expenses in the Court of Session and in the Sheriff Court.

Counsel were heard in the Single Bills.

Argued for the appellants — The appellants had to deposit the money from which the Nautical Assessor was paid. The respondents should be ordained to pay one-half of the Assessor's fees in both Courts. Both ships had been found to be in fault, and no expenses had been found due to or by either party.

Argued for the respondents—If the motion were granted it would really result in a modification of the respondents' expenses. The fee was exactly in the same position as an account for printing, and each party had to pay his own expenses and no part of the other party's expenses. In any event the motion was too late. The question of expenses had been decided, and the Court should not open up the matter again.

Without pronouncing an interlocutor the Court, in respect that there was no settled practice, directed each party to hand a cheque for £8, 10s. to the Clerk of Court in order to pay the Nautical Assessor's fee and expenses of £17 in the Court of Session. The Clerk was authorised to repay to the appellants the sum of £25 which they had consigned to meet said fee and expenses. The Court intimated that they refused to interfere in regard to the Nautical Assessor's fee in the Sheriff Court; and further stated that the question of the Nautical Assessor's fees in both Courts would in future have to be dealt with when the question of expenses was disposed of.

Counsel for J. Hay & Sons — Gentles. Agent—Campbell Faill, S.S.C.

Counsel for the Ocean Steamship Company, Limited — Brown. Agent — J. & J. Ross, W.S.

Wednesday, March 7.

EXTRA DIVISION.

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

Succession—Husband and Wife—Jus relictæ—Claim to Specific Asset in Satisfaction pro tanto of Jus relictæ.

A widow electing *jus relictæ* in lieu of testamentary provisions in her favour claimed a transfer of one-third of certain shares forming an asset of the husband's estate and specifically bequeathed by him.

Held that the principle enunciated in *Tait's Trustees* v. *Lees*, 1886, 13 R. 1104, 23 S.L.R. 782, applied, and that accordingly the widow could not demand the transfer in satisfaction *pro tanto* of her claim.

A Special Case was presented for the opinion and judgment of the Court by the Rev. Æneas Geddes and others, the trustees under the trust-disposition and settlement of the late John Cameron, at one time sheep farmer in Patagonia, and afterwards of Lakeview, Errogie, Inverness-shire, *first parties*, the truster's widow, *second party*, the truster's daughters, *third parties*, and two other legatees, *fourth parties*, to decide whether the widow, who had claimed her *jus relictæ*, was entitled *in forma specifica* to a third of certain shares held by the truster.

The truster died domiciled in Scotland on 1st June 1911, survived by his wife and three children of his marriage. His trust-disposition and settlement, dated 30th May 1911, conveyed his whole estate to trustees. The purposes of the trust were, *inter alia*, (first) payment of debts; (second) conveyance to his widow of certain heritage in Inverness (valued at £800), delivery to her of such portion (not exceeding one-half) of his household furniture as she might select, and payment to her of £1250 and of the rent of his property at Errogie for a certain period; (third) transfer to his three daughters of his shares in the Sociedad Explotadora de Tierra del Fuego in equal parts; (fourth) certain pecuniary legacies; (fifth) and (sixth) specific bequests to granddaughters; and (lastly) division of the residue equally among his daughters.

The *settlement* contained, *inter alia*, the following declarations: — "Declaring that the provisions hereby made in favour of my wife and children shall be accepted by them as in lieu and in full satisfaction of their whole legal rights of every description to which they would be entitled, or could claim or demand by or through my death; and in the event of them or any of them claiming her legal rights, she shall forfeit all right and interest and benefit under these presents: And I further declare that the whole legacies and other bequests herein made shall be paid free of all legacy, succession, or other government death duties."

After payment of debts the truster's moveable estate amounted to £15,053, 0s. 11d. His heritage was valued at £1400. The truster's widow declined her testamentary provisions and elected to claim her rights at common law. Owing to her election the estate was insufficient to satisfy the pecuniary legacies, if ranked equally, and government duties. At the date of the truster's death the share capital of the Sociedad Explotadora de Tierra del Fuego (a Chilian company) amounted to £1,500,000 shares of £1 each, or the Chilian equivalent. After the truster's widow had intimated her election, but before satisfaction of her claims had been made by the executors, the Sociedad increased its capital by 300,000 bonus shares paid for out of its real estate fund — a reserve fund of accumulated profits. These shares were allotted *pro rata* among the shareholders. The truster had held 3900 shares, valued at his death at £7800, and the allotment of bonus shares made the holding 4680 shares.

The second party *contended* that her *jus relictæ* was a right to a share *in forma specifica* of the moveable estate belonging to her husband at his death, and that one-third of the said shares, with the proportion of dividends accrued including the bonus shares, fell to her either under her *jus*

relictæ or as accrescing or effeiring thereto.

For the third parties the following contentions were stated—"That the bequest in their favour of the testator's shares in the Sociedad Explotadora de Tierra del Fuego is a special legacy in their favour which vested in them free of legacy duty at his death, and that the other moveable estate of the testator, and any estate, whether heritable or moveable, forfeited by the second party in respect of her having claimed her legal rights, must be exhausted in providing for debts, expenses of administration, *jus relictæ*, and other preferable claims before any diminution of the bequest is made. They further claim, without diminution in like manner, the 780 shares allotted to the trustees subsequent to the testator's death, and all dividends on these and the shares originally bequeathed which have been paid since the testator's death. They further contend that none of the said allotted shares or of the said dividends fall under the second party's *jus relictæ* or accresce or effeir thereto."

The fourth parties maintained "that (1) in the event of the second party being entitled to claim *in forma specifica* a third of the shares belonging to the deceased or allotted to the first parties in the Sociedad Explotadora de Tierra del Fuego the bequest of said shares to the third parties must abate *primo loco;* (2) that in the event of the second party not being so entitled the legacy to the third parties under the third purpose must suffer diminution *pari passu* with the" other pecuniary legacies "in so far as the trust estate is insufficient to pay all the legacies in full."

On the point now under report the *question of law* was—"2. Is the second party entitled (*a*) to a transfer of one-third of the deceased's shares in the Sociedad Explotadora de Tierra del Fuego in *pro tanto* satisfaction of her *jus relictæ*, or (*b*) to have only the value of said shares as at the date of the testator's death brought into computation in ascertaining the amount of her *jus relictæ?*"

Argued for the second party—Although legitim was payable out of realised estate, *jus relictæ* was a claim to moveables *in forma specifica*. *Jus relictæ* originated in Teutonic law and differed in its characteristics from legitim, which was of Roman origin, and from *jus relicti* which was the creature of statute. For convenience in division the pecuniary value might be taken, but that could not alter the nature of the right which vested in the widow at her husband's death and entitled her to a share of each asset of the moveable estate—Stair, iii, 4, 24; iii, 8, 43; Ersk. iii, 9, 20; Fraser, Husband and Wife, 648-50; *Fisher* v. *Dixon*, 1840, 2 D. 1121, *per* Lord Fullerton at p. 1142; *Ross* v. *Masson*, 1843, 5 D. 483, *per* Lord Moncreiff; *M'Intyre* v. *M'Intyre's Trustees*, 1865, 3 Macph. 1074; *Muirhead* v. *Muirhead's Factor*, 1867, 6 Macph. 95, 5 S.L.R. 88; *Pringle's Trustees* v. *Hamilton*, 1872, 10 Macph. 621, 9 S.L.R. 377; *Naismith* v. *Boyes*, 1899, 1 F. (H.L.) 79, 36 S.L.R. 973, *per* Lord Watson; *Stewart* v. *James Keiller & Sons, Ltd.*, 1902, 4 F. 657, 39 S.L.R. 353.

Argued for the third and fourth parties—The specific legacy of shares ranked preferably as regards liability to abatement—M'Laren, Wills and Succession, (3rd edn., pp. 577 and 588; *Millar* v. *Millar's Trustees* (O.H.) 1914, 1 S.L.T. 414; *Balmerino*, 1746, M. 8074; *Gordon* v. *Campbell*, 1729, M. 14,384. The legacy would be defeated were the second party's claim upheld. Her argument so far as based on origin of her right and of legitim was unsound. *Jus relictæ* was not a *jus in re;* it was a claim of debt, and nothing more than that was meant when the claim was described as a right of property—Ersk. iii, 9, 19; *Fisher* v. *Dixon*] (*cit.*); *Inglis* v. *Inglis*, 1869, 7 Macph. 435, 6 S.L.R. 271; *Tait's Trustees* v. *Lees*, 1886, 13 R. 1104, 23 S.L.R. 782; *Gilchrist* v. *Gilchrist's Trustees*, 1889, 16 R. 1118, at 1122, 26 S.L.R. 639; *Stewart* v. *James Keiller & Sons, Ltd.*, *cit.*

LORD DUNDAS—I do not think that the questions in this Special Case are attended with serious difficulty. They arise from the circumstance that the testator's widow has elected to claim her legal rights in place of her conventional provisions.

Speaking generally, I take it that *jus relictæ* is the legal right of a widow, vesting *ipso jure* by her survivance of the husband, to a share—one-third where, as here, there are children—of his free moveable estate as at the date of his death. It is not a right of property but a debt. The widow claims not as an heir but as a creditor—*Inglis* v. *Inglis*, 7 Macph. 435, 6 S.L.R. 271. Where a deficiency in the testamentary estate results from a widow's election, the order of preference as regards liability to abatement is—1st, specific legacies, 2ndly, general legacies, and lastly, the residue (see M'Laren on Wills and Succession, i, 588). I cannot accept the argument put forward by Mr Maconochie to the effect that a widow is entitled to demand one-third of the moveables specifically. We were referred, as negativing that argument—either expressly or by implication—to the opinions of Lord Kincairney and Lord Moncreiff in the case of *Stewart* v. *James Keiller & Sons, Ltd.*, 4 F. 657, 39 S.L.R. 353, and to the case of *Tait's Trustees* v. *Lees*, 13 R. 1104, 23 S.L.R. 782; and I think it was ultimately conceded by Mr Blackburn that the case of *Tait's Trustees* stands in his way so far as this Court is concerned. Mr Maconochie founded on the case of *M'Intyre* v. *M'Intyre's Trustees*, 3 Macph. 1074, in which Lord Cowan alluded to a widow's right as a right of property; but I agree with what Lord Kincairney said in the case of *Keiller*, that Lord Cowan "merely desired to distinguish the right from a right of succession."

LORD MACKENZIE—I am of the same opinion. Mr Maconochie did his best to maintain that the second party, in virtue of her *jus relictæ*, was entitled to a transfer of a certain share of the estate *in forma specifica*. I think there is no distinction between a right to *jus relictæ* and a right to legitim; each is of the nature of a debt; and no authority was cited to us which supports the proposition that the widow

has any *jus in re*. The argument cannot be assented to consistently with what was said in the case of *Tait's Trustees*.

LORD CULLEN—I agree. As regards the second question, I think the argument for the second party cannot be sustained consistently with the decision in *Tait's Trustees*.

The Court answered branch (*a*) of the second question of law in the negative, and branch (*b*) in the affirmative.

Counsel for the First and Fourth Parties—Chree, K.C.—Macquisten. Agents—Sharpe & Young, W.S.

Counsel for the Second Party—Blackburn, K.C.—Maconochie. Agents—Alex. Morison & Co., W.S.

Counsel for the Third Parties—D. M. Wilson. Agents—Burns & Waugh, W.S.

Friday, March 16.

FIRST DIVISION.

[Lord Dewar, Ordinary.

MANDELSTON *v.* NORTH BRITISH RAILWAY COMPANY.

Reparation—Slander—Master and Servant—Company—Verbal Slander by Servants of Company—Liability of Master.

In an action of damages against a railway company the pursuer averred that a police inspector in the service of the company, sent by the defenders' chief inspector and in accordance with a custom of the defenders, had visited his house and said—"We are to take up matters seriously against you now, as there are letters complaining about your using tickets which are not purchased by you for Craigendoran, and regarding your travelling with old tickets"—and, threatening to search the pursuer's house, further said—"If this matter comes before the court you will be severely punished." The pursuer, secondly, averred that he was accosted on the platform at Arrochar by a ticket collector in the defenders' service and acting on their instructions, who said, "I have received a wire from Craigendoran to look particularly at your ticket," and who demanded an explanation from the pursuer as to where he got his ticket, and said—"From the wire there seems to be something wrong with it." The pursuer attached a slanderous innuendo to the statements made on both occasions. *Held* (*sus.* Lord Dewar, Ordinary) that the servants of the defenders if they made the statements complained of were not acting in the course of their employment, and accordingly if the statements complained of were slanderous the defenders were not liable therefor.

Abraham Mandelston, traveller, Glasgow, *pursuer*, brought an action against the North British Railway Company, *defenders*, concluding for £300 damages for slander.

The *averments* of the parties were—"(Cond. 4) On 26th May 1915 [a railway] police inspector, on the express instructions of Chief Inspector Dunbar, called at the pursuer's house in Glasgow. The chief inspector is entrusted by the defenders with the duty of directing the actings of police inspectors, including the said police inspector, and he issued the said instructions in the course of that duty. It is the custom of the defenders through their chief inspector and police inspectors to make investigations at the homes of passengers and elsewhere outside the defenders' premises, and to authorise their police inspectors to obtain information on the defenders' behalf outwith defenders' premises in such way as the police inspectors acting as detectives may from time to time find available, and this custom was known to and authorised by the defenders. The said call and the proceedings after mentioned were in accordance with said custom and in pursuance of said authority. After explaining that he had again called on the pursuer about the tickets he used when travelling on the defenders' railway he stated to the pursuer, in the presence and hearing of the pursuer's wife and daughter—'We are to take up matters seriously against you now, as there are letters complaining about your using tickets which are not purchased by you for Craigendoran, and regarding your travelling with old tickets.' He threatened to search the pursuer's house, and said—'If this matter comes before the court you will be severely punished.' He had no warrant entitling him to make any such search. In making the said statements the defenders' said servant meant, and was taken by the pursuer to mean, that pursuer had defrauded the defenders by travelling with tickets for which he had not paid the defenders and that he had no right to use, and that he had been guilty of a crime. *Quoad ultra* the answer so far as not coinciding herewith is denied. (*Ans.* 4) Admitted that on a date in May 1915 an inspector, on the express instructions of District Inspector Dunbar, called at the pursuer's house in Glasgow. *Quoad ultra* denied. Explained that the said district inspector and police inspector were appointed and employed by the defenders under the 48th section of the North British Railway Act 1901 (1 Edw. VII, cap. clxxxviii), which is to the following effect—"48. The company may, subject to the condition herein set forth, appoint such persons as they shall think fit for that purpose to be special constables. . . . (2) Every person so appointed shall make oath in due form of law before any sheriff having jurisdiction in any county, city, or burgh in which any part of the railways or stations of the company is situated, duly to execute the office of a constable. (3) Every person so appointed and sworn as aforesaid shall have power to act as a constable in connection with any matter or business in which the company are interested, upon the railways belonging or leased to or worked or run over by the company, and upon and within the stations