

our legal system. On the contrary, in the passage from the judgment of Lord President Inglis in the case of *Ross v. Dunlop* (5 R. 833), referred to in the Lord Ordinary's judgment, the true principle of construction is very distinctly affirmed. If, as his Lordship points out, there is no direction to pay on the attainment of majority, but only a general right to share in the fund, and the class remains undetermined, then payment must be delayed until the class is determined. There have indeed been cases where there was an express direction to pay on attainment of majority, and we in this Division have authorised payment to the beneficiaries one by one. Here, however, in the event that has happened, there is a virtual trust to hold until the attainment of majority by all the children, and the trustees must therefore keep up the trust until the death of the father, when the class will be definitely ascertained.

The Court adhered.

Counsel for the Pursuers and Reclaimers—Wilson, K.C.—J. H. Millar. Agents—Forman & Bennet Clark, W.S.

Counsel for the Defenders and Respondents Sinclair's Trustees—Smith, K.C.—M'Clure. Agents—Lindsay, Howe, & Co., W.S.

Wednesday, October 26.

FIRST DIVISION.

[Lord Kincairney,
 Ordinary.]

M'GILP v. CALEDONIAN RAILWAY
 COMPANY.

Expenses—Modification—Jury Trial—Small Amount Awarded by Jury in Case Raised in Court of Session.

In an action raised in the Court of Session for payment of £500 of damages for assault a jury returned a verdict for the pursuer and awarded him £10 of damages. The defenders had made no tender.

The defenders moved that expenses to the pursuer should be subject to modification, in respect that the smallness of the sum awarded showed that the case ought to have been raised and tried in the Sheriff Court.

The Court refused modification on the ground that no reason had been given for taking the case out of the common rule.

Alexander M'Gill, inspector of police, Greenock, raised an action before Lord Kincairney in the Court of Session, against the Caledonian Railway Company, in which he sought to recover £500 as damages for an unjustifiable assault alleged to have been committed upon him by three servants of the company, acting within the scope of their employment. After issues had been adjusted by the Lord

Ordinary the case went to trial at the sittings before the Lord President, and the jury returned a verdict for the pursuer and awarded him £10 of damages. No tender had been made by the defenders.

When the pursuer moved the Court to apply the verdict, and for expenses, the defenders moved that the expenses should be subject to modification. They argued:—It was a rule settled by recent decisions that where a pursuer only obtained an award for a trifling sum the Court would modify the expenses—*Shearer v. Malcolm*, February 16, 1899, 1 F. 574, 36 S.L.R. 419; *Brennan v. Dundee and Arbroath Joint Railway*, May 26, 1903, 5 F. 811, 40 S.L.R. 622; *Lafferty v. Watson, Gow, & Company, Limited*, June 3, 1903, 5 F. 885, 40 S.L.R. 622. While these were all cases which had originated in the Sheriff Court and been appealed for jury trial to the Court of Session, the rule applied *a fortiori* of a case which had originated in the Court of Session, for in it the initial expenses also had been incurred on the unnecessarily high scale. The award in this case showed that the action should have been brought in the Sheriff Court as clearly as it would have shown that the case if it had originated in the Sheriff Court ought not to have been appealed to the Court of Session.

The Court, without calling on the pursuer, refused modification on the ground that no reason had been given for taking the case out of the common rule.

Counsel for the Pursuer—Dewar, K.C.—A. M. Anderson. Agent—Alex. Ramsay, S.S.C.

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

Friday, October 28.

BILL CHAMBER.

[Lord Pearson.]

GENERAL ASSEMBLY OF THE FREE
 CHURCH OF SCOTLAND v. RAINY.

Process—Interdict—Title to Sue—Occupation of Heritable Subjects—Interdict Brought to Enforce Declaratory Judgment concerning Heritage.

A held a declaratory judgment that he was entitled to have certain heritable properties held in trust applied for his behoof, and that B had no right or interest in any part of the property. C had not been called as a defender in the action of declarator, but prior to the date of the action he had occupied certain of the subjects forming a part of the said property, with the authority of B, and after the judgment he still continued in occupation. A thereupon presented a note of suspension and interdict against C to prevent the latter entering or further occupying the subjects.