On 4th January 1898 the Lord Ordinary (STORMONTH DARLING) allowed a proof.

Opinion.—"I am informed by the counsel for the Inland Revenue Department that for a long period of years every Revenue case requiring investigation into fact has in their experience been tried before a Judge without a jury; but I agree with Mr Salvesen that the course of practice would not prevail over a distinct and peremptory statutory direction, and the question therefore is, whether there is such a direction in the Exchequer Act of 1857. Now, by section 6 of that Act, in the event of an information being brought against a defender, and the defender not admitting the truth of it, there are three courses—the proverbial three courses—open to the Lord Ordinary. He may either appoint a day for hearing parties upon the information, if he thinks necessary, or he may appoint a day for the trial of the matters put in issue by the information, in which case there is to be no issue or issues, or he may take such other course as to him may seem proper. Now, it seems to me that that latter alternative leaves my discretion unfettered. Mr Salvesen maintains the contrary, and says that does not apply to the case of disputed fact being investigated, but applies to minor questions of procedure. I do not read the statute so. I think it is on the same level as the other alternatives which are open to the Lord Ordinary—that it applies to the same stage of the case—and that it covers any course which he may think necessary by way of investigating disputed facts, so long as it seems to him to be necessary for the justice of the case. If that be so, then section 9 affords a direction to the Lord Ordinary, or rather is of the nature of guidance to the Lord Ordinary, in exercising his discretion, because it says that the procedure in all cases under a subpœna shall be, so far as not provided, regulated by the Lord Ordinary, subject to any rules which may be framed. Well, no rules have been framed; and the section goes on to say that in so far as not so regulated the procedure shall be conducted as near as may be in conformity with the procedure before the Court of Session in ordinary actions. Well, then, if I have a discretion, I am to exercise it just as I would in an ordinary action. If this were an ordinary action I should not have much hesitation in ordering a proof in preference to a jury trial. The only thing that can be said against that is—and I give full weight to it—that this is not an ordinary civil action for £50, but is quasi-criminal in its character. If I thought that a judgment against the defender would affix upon him a stigma of crime, then I should certainly be in favour of sending the case to a jury, even though the amount involved is small; but I do not take the view that the result of an adverse judgment would be of that nature. I think, practically speaking, it may leave the defender's character uninjured, and it does not seem to me therefore that there is any necessity for empanelling a jury on that account. In all other respects it seems to me a trial before the Lord Ordinary would be much cheaper and more suitable, because one cannot help seeing that, dealing with facts of this nature, the burden of a trial would really come to rest upon the Lord Ordinary's shoulders in the shape of a charge to the jury, and if so, it is much better that he should dispose both of the law and of the facts. I shall therefore allow parties a proof of their averments."

Counsel for the Pursuer—Sol.-Gen. Dickson, Q.C. — Young. Agent — Solicitor of Inland Revenue.

Counsel for the Defender — Salvesen. Agents—Gill & Pringle, W.S.

Wednesday, February 16.

FIRST DIVISION.

MACKELLAR *v.* MACKELLAR

Parent and Child—Custody of Children—Guardianship of Infants Act 1886 (49 *and* 50 *Vict. c.* 27), *sec.* 5.

In a petition for the custody of the children of the marriage by a wife, who lived separately from her husband without a judicial separation, it was proved that the husband occasionally used profane language, that he had twice thrown one of the children on to the floor, and that to some extent he had taught the children to dislike their mother. The husband, who lodged answers, succeeded in proving nothing against the petitioner to disqualify her for the custody of the children.

The Court *refused* the application, on the ground that whether, as held by Lord M'Laren, the husband was to blame for the petitioner leaving him, or whether, as held by Lord Adam, the separation was unjustifiable, nothing had been proved sufficient to displace the father from his legal position as guardian of the children.

Terms of order allowing the mother access to the children.

Expenses—Husband and Wife—Petition for Custody of Children.

In a petition presented by a wife for the custody of children, which was ultimately refused, after a proof, the Court found the petitioner entitled to expenses down to the date of the interlocutor allowing a proof, and pronounced no further finding with regard to expenses.

Expenses—Taxation—Taxation as between Agent and Client or Party and Party.

In a petition presented by a wife against her husband for the custody of her children, the Court found the petitioner entitled to the expenses of part of the proceedings. *Held* that her account must be taxed as between party and party, and not as between agent and client, no motion for taxation on the latter scale having been

made when expenses were moved for, and no finding to that effect being contained in the interlocutor allowing expenses.

This was a petition presented on June 26th 1897 by Mrs Martha Mitchell or MacKellar, craving the Court to find her entitled to the custody of her children, or otherwise to find her entitled to free access to them at all reasonable times.

The petitioner set forth that she was married to Alexander MacKellar on 7th December 1886, and that there were three children of the marriage, one girl aged ten, and two boys, aged respectively nine and four. After their marriage she and her husband resided in Glasgow till 1893, when they removed to Tighnabruaich. "During the latter part of their stay in Glasgow, and especially during the period of their residence at Tighnabruaich, Mr MacKellar had by his conduct caused petitioner much misery. Without being actually guilty of physical cruelty to her, he caused her much annoyance by the violence of his temper, and by adopting towards her an insolent and domineering manner, frequently taunting her with a fancied inferiority to him in station. He also used violence towards the children, as hereinafter narrated. In these ways the petitioner's life was rendered very unhappy, and her health suffered thereby."

The petitioner went on to state that on 10th December 1895 she left her husband, and had not since resided with him. After narrating sundry matters showing that there was a dispute between the spouses as to the custody of the children, she proceeded—"During the latter years of petitioner's residence with him he had frequent fits of passion, in the course of some of which he subjected the children to such physical violence as resulted in the effusion of blood, and he more than once warned petitioner to watch him carefully when in such fits, as he felt that his mind was giving way, and that he might do the children an injury. His eccentricity and passionateness have of late years been aggravated by over-indulgence in drink. The petitioner accordingly submits that he is unfit, in the whole circumstances set forth, to have the unrestrained custody of the children." "The petitioner respectfully submits that the welfare of the children will, in the whole circumstances set forth, be best promoted by the petitioner being entrusted with their permanent custody, subject to such provisions for access by their father as shall seem fitting to the Court. In any event, she submits that she is entitled to free access to her children. Her husband having deprived her of this, it is necessary that the Court should make provision for her obtaining the same at such times and under such conditions as may seem fitting. She further respectfully suggests that even if she should not be entrusted with the permanent custody of the children, provision should be made, in any order to be pronounced, for all her children residing with her for some considerable portion of each year, and for their visiting her freely and regularly at her own house when she is residing at Glenelg, or elsewhere in Tighnabruaich.

Alexander MacKellar lodged answers, in which he denied the accusations of violent temper and intemperance brought against him by the petitioner, and charged her with harshness and neglect towards himself, as well as with unnecessary violence towards the children. He submitted that no reason had been alleged "for depriving him of his legal right to the custody of the children;" that it was unnecessary for the Court to make any order regulating the petitioner's right of access to the children, and that the petition should be refused.

The Guardianship of Infants Act 1886 (49 and 50 Vict. c. 27), sec. 5, enacts—"The Court may, upon the application of the mother of any infant (who may apply without next friend), make such order as it may think fit regarding the custody of such infant and the right of access thereto of either parent, having regard to the welfare of the infant and to the conduct of the parents, and to the wishes as well of the mother as of the father; and may alter, vary, or discharge such order on the application of either parent, or after the death of either parent, of any guardian under this Act, and in every case may make such order respecting the costs of the mother and the liability of the father for the same, or otherwise as to costs as it may think just."

When the case appeared in the summar roll, a discussion took place on the relevancy of the petition; after which:—

LORD PRESIDENT—Considering this as an application to the Court under the Act of 1886, I do not think that the statements are irrelevant, and I do not think that the bare fact of the spouses living apart and without a decree of judicial separation precludes the exercise of the jurisdiction conferred on the Court by the statute. That being so, it seems to me that there must be an ascertainment of the facts, and I do not think it desirable to enter into conjectures as to what the facts may be, or take a precise appraisement of the value of the several averments which are made; and therefore I think there should be an allowance of proof before one of your Lordships.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

Accordingly, on 9th November 1897 the Court allowed to both parties a proof of their respective averments, and appointed the proof to take place before Lord M'Laren.

At the proof, which extended over three days, the petitioner deponed:—"From the spring of 1894 my life was not at all a happy one, on account of my husband's irritable disposition. He manifested that by quarrelling with his neighbours, and then finding fault with me for not taking part with him in his quarrels with them. . . . With regard to my husband's conduct towards the children at this time, my little girl was in the habit of attending a school about a mile and a half from the house. I repeatedly asked my husband to go and bring her home, because I was afraid of her coming home

by herself in stormy weather. He refused to go. He had no employment or work to prevent him going; he was usually reading the papers. He was bad-tempered towards the children, and he used to swear before them, and I repeatedly checked him. One of the expressions he used was 'Damn it,' and another was 'God damn hell.' That was a constant expression in the presence of the children. He repeatedly spoke about his poor damaged brain. He said he felt it giving way. He twice warned me to watch in case he would do anything to the children. This was in the summer of 1894. What I have said in regard to his conduct to the children applies to the period from the summer of 1894 until the time I left. (Q) Did you ever see your husband subject the children, or any of them, to personal violence? [Question objected to. Objection repelled.]—(A) Yes, on two occasions. It occurred in regard to the boy Aleck. The first occasion was on a Sunday six years ago. I am not sure of the date, but it was the Sunday his brother's child Mary was baptised, and it occurred in Glasgow, in our house at Dennistoun. We were getting ready to go along to his brother's house to tea. Aleck was playing about, and I suppose annoying his father by being a little noisy, and my husband went and threw him on the floor and bled his nose very severely. Aleck was about three or four years old at that time. This was a year after my husband had been away to Egypt for his health. The second occasion took place in the wing at Glenelg in 1894, but I cannot give the date. My servant M'Gilp was present. On this occasion my husband again threw Aleck down on the floor, and bled his nose, the same as before. I remember an occasion in August 1895 when I had been at Edinburgh and had returned to Tighnabruaich. It was the Saturday of the Tighnabruaich regatta. It had been arranged that my husband should meet me at the pier. He did not meet me. We were then living at Glenbaan. I went up there, and my husband came in about an hour afterwards, about ten o'clock at night. He was drunk. He tried to apologise in a way for not having met me. I do not think I said anything to him. He drank a cup of tea and then went out. He came back at four o'clock in the morning. I asked him what he meant by coming to his home at this time on a Sunday morning, and he said, 'If you are in a better temper in the morning I may tell you; go to bed.'" The petitioner further deponed that at the end of August and beginning of September 1895 the respondent had more than once locked her out of his house and gone away with the key.

Mary M'Gilp, for two years in the service of the MacKellars, deponed:—"(Q) What do you say in regard to Mr MacKellar's temper in the summer of 1894?—(A) He was awful cross. (Q) Was he quarrelsome?—(A) Yes, very quarrelsome. He quarrelled with Mr Goble and Mrs Morrison and others. He did not treat his wife very well at all. He spoke cross to her—very angry. He did not treat the children well at all. He did not like having the children with him. I remember he was building a slip on the shore in the summer of 1894, and he quarrelled with Mr Goble about that. He was very irritable at that time. I was on the road on an occasion when Mr Goble and MacKellar had words. Mr MacKellar came up to the house afterwards and said to his wife that she was not a wife at all—she was not a wife for him, or she would have been down and helped him to quarrel with Mr Goble. She said no, she would not. *By the Court*—(Q) Did he ever do anything worse than that in the way of unkindness that you saw?—(A) I don't think it. *Examination continued*—At the time the slip was being built the children were down running about on the shore. He told them to go home. (Q) Did he order the children away?—(A) Yes. (Q) Crossly?—(A) Yes. . . . Mr MacKellar used to ill-treat the little boy Aleck. One day in Glenelg he threw him on his nose and bled it on the floor. I took the boy and washed his face. He had not done anything to deserve it; he was just crying about some matters of his own, I suppose. MacKellar was angry at him, and just caught hold of him and threw him. I have heard MacKellar use bad language to the children. (Q) What language?—(A) 'God damn hell.' He used that language in presence of the children. (Q) Was it to the children?—(A) He used to say it in their presence if he was angry. I heard it two or three times."

It was further proved that the respondent had inspired, or at all events sanctioned, a letter written by the daughter Jessie MacKellar to the petitioner in April 1897, in which the writer requested the petitioner to send John (one of the sons) here, "or else we will go for him;" a telegram, bearing to be from Jessie in answer to a reply from the petitioner, in these terms—"I received your letter, which is false. Will call for John to-morrow;" and a letter from Jessie to her mother's brother Mr Mitchell, in the following terms:—"Lawyer James Mitchell,—My papa received a letter from you, and I am angry at your impertinence. You have no right to be so wicket to my papa, who has always been good and kind, you are a very wicket fellow and must yet be punished. I am done with all the Mitchells, as they are a bad set of people. None of you will see John, we are all going far away.—JESSIE MACKELLAR."

Evidence was also led by the respondent in support of his averments.

After the hearing, the argument proceeded upon the facts as disclosed by the proof.

LORD M'LAREN—A considerable amount of extraneous matter has been introduced into this case, and I shall not attempt to deal with all the points in controversy, but will indicate my opinion on the facts which appear to me to be relevant, whether under the Guardianship of Infants Act or at common law, to the question to be decided. Under common law the question of the mother's conduct was, I think, never con-

sidered, or, at least, was not considered unless or until the father was displaced from his right to be guardian of the children by reason of misconduct. If he were so displaced, then it would be considered whether the mother was a proper person to be their guardian or to have the custody of the children. But the statute has made this alteration on the law, that the Court is directed to consider the conduct and wishes of the parents and the welfare of the children, the direction being given in such terms as to indicate that in considering the question no preference is given to one spouse over the other.

Now, as regards the conduct of the spouses Mr Christie, in answer to the question of your Lordship in the chair as to what was the worst instance of misconduct proved against the father, was only able to say that on one or two occasions Mr MacKellar had handled the eldest boy so roughly as to make his nose bleed; again, that he was given to the use of expletives, and again, that he had poisoned the minds of the children against their mother. It was justly said that this was not a line of conduct conducive to the welfare of the children. As regards the charge of actual cruelty on the part of the father to the children, my opinion is that the petitioner has entirely failed. There is some truth in the charge that Mr MacKellar endeavoured to prejudice the children against their mother, and his conduct in inspiring the matter of the letters written by his children to the mother's relatives was certainly indefensible. To employ one of the children to be the vehicle of intemperate expressions towards his wife's family was anything but conducive to the moral welfare of the child. Still such exhibitions of temper are not unnatural when there are strained relations between spouses, and I cannot hold that when parents are living separate, and the parent with whom the children reside says injurious things to the discredit of the other spouse, he is guilty of such misconduct as would make him unfit to have the guardianship of the children. In all such cases there is a good deal of feeling which cannot be kept from the knowledge of the children, and the worst that can be said of the father's conduct in this case is that he tried to instil into the minds of the children an aversion to their mother. But he did not make false charges against his wife, which would have given a very different complexion to the case. As regards the conduct of the mother, it was not, I think, part of the respondent's case to prove blameworthy conduct on her part, but in any case it is certain he has failed to prove anything to her discredit, and I think it is only fair to say that in my view the fault of the separation lies at the door of the husband. He is an eccentric man, and suffered from an infirmity of temper, which was perhaps not altogether his fault but the result of a nervous ailment. Mrs MacKellar had to put up with trying conduct on the part of her husband for some time, and it was only when she found the door of the family residence locked against her without justifiable cause that she separated herself from her husband. I do not consider whether she was entitled to a legal separation, but I think it was the fault of the husband that caused the actual separation.

That being so, and there being no such misconduct proved as to disqualify either parent from having the custody of the children, and no considerations affecting the welfare of the children to lead to either parent being refused their custody, I think that the father, who is by law the guardian of the children during the joint lives of the spouses, cannot be displaced from his position as their guardian. I keep in view that the doctrine of the father's right was carried to a great length under the common law, and that it has a much more restricted application under the statute, but considering the case in the light of the statute, I think nothing has been proved to disentitle Mr MacKellar from having the custody of his children. I think also that it will be better for the children to be all brought up under one roof and under the care of their father, who, especially in the case of the sons, will be better able to look after them as they grow up, and to assist their advancement in life. In the case of a child of very tender age it might be right to give the custody to the mother, but no such case arises here.

As Mrs MacKellar's conduct has been free from blame, my disposition would be to consider very favourably an application on her part for access to the children, not only at her husband's house, but by their paying her a visit of considerable duration every year, in order that they may have the benefit of the moral influence which a mother will naturally exercise over the minds of her children.

LORD ADAM—Mr Christie has, I have no doubt, said all that could be said in support of this petition, but after hearing him I have come to the opinion, expressed by Lord M'Laren, that we ought to refuse this petition as regards the handing over of the children to the mother, apart from the matter of giving access. By the 5th section of the Guardianship of Infants Act we are told to have regard for the welfare of the children, the conduct of the parents, and the wishes of the mother as well as of the father. Now, I have always thought that the welfare of the children is the thing which we are supposed to bear in mind most, though we are to take into consideration the wishes of both parents. As Lord M'Laren has said, in this case there is nothing proved against the father to show that the custody of his children should not be given to him. There is no active cruelty. The only thing is that he shoved the little boy on to the floor on one occasion, and that he was in the habit of using the word "damn." To say that a father is to be deprived of the custody of his children for any such reasons as these is ridiculous.

As regards the wishes of the mother, I do not know the facts so fully as Lord M'Laren, but I have not been able to see that there

was sufficient misconduct on the part of the husband to justify the wife's living separately from him. That his temper may have been bad, and that he may have been disagreeable to live with, is quite true, but neither of these things will justify her in living separate from her husband. There is no allegation of cruelty. He may have had faults of temper, but that is not sufficient.

This, then, as it appears to me, is a case of a mother living apart, for no sufficient reason, from her husband, and I confess I am not disposed to give her the custody of any of the children, for the leading consideration being the children's welfare, I think it is much better for the brothers and sisters to be brought up as one family, and that there should be no unnecessary separation. If they are to be brought up together, I think that the father is entitled to the custody of all of them.

I agree, therefore, that this petition ought to be dismissed, but that the fullest access to the children should be given to the mother.

LORD KINNEAR—I agree with your Lordships. I think that no sufficient ground has been stated for depriving the father of the custody of the children; but then, for the reasons which have been given by Lord M'Laren, I think that in this case the arrangements that ought to be made for giving access to the children should be of a very liberal kind, so that she should be entitled not merely to see her children occasionally, but to have them for some reasonable period residing with herself. That may be matter for arrangement, but I concur with Lord M'Laren that in the meantime the petition must be dismissed subject to such arrangement being made.

The LORD PRESIDENT concurred.

The Court pronounced the following interlocutor:—"Refuse the prayer of the petition as regards the custody of the children, continue the cause, and decern: Find the petitioner entitled to expenses to 9th November 1897, the date of the interlocutor, allowing to both parties a proof," &c.

On 16th March the petitioner presented a note to the Court with regard to the question of access to the children. The contentions of parties on this matter sufficiently appear from the opinion of Lord M'Laren.

LORD M'LAREN—I think that the proposals which the respondent accepts are substantially what the Court intended in pronouncing judgment. On the disputed points I may say I see no reason for making a distinction between the youngest child and the other children. I think it better, both with regard to the holiday and week-day visits of the children, that all should be treated alike. As regards the week-day visits, it does not appear to me desirable in the interests of the children that they should be obliged to pay two duty visits a-week to their mother. One of the disadvantages of her separation from her husband and her failure in the main application is that she can not have as much of the society of her children as under other conditions. That the children should visit her once a-week is, I think, as much as is reasonable, and I propose, if your Lordships should approve, that the children should spend every alternate Saturday with their mother, and on the other alternative week should spend one evening with her, the hours being as proposed.

LORD ADAM and the LORD PRESIDENT concurred.

LORD KINNEAR was absent.

The Court pronounced the following interlocutor—"Ordain the respondent to grant the petitioner access to her three children, Jessie Mitchell MacKellar, Alexander Thomson MacKellar, and John Mitchell MacKellar, as follows, viz., (1) The children shall be handed over to the petitioner at the Central Railway Station, Glasgow, on the second day of the school summer vacation of each year, to remain with her one half of the holidays; (2) the children shall be handed over to the petitioner at the same place at the commencement of the Christmas holidays in each year to remain with her one-half of these holidays; (3) the children shall be returned by the petitioner to the respondent on the termination of these visits at the place of delivery; (4) when the petitioner is resident at Tighnabruaich or elsewhere within one mile from where the children are for the time being resident, the children shall be sent to her residence and spend with her Saturday afternoon from 2 to 7·30 every alternate week, and in the course of each other week the children shall be sent to spend an evening with their mother at her residence between the hours of 4·30 and 7·30; (5) in the event of the petitioner visiting Tighnabruaich for a period of less than a week at one time the children shall be sent to spend an afternoon with her as above provided from 4·30 to 7·30 on her giving two days' written notice to the respondent of her wish that they shall do so; and (6) order and ordain the respondent to give the petitioner one week's previous notice in writing of any change in the permanent residence of the children, and to notify to her the place to which they are to be removed, and decern: *Quoad ultra* continue the cause, with liberty to either party to move therein."

The petitioner's account of expenses having been made out as between agent and client and taxed by the Auditor on that footing, the respondent on 19th March objected to the Auditor's report, on the ground that, though this was a consistorial cause, the Court would have given Mrs MacKellar the whole of her expenses, instead of a comparatively small part thereof, if it had been intended that the account should be so made out and taxed. It was stated at the bar, and not denied, that Mrs MacKellar had separate estate.

LORD PRESIDENT—The facts as explained to us at the discussion show that this lady has separate estate, because one aspect of the question turned on the comfort of the home to which the children would be taken if the custody were given to the mother. When the question of expenses was disposed of we were not asked to allow the expenses of the wife to be taxed as between agent and client. Accordingly, I think the account must go back to the Auditor to be taxed as in the ordinary case.

LORD ADAM concurred.

LORD M'LAREN—I am of the same opinion. I think when it is intended to move for expenses as between agent and client, that ought to be made part of the motion for expenses, and that if such expenses are allowed, a finding to that effect should enter the interlocutor allowing expenses, because I cannot see that it is part of the Auditor's duty to determine, apart from an order of Court, what is a proper case for taxing expenses as between agent and client.

LORD KINNEAR was absent.

The Court remitted the account back to the Auditor to tax the same as between party and party.

Counsel for the Petitioner—C. K. Mackenzie—J. R. Christie. Agent—Alexander Campbell, S.S.C.

Counsel for the Defender—W. Campbell—Hunter. Agents—Menzies, Bruce-Low, & Thomson, W.S.

Friday, February 18.

SECOND DIVISION.

BALLANTYNE'S TRUSTEES *v.* KIDD.

Succession — Vesting — Direction to Hold for Behoof of Children and to Pay on Youngest Attaining Majority—Power to Make Advances of Capital of Share "which will Probably Fall to Each Child" —Repugnancy.

A testator by his trust-disposition and settlement directed his trustees to pay the whole income of his estate to his widow, and upon her second marriage or death to hold the residue of his estate for behoof of his children till the youngest of them should reach majority, when the trustees were to divide and pay over the same equally among the children, declaring that the issue of children predeceasing the time of division should succeed to their parent's share. By a codicil he authorised his trustees to advance to sons on their attaining majority, or to daughters on their attaining majority or being married, a sum not exceeding one sixth of the share of his estate which would "probably fall to each child," such advances to be debited to such child and deducted from his share when it fell to be paid, and further provided that any of his children being major and unmarried and not desiring to reside in family with his widow, should "receive the whole income from the approximate amount of their shares in proportion to the income which might be derived from" his estate. The widow took her legal rights and so forfeited her provisions under the settlement.

Held (*diss.* Lord Young) (1), following *Wilson's Trustees* v. *Quick*, February 28, 1878, 5 R. 697, that the provisions in favour of the children vested *a morte testatoris;* and (2), following *Miller's Trustees* v. *Miller*, December 19, 1890, 18 R. 301; *Wilkie's Trustees* v. *Wight's Trustees*, November 30, 1893, 21 R. 199; *Greenlees' Trustees* v. *Greenlees*, December 4, 1894, 22 R. 136; and *Stewart's Trustees* v. *Stewart*, December 17, 1897, 35 S.L.R. 298, that the widow's interest being now at an end, the direction to postpone payment till the youngest child attained majority was ineffectual, as being repugnant to the children's vested right of fee, and that consequently those of the children who had attained majority were now entitled to immediate payment of their shares. *Adam's Trustees* v. *Carrick*, June 18, 1896, 23 R. 828, *distinguished, commented on*, and *doubted.*

Thomas Ballantyne, pawnbroker and jeweller in Glasgow, died on 21st May 1887, leaving a trust-disposition and settlement dated 14th June 1886, and a codicil dated 27th April 1887, whereby he conveyed his whole estate heritable and moveable to trustees for the purposes therein mentioned, and appointed his trustees tutors and curators to his pupil and minor children.

The first purpose of the said trust-disposition and settlement was for payment of debts and expenses. The second purpose provided for the widow getting the liferent use and enjoyment of the deceased's dwelling-house and furniture so long as she remained his widow; and the third purpose provided for payment to the widow, during her lifetime, of the whole annual income of his estate, under burden upon her of the maintenance and education of his sons till they attained majority, and of his daughters till they became married; and it was declared that the liferent to her should terminate on her entering into a second marriage. The fourth purpose was as follows:—"(*Fourth*) Upon the subsequent marriage or upon the death of my said wife, or upon my death should I survive her, I direct my trustees, after providing for the annuity and legacies after mentioned, to hold the remainder of my whole means and estate in trust for behoof of my children, till the youngest of them shall reach majority, when my said trustees shall, with the least possible delay, convert the whole of my estate, heritable and moveable, into money (if they should not have already done so in virtue of the powers given to them under these presents), and shall divide and pay over the same equally among them;