assoilzied by the Sheriff, and I think that we should answer the third question, which is enough for the disposal of this case, in the affirmative.

I am not disposed, and I do not think it necessary, to answer the second question, which asks whether a drift or hang-net is a fixed engine within the meaning of the Salmon Fishery Act 1861. It is clear that the proper respondents in such a case are the owners of the engine complained of, but the owners are no parties to this case, the respondents being, as the Sheriff says, merely their servants. I therefore think that we should find it unnecessary to answer the second question, the more especially as it is asked in a case the libel in which in my view is quite irrelevant.

As regards the first question, I do not understand what particular question of law it is intended to raise, and I think we should decline to answer it also.

LORD M'LAREN and LORD KINNEAR concurred.

The Court answered the third question of law in the affirmative, and found it unnecessary to answer either of the remaining questions.

Counsel for the Complainer and Appellant—H. Johnston, K.C.—Chree. Agents—Bonar, Hunter, & Johnstone, W.S.

Counsel for the Respondents—Macphail. Agents—Lindsay, Howe, & Co., W.S.

COURT OF SESSION.

Tuesday, February 21.

FIRST DIVISION.

PRINGLE, PETITIONER.

Process — Proof — Depositions to Lie in retentis.— Proof and Oath de calumnia on Commission.

A naval artificer-engineer was the pursuer in an action of divorce. He presented a petition stating that the summons in the action of divorce had been signeted and served edictally on the defender, but could not be called until after the date when the ship on which he and another material witness were serving was under orders to proceed to sea. He therefore craved the Court to appoint a commissioner to take the evidence of himself and the other material witness, the depositions to lie *in retentis*, and also to take his oath *de calumnia*. The Court *granted* the prayer of the petition, reserving to the defender all objections competent to her to the competency of the petition.

This was a petition presented by Peter Pringle, artificer-engineer on H.M.S. 'Berwick,' then stationed at Chatham. The petition set forth that the petitioner was a domiciled Scotsman and had raised in the Court of Session an action of divorce against his wife Mrs Amelia Annie Russell or Pringle, then or lately residing at 53 Albany Road, New Brompton, and that the summons was signeted and executed edictally against the defender on 20th February, but could not be called in Court before 7th March. It was further stated that the petitioner and Alfred Baynton, gunner on H.M.S. "Berwick," were material witnesses in the cause, whose evidence was likely to be lost owing to the ship being under orders to proceed to sea with the Second Cruiser Squadron on February 28th, prior to the expiry of the *inducice*, and that it was also necessary for the petitioner to emit the oath *de calumnia*. The defender, it was stated, had no known agent in Scotland. The petitioner therefore prayed the Court to appoint the petition to be intimated to the defender in the action, to grant warrant for citing the said Alfred Baynton as a witness, and to appoint a commissioner to take the evidence of the petitioner and Alfred Baynton, and also to take the petitioner's oath *de calumnia* and to dispense with interrogatories, the depositions to lie *in retentis*—*Clouston* v. *Morris*, February 15, 1848, 20 Scot. Jur. 228, was referred to at the bar.

The Court granted the prayer of the petition, and pronounced this interlocutor—

". . . Grant diligence at the instance of the petitioner for citing Alfred Baynton, gunner, H.M.S. 'Berwick,' and the other necessary witnesses for the petitioner in the action mentioned in the petition, whose evidence owing to their being about to leave the country is in danger of being lost, and grant commission to James Adam, Esq., Advocate, to take the oaths and examinations of the said Alfred Baynton and the petitioners, and to secure any exhibits and productions made by them in regard to the matters at issue between the parties to the said action, at such time and place as the said commissioner may appoint, due notice thereof being given to the defender or her known agent, and also to take the oath of the petitioner *de calumnia* in common form: Dispense with the adjustment of interrogatories, and appoint the depositions of the witnesses and productions, if any, made by them to be sealed up by the commissioner and immediately thereafter transmitted to the Clerk of the process, there to lie *in retentis* subject to the future orders of the Court or the Lord Ordinary, to be reported *quam primum:* Reserving to the defender all objection competent to her to the competency of the petition."

Counsel for the Petitioner—Constable. Agent—Thomas Liddle, S.S.C.

Tuesday, February 21.

FIRST DIVISION.

MICHIE'S EXECUTORS *v.* MICHIE AND OTHERS.

Succession—Testament—Construction—Bequest to Parent "for Behoof of His Family."

Held that a bequest in a holograph will to A "for behoof of his family" constituted, although the parent was described in a subsequent portion of the will as a "beneficiary," a trust in him for his children, who, being all of full age, were entitled to immediate payment.

Succession — Testament — Construction — "Necessary Expenses Connected with this Trust"—Incidence of the Expenses—Estate and Legacy Duty.

A testator by holograph will, after bequeathing certain shares of his estate to beneficiaries, provided in the *sixth* clause that the remaining share of his estate should be devoted to certain purposes, and that the residue of this remaining share should, "after discharging the necessary expenses connected with this trust," be apportioned to certain beneficiaries. *Held* (1) that the residue must bear the expenses of administering the whole trust estate, and not merely the expense of carrying out the directions contained in the *sixth* clause; and (2) that "necessary expenses" included only the legal and ordinary expenses of administering the will, and did not include the estate duty exigible from the testator's estate or legacy duty.

Succession—Executors—Bequest to Executors — Right of Assumed Executor to Share in Bequest to Executors.

A testator appointed as his executors A, B, and C, "or their representatives, namely, the successors of each, as representing their respective families," and directed that they should divide certain books, &c., amongst them. A predeceased the testator, and B survived the testator but declined to act as an executor. *Held* that A's eldest son, who acted as an executor, was entitled to share in the bequest, but that B's son, who had been assumed an executor, was not so entitled.

The Reverend John Grant Michie, minister of the *quoad sacra* parish of Dinnet in Aberdeenshire, died on the 21st January 1904, leaving a holograph last will and testament dated 11th April 1901, and holograph codicil thereto dated 14th March 1903, both of which were registered in the Sheriff Court books of the County of Aberdeen on 30th January 1904. His personal estate amounted to £7730, 15s. 1d., and his heritable estate, after deducting burdens, was valued at £350.

The will directed as follows:—"After the settlement of my pecuniary affairs—debts due to and by me—the residue of my property, personal and heritable, I leave to be divided into five equal shares (exclusive, however, of my books, pictures, works of art, and specimens of all sorts which I propose otherwise to dispose of).

"1st, I leave to my brother William for behoof of his family one share.

"2nd, I leave to my brother Charles for behoof of his family one share.

"3rd, I leave to my sister Jane for behoof of her family one share.

"4th, I leave to my sister Margaret one-half share (½ share). The reason why I bequeath her only half a share is that she has no dependants. . . . Should she predecease me I wish her portion to be equally divided among the three first-mentioned beneficiaries.

"5th, I leave to the surviving children of my late sister Anne Michie or Smith one-fourth of a share. . . . The reason why I thus dispose of this fourth of a share is that I believe these children are already better provided for than my other nephews and nieces. My brother James, whom I have maintained since his return from Australia, having means of his own and no dependants, I have not included as a beneficiary.

"6th, The remaining one and one-fourth share I wish to be devoted to the following purposes:"—(1st) the payment of a small legacy; (2nd) the purchase of a tombstone; "(3rd) my books, manuscripts . . . I leave to be disposed of by my executors as shall seem to them best, with this request, . . . and as there are several rare books of history, science, and reference, I desire that these be parted among my executors, as they shall agree among themselves. Any manuscripts of historical interest or collections of printed matter I wish to be disposed of in the same manner. The letters I have preserved I wish to be locked up in a box and kept for ten years where my executors may think most suitable, and thereafter to be inspected, and such as are of any value as illustrating local or general history to be selected and preserved for that or any similar purpose. The selection to be made by my executors with the assistance of any person or persons they may think well qualified to judge of their value. The residue of the above-mentioned one and one-fourth share I desire to be apportioned to the following objects:—(First) After discharging the necessary expenses connected with this trust, *to the University of Aberdeen in aid of the endowment of a chair of geology*, and (Second) to defray the expense in connection with the publication of any manuscripts I may leave, should such be deemed by my executors worthy of publication. The apportionment of the above-mentioned residue of one and one-fourth share to be entirely at the discretion of my executors for said purposes. I appoint the following to be my executors, viz., my brothers William and Charles and my sister Jane, or their representatives, namely, the successor of each as representing their respective families. Also I appoint as executors to be conjoined with them" two persons named, and "both of whom I wish