so read the stipulation in the agreement, and in the relative lease of 1863, regarding this matter. The possession there referred to is that which any landlord may stipulate to take of the subjects of the lease, so soon as the tenant is overtaken by bankruptcy, or otherwise incurs an irritancy. It is not such a stipulation as occurred in the case of *Sim* v. *Grant*, where, in the very act of effecting the sale, it was stipulated that the subject of it should remain with the seller to be used by him for his own profit until the purchaser should choose to claim delivery of the subject. I cannot therefore think that the stipulation in this transaction, that the defender on the bankruptcy of the tenant should be entitled to take possession of the property he had set in lease, can at all militate against the legal effect of the circumstances otherwise, as amounting in this case to what is equivalent to delivery.

On the whole, without infringing on the general principle of law, or trenching upon any of the decisions, I am of opinion that the pursuer is not entitled to prevail in this action, on the ground of the *jus in re* as regards this property not having been vested in the defender on the occurrence of the sequestration of the seller's estate, under which the pursuer is trustee. I concur in the conclusion at which your Lordship has arrived, that the plant has all along been in the pursuer's possession as owner, through Orr as his tenant.

Having formed this opinion, I think it unnecessary to consider whether, on the assumption that the real right has not passed to him, the defender could effectually plead the Mercantile Amendment Act. All I shall say is, that in my view the decision in the case of *Sim* v. *Grant*, which was arrived at after great deliberation, would present a formidable obstacle to such a plea on the part of the defender in the circumstances of this case; but, on the ground which I have stated, I concur in thinking that the interlocutor under review must be altered, and effect given to the defender's real right in this moveable property as well as in the copyright.

The other Judges concurred.

Agent for Pursuer—Robert Menzies, S.S.C.
Agent for Defender—J. D. Bruce, W.S.

Tuesday, July 12.

BILL CHAMBER.

GRANTS *v.* BOWLES.

Entail—Game—Lease. Held that a lease by an heir of entail, in possession of the sole and exclusive right to the whole shootings over the entailed estate, with the exception of the home farm and policies, for the period of nineteen years, was not binding on the succeeding heir of entail.

The late Mr Grant of Arndilly, heir of entail in possession of that estate, granted to the respondent Colonel Bowles a lease of certain farms and hill pasture and certain salmon-fishings in the Spey for nineteen years from Whitsunday 1866, and also the sole and exclusive right to the whole shootings over the estate of Arndilly, with the exception of the home farm and policies, "for the same duration of lease or as long as Mr Grant can legally grant me (the respondent) towards the nineteen years." Mr Grant died on 20th March 1870, and was succeeded by the complainer Mrs Menzies Grant as heiress of entail, who completed her title under the entail. The respondent having advertised the said shootings to let for the ensuing season, and having disregarded the complainer's intimation that his right to the shootings terminated upon the death of Mr Grant, the complainer lodged the present note of suspension and interdict, in which she craved interdict prohibiting the respondent from sub-letting the shootings of Arndilly, and from shooting or interfering with the game thereon.

CRICHTON for her.

W. F. HUNTER for respondent.

The Lord Ordinary on the Bills (MACKENZIE) granted the interdict craved, and passed the note in order that the question of law might be tried. His Lordship added to his interlocutor the following Note:—

"The late Mr Grant of Arndilly was proprietor under a strict entail of the estate of Arndilly. Mr Grant let to the respondent Colonel Bowles on 28th May 1866 certain farms and hill pasture at a rent of £205, and certain salmon-fishings in the Spey at a rent of £20, for nineteen years from and after Whitsunday 1866, and also the sole and exclusive right to the whole shootings over the estate of Arndilly, with the exception of the home farm and policies, for, as the respondent's offer bears, 'the same duration of lease, or as long as Mr Grant can legally grant me towards the nineteen years.' The rent for the shootings was £125 yearly, payable by two instalments, the first at 1st February thereafter, and the second at 1st August in the succeeding year. It was stipulated in the respondent's offer that he was to be entitled to sub-let the whole or any part of the shootings and fishings. Mr Grant died on 20th March 1870, and was succeeded by the complainer Mrs Menzies Grant as heiress of entail, who has completed her title under the entail. The respondent having advertised the said shootings as extending to about 12,000 acres, in Mr Snowie's list of shootings, dated 10th April 1870, with the services of one gamekeeper, to be let with the shooting lodge and salmon-fishings at a rent of £650 per annum for the ensuing season, and having disregarded the complainer's intimation that his right to the shootings terminated upon the death of Mr Grant, the complainers have lodged the present note of suspension and interdict, in which they craved interdict prohibiting the respondent from sub-letting the shootings of Arndilly, and from shooting or interfering with the game thereon.

"The question whether an heir of entail can grant a lease of the shootings over the entailed estate for nineteen years, which shall be binding after his death upon the future heirs of entail, has never been decided by the Court. In the case of *E. of Fife* v. *Wilson*, Dec. 14, 1859, 22 D. 191, the Lord Ordinary (Lord Ardmillan) held that such a lease was binding on the future heirs of entail. But the Court, holding that the lease of the shootings founded on had not been proved, recalled Lord Ardmillan's interlocutor, and did not decide the general question.

"It has been decided in the case of *Pollock, Gilmour & Company* v. *Harvey*, June 5, 1828, 6 S. 913, and by Lord Barcaple in the case of *Birkbeck* v. *Ross*, Dec. 22, 1865, 4 Macph. 272, that a lease of shootings is not effectual against a singular successor. In the first of these cases the Lord

Ordinary (Lord Corehouse) in his Note said—'By the law of Scotland the right of killing game, considered as a real right, is an incident of landed property.' The report of the case bears that the other judges, with the exception of Lord Craigie, concurred in Lord Corehouse's opinion. Mr Bell in his Principles (§ 952), states that 'the right to kill game does not exist as a real right separate from the land by sasine or lease; it is only a personal privilege in respect of the right of property.'

"The respondent maintained that the necessary inference to be drawn from the cases of *Sinclair* v. *Duffus*, Nov. 24, 1842, 5 D. 174; *Menzies*, March 10, 1852, 14 D. 651; *Leith*, June 10, 1862, 24 D. 1059; and *Crawfurd* v. *Stewart*, June 6, 1861, 23 D. 965, is, that the right to the game and shootings of an estate is not now regarded as a personal privilege or as an incident of property, but as a right of property, and that the late Mr Grant was entitled under the deed of entail which allowed leases of the entailed lands and estate, and also as an act of good administration of the estate, not injurious to the succeeding heirs, to grant the lease founded on by him.

"The Lord Ordinary considers that it was not decided in the cases of *Sinclair*, *Menzies*, and *Leith*, that the right to game and shootings must receive effect as a right of property, and not as a personal privilege, but only that the yearly rent or value of shootings, whether let or unlet, was to be taken into computation in fixing the amount of provisions to the widow and children of the preceding heir. He thinks that in none of these cases was the nature of such a right, or of a lease of shootings, decided, or necessary for the decision of the actions. The same remark applies, in his view, to the case of *Crawfurd* v. *Stewart*, where the question was whether the lessee of shootings was liable to be assessed for poor-rates?

"But, even supposing that the right to the game and shootings of an estate were not, as defined by Mr Bell, a mere personal privilege in respect of the right of property, but to some extent a right of property, that does not necessarily lead to the conclusiou contended for by the respondent. The heir in possession has a right of property in the mansion-house, offices, garden and pleasure grounds, and yet he cannot have these except for a year, or for a period to terminate with his life; *Cathcart* v. *Schaw*, 31st January 1755, Dict. 15,403; *Leslie* v. *Orme*, 2d March 1779, Dict. 15,530, 2 Pat. App. 533.

"The Lord Ordinary had the benefit of an able argument from the counsel of the respondent. He has since then carefully considered the cases and the authorities cited. After giving these the best consideration in his power, he is of opinion that the complainers are entitled to the interim interdict craved by them, and to have the note passed, so that the question of law may be fully considered and determined. As at present advised, he considers that the lease of the shootings to the respondent for nineteen years was not within the power of the late Mr Grant; and he thinks that it was not authorised by the entail, and was not an act of ordinary administration and arrangement, not injurious to the succeeding heirs, and practically necessary to enable the grantor to reap the full fruits."

Agents for Complainers—J. & G. Bining, W.S.
Agents for Respondent—Skene & Peacock, W.S.

Thursday, July 14.

FIRST DIVISION.

SPECIAL CASE—BARONESS GRAY AND OTHERS.

Entail—Provisions to Children. The heir in possession, under an entail which allowed certain provisions to children to be granted, bound himself and the heirs of entail, and his heirs and executors, &c., to pay £5000 to trustees for behoof of his eldest daughter, directing that, if she succeeded to the entailed estate, £500 of the provision should be paid to her heirs and assignees, and £4500 to a younger sister. The eldest daughter became heiress of entail in possession. *Held*, the second direction was valid, but not the first.

Entail—Provisions to Children—Fee and Liferent—Destination voided. By bond of provision granted on the occasion of his daughter's marriage, the heir of entail in possession bound himself, &c., to pay £5000 to trustees, with a direction (1) to pay the interest thereof to her during the subsistence of the marriage; (2) if she was the survivor of the spouses, to pay £3000 to her in fee, and the interest of the remaining £2000; and (3) if she was the survivor, and there was no issue of the marriage, to pay the £2000 after her death to her husband and his heirs and assignees. The marriage was dissolved by decree of divorce at the wife's instance, without any children being born of the marriage; and the husband assigned all his rights to any part of the £5000 to the wife's trustees. *Held* she was entitled to receive payment of the £2000 as well as of the £3000 in fee.

Entail—Provisions to Children—Exemption of next Heir—Interest. Under a bond of provision to one of his children granted by the heir of entail in possession, the next heir of entail was exempted from liability therefor. *Held* this did not invalidate the bond; but interest thereon could only run from the date of the death of the heir of entail so exempted.

Entail—Free Rent—Public Burdens—Annuity to Widow—Assessment for River Protection—Abatements of Tenants' Rents—Feu-duties—Improvement Debt—Montgomery Act. In computing the free rent of an entailed estate, the entail provided for the deduction "of all public burdens, liferents, and interests of debts which may affect the said lands and estates." *Held* an annuity to the widow of an heir of entail, though not payable till after his death, fell to be deducted; but not feu-duties, assessments for protecting the river in close time, abatements allowed to tenants from rental, and the interest of an improvement debt incurred under the Montgomery Act.

Expenses—Special Case. (*Per* Lord President.) In special cases the giving of expenses is a matter of circumstances, and not to be decided, as in ordinary cases, by the amount of pecuniary success.

In the year 1808 Francis Lord Gray, now deceased, granter of the bonds of provision after mentioned, succeeded to the entailed estates of Gray and Kinfauns, and others, in the county of Perth, under a bond of tailzie made and executed