Counsel for the Petitioner—Maconochie. Agents—Maconochie & Hare, W.S.

Counsel for the Respondent—M'Lennan. Agent—J. Murray Lawson, S.S.C.

Tuesday, January 30.

FIRST DIVISION.

[Lord Low, Ordinary.

WATSON *v.* MORISON & OTHERS.

Reclaiming-Note — Competency — Court of Session Act 1868 (30 *and* 31 *Vict. c.* 100), *sec.* 52.

The Court of Session Act 1868, by sec. 52, provides that—"Every reclaiming-note . . . shall have the effect of submitting to the review of the Inner House the whole prior interlocutors of the Lord Ordinary." *Held* that it is not competent for a person to reclaim against an interlocutor pronounced on his own motion for the purpose of submitting prior interlocutors to review.

In October 1893 Mrs Ann Cowans or Watson, Windygates, Fife, brought an action against Robert Morison, accountant, Perth, and others, for the purpose of having a trust-disposition and settlement and relative codicils and a holograph letter of instructions reduced.

On 23rd November 1893 the Lord Ordinary (Low) held the production satisfied by the production of an extract of the trust-disposition and codicils and of a draft of the holograph letter.

Upon 5th December 1893 the Lord Ordinary approved of issues lodged by the pursuer.

Against this interlocutor the pursuer reclaimed for the purpose of having that of 23rd November submitted to review.

The defenders argued it was incompetent for a person to reclaim against an interlocutor pronounced on his own motion.

The pursuer argued that she desired to bring a prior interlocutor under review, and was enabled to do so by reclaiming against a subsequent interlocutor by virtue of the 52nd section of the Court of Session Act 1868 (31 and 32 Vict. cap. 100), which provides that "Every reclaiming-note, whether presented before or after the whole cause has been decided in the Outer House, shall have the effect of submitting to the review of the Inner House the whole of the prior interlocutors of the Lord Ordinary of whatever date, not only at the instance of the party reclaiming, but also at the instance of all or any of the other parties who have appeared in the cause, to the effect of enabling the Court to do complete justice without hindrance from the terms of any interlocutor which may have been pronounced by the Lord Ordinary.

At advising—

LORD PRESIDENT—The reclaimer has not satisfied me of the competency of her reclaiming-note, the objection to which is palpable. The interlocutor against which the reclaiming-note is presented was pronounced on her own motion, as is evidenced by the fact that the issues which the Lord Ordinary approves of, are those very issues which were lodged by the pursuer as the issues proposed by her for the trial of the cause.

Apart from the 52nd section of the Court of Session Act 1868, no argument was advanced in support of the proposition that a party is entitled to reclaim against an interlocutor pronounced on his own motion, and good sense forbids the idea. Now, the 52nd section does not purport to enable a party to reclaim against a particular interlocutor, who formerly could not have reclaimed against that interlocutor. It merely says, so far as the reclaimer is concerned (and therefore so far as this question is concerned), that every reclaiming-note shall have the effect of submitting to review the whole of the prior interlocutor, instead of merely the interlocutor primarily and directly reclaimed against. The hypothesis of the section is that there is a competent reclaiming-note against the interlocutor purporting to be reclaimed against, and the criteria of that competency are not altered by the 52nd section.

I am therefore of opinion that this reclaiming-note should be refused as incompetent.

LORD ADAM and LORD KINNEAR concurred.

LORD M'LAREN was absent at the hearing.

The Court refused the reclaiming-note as incompetent.

Counsel for Pursuer and Reclaimer—Young—Clyde. Agents—Reid & Guild, W.S.

Counsel for Defenders and Respondents—W. Campbell. Agents—J. & J. Galletly, S.S.C.

Tuesday, January 30.

SECOND DIVISION.

[Lord Kyllachy, Ordinary.

CARRUTHERS *v.* EELES.

Succession—Trust—Vesting—Condition.

A truster directed his trustees after the death of the survivor of him and his wife to make provision for the education of any of his children under twenty-one at that time, and to pay and convey his moveable and heritable estate to his four children equally, share and share alike, "and the survivor or survivors equally, and that at the term of Whitsunday or Martinmas immediately following the death of the survivor of my said wife and me, or the majority of my youngest child, whichever of these events shall last happen, on the following conditions—the share of the premises of each child shall be a vested

right at majority though not payable till the youngest reach majority; if any of my said children die before the said period of division leaving lawful issue, the latter shall succeed equally to the share of their parent." His heritable estate comprised one-third part of the estate of C.

The truster died in 1854 survived by his four children and his widow. The youngest child attained majority in 1867. The widow died in 1885. The eldest son died in 1879 directing his trustees to pay the annual income of his estate to his daughter, and on her death to divide his whole estate among her children whom failing between his brothers.

His daughter made up a title by notarial instrument to one-fourth part of the one-third share *pro indivisio* of the estate of C, and granted two bonds and dispositions in security over it. In an action by her father's trustee the Court *reduced* these deeds, holding (*diss.* Lord Rutherfurd Clark) that her father's share of the lands of C vested in him prior to his death and passed to the pursuer as his trustee.

The Rev. William Carruthers, Queensferry, heritable proprietor of and duly infeft in the *pro indiviso* one-third share of the farm and lands of South Cobbinshaw, Mid-Lothian, died upon 23rd June 1854 leaving a trust-disposition and settlement by which he conveyed his whole estate to trustees, and directed them to pay to his wife Mrs Margaret Carruthers, formerly Smith, the income of his whole heritable and moveable estate during her widowhood, for these purposes, *inter alia*, "and that out of the said liferent and free yearly income she shall be bound to clothe, educate, and maintain the children of our marriage while unable to provide for themselves: In the first place, in the event of the said Mrs Margaret Carruthers, formerly Smith, entering into any second marriage, the trustees shall apply such parts as they deem proper, or if necessary, the whole of the annual produce of my whole succession, heritable and moveable, real and personal, to the education, clothing, and suitable maintainance of my children above named, and any other child or children who may yet be born of my body, and the survivors and survivor of them, and that during their respective minorities and while unable to provide for themselves, whereof the judgment of said trustees shall be binding on them: In the fourth place, after the death of the survivor of me and my said wife the trustees shall set apart as a debt the sum which they shall judge necessary to pay the education and maintainance of such of my children as shall then be under twenty-one years of age, until each respectively reach that age, or if daughters, shall be married, and the trustees shall pay over and divide the free proceeds of my moveable or personal estate and arrears or accumulation if any, of the whole income of the trust-estate, to and among, and shall dispone, assign, and convey my whole heritable or real estate to and in favour of the said David Carruthers, Margaret Carruthers, James Smith Carruthers, and William Carruthers, being my children, and any other child or children who may be born of my body, equally, share and share alike, and the survivors and survivor equally, and that at the term of Whitsunday or Martinmas immediately following the death of the survivor of my said wife and me, or the majority of my youngest child, whichever of these events shall happen on the following conditions—the share of the premises of each child shall be a vested right at majority, though not payable till the youngest reach majority, if any of my said children die before the said period of division leaving lawful issue, the latter shall succeed equally to the share of their parent."

William Carruthers was survived by a widow and four children, David, Margaret, James Smith, and William. William attained majority on 11th January 1867. The widow died on 25th March 1885.

The eldest son David predeceased his mother and died upon 7th April 1879, survived by one daughter. He left a trust-disposition and settlement by which he conveyed to trustees his property and estate, and "at present belonging to me or which shall pertain and belong to me at the time of my death." The deed proceeded—"In the third place, with regard to the residue of my estate and effects, heritable and moveable, above conveyed, I direct my said trustees to pay to my daughter Margaret Carruthers the free annual profits of the same during her life, but exclusive always of the *jus mariti* of any husband or husbands she may marry, to whose control or for whose debts or engagements the same shall not be subject or liable: In the fourth place, I appoint my said trustees, after the death of my said daughter, and so soon as they have realised my said estate and converted the same in cash, to pay and divide the residue of the said estate to and among all the lawful children my said daughter may leave, equally between them, share and share alike, but the principal sum of such share shall only be paid upon said children attaining the age of twenty-one years complete."

In the event of his daughter dying without lawful children, the residue of the estate was to be divided between the testator's two brothers James and William. The testator's brother William was the sole surviving trustee under this trust-deed.

In 1892 it was found that the said Margaret had made up a title in her person by notarial instrument dated 22nd December 1888 to one-fourth part *pro indiviso* of the one-third part or share of the estate of Cobbinshaw which belonged to the deceased Rev. William Carruthers. She had also in the same year granted two bonds and dispositions in security for £200 respectively to Francis Eeles and Alexander Naysmith over the estate to which she had made up title.

William Carruthers, as trustee of his

brother David, made up a feudal title to the same one-fourth part *pro indiviso* of the one-third share of the estate of Cobbinshaw. He brought an action of reduction of the notarial instrument of 22nd December 1888, and also of the two bonds and dispositions granted by his niece Margaret Carruthers against Margaret Carruthers, Francis Eeles, and Alexander Naysmith, and John Dryburgh, Naysmith's assignee.

The pursuer averred—"The pursuer as trustee foresaid maintains that the said one-fourth part *pro indiviso* of the one-third was under and in virtue of the trust-disposition and settlement of the Rev. William Carruthers, duly vested in the said David Carruthers, and was by his trust-disposition and settlement carried to the pursuer as trustee thereunder, and that he is the only person in right to make up a title to the same, and that his title is the only valid title thereto. The surviving trustee of the late Rev. William Carruthers has disponed said one-fourth part *pro indiviso* of the said one-third part or share to the pursuer."

The defender pleaded—"(3) On a sound construction of the trust-disposition and settlement of the said Rev. William Carruthers, the said one-fourth part *pro indiviso* of the one-third part *pro indiviso* vested absolutely in the defender Margaret Carruthers on the death of her father."

Upon 28th June 1893 the Lord Ordinary (KYLLACHY) pronounced this interlocutor—"Of consent holds the production so far as the said Francis Eeles is concerned satisfied: Of consent also holds the preliminary defences lodged for the said Francis Eeles as defences on the merits, and having heard counsel on the closed record, and considered the cause, Sustains the reasons of reduction, and reduces, decerns, and declares conform to the conclusions of the libel as against the said Francis Eeles, and in respect that the other defenders Alexander Nasmyth and John Dryburgh have failed to satisfy the production, grants decree against them *contra non producta:* Finds and declares in terms of the declaratory conclusions of the summons, and decerns, &c.

"*Opinion.*—This case takes the form of an action of reduction of certain titles made up on behalf of the defender Miss Margaret Carruthers, but the only question which I require to decide seems to be this—Whether the share of the trust-estate of the late Rev. W. Carruthers bequeathed to his son the late David Carruthers vested in the latter at majority? It appears that David Carruthers survived his majority, but died before his mother, the truster's widow. The question is, whether upon the just construction of his father's settlement vesting was postponed until the widow's death?

"There is undoubtedly some force in the view that the whole clause of bequest proceeds on the hypothesis that the truster and his wife have both died, or to put it otherwise, that there is no gift expressed except upon the condition that the donee shall survive both husband and wife. The clause certainly begins thus—'After the death of the survivor of me and my said wife, the trustee shall set apart," &c. &c. And Mr Clyde forcibly argued that these introductory words govern the whole clause, and that although the clause goes on to provide that vesting shall take place upon majority, that only means this—that assuming the widow to have predeceased, vesting shall not be postponed beyond majority by reason of the non-arrival of the period of payment, viz., the majority of the youngest child.

"I cannot say that I regard this reading of the settlement as necessarily inadmissible, but, on the other hand, I have to consider that the clause or trust-purpose referred to contains an express provision to the effect that 'the share of the premises of each child shall be a vested right at majority, though not payable till the youngest child reach majority.' I have not, I confess, seen my way to qualify this express provision by implications, which although plausible cannot be said to be necessary. It may be that the truster intended that qualifying words should be read in, drawn from the general scheme of the clause. But I think that if that were his meaning he could easily have expressed it. On the whole I prefer to construe the settlement literally, and I therefore propose to find that the share of the late David Carruthers vested in him prior to his death and passed to the pursuer as his trustee. I suppose it follows that I should pronounce decree of reduction in terms of the summons."

The defender Eeles reclaimed. Cases cited—*Gray and Others*, March 18, 1870, 42 Scot. Jur. 382; *Cunningham* v. *Cunningham*, November 30, 1889, 17 R. 218; *Henderson's Trustees* v. *Henderson*, January 8, 1876, 3 R. 321.

At advising—

LORD YOUNG—The Rev. William Carruthers by his trust settlement directed his trustees to give a liferent of his whole estate heritable and moveable to his wife, and on her death and the majority of his youngest child to pay and convey the fee and capital to all his children and the survivors equally, with a declaration, probably superfluous, that the issue of predeceasors should take their parent's share. By the law, as it has now for about thirty years been held to be settled and fixed, this imports vesting in the children (or the issue of predeceasors) existing at the date of distribution. This Court had erroneously thought and decided otherwise, but the error was corrected by a judgment of the House of Lords about twenty years subsequent to the date of the settlement of Mr Carruthers, which was in 1846, and about ten years subsequent to his death, which occurred in 1854.

It is by the fourth article of Mr Carruthers' settlement that the trustees are directed as I have stated. It however contains this clause, which I have not yet noticed—"the share of the premises of each child shall be a vested right at majority, though not payable till the youngest reach majority; if any of my said children

die before the said period of division leaving lawful issue, the latter shall succeed equally to the share of the parent."

The question, and only question, which was argued to us is, what is the legal import of this clause. Assuming that without it (*i.e.* had it not occurred) the vesting would have been at the period of distribution, and of course in the children—then surviving and the issue of predeceasors—what is the meaning and legal effect of this clause. It is not contended by either party that it is meaningless or inoperative, but they are in conflict as to its true meaning and operation. The defender (for only one has appeared) contends that it refers and applies only to such of the testator's children as may happen to survive the liferentrix (their mother), and must be read and have effect exactly as if the words had been "the share of the premises of each child who may survive the liferentrix shall be a vested right at majority," the reason which he assigns being that this is the reasonable and just inference from the words "though not payable till the youngest reach majority," and that had this inference and limitation not been intended these words would either have been omitted or enlarged so as to read "though not payable till the youngest reach majority and the death of the liferentrix." The pursuer disputes this construction, and the reasoning in support of it, on grounds which, whether sound and conclusive or not are sufficiently obvious. He says that the primary and leading words are too plain to admit of construction; that the testator's object manifestly was to enable each child after attaining majority to deal with his prospective estate as a vested right, so that those who came in his place at the time of distribution (if he did not survive) should take it as he would himself have done subject to his debts and deeds incurred or made after majority; that the words "though not payable till the youngest attain majority" are superfluous, meaning only "though not then payable." The Lord Ordinary favours the view of the pursuer rejecting that of the defender, and I agree with him.

The facts of the particular case as they have occurred illustrate the pursuer's contention as to the true sense and meaning of the clause in question and the purpose which the truster intended thereby to effect. He was survived by his widow for thirty years, and she survived the majority of the youngest child for nine years. That child was born shortly before the father's death and was over thirty when the mother died. The eldest child (David)—the validity of whose deed is in question—had a daughter (Margaret) born to him in his mother's lifetime, and in 1877 he executed a trust-disposition and settlement primarily in her favour, but with trusts for her protection and an ulterior destination. He died in 1879, when the youngest child of his father was twenty-four years old and he (the eldest) necessarily older. Now, it seems to me that the intelligible, legitmate, and indeed obvious purposes of the truster (the Rev. William Carruthers) in inserting the clause in question in his settlement was, that such a deed as his eldest son executed after majority should have validity and effect upon his "share of the premises." I can conceive no other, and no other was suggested. But this purpose has no apparent connection with the accident, whether the payment shall in the result be delayed beyond the time of a child's share becoming "a vested right" by the continuing minority of the youngest child or the prolonged survivance of the widow. It must of necessity, by the terms of the deed, be delayed till both events shall have occurred, and which of them shall first happen seems immaterial to the only purpose and intention which can reasonably be imputed to the testator.

I am therefore of opinion that David's "share of the premises" was "a vested right" in him at the time of his death, and that his deed must have effect upon it accordingly.

After the facts were stated to us by counsel I pointed out that it was impossible, so far as I could judge, to pronounce any judgment either under the reduction or the declaratory conclusion as matters now stand. Both parties, however, concurred in desiring an expression of our opinion on the construction and import of the clause in the Rev. William Carruther's trust-deed to which I have referred, and which was fully argued. I have expressed my opinion upon that clause accordingly.

LORD RUTHERFURD CLARK—The question is whether under the residuary clause of Mr Carruther's trust-disposition the benefit given to his children vested as they severally attained majority, or whether the vesting was postponed till the death of the widow.

The testator directed his trustees to divide his moveable and heritable estate among his whole children in equal shares, "and the survivors or survivor equally, and that at the term of Whitsunday or Martinmas immediately following the death of the survivor of my said wife and me or the majority of my youngest child, whichever of these events shall last happen." The parties did not dispute that if the question had to be decided by this claim alone, no interest could vest till the death of the widow. The reason is obvious. Nothing is given except through the division which the trustees are directed to make, and they can make no division until the death of the widow. And as it is settled that the survivorship clause must be construed by reference to the period of distribution, the meaning of the truster necessarily is, that the trustees are to divide the residue among such of his children as survive that period. Under such a clause no other children could take benefit.

But the division was to be made on the following conditions:—"The share of each child shall be a valid right at majority, though not payable till the youngest reach majority," &c. It is said that this declaration is absolute and unqualified, and that

by virtue thereof the share of each child must vest when he attains majority. Such a reading is an abrogation of the survivorship clause. If we adopt it we must hold that under a direction to divide, a vested interest is conferred on a legatee who is not one of the persons on whom the division can be made.

It is our duty, if we can, to give a meaning to every clause of the deed. It may happen that there is an absolute inconsistency, and in that case the latest clause would prevail. But if the different clauses may fairly bear a construction which will give consistency to the whole deed, we must accept that construction, or if this be impossible we must endeavour to reduce the inconsistency to its lowest limits.

There are two periods at which the division may take place, viz., the death of the widow and the majority of the youngest child. In stating the conditions the truster contemplates the latter only, but I think that he contemplates it as a period of division, or, in other words, he is referring to a time at which his wife is dead. For it is only on the supposition that that event has occurred that the period which he mentions is a period of division. I am disposed therefore to read the condition as merely accelerating the date of vesting after the death of the widow.

I am aware that this construction does not give consistency to the whole deed. For the division is directed to be made on the survivors of the last of two events, and a vested interest is given to a child who may not survive both. We must, however, give effect to the express declaration of the truster. I follow the rule of which I have previously spoken, and I do not carry the inconsistency further than the language of the deed necessarily requires.

Lord Trayner—I am not prepared to adopt the view that the opening words of the clause under construction, viz., "after the death of the survivor of me and my said wife" &c., govern the whole clause. Fairly read along with the context, these words appear to me to be limited in their application to the first matter with which the clause in question deals. By the second trust purpose of the late Mr Carruthers' settlement his trustees are directed to give to his widow the liferent and free yearly income of his whole estate, out of which she is taken bound to educate and maintain the children of the marriage, with a declaration that in the event of the widow entering into a second marriage her liferent shall cease. The third purpose provides that in the event of the widow entering into a second marriage the trustee shall apply a part or if necessary the whole of the annual produce of the estate in the maintenance of the children during minority or while unable to provide for themselves; and the fourth purpose (set forth in the clause in question) provides that "after the death of the survivor of me and my said wife, the trustee shall set apart as a debt the sum which they shall judge necessary to pay the education and maintenance of such of my children as shall then be under twenty-one years of age" until they reach that age or be married. Now observe what these clauses come to. They are, so far as the children are concerned, provisions for three different sets of circumstances. First, if the widow does not enter into a second marriage she gets the liferent of the whole estate under burden of maintaining and educating the children of the marriage; second, if the widow enters into a second marriage she loses her liferent, and the children are to be provided for by the trustees. The position and necessities of the children are thus provided for during their mother's survivance whether she enters into a second marriage or not. But another contingency had to be provided against, namely, the decease of the widow, and with regard to that the trustee provided (third) that after the death of himself and his widow the trustees shall provide for the children in minority or unable to support themselves, in a certain way. This third contingency is in my opinion what the opening words of the fourth trust purpose refer to, and nothing else. The rest of the fourth purpose although in form a continuation of the clause, is really a new provision relating to a totally different matter, namely, the vesting and distribution of the fee of the estate, after liferent for the widow or maintenance of children have been provided for, and need no longer to be considered. I think, therefore, we proceed to the construction of the clause in question unembarrassed by the words with which it commences; and looking at the clause in that view I reach the same conclusion as the Lord Ordinary. The period of payment of the children's provisions is postponed until after the death of the widow and until the youngest child has attained majority, because the liferent of the one and the maintenance of the other render such postponement necessary. But postponement of the term of payment does not *per se* postpone the period of vesting. Here the truster has fixed the period of vesting, for he expressly declares that the benefits conferred on his children by his settlement are conferred on the following conditions—the share of the premises of each child shall be a vested right at majority, though not payable till the youngest reach majority. It is pointed out to us that this assumes (although it is not expressed) that the widow must be dead when the youngest child attains majority, because until the widow's death the existence of her liferent would prevent the division of the estate. I agree that this must be so. Before payment to any child of his share of the estate, the widow must be dead and the youngest child major. But the vesting is declared to take place as each child attains majority, and the vesting therefore, according to the trustee's express declaration, is not postponed until the period of payment. I do not think it admissible to fix a period of vesting, as a result of mere construction, different from that which the testator has fixed in precise and unambiguous language. I am therefore

of opinion that the share of the late David Carruthers vested in him when he became major, and was consequently carried by his settlement to the pursuer.

The Court adhered.

The LORD JUSTICE-CLERK was absent.

Counsel for Reclaimer — Ure — Clyde. Agent—A. C. D. Vert, S.S.C.

Counsel for Respondent—Dundas—Craigie. Agents—Mackenzie & Black, W.S.

Tuesday, December 14, 1893.

OUTER HOUSE.

[Lord Wellwood.

LORD ADVOCATE *v.* MACFARLANE'S TRUSTEES.

Revenue—Heritable or Moveable—Interest in Joint-Adventure—Inventory or Succession Duty.

In partnership proper a subject in itself heritable, if forming part of the assests of the company for the purposes of their trade, is held to be moveable as regards the interest of each individual partner. In this respect joint trade or joint-adventure does not differ from proper partnership.

In joint-purchase it is otherwise. If there is no contribution for the purpose of joint-profit, there is no partnership, and the rules peculiarly applicable to partnership do not apply. The subjects of the joint-purchase retain their natural qualities *quoad* the interests of the joint-owners, and do not undergo conversion.

Held that the joint-interest of a deceased in certain heritable estate was, under a proper contruction of the terms of the deeds by which the estate was acquired and held, an interest as joint-adventurer, and not as joint-owner, and that his interest was therefore moveable, and subject to inventory-duty.

The late Walter Macfarlane, ironfounder, Glasgow, died on 18th October 1885. At his death he was possessed of valuable heritable and moveable estates. He left a trust-deed and settlement dated 26th May 1884, by which he conveyed his whole estates to trustees for the purposes therein mentioned.

The present action was brought at the instance of the Inland Revenue against the accepting and surviving trustees acting under this trust-deed, and raised the question whether Mr Macfarlane's interest in certain heritable estate was at the date of his death heritable or moveable.

Mr Macfarlane carried on business as an ironfounder in Glasgow, in partnership with the late James Marshall of Carlston, Kelvinside, and Thomas Russell of Ascog, under the firm of Walter Macfarlane & Company.

In 1868 the partners of the firm, taking into consideration the growth and necessities of their business, acquired an extensive tract of ground forming part of the land and policy of Possil, and of the farm of Keppoch. The title to the ground so purchased (referred to hereafter as the Possil-park estate or trust) was taken in the name of the partners and the survivor, as trustees and trustee for behoof of themselves and the heirs and assignees of deceasers. The trust was constituted by a minute of agreement dated 1st April 1869, the terms of which, so far as material to the case, are recited in the Lord Ordinary's note. Part of the property, required for the site of a new foundry work, was, in terms of a stipulation in the minute of agreement, conveyed by the trustees to themselves as partuers of the firm of Walter Macfarlane & Company. There were also subsequent transactions between the Possilpark trust, and the firm of Walter Macfarlane & Company, but, as stated in his note, the Lord Ordinary held on the documents and on the oral evidence led in the case, that these transactions had not the effect of identifying the firm and the trust as the same concern.

With regard to the property not conveyed to the firm, certain modifications were made in the purposes of the trust as set forth in the original minute of agreement, by the minute of alteration of 27th April 1879, the minute of agreement of 23rd April 1880, and by the minute of agreement of 7th February 1884, referred to in the Lord Ordinary's note.

In 1879 Mr Marshall and Mr Russell retired from the firm of Walter Macfarlane & Company, and thereafter Mr Macfarlane assumed two new partners, and retained his interest in the new firm until his death in 1885. Subsequently to his retirement from the firm, and up to the date of his death Mr Marshall remained a trustee of the Possil estate. After his death the trust in the hands of the two survivors was reconstituted by the minute of agreement, already referred to, of 7th February 1884. Under this agreement the Possilpark estate continued to be held till the date of Mr Macfarlane's death.

Mr Macfarlane's interest, as at the date of his death, in the firm of Walter Macfarlane & Company and in the Possilpark trust was vested in the defenders as trustees under his trust-disposition and settlement.

The following authorities were cited in the argument—*Murray*, November 6, 1739, M. 5115; *Pyper* v. *Christie*, 6 R. 143: *White* v. *M'Intyre*, 3 D. 334; *Lockhart* v. *Moodie*, 4 R. 856; *Lockhart* v. *Brown*, 15 R. 742; *Davidson* v. *Robertson*, 3 Dow 218; Bell's Comm. ii. 539; Bell's Prin., sec. 392; *re Hulton*, 62 Law Times 200; Lindley on Partnership (6th ed.) 25, 26.

On 14th December 1893 LORD WELLWOOD pronounced the following interlocutor:—"Finds that the interest of the late Walter Macfarlane in the Possilpark estate, in so far as remaining in the hands of the Possilpark trustees, was moveable at the date of his death, and that therefore it is liable in