lar question. However, as your Lordships are content to leave this point open to consideration, I am willing that the case should go back to the Outer House.

LORD KINNEAR—I am entirely of the same opinion. I think a probative writ by which a creditor under her hand acknowledges to have received payment of her whole debt, and in respect thereof to have delivered her document of debt to her debtor, is in law a discharge. It may be described, as your Lordship has observed, by some other term. But that it is a discharge in law, and may be properly called a discharge, I cannot say that I entertain any doubt. But whether it is properly called a discharge or not, it clearly presents an obstacle to the pursuer's demand, and until that obstacle is swept away she cannot possibly recover payment of her money, for as long as this document stands that would mean that she is entitled to have her debt paid twice over.

The Court recalled the interlocutor of the Lord Ordinary, and "in respect the pursuer states her intention to bring a reduction of the deed dated 15th May 1895," remitted to the Lord Ordinary to sist process in order that this might be done.

Counsel for the Pursuer—Guthrie, Q.C. —Cook. Agents—Kinmont & Maxwell, W.S.

Counsel for the Defenders—Balfour, Q.C —Hunter. Agent—James Ayton, S.S.C.

Wednesday, January 18.

FIRST DIVISION.

KESSACK *v.* KESSACK.

Process — Jury Trial — Veritas — Order of Leading Evidence.

Ruling per Lord President that where *veritas* is pleaded by the defender in an action of damages for slander, the pursuer is entitled to reserve his whole evidence on the question of justification until the defender has closed his proof.

Expenses—Jury Trial—Veritas.

Where a defender in an action of damages for slander, in which several distinct issues are submitted to the jury, pleads *veritas* and fails on the counter issue, he will be found liable in expenses, even though the pursuer be unsuccessful on some of the issues.

This was an action of damages for slander raised by Robert Murdoch Kessack against Alexander Kessack. The damages were fixed at £1000.

The slander complained of was contained in a letter written by the defender to the pursuer on 9th July 1898. The following was the passage founded on by the pursuer:—"Perhaps you will answer me the following questions—Did you ever write to me when I was in Glasgow offering me £50 to set fire to the Princess Theatre, Leith, or have I dreamt it? Did you ever tell me that you set fire to the Black Bull Inn, Inverness? Did you ever tell me that you wrecked the schooner 'Cheviot?" Did you ever tell me that you stole a sheep while in Cromarty Frith with the schooner 'Cheviot?' I could ask you a few more questions, but I refrain from doing so meantime. You will of course understand that I do not say you did any of these deeds. I simply ask you the questions."

The pursuer averred that the said letter was intended to represent that the pursuer had invited the defender to commit fire-raising, and that the pursuer had been guilty of fire-raising and other crimes. The pursuer also averred that on 11th January 1898 the defender had produced a copy of the letter, and read it over to a third party.

The defender averred that the pursuer had committed the crimes referred to in the letter, and, *inter alia*, pleaded *veritas*.

The following issue and counter-issues were adjusted:—"1. Whether on or about 9th July 1898 the defender wrote and sent to the pursuer a letter in the terms contained in the schedule hereto annexed, and whether the said letter is of and concerning the pursuer, and falsely and calumniously represents, and was intended by the defender to represent, that the pursuer had incited the defender to commit the crime of wilful fire-raising, and that the pursuer had admitted to the defender that he had been guilty of the crimes of wilful fire-raising, and of wilful destruction of a ship, and of theft, or of one or more of them? Or (1) Whether in or about the month of February 1888 the pursuer offered the defender a sum of money to set fire to the Princess Theatre, Leith? (2) Whether in or about the month of March 1884 the pursuer told defender that he had set fire to the Black Bull Inn, Inverness? (3) Whether in or about the month of April 1877 the pursuer told defender that he had wrecked the schooner 'Cheviot' in the Cromarty Firth? (4) Whether in or about the month of April 1876 the pursuer told defender that he stole a sheep when he was with the schooner 'Cheviot' in the Cromarty Firth?" There was also a second issue, with counter-issues, as to the reading of the letter by the defender to a third party.

At the commencement of the trial on 30th December the pursuer intimated that he proposed, subject to the approval of his Lordship, to prove merely the publication of the slander to begin with. He suggested that thereafter the defender should lead evidence in support of his counter-issue, and that then the pursuer should adduce evidence to meet the defender's substantive case—*Scott* v. *M'Gavin and Others*, June 25, 1821, 2 Murray, 484, *per* Lord Chief Commissioner Adam, 489.

The defender objected to the course proposed, and maintained that it was contrary to the usual practice.

The LORD PRESIDENT allowed the pursuer to follow the procedure suggested by him, but reminded him that the evidence he led

at the first stage must be rigidly confined to proof of the writing of the letter, of the reading of the letter to a third party, and of damage sustained by the pursuer.

The jury returned a verdict for the pursuer on the first issue—damages £50, and by direction of the Court a verdict for the defender on the second issue.

Upon the motion of the pursuer to apply the verdict and find him entitled to expenses, the defender objected, and moved that neither party be found entitled to expenses. The defender had been entirely successful on the second issue which was the more important one — *Shepherd* v. *Elliot*, March 20, 1896, 23 R. 695; *Harnett* v. *Wise*, L.R., 5 Ex. D. 307.

The pursuer referred to *Balfour* v. *Wallace*, December 3, 1853, 16 D. 110, and *Rogers* v. *Dick*, February 4, 1864, 2 Macph. 591; and submitted that there was no good ground for departing from the ordinary rule that expenses follow the event. The jury had awarded a substantial sum as damages.

Lord President—I see no way out of giving the pursuer his expenses.

Lord Adam concurred.

Lord M'Laren—When in an action of libel or slander a pursuer takes several distinct issues and no justification is pleaded, a question as to expenses will arise if he fails on one of the issues and succeeds on the other issues in the case. But I think it is a settled practice that where a defender justifies the libel and fails, that establishes the right of the pursuer to bring the action, and entitles him to his expenses if the counter-issue fails.

Lord Kinnear concurred.

The Court applied the verdict and found the pursuer entitled to expenses.

Counsel for the Pursuer—Salvesen—Constable. Agents—Wallace & Pennell, W.S.

Counsel for the Defender—Jameson, Q.C. —Watt. Agents — Clark & Mocdonald, S.S.C.

Friday, January 20.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

LORD ADVOCATE *v.* STEWART'S TRUSTEES.

Revenue—Settlement Estate-Duty—"Settled Property" — Liferenter with Limited Power of Disposal—Finance Act 1894 (57 *and* 58 *Vict. cap.* 30), *secs.* 5 *and* 22.

A truster directed his trustees to hold certain bequests for his daughters in liferent for their alimentary use allenarly, and for their issue in fee, with a clause of survivorship to the effect that the shares of those dying without issue, or whose issue did not live to take under the destination, should accresce to the survivors. The daughters, however, were given a power of appointment among their own issue, and an absolute power to test in the event of their having no issue, or of the issue not surviving to take. *Held* that (notwithstanding the daughters' limited power of appointment and power to test) the property thus bequeathed was "settled property" within the meaning of sec. 5 of the Finance Act, and was accordingly liable to settlement estate-duty.

Section 5 of the Finance Act 1894 enacts that "(1) Where property in respect of which estate-duty is leviable is settled by the will of the deceased, or having been settled by some other disposition passes under that disposition on the death of the deceased to some person not competent to dispose of the property, (*a*) a further estate-duty (called settlement estate-duty) shall be levied at the rate hereinafter specified, except where the only life interest in the property after the death of the deceased is that of a wife or husband of the deceased, but (*b*) during the continuance of the settlement the settlement estate-duty shall not be payable more than once."

By section 22 it is enacted that "(1) (*h*) The expression 'settled property' means property comprised in a settlement. (*i*) The expression 'settlement' means any instrument, whether relating to real property or personal property, which is a settlement within the meaning of section 2 of the Settled Land Act 1882. (2) (*a*) A person shall be deemed competent to dispose of property if he has such an estate or interest therein, or such general power as would, if he were *sui juris*, enable him to dispose of the property, including a tenant in tail whether in possession or not; and the expression 'general power' includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exercisable by instrument *inter vivos* or by will, or both." . . .

Section 2, sub-section 1, of the Settled Land Act 1882 (45 and 46 Vict. cap. 38) enacts that—"Any deed, will, agreement for a settlement, or other agreement, . . . or other instrument, or any number of instruments, whether made or passed before or after, or partly before and partly after the commencement of this Act, under or by virtue of which instrument or instruments any land or any estate or interest in land stands for the time being limited to or in trust for any persons by way of succession, creates, or is for the purposes of this Act a settlement, and is in this Act referred to as a settlement, or as the settlement, as the case requires."

Section 14 of the Finance Act 1898 (61 and 62 Vict. cap. 10) enacts that in the case of a death occurring after the commencement of the Act (1st July 1898) "Where settlement estate-duty is paid in respect of any property contingently settled, and it is thereafter shown that the contingency has