proof is incompetent. I consider, further, that the question is, whether there is in the policy a provision to the widow of the insured which is protected by the statute. There is no question about provisions to children. I think that the policy, so far as it purports to make a provision for the widow, contains no more than a provision for her, and for the heirs of Mr Dickie in the event of her predecease. I consider that the clause as to the terms of payment and vesting refers to the provisions to children who did not come into existence. I do not think that the destination-over to the representatives of the deceased takes the case out of the statute. There was such a destination in the policies considered in *Schumann* v. *The Scottish Widows Fund Society*, March 5, 1886, 13 R. 678; *Holt* v. *Everall*, 1876, L.R., 2 Ch. Div. 266; *Seyton* v. *Salterthwaite*, 1887, L.R., 34 Ch. Div. 511, in all of which the application of the statute seems to have been taken for granted. Further, I think that the destination to the widow adequately indicates that the person provided for is the wife of the insured, and satisfies the requirement of the statute on that point.

"On the whole, I lean to the opinion that the plea of the widow is well founded, but I prefer to rest my judgment on the ground that her right is, in a competition with the executor-dative, constituted by the terms of the policy irrespective of the statute."

The executor reclaimed, but the Court adhered without pronouncing opinions.

Counsel for the Pursuers and Real Raisers and the Executor—A. S. D. Thomsom. Agent—D. Hill Murray, S.S.C.

Counsel for Widow — Ure. Agent — David Turnbull, W.S.

HOUSE OF LORDS.

Tuesday, May 31.

(Before the Lord Chancellor, Lord Watson, Lord Herschell, Lord Morris, and Lord Field.)

DARLING (PAUPER) *v.* GRAY AND SONS.

(*Ante*, vol. xxviii. p. 872, and 18 R. 1164.)

Reparation—Master and Servant—Injury to Workman resulting Fatally after Action brought — Solatium — Executor —Competency of New Action by Mother for Damages for same Injury.

A workman died during the progress of an action of damages which he had brought against his employers for injuries sustained in their service, and his mother, as his executrix, was sisted as pursuer in the action. The mother afterwards brought an action of damages as an individual against her son's employers for the loss caused to herself by the death of her son.

Held (*aff.* judgment of the Second Division) that this second action was incompetent.

This case is reported *ante*, vol. xxviii. p. 872, and 18 R. 1164.

The pursuer Mrs Jane Wood or Darling appealed.

At delivering judgment—

Lord Watson—I am of opinion that the unanimous decision of the Second Division of the Court of Session in this case is in strict accordance with the existing law. The reasons assigned for it, which were delivered by Lord Young, are not fully expressed, but it sufficiently appears that the judgment of the Court proceeded upon the ground that the appellant's action was unknown to the law, and was therefore incompetent. The maxim *actio personalis moritur cum persona* has a very limited application in the law of Scotland, and in evidence of that proposition I need do no more than refer to the elaborate opinions of Lord Neaves and other Judges in *Auld* v. *Shairp*. It is in my opinion unnecessary for the purposes of this appeal to examine that case or to consider how far a bare claim in respect of personal injuries occasioned by the negligence of another constitutes a debt due to the party injured, which will pass upon his death without having brought an action to his personal representatives. The law has long been settled that when the deceased has instituted an action to enforce his claim, his executor can take up and insist in the process to the effect of recovering the pecuniary damages to which the deceased was entitled. The Court of Session, by a series of decisions which trench somewhat closely upon the province of the Legislature, has, subject to certain limitations, sustained actions at the instance of relatives of the deceased in their own rights, and not in a strictly representative capacity, against the parties whose negligence occasioned his death for the loss which they personally suffered through that event. Your Lordships had recent occasion in *Clarke* v. *Carfin Coal Company* to consider the class of persons to whom such a right of action has been given, and it was there held, in accordance with the rule adopted in the Courts below, that it only comprehended those persons between whom and the deceased there existed a reciprocal obligation of support in the event of either of them becoming indigent. The practical effect of your Lordships' decision was to limit the class to persons standing in the legitimate relation of husband, father, wife, mother, or child to the deceased. In *Eisten* v. *Eisten*, which is the leading authority upon this branch of the law, the Lord President (Inglis) observed—"As the existence of such claims in our common law is a peculiarity of our system, it is not desirable to extend this class of actions unless they can be justified on some principle which has been already established." In that observation, which has been repeatedly made in different terms by other Judges of the Court of

Session, I entirely concur. In *Clarke* v. *Carfin Coal Company* I had occasion to say that the rule which admits the particular action with which we are now dealing "does not rest upon any definite principle capable of extension to other cases which may seem to be analogous, but constitutes an arbitrary exception from the general law which excludes all such actions founded in inveterate custom, and having no other *ratio* to support it." The appellant maintained that whenever an individual is negligently injured there arises to each person standing towards him in the relation which I have explained an independent right of action contingent only upon his death sooner or later, and its being traceable to the injury which he received. For that proposition no authority whatever was produced except the worn-out analogy of actions of assythment. It would be the merest waste of your Lordships' time to go back to our ancient authorities for the purpose of examining the nature of an action of assythment, and showing that between it and an action by relatives in respect of negligence no analogy exists. In the case of *Eisten* v. *Eisten*, already cited, the Lord President said—"This is not an action of assythment, and it does not partake in any degree of the nature of such an action." Lord Deas—"To such a case I agree with your Lordships that the law of assythment is not applicable." Lord Ardmillan and Lord Kinloch expressed their opinions in similar terms. To my mind the only relevant question in the present case is, has the rule ever been carried so far as to recognise the competency of an action at the instance of relatives, whether an action in respect of the same *injuria* has been raised by the deceased during his lifetime, and is still a depending litigation? Unless that question can be answered in the affirmative, the appellant's action is in my opinion incompetent. There is no case to be found in the reported decisions of the Court of Session in which an action was sustained after the deceased's claims had been settled or extinguished by an adverse judgment, or where he had raised an action which passed to and might be insisted in by his executor, and the existence of such a right of action has not been affirmed or even suggested by a single text-writer. There is not a single instance in which the Court has allowed two actions to be brought in respect of the same negligent act leading to the injury and death of one person. Even in cases where the right of relatives to sue has been recognised they must bring one suit—and one only—in which the damages due to them respectively might be assessed. In that state of the law I do not think this House ought to encourage the creation of a new right and corresponding liability which are at present unknown in Scotland.

The LORD CHANCELLOR, and LORDS HERSCHELL, MORRIS, and FIELD concurred.

Their Lordships dismissed the appeal.

Counsel for the Appellant — Rhind — Kennedy. Agents—Keeping & Gloag, for D. Howard Smith, Solicitor.

Counsel for the Respondents—Sol.-Gen. Graham Murray, Q.C.—Johnston. Agents—Ingleden, Ince, & Colt, for T. & W. A. M'Laren, W.S.

Monday, July 25.

(Before the Lord Chancellor, Lord Watson, Lord Herschell, Lord Macnaghten, Lord Morris, and Lord Hannen.)

HUGHES AND ANOTHER (EDWARDES' TRUSTEES) *v*. EDWARDES AND ANOTHER

(*Ante*, vol. xxviii. p. 244, and 18 R. 319.)

Succession—Vesting—Marriage-Contract—Clause—Construction—Conditio si sine liberis.

In an antenuptial marriage-contract the wife conveyed a sum of £4000 to trustees. The deed provided that in the event of the marriage being dissolved by the predecease of the wife leaving children, the husband should have an alimentary liferent of this fund, that after his death the capital should be paid over to the children of the marriage on their attaining majority, and that if there were no children alive at the dissolution of the marriage, or should they all die before the terms of payment of their provisions as aforesaid, the husband should continue to have the liferent of the fund during his life, but that the whole capital should be subject to the wife's disposal by will. In the parallel clause which dealt with the event of the husband predeceasing the wife, it was provided that the wife should have an alimentary liferent of the fund; that after her death the interest was to be applied for behoof of the children during their minority, and that on their attaining majority the capital was to be paid to them, but subject to the declaration that if "such children should all die before their mother, or . . . should they all die before attaining majority, and without leaving issue of their own bodies," the fund should continue to be held for the alimentary liferent of the widow; and it was further declared that in the event of the wife surviving her husband, and of the failure of issue of the marriage, she should have the right to test on the capital. It was expressly provided that the provisions to children should not be payable, or become vested interests, or be transmissible by them until after the death of the longest liver of the spouses, and until the children attained majority.

The marriage was dissolved by the predecease of the wife, who was survived by one son, and left a will in