but nothing is said in the Act as to the entail, or as to a renewal of the old destination. The Crown was not bound to convey the estate under any limitation: and the pursuer is not entitled to complain of that which he admits they have done. Supposing it were the case that the Crown could have shown there was some claim of that kind, I very greatly doubt whether the present action is one that could have tested that. The service to James in that case would have been wholly inept, because it is not to James he would serve. There is nothing to take up in James. It would have needed to have been some very special thing that the Crown did wrong, and that they should have conveyed in some very peculiar manner, that would have given this party a *jus crediti*. Now, that is scarcely the nature of the present action. The present action is by the party interested as James' heir,—a very good title if he were right on the merits that James had still an interest in the estate; and that it was to some extent a reversion, or otherwise in the *hæreditas jacens*. But if his title is, not that he is the heir of James, but that he is the heir-male of John, or that he is the heir-male of the last Earl of Perth who got the estate, and was the institute under the deed that the Crown should have exercised, that is a totally different ground of action, and seems to me to be one of very great doubt. The Crown was not bound to carry out this, so far as I can see. If they gave it to the wrong man, it is a very doubtful thing whether this pursuer could complain—in this form at least—whatever appeal he might have had to the Crown to recall this conveyance. But that the Crown did not entail it is a matter which this action does not appear to me to be well calculated to raise; but if it be raised, the proposition that under the Act of Restoration the Crown was bound to execute a tailzied destination in favour of this party, with a *jus crediti*, and I suppose to record that new entail, for it would need to be a new entail, is a proposition that cannot be maintained in my opinion upon the Act of Restoration. In this way, the case comes to this point that the pursuer's *prima facie* title and interest are, by his own statements and the admitted facts of the case, extinguished and destroyed, so that he has no title and interest remaining, and any objections to the subsequent titles are irrelevant. His service to James Drummond is unavailing, and he has no right either to succeed to the late Baron Perth, or to exclude the present possessors on any ground. There are other grounds pleaded against the pursuer, but these are what I propose to sustain as being quite sufficient for the purpose. I concur in the view, that where it is quite clear that a party has not a good title and interest to succeed, and is by his own statement excluded, the defender is entitled to protect himself against the exhibition of his charter-chest to a party who has no right to look into it.

LORD JUSTICE-CLERK—We shall pronounce judgment accordingly.

SHAND—Your Lordships will sustain the 8th and 10th pleas. Will your Lordships pronounce special findings?

LORD COWAN—There are 33 pleas in law—23 for the pursuer, and 10 for the defenders; and the only one that seems to apply to the case is the defenders' 10th.

LORD JUSTICE-CLERK—We shall frame a finding.

SHAND—With reference to what fell from your Lordship, I think it right to say that there is no admission on record that the present pursuer, though he holds the service, has connected himself by relationship with James Drummond. We did not dispute that, for the sake of argument.

LORD JUSTICE-CLERK—I thought the Solicitor-General admitted it absolutely.

SHAND—It was assumed for the purposes of the argument, because we do not feel that we could raise the question, except in a reduction of the service; but I merely mention it lest there should be any expression in your Lordship's opinion that might bear that meaning.

LORD COWAN—Surely in this discussion we are entitled to hold that he does possess that character—the service standing.

LORD JUSTICE-CLERK—I thought it had been admitted.

Agents for Pursuer—J. & J. Turnbull, W.S.
Agents for Defenders—Dundas & Wilson, C.S.

Tuesday, February 16.

OUTER HOUSE.

(Before Lord Manor,)

MACPHERSON & OTHERS *v.* RICHMOND.

Partnership—Misconduct of Partner—Judicial Dissolution—Judicial Factor. Held (*per* LORD MANOR) and acquiesced in, that one of the members of a partnership having, in violation of the contract of copartnery, so grossly misconducted himself as to destroy his co-partners' confidence in him, they were entitled to have the estates of the company judicially wound up. Judicial factor accordingly appointed for that purpose.

This was a petition for the appointment of a judicial factor on the estates of Richmond, Struthers, & Company, Cabinetmakers, Upholsterers and Warehousemen in Glasgow, and was brought by three of the partners of that firm. It was directed against, and was opposed by, Mr Robert Richmond, the remaining partner of the firm. After setting forth the various contributions to the capital of the firm by the several members; the distribution of profits and losses; and the several amounts which the partners were entitled to draw in anticipation of profits, the petition proceeds thus:—

"That notwithstanding the provisions of the contract of copartnery recited, and the fact that the petitioners contributed their full stipulated shares of capital in the Company, the said Robert Richmond commenced in the year 1863, and has continued, to draw from the concern sums greatly exceeding the amount which he was entitled to draw under the provisions of the contract. An abstract of the accounts of the four partners respectively, showing overdrafts by Mr Richmond, as at 5th September 1867, to the extent of £1019, 2s. 4d., is herewith produced and referred to. These overdrafts have very seriously prejudiced the Company in their financial arrangements.

"For some time prior to the last-mentioned date, the petitioners repeatedly and anxiously remonstrated with the respondent Mr Richmond upon the impropriety of his conduct in thus withdrawing his capital from the concern, in breach of the contract of copartnery, and to the serious prejudice of the interests of the firm, but without effect; and on or about that day the petitioners Mr Macpherson and Mr Struthers gave notice to the petitioner Mr Rennie, who acted as cashier,

to permit no further overdrafts. Mr Rennie himself concurred in the course which they adopted.

"Mr Richmond thereupon absented himself from business for a period of eleven weeks, not returning until the 16th of the following month of November. He stated expressly, as his reason for so absenting himself, the prohibition by the petitioners of further overdrafts on his part in violation of the contract. Mr Richmond also, without cause or reasonable excuse, absented himself from business from the 21st of March till the 14th day of April last, both inclusive.

"After Mr Richmond did return to business, he refused to write up the books of the upholstery and cabinetmaking departments of the business, which he had regularly done previously as a part of his duty, just as the other partners in charge of their departments had always written up the books of these departments. Ultimately, in the month of April last, he, through his brother Mr George Richmond jun., proposed to stipulate for a salary of £200 per annum in addition to his share under the contract, as a consideration for his writing up these books, and on the 1st of May, the said George Richmond, acting on his behalf, threatened that if this proposal was rejected, 'he would try the firm's strength financially.' The petitioners on the 5th May declined the proposal. Thereafter, in fulfilment of the threat made by the respondent through his said brother, the respondent, Mr Richmond, arranged with his brother, Mr George Richmond jun., and with his law agent, Mr William Mathison, writer in Glasgow, to bring pressure on the petitioners, by arranging that these parties should make sudden and peremptory calls for immediate payment of sums lent by them respectively on interest to the firm. In consequence of this arrangement, Mr Mathison, on the 6th or 8th of May, applied for and received £200. On the 8th May, Mr George Richmond jun. demanded £600, to be paid on the following day, which was done accordingly. On the 14th May Mr Mathison demanded and was paid £100, and on the 19th May Mr Richmond himself, and Mr George Richmond demanded upwards of £180 to be paid to them as trustees for third parties, which was paid accordingly on the same day, making in all £1080 within a fortnight.

"During the month of May Mr Robert Richmond improperly, and without the consent, and contrary to the expressed desire of the petitioners, removed, or caused to be removed, from the warehouse of the firm, a considerable quantity of household furniture, forming part of their stock in trade, which is now believed to be in his dwelling-house.

"In order to embarrass the petitioners as much as possible, and to drive them into making the concessions which he demands, the respondent Mr Richmond has persisted in taking numerous orders from the customers of the Company, and executing these orders without making any entries in the books kept for the purpose, or any of the books of the Company, and without giving any information regarding them, so that it is impossible to know what goods have gone out or to whom to render accounts for said goods. This has been carried on by the respondent to a large extent.

"By the seventh article of the contract of copartnery it is stipulated, that in case of any difference of opinion arising between the partners as to the conducting of the business, the same should be determined by a majority of the partners, whose determination should bind the whole partners. In terms of this provision, the petitioners, on the 8th of June 1868, subscribed and intimated to the respondent Mr Robert Richmond a minute in the following terms:—'*Glasgow, 8th June* 1868. *Mem.* In the present circumstances of the firm we resolve that its obligations shall not be increased either by purchasing goods or manufacturing for stock, and that operations in either way shall be strictly limited to the execution of such orders as are duly entered in the firm's order-books. Further, that no purchases whatever be made without the written consent of our cashier, Mr Rennie, or a majority of the partners.'

"Notwithstanding this minute, and with a view of embarrassing the petitioners, Mr Richmond, as the petitioners have learned, proceeded to buy timber to a considerable extent, and on disadvantageous terms, which timber was not required at the time for the purposes of the business, and has made other purchases of a similar character, and with the same object. By all which the interests of the Company have been seriously prejudiced.

"Upon finding that Mr Richmond had withdrawn upwards of one half of his capital from the concern, the petitioners resolved to bring the claims thence arising before the arbiter named in the contract; and Mr Lumsden, the arbiter first named, having declined, they applied to Mr James Campbell of Tulliechewan, the arbiter second named; and, as ordered by him, lodged a statement or claim for replacement of the funds improperly withdrawn by Mr Richmond, which Mr Richmond has not answered. He has prevented the submission from being proceeded with by failing or refusing to produce the contract of copartnery, which is in his hands or those of his agent, Mr Mathison, to the arbiter as required by him.

"The respondent, Mr Richmond, still perseveres and continues to act in utter disregard of the wishes and interests of the petitioners and of the firm; he makes no entries of his transactions in the books of the firm, refuses all explanations on the subject, and refuses to replace that portion of his capital which he has withdrawn. In these circumstances it is absolutely necessary for the interests of all concerned that the Company should be immediately wound up and that for that purpose the Company's estate and effects should be sequestrated by your Lordships, and a judicial factor appointed to wind up the Company's affairs. The present petition has accordingly been presented for that purpose.

"The petitioners respectfully propose Mr Peter White, accountant in Glasgow, as a suitable and proper person to be appointed to the office of judicial factor."

The petition then concludes with a prayer for the appointment of a judicial factor for the purpose of winding up the affairs of the Company.

The respondent substantially denies the allegations in the petition, in consequence of which evidence was led.

SHAND for petitioners.

A. MONCRIEFF for respondent.

The following authorities were referred to at the hearing on the evidence—Clark on Partnership, 659; *Walker* v. *Taylor*, 2 Ves. and R. 399; Tudor's L. C., 329, 376; *Harrison* v. *Tennent*, 21 Beav. 482; *Smith* v. *Jeyes*, 4 Beav. 503; *Errill* v.

Rayward, 30 Beav. 158; *De Berenger* v. *Ramuel*, 7 Jac. and Blyth. 83; Bell's Comm., ii, 635; Lindley, 232; *Baxter* v. *West*, 1 Dr. and Sm. 173; *Watnes* v. *Ellis*, 30 Beav. 56–60; *Peare* v. *Hewitt*, 31 Beav. 22; Hoey on Partnership, §§, 287–8; *Cheesman* v. *Price*, 35 Beav. 142.

LORD MANOR pronounced the following interlocutor:—"The Lord Ordinary having considered the petition, with the closed record, productions, proof, and whole process, and having heard counsel thereon, and made avizandum,—Finds that the respondent Robert Richmond is and has been a partner in business along with the petitioners Alexander Macpherson, Thomas Struthers, and Robert Rennie, as cabinet-makers, upholsterers and warehousemen in Glasgow, under the firm of Richmond, Struthers & Company, since the first day of February 1863, under a contract of copartnery to endure for ten years, dated 24th March 1863, and containing all the articles and conditions under which the said copartnery was to be carried on; and specially, *inter alia*, this condition,—that the whole partners thereto should be bound and obliged, as they thereby bound and obliged themselves, to devote their whole time and attention to the business of the copartnery and to do all in their power to promote its success: Finds that within a very short time after the commencement of the copartnery the respondent began to neglect and disregard the conditions of the contract, and that latterly he has been pursuing a course of wilful and systematic violation of all its most essential provisions, and of his obligations to his copartners; thwarting and opposing their views and wishes, acting adversely to them, for his own ends, and impeding the conduct of the business in such a manner as to produce a state of continued animosity and dissention between him and his copartners, utterly destroying all mutual confidence, and rendering it unsafe to continue or carry on the concern with him, and impossible to carry it on upon the terms for which the parties engaged: Finds, more particularly, that the respondent has violated the proceedings of the contract in all several respects alleged, and set forth under the petitioners' third plea in law: Finds that, in these circumstances, the petitioners are entitled to have a judicial factor appointed on the property, estate and effects belonging to the said Company as craved by them, for the purpose of making up the affairs of the said company,—nominates and appoints Mr George Macfarlane, accountant in Glasgow, to that office, with the usual powers, he finding caution before extract, and decerns: Finds the petitioners entitled to expenses; allows an account thereof to be given in; and remits the same when lodged to the auditor to tax and report.

"*Note.*—It is not proposed in this note to enter into any minute examination of the whole evidence in the case, because, according to the view which the Lord Ordinary takes of it, any one of the various grounds of complaint stated by the petitioners is of itself sufficient, if fairly established, to entitle them to the remedy they seek. At all events, the Lord Ordinary is of opinion that if the petitioners succeed in shewing the misconduct of the respondent to have been such as to lead to a total and lasting want of confidence between him and his copartners, without any reasonable hope of their being reconciled so as to be enabled to work together for their common advantage, the Court, in the exercise of its equitable powers, ought to enterfere to dissolve the society. And that this unhappy state of matters has been brought about, and exists, there cannot, it is thought, be the slightest doubt.

"The firm of Richmond, Struthers & Company commenced business in 1863 upon a very slender capital, amounting to no more than £6,700, whereof the respondent, Robert Richmond, contributed only £700, the remaining £6000 being made up by the other three partners in different proportions; and, in order to have at their command as large an amount of funds as their limited capital admitted of, the partners resolved that the whole yearly profits should not be divided among them at each annual balance, but should, in part at least, be reserved and retained in the Company, to be employed in their business. For this purpose the sixth article of the contract was introduced, providing that each of the partners should be entitled to draw in each year, in anticipation of profits, not exceeding the sums following, viz., the said Robert Richmond, Thomas Struthers, and Alexander Macpherson, £300 per annum, and the said Robert Rennie the sum of £200 per annum. These proportions were plainly not fixed with any direct reference to the share of the input stock or capital which was contributed by each of the partners, as the respondent, though the lowest contributor of all, was placed in the highest scale of allowance of anticipated profits, while Mr Rennie, who contributed nearly three times as much as he, was placed in the lowest scale. The proportions accordingly were regulated upon other and different considerations, such as the amount of skill and connection and influence which each partner was able to bring to the concern; and there is no question that in all these respects the respondent had claims which were entitled to regard. He had previously been engaged in the same line of business—he was a man of acknowledged experience and capacity—and he had, moreover, obtained for the Company, from his brother George Richmond, a loan of £2500, bearing interest at 5 per cent., and to be repaid by instalments of £500 a-year. But, however much weight may have been due to these considerations, it is certain that the sum which each partner had right in each year to draw in anticipation of profits was absolutely fixed by the sixth article of the contract. The rule so laid down was a most important one, and its observance was essential to the success of the business.

"The respondent nevertheless, in disregard of this rule, began from the very first to overdraw his account, and continued and increased his overdrafts from year to year, till the other members of the firm became alarmed for the consequences. They frequently and repeatedly spoke to him on the subject in a friendly way, but without effect, and after the annual balance for 1866 was completed and signed on 5th March 1867, it was ascertained that he had overdrawn to the extent of upwards of £1000, as appears from an abstract of the accounts of the four partners (No. 43 of process), the accuracy of which is not disputed. Mr Struthers was then appointed by the other partners to remonstrate with him seriously on the impropriety of his conduct, which he did—the respondent not denying the rule to which he was bound to conform, or the correctness of the charges brought against him, but excusing himself on the ground that he was unable to live within his limited income. The overdrafts still went on as before; and at length, on 10th September 1867, the three partners concurred in resolving to sus-

pend all further payments to the respondent. On this resolution being communicated to him by a letter of that date he took great offence, and absented himself from the business for a period of eleven weeks, stating expressly as his reason for so absenting himself, the prohibition of the petitioners of further overdrafts on his part in violation of the contract. After he did return to business he refused to write up the books of the upholstery and cabinetmaking departments which had been peculiarly under his charge, as other departments were under the charge of the other partners; amd finally, after creating a great deal of annoyance amd embarrassment in this way and otherwise, he, in the month of April 1868, through his brother Mr George Richmond, proposed to stipulate for a salary of £200 a-year in addition to his share under the contract, as a consideration for his writing up these books. The bases of the proposed arrangement is contained in a memorandum in the respondent's handwriting, which he gave to his brother as the party by whom the negotiation on his behalf was to be conducted. Mr George Richmond, in laying the proposal before the petitioners, threatened, in the event of its being refused, to *try the firm's strength financially*—meaning thereby, as the event proved, to bring pressure upon the Company by suddenly withdrawing various sums of money which were in their hands on loan. Accordingly, the proposal for the salary having been declined by the petitioners on the 5th of May, no time was lost in carrying the threat into execution. A few days after, the respondent's law agent, Mr Matheson, applied for and received payment of a loan of £200. On 8th May Mr George Richmond called up a sum of £600, to be paid on the following day, and it was paid. On 14th May Mr Matheson applied for and was paid a further sum of £100. And on the 19th May the respondent and his brother demanded upwards of £180, to be paid to them as trustees for third parties, which was done on the same day—making in all £1080, within the space of a fortnight. The Company having no available funds to meet these demands, were put to great difficulty, and had to raise the money from private friends, to whom it became unavoidably necessary to explain the position of disagreement in which the partners stood. But the material thing to be attended to is the part which the respondent himself took in all these proceedings. That is conclusively proved by his own evidence as a witness in the cause.

"He states that the pressure was certainly put upon the Company in consequence of the quarrel between the partners, and that he, though aware of what his brother was about to do in the matter, did not ask him to withhold his hand and save the firm. On the contrary, he distinctly admits that, yielding to the feelings arising from what he considered the harsh treatment he had received at the hands of his partners, it is the fact that he wished the Company to be pressed for money. This avowal, alone, without going into any theor details of the case, manifestly shews that he was in a state of complete hostility to his partners; and though in another part of his deposition he says that he has not lost confidence in them, the worth of that statement must be judged of by what he actually did and consented to, and by the feelings and motives which he does not seek to disguise. His partners unanimously declare that they have lost all confidence in him. In these circumstances the Lord Ordinary ventures to think that the time has come for the interposition of the Court in the manner prayed for in the petition.

"This is a point on which there is very little direct authority in the law of Scotland. Mr Bell in his Principles, § 378, in speaking of the dissolution of partnership, mentions renunciation by one or more of the partners, where there is no term fixed, as a mode of dissolution. 'Or, even where there is a term fixed, this may be done on just cause for separating being shewn. The former may be by extrajudicial, the latter will require a judicial act.' And in like manner, in his Commentaries, vol. ii, p. 633, the same author says 'where a certain term has been fixed for the duration of the partnership, it can be dissolved only on cause shewn; or a majority also may dissolve a partnership, or joint trade, though undertaken for a certain term, provided the dissolution be made in *bona fide*, and justifiable on rational grounds.' These passages indicate clearly enough the principle which is thought to be applicable to a case like the present; but there are no Scotch decisions cited which have much bearing on the point; and even the English decisions referred to are deficient as authorities. The law in England, however, is now much more matured on the subject than it is with us in Scotland, and since Mr Bell's day numerous decisions have been pronounced in the English Courts which clearly establish the rule, that wherever there has been such gross misconduct on the part of any one of the members of a company as to destroy mutual confidence and harmony between him and the other partners, and to prevent the concern from being carried on in terms of the contract, a Court of Equity will decree dissolution. The Court will not take cognisance of mere partnership squabbles, or quarrels arising from ill temper or sullenness in any of the partners, but whenever the ground of complaint assumes the form of broken confidence, however that may have been occasioned—whether by a substantial violation by one partner of the conditions of the contract, or by his acting adversely to the rest, and refusing to submit to the wishes of the majority—or by his otherwise conducting himself so as to create a state of continued and irreconcilable dissension, wholly inconsistent with that friendly co-operation which is of the very essence of partnership, the Court will interfere and grant the remedy.

"A full exposition of this branch of the law will be found in Lindley on Partnership, vol. i, p. 225 *et seq.*, and the decided cases are collected in Tudor's Leading Cases on Mercantile and Maritime Law, where they are examined and commented upon. From these it appears that the current of modern authority in England now runs very strongly, and indeed uniformly, in favour of granting the remedy in such circumstances as occur in the present case. Among the decisions chiefly deserving notice are those of *Waters* v. *Taylor* at p. 329 of Tudor, and also separately reported in 2 Ves. and Beav. 299; *Harrison* v. *Tennant*, 21 Beav. 482; *Baxter* v. *West*, 1 Drewry and Smail's Chancery Cases; and *Watrey* v. *Wells*, 30 Beav. 56. A reference to these authorities will shew that such a case as the present would, without hesitation, be disposed of in the English Courts in favour of the petitioners; and, as the principle of the law is the same in both countries, there seems no room for saying that a wholesome rule, so plainly founded in reason and equity, ought not also to be

applied here. It would be to the detriment of all parties that they should continue to be linked together while they are, in fact, in a state of bitter opposition and disunion owing to the fault of one of the partners.

"The Lord Ordinary is satisfied that the respondent, besides violating the *contract* by withdrawing his capital from the business to an extent exceeding the amount authorized by the 6th article, and taking the adverse part he did along with his brother in bringing pressure upon the Company and embarrassing their pecuniary arrangements, and, besides absenting himself from the business and leaving his duties undischarged, has also furnished good ground for this petition against him by refusing to communicate with his partners, or to give them such information as was necessary for enabling them to keep the books of the company in order, and render their accounts to the customers; that he has further, in violation of the express resolution of his partners, purchased goods for the business not required therefor; and lastly, that he has wrongfully refused to implement his part of the contract, by declining to go on with a reference as proposed by his partners for settling their differences, in terms of a special provision in the contract by which he was bound to such reference. All these additional particulars have been clearly proved; but, as already observed, the matter of the respondent's overdrafts, and what ensued immediately in connection with the stoppage of them, form the central point of the case, and are thought to be by themselves sufficient for its disposal. It has therefore been deemed unnecessary to go further in the way of examining the proof.

"There remains only one point to be adverted to in conclusion. At the debate which took place before the Lord Ordinary, the respondent's counsel raised a question as to the interpretation of the sixth article of the contract, suggesting a doubt whether, upon a sound construction of its terms, the respondent could be held to have violated the rule with respect to overdrafts. The obvious answer to any such argument is that, even assuming the article to be in any respect ambiguous, the understanding and course of dealing among the partners themselves must regulate the manner in which the Court is to deal with them in regard to it. But all the partners undoubtedly were agreed as to the construction of that article. The respondent, in particular, raises no question on the record on the ground of its ambiguity; and in his deposition as a witness in the cause he states that he thought his partners justified in what they did in stopping his overdrafts, but objected to the manner in which they did it, and characterised the letter which they sent him on the occasion as insulting, impertinent and harsh; hence arose his resentment and all the consequences which followed of his absenting himself from the business, and refusing when he returned to do the duties of his place, or to communicate with his partners, or aid them by his counsel and advice, which they were entitled to expect."

The said interlocutor has become final.

Agents for Petitioners—G. & H. Cairns, W.S.

Agents for Respondent—Campbell & Smith, S.S.C.

Wednesday, February 17.

FIRST DIVISION.

MACKENZIE *v.* WILSON.

(*Ante*, p. 285.)

Husband and Wife—Exclusion of jus mariti—*Wife's separate estate.* Circumstances in which *held* that a small heritable property, the title to which stood in a wife's name, and a number of deposit-receipts, also in her name, were the property of the wife, and subject to her disposal without control of her husband, she having had for many years an income, derived from her father's estate, sufficient to account for the whole property standing in her name, her husband's *jus mariti* being excluded, and he having ample means of his own to support the burdens of the marriage.

William Hogg, by his trust-disposition and settlement, appointed his trustees to pay to his widow, and to his daughter Grace Hogg or Wilson, wife of Robert Wilson, equally, if they survived him, and to the survivor of them, the whole free income of his estate. The *jus mariti* of Mrs Wilson's husband was excluded. Hogg died in May 1847. His widow and daughter survived him, and jointly liferented his estate, which yielded about £50 annually, till March 1856, when the widow died. Thereafter the estate was liferented solely by Mrs Wilson till her death in 1867. At various periods, from 1847 down to 1867, sums of money were deposited by Mrs Wilson in bank, and otherwise invested, in her own name; and in 1858 she purchased a small heritable property, worth about £145, taking the title in her own name. She left a trust-disposition and settlement conveying her whole estate to trustees, but, as the persons named as trustees declined to accept, the pursuer Kenneth Mackenzie was appointed judicial factor on her estate.

Mackenzie now brought this action against Robert Wilson and others, for declarator that he, as said factor, had a right to the whole estate, heritable and moveable, left by Mrs Wilson, and calling on Robert Wilson to count and reckon for his intromissions with his deceased wife's estate.

The defender Wilson alleged that during the marriage he had supplied the means for housekeeping, except "a small sum which his said wife drew annually from the property which had belonged to her said father William Hogg and his wife Marian Henchlewood or Hogg, and which she undertook and was bound to apply in the same manner." He further alleged that his wife had saved out of the housekeeping money the various sums which had been applied by her partly in purchasing the heritable property, and party in investment in deposit-receipts. "These sums were all lodged on deposit-receipts or other obligations, payable to Mrs Wilson simply, without any exclusion of the *jus mariti*. The defender, who had sufficient means of his own otherwise, did not object to these moneys being so deposited. He knew from his wife's disposition that there was no danger of their being squandered. He also knew that, being in his wife's name, they belonged to himself, and that if he required them they were at his command at any time. Considering that it was the same thing as if he had deposited the monies himself, he allowed his wife to continue making these deposits, the idea of which seemed to gratify her while it did him no injury."