that unless something be found in the settlement elsewhere, overruling the plain directions of the clause, it must be held to fix the point of vesting as its plain words import.

I can find nothing in the settlement having to my mind this effect. Indeed the only clause creating any difficulty is that which provides a right of survivorship to the children *inter se*, "in case (as the words run) any one or more of my said children shall die before the foresaid share or respective shares or provisions provided for him, her, or them in manner before specified shall have vested or become payable as above mentioned." The alternative phrase "vested or become payable" was maintained to have the effect of suspending vesting till the time of payment, in order to give the benefit of survivorship to the children who should then be alive.

I cannot accede to this view, and for this primary reason—that it simply deprives of all meaning and substantially takes out of the deed the prior direction as to vesting already quoted. To hold that vesting was suspended till the time of payment is directly contrary to the plain declaration that vesting was to take place at majority or marriage. I cannot therefore hold this to have been the meaning of the clause now in question. The only rational meaning that can be put on it is to consider it as declaring a survivorship in the event of any child dying before his share vested in him. The clause, accordingly, speaks of the child dying "before vesting," which it never would have done had it been intended to suspend vesting till the time of payment;" it would have simply said, "dying before payment," which in that case would have expressed the idea. The insertion of the words, "or become payable," must have proceeded from some confusion in the mind of the writer between payable and due; or some deep metaphysical perception of the antecedence of vesting to payment. The mode in which the rest of the clause is worded as to original and accrescing shares, and the mode in which "the same shall vest and become payable at and upon the same terms, ages, or events as his, her, or their original shares are hereby directed to become payable," brings over its whole meaning a Cimmerian darkness. If I am not to interpret the clause as giving a right of survivorship in the event of any child dying before vesting of his share, in terms of the clause immediately preceding, I can, consistently with the retention of the previous clause, put no rational meaning on it at all. And I only follow an undoubted canon of construction when I refuse to control a clear and intelligible trust-direction by a passage in the deed which the writer has not made me understand.

There is no other clause in the deed but what may be construed and enforced in full consistency with the delaration as to vesting. The clause which was most discussed before us was that which authorised the trustees, if they thought any of the daughters had made an unsuitable or inexpedient marriage, to settle her share on herself in liferent, and her children in fee, in place of paying over to her the capital. The question was stirred, whether the trustees were bound to form their decision on this matter at the date of the marriage, or might postpone it till the division of the fund. I do not think the solution of this question affects the present inquiry. The utmost that in any event can be said is, that in the case of the daughters the fee vested *qualificate*, or subject to a certain control by the trustees. This does not infer that in the case of all the children whatever no vesting took place till the period of division; nor does it eliminate from the deed the distinction between vesting and payment expressed in by far its most distinct and unambiguous clause.

I am of opinion that the fund now in question vested in Mrs Isabella Bowes or Cleghorn during her lifetime, and passed to her husband by the assignation of marriage (no marriage-contract being alleged), so as to be assignable and well assigned by Mr Cleghorn.

Agent for the First and Second Parties—W. P. Anderson, S.S.C.

Agents for the Third Party—Duncan, Dewar & Black, W.S.

Saturday, March 19.

BEVERIDGE *v.* COLLIES.

Caution—Bill—Forgery—Suspension. Suspension *refused*, except upon caution, of a charge upon a bill to which the suspender said his acceptance had been forged.

This was a note of suspension and interdict presented by Dr Robert Beveridge, residing in Aberdeen, of a charge upon a bill for £100, said to have been drawn by James and George Collie, advocates in Aberdeen, upon and accepted by Dr Beveridge, Peter Beveridge, and Thomas Gordon Beveridge. He denied ever having adhibited his signature, and asserted that it was his belief it had been unauthorisedly adhibited by his brother Thomas Gordon Beveridge, one of the acceptors of the bill, who had left the country. The Lord Ordinary (ORMIDALE) sisted execution and ordered genuine subscriptions to be lodged in process; and eventually the Lord Ordinary on the bills (GIFFORD) pronounced the following interlocutor:—

"*Edinburgh, 22d February* 1870.—The Lord Ordinary having considered the note of suspension, answers, and productions, and having heard parties' procurators, on caution passes the note, and continues the sist formerly granted.

"*Note.*—The Lord Ordinary does not feel warranted in passing this note without caution. In general, the mere allegation of forgery will not entitle an obligant on a bill or note to suspend execution, even in order to obtain a proof of the alleged forgery. A bill or note is a liquid and privileged document of debt until reduced or set aside, and completely instructs the obligation and warrants summary diligence, which will not be stopped without caution, unless there be circumstances of very strong suspicion. The Lord Ordinary has compared the signature to the bill charged on, bearing to be the signature of the complainer, with the genuine subscriptions produced. There are, no doubt, differences, which different minds will view as of more or less importance, but the *comparatio literarum* does not impress the Lord Ordinary with any conviction that the subscription charged on cannot be genuine. Genuine subscriptions often very considerably differ from each other. Neither is the Lord Ordinary much moved by the circumstance that there are other bills and notes, apparently amounting to about £700 or £800, against which forgery is also alleged. There is no inherent impossibility, or even improbability, that the complainer and the other relatives of Thomas Gordon Beveridge, may have interposed their credit for his behoof to the full extent of all the

bills founded on. The correspondence founded on by the respondents, though perhaps of not very great importance, furnishes, so far as it goes, an additional reason why caution should be found."

The complainer reclaimed, and asked to have the note passed without caution.

FRASER and MACDONALD for him.

SOLICITOR-GENERAL and BIRNIE in answer.

The Court adhered.

Agent for Complainer—W. P. Anderson, S.S.C.

Agents for Respondents—Renton & Gray, S.S.C.

Saturday, March 19.

MARTIN & SON *v.* M'NAB.

Diligence—Bill—Fraud. Suspension of a charge upon a bill—alleged to be fraudulently drawn, accepted and indorsed—*refused.*

The complainers presented a note of suspension and interdict against a charge upon a bill drawn upon and accepted by them. They thus stated the ground of their suspension:—"That the complainers have been charged, at the instance of the said John Edward M'Nab, to make payment of the sum of £384, 0s. 6d. sterling, and the legal interest thereof since the same became due and till paid, contained in and due by a bill, dated the 26th day of October last, pretended to be drawn by Wright, Napier & Company, payable three months after date, upon, and pretended to be accepted by, the the complainers at four months, which bill is pretended to have been indorsed by the said drawers, without recourse to John Napier, tea merchant in Glasgow, by him to Marion M'Nab or Blair, residing there, and by her to the said respondent, under an extract registered protest, dated 1st June 1869, upon which the complainers were charged, on the 4th June 1869, most wrongously and unjustly."

Martin's son, who was in partnership with him, died two years ago; and thereon Martin took his son-in-law Lawrie into partnership with him. Lawrie, he said, looked after the business, and having involved himself through some speculations in joint-stock companies, &c., he resolved to dissolve the partnership. Meantime, he said, Lawrie had made fraudulent use of the firm's name for his own purposes—in concert with John Napier, a partner of the firm of Wright, Napier & Company. Napier in name of his firm drew the bill charged upon on the complainers, and Lawrie accepted it in their name. This bill, Martin further stated, had been fraudulently, and with a full knowledge of the circumstances, indorsed by Napier to a Mrs Blair, and by her to her brother, the respondent. In these circumstances the complainers maintained the bill and diligence should be suspended with expenses; and they lodged issues to have their allegations verified. The respondents pleaded, *inter alia,*—"(3) The complainers' averment that the respondent gave no value for the bill charged on can only be proved by the respondent's writ or oath. (4) The whole averments of the complainers as to the circumstances connected with the granting of the bill charged on are irrelevant in answer to a demand for payment by the respondents."

On 1st March 1870 the Lord Ordinary (JERVISWOODE) pronounced the following interlocutor:—"The Lord Ordinary, having heard counsel, and made avizandum, and considered the debate, with the record, productions, and whole process, Sustains the third and fourth pleas in law for the respondent; and, with reference thereto, appoints the cause to be enrolled, that the parties may be heard as to further procedure therein; reserving, *in hoc statu*, the matter of expenses.

"*Note.*—It appears to the Lord Ordinary that were he to grant to the complainers in this process an investigation by means of a proof at large, under issues or otherwise, into the circumstances which are set forth in the statements made on the record on their behalf, he would run the hazard of interfering wrongly, so far as his judgment could take effect, with the valuable privilege of summary diligence, competent in the general case to a party holder of a bill of exchange. Proof by writ or oath is, however, in the opinion of the Lord Ordinary, open to the complainers in this process; and to such evidence they may, if so advised, still resort."

Leave having been granted, the complainers reclaimed against the interlocutor.

MILLAR, Q.C., and SCOTT for them.

SOLICITOR-GENERAL and ASHER in answer.

The Court adhered, reserving the question of expenses, and recalling the interlocutor so far as regarded the fourth plea in law for the respondent.

Agent for Complainers—James Renton, S.S.C.

Agent for Respondent—James Buchanan, S.S.C.

Saturday, March 19.

MERCER *v.* ANSTRUTHER'S TRUTEES.

Evidence—Deposition. The evidence of a pursuer *allowed* to be taken on commission, as she was in the Mauritius, in very delicate health; and if her deposition were not taken there would be risk of her evidence being lost, or of great delay.

Mr and Mrs Mercer having raised an action against the trustees of the late James Anstruther (Mrs Mercer's father), in which *inter alia* they concluded for reduction of their marriage-contract, by which they alleged Mrs Mercer renounced certain rights competent to her under the marriage-contract of her father and mother, under essential error of the nature of these rights, the Court allowed the pursuers a proof of their averments relative to the circumstances under which their marriage-contract was executed. Mr and Mrs Mercer are both resident in the Mauritius. In July last the pursuers petitioned the Court to allow both Mr and Mrs Mercer to be examined on commission. The Court allowed this in the case of Mr Mercer, on condition that Mrs Mercer was examined in Court. An affidavit was now presented to the effect that Mrs Mercer's health was in too critical a state to permit her undertaking so long a voyage for some time, and the pursuers again petitioned the Court to allow Mrs Mercer's evidence to be taken on commission.

WATSON and SHAND for pursuers.

SOLICITOR-GENERAL and BALFOUR in answer.

The Court granted the petition. It was in general highly inexpedient to allow parties to be examined as witnesses for themselves, except in presence of the Court and of the jury, and subject to cross-examination. But the circumstances of this case were very peculiar. The distance was very great; Mrs Mercer's health was delicate; it would be unreasonable to expect her to come home now;