

claim was that the defender should be held confessed on the statements made by him with reference to the documents, and that copies of them should be held to be equivalent to originals.

Agents for Appellant—Maitland & Lyon, W.S.  
Agent for Respondent—Wm. Officer, S.S.C.

Saturday, November 12.

## FIRST DIVISION.

DOUGLAS v. THOMSON.

Process—Summar Roll—Debts Recovery Appeal.

This was a case brought originally in the Debts Recovery Roll of the Edinburgh Sheriff-court. It was remitted by the Sheriff to the Ordinary Roll as not suited to summary decision, and there decided. It was appealed to the Court of Session upon a question of expenses.

The case was put out in the Summar Roll, and on its coming before the Court the Lord-President objected to its being in that roll, and said that it had got there on false pretences, and that though it had been remitted to the Sheriff's Ordinary Roll, and decided there, it had been treated as still a Debts Recovery case, and put out in the Summar Roll. Now, when remitted to the Sheriff's Ordinary Roll it became an ordinary case, and appeal to the House of Lords became possible, which was not the case with Debts Recovery cases. It was now in the same position as many poor-law cases, which, from the importance of the question involved, have been remitted to the Ordinary Roll and gone ultimately to the House of Lords. In these circumstances it should have been put out in the Short Roll and not in the Summar Roll in this Court.

Counsel for the Pursuer—Burnet. Agent—J. A. Gillespie, S.S.C.

Counsel for the Defender—Mair. Agent—

Tuesday, November 15.

GRAHAM'S TRUSTEE v. GRAHAMS.

(*Ante*, v. 402, 539.)

*Trust—Accounting—Interest—Effect of Family Understanding—Interest on Sums in Trustee's hands Uninvested.* Circumstances in which a family understanding, not committed to writing, but clearly acted upon for a period of years, was held to overrule a clause in a written deed, to the effect of preventing parties going back upon and claiming under it. *Held* that in family accountings such understandings must be given effect to by the Court. *Opinion* intimated that a liferent has not the same claim as a *fiar* to a higher or penal rate of interest, upon funds allowed to lie uninvested in the hands of a trustee or agent.

This multiplepointing was before the Court on two previous occasions, in March and May of 1868 (see *ante*, vol. v, 402 and 539), when the Court disposed of certain legal questions which had arisen between those beneficiaries in the trust estate who were claimants in the action. Mr Ralph Erskine Scott, the accountant, to whom a remit had been made in the case, had meantime issued his first report on March 17, 1868. Objections to this report were lodged for the different parties, and were all disposed of by the Lord Ordinary in June of the

same year, excepting the second objection for Mr Humphrey Graham, on which the Lord Ordinary made a farther remit to the accountant to report. Mr Humphrey Graham reclaimed against the interlocutor of the Lord Ordinary disposing of the objections to the report, and on October 29, 1868, the Court pronounced an interlocutor in the following terms:—"Recall the interlocutor, so far as it repels the first objection stated by Humphrey Graham, and finds that any debts due to the said Humphrey Graham by the late Mrs Isabella Farquhar or Graham, however chargeable against Mrs Graham's own liferent interest, are not chargeable against the fee of the trust estate or any part thereof; and, with reference to the said objection, before farther answer, remit to the accountant to examine the accounts to which the said objection refers, and report in like manner as in regard to the second objection stated by the said Humphrey Graham, and direct the accountant to report to the Court *quam primum*, instead of reporting to the Lord Ordinary," &c.

The two objections for Mr Humphrey Graham referred to in this interlocutor of the Court are as follows:—(1) "That the balance due by the late Mrs Isabella Farquhar or Graham to the claimant (Mr Humphrey Graham) has not been deducted from the fund for division, the said balance amounting to the sum of £4898, 4s. 2d., as specified in the accounts Nos. 93, 94, and 95. (2) That the accountant has not given effect in the accounting to the sums paid by the claimant to the several beneficiaries, or for their behoof, as specified in accounts lodged in process in the conjoined actions of multiplepointing and count and reckoning between the same parties, in reference to the estate of the late George Farquhar. The claimant (Mr Humphrey Graham) accordingly claims that the said sums should be deducted from the whole amounts now payable to the said several beneficiaries, in respect of their shares, both of the estate of the said Colonel and Mrs Graham, and of the estate of the said George Farquhar."

In accordance with these directions from the Court, the accountant, in June 1870, made his supplementary report, in which he says:—"The objections Nos. 1 and 2 for Mr Humphrey Graham above narrated have involved the examination of the following accounts—

"Under Objection No. 1.—The account between the claimant and Mrs Colonel Graham in respect of one-sixth share of the annual produce of the estate of the late Mr Farquhar from Whitsunday 1830 to Whitsunday 1853 inclusive, being £19 half-yearly, and amounting, with interest to 31st Dec. 1865, to £2294, 7s. 8d. Mr Humphrey Graham supported this claim to the one-sixth of the produce of the Farquhar estate during his mother's liferent by reference to the following clause of the mutual trust-disposition and settlement of Colonel and Mrs Graham:—"And I, the said Isabella Graham, in case I shall survive the said Humphrey Graham, my husband, and in case any one or more of our children before named shall marry, do hereby, with advice and consent foresaid, bind and oblige myself to renounce my right of liferent over such share of my said deceased father's estate and effects as I have by these presents appointed to belong to such child or children respectively, so that such child or children so marrying may receive and enjoy such share or shares upon their entering into such marriage, if the same shall be contracted after the decease of the said