Thursday, October 15.

FIRST DIVISION.

[Sheriff of Lanarkshire.

PARK *v.* WEIR.

Appeal—Act of Sederunt, 10th March 1870, *sec.* 3.

Where an appellant failed to lodge a copy of the papers with the Clerk of Court, and was not reponed within the statutory time,—*held* that the Sheriff's judgment was final.

An appeal in this case was received on July 14, 1874, six days before the end of Session. The appellant printed the papers and boxed them on the first box-day, which was August 27, but failed to lodge within fourteen days after the appeal a copy of the papers with the Clerk of Court, as required by sec. 3, sub-section 2. The process was re-transmitted to the Sheriff-court in respect of the abandonment of the appeal. The appellant was not reponed within eight days, as required by sub-section 3, and the Court held that the judgment of the Sheriff had become final, in terms of sub-section 5.

Counsel for Appellant—Alison. Agent—William Livingstone, S.S.C.

Counsel for Respondent—M'Kechnie. Agent—Thomas Carmichael, S.S.C.

Friday, October 16.

FIRST DIVISION.

[Sheriff of Midlothian.

SIR DAVID BAIRD *v.* PETER GLENDINNING.

Appeal—Sheriff Court Act 1853, § 24.

An interlocutor by a sheriff granting warrant to a judicial manager under a sequestration to make payment of rent due to the landlord, *held* to be appealable under the Sheriff Court Act 1853, sec. 24.

The question in this case was whether an interlocutor of the Sheriff granting warrant to the judicial manager of a farm which had been sequestrated to pay the rent due to the landlord, was an interlocutor which was appealable under the Sheriff Court Act 1853, sec. 24.

The interlocutor was as follows:—

"*Haddington, 30th April* 1874.—The Sheriff-Substitute having resumed consideration of this case, with the interim state of the intromissions of the judicial manager, approves of said state of intromissions so far as the judicial manager charges against the proceeds of the sales of the crop sequestrated the outlays made by him in labouring the farm in preparation for said crop. In respect the judicial manager has in his hands funds more than sufficient to meet the rent sequestrated for, due at the term of Candlemas last, Grants warrant to pay said rent to the petitioner, with the interest thereof, at the rate of £5 per centum per annum from the date at which the same became due till payment; appoints the judicial manager to state in his account of intromissions any bank interest he is paid or is charged with, and appoints this cause to be enrolled for further procedure when the whole sequestrated effects have been realized.

"*Note.*—The Sheriff-Substitute would refer to his note to his interlocutor pronounced in the process of sequestration for the rent of the same lands for crop 1872, for a statement of the grounds on which he is of opinion that the cost of labouring the farm for crop 1873 falls to be charged against the proceeds of that crop, and also for the reason why he has ordered the judicial manager to add to his account of intromissions in this process any sums of bank interest he has received or been charged. The judicial manager having admittedly in his hands sufficient to pay the rent sequestrated for, due at the term of Candlemas last, an order for payment thereof has been granted.

The LORD PRESIDENT—(*After reading the interlocutor.*)—It is objected that this is not an interlocutor which is appealable under section 24 of the Sheriff Court Act 1853. On the other hand, it is said that a warrant such as this to an officer of Court authorising him to pay, is equivalent to an interim decree for payment. Strictly speaking, no doubt the interlocutor does not fall under sec. 24, but then the question comes to be whether under the words "interim decree," "interim warrant" is not intended to be included. It seems to me that to read it so is quite within the policy of the statute. This is the proper,—indeed it is the only—form of proceeding when money is in the hands of an officer of Court. The Court does not give decree against its own officer, but simply authorises or ordains him to do what is necessary. It would be very inconvenient if the statute did not apply to an interlocutor of this kind.

Counsel for Appellant—Robertson. Agent—T. White, S.S.C.

Counsel for Respondent — Blair. Agents—Hunter, Blair, & Cowan, W.S.

Saturday, October 17.

SECOND DIVISION.

[Lord Mure, Ordinary.

MUIR *v.* FLEMING.

Process — Reclaiming Note—6 *Geo. IV. c.* 120—*A.S.* 1828, *sec.* 77.

A reclaiming note with extensive manuscript additions to the closed record appended, *refused* as incompetent.

Friday, October 23.

FIRST DIVISION.

[Lord Gifford, Ordinary.

ROBERTSON *v.* LAWSON.

Sale—Contract—Rei Interventus.

An owner of a house let it to a tenant for one year, with option to the latter to buy it at the end of the lease for a price to be fixed by valuators mutually chosen, the contract being by missives of lease *ex facie* regular During the currency of the lease the owner sold the property to a third party. The tenant raised an action against the seller and buyer, which was not defended by the seller, and the buyer agreed to implement the contract so far as to refer the matter to two valuators, and to sell the subject for the price fixed by

them. They failed to agree, and in the course of the action the pursuer admitted that the writ founded on was not probative, but maintained that it was validated by *rei interventus*. *Held* that the improbative writing was not binding on the buyers, and that *rei interventus* was not proved.

The pursuer of this action in March 1872 became tenant of a shop in Leith, which was at that time the property of John Cameron. The agreement, which was by missive of lease *ex facie* regular, was that the lease was to be for one year, and that at the end of that time the pursuer was to have the option of purchasing the subject at a valuation to be fixed by arbiters mutually chosen. In May 1872 the defender Lawson bought the subject from Cameron, and at the end of the year the pursuer raised an action against Cameron and Lawson for implement of the agreement. Cameron did not appear to defend the action, and decree in absence was given against him. Lawson, though denying his liability, expressed his willingness to concur with the pursuer in appointing valuators—and this was done—but the valuators failed to agree. Lawson alleged that the missive of lease founded on was neither holograph nor properly tested, and had been vitiated, and in the course of the action this was admitted by the pursuer, who insisted in the action on the ground that the informal missive had been validated by *rei interventus*.

The Lord Ordinary (GIFFORD) pronounced the following interlocutor:—

"*Edinburgh, 30th December* 1873.—The Lord Ordinary having heard parties' procurators, and having considered the closed record, writs produced, and whole process, Finds that the agreement of sale entered into between the pursuer and the defender Cameron, dated 15th March 1872, is binding both on the defender Cameron and on the defender Lawson, and in respect that the parties have failed to ascertain the price by valuators mutually chosen, remits to Adam Beattie, Esquire, builder in Edinburgh, to examine the shop in question, No. 2 George Street, Leith, giving the parties or their agents an opportunity of meeting with him, and thereafter to report the fair price or valuation of the said shop as upon a sale by the defenders to the pursuer under the agreement above mentioned: Finds the defender Lawson liable in the expenses hitherto incurred, and remits the account thereof, when lodged, to the Auditor of Court to tax the same, and to report.

"*Note*.—The present action is brought in very peculiar circumstances, and gives rise to questions of considerable nicety. The pursuer's averment is that he took from the defender Cameron a lease of the shop 2 George Street, Leith, for one year to Whitsunday 1873, and that it was part of the bargain that the pursuer should be entitled to purchase the shop at any time before 15th March 1873, at a valuation to be made by valuators mutually chosen by the parties.

"The written agreement of lease, containing this bargain of sale, is No. 11 of process, and although it is subject to several objections, the Lord Ordinary assumes in the meantime that it is binding. It seems to have been followed by possession, which possibly might be held *rei interventus* both as to the lease and as to the agreement of sale. The pursuer avers that he made improvements on the faith of his purchase.

"On 17th October 1872 the pursuer raised an action against Cameron to enforce the agreement of sale, having previously intimated his election to purchase. By that time, however, it seems Cameron had sold the shop to the other defender Lawson, who took infeftment on 18th May 1872, and a dispute arose whether Lawson was bound by the agreement to sell which his author Cameron had made. This dispute was compromised by Lawson concurring in appointing valuators, the pursuer naming Mr Brown, and Cameron and Lawson naming Mr Goalen, to fix the price. There was some correspondence about entering into a new agreement and minute of reference, but the defender Lawson, the purchaser, refused to do this, granting, however, on 1st November 1872, a letter (No. 18 of process), in which he says,—'I have already informed you, as also your clients, on their call here, that I would implement the decision of the parties mutually chosen, and you have it now in writing that I will so implement it.'

"It appears that the valuators mutually chosen, Messrs Goalen and Brown, have been unable to agree on the valuation of the shop, and the result is the present action, to have the defender Cameron ordained to concur in appointing a new valuator, or otherwise to have a valuator named by the Court, and thereupon to enforce a conveyance by both defenders to the pursuer on payment of the price.

"The defender Cameron has not appeared, and although decree in absence has been pronounced against him in terms of the conclusions of the summons, he has failed to concur in appointing a valuator. The other defender, Lawson, has lodged defences, and keenly contested the case, and it is with him alone that the litigation has taken place. He refuses to concur in naming a valuator, and maintains that he is no way bound either to do so or to convey the shop. He maintains a variety of pleas, chiefly, however, of a technical character.

"The Lord Ordinary is of opinion that the pursuer is entitled to have a valuator named by the Court to ascertain and fix the price of the subjects.

"When parties enter into an agreement of sale at a price to be fixed by valuators mutually chosen, it will not annul or void the contract although the arbiters should differ in opinion, or although one of the parties should either refuse to appoint an original valuator, or should refuse to appoint a new valuator in the event of the first valuators differing in opinion or failing to make any report by reason of death or otherwise. In such a contract of sale the reference to, and the decision by, valuators is not the main contract, but merely incidental thereto, and the contract of sale will be binding though the valuators originally named should fail to fix the price. If the parties cannot agree in naming new valuators the Court must intervene, otherwise the contract of sale itself would be inextricable. The reference to valuators in such a case is not a reference of a dispute which has arisen, or even of a dispute which is expected to arise. It is the mode chosen by the parties for liquidating the price, and it will be enforced like any other agreement which is a necessary part of a contract. The question does not seem to have arisen frequently, at least there are not many reported cases, but the principle has

been often recognised. Thus, in *Smith* v. *Duff*, 28th February 1843, 5 D. 749, where a landlord was entitled to resume land on compensation to be 'fixed by men to be mutually chosen for that purpose,' it was held that the parties were bound to refer, and that the contract was not voided by an abortive award which was reduced. In this case will be found a pretty full reference to authorities, and the decision is the more valuable as some of the earlier cases appear adverse thereto. Lord Cockburn in his note says he enforces the obligation 'because he thinks that the enforcement of such obligations, even where the arbiters are not named, and the dispute has not yet arisen, rests upon far sounder principles of common sense than defeating them does.' Lord Mackenzie, with whom the other Judges concur, distinguishes the case of a reference of disputes from the case 'where no difference has arisen, or is contemplated as likely to arise, but where neither the one party nor the other knows the value of a particular subject, and where it is necessary that they shall have a valuation.' He observes 'A reference in such cases made beforehand, in order to make a bargain, differs from either of the other two classes of cases. It takes place in sales. A sale may be made by a reference of the price to one of the parties. The Roman Law held that to be a good sale, and I don't think it illegal; but suppose it is agreed that two persons shall be named to fix the value of the article agreed to be sold, I don't see why it should not be good in order that the bargain may be carried through.'

"'It is quite common in the Sheriff-Court to enforce agreements to take over stock, or cropping, or machinery, or improvements, at a valuation, and if the parties won't concur in naming valuators, or if the valuators differ, the Sheriff appoints a valuator.' See an instance of this in the Supreme Court, *Monro*, 18 Dec. 1823, 2 Shaw, 508. See the old case of *Wallace*, 20 July 1715, 5 Brown's Supplement, 7.

"The cases of mineral leases, in which there frequently occurs a provision that if two referees mutually named shall find that the minerals are not workable to profit, the lease shall came to an end—may be referred to. One of the latest of these is *Merry & Cunningham* v. *Brown*, 7th June 1860, 22 D. 1148. Here it was held by the whole Court that although the parties were bound to name referees under such a clause, they were not bound to execute a submission containing a devolution to an oversman. This case did not determine what the remedy of the tenant would be if the referees differed in opinion; but all the Judges indicated an opinion that there would be a remedy by inquiry in some form. Such reference clauses, however, in mineral leases differ from the present case; the object of these clauses is to enable a tenant to terminate a current contract, and it might well be that the tenant should be held bound strictly and *in terminis* to terminate the contract in the exact way provided by the lease, otherwise the contract must just subsist. In the present case, and in all cases of sale, the fixing of the price is really for behoof of both parties, and if the Court were to refuse assistance, this might annul the contract and create the greatest injustice.

"In the next place, the Lord Ordinary is of opinion that the obligation come under by Lawson to implement the agreement made by the pursuer with Cameron is still binding, notwithstanding the failure of the valuators originally named to fix the price. He thinks that Lawson will be bound to implement the agreement when the price is fixed by the valuator now appointed. No doubt the words of Mr Lawson's letter have reference to the valuators who had been named, and it was very ingeniously contended by his counsel that it was because of his confidence in these valuators that he had agreed at all to implement the obligation, which it was said he was not bound to do. Whether he was bound or not depends upon the previous question—whether he was a *bona fide* purchaser, purchasing and paying the price in ignorance of the prior agreement of sale? and this is a matter of fact yet unascertained. But the Lord Ordinary thinks it unnecessary to inquire into this, because reading Mr Lawson's letters, and particularly the letter of 1st November 1872, which has been duly stamped, the Lord Ordinary thinks that their fair meaning is to place him in the same position with his author Cameron. He became a party to the original contract of sale. The pursuer did not make one bargain with Cameron and another separate and different with Lawson. As to both, the price was to be ascertained in the same way. Lawson himself says in his letter of 1st November, 'As you allege there is an agreement between the parties, I do not understand why there should be another,' and accordingly he declines to enter into any new reference, but contented himseif with agreeing to implement the original contract. The Lord Ordinary thinks he is bound thereby. No other result would be consistent with justice and fair dealing between the parties.

"Both as regards Cameron, therefore, and as regards Lawson, the Lord Ordinary thinks that the agreement must be enforced. As both of the defenders resist the carrying out of the agreement, and refuse to concur in the ascertainment of the price, the Lord Ordinary has himself named an experienced and practical valuator, whose report will enable the contract of sale to be carried through. The Lord Ordinary has found the defender Lawson liable in expenses hitherto incurred, Cameron having been already found liable in expenses in absence. The expenses of the valuation, necessary and reasonable, will be paid by the parties mutually."

The defender reclaimed, and pleaded, *inter alia*:—"(2) This defender being a singular successor in said subjects. is not bound by any missives, formal or informal, or any other obligations undertaken by his authors, and not contained in his title or appearing *ex facie* of record. (3) The missives of sale founded on by the pursuer being neither holograph nor tested, and therefore defective in the solemnities required by law, are not binding on this defender. (4) Said missives having been vitiated and tampered with after their execution, the same have been rendered null and of no effect, at least as against this defender. (5) The said arbiters having differed as to the competency of nominating an oversman, and not having proceeded with their reference, the same stood unexhausted, and it is therefore incompetent to supersede them by the present action."

The pursuer pleaded:—"(1) The defender John Cameron is bound to concur with the pursuer in a reference *de novo* to two valuators mutually chosen, for the purpose of ascertaining and fixing the price or value of the subjects in question, and failing

such a reference, the pursuer is entitled to have the price or value judicially ascertained and fixed. (2) The price or value being so fixed, the pursuer is, upon payment of it to the party having right thereto, entitled to a valid disposition of the said subjects in his favour by the defenders, or one or other of them."

At advising—

Lord President—This action was laid on certain missives of lease by which the pursuer Mr Robertson took on lease for a year certain premises, with the option of buying them at the end of the twelve months. The action is laid wholly on these missives and on certain circumstances which are now founded on as *rei interventus*, but the missives were originally represented as tested and regular. The defender Mr Lawson, however, challenged them on grounds which he has stated on record, and it is now admitted that they are not probative. The action, as originally brought, was directed against Mr Cameron, the owner of the subjects, and against Mr Lawson, who bought them from him, but Cameron did not appear, and decree in absence was pronounced against him, and of the same date (4th December 1873) Lord Gifford pronounced this interlocutor—"The Lord Ordinary having heard parties' procurators, in respect of the decree against the defender John Cameron, continues the cause for ten days, that it may be seen whether the said defender will implement said decree by concurring with the pursuer in nominating an arbiter." Mr Cameron did nothing, and the case has since gone on between Robertson and Lawson. On December 30, 1873, the Lord Ordinary pronounced an interlocutor giving effect to the missives, apparently without observing the defender's averment respecting them in Art. 3 of his Condescendence, which is as follows:—"Immediately after these proceedings, this defender ascertained that the missives represented to have been holograph and binding on the defender Cameron, were informal, in respect they were neither holograph nor tested, as required by law. The pursuer or his agent, it is believed, with a view to validate the same, long after their date, inserted or caused to be inserted in the body of the document a clause purporting to be a testing clause, and stating that the same had been signed of the date and in presence of the two witnesses therein mentioned, and induced two parties to adhibit their names thereto as instrumentary witnesses in usual form. The parties so subscribing were neither called nor required to act as witnesses, nor were they warranted in doing so without the express authority of both parties to the document. It is, moreover, believed that the said pretended witnesses neither saw the said missives signed nor heard them acknowledged by the parties." When the reclaiming-note came before us Mr Lawson called the attention of the Court to it, and we pronounced the interlocutor of March 14, 1874:—" The Lords having heard counsel on the reclaiming-note for the defender Thomas Lawson against Lord Gifford's interlocutor, dated 30th December 1873, in respect the said defender Mr Lawson adheres by his counsel at the bar to the averments embodied in article 3d of his statements in the record, and undertakes to prove that in point of fact the document therein referred to was dealt with, vitiated, and altered *ex post facto* in manner therein set forth, recal *in hoc statu* the said interlocutor, and before answer allow the said defender a proof of his averments in the said article 3d of his statement of facts, and to the pursuer a conjunct probation thereanent; appoint the said proof to proceed before Lord Ardmillan, on a day to be afterwards fixed by his Lordship, reserving all questions of expenses." A proof was accordingly ordered before Lord Ardmillan, but after a day for it had been fixed the pursuer by minute admitted that the missives were not properly tested. Accordingly an interlocutor was pronounced finding the pursuer liable in expenses; and on July 7, 1874, we remitted to Mr Goalen, architect, and Mr Beattie, builder, to value the property in question and to report. This was done in consequence of a letter by the defender stating his willingness to implement an offer to that effect which he had formerly made. We have now got a report from Messrs Goalen and Beattie, but they have failed to agree, and that reference accordingly has come to nothing.

The pursuer now maintains that there has been *rei interventus*, and his averments on that point are contained in Arts. 3 and 4 of his Condescendence. Art. 3 is as follows:—"In virtue of the foresaid agreement of lease and sale, the pursuer entered into possession of said shop, and applied for and obtained a license to sell exciseable liquors therein. He has also laid out considerable sums in fitting up and furnishing said premises, with a view to carrying on the business of a public house, both as lessee and as proprietor of the said subjects." Now he entered as yearly tenant—he cannot possibly be said to have done so in any other way. He had a right within twelve months to demand a sale of the property to him, and if anything had been done on the faith of that agreement, and done within the knowledge of the defender, that might have been *rei interventus*, but nothing was done which does not seem to have been strictly referable to his tenancy for one year; and it seems to me, therefore, that Art. 3 is irrelevant. Art. 4 is in rather a different position; it is as follows:—"The present pursuer raised an action before our said Lords for implement of the said agreement as to the sale of said subjects, the summons in which was signeted on or about the 17th day of October 1872. Thereafter the defender John Cameron, with the concurrence and consent of the defender Thomas Lawson, agreed to choose, mutually with the pursuer, valuators to fix the price of said property, in terms of the said agreement, and the pursuer accordingly nominated and appointed Matthew Brown, licensed valuator, Edinburgh, and the defenders nominated and appointed James Goalen, architect, Leith, as the valuators to value the said shop, and fix the price to be paid by the pursuer therefor." At the time to which this averment refers Lawson had acquired the property from Cameron, and so the allegation of *rei interventus* is chiefly valuable as against him. It is not disputed that the whole negotiations are contained in the letters before us, one by the pursuer's agent, and another by Mr Lawson, written apparently in answer to it. The letter of the pursuer's agent is as follows:—"Dear Sir,—With reference to our conversation to-day, I understand that you have selected Mr Goalen, architect, Leith, to act as arbiter for yourself and Mr Cameron in the valuation of the subjects occupied by Mr Robertson, and that Mr Goalen will attend on Monday first, at three o'clock, at the premises, to proceed with the valuation accordingly. I have so arranged with

the valuator for Mr Robertson. To keep matters in proper shape, I think it would be well to have a short minute of reference, and shall send you the same for revisal at once." Now, Mr Lawson, either in answer to that letter or to one to the same effect, but of later date, says: "Dear Sir,—I am favoured with yours of yesterday, with dft minute of reference, which I return to you unrevised; for, as mentioned in my letter of 29th ultimo, as you allege there is an agreement between the parties, I do not understand why there should be another. I have already informed you, as also your clients, on their call here, that I would implement the decision of the parties mutually chosen, and you have it now in writing that I will so implement it. You are perfectly aware that there is no binding obligation on my client to dispose of the property to yours, and that he has resiled from the incomplete contract by disposing of the property to me; and it was only on the most anxious and repeated solicitations of your client's wife that, on the action being dropped, and they paying your expenses, that I would advise my client to name a party to value the property, along with a party fixed by your client. My client has, by virtue of this, named Mr Goalen, and you have fixed Monday first, at three P.M., as the time for him to meet the party named by your client; and I have agreed, and hereby agree to implement their decision. More than this hitherto has not been demanded by your client, and it is impossible for me to see, in the face of the alleged agreement, what more can reasonably be demanded or desired." Now, dealing with this as constituting *rei interventus* in a question with Cameron, it is important to observe that Mr Lawson says that Cameron denies the agreement, and represents Cameron as being wholly out of the case, and as having set aside the incomplete contract. That leaves the case as one wholly between the pursuer and Mr Lawson, who lays down his own conditions, which seem to me to substitute a new agreement for the old one, and if so Mr Lawson can only be bound by the agreement into which he has himself entered. These valuators have failed to fix a price, and there seems to be no hope of their ever coming to an agreement, and how that can be said to be in pursuance of the informal contract I do not see. The contract is confessedly invalid, and can only be validated by *rei interventus*, and there is none relevantly averred. I am therefore for assoilzieing the defender.

The other Judges concurred.

The Court pronounced the following interlocutor:—

> "Find that the missives on which the action is laid are informal and invalid, being neither holograph nor duly tested: Find that the pursuer has not relevantly averred any fact which as *rei interventus* can have the effect in law of validating the said informal and invalid missives: Therefore sustain the defences, assoilzie the defender Lawson, and decern: Find the defender Lawson entitled to expenses, so far as not already disposed of: Allow an account thereof to be given in, and remit the same, when lodged, to the Auditor to tax and to report."

Counsel for Pursuer—Solicitor-General (Watson) and Trayner. Agents—J. & A. Hastie, S.S.C.

Counsel for Defender—M'Laren and Kirkpatrick. Agent—James Campbell Irons, S.S.C.

Saturday, October 24.

SECOND DIVISION.

SPECIAL CASE—SIR J. COXE AND OTHERS.

Succession—Testament—Construction.

> Terms of settlements, under which—*Held* that where the last of several testamentary writings contained no express revocation of a former will, it operated as a modification, and not a revocation, of the former will.

Mr John Cox died on 16th January 1874, survived by his wife, but without issue. This Special Case was raised to determine the shares of his residuary estate falling to be divided amongst the following parties. The first parties were Sir James Coxe and Mrs Ivory, the surviving next of kin of the deceased. The second parties were the two children and the marriage contract trustees of one child of his brother George Cox, who predeceased Mr John Cox; and the third parties were his wife and a niece, daughter of his sister Mrs Ivory. The questions turned upon the construction of various deeds left by Mr Cox. On 24th December 1850 he executed a holograph will, by which, *inter alia*, he appointed his wife, and two brothers, who predeceased him, to be his sole executors, and he directed them to divide the residue of his means and estate equally among his next of kin, declaring that with respect to any of his next of kin who predeceased him leaving issue, such issue should succeed equally to their parent's share. By a holograph codicil, dated 7th November 1859, Mr Cox declared that if Robert Cox, only son of his late brother George, should succeed to Gorgie Mill as heir-at-law, his share of residue should be only one-half of what otherwise it would have been, and that the other half should be divided amongst his remaining residuary legatees in proportion to the sums otherwise falling to them. By this deed he also added his brother-in-law to be an executor along with the persons named in his former will. But by a holograph codicil, on 23d November 1871, he withdrew that name and added those of Robert Cox, his nephew, and Andrew M'Culloch, his clerk, to be trustees along with others mentioned in his former will. On 10th August 1872 Mr Cox executed a holograph writing as follows:—"In case I may not have made alterations on my last will, I now declare it to be my will and wish, that my dear wife Margaret Cox be paid out of my funds the sum of £20,000 over and above the amount left her in other documents: That Robert Cox, my nephew, after succeeding to Gorgie Mills (subject to such occupation as my wife wishes during her life), shall be one of my residuary legatees, along with my dear wife, my nieces Isabella and Anne Cox, and Anne Ivory; but before the residuary amount be arrived at, my will is that my sister-in-law Mrs George Cox receive £2000, my brother Sir James Coxe £1000, and my sister Mrs Ivory £1000." Certain other legacies were also bequeathed by the said holograph writing of 10th August 1872. At the date of this writing, Sir James Coxe and Mrs Ivory were the only surviving next of kin, the testator's brothers Robert Cox and Abram Cox having died without issue.