Largs and the abolition of fees rendered it no longer necessary.

The petitioners proposed that the money resulting from the sale should be applied by devoting the annual income therefrom to the purposes of the library maintained in connection with Largs Parish Church Sunday School, and to providing class books for the children attending the same.

Answers were lodged by Mr Dewar Paton, who had been an annual subscriber to the school for nearly thirty years, and by the School Board of Largs. The respondents objected to the proposed scheme of administration on the ground that, under it, the funds of the endowment would be applied for the benefit of one religious denomination exclusively, whereas the charity had hitherto always been conducted irrespective of creed or sect. The respondents accordingly craved that the proceeds of the sale should be handed over to the School Board of Largs.

Mr Ewan Macpherson, advocate, to whom the Court remitted to report and prepare a scheme, submitted a scheme the substance of which was that the yearly income of the trust funds should be applied in the purchase of books, to be housed in the Parish Church Sunday School library, and to constitute a special department of that library, for the use, without any charge being made, of all boys and girls attending public or State-aided schools within the parish of Largs.

On the reporter's scheme appearing in the summar roll, neither party objected thereto, but the respondents asked for their expenses out of the trust fund, and argued—The intervention of the respondents here had been of assistance, for it was on their suggestion that the benefits of the fund had been extended to children of all denominations. The respondent had also kept the petitioners' right in sundry details of procedure, *e.g.*, by suggesting intimation to the Lord Advocate.

Argued for the petitioners—The respondents had pressed for the fund being handed over to the school board, in defiance of the decision in *The Kirk Session* v. *School Board of Prestonpans*, November 28, 1891, 19 R. 193. In that contention they had been wholly unsuccessful, and they were therefore not entitled to their expenses.

Lord President—When a party comes forward as respondent in an application of this kind, and at the end of the proceedings demands his expenses out of the trust funds, it seems to me that the proper inquiry is—What advantage has his appearance rendered to the due administration of the fund? In the present case the intervention of Mr Trotter's clients has been advantageous to a certain extent. They have called attention to certain points on which the petitioners very properly gave way, and to certain other points by which the reporter's opinion may have been modified. But that does not necessarily lead to the conclusion that Mr Trotter's clients are entitled to full expenses, because in the first place the counter scheme proposed by them has been rejected, and it was the main, or ostensibly the main, object of their lodging answers. I think therefore we shall do well if, adopting the criterion I have stated, and having regard hereby to the extent to which the interests of the trust administration have been furthered, we give them one-third of their expenses out of the trust fund.

The only other observation I wish to make is that for my part I should not like it to be supposed that every school board, when an endowed school within its district comes into Court with a scheme, is entitled to come forward and take part in the proceedings as a matter of course and get expenses out of the endowment. It may very well be that in the public interest a school board may think it right to come forward at its own expense, but it must not depend on its being necessarily treated as a tutelary deity of the endowment whose presence is indispensable to the success of its every enterprise. I say this to guard against even this modest grant of expenses being construed as an invitation to school boards to come forward and take part in proceedings like the present.

Lord Adam, Lord M'Laren, and Lord Kinnear concurred.

The Court approved of Mr Macpherson's report and scheme, allowed the petitioners their expenses out of the trust fund, and found the respondents entitled to one-third of their expenses.

Counsel for the Petitioners—Chisholm. Agent—J. B. M'Intosh, S.S.C.

Counsel for the Respondents—Trotter. Agent—William Fraser, S.S.C.

Tuesday, June 13.

SECOND DIVISION.

REID *v.* REID'S TRUSTEES.

Succession — Fee and Liferent — Power of Disposal of Fee by Mortis causa Deed.

By his holograph will a testator left and bequeathed to his sister "all my property, heritable and moveable, real and personal, either mine at present or in expectancy, for her sole and separate use in liferent, and at her option as to destination in the event of her death."

Held that the effect of the will was to confer upon the sister, not a fee, but only a liferent, with power to dispose of the fee by *mortis causa* deed.

Marriage-Contract — Trust — Denuding — Alimentary Liferent—Power to Terminate Trust stante matrimonio.

In the antenuptial contract of marriage the husband conveyed certain property to trustees for, *inter alia*, the following purpose—to apply the annual produce for behoof of the spouses as an alimentary provision free from their debts and deeds or the diligence of their creditors.

In the event of there being no children of the marriage, then if the wife survived her husband the trustees were directed to convey the property to her absolutely, and if the husband survived the wife, the trustees were directed to reconvey the property to him as his own absolute property.

Twenty-one years after the marriage, when the husband had attained 61 years of age and the wife 60 without having issue, *held* (*diss.* Lord Young) that *stante matrimonio* the spouses were not entitled by mutual consent and the consent of the trustees to terminate the marriage-contract trust.

James Copland died on 9th November 1896 leaving a holograph will in the following terms: — Edinburgh, 1 Buccleuch Street, August 19, 1875. I hereby leave and bequeath, in the event of my death, to my well-beloved sister, Jane Copland, now Mrs Robert Reid, Wellington Street, Kirkwall, Orkneys, all my property, heritable and moveable, real and personal, either mine at present or in expectancy, for her sole and separate use in liferent, and at her own option as to destination in the event of her death, excluding the *jus mariti* of her husband (in terms of their marriage-contract). I esteem Mr Reid very highly, and I know his advice will be given in the management, but not to the extent of any control. In the event of mother or any of my brothers surviving me, I am certain she will treat them as kindly as I could wish."

The testator, who was unmarried, was survived by his sister Mrs Reid and a brother William Matches Copland.

Mrs Reid had been married to Robert Reid, Kirkwall, on 8th December 1871, and in view of the marriage the spouses entered into an antenuptial contract of marriage dated 6th December 1871. By the marriage-contract Mr Reid conveyed to the trustees therein named certain heritable property in Kirkwall belonging to him and a policy of life assurance for £300 in trust for the following purposes, viz. — (*First*) For payment of the expenses of the trust; (*second*) that the trustees should apply the annual produce of the estate in payment of the premiums on the said life policy and also on a fire policy to be effected over the said property and "the surplus of the said rents and interests to or for behoof of the said Robert Reid and Jane Copland as an alimentary allowance free from their debts and deeds of the said Robert Reid and Jane Copland or the diligence of their creditors;" (*third*), for payment to Mrs Reid during her life, should she survive her husband, and should there be issue of the marriage of the free yearly income: And in the event of her predeceasing him and there being issue, for payment thereof to Mr Reid, and that for their respective liferent uses allenarly; (*fourth*), on the decease of both spouses for payment to their child or children, if any, equally among them if more than one, and the lawful issue of predecessors as therein mentioned of the free yearly income of the estate, and on the youngest attaining the age of twenty-one, for payment and conveyance to them of the capital under reservation of a power of apportionment to the survivor of the spouses; (*fifth*), in the event of the second marriage of the surviving spouse, there being children of the present marriage, that the trustees should have power to make advances to such children; (*sixth*) "in the event of the said Jane Copland surviving her said promised husband, and there being no surviving issue of the marriage, the said trustees shall convey and make over to her the whole of the said trust means and estate, heritable and moveable, as her own absolute property: But in the event of the said Robert Reid surviving her, and there being no surviving issue of the marriage, the said trustees shall re-convey and make over the same to him for reconveyance thereof to him as his own absolute property as heretofore;" for which causes, and on the other part, Mrs Reid conveyed to the said trustees the whole means and estate of whatever nature or denomination or wherever situated then pertaining to her, or which she might succeed to or acquire during the marriage, or which might belong to her at her decease, always excepting the foresaid provisions in her favour, but in trust for the purposes first, second, and third above specified; (*fourth*), in the event of Mrs Reid surviving her husband, then on her death for payment of the free yearly income to the children of the present or any future marriage as therein mentioned, and on the youngest child attaining majority for conveyance to them of the capital subject to a power of apportionment by Mrs Reid; (*fifth*), in the event of Mr Reid predeceasing his wife without leaving issue of the marriage, for reconveyance of the estate to Mrs Reid; and (*sixth*), in the event of Mrs Reid being the predeceaser without leaving such issue, for payment to her husband of the free yearly income during his life, and on his death for conveyance of the estate to her own nearest heirs and assignees; and all which provisions in favour of Mrs Reid were thereby expressly declared to be exclusive of the *jus mariti*, power of administration, and every other right of her husband during the subsistence of the marriage, and should be accepted by her as in full satisfaction of all terce, *jus relictæ*, or other rights competent to her in and through his death, and all which provisions thereinbefore conceived in favour of Mrs Reid were declared to be purely alimentary, and not to be affectable by the debts or deeds or diligence of creditors of her husband and herself, or either of them; and which provisions in favour of children were declared to be in full of all legitim, bairns' part of gear, portion-natural, and any other claim that could be made by them on the decease of their father.

In 1899 Mr Reid was sixty-six years of age and Mrs Reid sixty years of age, and no issue had been born of the marriage. The only assets under the control of the trust were (*a*) certain heritable property in Kirkwall worth about £250, and (*b*) the sum of £400 due and payable under the life policy, being the two items conveyed by Mr Reid in the marriage-contract.

In these circumstances questions arose (1) as to the effect of the holograph will of James Copland, and (2) as to the necessity of keeping up the trust constituted by Mr and Mrs Reid's antenuptial contract of marriage. For the settlement of the question a special case was presented by (1) Mr and Mrs Reid, (2) Mr and Mrs Reid's marriage-contract trustees, and (3) William Matches Copland.

The questions at law were—"(1) Is the effect of James Copland's will of 1875 to confer on Mrs Reid (*a*) a right of fee in his estate; or (*b*) a liferent with power of appointment by deed either *inter vivos* or *mortis causa* deed only? or (*c*) A liferent with power of appointment by *mortis causa* deed only? (2) Are the first parties now entitled by mutual consent, and the consent of the marriage-contract trustees to terminate the trust created by their antenuptial marriage-contract, and to call upon the trustees to denude of the trust-estate?"

Argued for the third party—The right conferred on Mrs Reid by Mr Copland's will was not a fee but a liferent with a power of appointment which she was entitled to exercise by *mortis causa* deed only. That was clearly the intention of the testator, which was the ruling consideration in the construction of a settlement. It was also the natural meaning of the clause. The words "in the event of her death" showed that Mrs Reid never could acquire the fee herself. She could have sold it, but only as an expectancy, which could never be realised except after her death. The case therefore fell far short of those in which a party had all the rights of a proprietor without the name—*Alves* v. *Alves*, March 8, 1861, 23 D. 712, opinion of Lord Justice-Clerk Inglis, 717; *Hyslop* v. *Maxwell's Trustees*, February 11, 1834, 12 S. 413; *in re Waddell*, February 3, 1849, Scots Exch. Rep.; Sugden on Powers, 104.

Argued for second parties—They themselves were desirous that they should be discharged, but they felt bound to contend that the trust constituted by the marriage-contract of Mr and Mrs Reid must be kept up for fulfilment of the purposes of the contract. There was here under the second purpose an alimentary provision for the spouses during the subsistence of the marriage, and the property had been conveyed to trustees in order that that purposes, *inter alia*, should be carried out. In these circumstances the spouses were not entitled *stante matrimonio* to terminate the trust —*Menzies* v. *Murray*, March 5, 1875, 2 R. 507; *Ker's Trustees* v. *Ker*, December 13, 1895, 23 R. 317; *Eliott's Trustees* v. *Eliott*, July 13, 1894, 21 R. 975.

Argued for first parties—(1) Mr Copland's will conferred on Mrs Reid a right to the fee of the testator's estate. There was nothing to prevent Mrs Reid making an out-and-out conveyance with entry at the time of her death so as to comply with the form provided by the deed. The cases cited by the third party differed from the present, because in the present case there was (1) no disposition in trust, and (2) no destination-over. The estate was in Mrs Reid's hands, and there was no one with an interest to prevent her from disposing of it. The right therefore amounted to one of fee. In any event, if it should be held that Mrs Reid's right was limited to a liferent with a power of appointment, she was entitled to exercise that power by deed *inter vivos* or *mortis causa*. (2) Mr and Mrs Reid were entitled by mutual consent to terminate the trust under the marriage-contract. The marriage-contract contained provisions in favour of children, but the spouses had reached such an age that the idea of their having children might be disregarded. There was no interest to be provided for by keeping up the trust, and the husband and wife were entitled to renounce their provisions — *Paterson* v. *Hardie*, March 7, 1899, 36 S.L.R. 507. The case of *Menzies* did not rule the circumstances of the present case; in that case the wife had herself conveyed the estate to the trustees. In the present case the whole trust funds belonged to the husband.

At advising—

Lord Justice-Clerk—The bequest in this short holograph will is expressed in short and simple terms. The gift is to the testator's sister, "for her sole and separate use in liferent, and at her own option as to destination, in the event of her death." I am of opinion that this bequest conferred on her no right of fee, or of appointment *inter vivos*, but only a right of disposal *mortis causa*.

As regards the trust under the marriage-contract, I hold that the spouses cannot call upon the trustees to denude, the trust constituting a protection to the wife's interests which cannot be removed.

Lord Young—The only question about which I have a difficulty—and my difficulty arises only upon decisions or rather *obiter dicta* in the course of decisions—is upon the second question, "Are the first parties now entitled by mutual consent and the consent of the marriage-contract trustees to terminate the trust created by the antenuptial marriage contract, and to call upon the trustees to denude of the trust-estate?" I should upon that question on its own merits have myself entertained no doubt as to the law and the good sense of the thing. I quite appreciate the view which has been taken in several cases, that where a third party gives property to trustees with directions to them to hold it during the lifetime of a person for that person's liferent, the will of the truster is not to be defeated even when there is no interest concerned but that of the person to whom the liferent is given. In such a case it is presumed that the truster directed the trustees to hold the property during a certain period with the quite intelligible view in his mind that that was necessary for the reasonable protection of the person to whom the property was given. In such circumstances the will of the giver should not be defeated, and if my memory serves

me aright, the decisions and the view expressed to that effect proceed on the ground that the will of the giver ought not to be defeated but should be carried out. Here that is not so. The property is held by the marriage-contract trustees by direction of the two spouses for the liferent of the latter during their joint lives. The estate belonged to the husband, and nobody is interested in the matter except the two spouses, and if they desire that the trust should be terminated—there being no conceivable reason, at least no reason conceivable by me, why it should be continued—and if the trustees also see no reason why it should be continued, I should have no difficulty in deciding that the spouses being thoroughly intelligent in the matter are entitled with the consent of the trustees to terminate the trust which they had created in reference to their own property. Taking into account the decisions and *obiter dicta* to which I have referred, I am not disposed to decide that otherwise. On this question I therefore dissent from the opinion of your Lordship.

On the other question I entirely agree with your Lordship.

LORD TRAYNER—With reference to the questions put to us, my opinion is—(1) I can see no reason whatever for holding that Mrs Reid acquired any fee in Mr Copland's estate. Her interest is expressly declared to be merely one of liferent. To that is added a power to her to dispose of the fee "in the event of her death," which I read as a power to Mrs Reid to dispose of the fee by a deed which will only take effect on her death—in other words a *mortis causa* deed.

(2) The second question must I think be answered in the negative. Under the antenuptial marriage-contract between Mr and Mrs Reid, there is an alimentary provision in favour of Mrs Reid protected by a trust. That alimentary provision Mrs Reid can neither alienate nor *stante matrimonio* renounce.

I would just observe with reference to what Lord Young has said that *Menzies* v. *Murray* is not a case where the property came from a third party, but from the wife herself to the trustees nominated under the marriage-contract.

LORD MONCREIFF—I agree upon all points.

(1) I am unable to read the holograph will of 1875 as giving Mrs Robert Reid any higher right in the property bequeathed to her than one of liferent with a power of disposing of the capital by deed to take effect after her death. It is true that no trust is created and there is no ulterior destination of the fee. Further, under the terms of the will Mrs Reid could probably defeat the expectancy of the testator's heirs *ab intestato* by executing an irrevocable deed disposing of the capital. But giving full weight to these considerations the right conferred upon her falls short of one of absolute property, the testator's intention that she should only enjoy a liferent being sufficiently clear.

(2) I am also of opinion that Mr and Mrs Reid, the first parties, are not entitled by mutual consent to terminate the trust created by the antenuptial marriage-contract. If the only interest created in favour of Mrs Reid had been the right conferred upon her under the sixth purpose, in the event of her surviving her husband, and there being no surviving issue of the marriage, to have the whole means and estate contributed by her husband conveyed to her as her absolute property, the cases of *Ramsay*, 10 Macph. 120; and *Laidlaw's Trustees*, 11 R. 481, might have aided the first parties' contention. It is hard to see why there should be less necessity for protecting a wife against the influence of her husband *stante matrimonio* where the provision made in her favour if she survives her husband is one of fee, than where it is a liferent, as was the case in *Menzies* v. *Murray*, 2 R. 507. But the cases cited favour that contention.

But in addition to that provision Mrs Reid is entitled under the second purpose along with her husband to receive during the subsistence of the marriage the annual produce of the trust-estate (under certain deductions) as an alimentary allowance. This according to the authorities places it beyond the power of the spouses of consent to revoke the marriage-contract trust.

The Court answered the first and second alternatives of the first question in the negative, and the third alternative in the affirmative, and answered the second question in the negative.

Counsel for the First Parties—Dean of Faculty—Hunter. Agent—James Gibson, S.S.C.

Counsel for the Second Parties--Constable. Agents—Simpson & Marwick, W.S.

Counsel for the Third Party—Jameson, Q.C.—James Reid. Agents—Simpson & Marwick, W.S.

Tuesday, June 13.

SECOND DIVISION.

[Sheriff-Substitute at Dundee.

CLEMENT *v.* THOMAS BELL & SONS.

Parent and Child—Reparation—Title to Sue—Bastard—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37).

Held that an illegitimate child has no title to sue for damages in respect of the death of its mother either at common law or under the Workmen's Compensation Act 1897.

The following case was stated in terms of the Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), Schedule II. 14 (*c*), by the Sheriff-Substitute of Forfarshire at Dundee (J. C. SMITH) on an appeal to the Second Division of the Court of Session, in an action under said Act, at the instance of