conditional on the institute not having altered; and Stair lays this down very clearly—"The ordinary intent of such clauses is to appoint portions for the bairns named therein, who therefore are substitute heirs of provision to their father, so that if he do not expressly alter or prejudge the substitution his intent is that they succeed him whensoever." And again—"The nature and intent of such clauses is not to constitute the first person as a naked liferenter, but that they are understood as if they were thus expressed—'With power to the first person to alter and dispose at his pleasure during his life.'" The only exception which subsequent practice has admitted to this rule is when the substitution is in favour of the granter himself under a clause of return; in which case it has been held that the granter is only divested conditionally and *sub modo*, and that the property must revert when the condition is fulfilled, preferably to gratuitous disponee of the institute or his heirs. But even in this case the institute may alter gratuitously if his original right was onerous or in fulfilment of a prior obligation. The general effect, however, of a bare substitution or destination, even when the right of the institute is gratuitous, has never been doubted, and no authority to the contrary was quoted to us. The cases in regard to clauses of return, collected in Morrison's Dictionary under the head of Fiar, Absolute and Limited, and especially the case of the *Duke of Hamilton* v. *Douglas*, there reported, illustrate this branch of the law very fully.

But, no doubt, a destination may be accompanied by a prohibition to alter, gratuitously imposed on the institute; and this may be either express or derived from clear implication. It was maintained that such a prohibition was implied here—first, from the general tenor of the contract, and, secondly, from its special clauses.

As to the first, I am of opinion that the general tenor of the contract leads to the very opposite presumption. This conveyance proceeded on the most onerous considerations as regarded the institute. It was contained in her antenuptial marriage-contract. She renounced her legal rights, and she brought her husband £300—about half of what he ultimately left. On the other hand, the right of the children of the first marriage was not onerous in any sense. They gave no consideration for it. There was no obligation of any kind on either party to the contract to confer it, and their legal rights in their father's succession were not only not impaired, but were necessarily augmented by the wife's fortune. They were, as regarded this provision, simply third parties.

As regards the clause in the contract declaring "that none of the substitutes shall be entitled to interfere with Janet Weir during her survivance in regard to the management or disposal of the said means and estate," and which is supposed to limit the right of the institute, I should hesitate merely from words of limitation on the substitutes to spell out a restriction on the right of the institute. The inference, at the best, is uncertain and ambiguous, But I read this clause differently. I think it merely expresses what Lord Stair says such clauses imply, an absolute right in the widow during her survivance to manage and dispose of the property, and the absence of all right or interest on the part of the substitutes to prevent her. There is not a word said as to the clause being limited to deeds to take effect during the institute's survivance; and I see no reason to infer that such was its intention.

On the third question, how far Mrs Dyer's general settlement did evacuate the substitution, the point was decided *in terminis* in the case of *Leitch*, in the House of Lords, 3 W. and S. 366, and was treated in the case of *Baine* v. *Craig*, 7 D. 845, as not being open to argument.

The other Judges concurred.

Counsel for Parties of the First Part—Darling. Agents—Gillespie & Paterson, W.S.

Counsel for Parties of the Second Part—Kinnear and H. Moncrieff. Agents—Maconochie & Hare W.S.

Wednesday, May 27.

SECOND DIVISION.

SPECIAL CASE FOR JAMES CRAIG, INSPECTOR OF THE POOR OF THE PARISH OF ST CUTHBERTS, AND THE EDINBURGH STREET TRAMWAYS COMPANY.

Poor—Stat. 8 *and* 9 *Vict. c.* 83.

Held that a Tramway Company were liable to be assessed for support of the poor, as owners and occupiers of lands and heritages.

The party of the first part to this Special Case was the Inspector of the Poor of St Cuthbert's Parish, Edinburgh. The second party was the Edinburgh Tramway Company. The questions submitted for the opinion of the Court were:—

"(1) Are the Tramways belonging to the second party liable to assessment for poor rates as lands and heritages?

"(2) Is the second party liable to be assessed for poor rates as occupier and owner of such lands and heritages, or as owner, or as occupier, of such lands and heritages?"

The Tramway Company are incorporated by the Act 34 and 35 Vict., in which are incorporated, *inter alia*, parts II and III of the Act 33 and 34 Vict. c. 78. By sec. 57 of the last mentioned Act it is enacted that, "notwithstanding anything in this Act contained, the promoters of any tramway shall not acquire or be deemed to acquire any right other than that of user of any road along or across which they lay any tramway, nor shall anything contained in this Act exempt the promoters of any tramway laid along any turnpike road, or any other person using such tramway, from the payment of such tolls as may be levied in respect of the use of such road by the trustees thereof." The second party stated that the assessor of railways and canals has valued the line of tramways belonging to the said second party, and has included the said line in the valuation roll prepared by him for the year from Whitsunday 1872 to Whitsunday 1873 as lands and heritages belonging to or leased by and forming part of the undertaking of the second party—and the yearly value of the said 2 miles 41 chains of the second parties' line situated within the parish of St Cuthberts and burgh of Edinburgh is stated by him to be £904. The first party, in terms of their powers of assessment, imposed upon the second party as owner and occupier of the said line of tramways an assessment for the relief of the poor of the said parish, for the year ending Whit-

sunday 1873, amounting to £33, 18s. sterling, being at the rate of tenpence per £ upon the said yearly rent or value as entered in the said valuation roll. But the second party has declined to pay the assessment, and maintains that the tramways are not lands and heritages in the sense of the Poor Law Act, and that, even assuming them to be lands and heritages, the second party is neither owner nor occupier thereof.

Cases cited—*Hay* v. *Edinburgh Water Company*, 12 D. 1240, H. of L. 1 Macq. 682; *Pimlico Tramway Company* v. *Greenwich*, L. R. C. J. vol. ix, p. 9

At advising—

LORD BENHOLME—Two questions are raised in this Special Case.

On the first question I am moved by the statement in the 18th article, that the assessor has valued the line of tramways and included the said line in the valuation roll as lands and heritages belonging to or leased by the second party.

Besides, the English authority stated leaves no room for doubt that the parties here who occupy, and I think are owners in the sense of the statute, are liable to be assessed.

If the question was, are they feudal owners? there might be some difficulty, but the Poor Law Act removes any such difficulty and defines owners to "be persons who shall be in the actual receipt of the rents and profits of lands and heritages," and so clearly ascertains these parties to be owners. They have a permanent right, and their engagement is as long as they choose to be a company.

LORD NEAVES—I concur. The case of *Hay* was the first to bring this species of occupancy into prominence, and applied to a state of things which must include tramways.

The English authorities also throw light on it. The only specialty founded on here is, that in the Tramway Act, § 57, it is enacted that the promoters are not to have any right higher than that of user, but the fact that they are in the actual receipt of the profits is sufficient without a feudal title.

LORD ORMIDALE—I concur. There is no doubt the Tramway Company occupies lands. They are in the permanent and exclusive occupancy, and they are in receipt of the rents and profits of lands so occupied. The only doubt which occurred to me arose from the expression user in the 57th section. I do not require to state the meaning of the term in England, but I think it just amounts to this, that occupation of lands which is permanent and exclusive, and accompanied by receipt of rents and profits according to the Poor Law Amendment Act, are requisite to constitute liability as owner and occupier.

LORD JUSTICE-CLERK—I concur. On the question whether these rails and sleepers are lands and heritages I think the case of *Hay* is conclusive, and that they must be put in same class as water and gas pipes. When they have been put on the valuation roll, then comes the question, Who is the owner? It is clear no one is owner but the Tramway Company. Whatever the term user may mean, the Tramway Company have the right of receiving the rents and profits, and that, taken along with the terms of the Poor Law Amendment Act, is sufficient to constitute liability.

Counsel for Parish of St Cuthbert's—Marshall. Agent—E. Miln, S.S.C.

Counsel for Tramway Co.—Mansfield. Agents—Lindsay, Paterson & Hall, W.S.

Wednesday, May 27.

FIRST DIVISION.

[Lord Mackenzie, Ordinary.

STIRLING & FERGUSON *v.* MAGISTRATES OF TURRIFF.

13 *and* 14 *Vict. c.* 33—25 *and* 26 *Vict. c.* 101—*Finality of Sheriff's judgment.*

The Police Commissioners of a Burgh elected under the Act 13 and 14 Vict. c. 33, resolved to adopt the Act 25 and 26 Vict. c. 101, in accordance with a resolution passed at a public meeting. The statutory provisions as to notice and advertisement were not complied with, but a petition was at once presented to the Sheriff, on consideration of which he declared the Act to have been duly adopted, his judgment being declared by section 20 of the latter Act to be final. *Held* that the proceedings on which his judgment was based having been informal and reducible, his judgment fell with them, notwithstanding the finality clause.

The Magistrates of Turriff, elected under the Act 13 and 14 Vict. cap. 33, resolved to adopt the more recent "Police and Improvement Act" 25 and 26 Vict. cap. 101, according to the provision contained in section 15, (sub-section 3) which provides that the Act may be adopted "In burghs, not being royal or parliamentary burghs, which have adopted in whole or in part the provisions of the said Act 13 and 14 Vict., cap. 33, or which have Commissioners or Trustees of Police under the provisions of any local Act of Parliament, by a special order, as hereinafter defined, of the Commissioners or Trustees of Police acting in and for such burghs respectively." At a special meeting of said Commissioners, under 13 and 14 Vict., held in the Town-Hall on 24th November 1873, it was unanimously resolved that the Magistrates and Commissioners should adopt the said Act 25 and 26 Vict., cap. 101, and that they should meet in the Town-Hall at 8 o'clock on the evening of Friday the 26th day of December then proximo, and then and there adopt said Act. The clerk was accordingly instructed to give a month's notice in writing of said meeting to each of the Commissioners. A minute of the meeting was made and signed by the clerk and the chairman of the meeting. In terms of the said minute the clerk served upon each of the Commissioners a notice of the resolution come to at said meeting, and of the meeting to be held on 26th December to adopt the Act. No other notice was given of said resolution, or of the meeting to be held. The public were not made aware thereof in any way.

By section 15 of the said Act 25 and 26 Vict., cap. 101, provision is made for the adoption of said Act by Magistrates and Councils, or Commissioners, or Trustees of Police. It is thereby enacted that "This Act may be adopted either in whole or in part, (that is to say), in parts, sections, or clauses;" and, *inter alia*, that it may be so adopted (sub-section 3) "in burghs not being royal or parliamentary burghs, which have adopted in whole or in part the provisions of the said Act 13 and 14 Vict., cap. 33, or which have Commissioners or Trustees of Police, under the provisions of any local Act of Parliament, by a special order, as hereinafter defined, of the Commissioners or Trustees of Police, acting in and for such burghs respectively." There is no statutory definition of what is a