commission of adultery on four different occasions. The Lord Ordinary has held only one of the alleged acts proved, and in that view the pursuer has acquiesced. It is thought only necessary to deal with the case in so far as it relates to that one act. The pursuer's averment in reference to it is as follows:—"On another occasion about the end of April or beginning of May 1896 the defender committed adultery with a woman whose name the pursuer has been unable to discover, on the stair which leads to the dairymen's apartments." This occasion is spoken to by only one witness, and the import of his evidence is, that on a morning in September of either 1895 or 1896—he thinks "it was September 1895"—he saw the defender lying on a stair with a woman close to him, both apparently asleep. There was nothing about the condition of the clothes of either to attract attention, but on being asked his opinion as to what they were there for, he says, "I could not expect they were there for anything except an immoral purpose." Now, that may or may not be a well-founded opinion, but it is only opinion, and not evidence of any fact. So far as the witness speaks to fact, he does not prove the pursuer's averment. The pursuer tied herself down to an occasion in April or May 1896; her only witness speaks to an occasion in September 1895. It is obvious that the evidence does not prove the averment. Even if I assumed this witness to be speaking to the date and occasion libelled, I should still say that his evidence was insufficient to establish the pursuer's averment. It proved suspicious circumstances, but nothing more. But being only one witness, his evidence, had it been much more to the point than it is, would not have been sufficient without corroboration. The defender denies he was there—the witness says he was. In such a state of the evidence, what proof is there that the defender was on the stair at all? None, according to the decision in *Robertson's* case. Suppose you disbelieve the defender, that is not substantive corroboration of the witness. Is there any other corroboration? The Lord Ordinary thinks there is in the evidence of the witness Stewart, who depones that one night in April or May 1896 he saw the defender step out of a recess in a close, in which recess there was a woman. Nothing suspicious about clothes or attitude—no opinion formed as to what they were doing—"I just passed on"—did not know the woman, but "thought she looked like" a prostitute who had once accosted him. This, I may observe, is the evidence adduced to prove adultery on the third occasion libelled. The Lord Ordinary has held it insufficient for that purpose, but thinks it affords corroboration of Penman's evidence in reference to the fourth occasion. I confess I am not able to see how it can be. How can the evidence of a witness as to what took place in April or May 1896 corroborate the statement of another witness who speaks to something totally different as taking place in September 1895 or September 1896. If the two witnesses had spoken to seeing the defender in company with the same woman on the two different occasions—a woman of bad character—it would have been something. But there is not even that slender connection—indeed no connection whatever—between the circumstances of the two occasions to which Stewart and Penman respectively speak. If Stewart's evidence corroborates Penman's, then Penman's corroborates Stewart's, and on such corroboration the Lord Ordinary might have held the third act of adultery libelled proved, just as well as the fourth. In my opinion there was proof of neither.

I have not overlooked the evidence as to the disturbance that took place at the dairymen's apartments in or about April 1896, but I regard it as quite immaterial to the main issue. All that that evidence amounts to is, that one or other of the defender's fellow-servants introduced into the house two women of bad character, and the neighbours interfered. When the police came the defender was guilty of a breach of the peace, but it rather appears that his unruly conduct on that occasion was the result chiefly of his annoyance at being disturbed in his sleep. The defender is not said to have had anything to do with the introduction of the women into the house, nor to have approved of their being there.

LORD MONCREIFF was absent.

The Court recalled the interlocutor reclaimed against, and assoilzied the defender.

Counsel for the Pursuer—W. Campbell—A. O. M. Mackenzie. Agent—J. Gordon Mason, S.S.C.

Counsel for the Defender—G. Watt—Guy. Agents—Clark & Macdonald, S.S.C.

Wednesday, March 16.

FIRST DIVISION.

GREIG *v.* BALFOUR AND COMPANY.

Expenses—Taxation.

(1) *Precognition of Pursuer.*—A charge for drawing pursuer's precognition and making a copy thereof, *disallowed.*

(2) *Copies of Precognitions.*—Where a pursuer was found entitled to expenses up to the date of a tender by the defender lodged within eight days of the adjustment of issues, a charge by the pursuer for two copies of the precognitions of his witnesses, sent to counsel immediately after the adjustment of issues, *disallowed*, the interval between the adjustment of issues and the trial being close on three months.

(3) *Fees to Counsel.*—Circumstances in which a fee of twenty-five guineas to senior counsel for a jury trial which lasted only one day *allowed.*

This was an action concluding for payment of £5000 in name of damages for slander raised by J. B. Greig, banker, Laurencekirk, against John Balfour & Company, publishers of the "Montrose Standard.'

Within a week of issues being adjusted in October, the defenders lodged a tender of £50 with expenses; and at the trial in January at which the Lord President presided, a jury awarded the pursuer £25. Accordingly, when the verdict was applied the defenders were found liable in expenses up to the date of the tender, and entitled to expenses after that date.

Upon the Auditor's report on parties' accounts coming up for approval, the defenders objected to the following items in the pursuer's account—(1) a charge of four guineas for taking the pursuer's precognition and making a copy thereof, and (2) a charge of nine guineas for two copies of the precognitions sent to counsel immediately after the adjustment of issues. Both of these had been allowed by the Auditor. In the taxation of the defenders' account the defenders objected to the Auditor disallowing twenty-five guineas as senior counsel's fee for the trial. It was stated at the bar that the trial had lasted from ten in the morning till twenty minutes past nine at night, and that although comparatively few witnesses were examined for the defenders, a large number of precognitions had to be read. With reference to the precognition of the pursuer, the defenders relied on *Rough* v. *Lyell*, January 21, 1854, 16 D. 381.

The pursuer argued that no good reason had been shown for altering the decision of the Auditor, and in particular that twenty guineas was a sufficient fee for one day's work.

LORD PRESIDENT—This pursuer's account looks rather much considering the early stage at which the line is drawn up to which the pursuer gets expenses; and when we come to particulars I do not think this is a good charge for the precognition of the pursuer himself, and I think it should be struck out. Then it seems to me that two copies of the precognitions for counsel so early in the day as immediately after the issues were adjusted in a case which did not go to trial till after the new year will not do. So I am for striking that out. As regards the defenders' account, the question is whether twenty-five guineas should not be allowed for senior counsel. Now, it is the case that this was a long trial, and it happened that the requirements of the First Division on the following day made it a matter of practical necessity that it should finish on the first day. But I think that this is a case where we may take it that the work done by counsel really represents a day and a half, and so I think we may give twenty-five guineas.

LORD ADAM and LORD M'LAREN concurred.

LORD KINNEAR was absent.

The Court sustained the defenders' objections to the Auditor's report on their account *quoad* the sum taxed off from the fee to Mr Jameson and his clerk, and decerned against the pursuer for the taxed amount of the account *plus* the said sum. As regards the defenders' objections to the Auditor's report on the pursuer's account, the Court sustained the same *quoad* the fees for drawing pursuer's precognition and the fee for two copies of the precognitions, and decerned against the defenders for the taxed amount of the account less the above sums.

Counsel for the Pursuer—Shaw, Q.C.—F. T. Cooper. Agent—A. W. Gordon, Solicitor.

Counsel for the Defenders — Jameson, Q.C.—A. S. D. Thomson. Agents—Welsh & Forbes, S.S.C.

Thursday, March 17.

SECOND DIVISION.

BRUCE'S TRUSTEES *v.* BRUCE.

Succession — Vesting — Repugnancy — Burden on Fee becoming Inoperative before Period of Payment — Conditio si sine liberis.

A testator disponed and assigned the residue of his estate, heritable and moveable, to his two sisters *nominatim* jointly, and to the longest liver of them in liferent, and to his nephew J. in fee, whom failing his nephew T. in fee, whom failing his niece I. in fee, "but divisible in the events and in manner after mentioned," whom all failing to his own nearest heirs in fee, declaring that on the death of the longest liver of the liferentrices, if either survived him, or, in the event of both predeceasing him, on his own decease, the residue of his estate, heritable and moveable, should be divided into as many equal parts and shares as there should then be existing in number of his nephews J. and T. and his niece I., and each of them then alive should be entitled to an equal share.

J. predeceased the testator, T. and I. survived him. Both predeceased the longest liver of the liferentrices, but both left children who survived her.

Held that the fee of the residue of the testator's estate vested wholly in T. *a morte testatoris.*

By disposition and deed of settlement dated 10th March 1853 Archibald Bruce of Bankton disponed "to and in favour of my sisters Mrs Isabella Bruce or Torrance, wife of George M'Mikin Torrance, Esquire of Threave, and Miss Margaret Jane Bruce, presently residing in Hillside Crescent, Edinburgh, jointly, and to the longest liver of them in liferent, for their liferent use allenarly, and to James Bruce, son of my deceased brother Thomas Bruce, Writer to the Signet, in fee, whom failing to Thomas Bruce, also son of my said deceased brother, in fee, whom failing to Isabella Bruce,