been the case, I do not think that the Court could have been called upon to adjust the rate of annual rent on every fluctuation of the current rates of interest.

"I therefore feel that I have no alternative but to revert to the sum named in the contract, which during the years in question was not forbidden by the laws of the Kingdom. I should add as regards the apparent hardship to the defender, that he might at any time have paid off the bond by borrowing money at 3½ or 4 per cent. or other current rate of interest.

"I shall therefore find that for the period from 1st October 1855 to 15th October 1889 the defender falls to be debited with an annual rent of £200 Scots, or £16, 13s. 4d. sterling; and with that finding I shall remit the defender's accounts to an accountant, upon whose report the remaining questions between the parties which relate to progressive interest and annual accumulations may be settled.

"I venture to suggest, however, that this is a case for compromise, and the pursuers must consider whether if they get an annual rent at the rate of 6 per cent. they will not rest content with progressive interest at the rate of 4 per cent. as offered by the defender."

Counsel for the Pursuers — Graham Murray, Q.C.—Maclaren. Agent—W. H. Curr, W.S.

Counsel for the Defender — Dundas. Agents—Dundas & Wilson, C.S.

Tuesday, June 5.

OUTER HOUSE.

[Lord Wellwood.

CAMPBELL (INSPECTOR OF BOTHKENNAR) *v.* HISLOP (INSPECTOR OF MID-CALDER) AND ALSTON (INSPECTOR OF NEW MONKLAND).

Poor—Settlement—Pupil Lunatic.

The settlement of a pupil lunatic derived from her father is not affected by her mother's second marriage and consequent change of settlement.

Jane Innes, a congenital idiot, was secured in Larbert Institution for Imbeciles in April 1890, and remained there till February 1891. She was in pupillarity, having been born in 1880. Her father died in 1884, possessed of a residential settlement in the parish of Mid-Calder. Her mother left Mid-Calder in 1885 and married again, her second husband's birth settlement being New Monkland. From the time of her father's death till her admission to the Larbert Institution, Jane Innes had resided with her step-father, who at the date of her admission was resident in the parish of Bothkennar, but had not acquired a residential settlement there.

The pursuer, the Inspector of Poor for the parish of Bothkennar, sought in the present action to recover from one or other of the defenders the expenses incurred by him on account, of the girl's maintenance during her year's residence in the Larbert Institution. The defenders were respectively the Inspectors of Poor for the Parish of Mid-Calder, the residential settlement of the lunatic's father, and the Inspector of Poor for New Monkland, the settlement of her step-father. Both defenders admitted that the girl was a proper object of parochial relief, and that her step-father was not bound to support her.

The Lord Ordinary (WELLWOOD) on 5th June 1894 decerned against the first defender, the Inspector of Poor for Mid-Calder, for the sum in question, holding that that parish was liable to relieve the parish of Bothkennar of the expenses incurred for the girl's maintenance.

"*Note.* — [*After narrating the facts as above*]—At her father's death the pupil had a settlement in Mid-Calder derived from her father; but the Inspector of Mid-Calder maintains that that settlement was lost on the second marriage of the mother, the child's settlement following that of the mother.

"On a review of the authorities, I am of of opinion that this contention is not well founded in the circumstances of the case. The settlement of a pupil derived from her father not affected by the second marriage of her mother. In particular, *Hendry* v. *Mackinson & Christie*, 7 R. 458, is an authority directly in point.

"Mid-Calder relied on the older cases of *Gibson* v. *Murray*, 16 D. 926, *and Greig v. Adamson & Craig*, 3 Macph. 575; and certainly these cases, taken by themselves and unexplained, go far to support the proposition contended for. But as explained in *Beattie* v. *M'Kenna & Wallace*, 5 R. 737, they can only be supported as proceeding on the ground that the mother was the pauper, not the child. *Greig's* case was the judgment of the whole Court, but it was decided by a majority of one against a formidable minority. Lord Deas, who gave the leading opinion among the majority, afterwards emphatically disclaimed in *Beattie's* case the construction which is now sought to be put on *Greig's* case, and indeed the opinions of the majority in *Greig's* case sufficiently show the limited scope of that judgment, be it sound or not. Here the child is the pauper; the mother is not pauperised by the support given to her imbecile child in an asylum. And as a pupil or a lunatic placed in an asylum cannot lose a settlement, the girl's settlement remains in Mid-Calder. What I have stated shortly can be so clearly demonstrated by an examination of the cases, and especially of the opinions in the cases of *Greig* and *Beattie*, that I think it unnecessary to say more."

Counsel for the Pursuer—Crole. Agent—Wm. B. Rainnie, S.S.C.

Counsel for the Defender Hislop—C. S. Dickson—W. Gray. Agents—J. & A. Hastie, Solicitors.

Counsel for Defender Alston—Orr Deas. Agents—Drummond & Reid, S.S.C.

HOUSE OF LORDS.

Tuesday, March 6.

(Before the Lord Chancellor (Herschell) and Lords Watson, Ashbourne, and Morris).

THE LORD ADVOCATE *v.* BOGIE AND OTHERS (METHVEN'S EXECUTORS).

(*Ante*, vol. xxx. p. 454, and 20 R. 429).

Revenue—Inventory-Duty—Legacy-Duty—Legacy to Executors and Representatives whomsoever of a Predeceasing Legatee.

A testator bequeathed one-third of the residue of her estate to R. M., and failing him to his executors and representatives. R. M. predeceased the testatrix, leaving a will, by which he nominated executors with directions to invest the residue of his estate.

On the death of the testatrix the Crown claimed, in addition to the inventory duty and legacy-duty paid by her executors, a second inventory-duty and legacy-duty from R. M.'s executors on one-third of the testatrix's residue, on the ground that R. M. had disposed of it by will.

Held (*aff.* the decision of the First Division) that the Crown was not entitled to the duties claimed, the property not being the personal estate and effects of R. M. within the meaning of the statutes.

This case is reported, *ante*, vol. xxx. p. 454, and 20 R. 429.

The Lord Advocate appealed.

At delivering judgment—

LORD CHANCELLOR (HERSCHELL) — My Lords, the question raised in the present case is, whether inventory-duty and legacy-duty are to be paid in respect of a certain part of the estate of Miss Scott which passed to the executors of Mr Robert Methven.

Robert Methven left a trust-disposition and settlement and died. By this trust-disposition and settlement the defenders were his trustees and executors, and became entitled to his heritable and moveable estate. Miss Scott, who had made a trust-disposition in the lifetime of Robert Methven, by that disposition provided with regard to the free residue of her whole moveable estate and effects in these terms—"I leave and bequeath the same to the said Robert Methven, Robert Russell, and James Russell, equally between and amongst them share and share alike for their own use and behoof, and failing all or any of them by their predeceasing me, to their several and respective executors and representatives whomsoever, whom I do hereby appoint to be my residuary legatees." Of course there is no question that inventory-duty must be paid upon the third of the residue which is now in question passing under Miss Scott's will; and there is no question that legacy-duty must be paid in respect of the disposition to which I have just called your Lordships' attention. The question is, whether a second duty is payable.

Miss Scott survived Robert Methven, and therefore the gift to him personally never took effect. At the time from which her will must be regarded as speaking Robert Methven was dead. His estate had passed under this trust-disposition to his executors, and was then ascertained. It has been held, and it is not now in dispute, that the effect of Miss Scott's trust-disposition was not to vest in the executors of Robert Methven, the defenders, and the respondents here, a beneficial interest in the property left by Miss Scott, namely, one-third of her residue; that what they took they took as executors, and that they were bound to deal with this third of the residue in precisely the same way as they had to deal with the estate which had passed to them under Robert Methven's will.

Under these circumstances it is contended on behalf of the Crown, who are the appellants at your Lordships' bar, that inventory duty is payable in respect of the moneys which thus came to the executors of Robert Methven as part of Robert Methven's estate, and that legacy-duty is payable by the beneficiaries under Robert Methven's will, who of course will take, by virtue of this disposition of Miss Scott's, the money which so passes to the executors of Methven.

It may be that under circumstances such as I have detailed it would be neither unreasonable nor unjust that this second duty, as it is called, should become payable; but with that your Lordships have not to deal. It can only be payable if it falls within the taxing provisions which have been enacted by the Legislature with reference to inventories and legacies.

The Stamp Duties Act of 1815 defines as the estate liable to inventory-duty or probate-duty "the personal estate and effects of any person deceased." Now, the contention on behalf of the appellants is, that the effect of Miss Scott's disposition coupled with Methven's was to make this third of the residue of Miss Scott's estate part of the personal estate and effects of Robert Methven. Of course it had never belonged to Robert Methven; at the time of his death it could in no sense be said to be his or any part of his estate. The contention is that the effect of Miss Scott's disposition is to add it to his personal estate, and to make it as much a part of his personal estate as if it had belonged to him in his lifetime. The only question which your Lordships have to consider is, whether it has been in that sense so completely made a part of his personal estate as that within the words of the Stamp Duties Act, which I have read, it must be regarded as part of "the personal estate and effects of the deceased."

The will of Miss Scott, as I have said, must be taken as speaking from the time of her death; and the case appears to me to be precisely the same as if she in her lifetime had given the money to the execu-