

case that they are the only questions upon which argument was addressed to the Court from the bar. The competency of challenging by a reduction a decree pronounced in a case of divorce is not a question which the parties have taken up, and is not a question, as I have said, upon which we have derived any assistance. Therefore I am not only not called upon, but I think I am not entitled in the circumstances of the case, to commit myself further upon that question than I do in saying that the course which was followed in this action is the same course as was followed in the case of *Stewart*, February 27, 1863, 1 Macph. 449. In this last-mentioned case the Court took everything into consideration, and came to a decision with reference to the merits of the decree pronounced in absence, not merely upon the evidence in the original action, and the judgment of the Lord Ordinary upon that, but also on the proof which was led in the action of reduction. Therefore there seems to be authority for the procedure adopted here. Certainly that case of *Stewart* having been decided as it was, it appears to me that the counsel for the defender in this action of reduction were justified in not bringing forward for decision any question with reference to the mere competency of the action.

But the action being brought, what we have to determine is, whether the grounds of reduction have been established? The first of these grounds is the alleged corruption of a party to the suit in making the arrangement which is said to have been entered into. That arrangement is said to have been to the effect that if the pursuer would only refrain from defending the action for divorce, the defender in this action, who was pursuer in the divorce, would give her an annuity for a certain period of £100 a-year, and also allow her to participate in the guardianship of the children. I am of opinion, upon the facts, that the alleged collusion and corruption have not been established. I am as satisfied as I can be that there was no intention whatever in anything that occurred on the part of the defender here to attempt to interfere with the administration of justice in this matter. I think he believed the grounds of his action were well founded, and I am satisfied he had no idea, any more than the pursuer of this action, who was defender in the divorce, had any idea, that adultery having been committed there was to be kept back a plea which nevertheless would disentitle the husband from his remedy. I think that what was done was imprudently done, because agreements with reference to appearing or not appearing to defend an action in such a matter are, to say the least of it, extremely precarious. The pursuer seems to have expressed almost a feeling of diffidence as to the grounds of action; but far more strongly does the defender—the defender in the divorce—by consenting to stand by, by necessary implication confess her guilt of that which was alleged against her. As Lord Young has observed, it seems to me that no woman conscious of her innocence would ever consent, for even such a bribe as that which is said to have been held out, to have guilt and disgrace fixed upon her for the remainder of her life.

I do not think it necessary that I should say more, for I am satisfied that nothing was intended

to be done, and that nothing was done, by the defender here to corrupt the administration of justice, or to do anything which would in the least degree affect the decision which in any circumstances would be pronounced in an action of divorce.

On the question whether or not the grounds of action set forth in the summons of divorce have been established, I come to the same conclusion as both your Lordships.

The Lords adhered.

The pursuer's counsel moved the Court for expenses, on the ground that this action was virtually a defence to the original action for divorce. The motion was refused, LORD CRAIGHILL remarking as follows:—At the time the action was brought the pursuer was not the wife of the defender. She is now trying to recover her status, but she has failed in the attempt. Costs have been incurred in this, as in other cases, and any party who, even if he or she could challenge a decree of divorce, brings such an action, must do so subject to the ordinary conditions which any other party incurs.

Counsel for Pursuer (Reclaimer)—Macdonald, Q.C.—Scott. Agents—T. & W. A. M'Laren, W.S.  
Counsel for Defender (Respondent)—Lord Advocate (Balfour, Q.C.)—Trayner—A. J. Young. Agents—Duncan & Black, W.S.

Thursday, December 15.

## SECOND DIVISION.

[Lord Lee, Ordinary.

M'PHERSONS v. HAGGARTS.

*Cautionary Obligation—Writ—Parole Evidence of Qualification of Obligation as between Cautioners.*

Where several persons had entered into a cautionary obligation to a bank, to subsist till recalled in writing, for a customer of the bank in a cash-credit—held (rev. judgment of Lord Lee), in a question between the cautioners, that parole proof that the obligation of two of them had been given and accepted *ad interim* only, and till a supplementary and valid guarantee should be given by another, who was in minority at the date of their signature of their cautionary obligation, was incompetent.

In July 1878 a cash-credit was opened at the Bank of Scotland, Kirriemuir, for Donald M'Pherson, keeper of the Ogilvie Arms Hotel, Glenprosen. M'Pherson was to be allowed to overdraw his account with the bank to the amount of £500 on finding sufficient security. A cautionary obligation to that amount was on the 24th and 26th of that month entered into on his behalf by Charles and James M'Pherson, the pursuers of the present action, and by John Haggart, Donald M'Pherson's brother-in-law. This obligation of guarantee was to subsist till recalled in writing. Application had been also made to James Reid Haggart, John Haggart's son, to join in the cautionary obligation. He was at the time in minority, but on the 24th

July 1878, with consent and concurrence of his father as his curator and administrator-at-law, he granted an obligation of guarantee of all sums which M'Pherson might be or become liable for to the bank, the amount payable under the guarantee not to exceed £500, with interest from the date or dates of the advance, and the guarantee to remain in force until recalled in writing.

James Reid Haggart attained majority in April 1879, and on 25th June in that year he granted to the bank an obligation of guarantee for all sums for which M'Pherson might be or become liable to them, the amount payable under the guarantee not to exceed £500, with interest from the date of advance, and the guarantee to remain in force till recalled in writing. Before this letter of guarantee of 25th June 1879 was granted by James Reid Haggart, Donald M'Pherson had drawn on the credit to the amount of £511, 1s. 7d.

Shortly after the granting by James Reid Haggart of his letter of guarantee of 25th June 1879, Donald M'Pherson became insolvent, and the bank called upon the Haggarts and on Charles and James M'Pherson to pay up the amount of the debt then due to them, which at that time amounted to £539, 7s. 7d. Payment was refused by the M'Phersons, on the ground, afterwards maintained in this action, that their obligation had been only *ad interim* till the majority and granting of a guarantee by James Reid Haggart, but payment was made by John Haggart with money supplied by James. John Haggart took from the bank an assignation of the bank's right against the principal debtor Donald M'Pherson, and the other cautioners Charles and James M'Pherson. That assignation contained this narrative . . . "And further considering that the said James Reid Haggart was in nonage when he granted the said letter of guarantee" (of 24th July 1878), "and that the same was granted by him and accepted by us" (the bank) "as a collateral security to the said first-mentioned letter of guarantee" (that of 24th and 26th July 1878, signed by the M'Phersons and John Haggart), "and on the understanding and arrangement that when he attained majority the whole parties, in our option, would enter into and subscribe a cash-credit bond to us for the above sum of £500, or the said last-mentioned letter of guarantee would be superseded by a new one, granted by the said James Reid Haggart when he was of full and perfect age; and further considering that in accordance with the above understanding and arrangement, and having elected that the said James Reid Haggart should grant a second letter of guarantee when he arrived at majority, instead of calling upon the whole obligants to subscribe a cash-credit bond, the said James Reid Haggart, by his letter of guarantee dated 25th June 1879, having then attained majority, guaranteed to us due payment of all sums for which the said Donald M'Pherson might become liable to us as aforesaid."

Having taken this assignation, John Haggart in June 1880 raised an action against Charles and James M'Pherson for payment by each of them of £134, 16s. 10d., being one-fourth of the sum of £539, 7s. 7d. paid by him to the bank, and for which sum he maintained their liability to the extent sued for as his co-cautioners. The M'Phersons defended the action. In their defences they made this offer—"The defenders are

willing, and they hereby offer, each to pay his share of the foresaid sum of £539, 7s. 7d. upon condition of their obtaining an assignation of said bank's right contained in the foresaid letter of guarantee of 25th June 1879" (James Reid Haggart's guarantee). This offer John Haggart accepted, but the M'Phersons on their part lodged a minute craving leave to withdraw the offer. The Lord Ordinary allowed them to lodge a minute of amendment, and continued the cause. The First Division, however, subsequently held that the minute was incompetent, and the proposed arrangement was carried out.\*

In February 1881 Charles and James M'Pherson raised the present action against the Haggarts and against the Bank of Scotland for declarator—1st, that the obligation of guarantee of 24th and 26th July 1878, to which they were parties, was an interim guarantee only, to be held and acted on by the bank till James Reid Haggart should reach majority and grant a valid obligation of guarantee, and no longer; 2d, that he (J. R. Haggart) had granted the guarantee of July 1878; 3d, that he had granted that of 25th June 1879, and that it had been granted "in substitution for and in room and place of" the pursuer's guarantee of July 1878, and that the pursuers "were thus freed and relieved of all liability incurred by them in respect of their said obligation and letter of guarantee for any indebtedness by the said Donald M'Pherson" to the bank; further, "that the defender James Reid Haggart should be decerned and ordained to pay to the defenders" the bank, "or to the defender John Haggart, in the event of its being found that he as the assignee of the bank is in right thereof, the sum of £539, 7s. 7d., the amount of principal and interest said to be due to the defenders" the bank, "or otherwise the said James Reid Haggart ought and should be decerned and ordained to pay to the pursuers the said sum of £539, 7s. 7d. . . . in order that they may operate their own relief in the premises." They also concluded for delivery of their obligation of guarantee of July 1878, and for reduction of the assignation by the bank in favour of John Haggart.

They averred that they had been asked by the principal debtor to be cautioners for him *ad interim* only till James Reid Haggart should reach majority, and that they had agreed to be cautioners only to this limited extent. Of this they averred that the bank was aware, and further they averred that the bank had consented and agreed to the credit being given to Donald M'Pherson on these terms.

In support of their conclusion for reduction of the assignation they averred—" (Cond. 7) The said assignation was granted and taken, and the said action" [the previous action above narrated] "was raised in direct violation of the arrangement and agreement of parties, to which understanding and agreement not only the said John Haggart, but also the said Bank of Scotland and the said James Reid Haggart, were parties. The said assignation was procured by the said John Haggart in pursuance of a fraudulent scheme entered into between himself and his said son. The said fraudulent scheme was that it should be made to appear that the said John Haggart had paid the said debt as one of four co-cautioners, and was thus entitled to operate his relief against

\* The judgment on this point is reported *infra*, immediately following the case of *Wannop*.

the pursuers to the extent of one-fourth each by means of the said assignation. The fact, however, is that John Haggart did not pay any part of the said debt, which was paid by the said James Reid Haggart as the only cautioner. The defender John Haggart persists in his action against the pursuers, and he has thus rendered the present action necessary."

They pleaded—" (1) The pursuers not being cautioners after the second letter of guarantee was granted by the said James Reid Haggart, are entitled to decree of declarator, relief, and redelivery of their obligation as concluded for. (2) The assignation to the defender John Haggart being the result of fraud, the same falls to be reduced."

The defenders denied that the pursuers' obligation of guarantee was of an interim character, and maintained that it still subsisted. They denied that the assignation had been fraudulently taken.

They pleaded, *inter alia*, that the pursuers' obligation never having been recalled in writing, still subsisted, and that in any event the pursuers' averments could only be proved by writ or oath.

The Lord Ordinary (LORD LEE) allowed a proof before answer. He appended this note to his interlocutor:—"Although the record in this case is not in the best shape for raising the question which the pursuers appear desirous to raise, the Lord Ordinary does not think it necessary to throw out the action. He is of opinion that the pursuers have a sufficient title to pursue the action to have it found that under the letters of guarantee libelled their true position was that of cautioners interposing for the temporary purpose of enabling the principal debtor and his intended cautioners John and James Haggart to complete their arrangements for giving the required security, and he thinks that the summons is sufficient to enable them to maintain that contention. He has therefore repelled the plea of no title to sue.

"With regard to the merits, the Lord Ordinary is of opinion that these ought not to be disposed of without ascertainment of the facts. The features of the case as presented in the documents are certainly peculiar. It is neither a case of co-obligants in the same bond, nor the case of an additional obligant interposing by bond of corroboration or otherwise on the occasion of one of the original co-obligants dying or becoming bankrupt.

"James Reid Haggart, the granter of the separate letter of guarantee of 25th June 1879, was at the very beginning a party along with his father, as his curator and administrator-in-law, to a separate guarantee for all sums up to £500 for which Donald M'Pherson might become liable. He and his father had subscribed that letter on 24th July 1878, two days before the pursuers subscribed the joint and several guarantee with John Haggart. It is admitted that when he became of full age James Reid Haggart granted on his own account the letter of 25th June 1879. All these guarantees were to remain in force so far as the bank was concerned until recalled in writing. As to the reasons for James Reid Haggart's obligation being kept separate from the commencement, different and contradictory accounts are given. The pursuers say it was part of an arrangement which recognised the interim character of their obligation and enabled the parties principally in-

terested to provide the security which had been agreed upon in that of John and James Haggart. They contend that they were thus cautioners for and not with James Reid Haggart. On the other hand, the explanation given in the narrative of the assignation taken by John Haggart from the bank, and referred to by both defenders on record, is that James Reid Haggart's guarantee was intended 'as a collateral security,' and that 'the understanding and arrangement' was that when he attained majority there was to be a new arrangement dependent on the option of the bank. Neither explanation is proved by the terms of the letters of guarantee, but both import that there was some 'understanding and arrangement' at the time when the guarantees were originally entered into, and not embodied in the letters. The narrative in the assignation by the bank to John Haggart is not conclusive against the pursuers. It is not evidence against them at all. But it is important as showing that the defenders admit that there was an arrangement concerning what should be done when James Reid Haggart attained full age.

"In these circumstances the Lord Ordinary is of opinion that nothing should be decided as to the rights of relief enforceable by these cautioners against one another without inquiry into the facts; for the letters of guarantee, although they show the obligations of the several cautioners to the bank, do not instruct the rights of the cautioners *inter se*, or disclose all the facts necessary to enable a court of law to determine these rights.

"The case of *Thorburn v. Howie*, 1 M. 1169, and the cases referred to by Erskine (iii. 3, 69), appear to the Lord Ordinary to illustrate the necessity of considering, and therefore of ascertaining, the circumstances of each case before deciding whether the cautioner claiming relief interposed for the benefit of the other cautioners, or merely for behoof of the principal debtor. In some cases, no doubt, as in *Murray of Broughton's* case, M. 14,651, *aff. Robertson's Appeals*, 465, and *M'Kenzie v. M'Kenzie*, M. 14,661, the fact may sufficiently appear from the documents that the cautioner claiming relief interposed on behalf of the principal debtor, and consented to become a co-cautioner with him from whom he claims relief. But this is not always the case. It is not the case here in the question with James Reid Haggart, and the opinion of the Court in the case of *Thorburn v. Howie* encourages the Lord Ordinary to think that the facts may be ascertained (as he thinks they ought to be ascertained) by allowing a proof."

Thereafter, having taken the proof, the Lord Ordinary pronounced this interlocutor—"Finds, decerns, and declares against the defenders John Haggart and James Reid Haggart in terms of the first declaratory conclusion of the summons: Decerns against the defender James Reid Haggart for payment of £269, 13s. 9½d., being one-half of the debt of £539, 7s. 7d., with interest thereon, in terms of the conclusions of the summons to that effect: Repels the reasons of reduction, and decerns: Finds the defenders John Haggart and James Reid Haggart liable in expenses," &c.

The defenders reclaimed, and argued—That parole proof of such an averment as the pursuers made in relation to the cautionary obligation into which they had entered was incompetent, and that the proof led must be disregarded. The

terms of the guarantee of the pursuers were conclusive of their liability—Mercantile Law Amendment Act (19 and 20 Vict. c. 60, sec. 8).

The pursuers argued—The Court in this question between the co-cautioners were entitled to know the history of the various writs. If a man induce another to join with him in a cautionary obligation till a certain event, he is barred from afterwards repudiating that understanding.

Authorities—Cases cited by Lord Ordinary in note to interlocutor allowing proof.

At advising—

LORD YOUNG—This is a simple case. It is distressing how much litigation it has occasioned. The material facts are in a narrow compass. By a joint letter of guarantee dated 11th June 1878 the pursuers and John Haggart guaranteed Donald M'Pherson in a cash-credit with the Bank of Scotland to the amount of £500. By another letter of the same date, and in similar terms, James Reid Haggart, son of John Haggart, guaranteed the same amount, James being then a minor, whose guarantee was of course legally worthless. But the bank apparently relied on him to confirm it, as he in fact did, when he reached majority about a year afterwards. It is not suggested, and it is not the fact, that there were two cash-credits, and James' obligation was put in the separate letter plainly because had he while in minority joined in the same letter with the other securities there would have been a risk thereby of vitiating their liability, which it was obviously desirable to avoid.

On the guarantee of the pursuers and John Haggart, and while James was still a minor, and so unbound, the bank allowed Donald M'Pherson to draw on the credit to the amount of £511, 1s. 7d., and it is as plain a proposition as could easily be stated, that the only cautioners the bank had, namely, the pursuers and John Haggart, were liable to the bank for that amount if the principal debtor failed to pay. On 25th June 1879 James Reid Haggart, who was then major, gave the bank another letter, which repeated in the very same words the obligation which he had granted to them when in minority. After this there were exactly seven transactions on the account, viz., three drafts debited and four payments credited, the latter exceeding the former by £11, 1s. 7d., and so reducing the debt to the bank to the exact sum of £500 without interest.

Immediately thereafter, and in the same year, 1879, the bank stopped their credit, and their customer being insolvent, called upon the cautioners to pay the debt. It was paid ostensibly by John Haggart, but no doubt the money was furnished by James. John took a discharge and an assignation to the bank's rights against the principal debtor and the other cautioners. He thereupon sued the pursuers for their share as co-sureties, viz., one-fourth each.

In their defences the pursuers, then defenders, stated that "they were willing and offered each to pay his share of the foresaid sum of £539, 7s. 7d., upon condition of their obtaining the assignation to the said bank's right contained in the foresaid letter of guarantee of June 1879,"—that is, James Reid Haggart's letter. This offer was accepted and fulfilled—the pursuers paying the shares of the debt and obtaining from John Haggart the assignation to the bank's right assigned to him

under James Haggart's letter. The debt to the bank was thus paid and discharged, and the pursuers had, under decree of this Court, proceeding upon judicial arrangement, contributed their shares of it—one-fourth each.

They are of course at liberty to make what they can of their position as assignees to the bank's rights contained in the letter of 25th June 1879, but plainly nothing else is left to them. It is hardly necessary to say that this letter gives nothing to the pursuers, being a guarantee to the bank in the same terms as the other, and for the same debt, and that they can take nothing by it except as the bank's assignees through John Haggart. But the bank's assignation to John Haggart was "in order to enable him to operate his relief against the granter as co-cautioner for the debt which he had met," and he could make no other use of it. John Haggart's assignation to the pursuers was in like manner "in order that they might operate any relief competent to them or either of them against James Haggart as their co-cautioner." To any other effect the assignation is inoperative. If they have such right to relief, they may, as the bank's assignees, use the letter to enforce it, but if not, the letter is worthless to them. That they have none, and that the letter is worthless, I should have thought too plain to be disputed, for they have paid exactly their own admitted share, as in the question with their co-cautioners, of the debt which they guaranteed; but they alleged that when Donald M'Pherson applied to them for their guarantee, he (Donald M'Pherson) informed them that they were to be cautioners only *ad interim* till James Haggart came of age, and that they were to be freed as soon as the said James Reid Haggart granted a cautionary obligation for the said sum of £500. They also contend that in point of fact the bank also agreed to the loan being given on these terms. This is the substance of the averment in Condescence 1.

Condescence 2 merely states the fact that the letters of July were granted. In Condescence 3 it is said that on attaining majority in 1879 James Reid Haggart resolved to homologate, and did homologate, his obligation to relieve the pursuers and to take their places as cautioners, and that he granted the letter of June 1879 which the bank accepted in substitution of the letter of guarantee or obligation. Now, there is no averment of any obligation by James Reid Haggart other than his letter imports. It is not even averred that the pursuers were in communication with him, or anyone having authority to bind him, or make a representation for him, and moreover he was a minor. That Donald M'Pherson induced a false hope is plainly nothing to the purpose, and indeed even his written assurance would have been nothing against James Haggart. The case is thus, even on the averments, reduced so far as James Haggart is concerned, to his letter of June 1879, which being, as I have observed, a mere repetition in the same words of that which he gave in minority—that is, a guarantee to the bank for the same debt which the pursuers also guaranteed in the same terms—bound him exactly as the pursuers were bound.

The Lord Ordinary allowed a proof—I presume of the averments that the bank accepted this letter in substitution of the pursuers' obligation, which it is contended was thereby cancelled, to

their complete relief. The result is that the pursuers tender us parole evidence, extending to 49 pages, to show that by taking the letter in question the bank discharged them, and had thereafter no claim except against James Haggart as surety for Donald M'Pherson's debt.

The pursuers' counsel declined to contend before us that the letter of guarantee to a bank, with the liability for the debt incurred under it, could be so discharged, and so abandoned the first declaratory conclusion as untenable although it is confirmed by the Lord Ordinary. The second and third conclusions are quite idle, and the Lord Ordinary does not even notice them, but how then can the decree against James Haggart be supported? There is plainly no ground for it in his letter of guarantee to the bank, and I have already pointed out that there is nothing else against him even in point of averment, for that he could be affected by the representation made in his minority by Donald M'Pherson is extravagant. There was no room for parole evidence at all, and that submitted to us was, in my opinion, incompetent from beginning to end. I think, therefore, that the interlocutor of the Lord Ordinary ought to be recalled and the defenders assoilzied from the conclusions of the action.

**LORD CRAIGHILL**—I concur altogether with Lord Young, and I think it unnecessary to read the written opinion I had prepared.

**LORD JUSTICE-CLERK**—I concur in the result at which Lord Young has arrived—that it is unnecessary and even incompetent to take parole testimony here, seeing that the object to which the proof is directed is one which parole evidence is incompetent to arrive at. This is a written obligation, and it was proposed to vary the effect of that document by parole proof, and that the pursuers when they adhibited their names did not intend to be bound except *qualificate*. This is not a competent course, and I am prepared to adhere to the view which Lord Young has expressed.

The Court recalled the interlocutor of the Lord Ordinary and assoilzied the defenders.

Counsel for Pursuers—Lord Advocate (Balfour, Q.C.)—Brand—Dickson. Agents—Irons & Speid, S.S.C.

Counsel for Defenders—Guthrie Smith—M'Kechnie. Agents—Curren & Couper, S.S.C.

Thursday, December 15.

## OUTER HOUSE.

[Lord Adam.]

KIRSOP AND OTHERS (RENTON'S TRUSTEES)  
v. M'CULLOCH AND OTHERS.

*Succession—Fee and Liferent—Heritable and Moveable—Conversion.*

*Held*, under a direction in a trust-deed, by which estate, both heritable and moveable, was conveyed to trustees with instructions to settle certain heritable subjects upon the trustor's children in liferent allanarly and their heirs and assignees in fee, with a provision that

the issue of any predeceasing child should take "equally" the fee of the whole heritable and moveable estate "as if their parent had been in life, or had been liferented by him or her"—that the eldest son of one of the trustor's children, who survived the trustor and enjoyed a liferent right, was entitled to the fee of the heritable property held in liferent by his parent.

The pursuers and nominal raisers in this case were the surviving and acting trustees under the trust-deed of the late William Renton, smith and bellhanger, Tradeston, Glasgow, and relative deeds of assumption; the defenders were (1) John, (2) Archibald, (3) William Renton, and (4) James Naismith M'Culloch—who were all grandsons of the said William Renton—and the purpose of the multiplepointing was to determine the rights of parties in part of the heritable estate of the late William Renton which had been liferented by his daughter, the defenders' mother.

The said William Renton died on 23d July 1839, and left a trust-disposition dated 2d July 1839, in which he gave directions for the disposal of his whole heritable and moveable estate, and especially he directed that on the death of his wife or himself, whoever should be the longer liver of them, the heritable property should be conveyed and made over to his surviving children, "share and share alike, in liferent for their liferent use allanarly, and to their respective heirs and assignees in fee;" and he further directed that if any of his children should predecease him leaving lawful children, "such issue should be entitled to succeed equally to the fee of the portion of my whole heritable and moveable subjects as would have belonged to them had their parent been in life, or been liferented by him or her at the time of my decease." The testator was survived by his wife, one son, and eight daughters, of whom the son and one daughter died without leaving issue during the life of the testator's widow; she died on 25th May 1861, and the trustees then continued to pay the income of the heritable part of the trust-estate to the surviving daughters. Margaret Renton, one of the said daughters, died intestate on the 23d August 1879, predeceased by her husband, and leaving four sons, the defenders, of whom the defender William Renton M'Culloch was the eldest, and heir-at-law of his mother, the said Margaret M'Culloch. The trustees having raised a multiplepointing, he claimed the whole fund in that character. Claims were also lodged by John and Archibald, who maintained that the whole family were entitled to share equally in the subjects.

The Lord Ordinary pronounced the following interlocutor and note:—"The Lord Ordinary having heard counsel for the parties, repels the claim for the claimants John and Archibald M'Culloch, sustains the claim of the claimant William Renton M'Culloch, and finds him entitled to be ranked and preferred to the whole sum *in medio*.

"*Note*—The question in this case is whether the share of the heritable estate of the trustor William Renton which was liferented by his daughter Margaret Renton or M'Culloch, the mother of the claimants, is destined on a sound construction of his trust-disposition and settlement to her eldest son as her heir in heritage, or to all her children equally? The destination is in