of writing out in manuscript the notes of evidence, and lodging the manuscript copy in process, while the evidence is at the same time printed for the use of the Court and the parties. Their Lordships stated that there was no reason why the process copy should not be in print, or why the print should be copied over in manuscript for the sake of satisfying an imaginary rule that every step of process should be in manuscript. Such a practice increased expense, without any corresponding advantage.

Counsel for the Reclaimer—Mr Fraser and Mr Rhind. Agents—Messrs Jardine, Stodart, & Frasers. W.S.

Counsel for the Respondent — Mr Strachan, Agent—Mr Andrew Beveridge, S.S.C.

Tuesday, December 1.

FIRST DIVISION.

HUNTER AND OTHERS *v.* BURNLEY AND OTHERS (ECCLES' TRUSTEES).

Trust—Residue—Loss on Investments—Assignation of Bond—Pro indiviso *Creditor—Interest.* Generally, losses on investments of trust funds must be borne by the residue of the trust estate. Where, under a power of allocation in a trust-deed, trustees have allocated to a beneficiary a share in a heritable bond, that beneficiary cannot, if he becomes entitled to payment of his share of the trust estate while the bond is yet unrealized, demand an assignation to a proportion of the bond so as to become a *pro indiviso* creditor along with the trustees.

The pursuers sought in this action to recover payment of the balance of a legacy due to them from the trust-estate in the hands of the defenders. That balance was payable in October 1865, at which date it consisted of £350 in bank, and £100, being part of a heritable bond for £1500 held by the trustees. The pursuers contended that they were entitled to payment of the sum in bank as at October 1865, with interest at 5 per cent. from that date; and farther, that the trustees were bound either to pay the £100 along with the rest, or to assign the bond to the extent of the pursuers' interest therein. The trustees maintained that they were not bound to assign the bond to any extent, but were entitled to take their own time to realise it; and they claimed right to retain the money in bank in order to meet any loss which might arise on the bond. That bond, they alleged, had once been wholly allocated to the pursuers, and the allocation had been changed without any intention of relieving the pursuers from the loss which might arise therefrom. The Lord Ordinary (JERVISWOODE) sustained the defences and dismissed the action.

The pursuers reclaimed.

CLARK and MACKINTOSH for reclaimers.

MONCREIFF, D.-F., and H. J. MONCREIFF, for respondents.

The LORD PRESIDENT held that, on October 1865, the defenders were under an obligation to pay over the sum then due to the pursuers, whatever it was, unless any part of it was invested in such a way that it could not be immediately called up. Now the defender's own statement was that, to the extent of £100, the money was in that position, but the rest of it was in bank. The defenders had not alleged any sufficient reason for retaining the sum confessedly lying in bank. They spoke about retaining it in case there should be any loss on the bond, but they had not made it intelligible how the pursuers could be made liable for any loss arising in that way. Any such loss would fall on the residue of the estate. The residue appeared to be large. From the absence of any statements on record to the contrary, it must at least be assumed that the residue was quite capable of sustaining any such loss as was here apprehended, and such loss must then fall upon residue, unless it occurred through the malversation of the trustees. The notion, therefore, that the defenders were right to retain the money in bank was out of the question, and it followed necessarily that that money was payable as in October 1865; and if not paid, must bear interest at 5 per cent. That was the ordinary rule, and there was nothing in the circumstances of this case to prevent the application of the ordinary rule.

As to the £100, that was in a different position, and would be payable only now, when made available by the sale of the subjects over which it was secured.

The other Judges concurred, LORDS DEAS and KINLOCH holding that the pursuers were quite wrong in demanding a part assignation to the bond. That bond was a *unum quid*, which the trustees were entitled to hold and realise at their own discretion; and the introduction of a *pro indiviso* creditor into the bond might have greatly embarrassed the trustees in their management and realisation of the security.

In the circumstances, expenses to neither party.

Agents for Pursuers—W. F. Skene & Peacock, W.S.

Agents for Defenders—Murray, Beith & Murray, W.S.

Wednesday, December 2.

SECOND DIVISION.

WILSON *v.* DICK AND SON, AND OTHERS.

Agent and Client—Employment—Services—Remuneration. Circumstances in which *held* that an investigation into the affairs of a firm was made on the employment of the partners of the firm, as well as on behalf of other parties interested.

In this case Mr Richard Wilson, chartered accountant in Edinburgh, sued Mrs Janet Birrell or Dick, widow of the late Charles Dick, brewer in Edinburgh, and Brydon Monteith, farmer, Tower Mains, near Edinburgh, as individuals; the firm of Charles Dick & Son, now or lately brewers in Edinburgh, and William Dick, lately residing in Edinburgh, presently in South America; the said Mrs Janet Birrell or Dick, and Charles Thomson, brewer in Edinburgh, the individual partners of said Company, as such and as individuals, for the sum of £419, 9s. 6d. The pursuer makes the following statement:—The pursuer, Richard Wilson, is a chartered accountant in Edinburgh, and on or about April 14, 1865, was instructed and employed by the defenders, Mrs Janet Birrell or Dick and Mr Bryden Monteith, at a meeting of parties interested in the business of the defenders, Charles Dick & Son, brewers in Edinburgh, held on said date, to examine a balance-sheet that had been lately made up of the said defenders', Charles Dick & Son's