for donation, or, more properly, for tocher or advance to account of legitim. In short, the legal presumption is that which received effect in the case of *Nisbet* and the other cases of that class. It is, I think, settled by these cases that where a father makes advances to a child for his or her outset in life, and takes no document of debt, that advance is presumed to be to account of or in satisfaction of legitim.

It is in my opinion clear that the present case fails, and therefore I concur with the result of the Sheriff's judgment.

LORD JUSTICE-CLERK—I also concur. It was urged as a reason against the donation that the sum of £89 was so much in excess of what would have been a reasonable gift by a man in the defender's position to make to his child on her marriage as to make it most unlikely that it was advanced as a gift. But I do not consider it to be made out that there was any such extravagant disproportion between this sum and his other means as to exclude the idea of a gift. I think the pursuer's estate at the time may be taken to have been about £500. He had £400 in cash after the bond was paid off, and he had some stock besides, which belonged to the business which he was giving up. He felt his health failing, having had paralytic seizure, and his business was, from want of ability to attend to it, becoming unprofitable, and it was very natural for him to think that if his daughter were respectably married to a man whom he could set up in business that would the be best prospect of comfort for himself in his old age. If he set up her and her husband in life that would provide an asylum for him in his remaining years. With that view, as it appears to me, he advanced this £89 out of the £500—a sum not unreasonable, seeing that Mrs Campbell was one of five children, and indeed less than she might have received if he had died then.

Now, I agree with your Lordships that in such a case—the case of a father making a provision for a child and her husband on her marriage—the ordinary presumptions do not apply. Such cases are frequent. An illustration, which is of frequent occurrence, is that of a parent handing a sum of money to a daughter on her wedding-day—for example, laying an envelope with a bank-note of large value on her plate at the wedding breakfast. The child could not, surely, be asked after an interval to return that sum with interest as having been an advance by way of loan and not a donation. I think this case is substantially the same. The ordinary rule that donation is not to be presumed, and that the receipt of money implies an obligation to repay it, does not necessarily apply in such a case, in which it is according to the ordinary and natural course of things that there should be such a gift as the defender maintains. I think that the *onus* was therefore on the pursuer to prove his case rather than on the defender to rebut a presumption against donation. The Sheriffs treated the case as an ordinary one with a presumption against donation, and appointed the defender to lead. They hold he has discharged that *onus* laid upon him, and they have reached a result which is in consistency with what I hold to be right. Therefore I am for affirming their judgments. But at the same time I think it right to point out that an improper burden was put upon the defender, as it might lead to great injustice to deal with such a case as is done with those in which there is not the special feature which exists in this case, and to which I have referred. This case must not be a precedent for putting the *onus* on a defender in similar cases in future.

The Court pronounced this interlocutor:—

"Find that the pursuer does not now maintain his averments with regard to the sums of £34 and £8 specified in the condescendence: Find that the pursuer has failed to prove his averments relative to the sums of £13, £5, 17s. 6d., and £7, 1s. 4d., referred to in articles 5, 6, and 7 of the condescendence: Find that the sum of £89, referred to in articles 3 and 4 of the condescendence, was advanced by the pursuer to or for behoof of his daughter and the defender, her husband, on the occasion of their marriage without taking any document of debt, and without any agreement as to repayment: Therefore dismiss the appeal, and of new assoilzie the defender from the conclusions of the action," &c.

Counsel for the Appellant—A. S. D. Thomson — Greenlees. Agent — David Dougal, W.S.

Counsel for the Respondents—R. Johnstone—Sym. Agents—Forrester & Davidson, W.S.

Saturday, December 14.

FIRST DIVISION.

[Lord M'Laren, Ordinary.

GOWANS AND OTHERS (GOWANS' TRUSTEES) *v.* GOWANS AND OTHERS.

Process — Multiplepoinding — Reclaiming Note—Competency.

The Court of Session Act 1868 (31 and 32 Vict. cap. 100), sec. 53, provides—"It shall be held that the whole cause has been decided in the Outer House when an interlocutor has been pronounced by the Lord Ordinary which, either by itself or taken along with a previous interlocutor or interlocutors, disposes of the whole subject-matter of the cause or of a competition between the parties in a process of competition, although judgment shall not have been pronounced upon all the questions of law or fact raised in the cause; but it shall not prevent a cause from being held as so decided that expenses if found

due have not been taxed, modified, or decerned for." . . .

In an action of multiplepoinding involving the distribution of a trust-estate among a number of claimants, the Lord Ordinary pronounced an interlocutor in which he made various findings construing the trust-deed, but without any finding as to expenses, and without ranking and preferring any of the claimants, and appointed the cause to be enrolled in order that these findings might be applied.

A reclaiming-note at the instance of one of the claimants presented without the leave of the Lord Ordinary was refused as incompetent, on the ground that the interlocutor reclaimed against was not a final interlocutor in terms of sec. 53 of Court of Session Act 1868.

Tuesday, December 17.

SECOND DIVISION.

PILLANS *v.* REID & COMPANY, *et e contra.*

Contract — Construction of Agreement — Requirements.

A rivet manufacturer contracted to supply a firm of shipbuilders with their "requirements of iron rivets during the year 1888." *Held* that he had sufficiently implemented the contract by supplying the rivets required for use during 1888, and was not bound to supply rivets for work to be done by the shipbuilders after 1888 on ships contracted for during 1888.

Upon 1st December 1887 Alexander Pillans, bolt, nut, and rivet manufacturer, Caledonian Works, Motherwell, entered into a verbal agreement with Messrs John Reid & Company, shipbuilders, Port-Glasgow, to supply them with iron rivets for their requirements during the year 1888 at so much per ton. Upon the same day the following letter was written by Reid & Company to Pillans, and subsequently acknowledged by him as correctly setting forth the agreement —"We have pleasure in confirming our verbal arrangement with you to-day, viz., that we have bought from you about 80 tons best iron ship rivets (all to be equal to Lloyds' requirements) required for our Nos. 8/D and 8/E at the rate of £5, 13s. 9d. per ton, $\frac{1}{16}$ and up, usual extras; also that you supply us with our further requirements of iron rivets during the year 1888 at the rate of £5, 16s. per ton." . . .

Between 9th August and 12th November 1888 Reid & Company ordered 426 tons 12 cwts. of rivets to be supplied under this contract. Of this amount Pillans supplied for the year 1888 320 tons, which he alleged were quite sufficient for Reid & Company's requirements during that year.

In the beginning of 1889 Pillans brought an action in the Sheriff Court at Glasgow against Reid & Company for £132, 15s. 10d., being the balance of his account due for rivets supplied under the contract. Reid & Company admitted that the sum sued for was due, but explained that the pursuer had failed to implement the contract, and in particular that he had only supplied a portion of their August-November order. The remainder, or 278 tons 14 cwts. 2 qrs. 3 lbs., they had to get from other manufacturers at a cost which, after deducting the contract price for the same amount, and the sums due to the pursuer, left them with a loss of £334, 8s. 5d. For this loss they brought a counter action in the same Sheriff Court against Pillans. The actions were conjoined.

In the leading action Reid & Company pleaded in defence—"(2) The defenders are entitled to set off against the sum sued for the loss and damage sustained by them through the pursuer's failure to implement his part of said contract, and the amount of the loss and damage being greater than the sum sued for, they are entitled to absolvitor." And in the counter action Pillans pleaded in defence—"(3) The defender having supplied pursuers with rivets sufficient for their requirements for the year 1888 in terms of the contract, should be assoilzied with costs."

After a proof the Sheriff-Substitute (LEES) pronounced the following interlocutor:—"Finds that in December 1887 the pursuer entered into a contract with the defenders, under which he sold to them about 80 tons of iron rivets, and also undertook to supply them with their further requirements of iron rivets during the year 1888, of the qualities and at the prices specified in the letters passing between the parties on 1st and 5th December 1887: Finds that the defenders are resting-owing to the pursuer the sum of £132, 15s. 10d. for rivets supplied under said contract: Finds that the defenders have failed to show that the pursuer is indebted to them in any sum through failure to supply their requirements of iron rivets during the year 1888: Therefore repels the claim made for the defenders in the counter action, and assoilzies the party Pillans from the conclusions thereof, and in the leading action decerns against the defenders in terms of the prayer of the petition, &c.

"*Note.*—At the request of parties a proof was allowed them of their averments, but I entertain considerable doubt whether a court of law ought to look to evidence for the interpretation of the word 'requirements' occurring in the contract between the parties. It is not a technical trade term, and the fact that hardly any two witnesses of those examined assign the same meaning to the word makes it the more doubtful whether it is not more properly the function of the Court to consider the word.

"The defenders take the word as equivalent to 'orders,' and they say that if they can show that they gave orders for the 278 tons in dispute, and that they had contracts in hand on which these rivets would be used they are entitled to decree. It is no doubt true that the word 'require' is in