claim, No. 7 of Process; and decerns and finds the claimants Miss Isabella Neilson and others, claiming in terms of the claim No. 6 of process, liable to the pursuer and claimant, the said Mrs Elizabeth Williamson or Davidson, in the expenses of the action of reduction, from the date of the compearance of the said Miss Neilson and others, and also in the expenses of the competition; allows an account of the said expenses to be given in; and remits the same when lodged to the Auditor to tax and to report; Further, on the motion of the claimants Miss Neilson and others, grants leave to them to reclaim against this interlocutor."

The claimants Isabella Neilson and others reclaimed, but the Court unanimously adhered.

Counsel for Reclaimers—Fraser and Marshall. Agents—J. & J. Gardiner, W.S.

Counsel for Mrs Williamson—W. A. Brown. Agents—Morton, Neilson, & Smart, W.S.

Friday, June 13.

SECOND DIVISION.

DUKE OF BUCCLEUCH AND OTHERS *v.* COWAN AND OTHERS.

(*Ante*, p. 494.)

In this case, after the Lord Justice-Clerk had prepared a draft-interlocutor granting interdict in terms of the issue against the defender, Counsel for the pursuers appeared at the Bar and insisted that they were entitled to have interdict, not in the words of the issue, but in terms of the conclusion of the summons—(see p. 499, *ante*).

After argument, the Court granted interdict in the following terms:—

"Prohibit and interdict the defenders from discharging into the said water of the North Esk from their respective paperworks any impure stuff or matter of any kind, whereby the said water in its progress through or along the property of the pursuers or any of them may be polluted or rendered unfit for domestic use, or for the use of cattle."

Counsel for Pursuer—Watson and Johnstone. Agents—Gibson & Strathearn, W.S.

Counsel for Defender—Solicitor-General (Clark), Q.C. and Asher. Agents—White, Allardice & Dobson, W.S.

Friday, June 20.

FIRST DIVISION.

[Lord Gifford, Ordinary.

ASHLEY AND OTHERS *v.* THE MAGISTRATES OF ROTHESAY.

Licensing Magistrates — Statutory Powers—Limitation—9 *Geo. IV, cap.* 58 (*Home Drummond Act*)—16 *and* 17 *Vict. cap.* 67 (*Forbes Mackenzie Act*) § 11—25 *and* 26 *Vict. cap.* 35 (*Public Houses Amendment Act* § 2.

Held—(1) that, under section 2 of 25 and 26 Vict. cap. 35, the licensing Magistrates are not entitled to alter the hours of opening and closing licensed hotels and public houses throughout an entire county or burgh; (2) that, under the licensing acts, the time during which hotels and public houses are to be kept open is, as a general rule, fifteen hours each day.

Question—Whether the Magistrates have any power, under the exception introduced by the above section, to diminish the number of hours during which public houses and hotels are to be kept open?

Process—Review—25 *and* 26 *Vict. cap.* 35, § 34.

Held that a proceeding in the Supreme Court for the purpose of setting aside as incompetent and illegal the proceedings of an inferior court, is not a process of review, and therefore is not incompetent under the above section.

Process—Exclusion of Action through lapse of time—25 *and* 26 *Vict. cap.* 35, § 35.

Held that the limitation contained in the above section does not apply to a proceeding for the purpose of setting aside an incompetent and illegal proceeding of the licensing Magistrates.

The pursuers in this action were the four principal licensed hotel keepers in Rothesay. The defenders were the Magistrates and Town-Clerk of the burgh of Rothesay. At an adjourned statutory meeting for the purpose of granting and renewing certificates for the sale of exciseable liquors, the defenders, on 15th April 1872, passed a resolution in the following terms, viz.—"The Magistrates considering that in the particular locality within the burgh situated within the following limits, viz., Mackinlay Street, from the south end thereof to the sea, thence the sea and harbours of Rothesay, from Mackinlay Street to Bishop Terrace Brae, thence along Bishop Terrace Brae, Bishop Terrace, Mountpleasant Road, to Ministers' Brae, thence in a straight line from the west end thereof at High Street to the south end of Columshill Street, and thence in a straight line to the south end of Mackinlay Street aforesaid—other hours are required for closing inns and hotels and public-houses than those specified in the forms of certificates in schedule A, annexed to the Act 25 and 26 Vict. cap. 35, applicable thereto,—resolve to insert eight of the clock in the morning as the hour for opening, and ten of the clock at night as the hour for closing the same, in such certificates."

The Public Houses Acts Amendment (Scotland) Act 1862 contains in the 2d section the following provision, viz.—"The forms of certificates contained in schedule A to this Act annexed shall come in place of the forms of certificates provided by the recited Acts, or either of them; and it shall be lawful for the Justices of the Peace for any county or district, or the Magistrates of any burgh, where they shall deem it inexpedient to grant to any person a certificate in the form applied for, to grant him a certificate in any other of the forms contained in the said schedule; provided always that in any particular locality within any county or district or burgh requiring other hours for opening and closing inns and hotels and public-houses than those specified in the forms of certificates in said schedule applicable thereto, it shall be lawful for such Justices or Magistrates respectively to insert in such certificates such other hours, not being earlier than six of the clock or later than eight of the clock in the morning for opening, or earlier than nine of the clock or later

than eleven of the clock in the evening for closing the same, as they shall think fit."

The area within which the above resolution was to receive effect did not include the entire superficial area of the burgh, but it was admitted that the boundary line marked out by the said resolution was so contrived as to include every inn, hotel, and public-house within the burgh.

The pursuers' certificates, previous to May 1872, all contained the usual statutory hours of eight o'clock in the morning for opening and eleven o'clock at night for closing, and on 15th April 1872 they came before the Magistrates of the burgh for renewals of their certificates. In all the certificates granted on that occasion, however, for the then current year, the Magistrates, in pursuance of their said resolution, inserted a condition whereby the pursuers and others were required not to keep open house after ten o'clock at night of any day. In every other respect the said certificates were in the form provided by schedule A of the Act of 1862.

The pursuers appealed to the Quarter Sessions of the county of Bute, and the Quarter Sessions, on 7th May 1872, dismissed the appeals, and affirmed the decision of the Magistrates.

In these circumstances, the pursuers, on 15th June 1872 raised this action in the Court of Session, concluding for (1) reduction of the said resolution of the Magistrates; (2) declarator that the said certificates should be valid and effectual to the pursuers for the whole of the then current year, and that as if the condition complained of had not been inserted in the said certificates, and as if there had been inserted instead only the condition as to the hour of closing set forth in the forms of certificate for inns and hotels contained in schedule A of the Act of 1862; (3) an order on the defender, the town-clerk of Rothesay, to correct the said certificates by deleting the hour of 10 o'clock at night, therein inserted as the hour of closing, and substituting therefor the hour of 11 o'clock; and (4) damages for loss incurred by the pursuers through the operation of the resolution sought to be reduced. The conclusion for damages was ultimately not insisted in.

By sect. 34 of the Act of 1862, it is provided that "No warrant, sentence, order, judgment or decision, made or given by any quarter sessions, sheriff, justice, or justices of the peace, or magistrate, in any cause, prosecution, or complaint, or in any other matter under the authority of the said recited Acts, or of this Act, shall be subject to reduction, advocation, suspension, or appeal, or any other form of review or stay of execution, on any ground or for any reason whatever, other than by this Act provided." And by section 35 it is provided, that "Every action or prosecution against any sheriff, justice or justices of the peace, magistrate, or judge, acting under any general or local Police Act, or against any sheriff-clerk, clerk of the peace, or town-clerk, or any procurator-fiscal, superintendent, or and other officer of police, or constable, or other person, on account of anything done in execution of the recited Acts and this Act, or any of them, shall be commenced within two months after the cause of action or prosecution shall have arisen, and not afterwards."

On 21st January 1873, the Lord Ordinary (GIFFORD) pronounced an interlocutor, in which he repelled the reasons of reduction, and assoilzied the defenders.

The pursuers reclaimed, and argued—(1) The area affected by the said resolution being the whole burgh for licensing purposes, the same should be reduced. (2) The magistrates' power of alteration only exists where others hours are required for opening as well as closing, and no alteration being required or made on the hour for opening, the defenders' actings are illegal, and should be reduced. (3) The restriction of the pursuers to fourteen business hours, and the condition requiring them to close at ten o'clock at night, being illegal and unwarranted by the statute, the pursuers are entitled to decree as craved. (4) The proceedings complained of having caused, and still causing, loss, injury, and damage to the pursuers, they are each entitled to recover damages from the defenders as the individual wrong-doers.

Authorities cited by pursuers—*Sylvester* 31 L. J. (Mags. cases) p. 93; Bell's Commentaries (5th ed.) ii. 179; *Crosbie*, 4 Macph. p. 803 and 806.

The defenders argued—(1) The present action is incompetent, review being excluded by the 34th section of 25th and 26th Vict., cap. 35. (2) This action, not having been commenced within two months after the cause of action had arisen, is barred by the clause of limitation in the Act of 25th and 26th Vict., cap. 35 (sec. 35). (3) This action is incompetent, and should be dismissed, in respect that the actings of the magistrates sought to be reduced were appealed by the pursuers to the Quarter Sessions of the Peace for the county, and judgment given by the Quarter Sessions thereon; and also in respect that no reduction has been brought of the judgment of the Quarter Sessions.

Authorities cited by defenders—*Manson*, 9 Macph. p. 492; *Glassington*, 3 East. p. 407.

At advising—

LORD PRESIDENT—The pursuers of this action state that they are the four principal hotel-keepers in the town of Rothesay, and as such they hold certificates for the sale of exciseable liquors, and have done so for a considerable number of years. They complain of the Magistrates of the burgh that they have recently—that is to say last year—for the first time, made a change in the conditions of these certificates, by providing that, instead of their houses being opened at eight o'clock in the morning and shut at eleven at night, they are to be opened at eight in the morning and shut at ten at night. And they complain, further, that this has been done in pursuance of a general resolution adopted by the Magistrates, which they have carried out to the effect of making it apply to the whole burgh—that is to say, to every hotel and inn and public house within the burgh. It is maintained that this proceeding of the Magistrates is beyond their powers under the Public House Act.

The question is one of considerable general importance, and it requires a careful examination of the provisions of the different statutes, for there are three statutes in existence regulating this matter—the Act of the 9th of George IV., commonly called the Home Drummond Act; the Act of the 16th and 17th Victoria, known as the Forbes Mackenzie Act; and the recent statute of the 25th and 26th of the Queen, c. 35, which made some important alterations upon the previous statutes, but did not repeal those Acts except in so far as was necessary to give effect to the new provisions. Under the first of these statutes, the form of certificate provided only, with regard to this

matter, that no hotel, or inn, or public-house should be kept open at unseasonable hours. But in the second statute of the 16th and 17th of Victoria the hours are introduced in the certificates in this manner—that the person holding the certificate shall not sell or give out therefrom any liquor before eight of the clock in the morning, or after eleven of the clock at night, of any day. And the 11th section of that Act provides that the form of certificate contained in the schedule to this Act annexed shall come in place of the form of certificate provided by the said recited Act of the 9th of the reign of King George the Third, and it shall not be lawful to the Justices of the Peace for any county or district, or the Magistrates of any burgh in Scotland, whether acting under the said recited Act or this Act, from and after the passing of this Act to grant any certificates in other forms than those contained in the said schedule. And the 12th section provides that if any certificate shall be granted contrary to the provisions of this Act, the same shall be null and void to all intents and purposes. The last statute substitutes certain new forms of certificates for those provided by the Act of the 16th and 17th of Victoria; bnt in so far as regards this matter of the time of opening and shutting they are identical with the previous statute: and the 2d section of this last Act provides that "the forms of certificate contained in schedule A to this Act annexed shall come in place of the forms of certificate provided by the recited Acts, or either of them, and it shall be lawful for the Justices of Peace for any county or district, or the Magistrates of any burgh, where they shall deem it inexpedient to grant to any person a certificate in the form applied for, to grant him a certificate in any other of the forms contained in the said schedule." But again, as in the previous statute, the 4th section of this Act provides "that if any certificate shall be granted contrary to the terms and provisions of this Act, the same shall be null and void to all intents and purposes,"

Now the result of these enactments appears to me to be that the Legislature has determined that, as a general rule at least, the time that hotels and public-houses are to be kept open is from 8 o'clock in the morning till 11 o'clock at night—that is to say, a period of fifteen hours each day. There is an exception to this general rule, which I shall immediately notice; but it seems to me that as as a general rule this is made imperative, because except by means of the proviso which introduces a certain exception, no certificate which does not contain these hours would be a lawful certificate under the Act of Parliament, but it would necessarily be, under the fourth section, null and void to all intents and purposes.

The exception is introduced in the last statute by a proviso in the second section. But, in order to understand precisely the meaning and object of the Legislature in that proviso, it is necessary to go back to a corresponding proviso, in the Act of the 16th and 17th of Victoria. After providing that all certificates must be granted in the form of the schedule, the eleventh section goes on, "provided always that in localities requiring other hours for opening and closing public-houses, inns, and hotels than those contained in the said schedule, it shall be lawful for such Justices or Magistrates to insert in the said schedule such other hours, not being earlier than six o'clock or later than eight o'clock in the morning for opening, or earlier than nine o'clock or later than eleven o'clock in the evening for closing the same, as they shall think fit." Now, there are two expressions in this proviso which give rise to a good deal of doubt. In the first place, what is meant by "requiring other hours for opening and closing?" Does that mean that the exigencies of the locality are such that it is desirable that earlier hours shall be introduced in one place than in another, or does it mean that the inhabitants of the localty require or ask for such a variation? Perhaps it is not of very much importance to the present inquiry which of these is the meaning. But there is another expression in this proviso which also must have given rise, I think, to a good deal of difficulty in construction. This proviso applies to localities requiring other hours, and that may be construed to mean either a portion of a burgh or a portion of a county, or it may be construed to mean a whole burgh or a whole county. The word "locality" would be equally applicable to both. Now, it is for the purpose, as I think, of removing this latter difficulty of construction that the new clause and the new proviso were introduced into the last statute; because there the proviso runs thus—"Provided always that in any particular localty within any county or district or burgh requiring other hours for opening and closing," and then follows the power of the Magistrates, just in the same words as in the previous statute. This mode of expression renders it quite clear that it was not the intention of the Legislature to give a power to the Justices or the Magistrates to alter the hours of an entire county, or an entire burgh, but only to exercise that power in any particular locality within a county, or within a burgh, the peculiarities of which might render it desirable that the hours should be earlier; because, it will be observed that Magistrates have no power to make the hours later. They cannot make the opening later than eight, or the shutting later than eleven, which are the two hours prescribed in their schedule as a general rule. Their only power is to make these hours earlier. Now, construing this last proviso, I am of opinion, in the first place, that it certainly is unlawful for the Justices or the Magistrates to make this alteration applicable to the entire county or the entire burgh. I think, also, that the object for which this power was given is not far to seek. There are many localities, particularly within counties, where earlier hours are desirable than in other localities. One can easily understand, for example, that in a mining district, where the workmen come up from their work in the mines generally at six o'clock in the morning, it is very desirable that they should have an opportunity of obtaining refreshment before they go to bed. But this is only one of a great many other instances that could be suggested, where the particular kind of industry or occupation, existing in a particular locality, might make it desirable to have earlier hours than prevail in the county or burgh generally.

Now, keeping these observations in view, let us see what the Magistrates of Rothesay have done. They seem to have been aware that they would have a difficulty in dealing with the words "any particular locality within any county or burgh," and accordingly, in carrying out their resolution to shut up all the hotels and public-houses in Rothesay at ten o'clock at night, they defined a certain part of the burgh, and made their new hours applicable to that part of the burgh only, excluding

another but smaller part of the burgh. But then, the line is so ingeniously drawn that, in that part of the burgh to which the change of hours is made applicable, every hotel and public-house in the burgh is situated. So that in practical effect it is just the same thing as if they had come to a resolution that nobody in Rothesay, whether hotel-keeper, innkeeper, or public-housekeeper, should be allowed to keep his house open after ten o'clock. That is the practical effect of it, and the attempt to make this take the appearance of a provision for a particular locality is simply a fraud on the statute. I don't use that term in any offensive sense, but in its purely legal signification. It is a mode of defeating the words of the Act of Parliament by an ingenious contrivance. It appears to me that that is undoubtedly beyond the power of the Magistrates. There is no such power given to them by this Act of Parliament.

There are other objections which might be stated to what they have done. It may well be doubted, I think, whether the Magistrates have any power, under the proviso in the 2d section, to diminish the number of hours for which public-houses and hotels are to be kept open, and there is a great deal of support to that view from the particular words of the proviso itself, because it speaks of particular localities requiring other hours for opening *and* closing, and not for opening *or* closing. It is undoubtedly the general rule introduced by the schedule that every hotel, inn, and public-house shall be kept open for fifteen hours—that is to say, shall be entitled to be open for fifteen hours; and I think it would require a proviso of a somewhat different kind from this, and differently expressed, to allow the Magistrates or the Justices to interfere with the number of hours which is thus assigned to public-house keepers and hotel-keepers for remaining open. But I don't desire to put my judgment on that ground, which may admit of more hesitation than the other. I think the plain ground of the judgment here is, that the Magistrates of Rothesay have endeavoured, under the cover of this power which is given them in the proviso of the second section, to do a thing which the Act never contemplated or intended they should have the power to do.

I have thought it best to deal with this question upon its merits in the first place, before saying anything on certain preliminary pleas which are stated by the defender, because those preliminary pleas can be best judged of when one understands exactly what the question upon the merits is. The defenders plead that the present action is incompetent, review being excluded by the 34th section of the statute 25 and 26 Vict., c. 35. Now, that 34th section enacts that "no warrant, sentence, order, decree, judgment, or decision made or given by any Quarter Sessions, Sheriff, Justice or Justices of the Peace, or Magistrate, in any cause, prosecution, or complaint, or in any other matter under the authority of the said recited Act or of this Act, shall be subject to reduction, advocation, suspension, or appeal, or any other form of review or stay of execution, on any ground or for any reason whatever other than by this Act provided." Now, the plain answer to the objection founded upon this section is, that the present is not a process of review, nor is it in any proper sense a stay of execution. It is a proceeding brought in the Court for the purpose of setting aside as incompetent and illegal the proceedings of an inferior Court; and the jurisdiction of this Court to entertain such an action cannot be doubted, notwithstanding the entire prohibition of review of any kind. This is not review, as I said before, but it is the interference of the Supreme Court for the purpose of keeping inferior Courts within the bounds of their jurisdiction. The Magistrates having exceeded their powers under the statute, their order, whatever it may be—or decision—is liable to be set aside.

But, in the second place, the defenders maintain that the action, not having been commenced within two months after the cause of action had arisen, is barred by the clause of limitation in the 25th and 26th Vict., c. 35, sec. 35. That section provides that "every action or prosecution against any Sheriff, Justice or Justices of the Peace, Magistrate, or Judge acting under any general or local Police Act, or against any Sheriff-Clerk, Clerk of the Peace, or Town-Clerk, or any Procurator-Fiscal, or any other officer of police, or constable, or other person, on account of anything done in the execution of the recited Acts and this Act, or any of them, shall be commenced within two months after the cause of the action or prosecution shall have arisen, and not afterwards." Now, I think, so far as the reductive conclusions of this summons are concerned, that this section has no application. It is not an action or prosecution within the meaning of the 35th section at all. It is a proceeding for the purpose of setting aside an incompetent and illegal proceeding of the Magistrates. But, no doubt, this summons also contains conclusions for damages, and the 35th section does apply to a case of that kind; indeed, it is the very case contemplated by the 35th section. The only question therefore is, Whether the facts found the plea upon the 35th section? Is this action brought within two months after the cause of action shall have arisen, or is it beyond the two months? Now, the decision of the Magistrates on this matter was upon the 15th April, and the summons was executed upon the 15th of June. We had some ingenious observations made upon the computation of time, and some English authorities were quoted to us, which, if I understand them aright, established a different rule in the computation of time from that which prevails in Scotland. But I have no hesitation in saying that, according to the well-established rule for the computation of time in our law, an action brought upon 15th of June is brought within two months of the 15th of April; and I think it quite unnecessary to say more about it, because the thing is settled over and over again with reference to a great variety of cases.

I therefore think that the preliminary pleas of the defenders are not well-founded, and that the pursuers are entitled to a remedy such as they seek under this summons. But it remains for consideration in what precise form that remedy should be given. They conclude for reduction of the resolution of the Magistrates—that is, the general resolution to which they came about closing hotels and public-houses at ten o'clock, and they also conclude for reduction of the condition as to the hour of closing inserted in the said certificate as aforesaid; and I am of opinion that the pursuers are entitled to prevail in that conclusion for reduction. But there remains a little difficulty, because if the condition as to the hour of closing inserted in the certificates is set aside, there would remain in the certificates no

by the remarks which your Lordships have made, I cannot say that my difficulty is entirely removed.

But for the great respect with which I regard the opinion of your Lordships, and the great reluctance which I feel to differ on a question of construction of a statute of this kind, which is of extensive application and of practical importance, I should have been rather disposed to take a different view of the 2nd section of this Act; and I should have hesitated in coming to the conclusion that the Magistrates of Rothesay, dealing with premises within the Burgh, and acting in the wide discretion committed to them, have here exceeded their statutory powers. I should have been inclined to think that the Magistrates had power to insert in the certificates a condition that inns, hotels, and public-houses shall be closed at 10 o'clock at night instead of 11 o'clock, and had the power to direct the insertion of such condition within the area of the "particular locality" in question, the same being literally within the Burgh of Rothesay. If the Magistrates could have issued that order, and inserted that condition, in regard to one street or one district in the burgh, or several streets or districts in the burgh, which is scarcely disputed, then I have great difficulty in holding that they could not do the same thing in a larger area, still within the burgh, but including all the public-houses. It rather seems to me that if the limitation of hours was to be enforced at all, —a matter on which there may be difference of opinion, but on which the Magistrates must judge,— then, equality, impartiality, and justice, would be better promoted by the course which they took than by confining the resolution to a few streets. To limit the hours all over the town, and in all the public-houses, may be an extreme or an unwise measure. Some at least may think so. But to limit the hours in one half of the town seems to me to be less just.

The law trusts the Magistrates. The law has committed to them a wide discretion in this matter. I have no doubt that they acted from the best motives, and according to their deliberate judgment. It is not for us to say whether they acted wisely or not. We are not called on to judge—we are not entitled to judge—on this matter. The duty and responsibility rested with them: and in the discharge of that duty, under that responsibility, they have issued the resolution and order now complained of. These are my difficulties.

The judgment of your Lordships settles the question of construction of the statute and the question of the lawfulness or competency of the resolution: and having regard to the provisions in the series of statutes to which your Lordship has adverted in a most instructive commentary, I have not formed an opinion sufficiently clear and decided to justify my dissent from the judgment; accordingly I do not dissent. But I think it right, at the same time, to express shortly and with much diffidence the doubts which I entertain. Nor can I regret the result at which your Lordships have arrived, for I am one of those who feel that not so much by restraint of law as by moral influences and Christian example can the social reformation which these Magistrates desire be effectually promoted.

LORD JERVISWOODE concurred.

The Court pronounced the following interlocutor:—

"Recall the said interlocutor, repell the defences, reduce, decern, and declare in terms of the reductive conclusions of the summons; and decern and ordain the defender John Wilson, as town-clerk of the Magistrates of Rothesay, to delete the word 'ten,' standing at present in each of the certificates granted to the pursuers by the defenders the Magistrates of Rothesay, to denote the hour of closing the pursuers' hotels for the sale of exciseable liquors, and to substitute therefor in each of the said certificates the word 'eleven,' to denote such hour of closing; *quoad ultra*, of consent of the pursuers, assoilzie the defenders, and decern; find the pursuers entitled to expenses; allow an account thereof to be given in, and remit the same when lodged to the Auditor to tax and report."

Counsel for Pursuers—Watson and R. V. Campbell. Agent—A. Kirk Mackie, S.S.C.

Counsel for Defenders—Solicitor-General (Clark) and Orr Paterson. Agents—J. & A. Peddie, W.S.

M., Clerk.

Saturday, June 21.

SECOND DIVISION.

[Lord Mackenzie, Ordinary.

MALCOLM *v.* KIRK.

Entail—Debts—Alienation—Prohibitive and Irritant Clauses—Act 1685, *c.* 22—*Act* 11 *and* 12 *Vict. c.* 36.

A deed of entail, otherwise duly fenced with irritant and resolutive clauses, contained certain reservations permitting the contraction of debt, and sale of portions of the estate to pay off the debt thus permitted to be contracted. *Held* that the entail was nevertheless valid and effectual under the Act 1685, c. 32, and that the provisions of Act 11 and 12 Vict. c. 36, consequently did not apply.

This case came up by reclaiming note against the interlocutor of the Lord Ordinary.

The pursuers pleaded—"(1) In respect of the reservations contained in the deed of taillie from the prohibitions thereby imposed, the same does not contain valid or effectual prohibitions against either the contraction of debt, or against sales or alienations, or one or other of them, in terms of the Act 1685, cap. 22. (2) Even assuming that the entail contains the three cardinal prohibitions required by the Act 1685, cap. 22, none of these prohibitions is, or at least one or other of them is not, validly fenced with irritant and resolutive clauses. (3) The entail does not effectually exclude or annul diligence against the estate at the instance of creditors for or in respect of debts contracted by the heirs of entail. (4) The entail being an incomplete and imperfect entail in terms of the Act 1685, cap. 22, is, in virtue of the provisions contained in the Act 11 and 12 Vict. cap. 36, invalid and defective *in toto*, and the pursuer is entitled to decree as concluded for."

The defender pleaded that the entail being complete and unassailable he was entitled to be assoilzied with expenses.

The disposition and deed of taillie in question contains, *inter alia*, a prohibitory clause or prohibi-