the event of our judgment being affirmed.

I am therefore for granting the application.

Lord Rutherfurd Clark and Lord Adam concurred.

Lord Mure and Lord Shand were absent from illness.

The Court granted the application, but refused the petitioners expenses.

Counsel for the Steel Company—Salvesen. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for Tancred, Arrol, & Company—Jameson. Agents—Millar, Robson, & Innes, S.S.C.

Friday, March 15.

FIRST DIVISION.

[Lord Lee, Ordinary.

LANG *v.* LATTA AND OTHERS (LANG'S TRUSTEES) AND OTHERS.

Husband and Wife—Antenuptial Contract—Reduction—Agent of One Party Signing as Notary for the Other—Marriage—Rei interventus.

In an action by a widow to reduce an antenuptial contract as invalid, inasmuch as the agent for her husband had signed as notary for her, the Court, without deciding the question whether the contract had or had not been validly executed, *held* that if any informality in execution had existed, it had been cured *rei interventu* by the marriage having followed upon it.

This action was raised by Mrs Lang, widow of Walter Lang of Chapelton, near Dumbarton, against Robert Latta and others, the trustees and executors of the deceased Walter Lang, for the purpose of reducing an antenuptial contract of marriage dated 30th September 1878 entered into between the pursuer and her deceased husband.

The pursuer had been taken into the service of Walter Lang as housekeeper and general servant in 1868. She thereafter became his mistress, and she lived with him in that relation down to the year 1878, during which period she bore him three children in 1869, 1871, and 1874 respectively. In 1878 Walter Lang became seriously ill, and was urged by his friends to marry the pursuer, which he consented to do. The banns were published in the Parish Church of Dumbarton on 29th September 1878. On the 30th September the marriage-contract sought to be reduced was executed. It was signed by Walter Lang, and bore to be executed notarially for the pursuer by Robert M'Farlan, writer and notary public, Dumbarton. Later on the same day the parties were married, and they subsequently lived together as husband and wife down to Lang's death in 1887. By the above contract Walter Lang bound himself to secure to the pursuer the liferent of a cottage and garden at Townend, Dumbarton, belonging to him, and the liferent of the field opposite acquired by him from Mrs Findlay. He also gave the pursuer, if she should survive him, the whole household furniture and plenishings and general household goods that should belong to him at his death, and bound himself to make payment within three months after his death of the sum of £20 sterling as an allowance for mournings, and a sum of £100 within six months after his death, and the deed provided that the pursuer thereby accepted the said provisions in her favour as in full satisfaction of terce of lands, legal share of moveables, and every other thing that she, *jure relictæ* or otherwise, could claim from him or his heirs by and through his death.

The pursuer averred the following grounds of reduction. The contract was not read over by or to the pursuer, nor were its contents explained to her before it was executed. The pursuer gave no instructions for the execution of the deed on her behalf, and had no knowledge of its execution, but it bore to have been executed notarially for her by Robert M'Farlan as notary. She had no knowledge of its contents or effect. The notary who was said to have executed it on the pursuer's behalf was the private agent of Walter Lang, and as such prepared the marriage-contract upon his instructions, and was in attendance at the execution thereof as his agent. It was unlawful for him to occupy the position of agent for the husband and to act as notary for the wife in the execution of the said contract, under which they had conflicting interests. The interests of the pursuer were not protected by the said notary, but, on the other hand, he acted in the interests of the said Walter Lang, and both he and the said Walter Lang fraudulently concealed from the pursuer the provisions and effect of the contract, and also the amount and value of Walter Lang's means and estate, and the legal rights which would accrue to her as his wife. The provisions made in favour of the pursuer by the deed were totally disproportionate to the means and estate which then belonged to Walter Lang, and which were left by him at the time of his death.

The defenders pleaded—"(1) The pursuer's averments being irrelevant, the action ought to be dismissed. (3) The pursuer having suffered no lesion, is not entitled to have the contract reduced."

On 23d December 1887 the Lord Ordinary (Lee) approved of certain issues for the trial of the cause. On the 24th January 1888 the Inner House of consent dispensed with the adjustment of issues, and remitted to the Lord Ordinary to allow a proof before answer.

The result of the proof which was taken before the Lord Ordinary on 29th May 1888 was as follows:—At the date of the marriage Mr Lang derived £110 a-year from rents, £49 a-year from feu-duties, and about £127 a-year from the interest on a bond of £2600. He had also about two or three hundred pounds in bank, and was the owner of the estate of Chapelton, the letting value of which after his death, when it had increased in value, was £130 a-year. At the date of his death his estate had much increased in value, his personalty having increased to £6452, and the amount he received from feu-duties to £102 a-year. He appeared to have been unwilling to marry the pursuer, but was urged to do so by his friends. Mr M'Farlan deponed that when he was called in about the marriage-

contract "Mr Lang said 'They have been at me to marry her, but I will not do it until I have a settlement,' or words to that effect." The marriage-contract was prepared by Mr M'Farlan on the instructions of Mr Lang. He deponed that he had received his instructions in the presence of the pursuer, and that he subsequently read over the deed and explained its effect to her, and that she authorised him to sign for her, and these statements were corroborated by other witnesses. It was also clear from the pursuer's evidence that the deed had been read over to her, for she said in cross-examination—"I did not know what Mr M'Farlan was reading when Mr Jardine and the others were present before the marriage." Mr M'Farlan also deponed that he had told the pursuer what her legal rights would be if she married without a contract, and that she was quite aware of what they would be. The pursuer, on the other hand, said that she did not know that she was entering into any contract, and that she knew nothing of what was being done, but the Court preferred the testimony of Mr M'Farlan, corroborated as it was in part by the evidence of other witnesses.

The Lord Ordinary on 29th June 1888 pronounced this interlocutor:—"Finds that the notary by whom the deed under reduction was executed for the pursuer was acting at the time as the law-agent of the deceased Walter Lang, the other party to the contract, and on his instructions and employment: Finds that as such agent the said notary was personally interested in the deed, and was incapacitated by the law from acting as a notary in the execution of the deed for the pursuer: To this extent sustains the reasons of reduction: Therefore repels the defences: Reduces, decerns, and declares in terms of the reductive conclusions of the summons." . . .

"*Opinion.*—The pursuer of this action is the widow of Walter Lang of Chapelton. She here seeks to reduce an antenuptial marriage-contract between her and her husband, which is alleged to have been executed by her notarially on the day of her marriage, viz., 30th September 1878. The deed confessedly made a very poor and inadequate provision for her, which was 'accepted by her in full satisfaction of all terce of land, legal share of moveables, and every other thing that she, *jure relictæ* or otherwise, could ask, claim, or demand . . . through his death, his own free will only excepted.'

"But the grounds of reduction which were chiefly relied on go only to this, that the deed was not well executed.

"The pursuer and her husband (whose housekeeper she was) had lived together for about ten years before the marriage, and she had borne him three children. It is not disputed that she desired to marry him for the sake of the children. But the proof shows that in point of fact the marriage was brought about, not by her, but by the parish minister and one or two elders, who were visiting him at a time of severe illness. During the week previous to the marriage he was thought to be dying, and the witness Jardine was sent to Glasgow to find out how a marriage could be accomplished without awaiting the proclamation of banns. During the same week it appears that the witness Mr M'Farlan was busy, as Mr Lang's law-agent, with the preparation of his testamentary settlements. The banns were proclaimed by Mr Lang's instructions on the 29th, and the marriage took place on the afternoon of the 30th. It was not until the morning of the 30th, according to the witness M'Farlan, that he was told anything of the intended marriage. He was then sent for, and received instructions from Mr Lang as to the marriage-contract. He prepared the deed presumably in accordance with his instructions. It gives to the pursuer, as Mr Lang's wife, the same provisions substantially as she was to have received under the unexecuted settlements as Mr Lang's housekeeper and the mother of his illegitimate children. But if the deed under reduction is valid, she agreed to accept this in full of her legal rights. The question is, whether that deed is ineffectual upon any of the grounds stated?

"The principal objection urged at the debate was, that the deed was not well executed, in respect that the notary who signed it on the pursuer's behalf was the agent of Mr Lang, the other contracting party, and was acting at the time under his instructions. In disposing of this objection it must of course be assumed that the formalities required by the 41st clause of the Conveyancing Act were observed, that the deed was read over to the pursuer, and that she gave authority to Mr M'Farlan to subscribe it for her. But if it be the fact that Mr M'Farlan, the notary, acted in all he did as agent for Mr Lang, and was present solely in his interest and for his purposes, I cannot doubt that a serious question arises regarding his qualifications to act as notary in the execution of the deed for the other party.

"It is settled by the case of *Ferrie* v. *Ferrie's Trustees*, 1 Macph. 291, and by the authorities there cited, that a notary cannot, as such, execute a deed in which he is himself concerned. In that case the deed (a testamentary trust-settlement) was executed notarially and in good form by two notaries and four witnesses, but one of the notaries (Mr Adam Paterson, a well-known solicitor in Glasgow) was also one of the five gratuitous trustees to whom the execution of the testator's will was committed, and the deed authorised the employment by the trustees of one of their own number as agent, with remuneration. It was held that the deed was null, because one of the notaries was disqualified. In the words of the Lord President, 'The law excluded Mr Paterson from acting as a notary in the execution of this deed.' Lord Curriehill's opinion puts his judgment on the ground that it was settled 'that the acts of a notary in the exercise of his office will not be effectual where he is personally interested.'

"In the present case the notary was not interested as a beneficiary under the deed, but the evidence shows that he was intimately concerned in it as the agent of Mr Lang, and was interested to the extent of charging Mr Lang as his employer with his fees, both as agent and as notary. He says that he acted also as agent for Mrs Lang, but he admits that he was not employed by her, and that he took his instructions from Mr Lang. It was on his behalf that he had prepared the deed, and was present to get it executed. He thought the provisions of the deed in favour of Mrs Lang mean and inadequate, but he took, in my view of his evidence, no steps to inform him-

self as to Mr Lang's means, such as a separate agent would have taken, with a view to advising Mrs Lang concerning the full effect of the renunciation of her legal rights. He trusted to her knowledge on that subject, and states that she asked a question indicating her acquaintance with the legal rights of a widow. Upon this point, however, he is contradicted by Mrs Lang, and is not corroborated. I am not satisfied upon the evidence that she put any such question as he mentions. But the conflict of evidence as to the extent of Mr M'Farlan's explanations to her illustrates the difficulty and danger which must be experienced, even by the most conscientious agent, in attempting to combine agency for one of the contracting parties with the position of notary executing the deed for the other. Mr M'Farlan, I am sure, did not consciously fail to act faithfully towards her, but upon the evidence I was satisfied that he acted solely as agent for Mr Lang.

"This being so, did the law allow him, upon the employment of Mr Lang, to act as notary public in the execution of the deed by the other party? It seems clear that if Mr Lang had happened to be a notary-public himself he could not have executed it notarially for the other party. Could he, then, do by an agent that which he could not have done himself, supposing that no agent had been employed or required? I think not; and my opinion is that Mr M'Farlan, as Mr Lang's agent, was so much identified with his interests, and so far personally interested in the execution of the deed, that he was disqualified for acting as notary for Mrs Lang.

"I think it unnecessary to go back upon the old authorities, but the case of *Graeme's Trustees*, 7 Macph. 14, like the case of *Stoddart*, 1799, M. 16,857, appears to me to be distinguished by this, that the judgment was there put upon the ground that the deed was not a contract but a testamentary and revocable deed.

"The case of *Nisbet* v. *Newlands*, 1630, M. 17,016 and 5682, was referred to. But I think that the separate report, under the head 'homologation,' shows a distinction. For there was there a conveyance which had taken effect during the husband's life, and the judgment was put upon the ground of homologation.

"I therefore sustain this reason of reduction.

"*Secondly.* With regard to the question whether the deed was executed by the authority of the pursuer, there is one aspect of it in which I should give my verdict for the pursuer. If Mr M'Farlan was disqualified from acting as notary in the execution of that deed for the pursuer he was incapable of receiving authority to that effect, and did not receive it. But if I am wrong upon the first ground of reduction I should hold the evidence insufficient to contradict the notary's docquet, attested as it is and supported by the evidence of the witnesses Jardine and Bayne.

"*Thirdly.* Upon the question whether the deed was read over to the pursuer, my verdict again is for the defenders. I think that it was proved that it was read over. Mr Jardine's failure of memory is not sufficient to falsify the docquet attested by himself as well as by Bayne—*Frank* v. *Frank*, 1795, M. 16,825.

"*Fourthly.* As to the alleged fraudulent concealment, I am of opinion that it is not proved. There was no duty of disclosure imposed upon Mr Lang, excepting in so far as the employment of his own agent to act as a notary for the pursuer may have given rise to an obligation to see that she was fully advised. I am assuming at present, however, that the deed was well executed. In this view it was a deed between parties of full age, and not to be set aside without proof of fraud. Fraud not being proved, the pursuer cannot set aside the deed on the ground merely that she agreed to a bad bargain."

The defenders reclaimed, and argued—It was not a fatal objection to a deed that the notary who signed it for one of the parties was agent for the other party. There was no authority for the judgment of the Lord Ordinary to that effect. It had been found that the intimation of an assignation was null where the same party acted as procurator and notary, and also that the holder of a bill could not act as a notary in protesting it—*Scott* v. *Drumlanrig*, July 3, 1628, M. 864; *Russell* v. *Kirk*, November 27, 1827, 6 Sh. 133; *Leith Bank* v. *Walker's Trustees*, January 22, 1836, 14 Sh. 332. But, on the other hand, it had been found that it was no objection to the protest of a bill of exchange, made payable at the office of the son of the creditor, that it was taken by the son as notary—*Rankeillor* v. *Grindlay*, November 19, 1830, F.C. The decision that the same notary cannot act for both parties in a contract in *Craig* v. *Richardson*, June 27, 1610, M. 16,829, was gravely doubted by Lord Deas in the case of *Graeme* v. *Graeme's Trustees*, October 21, 1868, 7 Macph. 14. The decision in the case of *Ferrie* v. *Ferrie's Trustees*, January 23, 1863, 1 Macph. 291, could be explained by the fact that the trustee might have taken a beneficial interest under the deed, and was thus disqualified from acting as notary. Many things could be done through a man's agent which could not be done by himself. At all events, a long series of decisions established the fact that a technical objection such as this might be homologated by subsequent marriage—*Cheape* v. *Mowat*, July 6, 1626, M. 17,014; *Muir* v. *Crawford*, March 11, 1628, M. 17,014; *Brady* v. *Brady*, July 1, 1662, M. 17,018; *Nisbet* v. *Newlands*, December 10, 1630, M. 17,016, also M. 5682.

The pursuer argued — An agent for one party could not sign as notary for the other. The notary must be free from interest either *per alium* or *per se*. It was a *quasi*-judicial office, and notaries have been prevented from acting in any capacity which might bias their judicial mind—The Office of a Notary, pp. 15-248; *Jormock*, April 1583, M. 16,874. The provisions for the wife in this case were grossly inadequate, and the primary duty of the notary was to the husband to carry through this niggardly contract. He was therefore plainly put in a position which was in conflict with his *quasi*-judicial duties of reading over and explaining to the pursuer the provisions of the deed. The argument that the contract had been validated by homologation depended entirely on the fact that marriage followed. But if the first branch of the pursuer's argument was sound the deed had never been signed, and there was no deed capable of being homologated. The cases founded on by the defenders were all cases of technical objections founded upon statutory informalities and the

like—*Cooper* v. *Cooper and Others*, January 9, 1885, 12 R. 473, Feb. 24, 1888, 13 L.R. App. 88, 15 R. (H. of L.) 21.

At advising—

Lord Rutherfurd Clark—This is an action to set aside an antenuptial marriage-contract into which the pursuer is said to have entered on 30th September 1878. It is directed against the trustees and executors of the pursuer's late husband, and also against her children. She has a very material interest to reduce the contract, because it contains a discharge of her legal rights, which are of greater value than the conventional provisions.

The pursuer had for a considerable time been the mistress of the late Mr Lang, and had borne three children to him. In 1878 Mr Lang became seriously ill, and he was urged by his friends to marry the pursuer. He does not appear to have been very willing to do so, but he ultimately consented, and the marriage was celebrated on 30th September 1878, the marriage-contract having been previously executed on the same day.

The marriage-contract was prepared by Mr M'Farlan, a writer in Dumbarton, on the instructions of Mr Lang, and he says that he received his instructions in the presence of the pursuer. He further states—"Mr Lang said 'They have been at me to marry her, but I am not going to do it until I have a settlement with her.'" As the pursuer could not write, the contract was executed by her notarially, and Mr M'Farlan acted as the notary.

The sole ground of reduction relied on in argument was that Mr M'Farlan was disqualified from acting as notary, inasmuch as he was the agent of the other party. The pursuer did not attempt to set aside the contract on the plea that it was obtained from her by misrepresentation or undue influence. It is true that she says that she was ignorant of its terms, and that she did not understand that she was entering into a marriage-contract. These matters are, however, introduced into the case, not as substantial grounds of reduction, but as indicating the reason of the rule for which the pursuer contends.

I have further to observe that the objection on which the pursuer relies is not an objection which appears *ex facie* of the contract. On the contrary, so far as the deed shows, the prescribed legal formalities were duly observed.

The question which is thus raised is important. I do not think that it is ruled by any of the cases that are cited to us. It was decided in *Ferrie* v. *Ferrie's Trustees*, 1 Macph. 291, that a trust disponee cannot act as the notary of the truster, though there, something may have turned on the fact that the notary might and probably would have a personal benefit from the settlement inasmuch as he was the agent of the truster, and as the deed contained an express dispensation of the ordinary law applicable to a trustee who acts as agent for the trust. In the old case of *Craig*, M. 16,829, it was held that the same notary cannot subscribe for both the parties to a contract. But the soundness of this decision was more than doubted by Lord Deas in the case of *Graeme*, 7 Macph. 14, though it was regarded with more favour by Lord Ardmillan. The latter case was decided on the single ground that no statutory nullity was incurred because the same notaries had subscribed for each of the two parties to a mutual disposition and settlement which bore to be revocable by either. These are the only cases which have any direct application to the present, and they do not give us much assistance in the determination of it.

I confess that I think it very undesirable that the agent of the one party to a contract should act as the notary of the other. It is of great importance to preserve the purity of the office of notary, and to require that he shall not be under any influence which might induce him to be either corrupt or careless in the discharge of his duty. And these considerations present themselves with great force when we keep in view the duties that devolve on the notary who acts for an illiterate person. But there is a very analogous case where such considerations would not, I think, prevail against the validity of the deed. If the pursuer had been able to write, and if the same agent acted for both parties, the contract would not be void, but only voidable, though the Court before sustaining it would require to be satisfied that it was obtained with perfect fairness, and with full intelligence on the part of the wife.

I am glad to think that we need not decide this difficult and delicate question, because we can determine this case on another ground.

It is to my mind quite certain that before the marriage was celebrated the parties intended to enter into a marriage-contract, and we have in writing the contract which they intended to execute. The pursuer no doubt says that she did not know that she was entering into any contract, and affects to say that she knew nothing of what was done. I cannot take this off her hands. I prefer the testimony of Mr M'Farlan, whose veracity and honour were not impeached, and who is supported in the main by the other parties who were present. He gives distinct evidence to the effect that he read over the deed to the pursuer, and explained the meaning and effect of it. That the deed was read over is clear from the evidence of the pursuer herself. For she says that she "did not know what Mr M'Farlan was reading when Mr Jardine and the others were present before the marriage." Unless Mr M'Farlan was guilty of a fraud which he had no interest to commit, and which it is not alleged that he did commit, the whole proceedings were conducted with perfect fairness, and the intended contract was fully understood by the pursuer.

The marriage followed upon it, and in my opinion, any imperfection in the mode of execution has been removed *rei interventu*. The case of *Nisbet*, M. 17,016, is a direct authority to that effect, and it is in accordance with the recognised law that informal contracts may be so validated. There the Court had to consider a marriage-contract where only one notary subscribed for each party. It is clear that this was no subscription at all, and that so far as mere execution went the contract was absolutely void. But it was held that the contract was not challengeable provided marriage had followed upon it, because marriage is an act of homologation which bars objection. The worst that can be said of the contract in question is that it was not signed for

the pursuer by reason of the disqualification of the notary. But the marriage followed upon it, and I think that we accept the statement of Mr M'Farlan, which is in accordance with the reasonable and legal inference that the marriage would not have taken place if the contract had not been executed. In sustaining the marriage-contract in question we are within the rule of the case to which I have referred, and we are merely acting on the well-established principle which applies to marriage-contracts, as it applies to all other contracts, that informality in legal execution is cured *rei interventu.*

The LORD PRESIDENT and LORD ADAM concurred.

LORD MURE and LORD SHAND were absent.

The Court recalled the interlocutor of the Lord Ordinary.

Counsel for the Pursuer—Balfour, Q.C.—C. S. Dickson. Agents—Gill & Pringle, W.S.

Counsel for the Defenders—Gloag—C. Johnstone. Agents—T. & W. A. M'Laren, W.S.

Saturday, March 16.

SECOND DIVISION.

WEIR *v.* COLTNESS IRON COMPANY (LIMITED).

Reparation—Parent and Child—Title to Sue—Action of Damages for Loss of an Illegitimate Child.

Held that a woman has no title to sue an action of damages for the loss of her illegitimate child.

Margaret Grant or Weir, residing in Harthill, Lanarkshire, wife of Robert Weir, miner, brought an action in the Sheriff Court of Lanarkshire at Airdrie against the Coltness Iron Company (Limited), concluding for the sum of £500 as damages for the loss of her illegitimate son James Grant, aged fifteen, who had died from an accident sustained in the defenders' pit.

The pursuer had been twice married. She had children by her first husband, who were still alive and grown up. Her two sons by this marriage lived with the pursuer, and earned between them 8s. per day. Her illegitimate son was born while she was a widow, and her present husband, who was not the father of that son, had been living separate from her for ten years. He did not contribute to her support, and was not a party to this action.

The defenders pleaded, *inter alia*—"(1) No title to sue; and (2) *separatim*, the pursuer's husband should be a party, or at all events a consentor to the action, and it therefore falls to be dismissed."

The Sheriff-Substitute (MAIR) on 13th February 1889 repelled *hoc statu* the first and second pleas stated for the defenders, and before answer allowed to the parties a proof of their averments.

"*Note.*—. . . The first of these pleas raises the question whether the mother of an illegitimate child has a title to sue an action of damages and *solatium* for the death of the child. So far as I am aware this question has never been authoritatively decided by the Supreme Court. Cases of reparation have hitherto been confined to fathers and mothers and their lawful children, and in the two cases of *Greenhorn* v. *Addie*, June 13, 1855, 17 D. 860, and *Eisten* v. *North British Railway Company*, July 13, 1870, 8 Macph. 980, the Court has refused to sustain the title of brothers or sisters to sue such actions. In the latter case, however, the Lord President (Inglis) observed—'It appears to me that the true foundation of this claim is partly nearness of relationship between the deceased and the person claiming on account of the death, and partly the existence during life, as between the deceased and the claimant, of a mutual obligation of support in case of necessity. On these two considerations in combination our law has held that a person standing in one of these relations to the deceased may sue an action like this for *solatium* where he can qualify no real damage, and for pecuniary loss in addition where such loss can be proved.'

"In the present case the deceased was the pursuer's illegitimate son, and there can be no doubt as between the two there existed during life a mutual obligation of support in case of necessity. In the recent case of *Samson* v. *Davie*, November 26, 1886, 14 R. 113, it was held that a bastard son was liable to maintain his mother. This, in my opinion, is sufficient for the disposal of the defenders' plea. But the question was raised in the case of *Renton* v. *North British Railway Company*, 1869, to be found only in the 6th volume of the Scottish Law Reporter, 255, in which it was held by Lord Jerviswoode (Ordinary) that the mother of an 'illegitimate child has a title to sue an action of damages and *solatium* for the death of her child.' So far as appears, the judgment of the Lord Ordinary was acquiesced in, but I cannot help thinking, when I find that the counsel for the defender in that case was the present Lord Shand, if his Lordship had thought there was anything in the plea raised by the defenders they would have taken the judgment of the Court upon it. As it is, I must hold the Lord Ordinary's decision as binding on me." . . .

The pursuer appealed to the Second Division of the Court of Session for jury trial, and lodged an issue.

At the suggestion of the Court the husband by minute sisted himself as a party to the action.

The defenders again maintained their plea of no title to sue, and argued—The law recognised no claim for the loss of a relation, not being an action of assythment, except by husband and wife and by parents for the loss of their legitimate children, and *vice versa*. No action could be brought by collaterals for *solatium*—*Greenhorn* v. *Addie*, June 13, 1855, 17 D. 860—nor even for pecuniary loss—*Eisten* v. *North British Railway Company*, July 13, 1870, 8 Macph. 980. Such actions as the present were unknown in practice, and the only authority for them was sought to be found in the case of *Renton*, where Lord Jerviswoode had repelled a plea of no title to sue. That was only an Outer House case, and could not be held decisive on the subject. The case of *Samson* was an action of a totally different character. Even if a woman had a claim