a question whether it was truly intended to be a testamentary writing. We must therefore consider the document not only on its own apparent merits, but also in such light as may be derived from surrounding facts and circumstances; and the statements in the Special Case are equivalent to the result of a concluded proof in regard to these matters. There are to my mind features in the case tending in favour of, as well as against, the validity of the document. It is holograph, dated, and signed, and was found after General Sprot's death in his locked safe, in a sealed envelope addressed to his law agent Mr Blair, and tied up within the fold of a copy of the testator's trust-disposition and settlement of 4th January 1905, which Mr Blair had sent him on the 7th of that month. These are by themselves important considerations, but I think their weight is far outbalanced by considerations pointing in the opposite direction. The writing in question is not the sole, nor the latest, testamentary effort of General Sprot; it is not a universal settlement; it bears merely to make certain alterations upon the formal universal disposition of his affairs made about a month before, and is succeeded by a series of codicils of greater or less importance. The settlement and the codicils I have referred to were all formally executed in close collaboration with his trusted law agent, and kept in that gentleman's custody. The existence of the writing of 5th February 1905 was never disclosed to Mr Blair, and the suggestion (somewhat faintly made) that this reticence may have arisen from some motive of delicacy appears to me to be inadequate. Further—and this I think is the most striking fact of all—the codicil of 6th March 1905, executed after anxious communication with Mr Blair, would be, to say the least, rendered meaningless if the writing of 5th February, only a month earlier in date, were to be held valid. Then the idea that General Sprot intended it to be effectual seems out of harmony with what is admitted as to his subsequent relations both with his son and his daughter Mrs Keith Murray. One must also bear in mind what we know from the Special Case of peculiarities in this testator's habits—his great favour for making and preserving all sorts of signed "drafts," his reluctance to destroy any papers, his practice of using a seal, and so forth. And one is struck by the fact that a holograph will dated 21st July 1904, though admittedly revoked, was never destroyed by General Sprot, but was found after his death in a box which he used to take with him when travelling, contained in a sealed envelope addressed to his wife. Other facts and features in the case might be adverted to, but those I have mentioned appear to me sufficient to warrant the conclusion at which I, in common with your Lordships, have arrived. I agree without difficulty in holding that the question put to us should be answered in the negative.

The Court answered the question of law in the negative.

Counsel for the First, Second, and Third Parties—Fleming, K.C.—Chree. Agents—Blair & Cadell, W.S.

Counsel for the Fourth and Fifth Parties—Blackburn, K.C.—Macmillan. Agents—Hope, Todd, & Kirk, W.S.

Wednesday, November 25.

FIRST DIVISION.

[Lord Mackenzie, Ordinary.

MOON *v.* MOON'S TRUSTEES.

Succession—Legitim—Discharge—Married Women's Property (Scotland) Act 1881 (44 *and* 45 *Vict. cap.* 21), *sec.* 7.

In his settlement a testator, who died in 1876, declared that the provisions therein made for his children, and which were payable on the death of his widow, "shall be accepted of by them, and the same are hereby declared to be, in full of all legitim, portion natural, bairns' part of gear, executry, and all others whatsoever, which they or any of them can ask or demand by or through my decease, or by and through the death of their mother, or in any other manner of way." The widow having died domiciled in Scotland in 1907, a son who had accepted his provision under his father's settlement, claimed also, under the Married Women's Property Act 1881, legitim from his mother's estate which she had disposed of by will.

Held that the son's claim to legitim was not excluded by the above clause in his father's settlement.

Dunbar's Trustees v. *Dunbar*, December 4, 1902, 5 F. 191, 40 S.L.R. 146; *aff.* April 11, 1905, 7 F. (H.L.), 92, 42 S.L.R. 553, *distinguished.*

The Married Women's Property (Scotland) Act 1881 (44 and 45 Vict. cap. 21), enacts, sec. 7—"After the passing of this Act, the children of any woman who may die domiciled in Scotland shall have the same right of legitim in regard to her moveable estate which they have according to the law and practice of Scotland in regard to the moveable estate of their deceased father, subject always to the same rules of law in relation to the character and extent of the said right, and to the exclusion, discharge, or satisfaction thereof, as the case may be."

On 28th January 1908, John W. Moon, 8 Abbotsford Park, Edinburgh, brought an action against Mrs Margaret Robertson Moon or Anderson, Edenfield, Fifeshire, and others, the trustees of the late Mrs Ann Moorhouse Stocks or Moon, widow of William Moon, Esq., of Edenfield aforesaid, for declarator that he was entitled to legitim out of the estate of his mother, the said Mrs Ann Moorhouse Stocks or Moon.

The following narrative is taken from the opinion of the Lord Ordinary (MACKENZIE)—"This is an action at the instance of John William Moon against his mother's

testamentary trustees for payment of legitim out of her estate.

"The pursuer is a son of William Moon, who died in 1876. Mrs Moon, the pursuer's mother, died in 1907, domiciled in Scotland, leaving a trust-disposition and settlement disposing of her estate.

"In 1881 the Married Women's Property (Scotland) Act 1881 was passed, by which it was enacted— . . . [*His Lordship quoted section 7, supra*]. . . . By William Moon's trust-disposition and settlement, dated in 1876, certain provisions were made in favour of his widow and children, including the pursuer. The provisions in favour of his children were payable on the death of the widow in 1907, and his settlement contained a declaration that these 'shall be accepted of by them, and the same are hereby declared to be in full of all legitim, portion natural, bairns' part of gear, executry and all others whatsoever which they or any of them can ask or demand by or through my decease, or by and through the death of their mother, or in any other manner of way.'

"The testator's widow and all his children, including the pursuer, accepted the provisions in their favour under his settlement.

"The question is whether the present action can be maintained. The pursuer says it can. His contention is that as his statutory claim to legitim from his mother's estate was only conferred by the Act of 1881, it could not have been in the contemplation of his father when he made his settlement in 1876, or at any time during his life. It was further maintained for him that the clause above quoted in his father's settlement could only be read as excluding any claims which would conflict with that settlement. Mrs Moon was not a party to her husband's settlement. The pursuer avers that the estate left by Mrs Moon had been acquired by her subsequent to her husband's death."

The defenders pleaded, *inter alia*—"3. The pursuer is, in the circumstances stated, barred from maintaining his present claim."

On 28th May 1908 the Lord Ordinary sustained the defenders' third plea-in-law, and assoilzied them.

Opinion.—" . . . [*After the narrative, supra*] . . . I am of opinion that the pursuer is not entitled to succeed in the action. The declaration above quoted is expressed in language which is quite unambiguous, and amounts to an offer by the father of the provisions therein made, subject to the condition that these are to be accepted in full, *inter alia*, of legitim which could be claimed by and through the death of the mother. There was no such claim at the date of the settlement or at the date of the father's death. It was pointed out that in the year 1876 a movement was being made to secure some part of a wife's estate to herself, and that the Married Women's Property (Scotland) Act was passed in 1877. It may fairly be said that the corollary of such legislation was that the wife's estate should be subject to the same legal claims as the estate of the father. The possibility of legislation may have been present to the mind of William Moon when he made his settlement. On the question of construction, however, the case of *Dunbar's Trustees*, 5 F. 191, 7 F. (H.L.) 92, seems to me to be in point, and especially the opinion of Lord Lindley, who says that such a clause is intended to exclude all claims whether foreseen or unforeseen. The pursuer here contended that *Dunbar* was inapplicable, because in that case the clause occurred in a marriage contract to which the wife was a party. In principle that does not seem to me to make a difference.

"In the present case, unless the meaning contended for by the defenders is given to the clause, it has no meaning at all. In this respect the circumstances in the present case are even stronger for the defenders than those in *Dunbar*. In *Dunbar* the marriage-contract was dated in 1848. According to the law as it then existed and down to 1855, in the case of the father surviving his wife, the children had a right, as their mother's next-of-kin, to her share of the goods in communion. This was abolished by the Intestate Moveable Succession Act of 1855. The clause of exclusion had therefore a meaning in 1848, when the contract was entered into, which disappeared in 1855. The mother in that case survived until 1899. It was held that the clause in question excluded a claim for legitim from the mother's estate, based on the Act of 1881. The principle to be applied in the present case appears to me to be the same. Reference was made by counsel for the pursuer to the case of *Naismith* v. *Boyes*, 1 F. (H.L.) 79, which settled that a widow who had accepted her conventional provisions was entitled in addition thereto to terce and *jus relictæ* out of such heritage and moveables as fell to be disposed of as intestate succession of her husband. It was argued that the claim of legitim here was not inconsistent with the testator's settlement. The case of *Buckle and Another* v. *Kirk*, 15 S.L.T. 98, was founded on against the defenders. I do not, however, regard the question involved as one of *jus quæsitum* in the wife's representatives. In my opinion, it must be held that the testator's intention here was to secure that his wife should have the power of dealing with her own estate. He made it a condition of his children receiving their conventional provisions that they should, so far as in their power, give effect to this. In accepting the provisions made for him in his father's settlement, the pursuer came under an implied obligation not to claim his legal rights from the estate of his mother. In so deciding I do not think any view is expressed inconsistent with what was laid down by the Lord President in *Douglas* v. *Douglas*, 24 D. 1207, referred to by Lord Kinnear in *Hewit's Trustees* v. *Lawson*, 18 R. 793.

"I am of opinion that the defenders' third plea-in-law should be sustained, and that they are entitled to be assoilzied from the conclusions of the action, with expenses."

The pursuer reclaimed and argued—The

clause in question was meant to protect the testator's own estate and to exclude claims, of whatever kind, brought against it. The claim made here was against another estate, viz., the mother's. The case of *Dunbar* v. *Dunbar's Trustees*, December 4, 1902, 5 F. 191, 40 S.L.R. 146; *affirmed* April 11, 1905, 7 F. (H.L.) 92, 42 S.L.R. 553 (relied on by the respondents) was inapplicable, for at the date of Miss Dunbar's marriage contract there were claims arising to children on their mother's death. No claim for legitim out of a mother's estate was competent at the date of Mr Moon's will (1876). There was a *jus quæsitum* in the wife's representatives. The clause was meant to exclude such claims only as conflicted with the settlement, which the pursuer's claim did not—*Naismith* v. *Boyes*, May 27, 1898, 25 R. 899, 35 S.L.R. 702; *affirmed* July 28, 1899, 1 F. (H.L.) 79, 36 S.L.R. 973; *Buckle* v. *Kirk*, June 5, 1907, 15 S.L.T. 98.

Argued for respondents—The Lord Ordinary was right. Unless the meaning contended for by the respondents was given to the clause it had no meaning at all. It was immaterial that the right to legitim from a mother's estate was not in existence at the date of the will, for the words were so general as to exclude all claims. The case was ruled by *Dunbar's Trustees, cit. supra*. The fact that the clause in *Dunbar's Trustees* occurred in a marriage contract was immaterial, for the principle involved was the same. The testator's intention was to protect his wife's estate as well as his own. The pursuer had accepted the provisions in his favour under his father's will, and could not now claim legitim—*Murray* v. *Macfarlane's Trustees*, July 17, 1895, 22 R. 927, 32 S.L.R. 715. The wife's representatives had no *jus quæsitum*, for on a sound construction of the clause such a right was excluded.

At advising—

LORD PRESIDENT—In this action John William Moon sues the testamentary trustees of his mother for payment of legitim out of her estate. The demand is based upon the section of the married Women's Property Act (1881), by which legitim in regard to the estate of a mother is given, but subject, as your Lordships know, to the same rules of law as relate to legitim from the father's estate. The statute provides that—". . . [*His Lordship read section 7, supra . . .*"] The only defence proponed here is, that the action is excluded in respect of a clause in the will of the father under which the pursuer took a share. That clause runs as follows—"Which provisions above written conceived in favour of my said children shall be accepted of by them, and the same are hereby declared to be, in full of all legitim, portion natural, bairns' part of gear, executry and all others whatsoever which they or any of them can ask or demand by and through my decease, or by and through the death of their mother, or in any other manner of way." The Lord Ordinary holding that the case is really ruled by the decision in the House of Lords in the case of *Dunbar's Trustees*, has given effect to that defence. As to being actually ruled by *Dunbar's Trustees*, the Lord Ordinary does not say that it is, and I conceive as to that there can be no doubt. In *Dunbar's Trustees* the questions arose upon a marriage contract in which the mother had conveyed her estate, and then had inserted a clause that the provisions therein given from that estate should be in full satisfaction of all legal claims. I need not go through the particular words used in the contract, because it is sufficient to say that they were held by this Court and by the House of Lords to be so general as to cover all legal claims whatsoever. But there are two points of distinction. In the first place it is in a marriage contract and not in a will, and in the second place the claim there made was against the mother's own estate. At the time the marriage contract in *Dunbar's* case was written there were claims that arose to a child upon the death of the mother, because at that time the theory of the *communio bonorum* was still law. No doubt those claims were abolished in 1855, but subsequently there came the legislation of 1881, and I take it that the judgment in *Dunbar* really settled nothing more than this, that where the object is clearly expressed, that object will be given effect to if the words used are sufficiently general, even although the particular claim was not known at the time when the contract was written.

But when one comes to a case like this it seems to me the circumstances are altogether different. Here the demand is being made not against the estate of the person who, so to speak, wrote the instrument in which the claim is supposed to be barred, but it is made against the estate of one person whereas the instrument was written by another. Let me next turn to the clause itself. There can be no question that legitim as therein mentioned does not mean the legitim of 1881, because this testament was written before that legislation was passed. It really has not been contended that it could be so, but it has been said that the words thereafter used are of such a general character that they must be held to include all claims whatsoever. When one comes to consider that, one naturally inquires what is the real scope of the clause, because its interpretation would obviously be very much determined by the scope of it. Now the scope of such a clause, I think, is very well settled not only inferentially by *Dunbar's* case, but directly by the case of *Naismith* v. *Boyes*. In *Naismith* v. *Boyes* there was a declaration by a testator that certain provisions for his wife and children were to be in full of all claims of terce, *jus relictæ*, and so on, and the words may be taken as entirely general. Some of his fortune fell into intestacy owing to certain provisions having, so to speak, miscarried, and the question there was whether the widow could claim her legal rights out of this portion of the estate which had fallen into intestacy, over and above what she had taken under the settlement, notwithstand-

ing this declaration. It was held that she could. Lord Watson said—"In my opinion the testator, when he inserted a clause in his settlement barring the legal rights of the appellant and respondent, had no object in view except to protect the settlement, by preventing the enforcement of these claims to the disturbance of his will, and to the detriment of the beneficiaries whom he had selected." And in the same way the Lord Chancellor said—"To use the language of Lord M'Laren, with which I concur, such clauses are intended to enable full effect to be given to the testator's testamentary dispositions by putting all persons who take benefit from the will under a disability to put forward legal claims which would have the effect of withdrawing something from the estate disposed of." The actual words used by Lord M'Laren—thus approved of in the House of Lords—were these—"We must apply to this clause of exclusion the ordinary and time-honoured principle of construction, that such clauses are intended to enable full effect to be given to the testator's testamentary dispositions by putting all persons who take benefit from the will under a disability to put forward legal claims which would have the effect of withdrawing something from the estate disposed of."

Now applying that view to this clause, that seems to me to limit its scope, or rather I should say determine what is its natural scope. Of course if you could find in other portions of the deed something which pointed to a wish to enlarge the scope of this ordinary clause, that would be given effect to, but there is nothing of the sort, and it is, to say the least of it, a very violent assumption that in putting this clause in his will the testator wished not only to do something which was necessary to protect his own testamentary arrangements, but also wished that he should bargain *ab ante* for the renunciation of rights against the wife, the existence of which rights *ex hypothesi* at that moment he never knew. Accordingly, I confess I come without any difficulty to the view that this case is not in any way ruled by *Dunbar* to the effect that the Lord Ordinary thinks. I think it is quite in accordance with the proper view of *Dunbar*, and, accordingly, there is no relevant defence to the crave that is made by this pursuer for his rights of legitim as against his mother's estate, and I am of opinion that the Lord Ordinary's interlocutor should be recalled, and that decree should be pronounced. I should add that it was also argued to us that in any view there is no *jus quæsitum* in the representatives of the wife to raise this question. I do not think that that is a second question. I think it is only another version of the first, because if the construction of the clause was other than that which I have put on it, that is to say, if in the clause itself we could find that the testator had, *ex præposito*, barred a claim against the wife's estate, I think that very fact would give a *jus quæsitum*.

LORD M'LAREN—I think the Lord Ordinary has not fully considered the distinction between this case and that of *Dunbar's Trustees*. In the case of *Dunbar* the deed was a contract of marriage, but the settled property was chiefly the wife's property, and the question was whether the son could claim legitim notwithstanding a clause in the contract excluding all legal claims against the mother's estate. The decision was founded on the proposition that it was a reasonable and intelligible provision on the part of Mrs Dunbar that so far as she had the power she desired to exclude all claims against her own estate other than those which were in conformity with her marriage settlement. The exclusion was accordingly held to apply to a claim arising out of supervenient legislation.

Now, I think we give full effect to the ratio of *Dunbar's* case, if we hold Mr Moon's purpose to be that as far as he had the power he meant to bar all claims that would have the effect of diminishing the fund available for distribution under his will, whether these were claims made directly against his estate or indirectly through his wife. Such a case might conceivably occur. For instance, if Mr Moon had predeceased his wife, but she had only survived for a short period and had died before declaring her election to take under his will, a child might have claimed his share of the *jus relictæ* which would be due to his mother on the assumption that she had not exercised her election to take the provisions under her husband's will. Such a claim would probably fall under the declaration in Mr Moon's will that his provisions were given in full of all that the children could claim through his decease, or the decease of their mother, because the effect of the supposed claim would be to diminish the fund available for distribution in terms of Mr Moon's will. He was entitled to protect his own succession against all adverse claims however arising, and when words of universal exclusion of adverse claims are used, there is no reason that I can see against giving effect to the exclusion according to its terms.

But the present case is different. Mr Moon's estate has been distributed in terms of his will. No adverse claim has been admitted, and his widow has received from her husband's succession all he intended that she should receive. This is a new succession, and the claim is against Mrs Moon's estate. I have difficulty in understanding how Mr Moon's provisions to his children could be conceived to be in satisfaction of claims against Mrs Moon's estate; because on her death her estate would have to be divided in some way, and the most natural and usual division would be amongst her children. I can see no reason why Mr Moon should wish to debar his children from their claims against the estate of their mother, who was not a party to his testamentary deed and was not offering any equivalent for the surrender of claims against her.

It may be that a testator could engraft

such a provision on the clauses of his will, because there is no limit to the caprices of testators. But it is, to say the least, a very unlikely provision, and I can find nothing in Mr Moon's will which gives colour to the suggestion that he desired to interfere with the devolution of his wife's estate as distinct from his own. I think that in fair construction the clause only means that his provisions are to be taken in full satisfaction of all claims against his own estate which are contrary to the scope and intention of his will, whether such claims are made by the children in their own right or as the legal representatives of their mother.

The present claim does not affect Mr Moon's estate, which, as I have observed, has been distributed in terms of his will, and I therefore concur in your Lordship's opinion that the defence is not well founded, and that the claim of legitim ought to be sustained.

LORD KINNEAR — I am of the same opinion. I am disposed to think that the most convenient way to consider the question we have to decide is to follow the method prescribed by a very eminent authority, and begin by reading the will itself, and try to find out what it means, giving their natural meaning to the words employed without regard to previous decisions; and then, when we have ascertained what to our minds is the true meaning of the will itself, to consider whether there is anything in the construction which we propose to adopt that is inconsistent with the rules of law or the rules of legal construction that have been laid down in previous cases. Taking the will by itself, the first thing to my mind to inquire is, what is the subject-matter with which it deals, and as to that there can, of course, be no doubt whatever. This testator is settling his own estate. He begins by giving his whole property, heritable and moveable, in the usual words of style to trustees, and then he directs his trustees what they are to do with that property, and everyone of the subsequent provisions, until we come to the provision in question, is concerned with the distribution of that estate and that estate only. Well then, when he comes to the particular provision in question, it is a provision fixing the conditions upon which the children, whom he favours by the previous directions to these trustees, are to take the benefits he gives them, and he declares that the provisions in their favour are to be in full of all legitim, portion natural, bairns' part of gear, executry, and others whatsoever, which they or any of them could ask or demand by or through his decease.

Now the first question, if it be a question, is what is the estate in his mind from which he says the children are not to ask or demand anything. It seems to me as plain as anything can be in reading the will that he means his own estate. It is a direction to his trustees that the children are not to ask or demand anything more "from you out of my estate except that which I give them or make any such demand against the estate itself." Now that to my mind would be conclusive were it not for a point which is raised, and which causes the only difficulty in the case, viz., that what he is excluding is anything that can be "asked or demanded through his decease or by and through the death of their mother or in any other manner of way." I think that Mr Anderson in reading that clause made a very just observation on the words with which it concludes. If it had been doubtful otherwise, it would have appeared to me to be clear from the use of these words that what the testator was considering was not all the various successions to which his children might possibly have a right, but all the various ways in which claims could arise against the estate that he was dealing with. "By and through my death or by and through their mother's death or in any other manner of way" cannot be construed to mean claims against "my estate," or against the mother's estate, or against anybody else's estate, upon which they may be entitled to claim. The plain meaning of the words is—"Demands upon the estate I am now settling whether they arise out of my death, or out of their mother's death, or whether they arise in any other manner of way."

It is said that that is not a sensible construction, because there could be no claims arising upon his estate through the death of the mother at the time when this will was executed. Lord M'Laren has suggested what did not occur to myself, that there might be such a claim. I do not know whether the particular claim suggested by his Lordship would be a good one or not, but if we could not find any claim that could properly be described as a claim against the father's estate in consequence of the mother's death, I should still be of opinion that we could not refuse to give effect to the plain construction of a perfectly distinct provision merely because we could not find a meaning for words which might be superfluous. If, therefore, there were no way of accounting for the reference to the mother's death, I should still be of opinion that we must give the plain construction to the leading words of the clause. But then I think your Lordship in the chair pointed out in the course of the discussion that there could be little doubt as to the way in which these words came into the deed. They are mere survivals of a style which was perfectly apt and useful with reference to the law at a time not very remote from that at which this will was written, when the death of the wife gave her next-of-kin a share of the goods in communion, or, in other words, of the husband's estate; and when we read this clause and compare it with the subsequent clause about deathbed, which is equally superfluous, it becomes clear enough that the writer of this deed was simply following the style which he found in the style book, or in his own office, without considering the various parts of it which had become no longer useful and therefore superfluous. But then these superfluous

provisions do not detract from the plain meaning of the words which are not superfluous but which are intended to regulate the succession. I should, therefore, upon the mere construction of the deed, come to the conclusion which your Lordships have reached, that this testator is settling his own estate, and that he intends to exclude the children to whom he gives provisions from making any other claim on that estate.

Then the question arises whether that is in accordance with previous rules of construction laid down, and I agree that what was said by Lord M'Laren in this Court and by Lord Halsbury and Lord Watson in the House of Lords in *Naismith* v. *Boyes* is directly in point. All these clauses, according to the doctrine so laid down, are intended to enable full effect to be given to the testator's will by putting persons who are to take benefit under it, under a disability of putting forward legal claims which would withdraw some part of the estate from the disposition of the testator's will, and so disturb the distribution that he intended. That doctrine appears to me to be clearly applicable, and to settle the question of construction were it otherwise doubtful. But then the Lord Ordinary has proceeded upon what he considers to be the law established in the case of *Dunbar* v. *Dunbar's Trustees*, and in the argument upon that case our attention was called to what was said by Lord Lindley in particular, which was cited as containing the doctrine said to be established by *Dunbar* v. *Dunbar's Trustees* upon this point. In that case the Court was construing a marriage settlement by which the lady, who was possessed of very considerable means, had settled both the estate which she was actually possessed of at the time, and all estate which she might afterwards acquire, and had protected her settlement in the marriage contract by a clause that it should be in full satisfaction of bairns' part of gear, executry, and everything else which the children could claim or demand by and through the decease of the mother. Lord Lindley said—and the judgment of the House was in accordance with the observation—that these words were wide enough, in his opinion, to exclude the children of the marriage from all claims, foreseen or unforeseen, to any share of their mother's personalty except under the settlement. That is not laid down as a doctrine of law. It is a construction of particular words with reference to their context under a particular settlement, but I have no doubt at all that it is exactly the construction which ought to be put upon the similar words, although they are not identical, in the settlement we are construing. Therefore I should have no difficulty in holding that the words in question were wide enough to cover claims which the testator did not foresee. If by any subsequent legislation a right had been given to children to make a claim upon their father's estate in consequence of their mother's death which did not exist at the time the will was made, it may very well be that that clause would have covered such a claim.

But then the question that we have to determine is not what particular claims would be covered by the general words, but what is the estate which is being protected by the exclusion of claims in general, and upon that question *Dunbar* v. *Dunbar's Trustees* has no application to the present case. In that case, as I have said, the mother was settling her own estate by contract not by will, but the principle is the same; it was her own estate which she was settling, and the purpose of the clause was to prevent her own estate being carried away by any claim advanced by the children except under the settlement of that estate that she was making by contract with her future husband. The general words, therefore, that were used by Lord Lindley may be perfectly apt to define the claims that are excluded, as embracing such as might not be foreseen by the testator, but they have no bearing at all upon the question whether the estate protected from all such claims is the father's estate, or somebody else's. For these reasons, and also for the reasons which your Lordships have given, I am very clearly of opinion that the clause is applicable to the father's estate alone, and does not exclude any claim either upon the mother's, or upon anybody else's succession, which may emerge after the father's death.

LORD PEARSON — I am of the same opinion.

The Court recalled the Lord Ordinary's interlocutor, found and declared that the pursuer was entitled to legitim out of his mother's estate, and decerned.

Counsel for Pursuer (Reclaimer)—Graham Stewart, K.C.—D. Anderson. Agents—W. & J. Cook, W.S.

Counsel for Defenders (Respondents)—Hunter, K.C.—Sandeman. Agents—J. & D. Smith Clark, W.S.

Thursday, November 26.

FIRST DIVISION.

[Sheriff Court at Jedburgh.

PARISH COUNCIL OF CAVERS *v.* PARISH COUNCILS OF SMAILHOLM AND URR.

Poor—Settlement—Computation of Time—"Three Years"—Poor Law (Scotland) Act 1898 (61 *and* 62 *Vict. cap.* 21), *sec.* 1.

The Poor Law (Scotland) Act 1898 enacts, sec. 1, that "no person shall be held to have acquired a settlement in any parish in Scotland by residence therein unless such person shall . . . . have resided for three years continuously in such parish. . . ."

The three years must be three years according to the calendar, and there-