If, on the other hand, the Sheriff means that this was a *mortis causa* donation, that is wrong also, for a *mortis causa* donation is not irrevocable. So that he is wrong in either view. I think on the evidence that there was a gift, and that it was a donation *mortis causa*, and one of that kind which was recognised in *Morris* v. *Riddick*. I think the gift was made in the prospect of death, to take immediate effect as a transfer of property in favour of the donee, but on the condition that the donee should hold for the granter so long as she lived, subject to her revocation, and, failing such revocation, then to hold for his own behoof. Now, it is said that there was appended to this an understanding that if the old lady recovered the donee was to provide for her. If the annexation of that condition prevents it from being a proper *mortis causa* donation, and makes a composite transaction, then I am of opinion that that transaction cannot be proved by parol. It is only on the footing that it is a *mortis causa* donation that we can receive the evidence led in the Inferior Court. There is no doubt here that the donee did maintain the old lady, and made advances directly and for her behoof.

The result is, that I think the pursuer is entitled to revoke the gift, and I think she does so effectually by this action. But she cannot recover the entire sum handed over to the donee, but must suffer deduction of the sums advanced, and the expenses incurred by the defender on the faith of this gift remaining unrevoked, and becoming his property on the death of the pursuer. The only question is, What deductions are to be made? The first thing to be considered is the account of £36 for advances of money to and for behoof of the pursuer. The pursuer only admits them to a limited extent, and I think the Sheriff-substitute has allowed them only to the extent of the admissions of the defender. I cannot agree with him there. Here is a detailed account kept in a note-book to which the man swears. They are not advances for which he would naturally take vouchers, and I think it is sufficient to prove a series of advances of this kind, which are made the subject of a daily account, if the party keeping the account swears to it, and there is no counter evidence. Therefore, I think the defender is entitled to make this deduction of £36. Then there is £52 claimed for board. It can hardly be disputed that as this pursuer lived for twenty-one months in the house of the defender, and was maintained there, with apparently considerable attention to her wants, the rate of board to be allowed is not to be such as would be justified by a poor-law board. The amount of 7s. a-week is I think too low. The amount proposed by the pursuer is ludicrous. I think we ought to allow 12s. a-week for board. In round numbers the sum for which the pursuer is entitled to decree will be £35.

The other Judges concurred.

Expenses awarded to defender, in respect of his having made tender of £40.

Agent for Advocator—C. S. Taylor, S.S.C.

Agents for Respondent—Murdoch, Boyd & Co., S.S.C.

Tuesday, May 18.

KENMORE *v.* KENMORE'S TRUSTEES.

Trust — General Settlement — Revocation — Special Legacy—Husband and Wife. A husband, having received from his wife loans of money from her separate estate, delivered to her two holograph writings, bequeathing to her certain bank stock. Some years after, he executed a trust-disposition and settlement conveying his whole estate to trustees for payment of his debts, and of a certain special legacy to his sister-in-law, and conveyance of the residue to his daughter. After his death, *held* that the widow was entitled to the stock conveyed by the holograph writings, these writings not being revoked either explicitly or by implication.

Mr and Mrs Kenmore were married in 1860. By their marriage-contract Mrs Kenmore conveyed to trustees her whole estate except £400 and certain moveable property, which money and property were to be held by her exclusive of her husband's *jus mariti* and right of administration. Mr Kenmore provided an annuity of £60, besides another annuity to which his widow would be entitled from a widows' fund. After the marriage, Mrs Kenmore advanced certain sums of money to her husband, whereof £140 remained unpaid at her husband's death. On 23rd July 1862 Mr Kenmore delivered to Mrs Kenmore a holograph writing which remained in her possession, in the following terms, viz., "I, William Frederick Kenmore, advocate, Edinburgh, hereby leave, bequeath, and make over, to my wife Catherine Russell Hill or Kenmore, three shares of my Commercial Bank Stock in payment of money lent me by her. W. F. KENMORE. Edinburgh, 23 July 1862." On 7th June 1865 Mr Kenmore delivered to Mrs Kenmore another holograph writing which remained likewise in her possession, in the following terms:—"Edinburgh June 7th 1865.—I, William Frederick Kenmore, advocate, hereby leave and bequeath to you, Catherine Russell Hill or Kenmore, my spouse, Five hundred pounds Stg. worth stock of Commercial Bank of Scotland. W. F. FENMORE. You, Mrs Kenmore, should sell and heritably invest the amount which, as according to quotations from *Scotsman* of June 3d, sold at Two hundred and thirty pounds Stg. per one hundred pounds Stg. stock; that I would advise you to do in regard that a woman should not be in any mercantile firm." W. F. K. "To Mrs Kenmore."

In 1867, Mrs Kenmore obtained decree in an action of separation and aliment, brought by her against her husband. On 23d June 1868 Mr Kenmore executed a trust-disposition and settlement by which he conveyed to trustees his whole estate, heritable and moveable, in trust for the purposes therein mentioned. The deed proceeds on the narrative that the testator had "resolved to settle my affairs during my life," and the purposes are "in the first place, for payment of all my just and lawful debts, deathbed and funeral charges, and the expenses of executing this trust. In the second place, that my said trustees shall assign and convey over to Maria Jane Dalziel, sister of my first wife, one share of the stock of the Commercial Bank of Scotland, belonging to me and part of my trust-estate, to be held and enjoyed by the said Maria Jane Dalziel as her absolute property, and all dividends and profits that may fall due thereon. In the third place, I direct my trustees to hold the whole residue of my means and estate, heritable and moveable, before conveyed, for behoof of the said Catherine Margaret Kenmore, my daughter, while she shall survive me, and to lay out the annual return derivable from the said residue for her education and maintenance until she shall

reach the age of twenty-one years complete, or be married, whichever of these events shall first happen, and on the arrival of these events, or either of them, immediately on being required by my said daughter so to do, to denude themselves of this trust, and dispone, assign, convey, and make over to the said Catherine Margaret Kenmore, or to any trustees to be named by her and her husband, the whole of the said residue of my said heritable and moveable estate, but exclusive always of the *jus mariti* and right of administration of any husband my said daughter may marry; declaring that the said residue and the revenue derivable therefrom shall belong to herself only, and shall not be subject to the debts or deeds or diligence of the creditors of the husbands she may marry any manner of way, and in case of the death of my said daughter before the said conveyance by my said trustees, leaving lawful issue of her body, I direct my said trustees to hold the said estate and apply the annual return therefrom for behoof of such issue, until the youngest of said issue shall attain majority, or in the case of a daughter she be married, and thereupon to divide and convey the said residue amongst said issue, share and share alike; and failing my said daughter without lawful issue of her body, and failing further lawful children of my own body, I direct my said trustees to dispone, assign, convey, and make over the said residue of my said estate, heritable and moveable, to one of his trustees." The trust-disposition and settlement contained no express clause of revocation of previous settlements or bequests, nor did it contain any express direction to the trustees to pay legacies which he had bequeathed or might bequeath by separate writings. Mr Kenmore died on 17th August 1868. He was survived by Mrs Kenmore and by their only child the said Catherine Margaret Kenmore. His personal estate amounted, conform to Inventory given up by his trustees, to £3,715, 3s. 5¾d. sterling, which includes 12 shares (or £1200 of the stock) of the Commercial Bank of Scotland, valued in said Inventory at £3,144. His heritable estate consisted of house property and investments on heritable security, yielding a yearly income of about £280.

These questions were argued before the Court:—

"1. Whether both or either of the holograph writings of 23d July 1862 and 7th June 1865 constitute valid and effectual bequests in favour of Mrs Kenmore, and what is their legal effect? or Whether both or either of them were revoked by the trust-disposition and settlement of 23d June 1868.

"2. Whether, in the event of the holograph writing of 23d July 1862 being found to have been revoked, the said Mrs Catherine Russell Hill or Kenmore is entitled to payment of the said balance of £140 with interest at the rate of 5 per cent. per annum from 12th April 1861 till payment, or any part thereof."

CLARK and JOHNSTONE for Mrs Kenmore.

GIFFORD and MAIR for trustees.

At advising—

LORD PRESIDENT—I entertain no doubt that our judgment must be in favour of Mrs Kenmore, on the ground suggested in the first question appended to the Special Case.

It is not disputed by the trustees that the writings of 23d July 1862 and 7th June 1865 are holograph of the deceased Mr Kenmore, and that they are in their true construction and effect—supposing them to be unrevoked,—testamentary writings. By one of these writings Mrs Kenmore is entitled to three shares of the stock of the Commercial Bank, and that in payment of money lent him by her. The value of the stock is in excess of the money advanced, but that of course does not derogate from the effect of that as a legacy. By the second writing Mrs Kenmore is entitled to £500 bank stock. It must be conceded that there is no express revocation of these legacies, and it is not immaterial to observe in connection with that, that these papers were delivered to the legatee. If after that the testator intended to revoke such special legacies, it strikes me that he must either expressly revoke them or make his intention very clear by implication, almost equivalent to express revocation, for if he gives these papers to the legatee, to be founded on, and leaves them with the legatee till his death, that appears to be an indication in their favour. But on examining the general deed of settlement of 1868,—so far as I know, the first general settlement made by Mr Kenmore—it is very difficult to spell out of it anything like an implied revocation of these special legacies. It conveys his entire estate, no doubt under burden of various payments, and creates one special legacy in favour of his sister-in-law, and then gives the residue to his daughter. If the testamentary writings founded on by Mrs Kenmore had settled his whole estate, it might have been said that this later deed revoked the prior general settlement. But there is nothing inconsistent between this and the other deeds. They may receive effect together as constituting the will of the deceased. There is no legal principle on which the validity of these writings can be impugned.

I am therefore of opinion that we must give judgment in favour of Mrs Kenmore in terms of the first alternative stated in the Special Case.

The other Judges concurred.

Agents for Mrs Kenmore—Hope & Mackay, W.S.

Agent for Trustees—James Finlay, S.S.C.

Tuesday, May 18.

SECOND DIVISION.

SPECIAL CASE—WILSON AND OTHERS.

Special Case — Antenuptial Contract — Erasure — Clerical Error. A clerk, after engrossing and recording a deed, detected an error, the word "lives" being written "leaves." At his own hand he erased the words in the deed, and made the necessary correction. There was no notice of this erasure in the testing clause, and to the extent mentioned there was a discrepancy between the deed and the record. *Held* that the deed was in no way vitiated, and afforded a sufficient security for the lending of money.

This was a Special Case for the opinion and judgment of the Right Honourable the Lords of the Second Division of the Court of Session, submitted by John Wilson and Others. The following are the facts upon which the parties are agreed:—

"The said John Wilson and Christiana Johnston or Wilson agreed, in contemplation of their marriage, that by their contract of marriage provision should be made for the contingency of their having occasion to sell or burden with debt the heritable subjects intended to be thereby settled and conveyed; and also to divide and apportion the fee