ance with the fact, that the defender was a *bona fide* purchaser at the sale desiring to make the purchase which he made, and I see nothing to prevent him becoming a purchaser.

I concur with Lord Young in what he said with regard to the Lord Ordinary's judgment. I am not satisfied that the defender is a creditor in the sequestration in the meaning of the Bankruptcy Act, and though I do not express a definite opinion on the matter, I am not prepared to proceed on the ground on which the Lord Ordinary has decided the case.

LORD TRAYNER was absent on Circuit.

The Court adhered.

Counsel for Pursuer—Comrie Thomson—Salvesen. Agents—Gill & Pringle, W.S.

Counsel for Defenders—Asher, Q.C.—C. S. Dickson. Agents—M. MacGregor & Company, W.S.

Tuesday, June 30.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

CRICHTON AND OTHERS (CAMPBELL'S TRUSTEES) *v.* CRICHTON AND OTHERS.

Succession—Rents—Accumulations—Thellusson Act (39 *and* 40 *Geo. III. cap.* 98).

A testator by trust-disposition and settlement directed his trustees to pay the free annual income of his heritable estate to his wife, if she should survive him, during her life, and after her death to retain and accumulate the free rents and annual produce thereof until the death of the longest liver of certain of his nephews and nieces. The testator's wife survived him for more than twenty-one years, during which time she duly received the free annual income of the heritable estate.

In a multiplepoinding raised after her death—*held* that the direction to the trustees to accumulate was ineffectual, in respect that the period of twenty-one years during which accumulation was permitted by the Thellusson Act must be reckoned from the date of the testator's death.

Succession—Trust-Disposition and Settlement—Direction to Entail after Period of Accumulation—Right to Rents not Disposed of by Settlement.

A truster died leaving a trust-disposition and settlement by which he appointed his trustees to pay the free annual income of his heritable estate to his widow, after her death to accumulate the rents of said heritable estate until the death of the longest liver of certain nephews and nieces, and then to execute an entail of said estate upon a series of heirs specified. The direction to accumulate after the widow's death was rendered ineffectual under the provisions of the Thellusson Act, and the question arose, to whom the rents thus set free should belong.

Held (*altering* judgment of Lord Kincairney) that as there was no direction in the settlement regarding the disposal of these rents, they belonged to the heir-at-law of the truster as at the date when they became due—*diss.* Lord Young, who *held* that, the direction to accumulate the rents being ineffectual, the only reason for deferring the execution of the deed of entail had disappeared, and that, as it was clear who was the party pointed out in the settlement as the institute of the entail, he was entitled to the rents in question.

Opinion by Lord Kincairney, that the rents in question belonged to the representative in heritage of the person who was the heir-at-law of the truster at the date of truster's death.

Opinion by Lord Young to same effect, it being assumed that the time for the execution of the deed of entail had not arrived.

William Gunning Campbell, Esq. of Fairfield, died upon 24th November 1857, leaving a trust-disposition and settlement dated 7th July 1857, with three codicils. By this settlement he disponed to certain persons named therein as trustees his whole property, heritable and moveable, (1) for payment of his debts and certain legacies, (2) to pay his wife Mrs Maria Anna Menzies or Campbell, if she should survive him, the free annual income of his heritable estate of Fairfield thereby disponed during her lifetime. In the third place, he directed his trustees, as soon as convenient after the decease of the said Mrs Maria Anna Menzies or Campbell, and after the decease of the longest liver of my nephews, nieces, sons and daughters of his late brothers Charles Hay Campbell and Napier Campbell, to execute a deed of entail of his whole lands, in terms specified in the trust-disposition of his father, and deed of entail executed by his trustees in implement thereof, the said deed of entail to be granted "to and in favour of the heirs whatsoever of my body, and the heirs of their bodies, the eldest daughter or heir-female always succeeding without division, and excluding heirs-portioners during the whole course of succession, whom failing to and in favour of the heirs-male of the body of my nephew Leveson Granville Alexander Campbell, eldest son of the late Charles Hay Campbell, sometime major in the East India Company's Service, and the heirs-male of their bodies; whom failing to and in favour of the heirs-male of the body of my nephew George Gunning John Campbell, second son of the said Charles Hay Campbell, and the heirs-male of their bodies; whom failing to and in favour of the persons, heirs, and substitutes specified and contained or pointed out in the aforesaid trust-disposition and settlement by my said father, and thereby and by the said disposition and

deed of entail executed in implement thereof, appointed to succeed to the lands thereby directed to be entailed, and entailed accordingly; but always excepting my brother George Gunning Campbell and the heirs of his body, whom I hereby exclude from ever succeeding to the foresaid lands and estate and others hereby above directed to be entailed." In the fourth place, the trustees were directed upon his death to convert his whole moveable or personal estate into money and either purchase land therewith, or invest the same on heritable security, to be held by them during the lifetime of the longest liver of the truster's nieces and nephews, children of his brothers Charles and Napier (excepting the furniture, pictures, and plate in Fairfield House, which they were empowered to hand over, if they thought it expedient, "to the institute or heir of entail for the time"). The deed proceeded—"In the fifth place, my said trustees are hereby appointed and enjoined, and they shall, from and after the decease of my said wife, and during the lifetimes of my said nephews and nieces, sons and daughters of my said two brothers Charles Hay Campbell and Napier Campbell, and during the lifetime of the longest liver of my said nephews and nieces, retain and accumulate, according to their discretion, the free rents, interest, and annual produce that may arise during the period between the death of my said wife (or my own death, if she shall predecease me) and the death of the longest liver of my said nephews and nieces, from my said lands of Fairfield and others foresaid, herein specially described and hereby disponed, and also from the said lands and others hereby appointed to be purchased, and also from the said investments on securities of the monies arising from my personal or moveable estate, means, and effects appointed to be realised; and for the purpose of accumulation my said trustees shall, if they see fit, and from time to time, according to their own discretion, lay out and invest the said free rents, interest, and annual produce arising during the said period between the death of my said wife (or my own death, if she shall predecease me) and the death of the longest liver of my said nephews and nieces, upon heritable securities, in their own names as trustees foresaid." In the sixth place, he directed the trustees, upon the death of his wife and the longest liver of his said nephews and nieces, to call up all monies they had lent out on heritable securities, and with the proceeds thereof, and with "any accumulations of the rents and produce arising from my said lands of Fairfield and others, or from previous rents, interest, and annual produce," to purchase more lands and heritages, which they were to entail in the same manner and with the same destination as was directed in the third article of his trust-disposition with regard to the estate of Fairfield, and that either along with the lands of Fairfield or separately. The deed further declared "that the institute or heir of entail herein pointed out for the time being, who but for the continued existence of the trust hereby created would be in possession of the said lands and estate of Fairfield and others particularly herein described and hereby disponed, shall be entitled to provide and secure his wife and younger children who shall not succeed to the said lands and estate of Fairfield and others last above mentioned, in provisions of the like amount as if such institute or heir were actually in possession of my said lands and estate of Fairfield and others last above mentioned, in virtue of the said deed of entail directed to be executed thereof."

The testator was survived by his widow, by his immediately younger brother George Gunning Campbell, who was his heir-at-law, and by two sisters. He was predeceased by three brothers, Charles, Napier, and Alexander, each of whom left issue who survived the truster.

George Gunning Campbell died in 1858 without issue, and without having served as heir to the truster. He left a will in English form whereby he devised to certain trustees and executors the whole freehold, leasehold, or copyhold estate of which he might die possessed. The truster's two sisters died in 1861 and 1875 respectively, both leaving issue.

After the lapse of twenty-one years from the death of the truster, and while his widow was still alive, his trustees brought a multiplepoinding with the view of obtaining a judgment as to the person in right of the interests of the personal estate after the lapse of that twenty-one years, during which time these interests had been accumulated by the trustees. In that action Lord Curriehill, by interlocutor dated 30th December 1879, decided that, in respect of the provisions of the Thellusson Act, it was illegal to continue the accumulations of such interest beyond the period of twenty-one years from the truster's death, and that the fund *in medio* was divisible among the persons who were the next-of-kin to the truster and his heirs *in mobilibus ab intestato* at the date of his death, or the representatives of these persons.

The testator's widow died on 16th January 1889, until which date the free rents of the heritable estate were paid to her.

On 20th April 1890 the testator's trustees raised the present action of multiplepoinding to have it determined who had right to the rents of the heritable estate accumulated since her death, amounting to £181, 11s. 2d.

The fund *in medio* was claimed by (1) the trustees, who pleaded that they were bound and entitled to accumulate the rents during the lifetime of the testator's nieces and nephews; (2) Leveson Granville Campbell, who claimed as the heir first in the destination in the deed of entail directed to be executed; (3) Mrs Lambert, who claimed as the executrix of the last surviving executor under the will of George Gunning Campbell, who was the heir-at-law of the testator at the date of his death, and so as coming in place and right of the said George Gunning Campbell; (4) Leveson Granville Alexander Campbell, who claimed as the

existing heir-at-law of the testator, and also as the heir-at-law of George Gunning Campbell; (5) the representatives of the testator *in mobilibus*, who maintained that Leveson G. A. Campbell, the heir, having taken a share of the moveable state, was barred from claiming the fund *in medio* as heritage, or could not do so without repaying the sums received by him out of the moveable succession as one of the next-of-kin; (6) by assignees of certain of the other claimants.

Upon 6th December 1890 the Lord Ordinary (KINCAIRNEY) pronounced this interlocutor—"Having considered the cause, Finds (1) that William Gunning Campbell, Esq. of Fairfield, died in the year 1857; (2) that under the provisions of his trust-disposition and settlement his trustees paid to his widow the interests of the estate of Fairfield until her death on 16th January 1889; (3) that the truster directed that the rents of his said estate should be accumulated until the death of the longest liver of his nephews and nieces referred to in his trust-disposition and settlement, and after their death that the deed of entail therein directed should be executed; (4) that as, at the widow's death, more than twenty-one years had elapsed since the death of the truster, the direction to accumulate the rents has now become illegal and ineffectual, in respect of the provisions of the Statute 39 and 40 Geo. III. cap. 98; (5) that the fund *in medio* consists of rents which have accrued since the widow's death; (6) that the truster has not effectually tested on the rents accruing between the widow's death and the death of the longest liver of the said nephews and nieces; (7) that the said rents are of the nature of heritable estate falling to the heir-at-law or his representative in heritage; (8) that the heir-at-law was the truster's brother George Gunning Campbell, who died on 3rd May 1858; (9) that the right to the rents of the truster's estate illegally directed to be accumulated was an heritable right vested in George Gunning Campbell at the date of his death; (10) that said right was not effectually carried by his last will; (11) that his heir in heritage is primarily entitled to said rents and to the fund *in medio*: Therefore repels (1) the first claim of Hew Crichton and others, trustees of William Gunning Campbell; (2) the first claim of Mrs Ann Alderson Kendray or Lambert; (3) the claim of Leveson Granville Campbell; (4) the claims, so far as they are direct claims on the fund *in medio*, of the heirs *in mobilibus*, and of Mrs Mary Cuthbert, The Scottish Union and National Insurance Company, The Edinburgh Life Assurance Company, and Alexander Stewart, and decerns; and appoints the cause to be enrolled, that parties may be heard on the remaining parts of the case: Grants leave to reclaim.

"*Opinion.*—[*After narrating the facts above stated*]—The questions raised are perplexing and complicated.

"1. The first question is, whether the Thellusson Act applies? The facts are (1) that more than twenty-one years have elapsed since the truster's death, and (2) that there has as yet been no accumulation of the rents at all, because they have been paid to the widow.

"The provision of the Thellusson Act (39 and 40 Geo. III. cap. 98) under which the question arises, so far as bearing directly on the question, is as follows—'Whereas it is expedient that all dispositions of real or personal estate, whereby the profits and produce thereof are directed to be accumulated, and the beneficial enjoyment thereof postponed, should be made subject to the restrictions hereinafter contained, be it enacted that no person or persons shall, after the passing of this Act, . . . settle or dispose of any real or personal property so . . . that the rents thereof shall be wholly or partially accumulated for any longer term than the life or lives of any such granter or granters, settlor or settlors, or the term of twenty-one years from the death of any such granter, settlor, devisor, or testator,' and in every 'case where any accumulation shall be directed otherwise than as aforesaid, such direction shall be null and void, and the rents, issues, proceeds, and produce of such property so directed to be accumulated shall, so long as the same shall be directed to be accumulated contrary to the provisions of this Act, go to and be received by such person or persons as would have been entitled thereto if such accumulation had not been directed.'

"The trustees contended that what the Act prohibited was an accumulation of the rents for a longer term than the period allowed—twenty-one years—and that the statute was not infringed so long as the rents had not been accumulated above twenty-one years, and that as in this case there had as yet been no accumulation at all, the provision of the statute was inapplicable.

"It was contended by the other parties that accumulations became illegal whenever twenty-one years had elapsed from the truster's death.

"I am in favour of the latter contention, and against that maintained for the trustees. The question is no doubt important, and has not, I think, been deliberately decided in the Scotch Courts, although it has been involved in more cases than one.

"The evil against which the Act was directed was not only accumulation of rents, but postponement of the beneficial enjoyment—a mode of expression pointing, I think, to postponement immediately after the granter's death. The period of accumulation prohibited is a period in excess of twenty-one years from the death of the granter, and any accumulation directed otherwise is declared null. The words seem to point to the death of the granter as the period from which twenty-one years should run, otherwise the words 'from the death of the granter' have no meaning or object, and a construction of the statute which disregards these words seems inadmissible.

"The trustees maintained that the point had been decided in their favour in the

case of *Maxwell's Trustees* v. *Maxwell*, November 24, 1877, 4 R. 248. In that case a truster who died in 1841 directed payment of certain annuities, and appointed his trustees, after the death of the annuitants, to invest a certain sum as a fund for payment of bequests to certain religious and charitable institutions, and to accumulate and add to the fund one-fourth part of the interest payable on it. The last annuity was payable at Whitsunday 1856, and after that one-fourth part of the interest was accumulated until Whitsunday 1877—thirty-six years after the truster's death—when a special case was laid before the Court by the truster's representatives. It was decided that the direction to accumulate was null from the expiry of the period of twenty-one years from the term of Whitsunday 1856—that is to say, after the expiry of the term of twenty-one years from the death of the annuitants. But it is to be observed that prior accumulations were not challenged, and the question put to the Court was only whether the direction was void as from Whitsunday 1877. The Court could and did decide nothing else. Probably attention was not directed to the legality of prior accumulations, and I do not find that any of the Judges indicate any opinion on the point.

"The question was involved, and may have been decided, in the case of *Ogilvie's Trustees* v. *The Kirk-Session of Dundee*, July 18, 1846, 8 D. 1229. In that case Mr Ogilvie, who died in 1825, directed that a certain liferent should be paid to his widow, and he in effect committed to the charge of the kirk-session of Dundee at her death a sum estimated at £2000, with directions to accumulate the interest for one hundred years, and then to build and equip an hospital with the accumulated fund. There seems to have been a considerable amount of litigation in reference to this deed. The main question to which the report refers was whether the fund was heritable, and so not affected by the Thellusson Act, which did not at that date apply to heritable property in Scotland. The Court held that the fund was moveable, and found that the direction to accumulate was struck at by the Thellusson Act. It was also found that the rents struck at were carried by the trust-deed, and formed part of the trust-estate. There was no decision as to the time when the accumulation began to be illegal, but parties were appointed to be heard on the remaining points of the cause. Unfortunately, the case is not again reported. But I think it right to call attention to an observation of Lord Jeffrey, very favourable to the contention of the trustees in this case—'To what extent,' his Lordship asks, 'are the accumulations good? They are said to be good only for twenty-one years after the death of the maker of the settlement. Here the maker of the settlement was old Mr Ogilvie, who died about twenty-one years ago. But I suspect that in this case the death from which the twenty-one years was to date was that of the survivor of the spouses, and that the widow's life thus came to be the rule.'

"These remarks were, however, I think *obiter* at that stage of the cause.

"In *Lord* v. *Colvin*, December 7, 1860, 23 D. 111, the testator died on 18th June 1831, and, as I read the case, the whole accumulations of the personal estate were held illegal after 18th June 1852, and no one seems to have suggested that any part of the interest could have been legally accumulated beyond that date. But as considerable annual payments out of the revenue derived from the personal estate were directed or authorised to be paid to the truster's sons, one of whom survived until 1835, there must have been a considerable part of the revenue which had not at 18th June 1852 been accumulated for the full period of twenty-one years. But no question about such part of the rents seems to have been suggested either on the bench or from the bar.

"It has been expressly decided in England that the period of twenty-one years must be reckoned from the truster's death, and not from any later date, in the cases of *Webb* v. *Webb*, 1840, 2 Beavan, 493, and *Attorney-General* v. *Poulden*, 1843, 3 Hare, 555. It was objected that each of these cases was decided by a single Judge, and that the reasons of the judgment were not reported. But in *Webb* v. *Webb* the reasons of judgment appear sufficiently from the argument of the counsel Bethel, which was overruled, and these cases seem to have been accepted as settling the law in England. The point was assumed in *Nettleton* v. *Stephenson*, March 12, 1849, 3 De Gex & S. 366, and the law is so stated in Hargreave on the Thellusson Act, 113-158; Jarmyn on Wills (4th ed.) i. 304; and Lewin on Trusts, 91. M'Laren on Wills, i. 306, is to the same effect.

"On the whole, I am of opinion that the statute, according to its sound construction, renders illegal a direction to accumulate, such as to postpone the beneficial enjoyment beyond twenty-one years from the truster's death, and that, in this case, as the liferentrix has survived the truster for much more than twenty-one years, there can be no legal accumulations after her death.

"2. The next question is, to whom do these rents, ineffectually directed to be accumulated, belong?

"That question does not regard only the rents which have already accrued, but the same principle must determine the right to future rents.

"On this question there have been two distinct classes of decisions—in the one class, where it has been held that there was a good gift of the estate, the revenue derived from which was directed to be accumulated, the direction to accumulate has been held to be a burden on the gift of the estate, and the person to whom the estate was destined has been held entitled to it, unaffected by the direction to accumulate so far as in excess of the period allowed; and in the other, where there has been no prior gift of the estate, the revenue directed to be accumulated has, so

far as affected by the Act, been regarded as undisposed of, and as falling to the testator's heir in heritage or in moveables. To the former class of cases belong *Ogilvie's Trustees* v. *The Kirk-Session of Dundee*, July 18, 1846, 8 D. 1229; *Mackenzie* v. *Mackenzie's Trustees*, June 29, 1877, 4 R. 962; *Maxwell's Trustees* v. *Maxwell*, November 24, 1877, 5 R. 248. To the latter, *Keith's Trustees*, July 17, 1857, 19 D. 1040; *Lord* v. *Colvin*, 1860, 23 D. 111; and *Cathcart's Trustees* v. *Heneage's Trustees*, July 13, 1883, 10 R. 1205.

"I have no doubt that this case falls under the latter class, and that the rents ineffectually directed to be accumulated fall, not to the heir first in the destination in the deed of entail directed to be executed, but to the representative of the truster, as estate undisposed of.

"This point arose and was decided by Lord Curriehill in the previous multiplepoinding brought by Mr Campbell's trustees in reference to the interest of the personal estate. In that case his Lordship repelled the claim of the presumptive institute of entail. I have been furnished with a copy of his Lordship's opinion, and I adopt his reasoning. His Lordship observes—'If the only obstacle to making the entail had been the direction to accumulate the rents, and if it had been now absolutely certain that this claimant must be the institute in the deed of entail, his claim must have been sustained, on the authority of the case of *Mackenzie* v. *Mackenzie's Trustees*.' 'But this claimant is not in that predicament; the direction to accumulate is not the obstacle to the execution of the entail, and the entail cannot be executed until after the death of the longest liver of the truster's widow, nephews, and nieces. It is uncertain whether this claimant will be alive when that event occurs, and it is therefore uncertain whether he will ever be the institute of entail. The decision in the case of *Keith's Trustees*, 19 D. 1040, appears to me to meet the present question and to negative this claim.'

"It was not, I think, maintained that the rents thus thrown into intestacy were of the nature of moveable estate. It was, on the contrary, assumed that the rents were heritable estate, and, as it appears to me, rightly so, because they really formed a part of the heritable estate of which the truster had not disposed, except by the conveyance of the whole estate to his trustees. It appears to me that they fall to the truster's heir-at-law, or his representative, and that the trustees must uplift them for his behoof. The heir-at-law is necessarily the person who held that character at the death of the truster—that is to say, George Gunning Campbell, the truster's brother. He died on 3rd May 1858, surviving the truster for only half-a-year. At that time the trustees held the estate for behoof of the widow in liferent, and it was impossible to tell whether this intestate heritable estate would ever exist. It would never have existed if the widow and the nephews and nieces had all died within twenty-one years after the truster's death.

"I did not understand it to be disputed that George Gunning Campbell was, when alive, the person in right of the undisposed portion of the heritage. But it was contended on behalf of Leveson Granville Alexander Campbell that his right had wholly lapsed, because he had made up no title to the truster, and had not possessed for three years on apparency, and that he, Leveson Granville Alexander Campbell, was entitled to pass him by, and to take up this part of the heritable estate by serving heir in general to the truster.

"I do not think that this argument was supported by any of the authorities quoted. The point is not, perhaps, in my view of the case, of much practical consequence, but I am unable to concur in the argument. Of course George Gunning Campbell did not and could not possess on apparency, because the trustees held the feudal title, and the widow enjoyed the rents; and I do not see how the heir could have been expected to expede a service in order to take up an heritable estate which had no apparent existence. The trustees held the whole estate, and, so far as it was not effectually destined to anyone, they held it as trustees for the heir-at-law, and he had a *jus crediti* in the estate so far as held by them for his behoof, which I consider vested in him without service—*Gordon* v. *Harper*, December 4, 1821, 1 S. & D. 185, more fully reported in Ross' Leading Cases, Land Rights, i. 499.

"Now, if this right to rents ineffectually directed to be accumulated was heritable estate to which George Gunning Campbell had a complete and vested right, I see nothing at all which converted that right to which he was entitled as heritable estate into moveable estate in his person. He took it as heritable estate, and I think it was an heritable right vested in him when he died.

"It appears to follow that the person primarily entitled to the fund *in medio*, and to the rents which may subsequently accrue until the entail falls to be executed, is the representative in heritage of George Gunning Campbell.

"On the pleadings, as amended, there are two parties who claim this character—(1) Mrs Lambert, and (2) Leveson Granville Alexander Campbell. Mrs Lambert claims in virtue of George Gunning Campbell's settlement, under which it is said that Edward Lambert, the claimant's husband, was the last surviving executor, and Edward Lambert's will, in favour of the claimant Mrs Lambert. I have some hesitation in deciding as to the effect of these deeds, because there was not much argument on the point. But it appears to me that Mrs Lambert's title fails at its first step, for the reason that George Gunning Campbell's settlement is not conceived in terms which, at its date, were apt to carry Scotch heritable estate — *Kirkpatrick's Trustees* v. *Kirkpatrick*, March 19, 1873, 11 Macph. 551, June 23, 1874, 1 R. 37; and I am therefore of opinion that Mrs Lambert has instructed no right to this heritable estate, which therefore remained *in hære-*

ditate jacente of George Gunning Campbell.

"Mr Leveson Granville Alexander Campbell has now averred that he is the heir-at-law of George Gunning Campbell. I presume that is the case, but he has made up no title as his heir, and his averment that he is heir has not been, in terms, admitted.

"But assuming that he is heir of George Gunning Campbell, then I am of opinion that he is the person immediately in right of the rents as such heir, and not as heir of the truster.

"If the opinions that the estate in question is heritable, that it vested in George Gunning Campbell, and was not carried by his settlement be sound, the direct claims on the fund *in medio* of the Scottish Union and National Insurance Company, the Edinburgh Life Assurance Company, and Alexander Stewart appear to be negatived.

"But a question has been raised by the heirs *in mobilibus* of the truster, in which question these assignees may have an interest, in regard to the effect on the present question of the division which has been made of that part of the truster's succession which has been decided to be moveable. On that point I should desire further argument (either before or after this judgment has been submitted to review), especially with reference to the alterations on the record by Leveson Granville Alexander Campbell. The questions seem to be—(1) Is Leveson Granville Alexander Campbell in any way barred from claiming the heritable estate? (2) If not, is he bound to repay any part of the moveable succession? (3) What part? and (4) To whom?"

The pursuers reclaimed, and argued—The Thellusson Act did not forbid the accumulation here directed to be made. The meaning of the Act was that there could be accumulation for twenty-one years after the time when the accumulation began, and in this case the twenty-one years during which accumulation could be made ran from the death of the liferentrix. The authorities on the subject were—*Maxwell's Trustees* v. *Maxwell*, November 24, 1877, 5 R. 248; *Ogilvie's Trustees* v. *Kirk-Session of Dundee*, July 18, 1846, 8 D. 1229; *Lord* v. *Colvin*, December 7, 1860, 23 D. 111; *Webb* v. *Webb*, May 14, 1840, 2 Beavan's Rep. 493; *Attorney-General* v. *Poulden*, May 2, 1844, 3 Hare's Rep. 555; *Nettleton* v. *Stephenson*, March 12, 1849, 3 De Gex & Smale, 366.

Mrs Caroline Jones and others, the heirs *in mobilibus* of the truster, argued—*On the Thellusson Act*—There had been no direct decision on this point in Scotland, but it had been decided in England that the period for which accumulation was lawful was twenty-one years from the testator's death, and there was no reason why the law of Scotland should be different from that of England, because the statute was now one which applied to the United Kingdom. In the case of the accumulations continuing for a period longer than twenty-one years, the rents which might not lawfully be accumulated fell back into the estate of the granter, and must be taken by the person entitled to succeed to his estate—*Smyth's Trustees* v. *Kinloch, &c.*, July 20, 1880, 7 R. 1176. In this case nothing had vested in George Gunning Campbell; therefore the accumulations went not to his heirs, but to the heirs of the truster. When the truster died it was necessary for his heir to make up a service to him. George Campbell never did this, therefore he took nothing, and these rents fell back into the truster's estate, and must be taken by Leveson Campbell as heir of the truster, service not now being necessary—Bell's Prin. 1482; *Stuart* v. *Jackson*, November 15, 1889, 17 R. 85 (Lord President, 96).

Mrs Lambert argued—The heritable estate passed to George Gunning Campbell as the truster's heir-at-law, but the rents passed to his executors, of whom she was one, (1) because the rents of heritage were moveable as regarded the proprietor, or (2) because the rents became heritage in England, and so could be passed by his settlement. Service on the part of George Gunning Campbell was not necessary, because the whole estate given to trustees, and no one else than himself had any right to the rights.

Argued for Leveson Granville Campbell—This was not a question of vesting, but must be decided with regard to the provisions of the Thellusson Act. The claimant was pointed out as the institute of the entail directed to be executed, and would be the heir of entail if alive when the entail was executed. He was therefore entitled to the accumulations of rents beyond what was allowed by the Act—*Combe* v. *Hughes*, May 3, 1865, 34 L.J., Chan. 344; *Mackenzie* v. *Mackenzie's Trustees*, June 29, 1877, 4 R. 962.

L. G. A. Campbell of Fairfield argued—The estate in question, *i.e.*, the rents set free by the operation of the Thellusson Act, were in reality heritable estate. Until the entail directed to be executed was actually made, it was impossible to say who was to be the institute, and it was therefore impossible to say that the accumulations should go to the heir of entail. They therefore went to this claimant as the existing heir-at-law of the truster, or as the heir-at-law of George Gunning Campbell, who was the truster's heir in heritage at the date of the truster's death. They were not passed by George Gunning Campbell's settlement, because it was in the English form, and not habile to convey Scottish heritage.

At advising—

LORD YOUNG—The truster was survived by his widow for thirty-two years, and therefore, on the assumption that the Thellusson Act annuls any direction to accumulate beyond the term of twenty-one years from his death (in the meaning of the word "from" adopted by the Lord Ordinary), the direction to accumulate rents of land subsequent to the widow's

death (and we are here concerned with no other) must be regarded as void. The rents received by the trustees from the widow's death on 16th January 1889 to the date of the action (26th April 1890), amounting to £181, 11s. 2d., constitute the fund *in medio*. It will be convenient, and conduce to clearness, to consider the legal questions raised in the competition with reference to this as the fund *in medio* now competed for. It has since grown a little, and may continue to grow for a while, although the growth may stop at any moment.

Reading the trust-deed without regard, in the first instance, to any operation or effect upon it of the Thellusson Act, the trustees are directed to "retain and accumulate" the rents that may arise during the period between the death of the truster's widow and the death of the longest liver of his nephews and nieces, being sons and daughters of his two brothers Charles and Napier, and with the accumulated fund to purchase lands to be entailed along with the lands which he had himself conveyed to them—that is, to increase the landed property to be entailed as directed in the deed. This is the only direction to accumulate with which we are now concerned, and it is annulled by the Thellusson Act. There is no dubiety about the direction or about the absolute nullity of it by the Act. The statute enacts that the rents, the accumulation of which it prohibits, shall go to and be received by such person (or persons) as would have been entitled thereto if such accumulation had not been directed. If such person can be ascertained from the provisions of the will, legitimately construed with reference to the event—that the provision directing accumulation has become inoperative—the will must of course have effect, and if not, recourse must be had to the law of intestacy.

Accordingly, the question which I propose first to consider is, whether or not the trust-deed expresses the testator's will with reference to the event which has happened, viz., that the provision thereof which directs accumulation has become incapable of execution. The truster did not contemplate this event, and so made no express provision for it. But a will may satisfactorily disclose and manifest the testator's intention in an event which he did not contemplate. The cases illustrative of this are numerous and various. The question here therefore is, not whether the will before us contains an express declaration of the testator's intention in the event which has occurred contrary to his expectation—which it certainly does not—but whether it enables us, not to conjecture, but to collect the testator's intention in that event with such reasonable judicial certainty, as the Court may and does familiarly act upon in directing the execution of wills.

It is urged on the one hand that the direction to entail must be obeyed according to the very words of the trust-deed, and that the entail is therefore to be executed "after the decease of the longest liver" of the children of the testator's brothers Charles and Napier, and in no event before, and that the trustees must till then retain possession of the lands and draw the rents, but without any direction, express or implied, as to the disposal of them. If this be so, it follows that the institute of entail by the will cannot be known till the death of the longest liver of the children of these two brothers—that till then there can be no entail, and that the rents meanwhile must go according to the law of intestacy.

On the other hand, it is maintained that the direction to defer the execution of the entail till the death of the longest liver of the children of Charles and Napier was given with reference—and manifestly only with reference—to the direction to accumulate the rents, which is annulled by the statute, and that the testator's only reason and motive for ordering the execution of the entail to be deferred being inapplicable in the event which has occurred, his intention will not be frustrated but fulfilled by its immediate execution.

In deciding between these conflicting contentions the first point to be considered is, whether there is any reasonably conceivable reason or motive for the order to defer the execution of the entail till the death of all the children of Charles and Napier, besides the accumulation of the rents with a view to increase the lands to be entailed. That alone is certainly an intelligible, obvious, and sufficient reason, and I can imagine no other. The lifetime of any of the children of two brothers (none of whom were or could be benefited by the will) was a whimsical enough mode of limiting a period of accumulation—just as the lifetime of the Pope, or of the Sovereign of this or any other country, or of any other mortal would have been. But the accumulation itself, however uncertain the period of it, was quite intelligible. I cannot predicate the rationality or even intelligibility of the suggestion that there is thus manifested a preference to one rather than another heir of his own body, or to one rather than another heir of the body of Leveson Granville Alexander Campbell, or of George Gunning John Campbell, or of the heirs specified in his (the truster's) father's settlement—these being the heirs last called.

I must therefore conclude that the only purpose of deferring the execution of the entail after the widow's death was the accumulation which the statute annuls. But, if so, the case seems, *prima facie* at least, to come within the rule applicable where the enjoyment of an estate given by will is deferred for a purpose, and only for a purpose which has failed because it is illegal or otherwise. That rule is that the enjoyment shall have immediate effect. The most obvious and familiar illustration of the rule is when the gift and enjoyment of a fee given through the medium of trustees or executors is deferred till the death of a person to whom the income is directed to be paid during his or her life, and such person renounces and discharges the liferent provision. In such a case the

only questions are—First, whether the liferent provision was the only purpose of deferring the gift and enjoyment of the fee; and second, whether the renunciation is attributable to any indirect or oblique motive? Should the first question be answered in the affirmative and the second in the negative, it is, I think, not doubtful that the renunciation will operate immediately in favour of the donee of the fee ascertained as at the date of it. I venture to think the case even stronger for giving immediate enjoyment when the purpose for which alone it was deferred has failed, not by the voluntary act of a third party, such as a liferenter's renunciation, but by its inherent illegality. Such is the case under the will we are considering, as I regard it, and I am therefore of opinion that the time has arrived for giving the enjoyment of the testator's lands to the heirs specified by him, by executing an entail in their favour as directed. And this is in harmony with the Thellusson Act. For the true view, in my opinion, is, that the postponement of the enjoyment of these heirs by deferring the execution of the entail till the termination of the lives which the testator, however whimsically, selected as the measure of the accumulation which he desired, in order to augment the estate to be entailed, is merely incidental to the direction to accumulate, and so is annulled along with the direction of which it is an incident. The enjoyment of the income will thus go exactly as it would have done had the accumulation annulled by the Act not been directed. If the only obstruction to the immediate execution of an entail, in the very terms and on the very heirs directed, is that the period of accumulation has not expired, then that obstruction is removed by the annulling of the direction to accumulate.

But another obstacle is urged, and I proceed to consider it. The testator having left no heirs of his body the first heirs directed to be called by the entail are the heirs-male of the body of Leveson Campbell, who being alive, although he has living sons, has no heir-male of his body, for *nemo est haeres viventis*. Now I have to point out that this difficulty, whatever its value, concerns only the eldest son, and also it may be the male descendants generally of Leveson Campbell. For if on the more general aspect of the case, which I have hitherto dealt with, the opinion which I have expressed shall be rejected, the necessary result is that the execution of the entail must be deferred, and beneficial enjoyment under the will postponed till all the children of the truster's brother Charles (of whom Leveson is one) are dead, and in this view of the larger and more general question, the difficulty now suggested is manifestly immaterial and indeed cannot arise. I propose therefore to consider it upon its own merits, and with reference to the only view of the case in which it can present itself as of any practical significance. For clearness and succinctness I put it thus—The truster has directed his trustees to hold the land and accumulate the rental during the lifetime of Leveson Campbell, and on his death to entail on the heirs-male of his body, whom failing, on the heirs-male of George Campbell's body, and with other whom failings as in the deed. The statute annuls the direction to accumulate, and declares that the rights under the deed shall be taken to be as "if such accumulation had not been directed." My opinion is that the time for executing the entail has come. But then it is pointed out, and truly, that Leveson Campbell is alive, and urged as the necessary consequence that although he has living sons there are no heirs-male of his body. But George Campbell is dead and there are heirs-male of his body, and I suppose a host of other heirs called on the failure of Leveson's heirs. Are we to direct the trustees to act on the footing that the heirs of Leveson have failed? I could not assent to this as the result of any reasonable application of the maxim *nemo est hœres viventis*. We are dealing not with a deed of conveyance but with a will, and the duty of trustees to carry it out by executing a conveyance which will fulfil the testator's intentions. Now, in collecting the intentions of a testator to be fulfilled by his trustees in executing his instructions, we are not hampered by such technical considerations as may occur in the construction of a deed of conveyance. I have no difficulty in holding that the testator here preferred the sons and male descendants of Leveson to those of George, notwithstanding the use of the term "heirs," and that we should not follow but violate his intention by ordering his trustees to prefer the sons of George to those of Leveson because, Leveson being alive, the terms "heirs" did not technically fit them. I should indeed be prepared, if necessary, to go further and hold that under the destination of the most formal conveyance to the heirs-male of the body of A B (A B himself being clearly excluded), his sons would take, although A B should himself happen to be in life when the succession opened, and that his survivance would not be either a hindrance to its opening, or favourable in any way to heirs subsequently called.

Put the case that the truster here had directed his trustees, on the death of the survivor of himself and his wife, to divest themselves by a conveyance to the heir-male of the body of Leveson Campbell (Leveson himself being distinctly excluded), would the divestiture and conveyance in favour of the eldest living son of Leveson have been hindered or delayed by the circumstance of Leveson's own survivance, whereby the term heir did not technically fit his son, or on the consideration that it was proper, in deference to the truster's intention, to wait till Leveson's death in order to see the state of his family then, and that the rental meanwhile ought to be regarded as intestate succession?

The opinion which I have formed implies the possibility of ascertaining the institute or heir of entail "pointed out" by the will,

as at or with reference to any time subsequent to the commencement of the trust, however long prior to the period appointed by the testator for its termination and the divestiture of the trustees; while the contrary opinion, adopted by the Lord Ordinary (following Lord Curriehill), assumes as distinctly the impossibility of doing so. Now, it is instructive to observe that the testator himself assumed this very possibility which my opinion implies and the adverse view negatives, for his will contains this declaration—"That the institute or heir of entail herein pointed out for the time being, who, but for the continued existence of the trust hereby created, would be in possession of the said lands and estate of Fairfield, and others particularly herein described and hereby disponed, shall be entitled to provide and secure his wife and younger children, who shall not succeed to the said lands and estate of Fairfield and others last above mentioned, in provisions of the like amount, as if such institute or heir were actually in possession of my said lands and estate of Fairfield and others last above mentioned, in virtue of the said deed of entail directed to be executed thereof."

If you apply to this declaration the reasoning of Lord Curriehill, which the Lord Ordinary adopts, and on which he rests his judgment, you make it inoperative and indeed unmeaning; for according to that reasoning, "the institute or heir of entail herein pointed out" cannot possibly be discovered, as Lord Curriehill expresses it, "until after the death of the longest liver of the truster's widow, nephews, and nieces," which is plainly not "the time being" referred to by the testator in the declaration which I have just cited. It is, I think, manifest that the testator himself intended that his will should, and believed that it did, "point out" the institute or heir of entail "for the time being," meaning any time whatever during the subsistence of the trust and prior to the time appointed by him for its termination, viz., the death of the longest liver of certain persons, and that on a reasonable construction of his will such institute or heir could be ascertained.

Suppose it to be clear, and matter of judgment, that the trust in the event that happened terminated at the widow's death, and that it only remained to close it by a divestiture of the trustees, the question would remain in whose favour the divestiture was to be made. Now on this question is it reasonably conceivable that it ought to be made in favour of the truster's heir *ab intestato*, inasmuch as the trust-deed did not "point out," that is to say, enable the Court to ascertain the institute or heir of entail "for the time being" viz., the death of the widow? But if not, then you must of necessity determine who is the institute or heir "pointed out" by the will, and I have stated my opinion and the reasons of it that the institute so pointed out is the eldest son of Leveson Campbell, notwithstanding that by reason of his father's survivance the term "heir" of his father is not for the moment technically applicable to him or any other. The only alternative is to defer the divestiture of the trustees till the father's death, or for a longer period, viz., the death of all Charles' and Napier's children, and decree intestacy with respect to the rental meanwhile, for if the heirs "pointed out" by the will are in succession to have the rental till the execution of the entail, no good or even rational purpose will be served by deferring the execution and maintaining the trust.

The declaration which I have cited supports I think very strikingly the proposition on which my opinion is based, viz., that the continuance of the trust during the survivance of the widow was directed solely for her benefit, and after her death solely for the accumulation of the rental in order to enlarge the property. The language of it is indeed inconsistent with the notion that the truster intended that this desired continuance should, in the event that these the manifest purposes of it failed, be taken as affording a rule or criterion for determining who was "the institute or heir of entail herein pointed out for the time being." He contemplated no doubt that such institute or heir for the time being should go without the rents, first, while the widow enjoyed them, and, second, while they were being accumulated to buy more land. But at the same time he says in words that he is "pointed out," and that he shall have certain not unimportant rights as if he were "actually in possession" as such institute or heir. To ignore this, and on a subtle and, I think, captious argument to hold that the heir for the time is not pointed out and cannot be ascertained, is in my opinion unwarrantable. With such a will as we are dealing with intestacy is, if reasonably possible, to be avoided.

In the view, contrary to my opinion, that the trust is to be prolonged till the death of all the children of Charles and Napier, and that the law of intestacy applies to the beneficial right to the rental meanwhile accruing, I concur with the Lord Ordinary. I think, in this view, that the beneficial interest in the rental is heritable estate, or, in other words, that the law of primogeniture applies to it—that it goes to the *hœres* or person favoured by that law. There is no other distinction that I know of between heritable and moveable estate. To what kind of estate the law of primogeniture applies, and to what it does not is necessarily *positivi juris*. And here the Thellusson Act is of no significance whatever, although the law of resulting trust is. The case in hand, in the view of it I am now assuming, is that the owner of land has conveyed it to trustees without any direction, express or implied, as to the use or application of the rental for a certain or uncertain, longer or shorter period. The trustees are not of course entitled themselves to appropriate such rental, and this is only avoided by the doctrine of resulting trust, the only possible question being to whom does the trust result. It would of course result to the truster himself if in

life, and being dead, it must result to his successor by the law of primogeniture or otherwise according to the quality of the estate. By our positive law, as I understand it, the law of primogeniture applies to land as at the time of the ancestor's decease in so far, but only in so far, as not alienated by him. Now, here certain lands have been alienated to a certain extent, but not so far forth as regards the beneficial interest in the rental thereof or return therefor, during a limited period. That rental is to be drawn by trustees on a trust resulting to the truster, or (he being dead) his heir therein, viz., his heir determined by the law of primogeniture. This seems to me to be the simple case of an heir taking the beneficial interest in his ancestor's land in so far as such beneficial interest has not been alienated. Why the heir should not be ascertained as at the death of the ancestor, or why he should take subject to any restriction whatever, I fail to comprehend. The trust settlement of the ancestor may of course exclude his heir with respect to all or any part of the estate, and if it does, then there is no intestacy with respect to such estate. But in so far as he is not excluded—which is exactly in so far as the estate is not given to another—the administrative legal title in the trustees cannot affect the question who is the heir, or the character of his right to what he takes, *i.e.*, to what has not been given to another. Here the (*ex hypothesi*) unalienated estate is the rent of land for an uncertain period, which may be long or short as it happens. It would have been exactly the same had it been for a certain term of say fifty years. The ancestor has not alienated his land with respect to the beneficial interest in the return therefrom for fifty years, although he has made provision for the administration and management of the land itself. This, as heritable estate unalienated by the deceased owner, goes to his heir-at-law to be ascertained by the rules of the common law, unaffected by the trust deed or the Thellusson Act, and with his rights therein equally subject to the rules of the common law only.

LORD RUTHERFURD CLARK—I need not resume the facts of this case. They are very fully and accurately stated by the Lord Ordinary.

The first question is, whether the Thellusson Act applies so as to prevent accumulations after the death of the widow, or whether the accumulation may go on for twenty-one years after that event?

In my opinion the answer of the Lord Ordinary is right. We have no decisions in Scotland. But those of the English Courts are directly in point, and I think that we ought to follow them. I do not say that the question is free from difficulty, but in view of a series of judgments of the highest authority I cannot look upon it as being any longer open. It is true that these judgments are not formally binding on us, but I should be very slow to establish in Scotland a construction of an imperial statute different from that which is settled in England.

The next question relates to the disposal of the rents which have accrued since the death of the widow.

They are claimed by Mr Leveson Granville Campbell as institute of entail. I agree with the Lord Ordinary in thinking that his claim cannot be sustained.

It is to my mind a sufficient ground of judgment that Mr Campbell does not possess the character in which he makes his claim. Passing over those parts of the destination which have failed I find that the truster directs, that on the decease of the longest liver of his nephews and nieces, children of his late brothers Charles and Napier, the entail is to be made on the heirs-male of the body of his nephew Leveson G. A. Campbell, the eldest son of Charles, and a series of other heirs. Mr Leveson G. Campbell is the eldest son of Mr Leveson G. A. Campbell, and there is no doubt that, if he be alive at the time when the entail is directed to be made, he will be the institute of entail.

But although he is the eldest son of his father, Mr Leveson G. Campbell is not and may never be his heir. So long as his father lives it can never be known who shall be the heir of his body, and until the occurrence of that event the person in whose favour the entail is to be made cannot be ascertained. The claimant therefore is not and may never be the institute of entail, and I cannot see how we can sustain his claim when he does not possess the character in which it is made. We are not dealing with a case where by reason of the direction to accumulate the enjoyment of a gift is postponed. The right is in suspense.

It was maintained that in consequence of the failure of the direction to accumulate the time had arrived for the execution of the entail. The reason is that the truster had no purpose for postponing its execution other than to enable the accumulations to be made. I cannot so read the trust-deed, or hold that the entail is to be executed at an earlier date than that which the truster prescribed. I do not think that the truster had in his view the possibility of the direction to accumulate ceasing to be effectual. It is certain that he has made no provision for the occurrence of that event. In my opinion I am not entitled to conjecture what his views would have been if he had been aware of the operation of the Thellusson Act. He has expressed none, and I think that the only legitimate inference which we can draw is that he formed none.

I think that I am bound to give effect to the intentions of the truster according to the language in which they are expressed. The direction to accumulate was made, because the truster had to dispose of the rents which accrued due before the entail could be executed. The failure was an event which did not enter into his mind, and cannot I think afford a warrant for altering the whole scheme of the trust-deed.

As matters now stand there is the further difficulty, to which I have already adverted,

that no one can at present claim the character of institute of entail. This to my mind is sufficient to dispose of the point which I am now considering. But if by reason of the death of Mr L. G. Campbell the heir of his body was ascertained, I do not think that such heir would be institute of entail so long as any of the nephews or nieces of the truster are alive. The institute of entail must be looked for at the time when the entail is to be executed, and cannot be ascertained until that time arrives.

To whom then are the rents to be given? The Lord Ordinary has held that they belong to Mr L. G. A. Campbell as the representative in heritage of George Gunning Campbell, who was the heir of the truster *ab intestato*. I agree with his Lordship in thinking that Mr Campbell is entitled to be preferred to the rents, but I do not agree with the reasoning which has led him to that result.

We must keep in view that we are dealing not with capital, but income. The fund *in medio* consists of rents only. None of the claimants pretend—or can pretend—to have any right to the estate which yields the rents. That estate is vested in the trustees, who hold it for the purpose of entailing it at a future date.

Again, the rents are not in themselves heritable estate, in respect that they consist of money. They are the produce of heritable estate becoming due after January 1889. The owner of the estate has not disposed of them. Since his death there has been no owner other than his trustees, and as a consequence there could be no alteration of the legal order of succession other than that effected by the trust-deed itself. The trustees have a good, and indeed the only title to ingather the rents, but they have no directions with regard to their disposal.

As I have said, the Lord Ordinary sustains the claim of the representative in heritage of George Gunning Campbell, the heir-at-law of the truster as at his death. But this assumes that the rents belonged to George Gunning Campbell. If they did not, they could not be taken up by his representative. He died in 1858. To my mind it is clear that rents which did not become due till 1889 could not belong to a person who died before that date. I should think it a self-evident proposition that the interest of money or the rent of lands cannot belong to one who dies before they accrue. If the truster had died intestate, and George Gunning Campbell had succeeded as his heir, the latter would have been entitled to the rents which accrued due up to his death, and to no more. It can make no difference that we are dealing with a case where the rents are set free by the operation of the Thellusson Act. That circumstance can never enlarge the rights or estate of the heir *ab intestato*. I am therefore of opinion that the rents cannot be claimed by anyone as the representative of George Gunning Campbell.

For precisely similar reasons I have no difficulty in repelling the claim of the next-of-kin of the truster as at the date of his death or the representatives of such next-of-kin. The next-of-kin can have no claim except to the moveable estate of the truster, and the rents in question never formed a part of his moveable estate. It is impossible that they could, for the simple reason that they were not in existence at the time of his death.

As I read the record, no claim has been put forward on the part of the next-of-kin of the truster as at the date of the widow's death. If it had been made, I should have repelled it. For the reasons already assigned, they cannot claim in a representative character, nor do I see any principle on which they could claim in their own right the produce of an estate when they can have no possible claim to or interest in the estate itself.

There remains the claim of the heir-at-law as at the time when the rents accrued, and in my opinion his claim ought to be sustained. It is perhaps not enough to say that it is the only other possible claim. But it seems to me well founded in principle. If the truster had died intestate, and the law of intestate succession had run its ordinary course, he would have been entitled to the estate itself and to the rents. The legal succession has been so far excluded by the fact that the estate has been conveyed to trustees in order that they may execute an entail at a future time, but to no further extent. It is a plain principle of law that the rights of the heir cannot be defeated except by a conveyance in favour of another, and whatever is not so conveyed remains with the heir. It follows, I think, that until the time arrives at which the trustees are directed to entail, they hold for the benefit of the successive heirs-at-law, who are therefore entitled to the rents as they become due. They will take them, not in a representative capacity, but in their own right.

Lord Trayner and the Lord Justice-Clerk concurred with Lord Rutherfurd Clark.

The Court pronounced this interlocutor:—

"Recal the seventh, eighth, ninth, tenth, and eleventh findings of the Lord Ordinary, and in lieu thereof find that the fund *in medio* belongs to the heir-at-law of the truster as at the date when the rents of which it is composed become due: *Quoad ultra* affirm the interlocutor reclaimed against."

Counsel for the Trustees—Asher, Q.C.—Crole; for Mrs Lambert—Macfarlane; for Mrs Gunning Campbell—Cosens. Agents—Tait & Crichton, W.S.

Counsel for L. G. A. Campbell—D.-F. Balfour, Q.C.—Blair. Agents—Blair & Finlay, W.S.

Counsel for Mrs Jones, &c. (Heirs *in mobilibus*)—Gillespie. Agents—A. & A. Campbell, W.S.

Counsel for L. G. Campbell—C. S. Dickson—Salvesen. Agents—E. A. & F. Hunter, W.S.