extra expense occasioned by repeated inspections of the accounts. In other words, they must pay a suitable fee to the solicitors of the trustees. This the pursuer has offered to do, although there is no averment that the original beneficiary has ever exercised the right of inspection which admittedly belongs to him. The defenders' counsel suggested that the beneficiary himself ought to act as the representative and agent of all his partial assignees, but this suggestion is fanciful and unworkable. Counsel did not seriously dispute that if a partial assignee had ascertained *aliunde* that a breach of trust had been committed, and made a relevant averment to that effect, he would be entitled to see the accounts. Surely it is for the benefit of the trustees themselves that any breach of trust which they may have committed (it may be quite innocently) should be pointed out at a time when it may perhaps be rectified easily and cheaply?

The defenders' counsel founded upon the decision in the case of *Jacks' Trustee* v. *Jacks' Trustees* (1910 S.C. 34, 47 S.L.R. 32), and particularly upon certain passages in the opinion of the Lord President. These observations had reference to the question before the Court, viz., the true construction of certain sections of the Bankruptcy Act, and had no reference to the present question, which his Lordship had no occasion to consider. Counsel also cited *Brower's Executor* v. *Ramsay's Trustees* (July 12, 1912, 49 S.L.R. 962), in which the pursuer had obtained a decree adjudging a beneficiary's right to the fee of a trust estate subject to a liferent. This case does not help the present defenders, as the adjudging creditor was allowed by the Lord Ordinary (Guthrie) to see the accounts and to lodge objections. In the Inner House the Court negatived any duty on the part of the trustees to fortify the pursuer's position as legal assignee by doing anything which they would not have done in the ordinary course of administration. This decision has no bearing on the present question, as the pursuer is not attempting to interfere with the management of the trust. Nor has the following *dictum* of Lord Lindley (L.J.) in *Low* v. *Bouverie*, 1891, 3 Ch. 99-100, any application—"But it is no part of the duty of a trustee to tell his *cestui que trust* what incumbrances the latter has created, nor which of his incumbrancers have given notice of their respective charges. It is no part of the duty of a trustee to assist his *cestui que trust* in selling or mortgaging his beneficial interest and in squandering or anticipating his fortune, and it is clear that a person who proposes to buy or lend money on it has no greater rights than the *cestui que trust* himself. There is no trust or other relation between a trustee and a stranger about to deal with a *cestui que trust*, and although probably such a person in making inquiries may be regarded as authorised by the *cestui que trust* to make them, this view of the stranger's position will not give him a right to information which the *cestui que trust* himself is not entitled to demand. The trustee therefore is in my opinion under no obligation to answer such an inquiry. He can refer the person making it to the *cestui que trust* himself." In the present case a trust does exist as between the pursuer and the defenders, and she asks for no information which a beneficiary could not legally demand. I shall find that the pursuer is entitled to see the trust accounts. If the defenders think that the matter should not be further litigated I have no doubt that they will give effect to this finding. In the meanwhile I shall pronounce no order upon them. It is of course premature and out of the question to fix the amount of the trust estate as concluded for, but the defenders' counsel did not ask me to dismiss the action on that ground. Though I decide against the defenders, I think that, acting in the interest of the beneficiaries other than the pursuer's cedent, they were entitled to obtain a judgment, as there is very little authority in regard to the rights of assignees in the position of the pursuer.

The Lord Ordinary found that the pursuer was entitled to see the accounts, and continued the cause.

Counsel for the Pursuer — Macmillan, K.C. — Macquisten. Agents — Cowan & Stewart, W.S.

Counsel for the Defenders—Sandeman, K.C.—Hon. W. Watson. Agents—Dove, Lockhart, & Smart, S.S.C.

Friday, February 28, 1913.

FIRST DIVISION.

ADDIE'S TRUSTEES *v.* ADDIE AND OTHERS.

Succession—Vesting—Original or Substitutional Gift—Question Whether Condition of Surviving Liferenter Applicable only to Primary Legatees or also to their Issue.

A testator directed his trustees to hold one-seventh of the residue of his estate for the alimentary liferent of a certain son so long as he continued weak-minded, and declared that in the event (which happened) of his death without issue the capital of the said share of residue should fall and belong to two sons and three daughters of the testator, who were named, "equally among them and the survivors and survivor of them, the issue of any of them predeceasing being entitled equally among them, if more than one, to their deceased parent's share." The trustees were given power in the event (which did not happen) of the son recovering his mental health to pay or make over to him the said share.

Held in a Special Case that the gift to issue was substitutional and not independent, that the contingency an-

nexed to the gift to the sons and daughters that they should survive the liferenter applied also in the case of their issue, and accordingly that where children predeceased the liferenter and left issue, vesting only took place in those members of the issue who survived the liferenter and not also in those who, while surviving their parent, predeceased the liferenter.

George Addie, Ettrick Road, Edinburgh, and others, the trustees acting under the trust-disposition and settlement of the deceased Robert Addie of Viewpark, coal and iron master in Glasgow, who died on 10th January 1872, *first parties;* George Addie, Miss Marion Addie, Kloof Road, Cape Town, children of the testator; and George Dalziel, W.S., Edinburgh, *curator bonis* to Alexander Addie, St Ann's Heath, Virginia Water, Surrey, son of the testator, *second parties;* Mrs Mary Seton Jackson or Villiers, wife of Major Montagu Villiers, Roslin, and her brother and two sisters, the surviving children of Mrs Mary Addie or Jackson, a predeceasing daughter of the testator, *third parties;* Mrs Mary Slater or Baird Jackson, wife of J. S. Reardon, artist, London, executrix and universal legatory of her deceased husband James Baird Jackson, who was a son of Mrs Mary Addie or Jackson and a grandson of the testator, *fourth party;* and George Addie and another, the trustees acting under the trust-disposition and settlement of the deceased Alexander Dunbar Fyfe, who was the only child of the deceased Mrs Robina Addie or Fyfe, a daughter of the testator, *fifth parties*—presented a Special Case for the opinion and judgment of the Court as to the meaning of a clause in the testator's settlement dealing with the disposal of a share of the residue of his estate liferented by his eldest son Robert Addie, who died unmarried on 16th April 1911. James Baird Jackson survived his mother, but predeceased Robert Addie, the liferenter. Mrs Fife predeceased the liferenter, and her son, who survived his mother, also predeceased the liferenter.

By his trust-disposition and settlement the testator, on the narrative that on account of Robert Addie's mental weakness it was necessary to make special provision for his welfare and comfort, directed that the one-seventh share of residue to which he was entitled thereunder was, so long as he continued in a state of mental weakness and incapable of managing his own affairs, to be held invested by his trustees in their own names in trust for him in liferent for his liferent alimentary use allenarly, and for behoof of any child or children he might have, to be divided equally among them if more than one, in fee—"Declaring also that in the event of his death without issue the capital of the share of said residue hereby provided to him shall fall and belong to my said sons Alexander and George, and to my said daughters Mary, Marion, and Robina, equally among them and the survivors and survivor of them, the issue of any of them predeceasing being entitled equally among them if more than one to their deceased parent's share."

The testator further provided that if his son Robert should be restored to a reasonably sound state of mental health and become capable of managing his own affairs and should continue in that state uninterruptedly for a period of not less than two years, his trustees should be entitled, if they deemed it prudent and advantageous to his interests, to pay or assign and make over to him absolutely the capital of the share of residue provided to him.

The Case stated—"The said Robert Addie, the testator's eldest son, was never married and died on the 16th day of April 1911. He continued in a state of mental weakness until the date of his death, and the testator's trustees never exercised the power conferred upon them of paying or assigning to him the capital of his share of the residue of the testator's estate."

The second and third parties contended that on a sound construction of the trust-disposition and settlement of the testator the vesting of the share of residue liferented by his son Robert Addie was suspended until the liferenter's death, and that upon his death without issue and without the first parties having exercised the discretionary powers conferred upon them the said share vested in the second parties and the parties of the third part, in the proportions of one-fourth to each of the second parties and one-fourth to the third parties, *per stirpes.*

The fourth party contended that the late James Baird Jackson on the death of his mother took a vested interest in one-fifth of one-fifth of the fee of the share of the residue of the testator's estate liferented by the late Robert Addie, subject only to defeasance in the events, which did not happen, of the late Robert Addie dying leaving issue or of his recovering and the first parties exercising the power conferred upon them of paying over to him absolutely the capital of the share liferented by him. The fourth party accordingly contended that, as executrix and universal legatory of the deceased James Baird Jackson, she was now entitled to payment of one-fifth of one-fifth of the share of residue liferented by the late Robert Addie.

The fifth parties contended that the late Alastair Dunbar Fyfe on the death of his mother took a vested interest in one-fifth of the fee of the share of the residue of the testator's estate liferented by the late Robert Addie, subject only to defeasance in the events set forth in the contentions of the fourth party. The fifth parties accordingly contended that as the testamentary trustees of the said deceased Alastair Dunbar Fyfe they were now entitled to payment of one-fifth of the share of residue liferented by the late Robert Addie.

The *questions of law* were—"Did the share of residue liferented by the deceased Robert Addie vest only in (*a*) the children of the testator who survived the liferenter, and (*b*) the issue (who survived the liferenter) of the testator's child Mrs Jackson, who predeceased the liferenter? or, Did

it also vest in the issue (who survived their parents but predeceased the liferenter) of the testator's children Mrs Jackson and Mrs Fyfe, who predeceased the liferenter?"

Argued for the second parties (whose argument was adopted on behalf of the third parties)—The condition of surviving the liferenter applied not merely to sons and daughters of the testator but also to the issue of predeceasing sons or daughters. The gift to issue was merely substitutional, and was not, as in *Martin* v. *Holgate*, 1866, 1 E. & I. App. 175, an independent gift. The contention of the fourth parties that there was vesting in the issue on their parent's death subject to defeasance in the events of the liferenter dying without leaving issue or of recovering and of the trustees exercising their powers, did not involve defeasance merely in the happening of either of simple alternative events as in *Coulson's Trustees* v. *Coulson's Trustees*, 1911 S.C. 881, 48 S.L.R. 814, for there was in the latter alternative a double contingency which brought the case under the rule of *Johnston's Trustees* v. *Dewar*, 1911 S.C. 722, 48 S.L.R. 582.

Argued for the fourth and fifth parties—There was here a direct independent gift to such of the issue of the named sons and daughters who might predecease the liferenter as were alive at the date of their parent's predecease. Consequently the condition of surviving the liferenter which attached to the gift to the testator's children applied only to them and not to their issue—*Martin* v. *Holgate* (*cit. sup.*), which was followed in *In re Woolley*, [1903] 2 Ch. 206, and which would have been followed in *Bank's Trustees* v. *Bank's Trustees*, 1907 S.C. 125, 44 S.L.R. 121, but for the words "original and accruing," which were held to show that the gift to issue was substitutional and not original. These parties took a vested interest on the death of their respective parents, subject to defeasance in the event of the liferenter leaving issue or recovering—the events which might occasion defeasance were alternative and not cumulative, and accordingly the case fell under the rule of *Coulson's Trustees* v. *Coulson's Trustees* (*cit. sup.*), and not of *Johnston's Trustees* v. *Dewar* (*cit. sup.*).

At advising—

LORD MACKENZIE—[*After a narrative of the facts of the case*]—The determination of the question depends entirely upon the construction of the clause quoted above, which declares that in the event which has happened the capital of Robert Addie's share is to belong to the testator's sons and daughters named and the survivors "the issue of any of them predeceasing being entitled equally among them, if more than one, to their deceased parents' share." In my opinion the gift to issue is substitutional and not original. There is no independent bequest to issue. The bequest is to the sons and daughters absolutely. Therefore the contingency annexed to the gift to the sons and daughters that they shall survive the liferenter applies also in the case of their issue.

In the case of *Martin* v. *Holgate* (L.R. 1 E. & I. App. 175), which was founded on by the fifth parties, where it was held that the gift was original, the clause was in marked contrast to the present. There the testator devised his estate and effects to trustees to pay the proceeds to his wife for life, and "after her decease to distribute and divide the whole, &c., amongst such of my four nephews and two nieces" (naming them) "as shall be living at the time of her decease; but if any or either of them should then be dead leaving issue, such issue shall be entitled to their father's or mother's share." It was held that the gift to the children was original, not substitutional, and that the daughter upon her father's death took a vested interest in the share which if he had lived he would have taken. The fact that the gift to the parent was contingent did not affect the nature of the gift to the issue, which was an independent bequest. The construction put upon the words "should then be dead leaving issue," was that they were equivalent to "should then have died leaving issue." The words "leaving issue" were held necessarily to apply to the period of the death of the nephews and nieces, and not to the death of the tenant for life. As Lord Westbury observed, the form of the gift was not elliptical, nor referential nor substitutional. I am of opinion that in the present case, according to the form of the gift, issue are just substituted for their parents, and the contingency of surviving the liferenter which applied to the parent applies equally to the issue. In the case of *Bank's Trustees* (1907 S.C.125) where Lord Low expressed the opinion that but for the word "accruing" the rule of *Martin* v. *Holgate* would have been applicable, the testator's direction to his trustees was upon the death or second marriage of his wife if she survived him to pay and make over the residue of his estate to such of his children as had arrived at the age of twenty-one years or as they respectively reached that age. The declaration was as follows—"In the case of provisions to children under these presents, if any child shall die, either before or after me, leaving lawful issue, and without having acquired a vested interest in such provision, such issue shall be entitled to the share or shares, original and accruing, which their parent would have taken by survivance, and the share of any child dying without leaving lawful issue shall be divided among the surviving children and the lawful issue of such children as may have died leaving such issue, in equal shares *per stirpes*." In this case, as in *Martin* v. *Holgate*, the construction put upon the gift to issue but for the word "accruing" would have been that it was original and not substitutional. The form of the clause in the present case is different. I am accordingly of opinion that the first alternative of the question should be answered in the affirmative and the second in the negative.

LORD JOHNSTON—The testator Robert Addie directed his trustees to hold and apply the whole residue and remainder of his estate in trust for behoof of four out of his seven sons, and of his three daughters, equally among them, but subject always to the several conditions, restrictions, and declarations contained in his settlement. His other three sons had been provided for in his business.

These equal provisions out of residue to the seven children so provided for were not the subject of any general set of conditions and restrictions, but were dealt with more or less severally. The shares of Alexander and George were not affected by any conditions; that of his son William by one set of conditions; that of his son Robert by another set; and those of the three daughters by a general set of conditions applicable to them only.

This case is concerned with the share of Robert Addie, who was at the date of the settlement incapable of managing his own affairs. The trustees were directed to invest the share in their own names in trust for Robert in liferent allenarly and for behoof of his children in fee. But this was coupled with the following declaration, that in the event of his death without issue the capital of his share should fall and belong to his brothers Alexander and George and to his three sisters, equally among them, "and the survivors and survivor of them, the issue of any of them predeceasing being entitled equally among them, if more than one, to their deceased parents' share."

On that statement I think that there can be little doubt that vesting was suspended, that there was no vesting in Robert himself, and no room for vesting subject to defeasance in the destinees over. But there is another clause which requires to be attended to. After the destination over above referred to there is added a power to the trustees, if they should deem it prudent and expedient and advantageous to his interests in view of his being restored to a reasonably sound state of health, to pay or assign and make over to Robert absolutely the capital of his share of residue, to be at his own unlimited disposal, and there is also a general declaration that the shares of residue provided to each of the above-mentioned children should bear interest from the date of his decease, but that the shares of his sons should not vest in them until they respectively attain the age of twenty-five years. I do not, however, see that in the case of Robert these provisions can do more than add another contingency to the destination over.

So far, I do not think that there is much difficulty in the case. The share of residue provided for Robert Addie in liferent in the circumstances which have occurred vested, in my opinion, at his death, and not sooner, in the children of the testator who survived him. But there remains a question whether the issue of predeceasing children take their deceased parent's share. One sister predeceased Robert and left children who survived her and also survived Robert, and also a child who survived her but predeceased Robert, and another sister Mrs Fyfe predeceased Robert and left a child who survived her but predeceased Robert.

The question therefore is whether survivance of Robert the liferenter was a condition of the issue of predeceasing children taking their deceased parent's share. In this aspect of the case we were much pressed by the decision in *Martin* v. *Holgate* in the House of Lords (1 E. & I. App. 175). I recognise to the full the authority of that decision, but if we are to follow it the result would be to compel us to determine that the issue of these predeceasing daughters took, at any rate not later than their parent's death, a vested interest in the share which, if the parents had survived, they might respectively have taken. I am obliged to say "might" and not "would" have taken, because, as already shown, there was nothing to vest in the parents unless and until they survived Robert, and unless, if and when that occurred, certain contingencies had been purified. Now it seems to me that there could be no more vesting in the issue of predeceasing children than in such children if they survived in what was still subject to two contingencies, viz., those of Robert leaving issue, and of his recovery and the trustees determining to pay over to him his share. I think, therefore, that the case bears to be distinguished from *Martin* v. *Holgate* (*supra*), and that the first question should be answered in the affirmative and the second in the negative.

LORD KINNEAR—I entirely concur in the opinion of Lord Mackenzie, and I only wish to add that I should certainly not have reached that conclusion if I had not thought that it was altogether consistent with the decision in *Martin* v. *Holgate* (L.R. 1 E. & I. App. 175). There can be no question as to the binding authority of that decision, and this Court must necessarily follow it. And perhaps I may say it is a decision which demands all the more consideration because the judgments in the House of Lords are expressly intended to settle a controversy which had embarrassed the Court in England and upon which the opinions of eminent Judges were conflicting. But, then, we are bound to follow the rules laid down in *Martin* v. *Holgate* as principles of law governing the construction of wills. We are not called upon to follow the exact construction of particular language if the language which we have to interpret is different. We are bound to follow the general principle.

Now the principles established by *Martin* v. *Holgate* are, I think, very clearly stated in two propositions in the judgment of Lord Westbury. In the first place, his Lordship assumes—indeed expresses at another part of his opinion—the perfectly well-established principle that a court of construction will construe plain words according to their plain meaning. But then, in the application of that doctrine to the particular question he lays down

the two propositions which I am going to cite. I should remind your Lordships that the question was whether, when an estate which was to be distributed on the lapse of a liferent and was to go to a class of persons and the issue of such of that class as had predeceased, the issue of the predeceasing members of the class might take an immediate vested interest upon the death of their parent, even although the parent himself, if he had survived, could have taken no interest until the lapse of the liferent; and accordingly whether in such a case the children might take a vested interest although they predeceased the liferenter. But, then, that is not a general doctrine applicable to all cases in which a class of persons and the survivors are called with a gift to the issue of predeceasers. The propositions which Lord Westbury lays down are these. In the first place he says—"A judge is not justified in departing from the plain meaning of words, which admit of a rational interpretation for the purpose of giving effect to an assumed intention which appears to him to be more rational or more consistent with the rest of the will." And the second is, that the assumption, which had been made by the Court below, of an intention to make the gift to the issue contingent, because the gift to the parent was made contingent, was not warranted if it were used so as to control the plain meaning of the words. Now when that doctrine was applied to the construction of the will in the case of *Martin* v. *Holgate* it is perfectly clear upon what reasons of construction the House proceeded. They are stated in the outset of the Lord Chancellor's opinion, and all the other learned Lords concur with him. The terms of the gift were expressed in a direction to trustees to distribute and divide the estate at the death of the tenant for life "among such of my four nephews and two nieces . . . as shall be living at the time of her decease; but if any or either of them should then be dead leaving issue, such issue shall be entitled to their father's or mother's share." Now the Lord Chancellor says—"When we speak of a person having died leaving a child or children, we mean leaving a child or children at his death. If, therefore, the language here had been, if any of them should at the death of my wife have died leaving issue, it would have meant if any should at or before that time have died leaving issue at his own death, and if that be so, it is hard to say that any difference is to arise from the circumstance that the words are not 'shall then have died leaving issue,' but 'shall then be dead leaving issue.' Such a distinction would savour of technical subtlety barely intelligible to ordinary minds." That is the ground upon which the House proceeded in the interpretation of that particular will. And then they say, it is perfectly clear upon these words that the gift is made in favour of the issue of the legatees who shall die leaving issue, and there is no other contingency except the death of the parent during the lifetime of the tenant for life to affect this absolute gift to the issue.

Now on that reading of the words the learned Lords say you are not entitled to assume a contingency which the testator has not expressed merely because the gift to the parent has been subject to that contingency, because the two gifts are entirely separate and independent. There is no substitutional gift in favour of the issue of predeceasing parents. It is not a substitution, but there is an independent gift to children described as the issue of persons who shall die leaving issue during the existence of the liferent. But if you compare that with the words of the will which we have to construe it appears to me that the main principle of the House of Lords' judgment—that we are to give a plain meaning to plain words—leads to a different interpretation of the words before us from that which was put upon the words in *Martin* v. *Holgate*, because, in the first place, it is to be observed that there is but one contingency applicable to the whole disposition of the estate upon the death of the liferenter. It is upon the death of the liferenter that the capital of the share of the residue provided to him "shall fall and belong to my said sons Alexander and George, and to my said daughters Mary, Marion, and Robina, equally among them, and the survivors and survivor of them, the issue of any of them predeceasing being entitled equally among them, if more than one, to their deceased parents' share." There is no gift to children upon any different contingency from the gift to the parents.

The main ground of the decision in *Martin* v. *Holgate* is that although the gift to the parents was limited by reference to the death of the tenant for life, the gift to the children was not so limited at all, and that it was not the duty of a court of construction to assume a limitation which the will did not express. But there is here but one reference to one period at which the gift is to take effect in favour of any of the legatees. There is no reference at all to the death of parents as determining the period at which the right of their children is to come into operation. On the plain construction of the words according to their plain meaning, what the trustees are asked to do is, upon the death of the liferenter, to distribute the estate among Alexander, George, Mary, Marion, and Robina, and the survivors and the children of the predeceasers. The direction, of course, assumes the existence of children or issue, as the case may be, who are capable of taking, or, in other words, it assumes the existence of issue at the date of distribution. If no such issue exist, then I confess I see nothing to displace the right expressly given to the survivors in the event of the predecease of any one of these five.

On the whole matter I agree with Lord Mackenzie, and I am not troubled by any doubt as to the possibility of our departing from the decision in *Martin* v. *Holgate*, which we are plainly not entitled to do. Then we answer the first alterna-

tive of the question of law in the affirmative and the second in the negative.

The LORD PRESIDENT was absent.

The Court answered the first alternative of the question of law in the affirmative and the second alternative in the negative.

Counsel for the First and Second Parties—Fleming, K.C.—Black. Agents for the First Parties—W. & F. Haldane, W.S. Agents for the Second Parties—Tods, Murray, & Jamieson, W.S.

Counsel for the Third Parties—Blackburn, K.C.—A. J. Nicolson. Agents—Pearson, Robertson & Finlay, W.S.

Counsel for the Fourth and Fifth Parties—C. H. Brown. Agents—Wallace & Guthrie, W.S.

Wednesday, March 19.

FIRST DIVISION.

[Lord Cullen, Ordinary.

CORBRIDGE (SOMERVILLE'S TRUSTEE) *v.* SOMERVILLE AND ANOTHER.

(See also *ante*, 48 S.L.R. 1027, 1911 S.C. 1326).

Husband and Wife—Divorce—Reduction—Reduction on Ground of no Jurisdiction—Title of Creditor of Spouse to Sue.

In an undefended action of divorce at a wife's instance the Lord Ordinary granted decree. Thereafter the husband's trustee in bankruptcy, to whom the divorce proceedings had not been intimated, and who in consequence of those proceedings had been deprived of the income of certain postnuptial marriage contract funds which was formerly payable to the husband, and as a result of the decree of divorce became payable to the wife, brought an action for reduction of the decree on the ground that the husband's domicile was English, and that accordingly the Court had no jurisdiction to grant divorce.

Held that where, as here, the decree was challenged on a ground that did not affect the merits, the trustee had a right to have the question of its validity determined, and action allowed to proceed.

Opinion per curiam that the pursuer had adopted the wrong procedure, his proper remedy being to have brought a petitory action against the marriage-contract trustees for the income, in which the decree of divorce could competently have been set aside *ope exceptionis*.

Opinions that while a creditor may challenge his debtor's divorce on a ground not affecting the merits, he has no title to reduce on its merits a decree determining *status*.

Process — Consistorial Cause — Decree of Divorce in Absence—Rules of Commissary Court—Year and Day.

Held that the rules of the Commissary Court do not apply to the Court of Session, and that it was competent to reduce a decree of divorce in absence even after the lapse of a year and a day.

Greenhill v. *Ford*, February 7, 1822, 1 S. 296, *aff.* June 16, 1824, 2 Shaw's App. 435, *commented on*.

On 27th November 1911 Cooper Corbridge, C.A., London, trustee in the bankruptcy of S. W. May Somerville, Trewithian, Cornwall, *pursuer*, brought an action against Mrs Caroline Stuart Smith or May Somerville, 6 Arlington Street, London, and also against the said S. W. May Somerville for his interest, *defenders*, in which he sought reduction of a decree of divorce, dated 18th June 1910, pronounced by Lord DEWAR (Ordinary) in an undefended action at Mrs Somerville's instance against her husband.

He pleaded—"1. The pursuer, as trustee in the bankruptcy of the said Samuel Wallace May Somerville, is entitled to decree of reduction as concluded for in respect that (1) the said Samuel Wallace May Somerville not having been a domiciled Scotsman at the date of the divorce proceedings the Court of Session had no jurisdiction to grant the pretended decree of divorce, and said decree of divorce is null and void. (2) Said decree was obtained in absence, without the pursuer being informed of the divorce proceedings or having any opportunity of opposing the same, and without the whole facts and circumstances being fully disclosed to the Court. 2. The defences are irrelevant.

The defender Mrs Somerville pleaded, *inter alia*—"1. No title to sue. 2. The action is incompetent in respect that (1) the said decree of divorce having become final on the expiry of a year and a day from the date thereof, is not liable to be reduced. (2) *Esto* that the Court of Session had no jurisdiction to pronounce said decree of divorce, there having been no subsequent change of domicile by the said S. W. May Somerville the Court has no jurisdiction to reduce said decree."

The *facts* are given in the opinion *infra* of the Lord Ordinary (CULLEN), who on 19th June 1912 repelled the defender's first three pleas-in-law, and allowed a proof.

Opinion.—"The pursuer of this action is the trustee on the bankrupt estate of Samuel Wallace May Somerville under an adjudication of bankruptcy in England. He was appointed in January 1910. Mr Somerville was then married to the present compearing defender Mrs Caroline Stuart Smith or May Somerville, the marriage having taken place in 1899. By a postnuptial settlement executed by Mr Somerville in 1900 certain funds belonging to him were put in trust for the purpose, *inter alia*, that in the event of his dying survived by Mrs Somerville the income thereof should be paid to her during her survivance, restrictable to one half in the event of her entering into a second mar-