fund *in medio*, on the footing that by the predecease of the legatee the share destined to her fell to be treated as intestate succession, and went to Catherine and Ann Hutton as the next of kin of the testator at the time of his death.

Mrs Howison and Mrs Wilson, grand-nieces of the testator, and two of the next of kin of Christian Watkins, did not oppose the claim of the Misses Huttons' trustee, being beneficiaries under the mutual settlement of these ladies, and taking more benefit by the trustee being successful than in any other way; but alternatively, they claimed each one-fourth, on the footing that the share vested in Christian Watkins.

Colonel Watkins and John Watkin's trustees, stated alternative claims, their principal claim being on the footing of the share having vested, as in that case they would take benefit under an agreement between them and Christian Watkins.

Mrs Ryley claimed one-tenth, on the footing that the share was intestate succession, falling to the next of kin of the testator, as at the date of the death of the last liferenter.

The Lord Ordinary (ORMIDALE) sustained the claim of Misses Huttons' trustee, adding this note:—"The only question discussed before the Lord Ordinary was—Whether the fund *in medio*, being an eighth share of the residue of the estate of Mr Hutton, vested *a morte testatoris* or not till the period of division and distribution of that residue? In finding that the fund *in medio* did not vest till the latter period, the Lord Ordinary has been regulated by what he thinks must be held to have been the intention of the testator, as manifested by his deed of settlement, according to its true construction.

"The last purpose of the testator's settlement is that which requires to be chiefly considered. The testator there directs his trustees, after payment of certain annuities to his wife and sisters, to accumulate the surplus, and divide it, as well as the whole residue of his estate, amongst various persons, according to certain shares; one-eighth share whereof, being the fund *in medio*, he destined in the first instance, to Mrs Christian Watkins. Not only does the testator direct that the whole surplus of his estate, after satisfying the annuitants, should be accumulated and converted into a capital sum, to be, along with the rest of his estate, divided 'after the decease of my said wife and sisters, and the survivor of them;' but he specially declares that, in the event of any of the parties before named, who shall be entitled to a share of the residue or reversion of my said estate predeceasing,'—not the testator, but 'the period when the same shall be made,' that is, according to the Lord Ordinary's reading, not his own death, but the period when the residue or reversion is made up or ascertained so as to be capable of division,—'leaving issue of his or her body lawfully procreated, such issue shall be entitled to the portion or share which their father or mother would have been entitled to had he or she been alive.' There is thus a substitution or destination over, and otherwise such an indication of the testator's intention that, in accordance therewith, the Lord Ordinary thinks that he has had no alternative but to find that the share in question did not vest till the period of division and distribution. Altough the terms of the settlement in the case of *Young* v. *Robertson* were somewhat different from those of the settlement in the present case, the Lord Ordinary thinks that the conclusion he has arrived at here is supported by the reasoning which appears to have influenced the Court of last resort in that case, as reported in 4 M'Queen. p. 314. And he is also of opinion that the case of *Laing* v. *Barclay*, 20th July 1865, 3 M'P. 1143, which was cited to him at the debate, is a precedent to some extent in point.

"If the Lord Ordinary is right so far, and as Mrs Christian Watkins left no issue, it follows that the eighth share of the residue in question destined for her, and which is now the fund *in medio* in this process, falls to be treated as a lapsed legacy, and as such devolves on the next of kin or representatives of the testator, not as at the period of division and distribution of his estate, as was contended for by some of the competing claimants, but as at the time of his death—*Lord* v. *Colvin and Others*, 15th July 1865, 3 M'P. 1883."

Colonel Watkins and John Watkin's Trustees reclaimed.

MACLEAN (CLARK with him) for John Watkin's Trustees.

Solicitor-General (MILLAR) and R. V. CAMPBELL for Hutton's Trustee, respondent.

SPITTAL for Mrs Howison and Mrs Wilson.

At advising—

LORD PRESIDENT—It is not necessary to call for an answer. The considerations in favour of vesting have been well stated by Mr Maclean, but they have not made much impression on my mind.

The Lord Ordinary has stated some reasons of weight in support of the conclusion at which he has arrived, but I think there is another reason which he has not mentioned. The plan of this settlement is, that there shall be certain annuities paid out of the income of the trust-fund; and during the continuance of these annuities, or of any one of them, there is to be an accumulation of the surplus of the estate so as to make part of the capital for ultimate distribution. It is not until the ceasing of the last annuity that the division is to be made. That is rather an unusual scheme of settlement, and suggests this consideration, that the testator had no intention that any one should have an immediate benefit except the annuitants and these parties to whom certain small legacies were bequeathed. As to the capital, it was plainly his intention to postpone any benefit from it until a distant period.

The other Judges concurred.

Agents for Hutton's Trustee, and for John Watkin's Trustees—Wilson, Burn & Gloag, W.S.

Agents for Colonel Watkins—Ronald & Ritchie, S.S.C.

Agents for Mrs Wilson and Mrs Howison—M'Kenzie, Innes & Logan, W.S.

Saturday, November 28.

SECOND DIVISION.

THOMSON *v.* FRASER.

Process—Proof—Print—Manuscript Copy for Process. Observations by the Court on the practice of making a manuscript copy of proof for the process when the proof is already in print.

In this case, which came before the Court upon a reclaiming-note against an interlocutor of the Lord Ordinary fixing an issue, their Lordships appointed the proof to be taken before one of themselves, instead of before a jury; and, in the course of their observations, took occasion to animadvert upon a practice which prevails to a large extent in regard to such proofs—the practice, viz.,

of writing out in manuscript the notes of evidence, and lodging the manuscript copy in process, while the evidence is at the same time printed for the use of the Court and the parties. Their Lordships stated that there was no reason why the process copy should not be in print, or why the print should be copied over in manuscript for the sake of satisfying an imaginary rule that every step of process should be in manuscript. Such a practice increased expense, without any corresponding advantage.

Counsel for the Reclaimer—Mr Fraser and Mr Rhind. Agents—Messrs Jardine, Stodart, & Frasers. W.S.

Counsel for the Respondent — Mr Strachan, Agent—Mr Andrew Beveridge, S.S.C.

Tuesday, December 1.

FIRST DIVISION.

HUNTER AND OTHERS *v.* BURNLEY AND OTHERS (ECCLES' TRUSTEES).

Trust—Residue—Loss on Investments—Assignation of Bond—Pro indiviso *Creditor—Interest.* Generally, losses on investments of trust funds must be borne by the residue of the trust estate. Where, under a power of allocation in a trust-deed, trustees have allocated to a beneficiary a share in a heritable bond, that beneficiary cannot, if he becomes entitled to payment of his share of the trust estate while the bond is yet unrealized, demand an assignation to a proportion of the bond so as to become a *pro indiviso* creditor along with the trustees.

The pursuers sought in this action to recover payment of the balance of a legacy due to them from the trust-estate in the hands of the defenders. That balance was payable in October 1865, at which date it consisted of £350 in bank, and £100, being part of a heritable bond for £1500 held by the trustees. The pursuers contended that they were entitled to payment of the sum in bank as at October 1865, with interest at 5 per cent. from that date; and farther, that the trustees were bound either to pay the £100 along with the rest, or to assign the bond to the extent of the pursuers' interest therein. The trustees maintained that they were not bound to assign the bond to any extent, but were entitled to take their own time to realise it; and they claimed right to retain the money in bank in order to meet any loss which might arise on the bond. That bond, they alleged, had once been wholly allocated to the pursuers, and the allocation had been changed without any intention of relieving the pursuers from the loss which might arise therefrom. The Lord Ordinary (JERVISWOODE) sustained the defences and dismissed the action.

The pursuers reclaimed.

CLARK and MACKINTOSH for reclaimers.

MONCREIFF, D.-F., and H. J. MONCREIFF, for respondents.

The LORD PRESIDENT held that, on October 1865, the defenders were under an obligation to pay over the sum then due to the pursuers, whatever it was, unless any part of it was invested in such a way that it could not be immediately called up. Now the defender's own statement was that, to the extent of £100, the money was in that position, but the rest of it was in bank. The defenders had not alleged any sufficient reason for retaining the sum confessedly lying in bank. They spoke about retaining it in case there should be any loss on the bond, but they had not made it intelligible how the pursuers could be made liable for any loss arising in that way. Any such loss would fall on the residue of the estate. The residue appeared to be large. From the absence of any statements on record to the contrary, it must at least be assumed that the residue was quite capable of sustaining any such loss as was here apprehended, and such loss must then fall upon residue, unless it occurred through the malversation of the trustees. The notion, therefore, that the defenders were right to retain the money in bank was out of the question, and it followed necessarily that that money was payable as in October 1865; and if not paid, must bear interest at 5 per cent. That was the ordinary rule, and there was nothing in the circumstances of this case to prevent the application of the ordinary rule.

As to the £100, that was in a different position, and would be payable only now, when made available by the sale of the subjects over which it was secured.

The other Judges concurred, LORDS DEAS and KINLOCH holding that the pursuers were quite wrong in demanding a part assignation to the bond. That bond was a *unum quid*, which the trustees were entitled to hold and realise at their own discretion; and the introduction of a *pro indiviso* creditor into the bond might have greatly embarrassed the trustees in their management and realisation of the security.

In the circumstances, expenses to neither party.

Agents for Pursuers—W. F. Skene & Peacock, W.S.

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

Wednesday, December 2.

SECOND DIVISION.

WILSON *v.* DICK AND SON, AND OTHERS.

Agent and Client—Employment—Services—Remuneration. Circumstances in which *held* that an investigation into the affairs of a firm was made on the employment of the partners of the firm, as well as on behalf of other parties interested.

In this case Mr Richard Wilson, chartered accountant in Edinburgh, sued Mrs Janet Birrell or Dick, widow of the late Charles Dick, brewer in Edinburgh, and Brydon Monteith, farmer, Tower Mains, near Edinburgh, as individuals; the firm of Charles Dick & Son, now or lately brewers in Edinburgh, and William Dick, lately residing in Edinburgh, presently in South America; the said Mrs Janet Birrell or Dick, and Charles Thomson, brewer in Edinburgh, the individual partners of said Company, as such and as individuals, for the sum of £419, 9s. 6d. The pursuer makes the following statement:—The pursuer, Richard Wilson, is a chartered accountant in Edinburgh, and on or about April 14, 1865, was instructed and employed by the defenders, Mrs Janet Birrell or Dick and Mr Bryden Monteith, at a meeting of parties interested in the business of the defenders, Charles Dick & Son, brewers in Edinburgh, held on said date, to examine a balance-sheet that had been lately made up of the said defenders', Charles Dick & Son's