Saturday, July 7.

SECOND DIVISION.

[Lord M'Laren, Ordinary.

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

Process—Interlocutor—Expenses.

In order to entitle a party to have expenses taxed as between agent and client the interlocutor awarding expenses must expressly bear that expenses are to be taxed as between agent and client; and it is too late to obtain an award of expenses, to be taxed as between agent and client, after the Court has pronounced a final interlocutor dealing with expenses, but not expressly giving expenses as between agent and client.

In an action of multiplepoinding, exoneration, and discharge, brought by the trustees under the trust-disposition and settlement of the late Mr Joseph Fletcher of Kelton House, Dumfriesshire, the Court, on a reclaiming-note from the judgment of Lord M'Laren, pronounced an interlocutor disposing of the questions raised on the construction of Mr Fletcher's trust-settlement, and containing this finding of expenses—"Find all parties entitled to expenses out of the trust-estate; allow the accounts thereof to be given in, and remit to the Auditor to tax the same and to report."

On 5th July 1888 the Auditor issued this interim report—"With the view of carrying out the remit contained in the interlocutor of Court of 9th March last, the Auditor has examined the accounts of expenses incurred by the parties in this case, and met the agents and received explanations from them, but before reporting he humbly requests the direction of the Court as to the principle of taxation. Reference is made to the subjoined note.

"*Note.*—At the meeting held this day for audit of the accounts it was maintained by the agent for Mr John Fletcher and others that the intention of the Court was that I should tax them as between agent and client. The finding for expenses is in these terms—'Find all parties entitled to expenses out of the trust-estate; allow accounts thereof to be given in, and remit to the Auditor to tax the same and to report.' An examination of the record and of the judgment of the Lord Ordinary and shorthand notes of the advising in the Inner House leads me to think that it may have been the intention of the Court to give the parties their expenses as between agent and client, but to prevent mistake on my part, and trouble to the Court and parties, I think it well to ask the Court to favour me with a direction on the subject. At the close of the advising counsel for the claimants said—'Your Lordships will allow the expenses of the parties to come out of the trust-estate;' and Lord Rutherfurd Clark (who had delivered the judgment of the Court) replied—'I think that is most reasonable. You can arrange what interlocutor should be pronounced giving effect to these views.'"

At the hearing on the report Mr John Fletcher, one of the parties (with whom Mrs Fletcher, the widow of the truster, on this point concurred), argued that the intention of the Court when they decided the case was to give expenses as between agent and client, and that, in any event, it was equitable that that should be done, and was still within the power of the Court.

The trustees (acting in the interest of the children, *nati et nascituri* of Mr John Fletcher) objected that the interlocutor could not be construed to mean an award of expenses as between agent and client, and that it was final.

At advising—

Lord Young—I have no doubt about the matter; we have determined it by our interlocutor. The question whether a party should have expenses in the ordinary way as between party and party, or whether the matter should be dealt with as between agent and client, is a question for the determination of the Court at the time the case is decided. In the one case the Court simply allows expenses; in the other case the interlocutor expressly bears that expenses are to be taxed as between agent and client. Here our interlocutor does not expressly bear that expenses are to be taxed as between agent and client. We are really asked therefore to alter our interlocutor, and I am not inclined to do that.

Lord Rutherfurd Clark—I entirely agree. It never occurred to me that in pronouncing our interlocutor as we did we were allowing expenses as between agent and client.

The Lord Justice-Clerk concurred.

Counsel for the Trustees—Sir C. Pearson—C. N. Johnston. Agent—Knight Watson, S.S.C.

Counsel for Mr John Fletcher—D.-F. Mackintosh,—Gillespie. Agents—Mitchell & Baxter, W.S.

Counsel for Mrs Fletcher—R. Johnstone—Goudy. Agents—Scott & Glover, W.S.

Saturday, July 7.

FIRST DIVISION.

[Sheriff of Aberdeen, Kincardine, and Banff.

MACALLAN *v.* ALEXANDER.

Aliment—Liability of Son-in-Law to Aliment his Mother-in-Law—Married Women's Property (Scotland) Act, 1877 (40 *and* 41 *Vict. cap.* 29), *sec.* 4.

Held that a husband who had married subsequent to the Married Women's Property Act, 1877, and who had not been *lucratus* by the marriage, was not liable to aliment his mother-in-law.

The Married Women's Property Act, 1877, provides by sec. 4—"In any marriage which takes place after the commencement of this Act the liability of the husband for the antenuptial debts of his wife shall be limited to the value of any property which he shall have received from, through, or in right of his wife at or before or subsequent to the marriage." . . .

Mrs Ann Angus or Macallan, a widow, residing in Gerrard Street, Aberdeen, raised an action in the Sheriff Court at Aberdeen against William