to their expenses as between agent and client out of the trust estate, and remit the account thereof to the Auditor to tax and to report to the Lord Ordinary, and remit to his Lordship to proceed as may be just, with power to decern for the taxed amount of said expenses."

Thereafter on March 11th the pursuers presented a note in which they stated that the interlocutor above quoted did not correctly represent the judgment of the Court, and moved that an interlocutor in terms drafted by them should be substituted. The defenders consented to this.

The Court pronounced this interlocutor:—

"The Lords having considered the reclaiming-note for the defender Henry Gillon against the interlocutor of Lord Stormonth Darling dated 5th March 1902, and heard counsel for the parties, Recal said interlocutor: Find that the said defender is entitled to revoke the trust-disposition of 25th November 1897 mentioned in the summons with the consent of Mrs Amy Anne Blanche Hemans or Gillon, his wife: Find that the said Mrs Gillon has consented to the revocation of said trust-disposition: Assoilzie the defender from the first conclusion of the summons: Find, in terms of the second and alternative conclusion of the summons, that the pursuers, the trustees under said trust-disposition, are bound to denude themselves of the trust upon being relieved of all obligations properly undertaken by them on account of the defender or in the management and administration of the trust, and on being reimbursed of all payments properly made and obligations properly undertaken by them in relation thereto, but until the pursuers are so relieved and reimbursed they are not bound to denude themselves of said trust; and particularly the pursuers are not bound to denude themselves of said trust until they have been reimbursed and paid the sum of £1139, 2s., with interest thereon, or such other sum as shall be ascertained to have been the amount expended by the pursuers on account of the said defender, or in the management and administration of the said trust, and decern: And find the pursuers and respondents, the trustees, entitled to their expenses as between agent and client out of the trust estate, and remit the account thereof to the Auditor to tax and to report, and remit to his Lordship to proceed as may be just, with power to decern for the taxed amount of said expenses."

Counsel for the Pursuers and Respondents—Campbell, K.C.—Dewar. Agents—Cornillon, Craig, & Thomas, S.S.C.

Counsel for the Defender and Reclaimer—Guthrie, K.C.—Craigie. Agents—Millar Robson, & M'Lean, W.S.

Wednesday, March 17.

FIRST DIVISION.

[Sheriff-Substitute at Edinburgh.

PUMPHERSTON OIL COMPANY, LIMITED *v.* CAVANEY.

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37)—*Appeal—Refusal of Sheriff to State Case—Point at Issue Covered by Prior Decision—A. S., June* 3, 1898, *sec.* 9.

In an arbitration under the Workmen's Compensation Act 1897 the Sheriff refused to state a case for appeal, on the ground that the question of law involved was settled by a prior decision of the Court. It was admitted that the decision in question could not be distinguished.

Circumstances in which the Court *remitted* to the Sheriff to state a case.

This was an application on behalf of the Pumpherston Oil Company, Limited, for