the opinion of the majority of the two Divisions. It is that when an interlocutor declares that expenses are to be expenses in the cause, the meaning of that is that the expenses are to go, as a matter of right, to the party who in the cause is eventually successful, and who gets a general finding of expenses in his favour at the end.

I have personally no doubt that in the profession that was always understood to be the meaning of it, and I think that it is not only so but that this meaning can easily be supported upon considerations to which I think there is no good reply. The meaning of the fifth article of the Regulations, or rather the origin of the fifth article of the Regulations, is to avoid cross findings of expenses. Where one party is successful and where at the end of a case he gets a general finding, there may be portions of the case in which he has been unsuccessful, and, accordingly, if it had not been for the fifth article of the Regulations the only way to have dealt with that would have been, instead of giving a general finding, to split the case into sections, and to dispose of the expenses of each section separately, either in favour of one party or the other, or in favour of one party in one section and in another section to give no expenses to either the one or the other. In order to avoid the eternal necessity of that, the fifth article of the Regulations was enacted, and it was said that when there was at the end of the case a general finding of expenses, yet, nevertheless, the Auditor in looking into the case might, if he found a branch of it in which the eventually successful party had been unsuccessful, not give him as against his opponents the expenses of that branch.

Now the whole hypothesis of that is that the Court has not taken up bit by bit sections of the expenses. But when you have a reclaiming note which gives rise to what is an interlocutory judgment, and when at the end of the discussion of that reclaiming note there is a motion made there and then for the expenses of the discussion which has just ended, the Court is necessarily cutting the case into sections, and the Court before whom that reclaiming note has been heard is by that time thoroughly seised with all the facts which would go to the giving of expenses to either the one party or the other. And it can do so. It can give expenses to the person who has (what I may call) immediately won the reclaiming note, or it can find, if both parties have asked for more than they have got, that neither party shall have expenses.

But then there is another class of circumstances with which it has to deal, which is this—A reclaiming note may be seemingly to the advantage of one party at the moment, because its result may be that the interlocutor which was brought up by it may be altered, and yet, after all, the whole matter may be such a necessary step in the totality of the process that the Court may feel it would be unjust to give separate expenses on the reclaiming note, and that it would be better that the fate of these expenses should depend upon ultimate success. That is the occasion on which it is said that the expenses shall be expenses in the cause. If that is done, the question of expenses is really absolutely decided upon that section of the case, and therefore there is no application for the article allowing the Auditor to go back into it, as there is where the Court has not dealt with the case in sections but has dealt with it in the whole.

Accordingly we make this declaration, and it will be understood that in future that is the meaning of an interlocutor which declares that the expenses shall be expenses in the cause.

The Court pronounced this interlocutor—

"Adhere to said interlocutor: Refuse the reclaiming note; and decern: Find the defenders entitled to additional expenses since said 13th January 1910; and remit," &c.

Counsel for Pursuers (Reclaimers) — Solicitor-General (Hunter, K.C.) — Macmillan. Agent—John C. Brodie & Sons, W.S.

Counsel for Defenders (Respondents) — Dean of Faculty (Scott Dickson, K.C.)— Hon. W. Watson. Agent—James Ayton, S.S.C.

Friday, December 23.

FIRST DIVISION.

WILLIAMSON AND OTHERS (M'GROUTHER'S TRUSTEES), PETITIONERS.

Trust—Charitable Trust—Petition by Private Trustees for Authority to Transfer Trust to ex officio Trustees.

A testatrix by her trust-disposition and settlement conveyed her whole estate to certain individuals as trustees, and, *inter alia*, directed them "to hold and apply the sum of £1000 for providing an endowment for two bursaries for Highland students attending the Free Church College, Glasgow, and also to hold and apply the sum of £2000 and the interest thereof for the purpose of increasing the incomes of the poorer ministers of the Free Church of Scotland in the Highland districts, which sum shall be applied in such manner and in such sums as to my trustees shall seem proper." The trustees presented a petition to the Court for authority to transfer the two said trust funds of £1000 and £2000 to the Financial Board of the said College and the General Trustees of the said Church respectively, both *ex officiis*.

The Court, after a report, indicated that the permissibility of the proposed transference depended on whether the new trustees proposed were committees of a "constitutional" and "permanent" character, whose existence was not

liable to be terminated by a mere resolution, and *remitted* back to the reporter to further adjust the schemes, and on his supplementary report, in which in the first scheme the General Trustees of the United Free Church were substituted as proposed trustees in place of the Financial Board of the College, *approved* of the schemes under which in each case the General Trustees of the United Free Church became the trustees.

Andrew Williamson and another, the trustees acting under the testamentary writings of Miss Jane M'Grouther, Glasgow, who died on 26th November 1903, presented a petition to the Court for approval of two schemes contained in appendices thereto for the administration of two bequests by her of £1000 and £2000.

The first articles of the respective schemes (Appendix A and Appendix B) proposed by the petitioners were as follows:—Appendix A—"1. The funds applicable to the said bequest of £1000, with augmentation as aforesaid, shall be paid over by the petitioners to the Financial Board of the Theological College in Glasgow of the United Free Church of Scotland, to be held by them in trust for the purpose of providing out of the income thereof two bursaries to be called 'The M'Grouther Bursaries.'" Appendix B — "1. The funds applicable to the said bequest of £2000, with augmentation as aforesaid, shall be paid over by petitioners to the General Trustees of the United Free Church of Scotland, who shall pay over the whole free income arising therefrom to the convener, vice-convener, and secretary of the Highlands and Islands Committee of the General Assembly of the United Free Church of Scotland, and the convener and vice-convener of the Finance Committee of that body, and their successors in office, who shall have charge of the administration thereof, and are hereinafter called the managers."

The petitioners made the following averments, *inter alia*—"2. By her said trust-disposition and deed of settlement and deed of appointment the testatrix conveyed to her trustees her whole estate, heritable and moveable, including certain funds over which she had a power of appointment under the last will and testament of her deceased brother James M'Grouther, for the trust purposes therein specified, viz.: (1) for payment of her just and lawful debts, sickbed and funeral charges, and the expenses of the trust; and (2) for payment of a series of legacies therein set forth. The testatrix provided that in case the residue of her estate and of the estate over which she had power of appointment should not realise a clear sum sufficient to meet the legacies bequeathed by her and the duties thereon in full, then the legacies should all suffer a proportional deduction in proportion to the amount of the deficiency, while if the said residue should realise a sum exceeding in amount the sum sufficient to meet the same and the duties thereon, then the legacies should all be increased in proportion to the amount by which the said residue should exceed the amount of the said legacies and duties. In point of fact the residue has, on realisation, proved more than sufficient to pay the whole pecuniary legacies, and they will accordingly all fall to be proportionally increased. The precise amount available for augmenting the legacies cannot meantime be ascertained until all the expenses in connection with the trust have been finally settled.

"3. Among the legacies bequeathed by the testatrix as aforesaid were a number in favour of various charitable, religious, and other schemes. *Inter alia*, she directed her trustees 'to hold and apply the sum of £1000 for the purpose of providing an endowment for two bursaries for Highland students attending the Free Church College, Glasgow, and also to hold and apply the sum of £2000 and the interest thereof for the purpose of increasing the incomes of the poorer ministers of the Free Church of Scotland in the Highland districts, which sum shall be applied in such manner and in such sums as to my said trustees shall seem proper.'

"4. The said two bequests of £1000 and £2000 fell under section 4 (3) of the Churches (Scotland) Act 1905, and were, with others, allocated to the United Free Church of Scotland by Order No. 145 of the Commissioners appointed under the said statute. The said order, *inter alia*, provided and declared that the legacies and bequests thereby allocated to the United Free Church of Scotland should be held in accordance with its constitution and for the same or similar purposes in connection with that Church as the purposes to which they were destined in connection with the Free Church of Scotland.

"5. The whole legacies bequeathed by the testatrix other than the said two bequests of £1000 and £2000 fall to be paid over at once, and apart from the said two bequests, which the petitioners are instructed as above mentioned to hold and apply for the purposes directed by the testatrix, the petitioners are now in a position finally to wind up the trust.

"6. The petitioners are not in a position to administer the said bequest of £1000 themselves, and would require to consult with the authorities of the Glasgow United Free Church College, and be wholly guided by them. They are therefore of opinion that the fulfilment of the intentions of the testatrix with regard to the said bequest would be most effectively, economically, and permanently secured by their transferring the said sum of £1000, with augmentation as aforesaid, to the Financial Board of the Theological College in Glasgow of the United Free Church of Scotland, constituted as hereinafter mentioned, to be held by them in trust, and the annual interest thereof to be applied in providing two bursaries to be called 'The M'Grouther Bursaries' for Highland students attending the said College, in conformity with the scheme set out in Appendix A hereto.

"7. The funds and property of the said

Theological College in Glasgow are at present held by . . . [*Here followed an enumeration of names*] . . ., the members constituting, and as such trustees for the purposes of, the said Financial Board of the said College and their successors in office to be from time to time appointed by the General Assembly of the United Free Church of Scotland (any three of the said trustees, the number specified by the said General Assembly being always a quorum), conform to Order No. 1219 of the Commissioners under the said statute. The said funds and property are held in trust by the said Financial Board as directed by the said Order, No. 1219, in manner therein set forth, and include various sums held in trust for bursary purposes similar to those of the present bequest. The transference of the said bequest of £1000 by the petitioners to the said permanent Financial Board will ensure the best application thereof in all time coming for the purposes contemplated by the testatrix, and will obviate the expense attendant upon a separate administration thereof. The said Financial Board have intimated their willingness to accept and hold the said bequest in trust in conformity with the scheme to be settled under the present application.

"8. As regards the said bequest of £2000 for increasing the incomes of the poorer ministers of the Free Church of Scotland in the Highland districts, the petitioners are not connected with the United Free Church, although the testatrix was, and they could not administer this bequest without in all cases being entirely dependent on the advice and assistance of the said Church, or some one or more of its committees. They have ascertained that there exists a committee of the General Assembly of the United Free Church of Scotland known as the Highlands and Islands Committee, which is, *inter alia*, concerned with the augmenting of the incomes of the ministers of the said Church in the Highlands, and administers funds for that purpose. The petitioners are satisfied that they would effectually secure the fulfilment of the purposes of the said bequest of £2000 by transferring the same, with augmentation aforesaid, to the General Trustees of the said Church, who are a permanent body administering the property and funds of the said Church, the annual income thereof to be paid over by said General Trustees to the Convener, Vice-Convener, and Secretary of the said Highlands and Islands Committee, and the Convener and Vice-Convener of the Finance Committee of the General Assembly of the said Church and their successors in office, and to be by them applied for behoof of ministers and congregations of the said Church in the Highlands and Islands of Scotland, in conformity with the scheme set out in Appendix B hereto. The petitioners are of opinion that in this way it will be secured that the said bequest will be applied for the purposes designated by the testatrix, by persons having knowledge, which the petitioners do not themselves possess, of the special necessities of the ministers of the said Church in the Highlands, and of the methods in which the income of the funds may be most judiciously and beneficially expended on the objects of the testatrix's bounty. Permanence and uniformity of administration will also be ensured, and the expense of a separate trust will be avoided. The said General Trustees have intimated their willingness to accept and hold the said bequest in trust, in conformity with the scheme to be settled under the present application.

"9. In these circumstances the petitioners make the present application for authority to make over the funds in their hands, representing the said two bequests, to the Financial Board and the General Trustees above mentioned respectively in trust for the purposes specified in the schemes respectively set forth in Appendix A and Appendix B hereto, or with such modifications (if any) thereon as may be thought proper."

On 12th July 1910 the Court remitted to J. H. Millar, Esq., Advocate, to inquire as to the facts and circumstances set forth in the petition, and to report.

On 16th July 1910 Mr Millar presented his report, which, *inter alia*, stated—"It will thus be seen that the petitioners' application is twofold in regard to each bequest. In the first place, they seek the approval of your Lordships to a scheme regulating the administration of the funds dedicated respectively to (1) students' bursaries, and (2) poor Highland ministers; and in the second place, they desire your Lordships' authority for the transference by them to certain official bodies connected with the United Free Church of the trust funds and of the entire administration of the trust. . . . The only other material fact appears to be that apart from these two legacies of £1000 and £2000 'the petitioners are now in a position finally to wind up the trust.' The petitioners, in short, are anxious to be relieved *in toto* from their duties.

"As regards the practical mode of fulfilling the testatrix's intention, to which the schemes A and B give expression, the reporter has no criticism to offer. The schemes appear to him to have been carefully and judiciously framed, and he would respectfully recommend your Lordships to sanction them, subject to such modifications as may be necessitated by the view which your Lordships may see fit to take upon the second branch of the application.

"That second branch, which involves the devolution by the trustees upon certain official bodies connected with the United Free Church of the duties entrusted to them by the testatrix, appears to the reporter to stand in a very different position. The reporter has grave doubts whether your Lordships will be prepared to accede to this proposal. No failure of the trust purposes is here suggested. The circumstance that the trustees may have to make inquiries and to consult with other persons in the course of the trust administration does not *per se*, the reporter

apprehends, entitle them to divest themselves of their functions and to attempt to transfer those functions to other persons who are strangers to the trust. In this connection the reporter would respectfully refer to the case of *M'Lean* v. *The School Board of Alloa*, November 4, 1898, 1 F. 48, 36 S.L.R. 46. There the bequest had been vested by a testator in the Kirk-Session of the First United Presbyterian Church at Alloa. The trust purposes had failed, and the Kirk-Session, in addition to tabling certain proposals for the application of the trust funds, craved the authority of the Court to transfer the endowment and its administration to the School Board. This part of their application the Court refused. It is true that the petitioners in that case were a body of *ex officio* trustees. But the ground of judgment stated by Lord President Robertson seems no less applicable to a case where the trustees are selected and nominated as individuals by the truster." [*The reporter here quoted from* 1 F. *pp.* 50 *and* 51.]

"It may indeed be contended that under the proposed schemes for the carrying out of these trust purposes the whole work of administration will be vested in bodies other than the petitioners, and that if the view indicated by the reporter be given effect to, the sole duty of the trustees would be to hold the capital of the funds, and to pay over the income, in the one case to bursars selected in accordance with the rules of the United Free Church College, in the other case to the Convener, Vice-Convener, and Secretary of the Highlands and Islands Committee and the Convener and Vice-Convener of the Finance Committee of the United Free Church, to be distributed by them in terms of Scheme B. In other words, it may be said that the trustees would become merely the channels by which Miss M'Grouther's bounty would be conducted to beneficiaries chosen by other people.

"In answer to this contention the reporter would point out, in the first place, that if the mode of applying the income of the trust suggested by the trustees is the most satisfactory and efficient method of giving effect to Miss M'Grouther's intentions, there appears to be nothing in the terms of the trust deed to forbid it. In the second place, he would point out that it will still be the duty of the petitioners to keep a vigilant eye upon and take an intelligent interest in the application of the income, and that if circumstances ever arise and are brought to their notice inferring that full effect is not being given to the wishes of the testatrix, they will be not merely entitled but bound to come to the Court with proposals for an amended scheme.

"For these reasons the reporter ventures to suggest that your Lordship should decline to grant the authority now sought to transfer these bequests and their administration to bodies which, however well qualified they may be to take upon themselves such a charge, are not the persons to whom the testatrix confided this important trust. On the other hand, the reporter sees no reason why your Lordships should hesitate to sanction *quoad ultra* the schemes which the petitioners now submit for approval in the exercise of your Lordships' *nobile officium* and under section 16 of the Trusts (Scotland) Act of 1867 (30 and 31 Vict. cap. 97).

"Should your Lordships approve of the reporter's recommendation, your Lordships may be pleased to remit back to the reporter to adjust the schemes in conformity with your Lordships' opinion as the schemes for the administration of the trust."

On 15th October 1910 counsel was heard in Single Bills on the petition and report, and the following cases were cited—*M'Lean*, November 4, 1898, 1 F. 48, 36 S.L.R. 46; *Sutherland*, February 3, 1903, 5 F. 424, 40 S.L.R. 345 (*sub nomine Trustees of Gateside School*); *Murray and Another* (*Gill's Executrices*), *Petitioners*, December 1, 1891, 29 S.L.R. 173; *Earl of Rosebery and Others*, July 19, 1892, 29 S.L.R. 865.

At advising, on 10th November 1910—

LORD JOHNSTON—The testator by her settlement constituted two men of business in Glasgow, one an accountant and the other a writer, her trustees, and while the rest of her testamentary directions admit of immediate effect being given to them, so that *quoad* the generality of the estate the trust admits of being wound up, two of the bequests are of a permanent character, involving not merely a continuing but, humanly speaking, a permanent trust. These two purposes are both in favour of the Free Church, now, by allocation of the statutory Commissioners, of the United Free Church. The trustees are, first, to hold a sum of £1000 to provide two bursaries for Highland students attending the United Free Church College, Glasgow, and secondly, to hold a further sum of £2000 and apply the interest for improving the incomes of the poorer ministers of that Church in the Highland districts.

The trustees are not themselves members of the United Free Church. Even if they were, they could not effectually fulfil the trust imposed on them except under the guidance and truly under the responsibility of the authorities or officials of the United Free Church. They feel that, while they might be trustees of the capital, *quoad ultra* they would be trustees only in name, performing their trust functions by delegation, and they ask authority to transfer the trust, not only of the beneficial purposes but of the capital, to certain official bodies within the United Free Church, to be administered by them under schemes to be approved by the Court. Shortly put, they seek to avoid circumlocution and expense in the administration of these comparatively small bequests, and themselves to be relieved of the remainder of a trust which they cannot execute personally. It appears to me that this is common sense, and I do not see why the course should not be adopted, subject to certain matters of detail.

But it is said that to approve the pro-

posal would be contrary to the principles on which the Court proceeded in the *Alloa* case—*M'Lean*, 1898, 1 F. 48. I think that the cases bear to be distinguished. Here the trustees are private individuals; there they were a quasi-public body with perpetual succession so far as the constitution of the United Presbyterian Church could provide it, viz., the minister and kirk-session of the United Presbyterian Church in Alloa. The trust was of an educational endowment, and admittedly its object had failed. The proposal was to transfer the endowment to a public body, viz., the School Board of the parish, to be administered on a scheme to be approved. Now the School Board was in no way connected with the United Presbyterian Church, and might not have even a single member of that persuasion on it.

All considerations bearing upon the question at issue are thus just reversed in the present case, and, as it seems to me, they justify my statement that the cases bear to be distinguished. When the learned Lord President in the *Alloa* case describes such a step as is here proposed as alien to our practice, I humbly think that his Lordship's words must be read *secundum subjectam materiem*. He was speaking of a body of *ex officio* trustees, not of a number of individuals; and he says—"By selecting the minister and session of a dissenting church as *ex officiis* his trustees, the testator denotes his will that a denominational body shall administer his bounty." And he adds, by the ample power of administration conferred, the testator "shows that, relying on sympathetic trustees, he devolves on them from time to time to devise the best means of doing for him what he was not there to do himself." Now while I do not mean to suggest the slightest doubt as to the soundness of the conclusion arrived at by the Court in the *Alloa* case, or of the grounds explained by the Lord President, I think that these grounds, the gist of which was expressed in what I have quoted, are inapplicable to the present case. It is a necessary implication from the object the testator here had in view, that sooner or later the trust which he created must be superseded by something permanent. Why should not practical considerations have effect now, as well as a few years hence? In the *Alloa* case the trustees, though they might individually decline to act, could not resign, because the trust was to them and to their successors in office. Here the trustees may resign to-morrow or they may die, and the hand of the Court be forced either by their action or by Providence. It is not to be supposed that in such a case private individuals would be selected or a judicial factor appointed, or that anything else would be done than what is here proposed. If so, I cannot think that the considerations which properly weighed with the Court in the *Alloa* case are any obstacle to the Court taking a course now, recommended as it is by every practical reason, which they could and I think would take then.

But while I am generally for granting the application, there are details on which I am not satisfied. I think that the Court requires assurance that the bodies to hold and administer these funds are constitutional so far as the United Free Church is concerned, and not merely, so to speak, Committees whose existence may be terminated by a resolution. For instance, the General Trustees of the Church are probably of the former class. So long as the Church continues to exist they must continue. When the Church ceases to exist the object of the bequest itself fails. But the Financial Board of the College comes doubtless under the latter category, and may be ended at any time. While a transfer of the trust to the former body would, I think, be legitimate, one to the latter could not, in my opinion, be sanctioned.

Further, I think that in carrying out the transfer the very trusts of the settlement must be declared *in gremio* of the scheme to be adopted, and that we must through the reporter have an assurance that the body or bodies proposed as trustees will accept the trust.

LORD KINNEAR—I entirely agree with Lord Johnston's opinion.

LORD SALVESEN — I am of the same opinion.

LORD PRESIDENT — I am of the same opinion. I think that we may do what is asked subject to two things—first of all, that the body we select within the United Free Church is a body of a permanent character, and not one that may be changed by mere resolution; and secondly, that the terms of the trust are embodied in the transfer, so that the body to which the transfer is made may be affected by the trust as the trustees were. Consequently what I propose to do is, not in the meantime to write upon the petition, but to remit the matter to the reporter, and explain to him the way in which it will be necessary for him to amend the schemes.

The Court pronounced this interlocutor—"The Lords having considered the petition, along with the report by Mr J. H. Millar, and heard counsel for the petitioners, remit back to the reporter to further adjust the schemes."

On 22nd December Mr Millar reported—"In obedience to the foregoing interlocutor, the reporter has considered two fresh draft schemes submitted to him on behalf of the petitioners. *Quoad* the trust purposes, their terms are practically identical with those of the schemes appended to the petition, and they appear to the reporter to be sufficiently clear and explicit to enable the administration of the trust to be carried on in due conformity with the intentions of the testatrix. With regard, however, to the bodies which it is proposed should hold the trust funds, an important alteration has been made. In the case of the legacy of £1000 for bursaries, the General Trustees of the United Free Church have been sub-

stituted for the Financial Board of the United Free Church College in Glasgow.

"The reporter begs respectfully to report that this alteration appears to meet the principal point adverted to in the opinions pronounced by your Lordships when remitting back to the reporter. He has had exhibited to him certified extracts of the Acts of Assembly of the United Free Church of 31st October 1900 and of 30th May 1902; and these have satisfied him that the General Trustees of the United Free Church are 'a constitutional' and 'permanent' body in the sense in which these expressions are employed by your Lordships.

"With regard to the second point on which your Lordships desire to be certified, the agents for the petitioners have undertaken to lodge in process, before this supplementary report is submitted for your Lordships' consideration, an extract minute of a meeting of the trustees expressing their willingness to accept of the trust and hold the trust funds.

"The reporter has accordingly adjusted the schemes in conformity with your Lordships' remit; and the schemes as adjusted by him are appended hereto. It only remains for him respectfully to recommend to your Lordships to grant the prayer of the petition in respect that your Lordships' requirements have all been duly complied with."

The first articles of the schemes as adjusted were as follows—Appendix A—"1. The funds applicable to the said bequest of £1000, with increase thereof as provided by the terms of said trust-disposition and deed of settlement and deed of appointment, shall be vested in and held by the General Trustees of the United Free Church of Scotland in trust for the purpose of providing out of the income thereof two bursaries to be called 'The M'Grouther Bursaries.'" Appendix B—"1. The funds applicable to the said bequest of £2000, with increase thereof as provided by the terms of said trust-disposition and deed of settlement and deed of appointment, shall be vested in and held by the General Trustees of the United Free Church of Scotland, who shall have charge of the administration thereof, and are hereinafter called the managers."

On 23rd December 1910 the Court pronounced this interlocutor—

"The Lords having considered the supplementary report of Mr J. H. Millar, with the schemes appended thereto adjusted by him, and having heard counsel for the petitioners, approve of the said report: Approve also of the said schemes: Appoint them respectively the schemes for the future administration of (1) 'The M'Grouther Bursaries' described in the petition, and (2) the bequest of £2000 made by the late Miss Jane M'Grouther for aid to ministers of the congregations of the United Free Church of Scotland in the Highlands and Islands of Scotland: Direct the said schemes to be signed by the Clerk of Court and to remain in process: Authorise the petitioners to take payment out of the trust estate in their hands of the expenses of and incidental to the present application and decern."

Counsel for the Petitioners—Macmillan. Agents—Cowan & Dalmahoy, W.S.

Friday, December 23.

FIRST DIVISION.

(Before Five Judges.)

[Lord Salvesen, Ordinary.

PETRIE *v.* PETRIE (PETRIE'S EXECUTRIX) AND ANOTHER.

Husband and Wife—Constitution of Marriage—Proof—Habit and Repute—Declaration per verba de præsenti.

In 1901, A, a member of the S.S.C. Society, set up house in Edinburgh with B, an English lady, whom he had known for about nineteen years, and whom he had at first met when she was in Edinburgh as companion to a lady. In 1901 A was about fifty-five years of age and in good practice as a solicitor. B was then a trained nurse, thirty-eight years of age, supporting herself in London. Prior to their cohabitation the parties had corresponded since 1882. B had visited Edinburgh again in 1893, and A had visited her when she was living with her mother near Nottingham. In point of social position there was no disparity between them, and throughout the whole period of their acquaintance there was nothing to suggest anything approaching impropriety on her part. Prior to 1901 A had lived in a room at the back of his office with a housekeeper or general servant, with whom he was on terms of immoral intimacy, and had acknowledged the paternity of one of her illegitimate children. He had also had immoral relations with another woman who had also acted as his housekeeper. Each of them he had in turn discarded on account of their intemperate habits. B knew something of his relations with these women. A died in 1909. After his death B brought a declarator of marriage, her case being that in 1894 she and he had become engaged; that in 1901 he wrote asking her to come to Edinburgh, marry and settle; that she accordingly came; that they selected a house, a villa with a garden attached; that on the afternoon of the day on which they first lived together she refused to remain in the house unless he married her; and that he and she then and there interchanged matrimonial consent. No others were present at the alleged ceremony. No writing was produced to prove it, and the pursuer's story with regard to it