—availing themselves for that purpose of the provision contained in the 18th section of the Court of Session Act 1868, by which it is made 'competent to insert in the will of a summons passing the signet a warrant of inhibition which shall have all the like force and effect as letters of inhibition in the form in use at the passing of this Act.' The form of the warrant is prescribed by the statute, and it is also provided that when warrant of inhibition is contained in the will of a summons passing the signet, 'such warrant may be executed either at the same time as the summons is served, or at any time thereafter; and it shall not be necessary to publish such warrants, or to intimate letters of inhibition passing the signet to the lieges in any other way than by registration in the General Register of Inhibitions, and in registering it shall be sufficient to register the summons, including the warrant of inhibition, and the execution of such warrant without registering any condescendence or note of pleas in law which may follow the summons.' It is not alleged in the petition that there was anything irregular or informal in the warrant or the execution of the inhibition, or in the registration. The respondents deny that there was anything incompetent or illegal in the proceeding itself.

"The petition prays for the recal of this inhibition without caution, and prays also that the respondents be found liable in the expenses of the petition, and the procedure to follow hereon. The petition was presented without any application to the respondents either to recal or restrict the inhibition, and without any intimation that such a petition was to be presented.

"The respondents are quite willing that the inhibition shall be recalled upon caution for such amount as your Lordships may direct. But they submit that there is no ground for recalling it without caution, and that the petition ought to be refused, with expenses."

Nevey for petitioner.

Pattison in answer.

The Court held unanimously that such an action of declarator was not of a nature to form a competent or legal ground for inhibition, there being no conclusion for payment of a pecuniary claim or implement of any other obligation as the ground of an action, in security of which inhibition could be competently used; and they granted the prayer of the petition.

Agent for Petitioner—Robert Finlay, S.S.C.

Agent for Respondent—James Somerville, S.S.C.

OUTER HOUSE.

OSWALD, PETITIONER.

(Before Lord Mackenzie)

Entail—Rutherfurd Act—Power to Feu—Value of Estate. Held by Lord Mackenzie (and acquiesced in) that the powers granted to heirs of entail to feu under Rutherfurd Act to extent of one-eighth of estate are in addition to powers to feu under the entail; and that the value of estate in any such question is yearly, and not actual intrinsic or selling value.

In this petition to feu the Lord Ordinary (Mackenzie) has pronounced the following interlocutor, which has become final:—

"*Edinburgh, 19th July* 1870.—The Lord Ordinary having resumed consideration of the petition with the reports of Mr Thomas Brodie, W.S., and of Mr Colledge, Nos. 13 and 16 of process, and proceedings, Finds that the procedure under the petition has been regular and proper; and that the portions now proposed to be feued, along with that portion already feued under the former application to the Court, do not exceed in all one-eighth part in value of said entailed estate mentioned in the petition, and do not form any part of the mansion-house, offices, or policies of the same; and that the proposed feuing would be permanently advantageous to the said estate: Interpones authority, and authorises and empowers the petitioner to grant feus of the seven parcels of land specially described in the petition, and delineated on the plan No. 17 of process, which is subscribed by the Lord Ordinary as relative hereto, and that at such times and in such portions as the petitioner may think fit; fixes and determines the minimum rates of feu-duty at which the said lands may be feued to be the following:—viz. (*first*) the minimum rate of £35 sterling of yearly feu-duty per imperial acre for the parts of said lands first and second described in said petition; (*second*) the minimum rate of £171, 10s. sterling of yearly feu-duty per imperial acre for the parts of said lands third and fourth, fifth and sixth described in said petition; and (*third*) the minimum rate of £12 sterling of yearly feu-duty per imperial acre for the part of said lands seventh described in said petition, and decerns: Appoints a draft of a form of feu-charter, feu-contract or feu-disposition, to be made use of under this application from time to time as such feus shall be granted, to be lodged in process, and when lodged, remits to Mr Thomas Brodie, W.S., to revise and adjust the same, and to report.

"*Note.*—The 24th section of the Rutherfurd Act authorises the heirs of entail in possession to grant feus of the entailed estate, 'such feus'—that is, feus granted under the powers of the Act—not exceeding in all one-eighth part in value for the time of the estate. There is no prohibition in the Act similar to what occurs in the Aberdeen Act against the heir exercising the said statutory powers in addition to the powers conferred by the deed of entail, so as to exceed in the whole the proportion of ground authorised to be feued by the Act; not only so, but the said section of the Rutherfurd Act provides that nothing therein contained shall prevent the heir in possession from exercising any power in the entail of granting feus more extensive than the power conferred by the Act. The Lord Ordinary is therefore of opinion that the petitioner may exercise both the power conferred by the statute and the power conferred by the deed of entail.

"The Lord Ordinary is also of opinion that the value for the time of the entailed estate, which the heir in possession is prohibited from selling, means the yearly value of the whole estate, independent of any exercise of the statutory power. Such value is, he thinks, a more accurate criterion of the value of the estate, and of an eighth part thereof for the time than the estimate of skilled witnesses as to the actual intrinsic value, more especially seeing that the power conferred by the statute is to feu or lease certain parts of the estate for an annual return. Such actual intrinsic or selling value also depends so much upon contingencies and upon speculation as to render its ascertainment with any certainty very difficult. This appears to be the opinion of the skilled re-

porter. But the yearly value can be with ease and certainty, and has been, ascertained.

"It appears to be clear, as stated by Mr Brodie, that the power to feu now sought 'would immensely increase the value of the estate.'"

THOMS and BALFOUR for petitioners.

Agents—R. & J. A. Haldane, W.S.

HOUSE OF LORDS.

Wednesday, July 20.

DUNDAS AND OTHERS (STRATHMORE'S TRUSTEES) *v.* STRATHMORE AND OTHERS.

Trust—Policies of Insurance—Entail. A nobleman who had become deeply involved executed a trust-disposition and settlement whereby he conveyed all his property to trustees for certain purposes, viz., (1) in order that they might raise a sum of £250,000 to pay his debts; (2) that of this sum £10,000 was to be applied in insuring against a certain event, the proceeds of the insurance to be applied towards payment of the £250,000; (3) the balance of the £10,000 to be applied towards insurances of the nobleman's life, or, in their discretion, towards reduction of the debt of £250,000; (4) the deed proceeded—"That the residue of the said sum of £250,000, together with such sums received from any insurances on my life, either by the sums assured becoming payable or by the surrender or sale of the policy or policies, shall be applied in payment of my present debts and liabilities." They were further directed to keep up insurances on his life to the extent of £30,000. At the death of the nobleman policies of insurance, which it had been intended that the trustees should have surrendered, fell in to the extent of £130,000. *Held* (altering judgment of the First Division) that the duty of the trustees was to pay all the debts due by the deceased at the date of the trust-deed with the funds in their hands, including, if necessary, the policies which had not been surrendered; and that thereafter the balance of the said policies must be applied towards the reduction of the debt of £250,000 on the entailed estate; and did not belong to the disponee of the deceased or his later creditors.

This was an appeal against a judgment of the Court of Session in an action of multiplepoinding at the instance of the trustees of the late Earl of Strathmore.

The circumstances under which the question arose were shortly these:—The late Earl of Strathmore was heir or institute of entail in possession of the entailed estates of Glamis and others, situated in the counties of Forfar, Perth, Fife, and Kincardine

He was also absolutely seized to him and his heirs in possession in certain copyright tenements at Pauls Walden, in the county of Hertford, as tenant thereof, and was also tenant for life in remainder. immediately expectant on the decease of his mother, the Honourable Charlotte Bowes Lyon, commonly called Lady Glamis, of the manor of Pauls Walden, and other hereditaments in the parish of Pauls Walden and county of Hertford aforesaid, under an indenture of settlement dated 15th July 1847, and he was also tenant for life, in remainder, expectant on the decease of John Bowes, Esq., and default or failure of his issue (he having been at the periods after-mentioned and still being childless), of large estates in the counties of Durham, York, and Middlesex.

The late Earl having contracted large debts on the security of his interest as heir of entail in possession of the Glamis estates, and of policies of insurance on his life, he, by trust-disposition dated 28th October 1854, and three supplementary trust-dispositions, dated respectively the 19th and 20th May 1858, the 10th and 18th January 1860, and 23d and 24th March 1863, conveyed his whole estates, property, and effects, heritable and moveable, and particularly the Glamis estates, to Donald Lindsay and George Auldjo Jamieson, both accountants in Edinburgh, as trustees to act in succession in manner provided in the said trust-disposition and supplementary trust-disposition, for behoof of all his just and lawful creditors, and for the uses, ends, and purposes, with the powers and under the conditions, provisions, and declarations therein written, in virtue of which trust-disposition and supplementary trust-disposition the said Donald Lindsay and George Auldjo Jamieson were infeft in the said Glamis estates, and the said Donald Lindsay was in the year 1864 in possession and management thereof as sole acting trustee for behoof of the Earl's creditors entitled to the benefit of the trust thereby created.

By the year 1864 the debts, liabilities, and incumbrances of the late Earl had increased to such an amount as the agreement after-mentioned bears, "that even if his interests in the Glamis, Bowes, and Pauls Walden estates, and the policies of insurance on his life, and all other his property, heritable and moveable, real and personal, were at once to be disposed of and converted into money, the proceeds would be wholly insufficient for satisfying the claims of the creditors; and not only is he without the means of support and maintenance from the Glamis estates, but the said estates are liable to the diligence of his creditors, who may enter into possession thereof, and waste and dilapidate the same, to the great injury of the succeeding heirs of entail."

With the view of relieving the late Earl from his embarrassments, and preventing the creditors from entering into possession of the Glamis estates, to the injury of the next heirs of entail, who were the present appellants (Lord Strathmore and his two eldest sons, the respondents Lord Glamis and Francis Bowes Lyon), it was arranged that the said estates should be disentailed under the provisions of the Acts 11 and 12 Vict., cap. 36, and 16 and 17 Vict., cap. 94; that, as the agreement after-mentioned bears, "the said Earl shall receive an allowance of £2500 a-year, provided always the said allowance be strictly alimentary, as after-mentioned, out of the rents of the said estates, so long as the free revenue thereof shall be sufficient for payment of the same, after payment of preferable charges thereon, and that such alimentary allowance shall be increased to the extent and in manner after-mentioned, as the debt affecting the estate shall be diminished, and that the fee-simple of the said estates may be charged with a sum not exceeding £250,000, for payment of the said Earl's debts, and for the other purposes after-mentioned, on condition of the said Earl relinquishing all right and title to the estates," and on the other conditions embodied in the said agreement.