interest than the dividend which the holder of the B shares might be ultimately entitled to draw. But the 'A' shareholders appear satisfied of the expediency of the step, and the holder of the B shares acquiesces in it. The creditors of the company are either heritably secured, or are trade creditors whose debts have been incurred since the date of the petition, and are paid monthly. It is therefore maintained by the petitioners that no one has any interest to object to the proposed reduction.

"Your reporter is of opinion that the proceedings have been regular. He further finds that there is no diminution of liability in respect of unpaid capital or interference with the rights of creditors.

"Your reporter has not been able to find a case similar to the present, nor have the agents for the petitioners been able to refer him to any. If, however, your Lordships are satisfied that a loan such as is proposed can be held to constitute excess of capital in terms of the Act, and that the Act permits the payment of such excess of capital to one class of shareholders only, then it appears to your reporter that the prayer of the petition may be granted.

"The petitioners pray that the addition of the words 'and reduced' to the company's name be dispensed with.

"By section 4 of the Companies Acts 1877, the Court, if it thinks it expedient, may dispense altogether with the addition of the words 'and reduced.' In the present case the reporter is respectfully of opinion that the Court may so dispense with these words.

"On the question of the competency of the petition, as before mentioned, being settled by your Lordships in the affirmative, your reporter is of opinion that an order in the following terms may be pronounced by the Court:—'The Lords having resumed consideration of the petition, along with the report by Mr William Traquair junior, approve of said report; confirm the reduction of capital as resolved on by special resolution of the 21st September and 6th October 1893; approve of the minute set forth in the petition; dispense with the addition of the words 'and reduced' to the company's name; and appoint notice of the registration of this order and of the said minute to be made by advertisement once in the *Edinburgh Gazette* and the *Scotsman* newspaper,—and decern.'"

After hearing counsel on the petition and report, the Court pronounced an interlocutor in the terms suggested by the reporter, except that they required the petitioners to continue the addition of the words "and reduced" to their title till the end of March 1894.

Counsel for the Petitioners — Lorimer. Agents—Philip, Laing, & Company, S.S.C.

Tuesday, January 16.

FIRST DIVISION.

MACPHERSON AND ANOTHER.

Succession—Bequest—Absolute or in Trust—Joint or Several—Vesting.

A testatrix made a bequest "to C. M. for the benefit of herself and her sister J. M., both daughters of A. M." It was explained that J. M. was of weak mind, and entirely dependent on others for ordinary personal comforts.

Held that the bequest vested absolutely at the death of the testatrix in the two sisters to the extent of one-half each, but that C. was trustee for the administration of her sister's share.

Miss Robina Young, who died 13th March 1893, left a holograph will dated 30th June 1872, which contained, *inter alia*, the following bequest:—"Also I give and bequeath to Catharine Alexandrina Macpherson, for the benefit of herself and of her sister Jane Macpherson, both daughters of the aforesaid Agnes Young or Macpherson, all the cash moneys, securities for money, books, wardrobe, and all the rest, remainder, and residue of my estate which I may be possessed of at the time of my decease." The testatrix nominated Alexander Ronaldson as trustee and executor of this last will and testament.

A special case was presented by Miss Catharine Alexandrina Macpherson of the 1st part, and the *curator bonis* of Mrs Jane Macpherson of the 2nd part, in which it was explained that "Miss Jane Macpherson has been all her life rather weak mentally, and quite incapable of doing anything to earn a means of subsistence for herself, while she has always been entirely dependent on those with whom she has resided for ordinary personal comfort. This was well known to the testatrix, the said Robina Young, who was also aware that at the date of her will there was no *curator bonis* appointed to and acting for her said niece." A *curator bonis* had been appointed to Miss Jane Macpherson in 1886, and when Miss Young made her will her means were very moderate, but that she had died leaving about £18,000.

The questions submitted for the opinion of the Court were as follows:—"(1) Whether under the foresaid bequest in the will of Miss Robina Young, the subjects and residue of her estate thereby bequeathed belong absolutely to Miss Katherine Alexandrina Macpherson, she having the discretion of applying them, in so far as she may find to be necessary, for behoof of her sister, without any interference on the part of third parties? or, (2) Whether Miss Katherine Alexandrina Macpherson and Miss Jane Macpherson are each entitled to one-half of the said bequest absolutely, Miss Jane Macpherson's half being retained by her sister Miss Katherine Alexandrina Macpherson during their joint lives, as trustee for her, and to be administered by her for

Miss Jane's behoof? or, (3) Whether the said subjects and residue are bequeathed to Miss Katherine Alexandrina Macpherson in trust for the liferent use of herself and her sister, and pass, on the death of the predeceaser, to the survivor? or, (4) Whether the said subjects and residue are bequeathed to Miss Katherine Alexandrina Macpherson, subject to a trust to apply them as she thinks best for behoof of herself and her sister Miss Jane Macpherson, entitling her to dispose of interest, and even during her life of capital, if she deems it necessary for the benefit of herself and her sister, but so far as undisposed of during their joint lives, at the death of the predeceaser pass to the survivor, so that Miss Katherine Alexandrina Macpherson has no power to dispose of any portion of the said bequest by will or other *mortis causa* deed?"

Counsel for the first party maintained, and argued—That the subjects and residue bequeathed were given to her absolutely, but with the desire expressed that she should provide for her weakminded sister. That did not constitute a trust which was not to be readily implied—See *in re Diggles*, July 6, 1888, L.R., 39 Ch. Div. 253. It was evident that her aunt did not in the circumstances intend to give her sister an absolute right to half of the estate.

Counsel for the second party maintained, and argued—That the interests of the sisters were equal, each taking a half, but that Katherine was trustee for the administration of her sister's share.

At advising—

LORD PRESIDENT—I think there is no doubt as to the rights of these two ladies. They are equal, giving them an equal interest in the funds in question.

In expression, and setting aside the fact of one of them being, as we were told, of weak mind, there is nothing but parity in the rights of the two. The bequest is for the benefit of Katherine and of her sister Jane, both daughters of Mrs Macpherson. The truster chose one rather than the other as trustee, but she is careful to equalise the rights of the trustee with those of the other beneficiary. Now, when we turn to the statement of facts, which is said to displace the natural meaning to be given to the words used, we find an excellent reason for Katherine being chosen as administrator, but it does not go beyond that.

I am of opinion that the beneficiary rights are equal, and that the second question, although somewhat peculiarly expressed, contains a substantially correct statement of the rights of parties, and should accordingly be answered in the affirmative.

LORD M'LAREN—The question raised is whether the gift imports an absolute gift to Katherine, or whether it is a trust in her for the benefit of herself and her sister. It was suggested, as the result of recent decisions in England, that the Court should criticise the expression used very critically, and that if its meaning is of a doubtful character should not construe it as importing a trust. I do not think it is necessary in this case to consider very carefully the law of England, which I have always supposed to be in this matter the same as that of Scotland, but I would point out that our law requires no special or technical words in order to constitute a trust. If there is an appointment of a beneficiary, and if some person is charged with the administration of the funds beneficially destined, we have the essentials of a trust. If there is a clear indication of a trust to be constituted it is immaterial whether the words "in trust for," or "for the benefit of," or "for behoof of," or other similar words be used. Of all expressions other than "in trust for" I should have thought the words "for the benefit of" A, the clearest, because it is equivalent to a declaration that A is a beneficiary in the estate given to B. In this case no distinction is drawn between the extent of the interest to be taken by the two nieces. Katherine, it is true, was not constituted an executor; another executor is named at the end of the will. That executor would cease to act when the estate was realised. The testator did not continue him as trustee probably because she did not expect to leave a large fortune. No trust therefore was constituted in the normal way, but as Jane was unable to attend to business or to administer her share, an informal trust was constituted in the person of Katherine to administer it for her.

It is impossible to maintain that there was not here a qualified gift, and the result is that Katherine holds as trustee for herself and her sister.

LORD KINNEAR—I agree. If this bequest is read without reference to the special circumstances of this case, it is clear that the beneficial interest given by the testator to Katherine and Jane was exactly the same, and given in the same words. There is nothing to suggest a distinction between the two. It is a bequest to Katherine for herself and her sister. There is *prima facie* no apparent reason why the bequest should be paid to Katherine rather than to Jane. But when we turn to the statement of facts we find circumstances requiring us to put a somewhat different complexion upon the matter. We are there told that Jane is rather weakminded and dependent on others for ordinary personal comfort, although no *curator bonis* had, when this will was made, been appointed to her. There is thus a distinct averment that one of the legatees is not a proper person to administer money, but it is not said that her mental condition makes her incapable of the enjoyment of money. We have then an intelligible reason for Katherine being chosen as trustee, but not for any other difference being made between the sisters.

Counsel for the first party then submitted that it still remained doubtful whether, admitting the trust, the shares vested at the death of the testatrix. He argued that this was a joint bequest of all that the

testatrix had left, which would vest in the survivor at the death of the predeceaser, Katherine administering the trust during their joint lives.

Counsel for the second party argued that there was nothing to indicate a joint bequest. There was no clause of survivorship. This was simply a bequest of half of the estate to each of the sisters vesting at the testatrix's death—*cf. Bibby* v. *Thompson* (1863), 32 Beav. 646.

At advising—

LORD M'LAREN—We have now been invited to consider whether the second question, in the precise terms in which it is put, should be answered in the affirmative, because that implies separate interests in the two sisters to the extent of one-half each. It has been suggested that this is a joint bequest, and that the joint character must continue to be attached to it.

I think it is clear that to give effect to this contention would be to give an illegitimate extention to the distinction between joint and several gifts. It is settled that a bequest to persons as a class—*e.g.*, to the children of A—is a joint bequest whether the children be named or not, and that nothing lapses by the predecease of one of the class, the legacy being divided among the survivors. An exception is admitted in the case where the testator has used such expressions as "equally and proportionally" among them. But when the legacy vests its joint character necessarily disappears, because it is then the right of each legatee to receive in money his proportional share of the subject of the gift. There are peculiarities in the case of jointliferents depending on the principle that each termly payment vests separately, but for the purposes of the present case these need not be considered.

This was a gift which vested at the death of the testatrix, and was then divisible between Katherine and Jane. There was no doubt a continuing trust, but for administrative purposes only, and that on account of Jane's health. It would be unfair to Katherine to hold she was unable to dispose of her share in her lifetime unless she survived Jane, and she is as much interested to have her share separated as the curator of her sister.

I am of opinion after further consideration that the second question as it stands should be answered in the affirmative.

The LORD PRESIDENT and LORD KINNEAR concurred.

LORD ADAM was absent.

The Court answered the second question in the affirmative.

Counsel for First Party—Mackay—Macphail. Agents—Lindsay, Howe, & Company, W.S.

Counsel for Second Party—Dundas—M'Clure. Agents—Hamilton, Kinnear, & Beatson, W.S.

Tuesday, January 16.

SECOND DIVISION.

[Sheriff of the Lothians.

BUCHAN *v.* NORTH BRITISH RAILWAY COMPANY.

Reparation—Slander—Privilege—Publication of Conviction in Court of Justice—Bill Posted up in Stations by Railway Company Announcing Conviction of Offence against Companies Acts.

A railway company posted up in some of their stations printed bills containing (1) names and addresses of certain persons convicted of travelling without a ticket, and other offences against the Companies Acts and bye-laws; (2) the date and nature of the offence; and (3) the result of the conviction.

One of those whose names were thus posted up brought an action of damages against the railway company, in which, while asserting that the conviction was unwarranted, he admitted that it had taken place, but averred that its insertion in the bill was made maliciously by the defenders in order to injure him in the eyes of the public.

Held that the action was irrelevant.

William Buchan raised an action in the Sheriff Court at Edinburgh against the North British Railway Company for £500.

The pursuer averred—"(Cond. 3) On the 13th August 1892 the Sheriff-Substitute, within the Sheriff Court of Edinburgh, on the evidence solely of the defenders' servants, convicted the pursuer of having contravened the Railway Clauses Consolidation (Scotland) Act 1845, sec. 96, and the Regulation of Railways Act 1889, sec. 5, sub-sec. 3 (*a*), by travelling on the North British Railway from Kirkcaldy to Haymarket without having previously paid his fare, and with intent to avoid payment thereof—and fined him 5s. 6d. and costs, with the option of twenty days' imprisonment. Said conviction was bad in point of law, and was not warranted by the evidence; but the pursuer in order to avoid the publicity of an appeal, at once paid the fine and expenses in the belief that the proceedings against him were then at an end. This prosecution was in reality instigated by the manager or agent of the defenders, and he supplied all the evidence upon which the conviction was obtained. The pursuer defended himself, and in the course of the trial proved in open Court the illegal, unwarrantable, and violent conduct of the defenders' servants in assaulting him and rifling his pockets,; and in consequence of this, and of his threat to raise an action against the defenders for said illegal conduct, the defenders' said manager or agent conceived malice and ill-will towards the pursuer, which he gratified in the oppressive proceedings after mentioned. (Cond. 4) Towards the end of February and beginning of March 1893, about six months after said conviction, the defenders' agent