cannot be complied with, and that he has already got all he is entitled to.

Lord Deas—In this case the Lord Ordinary has found [*reads interlocutor*]. I agree with Lord Curriehill that these parties are not entitled to this conveyance. It is clear that in the ordinary case of a disposition and deed of settlement in favour of trustees, where the trustees are to hold the heritable subjects under that deed for behoof of a party in liferent, and the issue of that party, born or unborn, in fee, they cannot be called on when the trust subsists, and they are not getting any decree of exoneration, to convey that liferent, or, in other words, to denude of the trust to that extent. The trustees are entrusted by the truster with the duty of holding the subjects for certain purposes, for behoof of the liferenter and fiars. When the time comes for denuding of the fee, a conveyance may be granted by the trustees to the liferenter in liferent, and to the fiar *nominatim* in fee, and to whatever substitutes the truster has appointed, and they will be entitled to exoneration. But till then, their duty is to hold for behoof of the different parties. I never heard of a case in which trustees under such a settlement was required to denude of the liferent when they could not dispose of the fee. So long as the purposes are unfulfilled, the responsibility lies on the trustees of managing the estates; but if they should grant such a conveyance of the liferent as is here asked, they would have nothing more to do with the estate until the time came for disposing of the fee. If, in the meantime, any one interfered with the estate—if, for instance, any question arose as to the cutting of wood, it is difficult to see how the trustees could interfere, notwithstanding the duty imposed on them by the truster. If they were to denude, they could not grant a lease, or perform any act of administration. Is there anything in this deed to make a conveyance of the liferent competent, more than in the ordinary case? I don't think there is [*reads directions in trust-deed*]. To none of these parties could the trustees convey until the proper time came. It has been found already that the trustees had power to restrict Robert Ker's right to a liferent. They did so restrict it, and the effect of that is, that they now hold as if the deed had directed them to hold for him in liferent, and for the others in fee.

It is a separate matter whether they might give to Robert Ker or Mr Justice actual possession of the estate. No question as to that is raised here, and on that matter I give no opinion. It may be a question of circumstances whether, when an estate is directed to be held for one party in liferent, and for others in fee, the trustees can put the estate into such a position. If they did, they would still be responsible. Besides that, I have all along wished to know what sort of deed it was at which the Lord Ordinary pointed. The trustees now hold Mr Robert Ker junior, in liferent, and for others in fee. Robert has a *jus crediti* for his liferent. He has made a conveyance of that, but it stands in the position of a *jus crediti* still. The only deed that could be granted would be not an assignation, but a constitution of a liferent. I never saw a conveyance of a liferent, not to the liferenter, but to some one else. It would be quite against the will of the testator for the trustees to give away their power of management.

Lord Ardmillan—In reviewing this interlocutor, the first thing we have to do is to see if we understand what the Lord Ordinary means. He finds:—"That the raisers, the trustees of the deceased Robert Ker, of Argrennan, are bound to execute a deed of conveyance in favour of Robert Ker junior, now of Argrennan, the eldest son of the said deceased Robert Ker, or of the claimant Walter Justice, as his assignee, as shall be required of them by the said Walter Justice, of the liferent right and interest in the lands of Argrennan, and other subjects, which, by prior interlocutors in the cause, has been found to pertain to the said Robert Ker, junior." Now, in the first place, what is it which, by previous interlocutors, has been found to belong to Robert Ker junior. I am satisfied that nothing more has been decided than that Mr Justice is entitled to the rents in the hands of the trustees, and that there has been no finding of any right of liferent other than to receive from the trustees the rents which they draw. Whether he had such a right as he now claims was not touched by our former judgment. Lord Colonsay said:—"If Mr Justice is entitled to a conveyance of the estate, I do not see that in the Lord Ordinary's interlocutor, and this judgment does not foreclose that question." And Lord Deas and myself expressly reserved the question. The second point is, whether the Lord Ordinary here meant a direct conveyance to Mr Justice. He says the trustees are to convey either to Mr Robert Ker or to Mr Justice. If Mr Justice asks them to convey to him, I agree that that is out of the question. It is impossible to make Mr Justice liferenter in the estate. He may have an interest in the rents assigned to him, but he cannot be a liferenter. That leaves the question whether Mr Robert Ker or Mr Justice is entitled to a conveyance to Mr Robert Ker, and on that matter I concur with your Lordships. This is a trust constituted for a long period. The trustees hold for many beneficiaries, with many important duties arising from time to time; and I am clearly of opinion that it is not in the power of Mr Robert Ker to break up the trust before the trustees can be fully exonered. He is entitled to receive the rents from their hands, but to no more.

The Lord President, not having heard the argument, took no part in the advising.

Agents for Reclaimers—Waddell & M'Intosh, W.S.

Agent for Respondents, Thomas Ranken, S.S.C.

Friday, March 13.

SECOND DIVISION.

RUTHERFORD *v.* LAWRIE AND OTHERS.

Legacy—Averment of Payment—Proof—Writ or Oath—Acquiescence. Circumstances in which *held* that an averment of the payment of a legacy to the father of a lady to whom it was due, in terms of a trust-deed, could only be proved by the writ or oath of party, and moreover was an irrelevant averment, looking to the terms of the trust-deed. Averments of acquiescence held irrelevant and too vague.

This was an advocation from the Sheriff-court of Kirkcudbright of an action brought by Mrs Jane Robertson Wood or Rutherford, daughter of the late Rev. George Wood, minister of the United Presbyterian Church, Kirkcudbright, against the representatives of the trustees and executors of the late

Miss Jean Robertson, who some time resided in Kirkcudbright, and died there on 14th October 1830. The object of the action was to recover payment, with interest since 1848, when the pursuer attained majority, of a legacy of £100, left by the said Miss Jean Robertson, in the following terms:—"To Jean Wood, daughter of the said George Wood, who was called for me, one hundred pounds, the interest of which is to be paid to her parents during the minority, but the capital to vest in her and her heirs, although not payable till she is of age." The pursuer's allegation was, that this legacy had never been paid to her, or otherwise discharged, and was now resting-owing by the defenders as representing Miss Robertson's trustees.

The defence was—(1) That the capital as well as the interest of the legacy was paid during the pursuer's minority to her father, and applied for her maintenance and education. (2) That the pursuer acquiesced in this arrangement at the time, and made no demand for payment for twenty years after she came of age. In support of these averments, the defenders asked to be allowed a proof.

The Sheriff-substitute (DUNBAR) allowed a proof before answer *habili modo*. The Sheriff (HECTOR) recalled, on the ground that the defenders' averment of payment to the pursuer's father was irrelevant, looking to the terms of Miss Robertson's settlement, which expressly provided against such a payment, and that the averment of acquiescence was too vague and unsubstantial. The pursuer having led proof in support of her case so far as necessary, the Sheriff-substitute thereupon decerned against the defenders for the amount claimed.

The Sheriff adhered.

The defenders thereupon advocated the whole interlocutors.

GIFFORD and SPENS, for them, maintained that they were entitled to a proof *prout de jure*—at least, a proof by writ or oath.

CATTANACH in answer.

The Court adhered in substance to the Sheriff's interlocutor—holding (1) that payment to the pursuer's father could only be proved by writ or oath of party; (2) that, even if proved, it was irrelevant, looking to the terms of Miss Robertson's deed; (3) that the averment of acquiescence was irrelevant, as being much too vague and general; but (4) that it was for the defenders to consider whether they should not refer the whole cause to the pursuer's oath, as to the competency of which course their Lordships expressed no opinion.

Agent for Pursuer—John Thomson, S.S.C.
Agent for Defenders—George Wilson, S.S.C.

Tuesday, March 17.

FIRST DIVISION.

TRIMBLE *v.* CITY OF GLASGOW FLAX SPINNING COMPANY (LIMITED).

Reparation—Contract of Service—Wrongous Dismissal—Conclusions of Summons—Relevancy—Issue. A party suing for damages for wrongous dismissal from office of managing director of a trading company, concluded for (1) a sum in name of loss, and damages, and *solatium;* (2) the loss sustained by him in consequence of having to purchase shares of the company's stock as a condition of obtaining the appointment; and (3) the loss sustained by him through having to remove from his former place of residence to the place of business of the company. *Held*, that he was not entitled to make separate and substantive claims under the 2d and 3d conclusions.

In October 1866, the pursuer, at that time resident in Belfast, entered into an agreement with the defenders, whose place of business is in Glasgow, to serve them as a managing director, for a period of three years, at a salary of £800 per annum, and a commission on profits. The pursuer entered upon the service of the defenders, and continued therein, until October 1867, when he was dismissed from office. He now brought this action, concluding for payment of—"(*First*), The sum of £2000 sterling, or such sum, more or less, as may be fixed by our said Lords, by way of loss and damage, and as *solatium* for the defenders' wrongous dismissal of the pursuer from the office of managing director of the said company in or about October 1867; (*Second*), of the sum of £300 sterling, being the amount of loss sustained by the pursuer upon forty shares of the defenders' stock, bought by the pursuer as a condition of his appointment to the said office of managing director; or otherwise, of the sum of £400 sterling, being the price paid by the pursuer for the said shares; the pursuer always, *simul et semel*, assigning the said shares to the defenders at their expense on his receiving payment of said sum; and (*Third*), Of the sum of £150 sterling, being loss sustained by the pursuer in removing from Ireland to Glasgow, in order to fill the said office, with interest on said respective sums from the date of citation to follow hereon until paid," &c.

He proposed an issue, putting the question of engagement and dismissal, and annexing the following schedule of damages:—

Salary, 2 years at £800 per annum,	£1600	0	0
Loss sustained on 40 shares of the defenders' stock by the pursuer as a condition of his appointment to his said office, .	400	0	0
Loss sustained by the pursuer in removing from Ireland to Glasgow,	150	0	0
General damage and *solatium*, .	400	0	0
	£2550	0	0

The Lord Ordinary (BARCAPLE) reported the case, adding in his note:—

"The subject of dispute between the parties was the schedule of damages. The defenders maintain that there is no relevant case to recover anything, except the salary for the two years of the period of his engagement subsequent to his dismissal, or such part of that salary as he may be found entitled to. If it were not that the different items in the schedule are separately concluded for in the summons, the Lord Ordinary would not have doubted that the damages might have been laid at a sum larger than the amount of the salary, and without any specification; but as the damages are specifically stated, it may be right to consider at this stage the relevancy of the claim for loss on shares of the defenders' stock purchased as a condition of the pursuer's appointment. The claim is made solely on the ground of the pursuer's dismissal, and not on any allegation that he was fraudulently or improperly induced to purchase the shares. But the loss on the shares must have been caused by their fall in the market, and not by the pursuer's dismissal. On the whole, the Lord Or-