testator, to select among them. But then "religious" has been held not to be a definite object according to the decisions, and if you have a bequest which includes the word "religious" as one of the objects to which the money may be applied, that bequest is bad from vagueness and uncertainty. That being so, I have come to the conclusion that we must answer this question in the affirmative.

LORD LOW—I have come, with much hesitation and with some regret, to the same conclusion. I think it is conceded that if the clause in the settlement can fairly be read as meaning that any purpose to which the fund is devoted must be at the same time educational and charitable and religious, the bequest is good. Now if what had been directed had been to divide the fund among such educational, charitable, and religious institutions as the trustee might select, I think that the direction might fairly have been construed as meaning institutions which combined all three characteristics, and the case would then have been on all fours with the case of *Cobb's Trustees*, 21 R. 638, which was decided in this Division. But although that might be what the testator had in his mind, the word which he uses is not "institutions" but "purposes." The trustee is directed to divide the residue amongst such educational, charitable, and religious purposes as he thinks fit. If you are told to divide a fund among three classes—A, B, and C—I think that means that you must give part of it to each of the three classes, and that the direction is not confined to an object which combines the characteristics of all of them. Therefore I have, as I said, come, although with reluctance, to the conclusion that the bequest cannot be sustained.

LORD ARDWALL—I concur. It has been repeatedly said that no one case regarding the construction of a will can be held to rule another, unless the words in both wills are identical. Now here the words of the bequest are not identical with those under consideration in any of the cases which have been quoted to us. I think, therefore, we must endeavour to find what is the natural meaning of this clause read as any ordinary English sentence would be read. In the first place, we have a direction to divide the residue "amongst" certain "purposes." Now that means, to my mind, that there are different purposes amongst which it is to be divided, and we find it is distinctly set forth what these purposes, or rather I should say three classes of purposes, are. They are educational purposes, charitable purposes, and religious purposes. As I read this will, the trustee is directed to divide the residue amongst these three classes of purposes, and he would carry out this will properly, assuming the direction to be valid, by selecting one or more educational purposes, one or more charitable purposes, and one or more religious purposes, to benefit by the bequest of residue. That being so, it follows, that we have here a bequest which is void from uncertainty, because in addition to charitable purposes there are introduced as objects to be benefited educational purposes and religious purposes, and the direction to divide a certain sum of residue amongst purposes of these descriptions at a trustee's discretion is void as being vague and indefinite.

LORD DUNDAS was sitting in the Extra Division.

The Court answered the question in the affirmative.

Counsel for the First Parties — Cullen, K.C.—Sandeman. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Counsel for the Second Parties — Lord Kinross—Jameson. Agents—Boyd, Jameson, & Young, W.S.

Thursday, May 20.

SECOND DIVISION.

(SINGLE BILLS.)

GALLACHER *v.* CONNERTON.

Title to Sue—Husband and Wife—Curator ad litem—Married Woman—Marriage pendente lite—Action of Affiliation and Aliment.

The pursuer in an action of affiliation and aliment, in which the Sheriff-Substitute had granted decree and the Sheriff, on appeal, had assoilzied the defender, appealed to the Court of Session. The pursuer married, and the husband, with whom the pursuer was living, intimation of the action having been made to him on the motion of the defender, declined to sist himself. The defender having moved that the appeal be dismissed on the ground that a married woman could not sue in her own name, the Court, on the motion of the pursuer, *appointed* a *curator ad litem*.

In October 1906 Annie Gallacher raised an action in the Sheriff Court at Linlithgow against James Connerton, concluding for aliment for an illegitimate child to which she gave birth in April 1906 and of which she alleged the defender was the father. In December 1906 the Sheriff-Substitute (MACLEOD) granted decree. The defender appealed to the Sheriff (MACONOCHIE), who assoilzied. The pursuer appealed, and in April 1907 the case was sisted to enable her to apply for admission to the poor's roll, which application was granted. In June 1908 the pursuer married John Gaffney.

In March 1909, when, the sist having been recalled in July 1908, the case appeared in the roll, the defender lodged a note narrating the marriage and craving an order for intimation to the pursuer's husband that he might sist himself as consenting and concurring, or failing his doing so, dismissal of the appeal. Intima-

tion was made to the pursuer's husband with whom she was living at the time and he declined to sist himself.

The defender thereafter in the Single Bills moved the Court to dismiss the appeal on the ground that a married woman could not sue in her own name—Fraser, Husband and Wife, 2nd ed. i, p. 566. The pursuer opposed the motion, and argued that a wife was entitled to sue an action in which her husband had no interest, without his consent, and alternatively that any defect in the pursuer's title could be cured by the appointment of a *curator ad litem*—*Burns, &c.* v. *Blair*, December 17, 1829, 8 S. 264; Fraser, *op. cit.* i, p. 568-9; Ersk. Inst., i. 6, 21.

The defender opposed the motion for the appointment of a curator, and argued that where the husband, the wife's natural guardian and curator, was as here living with her, and refused to concur, the Court would not appoint a *curator ad litem*, though that course was no doubt competent where the spouses were living apart.

The Court, without delivering opinions, appointed a *curator ad litem.*

Counsel for the Pursuer (Appellant)—Inglis. Agent—John Grieve, W.S.

Counsel for the Defender (Respondent)—J. H. Henderson. Agent—Wm. Considine, S.S.C.

Saturday, May 22.

EXTRA DIVISION.

(Before Lord M'Laren, Lord Pearson, and Lord Dundas.)

YOUNG *v.* HEALY.

Process—Proof or Jury Trial—Action of Reduction—Discretion of Lord Ordinary—Evidence (Scotland) Act 1866 (29 *and* 30 *Vict. cap.* 112), *sec.* 4.

In an action of reduction of a deed on the ground of "force and fear," the Lord Ordinary refused to send the case to a jury, and pronounced an interlocutor allowing a proof.

On a reclaiming note the Court *refused* to interfere with the discretion of the Lord Ordinary.

The Evidence (Scotland) Act 1866 (29 and 30 Vict. cap. 112), sec. 4, enacts—"If both parties consent thereto, or if special cause be shown, it shall be competent to the Lord Ordinary to take proof in the manner above provided in section 1 hereof (*i.e. before himself*), in any cause which may be in dependence before him, notwithstanding of the provisions contained in the Act passed in the sixth year of the reign of H.M. King George IV, cap. 120, section 28, and the provisions contained in the Act passed in the thirteenth and fourteenth years of the reign of Her present Majesty, cap. 36, section 49; and the judgments to be pronounced by him upon such proof shall be subject to review in like manner as other judgments pronounced by him."

The enumeration of actions appropriated for trial by jury under the Judicature Act 1825 (6 Geo. IV, cap. 120), sec. 28, includes actions of reduction on the ground of force and fear.

Elizabeth James Young, residing at Uddingston, brought an action of reduction against Christopher John Healy, writer, Glasgow, and James Craig, C.A., Edinburgh, as trustee acting under a trust-disposition for creditors granted in his favour by the said Christopher John Healy, and the firm of Healy & Young, writers, Glasgow, of which Christopher John Healy was a partner. The pursuer sought reduction of a certain assignation alleged to have been granted by her in favour of the defender Healy.

The pursuer, *inter alia*, averred—"(Cond. 1) In or about January 1898 the defender Christopher John Healy and John Ross Young, writer, Glasgow, entered into partnership and commenced business under the firm name of Healy & Young, as writers, law agents, and conveyancers in Glasgow. The said John Ross Young is a brother of the pursuer. . . . (Cond. 2) The said firm of Healy & Young became agents for the trustees of the late John Ross, sometime coppersmith, Glasgow, who was grandfather of the said John Ross Young and the pursuer. The said John Ross Young's mother was liferentrix on the estate, and the sole beneficiaries were the said John Ross Young, the pursuer, and James Gladstone Young, another brother of the pursuer. These four persons were latterly also the trustees on the said estate, and at the date of the said John Ross Young's disappearance, as after mentioned, the trustees were the pursuer, the said John Ross Young, and the said James Gladstone Young. The said trust estate consisted of heritable properties and heritable bonds valued at £13,000. (Cond. 3) In or about May 1898, after the said firm's appointment as agents, the said John Ross Young, who was the partner in charge, proceeded to administer and manage the trust estate of the said John Ross, but did not keep a separate bank account for the trustees, and immixed the funds of the estate with those of his firm of Healy & Young. About the same time the said John Ross Young and his firm of Healy & Young began to finance several speculative builders in Glasgow, and in order to do so they lent the funds of the said trust estate. This was done by the said John Ross Young outwith the knowledge of the said James Gladstone Young and the pursuer. By these actions, along with other fraudulent acts on the part of the said John Ross Young, and including speculations upon the Stock Exchange, the trust estate of the said John Ross was deprived of the sum of about £6000. . . . (Cond. 4) On or about 18th June 1908 the said John Ross Young, who is married, and resided then at Mount Vernon, Glasgow, disappeared from his home. On 19th June a letter and a brown paper parcel addressed