der at the hearing objected to any reference to that evidence. No motion to have the evidence made part of the proof was made, but the Lord Ordinary considering the matter in his discretion referred to it and granted decree. The defender reclaimed. In the Inner House counsel for the pursuer moved that the evidence be admitted. *Held* that the admission of the evidence was a matter for the discretion of the Court, that in the circumstances it should be admitted, but that the pursuer was only entitled to one-half of the expenses of the reclaiming note.

Angus Murray Cameron, 45 Abbotsford Place, Glasgow, *pursuer*, brought an action against Philip Woolfson, wholesale jeweller, 165 Trongate, Glasgow, *defender*, whereby he sought to recover the sum of £500 as damages in respect of injuries sustained through having been knocked down by a motor van belonging to the defender, and at the time of the accident driven by a chauffeur in the defender's employment.

The evidence of one of the pursuer's witnesses, who was at the time of the proof engaged on military service abroad, was taken on commission by a military officer, to lie *in retentis*. Prior to the proof the report had been opened, both parties had been given an opportunity of becoming acquainted with its contents, and it had been returned to process. It was not, however, made a part of the pursuer's case before his counsel closed it. At the subsequent hearing the defender's counsel objected to pursuer's counsel referring to the evidence taken on commission, on the ground that such reference would be prejudicial to his case if made after the case for the defender had been closed. Although no motion was made that the evidence in question be admitted, the Lord Ordinary (ANDERSON) held that in the exercise of his discretion he was entitled to take it into account in deciding the case.

The Lord Ordinary having granted decree for £100 with expenses, the defender reclaimed, arguing that the evidence taken on commission had neither been put in nor had the Lord Ordinary been moved to admit it, and accordingly that he was not entitled to read it or take it into any consideration whatever.

The pursuer argued that the Court had in its discretion power to admit the evidence taken on commission even after the pursuer's case had been closed, and referred to *Lowenfeld* v. *Howat*, (1891) 19 R. 128, 29 S.L.R. 119.

The Court, without delivering opinions on this part of the case, allowed the evidence to be admitted, and adhered to the judgment of the Lord Ordinary.

Counsel moved that no expenses of the reclaiming note be allowed to or by either party, on the ground that the defender might not have reclaimed had he known that the evidence in question would be admitted.

The Court found the pursuer entitled to one-half of the expenses of the reclaiming note.

Counsel for Defender—Christie—E. O. Inglis. Agents—Manson & Turner MacFarlane, W.S.

Counsel for Pursuer—Morton—Macgregor Mitchell. Agent—W. T. Forrester, Solicitor.

Saturday, February 2.

SECOND DIVISION.

TAYLOR'S EXECUTORS *v.* TAYLOR AND OTHERS.

Succession—Husband and Wife—Intestacy—Distribution of Estate—Widow's Provision where Intestacy only Partial—Intestate Husband's Estate (Scotland) Act 1911 (*1 and 2 Geo. 5, cap.* 10).

A testator, by holograph will disposing of his whole estate, left to his wife for her natural life certain heritable property and all interest accruing from investments and his life policy, such interests to be applied for her maintenance and that of his daughter. The fee of the estate was left to his daughter after his wife's death. On his death, his daughter having predeceased him, his widow claimed, *inter alia*, payment of £500 out of the residue of the estate under the Intestate Husband's Estate (Scotland) Act 1911. *Held* that she was not entitled to the £500, inasmuch as the Intestate Husband's Estate (Scotland) Act 1911 did not, like the Intestate Moveable Succession Act 1855, apply to cases of partial intestacy.

The Intestate Husband's Estate Act 1911 (1 and 2 Geo. V, cap. 10) enacts—Section 1—"The heritable and moveable estate of every man who shall die intestate, domiciled in Scotland, after the passing of this Act, leaving a widow but no lawful issue, shall, in all cases where the net value of such heritable and moveable estate taken together shall not exceed five hundred pounds, belong to his widow absolutely and exclusively." Section 2—"Where the net value of the heritable and moveable estate in the preceding section mentioned shall exceed the sum of five hundred pounds, the widow of such intestate shall be entitled to five hundred pounds part thereof. . . ."

A Special Case was presented by Hugh Taylor and another, executors of the late William Taylor, Greenlaw, Kilbirnie, *first parties;* the said Hugh Taylor and others, the next-of-kin and heirs *in mobilibus* of the deceased William Taylor, *second parties;* and Mrs Elizabeth Galt or Taylor, Greenlaw, Kilbirnie, widow of the deceased William Taylor, *third party.*

The Case set forth—"1. The late William Taylor, mercantile clerk, who resided at Greenlaw, Kilbirnie, died on 10th January 1917, leaving a holograph will dated 7th June 1910, and registered in the Books of Council and Session 9th November 1917. 2. The *will* is in the following terms, viz.—'Greenlaw, Kilbirnie, June 7th, 1910.—I desire to leave to my wife Elizabeth Galt Taylor, for her

natural life, the property known as Greenlaw, Kilbirnie, and all interest accruing from investments, and my life policy, such interests for her maintenance and my daughter Elizabeth Taylor. To my daughter Elizabeth Taylor, after her mother's death, the property known as Greenlaw and the residue of my estate. . . . . (Signed) WM. TAYLOR. *Witness*, John Higgins, lithographer, Kilbirnie. *Witness*, John Turnbull, mill foreman, Kilbirnie.' 3. The said William Taylor was predeceased by his only child, a daughter, Elizabeth Taylor, named in the said will, who died on 3rd October 1912, and survived by his widow, who is the party of the third part. He was also survived by a brother and sister, the said Hugh Taylor and Mrs Janet Taylor or Martin, who as executors are the parties of the first part, and who also as individuals are among the parties of the second part. The other parties of the second part are the whole children of a predeceasing brother Robert Taylor. The parties of the second part are the whole next-of-kin and heirs *in mobilibus* of the said deceased William Taylor. 4. . . . The amount of the moveable estate as given up in the inventory after deduction of debts and funeral expenses was £2952, 1s. 2d., and the value of the heritable estate was £550. In the moveable estate is included a sum due under a policy of the Northern Assurance Company, Limited, on the life of the deceased, valued as at date of death at £449, 8s. 5. In connection with the interpretation of the will and the division of the estate questions have arisen as to . . . (6) whether she (*i.e.*, the third party) is entitled to payment of £500 out of the residue of the estate in terms of the provisions of the Intestate Husband's Estate (Scotland) Act 1911. 6. The second parties *contend* . . . that the third party is not entitled to payment of any sum out of the residue of the estate by virtue of the Intestate Husband's Estate (Scotland) Act 1911. 7. The third party contends . . . that she is entitled to payment of £500 out of the residue of the estate, in terms of the provisions of the Intestate Husband's Estate (Scotland) Act 1911. . . ."

The following *question of law* was, *inter alia*, submitted—"2. Is the third party entitled, under the Intestate Husband's Estate (Scotland) Act 1911, to payment of £500 out of such portion of the whole estate, heritable and moveable, as has fallen into intestacy?"

Argued for the first and second parties—The second question of law ought to be answered in the negative. The Intestate Husband's Estate (Scotland) Act 1911 (1 and 2 Geo. V, cap 10) was copied from the corresponding Act which applied to England, namely, the Intestate's Estates Act 1890 (53 and 54 Vict., cap. 29), and it had been decided that that Act did not apply to cases of partial intestacy—*In re Twigg's* Estate, [1892] 1 Ch. 579, *per* Chitty, J. Accordingly the Scots Act should also be held not to apply.

Argued for the third party—The second question of law fell to be answered in the affirmative. The question turned, not on what the testator tried to do in disposing of his estate, but on what, as things turned out, he had done. Counsel referred to the Intestate Moveable Succession (Scotland) Act 1855 (18 and 19 Vict. cap. 23), secs. 3, 9; *in re Cuffe*, [1908] 2 Ch. 500, *per* Joyce, J.

LORD JUSTICE-CLERK—The second question in this case raises a point of importance depending upon a construction of the Intestate Husband's Estate Act of 1911. Upon a consideration of that statute I would have thought that the Act only applied to cases where a married man died without leaving a will, and that it was in that case alone that the statute came into operation. In the Intestate Moveable Succession Act 1855 there is an interpretation clause which, so far as that statute is concerned, would have resulted in a different conclusion being arrived at. But I cannot import the interpretation clause from the Act of 1855 into the Act of 1911. The statute is entitled "An Act to amend the law relating to the share of intestate husband's estate," and it speaks of "the heritable and moveable estate of every man who shall die intestate," and I think the statute applies only to the case of a man who dies without leaving a will which, either in whole or in part, disposes of his estate, heritable and moveable.

I find that in England a similar result has been arrived at under the corresponding English statute of 1890. I am not sure that I agree entirely with all that Chitty, J., said in the case of *in re Twigg*, [1892] 1 Ch. 579, but I agree in the conclusion at which he arrived, and that conclusion seems to have been accepted by Joyce, J., in the case of *in re Cuffe*, [1908] 2 Ch. 500. The judgment which I propose to your Lordships in this case will bring about a similar result here and in England under similar statutes. I propose that the second question should be answered in the negative.

LORD DUNDAS—I agree and have but little to add. As regards question two, it seems to me that on the proper reading of this Act of Parliament it does not apply to cases of partial intestacy. That conclusion has been arrived at in England. I agree in the result of the judgment delivered by Chitty, J., in *Twigg's* case, [1892] 1 Ch. 579. The subsequent case of *in re Cuffe*, [1908] 2 Ch. 500, is quite consistent with that of *Twigg*, as is pointed out by the learned judge, Joyce, J., who decided it. In that case the will had wholly failed; there was in effect no will; the man had died wholly intestate. As regards the Intestate Moveable Succession Act of 1855, I am not sure that it has much bearing on the question in hand, but in so far as it does bear I think it is in favour of Mr Henderson's view, because it at all events shows that when an Act of Parliament applying to Scotland intends that "intestate succession" and "intestate" shall include partial intestacy for the purposes of the Act, it knows how to say so. There are no such definitions in the Act we are now considering.

LORD GUTHRIE concurred.

LORD SALVESEN was not present.

The Court answered the second question in the negative.

Counsel for the Parties of the First and Second Part—R. C. Henderson. Agents—W. B. Rankin & Nimmo, W.S.

Counsel for the Party of the Third Part — Leadbetter. Agents — Macpherson & Mackay, S.S.C.

VALUATION APPEAL COURT.

Saturday, February 2.

(Before Lord Johnston, Lord Salvesen, and Lord Cullen.)

INVERNESS ASSESSOR *v.* GRANT.

Valuation Cases — Value — War — "Fair Annual Value" — Rent — Valuation of Lands (Scotland) Act 1854 (17 *and* 18 *Vict. cap.* 91), *sec.* 6.

A proprietor appealed against the valuation of a deer forest and certain shootings which he had let for the year 1917-18 at a net rental of £196. The assessor's valuation of £1543 was based upon the rental stipulated for in a nine years' lease of the subjects from Whitsunday 1914, with a break at Whitsunday 1917, of which the then tenant took advantage. The assessor intimated his willingness to agree to a reduction of 50 per cent. in this valuation in order to meet the changed conditions brought about by the war. *Held* (*dis.* Lord Salvesen) that the rent received for the year 1917-18 was not a "rent conditioned as the fair annual value" of the subjects within the meaning of section 6 of the Lands Valuation (Scotland) Act 1854, and that the assessor's offer, in the absence of other information, must be accepted.

Walter Enum, Assessor of Inverness-shire, *appellant*, appealed against a decision of the County Valuation Committee for the Kingussie District of the County of Inverness, given on 15th September 1917, in a case in which Sir George Macpherson Grant, Bart. of Ballindalloch, *respondent*, had objected to the following entries in the valuation roll for 1917-18; viz. :—

No.	Description & Situation of Subjects.	Proprietor.	Tenant.	Occupier.	Yearly Rent or Value.
61	Shootings and Deer Forest, Inver-eshie	Parish of Kingussie, Sir George Macpherson Grant, Bart.	S. Christie Miller, Britwell Court, Burnham, Bucks.	Tenant	£739
47	Shootings, Inver-markie	Parish of Alvie, do.	do.	do.	£804

and had craved that the yearly rent or value should be reduced to £96 in the parish of Kingussie and £100 in the parish of Alvie.

The Committee had sustained the objection and had reduced the valuation as craved, whereupon the assessor had taken a Case for appeal.

The Case set forth the following *facts* as proved or admitted: — "1. The shootings and deer forest of Invereshie and the shootings of Invermarkie, together with the house and offices of Invereshie and certain woodlands and fishings, were let to Mr Sydney Richardson Christie Miller on a lease of nine years from 15th May 1914, with a break at the term of Whitsunday 1917, of which break the tenant has taken advantage, at a gross yearly rent of £1900, the tenant covenanting to execute considerable internal repairs and improvements on buildings and the renewal of certain furnishings at his own expense, and to pay the proportion of poor rates and other taxes legally chargeable upon him as tenant of the said subjects, and during the currency of this lease the rent entered in the valuation roll for the shootings and deer forest of Invereshie had been £739, and for the shootings of Invermarkie £804. The annual value of the house and offices of Invereshie is entered separately in the valuation roll at the sum of £100, the woodlands are entered separately at a value of £15, and the fishings at a value of £7, but these entries are not in dispute. 2. Following the break in the lease the subjects (with the addition of a meadow of the annual value of £10 which had previously been let separately) were let for one year from the term of Whitsunday 1917 to Mr Christie Miller in terms of a minute of alteration, dated 25th and 30th June 1917, appended to the original lease. By said minute of alteration it was provided that the rent payable for the whole subjects let should be at the rate of £450 per annum, and that the proprietor should pay all the tenant's rates, and also inhabited-house duty and income tax under Schedule B, in respect of the occupancy of the said subjects. After deducting these and other usual outlays the net return to the proprietor for rent amounts to £96 for the shootings and deer forest of Invereshie and £100 for the shootings of Invermarkie. 3. Owing to the war the demand for deer forests and shootings has fallen off, and increasing difficulty is experienced in finding tenants for such subjects. The rent of the subjects in question is *bona fide*."

The Committee having heard the arguments of the parties considered themselves bound to take the rent that had been actually accepted, seeing that it was *bona fide* and the best that could be got, and they also considered themselves bound, following the case of *Lord Middleton* v. *The Assessor for Ross-shire*, (1882), 10 R. 28, 19 S.L.R. 564, to allow the usual deductions for outlays, and they accordingly upheld the appeal and fixed the entries in the roll at £96 for the shootings and deer forest of Invereshie in the parish of Kingussie, and £100 for the shootings of Invermarkie in the parish of Alvie.

The appellant's *grounds of appeal* were as follows — "1. Section 6 of the Lands Valuation (Scotland) Act of 1854 enacts that the yearly value of lands and heritages 'shall be taken to be the rent at which, one