a way that is not an unnatural interpretation of them."

In the present case that rule applies, but the question remains, whether those who oppose the claim are able to point to anything in the terms of the settlement or the actings of the deceased that can be held sufficient to indicate an intention to revoke the first special destination and to include this bond in the estate disposed of by the general settlement. There is no such provision in the settlement, and there is no acting on the part of the deceased, such as calling up the fund, or refusing payment at a certain date, which would indicate an intention that this fund should come into the general estate at his death. I am therefore of opinion that the Lord Ordinary is right in his second interlocutor.

As to the earlier judgment, I confess I am sorry that Mrs Walker raised the question she did raise at that time. Mrs Walker maintained that the assignment was a *de præsenti* conveyance, so as to take this fund out of the estate of the deceased during his lifetime. I agree with your Lordships in thinking the Lord Ordinary is right there too.

Lord Deas—I ought to add that we do not in my opinion require any general rule to decide this question. I go merely upon the intention of the testator as I find it in these deeds.

The Court adhered.

Counsel for Mrs Walker (Claimant)—Maclean—Thorburn. Agents—J. & J. Gardiner, S.S.C.

Counsel for Macbrair (Walker's *Tutor ad litem*)—Dean of Faculty (Fraser)—Lorimer. Agents—Macbrair & Keith, S.S.C.

Wednesday, June 19.

SECOND DIVISION.

[Lord Craighill, Ordinary.

GRAY *v.* BROWN.

Issues—Terms of Issue in an Action of Damages for Seduction—Where No Promise to Marry alleged.

Terms of issue adjusted in an action of damages for seduction, where the pursuer alleged that the defender had seduced her by means of courtship and professions of honourable attachment, by which he induced the belief that he would make her his wife, but where no specific provision to marry was alleged.

This was an action of damages for seduction, in which the pursuer averred that about the summer of 1876 "the defender began to pay her attentions . . . an intimacy sprang up, and the defender frequently expressed to the pursuer his admiration of and love and affection for her, and conducted himself towards her as one who desired to make her his wife. His courtship appeared to be an honourable one, and the pursuer believed it to be so." In Cond. 3 the pursuer, *inter alia*, averred that "the defender paid his addresses to her, and professed to entertain for her an honourable love, and the greatest esteem and regard. In consequence of his so conducting himself towards her, and she being, moreover, very young, and feeling flattered by the courtship of a man so much her superior in years, the pursuer gave her affections entirely up to the defender, and regarded him with entire trust and confidence. She looked upon him as her future husband, and on that footing permitted endearments and caresses from him. The defender took advantage of the feeling towards him on her part, which he had inspired as aforesaid, and of the trust she reposed in him, and of the belief which he well knew he had caused her to entertain that she would be his wife, to seduce her." Cond. 4 was, *inter alia*, as follows:—"She was prevailed on to permit connection by the love for him which the defender had induced by means of his said courtship and professions of honourable attachment, and making the pursuer his wife, and in reliance upon the prospect she entertained of one day being such."

The Lord Ordinary (Craighill) reported the case with a view to the adjustment of issues.

The pursued argued—It was not necessary to include in the issue the means by which the seduction was accomplished; it was enough merely to put the question, was the pursuer seduced? In the cases quoted for the defender, where the means of seduction were described, there was a specific promise of marriage, and besides in them the pursuer proposed the issue, and undertook of her own free will the burden of proof.

Argued for defender—It was settled that where a profession of honourable courtship was alleged to be the means by which seduction was accomplished, it was necessary to insert it in the issue; here what was averred amounted to this, and it ought to be inserted.

Authorities referred to—*Monteith* v. *Robb*, March 5, 1844, 6 D. 934; *Kay* v. *Wilson's Trustees*, March 6, 1850, 12 D. 845; *Stewart* v. *Menzies*, June 27, 1837, 15 S. 1198; *Walker* v. *M'Isaac*, January 27, 1857, 19 D. 340; *Paton* v. *Brodie*, December 10, 1857, 20 D. 258; *Forbes* v. *Wilson*, May 16, 1868, 6 Macph. 770; Macfarlane's Issues, 378–381; Fraser on Husband and Wife, vol. i. 504.

The Court appointed the following issue for the trial of the cause:—"Whether, in the course of the period betwixt May 1876 and October 1877, the defender courted the pursuer, and professed honourable intentions towards her; and whether by means of such courtship and professions the defender seduced the pursuer, and prevailed upon her to permit him to have carnal connection with her, to her loss, injury, and damage. Damages laid at £1000.

Counsel for Pursuer—Rhind. Agent—Wm. Spink, S.S.C.

Counsel for Defender—Campbell Smith. Agent—Adam Shiell, S.S.C.

Wednesday, June 19.

FIRST DIVISION

[Lord Curriehill, Ordinary.

MITCHELL AND OTHERS *v.* BURNESS (JUDICIAL FACTOR ON THE ESTATE OF THE UNITED SOCIETY OF SEAMEN OF MONTROSE).

Friendly Society—Winding-up—Interference of Court. Where an association of the nature of a friendly or assurance society had, in consequence of the death of nearly all its members, become unworkable, *held*, (1) that the survivor or survivors of its members were not entitled to divide the funds among them, and (2) that the Court could not interfere to adjust any scheme for its management as in the case of a public charity.

Expenses—Party bringing Action to have Friendly Society wound-up found Entitled to Expenses out of Fund though unsuccessful.

Held that the last surviving member of a friendly society, who by claiming the society's funds had brought the matter before the Court for their decision as to the legality of such a course, was entitled to have his expenses paid out of the funds of the society.

In the year 1801 the Ancient Fraternity of Seamen of Montrose and the Seamen's Friendly Association of Montrose, two societies for the relief of widows and children of decayed shipmasters and seamen of Montrose, resolved to unite themselves into one society, for the benefit of the widows and children of the existing members of the two societies and of those that should thereafter become members of the new society. The contract that was drawn up of that date recited that—"Considering that the shipmasters and master shipbuilders of Montrose have, past the memory of man, associated and incorporated themselves under the denomination of the Fraternity of Seamen of Montrose, and have contributed part of their wages for raising a fund for relief of the widows and children of such shipmasters and seamen as have become decayed in their means, whereby a considerable stock has been raised for that laudable purpose: And considering also that another association has within these few years been formed by other shipmasters, mariners, master shipbuilders, and others within the said town of Montrose, for the said laudable purpose of relieving their widows and children, under the name and denomination of the Seamen's Friendly Association of Montrose, whereby a considerable stock has already been raised; and the persons above named, present members of the said Ancient Fraternity of Seamen, and of the said Friendly Association of Montrose, being convinced that an union of the said two societies and of their funds would greatly tend to increasing the funds of both societies for relief of their poor: They have unanimously agreed to unite, and by tenor of this contract all the parties hereto subscribing do unite themselves into one society or association, with intention of perpetual succession, under the name and denomination of the United Society of Seamen of Montrose, for the benefit of the widows and children of them the contractors, and of such other persons as shall hereafter be admitted as members thereof in manner after mentioned, and to observe and fulfil and be subject to all the articles and conditions after written." The provisions necessary for amalgamating the funds of the societies and administering them in future were then inserted. Rules proper for the management of the new society, and conditions under which members were to be admitted, followed. The members were to be of three classes, and the widow and children of any member in the event of his death, or the members themselves upon attaining a certain age, were to receive payments out of the funds corresponding to the class to which they had belonged:—Articles 10 and 11 of the contract were as follows:—"(Article 10) That no person shall hereafter be admitted or received as a member of the said United Society unless he has formerly been or shall at the time be a shipmaster, a mate, or mariner, or ship-carpenter, and that no person shall be so received or admitted a member unless he is recommended by five of the members of the two highest classes, and shall afterwards be admitted by a majority of the managers of the funds of the society for the time; and every person upon his said admission shall pay into the treasurer for the time the sums payable by those admitted as before-mentioned in this contract, and shall become bound to pay his half-yearly contribution, and perform all the articles and conditions contained in this contract, and such other articles, rules, and conditions as shall afterwards be made for the regulation of the United Society's affairs, as hereinafter expressed."—"(Article 11) That the management of the funds of the said United Society, and all other matters and things concerning the same, shall be vested in and under the direction of the members who have entered upon the two highest classes, who shall meet annually on the first Wednesday of February, when a preses and other six managers for the then succeeding year shall be chosen from amongst them, and at this meeting a treasurer shall also be chosen for one year; and a meeting of the managers shall be held on the first Wednesday of August yearly—any four of them to be a quorum." There was nothing to show that the society had had any public object, or that anyone other than the widows or children of members of the society had derived any benefit from its funds, and in a memorial for the opinion of counsel drawn up in 1774 the Ancient Fraternity was expressly described as existing for behoof of the widows and children of members or of such of the members themselves as should have become indigent.

The number of members became reduced, so that in 1858, there being but four members alive, and the contract having, *inter alia*, provided that the management of the society should be in the hands of a preses and six managers, a judicial factor was appointed on the application of three of these members to manage the society's affairs. The defender in the present action was the factor appointed on the death of Mr Greig, who was the person originally holding the office.

At the date of raising this action the pursuer William Mitchell was the only surviving member of the society, and the other pursuers were the annuitants entitled as widows of deceased members to participate in the funds of the society. No new member had joined the society for more than twenty years, and under bye-law 14, passed on 1st February 1837, Mitchell was