be reclaimed against at any time, provided the leave of the Lord Ordinary was given, and the reclaiming note was presented within ten days thereafter.

I cannot, on any other supposition, account satisfactorily for the introduction of the enactment declaring that the period of reclaiming should be ten days from the date of the interlocutor granting leave to reclaim. If the time of reclaiming was still to be reckoned from the date of the interlocutor to be reclaimed against, this seems to me a meaningless enactment. I cannot conceive the Legislature intending a double expression of the time for reclaiming—viz., that it shall be the usual period of so many days from the date of the interlocutor, and also that it shall be ten days from the interlocutor granting leave. Nor would such a supposition admit of any sound practical working out of the enactment. By the eleventh section of the Act 13 and 14 Vict., c. 36, it was declared that all interlocutors must be reclaimed against within ten days, except interlocutors disposing, in whole or in part, of the merits of the cause; and, except in so far as affected by the general declaration in sect. 54 of the recent statute, this enactment still subsists as to all other than interlocutors provided for in sect. 28. The result is, that in regard to all such interlocutors as are final in ten days, the leave would require to be obtained at the very same time with the interlocutor being pronounced, which, in the greater number of cases, is practically impossible, and could not be intended. As to those interlocutors, again, which are not final till the lapse of twenty-one days, the leave would require to be obtained not later than the eleventh day after the date of the interlocutor; and there seems no good reason for inferring such a cessation of the power to make the application. I cannot, in these circumstances, form any other conclusion than that the words were intended to introduce a new period of reclaiming in the case of all interlocutors allowed to be brought under review before the whole cause is decided. The period runs from the date of granting leave, just because it was intended that there should be a power to reclaim after the usual reclaiming days had expired. In that event the period runs, from the necessity of the case, from the date of the interlocutor granting leave. This, I think, gives to the enactment a satisfactory and consistent meaning, not otherwise attainable.

With regard to the provision in sect. 94 of the recent statute, giving power to obtain the necessary leave during the vacation, either from the Lord Ordinary in the cause, or the Lord Ordinary on the Bills, I think its object is merely to facilitate the progress of the cause, by enabling the party to reclaim at a box-day or on the first sederunt-day, in place of having to wait for the meeting of the Court, before he can apply for leave. This seems to me sufficiently to satisfy the presumable intendment of this clause, and to make it work in harmony with the 54th, construed as I have ventured to construe it.

Agent for Pursuers—W. K. Thwaites, S.S.C.

Agents for Defender—A. & A. Campbell, W.S.

Tuesday, May 25.

GILPIN *v.* MARTIN AND OTHERS.

Trust—Irrevocable Deed—Parent and Child—Reduction—Heritage. Terms of disposition which *held* to constitute the disponee a disponee in trust for his children, and so to render invalid a disposition by him of the property to another party twenty-seven years after.

In 1839 Thomas Jardine, proprietor of a heritable subject in Lochinavar, "in consideration of a sum of £30 paid to him by Christopher Smyth, writer in Dumfries, for behoof of the party aftermentioned, as the price of the said subject, of which price I hereby grant the receipt, and discharge the same for ever; have sold and disponed, as I hereby sell, alienate, and dispone from me, my heirs and successors, to and in favour of John M'Vitie, for behoof of Agnes, Sarah, and David M'Vitie, three of his children, and to their heirs and should any of them decease without lawfu heirs of their own body, the survivors or survivor shall succeed to the deceased's part, share and share alike; and as the purpose of making the purchase is to build upon the ground purchased, which will require advance of money, with power to the said John M'Vitie, so long as the youngest of his said three children is a minor, but not afterwards without their consent, to borrow money and grant bond and security over said property for meeting the expense of the buildings intended, and under the other conditions after-mentioned, all and whole," &c., "and I hereby make and constitute the said John M'Vitie, for behoof of his children foresaid, and them and their heirs and successors, my cessioners and assignees, not only in and to the whole writs, evidents, and titles, and securities of the said subjects, with all that has followed, or competent to follow thereon, and without prejudice to the said generality; in and to a disposition," &c., "that in virtue thereof infeftment may take place to and in favour of the said John M'Vitie for behoof of his said children, or in names and favour of the children themselves, are in both their names, the one without prejudice of the other, as use is; but also in and to the rents and profits thereof, from and after the said term of entry, declaring further that the purchase so made for behoof of the minors, notwithstanding the power of management and negotiation of the father, and this further condition, that if needful for his own personal sustenance the free annual produce of the said subject during all the days of his natural life, or so long as he may require the same, the said rents and profits not being attachable by any of his personal creditors by arrestment, or otherwise; and having herewith delivered the said deeds to the said John M'Vitie, I consent to the registration thereof," &c.

John M'Vitie erected various buildings on the said property, and during his lifetime he collected the rents and took the full management of the property. He died in 1866. Shortly before his death he disponed the property above-mentioned to John M'Vitie Martin.

Sarah M'Vitie or Gilpin, one of the persons named in the disposition of 1839, now brought this reduction of the disposition of 1866, pleading that "John M'Vitie not being the proprietor of the inclosure of ground conveyed by him in said disposition and settlement, but merely trustee for the female pursuer and the other disponees, he was not entitled to convey, dispose of, or in any way affect her share or interest in said inclosure."

The defender contended that the deed of 1839 was revocable and had been revoked.

The Lord Ordinary (MANOR) assoilzied the defender, holding that, notwithstanding the terms

in which the title was taken by M'Vitie in 1839, the substantial right and control of the property remained in him, and he was entitled to revoke, and did revoke, the deed of 1839 by the deed of 1866.

The pursuer reclaimed.

SCOTT for reclaimer.

ASHER for respondent.

The Court unanimously reversed.

LORD KINLOCH—I am of opinion that the interlocutor of the Lord Ordinary should be recalled, and the deed of settlement challenged found to be invalid and inoperative as regards the interest of the pursuer, Sarah M'Vitie.

I consider the disposition by Thomas Jardine to John M'Vitie, dated 6th July 1839, to constitute a trust in the person of the latter on behalf of his children therein named. And this deed received all the delivery of which it was susceptible—viz., delivery to M'Vitie, the trust-disponee. This has not been sufficiently adverted to by the Lord Ordinary. And the point is one in which the present case differs materially from those of *Balvaird* and *Hill*, quoted to us; for in these cases the deed was not taken in favour of the father, the receiver, but of a third party, to whom no delivery, either actual or constructive, ever took place.

This trust-disposition remained in the possession of John M'Vitie from July 1839 to the time of his death in February or March 1866. A short time before that event he executed a disposition and settlement, by one of the clauses of which he disponed the subjects contained in the deed of 1839 to the defender Martin.

The pursuer, Sarah M'Vitie, cannot challenge this deed, on the ground of its being executed on deathbed; for she is not the heir of the granter, nor in any view more than a beneficiary under the deed in question. But she maintains the further plea, that the deed of 1839 constituted an irrevocable trust in her father's person for her behalf, and that on that account he could not competently or effectually convey the subjects away to her prejudice.

I do not intend to decide that a case may not occur in which a deed taken by a father to himself, as trustee for his children, will be revocable, or capable of being discharged by him, notwithstanding delivery to him in that capacity. It would be a strong thing to affirm that a father, intending a gratuitous benefit to his children, embodied in this form, was in all circumstances debarred from changing his mind, and destroying or discharging the deed. But, looking to the very peculiar terms of this deed, and to the long period for which it remained a subsisting instrument in the father's possession, without any process of declarator, or other proceeding to establish the contrary of what the deed bears. I cannot safely hold that, in a question between the father and his children, this was in the position of a mere gratuitous deed, revocable at any time. On the contrary, I think the legal character which must now be affixed to the deed is that of an irrevocable trust. The *prima facie* character which it bears to this effect cannot, I think, now be taken from it, with safety either to the law, or to the just interests of the parties.

I would only add, that I have great doubts whether a deed like this, constituting, as it did, the father's only title to the subjects, could, even if revocable, be competently revoked and discharged by merely granting a disposition to a third party, inconsistent with the terms of the trust. But it is unnecessary for me to decide this question; for, on other grounds, I come to the conclusion that the father's *mortis causa* settlement must be regarded as not an effectual revocation of the trust of 1839, but an ineffectual attempt to frustrate that trust.

Agent for Pursuer—W. S. Stuart, S.S.C.

Agents for Defender—Maconochie & Hare, W.S.

Tuesday, May 25.

FORSTER *v.* FORSTER.

Husband and Wife—Written Acknowledgment of Marriage—Proof. A marriage by interchange of consent *de præsenti held* established by mutual declarations, written in the defender's Bible, and signed by the parties, the proof establishing the genuineness and seriousness of the writing.

This was an action brought by Jessie Grigor or Forster, residing at Teindland, Elgin, against James Ogilvie Tod Forster, residing at Findrassie House, near Elgin, in which she sought to have it declared that she was the wife of the defender, or alternatively, asked damages for breach of promise of marriage. She alleged that there had been a deliberate verbal and written interchange of consent *de præsenti.* The written declaration was a writing on the fly-leaf of the defender's bible in the following terms:—"I, James Ogilvie Tod Forster, take thee, Jessie Grigor, to be my wedded wife, from this day henceforth until death us do part, and thus do I plight thee my troth. I, Jessie Grigor, take thee, James Ogilvie Tod Forster, to be my wedded husband, from this day henceforth until death us do part, and thus do I plight thee my troth. (Signed) JAMES OGILVIE TOD FORSTER, JESSIE GRIGOR. Sept. 2, 1865." This the pursuer contended, *ipso facto* constituted a marriage; or even, if only to be read as a promise of marriage, the subsequent intercourse yielded the legal inference of interchanged consent. In the course of the proof that was led it was testified that various acts of familiarity had openly taken place between the parties after the date of the writing, and that they had been seen coming out of one another's bed-rooms. The defender denied the authenticity of the handwriting in the bible, and maintained that the nature of the proof showed that the pursuer's conduct was inconsistent with the idea of marriage. The Lord Ordinary (MANOR) found that a marriage had been constituted *de præsenti.* The defender reclaimed, and moved for permission to lead proof that the writing in the Bible was not his.

CLARK and ASHER for reclaimer.

GIFFORD and KEIR for respondent.

The Court commented upon the peculiarity of the application, especially when coupled with the defender's departure from the country immediately before the proof, and refused the motion, with expenses.

At advising on the merits—

LORD ARDMILLAN—This is an action of declarator of marriage; and the foundation of the action is the alleged exchange of writings in the following terms:—"I, James Ogilvie Tod Forster, take thee Jessie Grigor to be my wedded wife from this day henceforth until death do us part; and thus do I plight thee my troth." "I, Jessie Grigor, take thee James Ogilvie Tod Forster to be my wedded husband from this day henceforth until death us do part; and thus do I plight thee my