subsequent rents, interests, and annual profits of the trust-estate of the deceased Robert Ker: Find neither party liable to the other in expenses of process hitherto incurred and not already decerned for.

"DUN. M'NEILL, *I.P.D.*"

Agent for Raisers—Willam Waddell, W.S.
Agent for Major Weller—William Sime, S.S.C.
Agent for Mr Justice, &c.—Thomas Ranken, S.S.C.

M'LACHLANS *v.* GARDNER (*ante.* vol. i. p. 259).

New Trial. Motion for a rule on the ground that a verdict was contrary to evidence refused, the sole question before the jury being one of credibility. Observations as to the principles on which new trials on that ground should be allowed.

This was a motion for a rule. In an action of damages at the instance of the widow and children of a fireman at Solesgirth Colliery, near Kirkintilloch, who was killed there on 6th June 1865, the issue, whether the death was caused through the fault of the defender, was tried before the Lord President and a jury on 9th and 10th April 1866. The jury by a majority of nine to three found for the pursuers, and assessed the damages at £100 to the widow, and £5, £10, and £20 to the three children respectively.

The defender having moved for a rule,

W. M. THOMSON was last week heard in support of the motion.

The Court to-day refused the motion.

Lord DEAS said—I think we ought not to grant this rule. The whole question for the jury was whether the accident happened in consequence of one of the spokes being broken or being insufficiently secured. There are four witnesses who swear that it was broken, and if it was, that was sufficient to account for the accident. On the other hand, seven witnesses swear as distinctly that it was not. The jury have believed the four against the seven. It was a question of credibility peculiarly within the province of the jury. Such a question is not to be determined by numbers; and if it is not, it is not possible to suppose a more obviously jury question. Even if I were disposed to lean to the side of the seven instead of that of the four witnesses, I don't think that would be a sufficient ground for granting a rule. But I am not prepared to say that I believe the seven instead of the four. Two of the seven were deeply interested in the matter. It was the duty of one of them to repair the spoke when it broke, and it was the duty of another to see that he did so. The means of knowledge of the seven were not greater than those of the four; and, besides, there is a circumstance of real evidence which affects my mind considerably. If the accident did not happen in consequence of a broken spoke, there is no other way suggested in which it did happen. On the whole, therefore, had I been a juryman, I think I would rather have inclined towards the opinion of the majority of the jury.

Lord ARDMILLAN—There are two classes of cases in which we are asked to allow new trials. In the one class, where juries draw inferences from admitted or clearly proved facts, and the Court are very clear that the jury has gone wrong, we generally, when a strong case is made out, allow a new trial. But where the case is one of antagonistic evidence, and the sole question is the credibility of human testimony, I am always very slow to interfere with the opinion of the jury who saw and heard the witnesses, and observed their demeanour in the witness box. I would require a very strong case for that. I think this case belongs to the latter class. I also agree with Lord Deas that it is a strong circumstance in this case that no other explanation of the accident is suggested, while the want of a spoke is sufficient to account for it. I don't say what verdict I would have returned had I been on the jury. I think the question was one of great nicety.

Lord PRESIDENT—I must confess that at the trial I concurred with the opinion of the minority of the jury; but the case was a very nice one, and as your Lordships agree that the motion for a rule should be refused, I am not prepared to dissent.

Agents for Pursuers—Macgregor & Barclay, S.S.C.
Agent for Defender—George Wilson, S.S.C.

Thursday, Nov. 8.

M.P.—HILL'S TRUSTEES *v.* HILL AND OTHERS.

Trust—Bequest of Interest—Vesting—Intestacy—Accretion. A person by his trust-deed appointed a sum of money to be distributed in 1878, and the intermediate interest accruing to be paid to his brother, who survived him, but died in 1864. Held that the bequest of interest had vested in the brother by his survivance, and his executor preferred thereto in competition with the truster's heirs *ab intestato*, and the persons among whom the money was to be ultimately distributed, the latter claiming right to it *jure accretionis*.

By trust-disposition and deed of settlement, dated 6th November 1860, the late David Hill of Hillgarden conveyed his whole heritable and moveable means and estate to certain trustees for the purposes therein mentioned. These purposes, so far as necessary to be here narrated, were as follows:—"*First*, In respect that the main object of this trust is to form a clear capital trust-fund of £6500 sterling, to be disposed of under the management of my trustees in manner under written, and that over and above the said Coupar-Angus heritable properties, the disposal whereof is hereinafter provided for, I declare and enjoin that my brother Robert shall provide funds to my trustees for paying all my just and lawful debts, my deathbed and funeral expenses, and the expense of the executry, including the stamp of the inventory of my personal estate, leaving the other expenses of this trust to be paid out of the first and readiest of the funds under my trustees, and the legacy-duties to be paid by the respective legatees, or retained by my trustees off their legacies: *Second*, My trustees shall make over to my brother Robert the lease of Hallyards for the whole remaining years thereof, and also my whole crop, stocking, household furniture, and moveables thereupon, and my other moveable means and estate wherever situated, and also my heritages, except what is hereafter specially disposed of, at the sum of £3500 sterling, which he shall be required to pay over to my trustees as soon after my death as he and they arrange, and at least within six months thereof; and as this sum, with £3000 I now have in the bank, will form a capital of £6500, which will be the full money fund under the trust, I direct this amount of capital to be disposed of in manner following, viz.:—My brother Robert shall have the whole interest of £6000 thereof until the youngest