my opinion of it in a single sentence. I have come to be very clearly of opinion that the offence provided for under the statute in question, and the clause in question, is that of unlawfully entering or being on ground without leave of the proprietor, for the purpose of capturing and destroying live wild animals; and that it cannot be committed under any other circumstances. I have come to that conclusion after studying the English cases and the argument. Trespass upon land for the purpose of securing some wild animal which another has killed is a totally different matter from the offence specified in the Act. It may or may not show complicity in the act by which the animal was killed, but that is not the crime set out in the statute, and therefore I am for dismissing the appeal.

Lords Young and Craighill concurred.

Appeal dismissed with expenses.

Counsel for Appellant — Balfour — Pearson. Agents—Gibson-Craig, Dalziel, & Brodies, W.S.

Counsel for Respondents—Mackintosh. Agents —J. & A. Peddie & Ivory, W.S.

COURT OF SESSION.

Friday, February 28.*

SECOND DIVISION.

[Lord Rutherfurd Clark, Ordinary.

STIRLING CRAWFURD *v.* DEMPSTER.

Fee and Liferent—Casualty in Feu-Contract—Singular Successor (8 *and* 9 *Vict. c.* 83, *sec.* 52).

It was a condition in a feu-contract that a singular successor, entered or unentered, taking possession of the subjects feued, should pay a casualty of a year's feu-duty. Where under the provisions of an Act of Parliament the magistrates of a burgh transferred certain property held by them under a feu-contract to the parochial board, which possessed for the same purposes and under the same trusts as previously—*held* (*diss.* Lord Young) that the parochial board were singular successors in the sense of the contract, and as such liable in a single payment of the feu-duty as casualty.

This was an action of declarator and for payment of £167, 7s., with interest from 27th April 1848, in name of casualty, raised by William Stuart Stirling Crawfurd of Milton, immediate lawful superior of two separate portions of ground, parts of the lands of Spangsholm, on the estate of Milton, within the Barony parish of Glasgow, against Archibald Dempster, inspector of poor for the city and parish of Glasgow. The predecessors of the pursuer, by feu-contract dated September 1820, "disponed and in feu-farm and heritage perpetually let and demitted" to the directors of the lunatic asylum erected or incorporated by the magistrates of Glasgow a plot of ground, part of the entailed estate of Milton, for the yearly payment of £160, 6s. 10½d. of feu-duty, with an additional year's feu-duty on the entry of each singular successor. On this feu-contract the disponees, directors of the asylum, were infeft in 1821. Another similar feu-contract was entered into between the same parties in 1824, where the amount of the feu-duty was £7, 0s. 1½d. In 1843 the lunatic asylum sold the subjects to the magistrates of Glasgow, and granted them a conveyance thereof, "in trust for the magistrates or the magistrates and council of the city of Glasgow, or others having, by Act of Parliament or otherwise, the power of assessment, and the superintendence, management, and distribution of the funds necessary for the support and maintenance of the poor within said city, and their assignees and disponees whomsoever." The magistrates were infeft on this conveyance, and in 1844 entered with the superior and paid a composition. By the Statute 8 and 9 Vict. cap. 83, section 52 (Poor Law Amendment Act 1845), it was enacted, *inter alia*, that where any property, heritable or moveable, or any revenues, should, at the time of passing the Act, belong to or be vested in the magistrates or magistrates and council of any burgh, or commissioners or trustees, or other persons on behalf of the magistrates or magistrates and council under any Act of Parliament, or under any law or usage, or in virtue of gift, grant, bequest, or otherwise, for the use or benefit of the poor of such parish or burgh, it should be lawful for the parochial board to receive and administer such property and revenues, and the right thereto was to be vested in them; and the magistrates, town-council, commissioners, trustees, or other persons, were "authorised and required either to continue to hold all such property and revenues for the behoof of such parochial board, or to make, grant, subscribe, and deliver such dispositions, assignations, and conveyances of all such property and revenues as may be necessary to enable such parochial board to administer the same for behoof of the poor of such parish or combination."

By disposition, dated 27th April 1848, the provost, magistrates, and council of Glasgow, on the narrative of their being vest in the subjects in trust as aforesaid, and of their having been called on by the parochial board of the city and parish of Glasgow to convey the subjects to them in terms of the Act, conveyed them to the then members of the board, and their successors in office; and the parochial board became infeft therein.

The pursuer averred that the defender became liable on 27th April 1848 in the year's feu-duties sued for as the composition payable on the entry of singular successors, being the total sum of £167, 7s., with interest at 5 per cent. till paid.

The pursuer pleaded, *inter alia*—"(2) The subjects having been in non-entry since the date of the disposition in the defender's favour, the pursuer is entitled to decree of declarator and for payment as concluded for, in terms of the Act 37 and 38 Vict. cap. 94, in respect that but for the said Act he would have been entitled to sue an action of declarator of non-entry against the said defender as singular successor of the vassals last infeft. (4) The said defender being singular successor of the last vassals, is liable, in the feu-contracts libelled on, to pay a composition of one year's feu-duty of said subjects, with interest, as concluded for."

The Lord Ordinary (Rutherfurd Clark) gave

* Decided February 26, 1879.

decree in terms of the conclusion of the summons. He added this note to his interlocutor:—

"*Note*—[*After stating the facts*]—The Poor Law Amendment Act passed in 1845, and under the 52d section the defenders in 1848 required and obtained a disposition of the foresaid subjects to the then members of the parochial board, and their successors in office. Infeftment passed on this disposition in September 1848, but the disponees were not until the Act of 1874 entered with the superior.

"The only question is, whether the defenders are singular successors within the meaning of the feu-contract, and are liable for an additional feu-duty? The Lord Ordinary is of opinion that they are.

"The words 'singular successor,' as they occur in the feu-contracts signify a person who for an entry would have to pay composition. The defenders did not dispute the point; but they argued, that as they held the subjects in the same trusts for which they were held by their predecessors they could not be regarded as singular successors.

"To the Lord Ordinary, however, it appears that the question is to be decided, not by reference to the beneficial interest, but by reference to the investiture. The disposition, which was confirmed in 1844, was in favour of certain persons having office, and their successors in the offices which they held. The defenders are not within that investiture. They could not enter as heirs, and hence they are, it is thought, singular successors."

The defender reclaimed.

At advising—

Lord Ormidale—I am not aware of any authority—institutional or other text writer, or decided case—for the defenders' contention that the question whether a casualty is due to the superior of lands must be judged of and determined, not by reference to the investiture, but to the beneficial interest. Not only is such a contention without, so far as I am aware, any authority to support it, but it is also, I believe, inconsistent with practice, and with what I must hold to be the well established feudal rule or principle applicable to such a matter. Assuming that this is so, it is clear that the casualty of composition as for the entry of a singular successor is due to the superior in the present instance, for undoubtedly the parochial board of the City Parish of Glasgow, the present disponees and holders of the heritable subjects in question, were not in any sense heirs or successors thereto under and in terms of the prior investiture in favour of the provost, bailies, and councillors of the city of Glasgow, but strangers to that investiture. The Parochial Board obviously constitute the commencement of a new investiture. Nor do I think it is of any consequence that the present disponees and holders of the subjects are virtually, although not expressly, trustees, as the disponers to them were—it being certain that the two sets of trustees and their successors are entirely different, and will have right to the subjects under and in terms of different investitures. It may be that the recognition by the superior of the new investiture will have the effect of enfranchising it, so as to entitle those succeeding under it to an entry in future on payment of the casualty of relief as for the entry of an heir, but with that we have no concern at present.

For these reasons, briefly stated—and they are in conformity with the Lord Ordinary's grounds of judgment—I am of opinion that his interlocutor reclaimed against ought to be adhered to.

Lord Gifford—The only question in this case is whether the defenders, the parochial board of the city and parish of Glasgow, or their inspector who represents them, are singular successors in the various subjects mentioned in the summons, and whether as such singular successors the defenders are indebted to the pursuer, as superior of the said subjects, in one year's feu-duty thereof as at 27th April 1848, in terms of the investiture, with interest from 27th April 1848, when the casualty of one year's feu-duty is alleged to have become payable. The subjects were feued out in 1820 and 1824 under two separate feu-contracts granted by the pursuer's predecessors as superiors in favour of the directors of the lunatic asylum erected and incorporated by the magistrates and council of Glasgow under charter of erection or seal of cause dated 17th June 1814. Both feu-contracts are in the same terms, but stipulate for different amounts of feu-duty, and both contracts stipulate that "each singular successor, entered or unentered, taking possession of the said subjects or any part thereof, paying an additional year's feu-duty, or augmented feu-duty, as the case may be, and proportionally for the subdivided parts thereof as therein mentioned, with interest thereof from the decease of their predecessors or the date of the disposition in their favour, renewing the investiture within three months of such period respectively under pain of forfeiture of the feu."

In 1843 the Glasgow Royal Asylum for Lunatics, then incorporated by royal charter, sold the subjects to the magistrates of Glasgow, as administrators for behoof of the poor of the city and parish of Glasgow, by disposition dated 20th September 1843, on which infeftment duly followed. In 1844 the magistrates of Glasgow entered with the superior by charter of confirmation, and paid to the superior a year's feu-duty of the subjects as composition for entry in terms of the feu-contracts.

By the Poor Law Amendment Act of 1845 it was provided, section 52, that property vested in magistrates and town councils for behoof of the poor should belong to and be administered by the parochial board for behoof of the poor, and such magistrates and town council are directed to execute conveyances of such property to and in favour of the parochial board. In virtue of this provision, the magistrates and town council of Glasgow were required to execute a conveyance of the said subjects in favour of the parochial board of the said city and parish, and they did so by disposition dated 27th April 1848, upon which infeftment duly followed, registered on 15th September following.

Now, the question is, whether the parochial board of the city and parish of Glasgow are, in the sense of the two original feu-contracts, singular successors of the magistrates and town council of Glasgow, and as such liable in the composition of one year's feu-duty, with interest

from the date of the disposition. I am of opinion that they are, and I agree with the Lord Ordinary that the pursuers are entitled to decree in terms of their summons.

It is no doubt true that the parochial board of the city and parish of Glasgow hold the subjects in virtue of the Poor Law Amendment Act for precisely the same purposes and under precisely the same trusts as the subjects were formerly held by the magistrates and town council of Glasgow. The statute of 1845 merely effected a statutory change of trustees for behoof of the poor—the new trustees holding the property in exactly the same way as had been done under the trusts formerly constituted. But this consideration is not sufficient for the solution of the present question, for the question under the feu-contracts is a strictly feudal question, and to be decided according to the principles which governed the feudal system. Neither the Poor Law Amendment Act nor the recent Conveyancing Statute of 1874 made or were intended to make any difference on the pecuniary rights of superiors, or to alter the terms on which singular successors became liable in composition.

Now, I am of opinion that in the strict feudal sense of the term "singular successor," and in the sense in which that term is used in the original feu-contracts, the parochial board of Glasgow is a singular successor of the magistrates and town council of Glasgow as administrators for the poor thereof. In feudal language everyone who was not entitled to enter as heir, but who entered in virtue of a disposition, whether by resignation or by confirmation, was a singular successor—that is, he entered in virtue of a singular title—that is, disposition as contradistinguished from the universal title-succession as heir. This is explained by many of the institutional writers. I need only refer to Mr Erskine's Inst., ii. 7, 1, and iii. 8, 1, and there can be no doubt that these passages give the feudal definition of a singular successor. Even an heir-at-law, if he did not enter by service or by precept of *clare constat*, but in virtue of a special disposition, at least if such a disposition was a deed *inter vivos*, was regarded as a singular successor, the disposition being his singular title; and if he demanded a charter of resignation or a charter of confirmation he could only obtain it on payment of whatever composition was due on the entry of singular successors. The mere possession of the character of heir-at-law did not entitle him to an entry as such unless he adopted the forms appropriate to the entry of an heir as such.

Accordingly, in the common case of family trusts, the trustees, if they demand an entry from the superior, are always regarded as the singular successors of the entered truster, whatever be the purposes of the trust, and even although the sole beneficiary in the trust be the heir-at-law of the truster. The superior cannot be compelled to recognise trustees as vassals except on payment of the composition exigible from singular successors, and where there are a plurality of trustees the superior is entitled to stipulate that one of their number shall be named, on whose death the subjects shall again fall into non-entry.

The case of successive trusts constituted one after another, but for behoof of the same beneficiary or for the same trust purposes, does not seem to have occurred in any of the decided cases; but on principle I think it clear that unless the succeeding trustees could be served as heirs to their predecessors, heirs of provision, or otherwise, they could only enter as singular successors. If they enter in virtue of a disposition or procuratory of resignation, such entry is really the entry of singular successors, and founds a claim for composition accordingly. In the present case I think it plain that the parochial board could not serve as heirs in any sense to the magistrates and town council of Glasgow, and therefore by the necessity of feudal principles, as they cannot enter as heirs, they can only do so as singular successors. There is no third character or third category under which they could feudally claim an entry.

As to future entries, or rather as to future compositions payable by the parochial board to the superior, I presume these will be regulated by section 5 of the Conveyancing Act of 1874, under which clause corporations or bodies of trustees, whether the individual trustees are changed or not, are to pay a composition every twenty-five years, or in other cases every fifteen years, so long as the lands remain vested in them. In the present action, however, no question is raised under this section of the statute.

Lord Young—The Lord Ordinary correctly states the question to be—Whether the defenders are singular successors? On that question I am of opinion (differing from your Lordships) that they are not. The lands were acquired and held by the magistrates and town-council of Glasgow on titles granted to them as public and constitutional trustees for the legal poor of the city, in which capacity they were received and entered by the superior. It is, I think, not doubtful that so long as the magistrates and council held the lands on this trust they could not fall into non-entry or the superior have any casualty, and although for this reason precisely the superior was not bound to enter them as vassals, yet having done so (no doubt for proper and sufficient reasons), he and his successors must stand by the consequences. The lands were in mortification or mortmain, and lands in that situation yield no casualties.—See 2 Ersk. 4, secs. 10 and 11. But the trust being of a public nature, and relating to the execution of the law of the land, the Legislature saw fit to change—not the trust itself—but the trustees who administered it, by substituting a new body of trustees for the old. The parochial board thus comes in place of the magistrates and council. The only plausibility in the pursuer's case arises from the circumstance that the transference to the new trustees was effected by disposition—had the statute simply substituted the parochial board for the magistrates and council, with respect to all titles held by them, the case would have been too clear for argument. But in dealing with a money claim I think we ought to regard the substance of the thing which is a statutory transference without reference to the superior who had no interest in the matter, unless it be supposed that it was intended to bestow upon him a bonus out of the poor-rate, which I should think an inadmissible supposition. The mode in which the transference was effected is matter of mere detail.

The lands remain in mortification for the legal poor of the city of Glasgow exactly as before, and as the superior intended that they should when he invested the magistrates and council as the proper trustees of the charity by the law as it then stood.

I agree with the Lord Ordinary that the question is to be decided "by reference to the investiture." I think, however, that his Lordship has not given due effect to the fact that the investiture was a mortification, and so perpetual, unless indeed the mortification (meaning the charity itself) should be annihilated, or the lands severed from it and turned to another use. Of such an investiture there are no heirs—for the vassal never dies. The individual men who in frequent succession come into the place of their predecessors in the trustees' office are neither heirs nor singular successors, but only make up and continue the body of trustees which is itself perpetual, and an undying vassal. A permanent charity must necessarily be administered by living men with perpetual succession according to some law,—but what that law may be, or how it may from time to time be changed by the Legislature, is of no interest to the superior who has mortified his lands and invested an undying vassal for a permanent charity of which he approved. The continuance of the vassal in perpetuity without succession (in the sense in which we speak of the succession of an heir or singular successor) was precisely what he contemplated and intended, and how this may be effected is nothing to him who is interested only in the permanence of the charity and the perpetuation of the administering trustees.

I am therefore of opinion that there is here no new investiture of the defenders as singular successors, and that they ought to be assoilzied with expenses.

The Court adhered.

Counsel for the Pursuer (Respondent)—Keir. Agents—Dundas & Wilson, C.S.

Counsel for the Defender (Reclaimer)—Trayner. Agents—W. & J. Burness, W.S.

Wednesday, March 5.

FIRST DIVISION.

(Before Seven Judges).

LAIRD *v.* THE CLYDE NAVIGATION TRUSTEES.

Statute — "Clyde Navigation Consolidation Act, 1858"—Dues upon Timber Logs conveyed to Storing-ponds—Right to Charge.

Held, (where no such charge had been sought to be imposed for a period of twenty years) that upon a construction of the clauses of the "Clyde Navigation Consolidation Act 1858," timber unshipped in the harbours of Port-Glasgow or Greenock, and towed "in chains," by a channel which was not the usual and artificial channel of the river, to certain timber ponds within the jurisdiction of the Clyde Navigation Trustees, there to be stored, was not liable to dues, in respect that it was not "shipped or unshipped" in the river—*diss.* Lords Gifford and Shand, who thought that on a broad interpretation of these words timber so dealt with might be said to be "unshipped" in the river.

Question, Whether the same timber, if made up into rafts and taken up the river to Glasgow and there landed, was liable to dues?

Observations as to the effect to be given to schedules appended to a statute.

This was a process of suspension and interdict raised by John Laird & Sons, timber measurers, Port-Glasgow, against the Clyde Navigation Trustees, to prevent them levying or exacting payment of rates or dues for or in respect of timber imported into this country from abroad, and unshipped in the harbours of Greenock and Port-Glasgow, or either of them, and thereafter floated and towed in chains up to the timber-ponds of the complainers, situate above Newark Castle, on the south side of the river Clyde.

The following statement of the facts of the case is taken from the Lord Ordinary's note.

"The power of charging rates on timber was conferred on the respondents for the first time by the Clyde Navigation Consolidation Act 1858.

"Timber was at that time, and has ever since been, in use to be floated to the ponds in question, but the respondents have not attempted until now to charge rates on it.

"The complainers dispute their liability to pay the rates claimed, upon two grounds—(1) Because they do not in floating the timber use any part of the deep water channel or waterway of the river, for the use of which alone they maintain vessels or goods are liable to pay rates; and (2) because the timber is not 'shipped or unshipped' in any part of the river or harbour.

"The timber in question is unshipped in the harbour of Port-Glasgow or Greenock, as the case may be. It there pays harbour dues. The logs are there bound together by chains, and as it is not allowed to remain in harbour for more than about forty-eight hours, it is towed by tug steamers to the timber ponds in question, where it is placed for storage purposes. If the timber is sold, and is to be sent up the river, it is built up into rafts, formed of from three to five tiers of logs placed one on the top of the other, and firmly secured together.

"By the 75th section of the Clyde Navigation Act it is enacted that the limits of the river Clyde shall include the whole channel or waterway of the said river forming the harbour, and as far down the river as to a straight line drawn from the eastern end of Newark Castle, on the south shore of the river, to the mouth of Cardross Burn on the north shore, and the whole works within the said limits for the improvement of the navigation of the river constructed or authorised to be constructed by or under the charge of the Clyde Trustees, and the whole lands acquired for the purposes of such works or occupied by the Trust in connection with the navigation of the river.

"It is not disputed that the complainers' ponds are all situated above Newark Castle, and in that sense within the limits of the river, as defined by the 75th section.

"Immediately above the line which forms the limit of 'the river' in the sense of the Act, there are two channels—a new channel, which was