exceed £500, with a direction that if she died before receiving all the instalments, and without leaving children, the instalments which she had not received are to be paid to other persons altogether. Now, I think that that is a perfectly lawful provision, which the trustees are bound to carry out, and which Mrs Campbell is entitled to compel the trustees to carry out. How long she might live could not of course be anticipated, but she is entitled to get £95 each month so long as she lives and until the whole £500 has been paid. I think that these payments of £95 each month do not fall under the marriage-contract. Each one of these payments is her own absolute property. She is entitled to spend it as she gets it or to do what she likes with it. I am therefore clearly of opinion that the first question ought to be answered in the affirmative.

As to the second question, I am just as clearly of opinion that it should be answered in the negative. I think that no payment whatever ought to be made to the marriage-contract trustees.

LORD TRAYNER—I do not entertain a different opinion on the construction of the will and the marriage-contract before us, but I think, as I said in the course of the debate, that the questions in the case are not well put.

LORD MONCREIFF—I have no hesitation in answering the first question in the affirmative and the second in the negative.

LORD JUSTICE-CLERK—I agree.

The Court pronounced this interlocutor:—

"Answer the first question therein stated in the affirmative, and the second question therein stated in the negative: Find and declare accordingly, and decern: Find the whole parties to the special case entitled to their expenses, as the same may be taxed as between agent and client, out of the moiety of the estate of Miss Helen Maude Campbell in question."

Counsel for the First and Third Parties—D. Anderson. Agents—Buik & Henderson, W.S.

Counsel for the Second Parties — W. Thomson. Agent—Charles George, S.S.C.

Tuesday, June 27.

SECOND DIVISION.

[Sheriff Substitute of Lothians.

HANLIN *v.* MELROSE & THOMSON.

Title to Sue—Reparation—Grandchild.

A grandchild has a title to sue for damages and *solatium* in respect of the death of its grandfather.

This was a stated case on appeal from the Sheriff Court at Edinburgh in the matter of an arbitration under the Workmen's Compensation Act 1897.

The case stated by the Sheriff-Substitute (Hamilton) was as follows:—"This is an arbitration in which the pursuers make the following averments:—That the pursuers are respectively the daughter-in-law and grandchildren of the deceased Edward Hanlin, his son Thomas Hanlin having been the husband of the female pursuer Mrs Annie M'Kue or Hanlin, and the other pursuers being their children. That Thomas Hanlin died on 25th August 1896, and that the pursuers were dependent on the said Edward Hanlin at the date of his death. That Edward Hanlin was a labourer in the employment of the defenders, and that he met his death on 3rd October 1898 while engaged at the erection of a building which was being constructed by means of scaffolding, and was on said date over thirty feet in height."

The case was debated before the Sheriff-Substitute, on the question of title to sue, and on 8th May 1899 he pronounced the following interlocutor:—"The Sheriff-Substitute having resumed consideration of the case, dismisses the petition, in so far as brought at the instance of the pursuer Mrs Annie M'Kue or Hanlin for her own right and interest: Sustains the title to sue of the other pursuers John Hanlin, Edward Hanlin, and Thomas Hanlin."

The question of law for the opinion of the Court was—"Whether the said John Hanlin, Edward Hanlin, and Thomas Hanlin are entitled, according to the law of Scotland, to sue the defenders for damages, or *solatium*, in respect of the death of the deceased Edward Hanlin, and are in this respect entitled to the present application."

The Workmen's Compensation Act 1897 (60 and 61 Vict. c. 37) enacts by section 1, sub-section (1), and First Schedule, section 1 (*a*) (I) and (II), and section 4, that where death results from the injury to the workman, the employer shall, under the provisions of the Act, be liable to pay compensation for the benefit of the workman's "dependants," if he has any. By section 7, sub-section (2), the word "dependants" is defined to mean in Scotland such of the persons entitled according to the law of Scotland to sue the employer for damages or *solatium* in respect of the death of the workman, as were wholly or in part dependent upon the earnings of the workman at the time of his death.

It was not disputed that the claim of Mrs Annie M'Kue or Hanlin had been rightly rejected by the Sheriff-Substitute.

Argued for the appellants—Grandchildren had no title at common law to sue for damages and *solatium* in respect of the death of their grandfather, and consequently they had no title to claim compensation for such death under the Workmen's Compensation Act 1897—Workmen's Compensation Act 1897, section 7 (2), *sub voce* "dependants" (*b*). There was no case in which the title to sue of grandchildren had been either sustained or rejected. It must

be conceded that there was a mutual obligation of support between grandchildren and grandparents (*Bell* v. *Bell*, March 1, 1890, 17 R. 549), but that was not sufficient. The right given to certain relatives by the law of Scotland to sue for such damages and *solatium* was anomalous, and was not to be extended beyond those cases which had already been recognised and admitted, viz., husband and wife, and parent and child. The rule now was that a title to sue only existed in cases where there was (1) a mutual obligation of support, and (2) previous judicial recognition of the title to sue. Extension of the rule to analogous cases was not allowable—*Eisten* v. *North British Railway Company*, July 13, 1870, 8 Macph. 980, *per* L. P. Inglis at page 984; *Weir* v. *Coltness Iron Company*, March 16, 1889, 16 R. 614, *per* Lord Young at page 616; *Clarke* v. *Carfin Coal Company*, July 27, 1891, 18 R. (H.L.), 63, *per* Lord Watson at page 65; *Darling* v. *Gray & Sons*, May 31, 1892, 19 R. (H.L.), 31, where Lord Watson at page 32 said that the benefit was limited "to persons standing in the legitimate relations of husband, father, wife, mother, or child to the deceased;" *Whitehead* v. *Blaik*, July 20, 1893, 20 R. 1045, *per* L. P. Robertson at page 1048. In *Eisten*, *cit.*, if a mutual obligation of support had been sufficient, the additional element of nearness of relationship desiderated by the Lord President would have been irrelevant. In that case the Lord President began by enumerating the cases which were admitted and beyond which the right was not to be extended. In *Weir*, *cit.*, the judgment proceeded on the assumption that the case of *Samson* v. *Davie*, November 26, 1886, 14 R. 113, was well decided, and consequently upon the assumption that there was a mutual obligation of support, and the case of *Weir* was therefore an authority for the proposition that a mutual obligation of support by itself was not sufficient, and that inclusion among the previously admitted cases was also necessary, for in *Weir* the Court held that there was no title, even assuming a mutual obligation of support. This view was approved by the House of Lords in the case of *Clarke* v. *Carfin Coal Company*, *cit.*, which overruled *Samson* v. *Davie*, *cit.* The title of grandchildren to sue had never been recognised, and as the previous practice was conclusive, however strong the argument might be upon principle for their inclusion among the cases recognised, that was not now sufficient. Under Lord Campbell's Act (9 and 10 Vict. c. 93), section 5, grandchildren were entitled to sue because "child" was defined as including "grandchild," but it was plain that in the House of Lords' decisions, *cit. supra*, the Lords having that Act before them did not recognise any title to sue in grandchildren under the law of Scotland.

Argued for the respondents—The title to sue of grandchildren had been expressly recognised.—*Greenhorn* v. *Addie*, June 13, 1855, 17 D. 860, *per* Lord Curriehill at page 868, and *per* Lord Deas at page 869, where the expression used was "ascendants and descendants," and *per* L. P. M'Neill at page 864, where it was "parents or descendants;" *Eisten* v. *North British Railway Company*, *cit.*, *per* Lord Deas at page 985 ("ascendants and descendants," and "grandchildren and great-grandchildren"), *per* Lord Ardmillan at page 986 ("ascendants and descendants"), and *per* Lord Kinloch at page 987 ("perhaps generally to ascendants and descendants"). The expression "parent and child" was used in the cases as including all "ascendants and descendants." Lord Watson, in using the expression "parent and child," was employing these words as defined in Lord Campbell's Act (9 and 10 Vict. c. 93), sec. 5.

Lord Justice-Clerk—If it be admitted, as it was quite frankly admitted by Mr Glegg, that there is a mutual obligation of support between grandparents and grandchildren in case of need, it is but a short step to the doctrine that grandchildren have a right to claim damages and *solatium* for the death of their grandfather, if they were dependent on him, their own father being dead. There is no doubt that a child can claim for the death of its own parent, or a parent for the death of his own child directly. The only question is, whether when their own parent is dead, and the obligation of support is between the grandparent and the grandchildren, the death of the grandparent gives a title to sue to the grandchildren. Mr Glegg may be quite right that there is no case in which the title of grandchildren to sue such an action has been specially recognised. That may be, because it has never been made matter of dispute. But when we look at the case of *Greenhorn* we find that the expression used by the Lord President in that case is "parents or descendants," and the expression used by the other judges is "ascendants and descendants." They avoid using the expression "parent and child," which might be held to have only the narrower meaning of father or mother and child, although as used in the decisions I do not think it has.

I am of opinion that the Sheriff-Substitute was right, and that we should answer the question of law put to us in the affirmative.

Lord Young—I am of the same opinion. But I should like to say that I give that opinion upon the footing that these children were dependent upon their grandfather in fact. On that supposition I think that they are entitled to sue for his death.

Lord Trayner—I agree. Under the Workmen's Compensation Act 1897 the persons who have a right to claim compensation under the Act are "such of the persons entitled according to the law of Scotland to sue the employer for damages or *solatium* in respect of the death of the workman as were wholly or in part dependent upon the earnings of the workman at the time of his death." I think the rule of the law of Scotland is, that there is such a right to sue when there is between the deceased and the person claiming in respect

of his death near relationship, and a mutual obligation to support in case of necessity. Here the persons claiming are grandchildren of the workman, and therefore there existed between them and him both near relationship and a mutual obligation of support. I am consequently of opinion (assuming, as Lord Young has said, that the respondents were in fact dependent upon their grandfather) that the respondents have a title to claim compensation for their grandfather's death under the Workmen's Compensation Act.

Lord Moncreiff—I am of the same opinion. When there is near lawful relationship combined with a mutual obligation of relief in case of need, then there is a good title to sue in such cases. Here these two elements coexist. The relationship was that of grandfather and grandchildren, and it is admitted that between a grandfather and his grandchilden there is a reciprocal obligation of relief in case of either falling into poverty. I am therefore of opinion that under the law of Scotland grandchildren have a title to sue in respect of the death of their grandfather.

The only ground of Mr Glegg's argument was that there is no recorded case in which an action at the instance of grandchildren for the death of their grandfather has been sustained. There is no case to the opposite effect, and I must say that I always understood that the *dicta* in the decided cases referred not merely to parent and child but to ascendants and descendants. Probably the reason why there is no case directly in point is, that it was never before disputed that grandchildren had a good title to sue, their father being dead and they being dependent on their grandfather.

The Court answered the question of law in the affirmative, and found the respondents entitled to expenses.

Counsel for the Appellants — Glegg. Agents—Macpherson & Mackay, S.S.C.

Counsel for the Respondents — A. J. Young—W. Thomson. Agent—D. Howard Smith, Solicitor.

Wednesday, June 28.

SECOND DIVISION.

[Lord Stormonth Darling, Ordinary.

AGNEW *v.* WHITE.

Process — Multiplepoinding — Double Distress—Bill of Exchange.

Agnew accepted a bill for £300 drawn upon him by Thorl & Co. Having become bankrupt he agreed to pay a composition, which was accepted. The composition payable upon the bill referred to was claimed by White, the holder, and by the Tile Company, Limited, who had in fact supplied the goods for which the bill was granted by Agnew, but who were not disclosed to him as principals in the transaction when he made the purchase, and whose names did not appear upon the bill. They now alleged that the bill was drawn by Thorl & Co. as their agents, and sent by Thorl & Co. for discount to White, who, having got possession of it for that purpose, declined either to discount it or to give it up, but retained it in bad faith, and without any consideration whatever, on the pretext that he had some claim against the Tile Company. Agnew refused to pay to White, the holder, and brought a multiplepoinding setting forth the facts. White objected to the competency of this action on the ground that there was no double distress. *Held* that the action was competent.

This was an action of multiplepoinding and exoneration at the instance of John Agnew, brick manufacturer and coalmaster, Glasgow, principal debtor, John M'Donald and John Pyper, two of the cautioners, for payment of a composition under a deed of arrangement entered into between Agnew and his creditors, pursuers and real raisers, in which they called as defenders John White, ship and insurance broker, London, the Self-Lock Roofing Tile Company, Limited, London, and John Thorl & Company, and Julius Burckhardt, the only known partner of that firm, as such partner and as an individual, and also the other cautioners, for payment of the composition, for their interest.

The fund *in medio* was a deposit-receipt for the composition payable under the deed of arrangement upon a sum of £300.

The defender John White objected to the competency of the multiplepoinding on the ground that there was no double distress, and a record was made up on the competency.

The pursuer and real raisers averred that in 1897 Agnew bought and received delivery of six machines, the price of each machine being £100; that this sale was carried through by one Burckhardt, who represented himself, and was understood by Agnew to be sole partner of a firm of John Thorl & Company, who Agnew understood were the vendors; that Agnew at Burckhardt's request granted in favour of John Thorl & Company two bills for £300 each in payment of the price; that thereafter some material connected with Agnew's purchase was invoiced to him by the Self-Locking Roofing Tile Company, and that Burckhardt, on being asked for an explanation, explained that this company was the same as John Thorl & Company, and that he was the sole partner of both firms; that on 8th April 1897 the Self-Lock Roofing Tile Company, Limited (that company having been incorporated as a limited company under the Companies Acts), wrote to the defender Agnew requesting him to refuse payment of the two bills drawn by John Thorl & Company and accepted by him; that the estates of John Agnew were sequestrated on 4th December 1897, and a trustee, Mr James Taylor, C.A., Glasgow, appointed,