sumed to have known that this power of appointment was given to him. I am of opinion that this case is ruled by the cases of *Hyslop*, *Dalgleish*, and *Clark's Trustees*, and I agree with your Lordship.

LORD M'LAREN—The question is whether the will of Francis Hargrave Ogston, which is in the form of a general settlement, takes effect on a bequest contained in the trust-disposition and settlement of Lockhart Mactavish to Francis Hargrave Ogston in liferent and to the persons nominated by him by will in fee. We start with the doctrine laid down by Lord Brougham in the case of *Cameron* v. *Mackie* (1833, 7 W. & S. at p. 141), that the presumption is that a general settlement exercises a power of appointment. There was not much authority then for that proposition. But we must take it that Lord Brougham expressed the effect of such authority as there was, and of the traditions of the legal profession, that it was to be presumed that a general settlement effectually exercises a power of appointment unless there is something to show the contrary. Here it is enough that there is nothing to show the contrary. It is not indeed certain that Mr Ogston knew he had this power. But it is not plain that he did not know. The presumption is that he had information about it. He drew the liferent, and would naturally be informed as to what was to become of the fee. At least it cannot be affirmed as matter of fact that he was in ignorance of the power. If he knew of it, then according to the rule expressed by Lord Brougham the presumption is that he exercised it by his general settlement. This is only a presumption, and it is easy to figure cases in which it would be rebutted. Here there are no special facts to create difficulty.

I am not sure that it makes any difference which way the question is decided, as one possible reading of the bequest in Mr Mactavish's settlement is that under it the fee goes to the liferenter's brothers and sisters failing appointment by him; but it is not necessary to consider this.

LORD KINNEAR concurred.

The Court answered the first question in the case in the affirmative.

Counsel for the First Parties—Chree. Agents—Skene, Edwards & Garson, W.S.

Counsel for the Second Parties—Campbell, K.C.—Hon. W. Watson. Agents—Tods, Murray & Jamieson, W.S.

Tuesday, March 10.

SECOND DIVISION.

[Sheriff Court of Lanarkshire at Glasgow.

SCHMIDT v. CALEDONIAN RAILWAY COMPANY.

Expenses — Parties Liable — Husband — Action by Wife with Consent and Concurrence of Husband — Husband and Wife.

In an action of damages for personal injury at the instance of a married woman, with consent and concurrence of her husband, who had been present when she sustained the injuries on account of which she sued, the case was tried by a jury, and at the trial the husband gave evidence in support of his wife's averments, and a verdict was returned for the defenders. *Held* that the husband and wife were liable jointly and severally in expenses.

Mrs Jessie Kemp or Schmidt, wife of Robert Schmidt, furrier, 3 Pettigrew Avenue, Shawlands, Glasgow, with consent and concurrence of her husband, raised an action against the Caledonian Railway Company, in which she sought to recover damages for personal injuries sustained by her, which were caused by an accident for which she alleged the defenders were responsible.

The case was tried before the Lord Justice-Clerk and a jury.

Robert Schmidt was present when the accident happened to his wife, and consequently was in a position to judge of her grounds of action. At the trial he gave evidence in support of her averments.

The jury returned a verdict for the defenders.

In moving the Court to apply the verdict and for expenses, the defenders maintained that the pursuer and her husband should be found jointly and severally liable in expenses.

Argued for the pursuer—The mere consent and concurrence of the husband was not sufficient ground for making him liable in expenses—*Whitehead* v. *Blaik*, July 20, 1893, 20 R. 1045, 30 S.L.R. 916; *Fraser* v. *Cameron*, March 8, 1892, 19 R. 564, 29 S.L.R. 446; *White* v. *Steel*, March 10, 1894, 21 R. 649, 31 S.L.R. 542; *Macgown* v. *Cramb*, February 19, 1898, 25 R. 634, 35 S.L.R. 494; *Chalmers* v. *Douglas*, February 19, 1790, M. 6083, *revd. Baillie* v. *Chalmers*, April 6, 1791, 3 Pat. App. 213; *Maxwell* v. *Young*, March 7, 1901, 3 F. 638, 38 S.L.R. 443; *Picken* v. *Caledonian Railway Company*, October 26, 1901, 4 F. 39, 39 S.L.R. 31. Apart from giving his consent the pursuer's husband had done nothing to identify himself with her action; at the trial he had taken no more active part than an ordinary witness.

Counsel for the defenders were not called upon to reply.

LORD JUSTICE-CLERK—Mr Watt frankly admitted that he knew of no case until very lately in which, where a woman complained of personal injuries and sued with consent of her husband in respect of these injuries, the question had been raised whether the husband was liable in expenses. Now, in this particular case I think we have all the circumstances which tend to show that the husband was active in the matter. He was present at the time the accident took place, and therefore knew the circumstances in which it took place. He joined with his wife in making a statement in regard to these circumstances, and I am satisfied from what I heard at the trial that that statement was not true, and therefore he joined with her in endeavouring—I do not say by perjured evidence, but by that exaggerated and untrustworthy evidence which is so common in such cases—to set up a case against the defenders, and was unsuccessful. Now the Lord President in the case of *Picken*, 4 Fraser 39, made use of words which I may read and use as my own—"It appears to me that the jury must have thought, and I am not in the least surprised if they did think, that there was really no substance in the case. They must have considered that the evidence as to the condition of the wife's health was exaggerated and could not be relied upon, and if the husband initiated, or was a party to initiating, and supported by his evidence as well as by his instance, a case which proved not to be a substantial one, it seems to me that he should be held liable to the opposite party in expenses." I think that expression is just exactly what my own view is, and I am in favour of granting decree here both against the wife and the husband.

LORD TRAYNER concurred.

LORD MONCREIFF—I am of the same opinion. It is a very difficult thing to dissociate a husband's liability from that of his wife. There may be cases where that can be done, and Mr Watt has referred to some of them, but where a husband either knows the facts or should know them, and the proof of the facts averred entirely fails, I see no reason for absolving him from joint liability with the wife for expenses.

LORD YOUNG was absent.

The Court applied the verdict, and found the pursuer and her husband jointly and severally liable to the defenders in expenses.

Counsel for the Pursuer—Watt, K.C.—Burt. Agents—M. J. Brown, Son, & Co., S.S.C.

Counsel for the Defenders—Clyde, K.C.—MacRobert. Agents—Hope, Todd, & Kirk, W.S.

Wednesday, March 11.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

GILLON'S TRUSTEES *v.* GILLON.

Husband and Wife—Postnuptial Provisions for Wife — Trust-Deed for Creditors—Revocability—Trust.

By trust-disposition *inter vivos* A conveyed his whole estates to trustees primarily for the purpose of payment of his debts. He directed that as long as his debts remained unpaid the deed should not be revocable by him. The truster directed the trustees to pay the whole free residue and remainder of the annual income of the trust estate for behoof of the truster in liferent, and after his death to his wife in liferent. These liferents were declared to be alimentary. The deed contained a clause declaring that the provisions in favour of the wife should not be held to be a donation *inter virum et uxorem*, but were granted in order to recoup her for advances made by her to the truster and to provide a suitable provision for her in the event of his death. It was also provided that these provisions in favour of the wife should not be revocable by the truster. A had married without a marriage-contract, and his wife had before the date of the trust-deed advanced considerable sums to him out of her separate estate.

Some time afterwards A, with the consent of his wife and all the creditors interested, executed a revocation of the trust, and called upon the trustees to denude.

The trustees brought a declarator that the trust-disposition was not revocable by A with the consent of his wife. *Held* (*rev.* judgment of Lord Stormonth Darling, Ordinary) that the provisions in favour of the truster's wife contained in the trust-deed could not be considered as a postnuptial provision for her, and were revocable with her consent, and that the trustees were bound to denude.

Question (*per* Lord M'Laren) whether a postnuptial contract containing reasonable and proper provisions for the wife, to take effect only on the dissolution of the marriage, is revocable with consent of all parties interested.

Process — Interlocutor — Substitution of Amended Interlocutor — Consent of Parties.

Circumstances in which the Court, with consent of both parties, substituted an amended interlocutor for an interlocutor pronounced by themselves, on the ground that the interlocutor originally issued did not correctly express the judgment of the Court.

In 1897 Henry Gillon of Wallhouse, who was then in embarrassed circumstances, granted a trust-deed by which he conveyed