and are not here intended to cover, the case of works outside the railway itself.

Whether the powers of the Corporation (and by consequence the company) under the 328th section of the Glasgow Police Act gives right to withdraw support from the lands, or from the buildings, or from any particular building, in the streets in which they operate, are questions which do not arise here. What we decide is, that if they do, there is no statutory right to compensation such as is here sought, and if they do not, it is obvious that the remedy for an excess of statutory power cannot lie in statutory compensation.

I am for adhering to the interlocutor of the Lord Ordinary.

LORD M'LAREN and LORD KINNEAR concurred.

LORD ADAM was absent.

The Court adhered.

Counsel for the Complainers—Sol.-Gen. Graham Murray—Clyde. Agents—Hope, Mann, & Kirk, W.S.

Counsel for the Respondent — Comrie Thomson—Guthrie—Deas. Agent—Robert Stewart, S.S.C.

Tuesday, December 1.

FIRST DIVISION.

[Lord Wellwood, Ordinary.

THE LORD ADVOCATE *v.* THE DUKE OF HAMILTON.

Revenue—Succession—Legacy and Inventory Duty—Liferent—36 Geo. III. c. 52, sec. 14—Process—Amendment of Record—Crown not Prejudiced by Neglect of Officers.

A testator conveyed to his trustees, *inter alia*, his whole moveable means and estate in Scotland which should belong to him at the time of his death, and after providing for payment of his debts he directed his trustees to make an inventory of the collection of "marbles, bronzes, objects of virtu, buhl, pictures, ornaments, china, and the library" in his house, which articles were to remain vested in and to be held by them as part of his trust-estate, the liferent use thereof being permitted to his eldest son D, whom failing to the substitute heirs of entail entitled to succeed to the estate. After all his debts, &c., had been "completely paid and extinguished," the trustees were directed to divest themselves of the whole of his heritable and moveable estate, and dispone the same by deed of entail as follows—"In the event of the liquidation of the said debts and obligations during the lifetime of D, the said trustees shall assign and make over to him the whole of the moveable estate hereby conveyed, and directed to be liferented as aforesaid." . . .

D, by an arrangement with the creditors of the testator, liquidated his debts partly by payment and partly by taking upon himself the burden of the balance, but the art collection continued to be held by the trustees during his life.

In a claim by the Crown against the executor and general disponee of D for legacy and inventory duty upon this collection as having been *in bonis* of D —*held* that by the provisions of the trust-deed the art collection was to become the property of the heir in possession of the estate upon certain debts being extinguished, and these having been paid off during D's life the collection vested in him, and that the defender was bound to lodge accounts of the personal estate and effects of the testator and of D in order that the legacy and inventory duties respectively remaining due thereon might be ascertained.

This was an action by the Board of Inland Revenue against the Duke of Hamilton for legacy and inventory duty on the collection of pictures, bronzes, and articles of vertu known as the "Hamilton Collection," which was formed by Alexander Duke of Hamilton, and sold by the present Duke in 1882.

Alexander Duke of Hamilton died on 18th August 1852. He left a trust-disposition and settlement dated 12th October 1850, and recorded in the Books of Council and Session 16th September 1852. By that deed he conveyed to certain trustees the whole heritable means and estate in Scotland, of whatever denomination, then belonging to him, or which might belong to him at the time of his death, and also his whole moveable means and estate in Scotland of whatever kind and denomination, heirship moveables included, marbles, bronzes, objects of vertu, buhl, pictures, and ornamental china, and his library at Hamilton Palace, and in general his whole moveable means and estate in Scotland that should belong to him at the time of his death.

The deed set out as follows—"My object and intention in executing these presents is to evince my solicitude for the welfare and advantage of my descendants, for the continued honourable and fitting maintenance of my ancient name, and for the preservation of the paintings, books, and objects of art at Hamilton Palace belonging to me—a collection which if dispersed could not be replaced. This feeling, paramount at all times, has become more intense from a consideration of the tendency of the late enactments of the Legislature. These objects I have promoted myself at great personal sacrifice and inconvenience, and my wish and desire is that the fruits should be preserved by my successors."

The purposes of the trust after payment of debts were as follow—"*Secundo.* That the said trustees shall apply such portion of the balance of my said moveable

estate as the said Marquess of Douglas" (the testator's eldest son) "may approve in payment and extinction of the Scotch consolidated family debt, and in discharge of the legacies which I may bequeath by any writing under my hand: But declaring that the said Marquess, after fixing the portion to be paid in extinction of debt as aforesaid, shall be entitled to use and apply the remainder of the rents of the said whole estates hereby conveyed, both entailed and unentailed, for the support of his rank and due maintenance of his family until his own right to demand payment of rents shall open, my intention being that the said Marquess shall not be put to inconvenience by the foresaid direction should it be found that such application of the said balance may interfere with the ordinary administration of the estates or the well-being of the tenantry. *Tertio.* That my said trustees shall apply the rents and produce of the heritable estate, minerals, and quarries hereby conveyed towards further extinction of the said Scotch consolidated family debt. . . . *Quarto.* That my said trustees and executors shall, immediately after my death, hand over to the said Marquess of Douglas the whole of the plate of every description in Hamilton Palace as well as the whole household furniture therein in common use for his sole use and behoof; but declaring that a special inventory shall be made of the said marbles, bronzes, objects of virtu, buhl, pictures, ornamental china, and library therein, and which shall remain vested in and be held by the said trustees as part of my said trust-estate, the liferent use thereof being permitted to the said Marquess of Douglas, and failing him by death to the Right Honourable William Alexander Louis Stephen Hamilton, commonly called Earl of Angus and Arran, his eldest son; whom failing without male issue, to the Right Honourable Charles George Archibald Hamilton, commonly called Lord Charles Hamilton, second son of the said Marquess of Douglas; whom all failing, as after mentioned, to the person succeeding to and in possession of the dukedom and estates of Hamilton for the time being . . . . *Septimo.* After all the said debts legacies, donations, and provisions shall have been completely paid and extinguished, the said trustees shall be bound and obliged to divest themselves of the whole of the said heritable and moveable estate hereby conveyed, and to dispone, assign, convey, and make over the same by disposition and deed of entail, assignation, or other habile mode, as follows, *videlicet:* In the event of the liquidation of the said debts and obligations during the lifetime of the said Marquess of Douglas, the said trustees shall assign and make over to him the whole of the moveable estate hereby conveyed and directed to be liferented as aforesaid, and shall dispone and convey the heritable estate, minerals and quarries to the said Marquess, and the other substitute heirs of entail entitled to succeed to the Hamilton estates in virtue of the existing entails thereof, but always with and under the same provisions, conditions, limitations, declarations, clauses irritant and resolutive, contained in the said existing entails: In the event of the death of the said Marquess before the said debts, legacies, donations, and provisions shall have been paid and extinguished, the directions hereinbefore contained relative to the divesting and assignation and conveyance of the said heritable and moveable estates after the purposes of the present trust have been fulfilled shall be followed by the said trustees with reference to the Earl of Angus and Arran, or the heir substituted to him in the entails of the Hamilton estates, and in possession thereof at the termination of the present trust; it being my wish and intention that the said estates, real and personal, hereby conveyed should in time to come, after the purposes of this trust are fulfilled, descend to and be possessed by the heir of entail in possession for the time of the dukedom and estates of Hamilton."

An inventory of the personal estate of Alexander Duke of Hamilton was given up on 9th February 1851. That inventory included household furniture, paintings, jewels, articles of husbandry, and horses and carriages, at the appraised value of £57,718, 0s. 8d. The residuary account of the deceased's estate rendered on 15th January 1859 comprised the same amount as the value of the furniture, plate, china, books, pictures, &c., but in the account there was a deduction of £44,532, 12s. as the value of the marbles, bronzes, &c., left as heirlooms, not subject to duty.

The deduction allowed in the residuary account was made in respect of the art collection and library, which the trustees were directed to hold until the debts, legacies, donations, and provisions were paid and extinguished. Until that took place the heir in possession of the dukedom and estates of Hamilton for the time being had a liferent of these subjects with no power of sale, and there was no claim for legacy duty.

Duke Alexander was succeeded in the dukedom and estates by his son William Alexander Anthony Archibald Duke of Hamilton, referred to in the said trust-disposition and settlement as the Marquess of Douglas. He died on the 15th July 1863.

Duke Archibald was succeeded by his son the defender. Under deed of nomination of tutors and curators dated 23rd September 1852, and relative codicil and general settlement dated 2nd December 1861, the defender was constituted the general disponee of his father's whole estates, heritable and moveable, under burden of payment of debts, obligations, and provisions. The defender was decerned executor of his father, *qua* general disponee, and entered upon the possession and management of his whole estate. An additional inventory of personal estate, given up by the defender's commissioner on his behalf as executor of his father, included the sum of £38,120, 16s. 4d., being the appraised value of household furniture, silver plate, &c., at Hamilton Palace. This sum was included for duty, as were also the values of the furnish-

ings of various other residences of the defender's father. But not included for duty, and merely entered in a note, there was the following item—"Articles of vertu, &c., made heirlooms by the late Alexander Duke of Hamilton and Brandon, and entailed to be accounted for as a succession, £24,796, 6s." In the residuary account which followed the art collection and library were not referred to, though the ordinary furniture, plate, &c., in Hamilton Palace were included for legacy duty at the foresaid value of £38,120, 16s. 4d. The art collection and library were not comprised in the succession duty accounts.

In the years 1882, 1883, and 1884 the greater portions of the art collection and library were disposed of by the defender. The works of art were of great value.

The pursuer averred that on payment of Duke Alexander's debts "the trustees were under obligation to divest themselves in favour of the heir in possession who acquired a full right of property or absolute interest in the said subjects, and legacy duty became exigible in respect thereof. . . . It has recently come to the knowledge of the Board of Inland Revenue that the debts, legacies, donations, and provisions, mentioned in the trust-disposition and settlement were paid and extinguished during his (Duke Archibald's) lifetime at or before the term of Martinmas 1859, and the art collection and library fell to be made over to him on such payment and extinction in terms of the directions given to the trustees. The heritable estate, which was conveyed to the trustees subject to the same conditions as the moveables, was conveyed by the trustees to Duke Archibald and the substitute heirs of entail by deed of entail subscribed in 1859 and 1863. The deed of entail proceeded on the narrative, *inter alia*, and it was the fact, that the whole debts, legacies, donations, and provisions, due and made by the said Alexander Duke of Hamilton had all been satisfied and discharged prior to the first date of executing the said deed, whereby the purposes of the trust had been fulfilled."

The summons concluded (1) for delivery of an account of the personal estate and effects of Alexander Duke of Hamilton; (2) for an account and additional inventory of the personal estate and effects of Archibald Duke of Hamilton in order to ascertain what legacy and inventory duties respectively remained due and payable in respect of the said estate and effects.

The defender averred that the total liabilities which the trustees of Duke Alexander were directed to discharge "amounted to over £208,982, 10s. 8d.; that the personal estate in their hands to meet these did not exceed £68,987, 1s. 7d., leaving a deficit of £139,995, 9s. 1d., to pay off which only the rents of the unentailed heritage, which was worth about £54,000, were available; further explained that the liabilities could never have been paid off by the operation of the said trust during the lifetime of Duke Archibald, and as a matter of fact never were discharged by the said trustees, but by Duke Archibald, who advanced out of his own funds over £109,315, 10s., and became personally liable for the remainder of the said deficit. . . . The trustees conceived it was their duty to retain possession of the articles of vertu, and as a matter of fact never handed these over to Duke Archibald, merely allowing him the liferent use thereof, as directed by the trust-disposition and settlement." Without admitting liability therefor, the defender offered to pay legacy duty on the value of the heirlooms as ascertained on the death of his father Duke Archibald, and set forth in the additional inventory of his estate, with interest thereon at 4 per cent.

The pursuer pleaded, *inter alia*—"(2) The said art collection and library having been *in bonis* of the defender's father, the defender, as his executor and general disponee, is liable for inventory duty and legacy duty thereon, in terms of the second and third conclusions of the summons."

The defender pleaded, *inter alia*—"(2) No legacy duty is payable for the succession of William Alexander Anthony Archibald Duke of Hamilton to the articles in question, in respect that, 1st, the said articles never belonged to him, but only to the trustees of Alexander Duke of Hamilton; 2nd, *Separatim*, if they belonged to the said William Alexander Anthony Archibald Duke of Hamilton, they were not a succession, but were purchased by advances from his own funds, and the defender should be assoilzied from the first conclusion of the summons. (3) No inventory duty is due for the articles in question on the death of the said William Alexander Anthony Archibald Duke of Hamilton, in respect that said articles were never *in bonis* of the said William Alexander Anthony Archibald Duke of Hamilton, and the defender should be assoilzied from the second conclusion of the summons."

With reference to the defender's averments as to the extinction by his father Duke Archibald, out of his own funds, of the debt left by Duke Alexander, a minute of meeting of the trustees of Duke Alexander held on 10th June 1859 was produced, the more important passages in which were as follow—"*Present*—His Grace the Duke of Hamilton, the Right Honourable the Earl of Selkirk, the Honourable C. A. Murray, David Robertson Souter, Esq., Robert Rutherfurd, W.S. . . . Mr Souter further stated that in order to further the object of the trust and the sooner liquidation of his father's debts and legacies, his Grace had sold the Ashton Hall estate in Lancashire, and out of the proceeds had paid all of his father's debts excepting the sum of £16,300 or thereby of family debts which his Grace proposed to take upon himself, and the creditors had agreed to accept his Grace's obligations, and discharge his father's estate. His Grace had also completed the mausoleum. In order to exhibit what had been done Mr Souter had prepared a full state of the trust affairs, showing, on the one hand, the trust-funds and estate, and on the other a list of the late Duke's debts and engagements, and

the debts which had been paid. This state was laid before the meeting. Upon deliberating upon what was above stated, and on examining the state of the trust affairs, the meeting were of opinion that the purposes of the trust had in so far been accomplished and fulfilled. And that it only remained for them to execute an entail in favour of his Grace of the heritable property left by the late Duke. It was explained that in order to save expense the titles thereto had been made up in the person of the present Duke as heir-at-law of his father, so that to complete the requisite entail his Grace should, with the consent of the trustees, grant such deed in favour of himself and his heirs of entail. . . . The only part of the late Duke's estate which must of necessity remain under trust were the articles of vertu, statuary, paintings, and which by the late Duke's directions were to be kept as heirlooms in his family. A regular and detailed inventory thereof had been prepared, so that they were completely identified and separate from the other articles in the Palace. The meeting directed this inventory to be engrossed in the sederunt-book. It was not considered necessary to execute a formal entail of these articles, for it would be sufficient to leave them, as at present, vested in the trustees."

The deed of entail of the heritable estate executed by Duke Archibald, with consent of the trustees of Duke Alexander, contained, *inter alia*, the following passages—"Further, considering that upon the death of my said father his said trustees handed over to me the whole plate of every description in Hamilton Palace, as well as the whole household furniture therein in common use, and that a special inventory has been made up of the marbles, bronzes, objects of vertu, buhl, pictures, and ornamental china in Hamilton Palace, as directed by my said father, and of which I and the succeeding heirs of entail in possession of the dukedom of Hamilton are to enjoy the liferent as heirlooms; and further, that as the readiest and least expensive mode of completing a title to the heritable property conveyed to the trustees, a feudal title has been made up in the person of me, the said Duke, as nearest and lawful heir to my said father, to the several lands and heritages which belonged to him in fee-simple at the time of his death, and which fell under the disposition contained in his said trust-settlement, and the said lands and others still remain feudally vested in my person; and now, seeing that out of my own funds, and other ways, the whole debts, legacies, donations, and provisions due and made by my said father have all been satisfied and discharged, whereby the purposes of the trust have been fulfilled and discharged, it now becomes incumbent upon me and the other trustees of my said father to settle the said trust lands and estate in favour of myself and the heirs of entail succeeding to me in the dukedom of Hamilton, in manner directed by the said trust-deed; therefore, in order to divest myself of the said lands and others, and to carry the purposes and intentions of my said father into full effect, I, the said William Alexander Anthony Archibald Duke of Hamilton, Brandon, and Chatelherault, am infeft and seised in said lands," &c.

In the discharge granted by Duke Archibald in favour of his father's trustees, dated 1859, but not tested, the following passage occurs—" . . . I do by these presents exoner, acquit, and simpliciter discharge" the said trustees, "hereby confessing and declaring that they have faithfully fulfilled and discharged the various duties and trusts incumbent upon them, and have conveyed and made over to me the moveable and the heritable estate of the truster as directed by him, and have thus fully discharged and fulfilled the trust imposed upon them; but reserving always entire the said trust in so far as it regards the marbles, bronzes, objects of vertu, buhl, pictures, ornamental china, and library within Hamilton Palace, and which are directed by the truster to remain vested in and to be held by his said trustees as part of his trust-estate, and of which I and the succeeding heirs of entail are only to enjoy the liferent, as the said several articles are specified and enumerated in an inventory thereof prepared by Thomas Nisbet, auctioneer and appraiser in Edinburgh, and of which a copy is engrossed in the sederunt-book of the trust, hereby declaring the trust, excepting as relates to said articles, to be at an end and for ever extinguished."

The defender proposed to amend the record, and he lodged a minute of amendment in the following terms—"Macphail, for the defender, craved leave to amend the record by adding to his answer to the sixth article of the pursuer's condescendence the following words—'Further explained, that in 1859 in settling the residuary accounts of the estate of the said Alexander Duke of Hamilton, and again in 1864 in settling with the Solicitor of Inland Revenue the inventory of Duke Archibald's personal estate, and thereafter in settling the succession and residue accounts payable on the death of the said Duke Archibald, the documents were fully submitted and the facts explained to the officials in the Edinburgh Department of the Board of Inland Revenue, who after full deliberation and after communicating with the board in London, and with their approval, admitted that no residue duty was payable upon the death of Duke Alexander, and no inventory duty or succession duty was payable upon the death of Duke Archibald, and upon that footing the succession accounts were passed, and payment of the succession duties was made and accepted by the Board;' and also by adding the following plea-in-law—'In respect of the settlement of accounts condescended on, the pursuer is barred from insisting on the first and second conclusions of the summons."

On 11th June 1891 the Lord Ordinary (WELLWOOD) refused the defender's motion for leave to amend, repelled the second and third pleas-in-law stated for the defender,

and ordained the defender to lodge in process by the 14th day of July next (1) an account of the personal estate and effects of Alexander Duke of Hamilton, and (2) an account and additional inventory of the personal estate and effects of Archibald Duke of Hamilton, as called for in the summons, for the purpose of ascertaining what legacy and inventory duties respectively remained due and payable in respect of the said estate and effects, and granted leave to reclaim.

"*Opinion.*—This case, which involves a considerable sum of money, depends mainly upon the construction of the trust-disposition and settlement of the defender's grandfather Alexander Duke of Hamilton, who died on 18th August 1852, leaving large estates, heritable and moveable. The moveable estate included a valuable collection of marbles, objects of vertu, pictures, &c., in Hamilton Palace. It is in respect of the succession to those heirlooms that the Crown's present claim is made. The defender does not dispute that legacy duty is due by him in respect of his succession to his father Duke Archibald, although the amount has not been ascertained or admitted. But he does not admit that any legacy duty or inventory duty is due under the first and second conclusions of the summons, in respect that right to the said articles never vested absolutely in Duke Archibald, and were never *in bonis* of him.

"The question in dispute therefore is, whether those heirship moveables ever belonged in property to Duke Archibald? I am of opinion, on a sound construction of Duke Alexander's settlement, that an absolute right to those articles vested in Duke Archibald on the debts and obligations affecting the estates being liquidated, which occurred during his lifetime.

"The question mainly turns upon the fourth and seventh purposes or heads of the deed. It is clear from the preamble that a trust of considerable length was contemplated, as heavy debts required to be gradually paid off. In the next place, the moveables in question are specially included in the conveyance of the truster's moveable means and estate, the words used being, 'as also my whole moveable means and estate in Scotland of whatever kind and denomination, heirship moveables included, marbles, bronzes, objects of virtu, buhl, pictures, ornamental china, and my library at Hamilton Palace, and in general the whole moveable means and estate in Scotland that shall belong to me at the date of my decease.'

"The seventh purpose of the trust commences as follows — 'After all the said debts, legacies, donations, and provisions shall have been completely paid and extinguished, the said trustees shall be bound and obliged to divest themselves of the whole of the said heritable and moveable estate hereby conveyed, and to dispone, assign, convey, and make over the same by disposition and deed of entail, assignation, or other habile mode, as follows, *videlicet*—In the event of the liquidation of the said debts and obligations during the lifetime of the said Marquess of Douglas, the said trustees shall assign and make over to him the whole of the moveable estate hereby conveyed and directed to be liferented as aforesaid, and shall dispone and convey the heritable estate, minerals and quarries, to the said Marquess, and the other substitute heirs of entail entitled to succeed to the Hamilton estates in virtue of the existing entails thereof, but always with and under the same provisions, conditions, limitations, declarations, clauses irritant and resolutive, contained in the said existing entails.'

"The question is, what is included in the words 'the whole of the moveable estate hereby conveyed and directed to be liferented as aforesaid?' Looking back to the earlier parts of the deed, it will be seen that there is only one of the purposes in which the word 'liferent' is used in connection with moveables, and that is the fourth, which deals with the heirship moveables. It may be inferred from the terms of the second purpose that it was intended that Duke Archibald should have a liferent of so much of the moveable estate as was not required for the payment of debts, but the clause is badly drawn, and that is not expressly said.

"The fourth purpose is as follows—'That my said trustees and executors shall immediately after my death hand over to the said Marquess of Douglas the whole of the plate of every description in Hamilton Palace, as well as the whole household furniture therein in common use, for his own sole use and behoof, but declaring that a special inventory shall be made of the said marbles, bronzes, objects of virtu, buhl, pictures, ornamental china, and library therein, and which shall remain vested in and be held by the said trustees as part of my said trust-estate, the liferent use thereof being permitted to the said Marquess of Douglas, and failing him by death to the Right Honourable William Alexander Louis Stephen Hamilton, commonly called Earl of Angus and Arran, his eldest son, whom failing without male issue, to the Right Honourable Charles George Archibald Hamilton, commonly called Lord Charles Hamilton, second son of the said Marquess of Douglas, whom all failing, as after mentioned, to the person succeeding to and in possession of the dukedom and estates of Hamilton for the time being.'

"The defender's argument involves this startling proposition, that the only moveables which are expressly directed to be liferented in the deed shall be excluded from the direction in the seventh purpose of the trust which deals with moveables directed to be 'liferented as aforesaid.' As I understand the argument, it is maintained that the truster's purpose was that after the debts were paid, and the rest of the moveable estate made over, the trustees should continue to hold the heirship moveables in question in trust for behoof in liferent of the heirs named in the destination in the fourth purpose. I cannot accept

this view. In the first place, as I read the seventh purpose, the trustees are directed in the event named to divest themselves once for all of the whole heritable and moveable estate conveyed to them, *i.e.*, the whole trust-estate, and as the moveable estate conveyed to them expressly included the heirship moveables, I think they must be held to fall under this direction. Indeed, in the fourth purpose the moveables are directed to be held 'as part of my trust-estate.' It is not to be readily assumed that it was intended that a separate trust should be kept up to protect the heirship moveables. Only one trust is spoken of throughout the deed. For instance, in the latter half of the seventh purpose, which deals with the case of the debt not being paid off during the Marquess' (Duke Archibald's) life, we find the expressions 'after the purposes of the present trust have been fulfilled,' 'the termination of the present trust,' &c.

"It is true that the structure of the fourth purpose indicates that it was anticipated that there would be a trust of long duration, during which there might be a succession of liferents; but I think that this is sufficiently explained by the fact that when the deed was framed it was contemplated that the debts would not be paid off for a considerable period, and that it was to protect and keep together the collection during that period that the trustees were directed to inventory the goods and hold them in trust. The alternative is, that the truster's intention was that there should be a perpetual trust or a virtual entail of the collection. There is much plausibility in this view, and it seems to have been the view originally taken and acted on by the trustees and Duke Archibald. But I do not think that it can be sustained, having regard to the terms of the seventh purpose, which apparently was entirely ignored by everybody.

"The next defence is, that although the debts were paid off during the lifetime of Duke Archibald (the Marquess of Douglas), this was done to a great extent out of his own means, and the defender argues that as the extinction of debt would not otherwise have occurred during the lifetime of Duke Archibald, it should be held that he did not succeed to the property in question, but virtually purchased it by the payments he made in extinction of debt. I do not think that this defence is sound. I think it is immaterial to consider from what source the funds came by means of which the debt was paid off, or what were Duke Archibald's motives in paying it out of his own means. He might, if he had chosen, have taken an assignation to the debts and kept them up against the entailed estates, but he preferred, no doubt for adequate reasons, not to do so, and thus became entitled to a conveyance of the whole trust-estate, heritable and moveable. His motive was not apparently to obtain the absolute property of the heirship moveables, because he seems to have been under the impression that the trustees must continue to hold them in trust. But even if it had been otherwise, I do not think that the right which thus opened to conveyance of the heirship moveables was altered in its character from a right of succession to a right by purchase by the fact that the time of payment was anticipated or hastened by the payments made by the legatee.

"The defender next pleads that no legacy duty is due in respect that Duke Archibald remained content with a liferent of the heirship moveables, and thus virtually disclaimed the legacy. I do not think that the Duke can be held to have disclaimed, because disclamation implies knowledge of the right or benefit disclaimed, and *ex hypothesi* the Duke was not aware that he had an absolute right to the moveables. In point of fact he had possession of them, because they were all in Hamilton Palace, and all that required to be done was that the trustees should execute a formal deed of conveyance in his favour. The result was, that on the debts being paid off the trustees truly continued to hold under their formal title for the Duke, who had an absolute right to the moveables, and therefore legacy duty became payable—*Attorney-General* v. *Maxwell*, 10 Jr., C.L. Rep. 267; and *Attorney-General* v. *Partington*, 3 Hurl. & Colt. 193.

"The only other matter which requires to be noted is, that shortly before the proof the defender proposed to amend the record in terms of minute No. 162 of process. I refused the motion because I held the proposed amendment to be irrelevant, amounting as it does to an averment that the Crown is barred from making the present claim by the actings of its officers in 1859 and 1861 in settling with Duke Archibald and the defender. I held that looking to the decision in *The Lord Advocate* v. *Meiklam's Trustees*, 22 D. 1427, which was followed by Lord Fraser in the subsequent case, *The Lord Advocate* v. *Millar*, 11 R. 1046, I was bound to hold that this averment was irrelevant. But as the rule enforced in those cases may be reconsidered elsewhere I have noted the defender's motion."

The defender reclaimed, and argued—1. *As to the proposed amendment of the record*—The new matter proposed to be added to the record came to the defender's notice after the record was closed, and was to the effect that the subject-matter of the present action had been fully discussed, and had been settled with the Revenue Department. The Lord Ordinary was wrong in refusing the amendment. This was not a case like *Lord Advocate* v. *Meiklam*, July 13, 1860, 22 D. 1427, where it was held that *mora* did not prejudice the Crown, or the case of *Lord Advocate* v. *Miller's Trustees*, July 4, 1884, where it was held that the Crown could not be prejudiced by the neglect or omissions of its officials. Here there was the fullest knowledge on the part of the officials of the department, accompanied by deliberate consideration, and a final settlement—*Lord Advocate* v. *Pringle*, June 12, 1878, 5 R. 912. 2. *On the merits*—The articles upon which duty was claimed by the Crown were never *in bonis*

of Duke Archibald. It was the intention of the truster, as shown by the deed, that the collection should be kept together, and his trustees carried out his intentions to the best of their ability. They gave a limited right only to the heir in possession for the time being, and a right of liferent was all that Duke Archibald ever had from them. The important words in the trust-deed were in article 7, and were, "the whole of the moveable estate hereby conveyed and directed to be liferented." This clause dealt only with the residue of the moveable estate, and excluded the art collection, which had previously been exhaustively dealt with by the fourth purpose of the deed. If the collection was held to fall under the seventh purpose of the deed, then it was directed to be entailed *habili modo*, and even if ineffectual, the entail would require to have been executed—*Kinnear* v. *Kinnear's Trustees*, June 5, 1875, 2 R. 765. As a matter of fact Duke Archibald never had the fee of the collection, as the trustees never denuded. No duty was payable on a liferent, but it was urged for the Crown that when Duke Archibald's right to terminate the liferent and acquire in fee emerged, duty became due under Statute 36 Geo. III. cap. 52, sec. 14. The condition upon which denuding was to take place was never purified, *i.e.*, the whole debts were never completely paid and extinguished. All that the Crown averred was that the debts were satisfied and discharged, but this was not the language of the trust-deed. As the minute of the trustees showed, £16,000 of debt was taken over by Duke Archibald, but that did not extinguish it. This was a case of delegation—Ersk. iii. 4, 22; Bell's Conveyancing, 336-353. The obligation was not extinguished by a new obligant being substituted for the old—*Fox* v. *Anderson*, June 26, 1849, 11 D. 1196; *Mackintosh & Son* v. *Ainslie*, January 10, 1872, 10 Macph. 304—and the trustees would have been entitled to refuse to hand over the collection had it been demanded, as the condition of handing over had not been purified. If the articles of vertu were *in bonis* of Duke Archibald, they came there by purchase and not by succession. At the death of Duke Alexander the trust-estate was practically insolvent; there was a deficiency of £139,995 to pay up, while there was only a trust revenue of £2000, and it was to meet this state of matters that Duke Archibald paid off the debts out of his private estate. If he was a legatee in form, he was a purchaser in reality—*Lord Advocate* v. *Earl of Fife*, December 4, 1883, 11 R. 222—and therefore only inventory duty and one legacy duty was payable.

Argued for the respondent—1. *On the question of bar*—The Lord Ordinary was right in refusing to allow the amendment, as it was irrelevant, and the Crown could not be prejudiced or its rights taken away by the erroneous determination of its officials, even if these were communicated to third parties—cases *supra*. 2. *On the merits*—The question depended on the construction of the seventh purpose of the trust-deed, the fair reading of which was, that the articles in question were to become the property of the heir in possession of the title and estates upon certain debts being paid off. The fourth purpose was not to be read as in any way controlling the seventh. They were independent directions, the former relating to the period during which the debt existed, the latter to the period after it was extinguished. The question therefore came to be, were the debts referred to in the deed paid off in the lifetime of Duke Archibald? The minute of the trustees of June 1859 showed that they were, and this was corroborated by the terms of the deed of entail in November following. The Crown was entitled to accept the statements of fact set forth in these documents as correct, and to base its claims upon them. An absolute interest in these articles having vested in Duke Archibald, the duty payable thereon became on his death a debt of his estate. It could not be said that Duke Archibald purchased this collection, because the trustees were not entitled to sell it; what he did purchase by the arrangement referred to in the minute of June 1859 was an accelerated succession. Under Duke Alexander's trust-deed Duke Archibald's rights were not confined to a mere liferent; in a certain event he was entitled to the fee of the collection. That event was brought about by the arrangement referred to in the trustees' minute, and the fee accordingly became his, and the duty became exigible.—Statute 36 Geo. III. cap. 52, sec. 14.

At advising—

LORD PRESIDENT—From the death of Alexander Duke of Hamilton down to its sale in 1882, the collection which gives rise to the present question was in Hamilton Palace, and was successively in the possession of the three Dukes, of whom the first (Duke Alexander) was the grandfather, and the second (Duke Archibald) the father of the noble defender.

Admittedly it was originally the property of Duke Alexander, and as it was sold by the defender as *de facto* proprietor, he, without formally admitting his liability, offers to pay legacy duty as at his father's death, but this does not conclude the question which is now in dispute, viz., whether the collection was *in bonis* of the intermediate Duke—Duke Archibald—at his death.

The contention on behalf of the Crown is, that under the trust-disposition and settlement of Duke Alexander the articles in question were to become the property of the heir in possession of the title and estates upon certain debts being paid off, and that this event having occurred during Duke Archibald's life the collection vested in him. Both this construction of the trust-disposition, and the occurrence of the event stated, are disputed by the defender.

The deed out of which these questions arise is not skilfully drawn, but I have come to the conclusion that the contention of the Crown is that which is most consistent with its provisions.

The question primarily turns on the meaning in the seventh purpose of the words, "the whole of the moveable estate hereby conveyed and directed to be liferented." Now, turning to the clause of conveyance which is thus referred to, I find that "marbles, bronzes, objects of virtu, buhl, pictures, ornamental china, and my library at Hamilton Palace," are expressly conveyed in such collocation to the preceding words, "my whole moveable means and estate in Scotland of whatever kind and denomination," and to the following words "and in general my whole moveable means and estate in Scotland that shall belong to me at the time of my death," as to demonstrate that in the sense of the deed as well as in law the collection now in dispute was recognised as part of the moveable estate. That the collection was "directed to be liferented" is certain from the express terms of clause 4. Accordingly as being (1) moveable estate, (2) conveyed to the trustees, and (3) directed to be liferented, the articles now in dispute fall within the description given of what is under the seventh purpose to be made over to the heir in possession on the extinction of the debt.

It was argued, however, for the defender that the fourth purpose contains a separate, exhaustive, and final disposal of the collection, and that accordingly the seventh purpose could not take effect on it, and must be treated as dealing with the residue only of the moveable estate.

If the fourth purpose be considered alone, it lends much countenance to the view that it embodies the ultimate disposal of the collection, for it declares that the collection shall remain vested in and be held by the trustees, who are to permit a liferent use to the successive heirs in possession of the dukedom and estates of Hamilton. But when the deed is read as a whole the just conclusion seems to me to be that the fourth purpose applies to the period during which the debt still existed, and that it gives way to the seventh purpose on the extinction of the debt. Even in the fourth purpose itself there is nothing contradictory of this view. It certainly is adapted to a period of long endurance, and the amount of debt, contrasted with the means at the disposal of the trustees for its liquidation, made this appropriate. But it does not prescribe perpetuity, and indeed if a perpetual trust is intended it is lamely announced. On the other hand, only a little better dovetailing of the clause is needed to make manifest the substantial harmony of the fourth with the seventh clause, and the absence of such art is not surprising in an inartificial instrument.

The second question, whether the condition specified in the seventh purpose was purified during the life of Duke Archibald is primarily a question of fact. Now, although the events are comparatively recent, the evidence before the Court is not either exact or complete, and on the point now under consideration we depend on the minutes of the trustees and the narrative of the deed. That all the debt, with the controverted exception of £16,300, was paid and extinguished in 1859 is, I think, adequately proved by the minute of 10th June 1859, and the only doubt is as to the sum of £16,300, of which it is in that minute stated that his Grace proposed to take it upon himself, and the creditors had agreed to accept his Grace's obligations and discharge his father's estate. Upon deliberating upon what was thus stated, the trustees were of opinion that the purposes of the trust had in so far been accomplished and fulfilled, and how far is shown by their narrating that it only remained for them to execute an entail in favour of the Duke. In the narrative of the disposition and deed of entail executed six months later it is set forth by the granter Duke Archibald, with consent of the trustees, that out of his own funds, and in other ways, the whole debts due by his father had all been satisfied and discharged. It is therefore manifest that both parties concerned acted on the footing that in the sense of the trust-disposition of Duke Alexander the debts had been paid and extinguished. I am not prepared to hold that they were wrong, even assuming that the £16,300 stood as a personal debt of Duke Archibald, for the trustees were not bound to ascertain that he was free from all personal liabilities of his own, however arising, before they conveyed the estate. It is perhaps hardly to be assumed that even as a personal liability of Duke Archibald the debt was allowed to remain till his death. It is difficult for the defender to maintain that it did, having regard to the facts that no suggestion is made that a debt of £16,300 now subsists, or that after Duke Archibald's death it was paid off by the defender, while no attempt has been made substantially to prove that that debt subsisted even as a personal obligation of Duke Archibald in any shape or form at his death, these being matters of which the means of proof, if they existed, would have been at the defender's disposal.

It was further submitted that even assuming that in the events which occurred Duke Archibald became entitled to the collection as his property, he must be held to have disclaimed his right, and to have contented himself with the lower right of a liferenter, and to have thus come within the first branch of the 14th section of the Act 36 Geo. III. c. 52. Agreeing with the Lord Ordinary I consider this argument to be entirely untenable. It is probable that the Duke was not acquainted with his legal rights in regard to this collection, but this probable conjecture as to the Duke's opinion is the whole basis of the argument, and even if in place of conjecture there were certainty it would be inadequate to support the conclusion proposed.

The Lord Ordinary's refusal to allow the defender to amend his record in terms of his minute was also reclaimed against, but in my opinion his Lordship did rightly. No bargain or transaction is alleged, for nothing was paid or given up by the defender, and the right of the Crown is not taken away by its officers, even after consultation among themselves, departing from

a demand for duty, and telling the persons concerned that they did so.

I am of opinion that the Lord Ordinary's interlocutor should be adhered to.

LORD ADAM—The question in this case is, whether the art collection, the library, and books at Hamilton Palace became the property of Duke Archibald during his life, or perhaps I had better say, whether he was beneficially entitled to them during his life? If that be so, I do not think any question arises between the parties except the one which your Lordship has last reverted to, whether it is too late to open this question. Now, I would just observe that the Lord Ordinary calls this art collection—although I dissent from it—he calls it throughout heirship moveables. I think it right to say, in passing, it is not a question of heirship moveables, and these are not heirship moveables in any sense, but that does not affect the argument.

As his Lordship said, the issue in this case depends on a question of construction and a question of fact, the question of construction being—what is the true construction of the trust-disposition and settlement of Duke Alexander of October 1850? and it appears to me that this question must depend on what are the rights given to Duke Archibald under that deed. I do not think, as it was argued to us, that however the parties may have acted with reference to these moveables, that that can affect the right of the Crown. If it be the fact that a beneficial interest was conferred on Duke Archibald by the terms of this deed, I do not think it is of the least consequence whether the parties in carrying out the deed acted upon the notion that they had power to give them to him *sub conditione* or otherwise. I think the true question is, what was really conferred upon Duke Archibald by his father in this deed?

As I said, the first question is a question of construction, and I concur with your Lordship upon the construction of this trust-disposition. Like most trust-deeds, the whole estates, heritable and moveable, are conveyed to trustees, and as your Lordship has pointed out, in the estates so conveyed as moveables the collection in question is specifically named. Then there is the usual direction for paying debts, the direction in the second and third places as to what is to be done with the Palace, and then we come to the fourth, which is the material clause. By that the trustees are directed that immediately after the truster's death they are to hand over to his son the Marquess of Douglas the whole plate and household furniture in Hamilton Palace for his own use and behoof. Then it is stated that an inventory must be made of the art objects in question, and it is directed that they shall remain vested in and held by the trustees as part of his trust-estate, the liferent use thereof being permitted to the Marquess of Douglas, and afterwards to the next heirs of entail. Now, I agree with your Lordship that that is intended to be and is a temporary provision until the debts are paid up, and until the purposes of the trust in that respect are fulfilled. I think that is the true meaning of that clause. I have no doubt that the Duke looked forward to a considerable duration of time before that event could be fulfilled and the debts paid up; but in my view that is the correct reading of that clause.

After having so provided, he comes next to the fifth, sixth, and seventh purposes, which direct certain legacies to be paid, a certain mausoleum to be constructed, and then comes the material clause. The direction in that clause is—"After all the said debts, legacies," &c.—[*His Lordship read the clause quoted supra*]. Now, I cannot see how there can be any question here, because the words are as plain as the English language can use. The deed says that after the debts, legacies, &c., shall have been paid and extinguished, the trustees shall be bound and obliged to divest themselves of the heritable and moveable estate hereby conveyed. Is there any question whatever under that language that the whole of the moveable estate hereby conveyed refers to the moveable estate conveyed by the former part of the deed, of the whole of which the trustees are directed to divest themselves? But then the deed goes on in the next clause to provide for two events—first, the event of the debts being paid off during Duke Archibald's lifetime, and second, the event of the debts not being paid off until after his death. The deed provides in this way for these events—"In the event of the liquidation of the said debts and obligations during the lifetime of the said Marquess of Douglas, the said trustees shall assign and make over to him the whole of the moveable estate hereby conveyed and directed to be liferented as aforesaid;" and then they are directed to dispone and convey the heritable estate to the heirs of entail under existing entails, "but always with and under the same provisions, conditions, limitations, declarations, clauses irritant and resolutive, contained in the said existing entails." Now, these last words, namely, that the estates are to be made over under the provisions of the existing entails, may be regarded as applying to the whole of the previous sentence, namely, to this particular moveable as well as to the heritable estate. I do not think that is the correct reading, but the words may be so read. But the trustees are to divest themselves and make over to the Marquess "the whole of the moveable estate hereby conveyed and directed to be liferented as aforesaid." Now, that is a direction to make over the whole of the moveable estate, and I think the intention becomes stronger from the fact that the words include the moveable estate directed to be liferented as aforesaid. It is the fact that there is no other moveable estate directed to be liferented except this art collection, so that instead of this clause making the general clause fail, it seems, to my mind, to make it stronger.

The result is, that there is an express direction to divest themselves and to make over this estate upon the debts being paid. If that be so, how can any question arise as to this collection becoming the property of the Marquess as soon as the debts are paid? I do not see that any question arises. Then, if these words of entail did, as perhaps they were intended, apply to these liferented articles in question, the only result is this, that supposing the trustees had taken that view of the deed and attempted to include this art collection which was directed to be liferented in the entail of the heritable estate, that would have been altogether a null proceeding, for the simple reason that it is quite settled in the law of Scotland that you cannot entail moveables. So if the trustees had taken the other view, and endeavoured to make an entail of these objects, the only result would have been that they would have gone to the Marquess as his property in fee-simple, and nobody could have hindered him from disposing of them as he pleased. It appears to me that under the construction of this deed the Marquess of Douglas, Duke Archibald, became beneficially entitled during his lifetime to these articles; that is my construction of this deed. I may have a suspicion that the parties who were advising the Duke really thought that they could make a valid entail of these moveables which could not be disturbed, just as they could of the land, and that that is why no other provision was made. To say that the truster contemplated continuing the trust is, to my mind, impossible to reconcile with this deed, because the direction to the trustees is that as soon as the debts are paid they are to divest themselves of the whole moveable estate. Now, if directions are given to the trustees to divest themselves of the whole of the moveable estate, it is, to my mind, out of the question to say that the truster could have contemplated a continuing of the trust.

My impression is that the parties who advised the Duke thought they could make a valid entail of these goods. If we look at the very last words of the seventh clause there is some ground for saying that, because I think the expression there is intended to apply to the whole of the clause. It says—"It being my wish and intention that the said assets, real and personal, hereby conveyed and in time to come, after the purposes of this trust are fulfilled, descend to and be possessed by the heir in possession for the time"—that is to say, that what he directed his trustees to do applied to this particular moveable estate directed to be liferented, and that if the deeds were made, as he directed them to be made, that would secure the whole. As I have said, in my opinion that is an entire mistake. If the trustees had endeavoured to entail these moveables, the only result would have been that they would have gone with the moveables at the testator's death. Therefore on the construction of this deed I have came to be of opinion that provided it be the fact that the debts, legacies, &c., are completely paid and extinguished during Duke Archibald's life, he acquired a beneficial interest in the whole estate, that he was in possession thereof, and that the articles are subject to legacy duty. It is quite true that the parties in this case, the Duke's advisers and the trustees' advisers, seem to have thought that they were under no obligation to make them over, and whether they were making a mistake or not, the result, as I have said before, depends on the construction of the deed itself, and what was given by the deed, and not at all as to how the parties acted upon it, unless it could be made out that the Duke refused to accept this legacy altogether. If that could have been made out, that would be a different question, because if a person refuses a legacy on the death of the truster he is not liable to pay taxes upon it, but there is no such case as that here.

The only other question is, whether in the sense of this Act the debts, legacies, &c., were completely paid. Now, how they were paid up, I think, appears in a certain minute, and I think we are entitled to take that in this case as representing the true state of the facts as to the debts. Mr Souter, who was then commissioner for the Duke, stated at a meeting of the trustees in June 1859 "that in order to further the object of the trust and the sooner liquidation of his father's debts and legacies, his Grace had sold the Ashton Hall estate in Lancashire, and out of the proceeds had paid all his father's debts excepting the sum of £16,300." Now, that represents, and no doubt it was the fact, that all Duke Alexander's debts had been paid off at this date except the £16,300. I agree with your Lordship that we are entitled to hold that that £16,300 has been paid off too, and for this reason, that the trustees were not entitled to divest themselves of any part of the heritable estate until the whole debts were paid off. Yet we find, as regards the heritable portion of the estate, that it was duly disponed and conveyed over to the Duke, which could not have been done unless the trustees were satisfied that the whole of the debts had been paid off. I think therefore there can be no doubt that the whole of the debts and legacies have been paid off.

But the reclaimers say, assuming that to be true, they were paid off by Duke Archibald's own money. I cannot see what difference that makes in the case. The question is, whether in point of fact the debts were paid off, not the means by which they were paid. I do not know whether Duke Archibald paid them off, and if he did, the trustees could have nothing to say; and as I hold that it is clearly established that all the trust debts referred to in the trust-deed have been paid off and extinguished, to my mind it makes no difference that Duke Archibald paid them off by selling estates in England. Neither does it make any difference that the creditors chose to accept, as is set forth in the minute I

have already quoted, to the extent of £16,300 Duke Archibald's personal obligation, because while they did that they agreed to discharge the father's estate, and no doubt that has been done. If that be so, to my mind the whole debts are paid off and extinguished, and that being so, upon the construction of the deed which I have already referred to and commented upon, I think Duke Archibald became beneficially entitled to this art collection, and as a consequence that the Crown is right.

LORD M'LAREN — I concur with your Lordship in the chair. There is only one observation I propose to make regarding the manner in which the direction of Duke Alexander was carried out. I assume, for the reasons given by your Lordship, that according to a due construction of Duke Alexander's settlement the duty of his trustees, after the debts were paid and extinguished, was to make over the whole of what has been termed the art collection to the heir in possession absolutely. And I agree with your Lordship and Lord Adam that when funds were provided by Duke Archibald, and when the debts were paid out of those funds, the condition contemplated in the settlement was fulfilled. Now, instead of conveying the art collection absolutely, the trustees proposed to convey it to Duke Archibald in liferent, and to the heirs of entail in fee, and they do so on the narrative contained in the joint print. It is perfectly plain, I apprehend, that liability to legacy duty must depend upon the right which Duke Archibald had under his father's settlement, and if he had chosen to accept a conveyance in liferent, with a reversion to his heirs that might be binding on himself provided the proper steps were taken to secure the right to the heirs by vesting the property in trustees, or in some other way, that being a settlement proceeding upon the consent of Duke Archibald himself could not affect the claim of the Crown to legacy duty. That seems perfectly clear, and assuming the construction of the original deed, which I think your Lordship has clearly established, the right to legacy duty follows.

LORD KINNEAR—I agree with your Lordship and Lord Adam, and as my reasons for the opinion which I have formed have been already fully stated, I do not think it necessary to detain your Lordships by repeating them. I have only to add that I also agree with Lord M'Laren in thinking that if the transaction between the late Duke of Hamilton's trustees had been actually carried out in terms of the draft conveyance to which he has referred, the result would have been exactly the same in law as I hold that it is now in consequence of the arrangement which was actually made. The conveyance in question does not appear to have been ever executed, but the effect of it, if it had been executed, would have been exactly the same as if the deed was really carried out. I therefore agree with your Lordship.

The Court adhered.

Counsel for Pursuer — Lord Advocate Pearson, Q.C. — Young. Agent — David Crole, Solicitor of Inland Revenue.

Counsel for Defender — D.-F. Balfour, Q.C. — Ure — Macphail. Agents — Tods, Murray, & Jamieson, W.S.

Tuesday, December 8.

SECOND DIVISION.

[Sheriff of Aberdeenshire.

WALLACE *v.* ROSS.

Poor — Settlement — Proof — Evidence — Hearsay—Family Tradition.

In an action at the instance of a relieving parish against the parish alleged to be that of the pauper's birth, for repayment of funds expended on his behalf, the only evidence in support of the fact of his having been born there was that of the pauper himself and of his sister, who relied solely upon statements made to them by their mother, who was dead.

Held (*diss.* Lord Young, *dub.* Lord Rutherfurd Clark) that this was not a case of family tradition, and that the evidence, being virtually that of a single witness, was insufficient to establish the pursuer's claim.

James Wallace, Inspector of Poor of the parish of St Nicholas, Aberdeen, brought an action in the Sheriff Court at Stonehaven against George Ross, Inspector of Poor of the parish of Laurencekirk, for payment of sums expended and to be expended for the maintenance and support of a pauper John Duncan, on the ground that the pauper had no residential settlement, and that Laurencekirk, as the parish in which he was born, was liable for the expense of alimenting and providing for him.

The defender pleaded that the said John Duncan not having been born in the parish of Laurencekirk, he should be assoilzied.

The question in dispute was entirely one of fact, viz., whether or not the pauper had been born in the parish of Laurencekirk?

A proof was allowed, at which the pauper, aged sixty-nine, deponed—"After I grew up I was told by my mother that my father was working at Scotston when I was born. I was born six weeks before Whitsunday. My mother told me that. I am sure my mother told me I was born at Scotston, Laurencekirk. She said it was a stone and lime laigh house I was born in. She often told me the place of my birth. *Cross.* --I do not know that I was ever told the year I was born. I do not mind much about the conversation I had with my mother as to where I was born. It is thirty-three years since I had the conversation with my mother.

Mrs Robertson, aged seventy, deponed—"I am the only sister of John Duncan. He is twenty-one months younger than me.