Mr Harkness. They were of opinion that, whether the obligation was a direct obligation or a cautionary one, there was at common law, and under the terms of section 8 of the Mercantile Law Amendment Act, a competent action against Mr Harkness, without the necessity of discussing or doing diligence against any other person. They indicated an opinion that, on the authority of the case of *Galloway* (*supra*), such a writing as the present constituted a direct and primary obligation against the granter. The consideration for which Mr Harkness granted the obligation was the delivery of the discharges; without it, Mr Wilson would not have given these up.

Agent for Pursuers—R. P. Stevenson, S.S.C.
Agent for Defender—W. S. Stuart, S.S.C.

Friday, October 21.

FIRST DIVISION.

HOSEASON *v.* HOSEASON.

Aliment—A father-in-law cannot be compelled to aliment the widow of a deceased son.

This was a claim of aliment made by the widow of Hosea Hoseason junior against her husband's nephew Robert Hoseason, on the ground that he represented his grandfather Hosea Hoseason senior, who, the pursuer maintained, would have been liable for her aliment if he had been alive. Hosea Hoseason senior died in 1824, leaving a settlement by which he conveyed a small heritable estate to his eldest son in liferent, and the heirs-male of his body in fee; whom failing, to his second son in liferent, and the heirs-male of his body in fee, &c.

The eldest son, the husband of the pursuer, died without male issue, and the estate has now devolved on the defender Robert Hoseason, son of the second son of the testator. The defender is absent from Scotland, and his brother Charles has been appointed judicial factor on his estate. It was admitted that the pursuer had no relations of her own able to support her.

The questions raised were, first, Whether Hosea Hoseason senior, if he had been alive, would have been liable to aliment his son's widow? and, second, Whether that obligation transmitted to his grandson, the son of a younger son, upon his coming to represent his grandfather?

The Lord Ordinary (GIFFORD) decided the first question in the negative, and accordingly assoilzied the defender, it being unnecessary to decide the second point.

The pursuer reclaimed.

SPEIRS, for her, founded chiefly on the case of *De Courcy* v. *Agnew*, 3rd July 1806, Mor. App. *voce*, "Aliment," No. 8.

CHEYNE, for the defender, referred to *Duncan* v. *Hill*, 28th Feb. 1809., F.C.; *Yule* v. *Marshall*, 21st Dec. 1815, F.C.; and *Pagan* v. *Pagan*, Jan. 27, 1838, 16 S. 399.

LORD PRESIDENT—The question here is whether, apart from special circumstances, the relation between father-in-law and daughter-in-law is such as to found a claim of aliment. It is unnecessary to impugn the decision in the case of *De Courcy*, though it has been much criticised. The ground of decision in that case was, that Sir S. Agnew was bound to support his daughter-in-law, as the mother of his heir of entail. The other cases in which the point has been raised form an unbroken series of decisions negative of the pursuer's contention.

LORD KINLOCH—Whether a father is bound to support the widow of a son is a question of positive law, not to be decided on theoretical grounds. Authority shuts us up to a negative answer.

The other Judges concurred.

The Court adhered.

Agent for Pursuer—John A. Gillespie, S.S.C.
Agents for Defender—Stuart & Cheyne, W.S.

Friday, October 21.

SECOND DIVISION.

THE SCOTTISH LEGAL BURIAL AND LOAN SOCIETY *v.* LEITCH.

18 *and* 19 *Vict.*, *c.* 63, § 40—*Appeal—Finality.* Section 40 of 18 and 19 Vict., c. 63, enacts—"every dispute between any member or members of any society established under this Act, or any of the Acts hereby repealed, or any person claiming through or under a member, or under the rules of such society, and the trustee, treasurer, or other officer, or the committee thereof, shall be decided in manner directed by the rules of such society, and the decision so made shall be binding and conclusive on all parties without appeal." Leitch, the representative of a deceased member of a friendly society, sued the society and the agent of the society at Greenock. The Sheriff-Substitute dismissed the action, in respect that the secretary of the society had not been made a defender. The Sheriff-Principal having recalled this interlocutor, thereafter decerned in favour of Leitch for the amount of his claim. Appeal against this interlocutor to the Court of Session *dismissed* as incompetent.

18 *and* 19 *Vict.*, *c.* 63, § 40—*Finality—Review—Decision of the Dispute. Held* that the finality of judgments pronounced under the above Act extended only to judgments on the merits, *i.e.*, "decisions of the dispute;" and that it was competent to appeal judgments of the Sheriff-Substitute upon questions of procedure, &c., to the Sheriff-Principal.

18 *and* 19 *Vict.*, *c.* 63, § 40—*Sheriff—Sheriff-court.* Opinions *per* Lords Justice-Clerk and Cowan, that the word "Sheriff" in the above section meant "Sheriff-court;" and that judgment on the merits was reviewable by the Sheriff.

This action was raised in the Sheriff-court of Greenock at the instance of the respondent, as executor of his mother, to recover the amount for which the deceased had insured her life with the appellants' society. The defence was a denial of the resting-owing, on the ground of misrepresentation as to the deceased's age at the time of effecting the insurance, but an offer to pay what would have been due in respect of the premium really paid, and calculating the deceased's right upon her real age and not her age as represented.

The Sheriff-Substitute (TENNENT) sustained the second plea in law for the defender, which was that the secretary of the society had not been made defender in terms of section 7 of 21 and 22 Vict., c. 101, and dismissed the action. The action had been directed against the society and its agent at Greenock. On appeal, the Sheriff recalled this interlocutor, and remitted to the Substitute to proceed with the cause. Thereafter the Sheriff-Sub-