

topic it might well be a ground for setting aside a verdict. The present, however, is not such a case as your Lordship has stated, and as Lord Sands, who presided at the trial, has indicated during the discussion. [*His Lordship then dealt with the question of procedure.*]

LORD ORMDALE—I concur with your Lordships. [*His Lordship expressed the opinion that there was evidence to support the verdict, and proceeded*].—On the point as to the disclosure of the fact that the defender's car was insured, if that information was elicited accidentally, as I understand it to have been in this case, then I think though unfortunate it may be overlooked. The only effect of introducing the topic is to prejudice the minds of the jury, and I think to introduce it deliberately would be most improper and irregular and contrary to the universal practice in this Court, and some notice of the irregularity would require to be taken. There is force in the suggestion that if the presiding judge were satisfied that it had been deliberately brought in, then the case might be immediately withdrawn from the jury. [*His Lordship then dealt with the question of procedure.*]

LORD SANDS—[*After referring to the evidence*].—As regards the question of the defender's car being insured, I regret that this came out, but the pursuer was quite justified in producing evidence as to what took place when the defender called the day after the accident and interviewed her. This statement about insurance was said to have been made in the course of the conversation, and evidence in regard to it was not impertinent or irrelevant on the question of credibility. Whilst I could not but think that the pursuer regarded it as a matter of tactical advantage that this fact should come out, it could hardly be suggested that it was deliberately brought out for an improper purpose. I could not regard the question put as one which could be disallowed as improper. Whilst I entirely concur with your Lordships' view as to the propriety of not in any way bringing out the fact of insurance, I do not think this verdict should be disturbed. [*His Lordship then dealt with the question of procedure.*]

LORD SALVESEN did not hear the case.

The Court refused the motion.

Counsel for the Pursuer—Watt, K.C.—Ingram. Agents—Milne & Lyon, W.S.

Counsel for the Defender—MacRobert, K.C.—Paton. Agents—Ross & Ross, S.S.C.

Wednesday, March 9.

FIRST DIVISION.

SINCLAIR'S TRUSTEES, PETITIONERS

Trust—Nobile Officium—Power to Make Advances out of Surplus Income—Advances to Major Beneficiaries out of Prospective Shares not yet Vested.

A testator by his settlement directed his trustees to pay an annuity of £230 to his widow, and also, "so long as my said wife shall survive me and shall remain my widow, and the youngest of my daughters shall not have attained the age of twenty-five years," to pay out of the surplus income certain annual allowances to his daughters. He thereafter provided for the ultimate division of the estate among his daughters and their issue upon the death of his widow and upon his youngest daughter attaining the age of twenty-five years, to which date vesting was postponed. But he made no provision of any annual allowances for his daughters in the contingency, which occurred, of his widow surviving after his youngest daughter had attained the age of twenty-five. Two of his four daughters being unmarried and having no other means of support, a petition was presented by the trustees for authority to make advances to them out of surplus income. The Court authorised the trustees to make a yearly allowance out of the surplus income of the trust, or out of the accumulations of income, of £50 to each of the unmarried daughters so long as they were unable suitably to maintain themselves, said allowance to cease on their marriage and to be deducted from their shares of the residue.

James Kinnaird, joiner, Greenock, and others, the trustees acting under the trust-disposition and settlement of William Sinclair, steamship agent, Greenock, presented a petition to the Court for authority to make advances of £50 a-year out of the surplus income of the trust funds to each of the testator's daughters Margaret and Jessie Sinclair. The testator died on 13th March 1908 leaving a widow and four daughters. By his trust-disposition and settlement he conveyed his whole means and estate to his trustees, giving among others the following directions:—"*(Fourth)* I direct my trustees to make payment to my said wife during her survivance of me of a free life rent annuity of Two hundred and thirty pounds sterling . . . declaring that the said annuity . . . shall be strictly alimentary and shall not be assignable by my said wife or subject to her debts or deeds or the diligence of her creditors: *(Fifth)* I direct my trustees so long as my said wife shall survive me and shall remain my widow and the youngest of my daughters shall not have attained the age of twenty-five years, to pay out of the surplus of the annual produce and income of my said estate which shall remain after providing

for the foresaid annuity . . . to my said wife, the following annual allowances to my daughters, viz.—to my daughter Jane the sum of eighty pounds and to each of my daughters Agnes, Margaret, and Jessie the sum of fifty pounds . . . ; Declaring that in the event of the death or second marriage of my said wife before the youngest of my said daughters shall have attained the age of twenty-five years, then from and after such death or second marriage the said allowances to my said daughters shall be increased, as I hereby direct my trustees to increase the same, as follows, viz.—the allowance to my daughter Jane shall be increased to the sum of one hundred and thirty pounds, and the allowances to each of my daughters Agnes, Margaret, and Jessie shall be increased to the sum of ninety pounds, payable said increased allowances half-yearly and at the terms all as provided with regard to the said original allowances; Declaring that in the event of the death of any of my said daughters before the period hereinafter appointed for division of the residue of my estate, leaving issue, such issue shall be entitled equally among them, share and share alike, to the allowance which under this fifth purpose of trust would have fallen to their parent if in life, and that on the death of any of my said daughters before the said period without leaving issue the allowance which under this fifth purpose would have fallen to such daughter shall fall to the survivors of my said daughters jointly with the issue of such of them as may have predeceased said period leaving issue, the division being equally *per stirpes*, and declaring that in the case of any of my daughters or of their issue who shall be under twenty-five years of age it shall be in the power of my trustees to hold, apply, lay out, and expend the allowance or share of any such daughter or grandchild, and any interest or other income which may accrue upon accumulations therefrom, or so much thereof as shall in the opinion of my trustees be necessary for the purpose, in the maintenance, upbringing, and education or advantage otherwise of such daughter or grandchild, and that in such manner as my trustees shall deem best; of all which my trustees shall alone judge, and any portion of the allowance or share which may not be so applied shall be accumulated for behoof of such daughter or grandchild, and all such accumulations from any allowance or share shall on such daughter or grandchild attaining the said age of twenty-five years complete be paid over to the daughter or grandchild out of whose allowance or share the accumulations have arisen; and declaring that in the event of any such daughter or grandchild dying before he or she shall have attained said age, the accumulated interest or income on his or her share, or so much thereof as shall not have been expended for his or her behoof, shall form part of the residue of my estate and shall be dealt with accordingly; which allowances are and shall be strictly alimentary and shall not be assignable by my said daughters or their issue or any of them or subject to the debts or deeds of the daughter or grand-

child entitled thereto or the diligence of creditors; and declaring also that any portion of said surplus of annual produce or income which shall remain after satisfying the allowances thereout hereinbefore provided shall be accumulated, as I hereby direct my trustees to accumulate the same, with the principal of my estate; and further declaring that in the event of the said surplus income being at any time insufficient to meet to the full extent the said allowances, such deficiency shall be made up, as I hereby direct my trustees to make up the same, out of the capital of my estate: (Sixth) In the event of the marriage of any of my daughters before the period hereinafter appointed for division of residue I direct my trustees to make payment to such daughter out of the capital of my said estate of the sum of two hundred pounds sterling for her marriage outfit, which payment shall not be imputed as an advance to such daughter on account of her share in the final division of my estate, but shall be in addition to all other benefits provided to her under these presents . . . : (Seventh) Upon the death of my said wife and upon the youngest of my daughters attaining the age of twenty-five years complete my trustees shall hold, apply, pay, and convey the whole rest, residue, and remainder as then existing of my said means and estate, including accumulations from income if any, among or to all my said daughters equally, share and share alike; declaring that the issue of any daughter dying previous to the period of division shall be entitled equally among them to the share which would have fallen to their parent if in life, and that in the event of any daughter dying without leaving issue the share of such daughter shall accrete to the survivors jointly with the issue of any predeceaser, the division being *per stirpes*; and also declaring that the shares of said residue shall become vested interests in the persons entitled thereto only upon the arrival of the period of division hereinbefore expressed."

The petition set forth, *inter alia*—"The testator's daughters Margaret and Jessie, who are unmarried, were born respectively on 11th February 1883 and 11th May 1890, so that Jessie, who is the youngest of testator's daughters, attained twenty-five years of age on 11th May 1915.

"The moveable estate of the testator as given up in the inventory of the personal estate was . . . £4505 0 0
 from which there was deducted
 in respect of debts and funeral
 expenses 79 16 9
 £4425 3 3

The trustees have paid the debts, funeral expenses, and the pecuniary legacies, and have delivered the specific legacies in terms of the said trust-disposition and settlement, and have also settled the Government duties payable on the testator's death. The heritable estate of the testator was valued at the date of death at the sum of £7500.

"The trustees have paid and are still paying the annuity of £230 to the widow of the testator. They have also paid the allowances to the four daughters up to the

term of Whitsunday 1915. The youngest daughter having reached the age of twenty-five on 11th May 1915, the trustees thereafter discontinued payment of the allowances in terms of the fifth purpose of the trust-disposition and settlement."

The petition then detailed the revenue balances shown by the accounts of the trust since its commencement amounting to £1909, 12s. 3d., and continued—"The widow of the testator has since Whitsunday 1915 maintained the two unmarried daughters Margaret and Jessie Sinclair wholly out of her own funds, except for a short period during the war, during which Jessie Sinclair earned a small salary as a bank clerk, with which salary she to some extent provided for her own maintenance. Mrs Sinclair's income at the present time amounts to about £290 per annum, made up of her annuity of £230 and about £60 from her own private investments, and is not capable of expansion. This income is subject to deduction of income tax. From time to time since 1915 Mrs Sinclair has felt very severely the increased cost of living, and has been obliged to remove from 81 Brisbane Street to a smaller house at 61A Finnart Street, Greenock. She has had to entrench upon capital to a considerable extent. She now finds that her total income is little more than sufficient to keep herself, and in consequence is unable to provide for the aliment of her two daughters who reside with her, and she declines to pay for the aliment of her daughters out of the capital of her estate so long as her husband's estate is available.

"The daughters are not earning any income of their own, and have no private means. The elder daughter Margaret is unable to earn a living, not having received any training. . . . The other daughter Jessie . . . has recently been in hospital, and at the present time the state of her health does not permit of her taking any employment. She has had no training to enable her in these days to compete for a situation against the numerous other applicants who now apply for situations. Her assistance is not required by her mother in housekeeping so long as the elder sister is at home.

"In these circumstances Misses Margaret and Jessie Sinclair applied to the petitioners for allowances out of the surplus revenues of the trust for their aliment, and the petitioners at a meeting on 27th October 1920 passed a resolution recording their willingness to grant them a yearly allowance of £50 each, provided the authority of the Court could be obtained for these payments.

"The petitioners have very carefully considered the unfortunate circumstances in which the testator's two unmarried daughters have been placed, and they conceive that it is their duty to make this application on the ground that the present position can never have been in the contemplation of the testator, and that they are in fact endeavouring to give effect to his wishes."

No answers were lodged.

On 4th January 1921 the Court remitted to Mr J. G. Kirkpatrick, W.S., to inquire into the facts and circumstances and to report. Mr Kirkpatrick's report included the following passage—" . . . The reporter respectfully suggests that the prayer be granted with two modifications—(1) that the allowances should be declared to be alimentary, and (2) that they should be deducted respectively from the shares which may ultimately come to these two daughters under the residuary clause in the trust-disposition and settlement, but without charging interest on the sums so advanced, such sums to be deducted from the first portion of the share of capital and accumulations of income to be paid to or set aside for these beneficiaries."

Counsel for the petitioners was heard on 9th March 1921, when the following cases were referred to—*Webster v. Miller's Trustees*, 1887, 14 R. 501, 24 S.L.R. 368; *Clark's Trustees*, 1895, 22 R. 706, 32 S.L.R. 511; *Robertson's Trustees*, 1909 S.C. 236, 46 S.L.R. 139; *Milne's Trustees*, 1919, 57 S.L.R. 112.

At advising—

LORD PRESIDENT—This is a petition to the *nobile officium* of the Court. Its circumstances are well within those in which in the case of *Robertson's Trustees* (1909 S.C. 236) an order similar to that asked for here was made. I think the petition may be granted subject to the following qualifications—that the allowance should be made specifically for the maintenance and support of the two ladies; that the advances should be terminable in the event of marriage, and should continue only so long as the daughters are unable, in the opinion of the trustees, suitably to maintain themselves; and, lastly, subject to a declaration substantially in the words suggested by the reporter whereby the advances made to the two ladies respectively will ultimately be deductible from the respective shares of the residue of the estate to which they may become entitled.

LORDS MACKENZIE, SKERRINGTON, and CULLEN concurred.

The Court pronounced this interlocutor—

" . . . Authorise the petitioners and their successors in the trust of the late William Sinclair mentioned in the petition to advance to each of Margaret and Jessie Sinclair, also mentioned in the petition, for their maintenance and support out of the surplus income of the trust or otherwise out of the accumulations of income in their hands as trustees, so long as the said Margaret and Jessie Sinclair are in the opinion of the petitioners or their successors in the trust unable suitably to maintain themselves, a yearly allowance of fifty pounds, said allowance to commence to run as from 11th November 1920 and to be payable half-yearly in advance; declaring that said allowances shall cease on their marriage, and that they shall be deducted respectively from the shares which may ultimately come to them under the residuary clause in the trust-

disposition and settlement of the said William Sinclair, but without charging interest on the sums so advanced, such sums to be deducted from the first portion of the share of capital and accumulations of income to be paid or set aside for these beneficiaries; and decern."

Counsel for Petitioners—Maitland. Agents—Murray, Beith, & Murray, W.S.

Thursday, March 10.

SECOND DIVISION.

[Sheriff Court at Glasgow.

M'FADYEN v. WHITE.

Reparation—Negligence—Property—Relevancy—Brawl in Public-house—Liability of Licencee for Injury to Customer Entering Premises while Brawl in Progress and Struck by Tumbler Thrown by One of Customers.

A member of the public brought an action of damages against the licencee of a public-house for personal injury received by him while entering the premises for the purpose of obtaining refreshment. He averred that some time before he entered several of the customers in the public-house had become intoxicated and that fighting ensued, that the defender's servants who were in charge, and who were well aware of the danger to persons entering the premises while the tumult was in progress, took no steps to deal with the situation either in the way of quietening the combatants or having them expelled, or of safeguarding customers who were about to enter. The pursuer further averred that a similar disturbance had taken place on a previous occasion shortly before, and that on each of these occasions the defender had been guilty of a breach of the certificate granted under the Licensing (Scotland) Acts. Held that the pursuer's averments were relevant, and issue allowed.

John M'Fadyen, plater's helper, Glasgow, pursuer, brought an action in the Sheriff Court at Glasgow against Mrs Margaret Smith Miller or White, licencee of the public-house situated at 284 Nuneaton Street and 294 Baltic Street, Glasgow, defender, for £500 damages for personal injuries.

The pursuer averred—“(Cond. 3) On the evening of 13th December 1919, about 7:55 p.m., the pursuer entered the said public-house for the purpose of obtaining refreshment, and just after he had done so he was struck a severe blow in the left eye with a tumbler thrown by someone from among the customers who were present in the said public-house at the time. The pursuer's left eye was very seriously injured as the result of the said blow, and the sight thereof has been all but entirely destroyed. The pursuer had no reason to anticipate that he was exposing himself to danger by entering the defender's public-house on the said date, and

in any event he was entitled to assume that so long as the defender kept the said public-house open it was reasonably safe for him to enter, unless the defender or her servants warned intending customers that it was dangerous for them to enter. (Cond. 4) The injuries sustained by the pursuer were the natural and probable result of the failure in duty, as hereinafter set forth, on the part of the defender's servants, who were in charge of the said public-house and for whom the defender is responsible, and were thus due to the fault of the defender. The defender's public-house was on the said occasion well filled with customers, and some time before the pursuer entered the premises several of these customers had become intoxicated and had become violent and quarrelsome. Fighting ensued, in which several customers took part, and in which several were more or less injured. This riotous conduct had lasted for some considerable time before the pursuer entered the said public-house. The defender's servants, who were in charge of the premises, took no steps to deal with the situation either in the way of quietening the combatants or of having them expelled, or in the way of safeguarding customers who were on the premises or intending customers who were about to enter. The defender's servants were well aware of the danger to any person entering the premises during the continuance of the tumult, and knew or ought to have known that there was very great danger of customers or intending customers sustaining injuries. It was the duty of the defender or of her said servants to have taken the following precautions for the safety of her customers:—(a) To have pacified the combatants and so ended the danger which had arisen; (b) failing to succeed in that effort, to have called in the police for that purpose, or for the purpose of having those guilty of the breach of the peace removed; (c) while the tumult and fighting were going on, and whether or not the police had been summoned, either to have closed the doors of the premises and so have prevented the entry of intending customers, or to have issued a warning to intending customers about to enter the premises that it was unsafe to do so, and that any persons entering would do so at their own peril. Neither the defender nor her said servants did any of these things, with the result that the pursuer, quite unaware of the danger, entered the premises and was struck as aforementioned. If the defender or her said servants had taken any of the said precautions, and so had either rendered the premises safe or had prevented the entry of the pursuer therein, the pursuer would not have sustained the said injuries, and for her or their failure to take these precautions or any of them the defender is responsible. The defender was all the more negligent in her said failure in respect that a similarly dangerous situation arose in her premises on 6th December 1919, on this occasion causing alarm to customers therein through the threatening attitude of certain men who had been allowed while on the premises to get into a state of intoxication. On each of the said occasions the defender conducted