4 R. 1149; *Heritors of New Monkland*, March 21, 1872, 11 Macph. 986, 9 S.L.R. 446; *Menzies*, March 29, 1873, 11 Macph. 989, 10 S.L.R. 661; *University and College of Glasgow*, December 24, 1870, 11 Macph. 982, 9 S.L.R. 443; *Manchester Corporation* v. *Chorlton Union Assessment Committee*, 1899, 15 T.L.R. 327; *Ferrier* v. *Edinburgh Assessor*, July 20, 1892, 19 R. 1074, 29 S.L.R. 723; *Blyth Hall Trustees* v. *Assessor for Fife*, February 24, 1883, 10 R. 659, 20 S.L.R. 433.

There was no appearance for the Assessor.

At advising—

LORD LOW read the following opinion of Lord Dundas, who was absent, stating that it was the opinion of the Court—

LORD DUNDAS—The appellants' counsel urged that the subjects here in question ought not to be entered in the valuation roll because they have no lettable value, or, alternatively, that they should be entered in the roll as having no letting or rateable value, *i.e.* at *nil*. The first of these contentions seems to me to be clearly wrong. The subjects are certainly lands and heritages; and it is well settled that the mere fact that a heritable subject does not yield profit to anyone is not a sufficient reason for omitting it from the valuation roll. Many instances to this effect might be cited, *e.g.* prisons, hospitals, and asylums, where criminal, sick, and insane persons are respectively housed, which yield no profit, and yet must enter the roll; and the same has been held to be the case even with university buildings and professional dwelling-houses exempted by royal charters and Acts of Parliament from all public and local taxation (*University and College of Glasgow*, 1870, 11 Macph. 982). The heritable subjects in question were, in my opinion, correctly included in the roll. As regards the second and more material contention, the appellants' argument must also, in my judgment, be rejected. Their counsel founded strongly upon the English cases of *Lambeth Overseers*, [1897] A.C. 625, and *Liverpool Corporation*, [1908] 2 K.B. 647. But it seems to me that these decisions, assuming them to be otherwise applicable, are effectually distinguished from the present case, because in both of them the subject, a public park, was by Act of Parliament destined to be held in perpetuity solely for the use of the public. The Legislature can do many things which individual persons can not. It would, I think, be anomalous, viewing the question as one of principle, that a private citizen should be able, by his own voluntary act, to withdraw lands belonging to him from valuation and assessment, with the result, of course, of imposing a heavier liability to assessment upon the remaining lands in the area within which his property is situated. When one turns to the cases decided in this Court, one finds, I think, sufficient material to support the view which, regarded as matter of principle, seems to commend itself. In the case of *Blyth Hall Trustees* (1883, 10 R. 659), Lord Fraser laid it down that "when a private individual dedicates a portion of his property for the accommodation and enjoyment of the people in his native village under restrictions which prevent it being a remunerative occupation, the annual value in such a case must be ascertained without reference to these restrictions. The accommodation to this section of the community still remains, and like hospitals and charities which yield no pecuniary profit, such property must be valued without reference to its being a paying or a losing concern in consequence of the arbitrary restrictions imposed by the truster." In *Sheriff* v. *Assessor for Argyll* (1885, 12 R. 919) the same learned Judge reiterated his opinion, and pithily observed that "no man is entitled to withdraw his property from valuation, and consequent taxation, however philanthropic may have been his motives." Then in the *Duke of Montrose's* case (1890, 17 R. 854)—Lord Fraser's opinion in *Blyth Hall Trustees* was quoted with approval and applied by Lord Wellwood, Lord Trayner concurring. Again, in *Glasgow Abstainers' Union* (1906, 8 F. 500), a case relating to the valuation of a convalescent home, Lord Low, with whom I concurred, stated that he agreed "with the opinion expressed by Lord Fraser in the case of the *Blyth Hall Trustees* that, in circumstances such as those with which we are now dealing, restrictions imposed by a private individual in regard to property which he has placed on trust, and which prevent the use of the property being a remunerative occupation, must be disregarded in ascertaining the annual value." I am therefore of opinion, both upon principle and authority, that the appellants' argument fails. It is admitted in this case that, apart from the legal questions, the Assessor's actual valuations are not open to objection. The result, then, is that we hold the determination of the Valuation Committee to be right.

The Court dismissed the appeal and affirmed the determination of the Valuation Committee.

Counsel for the Appellants — Morison, K.C. — Hon. Wm. Watson. Agents — Wallace & Begg, W.S.

COURT OF SESSION.

Saturday, January 30.

FIRST DIVISION.

PERRETT'S TRUSTEES *v.* PERRETT.

Succession—Special Destination in Bond—General Settlement—Revocation of Special Destination—Bonds Partly Prior to, and Partly Subsequent to, Settlement.

A general disposition and settlement which recals all other testamentary writings will not, in the absence of circumstances indicative of a contrary intention, operate as a revocation of a

special destination taken by the testator himself, but it will operate as a revocation of a special destination made by another person, and to which the testator has, so to speak, only succeeded.

A died survived by his wife B, and leaving a trust-disposition and settlement, by which he revoked all prior settlements of a testamentary nature executed by him. A's estate mainly consisted of bonds and assignations of bonds containing special destinations to A and B, or either, or the survivor. The money invested therein belonged solely to A. Some of the bonds were dated prior to the settlement, others after it, and one though taken before, had been renewed after the date of the settlement. A's estate, exclusive of the bonds prior to the settlement, was quite insufficient to make good the provisions of the settlement.

Held (1) that the destinations in the bonds prior to the settlement had been revoked by the settlement; (2) that those in the bonds subsequent to the settlement remained unrevoked; and (3) that the bond renewed subsequent to the settlement fell within the category of investments taken prior thereto, and that accordingly the destination therein had been revoked by the settlement.

Succession—Special Destination—Heritage—General Settlement—Revocation—Disposition of Heritage Containing Special Destination.

A died survived by his wife B, and leaving a trust-disposition and settlement, by which he revoked all prior settlements of a testamentary nature. In his repositories was found a disposition of heritable property dated prior to the settlement, to the purchase of which A and B had contributed equally, and the title to which was taken to A and B jointly, and the survivor, and the heirs of the survivor.

Held that the property formed no part of A's estate at his death, and that accordingly it did not fall under his settlement, but passed on his death to B in terms of the destination in the conveyance.

David James Knox, Renfield Street, Glasgow, and others, trustees of the late William Perrett, Eversley, Carrick Castle, Argyllshire (*first parties*), and Mrs Margaret M'Cormick or Perrett, widow of the said William Perrett (*second party*), brought a Special Case for the determination of certain questions connected with the administration of the deceased's estate.

The testator died on 3rd March 1908 survived by his wife and four children. He left a trust-disposition and settlement dated 21st February 1903, by which he conveyed to trustees his whole estate for behoof of his wife in liferent, for her liferent alimentary use allenarly, declaring that in the event of the nett annual income being at any time less than £156 his trustees should make up the balance out of the capital of his estate. He also revoked all settlements of a testamentary nature executed by him "at any time heretofore," and declared that the provisions in favour of his widow were to be in full of all claims competent to her against his estate. On the death of the widow the trustees were directed to divide the estate among his children.

The case stated—"6. After Mr Perrett's death the following documents were found in his repositories, viz.—*a.* Disposition of Eversley, being villa property, Carrick Castle, Lochgoil, by Alexander Scott Mories, timber merchant in Greenock (in consideration of the sum of £835 paid to him in equal proportions by the said William Perrett and Mrs Margaret M'Cormick or Perrett, his wife, as the price thereof), in favour of the said William Perrett and the said Mrs Margaret M'Cormick or Perrett jointly, and the survivor of them, and the heirs of the survivor and their assignees whomsoever, dated 10th, and recorded in the Division of the General Register of Sasines applicable to the county of Argyll 12th, both days of November 1892. The statement in the disposition that said sum of £835 was contributed equally by Mr Perrett and Mrs Perrett is correct. Parties are therefore agreed that Eversley, to the extent of at least one-half *pro indiviso*, belongs to the second party, but they are in controversy as to the other half. *b.* Assignation by James Robertson, Northwood, Helensburgh, for the sum of £1300 (bearing to be paid by the said William Perrett and Mrs Margaret M'Cormick or Perrett, his wife), in favour of the said William Perrett and the said Mrs Margaret M'Cormick or Perrett, or either or the survivor of them, and his or her executors and assignees whomsoever, of bond and disposition and assignation in security, dated 21st and recorded 24th January 1895 by Alexander Ferguson, wine and spirit merchant in Glasgow, in favour of the said James Robertson, over ground-annual of £65 on subjects Gardiner Terrace, Blantyre, dated said assignation 6th, and recorded in the Division of the General Register of Sasines applicable to the county of Lanark 8th, both days of April 1899. *c.* Bond for £900 (bearing to be paid by William Perrett, residing at 2 Thornwood Terrace, Partick, and Mrs Margaret M'Cormick or Perrett, his wife), by Allan and M'Lean and others in favour of the said William Perrett and Mrs Margaret M'Cormick or Perrett, or either or the survivor of them, and his or her executors or assignees whomsoever; and disposition in security in their favour by William Barr Crawford and others over subjects Moorpark, Renfrew, dated 12th, and recorded Renfrew Burgh Register 15th May 1899. *d.* Bond for £900 by the said Allan and M'Lean (whereof £500 bears to be paid by the said William Perrett and Mrs Margaret M'Cormick or Perrett, his wife), in favour of the said William Perrett and Mrs Margaret M'Cormick or Perrett, or either or the survivor of them and his or

her executors or assignees whomsoever, to the extent of £500, and disposition in security in their favour by the said William Barr Crawford and others over subjects Moorpark, Renfrew, dated 26th and 27th, and recorded Burgh Register, Renfrew 30th, all days of May 1899. *e.* Partial assignation for £400 (being remainder of bond narrated in *d*) by the Reverend William Stark and others in favour of the said William Perrett and Mrs Margaret M'Cormick or Perrett, or either or the survivor of them, and his or her executors or assignees whomsoever, over subjects Moorpark, Renfrew, dated 8th, and recorded Burgh Register, Renfrew, 14th, both days of September 1903. *f.* Certificate of debenture by the City Line, Limited, incorporated under the Companies Acts, 1862 to 1890, whereby they acknowledge to have borrowed from and to be indebted to William Perrett and Mrs Margaret M'Cormick or Perrett, his wife, both of 3 Thornwood Terrace, Partick, payable to either or the survivor, the sum of £500, repayable 1st November 1905, dated said debenture 30th November 1900. Said debenture has minute of renewal thereon, of date 1st November 1905, renewing said debenture till 1st November 1908. *g.* Mortgage No. 6956 of the Glasgow Corporation Loans Fund for £500 (bearing to have been paid by the said William Perrett and Mrs Margaret M'Cormick or Perrett, his wife), and containing assignation to the said William Perrett and Mrs Margaret M'Cormick or Perrett and the survivor of them, and the executors of such survivor and their or his or her assigns, dated 2nd November 1905, expiring 11th November 1908. *h.* Bond No. 22,845 for £500 by the Clyde Navigation Trustees (bearing to be paid by the said William Perrett and Mrs Margaret M'Cormick or Perrett, his wife) in favour of the said William Perrett and Mrs Margaret M'Cormick or Perrett and the survivor of them, and their, his, or her executors, administrators or assigns, dated 6th November 1906, expiring 11th November 1911. *i.* Bond No. 23,098 for £500 by the Clyde Navigation Trustees (bearing to be paid by the said William Perrett and Mrs Margaret M'Cormick or Perrett, his wife), in favour of the said William Perrett and Mrs Margaret M'Cormick or Perrett, and the survivor of them and their, his, or her executors, administrators or assigns, dated 4th December 1906, expiring 11th November 1911. *j.* Bond No. 23,444 for £900 by the Clyde Navigation Trustees (bearing to be paid by the said William Perrett and Mrs Margaret M'Cormick or Perrett, his wife) in favour of the said William Perrett and Mrs Margaret M'Cormick or Perrett, and the survivor of them and their, his, or her executors, administrators or assigns, dated 7th May 1907, expiring 15th May 1912.

"The whole of the sums invested in the said securities *b* to *j* were the separate property of the testator, and with the sums mentioned below formed his whole estate.

"At the date of the said trust-disposition and settlement substantially the whole moveable estate of the testator was invested on securities containing special destinations in favour of the said William Perrett and Mrs Margaret M'Cormick or Perrett and the survivor of them. The whole of said investments were made by the testator himself.

"In addition to the above investments there was a balance of £101, 6s. 1d. at the credit of deceased's current account with the Royal Bank (Trongate Branch), Glasgow, at date of death. There were also two deposit-receipts for £250 and £100 respectively, both dated 10th October 1907, in name of Mr and Mrs Perrett, payable to either or the survivor. The parties are agreed that the sums contained in said current account and deposit-receipts belonged exclusively to Mr Perrett.

"The deceased left no property of value other than above narrated."

The first parties maintained that the said documents vouching the above investments (all or some of them) were not testamentary writings, nor such as the law recognises as competent of themselves to constitute special legacies or donations; that the deceased never made the sums of money contained in the said investments the subject of a donation to his wife, either *inter virum et uxorem* or a donation *mortis causa;* that in any case the trust-disposition revoked all previous provisions in favour of the wife, and that the said investments were part of the trust estate of the late William Perrett, and were to be dealt with and distributed under and in terms of his trust-disposition and settlement. They further maintained that in so far as the said security writs contained operative special destinations, these destinations were revoked by the said trust-disposition and settlement, or at all events all such special destinations as were prior in date to the said trust-disposition and settlement, in respect that the whole of the testator's estate was at the date of the said trust-disposition and settlement, and at the date of the testator's death, invested in said securities.

The second party maintained that the heritable property at Carrick Castle called Eversley now belonged exclusively to her in virtue of the destination in the recorded conveyance in Mr Perrett's and her name.

The second party further maintained that the said other investments marked *b* to *j* were specially destined to her by the deceased, that said special destinations were not revoked by his trust-disposition and settlement, and that said investments now belonged to her as survivor. In any event she maintained that such of the investments as were made after the date of the trust-disposition and settlement belonged to her.

The *questions of law* were—"(1) Is the heritable property at Eversley, Carrick, Argyll, wholly the property of the second party, or does it, to the extent of one-half, form part of the trust estate of the said William Perrett? (2) Do the sums contained in the bonds and dispositions in security, and assignations of bonds and dispositions in security, specified in article

6, under the heads of *b*, *c*, *d* and *e*, or any and which of them, belong to the second party; or do the said bonds and dispositions in security and assignations belong to the trust estate of the said William Perrett? (3) Does the debenture of the City Line, Limited, narrated in article 6, under head *f*, belong to the second party; or does it belong to William Perrett's trust estate? (4) Does the mortgage of the Glasgow Corporations Loans Fund, narrated in article 6, under head *g*, belong to the second party; or does it belong to William Perrett's trust estate. (5) Do the bonds by the Clyde Navigation Trustees, narrated in article 6, under heads *h*, *i* and *j*, belong in whole or in part to the second party; or do they belong to William Perrett's trust estate."

Argued for first parties—(1) *As regards the Investments prior to the Settlement*—Special destinations were in the absence of contrary intention revoked by a subsequent general settlement—*Campbell* v. *Campbell*, July 8, 1880, 7 R. (H.L.) 100, 17 S.L.R. 807; *Connell's Trustees* v. *Connell's Trustees*, July 16, 1886, 13 R. 1175, 23 S.L.R. 857; *Walker* v. *Galbraith*, December 21, 1895, 23 R. 347, 33 S.L.R. 246; *Minto's Trustees* v. *Minto*, November 9, 1898, 1 F. 62, 36 S.L.R. 50; *Brydon's Curator Bonis* v. *Brydon's Trustees*, March 8, 1898, 25 R. 708, 35 S.L.R. 545. The case of *Paterson's Judicial Factor* v. *Paterson's Trustees*, February 4, 1897, 24 R. 499, 34 S.L.R. 376, was distinguishable, as the facts in that case showed that the bonds were not intended to fall under the settlement. It was plain that the testator (Perrett) meant to deal with property yielding £156 a year, and if the investments prior to his settlement were excluded, the residue was nothing like sufficient to produce such a sum. (2) *As regards the Investments subsequent to the Settlement*—No distinction could be drawn between the investments prior to and those subsequent to the settlement, for it was clearly the intention of the testator to deal with his whole estate. The will spoke from the date of his death, so that the date of the investments was immaterial. The case of *Webster's Trustees* v. *Webster*, November 8, 1876, 4 R. 101, 14 S.L.R. 51, relied on by the second party, was inapplicable, for the terms of the special destination there showed that the subject was not intended to fall under the settlement. A subsequent special destination would not be held to revoke a prior general settlement in the absence of clear intention to the contrary.

Argued for the second party—(1) It was well settled that a special destination was not revoked by a general settlement where the special destination was taken by the testator himself, and not by another—*Thoms* v. *Thoms*, March 30, 1868, 6 Macph. 704, at p. 724: *Glendonwyn* v. *Gordon*, May 19, 1873, 11 Macph. (H.L.) 33, 10 S.L.R. 451; *Campbell* (*cit. supra*); *Gray* v. *Gray's Trustees*, May 24, 1878, 5 R. 820, 15 S.L.R. 571. (2) A subsequent special destination in the absence of contrary intention evacuated a will—*Webster* (*cit. supra*). The fact that the testator only revoked settlements executed "heretofore" showed that he did not intend his settlement to cover destinations subsequently taken.

At advising—

LORD PRESIDENT—The questions in this Special Case arise upon the trust-disposition and settlement of the late William Perrett and the terms of certain investments made by him. Mr Perrett's trust-disposition and settlement is dated 21st February 1903, and makes provision for a certain liferent to be paid to his wife. That trust-disposition and settlement also contains a clause of revocation of all prior settlements of a testamentary nature executed by the testator. Mr Perrett died in 1908, that is to say, five years after the date of the trust-disposition and settlement, and after his death it was found that he had left moveable property, which, however, was quite insufficient to make good the provisions of the trust settlement, if the investments which I am now to describe are excluded. These investments are as follows:—There is first of all a disposition of heritable property called Eversley, which is a villa at Carrick Castle, Lochgoil. The title of that subject is in Mr Perrett and his wife jointly and the survivor of them and the heirs of the survivor and their assignees whomsoever. That title bears that the consideration money had been paid equally by the two spouses, and there is an admission in the special case that that statement is true. This investment is in a category by itself. Then there are a series of bonds and assignations of heritable bonds. These all bear that the consideration money was paid by the two spouses, and the destinations are to the two spouses or either or the survivor of them, but as to this class of deeds it is admitted in the special case that the statement that the money was contributed equally by the spouses is not true, and that the money was really all Mr Perrett's. This set of these bonds, with one exception, were all taken before the date of the trust-disposition and settlement. These form another category. Then there is one debenture which stands by itself, the narrative in it being the same as before, but the debenture having been taken before the trust-disposition and settlement, and the time of payment having come, it was renewed after the date of the settlement. Then there are a set of bonds by the Clyde Navigation Trustees and a mortgage of the Glasgow Corporation Loans Fund, which, with the same narrative and the same destination as in the bonds I have referred to, were all taken after the date of the trust-disposition and settlement. There is only one other fact which I need to bring before your Lordships, namely, that if you take the aggregate sums of money contained in the investments taken before the date of the trust-disposition and settlement with the testator's other available money, you get, roughly speaking, nearly enough money to make the provisions of the trust-disposition and settlement effectual. Now we are asked in a series of questions whether these various

investments are ruled by the terms of their own destinations or are carried by the trust-disposition and settlement. There has been a good deal of difference of opinion, and perhaps the state of the law upon this matter has come to be somewhat artificial, but at the same time I think it is well fixed, and this is just one of those branches of the law where it is very important that we should not deviate from the settled law, because persons, perhaps not directly, but through their lawyers relying upon the decisions, have made their dispositions accordingly. Now the rules, I think, may be very shortly stated. The first rule is that a general disposition and settlement which recals all other testamentary writings, and is a general conveyance, will not operate as a revocation of a special destination made by the testator himself, but will operate as a revocation of a special destination which has been made by another person, and to which destination the testator himself has, so to speak, only succeeded. But these rules are only presumptions which can be redargued by circumstances, and one state of circumstances that would redargue the rule that such a settlement would not operate as a revocation of a special destination made by the testator himself would arise if it could be shown that the general disposition, unless it operated as a revocation, could not receive effect, because otherwise it would be impossible to fulfil the trust purposes thereunder. Well, the other rule that I think has been fixed is that wherever a person makes a special destination after the date of his trust-disposition and settlement, then that destination must be held to be the last expression of his will, because he has done so with his eyes open to what he had done in his prior trust-disposition and settlement. Applying these rules to the present case, with the facts that I have stated, the result is, I think, this, that the destinations in the investments made before the date of the trust-disposition and settlement must all be held to have been revoked, and these investments will therefore fall under the general trust-disposition and settlement. On the other hand, the investments made after the date of the trust-disposition and settlement will stand on their own special destinations. That only leaves two special matters still to be cleared up. First, there is this question of the debenture which was taken before, but was renewed after the date of the trust-disposition and settlement. This is all a question of *voluntas*. Now, although it must be presumed that a testator has applied his mind to the precise effect of what he was doing when he took a destination in the first instance, that presumption need not I think apply in the case of a renewal of an investment, because a person may very well renew an investment without giving the matter much consideration. I hold, therefore, that this debenture falls within the category of investments that were taken before the date of the trust-disposition and settlement.

The other question is that as to the heritable property. That I do not think falls under the rule at all, because that was heritable property the destination of which was taken to the two spouses jointly and the survivor of them and the heirs of the survivor, and to the purchase of which each spouse contributed one-half. I think that was a contractual arrangement where each took the chance of getting the half of the other, and accordingly I think that the property stands upon its own destination and is not carried, and could not be carried, by any testament whatsoever. The moment that disposition was mutually delivered, as it was by the mere fact of taking the destination as between these two people, I do not think this destination could have been altered except by joint consent of the spouses. Accordingly that is outside the rule altogether, and the lady who has survived takes the heritable property because she is the proprietrix under the terms of the conveyance. The result is that the first branch of the first question will be answered in the affirmative; the second branch of the second question will be answered affirmatively except with regard to *e*, which was taken after the date of the testator's settlement; the second branch of the third question will be answered affirmatively; the first branch of the fourth and fifth questions will be answered affirmatively.

LORD KINNEAR—I agree, for the reasons your Lordship has given. I only add one sentence with reference to the property of Eversley, which forms the subject of the first question. I agree with your Lordship as to that, because that property formed no part of Mr Perrett's estate at his death, and therefore could not fall under his trust-disposition and settlement. I take it to be perfectly well-settled law that when a right is taken to two persons jointly and the survivor and the heirs of the survivor, the two disponees are joint fiars during their lives, but upon the death of the first deceaser the survivor has the entire fee to the exclusion of the heirs of the predeceaser. The law is so laid down in every one of our institutional writers, and is supported by the authorities; and the rule applies to joint fiars who are husband and wife, in exactly the same way as to other persons. The question was considered in the very recent case of *Walker* v. *Galbraith*, 1895, 23 R. 347, in which Lord M'Laren said—"I know of no authority for giving to the words 'conjunct fee' in a destination to spouses a different construction from the construction which would be put on them in a destination to persons not connected by marriage." The view which I take is correctly stated in the contention of the second party. As to the other points I agree with your Lordship, and I only add that in the case which I have cited there is an observation which I think of material importance with reference to these other questions. Lord M'Laren, in giving the opinion of the Court as to the effect of a general disposition by both spouses jointly, in evacuating a previous destination, says that it is a question of intention, and he

points out what, he says, appears to him to be a strong piece of evidence of such intention. I agree with your Lordship with reference to all the questions.

LORD MACKENZIE—I am of the same opinion.

LORD M'LAREN and LORD PEARSON, who were sitting in the Division at the advising, gave no opinion, not having heard the case.

The Court answered the first branch of the first, fourth, and fifth questions, and the second branch of the third question, in the affirmative, and the second branch of the second question, as to the sums under heads "*b*," "*c*," and "*d*," in the affirmative, and as to the sums under head "*e*" in the negative.

Counsel for First Parties—Sandeman. Agent—W. B. Rankin, W.S.

Counsel for Second Party—Chree. Agent—A. P. Nimmo, W.S.

Wednesday, February 17.

FIRST DIVISION.

(SINGLE BILLS.)

JAFFRAY *v.* JAFFRAY.

Expenses—Husband and Wife—Divorce—Reclaiming Note for Husband (Pursuer)—Motion by Wife in Inner House for Payment of Expenses Incurred by Her in Outer House before Hearing of Reclaiming Note—Interim Award.

In an action of divorce for adultery at the instance of a husband the Lord Ordinary assoilzied the defender and found her entitled to expenses. The pursuer having reclaimed, the defender, who had already received three interim awards of £15 each towards her expenses, presented a note in the Inner House in which, on the narrative that she had no money to instruct her agents to support the judgment, she craved the Court to ordain the pursuer to pay the balance of her Outer House expenses, being £222 odds, or to remit the account to the Auditor for taxation with a view to decree.

The Court, without dealing with the Outer House expenses, *decerned* against the pursuer for £15 towards his wife's expenses in connection with his reclaiming note.

Hoey v. *Hoey*, October 23, 1883, 11 R. 25, 21 S.L.R. 23, and *Johnston* v. *Johnston*, January 27, 1903, 5 F. 336, 40 S.L.R. 302, *commented on.*

Robert Jaffray, tailor, raised an action of divorce on the ground of adultery against Mrs Jane M'Dougall Duncan or Jaffray, his wife.

On 30th June 1908 the Lord Ordinary (GUTHRIE) decerned against the pursuer for payment to the defender of £1 per week in name of interim aliment and of £15 to account of expenses in the cause. On 20th October and on 3rd November 1908 the Lord Ordinary gave decree for two further sums of £15 to account of expenses.

On 10th December 1908 the Lord Ordinary (GUTHRIE), after a proof, assoilzied the defender and co-defender from the conclusions of the action and found the pursuer liable in expenses to the defender and co-defender, allowed accounts thereof to be lodged, and remitted the same to the Auditor to tax and report.

On 31st December 1908 the pursuer reclaimed against the Lord Ordinary's interlocutor, and on 6th January 1909 the case was sent to the roll.

On 17th February 1909 the defender presented a note to the Lord President, in which she stated—". . . The account of expenses incurred by the defender to her agents amounts to £267, 11s. 3d., to account of which she has received from her husband, the pursuer, the sum of £45, leaving a balance due by him thereon of £222, 11s. 3d.; that the defender is destitute, and has no money to instruct her agents to support the judgment of the Lord Ordinary, and accordingly she is under the necessity of craving your Lordship to move the Court to ordain the pursuer to pay to her said balance of £222, 11s. 3d. within six days or such other time as your Lordships may appoint, or to remit the said account to the Auditor to tax and report, and thereafter to ordain the pursuer to pay the taxed amount thereof within said period, or to do otherwise as to your Lordships may seem proper."

Argued for the defender (respondent)—The defender was entitled at this stage to payment of the expenses incurred by her in the Outer House—*Hoey* v. *Hoey*, October 23, 1883, 11 R. 25, 21 S.L.R. 23.

Argued for the pursuer (reclaimer)—The Court at this stage should not deal with the question of expenses, the whole case, including the award of expenses, being before the Division for review—*Johnston* v. *Johnston*, January 27, 1903, 5 F. 336, 40 S.L.R. 302.

LORD PRESIDENT—This is a case in which a husband brought an action for divorce against his wife on the ground of adultery. In the Outer House the Lord Ordinary has pronounced an interlocutor, in which he finds that the pursuer has failed to prove his averments, and therefore sustains the defences, assoilzies the defender, finds the pursuer liable in expenses to the defender and co-defender, allows accounts thereof to be lodged, and remits the same to the Auditor to tax and report. Against that interlocutor a reclaiming note has been taken by the pursuer, and the motion made before your Lordships to-day by the defender's counsel is to remit that account to the Auditor for taxation, in order that when the account comes back the defender may get decree for the sum brought out. There have been three interim awards of expenses of £15 each made in the Outer House, and the defender has received payment of the sum of £45, to which these awards amount, but