expected to let from year to year." It was pointed out that the situation was singularly destitute of amenity or privacy, inasmuch as it was bounded on one side by a large spinning mill, and on another by the Caledonian Railway and station ground, where engines are passing day and night. Reference was also made to the valuation of neighbouring houses.

The assessor stated that the property, which included, however, a cottage valued at £50, had been recently purchased by Mr White for £6000.

The Court remitted to the Magistrates, Commissioners under the Valuation Acts, to state—(1) If they were unanimous in the decision of the case; if not, the number present, and the majority. (2) Whether there is a separate entry in the valuation roll of the cottage, stated to be valued at £50; and whether this cottage is let to a tenant? (3) Are the Commissioners of opinion that £200 is a fair rent for the appellant's house, compared with the rent as entered in the valuation roll of the other houses mentioned, looking to the situation and style of the house, and the relative size, accommodation and extent of ground; and especially, is it a fair rent relatively to Colonel Allison's house? (4) The Commissioners will be so good as to give the appellant, if he desire it, an opportunity of producing evidence to them of the value of his house relatively to others, and otherwise; and report the substance of such evidence, and their opinion upon it.

The Magistrates reported.

They allowed the appellant, at his request, to adduce further proof, which is reported herewith. (The result of the appellant's evidence was, that the house would not let for above £120.) (1) The former decision was a majority of nine to four; the minority voted for the value being fixed at £160. (2) There is a separate entry in the valuation roll of the cottage let at the rent of £50. (3) The Magistrates having given their best consideration to the additional evidence, (1) having regard to the price paid for the premises, and the size and commodious nature of the premises; and having also in view that such residences in the burgh are nearly all occupied by the owners, and therefore not so capable of being valued by a rental test as property let to tenants, the Magistrates are of opinion that £200 is a fair annual value or rent one year with another; (2) that relatively to the value of some similar residences referred to by the appellant, and particularly to Colonel Allison's house, which has not the advantage of the frontage position of Spring Grove, the Magistrates think that Spring Grove is higher in rental than these houses appear in the roll, but having heard the detailed evidence as to these houses also adduced before them by the appellant, they are of opinion that this difference does not arise from any overvalue of Spring Grove, but from these particular houses being at present undervalued in the roll.

The appeal was debated June 24.

MACKAY for appellant.

Mr DAVID CROLE, Assistant Solicitor, Inland Revenue, in answer.

The Court were of opinion that the determination of the Commissioners was wrong, and reduced the valuation to £160.

No expenses.

Agents for Appellant—Alexander Howe, W.S.

Agent for Defender—A. Fletcher, Solicitor, Inland Revenue.

COURT OF SESSION.

Wednesday, July 5.

SECOND DIVISION.

KETCHEN *v.* GRANT.

Process—Diligence—Inhibition. A woman having divorced her husband, raised an action concluding for declarator that she was entitled to terce and *jus relictæ*, and for certain specific sums as her *jus relictæ*. The Court found her entitled to terce, and also to certain specific sums of money. *Held* that she was not entitled to continue an inhibition, which she had used on the dependence of the action, in order to protect her right to terce.

BURNET for the petitioner.

LANCASTER for the respondent.

Agent for the Petitioner—N. M. Campbell, S.S.C.

Agents for the Respondent—H. & J. Inglis, W.S.

Thursday, July 6.

FIRST DIVISION.

SPECIAL CASE—DAVID MORGAN'S TRUSTEES AND OTHERS.

Succession — Testament — Clause — Construction of Testamentary Deeds.

George Morgan, merchant, Kirkcaldy, died in 1829, leaving a trust-settlement dated 1823, an additional trust-settlement dated 1827, with a codicil dated 1828. By the deed of 1823 he directed the residue of his estate to be divided into seven equal shares, one for each of his four sons and three daughters. In the case of two of his daughters, who were married, and also in the case of the other daughter Jane, in the event of her marriage, the share was given to the daughter in liferent only, and to her children in fee. Failing issue, two-thirds of the share was to return and form part of the trust-funds, "to be divided, in the same proportions and in the terms of this deed, among my other sons and daughters."

The narrative of the deed of 1827 bears that, on account of the death of one of the truster's sons and other reasons, he had resolved to make the additions to and alterations upon his settlement. The residue was now to be divided into six shares. Various provisions follow. The trustees were directed to lay out Jane's one-sixth share in the same manner as mentioned in his former settlement with regard to the one-seventh share there provided to her. The clause of return, in case of failure of issue, was not specially repeated. Shortly after, Jane married the late William Oliphant. Mr Morgan was a party to her antenuptial contract, in which, and also in a relative codicil executed by Mr Morgan in 1828, it was provided that, in the event of her dying without issue, two-thirds of her share should, subject to her husband's liferent, in case of his survivance, revert to his (Mr Morgan's) heirs, executors and assignees.

Mrs Oliphant died without issue in 1851, and Mr Oliphant in 1868. Questions having arisen as to the disposal of the two-thirds of the share liferented successively by Mrs Oliphant and her husband, a Special Case was presented to the Court. The case turned upon the interpretation

of the codicil of 1828, and of the marriage-contract of Mr and Mrs Oliphant, and particularly on that of the words "my own nearest heirs, executors and assignees."

The Court pronounced the following interlocutor:—

"31*st May* 1870.—Find and declare that on the death of Mrs Jane Oliphant without issue in 1851, the right of fee of two-thirds of the one-sixth of her father George Morgan's estate (settled on her and her husband and children by her marriage-contract, and the codicil of the said George Morgan's settlement, dated 17th July 1828), did, in terms of the said marriage-contract and codicil, revert to the trustees under the said George Morgan's settlement, as his assignees, to be distributed by them as part of the residue of the trust-estate, and decern."

After the date of the judgment the trustees of William Oliphant, who were not parties to this special case, on hearing for the first time of the questions which had arisen regarding George Morgan's estate, preferred a claim, on the ground that the share above mentioned, having reverted to George Morgan's trustees, fell to be dealt with by them as undisposed of residue, and to be distributed to the next of kin of George Morgan or their representatives. In this view they claimed as in right of Mrs Oliphant, she and her husband having executed a mutual settlement of their whole estate.

The representatives of George Morgan's other children maintained that the share fell to be distributed according to the provisions of the settlement of 1823, and fell under the clause of survivorship therein.

A second special case was presented, the parties being (1) the representatives of George Morgan's other children; (2) Oliphant's trustees.

The questions were as follows:—

"(1) Does the said share of the late George Morgan's trust-estate fall to be dealt with by his trustees as undisposed of residue, and to be distributed by them among the representatives of the six children of the truster who survived him in the character of next of kin at the time of his death? Or—

"(2) Does the said share fall to be otherwise distributed under the provisions contained in the truster's trust-disposition and settlement, and additional trust-disposition and settlement?"

MUIRHEAD and A. GIBSON for the *first* parties.

M'LAREN, for the *second* parties.

The Court were of opinion that the deed of 1827 did not supersede that of 1823, except in so far as its provisions were inconsistent with it; that consequently the share in question fell to be distributed under the provisions of the settlement of 1823; answered the first question in the negative, and the second in the affirmative; and found the parties of the *second* part liable to the parties of the *first* part in expenses.

Agents for parties of the *first* part—J. Stormonth Darling, W.S., and James Bruce, W.S.

Agents for parties of the *second* part—Dalmahoy & Cowan, W.S.

Thursday, July 6.

STIVEN (YOUNG'S FACTOR) *v.* BROWN'S TRUSTEES AND OTHERS.

Process—Title to Sue—Heir—Service. Circumstances in which a process of reduction of prior infeftments was sisted, in order to allow the pursuer to mend his title to sue, by serving as heir of provision or otherwise, as advised.

This was a summons of reduction and declarator, at the instance of William Stiven, accountant in Dundee, factor *loco absentis* to James Young, a seaman belonging to that town, but presently abroad, seeking to have reduced certain instruments and titles which had been expede to heritable property in Dundee, to a *pro indiviso* share of which the said James Young alleged right. The defenders were the trustees of Young's uncle James Brown junior and his four younger brothers and sisters. From the record it appeared that James Brown senior, who died in 1833, was possessed of several heritable subjects in Dundee, amongst which was a tenement in Whitehall Close. James Brown senior left several children, of whom the eldest surviving son was the above-mentioned James Brown junior, whose trustees were called as defenders in this action, and Janet Brown or Young, the mother of James Young, and also of the four remaining defenders.

Under a disposition by James Brown senior, dated 29th April 1797, the subjects in Whitehall Close vested equally in his five surviving children. Janet Brown or Young therefore became entitled to a fifth share *pro indiviso*. She having died intestate, James Young, as her eldest son and heir of line and conquest, claimed to be in right of her fifth share *pro indiviso*, as heir of provision under James Brown senior's disposition.

The said subjects in Whitehall Close are the only ones that need be noticed at this stage of the action. Janet Brown or Young was never infeft in her share of these subjects, nor has it been taken up by service or otherwise. In 1849 James Brown junior served himself as nearest and lawful heir of his father James Brown senior in the said subjects and others, and was infeft therein. He thereafter conveyed them to his trustees, the first parties called as defenders in this action, who were infeft. The deeds sought to be reduced were the instrument of cognition and sasine in favour of James Brown junior, and his trust-disposition, with the sasines and instruments which had followed thereon, so far as the same affected the share of the properties claimed by James Young as in right of his mother. As a defence against this action, so far as the Whitehall Close subjects were concerned, the defenders James Brown junior's trustees pleaded *inter alia*—"(2) James Young, who is said to be in right of his mother Janet Brown or Young, as heir of provision to her shares of the several subjects libelled, not having produced or expede any service or other title instructing that character, the pursuer, as representing the said James Young, is not entitled to insist in any of the conclusions of the present action."

The Lord Ordinary (MACKENZIE) on 31st January 1871 pronounced an interlocutor, which, in so far as regarded the subjects in Whitehall Close, sustained the defender's plea in law above stated, and dismissed the action. His Lordship added the following Note:—