and continued to possess in October 1868 merely upon a lease for a single year. The very contemplation of having a written lease ultimately made out is unfavourable to the view that anything was irrevocably fixed.

"On 29th January the respondents were warned, by the usual burgh ceremony of chalking of doors, to remove at the ensuing term from the property occupied by them, and at this date still the respondents had no written lease.

"On the 4th of February thereafter the lease now founded upon was executed by Stewart & Co.; and the question thus arises, Whether the respondents are to be dealt with as validly vested with a tenancy for three years, or whether the suspenders have not acquired the subjects by their statutory notice, free from any lease extending beyond the then current year ending at Whitsunday 1869?

"The questions that have here arisen are partly questions of fact and partly questions of law. The respondents say that, in point of fact, they knew nothing of the railway company's rights until after they had obtained the lease in February 1869; and they argue that at that time Stewart & Co. were still the undivested proprietors of the subjects, and thus entitled to grant them such a lease.

"They further argue, in point of law, that even if they had known of the railway company's proceedings, they were not bound to regard them, in consequence of what had previously passed in their verbal communications with Stewart & Co.

"The Lord Ordinary thinks that the questions of fact and law are a good deal mixed up together.

"The giving of notice to take lands by a railway company has been assimilated to a concluded contract of sale. But the Lord Ordinary thinks that it is something more than a mere private contract would be. The passing of the Act establishing the railway, the scheduling of the properties intended to be taken, and the notoriety generally attending the company's proceedings, give a publicity to this matter which would not attach to the execution of private missives of sale. Further, when the notice given by the railway had been followed, as here, by a formal warning to remove, it is impossible to conceive that after that the respondents were in ignorance of what was going on. The Lord Ordinary is willing to take as favourable a view of the evidence as possible for the respondents, and to hold that, in the multiplicity of proceedings that took place at that time, the officials examined for the suspenders may have been forgetting or confounding some things that took place. But it is certain that a warning to remove was given, and that the respondent M'Ewen, if not then present, heard of it next day from his shopman. He cannot be allowed, it is thought, to plead ignorance of its meaning, or of its connection with the railway company's proceedings, which, as they involved the removing of many other parties, must have excited a considerable sensation in the neighbourhood. It cannot be overlooked that the respondent immediately afterwards hurried on the preparation of the lease, and it is remarkable that, though in communication with his own agent, he did not tell him of the warning to remove until after the lease was obtained. He says also that he never spoke on the subject to the landlord, from whose actings, in some way or other, the warning must have proceeded. Any ignorance existing in such a state of things is very like knowledge.

"In these circumstances, the Lord Ordinary cannot but hold that when the respondents obtained the only lease they have, they did so with such knowledge of what was going on as to preclude them from altering the state of matters, to the prejudice of the suspenders. Stewart & Company could not lawfully do so, and the respondents should not have been parties to the attempt.

"If the lease thus obtained is taken out of the way, it seems quite clear that the respondents have no case. A verbal agreement of lease for more than one year is not binding upon either party, except for that year. It is clearly not valid against a singular successor. The railway company are not bound to implement such an agreement, or to compensate the respondents for its being disregarded."

The respondents reclaimed.

MONCRIEFF and BALFOUR for them.

SOLICITOR-GENERAL and WATSON in answer.

At advising—

LORD-PRESIDENT—There are really some nice points in this case; but it just falls short of raising them. The Railway Company gave notice in October 1868 of their intention to take these subjects; and I am satisfied it was possessed by the tenants in January 1869 at least. There was then no lease. The premises were held by the reclaimers under a verbal contract; and the Company were therefore entitled by statute to acquire the land on payment of compensation to the landlord alone. They were exempted by statute from the necessity of compensating the tenants; and the question arises, whether a landlord and tenant can, by laying their heads together and concocting a lease, defeat this provision? I do not wish to say anything disagreeable; but to do so was a fraud. But I will confine myself to calling it a legal fraud; for there was no moral fraud in the transaction. There is a general feeling that it is perfectly justifiable to "do" a railway company. And that was the nature of what took place here. It is said the Messrs Stewart were bound to grant this lease; but it is admitted that they were only bound to do so *in foro conscientiæ*. There may have been a promise to grant the lease to be fulfilled; and the lease so granted might be a good lease in a different question. But the Railway Company were in the position of purchasers of the subjects, and the proprietors, having sold the subjects to them, were not entitled to do anything to defeat their rights. I therefore think the Messrs Stewart were not bound to grant this lease; and I am for adhering to the Lord Ordinary's interlocutor.

The other Judges concurred.

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

Agents for Respondents—Graham & Johnston, W.S.

Friday, March 18.

SPECIAL CASE—GRAY *v.* WADDELL.

Provisions—Vested Interest—Postponed Vesting—Term of Payment—Assignation. A truster, in his trust-disposition and settlement, directed that "the shares or provisions of said residue to his said daughters should become vested interests on their being married or attaining the age of twenty-one years complete, which ever event should first happen, and should become payable to them at the first term of Whitsunday or Martinmas that should happen

after his youngest child alive at the time should have attained the age of twenty-one years complete: Declaring, that in case any one or more of his said children should die before the foresaid share or respective shares or provisions provided for him, her or them, in manner therein and before specified, should have vested or become payable as therein and above mentioned, then and in such case not only the original share or shares of the child or children so dying, but the share or shares accrescing to him, her or them, in virtue of said clause, should appertain and accresce to the survivors or survivor of his said children." One of the daughters married and died, leaving an only child, before the majority of the youngest child. Thereafter, and before the majority of the youngest child, her husband assigned her share of the residue of her father's estate to certain parties. In a competition between the only child of the marriage and the representatives of the husband's assignees, *held* that the lady's share in the residue of her father's estate vested in her on her marriage, so as to render the assignation of it by her husband valid.

This was a Special Case submitted for the opinion and judgment of the Court by the following parties, viz.:—*First*, George Gray, banker, Dalkeith, the sole surviving testamentary trustee and executor of the late James Bowes, corn merchant in Dalkeith; and the said George Gray and James Bowes, draper, Huddersfield, the surviving trustees acting under trust-disposition and assignation by the testamentary trustees of the said late James Bowes and others, dated 19th and 25th September, and 2d and 5th October 1850: *Second*, Mrs Mary Smeall or Bowes, widow of the late John Bowes, sometime agent for the Clydesdale Banking Company at Dalkeith; Magdalene Mushet Bowes, grocer in Dalkeith; Alexander Yellowlees, merchant in Galashiels; and John Gray, corn merchant at Elginhaugh, the trustees and executors acting under holograph will and settlement executed by the said John Bowes, dated 1st May 1860; and *third*, Mrs Magdalene Cleghorn or Waddell, widow of the deceased John Waddell, merchant, Dalkeith, and only child of the late Mrs Isabella Bowes or Cleghorn, who was a daughter of the said deceased James Bowes.

The late James Bowes died in 1840, leaving a trust-disposition and settlement, by which he disponed and assigned his whole heritable and moveable estate to certain trustees, in trust, for certain purposes. The truster by said deed, *inter alia*,—"*fourthly*, appointed that the free income of the residue of his estate should be paid to his widow (during viduity), under the burdens, provisions and conditions therein mentioned, until his youngest child alive at the time should attain majority, subject to an obligation to aliment such of the children as should live in family with her; and, upon that event, that she should have the liferent of his furniture, and an annuity equal to one-third of the free income of the residue (during her viduity); but in the event of her marrying again, that she should receive an annuity therefrom of £20 per annum. *Fifthly*, so soon as his youngest child alive at the time should have attained majority, he appointed his trustees, in virtue of the powers therein contained, to sell and dispose of, either by public roup or private bargain, his whole heritable and moveable means and estate thereby generally and particularly conveyed; and, after payment of his debts, sick-bed and funeral charges, the expenses attending the execution of said trust, and the legacies, provisions and others therein contained, and on investing a capital sum sufficient for payment of the said annuity provided for his said spouse in the events foresaid, on proper heritable security, payable to her in liferent, and to the said trustees in fee, in trust, and for behoof of his children therein named, in terms of his said trust-disposition and settlement, he directed his said trustees to divide and make payment of the free residue of his said estate and effects, heritable and moveable, to and in favour of his eleven children therein named, including his daughter Isabella Bowes, afterwards Cleghorn (the mother of the party hereto of the *third* part), and any other lawful child or children that might be born to him living at the time of his decease, or born thereafter, and that equally between or among them, share and share alike, and at and upon the terms, ages and events therein specified, viz., that the shares or provisions to his said sons of the residue of his said estate should become vested interests on their attaining the age of twenty-one years complete, and the shares or provisions of said residue to his said daughters should become vested interests on their being married or attaining the age of twenty-one years complete, whichever event should first happen, and should become payable to him, her or them respectively at the first term of Whitsunday or Martinmas that should happen after his youngest child alive at the time should have attained the age of twenty-one years complete: Declaring that in case any one or more of his said children should die before the foresaid share or respective shares or provisions provided for him, her or them, in manner therein and before specified, should have vested or become payable as therein and above mentioned, then and in such case not only the original share or shares of the child or children so dying, but the share or shares accrescing to him, her or them in virtue of said clause, should appertain and accresce to the survivors or survivor of his said children, and be divided equally amongst them, if there should be more than one, share and share alike, and the same should vest and become payable at and upon the same terms, ages, or events as his, her, or their original shares were thereby directed to become payable as aforesaid: Providing, nevertheless, that in case any one or more of such children as should die as aforesaid should have left lawful issue of his, her, or their bodies, then, and in that case such issue should be entitled to the share or shares which their deceased parent or parents would have been entitled to if alive, and the same should become payable to such issue at and upon the same terms, ages, and events as his, her, or their deceased parent or parents would have been entitled to. Further, it was, by said trust-disposition and settlement, specially provided and declared that, in the event of any or all of the truster's said daughters contracting a marriage or marriages which should appear to his said trustees inexpedient or unsuitable, then his said trustees were thereby expressly authorised and empowered not to pay over to the daughter or daughters contracting said marriage the share or shares of his said means and estate provided for them as aforesaid, but to invest and lay out the same upon proper heritable security, due and payable to such daughter or daughters in liferent

for their liferent use allenarly, excluding expressly the *jus mariti* and curatorial powers of their husbands, with whose debts and deeds their said liferent should noways be affected, and to the child or children to be lawfully procreated of the bodies of his said daughters respectively, who should share the capitals of the shares or provisions of their respective mothers equally among them in fee; and, failing lawful issue of the bodies of his said daughters, the said several shares or provisions should revert and be divided equally amongst his other children and their heirs and successors *per stirpes* respectively."

The truster was survived by his widow and eleven children, including a daughter named Isabella, who had married in 1837, after she had attained majority, to James Cleghorn. There was no marriage settlement, and she died in 1844. In 1846 her husband, Cleghorn, assigned the share in the residue of the estate of James Bowes which had belonged to his wife to certain parties. The youngest child attained majority in 1849. In 1850 the testamentary trustees paid £120 to these assignees in part payment of the Mrs Cleghorn's share in the residue; and, by assignation dated March 1850, the assignees sold their right to the remainder of the share to Mr John Bowes for £60.

At this time, in 1850, the only child of Mrs Cleghorn, viz., Mrs Magdalene Cleghorn, now Waddell, was only eight years of age, and she neither knew nor consented to the execution of these deeds; and she now contended in this Special Case that, as the only child of her mother, she was entitled to the share of the residue of the estate of James Bowes which belonged to her mother, in respect that that share did not vest in her mother until the youngest sister attained majority in 1849, and consequently, that the assignation of it by her father, James Cleghorn, in 1846, was inept. It was claimed, on the other hand, by the trustees and executors of the late John Bowes, in virtue of the before-mentioned assignation, dated March 1850, in his favour.

The questions submitted were—

"I. Did the said share of the residue of the said deceased James Bowes' trust-estate vest indefeasibly in the said Mrs Isabella Bowes or Cleghorn during her lifetime, so as to be assignable by her said husband in her right after her death?

or,

"Did the right thereto and interest therein, upon the majority of the youngest child of the truster, open to and become indefeasibly vested in the *third* party hereto as beneficiary in her own right?

"II. Regard being had to the terms of the said trust-disposition and settlement of the said deceased James Bowes, and the facts and circumstances before set forth, were his testamentary trustees, upon the majority of his youngest child, entitled to pay over any, and, if any, what, portion of the said share of residue to the assignees, voluntary or judicial, of the said James Cleghorn?

or,

"Were they bound to hold account for and pay the same to and for behoof of the party hereto of the *third* part?

"In the event of the Court pronouncing judgment upon the foregoing queries in favour of the party of the *third* part, the parties crave that judgment be pronounced in her favour, decerning the parties of the *first* part to make payment to her of the said balance in their hands, with the proportional part of the free income of the said residue effeiring thereto from and since the said 15th August 1869, reserving to her any further claim under the minute of agreement between the parties above set forth."

HORN and DEAS contended that the share did not vest until the majority of the youngest child, and quoted *Croom's Trustees*, Nov. 30, 1859, 22 D. 45.

M'LAREN and BALFOUR in answer.

The Court were unanimously of opinion that the first and second questions should be answered in the affirmative, and the first and second alternative questions in the negative.

LORD KINLOCH—The substantial point in controversy is, Whether, under the terms of the trust-disposition of James Bowes, the share of residue thereby given to each child vested at that child's majority if a son, majority or marriage if a daughter, or did not vest till the youngest child attained twenty-one years.

The deed is by no means a skilfully framed or accurately worded instrument. But in one clause it contains enough of what is plain and express and unambiguous to afford, as I think, its own satisfactory construction on the point now in discussion.

The granter gives his wife, if surviving him, a liferent of his whole means and estate, till his youngest child alive should attain majority; burdening her till that period with the expense of maintaining and educating the children. From that date she is to have an annuity of one-third of the free produce, restrictable to £20 per annum should she enter into a second marriage. The granter provides that at this date of the youngest child's majority, his trustees should realise all his property, and, after investing a capital sum sufficient for his wife's annuity, divide the whole amongst his children named, and any others still to be born to him. And he adds this express declaration—"that the shares or provisions to my said sons of the residue of my said estate shall become vested interests on their attaining the age of twenty-one years complete, and the shares or provisions of said residue to my said daughters shall become vested interests on their being married or attaining the age of twenty-one years complete, whichever shall first happen, and shall become payable to him, her, or them respectively, at the first term of Whitsunday or Martinmas that shall happen after my youngest child alive at the time shall have attained the age of twenty-one years complete."

This is a very clear and distinct clause, incapable, as I think, of any other meaning than one. It preserves very carefully the well known and recognised distinction between a provision vesting and becoming payable. The vesting is at majority or marriage; the payment when the youngest child reaches twenty-one. I do not think it possible to construe this clause except as meaning that, whilst payment should not be made till the youngest child became twenty-one, vesting should take place at majority or marriage, so as to give after that date the power of disposal—of assigning the share by deed *inter vivos* or *mortis causa*, or of making it the subject of settlement in a marriage-contract.

The terms of this clause are so unambiguous,

that unless something be found in the settlement elsewhere, overruling the plain directions of the clause, it must be held to fix the point of vesting as its plain words import.

I can find nothing in the settlement having to my mind this effect. Indeed the only clause creating any difficulty is that which provides a right of survivorship to the children *inter se*, "in case (as the words run) any one or more of my said children shall die before the foresaid share or respective shares or provisions provided for him, her, or them in manner before specified shall have vested or become payable as above mentioned." The alternative phrase "vested or become payable" was maintained to have the effect of suspending vesting till the time of payment, in order to give the benefit of survivorship to the children who should then be alive.

I cannot accede to this view, and for this primary reason—that it simply deprives of all meaning and substantially takes out of the deed the prior direction as to vesting already quoted. To hold that vesting was suspended till the time of payment is directly contrary to the plain declaration that vesting was to take place at majority or marriage. I cannot therefore hold this to have been the meaning of the clause now in question. The only rational meaning that can be put on it is to consider it as declaring a survivorship in the event of any child dying before his share vested in him. The clause, accordingly, speaks of the child dying "before vesting," which it never would have done had it been intended to suspend vesting till the time of payment;" it would have simply said, "dying before payment," which in that case would have expressed the idea. The insertion of the words, "or become payable," must have proceeded from some confusion in the mind of the writer between payable and due; or some deep metaphysical perception of the antecedence of vesting to payment. The mode in which the rest of the clause is worded as to original and accrescing shares, and the mode in which "the same shall vest and become payable at and upon the same terms, ages, or events as his, her, or their original shares are hereby directed to become payable," brings over its whole meaning a Cimmerian darkness. If I am not to interpret the clause as giving a right of survivorship in the event of any child dying before vesting of his share, in terms of the clause immediately preceding, I can, consistently with the retention of the previous clause, put no rational meaning on it at all. And I only follow an undoubted canon of construction when I refuse to control a clear and intelligible trust-direction by a passage in the deed which the writer has not made me understand.

There is no other clause in the deed but what may be construed and enforced in full consistency with the delaration as to vesting. The clause which was most discussed before us was that which authorised the trustees, if they thought any of the daughters had made an unsuitable or inexpedient marriage, to settle her share on herself in liferent, and her children in fee, in place of paying over to her the capital. The question was stirred, whether the trustees were bound to form their decision on this matter at the date of the marriage, or might postpone it till the division of the fund. I do not think the solution of this question affects the present inquiry. The utmost that in any event can be said is, that in the case of the daughters the fee vested *qualificate*, or subject to a certain control by the trustees. This does not infer that in the case of all the children whatever no vesting took place till the period of division; nor does it eliminate from the deed the distinction between vesting and payment expressed in by far its most distinct and unambiguous clause.

I am of opinion that the fund now in question vested in Mrs Isabella Bowes or Cleghorn during her lifetime, and passed to her husband by the assignation of marriage (no marriage-contract being alleged), so as to be assignable and well assigned by Mr Cleghorn.

Agent for the First and Second Parties—W. P. Anderson, S.S.C.

Agents for the Third Party—Duncan, Dewar & Black, W.S.

Saturday, March 19.

BEVERIDGE *v.* COLLIES.

Caution—Bill—Forgery—Suspension. Suspension *refused*, except upon caution, of a charge upon a bill to which the suspender said his acceptance had been forged.

This was a note of suspension and interdict presented by Dr Robert Beveridge, residing in Aberdeen, of a charge upon a bill for £100, said to have been drawn by James and George Collie, advocates in Aberdeen, upon and accepted by Dr Beveridge, Peter Beveridge, and Thomas Gordon Beveridge. He denied ever having adhibited his signature, and asserted that it was his belief it had been unauthorisedly adhibited by his brother Thomas Gordon Beveridge, one of the acceptors of the bill, who had left the country. The Lord Ordinary (ORMIDALE) sisted execution and ordered genuine subscriptions to be lodged in process; and eventually the Lord Ordinary on the bills (GIFFORD) pronounced the following interlocutor:—

"*Edinburgh, 22d February* 1870.—The Lord Ordinary having considered the note of suspension, answers, and productions, and having heard parties' procurators, on caution passes the note, and continues the sist formerly granted.

"*Note.*—The Lord Ordinary does not feel warranted in passing this note without caution. In general, the mere allegation of forgery will not entitle an obligant on a bill or note to suspend execution, even in order to obtain a proof of the alleged forgery. A bill or note is a liquid and privileged document of debt until reduced or set aside, and completely instructs the obligation and warrants summary diligence, which will not be stopped without caution, unless there be circumstances of very strong suspicion. The Lord Ordinary has compared the signature to the bill charged on, bearing to be the signature of the complainer, with the genuine subscriptions produced. There are, no doubt, differences, which different minds will view as of more or less importance, but the *comparatio literarum* does not impress the Lord Ordinary with any conviction that the subscription charged on cannot be genuine. Genuine subscriptions often very considerably differ from each other. Neither is the Lord Ordinary much moved by the circumstance that there are other bills and notes, apparently amounting to about £700 or £800, against which forgery is also alleged. There is no inherent impossibility, or even improbability, that the complainer and the other relatives of Thomas Gordon Beveridge, may have interposed their credit for his behoof to the full extent of all the