grant leave to reclaim before the record was closed. The interlocutor meant therefore leave to reclaim after the closing of the record. There was no case in which a reclaiming note prior to the closing of the record had been held competent. Assuming that it was competent a reclaiming note at that stage was highly inconvenient, and that alone was sufficient ground for refusing it—*Brown* v. *Virtue & Company, Limited*, July 16, 1889, 16 R. 987, 26 S.L.R. 675. Without refusing the reclaiming note as incompetent the Court could supersede consideration of it till the record was closed by the Lord Ordinary—Codifying Act of Sederunt, 1913, D, 1, 3. Reference was also made to the Court of Session Act 1850 (13 and 14 Vict. cap. 36), sec. 5; the Court of Session Act 1868 (31 and 32 Vict. cap. 100), secs. 28 and 54; and the Codifying Act of Sederunt, 1913, D, 1, 2.

Argued for the pursuer—A reclaiming note at the present stage was competent and convenient. It was always the right of a litigant to reclaim unless that right was expressly or by necessary implication excluded—*Harper* v. *Inspector of Rutherglen*, October 29, 1903, 6 F. 23, 41 S.L.R. 16, *per* Lord Trayner. In a suspension a reclaiming note might be presented before the record was closed. Reference was also made to the Court of Session Act 1868 (*cit.*), sec. 54 and the Codifying Act of Sederunt, 1913, D, 1, 2.

Lord President—We think this reclaiming note competent and in the circumstances highly expedient.

Counsel for Pursuer and Reclaimer—Maclaren. Agent—John Robertson, Solicitor.

Counsel for Defender and Respondent—T. G. Robertson. Agent—Allan M'Neill, S.S.C.

Tuesday, July 7.

FIRST DIVISION.

CRAIG *v.* MAIR'S TRUSTEES.

Right in Security — Discharge — Confusio — Ground-Annuals — Acquisition of Ground-Annuals by Owner of Property.

Trustees who were the creditors in certain ground-annuals purchased the subjects over which they were secured, but without incurring personal liability for payment of them.

Held that the ground-annuals were not discharged *confusione*—*per* the Lord President and Lord Johnston, on the ground that ground-annuals from their nature were not extinguishable *confusione*; *per* Lord Skerrington, on the ground that the personal obligation to pay these ground-annuals could not *confusione* have been discharged.

On 13th March 1914 James Craig, C.A., Edinburgh, as trustee under a deed of dissolution of partnership, and trust-disposition and assignation in his favour as such, granted by Messrs Healy & Young, writers, Glasgow, and John Ross Young and Christopher John Healy, the individual partners of the said firm, and as such heritably vest in certain heritable properties, *first party*, and John Mair, 30 Wallfield Crescent, Aberdeen, and another, testamentary trustees of the late Mrs Annie Simpson or Mair, and others, the creditors and disponees in security under certain bonds and dispositions in security affecting the said heritable properties, *second parties*, brought a Special Case to have it determined whether certain ground-annuals which had been created over the said heritable properties had or had not been extinguished *confusione*.

The Case stated, *inter alia*—"2. The first party as trustee under the foresaid deed of dissolution and trust-disposition is now vested in—(*First*) Property, Springburn Road and Albert Street, Paisley, which consists of five plots of ground containing 239⅔, 427, 335, 334, and 296 square yards respectively, with the buildings thereon, conform to disposition in his favour granted by David Strathie, chartered accountant in Glasgow, judicial factor on the trust estate of the deceased John Ross, coppersmith in Glasgow, conform to act and decree after mentioned, dated said disposition 18th and recorded in the foresaid Register of Bookings, &c., kept for the burgh of Paisley on 25th April 1913; and (*Second*) Five ground-annuals of £20, £25, £20, £20, and £15, created over the foresaid five plots of ground respectively, conform to disposition and assignation granted by the said David Strathie as judicial factor foresaid in his favour, dated 18th and recorded in the foresaid Register of Bookings 25th April 1913. The present case relates to the first three of said ground-annuals, being those secured over the first three plots of ground before mentioned.

"3. The circumstances under which the first party so acquired from the said judicial factor on the said John Ross's trust estate the said five plots and the said ground-annuals payable therefrom are as follows:—The said John Ross died on 5th December 1874, and by his trust-disposition and settlement dated the 12th day of August 1868, and relative codicil dated the 20th day of December 1870, and both registered in the Books of Council and Session on the 21st day of December 1874, conveyed his whole estate to the trustees therein named for the purposes therein expressed. In the year 1899 the trustees under said trust-disposition and settlement were the now deceased Mrs Isabella Watson Ross or Young, the daughter, and her children the said John Ross Young and James Gladstone Young and Miss Elizabeth James Young, the grandchildren, all of the said John Ross; and the said Mrs Young as liferentrix, and her said children as fiars, were the sole beneficiaries on the estate of the said John Ross.

"4. In the year 1898 the said five plots of ground were held by the said John Ross Young and James Gladstone Young and by Hugh Wilson, joiner and builder in

Govan, as trustees for themselves, and they constituted said five ground-annuals over said plots of ground respectively as follows:—The foresaid ground-annuals of £20 and £25 over the foresaid two plots of ground containing 239⅝ and 427 square yards respectively were constituted by contract of ground-annual entered into between the said John Ross Young, James Gladstone Young, house factor in Glasgow, and the said Hugh Wilson, as trustees and trustee for behoof of themselves as aforesaid of the first part, and James Watson, builder in Partick, dated 22nd, and recorded in the foresaid Register of Bookings 24th, both days of August 1898, and the foresaid ground-annuals of £20, £20 and £15 over the foresaid three plots of ground, containing 335, 334, and 296 square yards respectively were constituted by contract of ground-annual entered into between the said John Ross Young, James Gladstone Young, and Hugh Wilson, as trustees foresaid of the first part and the said James Watson of the second part, dated 23rd, and recorded in the foresaid Register of Bookings 26th, both days of September 1898. . . .

"5. By disposition and assignation, dated 23rd, and recorded in the foresaid Register of Bookings 25th, both days of March 1899, Mrs Isabella Watson Ross or Young, wife of James Young, residing at Bella's Choice, Uddingston, the said John Ross Young, Elizabeth James Young, residing at Bella's Choice aforesaid, and the said James Gladstone Young, as trustees of the said John Ross, in consideration of the sum of £1700 paid by them, acquired the said ground-annuals from the said John Ross Young, James Gladstone Young, and Hugh Wilson as trustees foresaid.

"6. After acquiring the foresaid ground-annuals Mr Ross's trustees thereafter acquired the ground and buildings thereon from which the foresaid ground-annuals were payable, and the same were conveyed to the said trustees by disposition in their favour, granted by the said James Gladstone Young (then heritably vest in the ground), with consent of the said James Watson, dated 18th, and recorded in the foresaid Register of Bookings 20th, both days of April 1899. The disposition bears to be granted in consideration of the sum of £4200, £1750 of which bears to be paid by Mr Ross's trustees to James Gladstone Young, and the balance of £2450 was the cumulo amount of the four bonds then affecting the said four plots of ground containing 239⅝, 427, 335, and 334 square yards. Mr Ross's trustees did not take over and become responsible for the personal obligations in the aforesaid bonds, although these remained a burden on their titles, and they have since paid interest thereon."

The bonds were dated 4th November, 8th September, 28th October, and 5th December, and were recorded in the Register of Bookings on 12th November, 3rd October, 28th October, and 8th December 1898 respectively. They had been granted by the said James Watson, and contained a disposition in security by the said James Gladstone Young (then heritably vest in the ground). The second parties were the present creditors and disponees in security under the bonds.

The Case further stated — "(8) On the petition of the said James Gladstone Young, as one of the trustees of the said John Ross, the trust estate of the said John Ross was sequestrated, and the said David Strathie was appointed judicial factor thereon on 14th May 1909 conform to act and decree by the Lords of Council and Session. At the date of the appointment of the said David Strathie the trust estate of the said John Ross included the said five plots of ground and buildings thereon, and the said five ground-annuals payable therefrom. The first party as trustee foresaid, and in virtue of the afore-mentioned deed of dissolution of partnership and trust-disposition and assignation, was vested in the said John Ross Young's beneficial interest in the estate of the said John Ross, his grandfather, and he also acquired the interest therein of the other beneficiaries — the said James Gladstone Young and Elizabeth James Young, who had disponed them to the said Christopher John Healy, who by the said deed of dissolution of partnership and trust-disposition and assignation disponed them to the first party. The first party being then the sole beneficiary, the said David Strathie as judicial factor foresaid conveyed to him, with consent of the bondholders and without prejudice, the said five plots of ground by the disposition first above mentioned, and the ground-annuals by the disposition and assignation first above mentioned. (9) In these circumstances a question has arisen between the first party and the second parties as to whether or not the three ground-annuals in question have been extinguished *confusione* by having thus become the property of the duly infeft proprietors of the subjects over which they have been created. The first party, who *contends* that the ground-annuals have not been extinguished and discharged, is desirous of realising them and devoting the proceeds thereof for behoof of the creditors of the trust estate over which he has been appointed trustee. He is, however, not in a position to do so until the question between the parties hereto is determined, and unless it is determined in his favour. On the other hand, it is the interest of the second parties that confusion should be held as operating, as it is very doubtful if the properties if held as burdened with the ground-annuals will when realised be sufficient to meet the respective bonds over the properties."

The *question of law* for the opinion of the Court was—"(*a*) Whether the three ground-annuals in question are still real burdens upon the said subjects; or (*b*) Whether they have ceased to exist as such and have been extinguished and discharged *confusione*, and are no longer real burdens upon the said subjects?"

Argued for the first party—To operate the extinction of obligations *confusione* there must be merger in the same person and in the same capacity of the debit and credit sides of the same obligation without there remaining any interest to keep the

obligation alive—Stair, i, 18, 9; Erskine's Inst. iii, 4, 27; Bell's Prin., 580. There was here no true *consensus debiti et crediti*, as the owner of the property was not under personal obligation to pay the ground-annuals. Nor was the estate out of which the ground-annuals were payable, viz., the property unburdened by the bonds, the same estate as the creditors in the ground-annuals had acquired, which was the property burdened by the bonds. Moreover, there was an interest to keep up the ground-annuals, otherwise the bondholders would benefit at the expense of the creditors in the ground-annuals, and that interest excluded the operation of *confusio*—*M'Kenzie* v. *Gordon*, January 16, 1838, 16 S. 311, *aff.* M'L. & Rob. 117; *Fleming* v. *Imrie*, February 11, 1868, 6 Macph. 363, 5 S.L.R. 242. In any event, ground-annuals were irredeemable rights in land constituted by infeftment, and like feu-duties, to which they were analogous, could not be extinguished *confusione*—*Murray* v. *Parlane's Trustees*, December 18, 1890, 18 R. 287, 28 S.L.R. 223. There was no principal sum which ever became exigible, but only termly payments. These, no doubt, were extinguished as they fell due, but that did not affect the subsistence of the obligation to make future termly payments. Reference was also made to *Miller* v. *Small*, March 17, 1853, 15 D. (H.L.) 38; *King* v. *Johnston*, 1908 S.C. 684, 45 S.L.R. 533; *Colville's Trustees* v. *Marindin*, 1908 S.C. 911, 45 S.L.R. 746; Duff's Feudal Conveyancing, p. 201; *Love* v. *Storie*, November 6, 1863, 2 Macph. 22; *Lord Blantyre* v. *Dunn*, July 1, 1858, 20 D. 1188; *Cumming* v. *Irvine*, M. 3042; *Murray* v. *Neilson*, M. 3043; *Cunninghame* v. *Cardross*, M. 3038; *Welsh* v. *Barstow*, February 11, 1837, 15 S. 537; *Lawrie* v. *Donald and Others*, December 7, 1830, 9 S. 147; *Lockhart* v. *Duke of Gordon*, M. 10,736.

Argued for the second parties—A ground-annual was not a separate estate in land, but was merely a real burden on the land. Consequently no feudal solemnities were necessary to its extinction. It was the theory that the *dominium directum* and the *dominium utile* were separate estates which prevented the extinction of a feu *confusione*—*Bald* v. *Buchanan*, M. 15,084. A ground-annual was really interest on a principal sum, viz., the ground-annual capitalised—*Bell's Trustees* v. *Copeland & Company*, March 13, 1896, 23 R. 650, 33 S.L.R. 472. The fact that it was an irredeemable right did not prevent its extinction *confusione*, and the dicta in *Murray* v. *Parlane's Trustees* (*cit. sup.*) to the contrary effect were *obiter*. *Confusio* extinguished the *jus crediti* in the whole obligation—*Motherwell* v. *Manwell*, March 6, 1903, 5 F. 619, 40 S.L.R. 429—not merely the termly payments as they fell due. A person could not be in right of a burden over his own property, even where the burden extended over a tract of future time—*Lord Blantyre* v. *Dunn* (*cit. sup.*). Intention was irrelevant, as *confusio* operated *ipso jure*—*Hogg* v. *Brock*, December 11, 1832, 11 S. 198; *Balfour Melville's Trustees* v. *Gowans*, 4 S.L.T. 111. Reference was also made to *Church of Scotland Endowment Committee* v. *Provident Association of London, Limited*, 1914 S.C. 165, 51 S.L.R. 120; Titles to Land Consolidation Act 1868 (31 and 32 Vict. cap. 101), sec. 3; and Conveyancing (Scotland) Act 1874 (37 and 38 Vict. cap. 94), sec. 30; *Love* v. *Storie* (*cit. sup.*).

At advising—

LORD JOHNSTON—The facts of this case though complicated are for the purpose of the question raised quite simple.

In 1898 the proprietor of certain subjects in Paisley sold and conveyed them to James Watson in consideration of a ground-annual reserved but also constituted in the same deed. The clause of constitution imposed a personal obligation for the ground-annual on Watson and his heirs.

Watson or his disponee borrowed £2450 on security of the property, but necessarily subject to the ground-annual, by bond and disposition in security.

Thereafter by disposition and assignation John Ross's trustees in March 1899 acquired the ground-annual for the sum of £1700.

Thereafter by disposition John Ross's trustees in April of the same year acquired the property over which they already held the above-mentioned ground-annual for the sum of £4290, made up of the £2540 with which the subjects were burdened by the above-mentioned bond and disposition in security, and of £1750 in cash. John Ross's trustees did not undertake the personal obligation in the bond.

The first party represents the holder of the ground-annual and of the property thus acquired on separate titles, and the second parties represent the bondholders.

The second parties maintain that *ex confusione* the ground-annual has been extinguished. The first party maintains the contrary.

It is, I think, impossible to reduce the law of extinction of obligations *confusione* to any statement which will logically cover all the cases which have arisen or may arise, but I think that it may be accepted that it ought not to be extended in application out of mere deference to legal logic.

I have used the expression "extinction of obligations," but primarily I think that confusion proper only applies to obligations which sound in a payment of money, though by analogy it has been extended to cases which do not directly come under that category. The doctrine rests on the commonsense view that a man cannot be both creditor of and debtor to himself, and therefore when the right of credit and the obligation of debit are merged in one person the obligation is extinguished *confusione* or *ipso facto* discharged. I think that such extinction or discharge takes place *ex lege* and independently of intention—Menzies' Lectures (ed. 1900), p. 891.

The question of extinction *confusione* has arisen in relation to heritable bonds, where the owner of the heritage has come to be in right of the bond, or *vice versa* where the bondholder has become owner of the heritage—in relation to leases where the tenant has become proprietor of the subject — in relation to ground-annuals

where the person in right of the ground-annual has become proprietor of the property, or *vice versa* where the proprietor of the property has become in right of the ground-annual (the only authority on this aspect of the question—Murray, 18 R. 287—does not, however, owing to specialities, decide the general question which is raised here)—in relation to the dues of superiority where the right of superiority and property have merged in the same person, and possibly in other circumstances. It is, at first sight, difficult to reduce these different cases to one clear principle. But I think that they can all be reconciled if it be kept clear that what is discharged by confusion proper is an obligation immediately exigible and sounding in a payment of money.

In the case of a heritable security what is discharged is the bond. The fact that it is secured by a conveyance of heritage is a mere accident. The heritable security is an accessory. If the right to demand payment and the obligation to make payment of the bond have vested in the same person, the obligation is discharged by the *concursus debiti et crediti*, and the burden on the heritage flies off. It is the bond that is discharged, not the security.

But the *concursus debiti et crediti* must be complete. The debtor and creditor may be the same individual, yet if such individual is debtor in one character and creditor in another character, there is no such *concursus* and therefore no extinction *confusione*. The law of entail supplies an illustration which very clearly elucidates the whole matter. Suppose an heir of entail in possession acquires right to a bond which represents an entailer's debt, or one of these debts which statute now allows to be imposed on the entailed estate, there is no *concursus debiti et crediti*, for he acquires in his own right what he is due merely as heir of entail. What he acquires, unless he voluntarily takes a discharge or an assignation to himself as heir of entail, he transmits to his own heir. His obligation, on the other hand, is as heir of entail and transmits only against the succeeding heirs. On his death the succession diverges, the right in the bond going to his own heir; that in the estate, and with it the obligation in the bond, to his heir of entail.

In the meantime what happens to the termly interest as it becomes due? That is an obligation immediately sounding in the payment of money, and as he is in possession drawing the rents, the heir of entail in possession is personally liable in payment of the termly interest. *Concursus debiti et crediti* takes place, and the termly payments are discharged, as they become due, *confusione*. I think that here is the key to the present question. In the case of a ground-annual there is no obligation to pay a principal sum; there is only obligation to pay an annuity in perpetuity. For I cannot subscribe to the view that "the annual payment under the contract of ground-annual is not the amount of the debt; the debt is the annual payment capitalised," which is the ground of judgment in *Bell's Trustees*, 23 R. 650. The recurring termly payments may be extinguished *confusione* while the right to the ground-annual and to the property are vested in the same person, yet the ground-annual as a perpetual obligation will not be extinguished *confusione*, for there is nothing further demandable at the time, that sounds in a payment of money, to be extinguished. There is a valuable passage in Lord Ivory's opinion in the case of *Lord Blantyre* v. *Dunn*, 20 D. 1188, at p. 1195, where his Lordship is dealing with the case of an heir of entail in possession acquiring an entailer's debt secured on the estate, which may with advantage be considered.

But while this passage aptly illustrates the position which I have endeavoured to present, I demur to Lord Ivory's use of the term "suspended." There is confusion so far as termly payments are concerned as they become due. But there is no suspension of liability. The liability for anything but the termly payments rests on the estate and on the heir of entail *qua* heir of entail. That when he acquires right to the bond he allows it to lie dormant is not suspension. Suspension predicates the operation of law.

Returning to the question of the ground-annual—in *Murray's* case Lord Kinnear puts the matter in another form, but entirely consistently, I think, with what I have said, as thus—"The ground-annuals are in a different position. These are *ex facie* irredeemable rights, and no authority has been cited for holding that an irredeemable right in land, completed by infeftment, can be extinguished *confusione* . . . It would appear to me to have been competent for the testatrix to keep up the ground-annuals as separate rights in her own person if she desired to do so." That is, I think, because they are not obligations reducible to a capitalised value, but for an annual sum only accruing due from term to term and in perpetuity. I doubt, however, whether the result is really affected by the form of the title, notwithstanding it is true that the right to the ground-annual, though not feudalised in the wider sense, is completed by infeftment, though by the infeftment not of the creditor in the ground-annual but of the disponee in the lands—Bell's Lectures, (2nd. ed.) p. 1142. But so is a security for a sum of money by reservation. And a heritable bond must equally be made real by infeftment on or recording of the disposition in security. It is the absence of any capital liability and the perpetuity and irredeemability of the obligation which I think produce the result at which Lord Kinnear arrives. Now unfortunately the case of *Murray* is not an authority on the subject now in question, for it was not there raised directly, and was mixed up with a question of testamentary intention. Lord Kinnear's opinion was not confirmed by the Inner House, and was indeed somewhat misapprehended, I think, by Lord Rutherfurd Clark, whose opinion is not stated with the accuracy which usually characterised him. In the Inner House the decision proceeded upon intention, but that intention must have been the

intention of the creditor in the ground-annual when she made her will, and not her intention when she acquired the property on which it was a burden.

I think, for the reason I have given, that we may with confidence follow the ground of judgment of Lord Kinnear in *Murray's* case.

I do not think that I need refer at length to the other instances of the application of confusion. It does not take place between superior and vassal, where the estates of superiority and property merge in the same person, not merely for the reason which excludes it in the case of ground-annuals, but because feudal principle and practice require the extinction of the vassal's estate by consolidation. It is a feudal estate in, and not a right secured on or out of land —*Motherwell*, 5 F. 619.

In the case of leases, of which *Blantyre* v. *Dunn* is a leading example, confusion proper does not take place, but by analogy the same rule has been applied on the ground that a man cannot be at the same time proprietor and tenant of the same subject.

For the above reasons I would propose to your Lordships to answer question (*a*) in the affirmative and (*b*) in the negative.

LORD SKERRINGTON—I concur with your Lordship in your answer to the question of law.

Originally, and as a matter of history, a ground-annual was nothing more than a perpetual rent-charge or annuity which was secured over land by the infeftment of the owner of the land and not by the infeftment of the owner of the annuity. I call the latter "owner" and not "creditor," because no one was personally bound for payment of the annuity. In the case of a ground-annual of this simple character there is a technical difficulty in holding that the ground-annual or annuity-right can continue to subsist after both the land and the annuity have come to belong to the same owner. How, it may be asked, is it legally competent and possible that a man's own title of property and his infeftment therein can be burdened with a perpetual annuity in his own favour? When this question requires to be decided legal ingenuity will no doubt discover some sufficient answer to this legal puzzle. It would be monstrous that postponed heritable creditors should take a gratuitous advantage because the owner of a ground-annual constituting a preferable charge on an estate had bought the estate itself as a further investment. In the present case, however, there is a very simple reason for deciding that the ground-annuals referred to in the Special Case are still real burdens upon the subjects, and that they were not extinguished and discharged when John Ross's trustees, who had purchased the ground-annuals, subsequently purchased the subjects over which the ground-annuals were secured. The ground-annuals in question were not mere rent-charges of the simple character which I have described, but were rights of a complex and artificial character created by formal written contracts made in the year 1898 between the owners of the subjects for the time being, of the first part, and a certain James Watson, builder in Partick, of the second part. By these contracts James Watson bought the subjects and became owner thereof, subject to the reserved burden of the ground-annuals in favour of the sellers. He further bound himself personally to pay the ground-annuals as they fell due, and in further security therefor he disponed to the sellers not only ground-annuals of corresponding amount but also the subjects themselves. It was not argued, and could not have been argued with any plausibility, that Mr Watson's personal obligation to pay the ground-annuals had been discharged or in any way affected by the circumstance that the ownership of the ground-annuals and the ownership of the lands had come to vest in the same persons. It necessarily follows that the real burdens as reserved and the heritable securities as constituted by the contracts of ground-annual continue to exist as they were originally created—*North Albion Property Investment Company, Limited* v. *Mac-Bean's Curator Bonis*, (1893) 21 R. 90, 31 S.L.R. 58; *MacKirdy* v. *Webster's Trustees*, (1895) 22 R. 340, 32 S.L.R. 252. To hold otherwise would impose new and different contracts upon Mr Watson.

We are not asked to decide, and I express no opinion, as to whether any particular termly payments of the ground-annuals have been discharged *confusione*.

LORD PRESIDENT—I concur in the opinion of Lord Johnston, which I have had an opportunity of reading. *Confusio* is, in my judgment, a highly artificial doctrine to which I for my part decline to give any logical extension, or to apply it to any case in which it has not hitherto been held to operate.

(First) Agreeing, I think, with Lord Johnston, I hold that *confusio* always operates *ipso jure* or not at all, and accordingly that it does not apply to feudal rights which cannot be extinguished except by the observation of feudal solemnities. (Second) Agreeing also, I think, with Lord Johnston, I hold that where the doctrine applies it absolutely extinguishes the obligation, and that cases of supposed temporary suspension are not exceptions to the rule but are cases to which the doctrine of *confusio* does not apply.

To apply the doctrine to the case of recurring perpetual termly payments such as annuities, feu-duties, or ground-annuals appears to me to border on the absurd, for in this relation I draw no distinction between a feu-duty and a ground-annual.

Going further, I think, than your Lordships, I hold that this case is completely covered by authority. *Murray* v. *Parlane's Trustees*, 18 R. 287, in my judgment decides this case, for the Court there held that the ground-annuals were not extinguished because the testatrix did not intend that they should be extinguished. The Court were unanimous in holding that ground-annuals could not be extinguished *ipso jure*, and if the doctrine of *confusio* always (as I hold)

operates *ipso jure*, then it was absolutely inapplicable to ground-annuals. And the Court, in deciding that *confusio* did not take place *ipso jure* decided that *confusio* did not apply to ground-annuals. In agreeing with Lord Johnston I hold that Lord Kinnear's opinion is quite unassailable—that a ground-annual, being an *ex facie* irredeemable right, cannot be held to be extinguished *confusione*. It is an irredeemable right in land completed by infeftment, and, as Lord Kinnear points out, there is no authority in principle for holding that it can be extinguished *confusione*. No doubt Lord Kinnear's view was combated by Lord Rutherfurd Clark, but on a ground on which Lord Kinnear did not rest his opinion. If Lord Rutherfurd Clark had approached a criticism of Lord Kinnear's opinion on the ground on which Lord Kinnear rested it, I do not know to what conclusion he would have come, but I rather suspect that, great lawyer as he was, he would have expressed himself, as Lord Trayner did, to the effect that the Lord Ordinary's view that ground-annuals being irredeemable rights perfected by infeftment cannot be extinguished *confusione* could not be gainsaid.

It may, no doubt, be true that so long as Ross's trustees held the ground-annual and were also the owners of the property James Watson might not be sued for payment of the ground-annual, but that would not be on the ground that the right was extinguished or temporarily suspended. The right still existed, but it would be idle to enforce it when there would be immediate relief against the property which the trustees continued to hold.

Upon these grounds I concur with your Lordships in thinking we ought to answer the questions as Lord Johnston proposes.

LORD MACKENZIE was not present.

The Court answered branch (*a*) of the question of law in the affirmative and branch (*b*) in the negative.

Counsel for the First Party—Chree, K.C.—Crawford. Agents—M. J. Brown, Son, & Company, S.S.C.

Counsel for the Second Parties—Paton. Agents—Alex. Morison & Company, W.S.

Thursday, July 9.

FIRST DIVISION.

ARGYLLS LIMITED, PETITIONERS.

Company — Liquidation — Liquidator — Joint Liquidators—Conflict of Interest.

In an application for the appointment of an additional liquidator and for a supervision order, objection was taken to the person suggested for the office on the grounds (1) that his firm acted as auditors of the company, and (2) that the existing liquidator was also an interested party, he being the managing director of the company.

The Court superseded the appointment of the existing liquidator, confirmed the appointment of the person suggested for the office of additional liquidator, and conjoined with him as joint liquidator a person unconnected with the company.

On June 19, 1914, Argylls Limited, and Robert W. Blackwell, Argyll Works, Alexandria, the liquidator thereof, presented a petition under sections 151, 199 to 204, and 213 of the Companies Consolidation Act 1908 (8 Edw. VII, cap. 69), in which they craved the Court to order that the voluntary winding-up of "Argylls Limited" should be continued, but subject to the supervision of the Court, and that the liquidator should be authorised to carry on the business of the company for a period not exceeding one year. From the petition it appeared that the capital of the company, all of which has been issued and paid up, amounted to £209,802, divided into 419,604 ordinary shares of 10s. each; that the debenture stock outstanding was £142,964; that there were also debenture bonds outstanding to the extent of £74,016; that it had been proved that the company could not by reason of its liabilities continue its business, and that a voluntary winding-up had been resolved on.

On 9th July 1814 a note was presented by the petitioners, in which they stated that at a meeting of creditors of the company, held on 3rd July 1914, in terms of section 188 of the Companies Consolidation Act 1908, it was decided by a majority that Mr J. M. MacLeod, C.A., Glasgow, should be appointed additional liquidator, and craving his appointment accordingly.

The application was opposed by Ritchie & Whiteman, metal merchants, Glasgow, and S. Stevenson & Company, timber merchants, Glasgow, creditors to the extent respectively of £1126, 7s. and £352, 3s. 4d., who objected to Mr MacLeod's appointment.

In their minute the respondents stated—"The minuters object to the appointment of Mr John M. MacLeod as additional liquidator of the company, for the following among other reasons, viz.—1. That his firm of Kerr, Andersons, & MacLeod, C.A., Glasgow, are the present auditors of the company. No proper allowance has been made for depreciation in the annual balance-sheets, and this matter will require to be investigated by the liquidators. There have been many serious complaints with regard to the management of the company, and these also should be independently investigated. Mr Blackwell, the existing liquidator, is its chairman, and the result of appointing Mr MacLeod as additional liquidator would be that there would be no independent officer to investigate the affairs of the company in the interests of the creditors, although the creditors would be put to the expense of two liquidators. The shareholders of the company have no real interest in the liquidation, as the assets will be insufficient to pay the creditors in full. 2. In the course of the liquidation questions are bound to arise between the company and the Motor Vehicles Finance