

both holograph, and the question raised in this case relates to the disposal of the residue of his estate by the codicil, by which that residue is directed to be "equally divided amongst all my relatives, my sister Maria to get a-half more than the others." It is contended, on the one hand, that by this direction the testator favoured equally all those who were legally his next-of-kin, that the estate must be divided into twice as many shares as there are next-of-kin, and one share more, and that they must receive each two shares, Maria, the sister, receiving three. On the other hand, it is contended that the true construction is, that the testator intended by the expression "my relatives" his brothers and sisters, or the direct descendants of those who should predecease him, the latter taking their parent's share.

There is considerable difficulty in finding grounds in the words of the codicil for either construction, but I have come to the conclusion that the construction by the Lord Ordinary is the right one. I think that is the conclusion I should have arrived at had there been no other words than these—"amongst all my relatives." The deceased was making a family settlement, in which he was acting as *in loco parentis* to the rest of his family, and it would, I think, be an unnatural construction to put upon the words he used a meaning which would cause the shares of his brothers and sisters who might survive him to have a proportion carried out of them whenever a brother or sister should die leaving a number of children. Such a reading would, I think, be strained and unnatural. But the special favour shown to "my sister Maria" that she was to get "a half more than the others," seems to me to indicate very plainly that in speaking of his relatives he intended a division among the family in equal proportions to each individual, whether brother, sister, nephew, or niece, who might survive. I move your Lordships therefore to adhere to the interlocutor reclaimed against, and to remit the case back to the Lord Ordinary.

LORD YOUNG and LORD RUTHERFURD CLARK concurred.

LORD TRAYNER did not hear the case.

The Court adhered.

Counsel for the Reclaimers—Asher, Q.C.—Fleming. Agent—W. B. Rainnie, S.S.C.

Counsel for the Respondent—Vary Campbell—W. Campbell. Agent—Thomas Hart, L.A.

Thursday, January 15.

SECOND DIVISION.

LINDSAY v. KERR.

(Ante, p. 233, December 19th, 1890.)

Expenses—Decree against Husband and Wife.

A wife with the concurrence of her husband unsuccessfully brought an action of affiliation and aliment against a man whom she alleged to be the father of a child born shortly after her marriage. Held that decree for expenses in favour of the defender fell to be pronounced against both the wife and her husband.

A married woman with the consent and concurrence of her husband brought an action of affiliation and aliment against a man whom she alleged was the father of a child born shortly after her marriage. The Sheriff-Substitute pronounced decree in her favour, but the Court of Session recalled this interlocutor, assoilzied the defender, and found him entitled to expenses. The defender's counsel when moving the adoption of the Auditor's report, contended, upon the authority of Lord Fraser's work upon Husband and Wife, p. 584, that the decree for expenses should be pronounced against the husband as well as against the wife.

It was argued for the husband—That on the authority of the case of *Baillie v. Chalmers*, April 6, 1791, 3 Paton's App. Cas. 213, decree for expenses here should go out against the wife alone. It was her action.

At advising—

LORD YOUNG—It is quite clear that decree must go out against the husband here as well as against the wife. He could have pursued this action quite well without his wife. The child was his, and could not have been given to anyone else by any action at the wife's instance.

LORD JUSTICE-CLERK, LORD RUTHERFURD CLARK, and LORD TRAYNER concurred.

The Court pronounced decree for expenses against both the husband and the wife.

Counsel for the Defender—Sym. Agent—Alex. Wyllie, Solicitor.

Counsel for the Husband—Burnet. Agents—Emslie & Guthrie, S.S.C.