

And consequently the doctrine of collation is outside the circumstances of the present case. There is, as I think, no authority for the opposite opinion. All authority, rightly understood, is, as I think, against it. We may or may not think it a right thing that the distribution should be in this way, inasmuch as the heir-at-law, or the man who should have been the heir-at-law had there been anything for him to take in that character, is the heir of entail now in possession of the family property. It would seem more desirable perhaps in one way that he should not be able to participate with brothers and sisters in the moveable succession; but this consideration cannot be allowed to affect the question, which must be answered according to the recognised rules of law.

The Court therefore were of opinion on the first and second questions that neither of the parties were liable in the payment of the £1000; and further, on the third and fourth questions, that the third part or share of the residue must be distributed equally among the children of Colonel Alexander Sinclair; and that the party of the third part was not bound to collate heritage.

Counsel for the Parties of First Part—Solicitor-General (Balfour)—Gloag. Agent—James Mason, S.S.C.

Counsel for the Parties of Second, Third, and Fourth Parts—Mackintosh—Lorimer. Agents—H. & H. Tod, W.S.

Tuesday, June 7.

SECOND DIVISION.

UNITED INCORPORATION OF MASONS AND WRIGHTS OF HADDINGTON, AND DICKSON, PETITIONERS.

Burgh Act (9 and 10 Vict. c. 17)—Abolition of Exclusive Privileges of Trade Incorporation—Incorporation Affected by the Act.

Procedure in petition to sanction special resolutions of incorporation affected by the abolition of exclusive privileges of members of trades incorporations in burghs.

Nature of alterations in management and application of funds of such incorporation sanctioned by the Court.

The Act 9 and 10 Vict. cap. 17 (Act for the abolition of the exclusive privilege of trading in burghs in Scotland), after providing by sec. 1 that from and after its date all exclusive privileges and rights of trading shall cease, and that it shall be lawful for any person to carry on any trade or handicraft in any burgh without being a burghess of such burgh, or a guild brother, or a member of any guild, craft or incorporation, and by sec. 2, that notwithstanding the abolition of such exclusive privileges such incorporations shall retain their corporate character, provides by sec. 3—"Whereas the revenues of such incorporations as aforesaid may in some instances be affected, and the number of the members of such incorporations may, in some instances, diminish by reason of the abolition of the said exclusive privileges and rights, and it is expedient that provision should be made for faci-

tating arrangements suitable to such occurrences: Be it therefore enacted that it shall be lawful for every such incorporation from time to time to make all bye-laws, regulations, and resolutions relative to the management and application of its funds and property, and relative to the qualification and admission of members in reference to its altered circumstances under this Act, as may be considered expedient, and to apply to the Court of Session by summary petition for the sanction of the said Court to such bye-laws, regulations, or resolutions; and the said Court, after due intimation of such application, shall determine upon the same, and upon any objections that may be made thereto by parties having interest, and shall interpose the sanction of the Court to such bye-laws, regulations, or resolutions; and the said Court, after due intimation of such application, shall determine upon the same, and upon any objections that may be made thereto by parties having interest, and shall interpose the sanction of the said Court to such bye-laws, regulations, or resolutions, or disallow the same in whole or in part, or make thereon such alterations, or adject thereto such conditions or qualifications, as the said Court may think fit, and generally shall pronounce such order on the whole matter as may to the said Court seem just and expedient; and such bye-laws, regulations, or resolutions, subject to such alterations and conditions as aforesaid, shall be, when the sanction of the said Court shall have been interposed thereto, valid and effectual and binding on such incorporations, provided always that nothing therein contained shall affect the validity of any bye-laws, regulations, or resolutions that may be made by any such incorporation without the sanction of the said Court, which it would have been heretofore competent for such incorporation to have made of its own authority or without such sanction."

The United Incorporation of Masons and Wrights of Haddington was founded by gift and letters-patent under seal of cause of the Magistrates and Town Council of Haddington at a period long prior to the year 1647, when the old charter having been lost, a new charter or gift was granted by the Magistrates and Town Council of new erecting and creating the incorporation with the usual rights and powers and privileges. Until the passing of the Act of Parliament above quoted, the corporation had numerous members, and had acquired certain property, heritable and moveable. After the date of that Act, however, the number of members gradually diminished, till in 1881 Andrew Dickson, joiner in Haddington, was the only surviving member resident in Scotland. No meeting of the incorporation had taken place for eighteen years, and no member had been admitted for twenty-seven years. This petition was in these circumstances presented by Dickson in terms of sec. 3 of the Act, 9 and 10 Vict. c. 17, above quoted, for the sanction of the Court to certain resolutions as to the future disposal of the funds. The petitioner stated with regard to the past management of the incorporation that "the incorporation has been long accustomed to clear off first all necessary charges, and then to distribute part of its annual revenue among members in distress and the widows and children of those members who had left their families in poor circumstances. Help thus afforded was not demanded as a right, but allowed as a charity.

Under the said charity or gift of 25th September 1647 the incorporation was empowered to apply its funds for the help of decayed freeman of the craft and their wives and children, and any other necessary uses belonging to the craft. The last occasion on which relief was afforded to a member was about fifteen or sixteen years ago, when one who had been in bad health and off work received temporary assistance. The relief afforded to such widows of members as were in poor circumstances has been a payment of about £2 each per annum. For a time there were generally four or five widows in receipt of that relief, but latterly the number has fallen to two. After these payments, as well as taxes, repairs, and other expenses have been met, the funds have been regularly accumulated in bank." The resolutions as to the future application of the funds of the incorporation which the petitioner stated that he had formed, and to which he desired the sanction of the Court, were that the funds should be applied by himself, and any other member of the incorporation who might be found to be alive or who might be assumed into it, along with the Provost, Dean of Guild, and Bailies of Haddington, in (1) payment of taxes due in respect of, and necessary repairs on, the property of the incorporation, and other expenses; (2) the charitable purposes authorised by the charter; (3) payment of the school fees of such children attending the public schools of Haddington, of members or deceased members of the incorporation, as were deserving of assistance; (4) promotion of secondary education in Haddington by means of bursaries, payment of salaries to teachers, or payment to provide school appliances for which assessment could not be levied on the burgh by Act of Parliament. The property of the incorporation consisted of heritable subjects of the value of £400, and a sum of £170 in bank.

The Court remitted the petition to Mr J. Balfour Paul, advocate, Register of Friendly Societies, who generally approved of the objects of the petition, but suggested certain amendments in the proposed scheme, to which the petitioner intimated his assent. The nature of these alterations will be seen from the interlocutor of Court printed below. The petitioner, on the suggestion of the Court, embodied the amendments proposed by the reporter in an amended series of resolutions which he submitted to the Court.

Counsel for him referred to the following similar petitions which had been before the Court:—*Guildry Incorporation of Arbroath*, July 5, 1856, 18 D. 1207; *Incorporation of Wrights of Leith*, June 4, 1856, 18 D. 981; *Skinnners of Glasgow*, Dec. 4, 1857, 20 D. 211; also *Incorporation of Tailors of Glasgow*, before the First Division in July 1880.

The Court pronounced this interlocutor:—

"Approve of said bye-laws, regulations, or resolutions as hereby amended, and which bye-laws, regulations, or resolutions as thus amended are as follows—viz. 'That the income of the incorporation ought to be applied by the incorporation, or, when the members thereof resident within the parliamentary bounds of the burgh of Haddington shall be under twelve in number, then by such members, if any, along with the Provost, Bailies, Dean of Guild, and Treasurer of the

royal burgh of Haddington for the time being; and in case it shall happen at any time that there is no member of the incorporation resident within the said parliamentary boundary, then, and so long as this state of things shall last, by the said Provost, Bailies, Dean of Guild, and Treasurer, for the following purposes, in their order—(1) in payment of taxes, repairs, and other necessary burdens and expenses; (2) to meet the charitable purposes authorised by the gift or charter granted by the Magistrates and Town Council of the burgh of Haddington on 25th September 1647, of new erecting and creating the incorporation—that is to say, to make allowances to members in destitute circumstances, and the widows and children of deceased members who have been left or at the time are in destitute circumstances, subject, however, to the declaration that the allowance to each widow may be increased to the extent of £2 per annum beyond what has formerly been allowed, provided this increase shall not diminish the fund requisite for the allowance to be paid to destitute members; (3) to pay or assist in paying the school fees of such children or grandchildren of deceased members of the incorporation as may stand in need of such assistance, the expediency of such payment in particular cases being left to the determination of those at the time in the administration of the funds of the incorporation; (4) for the promotion of secondary education in the burgh of Haddington by means of a bursary or bursaries to children attending the public secondary school of the royal burgh of Haddington, or towards payment of the salaries of the teachers thereof, or towards payment of the expense of appliances in connection with the school or schools, if any, for which assessment cannot be levied on the burgh by Act of Parliament,' and decern."

Counsel for Petitioner—A. J. Young. Agent—J. Smith Clark, S.S.C.

Tuesday, June 7.

SECOND DIVISION.

[Lord Lee, Ordinary.

RONALDSON AND OTHERS v. DRUMMOND
& REID.

Reparation—Agent and Client—Loan.

The agent of a trust (who was himself a trustee), in which the trustees were empowered to invest funds on heritable securities, advised the loan of a sum of money out of the trust-funds to another client of his own on a bond and disposition in security over certain heritable subjects. The debtor having become bankrupt, and the trustees having failed to recover the sum lent by a sale of the security, they raised action against the agent to have him ordained to pay the sum lent on receiving an assignation to the security in question, on the grounds (1) that the security was leasehold and not feu, as was intended by