deduction which they claim.

"I have thought it right to consider the particular arguments urged in this case; but I must add that I think in principle it is ruled by the case of *Alexander's Trustees*, 1905, 7 F. 367.

"The defenders maintained that in any view partial deduction of the debt should be allowed, even if it could not be wholly deducted as having been created for full consideration. I confess I am not satisfied that the statute allows any such partial deduction, and there are no materials in the defenders' pleadings for the ascertainment of it, even if it were allowable."

The defenders reclaimed and argued—The sum in the bond fell to be deducted in respect that it was granted for full consideration in money's worth and for the granter's use and benefit. The claim of legitim which was discharged in the marriage-contract was a valuable right, and the discharge operated to the father's benefit—*Fisher* v. *Dixon*, June 16, 1840, 2 D. 1121; Lord Fullerton at pp. 1139-40. In *Lord Advocate* v. *Sidgwick*, June 6, 1877, 4 R. 815, 14 S.L.R. 522, it was recognised that the discharge of legal rights might in some cases amount to a "consideration in money or money's worth." The case of the *Inland Revenue* v. *Alexander's Trustees*, January 10, 1905, 7 F. 367, 42 S.L.R. 307, on which the Lord Ordinary founded, was distinguishable in that there the son did not discharge his legal rights.

Counsel for the respondent were not called on.

LORD PRESIDENT—In this case I am satisfied that the Lord Ordinary has come to the right conclusion. The whole point turns upon the meaning of sub-section (1) of the 7th section of the Finance Act, which provides that "allowance shall not be made (*a*) for debts incurred by the deceased or incumbrances created by a disposition made by the deceased, unless such debts or incumbrances were incurred or created *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit, and take effect out of his interest." Now, the sum which is here sought to be deducted is a sum of £30,000, for which Sir George had granted a bond and disposition in security. This bond was granted in implement of an obligation undertaken by Sir George in his second son's marriage contract as a provision for that son, the sum being settled under the marriage contract in consideration of the marriage which he was about to make with his proposed spouse Lady Maud Ashley. It is quite true that as one of the incidents of the marriage contract there is also a discharge by the said son of any claim for legitim which he might have. His claim for legitim was in a peculiar position, because in Sir George's own marriage contract all rights in respect of children's legitim had been discharged with the exception of such child as should succeed to the family estates. At the time of the marriage contract with the younger George, the eldest son, the heir-apparent to the family estates, was a certain John, and it was possible that if John should die Sir George would require, if he wished his estate to avoid the payment of legitim, to take a discharge from the younger George. But all that seems to me to come in quite incidentally. It is perfectly impossible to say that the £30,000 was a consideration wholly for Sir George's own use and benefit. Whether the language "own use and benefit" applies to a discharge of a possible claim of one of the children for legitim is doubtful, but without deciding that, it is enough to say that the £30,000 was not wholly given for the discharge of legitim, and the further consideration of the marriage is obviously not a consideration in money's worth for Sir George's own use and benefit.

LORD M'LAREN, LORD KINNEAR, and LORD PEARSON concurred.

The Court adhered.

Counsel for the Pursuer and Respondent — Solicitor-General (Ure, K.C.) — A. J. Young. Agent—Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Counsel for Defenders and Reclaimers—Macfarlane, K.C.—Pitman. Agents—J. & F. Anderson, W.S.

Tuesday, January 16.

FIRST DIVISION.

[Sheriff Court of Lanarkshire at Glasgow.

MASSIE *v.* THE CALEDONIAN RAILWAY COMPANY.

Process — Jury Trial — Appeal for Jury Trial—Remit to Outer House—Motion for Trial—Trial not Necessarily within Three Weeks of Party's Motion — Court of Session Act (13 *and* 14 *Vict. c.* 36), *sec.* 40 *—Notice for Sittings.*

Observed, per Lord President, that the provision of section 40 of the Court of Session Act 1850 that "where an issue or issues is or are approved . . . it shall be competent to the Lord Ordinary in the cause, on the motion of either of the parties, to appoint a time and place for the trial of such issue or issues, such time being . . . except upon special cause shown, not later than three weeks from the date of such motion," does not apply to cases appealed from the Sheriff Court for jury trial; and where such a case has been remitted to the Outer House the judge to whom the case is remitted may try it at any time before the next sittings, but if he is unable to do so notice may be given for such sittings.

This was an action in the Sheriff Court of Lanarkshire at Glasgow at the instance of Mrs Margaret Slessor or Massie against the Caledonian Railway Company for damages for the death of her son due to the alleged fault of the defenders. The pursuer ap-

pealed to the First Division of the Court of Session for jury trial.

In approving of the issue proposed by the pursuer and remitting the case to the Outer House, the LORD PRESIDENT observed—"It has been suggested in view of the provisions of section 40 of the Court of Session Act 1850 that when a case is appealed from the Sheriff Court for jury trial and is remitted to the Outer House, the judge to whom it is remitted must fix a day for the trial of the issue within three weeks. In my opinion that statutory provision has no application to appeals from the Sheriff Court for jury trial. It appears that in some cases of this sort when we have made a remit and the judge has been unable to give a diet within three weeks, notice has been given for the sittings. This is wholly unnecessary, for the judge to whom the case is remitted may try the case at any time before the next sittings. Of course these cases cannot be hung up indefinitely, and if the judge cannot give a day before the end of the session notice of trial for the sittings may be given."

Counsel for Pursuer—Spens. Agents—Oliphant & Murray, W.S.

Wednesday, January 24.

FIRST DIVISION.

[Lord Johnston, Ordinary.

M'CARDLE, PETITIONER.

(See *ante*, January 13, 1906, 43 S.L.R. 268.)

Administration of Justice—Distribution of Business—Power to Transfer—Transfer to Another Lord Ordinary of Cause Appropriated to Junior Lord Ordinary—Jurisdiction of Judge to whom Cause was Transferred on the Appointment of a New Junior Lord Ordinary—Court of Session Act 1857 (*Distribution of Business Act*) (20 *and* 21 *Vict. cap.* 56), *secs.* 1 *and* 4—*Bankruptcy* (*Scotland*) *Act* 1856 (19 *and* 20 *Vict. cap.* 79), *sec.* 164—*Act of Sederunt, 25th November* 1857, *sec.* 29—*Clerks of Session Regulation Act* 1889 (52 *and* 53 *Vict. cap.* 54), *sec.* 3.

In a petition appropriated by statute to the Junior Lord Ordinary, a Junior Lord Ordinary intimated that having acted as counsel in the cause he desired not to exercise jurisdiction; and the Lord President transferred the cause to another Lord Ordinary.

Held (after consultation with the Judges of the Second Division) (1) that the Lord President had power so to transfer the cause under sec. 1 of the Court of Session Act 1857 (Distribution of Business Act) and (2) that on the appointment of a new Junior Lord Ordinary the cause did not revert to him unless re-transferred.

The Court of Session Act 1857 (Distribution of Business Act) (20 and 21 Vict. cap. 56) in sec. 1 enacts—"It shall be lawful for the Lord President of the Court of Session from time to time, as it shall appear to him to be necessary or expedient with a view to promote the due despatch of the business of the Court, to transfer causes from one Division of the Court to the other, and from any one Lord Ordinary to any other Lord Ordinary, to such extent as he shall judge to be necessary or expedient, for the purpose of promoting despatch and preventing delay. . . ."

Section 4 provides—"All summary petitions and applications to the Lords of Council and Session which are not incident to actions or causes actually depending at the time of presenting the same shall be brought before the Junior Lord Ordinary officiating in the Outer House, who shall deal therewith and dispose thereof as to him shall seem just; and in particular all petitions and applications falling under any of the descriptions following shall be so enrolled before and dealt with and disposed of by the Junior Lord Ordinary, and shall not be taken in the first instance before either of the two Divisions of the Court viz., (1)... (2)... (3)... (4)... (5) . . ."

The Act of Sederunt of 25th November 1857 regulates the procedure of judicial factors under the Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. cap. 79). In its 29th sec. it provides—"All proceedings which in this Act are appointed to take place by or before the Court shall, although the same be addressed to the Lords of Council and Session, be brought before, dealt with and disposed of by the Junior Lord Ordinary officiating in the Outer House, or by the Lord Ordinary officiating on the Bills in time of vacation, subject to the review of the Inner House, in conformity with the 4th sec. of the statute 20 and 21 Vict. cap. 56.

The Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. cap. 79), sec. 164, *inter alia*, provides—"It shall be competent to one or more creditors of parties deceased to the amount of £100, or to persons having an interest in the succession of such parties, in the event of the deceased having left no settlement appointing trustees or other parties having power to manage his estate or part thereof . . . to apply by summary petition to either Division of the Court for the appointment of a judicial factor and . . . the Court may appoint such factor. . . ."

The Clerks of Session Regulation Act 1889 (52 and 53 Vict. cap. 54), sec. 3, provides—". . . All summary petitions and applications which are at present under the provisions of sec. 4 of" the Court of Session Act 1857 "appropriated to the Junior Lord Ordinary, shall . . . be presented and disposed of in the Bill Chamber, . . . and such applications may be made and petitions presented and disposed of and orders pronounced thereon at all times by the Junior Lord Ordinary in Session and by the Lord Ordinary on the Bills in vacation, provided that nothing herein contained shall affect the form of such applications and petitions, or of the interlocutors to be pronounced therein, or the preparation of extracts of decrees pronounced therein,