doubt and attended by such difficulty. I think he is entitled so to decline. He is not bound to incur the risk or expense of litigation. The fact that the validity and sufficiency of the title is open to serious doubt is enough to support his refusal.

I may refer to the case of *Dick* v. *Cuthbertson* in the House of Lords on 12th Dec. 1826, and in this Court on 30th Nov. 1830, and the cases of *Brown* v. *Cheyne*, 6th Dec. 1833, and *Dunlop* v. *Crawford*, 25th Jan. 1850, and I do so, not to support the defender's objections, but to illustrate the remark that, if there is serious doubt the purchaser may decline to accept the title offered. He has a right to a valid and unchallengeable title—he is not bound to enter on litigation.

As the points raised in regard to the effect of the diligence of creditors and of incumbrances created thereon, is not free from doubt, and as the purchaser declares he is not satisfied, I think that the Court ought not, in absence of the creditors, to interfere in the matter. The objection to the giving of consents by Sir James Mackenzie and Lady Anne Mackenzie is not, I think, equally formidable. On that point I agree with your Lordship. I do not think the power was a trust; it was simply a power, and if there were no other objection I think that the power could be well exercised. It is on the other objection that I rest my opinion, that this Court ought not to ordain the purchaser to accept the title offered.

LORD JERVISWOODE concurred.

The Court pronounced the following interlocutor:—

"Recal the said interlocutor; find that the defender is not bound to accept of a disposition, and pay the price of the lands sold, so long as securities and diligences affecting, or which may affect, Sir James Mackenzie's interest in the lands sold, remain undischarged; therefore assoilzie the defender (reclaimer) from the petitory conclusions of the summons; find it unnecessary to dispose of the other conclusions, and therefore *quoad ultra* dismiss the action, and decern; find the defender entitled to expenses, and remit to the Auditor to tax the amount thereof and to report."

Counsel for the Pursuer—Lee and Mackintosh. Agents—Mackenzie & Black, W.S.

Counsel for the Defenders—Watson and Asher. Agents—Gibson-Craig, Dalziel & Brodies, W.S.

Friday, June 19.

FIRST DIVISION.

SPECIAL CASE—MACKENZIE AND OTHERS.

Succession—Power to Dispose.

Circumstances in which *held* that a power to dispose of a fund by settlement had not been exercised by a testatrix.

Succession—Testament—Executor—Power to Dispose.

Question whether a power to dispose of a fund by settlement can be exercised by a testament containing a bare nomination of an executor.

This Special Case was brought in the following circumstances:—The late John Gillanders, heir of entail in possession of Highfield, and also proprietor of certain lands in fee-simple, all situated in the counties of Ross and Aberdeen, executed, on 26th November 1824, a general trust-disposition and settlement. By this deed Mr Gillanders conveyed to trustees his whole means and estate with the exception of all lands in the counties of Ross and Aberdeen then belonging to him under the fetters of entail, or in fee-simple. After directing payment to be made of his debts, &c., and of an annuity to his wife under their contract of marriage, dated 28th November 1801, and on the narrative, *inter alia*, that by the said marriage-contract, in virtue of powers under the deed of entail of Highfield, the truster had provided his younger children, if more than one, in the sum of £800, payable at their majorities or marriages, subject to a power of division, and failing division, equally among them, and had further bound himself and his heirs and successors to make payment to his said younger children of the additional sum of £1500 out of funds under the said marriage-contract, payable and divisible as aforesaid, and that in lieu of these provisions he granted the following provisions — the truster directed his trustees at the first Whitsunday or Martinmas after his death, either to stock out or appropriate out of the trust-funds invested at the date of the trust coming into operation, a sum of £2000, whereof the interest was to be paid half-yearly to the truster's daughter, the said now deceased Margaret Mackenzie Gillanders (named in the said general trust-disposition Margaret Gillanders), so long as she should remain unmarried; and in the event of her marriage, the trustees and their foresaids were appointed to lay out the said sum of £2000 on good security, to be taken in favour of the truster's said daughter Margaret in liferent, excluding her husband's *jus mariti*, and the lawful issue of her body in fee, but under the declaration that should she die unmarried or if married, without leaving lawful issue, that then and in that case, and in either event, she should have full power to dispose by settlement of any part of the said principal sum not exceeding £1000 sterling to and in favour of such person or persons, or for such purpose or purposes as she might think fit, it being expressly provided and declared that the remaining part of the said provision, and the whole of the provision in case the trustee's said daughter Margaret should not have disposed of any part thereof by settlement as aforesaid, should fall and revert to the said trustees and their foresaids, and be applied by them as after specified in the said trust-disposition.

After making a similar provision in favour of his other daughter Catherine Gillanders the truster declared that the said provisions in favour of his said daughters Margaret and Catherine, were in lieu and full satisfaction to them of their shares of said sums of £800 and £1500, all right to which they, by acceptance of the said provision under his trust deed, renounced and for ever discharged.

After all the purposes of the trust were accomplished and fulfilled, the truster directed his trustees to apply the residue of the trust estate in the payment and discharge of all debts affecting the said entailed estate of Highfield at or prior to the truster's disease, should any then exist, and on that being effected, to pay over the balance, if any, to the heir of entail in possession of the said estate for the time, provided he was also the truster's heir of line; but if the heir of entail of Highfield was

not the truster's heir of line, then the trustees were appointed to pay such balance, if any, to the truster's heir of line then in existence, though not in possession of the said entailed estate of Highfield.

By the said trust-disposition it was further declared that the whole provisions therein conceived in favour of the truster's daughters should be accepted of by them, and were in full, not only of the provisions stipulated in their favour by the said marriage-contract, and under the said deed of entail, but also in full of all *legitim*, portion natural, bairns' part of gear, executry, or others whatsoever, which they could ask or demand by and through his decease, or by and through the decease of their mother, or in any other manner of way whatsoever.

The truster died on 2d May 1831, survived by his daughters Margaret and Catherine; and the persons nominated by him as trustees accepted and entered on the administration of the trust committed to them.

The said Margaret Mackenzie Gillanders, who was never married, accepted the provision in her favour under the truster's settlement in lieu and satisfaction of the sums due her under her father's marriage-contract.

She died on 12th March 1873, leaving a last will and testament, executed by her on 10th March 1873, whereby she appointed her nephew George Gillanders to be her executor, and directed him to pay her whole just and lawful debts and funeral expenses, and appointed him to pay and divide the whole residue and remainder of the estate, after payment of the said debts and funeral expenses, and any legacies she might bequeath, to and among her nephews and nieces, and the lawful issue *per stirpes* of such as might have predeceased her, equally share and share alike; and also disponed to the said George Francis Gillanders in trust as aforesaid her whole heritable estate. The said last will and testament also contained two bequests of £500 each.

The said last will and testament did not contain any express reference to the power granted by the deed of settlement of Mr John Gillanders, her father, to dispose of any part of the said principal sum of £2000 not exceeding £1000.

The parties to this case were, *first*, the trustees of Mr John Gillanders of Highfield; *second*, James Falconer Gillanders, heir of entail in possession of Highfield, and heir of line of the said John Gillanders; *third*, George Francis Gillanders, executor of Miss Margaret Gillanders; and *fourth*, the children of Mrs Catherine Gillanders or Inglis.

The following questions were submitted for the opinion and judgment of the Court: — "(1) Whether the said sum of £2000, mentioned in Article 3, and interest thereof from the 12th March 1873, fall to be applied by the first parties hereto in payment and discharge of debts affecting the entailed estate of Highfield at or prior to the truster's decease, and the balance, if any, thereafter remaining, to be paid to the second party hereto; or, (2) Whether the said sum of £2000, and interest thereof from 12th March 1873, to the extent of the sum of £1000, and corresponding interest, fall to be paid over to the said George Francis Gillanders, as executor foresaid, to be applied by him in terms of the last will and testament of the said Margaret Mackenzie Gillanders."

The second party argued — The power to dispose of a fund was not exercised by the mere nomination of an executor. The executor could only take up moveable estate, and it was impossible to say that this £1000 was part of Miss Margaret Gillanders' moveable estate, for she had only a liferent right to the fund of which it was a part. Thus the power conferred upon Miss Margaret Gillanders was not specially exercised, and exercise of such a power was not to be presumed. Again, the circumstances of the case was against the presumption that Miss Gillanders intended to exercise the power, because, although her nephews and nieces were the favoured parties under her will, she had ample means to provide for them, and the person who benefited by the £1000 if she did not dispose of it was her only brother.

The third and fourth parties argued that the power of disposing of the £1000 was exercised by Miss Gillanders when she executed a will appointing an executor. It was settled that an express conveyance of the whole means and estate involved the exercise of a power to convey a fund, although that fund was not the property of the testator, and it was also settled that the mere nomination of an executor carried the whole personal estate of the testator. If, then, the mere nomination of an executor had this effect, why should it not also have the effect of exercising a power to dispose of a fund.

Authorities—*Jardine* v. *Jardine*, Jan. 22, 1850, 12 D. 504; *Bradley* v. *Westcott*, 1807; 13 Vesey 445; *Mill* v. *Smith*, Jan. 6, 1826, 4 S. 679: *Hislop* v. *Maxwell*, Feb. 11, 1834, 12 S. 413; *Grierson*, July 1852, 14 D. 959; Menzies' Conveyancing, 422; *White* v. *Findlay*, 24 D. 47.

At advising—

Lord President—The question presented to us in this case is substantially this, whether Miss Gillanders did by her will exercise a power conferred upon her by her father's trust-settlement, of disposing of a certain sum of money. By his settlement Mr Gillanders made certain provisions for his daughters, and declared these provisions to be in satisfaction of the provisions in their favour in his marriage-contract, of *legitim*, and of all legal claims. The provisions made by this settlement were larger than those in the contract of marriage.

The terms in which these provisions are expressed are very important in regard to the present question. They are in the following terms:— "My said trustees and their foresaids shall at the first Whitsunday or Martinmas after my death either stock out, or appropriate out of my funds already invested, a sum of two thousand pounds sterling, the interest whereof to be paid half-yearly to my daughter Margaret Gillanders, so long as she remains unmarried, and in the event of her marriage, my said trustees and their foresaids shall lay out the said sum of two thousand pounds on good security, to be taken in favour of my said daughter in life-rent, excluding her husband's *jus mariti*, and the lawful issue of her body in fee, but declaring that should she die unmarried, or, if married, without leaving lawful issue, that then and in that case and in either event she shall have full power to dispose by settlement of any part of the said principal sum not exceeding one thousand pounds sterling, to and in favour of such person or persons, or for such purpose or purposes, as she may think fit: declaring farther, as it is hereby expressly provided and declared, that the remaining

part of the said provision, and the whole of the provision in case my said daughter shall not have disposed of any part thereof by settlement as aforesaid, shall fall and revert to my said trustees and their foresaids, and be applied by them towards the purposes of the trust as after-specified." These purposes are:—"And lastly, my said trustees and their aforesaids shall apply the residue of the trust-estate in the payment and discharge of all debts affecting the said entailed estate of Highfield at or prior to my decease, should any then exist, and on this being effected, to pay over the balance, if any, to the heir of entail in possession of the said estate for the time, provided he is also my heir of line, but if he is not, then such balance, if any, to be paid to my heir of line then in existence, though not in possession of the said entailed estate."

Now the will of Miss Gillanders does not expressly exercise the power given to her in her father's trust-settlement, nor is that power of the settlement referred to. The question is, is there anything to show that Miss Gillanders intended to exercise the power. The power is to dispose of any part of the £2000 not exceeding £1000. That is rather a peculiar power, and it is further to be observed that if the power is not exercised the whole provision is to become part of the residue of the estate, which is destined for the purpose, 1st, of discharging the debts affecting the entailed estate; and, 2dly, for the benefit of the heir of entail in possession, if also the granter's heir of line. When Miss Gillanders made her will the state of affairs was this:—her nearest relation was her brother, who was heir of entail in possession of the estate, and heir of line to her father, and whether Miss Gillanders had a greater favour for any body else, or whether, as regards this particular fund, she preferred that it should go to her brother, we have little means of judging. There is no presumption one way or the other. Most cases of this nature which we have had have been cases of a general conveyance of the person's whole estate for trust purposes, and such a conveyance has been held to be a good exercise of a power of the kind which we are now considering. Now, Miss Gillanders could either exercise the power or let it alone. If she let it alone she in effect gave the fund to her brother. Further, this £1000, if dealt with as part of her moveable estate by Miss Gillanders, was but a small part of the wealth she possessed, which at her death amounted to fifteen or twenty thousand pounds. So, although she had many objects of her bounty she had ample means. These are the circumstances in which the will was made, and it is now important to observe the form in which it is made. I do not wish to deal with this matter technically, but it is of great importance to observe that the only way in which the estate is conveyed is by a mere nomination of an executor. But an executor cannot take up anything but the moveable estate, and it is not possible to say that this £1000 was part of Miss Gillanders' moveable estate. She was entitled to dispose of that fund, but it did not belong to her during her life. It could not enter the inventory of her personal estate, and the inventory is the limit of the executor's right. I would not, however, give so much weight to this if it could be shown that there was any intention on the part of the testator to include the £1000 in her will. The provisions of the will are these:—"I hereby appoint my nephew George Francis Gillanders to be my executor, and I direct my said executor to pay my whole just and lawful debts and funeral expenses, and I appoint my said executor to pay and divide the whole residue and remainder of the estate, after payment of said debts and funeral expenses, and any legacies I may bequeath, to and among my nephews and neices and the lawful issue *per stirpes* of such as may have predeceased me, equally share and share alike, and I dispone to the said George Francis Gillanders in trust as aforesaid my whole heritable estate. I leave and bequeath to Duncan Chisholm, my servant, five hundred pounds sterling. I leave and bequeath to the trustees of the Episcopal Church of Scotland for behoof of said Church, and to be applied as they may direct, five hundred pounds sterling; and I consent to the registration hereof for preservation."

That is the whole will, and we have now nothing to do with the disposition of the heritable estate or the legacies. There is thus only the nomination of the executor, and I desire something more to imply the exercise of such a power as we are now dealing with than the mere nomination of an executor.

I am, therefore, of opinion that the first question should be answered in the affirmative, and the second in the negative.

Lord Deas—It is settled in law and practice that if a testator leaves his whole means and estate to certain person or persons named in his will, that will may be a sufficient exercise of a power to dispose of funds not the property of the testator, but which he has been empowered by some one else to dispose of.

I am disposed to think that that doctrine applies not only to the case of a will which in so many words disposes of the whole means and estate of the testator, but also to a will which in point of fact does so by appointing an executor and telling him what to do with the estate. It is an understood matter of law that in order to carry a moveable estate from the dead to the living it is sufficient to appoint an executor. If nothing more is done than to appoint an executor, then the executor holds as trustee for the next of kin of the deceased. At one time the executor got a certain portion of the estate, but that is now done away with by Act of Parliament. But still the nomination of executors carries the administration of the whole estate.

Erskine lays down (iii. 9, 26)—"It has been already said that all the moveable estate of persons deceased, over which they have full powers, or in other words, their dead's part, descends to their next of kin, in so far as it has not been tested upon. And thus the law stands, though another who is a stranger, *i.e.*, who has no interest in the legal succession, be named executor by the deceased in his testament; because he is not by such nomination presumed to exclude his next of kin from the succession, but merely to confer on the executor so named, as an *hæres fiduciarius*, or trustee, the right of administration for his behoof."

The same rule is quite correctly stated by Professor Menzies in these words:—"When an executor is appointed without directions how to dispose of the property, the testament is complete, and the executor in that case is in law *hæres fiduciarius*, a trustee for all concerned, the testament carrying to him the right of the deceased's

whole moveables, wherever they may be, it being fixed law that the personal succession is regulated by the *lex domicilii*."

Thus it is clear that the mere nomination of an executor carries the whole personal estate, without any words of conveyance. Now, when it is settled that the conveyance of the whole means and estate in express words may include a power to dispose of a fund, although that fund is not the property of the testator, is that any reason that the appointment of an executor, having the effect which we have seen it has, should not also include the exercise of such a power?

Either in the case of an express conveyance or of a mere nomination of an executor, the observation that nothing but actual estate of the testator can enter the inventory applies, and if the fact that the fund over which the power exists did not enter the inventory, was a proof that the power had not been exercised, then all the decisions referred to have been erroneous. I therefore cannot agree with your Lordship on these grounds.

But this will, although it may be an exercise of the power, also may not be an exercise of the power, and in order to ascertain this we must look to the facts and circumstances of the case, in order that we may thereby discover the intention of this lady. I rather think that there is a certain presumption that when a testator conveys her whole means and estate to an executor, that is a conveyance of everything over which she has power. That, however, is a very slight presumption, and to arrive at the actual intention of the testator we are entitled to look to the facts and circumstances of the case,—the position of parties and so forth.

Now in that view, although this is a narrow case, I agree with your Lordship that there is enough to show that the lady did not intend to deal with the £1,000. By her father's deed the position of this £1,000 was clearly before her eyes. If she did not dispose of it, it was to go to pay off the debts on the entailed estate, and then to her brother. She knew this perfectly well, and yet she did not in her will allude in any way either to her father's settlement or to this fund, and although the nephews and nieces are the favoured parties under her will, her brother is a nearer relation. On the whole matter, I therefore concur in the conclusion at which your Lordship has arrived.

Lord Ardmillan—The purposes of John Gilanders' trust have been fulfilled, and unless Miss Margaret Gillanders has effectually exercised her power of disposal to the extent of £1000, then the sum of £2000 which, to the extent of £1000 she had power to dispose of, must of course fall into the residue of the trust-estate of John Gillanders, and be applied in terms of the trust-deed.

The sum of £2000 was part of John Gillanders' estate, and fell within his trust. But it was subject to Miss Margaret's disposal by settlement to the extent of £1000. Miss Margaret died on the 12th of March 1873, leaving a settlement, dated 10th March 1873, the terms of which have been already read.

I think that a "power to dispose by settlement" of a specified sum, or a sum within specified limits, may be effectually exercised by the donee of the power by means of a general settlement or *mortis causa* disposition, though the disposition may not expressly bear to be in exercise of the power, and may not refer to it. This is in accordance with many decisions—from *Smith* v. *Milne*, on June 6, 1826, down to a very recent date. I may particularly mention *Hyslop* v. *Maxwell*, 11th February 1834, with the important remarks of Lord Corehouse; *Grierson* v. *Miller*, 3d July 1852, with the opinions of Lord Justice-Clerk Hope and Lord Rutherfurd.

But while a power may, without mention or reference, thus be exercised, the question, whether it has or has not been exercised, is a question of intention. In the case of *Cameron v. Mackie*, in the House of Lords, on 29th August 1833, Lord Brougham explains that in Scottish law, unless it appears as matter of fair construction that the maker of a general settlement did not intend to execute the power, the settlement shall be held a good execution of the power. The question is one of intention, as gathered from the construction of the deed.

In the present case I am of opinion that it was not the intention of Miss Margaret Gillanders to execute this power. The power was peculiar. It was not power to dispose of a specified sum, but of a sum of £2000 to the extent of £1000. She might dispose of £20, or £500, or £1000. The intelligent exercise of the power implied determination of the sum disposed of. How much did she mean to dispose of? She has not expressed her will on that subject, which I think she would have done if she had intended to exercise such a power.

Then she appoints an executor, without express conveyance or assignation to him of her moveable estate; and she conveys to him as trustee her heritable estate. She bequeaths two legacies of £500 each, the one to her servant, the other to her church, and directs the residue to be distributed among her nephews and neices.

Whether this sum of £1000 would, by the exercise of this power, have been well conveyed as part of the executry estate of Miss Margaret—whether it would have been included in the inventory—and whether, if not included in the inventory, it could have passed to the executor under the will, are questions on which I do not at present offer any opinion. I do not think it necessary for the decision of this case, in which it appears to me that there are separate grounds of judgment more free from difficulty.

If the exercise of the power was really intended, then it was validly exercised; and if there was a valid exercise of the power effect would in some way be given to it. But, in the question of intention it is not unimportant to observe, that Miss Gillanders, knowing, as I think must be presumed, the provision in her father's trust-settlement, and knowing that her power of disposal was limited to a certain portion of a fund forming part of his trust-estate, did not, by the terms of her own settlement, convey to her executor her moveable estate, in which alone this fund could be comprehended. She had large funds of her own, more than sufficient to meet and satisfy all the purposes of her settlement. I think she had above £15,000. Then the parties ultimately benefited by her father's trust were her own nearest relations, and I see no reason to suppose that she meant to deprive them of the benefit, and to do so, not by bequeathing to others, but by the mere nomination of an executor. Her own funds would amply and immediately meet the bequests, and whatever may he the scope of the settlement, her own funds must be primarily applicable to the

bequests. Then the question really is,—Was it her intention to deal with this particular fund, and to exercise this power of disposal, by bringing it, without specifying or defining it, or in any way indicating its amount, into the residue of her estate?

The question is one of much delicacy. But, on the whole, I have arrived at the conclusion that it was not her intention to exercise this power of disposal by the will which she executed on 10th March 1873.

Lord Jerviswoode concurred with Lord Ardmillan.

The Court answered the first question in the affirmative, and the second in the negative.

Counsel for the First and Second Parties—Duncan. Agents—Mackenzies & Fraser, W.S., and Hamilton, Kinnear, & Beatson, W.S.

Counsel for the Third Parties—Pearson. Agents—Menzies & Coventry, W.S.

Counsel for the Fourth Parties—Mackintosh. Agents—Murray, Beith & Murray, W.S.

Tuesday, June 23.

SECOND DIVISION.

[Lord Mackenzie, Ordinary.

THE DICK TRUSTEES AND OTHERS *v.* THE EDINBURGH VETERINARY MEDICAL SOCIETY.

Contract—Voluntary Association—Usage.

Held (1) that a majority of the members of a voluntary association are entitled to sue in name of the association; (2) where one of the rules of the association provided that "no rule shall be cancelled or altered unless a fortnight's notice be given, and then only by the votes of a majority of at least two thirds of the society,—*Held* that according to the usage of the society the votes of a majority of two-thirds of the members present at a meeting of the society was sufficient to comply with the rule.

This action arose out of differences between the Dick Trustees and the late Principal Williams. The pursuers in the action were the office-bearers and a large majority of the members of the Edinburgh Veterinary Medical Society, while the defenders called were the Corporation of Edinburgh, as trustees of the late Professor Dick, Professor Fearnley, at the time Principal of the Edinburgh Veterinary College, Clyde Street, and several members of the pursuers' Society. The purpose of the action was to have it declared that the pursuers constituted the Edinburgh Veterinary Medical Society, and had right to all its property and effects, and particularly to the library and certain specimens now situated in the college in Clyde Street, formerly occupied by the Society. Defences were not, however, actually put in for any of the defenders except the Dick Trustees and Principal Fearnley.

The pleas in law for the pursuers were—"(1) The pursuers being the office-bearers and a large majority of the whole members of the said Veterinary Medical Society, they, along with the remaining members thereof, constitute the said Society, and have right to the whole property and effects belonging thereto. (2) The foresaid library and other articles in the Edinburgh Veterinary College being the property of the said Society, the pursuers are entitled to remove the said articles from the said college, and to have the custody and use and enjoyment thereof, without any control or interference on the part of the defenders, or any of them. (3) None of the defenders appearing in this action having any right or title to the said library, or other property, they are bound to deliver the same to the pursuers. (4) The said defenders having refused to allow the pursuers to remove the said library and other articles from the said college, and the whole grounds on which they claim right to retain the same being groundless and untenable, and, *separatim*, being *jus tertii* of the defenders, the pursuers are entitled to decree against them, in terms of the conclusions of the summons, with expenses. (5) The defenders have no title to maintain the pleas stated by them in defence."

The pleas for the defenders were—"(1) The pursuers have no title to sue the present action. (2) The pursuers' averments being unfounded and irrelevant, the defenders ought to be assoilzied. (3) The pursuers having connected themselves with a Veterinary School other than the Edinburgh Veterinary College, have forfeited all right to the use of the library and periodicals of the Edinburgh Veterinary Medical Society of the said college. (4) It is an essential part of the constitution of the said Veterinary Medical Society, in the intention of its originators, and also by its rules, that it shall be an adjunct of the Edinburgh Veterinary College, and only exist in connection therewith, and the alleged alteration of this part of the constitution of the Society is invalid. (5) The pretended alterations made by the pursuers on the rules of the Society not having been legally proposed and carried, cannot be given effect to. (6) In respect that the library of books and other effects concluded for were founded and in part endowed by Professor Dick, as a library and museum intended to be auxiliary to the study of veterinary science and medicine in the Edinburgh Veterinary College, and that the said library and museum, by the rules of the Society, are to be locally connected with the said college; the defenders are not entitled to make delivery in terms of the conclusions of the summons."

The Lord Ordinary pronounced the following interlocutor:—

"*Edinburgh, 10th April* 1874.—The Lord Ordinary having heard the counsel for the parties, and considered the closed record, proof, and process; finds and declares that the defenders, the Lord Provost, Magistrates, and Council of the city of Edinburgh, as trustees of the deceased William Dick, professor of veterinary medicine in the Veterinary College, Edinburgh, under his trust-disposition and settlement libelled on, and the defender, William Fearnley, as Principal of the said Veterinary College, have no right or title to the library, *materia medica*, and other specimens, models, and other property belonging to the Edinburgh Veterinary Medical Society, and the members thereof, presently situated within the premises in Clyde Street, Edinburgh, of the said Edinburgh Veterinary College: Finds and declares that the pursuers, as office-bearers and members, and the other members of the Edinburgh Veterinary