

entire the effect of marriage-contracts, and independently of that provision I should have assumed that marriage obligations were not intended to be rescinded by the Act of Parliament.

LORD KINNEAR—I am of the same opinion. I think the validity of the claim in cases of this kind must depend on the construction of the marriage-contract, whether the parties have entered into the contract before or after the passing of the Act. If the claim is inconsistent with the provisions of the marriage-contract, then it is excluded by the Act of Parliament itself. If it is not inconsistent with these provisions there is nothing in the Act to prevent it receiving effect. The Lord Ordinary, as I understand his Lordship, has sustained the claim because of this, that the husband is claiming, not against but in terms of the marriage-contract, because his Lordship appears to consider that the gift, or the provision in favour of the wife or her heirs and assignees, is exactly to the same effect as if it had been stipulated that on the wife's death her estate should go to the persons who would be entitled to it under the law in force at the time being, whosoever these persons might be, and accordingly he holds that Mr Buntine, having right by the law now in force to a share of his wife's moveable estate, is claiming, not against but in terms of the contract when he asks that that receive effect. Where an antenuptial contract of marriage has been conceived in terms that will bear such a construction as that, I should agree with the Lord Ordinary, but in the present case I agree with your Lordship that that is not the true construction of the contract at all, but that the wife has agreed with the husband that in the event, which has happened, of having no children, her estate shall be at her absolute disposal or shall be held for her behoof, and at the absolute disposal of herself or her heirs and assignees. Now, if this estate is at her absolute disposal, then she can test, and that is the obvious and inevitable construction of the clause in her favour, and failing her testing then it is to go absolutely to her heirs *in mobilibus*. The husband says that by virtue of a supervening law he has a right to take one half of the estate because the *jus relicti* gives him a right which the wife could not defeat by her will, and in the event which has happened, of her making no will, it gives him right, he says, to take the one half from her heirs and so defeat the provisions of the marriage-contract which say that it shall be held absolutely at her disposal. Now, the Act of Parliament says that the right which it gives to the husband shall not be allowed to affect any contract between spouses before or after marriage, and the only question under that clause appears to me to be whether the husband in this case is not claiming in terms of the contract which he has made with his wife before marriage. Under the contract the wife and her heirs have an absolute right to

the whole of her moveable estate, but the pursuer says that he is entitled to defeat that right in consequence of the *jus relicti* which the Act confers upon him.

It appears to me it would be quite impossible to give effect to the claim on any other ground except that the Act of Parliament has altered the provisions of the contract by the introduction of a new right in favour of the husband. I therefore concur with your Lordships.

The Court recalled the Lord Ordinary's interlocutor and assoilzied the defenders.

Counsel for the Pursuer and Respondent—Sol.-Gen. Asher, Q.C.—Dundas. Agents—Cowan & Dalmahey, W.S.

Counsel for the Defenders the Marriage-Contract Trustees—H. Johnston—Fleming. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for the Defenders and Reclaimers the Next-of-Kin of Mrs Buntine—H. Johnston—Fleming. Agents—Murray, Beith, & Murray, W.S.

Friday, March 16.

## FIRST DIVISION.

[Lord Low, Ordinary.]

### MAGISTRATES OF GALASHIELS v. SCHULZE.

Burgh—"Regular Line of Street"—Setting Back Buildings—General Police Act 1862 (25 and 26 Vict. cap. 101), sec. 162.

The General Police Act 1862, by section 162, provides that "When any house or building, any part of which projects beyond the regular line of the street, . . . has been taken down in order to be . . . rebuilt, the commissioners may require the same to be set backwards to or towards the line of the street." . . .

In 1877 the Magistrates of Galashiels resolved to widen one of the streets in the burgh to a minimum width of 40 feet. In 1893 the width of the street opposite most of the houses was 40 feet, and in some cases more, but three houses still projected 13 feet to 15 feet beyond that limit. Upon one of these houses being taken down in order to be rebuilt the Magistrates sought to have the proprietor ordained to set it back to the 40 feet line.

Held (*rev.* Lord Low) that there was no regular line of street to which they were entitled to have the house set back.

Burgh—Turnpike Act 1831 (1 and 2 Will. IV. cap. 43), sec. 91—Adoption of that Act by Local Act—Street.

The Turnpike Act 1831, by section 91, provides "That no houses, walls, or other buildings above 7 feet high shall be erected without the consent of the trustees . . . within the distance of

25 feet from the centre of any turnpike road." . . . The Galashiels Police Act 1876 adopted several sections of the Turnpike Act, including section 91, "so far as the said clauses are applicable to the roads and streets within the extended burgh." . . .

*Held* (aff. Lord Low) that the Magistrates of Galashiels were entitled to refuse to allow new buildings of a greater height than 7 feet to be erected on ground hitherto vacant within 25 feet of the centre of a street in the burgh.

The General Police and Improvement (Scotland) Act 1862 (25 and 26 Vict. cap. 101), by section 162, provides—"When any house or building, any part of which projects beyond the regular line of the street, or beyond the front of the house or building on either side thereof, has been taken down in order to be altered or is to be rebuilt, the commissioners may require the same to be set backwards to or towards the line of the street . . . for the improvement of such street."

The General Turnpike (Scotland) Act 1831 (1 and 2 Will. IV. cap. 43), by section 91, provides—"And be it enacted that no houses, walls, or other buildings above 7 feet high shall be erected without the consent of the trustees previously obtained in writing, and no new inclosures or plantations shall be made, within the distance of 25 feet from the centre of any turnpike road, without prejudice always to any further powers and authorities vested in any turnpike trustees thereanent by any local Act of Parliament, and no place out of which the trustees of any turnpike road have been in the use of taking materials shall, without the consent of the trustees previously obtained in writing, be in any way shut up or inclosed." . . .

The Galashiels Municipal Extension Police and Water Act 1876 (39 and 40 Vict. cap. 60), by section 40, provides that "The Corporation shall have the general administration, management, and superintendence of all roads and streets within the extended burgh already made and constructed, or that may be constructed or assumed by virtue of this Act and the Police Act, and clauses 80, 81, 83 to 92 (both inclusive), 94, 100 to 106 (both inclusive), and 109 to 119 (both inclusive) of the General Turnpike Act, so far as the said clauses are applicable to the roads and streets within the extended burgh, and in so far as the same are not inconsistent with this Act and the Police Act shall from and after the 15th day of May 1877 extend and apply to all the roads and streets within the extended burgh; and in the construction of the said clauses in the General Turnpike Act with reference to this Act, the expression 'trustees under any Turnpike Act,' or words having the like import, and the expression 'turnpike roads,' shall mean and apply to the Corporation and to the said roads and streets, . . . but in so far only as such applications shall not be excluded by the context and any of the provisions of this Act." And section 42 provides that "The Corporation shall have full power and

authority to widen and improve existing streets and bridges, and to build new bridges over Gala Water, or elsewhere within the extended burgh, with proper approaches thereto, and they may acquire by agreement lands and heritages necessary for such purposes."

Channel Street is one of the leading thoroughfares in Galashiels, and in 1878 the Magistrates of that burgh resolved to endeavour to widen it to a uniform width of 40 feet. In 1892, by means of agreements and purchases made by the Corporation, the street was throughout 40 feet or more than 40 feet wide except opposite the houses of Messrs Schulze, M'Queen, and Gillies, the frontage of which was practically on the same line. The uniformity of the street was also broken by several of the houses standing back beyond the 40 feet limit, with ground in front either enclosed or paved, the proprietors, however, being entitled to build up to the 40 feet.

In that year William Schulze, tweed manufacturer, proprietor of two houses, several storeys high, projecting from 13 feet to 15 feet beyond said line, and of vacant ground adjoining at the corner of Channel Street and Park Street, took down said houses with the view of re-erecting them. He proposed at the same time to build on the vacant ground to the same height and on the same line, and served notices to that effect upon the Corporation.

The Magistrates refused their consent to his proposals, and founding upon the Acts above quoted brought an action of interdict against him. By it they sought to have him ordained to set back the existing houses 13 feet to 15 feet, and interdicted from covering the vacant space within 25 feet of the centre of the street with buildings of a greater height than 7 feet.

They averred—"In and prior to the year 1877 the width of this street varied from about 20 feet at the west end to about 30 feet at the east end. The line of the buildings on each side of it was irregular, although the line of the street was quite regular and well defined." They narrated their resolution to widen the street to a uniform width of 40 feet, and they explained—"Subject to the three exceptions above mentioned, the work has now been carried out and completed by the Corporation, and the whole of the north side of Channel Street, from its junction at its western extremity with High Street to Market Street on the east, has been widened in conformity with the Corporation's said resolution."

They pleaded—"(1) The erection by the respondent of the proposed buildings described in his notices, . . . and relative plans, being illegal, interdict should be granted as craved. (2) The erection of the said proposed buildings without the written consent of the Corporation being contrary to the Act 1 and 2 Will. IV. c. 43, sec. 91, as incorporated in the Galashiels Municipal Extension Police and Water Act 1876, and such consent having been refused by the Corporation, interdict ought to be granted

as craved. (3) The erection of the said proposed buildings being in contravention of section 162 of the General Police and Improvement (Scotland) Act 1862, interdict ought to be granted as craved.”

The respondent pleaded—“(2) The operations complained of being lawful operations upon the respondent’s own property, and not being in contravention of the statutes founded on, interdict ought to be refused. (3) The complainers having failed to acquire any right or interest in or to the respondent’s property in accordance with the provisions of section 161 of the General Police and Improvement (Scotland) Act 1862, and section 42 of the Galashiels Municipal Extension Police and Water Act 1876, or otherwise, are not entitled to interfere with the respondent’s said operations. (4) The complainers are not entitled to object to the respondent’s operations under the said General Police Act of 1862, in respect that there is no regular line of street in Channel Street as a whole, and that the buildings formerly on the ground did not project, and the new buildings will not project, beyond either, 1st, the actual line of the street at the part thereof where situated, or 2nd, the actual front of the houses or buildings thereto adjoining. (6) The provisions of the Act 1 and 2 Will. IV. cap. 43, founded on by the complainers, being inapplicable to the present case, and the operation thereof contended for by the complainers being inconsistent with the provisions of the said General Police and Improvement (Scotland) Act 1862, and the Galashiels Municipal Extension Police and Water Act 1876, interdict should be refused.”

Upon 9th June 1893 the Lord Ordinary (Low) granted decree in terms of the prayer of the note.

“*Opinion.*—I do not think that there is any substantial dispute between the parties as to the material facts of this case, and I am therefore in a position to dispose of it without further inquiry.

“Channel Street is one of the leading thoroughfares in Galashiels, and about 1878 the complainers approved of a scheme for widening the street to a breadth of 40 feet. The plan No. 10 of process shows in pink the buildings and front gardens as they existed in 1878, and the blue lines show what the line of the street will be when the scheme is carried into effect.

“The complainers have by agreement with the proprietors been able to widen the greater part of the street, but three of the proprietors, viz., Messrs Gillies, Mr M’Queen, and the respondent Mr Schulze, have refused to transact thereanent with the complainers, and their buildings still project beyond the line of the street as widened.

“The plan No. 17 of process shows the present condition of the street.

“The respondent had two houses fronting Channel Street, and adjoining them a vacant stance at the corner of Channel Street and Park Street. He has taken down the two houses fronting Channel Street, and proposes to rebuild them. The

front line of the houses projects into the street from 13 to 15 feet beyond the line of the street as widened. The complainers have required the respondent, in terms of the 162nd section of the General Police Act of 1862, to set back the new houses to the line of the street as widened.

“The respondent also proposes to erect a building upon the vacant stance upon the same line of frontage as his old houses. The 162nd section of the Police Act does not apply to a building erected for the first time, as it only deals with the case of existing houses being taken down to be altered or rebuilt. The complainers therefore appeal to the 91st section of the General Turnpike Act of 1831, which is incorporated with the Galashiels Municipal Extension Police and Water Act 1876. That section provides that no houses or other buildings above 7 feet high shall be erected without the consent of the trustees (in this case the complainers) previously obtained in writing, within the distance of 25 feet from the centre of any turnpike road. By the Galashiels Act, and for the purposes of that Act, the expression ‘turnpike roads,’ when used in the incorporated section of the Turnpike Act, is defined as meaning ‘roads and streets’ within the burgh. The complainers accordingly contend that the respondent is not entitled, without their consent in writing, which they refuse to give, to erect a building upon the vacant stance above 7 feet high within 25 feet of the centre of Channel Street. If the complainers are right in their contention they can prevent the respondent erecting a building of a greater height of 7 feet upon the vacant stance beyond the line of the street as widened.

“I shall first consider the case in regard to the old houses under the 162nd section of the General Police Act, and then the case of the new house under the 91st section of the Turnpike Act.

“The 162nd section of the Police Act provides [quoted *supra*].

“It is admitted that the respondent’s houses do not fall under the alternative case contemplated by the section, because it does not project beyond the front of the house immediately to the east—that is, Mr M’Queen’s house. The question therefore is, whether they project beyond the regular line of the street within the meaning of the Act? The respondent contends that they do not do so, because there is no regular line of street, and he appeals to the plan No. 17 of process as showing that that is the case. That plan shows that the regular line of the street is, in the first place, interrupted by the projecting houses of the three proprietors to whom I have referred, who refused to sell to the complainers the ground necessary for widening the street opposite their houses. In the second place, the plan shows that eastward of the Douglas Hotel the houses upon the north side of the street stand behind and are not parallel with the line shown upon the plan as the line of the street. The latter state of matters is, how-

ever, easily explained. The plan of 1878, No. 10 of process, shows that a number of the houses to the east of the Douglas Hotel had enclosed plots of ground in front of them. The proprietors were willing to sell or give to the complainers the ground necessary for widening the street, but they stipulated that the complainers should take over and pave the whole of the front plots, and not only the portions thereof which were included within the proposed line of street. It was also agreed that in the event of any of these proprietors rebuilding his house he should be entitled to bring the front forward to the new line of the street. The complainers accordingly, in paving the front plots, ran a line of coloured stones along the pavement upon the new line of the street. The result is that throughout the whole length of the street, except *ex adverso* of the three properties to which I have referred, the street has actually been widened to the proposed regular breadth of forty feet, or the ground necessary for that purpose has been acquired, and the ultimate line of the street marked upon the pavement. In these circumstances, I think that the street has a regular line according to the fair and ordinary use of language, except in so far as that line is broken by the three projecting properties.

"The question therefore arises, whether the fact that there are three properties which have not been brought into line prevents the application of the Act. Whether or not there is a regular line of street within the meaning of the Act must always, I think, be a question of circumstances. Here the fact is, as shown by the plan, that out of a street of over 200 yards in length there are only buildings (including those of the respondent) having a frontage of from 40 to 50 yards which project beyond the regular line of the street. It seems to me that this is just the kind of case in which the Act gives the commissioners power to take advantage of the rebuilding of a projecting house to compel the proprietor to set it back to the regular line of the street.

"I am therefore of opinion that the complainers are entitled to prevail as regards the old houses.

"In regard to the new building upon the vacant stance, the only question is whether the 91st section of the General Turnpike Act applies. If it does apply, the complainers can prevent the respondent building above a certain height, beyond the regular line of the street, and of course it is only to that extent and effect that they desire to exercise their statutory powers.

"By the Galashiels Municipal Extension and Police Act a number of the clauses (including the 91st) of the General Turnpike Act are incorporated, 'so far as the said clauses are applicable to the roads and streets within the extended burgh, and in so far as the same are not inconsistent with this Act and the Police Act.'

"Now, many of the incorporated sections are obviously not applicable to a

street within burgh. Thus the 84th and the 85th sections, which empower the road trustees to make side drains and ditches along the side of a turnpike road; the 88th and 89th sections, which provide for the pruning of hedges and trees at the side of a road; the 103rd section, which provides that no animal is to be pastured upon a public road, and several others, plainly refer to country roads, and would seldom, if ever, be applicable to a street within burgh. But I see no reason why the 91st section should not be applicable to a street within burgh. It cannot be disputed that it is applicable to a road (as distinguished from a street) within the burgh boundaries, and there does not seem to me to be any sufficient reason for drawing a sharp distinction between a road within burgh and a street within burgh. I have already pointed out that the Galashiels Act defines 'turnpike road' as 'road or street' within the extended boundaries of the burgh.

"The respondent's counsel suggested that the reason of giving the power in the case of a road was that the road might afterwards be more easily widened if that should be found necessary. But that would be a reason for giving the power in the case of a street, and it is for that very purpose that the complainers desire to exercise the power.

"The respondent further says that the section is inconsistent with the Galashiels Act. That Act authorises the Commissioners to widen existing streets, and for that purpose to acquire land by agreement. That, the respondent argues, is the limit of the complainers' right as regards 'existing streets.' When there is a road which is not an 'existing street,' they may use the power given in the 91st section of the Turnpike Act, in view of it being necessary subsequently to widen the road, but if there is an existing street, they can only widen it by acquiring the requisite land by agreement. Further, to put in force the powers of the 91st section would not, the respondent argues, enable the complainers to widen the street. It would not give them any part of the respondent's land, but would only limit the respondent's use of his land by preventing him building upon a certain part of it to a greater height than seven feet.

"I am of opinion that the respondent's argument is not well founded. I do not think that it can be said that the power conferred by the 91st section of the Turnpike Act is inconsistent with the special power given by the Galashiels Act to acquire land for the purpose of widening a street, because road trustees under the Turnpike Act had, in addition to the general powers of the 91st section, special power by the 61st section of that Act to widen roads to twenty feet without paying for the ground, and to forty feet on making satisfaction.

"Then, although it is quite true that the complainers would not, by exercising the powers of the 91st section, acquire any additional land, or be entitled actually to widen the street, they have a substantial

interest to enforce these powers. If they are to complete the widening of the street, they must ultimately acquire the necessary part of the respondent's land, either by agreement or by the exercise of the compulsory power which they now possess. If the complainers are entitled to call in aid the 91st section, then the respondent must either keep back his buildings to the new line of the street, or must restrict their height to seven feet. In either case the subject which the complainers would be compelled to acquire in order to complete the widening of the street would be less costly than it would be if the respondent is entitled to erect buildings several storeys in height up to the verge of his property.

"I have therefore come to be of opinion that the 91st section of the Turnpike Act is applicable, and that the complainers are entitled to enforce it.

"I shall therefore grant interdict in terms of the prayer of the note."

The respondent reclaimed, and argued—(1) There was no "line of street" in fact, but only on the plans of the Corporation. (2) The 91st section of the Turnpike Act was applicable to country roads, but not to a street in a burgh. (3) The Corporation's proper course was to come to an agreement with him. The 42nd section of the local Act contemplated agreements, but not the compulsory powers here sought to be exercised. (4) Either to order him to set back the existing houses or to restrict him as to the height of the new buildings on the hitherto vacant stance was a hardship the Court ought not to countenance.

Argued for the complainers—(1) There was a regular line of street. The three houses whose proprietors would not come to terms were marked exceptions. (2) Unless the order to set back was granted, the statute conferring the power upon magistrates became a dead letter. (3) Some of the provisions of the Turnpike Act, although nominally incorporated in the local Act, might not be applicable to streets in a burgh, but there was nothing inconsistent in applying the part of the 91st section here founded on to such a street.

At advising—

LORD KINNEAR—This reclaiming-note raises two separate questions. The claimer is proprietor of ground in Channel Street, Galashiels, formerly occupied by two houses fronting the street; and he is also proprietor of a vacant stance at the corner of Channel Street and Park Street. He has taken down the two houses and proposes to rebuild them. The first question is whether he is entitled to erect the new buildings on the same site as the old, or whether he can be compelled to set them back from 13 to 15 feet, to a line which the complainers allege to be the regular line of the street. This depends on the terms of the 162nd section of the General Police Act of 1862. That section contemplates two different conditions in which a street may be found when a house

or building is taken down in order to be altered or rebuilt. In one case the Act supposes that there is a regular line of street, although the house that is to be altered projects beyond it. In the other, it is not assumed that any regular line exists, but that the front of the house which is to be altered projects beyond the front of the house on either side. In the first case the section provides that when any house or building, any part of which projects beyond the regular line of the street, has been taken down in order to be altered or to be rebuilt, the commissioners may require the same to be set backwards to, or toward, the line of the street. In the other case the commissioners may require the house to be set back to the line of the adjoining houses.

The first question is, whether the claimer can be compelled to set back his house to what has been called the line of the street, and that depends upon whether or not there is a regular line. That is a question of fact which must be determined with reference to the actual condition of the street at the time when the alterations are being made, and not to any scheme for an improved street, which may have been framed or approved by the Corporation, but not yet carried into effect. Whether there is or is not such a line is a question on which opinions may differ, because a street may be called regular notwithstanding that there may be some occasional departure from absolute uniformity of line. It is a question of less or more. But I am not satisfied that the magistrates have shown that there is a regular line of street in a reasonable sense of their words. Their averment is that the width of the street varies, and that the line of the building on each side of it is irregular, although the line of the street is regular and well defined. I do not appreciate the distinction between the line of the street and the line of the buildings on either side of it. If there is a regular line to which a new building is to be set back, it must be the line of the existing buildings, and in the present case it appears to me that there is no such regular line. The plans produced, although they show that the magistrates contemplate alterations which may result in the creation of a uniform line, show at the same time that the existing line of buildings is still irregular, and if the complaint were sustained the result would be to increase the irregularity by compelling the claimer not to make his house uniform with those of his neighbours, but to set it back several yards behind their houses. I think that an operation having that result is not within the enactment, and therefore in this branch of the case I am unable to agree with the Lord Ordinary.

The second question depends upon the 91st section of the General Turnpike Act, which is incorporated with the Galashiels Municipal Extension Police Act, and by which it is provided, that "no houses, walls, or other buildings above 7 feet high shall be erected without the consent of the

trustees, within the distance of 25 feet from the centre of any turnpike road." The question is, whether that section of the Turnpike Act is or is not applicable to a street within the burgh of Galashiels.

Clauses 83 to 92 and others of the General Turnpike Act are by section 40 of the local Act adopted "so far as said clauses are applicable to the roads and streets within the burgh, and in so far as the same are not inconsistent with" the local Act. Now, there are various provisions in the incorporated clauses, and in particular in clause 91, which would be quite inapplicable to a street within burgh. But I do not think a prohibition to erect new buildings above a certain height within a certain distance of the centre of the street is in that position. There is no difficulty in its practical application if it be applicable in law. Our attention was not called to any clause in the local Act which would be inconsistent with this provision, except to those to which the Lord Ordinary has adverted, and as to these I agree with his Lordship. But the ground on which it was maintained that the clause in question is inapplicable was, that it would be inequitable to enforce it, inasmuch as it would deprive the respondent of a valuable right without adequate compensation. But that is not a consideration for this Court. It may be that powers which have been given to the Corporation for the benefit of the community may operate harshly in particular cases. But the only question we are to determine is, whether they have or have not been conferred. On this part of the case I agree with the Lord Ordinary.

The LORD PRESIDENT and LORD M'LAREN concurred.

LORD ADAM was absent.

The Court refused to ordain the respondent to set back the houses previously built, but interdicted him from erecting buildings to a greater height than 7 feet within 25 feet of the centre of the street upon the hitherto vacant space.

Counsel for the Complainers—Dickson—Dundas. Agents—Bruce & Kerr, W.S.

Counsel for the Respondent—Party. Agent—Andrew Tosh, S.S.C.

Saturday, March 17.

## SECOND DIVISION.

### BISHOP'S TRUSTEES v. BISHOP.

*Succession—Legitim—Amount of Legitim Fund—Whether Fund Available for Payment of Legitim to Child of First Marriage is reduced by Marriage-Contract Provisions to Children of Second Marriage which have been Surrendered.*

B was twice married. He was survived by seven children, of whom five

were by the first marriage and two by the second. His wife predeceased him. There was no marriage-contract on his first marriage, but when he married a second time he entered into an antenuptial contract, whereby, in order to make a provision for the children of the marriage, he bound himself to pay them on his death a just proportion and share of the means and estate that might happen to belong to him at his death along with the children of his first marriage, and any children that might be born of a future marriage, and that either among them equally or in any other proportion as he might appoint. These provisions were made in full of legitim. B left a settlement under which he directed his trustees at the first term occurring one year after his death to divide his whole estate equally among his children, declaring that the issue of deceasers should take the parent's share, and that in the event of any of them dying without having lawful issue, the share that would have fallen to them should be divided equally among the survivors. A son of the first marriage survived B, but predeceased the term of payment without leaving lawful issue, and consequently no right vested in him under the settlement. This son left a widow, whom he made his universal legatee, and she claims the legitim to which he was entitled out of his father's estate. The trustees under B's settlement maintained that before the legitim fund was struck, two-sevenths of the entire estate was to be deducted as being due to the children of the second marriage under the marriage-contract. *Held* that the marriage-contract could not be put forward in order to diminish the amount payable as legitim, in respect that the children of the second marriage would surrender their provisions under that contract in order to obtain the greater benefit which they would receive under the settlement.

### *Succession—Legitim—Interest.*

*Held* that interest at the rate of 5 per cent. per annum was due upon a child's legitim from the date of the father's death, although the funds in the hands of the father's testamentary trustees had only been earning interest at the rate of about 2 per cent.

John Baillie Bishop was twice married. By his first marriage he had five children, and by his second two. There was no contract of marriage between Mr Bishop and his first wife, and none of the children of the first marriage discharged or transacted their claim for legitim.

In contemplation of his second marriage, Mr Bishop entered into an antenuptial contract of marriage with his intended wife whereby he conveyed to the marriage-contract trustees, for her behoof in liferent allanarly, and the issue of the marriage in