"Upon the whole, the Lord Ordinary is of opinion that the option conferred upon the surviving partner by the deed of agreement of 1859 is still applicable, and capable of receiving effect, and that the accounting between the parties must be subject to the provisions of that deed, including the provision as to the sum at which the works were to be valued."

Mr Dalglish reclaimed.

SOLICITOR-GENERAL and WATSON for him.

CLARK and A. MONCREIFF in answer.

The Court adhered to the interlocutor of the Lord Ordinary.

Agents for Reclaimers—Murray, Beith, & Murray, W.S.

Agents for Respondent—Hamilton & Kinnear, W.S.

Friday, February 21.

HAMILTON *v.* RATTRAY AND OTHERS.

Vesting—Legacy—Lapse—Postponed Payment. Circumstances in which *held* that certain legacies, the payment of which was postponed till six months after the death of the truster, or his widow if she survived him, vested *a morte testatoris*, and were not defeated by the previous right of the legatees.

This was an action of declarator brought for determining the rights of parties under the settlement of the late Lieutenant-Colonel William Rattray of Downie Park, in the county of Forfar. The leading question was whether the legacies, given under the sixth purpose of said settlement, vested in the legatees *a morte testatoris*, or not till the death of Colonel Rattray's widow, whom he constituted liferentrix of his estate.

By Colonel Rattray's settlement he disposed of his whole estate, real and personal, except his lands of Downie Park (of which he executed a separate deed of entail), to certain parties named as trustees. He bestowed on his surviving wife the liferent of his whole estate, including the lands of Downie Park, and, by the sixth purpose, he made the following appointments with reference to the legacies now in question:—"I appoint my said trustees to make payment of the legacies following at the first term of Whitsunday or Martinmas that shall happen six months after the death of the said Mrs Janet Henrietta Rankine, my spouse, or me, in case she shall happen to survive me." The question was whether, looking to the postponed period of payment, and reading the clause in the light of the other provisions of the deed, vesting was postponed till the period of payment, which took place *a morte testatoris*.

The Lord Ordinary (KINLOCH) pronounced the following interlocutor:—

"*Edinburgh, 1st June* 1867.—The Lord Ordinary, having heard parties' procurators, and made avizandum, and considered the process—Finds that, according to the sound construction of the trust-disposition and settlement of the deceased Lieutenant-Colonel William Rattray, dated 9th December 1815, and codicil thereto, the legacies bestowed under the sixth purpose of the said trust-disposition did not vest till the death of Mrs Janet Henrietta Rankine or Rattray, his surviving wife; and that no right thereto now arises to the assignees, or legal representatives, of those legatees who predeceased the said date: Finds that the late Captain James Rattray, having been an accepting trustee of the deceased, and having survived the death of the widow, became thereby entitled to the legacy of £19, 19s. given to the accepting trustees by the settlement; and that the same is payable to those now claiming in his room: And appoints the cause to be enrolled, in order that judgment may be pronounced therein, in accordance with the preceding findings. W. PENNEY.

"*Note.*—The leading question in the present case is, whether the legacies given under the sixth purpose of the late Colonel Rattray's settlement vested in the legatees *a morte testatoris*, or not till the death of his widow, whom he constituted liferentrix of his estate.

"By Colonel Rattray's settlement he disponed his whole estate, real and personal, except his lands of Downie Park (of which he executed a separate deed of entail), to certain parties specifically named as trustees. These comprised Mrs Janet Henrietta Rankine, his wife, afterwards his widow, and nine gentlemen, some of whom were resident in Scotland and some in England; and the conveyance was made to these 'as trustees, with the powers, and for the uses and purposes after mentioned, and to the survivors or survivor of them residing in Scotland for the time, who shall accept, any three of them to be a quorum, while that number of accepting trustees survive.'

"Colonel Rattray, by this settlement, bestowed on his surviving wife the liferent of his whole estate, including the lands of Downie Park. He appointed various legacies to be paid, the term of payment of most of which was the term succeeding the death of his wife, if she survived him; and with regard to the residue, the following is his declaration: 'In case there shall be any residue or reversion of the trust-funds and subjects hereinbefore conveyed, I appoint my said trustees to make over the said residue and reversion, as soon after the death of the survivor of my said wife and me as this trust can be closed, to the heir of my body, or other heir or substitute called to the succession of my tailzied lands and estate; and upon such payment the said heir shall be bound to settle the accounts of my said trustees, and to discharge them of this trust.'

"The question now arises as to the legacies bestowed under the sixth purpose of the trust; and, as said above, is, Whether these vested a *morte testatoris* or not till the widow's death? The question is convertible with this other, Whether the testater intended a personal bequest to the parties named, provided they should survive his widow, or whether he intended the bequest to go to their assignees or legal representatives if they should die in the interval between his own death and his wife's? The question must, like all other questions of vesting under a settlement of moveables, be determined by a sound consideration of the testator's intentions, as these are expressed in the settlement.

"The Lord Ordinary has come to the conclusion that the testator intended these legacies to vest at the death of his widow, and not sooner.

"The first consideration to be attended to, is that the time of payment of the legacies is the death of the widow. The sixth purpose begins thus:—'I appoint my said trustees to make payment of the legacies following at the first term of Whitsunday or Martinmas that shall happen six months after the death of the said Mrs Janet Henrietta Rankine, my spouse, or me, in case she might

happen to survive me.' A doubt was stirred before the Lord Ordinary as to the meaning of this clause, raised by the somewhat odd collocation of the words 'or me,' in the sentence. It was said that the clause must be read 'six months after the death of Mrs Henrietta Rankine, my 'spouse, or after my own death, in case she shall happen to survive me;' and that thus, in the event of the widow's survivance, it was still at the date of six months after the testator's own death that the legacies were to be paid. But this construction would make mere nonsense of the clause. It would make the legacies payable by the testator during his own lifetime, if his wife predeceased him, for that would be the meaning of 'six months after the death of the said Mrs Janet Henrietta Rankine,' if read absolutely and without qualification in the first part of the clause. It would also raise the absurdity of making the survivance of the wife the condition of the legacies being payable after the testator's own death. Most probable, the words 'or me' are a clerical error for 'and me,' and nothing else. But even as it is, the Lord Ordinary has no difficulty in reading the clause so as to import payment of the legacies at the testator's own death, if his wife should predecease him, and at his wife's death in the event of her survivance. The payment is made alternative, 'after the death of the said Mrs 'Janet Henrietta Rankine, my spouse, or me,' and what follows is equivalent to the statement, 'the first event occurring, in case she shall happen to survive me.'

"It is thus the starting point in the case, that in the event of the wife's survivance (which is what occurred) the legacies are not payable till her death. It is true that a mere postponement of the term of payment will not by itself infer that the legacy did not vest *a morte testatoris*. In the simple case, which has often occurred, of a liferent of the fund being constituted, and legacies indefinitely left to individuals named, with the term of payment declared to be the death of the liferenter, there may be no great difficulty in holding such legacies to vest at the testator's death; the right being unlimitedly given and merely the payment postponed. But the fact of a postponed period of payment may, on the other hand, be very material in determining at what period the testator intended vesting to take place. It will especially be so if the right to the legacy be not given indefinitely, but in the shape of an appointment to pay at a particular period—which may fairly be said to make the whole right centre in the appointment, so that if the appointment cannot be followed out literally by paying to the specific person named, no right shall arise. In the present case there is no indefinite bequest, such as would arise if the testator said—'I leave and bequeath the following legacies to the persons after named.' The terms in which the bequest is made are:—'I appoint my said trustees to make payment of the legacies following, at the first term of Whitsunday or Martinmas that shall happen six months after the death of the said Mrs Janet Henrietta, my spouse, or me, in cases he shall happen to survive me,' the specific legatees favoured being thereafter named in the deed. It is fairly contended that, under these words, the right of the legatees only arises out of the appointment, and does not come into operation till the time of execution of the appointment; and that the right must be held to have lapsed, if, by the predecease of the legatees, payment to the individuals named has become an impossibility.

"The principle on which, in the general case, a legacy is held to lapse if the legatee has predeceased the testator, may be fairly held applicable to such a case as this. It is the *personal* character of the legacy which is held to bring about this result. Hence if the legacy is left not merely to the individual named, but to him and his heirs, the legacy is held not to lapse, but to pass to these latter as conditional institutes. The reason is, that by the addition of these words the legacy is deprived of the exclusively personal character which otherwise belongs to it. It is reasonably contended in the present case, in regard to all the legacies under the sixth purpose which are given to specific individuals without mention of heirs or children, that the personal character of every such legacy prevents its passing to any legatee who predeceased the testator's widow, as much as, in the ordinary case, such a consequence is operated by the legatee's predecease of the testator himself.

"The next material consideration arises out of the fact that, in regard to *some* of the legacies bestowed under this sixth purpose, it is indisputable, and was not disputed, that the time of vesting was the death of the widow and not sooner. This is manifestly the case with the very first legacy bestowed, which is 'to the daughters of the said Dr Charles Rattray, the sum of £900 sterling, to be divided among them equally, share and share alike; and failing any of them without leaving children, the share of those dying to go to the survivors or survivor.' It was admitted on both sides that the clause of survivorship here inserted had the effect of suspending the vesting till the widow's death, as it could not be known till then who the survivors would be. The same inference was drawn, though more doubtfully, from others of the legacies, which were given to children failing the parents; as to which, it was said that the children were conditional institutes, in whose favour vesting was alike suspended. It was said in reply that it has been more than once decided that legacies may be given in the same clause of a settlement, of which some vest *a morte testatoris*, and some not till the death of the liferenter. The Lord Ordinary cannot doubt the competency of so wording a settlement as to make different legacies vest at different periods. But whether this result arises or not will depend on the terms employed. It is not naturally to be presumed, that where all the legacies arise out of one general appointment to pay six months after the liferenter's death, more than one period of vesting was intended by the testator. The natural presumption, on the contrary, is, that one general appointment, applicable to all, gives one period of vesting equally so applicable.

"There are other inferences pointing in the same direction, to be derived from the terms in which some of these legacies are expressed. Several of them, as already said, are legacies given to children failing their parents, that is, to the children generally mentioned of persons specifically named. It cannot be reasonably maintained that the parties favoured were the children in existence at the time of the testator's death; and that all were excluded who were born afterwards before the death of the widow. The fair presumption is, that the legacy was intended to operate in favour of all the children existing at the widow's death. But this is a consideration which is very adverse to the theory of vesting *a morte testatoris*. For if the legacy then vested, it vested in the children then existing. It is made to embrace all the children coming into

existence before the widow died (which is the fair presumption as to the testator's intention), by assuming that the widow's death, and no earlier period, was the intended time of vesting.

"The mode in which these legacies are expressed further shows very clearly that the testator knew how to express himself when he intended the legacies payable at his wife's death to go beyond the persons specifically named. He bestows the legacy on children, failing the parent, just because he did not intend the expression of his kindness and affection to be exclusively personal to the party named. The inference at once arises that, where no one is named but the specific legatee himself, the testator intended the personality of the legacy to apply in all its exclusiveness. He gives the legacy to children for the very purpose that, if the parent predeceased, these should claim as conditional institutes. But where, in the very same clause, none is mentioned but the legatee himself, the contrast in the form of expression speaks strongly in favour of a diversity of intention. It is reasonably held that the legatee is alone personally named, just because the testator intended that if he did not subsist to present his personal demand, the legacy should go to no one else.

"A special inference was drawn at the debate from the terms of the legacies given to Elizabeth and Chartotte Rattray, being 'the sum of £50 sterling each for a ring.' It was argued that the *purpose* of the bequest showed its being exclusively confined to the parties themselves. The ring was to be worn by these parties; it was not to be the subject of assignment, voluntary or legal, in favour of a number of others. Perhaps the argument is not one which can be pressed very far. But it undoubtedly corroborates the idea that the legacies were intended to be strictly personal at the time of payment; and that where the person did not exist the legacy did not exist any more.

"Taking all these circumstances into view, the Lord Ordinary has arrived at the conclusion that the only sound construction of the testator's intentions is to hold that he intended his legacies to be strictly personal to the legatees, and to be only demandable where the parties favoured survived personally to demand them; and not to be payable to assignees, voluntary or legal. And this, after all, is the true point of inquiry in the so-called question of vesting. The thing to be ascertained is simply whether, on a just construction of the terms of the settlement, the testator intended the legacies to be only payable if the legatees survived the widow, and themselves were in a situation to demand them, or whether he intended them to be equally claimable by their legal representatives or voluntary disponees. When once the mind rests in the conviction that this last alternative was not intended by the testator, this is equivalent to holding that the legacies did not vest anterior to the widow's death.

"It is to be added, in conclusion, that the case is not hampered with the difficulty which sometimes occurs in questions of vesting, namely, that to hold that no vesting took place will raise a case of intestacy, to which it is said the law is adverse, in much the same way as nature is said to abhor a vacuum. To hold the legacies not to have vested involves no case of intestacy in the present question. There is a residuary disponee, to whom everything falls which is not effectually bequeathed otherwise. And it is not unworthy of notice, that the residuary bequest does not itself vest till the widow's death. It is the heir of entail *then* in existence who takes the residue of the estate. The question is, whether he takes it subject to payment of the legacies to the legatees *then* in existence; or whether he must alike pay them to their legal representatives, or voluntary disponees. The Lord Ordinary is of opinion that the first branch of the alternative is that fixed by the testator.

"There is a special question raised on the terms of the last legacy, which is thus expressed, 'And lastly, to each of my accepting trust-disponees before-named, the sum of £19, 19*s.* sterling, for souvenir.' The words of this clause have been pressed into the service of the legatees by the argument supposed to be supplied by them, that as the widow, who was one of the trustees, could not draw the sum in question if the legacy did not vest till she had died, this supports the position that the legacies vested *a morte testatoris*. This seems to the Lord Ordinary somewhat more subtle than sound. If the opposite view is correct, no one was entitled to a legacy without survivance of the widow, whether trustee or not; and first to assume the widow entitled to the legacy, and then to argue that she could not obtain her right unless on the supposition of vesting *a morte*, is somewhat of a *petitio principii*. The Lord Ordinary is disposed to think that the sound construction of this clause is to hold the widow not to be referred to at all, but only the trustees other than her.

"But another point has been raised. Captain James Rattray was an accepting trustee, and survived the widow; but was then, it is admitted, permanently resident out of Scotland. It is said that he had lost all his rights of trustee, and, amongst others, his right to this legacy, under the clause quoted in the outset, which devolved the trust on 'the survivors or survivor of them residing in Scotland for the time.' It is not easy to construe this clause satisfactorily. But it appears to the Lord Ordinary not to be necessary to do so in order to determine the point in question. The clause provides for a case of survivorship; but it does not interfere with the original constitution of the trust, which undoubtedly vested the trust, *in the first instance*, in all the trustees named, whether in Scotland or out of it. Captain Rattray was admittedly an accepting trustee. The Lord Ordinary is not prepared to hold that his office came to an end by his removal out of Scotland. The clause appears to him rather to be an enabling than a disqualifying one; that is to say, rather to enable the trustees within Scotland to act without the others, than to erase those others from the trust. But be this as it may, the Lord Ordinary thinks that under the clause bestowing the legacy, it was enough to enable Captain James Rattray to demand it, first, that he was an accepting trustee; and secondly, that he survived the widow."

The representatives of the predeceasing legatees reclaimed.

Young, A. Moncreiff, H. Moncreiff, and Ellis for them.

Watson and Gloag for Respondent.

At advising—

Lord Justice-Clerk—The question to be determined in this case is, whether certain legacies conferred by the trust-deed of the late Colonel Rattray vested in the legatees at the death of the truster, or lapsed because of the legatees not surviving his widow. The form of the bequest is as follows—"I appoint my said trustees to make payment of the legacies following at the first term of Whitsunday or Martinmas that shall happen six months

after the death of the said Mrs Janet Henrietta Rankine, my spouse, or me, in case she shall happen to survive me." Then follow the names of the legatees.

The clause has been properly regarded by the Lord Ordinary as one really importing that the bequests are payable at the first term occurring six months after the death of the testator and his spouse. The words *or me*, which seem to introduce a difficulty in the construction, we were told, are written upon an erasure. One of the legatees named is William Rattray, a son of a niece of Colonel Rattray, to whom £100 is appointed to be paid. Another legatee, Selina Rattray, is to have a sum of £100. Another relative, named also William Rattray, is to be paid £100. Two sums of £50 are directed to be paid to each of two nieces *for a ring*, and the trustees named, and who shall accept, are to be paid £19, 19s. *for a souvenir*. These legatees and one of the trustees all survived the testator, but predeceased his widow. It is maintained against them that the legacies form a part of the residue as lapsed legacies.

It does not admit of dispute that a legacy left to a person named, without any ulterior destination, is to be held *prima facie* as vesting in the legatee on the testator's death. A legacy is a testamentary gift, and the death of the testator is presumably the time at which the right to testamentary gifts emerges. To defeat that *prima facie* presumption, it must be clearly shown that the gift was meant to be made conditional on the legatee's survivance of a party or a particular event as opposed to the ordinary presumption of a right vesting *a morte testatoris*. In this case it is said that the legacy is contingent on the legatee surviving the term of payment, because it is appointed to be paid at that term. The answer is, that it is appointed to be paid when a time, which is certain to arrive, shall have come, and that though a future term is fixed, it is fixed only as the time of the payment of a legacy which legacy is itself given absolutely.

The words of the direction to the trustees, to pay after the death of the liferentrix, do not point to the right of the legatees being contingent on that event. The legacies are to be paid to the parties named on the death of his widow, if surviving him; but there is no condition imposed on the grant of the legacy that the legatee shall have survived that period. Time is annexed to the payment of the legacy, and not to the legacy itself. The legatee is to be paid at a time certain to arrive, though that time may be distant, but the gift is made to the party, and is not so connected with the time in the expression of the gift, as to make the survivance an absolute condition of taking it. The payment merely is postponed. Nor can it be said that the fact of the postponement of the term of payment till the death of the widow, affords, in this case, any indication of the testator's view being opposed to vesting at the testator's death. Such a postponement was to be expected when regard is had to the general arrangements of this trust. The fund out of which these legacies fell to be paid was made subject to the widow's liferent, and the postponement of the period of payment of the liferented fund was necessary in order to carry out that important purpose of the trust. Mere postponement of the time of payment of legacies—and there is really here nothing more—especially where there is an obvious reason why payment should be delayed, cannot operate against vesting. In fact, there are probably few instances of legacies being made payable unless at a term different from the day of the actual death of the testator. The necessary administration of the affairs of a trust require that the payment should be postponed for six, or it may be for twelve months after the death; and in this very case the payment is not to be made until the first term occurring six months after the death of the survivor of the spouses; so that, if mere postponement of the term of payment were to be held as annexing the condition of survivance of the period of payment, the legacies would not be payable to any one dying after the decease of the surviving spouse, but before the actual date of payments, a proposition which cannot be maintained.

The form in which the legacy is given here, and the provision as to the time of payment, are as nearly as possible the same as those used in various cases where the legacies have been held to vest.

In the well-known and authoritative case of *Wallace*, the truster appointed his trustees, *inter alia*, to content and pay to Alexander Wallace, his nephew, the sum of £1000, which is "hereby bequeathed to the said Alexander Wallace, and shall be paid to him at the first term of Whitsunday or Martinmas that shall happen after the decease of the longest liver of me and my said spouse."

In the case of *Cochrane* (17 D. 103), the testator appointed payment to "John Cochrane or his heirs" six months after his decease, and "when the same is free from the liferent of my said spouse." Although it was contended that the heirs were pointed out as conditionally instituted in event of John Cochrane to survive the liferentrix, a specialty which does not occur here; the Court held that the legacy vested *a morte testatoris*.

In the case of *Marchbank* (14 Shaw, 521), an appointment to divide a sum on the death of an annuitant, and pay specific portions to individuals named or their heirs, was held to vest these portions of the estate in these individnals on the testator's death.

In the case of *Maxwell* (15 Shaw, 1005), it was held that an appointment to make payment, after the death of the longest liver of three sisters, to six nephews and nieces named, or "to the children of such as may have deceased before that time," vested the shares in the nephews and nieces from the death of the testator.

In the case of *Stirling* v. *Baird* (14 D. 20), Sir David Baird directed his trustees, at the first term after the death of Lady Baird, to "make payment of certain legacies," "which legacies shall be due and payable all at the first term of Whitsunday or Martinmas that shall happen six months after the death of the longest liver of me and my said wife, with interest from the term of payment till paid." It was held in the case of a legatee surviving Sir David, but predeceasing Lady Baird, that the legacy had vested.

There is thus clear authority in favour of bequests conceived in similar terms to those now before us, vesting on the death of the testator. In those cases, as in the present, the legacy was conferred by a direction or appointment to the trustees to pay it, and the payment is directed to be made on the expiry of liferents. Consistently with these cases, and apart from the supposed intention of the testator being otherwise indicated than by such appointments to pay at postponed periods, it would seem plain that the claim of the legatees is good.

The Lord Ordinary infers an intention to make the legacies conditional on surviving the liferenter from the assumed fact that the other legacies be-

queathed under the same trust directions cannot be held to be meant to vest until the widow should die. The first of the series is one where there is a destination over to the survivor, which may be held to point to the right being in the party surviving the period of distribution, and come within the precedent of the case of *Donaldson*. Another case is that of a legacy to be paid to Captain Rattray, and failing him to his children, a case *in pari casu* with the one in dispute, because the testator stood to Captain Rattray *in loco parentis;* and the mere expression in words of the condition *si sine liberis decesserit*, which would have applied had these words not been used, can scarcely alter the nature of the legatee's right. Two bequests are given of £50 each, money "for rings." The rings are, of course, to be worn not in honour of his widow, but of himself; and if any intention separately from the words of the gift is to be inferred, it may be assumed that the testator would rather contemplate an immediate than a contingent vesting, with a vested right to the money on the testator's death; for in that view only could a ring be acquired and used by the legatee in honour of the testator. If the right were contingent on surviving his widow, it would not be known whether it was ever to be worn till, it may, be forty years after his death. There is then a liferent provided in £500 coming into operation six months after the expiry of the widow's, with a fee in the children of the second liferentrix —a destination too special to admit of any inference as to bequests differently conceived. Then there is a right of disposal conferred on Mrs Christian Rattray, which right of appointment certainly did come into immediate operation, though the right of the appointees to take was necessarily postponed. The bequest of £19, 19s. to each trustee accepting of the trust as a *souvenir*, points to a right vesting on acceptance, and not, as the Lord Ordinary has held, contingent on the survivance of the liferentrix. The reading of this clause against vesting is exposed to two difficulties; one that, in such a case as has happened, where trustees to to whom a gift is given as accepting trustees, in anticipation of services to be rendered—though the services may have been rendered for years—would be cut out of this acknowledgment; and secondly, that the widow to whom the like sum, as a trustee, is given for a *souvenir* could not possibly take, because she could only do so on the condition of surviving herself. The suggestion that the truster did not intend to give his wife the same sum as the other trustees is opposed to his positive direction on the subject. If such a reading would necessarily deprive her of the *souvenir* on any possible contingency, the reading must be erroneous.

Lastly, a legacy of £1000 appointed to be paid to Lucy Rattray, and failing her to her lawful children equally, is recalled by a codicil, and "in place thereof," the truster says, "I direct my said trustees to pay the sum of £100 to William Fountaine, her eldest son, the sum of £450 to her brother Charles Rattray, and the like sum of £450 to her other brother James Rattray, and these three sums shall be paid to the said legatees at the terms, with interest and penalty as provided with regard to the foresaid original legacy and other legacies left by me by the sixth purpose of the foregoing settlement." So that there is here first a direction as to payment not in any way mixed up with time, and then a separate provision as to the term of payment of the legacies; demonstrating as to this fund the clear intention of the testator that the right to the legacy should exist, with a term of payment postponed; in other words, that a vested right should be conferred as at his death. And this as to the distribution of a fund falling within the original operation of the 6th direction. The inference is plain, that there was no condition, but only the fixing of a term *morandee solutionis causa*.

It follows from this analysis of the legacies under the 6th direction of the trust, that no intention can be legitimately deduced against vesting from the other bequests given in that direction, but rather the contrary. But no inference can safely be drawn as to one legacy from another. Each legacy must, I think, be construed according to the terms in which it is conceived, and not according to the expression of the terms of other legacies.

The destination of the residue is a matter wholly apart from the portion of the deed, and can still less afford any ground for inference as to specific legacies; and when it is considered that in the case of *Wright* one-half of the residue was held to vest on the testator's death, while the other did not; though given in the same clause, the argument, from the expression of other gifts than the one under consideratiion, must be admitted to be slender.

The result is, that the interlocutor should be recalled, and the representatives of the legatees surviving the testator, but predeceasing his widow, should be preferred.

The other judges concurred.

Agents for Reclaimers—Morton, Whitehead and Greig, W.S.; Wilson, Burn and Gloag, W.S.

Agents for Respondent—Mackenzie and Kermack, W.S.

Friday, February 21.

JURY TRIAL.

(Before Lord Kinloch.)

JOHNSTON *v.* RANDALL.

Jury Trial—Reparation—Slander. Action of damages for slander. Verdict for pursuer.

This was a case in which Lieut.-General Thomas Henry Johnston of Carnsalloch, residing at Mollance, near Castle-Douglas, was pursuer, and the Rev. Edward Randall, Episcopal clergyman at Castle Douglas, was defender.

The issue sent to the jury was in the following terms:—

"Whether, in or about the month of March 1867, the defender wrote and sent, or caused to be written and sent, to the editor of the *Dumfries and Galloway Courier*, for the purpose of being published, a report or statement containing a passage in the following terms, or in terms of similar import and meaning, and which was published in the *Dumfries and Galloway Courier* dated on or about 19th March 1867, viz.:—'Well, we were forced into the Town Hall, and the harmonium belonging to the trust surreptitously abstracted from us, and, though applied for, never returned. I have as good a right to claim the organ ('tis half mine) as the filcher of that harmonium had to deprive us of the use of it. However, we put up with the injustice, and found an instrument for ourselves?'

And,

"Whether the said passage is of and concerning