not insisted on before the Lord Ordinary; and as the three first pleas in defence appear to him to depend substantially upon the same question, he has thought it better, instead of dealing with those pleas separately, to dispose of the case in the meantime by a finding relative to what he conceives to be the nature and extent of the pursuer's right and interest in the property in question on the dissolution of the marriage, the more so as it appears to him that the claim is not, strictly speaking, one in name of *jus relictæ*, but one which depends upon the wife's right, in the special circumstances of the case, to demand one-half of the goods in which she and her late husband had a common interest at the date of the divorce."

The defenders lodged a reclaiming-note, but the case was compromised.

Agent for Pursuer—William Officer, S.S.C.
Agents for Defenders — Mackenzie, Innes, & Logan, W.S.

Friday, October 20.

FIRST DIVISION.

CHRISTIE *v.* MATHESON.

Interest—Loan. Circumstances in which it was *held* that advances of money made by a person to his half-brother did not bear interest.

This was an appeal from the Sheriff-court of Dundee.

In September 1861 James Christie, then resident in California, remitted £50 to Alexander Matheson, his half-brother, a draper in Dundee. In a letter which accompanied the remittance, Christie, after referring to Matheson's circumstances, which appear to have been embarrassed, says he sends £50, and adds, "I would rather avoid to answer questions on the subject. All I have to say about it is, that this and all other remittances which I may in future make, I wish you to take your full use of, as if they were your own; when it becomes unnecessary (which I hope, for your own good, it may), then dispose of it to the best advantage." In 1862 another £50 was remitted, and a like sum in 1863. The principal sums were afterwards repaid by Matheson, but a question arose in regard to interest, in consequence of which Christie raised the present action, claiming 5 per cent interest on the sums from the dates of the advances till payment.

The Sheriff-Substitute (CHEYNE) found that the pursuer was entitled to interest, on the ground that the advances must be held as loans and not as gifts, and that there was nothing to take the case out of the ordinary rule, that *ex lege* interest is due on loans; 1 Bell's Com., 7th Ed., 692–3; *Garthland's Trustees* v. *M'Dowal*, 26th May 1820, F.C.; *Cuninghame* v. *Boswell*, 29th May 1868, 6 M. 890, 5 Scot. Law Rep., 559.

On appeal, the Sheriff (MAITLAND HERIOT) recalled the interlocutor of the Sheriff-Substitute, and found that no interest was due. The Sheriff considered that the case turned on what was the intention of parties; and that, looking to the whole circumstances, the pursuer sent the money, and the defender received it, on the understanding that no interest was to be paid; *Forbes* v. *Forbes*, 4th Nov. 1869, 8 M. 85, 7 Scot. Law Rep. 49.

The pursuer appealed to the Court of Session.

STRACHAN for him.

TAYLOR INNES, for the defender, was not called on.

At advising—

LORD PRESIDENT—I have no doubt that the Sheriff has arrived at a sound conclusion. The Sheriff-Substitute is quite right in his general view of the law, but he has overlooked the very peculiar circumstances of this case. The passage quoted in the pursuer's letter can have but one meaning. The defender was in business in Dundee. The pursuer, aware of his embarrassments, sends him £50, and writes—(*reads letter*). That means that the money which he then sent, and which he was afterwards to send, was to be used by the defender in his business on terms very different from those that regulate the ordinary relation of debtor and creditor. Telling him to take the full use of the money as if it was his own, is as nearly as possible saying "use without interest." This is rendered still more clear by what follows. After he finds the money unnecessary he is to dispose of it to the best advantage,—implying that till then the sole advantage was to be with the defender.

The other Judges concurred.

Defender assoilzied.

Agent for Pursuer—David Milne, S.S.C.
Agents for Defender—Lindsay & Paterson, W.S.

Saturday, October 21.

PARK *v.* ROBSON.

Bankruptcy—Examination under 19 *and* 20 *Vict. c.* 79, § 90—*Party resident in England*—32 *and* 33 *Vict. c.* 72, § 74. Where the trustee in a sequestration depending before the Sheriff of Lanarkshire desired to examine a person residing in London, in order to obtain information regarding some of the bankrupt's affairs,—*held* that the proper course to pursue, under section 74 of the English Bankruptcy Act of 1869, was for the Sheriff, on the application of the trustee, to pronounce an order for the examination of such person, adding thereto a request addressed to the London court having jurisdiction in bankruptcy to aid and be auxiliary to the Sheriff in carrying out the said order, and that no specific directions should be given, but the time, place, and method of examination be left to the English court.

Remarked, that in the conduct of such examination the English court would be guided by the rules adopted in Scotch practice, so that the party being examined would suffer no hardship from the English practice differing from the Scotch.

The respondent in this process of suspension and interdict was Mr George Robson, accountant in Glasgow, who had been appointed by the Sheriff of Lanarkshire trustee upon the sequestrated estate of George Lambie, grocer, wine merchant, and ship-owner in Glasgow and Helensburgh. In the course of his investigations into the affairs of the bankrupt, the respondent ascertained that he and the complainer Mr James Park, merchant, Adelaide Chambers, 52 Gracechurch Street, London, had both been engaged in transactions connected with the ship "Ferdinand de Lesseps," which, in the interest of Mr Lambie's creditors, it was his duty to bring to light. It appeared that the ship had