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

Christina Clement, a pupil child residing with Mary Chalmers or Wallace, wife of John Wallace, waggon driver, at 14 Lyons Close, Dundee, appellant, against Thomas Bell & Sons of Dundee, Limited, spinners and manufacturers, respondents :—

"Upon the 27th day of January 1899 a petition was presented under the Workmen's Compensation Act 1897 to the Sheriff Court of Forfarshire, at Dundee, at the instance of the appellant against the respondents, to pay to the appellant £150 with interest.

"In her condescendence the appellant stated—(Art. 1) That she was about two years of age, and was the illegitimate and only child, and the only known dependent of the late Mary M'Intyre, spinner, who resided at 14 Lyon's Close, Dundee. (Art. 2) That the said Mary M'Intyre was employed by the respondents as a spinner in their said Heathfield Works. (Art. 3) That on the morning of 3rd December 1898, while the said Mary M'Intyre was working in respondent's said Heathfield Works at a spinning-frame, her right hand was caught at a part of the said machine, and she was severely injured. She was removed to the Dundee Royal Infirmary, and died there from the effects of the said injuries on 11th December 1898. (Art. 4) That said Heathfield Works are a factory within the meaning of the Factory and Workshop Acts 1878 to 1891, and the respondents are occupiers thereof within the meaning of the Factory and Workshop Acts 1878 to 1895. That the said late Mary M'Intyre's employment was one to which the Workmen's Compensation Act 1897 applied, and that the personal injuries sustained by the said Mary M'Intyre were the result of an accident arising out of and in the course of her employment.

"The petition was served upon the respondents upon 27th January 1899. On 8th February 1899 the said John Wallace was appointed *curator ad litem* to the pursuer, and a hearing took place before the Sheriff. No defence was stated in writing. The only defence insisted upon was a denial of the appellant's title to sue in respect of her being an illegitimate child.

"On 26th April 1899 the Sheriff dismissed the petition in respect that an illegitimate child has no title to sue.

"The question of law for the opinion of the Court was—Whether an illegitimate female child, dependent upon the earnings of her mother at the time of the mother's death, has a title to sue the employers of the mother for compensation under the Workmen's Compensation Act 1897 in respect of the death of the mother?"

Argued for appellant—It was contended that the case was ruled by the case of *Clarke* v. *Carfin Coal Company*, July 27, 1891, 18 R. (H.L.) 63, which had affirmed the decision in *Weir* v. *Coltness Iron Co.*, March 16, 1889, 16 R. 614, and overruled *Samson* v. *Davie*, November 26, 1886, 14 R. 113. Two circumstances, however, differentiated the present case from *Clarke* and *Weir*, viz., (1) The present case was that of a pupil child suing for the death of its mother, not that of a parent suing for the death of a child. There was no liability on the part of illegitimate children to support their parents, but deceased if she had lived would undoubtedly have been bound to aliment her child, and therefore the latter had a claim for pecuniary loss for the death of her mother. (3) Both *Clarke* and *Weir* were actions in which *solatium* and damages were sued for. In the present case the appellant did not sue for *solatium* but for damages alone. The claim of an illegitimate child to damages for the death of a parent had been recognised in the old case of *Children of Forrest* v. *Clerkington*, June 24, 1542, M. 13,903.

Argued for the respondent—The appellant had no title to sue. At common law all actions of this kind were confined to a very limited class, viz., husbands and wives and parents and lawful children. A brother had no such action for reparation for the death of a sister, and there was less reason for extending to an illegitimate child what the law did not give to a brother or sister. Under section 7 of the Act the dependent entitled to sue under it must have a title to sue at common law. It would not do to argue that the illegitimate child had a title to sue merely because she had sustained some pecuniary loss by reason of her mother's death, because if that reasoning were sound, then if a workman, who was in debt, died by reason of accidental injury received in the course of his employment, any creditor who had sustained loss by reason of his debtor's death would have a title to sue the employer for damages. The decision in *Clarke* was fatal to the present claim.

At advising—

Lord Justice-Clerk—The question in this case is, whether an illegitimate child can claim compensation for the death of its mother under the Workmen's Compensation Act. I am of opinion that the Sheriff-Substitute has rightly decided that it can not. I do not find any ground in any of the cases quoted to justify our holding that there is in such a case a title to sue. The whole general policy of the law is to an opposite effect, and the special considerations which lead to a legal claim for aliment of bastards do not seem to me to afford any ground for holding that where a statute makes special provision for claims of a novel character in favour of relatives of a person accidentally killed that such claim extends, although not so expressed, to the illegitimate child of a person so killed.

Lord Young concurred.

Lord Trayner—The appellant can only insist in a claim under the Workmen's Compensation Act if she has a title to sue the respondents for damages at common law on account of her mother's death. It has been laid down in the House of Lords that such a claim of damages can only be insisted in by one between whom and the deceased person there existed a reciprocal obligation of support. As an illegitimate child is not bound to support its mother, there

was no such reciprocal obligation between the appellant and her deceased mother. The Sheriff has therefore rightly decided that the appellant has no title to sue.

LORD MONCREIFF — In the Workmen's Compensation Act 1897 the word "dependents" is defined by section 7, sub-section 2 (*b*), as meaning in Scotland "Such of the persons entitled according to the law of Scotland to sue the employer for damages or *solatium* in respect of the death of the workman as were wholly or in part dependent upon the earnings of the workman at the time of his death."

The question, therefore, which we have to decide is, whether at common law an illegitimate child has a title to sue in its own right for damages and *solatium* in respect of the death of his or her mother. In view of the decision in this Court in the case of *Weir* v. *Coltness Iron Co.*, 16 R. 1614, and the grounds of judgment in the House of Lords in *Clarke* v. *Carfin Coal Co.*, 18 R. (H.L.), p. 63, the point can scarcely be said to be still open.

In *Weir* v. *Coltness Iron Co.* it was decided in terms that the mother of a bastard child has no title to sue an action of reparation in respect of his death.

The question in *Clarke* v. *Carfin Coal Co.* was the same, viz., whether the mother of an illegitimate child was entitled to sue such an action. The House of Lords approved of the decision in the case of *Weir*, Lord Watson expressing an opinion that the right to sue a derivative claim of this kind is limited to a small class of persons, viz., husband and wife and their legitimate children.

The House of Lords thought it necessary to incidentally overrule the earlier decision in the case of *Samson* v. *Davie*, 14 R. 113, in which it was decided that a bastard son was liable to support his mother upon the ground that between the mother (as distinguished from the father) of an illegitimate child and the child there exists a mutual obligation of support in the event of necessity, which taken in connection with the natural though not lawful relationship existing between the two, is sufficient to satisfy the definition given by Lord President Inglis in *Eisten* v. *North British Railway Co.* in 8 Macph. 984. But the House of Lords in *Clarke* v. *Carfin Coal Co.* held that the decision in *Samson* v. *Davie* was not warranted by the authorities or by custom; and accordingly it must now be taken that the mother of an illegitimate child has no better claim for support from the child than has his putative father.

It is urged, however, that while it must now be held that a mother has no claim of support against an illegitimate child and no right to sue for damages in the event of his death, it does not follow that an illegitimate child has no such rights, because he has a claim for aliment against his mother. This does not seem to me to affect the question, because the claim for aliment against the mother is precisely of the same character as that which the child has against his putative father, viz., a claim of debt, and a creditor has no title to sue for reparation merely in respect of the death of his debtor.

I am therefore of opinion that the pursuer not being within the limited class who are entitled to sue such actions has no title to sue.

This being so, it is not necessary to consider whether the deceased having survived for some time the accident which resulted in her death, and the right of reparation having vested in her, that right did not pass to her next-of-kin as her representatives (among whom the pursuer does not stand) to the exclusion of the present claim. The question may hereafter arise whether this is not involved in the decision of the case of *Darling*, 19 R. (H.L.) 31.

The Court dismissed the appeal and affirmed the interlocutor appealed against.

Counsel for the Appellant—Dove Wilson. Agent—Charles T. Cox, W.S.

Counsel for the Respondents — Sym. Agents—Anderson & Chisholm, Solicitors.

Tuesday, June 13.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

INLAND REVENUE *v.* MACLACHLAN.

Revenue—Estate-Duty—Cesser of Annuity—Finance Act 1894 (57 *and* 58 *Vict. cap.* 30), *secs.* 1, 2 (1) *b*, 7 (7) *b.*

Section 1 of the Finance Act of 1894 provides for the levying of estate-duty on the principal value of all property which passes on the death of any person dying after the commencement of the Act.

Section 2 (1) provides that "property passing on the death of the deceased" shall be deemed to include (*b*) "property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest."

Section 7 (7) of the Act provides that "The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall—(*b*) if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended."

The proprietor of an estate burdened it with an annuity of £800 to his widow. A subsequent proprietor burdened it to the extent of a further sum of £800 restrictable during the life of the previous annuitant to the extent of £400, an additional £400 a-year being charged in favour of the second annuitant on certain legacies during the same period.

Held that estate-duty was payable by