

the views expressed by the Sheriff upon the law of the matter. The statement that the one person on whom any responsibility for children let loose on a street is on a driver, and he is bound to show that he could not by any possibility have avoided an accident, is one to which I cannot assent in either of its branches. I am of opinion that in a case of this kind the pursuer cannot succeed by simply proving the accident and calling on the defender to prove a negative. I entirely agree with the proposition that in such a case the defender is exposed to a very strong presumption, and that very little in the way of proof of fault is sufficient to shift the onus, and to place a defender in the position of having to overcome the presumption against him. But to say that the law lays the responsibility of any such accident on the driver, and requires him at once to prove a negative, is to state what I hold not to be the law. A defender in such a case, as in all cases of injury said to be caused by negligence, is entitled to have the fault he is said to have committed specified and proved before a judgment can be given against him.

Reading the findings in the Sheriff's judgment, I am inclined to believe that if he had not taken this erroneous view of the law he would have assoilzied the defender, and I cannot say that in my opinion he would have been wrong in doing so.

The Court pronounced this interlocutor:—

“Recal the interlocutor of the Sheriff of Forfar dated 20th March 1899, as also the interlocutor of the Sheriff-Substitute dated 21st December 1898: Find in fact (1) that on the occasion specified in Cond. 3 the defender was in charge of a horse and dog-cart, and driving the same along the street; (2) that he was the worse of drink, and drove without due and reasonable care; and (3) that in consequence of his fault the pursuer's son James Symers Alexander junior, aged six years, was knocked down and run over by said horse and dog-cart, and so injured that he died on the following day: Find in law that the defender is liable to the pursuer in damages, and assess the same at the sum of £50 sterling, and ordain the defender to make payment of said sum with interest thereon at the rate of £5 per centum per annum from the date hereof till payment: Find the pursuer entitled to expenses in this and in the Inferior Court,” &c.

Counsel for the Pursuer—Guthrie, Q.C.—A. S. D. Thomson. Agents—W. & J. L. Officer, W.S.

Counsel for the Defender—Sym—A. M. Anderson. Agents—Mackay & Young, W.S.

Tuesday, June 27.

SECOND DIVISION.  
CAMPBELL v. CAMPBELL'S  
TRUSTEES.

*Marriage-Contract — Succession — Acquir-  
enda—Legacy Designed to Exclude Mar-  
riage-Contract Trustees.*

In an antenuptial contract of marriage, A, the wife, assigned, conveyed, and made over to the marriage-contract trustees any real or personal property which she should at any time become possessed of or entitled to (in the nature of capital but not in the nature of income) which should at any one time amount to or be equal in value to £100. A's sister by her will directed her testamentary trustees to pay one moiety of the residue of her estate to A “in sums not exceeding £95 at any one time,” “at intervals of one month between each payment,” for her sole and separate use, with a view to such sums being treated as sums coming at one and the same time to less than £100 in value, and expressed her wish and intention to the effect that the sums so coming to the wife under the will should be hers absolutely in her own right, and free from any settlement trust. The testatrix also directed that if her sister A died before all sums due to her under the will had been paid to her, the unpaid sums were to be dealt with by her trustees for the benefit of A's children, and failing such children should go to other persons mentioned in the will. The moiety of the residue amounted to £500 or thereby. *Held* that A was entitled to have this sum paid or conveyed to her in instalments as provided in her sister's will for her own use and behoof, and free of any claim therefor on the part of her marriage-contract trustees.

Mrs Montgomery Beatrice Campbell or Campbell, daughter of the late Patrick Campbell of Belmont, Stranraer, and Daniel William Campbell, merchant in Sydney, were married at Colombo, Ceylon, on and after 22nd February 1886. At the date of the marriage the parties were of Scotch domicile.

By antenuptial contract of marriage dated 22nd February 1886 the said Daniel William Campbell, on the one part, assigned and transferred to the trustees therein mentioned, and for the purposes therein mentioned, certain policies of assurance with profits and bonuses therein; and, on the other part Mrs Montgomery Beatrice Campbell assigned, conveyed, transferred, and made over to the same trustees certain shares in the National Safe Deposit Company, Limited, and also assigned, conveyed, transferred, and made over to the said trustees any real or personal property which she, the said Montgomery Beatrice Campbell, or the said Daniel William Campbell

in her right, shall at any time or times become possessed of or entitled to (in the nature of capital but not in the nature of income) which shall at one time amount to or be equal in value to One hundred (£100) sterling, other than jewels, trinkets, ornaments, plate, linen, china, books, or pictures" in trust to invest the funds coming into their hands, and to pay the income thereof to the said Mrs Campbell, or permit her to receive the same for her separate use during her life, but not in any mode of anticipation, free from the debts, control, or engagements of her husband, and after Mrs Campbell's decease to pay the income to Mr Campbell should he survive, and to hold the funds for the children of the marriage in fee, with a clause of return to Mrs Campbell should there be no issue of the marriage. The trustees accepted office. The trust was administered in Scotland and held Scotch investments. There was issue of the marriage.

Miss Helen Maude Campbell of 12 Belgrave Square, Rathmines, Dublin, sister of Mrs Daniel William Campbell, died on 25th November 1898, leaving a last will and testament dated 22nd August 1898. Miss Campbell thereby appointed certain persons to be her executors and trustees. By her said last will and testament Miss Campbell directed — "(7) As regards the other moiety representing the ultimate residue of my estate and effects, and the nett proceeds thereof, my trustees shall hold same upon trust to pay same away in sums not exceeding £95 at any one time at intervals of one month between each payment, to my sister Montgomerie Beatrice Campbell for her sole and separate use, with a view to such sums being treated as sums coming at one and the same time of under £100 in value, and as not being sums which can in any way be looked upon as subject to the trusts of my said sister's marriage-settlement, my wish, desire, and intention being that all sums coming or to come to her under this my will shall be treated as sums to which my said sister is or may become absolutely entitled in her own right and free from any settlement trust; or if my said sister predecease me or die before all sums due to her in manner aforesaid under this my will have been paid over to her, then and in that case I empower and authorise my trustees to deal with any unpaid sums in any manner they may deem most for the benefit of all or any of the children of my said sister Montgomerie Beatrice Campbell who may then be living, in equal or unequal shares and proportions, as my said trustees may deem right and reasonable, and failing children to take under this conditional bequest, I desire and direct that any sums not dealt with or paid away by my trustees for the benefit of my said sister Montgomerie Beatrice Campbell or for the benefit of her children shall go to my brother Colin if then living, or to his widow if he have predeceased, and such widow be then living, or if both be dead, to my said brother Colin's next-of-kin living at the date when my said sister Montgomerie Beatrice and

her children's interest in the said moiety shall lapse by their deaths prior to the whole of the said moiety having been paid away or otherwise expended for their benefit." The moiety of Miss Campbell's estate for disposal under the above-narrated provision amounted to £500 or thereby.

Questions having arisen with regard to the payment of this bequest in Miss Campbell's will, this special case was presented for the opinion and judgment of the Court.

The parties to the special case were (1) Mrs Montgomerie Beatrice Campbell or Campbell with consent of her husband, and her husband for his interest; (2) the marriage-contract trustees; and (3) Miss Helen Maude Campbell's testamentary trustees.

The first parties maintained that in terms of Miss Campbell's will, Mrs Campbell was entitled to receive payment of the sums thereby bequeathed to her for her own absolute disposal. The second parties, on the other hand, contended that these sums fell to be paid to them as part of the trust-estate under the contract of marriage.

The questions of law for the opinion and judgment of the Court were as follows:— "Is Mrs Campbell entitled to have a moiety of the residue of Miss Campbell's estate, amounting as aforesaid to £500 or thereby, paid or conveyed to her absolutely in instalments, as provided in Miss Campbell's will, for her own use and behoof, and free of any claim therefor on the part of the second parties? or Are the second parties entitled to demand that the said moiety of the residue of Miss Campbell's estate shall be paid or conveyed to them to hold and administer under the terms of the said contract of marriage."

Argued for the first and third parties—Mrs Campbell was only to get £95 at any one time. She might never receive more than one instalment. In the event of her death, before all the instalments were paid, there was a destination-over in terms of which the instalments still remaining unpaid were to go to her children, or failing children to other persons mentioned in the will. The testator had not merely expressed her intention that the bequest should not fall under the trust, which might have been insufficient, but had made the bequest in such a form that it did not do so. This case was accordingly distinguished from *Simson's Trustees v. Brown*, March 11, 1890, 17 R. 581, and the first question should be answered in the affirmative.

Argued for the second parties—Practically Mrs Campbell was to get £500 under her sister's will, and the provision for payment by instalments was a mere evasion. This case was ruled by *Simson's Trustees v. Brown, cit.*, and the lady was bound to pay over the bequest to her marriage-contract trustees.

LORD YOUNG—The first question in this case is—[*His Lordship read the first question of law*]. I am of opinion that she is. Her sister's will directs her trustees to make payment to her in monthly instalments of £95 each, the total sum to be paid not to

exceed £500, with a direction that if she died before receiving all the instalments, and without leaving children, the instalments which she had not received are to be paid to other persons altogether. Now, I think that that is a perfectly lawful provision, which the trustees are bound to carry out, and which Mrs Campbell is entitled to compel the trustees to carry out. How long she might live could not of course be anticipated, but she is entitled to get £95 each month so long as she lives and until the whole £500 has been paid. I think that these payments of £95 each month do not fall under the marriage-contract. Each one of these payments is her own absolute property. She is entitled to spend it as she gets it or to do what she likes with it. I am therefore clearly of opinion that the first question ought to be answered in the affirmative.

As to the second question, I am just as clearly of opinion that it should be answered in the negative. I think that no payment whatever ought to be made to the marriage-contract trustees.

LORD TRAYNER—I do not entertain a different opinion on the construction of the will and the marriage-contract before us, but I think, as I said in the course of the debate, that the questions in the case are not well put.

LORD MONCREIFF—I have no hesitation in answering the first question in the affirmative and the second in the negative.

LORD JUSTICE-CLERK—I agree.

The Court pronounced this interlocutor:—

“Answer the first question therein stated in the affirmative, and the second question therein stated in the negative: Find and declare accordingly, and decern: Find the whole parties to the special case entitled to their expenses, as the same may be taxed as between agent and client, out of the moiety of the estate of Miss Helen Maude Campbell in question.”

Counsel for the First and Third Parties—D. Anderson. Agents—Buik & Henderson, W.S.

Counsel for the Second Parties—W. Thomson. Agent—Charles George, S.S.C.

Tuesday, June 27.

## SECOND DIVISION.

[Sheriff Substitute of Lothians.

HANLIN v. MELROSE & THOMSON.

*Title to Sue—Reparation—Grandchild.*

A grandchild has a title to sue for damages and *solatium* in respect of the death of its grandfather.

This was a stated case on appeal from the Sheriff Court at Edinburgh in the matter

of an arbitration under the Workmen's Compensation Act 1897.

The case stated by the Sheriff-Substitute (Hamilton) was as follows:—“This is an arbitration in which the pursuers make the following averments:—That the pursuers are respectively the daughter-in-law and grandchildren of the deceased Edward Hanlin, his son Thomas Hanlin having been the husband of the female pursuer Mrs Annie M'Kue or Hanlin, and the other pursuers being their children. That Thomas Hanlin died on 25th August 1896, and that the pursuers were dependent on the said Edward Hanlin at the date of his death. That Edward Hanlin was a labourer in the employment of the defenders, and that he met his death on 3rd October 1898 while engaged at the erection of a building which was being constructed by means of scaffolding, and was on said date over thirty feet in height.”

The case was debated before the Sheriff-Substitute, on the question of title to sue, and on 8th May 1899 he pronounced the following interlocutor:—“The Sheriff-Substitute having resumed consideration of the case, dismisses the petition, in so far as brought at the instance of the pursuer Mrs Annie M'Kue or Hanlin for her own right and interest: Sustains the title to sue of the other pursuers John Hanlin, Edward Hanlin, and Thomas Hanlin.”

The question of law for the opinion of the Court was—“Whether the said John Hanlin, Edward Hanlin, and Thomas Hanlin are entitled, according to the law of Scotland, to sue the defenders for damages, or *solatium*, in respect of the death of the deceased Edward Hanlin, and are in this respect entitled to the present application.”

The Workmen's Compensation Act 1897 (60 and 61 Vict. c. 37) enacts by section 1, sub-section (1), and First Schedule, section 1 (a) (I) and (II), and section 4, that where death results from the injury to the workman, the employer shall, under the provisions of the Act, be liable to pay compensation for the benefit of the workman's “dependants,” if he has any. By section 7, sub-section (2), the word “dependants” is defined to mean in Scotland such of the persons entitled according to the law of Scotland to sue the employer for damages or *solatium* in respect of the death of the workman, as were wholly or in part dependent upon the earnings of the workman at the time of his death.

It was not disputed that the claim of Mrs Annie M'Kue or Hanlin had been rightly rejected by the Sheriff-Substitute.

Argued for the appellants—Grandchildren had no title at common law to sue for damages and *solatium* in respect of the death of their grandfather, and consequently they had no title to claim compensation for such death under the Workmen's Compensation Act 1897—Workmen's Compensation Act 1897, section 7 (2), *sub voce* “dependants” (b). There was no case in which the title to sue of grandchildren had been either sustained or rejected. It must