if living; if not, then to the assured's executors, administrators, or assigns." The wife's interest was of a very peculiar description—(1) The sum assured could not be reduced to possession *stante matrimonio;* (2) it was contingent on her surviving her husband; (3) the husband was not bound to keep up the policy; it was only good against him and his creditors if he kept it up; and (4) the wife's rights under the policy were not protected by a separate trust in terms of section 2 of 43 and 44 Vict. cap. 23.

Thus the second party only obtained an indefeasible right to the sum in the policy after the dissolution of the marriage. I therefore think that it did not pass to her marriage-contract trustees, and that she is now entitled to it absolutely.

The Court answered the second question in the affirmative, and found it unnecessary to answer the other questions.

Counsel for the First Parties—Cullen. Agents—T. & W. A. M'Laren, S.S.C.

Counsel for the Second Party—M'Clure. Agents—Baxter & Burnett, Solicitors.

Wednesday, July 3.

FIRST DIVISION.

SIM *v.* ROBERTSON.

Tutor and Pupil—Parent and Child—Appointment of Tutor Resident in England to Act Jointly with Mother—Guardianship of Infants Act 1886 (49 *and* 50 *Vict. cap.* 27), *sec.* 2.

A father died intestate, domiciled in Scotland, and survived by a widow and pupil children. The widow presented a petition for the appointment of a relative of her own who was resident in England to act jointly with her as tutor to her children. She had no relatives in Scotland, and the father's only relative was a married woman, who was resident in Scotland. The Court *granted* the petition, on condition of the person appointed granting a bond prorogating the jurisdiction of the Court of Session.

Patrick Sim died on 23rd November 1900, intestate and domiciled in Scotland, and was survived by a widow and three pupil children. His widow was decerned his executrix-dative, and his estate amounted to about £65,C00.

By antenuptial contract of marriage between Mr and Mrs Sim, Mr Sim provided an annuity of £250, and certain small sums for mournings and aliment for his widow, which she accepted in full of all her legal rights. The antenuptial contract made no provision for children.

In contemplation of the possibility of making a claim for her *jus relictæ,* in which case her interest as an individual would be adverse to her pupil children, Mrs Sim presented a petition on 25th May 1901 for the appointment of a tutor to them in terms of the Guardianship of Infants Act 1886 (49 and 50 Vict. cap. 27), sec. 2.

The petitioner, who was described as residing in London, averred that Mr Sim's only surviving relative was his sister, a married woman, who lived in the north of Scotland, and that she herself had no relatives in Scotland. The petitioner craved the Court to appoint John Barnes, manager of the London and Provincial Bank, Limited, at Walthamstow, near London, and residing at 278 Hoe Street, Walthamstow, to act jointly with the petitioner as tutor to her pupil children. Mr Barnes was the petitioner's cousin.

Answers were lodged by Mr Sim's surviving sister, in which the facts averred in the petition were admitted.

Argued for the petitioner—A domiciled Englishman might be appointed in such a case if he was willing, as Mr Barnes was, to prorogate the jurisdiction of the Court of Session, and have an address in Scotland at which he might be cited—*Macdonald* v. *His Next-of-Kin,* June 11, 1864, 2 Macph. 1194; *Dalhousie,* February 22, 1698, 4 Br. Sup. 405. The proper course was to appoint the person nominated by the mother—*Martin* v. *Stewart,* December 1, 1888, 16 R. 185.

Argued for the respondent—The proposed tutor being a near relative of the mother, his appointment was undesirable, since there was to be a conflict of interest between the mother and her children. Not being resident in Scotland he was ineligible for the office. Even in choosing curators no-one beyond the jurisdiction of the Court could be chosen except in very peculiar circumstances — *Fergusson* v. *Dormer,* January 25, 1870, 8 Macph. 426; Thomson Factors, 43; *Robertson,* December 3, 1846, 9 D. 210.

LORD PRESIDENT—The proposal made in this petition that a person who is out of the jurisdiction of this Court should be appointed as co-tutor with the petitioner is somewhat unusual. But the circumstances are unusual, and in dealing with such a case our duty is to have regard primarily to the benefit of the pupil. The Guardianship of Infants Act 1886 provides that in a not very different matter the wishes of the mother should be considered.

The statement made by the petitioner is that there are no relatives in Scotland suitable for the office, the only relative of the father in Scotland being a married woman resident in Huntly. Under these circumstances the petitioner suggests that her cousin, a banker in England, should be appointed as tutor. The position which this gentleman holds is evidently one of trust and responsibility, and it is reasonable to suppose that his advice would be valuable as a tutor. Further, it is desirable to have someone who will act harmoniously with the petitioner, who seems to think that her cousin would do so—and there is no reason to suppose that he would not. Under these circumstances it seems to me that the proposed appointment would be

the best in the interest of the children. Although such an appointment is unusual, the cases quoted by Mr Younger prove that it is not without precedent, the difficulty as to jurisdiction being got over by the person appointed lodging a bond prorogating the jurisdiction of the Court. It appears to me that if the gentleman named is prepared to do this, we should appoint him in the special circumstances of the case.

Lord Adam, Lord M'Laren, and Lord Kinnear concurred.

The Court pronounced this interlocutor:—

"Appoint John Barnes, residing at 278 Hoe Street, Walthamstow, manager of the London and Brazilian Bank, Limited, Walthamstow, to act as tutor to Patrick Wood Sim, Catherine Sim, and Edward William Boyd Sim, jointly with Mrs Catherine Jane Barnes or Sim the petitioner, and decern: the said John Barnes always granting a bond of prorogation in the usual form to the satisfaction of the Clerk of Court, before extract."

Counsel for the Petitioner — Younger. Agents—Waddell & M'Intosh, W.S.

Counsel for the Respondent—M'Lennan. Agents—Macpherson & Mackay, S.S.C.

Thursday, July 4.

FIRST DIVISION.

DOWNIE'S TRUSTEES.

Succession—Fee or Liferent—Gift Qualified—Successive Liferents—Entail Amendment (Scotland) Act 1868 (31 *and* 32 *Vict. cap.* 84), *sec.* 17.

A trust-disposition and settlement contained the following provision as to residue—"I direct my said trustees . . . to hold the residue of my estate . . . for behoof of any children I may have, with power to my trustees to advance such sums as may be necessary for their aliment and education until such children shall respectively reach twenty-one years of age, and upon such children respectively attaining twenty-one years of age my trustees shall pay to him or her the equal share accruing to him or her of the whole free proceeds of my estate, and that at such times and in such proportions as to my trustees shall seem fit, and that during all the respective lives of the said children." After providing that the children's shares should not be subject to the diligence of their creditors, and in the case of females should be exclusive of their husbands' *jus mariti*, the disposition proceeded—"Providing and declaring that my trustees shall hold my heritable and moveable estate in trust, and after the above provisions are fulfilled apply the proceeds thereof for behoof of the children of my children equally *per stirpes* during their lives." There was no express disposal of the fee except in the event of the truster dying without issue.

The truster was survived by two unmarried daughters, by one son who subsequently died intestate and unmarried aged 21 years, and by the son of a daughter who had predeceased the testator and also the date of the settlement. *Held*, on a general construction of the clause above quoted (1) that the gift to the truster's children was limited to an alimentary liferent; (2) that the gift to grandchildren was also limited to a liferent, the fee being undisposed of by the will; and (3) that on the death of each of the children the share liferented by him or her fell to be held by the trustees for behoof of the son of the daughter who had predeceased, and of any other grandchildren who might come into existence *per stirpes* in liferent, but subject as regards *nascituri* to such claim as might be competent to them under the provisions of the Entail Amendment (Scotland) Act 1868, section 17.

Question whether, if the daughters should marry and leave children, these children, as persons entitled to a liferent of moveable estate and born after the death of the granter, would be entitled on attaining majority to demand from the trustees an absolute conveyance of the share subject to their liferent, under the provision of section 17 of the Entail Amendment (Scotland) Act 1868.

Succession—Conditio si sine liberis.

Opinion (*per* Lord M'Laren) that where a liferent interest is given to children, with a provision that the liferent interest of each child who is instituted is to pass to his or her descendants, the children of a child who has predeceased the date of the will will not be entitled to a share.

John Downie, nurseryman in Edinburgh, died in 1892, leaving a trust-disposition and settlement, dated 28th December 1886, by which he appointed his wife and certain other parties (who accepted but resigned the trust) to be his trustees, and conveyed to them his whole heritable and moveable estate for the trust purposes therein mentioned.

After directing the trustees to allow the testator's wife the liferent use of certain houses, and to allow his daughters Jemima and Margaret Isabella the liferent use of a certain house and grounds, and after providing for certain legacies, the testator directed as follows—"And I direct my said trustees, after paying and providing for the foresaid expenses, debts, legacies, annuities, and others, to hold the residue of my estate, heritable and moveable, for behoof of any children I may have, with power to my trustees to advance such sums as may be necessary for their aliment and education until such children shall respectively reach twenty-one years of age. And upon such children respectively attaining twenty-one years of age my trustees shall pay to him