

judgment on the merits of the case in favour of the pursuer, for he therein assumed that she was entitled to what she claimed, only subject to questions of accounting. On the whole, therefore, I think it is the clearest case possible for holding that the finding of expenses in favour of the pursuer was a necessary consequence of the proceedings which had already taken place.

The Court adhered, and refused the reclaiming note.

Agent for the Reclaimer—D. J. Macbrair, S.S.C.

Agents for the Respondents—D. Crawford & J. Y. Guthrie, S.S.C.

Saturday, March 18.

DOWIE v. DOWIE OR BARCLAY.

Process—Reduction—Decree of Confirmation—Executor—Next of Kin—18 Vict. c. 23, § 1. Where a niece had been decerned executrix "qua one of the next of kin" to her uncle, there being no competition or opposition to her service; and where another uncle, brother to the deceased, afterwards sought to reduce the decree on the ground that the defender had obtained confirmation under an erroneous description, the Moveable Succession Act, 18 Vict., c. 23, § 1, only entitling her to succeed or be confirmed as "a descendant of a predeceasing next of kin"—it was held, affirming the judgment of Lord Jerviswoode, that she had been rightly decerned executrix, there being no competition; and that, though the description in the decree of confirmation was not quite accurate, it was not sufficient to render the confirmation null, nor a ground upon which it could be reduced.

Agent for the Pursuer—James Barton, S.S.C.

Agent for the Defender—Alex. Gordon, S.S.C.

Friday, March 17.

SECOND DIVISION.

MRS HELEN BRINE OR GORDON, PETITIONER.

Register—Warrant to Transmit—Recorded Deed.

Warrant granted by the Court to transmit a contract of marriage, registered in the Sheriff-court Books, to Edinburgh by registered post-letter, for the purpose of having an additional stamp impressed at the Inland Revenue Office.

Mrs Gordon presented a petition to the Court, setting forth that an antenuptial marriage contract had been entered into in 1852, between her and her late husband, Alexander Gordon of Newton, Aberdeenshire, which was recorded in the Sheriff-court Books of Aberdeenshire at Aberdeen, on 4th April 1856; that the executors of her late husband were entitled to a return of a portion of the inventory duty, paid on her husband's personal estate, but that the Board of Inland Revenue refused to repay the same, in respect that their marriage contract was insufficiently stamped; and that she had an interest in the said marriage contract, which contained various provisions in her favour, including an annuity of £400, and sundry provisions respecting her own fortune. The petition prayed for service on the Sheriff, Sheriff-Substitute, and Sheriff-Clerk of Aberdeen, and for warrant to the Sheriff-

Clerk or his Depute at Aberdeen "to transmit the said principal contract of marriage by registered post-letter, to the Clerk of Court in this petition, that he may present the same at the office of Inland Revenue in Edinburgh, and obtain it duly and sufficiently stamped, and thereafter retransmit the said contract of marriage, also by registered post-letter, to the said Sheriff-Clerk or his Depute at Aberdeen," or to do otherwise &c.

Service was ordered, and answers appointed to be lodged within three days, in consequence of the Session being near a close, and intimation in the minute book was dispensed with.

On the calling of the case in the Summar Roll, no appearance having been made for the Sheriffs or Sheriff-Clerk, the prayer of the petition was granted.

Agent for Petitioner—John Auld, W.S.

Saturday, March 18.

SPECIAL CASE—EWEN MENTEITH TOD AND GENERAL TOD'S TRUSTEES.

Trust—Clause—Powers of Trustees—Annuity—Alimentary. Terms of a settlement which were held not to import an imperative direction to trustees to invest a fund in an alimentary annuity for a son of the trustor; and observed, that even if they did, as the trustor's intention of securing an alimentary annuity could not be made effectual by following the directions of the deed, the trustees were entitled to pay over the capital of the fund to the son, as the sole party interested in the same.

General Suetonius Tod died in September 1861, survived by a widow and two sons. Mrs Tod died in April 1866. In 1859 General Tod executed a trust-settlement of his whole estate. After certain provisions in favour of his widow, the trust-deed proceeded:—"Fourth, I direct and appoint my said trustees to divide the residue of my said means and estate among my two sons, Suetonius Macdonald Tod and Ewen Menteith Tod, equally between them or the survivor of them, in manner following, viz.—Should my said trustees consider it prudent and proper to advance to each of my said sons, for the purpose of setting them up in business, or of advancing their prospects in life, such a sum as shall not exceed the one-half of the share of the free residue of my said means and estate, to which each of them might be entitled in the event of my death, and the other half or balance of the said free residue shall be invested when my said trustees shall consider it proper and prudent to do so, in the purchase of two separate annuities for each of my said sons, or the survivor of them, declaring that, as said annuities are intended by me solely for their respective aliment and personal support, the same shall not be assignable, arrestable, or affectable, for the debts or deeds, legal or voluntary, of the said Suetonius Macdonald Tod or Ewen Menteith Tod." General Tod left no heritable estate. The value of his moveable estate was about £12,000, one-half of which the trustees paid over to the two sons absolutely in equal portions, and the other half stood invested in the name of the trustees, who paid the interest to the sons. Mr Ewen Tod, who was now about thirty-two years of age, was desirous of entering into business, and accordingly requested payment of the remaining capital of his share of