course to starboard. I could see his hull perfectly distinctly. When I saw him alter his course in that way I thought a collision was imminent;" and a little earlier in his evidence he says—"I observed him (the trawler) suddenly closing in his green light. At that time, as near as I can go, he was between a point and a-half and two points on our starboard bow. To my judgment the "Aranmore" would be a quarter of a mile or may be a little more from him at that time."

Further, for what it is worth, the entry in the log of the engineer of the "Aranmore" tells against that vessel, because it discloses an interval of two minutes between the order to stop the engines, 1·50 a.m., and the order at 1·52 to go full speed astern.

Now, if Black, the mate of the "Aranmore," not only saw the trawler's lights change from green to white, but also heard a blast from the trawler's whistle when the vessels were more than a quarter of a mile apart, he should have been in no doubt as to what the trawler intended to do, and if he had immediately reversed his engines and put his helm hard-a-port the collision would probably not have occurred. The trawler was struck only 30 feet from her stern, and as the "Aranmore" was going free and at a fair speed (while the trawler was encumbered with her trawl) she would have answered her helm quickly, and in the interval, short as it was, would have prevented collision. The trawler was not approaching stem on, she was coming round in a curve, and therefore there was all the longer time for the "Avanmore" to clear her.

From the evidence of the mate of the "Aranmore" it appears that he did not give the order to reverse followed by the order to put the helm hard-a-port until the vessels were within 200 yards of each other (as he puts it, between 2 and 3 lengths of the "Aranmore") by which time it was probably too late to avert the collision. But he knew or ought to have known at latest when the vessels were a quarter of a mile apart that the trawler was coming round and going to cross the "Aranmore's" bows, and that there was a risk of collision. Indeed, he says so—"From the moment I lost the green light my view was that he was coming round and that a collision would take place." And again—"When I saw him putting about I stopped the engines. I did so because I knew he was putting about, and he might be coming round, coming out towards me. When I got the red I immediately put her full speed astern. It was almost as clear as daylight." He was asked why he did not give the order to reverse when the trawler opened her white light. The explanation he gave was—"If he (the trawler) did stop there was no reason why I should alter;" and he says—"After I lost the trawler's green light there was an interval of time before I gave the order to reverse, but he was coming round so fast that it was done almost immediately. (Q) But you did not do it at the moment?—(A) No, not at the moment. It was in the expectation that there might be some change in his speed that I did not give the order at once."

Now, this is just where I think he was to blame. In my opinion the trawler's intended course was clearly defined when the first blast was given and the green light disappeared, and the mate of the "Aranmore" should have been in no doubt as to what the trawler was doing. He says that he only heard one blast, and that when the trawler was only 2 or 3 lengths (130 to 200 yards) from the "Aranmore"; but in my opinion it is proved that at least one blast was given when they were at a greater distance apart than a quarter of a mile.

Now, no doubt the time was short, but if it be the case that the mate of the "Aranmore" should have been in no doubt as to the course of the trawler, he could and should have been able to avoid collision.

For those reasons, though necessarily with considerable doubt, I am not prepared to concur in the proposed judgment.

The Court recalled the interlocutor reclaimed against and assoilzied the defenders from the conclusions of the action.

Counsel for the Pursuers and Respondents—Solicitor-General (Dickson, K.C.)—Spens. Agents—J. & J. Ross, W.S.

Counsel for the Defenders and Reclaimers—Salvesen, K.C.—Horne. Agents—Webster, Will, & Co., S.S.C.

Thursday, December 11.

SECOND DIVISION.

HUTCHISON *v.* HUTCHISON'S TRUSTEES.

Agent and Client—Expenses—Charging Order—Property Preserved—Law-Agents and Notaries Public (Scotland) Act 1891 (54 *and* 55 *Vict. cap.* 30), *sec.* 6.

The Law-Agents and Notaries Public (Scotland) Act 1891, sec. 6, enacts that where a law-agent has been employed to pursue or defend an action, the Court before whom such action has been heard may declare the law-agent entitled "to a charge upon and against, and a right to payment out of the property . . . recovered or preserved on behalf of his client by such law-agent in such action . . . for the taxed expenses of or in reference to such action."

An action was raised against a body of trustees for payment of an account alleged to be due by the trust estate. The trustees informed the beneficiaries that they were unable to resist the pursuer's claim, and that unless the beneficiaries sisted themselves as defenders they would raise an action of multiplepoinding. The beneficiaries sisted

themselves and lodged defences. The trustees also lodged defences, and both trustees and beneficiaries defended the action to the end. They were separately represented in the Sheriff Court, but not in the Court of Session. The defenders were successful. Thereafter the agents of the beneficiaries sought to have the expenses incurred to them charged upon the trust estate, and moved for an order in terms of section 6 of the Act of 1891, alleging that the amount of the sum sued for in the action had been preserved to the estate by them on behalf of their clients. *Held* that the case did not fall under the statute, and motion *refused.*

In an action in the Sheriff Court at Dumbarton at the instance of John Hutchison junior, plasterer and slater, 64 College Street, Dumbarton, against the trustees of his father the deceased John Hutchison senior, slater and plasterer, Dumbarton, for payment of an account for £166, 10s. 5d., alleged to be due by the trust estate, defences were lodged for the trustees and also for the beneficiaries, sisters of the pursuer, who were sisted as defenders and were separately represented. The defenders were successful, and were found entitled to expenses. An appeal by the pursuer to the Court of Session was dismissed, and he was found liable in the expenses of the defenders in the Court of Session.

The present question arose on a minute presented by William Ritchie junior, solicitor, Dumbarton, and Messrs Dove, Lockhart, & Smart, S.S.C., Edinburgh, the agents of the beneficiaries in the Sheriff Court and Court of Session respectively, in which the minuters craved the Court to declare that they were "entitled to a charge upon and against, and a right to payment out of the estate of the said John Hutchison senior for the expenses incurred to them of or in reference to the action" above mentioned, as the same might be taxed, and to ordain the trustees to make payment thereof, in terms of the Law-Agents and Notaries Public (Scotland) Act 1891 (54 and 55 Vict. cap. 30), sec. 6.

That section enacts as follows:—"In every case in which a law-agent shall be employed to pursue or defend any action or proceeding in any court, it shall be lawful for the court or judge before whom any such action or proceeding has been heard or shall be depending to declare such law-agent entitled to a charge upon and against, and a right to payment out of the property, of whatsoever nature, tenure, or kind the same may be, which shall have been recovered or preserved on behalf of his client by such law-agent in such action or proceeding, for the taxed expenses of or in reference to such action or proceeding, and it shall be lawful for such court or judge to make such order or orders for taxation of, and for raising and payment of such expenses out of the said property, as to such court or judge shall appear just and proper." . . .

When the pursuer's action was served upon the trustees they informed the beneficiaries that they could not do other than admit the pursuer's averments, and they requested the beneficiaries to take steps to sist themselves as defenders in the action to state any objections they might have to the account sued on. This request was made on account of circumstances owing to which the trustees did not think that all parties would be satisfied with the defence as conducted by them.

The beneficiaries were unwilling to sist themselves as defenders, but on being informed that the trustees were to raise an action of multiplepoinding if they did not do so they applied to have themselves sisted, and were sisted and lodged defences. The trustees also lodged defences, and both the trustees and the beneficiaries continued to defend the action till the end. They were represented by separate agents in the Sheriff Court, but they were not separately represented in the Court of Session.

In the present minute the agents of the beneficiaries averred that these defenders had preserved the trust estate to the extent of the sum sued for and the expenses which the pursuer would have recovered out of the estate if he had been successful.

Argued for the agents of the beneficiaries —The amount of the account sued on had been "preserved" to the trust estate on behalf of the beneficiaries, who were the clients of the minuters in the sense of the section of the statute relied on, and the beneficiaries having been brought into the action as defenders by the trustees, who otherwise would not have defended, the minuters were entitled to a favourable exercise of the discretion of the Court—*Carruthers* v. *Carruthers' Trustees,* January 7, 1897, 24 R. 363, 34 S.L.R. 254.

Counsel for the trustees argued that the prayer of the minute should be refused, and stated that the agents of the trustees had at one time acted for the pursuer of the action, and that the beneficiaries were asked to sist themselves or allow the trustees to raise an action of multiplepoinding for their own exoneration, because one of the beneficiaries had written to the agents of the trustees expressing a fear that they were not in earnest in their defence.

LORD JUSTICE-CLERK—I am unable to say that this case falls within the statute. The facts are these—An action was raised against this trust, and the trustees intimated to the beneficiaries that they were unable to state any pleas in defence, but that if the beneficiaries would sist themselves as defenders they would go on to defend, because the beneficiaries wished them to do so. This was done, and the contentions of these parties turned out to be successful. This does not seem to me to be a case in which property can be said to have been "preserved on behalf of his client" by the agents for whom this motion is made.

LORD YOUNG concurred.

LORD TRAYNER — I am of the same opinion. I am not satisfied that the clause

of the Act on which this application is based is applicable to the case before us.

The case before us is this—Trustees were sued for what was alleged to be a trust debt, and after lodging defences intimated to the beneficiaries that they would not maintain their defences unless the beneficiaries desired this to be done, but would protect themselves by raising a multiplepoinding. The beneficiaries thereupon asked to be sisted, and were sisted as defenders. They maintained the defence originally stated by the trustees successfully. They say that in doing so they have "preserved" the estate. They have no doubt been successful in preventing the pursuer obtaining decree for his claim, but that is nothing more than saying that for their own benefit they have successfully resisted a claim which was unfounded. In these circumstances I do not think any estate has been "preserved" to the trust by the beneficiaries. The estate, and consequently the beneficiaries, have not been made liable for the pursuer's claim—that is all.

LORD MONCREIFF — I was not present when this case was decided, and I am not sure that I quite apprehend the facts, but as I understand them the beneficiaries' agents are not entitled to the benefits of the statute.

If a claim is made against trustees which if successful would take away part of the estate which they hold, but which they succeed in defeating, and if the law-agent who has been employed by them claims a charge upon that part of the estate which has been "preserved on behalf of his clients" by him, I think that would be a case falling under the 6th section of the statute.

In the present case, as far as I can see from the papers, the trustees defended an action, and continued to do so separately to the end. They had separate pleas, all combating the pursuer's claim, and they were successful. But the beneficiaries do not seem to have had confidence in the trustees' defence, and chose to appear to see the action fought out. They entered separate appearance and lodged separate defences with separate pleas. I think the estate which they were defending could have been preserved by a single defence by the trustees, and that a double charge should not be sanctioned.

The Court refused the prayer of the minute.

Counsel for the Minuters — Hunter. Agents—Dove, Lockhart, & Smart, S.S.C.

Counsel for the Trustees—A. S. D. Thomson. Agents—Party.

Saturday, December 13.

FIRST DIVISION.

STEEL'S TRUSTEES *v.* STEEDMAN'S EXECUTOR.

Succession—Vesting—Share held for Mother in Alimentary Liferent and Children in Fee—Vesting in Children at Birth—Destination-over in event of Mother "dying without issue."

A testator directed his trustees to hold the residue of his estate for behoof of the whole of his children equally, share and share alike, and to retain the daughters' shares invested for their liferent alimentary use only, and for their children equally *per stirpes* in fee. In a subsequent clause he further directed—"And should any of my daughters die without issue, such deceaser's share shall be paid and held respectively for the behoof of my surviving children."

One of the testator's daughters died leaving issue, but predeceased by one daughter.

Held that under the will a share of the share liferented by the testator's daughter vested in each of her children at its birth, and that such a share had vested in the predeceased daughter, the words "dying without issue" being equivalent to "dying without having had issue."

Succession—Heritable or Moveable—Conversion.

A testator whose estate consisted of moveable property to the gross value of £3352, and heritable property which afterwards sold for £22,590, directed his trustees to hold the residue of his estate for behoof of the whole of his children equally, share and share alike, and to pay the sons their shares on their successively attaining twenty-five, and to retain the daughters' shares invested for their liferent alimentary use only, and for their children equally *per stirpes* in fee. The deed contained a power but no direction to sell the heritage.

Held that the scheme of the settlement necessitated the sale of the heritage, and consequently that the shares of residue were moveable.

Playfair's Trustees v. *Playfair*, June 1, 1894, 21 R. 836, 31 S.L.R. 671, *followed.*

By trust-disposition and settlement dated 5th April 1867, with two codicils dated 11th March 1868 and 31st May 1869, the deceased Robert Steel, of Browncastle and Burnhouse, conveyed his whole estate, heritable and moveable, to trustees. After making provision for debts and expenses, a liferent provision for his widow, and certain small annuities and bequests, he directed his trustees—"(Fifthly) I appoint my trustees after my death to pay to or disburse on account of my children equally, the interest of the residue of my estate for their education and after maintenance, or should my