The Court refused the reclaiming-note and adhered.

Counsel for Pursuer and Reclaimer — Guthrie—Orr. Agents—Fodd, Simpson, & Marwick, W.S.

Counsel for Defender and Respondent— C. K. Mackenzie. Agents — Melville & Lindsay, W.S.

Saturday, March 8.

SECOND DIVISION.

[Lord Kinnear, Ordinary.

ALEXANDER AND OTHERS *v.* LOWSONS (LOWSON'S TRUSTEES).

Trust — Trust-Settlement — Construction — Intention of Testator—Partnership—Dissolution of Partnership—Continuity of Provision in Favour of a Business notwithstanding Dissolution of Partnership by Death of One of the Partners.

A truster who had succeeded his father in a manufacturing business, and had assumed his sons as partners, and invested the great bulk of his estate in the hands of the firm, directed his trustees to allow the whole of his funds in the business to remain "invested in the hands of and on loan to the firm on their personal security for the period of twenty years from" his death, with interest, payable to the beneficiaries under his will. He provided for the final and equal division of his estate among his children.

After the truster's death the business was carried on by his sons, and on the death of one of the partners, two of the testator's children raised an action to have it declared that the principal sum lent to the firm was now payable, on the ground that the loan was provided solely for the firm, who received it at the truster's death, and fell to be repaid at the dissolution of the firm, which had occurred by the decease of the partner.

The Court *held* that the intention of the testator was to benefit the business by allowing his funds to remain invested therein, and therefore that the pursuers were not entitled to decree as concluded for, but reserved right to the pursuers, or either of them, to apply to the Court for decree for payment of their shares or share in the event of circumstances entitling them thereto prior to the date fixed for repayment.

This was an action by Mrs Eliza Lowson or Alexander and Mrs Euphemia Lowson or MacHardy against their brothers James Lowson younger, William Lowson, and John Lowson, as trustees of their late father James Lowson junior, and against their brothers James Lowson younger, and William Lowson, the sole surviving partners of the firm of John Lowson & Sons, for repayment of the sum of £45,680, 18s. 10d. lent by the defenders, the trustees, to the firm of John Lowson & Son, and for payment of £11,420, 4s. 6d., the amount of the pursuers' aggregate shares of the said sum.

The pursuers alleged that the sum became payable on the 30th June 1887, being the date of the dissolution of the firm by the death of their brother Andrew Lowson, a partner of the firm.

James Lowson junior died upon 27th November 1883. He was the senior partner of the firm of John Lowson & Son, manufacturers, Forfar. The business had been originated by his father, and he succeeded to the principal position in it, and assumed his sons as partners. At the time of his death the firm consisted of his three sons, Andrew, James, and William Lowson. Besides these he left two sons, Francis, who died before the raising of the action, and John, who was employed in the business, but was not a partner. He also left four daughters, who were all married. By a trust-disposition and settlement dated 12th December 1866 he appointed his five sons his trustees, and, *inter alia*, as regarded the residue of his estate, he directed them to hold and administer it for the use of themselves and their sisters equally, share and share alike, on their respectively attaining majority or being married, excepting the sum of £20,000, part of his capital in the firm, which £20,000 he directed and appointed his trustees to continue invested on loan to the firm of John Lowson & Son, on their personal security, for the period of five years from and after his death, the firm paying interest at £5 per cent. therefor, but with this stipulation, that the loan should be paid up by two equal instalments, the first whereof was to be payable five years after his death should his wife be then alive, and the second whereof was to be payable upon his wife's decease. The truster provided for a final and equal division of the capital sum among his sons and daughters, with provision for their issue and survivors.

By codicil dated 13th October 1883 the truster, *inter alia*, provided—"I do now hereby authorise, direct, and appoint my said trustees named in my said trust-disposition and settlement to allow the whole funds, property, and means belonging to me which may at the date of my death be lent or invested in the business of the said firm of Messrs John Lowson & Son, either as a partner thereof or on loan, or in any other manner of way, to remain and continue invested in the hands of and on loan to the said firm, on their personal security, for the period of twenty years from and after my death, they paying interest thereon half-yearly at the rate of 4 per cent. per annum, to which the same is hereby restricted, the said firm having it in their power to pay up the whole or any part of the said loan sooner than the said twenty years if they find themselves in a position to do so; and so long as the said loan shall continue the interest thereof shall be divided half-yearly in equal shares to and amongst my said five sons and four daughters, named in my said trust-disposition and settlement,

and the capital of the said funds, property, and means belonging to me so invested on loan to the said firm as aforesaid shall, when paid up, be paid and distributed by my said trustees in equal shares to and amongst my said five sons and four daughters named in my said trust-disposition and settlement."

After the testator's death the trustees and beneficiaries, and the firm of John Lowson & Son, entered into a minute of agreement dated December 1883, whereby they agreed "to adopt and hold the sum of £45,680, 18s. 10d. as being the true and full amount of the share or interest of the said deceased James Lowson junior at the date of his death in the stock, funds, property, assets, and business of the said firm or copartnery of Messrs John Lowson & Son, and as representing the whole funds, property, and means belonging to him which at the date of his death was lent or invested in the business of the said firm or copartnery of Messrs John Lowson & Son, either as a partner thereof, or on loan, or in any other manner of way, and claimable by the representatives of the said deceased James Lowson junior, as the deceasing partner, from the surviving partners of the said firm or copartnery." All the parties further agreed to homologate and abide by the terms of the trust-disposition and settlement and codicil, and they elected and agreed to accept of the provisions in their favour therein contained as in full of all legitim, &c., which they could ask or demand by and through their father's decease.

Upon 2nd June 1884 the partners in the firm granted an acknowledgment to themselves and John Lowson, as trustees under their father's trust-disposition and settlement, admitting that they were indebted for the sum of £45,680, 18s. 10d.

Andrew Lowson died upon 30th January 1887, leaving as partners in the firm James Lowson younger and William Lowson.

This action was raised in August 1888.

The pursuers averred—"By the decease of the truster the firm of John Lowson & Son, of which he was the senior partner, was dissolved, resulting as a consequence in the surviving partners thereof, the said Andrew Lowson junior, James Lowson younger, and William Lowson, becoming the succeeding firm of John Lowson & Son, being the firm which the truster provided should be favoured with the said loan, and which succeeding firm as such received and acknowledged the loan as after mentioned. This change was effected, as is usual, without any change in name or in the business; the old firm's business was never discontinued, but was carried on in all its departments in the same premises by the succeeding firm, who took over the whole stock of the old firm, and employed the same servants. Founding upon the foresaid direction and appointment by the truster to his trustees to allow his whole funds and others lent or invested on loan in the said firm of which he was a partner to remain invested in the said succeeding firm of John Lowson & Son, the latter firm accordingly received and retained the said funds and others which they were so to receive on loan. . . . The defenders, the said firm of John Lowson & Son, consisting of the said Andrew Lowson junior and the defenders James Lowson younger and William Lowson as aforesaid, was dissolved by the death of the said Andrew Lowson junior, which happened as aforesaid on the 30th day of January 1887, whereupon the said loan became payable."

They pleaded—"(1) According to a sound construction of the said trust-disposition and settlement and codicil, the said loan thereby authorised was provided solely for the firm of John Lowson & Son, who received the same at the death of the truster, and fell to be repaid upon the dissolution of said firm. (2) The said firm having been dissolved by the decease of the said Andrew Lowson junior, the senior partner thereof, and the said loan thereupon having become repayable, the pursuers are entitled to decree in terms of the declaratory conclusion of the summons. (3) The said dissolved firm only subsisting for the purpose of winding-up, which involves payment of its debts and the discharge of its liabilities, said loan has become repayable, and the pursuers should have declarator to that effect as concluded for."

The defenders pleaded—"(2) According to a sound construction of said trust-disposition and settlement and codicil, the capital belonging to the truster falls in the events which have happened, to remain in the firm of John Lowson & Son for the period mentioned in the said deeds. (3) The period of twenty years from the date of the death of the testator not having expired, the defenders—the trustees—are not bound or entitled to exact immediate payment of the money. (4) In respect of the provisions of the said trust-disposition and settlement and codicil, and of the deed of agreement and acknowledgment mentioned in the answers, the defenders are entitled to absolvitor.

Upon 22nd December the Lord Ordinary pronounced this interlocutor:—"Finds, decerns, and declares in terms of the declaratory conclusions of the summons: Decerns and ordains the defenders John Lowson & Son, and James Lowson younger, and William Lowson, as sole surviving partners thereof, as such partners and as individuals, and the defenders the said James Lowson younger, and William Lowson, as general disponees and executors of the deceased Andrew Lowson junior, conjunctly and severally, to make payment to the female pursuers, equally between them, of the sum of £11,420, 4s. 6d., with interest thereon at the rate of £4 per centum per annum, from 30th January 1887 until payment: Finds the pursuers entitled to expenses, &c.

"*Opinion.*—The question is, whether the pursuers, who are two of the children and residuary legatees of the late James Lowson, a merchant in Dundee, are entitled to recover their shares of the estate from the surviving partners of his firm, to whom it has been lent, in accordance with a direction in his will: Or whether the latter are entitled to retain the whole estate in their

hands until the lapse of twenty years from the date of his death in 1883.

"The testator by a codicil directed his trustees to leave the whole of the funds belonging to him which might at the date of his death be lent or invested in the business of the firm of John Lowson & Sons, 'invested in the hands of, and on loan to the said firm, on their personal security, for the period of twenty years from his death.' It appears that the great bulk of the estate was in this position; and the practical effect of the direction therefore is to leave the whole patrimony of the defenders' children in the hands of a mercantile firm. But the testator's intention to this effect was perfectly clear, and it has been carried out by an agreement, to which the beneficiaries under the will, the trustees, and the firm are parties. This agreement is expressed in two written instruments, a minute of agreement and an acknowledgment by the firm. The result of these documents is, that the testator's children agree to renounce their legitim and abide by the will; that the whole parties agree that the sum of £45,680, 18s. 10d. shall be held to be the whole amount of the testator's interest in the funds and assets of the firm, and that 'the firm of John Lowson & Sons, and Andrew, James, and William Lowson, the individual partners thereof as now constituted,' acknowledge themselves to be indebted in that sum, to be paid to the trustees in twenty years from the truster's death.

"This arrangement was completed in December 1883. In January 1887 the eldest of the testator's sons, Andrew Lowson, died, and the pursuers maintain that the firm has been dissolved by his death, that they are under no obligation to leave their share of the trust-estate in the hands of any other firm which may succeed to its business, and that they are therefore entitled to immediate payment.

"I assent to the Dean of Faculty's argument that the question so raised depends primarily upon the effect of the contract between the trustees and beneficiaries, and John Lowson & Sons. There can be no question that what the testator meant by the firm of John Lowson & Sons was the firm as it was constituted upon his death; and if any one of the partners who survived him had died before his directions had been carried into effect by the trustees, the question which would then have arisen must have been determined upon the construction of the will as a question of testamentary intention. But since the testator's directions have been carried out by the execution of an agreement, I assent to the Dean's observation that the rights and liabilities of the parties are determined by that agreement; and therefore that the question to be considered depends upon the construction and legal effect of the contract, and not merely upon the interpretation of the will.

"The question therefore appears to be, whether the agreement made by the trustees in the execution of their trust was to lend the trust-funds for twenty years to John Lowson & Son and their successors in business, or to lend the funds to the firm of John Lowson & Son, as then constituted, for twenty years, or so long as the firm should continue to exist. I think the latter is the true construction.

"The question whether an obligation undertaken to a copartnery is limited to the actual partners at the time, or whether it is to be extended to the house whatever changes it may undergo, is discussed shortly but very satisfactorily in two passages in Bell's Comm. ii. 526, and i. 287. It is always a question of intention; and when the intention is not clearly expressed it is to be gathered from a consideration of the subject-matter of the contract. The result of the authorities appears to me to be that wherever the motion or consideration of the contract is founded in any material degree upon the confidence of the one party in the integrity, ability, and judgment of the other, it must be assumed that the obligation was intended to be limited to the firm as actually constituted. If it is intended that such an obligation should subsist through all the changes that may arise from the death or retirement of partners, and from the assumption of new partners, there is no difficulty in expressing that intention by taking the obligation to the firm and its successors in business. If it is not so expressed, the inference, from the very nature of the obligation, is that it was undertaken to those persons only on whose capacity and integrity the granter may be supposed to have relied. It is on this principle that guarantees or cautionary obligations for a firm are no longer binding when a change has taken place in any one or more of the partners; for although the rule to this effect may be now rested on a provision of the Mercantile Law Amendment Act, that enactment is in no way at variance with the doctrine of the common law, but, on the contrary, expresses and gives effect to a principle which had been long recognised.

"If the principle be well established, there can be little difficulty in applying it to the circumstances of the present case. I think it quite legitimate to consider the effect of the contract with reference to the confidence which the testator may have reposed in his sons, because although the children and the trustees are the contracting parties, it is not a merely voluntary agreement but an agreement made by the trustees, and assented to by the children, in obedience to the directions of the testator. But there can be no more striking example of exuberant confidence in the capacity and integrity of individuals than the testator's direction to leave the whole patrimony of his nine children, of whom four were daughters, in the hands of his partners in business for so long a period as twenty years. I think it must be assumed that in making that direction he relied not on one or other of his sons, but upon them all, as partners in a business to the conduct of which they were all bound to contribute their experience and skill. And when the children agreed to give up their right to

legitim and accept this particular direction as well as the other dispositions of the will, they must, in my judgment, be held to have relied upon the same persons.

"If this be so, it seems to follow that the death of Andrew Lowson has made such a change in the constitution of the firm as to determine the obligation of the other children to leave their patrimony in its hands. It may well be that Andrew Lowson, who was the senior partner, was the very person on whom the testator and his children chiefly relied. But the true ground of judgment is that they relied upon all the partners who survived the testator, and not upon any one to the exclusion of the others. I cannot assent to the view suggested by the defender's counsel that it would be reasonable or legitimate to take evidence for the purpose of determining whether in point of fact it is probable that the testator expected Andrew Lowson to take a considerable part in the management, or whether his death is likely to make any substantial change in the conduct of the business or in the credit of the firm. The only question is, whether the pursuers are now asked to rely upon the capacity and skill of the same persons to whom the testator directed, and they agreed that their money should be lent. And it appears to me that there are only two views which can reasonably be taken. They must either have relied upon the firm as actually constituted, and therefore agreed to leave their money in its hands, so long as it remained unchanged, and no longer; or else they contracted with the firm and its successors, whatever changes it might undergo, so long at least as it continued to carry on substantially the same business through an indefinite succession of partners. There appears to me to be no middle course between these two alternatives. If the three partners to whom the loan was actually made were entitled to substitute the capacity and skill of two of their number, or of one of their number, for that of the three on whom the lenders relied, I see no reason why, on the same grounds, they should not substitute the capacity of some third person, and so by a series of changes transfer the loan on the original terms to an entirely different firm. It is certain that they could not so deal with any other obligation inferring confidence in themselves as individuals. If the pursuers had guaranteed the firm to a bank they would have been relieved by the death of Andrew Lowson. I think they are relieved, upon the same principle, of their obligation to leave their patrimony in its hands.

"It was argued for the defenders that although the firm may be dissolved by the death of a partner, it still exists for the purpose of winding up, and that in the course of winding up it cannot be required to perform its obligations otherwise than according to their terms, and therefore cannot be required to repay the loan by the trustees until after the lapse of twenty years from the testator's death. I think the argument fallacious—*first*, because it assumes that the loan is absolute for twenty years, whereas the question is whether it was not a loan for twenty years, or so long as the firm should subsist; and *secondly*, because they do not in fact propose to retain the loan for the purpose of winding up but for the purpose of carrying on business.

"The parties are agreed that the case should be disposed of in the same way as if the trustees had brought an action for repayment against the firm; and they are also agreed as to the sums to which the pursuers are entitled if they are now in a position to demand payment of their shares of the estate."

The defenders reclaimed, and argued—The testator's intention was to benefit the firm which had been founded by his father, which had been supported by his own exertions, and which he had left as a legacy to his sons. It was a mistake to suppose that he had left the £45,000 only to be employed in the firm if a certain conjunction of his sons existed as the firm, it was really meant to be a benefaction to his firm, whoever were the persons composing it. That being so, so long as the firm of John Lowson & Sons subsisted this sum of £45,000 was to be left in the firm, or at least for the term of twenty years. Even if the death of one partner broke up the firm and made a new partnership necessary, the trustees were entitled to keep the money until the term of twenty years was expired. Unless it had been understood by the defenders that the money was to remain in the firm for twenty years they would not have allowed the deceased truster's share to be valued at such a large sum as £45,000.

The respondents argued—The intention of the truster was to give a loan for twenty years to the firm of John Lowson & Sons, *i.e.*, a family firm, but only to the firm as the truster knew it would exist at his death, a firm of which Andrew was a partner. When Andrew died the firm of John Lowson & Sons was dissolved, and the shares of the different parties in the £45,000 became exigible. The duty of the trustees was to pay up the shares to the persons entitled to them, and so carry out the intention of the testator. Here his purpose had now come to an end, the firm to which he had left his money was dissolved, so that part of the trust came to an end in spite of the words "twenty years."

The defenders lodged a minute agreeing to give to each of the pursuers £1000 to account of the principal sum sued for, with arrears of interest due to them, and to grant to each a bond and disposition in security over the heritable property and machinery belonging to the firm for the balance of the principal sum and interest till paid. The defenders thereby agreed that in the event of failure to pay the interest then the principal sum should be immediately exigible notwithstanding the terms of the will.

At advising (on March 20, 1889)—

LORD YOUNG—We have all found this case to be a very difficult one, the considerations being perplexing.

The testator Mr James Lowson was a

partner of the firm of John Lowson & Sons, manufacturers, Forfar, at the time of his death on 27th November 1883. I suppose that the business had been founded by his father, and had been maintained by him during his own business life. Before his death he had assumed as partners his three sons, Andrew, James, and William, and he had funds in the business which upon an accounting were found to amount to £45,600. He made his will in the form of a testamentary trust-disposition and settlement in the year 1866, and he executed a codicil in 1883, shortly before his death. There were after his death the three sons I have mentioned as partners in the firm, and the provision of the will upon which the question now before us is raised is expressed thus—"And in respect that a considerable portion of my means and estate is at present lent or invested in the business of the firm of Messrs John Lowson & Sons, manufacturers, Forfar, I hereby authorise, direct, and appoint my said trustees to allow the trust funds to the extent of £20,000 to continue invested on loan to the said firm on their personal security for the period of five years from and after my death, they paying interest thereon at the rate of 5 per cent. per annum." The codicil makes some change in this bequest, as after the same preamble he goes on, instead of the sum of £20,000 he directs his trustees "to allow the whole funds, property, and means belonging to me, which may at the date of my death be lent or invested in the business of the said firm of Messrs John Lowson & Sons either as a partner thereof, or on loan, or in any other manner of way, to remain and continue invested in the hands of and on loan to the said firm on their personal security for the period of twenty years from and after my death, they paying interest thereon half-yearly at the rate of 4 per cent. per annum." That codicil was dated 30th October 1883, the year of his death. When he died his three sons carried on the firm and the business thereof. Shortly thereafter one son Andrew Lowson died, and there were only the two present defenders left to carry on the business.

The firm is the same firm and the business the same business so far as it is possible to identify a business like this, and the question is, whether the amount of the truster's money which was invested in the firm at his death, and which he directed should be allowed to remain in the hands of the firm on their personal security for the period of twenty years, by the death of one of the partners of the firm has become immediately payable. I think that is the question before us, and the question which was argued before us. The ground upon which the pursuers, two of his daughters, hold that this sum has become immediately payable (nothwithstanding the direction of the testator that it was to remain and continue uplifted for twenty years) is this, that by the death of one of the partners the firm has ceased to exist, and therefore it is impossible that the money can remain in the hands of the firm. This is not a mere question of investment of trust funds. No doubt it involves the investment of trust funds, but it is not a question of the propriety or legality of any particular investment. The question regards the testamentary instrument, and I think it is necessary for us to find out the intention of the testator as we can judicially collect it from the deeds in question. What then was the intention of the testator? It was contended that we must impute to him the intention that the continued investment, or rather continued abstention from calling up the trust funds out of the firm, should cease and come to an end as soon as there was any change in the constitution of the firm, either by the death of one of the partners or the assumption of a new one. I am not able to impute that intention to him.

It is undoubtedly true for many purposes, and for many important effects, that a trading partnership ceases upon the death of an old or the introduction of a new partner, but that does not seem to me to be conclusive of the question which is now before us. Notwithstanding that rule it may very well be that a party is not entitled to terminate the carrying out of contracts upon which he had previously entered with a partnership because the partnership with which he had made it has ceased to exist owing to the death of one partner or the assumption of a new one, or—which is the same thing—that a partnership can free itself from its obligations to others because it has ceased to exist, and has been replaced by a new firm. Suppose some old established business which has remained unchanged in character although the partners have changed and died, and someone contracted to invest money in it on the understanding that the investment should continue so long as practically the same business was carried on in the future as in the past although the parties might change. Suppose the contract made in terms that showed that that was the intention of the parties, we could never impute to them an intention that the contract should fail because the partnership failed by the death of one of the partners. The other partners who carried on the same business, could they refuse to carry out the contract previously made? If this very company of John Lowson & Sons had any current contract at the time when the partnership ceased, on the death of the partner Andrew, the old firm could not be prevented from carrying out the contract, and the other party would have a right to insist against the firm on its fulfilment. One partner going out would not relieve the two remaining partners from implementing the contract, and if a new partner should be introduced he must come in on these terms and no others, that the contracts into which the old firm has entered must be carried out. Therefore the intention of parties must always be looked to, and eminently in a case involving a question of testamentary investment we must look at the intention of the testator.

Now, the intention of the testator, as I gather it from what he said in his will, was that this business which he had inherited

from his father, which he had himself fostered, and into which he had invested these large sums of money should be aided and fostered after his death by his funds being allowed to remain in it, and that they should not be called up for twenty years. This is what he said upon his death-bed. No doubt he contemplated that the calling up of this sum immediately might be injurious to the business and to the interest of his sons whom he desired to aid, and therefore he gave these instructions to his trustees. I think it would not be aiding his intention, and that we should be doing violence to the terms in which he expressed his intentions if we were to hold that when one of the partners died, or if another son should be introduced into the business, the benefaction should cease, with perhaps serious consequences to the parties he intended to benefit.

I do not say that such a change of circumstances might not occur as not only to warrant the trustees but to make it their duty to uplift this money, or to authorise any of the beneficiaries, if they felt that the money was in danger of being lost, to compel the trustees to uplift it before the term of twenty years had expired. The trustees are the very sons who are carrying on this business in which the money is invested, and it is not impossible that they might be a little remiss in seeing the necessity of having this money taken out of the business, although there is nothing before us to lead me to that conclusion. I do not wish to be misunderstood, I only desire to guard myself from being taken as saying that such a change of circumstances might not occur at any time within the twenty years, or before its expiry, to make it the duty of the trustees to uplift this money, a duty which might be enforced by any of the beneficiaries whose real interests were imperilled by allowing it to remain.

All we require to determine now is whether by the death of Andrew, and having regard to the rule that by the death of a partner the partnership ceases, the time has come that, without doing violence to the testator's expressed intention, we may say the money should be uplifted. In my opinion it has not, and to allow it to be called up now would not be in furtherance, but in violation of the meaning and intention of the will. I go no further in the present circumstances than to say I do not consider this action maintainable. But I am aided in coming to this conclusion by the very proper and commendable offer which the pursuers have made in the minute lodged by them. By that minute they agree to give £1000 to each of the beneficiaries, and to give them the security of the heritable property, and of the machinery belonging to the firm, with an assurance that the interest is to be regularly paid, and if there is any failure in the payment of interest, that then the sum, notwithstanding the will, shall be immediately exigible. I think that when this has been carried out the pursuers in the present action will have a much larger security than they would have had if Andrew had lived, and larger security than the truster thought they would have, because he of necessity exposed his money to considerable peril by investing it in this business, and he meant to expose it to peril in furtherance of his desire to help the business and those interested in carrying it on.

With regard to the future, I do not think we need to determine anything. My opinion is that so long as this business continues and is carried on by the truster's sons as practically the same business, there will be no occasion for calling up this money, and to do so would be to frustrate the testator's intention. I think we all thought in our consultation upon the subject that it would be proper in every view, before we pronounced any formal interlocutor, that this minute should be actually carried out, and that when this has been done we should dismiss the action.

LORD RUTHERFURD CLARK and the LORD JUSTICE-CLERK concurred.

LORD LEE was absent.

Upon 7th March 1890 the parties lodged a note stating that the defenders had implemented the obligations undertaken in the minute lodged by them, and above quoted, and they therefore craved the Court to pronounce an interlocutor as adjusted by them.

The Court pronounced this interlocutor:—

"The Lords having heard counsel for the defenders' reclaiming-note against Lord Kinnear's interlocutor of 22nd December 1888, and thereafter advised the cause on 20th March 1889, Find that the pursuers have since received from the defenders John Lowson & Sons, and James Lowson younger, and William Lowson, the partners of the said firm, the sum of £2000 to account of the principal sum sued for, and have also received from them all arrears of interest to 22nd November 1889, and likewise bonds and dispositions in security by them to the pursuers, Nos. 39 and 40 of process, for £9420, 4s. 6d., the balance of said principal sum, bearing interest from said 22nd November 1889 till fund recalled, and hereby recal the interlocutor reclaimed against: Found and hereby find that the pursuers are not in existing circumstances entitled to decree as concluded for, but that under reservation of right to the pursuers, or either of them, to apply to the Court for decree for payment of their shares, or her share, of said balance in the event of circumstances arising or emerging entitling them thereto prior to 27th November 1903, therefore continue the cause: Found and hereby find no expenses due to or by any of the parties, and decerned and hereby decern *ad interim*.

Counsel for Defenders and Reclaimers—D.-F. Mackintosh, Q.C.—Graham Murray. Agent—J. Smith Clark, S.S.C.

Counsel for Pursuers and Respondents—Jameson—Macfarlane. Agents—Macrae, Flett, & Rennie, W.S.