an allowance, and that after her death he would have an income of £600 a-year. On 4th March 1903 they went through a form of irregular marriage by a declaration before witnesses, in which he called himself "Walter Erby Hamilton, bachelor, of independent means." A petition was afterwards presented to the Sheriff for registration of the marriage, and the petition was granted and the marriage registered. A child, of which the defender was the father, was born in December 1903.

It was found that as a matter of fact the defender's true name was Walter Horn; that he had no settled occupation, but had kept himself for some time as a betting tout; that he had started a lodging-house in Brighton, got furniture on credit, and sold it and absconded with the proceeds. After imprisonment and examination in bankruptcy at Brighton he was sentenced, on a plea of guilty, to six months' imprisonment in Aberdeen for making a false declaration at the registration of his marriage in breach of the Registration Acts. His father had been a postilion in Bedford; his mother, who was alive, kept a small beer shop there.

LORD LOW granted decree, and pronounced the following interlocutor:—"Finds and declares that the pursuer was on or about the 4th day of March 1903 circumvented and induced to contract a pretended marriage with the defender by means and in consequence of false and fraudulent representations and personation used by the defender towards the pursuer, and in particular by his falsely pretending to be Walter Erby Hamilton of Foxhall Park, Letterkenny, County Down, Ireland: Finds and declares the said pretended marriage betwixt the pursuer and defender to have been from the beginning, to be now, and in all time coming of no avail, force, strength, or effect, and that the pursuer is free to marry any free man as if she had never been married to the said defender or as if he were naturally dead, and decerns."

Counsel for the Pursuer—M'Lennan—Ingram. Agents — Purves & Barbour, S.S.C.

Saturday, February 20.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

THE GOVERNORS OF GEORGE HERIOT'S TRUST *v.* CALEDONIAN INSURANCE COMPANY.

Superior and Vassal—Casualty—Composition—Composition Payable by Corporation—Conveyancing (Scotland) Act 1874 (37 *and* 38 *Vict. c.* 94), *sec.* 5.

By disposition dated and recorded in 1868 a vassal who was entered with the superior sold his feu to a corporation. He died in 1877. No composition was demanded from the corporation by the superior till 1900, in which year a composition was demanded and paid. *Held* that a second composition was not due till 1925.

By section 5 of the Conveyancing (Scotland) Act 1874 it is provided—"Unless where it has been or shall be otherwise stipulated, corporations shall pay at the date at which the first composition would have been payable if this Act had not been passed, and every twenty-fifth year thereafter, a sum equal to what but for the passing of this Act would have been payable on entry by a singular successor."

The Governors of George Heriot's Trust were the superiors of certain heritable subjects in West Maitland Street and West Coates, Edinburgh.

In 1866 Robert Matheson was the vassal in these subjects and was duly entered with the superior.

By dispositions dated and recorded in 1866 and 1868 Matheson disponed the subjects to the Caledonian Insurance Company, incorporated by royal charter and Act of Parliament.

Matheson died on 5th March 1877. No demand for a composition was made by the superiors from the Caledonian Insurance Company till 16th May 1900, when a composition was paid by the latter.

In October 1902 the superiors raised an action against the Caledonian Insurance Company for payment of £544, 3s., being the amount of a second composition which they alleged was due by the defenders.

The pursuers contended that the date at which the first composition due by the defenders was payable was the date of Matheson's death, and that although this composition had not been demanded and paid till 16th May 1900, the twenty-five years at the expiry of which a second composition was due must be held to run from 5th March 1877.

The defenders on the other hand contended that the first composition was not due till demanded, that the twenty-five years should therefore run from 16th May 1900, and that no second composition was due till 1925.

On 21st July 1903 the Lord Ordinary (KINCAIRNEY) pronounced the following interlocutor:—"Finds (1) that on a sound construction of the fifth section of the Conveyancing Act 1874, the first composition was not payable by the defenders to the pursuers until 16th May 1900; and (2) that the second composition is not due until twenty-five years thereafter: Therefore dismisses the action as premature and decerns," &c.

Note.—"The Governors of Heriot's Hospital are superiors of certain property in West Maitland Street and West Coates, Edinburgh, and by this action they sue the Caledonian Insurance Company, their vassals in these subjects, for payment of £544, 3s., which they make out to be the amount of the composition payable for the subjects. This form of action is specially authorised by the Conveyancing Act.

"The defenders' author was Robert

Matheson, architect, Edinburgh, who disponed them to the defenders in 1866 and 1868.

"Matheson was duly entered with the superiors, and he died on 5th March 1877, and a composition was paid by the defenders to the pursuers on 16th May 1900.

The property is now subdivided into various separate subjects and has been covered with buildings, and various subfeus have been granted, whether by Matheson or by the defenders does not very clearly appear.

"The pursuers seek by this action to recover a second composition, and the principal question in the case is whether it is at present due. The defenders maintain that it will not be due until twenty-five years after the last payment in 1900.

"The question depends on the fifth section of the Conveyancing Act of 1874, which provides as to compositions payable by corporations that 'corporations shall pay at the date at which the first composition would have been payable if this Act had not been passed, and every twenty-fifth year thereafter, a sum equal to what, but for the passing of this Act, would have been payable on entry by a singular successor.' I refer to the rest of the section, which it is not necessary to quote.

"The question is, what, according to the true interpretation of the Act, was the date at which the composition would have been payable according to the law prior to the Act; because a solution of that question will ascertain the time when the next composition is payable, *i.e.* twenty-five years afterwards.

"The pursuers contend that the date at which under the old law the composition would have been payable was the date of the death of the last-entered vassal, and therefore twenty-five years should be counted from 5th March 1877. The defenders contend that the composition would not have been payable until it was demanded or paid, and that therefore the twenty-five years should run from 16th May 1900, the date of payment.

"There is a sense in which the composition might be said to have been payable on the death of the last vassal, because then, and not until then, the superiors would have been entitled to take legal steps to recover it by means of a declarator of nonentry; but they could not have recovered it by direct action as if it were the amount of a debt presently due; and if the feu had passed to some-one else—another corporation, for example—before the composition was recovered, then the liability of the defenders would have ceased altogether, and the burden would have been transferred to the succeeding corporation—*Mounsey* v. *Palmer*, December 6, 1884, 12 R. 236, 22 S.L.R. 118. I rather think, however, that the question has been removed from the domain of controversy in the Outer House by a very recent judgment of the First Division—*Motherwell* v. *Manwell*, March 6, 1903, 5 F. 619, 40 S.L.R. 429, decided by a majority of seven judges. In that case what happened was that the same person (Motherwell) had been in right of the superiority and also of the *dominium utile* of a particular subject. In 1897 his trustees sold the *dominium utile* to Manwell, and as the last-entered vassal had died in 1885, Motherwell's Trustees raised an action against the representative of the disponee for a composition.

"The defence was, that as after 1885 the superior, and after him his trustees, had been superior of the lands and at the same time the vassal, he was after the death of the former vassal, in 1885, himself both creditor and debtor for the amount of the composition, and that the claim to it was therefore extinguished *confusione*. But it was held by the majority of the Court that there was no confusion, for that a superior and his vassal did not in such circumstances stand in the relation of creditor and debtor; the only right of the superior being to proceed (under the old law) by declarator of non-entry, and under the Act of 1874 by a direct action, decree in which is declared to have the same effect as a decree of declarator of non-entry. Now in this case no steps whatever, as I understand, were taken by the superiors to recover the composition before 1900, when it was demanded and paid, and it rather appears to me that the judgment in the case of *Motherwell* precludes me from holding that the composition was 'payable' before that. I feel that there are some difficulties attending this view, but I have not been able to overcome the impression that it is necessitated by the judgment cited.

"The result is that I must assoilzie the defenders, and I do not require to deal with the other questions as to the amount of the composition."

The pursuers reclaimed, and argued—The word "payable" in section 5 of the Act of 1874 meant "prestable." If the Act had meant by "payable" "payable on demand" it would have said so. They were suing for a statutory debt falling due at a certain period irrespective of demand. This construction of the words of section 5 of the Act of 1874 was fortified by the terms of section 113 of the Titles to Land Consolidation Act of 1868, which showed that the composition was due "at the death of the existing vassal, and at the expiration of every period of twenty-five years thereafter." Both of these sections applied to educational trusts. The case of *Motherwell, supra*, had no bearing on the present question. The summons in that case was not a petitory summons like the present, and in that case it was also admitted by both sides that a casualty was due if it had not been extinguished *confusione*.

Argued for the defender and respondent—The Lord Ordinary had rightly decided the case. Section 5 of the Act of 1874 plainly set forth that the first composition was payable at the date it would have been payable if the Act had not been passed. Before 1874 no casualty was due till it was demanded. A composition was not a money debt arising *ipso facto* on the death of the last-entered vassal. Until a demand for it was made no debt was due by the vassal

—*Motherwell, supra,* opinion of Lord Adam, 5 F. 627, 40 S.L.R. 432, and Lord Kinnear, 5 F. 632, 40 S.L.R. 433; *Fisher* v. *Fisher's Trustees,* December 8, 1903, 41 S.L.R. 126. Any other decision would lead to injustice to vassals in the defenders' position. The rent of the property in 1900, the year in which the composition was paid, was much larger than the rent of 1877, the year in which the vassal died. So if it was held that another composition was now due it would be for the interest of superiors who had a corporation as their vassal to defer asking compositions till the feuduties or rents had gone up, and then ask a number of compositions one after another in the same year.

At advising—

LORD MONCREIFF—I am of opinion that the Lord Ordinary's interlocutor is right and should be affirmed.

The pusuers are superiors of certain property in West Maitland Street and West Coates, Edinburgh, of which the defenders the Caledonian Insurance Company, incorporated by royal charter and Act of Parliament, are heritable proprietors. The pursuers claim a composition from the defenders of £544. 3s.

The defenders' author was Robert Matheson, who disponed the lands to them in 1866 and 1868. Matheson, who was duly entered with the superiors, died on 3rd March 1877, at which date the defenders were entered with the superiors by force of the Act of 1874, and the superiors might then if they thought fit have demanded payment of a casualty.

The demand, however, was not made until the year 1900, and on 16th May 1900 a composition was paid by the defender to the pursuers.

In this action, the summons in which was signeted on 25th October 1902, the pursuers seek to recover from the defenders a second composition. No objection is taken to the form of the summons. The lands not being in non-entry, and the composition sued for being the second and not the first, a petitory action is probably the proper form of process by which to recover it if due. The defence which the Lord Ordinary has sustained is that the action is premature, because the defenders, who are a corporation, paid a first composition so late as 16th May 1900, and therefore the defenders maintain a second composition will not be demandable until 1925.

The pursuers' demand is made under the 5th section of the Conveyancing Act of 1874. It provides that, unless otherwise stipulated, "corporations" shall pay "at the date at which the first composition would have been payable if this Act had not been passed, and every twenty-fifth year thereafter, a sum equal to what but for the passing of this Act would have been payable on entry by a singular successor." It seems to me that these words by themselves are decisive against the pursuers, because previously to the passing of the Act of 1874 a composition would not have been payable by a singular successor until the superior demanded it and enforced payment by an action of declarator of non-entry. The Act of 1874 has in no way enlarged the rights of the superior in this matter. Before the Act the superior might demand a composition, and bring his declarator of non-entry immediately on the death of the last-entered vassal; but he was not bound to do so, and it might and often did happen that the person against whom the demand was ultimately made was not the person from whom the superior might have originally demanded payment. As I have said, the Act of 1874 makes no practical difference in this respect. A new form of action (Schedule B) is introduced, but under section 4, sub-section 4, the superior must direct that action, in the case of an individual, against the vassal entered by force of the statute at the date of the action, and can only demand payment of the casualty "exigible at the date of such action."

Now, it seems to me that the fallacy of the pursuers' argument lies in assuming that the superior's right to a first composition payable by a corporation is in anyway different from his right to a composition payable by an individual. In my opinion it is precisely the same, so that if between the date of the death of the last-entered vassal and the date of the superior's demand for a casualty from the corporation the corporation had parted with the lands in favour of an individual who was infeft, the superior would have lost all claim against the corporation and would have been obliged to proceed against the disponee of the corporation in possession of the lands, who would in that case have been subject to payment of casualties in the same manner as if the lands had never been vested in the corporation. This follows from the cases of *Mounsey* v. *Palmer,* 12 R. 236, and *Motherwell* v. *Manwell,* 5 F. 619.

In confirmation of the view which I take of the section I may point to the proviso in the middle of the section to the effect that in the event of the corporation ceasing to be proprietors of the lands "*after having paid a composition* or compositions in terms of this section," such successors should pay another composition at an interval of twenty-five years or fifteen years "*from the date of the last payment of composition* as aforesaid," and that thereafter the casualties should become due and payable at the same time and in the same manner as if such lands had never been vested in such corporation.

Mr Murray very properly drew attention to section 113 of the Consolidation Act of 1868, which contains somewhat similar provisions for protection of superiors in cases in which under section 26 of the Act special privileges dispensing with the necessity of transmission or renewal of investiture are conferred on the holders of lands for religious or educational purposes. But I think that the language used in section 113 of the Act of 1868 presupposes that the original trustees had entered and paid a first composition, because at that time (1868) there was no implied entry. It only provides for

payment of a second composition on the death of all the original trustees. It speaks of the new trustees as "successors to the party or parties in whose name the titles shall have been expede and recorded," viz., the original trustees; and when it speaks of "the death of the existing vassal" I apprehend it means the death of the last survivor of the original trustees. But perhaps it is sufficient to say that this enactment is superseded by section 5 of the Act of 1874, the terms of which alone are to be construed.

On the whole matter, I think that the Lord Ordinary has arrived at a sound conclusion.

LORD JUSTICE-CLERK—That is my opinion also, and LORD YOUNG (who was present at the hearing of the case but absent at the advising) requested me to say that he concurred.

LORD TRAYNER having been absent at the hearing gave no opinion.

The Court adhered.

Counsel for the Pursuers and Reclaimers—The Solicitor-General (Dundas, K.C.)—C. D. Murray. Agent—Peter Macnaughton, S.S.C.

Counsel for the Defenders and Respondents—Campbell, K.C.—Craigie. Agents—Fraser, Stodart, & Ballingall, W.S.

Saturday, February 20.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

THE LIFE AND HEALTH ASSURANCE ASSOCIATION, LIMITED, *v.* YULE.

Insurance — Accident Insurance — Condition — Agent and Principal — Misstatements in Proposal by Agent of Insurers without Knowledge of Insured—Authority of Agent — Effect of Signing Proposal of Insurance without Reading it—Personal Bar.

A, a milk purveyor, at the request of B, an insurance canvasser, agreed to take out an insurance against driving accidents. At the request of A, who was busy at the time, B filled up the proposal for insurance without asking A any questions, and A signed it without reading it over. To the question whether any accident had happened "in connection with vehicles or horses now in use, or with the drivers now in your service," the reply was negative, although it was the fact that two accidents had happened in connection with one vehicle and one horse in use by A at the date of the proposal. The declaration annexed to the proposal signed by A set forth that the questions were answered correctly and fully to the best of the signer's knowledge and belief.

Following on the proposal, a policy of insurance was made out, a condition of which was that if there was any misstatement in the proposal the policy should be void.

Thereafter an accident occurred in connection with one of A's milk carts. The insurance company denied liability on account of misstatement in the proposal. A maintained (1) that the misstatement was immaterial, and (2) that B, who was the insurance company's agent, had filled up the misstatement without consulting A.

Held (1) that the misstatement was material; (2) that it was A's duty to read the answers in the proposal before signing it, and that he must be taken to have read and adopted them; and (3) that B in filling in the false answer in the proposal was acting as agent for A and not for the insurance company, and that therefore the policy was void.

This was an action of reduction by the Life and Health Assurance Association, Limited, against John Yule, milk purveyor, Partick, concluding for the reduction of a policy of insurance on the ground of misstatement in the proposal in terms of which the policy was issued.

A proof was led, which disclosed the following circumstances:—In the end of July 1901, Robert Wylie, the pursuers' local agent, called on the defender and asked him to insure with the pursuers against claims made for personal injury or injury to property caused by the vehicles or horses attached to them belonging to the defender. The defender agreed to insure for £200 at a premium of £3. The defender was busy in his shop at the time, and told Wylie to write out the proposal himself and that he would sign it. Wylie produced and filled up a proposal form framed by the Assurance Company and containing certain questions to be answered by the insured. The fourth query in the proposal was—"Has any accident happened in connection with the vehicles or horses now in use, or with the drivers now in your service? Give full particulars." To this query Wylie without asking the defender any questions filled in the answer "No." At the bottom of the proposal was the following declaration—"I declare that the above questions have been answered correctly and fully to the best of my knowledge and belief, and I agree that this declaration and the answers above given will be the basis of contract between me and the company, and I agree to accept a policy subject to the usual conditions prescribed by the company and to be endorsed on the policy." Thereafter the defender signed the proposal without reading it over.

Prior to the date of the proposal two accidents had happened, one in connection with a horse and another in connection with a vehicle still in use by the defender at the date of the proposal. On 6th January 1900 a horse and vehicle belonging to the defender backed into a railing, causing damage