there is no debt proved by writ, which is the only issue in the case.

LORD BENHOLME—I concur with your Lordships, and would add that I find no document of debt other than that of February 2, 1869, which the Court have already held not obligatory. During Dr Duncan's lifetime an attack for the money was commenced, was then unaccountably stopped, and has now, after a long interval, revived on his death. It appears to me very unlike what would have occurred had the money been advanced as a loan. A null obligation cannot be set up and raised into a good one by these letters; they must in that respect be regarded alone. Has Miss Shand by these letters bound herself to pay the money? I clearly think it is not so, the qualifications adjected entirely destroyed them as substantive obligations.

LORD NEAVES—I concur. The argument for the pursuers had, I think, but small foundation; I should be sorry to suppose that any such doctrine of law had received support, but hitherto in Scotland it is not so.

I do not think Dr Duncan meant to do posthumously that which certainly in his lifetime he did not do.

Counsel for Duncan's Trustees—Watson and Trayner. Agent—D. Todd Lees, S.S.C.

Counsel for Miss Shand—Lord Advocate and Smith. Agent—T. Spalding, W.S.

Thursday January 9.

FIRST DIVISION.

[Lord Mackenzie, Ordinary.

REID *v.* REID'S TRUSTEES.

Process—Act, 48 *Geo. III. c.* 151, § 9—*Remit* ob contingentiam.

B brought an action, marked to the Second Division, against A's trustees, to ascertain the amount of the trust-estate, and the portion thereof due to her. Ten years after, C brought an action against A's trustees, marked to the First Division, to ascertain the amount of the trust-estate and the portion due to him. About the same time the trustees brought an action against B and C, also with reference to the trust-estate. The First Division remitted the two last actions to the Second Division *ob contingentiam* of the first action.

An action of count and reckoning was brought by Elizabeth Reid and others, her sisters, against the trustees of the deceased James Reid, their father, and the object of the action was (1) to ascertain the amount of the trust-estate, and (2) to ascertain the portion of that estate due to the pursuers.

This action was a Second Division case.

Ten years after, an action of count, reckoning and payment was raised by Walter Reid, the brother of the pursuers in the first action, against the same defenders, viz. the trustees of James Reid, and the object of this action was to fix the amount of the trust-estate due to the pursuer Walter Reid.

About the same date as the second action, a third action was raised by the said trustees against the pursuers in both the other cases, viz. Walter Reid and his sisters. The object of this third action was to recover certain sums said to be due by Walter Reid to the trust-estate, but with the alternative that he should relieve the pursuers of the first action—that is the action of count and reckoning brought by the other defenders Elizabeth Reid and others, against the pursuers Reid's trustees.

The second and third actions were brought to the First Division of the Court.

The Lord Ordinary pronounced an interlocutor conjoining the actions, and Walter Reid and his sisters reclaimed. When the reclaiming notes were in the Single Bills the counsel for the trustees moved that the actions be remitted to the Second Division. This motion was opposed by the reclaimers.

It was argued for them that (1) There was no such identity in the subject matter of the actions, or contingency between the actions, that they must be conjoined under the Act of 1868; (2) That there being thus no necessity to do so, it was not in the circumstances expedient, for the later actions had not been raised until many years after the first action, and although the trust-estate which formed an element in each action was the same, yet the real subject matter in each action was different, viz. the amount due to the respective parties.

Mansfield v. Atchison, 11 Dec. 1829, 8 S. 243; *Landale* v. *Todd*, 9 S. 268; *Western Bank*, 22 D. 447; *M'Neill* v. *Scott*, 4 M'Ph. 468.

It was argued for the respondents that there was plainly contingency between the actions, as the parties were the same, as also the subject-matter, viz. the division of the trust-estate, and that a decision in any one of the cases would very materially affect the other. It was therefore argued that this was a clear case for conjoining the actions, and remitting the First Division action under the 9th section of the Procedure Act of 1808, to the Second Division, in which Division the original action was brought.

At advising—

LORD PRESIDENT—It is not wonderful that questions should have arisen in construing the 9th section of the Act of 1808. If the section is widely construed it may include all cases in which there is any connection. I have never been able to hold that every case which has a connection with another in dependence in the other Division must be remitted. Connection means more than contingency. The other part of the section, which consists of the words "relating to the same subject matter, or thing," is also susceptible of different interpretations, as you construe it strictly or extensively. In the *Western Bank* case all the actions related to the same subject-matter, but the Court were of opinion that there was not sufficient ground for remitting.

I am clearly of opinion that the present case must be remitted to the Second Division. The object of all the actions is the same, viz., to have an accounting and enquiry into the estate of the late Mr James Reid, with a view to its distribution. The parties are also the same. I am therefore of opinion that it is imperative on us to remit the case.

The other Judges concurred.

The Court remitted the actions at the instance of Walter Reid and Reid's Trustees and the action at the instance of Reid's Trustees v. Walter Reid, Elizabeth Reid, and Others, to the Second Division *ob contingentiam* of the process depending before the

Second Division at the instance of Elizabeth Reid and Others v. Reid's Trustees.

Counsel for Elizabeth Reid and others—Keir. Agents—Webster & Will, S.S.C.

Counsel for Walter Reid—Balfour. Agents—J. & J. Gardner, S.S.C.

Counsel for Reid's Trustees—Marshall. Agent—Alexander Stevenson, W.S.

Friday, January 10.

FIRST DIVISION.

[Lord Mackenzie, Ordinary.

STEVEN (YOUNG'S FACTOR) *v.* YOUNG & OTHERS.

Disposition—Mutual Disposition—Revocation—Conditional Institution.

A purchased certain heritable subjects, and took the title to himself and his wife, in conjunct fee and liferent, for her liferent use allenarly, and to himself, his heirs and assignees whomsoever in fee. By mutual disposition and settlement A and his wife disponed the subjects to "their daughters in liferent, and their heirs in fee," reserving power to themselves to revoke during their joint lives. After the death of his wife A executed a settlement disponing the said subjects to his said "daughters in liferent, and to their lawful children equally among them." *Held* that the mutual disposition and settlement by A and his wife was revoked by the subsequent settlement by A alone.

The said A, by another disposition and settlement, disponed certain other subjects to his *children* "equally among them and the lawful issue of their bodies, to the survivors equally, their heirs and assignees, exclusive always of the *jus mariti* of the husbands, present or future, of my said daughters." *Held* that this destination was a conditional institution.

This was an action of reduction of certain deeds brought at the instance of William Stiven, accountant in Dundee, factor *loco absentis* to James Young, against the trustees of James Brown and others. The questions which ultimately came before the Court were two, (1) Whether a mutual deed granted by a husband and wife had been revoked by a subsequent deed by the husband alone, and (2) whether the destination in a third deed imported substitution or conditional institution. The circumstances under which these questions arose were as follows.

James Brown senior, merchant in Dundee, purchased certain subjects in Couttie's Wynd, Dundee, and took the title to himself and his wife Isobel Maiden, in conjunct fee and liferent, for her liferent use allenarly. By mutual disposition and settlement, dated the 23d day of August 1821, executed by the said James Brown senior and Isobel Maiden, proceeding on the narrative that it being their duty in their own lifetime to settle their affairs in such a manner as to prevent all disputes after their death, they had resolved to grant said mutual disposition in manner therein under written: Therefore, and for other good and onerous causes, the said James Brown senior and Isobel Maiden gave, granted, assigned, and disponed to and in favour of the said Janet Brown, and Isobel or Isabella Brown, their daughters, equally between them, and the survivor of them, in liferent for their liferent use allenarly, and to their heirs in fee, all and whole the said subjects lying on the east side of Spalding's or Couttie's Wynd, in Dundee, being the subjects second described in the conclusions of the summons. The said mutual disposition and settlement contains a clause in the following terms:—"Reserving always to us during our joint lives our own liferent right and use of the premises, with full power to us at any period during our joint lives to alter, innovate, or revoke these presents in whole or in part, to sell, alienate, and dispone the subjects and effects hereby conveyed in any manner we may think proper; but, in as far as these presents shall not be altered or revoked, the same shall be valid and effectual though found lying in the custody of either of us at the time of the death of the longest liver, or in the custody of any other person at that time, dispensing with the delivery hereof," After his wife's death, in 1825, the said James Brown, by a settlement executed on 29th July 1829, made a new and different disposition of the whole of the properties, heritable and moveable, belonging to him, which had formed the subject of the former settlement of 1821. In particular, he conveyed the said subjects in Couttie's Wynd to his daughters Janet (who had in the interval been married) and Isobel, equally between them, in liferent for their liferent use only, and to their respective lawful children equally among them, whom failing to the heirs and assignees of his said daughters in fee. On the said James Brown's death he was survived by five children, and among them by his daughters Isobel and Janet. The said Janet Brown or Young left five children, of whom James Young, to whom the pursuer had been appointed factor *loco absentis*, was the eldest son. The pursuer maintained that the mutual deed of 23d August 1821 was not revoked by the deed of 29th July 1826, and that under the former, Isobel Brown or Young had right to half the subjects in Couttie's Wynd therein conveyed to her and her sister, and that the said James Young, being the eldest son and heir of line and conquest to his mother, was heir of provision to her under the said mutual disposition, and had right to the said one-half of the subjects.

Then, by disposition and settlement, dated 6th December 1831, the said James Brown senior, on the narrative of the love, favour, and affection which he had and bore to his sons and daughters thereinafter named, gave, granted assigned, and disponed to and in favour of his three sons, and Margaret Brown, Isobel Brown, and Janet Brown or Young, his daughters, equally among them, and the lawful issue of their bodies, and failing any of them by death without lawful issue of their bodies, to the survivors equally, their heirs and assignees, exclusive always of the *jus mariti* of any husbands, then present or future, of his said daughters, all and whole the subjects situated on the south side of the Cowgate of Dundee. Under this deed the pursuer maintained that the said James Young, as heir of provision to his mother, was in right of one-fifth part of the said subjects in the Cowgate of Dundee.

It was *inter alia* pleaded for the defenders that "the pursuer was not entitled to insist in any of the conclusions of the action in so far as regarded one half *pro indiviso* of the subjects in Couttie's Wynd, in respect—(1) That the settlement of 1821,