confidently that if a sum was paid and the promissory-note granted to Mr Ferrier he would not give information against Alexander, but there is an important legal distinction between a natural hope that if payment is made no prosecution will follow and a deliberate bargain to that effect. I think that while there was a sanguine expectation and confident belief that if there was reasonable reparation made to the pursuer by the defender and his brother to the best of their ability, there would be no prosecution, there was no paction or bargain to that effect. The present defence, I must admit, is one with which I have no sympathy, and without serious difficulty I have come to be of opinion that the Sheriff's judgment should be adhered to.

LORD TRAYNER—I am of the same opinion. The plea-in-law stated for the defender is of a somewhat composite character. It is this—"The promissory-note founded on being signed by the defender under pressure from pursuer, in circumstances constituting a *pactum illicitum*, is void." No question of pressure has been submitted to us, and it appears from the Sheriff's interlocutor that it was not pleaded before him. I think the pursuer was well advised in not pleading this, because in the proof there is no evidence of force or fear sufficient to overcome the will of anyone of ordinary strength of mind. But it was strongly contended that the bill was granted for an illegal consideration and was therefore void. I think that defence has also failed. I abstain from saying anything on the question as to whether an engagement to refrain from criminal prosecution in return for payment of the loss incurred through the alleged crime would amount to a *pactum illicitum*. That is a delicate question. No reference has been made to any Scotch case upon the subject, and it is difficult to apply English authorities because of the distinction recognised in English law between felony and misdemeanour, a distinction which we do not recognise. But in my opinion the defender has failed to establish that there was any *pactum illicitum* entered into between the parties.

LORD MONCREIFF—I am of the same opinion. I think that the only defence is that the bill was obtained as part of a *pactum illicitum*. I think it is sufficient for the judgment to hold that the defender has not proved that the bill was obtained in return for an agreement to abstain from a criminal prosecution against his brother. I think that there is no doubt that the defender had fully in view the danger of his brother being proceeded against criminally, but that falls short of proof that any agreement to that effect was made with the pursuer. I even think that the defender signed the bill in order to ensure his brother not being prosecuted, but, as I have said, there is no proof of any bargain, The defender's case depends entirely on his own evidence and that of his brother, and in my opinion their evidence entirely fails to substantiate the defence.

The Court pronounced the following interlocutor:—

"Dismiss the appeal: Find in fact and in law in terms of the findings in fact and in law in the said interlocutor appealed against: Of new decern against the defender for payment to the pursuer of the sum of £35 sterling with interest thereon in terms of the conclusion of the action."

Counsel for Pursuer—Hunter. Agents—Patrick & James, S.S.C.

Counsel for Defender—Baxter—Sandeman. Agent—David Dougal, W.S.

Thursday, February 23.

SECOND DIVISION.

LESLIE PARISH COUNCIL *v.* GIBSON'S TRUSTEES.

Parent and Child—Aliment—Aliment of Granddaughter.

Held that the aliment of a lunatic granddaughter, whom the grandfather supported during his lifetime, constituted a good charge against his estate after his death.

Isabella Gibson was born in the parish of Leslie on 13th September 1862. She was the daughter of George Gibson, sometime joiner in Leslie. George Gibson deserted his wife and family prior to 1869, and no trace was afterwards found of him. He had no means or estate.

For some time previous to 1878 Isabella Gibson was of unsound mind, and in February 1878 she became chargeable as a pauper lunatic to the parish of Leslie as the parish of her birth. On 22nd February she was removed to the Fife and Kinross District Lunatic Asylum, Springfield, near Cupar.

George Gibson was a son of Robert Gibson, flax and waste merchant in Kirkcaldy. The latter had previously supported the wife and family of his son George before Isabella Gibson's illness. After she became a lunatic he was applied to by the Parochial Board of Leslie Parish for payment of the sums disbursed for her maintenance in the asylum. After some correspondence he on 4th December 1878 repaid to them the sums disbursed by them from 22nd February of that year, and down to the date of his death he continued to repay the sums thereafter disbursed by them for her maintenance. These payments were at the rate of £21 a-year, under deduction of the lunacy grant.

Robert Gibson died on 13th May 1891, predeceased by his wife and by all his children, except George Gibson, as to whom it was not known whether he was alive or dead. Robert Gibson left a trust-disposition and settlement dated 8th November

1888 by which he left all his means and estate to trustees. He bequeathed his heritable estate to his granddaughter Miss Jessie Black. He left various pecuniary legacies amounting in all to £670. Among these was a legacy of £100 to his son George Gibson if he appeared and claimed it within six years from the date of the testator's death. During these six years, if George Gibson did not appear, the trustees were to invest the £100, and apply the revenue to the maintenance of Isabella Gibson, and in the event of her death or recovery for the benefit and maintenance of George Gibson's wife and her three children. In the event of George Gibson not appearing and claiming the legacy within six years from the date of the testator's death, it was to be divided equally among his wife and three children including Isabella Gibson. The residue of the moveable estate was left to Miss Jessie Black.

At his death Robert Gibson, the testator, left heritable estate to the value of £900, and moveable estate, after payment of debts and charges, of the value of £1231, 7s. 6d. The trustees set aside the one-half of the estate, viz., £615, 13s. 9d. as the amount of George Gibson's legitim, and applied the other half in payment of the pecuniary legacies contained in the testator's settlement.

After the death of Robert Gibson the Parish Council of Leslie, who had taken the place of the Parochial Board, continued to expend the necessary sums for the maintenance of Isabella Gibson, and paid her asylum accounts as they fell due. They in this way, up to the term of Whitsunday 1898, expended the sum of £147, 16s., from which £67, 2s, or thereby fell to be deducted as the amount of lunacy grant received from Government. The balance due to them in 1898 was £80, 14s., exclusive of interest on the advances. Upon the death of Robert Gibson the Parish Council intimated to his trustees that they held them liable in relief of all sums paid or to be paid by them for the maintenance of Isabella Gibson. The trustees were willing to account to George Gibson for his legitim should he appear and claim it, and they were also willing to administer the legacy of £100 provided to him or his family in terms of the settlement, but they did not admit that he or any of his family had any other claim against the trust estate. They were willing to apply Isabella Gibson's interest in the legacy towards the expenses of her maintenance by the Parish Council.

For the settlement of the point a special case was presented to the Court by (1) the Parish Council of Leslie, and (2) Robert Gibson's trustees.

The questions of law were — "1. Is the maintenance of the said Isabella Gibson from and after the date of the death of her grandfather the said Robert Gibson, so long as the said chargeability exists, a debt chargeable upon the estate administered by the second parties? 2. Are the second parties bound to free and relieve the first parties of all sums paid or to be paid by them in respect thereof to the extent of the trust estate now under their management? Or 3. Are the second parties' obligations limited to making the said Isabella Gibson's interest in said legacy furthcoming to the first parties to account of the sums disbursed by them for her maintenance since the truster's death?"

It was stated in the special case—"The yearly sum hitherto paid for the maintenance of the said Isabella Gibson is £21, but owing to an increase in the asylum charges the sum necessary for the future will be £25 yearly, less the Government Lunacy Grant. The medical superintendent of the asylum considers her case to be very unfavourable as regards prospect of recovery.

Argued for first parties—The obligation of Robert Gibson to maintain his indigent lunatic granddaughter transmitted to his representatives and was a burden on his estate, and they were entitled to reimbursement from the second parties of all outlays in respect of the maintenance of Isabella Gibson bygone and in time to come so long as the chargeability exists, to the extent of the estate now in their hands.

Argued for second parties—They were not liable to make any payment to or on account of Isabella Gibson beyond her interest in the legacy of £100 and the income thereof. If the grandfather had been alive, there was no doubt that he would have been liable. But his estate was not liable. A claim for aliment was not a claim for debt in ordinary circumstances; it ended with the death of the person against whom the claim could be made—*Howard's Executor* v. *Howard's Curator Bonis*, May 25, 1894, 21 R. 787. No doubt brothers or sisters succeeding to the estate of their father were bound to aliment out of that estate other brothers and sisters. But although claims for aliment were good against the representatives of a father, this doctrine should not be extended to the representatives of grandparents — decision of Lord Fraser in *Smith* v. *Smith's Trustees*, March 14, 1882, 19 S.L.R. 552. Otherwise it would practically result in making one cousin support another. In *Lemon* v. *Semple's Trustees*, May 27, 1880, 8 P.L.M. 433, Lord Fraser had decided that the trustees of a grandmother of pupil children were bound to repay advances made by a parochial board for behoof of the children, but in that case the argument appeared to have been less exhaustive than in the case of *Smith* and the latter case was the later in date.

Lord Justice-Clerk—I do not think it necessary to consider what would be the law if a claim had been made against the estate of the grandfather after his death, no such claim having been made on behalf of the lunatic and admitted by the grandfather during the latter's lifetime. Here it is distinctly stated that the obligation was recognised by the grandfather during his lifetime, and is in the same position as if

it had been constituted against him. In these circumstances I am of opinion that the first question should be answered in the affirmative.

Lord Young—That is my opinion also. The facts in this case are simple and raise no questions of difficulty. I think the case is so simple as this. During the grandfather's life, many years before his death, his only son had gone abroad leaving a destitute lunatic daughter behind. The grandfather recognised his obligation to relieve the ratepayers of her maintenance. He admitted his liability for her support, and down to the date of his death paid the sum required therefor. The grandfather died leaving estate worth about £2000, £900 of heritage, and about £1200 of moveables. Half of the £1200 has been set apart to meet the claim on the estate for legitim if the son who has gone abroad should ever return and demand it. The sum therefore in the hands of the testamentary trustees laid aside to meet this claim for legitim is £600. The interest of that sum will be more than sufficient to meet the claim for aliment of the lunatic granddaughter. If the son ever turns up, that expenditure of the interest could not be objected to by him; if he do not, the voluntary beneficiaries would not on any rational or I think legal ground object, because the aliment of a granddaughter whom the grandfather supported during his lifetime attaches to the estate which he leaves. That exhausts the matter.

Lord Trayner—I am of the same opinion. I think that there can be no doubt that this aliment, which was due by the grandfather *ex debito naturali*, and which was paid by him during his lifetime, continues a good charge against his estate after his death. Although I have formed an opinion on the point, I do not think it necessary to enter into the question as to whether the aliment of his granddaughter would have been a good debt against the estate of the grandfather if the obligation had not been admitted by him during his lifetime. Here the obligation was so admitted.

I think that the first question should be answered in the affirmative, with the declaration that the aliment may be charged in the first place against the portion of the estate set apart to provide for the legitim of George Gibson, the father of the lunatic, and failing it against the rest of the estate.

Lord Moncreiff— I am of the same opinion. The claim for aliment was made during the lifetime of the grandfather and was acknowledged by him. The question is, whether his testamentary trustees are now liable to support the lunatic out of his estate. I had occasion to consider this point in a case of *Govan* v. *Govan's Trustees*, reported as *A* v. *B*, December 22 1892, 3 Poor Law Mag. 239. The facts in that case were similar to the present, and I held that the estate was liable. I had there occasion to consider the two judgments of Lord Fraser, mentioned during the debate. From the report of the case decided by myself I seem to have been under the impression that the test proposed by Lord Fraser, in the second case decided by him, in order to decide whether a grandfather's estate should or should not be held liable, was whether the claim had been constituted during the grandfather's lifetime. In that I must have been mistaken, as the test, which Lord Fraser seems to have proposed, is whether the claim has been made and acknowledged during the grandfather's lifetime. It is, however, not necessary in the present case to consider what would have been the result if the claim had not been made and acknowledged during the grandfather's lifetime, because here it was made and acknowledged until the grandfather's death.

I agree with Lord Trayner that the portion of the estate set aside to provide for the legitim of the father of the lunatic should, *primo loco*, bear the expense of the maintenance of the lunatic.

The Court pronounced this interlocutor:—

"Answer the first question therein stated in the affirmative, with the declaration that the payments made and to be made by the first parties on account of Isabella Gibson shall primarily be charged against the sum set aside by the second parties to meet any claim for legitim on the part of George Gibson: Answer the second question therein stated in the affirmative, and the third question in the negative: Find and declare accordingly and decern."

Counsel for the First Parties—Guthrie, Q.C. — Graham Stewart. Agent—W. J. Lewis, S.S.C.

Counsel for Second Parties—Campbell, Q.C. — Cook. Agent — James Skinner, S.S.C.

Friday, February 24.

FIRST DIVISION.

[Sheriff of Renfrew and Bute.

M'NICOL *v.* SPEIRS, GIBB, & COMPANY.

Reparation — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 31), *sec.* 1, *sub-sec.* (1)—"*Accident Arising out of and in the Course of the Employment*"—*Sub-sec.* (2) (c)—"*Serious and Wilful Misconduct.*"

In a case stated under the Workmen's Compensation Act 1897 the facts were as follows:—The pursuer, a miner, having lighted the train in order to fire a shot, and the shot not having exploded, after an interval of six minutes returned to examine the shot-hole, and while so engaged the shot went off, whereby he suffered serious injury. One of the special rules of the mine prohibited any person from entering the place where a