Counsel for Pursuer—Brand—Millie. Agents—Wright & Johnston, Solicitors.

Counsel for Defenders (Dalziels)—J. A. Reid. Agents—Lindsay, Paterson, & Co., W.S.

Counsel for Defender (More)—Lang. Agent—Thos. Carmichael, S.S.C.

Saturday, November 24.

SECOND DIVISION.

SPECIAL CASE—HECTOR AND OTHERS (MAXWELL'S TRUSTEES).

Succession — Direction to Trustees to Accumulate Residue—Right to Accumulations where struck at by Thellusson Act.

A deed of settlement contained directions to trustees to invest a sum of money as a fund for payment of certain bequests to a variety of charitable institutions, and "for the purpose of increasing said fund" to add thereto yearly one-fourth part of the interest payable upon it, and to pay the remaining three-fourths of the interest after the decease of certain annuitants on the estate, and ever thereafter, to the institutions.—*Held* (1) that the accumulations were struck at by the Thellusson Act, 39 and 40 Geo. III. cap. 98; and (2) (*dub.* Lord Ormidale) that there having been by the deed a present gift of the fund itself, and the direction to accumulate having been merely a burden on that gift, the gift became at the expiry of the statutory period of limitation absolute in the person of the donees.

Title to Sue—Personal Bar—Thellusson Act.

Observed that personal bar cannot be pleaded so as to defeat the provisions of the Thellusson Act, it being an Act dictated by motives of public policy, and having for its object the repression of public evils.

This was a Special Case for the opinion and judgment of the Court presented by the following parties:—(1) William Hector, writer in Pollokshaws, and others, trustees under the trust-disposition and settlement of the late Miss Harriet Maxwell, of the first part; and (2) Sir William Stirling Maxwell, Bart., of the second part.

Miss Maxwell, who was an aunt of the party of the second part, had died on 18th October 1841, leaving a trust-disposition and settlement dated 21st June, and a codicil dated 19th August 1841. The codicil ran, *inter alia*, as follows:—"Farther, in the event of my father Sir John Maxwell surviving Tamar Bee and Archibald Macdonald senior, in whose favour I have granted annuities of £50 each by the said disposition and settlement, payable out of the interest of £4000 deposited by me in the Glasgow branch of the Royal Bank of Scotland, I do hereby leave and bequeath to him the sum of £2000, which sum I hereby appoint to be paid to my said father by my said trustees, or survivor of them, or any other trustee or trustees whom they may assume into the trust, out of the said sum of £4000, immediately after the decease of the longest liver of the said Tamar Bee and Archibald Macdonald senior: Farther, on the decease of the longest liver of the said Archibald Macdonald senior and Tamar Bee, my said trustees or their foresaids shall allow said sum of £4000, and surplus interest due thereon, after paying said annuities, but under deduction of the said sum of £2000 bequeathed to my father in the event foresaid, to remain deposited in the said bank, or otherwise securely to invest the same as a fund for payment of the bequests to the religious and charitable institutions after mentioned; and for the purpose of increasing said fund, my said trustees or their foresaids shall add thereto yearly one-fourth part of the interest payable on the said sum deposited in said bank, and they shall make payment of the remaining three-fourths of said interest at the term of Whitsunday yearly, and beginning at the first term of Whitsunday that shall arrive after the decease of the longest liver of the said Tamar Bee and Archibald Macdonald senior, and continuing thereafter for ever, to the following religious and charitable institutions, equally among them, viz.—The Glasgow Royal Infirmary, the Glasgow Deaf and Dumb Institution, the Glasgow Asylum for the Blind, the Glasgow Eastwood Club, and the British and Foreign Bible Society."

Both annuitants survived the testatrix, and one of them survived Sir John, who died in 1844, so that the legacy of £2000 to him did not take effect. The last annuitant died on 6th September 1855, when there stood at the credit of the trustees in bank £4000 of principal and £441, 1s. 9d. of surplus interest, leaving, after payment of all duties and expenses, £4000 applicable as directed by the codicil.

From Whitsunday 1856, when the above-mentioned charitable bequest came fully into operation, to Whitsunday 1877, being a period of twenty-one years, the trustees, in terms of Miss Harriet Maxwell's settlement and codicil, retained and accumulated one-fourth of the annual interest of the capital sum, and distributed the remaining three-fourths among the five charities. The sum thus accumulated as at Whitsunday 1877 amounted to £1211, 2s. 6d., which fell to be added to the capital, with the view of applying the income thereof as directed. Sir William Stirling Maxwell was the heir-at-law and sole next-of-kin and heir *in mobilibus* of Miss Maxwell. The trustees being in doubt whether they could lawfully make any further accumulation of income, the opinion and judgment of the Court was sought on the question as to the disposal of the one-fourth of the income, and possibly of the capital of Miss Maxwell's trust-fund. It was contended on behalf of the trustees that the whole fund was appropriated to purposes of charity, and that they were either bound to continue accumulating one-fourth of the revenue, or, if that purpose was illegal under the Thellusson Act, that the whole income was applicable to the charitable purposes specified by the testator. It was contended by the second party that the one-fourth of the income or revenue of the trust-fund to accrue from and after the expiration of the foresaid period of twenty-one years being no longer subject to accumulation, fell, under the operation of the statute, to him as heir-at-law and next-of-kin of the said Harriet Maxwell. He further maintained that, being thus entitled to a

perpetual annuity equal to one-fourth of the trust-fund, and no other person having any interest in the capital thereof, he was the equitable proprietor or beneficiary of one-fourth of the trust-estate, and entitled to have the capital to that extent transferred to him.

The questions accordingly submitted were as follows:—"(1) Is the direction to accumulate one-fourth of the income of the fund in question null and void as from the term of Whitsunday 1877, under the Statute 39 and 40 Geo. III. cap. 98? (2) Does the one-fourth share of the revenue of the trust estate, subject to such direction to accumulate, assuming the same to be ineffectual, result to the second party after Whitsunday 1877, or does it fall to be applied by the first parties to the same uses as the other three-fourth parts of said revenue? (3) If the second question be answered in favour of the second party, is the second party entitled to have one-fourth of the trust-funds or capital paid or transferred to him absolutely? (4) Should either of the second or third questions be answered in favour of the second party, is his interest limited to one-fourth part of the revenue of the £4000 of original capital, or the fourth of the original capital itself only, or is he entitled to share, to any and what extent, in the revenue or principal of the accumulated fund of £1211, 2s. 6d.? (5) Should the second party be entitled to one-fourth of revenue only, has he right to a share of the extra revenue alleged to be contributed by the late Sir John Maxwell, and which is declared to be £40 per annum? (6) Assuming that the accumulation directed by Harriet Maxwell is illegal, is the second party, in the circumstances above stated, barred from stating this plea, and claiming the fund so far as illegally directed to be accumulated, seeing that he is the heir-at-law and a testamentary trustee of Sir John Maxwell?"

Authorities—Thellusson Act, 39 and 40 Geo. III. cap. 98, extended by 11 and 12 Vict. cap. 36, sec. 41; M'Laren on Wills, i. 302; *Ogilvie* v. *Kirk-Session of Dundee*, July 18, 1846, 8 D. 1229; Lewin on Trusts, 81, 82; *in re Clulow's Trustees*, 28 L. J. (Chan.) 696; *Green* v. *Gascoigne*, 34 L. J. (Chan.) 268; *Lord* v. *Colvin*, Dec. 7, 1860, 23 D. 111; *Combe* v. *Hughes*, 34 L. J. (Chan.) 344; *Glen* v. *Stewart*, June 23, 1874, 1 R. (H. of L.) 48; *Mackenzie* v. *Mackenzie's Trustees*, June 29, 1877, 14 Scot. Law Rep. 596; *Tucker* v. *Kayess*, April 30, 1858, 4 Kay and Johnston, 339; Williams on Executors, 7th ed., 1193; *Anderson* v. *Thomson*, July 17, 1877, 14 Scot. Law Rep. 654.

At advising—

LORD JUSTICE-CLERK—[*After stating the facts*]—I think the rules which are to be applied to the Thellusson Act have been very clearly fixed by a long series of decisions, and, as far as applicable to this case, may be thus stated:—If the fund directed to be accumulated is not the subject of any present gift, then the right of the eventual beneficiary will not be accelerated or arise at the term of twenty-one years, but the heir-at-law *in mobilibus* will take it as intestate succession. But if there be a present gift of the fund itself, and the direction to accumulate be only a burden on the gift, then the burden will terminate at the expiration of twenty-one years, and the gift will become absolute in the person of the donee.

These principles have been recognised in our own law as well as in that of England. The case of *Lord* v. *Colvin*, 23 D. 111, and 3 Macph. 1083, is an example of the first class; that of *Ogilvie* v. *Kirk-Session of Dundee*, July 18, 1846, 8 D. 1229, is an example of the last. In the case of *Lord* v. *Colvin* none of the parties claimed as legatees. There was admittedly no gift, and the claims were vested on the character of heir *in mobilibus* at different periods. On the other hand, the case of *Ogilvie* is very close to the present. In that case the Kirk-Session of Dundee were given a legacy of £2000, to accumulate for 100 years, in order that they might build an hospital. The Court sustained their claim to the whole fund. Lord Fullerton says—"The party to take these accumulations, if they had been carried into effect, is the trust, and that very same trust is also the party who, but for the direction to accumulate beyond the period of twenty-one years, would take these profits as the holder of the fund, so that there can be no doubt of their full right to the bequest, the statute only relieving them of the obligation to accumulate after the time prescribed." The same rule was applied in the recent case of *Mackenzie* v. *Mackenzie's Trustees*, 14 Scot. Law Rep. 596, in which the First Division found that the whole income of a fund directed to be applied in the purchase of an entailed estate, and until the purchase to be divided in the proportion of three-fourths to the first institute of entail and the remaining fourth to accumulate, fell to the beneficiary after the twenty-one years had expired, and that the one-fourth did not fall into intestacy.

In England the same rule has long been fixed. Examples of it will be found in Hargreave's Treatise on the Thellusson Act, 256. The case of *Green* v. *Gascoigne*, 34 L. J. (Chan.) 268, decided by Lord Chancellor Westbury, is an example of the first class. He found that there was no present gift in the settlement. The case of *Combe* v. *Hughes*, Jan. 27, and May 2, 1865, 34 L. J. (Chan.) 344, well exemplifies the second. Lord Justice Turner states the law with great clearness. He says—"I think the general rule may well be taken to be this—If there is an absolute gift, and then a series of limitations modifying that gift, so far as the limitations do not extend the absolute gift remains. If, on the other hand, there be no absolute gift, but merely a series of limitations, then of course the limitations only can take effect, and what is not reached by the limitations is not disposed of."

Now, applying these rules to the present settlement, the question is, Whether there be here a gift of the £4000, burdened by a direction to accumulate one-fourth of the income? or whether there be only a legacy of three-fourths of the income of the fund to these charities? I am of opinion that the capital or *corpus* of the fund was bestowed on the trustees for behoof of these charities, and that the direction to accumulate was a mere burden on a limitation of the bequest. The direction to pay the three-fourths to the charities is only a consequence of the direction to accumulate, and its object is explained by the testatrix to be to increase the capital sum already bequeathed, and indeed is superfluous; for if nothing had been said as to the remainder of the income, the general words would of themselves have carried it to these beneficiaries. At all

events, I think the limitation to three-fourths of the interest is only administrative and executory, and only introduced because without it the right to the whole income would be absolute. Therefore, when the twenty-one years have expired, the burden ceases, and the unburdened bequest remains.

If your Lordships concur in this view, it is unnecessary to deal with any of the other questions. But I should not be inclined to sustain the plea of personal bar against the provisions of an Act passed from views of public policy.

Lord Ormidale—In this case there are several questions which have to be answered by the Court, one of them, as it appears to me, being attended with considerable difficulty.

1. In regard to the first question, Whether the accumulation directed to be made by the testatrix Miss Maxwell is struck at by the Thellusson Act? it does not appear to me that any doubt can be entertained. The statute does not require that the accumulation must, in order to come under the operation of the statute, be directed to be made in any particular words or form, or that there should be any express direction to accumulate beyond the prescribed period of twenty-one years. It is enough that the deed under which the question arises is so conceived that there must necessarily be an accumulation beyond twenty-one years. That was the principle given effect to in the case of *Lord* v. *Colvin.* This being so, there can be no difficulty in the present instance, where the illegal accumulation is expressly directed to be made, in holding that the first question must be answered in the affirmative; and this indeed was scarcely contested.

2. The second question is the principal one in the case, and raises considerations of some difficulty and importance. It is, Whether, supposing the accumulation directed to be made is struck at by the Thellusson Act, and therefore ineffectual, the disputed fund, being one-fourth of the revenue or interest of £4000, falls to be administered and applied by the first parties, the trustees of Miss Maxwell, in the same way and for the same uses as the other three-fourths of the revenue or accruing interest? or does it fall to the second party, Sir William Stirling Maxwell, who is both the heir-at-law and next-of-kin of the testatrix Miss Maxwell?

In dealing with this question the precise terms of Miss Maxwell's will, so far as it relates to the disputed question, require to be carefully attended to. It was maintained by the first parties, as I understood them, that the whole £4000—the *corpus* or capital, as well as accruing revenue or interest—has been bequeathed to certain charitable and religious institutions. This appeared to me to be in substance the foundation of the first parties' argument, without which their claim could not be sustained. But, as I read Miss Maxwell's settlement, it is, to say the least, doubtful whether it affords sufficient ground for such foundation. In place of the whole £4000 and its accruing interest being bequeathed to or for behoof of the religious and charitable institutions referred to, it is only the interest of three-fourths of the capital that is so bequeathed. I think this plain from the language of the testatrix when closely examined.

She says in the codicil to her principal deed of settlement—[*reads codicil to "after mentioned"*]. But in place of this being in itself a bequest of the £4000 or anything else in favour of the religious and charitable institutions, as seemed to be contended on behalf of these institutions, it is obvious that some more of the settlement must be read before any certain or distinct idea of what the testatrix truly intended can be formed. That bequests to be "after mentioned" to certain religious and charitable institutions were intended to be made is all that as yet can be discovered. The testatrix, however, goes on to state and explain what these are, when she adds—That for the purpose of increasing the deposited or invested funds, her trustees shall do two things—[*reads the provisions as above*].

It would thus rather appear that the bequests made by the testatrix to the religious and charitable institutions she names were in no event or at any time to be part of the capital of the originally deposited or invested sum of £4000, but merely three-fourths of the interest arising therefrom. And if this be so, I do not see very well upon what ground it can be availably maintained that the interest of one-fourth of the deposited or invested fund, arising after twenty-one years from the death of the testatrix, falls to the first parties to be applied by them to the same uses as the other three-fourths, that is, to the uses of the religious and charitable institutions. It is true that by the operation of the Thellusson Act the receipts or revenue arising on that one-fourth, twenty-one years after the death of the testatrix, cannot be accumulated, but it does not follow, necessarily at least, that it must consequently go to the first parties for the religious and charitable institutions referred to. The testatrix certainly does not say so in express terms. Nor does she unequivocally indicate that such was her object or intention. It rather appears, from the language she employs, that the religious and charitable institutions are to be limited to the revenue or interest of three-fourths of the £4000, enlarged from time to time by the revenue or interest of the other fourth being, as directed by the testatrix, added to the capital.

If, then, the first parties cannot, on behalf of the religious and charitable institutions, lay claim to the interest or revenue of the one-fourth in respect of the express direction of the testatrix, is there any other ground upon which they can maintain that it falls to them, keeping in view that they are not in the position of heirs or representatives of the testatrix, while, on the other hand, as stated in the 11th article of the case, the second party, Sir William Stirling Maxwell, is "the heir-at-law and sole next-of-kin and heir *in mobilibus* of Miss Harriet Maxwell, the testatrix." And further, I observe that the testatrix expressly provides that when the specific purposes of her trust-settlement have been fulfilled, her trustees "shall divest themselves of such parts of my estate, means, and effects as have not been disposed of, and make over the same in favour of my heir-at-law, or any other person or persons to whom I may hereafter direct the same to be conveyed;" but as no such direction was made, there can be no doubt that it is to the same party, Sir William Stirling Maxwell, that the interest or revenue in dispute falls, if it is to be held as of the nature of part of the testatrix's

estate not otherwise disposed of, or, to put it differently, of the nature of a lapsed legacy.

But it was argued that if the direction to accumulate after twenty-one years is to be struck out of the deed as being illegal under the Thellusson Act, the consequence is that it must be held that the whole fund has been disposed of by the testatrix to or for behoof of the religious or charitable institutions, in conformity with the principles of decision in *Green* v. *Gascoigne*, 34 L. J. (Chan.) 268, and other cases which were referred to at the debate, especially the cases of *Combe* v. *Hughes*, 34 L. J. (Chan.) 344; *Ogilvie's Trustees*, July 18, 1846, 8 D. 1229; and *Mackenzie* v. *Mackenzies*, June 29, 1877, 14 Scot. Law Rep. 596. Although these cases vary in their circumstances, the rule or principle to be deduced from them may, I think, be stated to be that where there is a gift or disposition distinct from the direction to accumulate, then when the illegal accumulations are disallowed they must go to the party or parties entitled to the gift; or, in the words of the Lord Chancellor in *Green* v. *Gascoigne*—"Although the direction for accumulation is cut down and reduced to a limited period, the whole of the rest of the will remains in point of disposition—in point of the meaning, effect, and true interpretation of its language—precisely as if there had been no such operation performed by the statute."

The question therefore comes to be—Whether, applying the principle or rule so laid down by the Lord Chancellor to the present case, there is a gift of the whole fund in question to the religious and charitable institutions to which the accumulations left free by the operation of the Thellusson Act can be held to accresce? It is here my doubts arise, in respect of the difficulty there is in holding, having regard to the peculiar terms of the destination or disposition of the £4000 and revenue, that they must go to the religious and charitable institutions. I doubt very much whether anything more can be held to have been bequeathed to the religious and charitable institutions than the revenue or interest arising on three-fourths of the £4000, enlarged, it may be, by the interest or revenue of the remaining fourth, and that whether the illegal accumulations are disregarded or not. At the same time, I cannot say that there is not room for the contention that the £4000 with its accruing revenue or interest is substantially bequeathed or dedicated to the religious and charitable institutions; and also for the argument that, as the direction to accumulate ceases to be effectual after twenty-one years, and thereby the only object of the testatrix in limiting the right of the religious and charitable institutions in the manner she does also ceases to operate, the just and reasonable conclusion to come to is, that the revenue of the one-fourth of the fund does not result to the second party after Whitsunday 1877, but falls to be applied by the first parties to the same uses as the other three-fourths of the revenue. It is not, however, without some misgiving and doubt, arising, as I have already said, from the peculiar terms of the disposition or destination in the testatrix's will in the present case, that I have ultimately felt that I would not be warranted in differing from both your Lordships in acceding to that conclusion.

3, 4, and 5. These questions are superseded, proceeding as they do on the assumption that the second question was to be answered favourably for the second party, which it has not been.

6. I am very clearly of opinion that the second party is not barred from maintaining that the accumulations in question were illegal. No private arrangement or consent to defeat the provisions of the Thellusson Act, which, as is well known, was dictated by public policy, and has for its object the repression of public evils, can be entertained and given effect to by the Court. Were it otherwise, I can readily understand that the Act might without much difficulty be so entirely defeated as to render it of no more effect than if it had been repealed.

Lord Gifford—The questions raised under this Special Case are interesting and important, and like many points involved in the construction and application of the Thellusson Act, some of the questions raised are attended with considerable difficulty.

In the first place, I am of opinion that the will of the late Miss Harriet Maxwell directs an accumulation which is struck at by the Thellusson Act, and which that Act renders incompetent and illegal. It was the wish of the testatrix that the fund which she destined for behoof of the Glasgow Royal Infirmary and the other charitable and religious institutions mentioned should be increased continually by the annual addition to the capital of one-fourth part of the annual interest or income, and she expressly provided that this accumulation and increase should continue and go on for ever. It is too plain for argument that this perpetual accumulation is prohibited and rendered illegal by the Thellusson Act, and the result is that after the lapse of twenty-one years the accumulation must stop and proceed no further, just as if the accumulation had been directed to be made and to be continued for twenty-one years only. I agree with your Lordships therefore that the first question put in the Special Case must be answered in the affirmative.

The next question which arises is—To whom do the accumulations directed after the lapse of twenty-one years, and which are therefore struck at by the statute, now belong? And the competition for these illegal accumulations arises between the charitable and religious institutions on the one hand, who are here represented by the trustees of Miss Maxwell, and, on the other hand, by Sir William Stirling Maxwell as heir-at-law and next-of-kin of the testatrix Miss Maxwell.

I am of opinion that the effect of the statute in preventing any accumulation after the lapse of the twenty-one years is to enlarge the annual sum or annual interest payable to the charities, so that instead of these charities receiving three-fourths of the annual interest or proceeds of the principal and accumulated sum, they will, from and after Whitsunday 1877, be entitled to receive the whole annual interest or proceeds of the invested sum of £4000 and of its past accumulations. The accumulations, I think, must stop, but the only effect of that will be that the fourth of the interest will no longer be deducted and accumulated, such accumulation after the lapse of twenty-one years being now illegal, but the whole interest will hereafter be handed annually to the favoured charities.

The words of the statute regarding the disposal of illegal accumulations are the following:—"And in every case where any accumulation shall be directed otherwise than as aforesaid, such directions shall be null and void, and the rents, issues, profits, and produce of such property so directed to be accumulated shall, so long as the same shall be directed to accumulate contrary to the provisions of that Act, go to and be received by such person or persons as would have been entitled thereto if such accumulation had not been directed." Upon these words the question seems to be—Who would have been entitled to the one-fourth of the interest if no illegal accumulation had been directed? In other words, if the testatrix, instead of directing that one-fourth of the interest should be added to the capital for ever—a direction which is illegal—had simply directed that that accumulation should be made for twenty-one years, which is legal, who would have been entitled to the fourth of the interest after the twenty-one years had elapsed? This is the principle recognised by Lord Westbury in the case of *Green* v. *Gascoigne*, 34 L.J. (Chan.) 268. The illegal direction to accumulate is to be read as if it had been restricted within legal limits, that is, as if accumulation had only been directed for twenty-one years, and the rest of the words of the deed are to remain unaltered and to receive effect—"The trust for accumulation is cut down and reduced to a limited period; the whole of the rest of the will remains in point of disposition—in point of the meaning, effect, and true interpretation of its language—precisely as if there had been no such operation performed by the statute."

Now, applying this canon, I think that the effect of reading into the direction to accumulate the limitation that this is to be done for twenty-one years only, must in the present case enlarge the rights of the charities, and will not leave any proportion of the interest undisposed of to go either as intestacy or to the residuary legatee. It appears to me that on a fair reading of the bequest the charities are the beneficiaries in the whole legacy of £4000, which sum is to be managed in perpetuity for their behoof, and this of course is quite legal, provided only that the capital is not increased by accumulation for more than twenty-one years.

No doubt there is the difficulty that the testatrix having a perpetual accumulation in view, directs that one-fourth of the interest shall be added for ever to the principal, and that the remaining three-fourths only of the interest, both of the original and of the accumulated capital, shall be paid to the charities; and there is great plausibility in the argument that this is merely a legacy of three-fourths of the interest, and can never be employed or extended into a legacy of the whole interest. But I think the answer is satisfactory, that the division of the interest of the legacy into one-fourth for accumulations and into three-fourths for annual or termly use, is really part of the direction to accumulate, and must cease and fly off at the end of twenty-one years—because it is by statute declared to be void for any longer period. The real bequest to the charities is the whole £4000, and all the directions for accumulation or partial accumulation of interest are only directions for the management and administration of the legacy—directions which are quite good for twenty-one years, but which after that period must be disregarded.

Suppose that the testatrix, instead of interposing trustees, had bequeathed the sum of £4000 directly to the charities themselves, these charities being as they really are permanent corporations, and had directed the charities or their administrators to accumulate one-fourth of the annual interest just in the same way as she has directed her trustees to do. In such a case it can hardly be doubted that the only effect of the statute in terminating the direction to accumulate would be to leave the whole legacy in the hands of the legatee without being bound by the illegal direction. I think the effect must be the same notwithstanding the interposition of the trustees of the testatrix herself. Indeed, the only purpose of the appointment of the trustees is convenience of management, for the charities are numerous, and could not easily administer the slump capital sum of the legacy. Probably if there had been only one charity, such as the Glasgow Royal Infirmary, the bequest would have been direct to the managers of that incorporation, and the direction to accumulate would only have been binding upon them for twenty-one years. It seems to make no difference in law whether the bequest is direct to the charities or to trustees for their behoof.

If the subject of the bequest had been an estate or a house instead of a sum of £4000, and if the direction had been to accumulate one-fourth of the rents, so as to form a fund for behoof of the legatee or disponee of the house for ever, the statutory limitation of such direction to accumulate to a period of twenty-one years would, I think, simply operate so as to leave the whole rents to the legatee when the accumulation was terminable by the statute. It is like a direction to increase an entailed estate for ever by adding field to field out of the rents or out of a given proportion of the rents. Such direction is void after twenty-one years, but the whole estates and rents then simply belong to the heirs of entail. It could never be maintained that the intended additions to the entailed estates, or the rents which were to be employed in the purchase, would go to the entailer's heirs-at-law. This was the principle of the decision in the case of *M'Kenzie* v. *M'Kenzie's* Trs., 14 Scot. Law Rep. 596. I think the second question therefore must be answered in favour of the trustees of Miss Maxwell as representing the charities.

If the above view of the nature of the bequest and of the effect of the statute is well founded, the other questions put in the Special Case are superseded. Sir William Stirling Maxwell, the second party to the case, has really no interest in the bequest of £4000, or in the interest thereon, or in any part thereof; but I do not think that he is excluded by anything of the nature of a personal bar, either in himself or as heir of Sir John Maxwell. He is excluded simply because the bequest to the charities and the investment for their behoof is lawful and effectual, and because the statutory limitation of the accumulation inures to their behoof, and not to that of Miss Maxwell's heir or representative.

The Court answered the first two questions in the affirmative.

Counsel for the First Parties—Fraser—Pearson. Agent—John Martin, W.S.

Counsel for the Second Party—M'Laren—Moncreiff. Agent—John Carment, S.S.C.

Tuesday, November 27.

FIRST DIVISION.

[Sheriff of Banff.

ROBERTSON *v.* BARCLAY.

Process—Reponing—Failure to lodge Prints—Act of Sederunt, March 10th, 1870.

Circumstances *held* insufficient to entitle an appellant to be reponed against a decree pronounced upon failure to lodge prints in an appeal within 14 days after the process had been transmitted.

Observed (*per* the Lord President) that if a respondent intends to give an appellant time to print beyond what the Act allows, it should be so stated in writing.

This was an appeal from the Sheriff Court of Banff. In terms of the 2d sub-section of section 3 of the Act of Sederunt, 10th March 1870, the appellant was bound to have lodged the printed papers on 19th November. He failed to do so, and on 24th November presented a note to the Lord President asking to be reponed, in terms of the 3d sub-section of section 3 of the Act. It was stated that the delay had been caused in consequence of negotiations that had been proceeding between the parties' agents in the country for a settlement of the case. The only proposal made in writing was one by the appellant's agent, made on 20th October. The offer was therein declared to be open for three days only. Parties' agents had various meetings and conversations on the matter, but the only proposal made by the respondent's agents was, that this appeal, and another connected with it, should be abandoned, and a sum of £10 paid by the appellant in name of expenses. It was stated that the respondent's agent had agreed to allow the prints to be received after they were due, on the ground that the appellant's agent had difficulty in communicating with his client.

At advising—

Lord President—One of the leading objects of all recent legislation and recent regulations introduced by Acts of Sederunt is to expedite the procedure of the Court; and accordingly by this Act of March 10, 1870, a term is assigned within which certain steps must be taken by an appellant. The tendency of these regulations is to enforce performance of these steps within a certain time. Here the party has a time assigned him within which his prints in the case must be lodged. He has this indulgence, that within eight days after the appeal has been held to be abandoned he may move the Court to repone him to the effect that he may insist in the appeal; but the Act of Sederunt provides that "the motion shall not be granted . . . except upon cause shown."

Now, the question that we have to answer here is,—has cause been shown for the appellant's omission to perform this duty? The only cause alleged is this, that the parties' agents were wasting in useless verbal negotiations the time that should have been otherwise employed, thereby clearly violating the spirit of these regulations. And what were these negotiations? They were not really negotiations at all. The respondent had made a proposal that was not at all likely to be entertained, and it was for the purpose of communicating that proposal to his client that the agent lost all this time.

This is, in my opinion, a very bad case of failure to perform the duty required of him. Indeed, I am inclined to say, as a general rule, that conversations and verbal negotiations are not to be taken as cause shown. If an agent intends to give a party time, let him state so distinctly in writing. Such an excuse as this we cannot entertain.

The Court accordingly refused to repone the appellant.

Counsel for Appellant—Mair. Agent—William Officer, S.S.C.

Counsel for Respondent—Guthrie. Agents—Gibson-Craig, Dalziel, & Brodies, W.S.

Wednesday, November 28.

FIRST DIVISION.

[Lord Young, Ordinary.

STEUART *v.* SOUTER.

Public Burdens—Road Assessment—Mode of Collection.

A collector of road assessments under a County Road Act, leviable from proprietors in a county, who included a large number of feuars in scattered villages paying assessments of very small amount, was in use, in accordance with the notice sent to the feuars, to postpone collection of the assessments due by them till March, whereas, in terms of the notice as served upon the larger proprietors, payment was demanded and obtained from them in December. No interest was charged on the assessments of the feuars where payment was delayed, although the collector was empowered by the statute to charge it at the rate of 5 per cent. The resolution of the Road Trustees had made the assessments payable by all alike at 1st December.—*Held* that in these circumstances one of the larger landed proprietors was not entitled to a declarator that the mode of collecting from the feuars was illegal, and that all collections must be made of even date, nor to an interdict against the same practice being followed in future.

Andrew Steuart of Auchlunkart, in the county of Banff, presented a note of suspension and interdict against Alexander Souter, collector of county road assessment under the Banffshire Roads Act 1866, craving suspension of certain assessments levied under the Act, in respect of certain lands of which he was proprietor, amount-