existence after the death of the testator would have had a right to share with those born before that event. In that case I would have come to the conclusion that the property vested in each child, although his share might have been diminished by others being subsequently born, It is contended, still, that that is the result of the deed, but that view is, I think, unsound, because we have here a survivorship clause of the ordinary kind in these terms:—"Any of whom failing the share or shares of the deceaser or deceasers to the survivors, equally among them, share and share alike." There is to be an equal division of the estate, the share or shares of any one who has deceased—that is, without issue as the deed was granted by the grandfather—are to go to the survivors, share and share alike. There is nothing, so far as I see, to suggest a difficulty in giving to that clause its usual interpretation, which it received in the case of *Young* v. *Robertson*. Accordingly I am of opinion that as there were two children who did not survive the first liferentrix, and who left no children, their shares accresced to the others, and that therefore there are only five parties to take. Whether there could be any sort of vesting *a morte testatoris* perhaps is more a question of words than of any practical importance. What occurs to me is that there was no vesting in the children or the families properly speaking. Till the liferentrix died the fee was in the trustees, and there was suspension of vesting. If the trustees had conveyed to the daughters of the testator in liferent, I should say that there was no vesting in a class properly speaking, because there would then have been a fiduciary fee in the mothers for the children surviving the liferentrices. It is pretty obvious that if the liferentrices died without issue there was no vesting of the fee, because there was no issue to take, and any vesting which could be stated as a vesting *a morte testatoris* must have been a vesting of a fiduciary fee either in the trustees or in the daughters to hold for the grandchildren.

Lord Adam—I am of the same opinion. There are two possible terms at which vesting might have taken place. It might either have been *a morte testatoris*, or at the period of distribution, and by the terms of the clause of survivorship I think there was no term but the period of distribution at which it could have taken place. One half of the estate has by the death of Mrs Simpson been set free for distribution. That has now vested in the children surviving as a class, and there has been no vesting of the other half. That conclusion causes no difficulty about legal considerations, because the trustees hold the fee for the grandchildren who may survive the period of distribution. It is possible that none of the grandchildren may survive that period, in which case that purpose of the deed will lapse. If we were dealing with such a case as *Snell* v. *White*, where there was a direct conveyance by the testator, the presumption of a fiduciary fee might be necessary, just because there had been no trustees mentioned by the testator. If, however, the conveyance is made in the terms of the seventh head of this deed, I do not think it is necessary to presume a fiduciary fee in the daughters. The trustees have been appointed to carry out the purposes of the trust-disposition—to hold the fee for the purposes of the trust-deed—and one purpose is that of making payment among the surviving grandchildren of the testator when the period of distribution comes. I do not think there is any difficulty in coming to that conclusion.

The following interlocutor was pronounced:—

"The Lords having considered the special case and heard counsel for the parties—(1) Find and declare that the fee of the Greenock properties did not vest in the testator's grandchildren or their issue at the testator's death, but that on the death in 1886 of his daughter Mrs Martha Melville or Simpson one-half of the said properties fell to be distributed among the whole grandchildren of the testator or their issue then existing, and that the other half of the said properties has not vested in the grandchildren or their issue now in existence, but will fall to be distributed on the death of Mrs King among the whole grandchildren or their issue then in existence: (2) Find and declare that the said Greenock properties fall to be divided into five equal shares, one of which is to be conveyed to each of Mrs Marshall, Mrs Fraser, John King, David Melville Simpson, and John Ewing Melville Simpson, and decern."

Counsel for the First Parties—Guthrie. Agents—Smith & Mason, S.S.C.

Counsel for the Second Parties—C. S. Dickson. Agents—Cumming & Duff, S.S.C.

Counsel for the Third Parties—M'Clure. Agents—Smith & Mason, S.S.C.

Wednesday, October 31.

FIRST DIVISION.

M'PHEDRON AND ANOTHER *v.* M'CALLUM AND OTHERS.

Arrestment—Ship—Recal of Arrestment—Consignation—Caution.

An action having been raised against the owners of a ship, on the dependence of which arrestments had been laid on the ship, on the petition of the defenders the Court (following *Stewart* v. *Macbeth*, December 19, 1882, 10 R. 382) *recalled* the arrestments on consignation of the amount sued for and a sum to meet the expenses of the action.

John M'Phedron and John Currie presented this petition for recal of arrestments laid on their steamship the "Easdale," on the dependence of an action against them for £176, 11s. 8d. at the instance of John M'Callum and others, the owners of the steamship "Hebridean."

The petitioners averred that the action was called in Court on 25th October, and defences did not fall to be lodged till ten days thereafter. They were prepared to lodge defences when due, and to dispute the conclusions of the summons. They had offered to consign the sum sued for in the hands of the Clerk of Court, but the pursuers refused to withdraw their arrestments. Further, that they were under engagement to carry cargo,

and were suffering loss and damage owing to this refusal. They therefore prayed the Court to recal the arrestments on consignation of £176, 11s. 8d.

Service of this petition was dispensed with of consent.

The petitioners argued that the sum offered by them for consignation was more than sufficient. The sum sued for in the action was illiquid, and they intended to dispute the amount of the claim. No prejudice would be caused to the pursuers in that action by recalling the arrestments, as the petitioners were resident in Scotland, and always within the jurisdiction of the Court. The petitioners, on the other hand, had been suffering loss and damage as averred.

The respondents maintained that there should be consignation of a sum to meet the expenses of the action as well as the amount sued for—*Stewart* v. *Macbeth*, December 19, 1882, 10 R. 382.

The Court, following the case of *Stewart* v. *Macbeth*, *supra*, pronounced the following interlocutor:—

> "The Lords of consent dispense with service of this petition, and having heard counsel for the petitioners and for the respondents, and considered the petition, Recal the arrestments therein mentioned, and prohibit and discharge the use of further arrestments as prayed for, upon the petitioners finding caution to the extent of £200, or upon the consignment of that sum in the hands of the Clerk of Court, and decern."

Counsel for the Petitioners—Deas. Agents—Fodd, Simpson, & Marwick, W.S.

Counsel for the Respondents—C. S. Dickson. Agents—Webster, Will, & Ritchie, S.S.C.

Wednesday, October 31.

FIRST DIVISION.

[Lord Kinnear, Ordinary.

M'ELMAIL *v.* LUNDIE AND OTHERS.

Succession—Vesting—Term of Payment—Husband and Wife—Divorce for Adultery—Wife's Legal Provisions.

A testator directed his trustees, *inter alia*, in particular events, to hold certain shares of his estate in trust for behoof of his son, and to pay the said shares to him by such instalments, or in such portions, and at such times, as they might think fit; but so long as the said shares, or any part thereof, remained unpaid, to pay to him the interest or annual produce of such shares, or part thereof, so remaining unpaid, half-yearly, until the shares should be wholly paid over to him and discharged. He declared further that the various provisions of his settlement should not become vested interests till the respective terms of payment thereof. The trustees accordingly took possession of the son's shares, and held them for his behoof, with the exception of several instalments which were paid to him. His wife having obtained decree of divorce against him in respect of his adultery, in an action at her instance against the trustees under his father's settlement and himself, *held* that the shares of his father's estate had vested in him, and fell to be regarded as part of his estate in computing the pursuer's legal rights.

This action was raised by Mary M'Elmail against Robert Stark Lundie and others, the surviving and acting trustees under the trust-disposition and settlement of John Lundie senior, pawnbroker in Glasgow, and against John Lundie junior. The pursuer sought to have it found and declared that by dissolution of the marriage between her and the defender John Lundie junior by decree of divorce in respect of his adultery she became entitled to her legal provisions of terce and *jus relictæ* out of the estate then belonging to him, and that his estate included his share in the trust-estate of his father John Lundie senior.

The pursuer was married to the defender John Lundie junior on 10th February 1870, and on 22d February 1887 she obtained decree of divorce against him on account of his adultery.

John Lundie senior died in July 1869. By his trust-disposition and settlement, dated 23d and recorded 30th July 1869, he conveyed his whole means and estate to Robert Stark Lundie, his son, and certain other trustees, chiefly for the following purposes—(1) Payment to his widow of an annuity of £60, to meet which a capital sum was to be set apart. Upon her death this sum was to be "divided into six equal shares or portions, and my said trustees shall pay over one share thereof to my son the said Robert Stark Lundie, and one share thereof to my son James Buchanan Lundie; and my said trustees shall hold one share thereof in trust for the use and behoof of my son John Lundie junior, and shall retain the same, or such part thereof as they may think proper, in their own hands, for such period after the death of my said spouse as they may deem expedient, and they shall pay the said share to him by such instalments, or in such portions, and at such times, as they may think fit; but so long as the said share, or any part thereof, shall not be paid over to my said son, my trustees shall pay to him the interest or annual produce of such share, or part thereof, so remaining unpaid up, and that half-yearly by equal portions, at the terms of Martinmas and Whitsunday in each year, aye and until the said share be wholly paid over to him and discharged." The other three shares the trustees were directed to hold in trust for the testator's three daughters in liferent, and their children in fee, and upon the death of each of his daughters who should leave lawful issue, they were directed "to pay over to such issue equally amongst them, if more than one, share and share alike, the fee and capital of the said share liferented by their parent." (2) He directed his trustees to apportion and divide the whole residue of his estate, after payment of expenses, into six equal shares, and to deal with them in the same manner as he had directed with respect to the payment of the capital sum payable upon the death of the widow. It was further provided—"Declaring that the foresaid provisions to my said three sons, and to the issue of my said three