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,

but that a deed of arrangement, under which a composition was to be paid to his creditors, was accepted and approved, and that the sequestration was consequently discharged.

They further averred—"(Cond. 7) The defender John White, who alleges that he is endorsee and holder for value of a bill, dated 9th February 1897 at five months' date for £300, drawn by the said John Thorl & Company upon and accepted by the pursuer John Agnew, lodged with the said James Taylor, as trustee in Agnew's sequestration, a claim for composition upon said bill. The bill founded on by the defender White is one of the bills granted by the pursuer Agnew in payment of said tile machines. A claim was also lodged with said trustee by the defenders the Self-Lock Roofing Tile Company, Limited, a copy of which was produced and referred to. A copy of a letter addressed by said company to Messrs Thomson, Jackson, Gourlay, & Taylor, C.A., Glasgow, of which firm Mr Taylor, trustee in Agnew's sequestration, is a partner, dated 4th May 1898, is also produced and referred to. In consequence of the conflicting claims to the said bill for £300, Mr Taylor as trustee foresaid declined to grant to the defender White a certificate that he was entitled to the composition on said bill, and consequently the composition was not paid by the present pursuers. Said company now assert that they were the vendors of said tile machines, and that there was originally a bill for £600, being the price thereof, drawn by the company, but that subsequently the said Mr Burckhardt, who was the secretary of said company, arranged with the pursuer Agnew that two bills of £300 each should be substituted. They further assert that owing to there being no meeting of the directors of said company, Mr Burckhardt drew said substituted bills in the name of his firm John Thorl & Company, intending to discount them and hand the proceeds to the Self-Lock Roofing Tile Company; that he instructed his managing clerk to offer one of said bills for discount to the defender White; that the bill was accordingly so offered by the clerk, but that said defender having got possession of said bill with a view to discount, asked said clerk to call back next day for his answer, and that when the clerk called back he declined either to discount the bill or to give it up, but retained it in bad faith and without any consideration whatever."

They also averred that White had brought an action against the present pursuers and the other cautioners for payment of the composition due on said bill for £300; that the Self-Lock Roofing Tile Company would not withdraw their claim, and insisted that the pursuers were liable in composition to them in respect of said bill; that since this action was raised the Self-Lock Roofing Tile Company had gone into voluntary liquidation, and the liquidator had intimated that he was to claim the fund on the grounds above stated, and that in consequence of the said rival claims to the composition on said debt the pursuers were not in safety to pay without judicial authority.

The defender John White pleaded—"The action should be dismissed with expenses, because . . . (*b*) It is incompetent, and *separatim*, it is irrelevant. (*c*) There is no double distress."

The bill for £300 referred to on record bore to be drawn by "John Thorl & Co," to be accepted by "John Agnew," and to be endorsed by "John Thorl & Co." These were the only names appearing on the bill.

The letter from the Self-Lock Roofing Tile Company, Limited, to Agnew, dated 8th April 1897, and referred to on record, was as follows:—"Please refuse payment of the two bills drawn by Messrs John Thorl & Company as our agents and accepted by you. The bills in question were each for £300 at five months from date of February 8th. Messrs John Thorl & Company left them for discounting, one with Messrs Charles Taylor & Company, 9 Fenchurch Avenue, E.C., and one with Mr J. White, 23 Great St Helens, E.C., but they have neither paid the value to us nor have they returned the documents, although we have made repeated applications to them."

The letter from the Self-Lock Roofing Tile Company to Messrs Thomson, Jackson, Gourlay, and Taylor, dated May 4th 1898, and referred to on record, was as follows:—The original bill for £600 was drawn by the company, but subsequently Mr Burckhardt arranged with Mr Agnew that he (Burckhardt) should draw two bills of £300 each, and he promised us the cash. We neither had the cash or the bills, nor are our names on the two bills. Our proof is not for £600, but for £609, 18s., as per particulars already furnished to you."

The claim lodged by the Self-Lock Roofing Tile Company, Limited, in Agnew's sequestration was for the sum of £609, 18s., and was made not upon the bills but upon an account for machines and other goods supplied by them to Agnew.

The Lord Ordinary (STORMONTH DARLING) after hearing counsel in the Procedure Roll on 27th May 1899 pronounced the following interlocutor:—"Repels the defences for the defender John White, and decerns: Finds the said defender liable in expenses since the date of closing the record to this date: Allows an account thereof to be given in, and remits the same to the Auditor to tax and report: Finds the pursuers and real raisers liable only in once and single payment of the fund *in medio*, and appoints all parties claiming an interest in the said fund to lodge their condescendences and claims in ten days: Grants leave to reclaim."

Opinion—"There are certain legal presumptions in favour of the holder of a bill, and I agree with the defender White that the acceptor would not be justified in refusing payment to the holder merely on the allegation that some-one else claimed to be the seller of the goods for the price of which the bill had been drawn. The acceptor's true answer to such a claim would be that the seller's remedy was against the party who had improperly endorsed the bill to

the holder. If, therefore, this multiplepoinding could not be supported on any better ground than that, I should hold that there was no double distress.

"But as the pleadings now stand (whatever may have been their original shape) the allegation of the pursuers and real raisers is that the Self-Lock Roofing Tile Company challenge White's title as a holder in due course. They say, and the liquidator apparently maintains the contention, that the bill was drawn by their agent and was sent by him for discount to White, who improperly and in bad faith retained it without giving any value. Now that, whether well founded or not, would surely be a relevant averment in a direct action by the company against White; and if so, it seems to me that, when it is made the ground of claim by the company against the acceptor Agnew, it discloses a sufficient case of double claims on one fund to support a multiplepoinding. In other words, it gives the company an interest to see that the contents of the bill are not paid to one who, according to their statement, obtained possession of the bill wrongously from their agent, and has therefore none of the rights of a holder in due course.

"I shall therefore repel the defences to the competency of the action, but, as double distress does not seem to have been well averred till adjustment, I shall only find the defender liable in expenses since the closing of the record. The direct action at the instance of White must be sisted to await the issue of the multiplepoinding."

The defender John White reclaimed, and argued—There was here no double distress. The fund *in medio* was the composition due upon a bill. No claim had been made in virtue of that bill except this defender's. The Self-Lock Roofing Tile Company did not claim upon the bill but upon an open account. These two claims did not constitute double distress upon the fund *in medio*. If the open account referred to was in fact paid by the granting of these bills, the acceptor should have taken a receipt which would have met the claim upon the open account; and if he did not do so any consequences of his failure to do so were due to his own fault. But if the Self-Lock Roofing Tile Company were now in fact putting forward a claim upon the bill (and no such claim had been intimated by them to this defender) the position was not altered, because they could not have a claim upon the bill. Their name did not appear upon it, and no person could be liable or could sue upon a bill whose name did not appear upon it. An undisclosed principal could not sue or claim upon his agent's bill, and the intimation of any such claim by an undisclosed principal could not constitute double distress. The acceptor of a bill had no answer to the holder except a suspension. It was no answer to the holder that someone whose name did not appear upon the bill asserted that he, and not the holder, had right to it. Authorities referred to—*Dalgleish* v. *Forrest & Miller*, December 2, 1870, 8 S.L.R. 166; Bills of Exchange Act, 1882, sec. 23.

Counsel for the pursuers and real raisers and respondents were not called upon.

LORD JUSTICE-CLERK—I think that the Lord Ordinary is right in sustaining the competency of this multiplepoinding. If a man comes forward alleging that there are two separate and independent claims to a fund which he holds, and that in consequence he is not in safety to pay the fund to either claimant, he is entitled to consign the sum in Court in an action of multiplepoinding so as to leave the two claimants to fight the matter out between themselves. I think that the pursuers and real raisers have made such allegations here, and consequently that the course which they have followed of bringing this multiplepoinding was quite a proper course. They allege that the fund *in medio* is claimed in the first place by White as the holder of the bill, and secondly, by the Self-Lock Roofing Tile Company on the allegation that they were truly the persons in right of the debt for which the bill was granted, and that White retained the bill without consideration although he had got it for discount merely. Of course the pursuers cannot be expected to give all the details of the question between White and the Tile Company. That is no part of their case. It is sufficient that they allege a substantial competition between White and the company, and this I think they have alleged.

LORD YOUNG—I am of the same opinion. It is very possible that this Tile Company have no claim to the fund in competition with Mr White, and that if and when they present such a claim the Lord Ordinary will have little difficulty in rejecting it, and sustaining the claim of White; and if the Tile Company had been here White might have been able to satisfy us that they have no claim, in competition with him, worthy of serious attention. But I am afraid that we are not at present in a position to judge of that, because it is a settled rule of this Court that we cannot determine anything against a person who is not before us. The holder of this fund says that there are competing claims to the fund. I think that he does so relevantly and sufficiently on this record, and the Lord Ordinary being of the same opinion has appointed all parties who have claims to the fund to put in their claims. I agree with the Lord Ordinary. If the Tile Company are persuaded that they have no claim worth putting in, then White will get the money, for it is not, as I understand, suggested that there is any other possible claimant; on the other hand, if the company put in a claim, then they or White will get the money, according as their claim or White's is held to prevail.

LORD TRAYNER—There is no doubt that there is here a question to be settled between the Tile Company and White, and it is obviously as easy to be settled in this action as in any other. At the same time mere considerations of convenience would not be conclusive as to the competency of the form of process, and the question has

been raised whether this is a competent form of process in the present instance. Now, I am personally averse to doing anything which might have the appearance of weakening the settled rules in regard to the forms of process; and if I had thought that this action could not be regarded as competent in accordance with the recognised rules regulating the competency of actions of multiplepoinding, I should certainly not be for sustaining it on the ground of considerations of convenience merely. But I think that the present action is entirely in accordance with the form of process, as it is also in harmony with obvious convenience.

As stated by the pursuers and real raisers on record, the case arises in the following circumstances:—Mr Agnew granted bills to Thorl & Company for the price of certain tiles. The Tile Company are said to have been the real sellers of the tiles, and therefore the true creditors in the bills. The bills were handed to the reclaimer White for discount, and it is said that he, instead of discounting the bills, retained them in bad faith, on the pretext that he had some claim against the Tile Company. The Tile Company then intimated to Agnew that he was not to pay the bills to White, on the ground that he was not entitled to the proceeds as not being the holder in due course. Agnew was not able to meet the bills, and the result is that under the deed of arrangement between him and his creditors the fund *in medio* is the composition of one-fourth the sum in the bills. The Tile Company claims this sum as a debt due to them, while White claims on the bills. The Tile Company reply to White's claim, "You are not entitled to claim on the bills because you hold them by fraud." Now, obviously Agnew cannot be expected to determine this question for himself. What the true facts may be it is no part of his duty to settle. It is sufficient for him that he is distressed by White, the holder of the bills, founding on his right and title as holder, and also by the Tile Company who allege that they are the true creditors, and that White, although in possession of the bills, has no right or title to claim on them as holder. That is a question to be settled between White and the Tile Company, and Agnew has obviously no interest which way it is settled.

Lord Moncreiff—I am of the same opinion. I think that a case of double distress is disclosed on record. The fund *in medio* is the composition payable on a bill accepted by Agnew for a debt due by him. That debt was the price of certain tile machines supplied to him, and the allegation of the real raisers is that the fund *in medio* is claimed by White, the holder of the bill; and by the Self-Lock Roofing Tile Company on the ground that they were truly the vendors of the tile machines to Agnew, and that White having got the bill for discount retained it without giving any consideration. There is no doubt that Agnew's trustee is liable in once and single payment only of the fund *in medio*, and that according to the averments on record he has been called on to pay twice. According to the averments on record there is a serious dispute between White and the Self-Lock Roofing Tile Company, but with the merits of that dispute the real raisers have no concern.

The Court adhered.

Counsel for Pursuers and Real Raisers and Respondents — M'Lennan — Taylor. Agents—T. & W. A. M'Laren, S.S.C.

Counsel for the Defender and Reclaimer —Vary Campbell—W. Thomson. Agents —W. & J. Burness, W.S.

Wednesday, June 28.

SECOND DIVISION.

ADAM'S TRUSTEES *v.* WILSON.

Succession — Legacy — Amount — Specific Legacy—Demonstrative and Taxative.

A testator directed his trustees to dispose of his property of X, and apply "£4000 of the price thereof" in part payment of a bond for £14,000 affecting his estate of Y, which he directed to be entailed upon a series of heirs mentioned, the conveyance being granted "subject to the real burden of the bond presently affecting said lands to the extent of £10,000 sterling, part of the principal sum of £14,000 sterling therein contained (the sum of £4000 sterling being payable by my trustees in part of the said principal sum as hereinbefore provided)." The lands of Y were purchased by the testator for £14,556, and were valued in 1897 at £11,500. The direction to entail was the leading purpose of the settlement. The lands of X when sold only realised £2455. *Held* that only the price of the lands of X could be applied in paying off debt on Y, and that the heirs of Y were not entitled to have the difference between the price realised and the sum of £4000 made up out of residue.

Succession — Legacy—Amount — Legacy of Price of Lands Sold — Surplus Rents — Expenses Incident to Sale.

Where in terms of a trust-disposition and settlement £4000 of the price of lands directed to be sold was to be applied in paying off debt on other lands directed to be entailed, and the lands directed to be sold ultimately realised less than £4000 — *Held* (1) that accumulations of surplus rents of the lands directed to be sold fell into residue and were not applicable in paying off the debt, and (2) that in ascertaining the sum applicable in paying off the debt there fell to be deducted from the price (*a*) the sellers' half of the cost of the disposition, and (*b*) the expenses of the exposure and sale of the property, but not (*c*) the cost of an application to the