the river, and, under the system hitherto pursued, the timber which is so taken down the river is entirely free of dues. As to the purpose for which it is there taken, it is not storage only. These ponds are merely woodyards, with this benefit, that the tide floats the timber when it is in. They are in no different position than if they were woodyards on land, and the timber being unshipped was landed and kept on land. The persons who keep the timber, and who use the river to bring the timber there, are wood merchants, who sell that timber there at their convenience, and the timber so sold becomes the property of others who remove it. In that state of matters I have the utmost difficulty in seeing on what principle the proprietor of the timber, unshipping it and bringing it into his woodyard, and keeping it there till he comes to sell it, is to get rid of the dues. We are dealing here with a toll or duty fixed by Act of Parliament. I can understand very well that when you find exemptions in an Act of Parliament, after a general rate is authorised to be levied for the use of a road or a river, the exemptions may be founded on this, that if the use is of a particular kind, you shall give the parties the benefit of the exemption. If in Road Acts you find exemptions given to certain persons in respect of their offices, or if it is said that no toll shall be paid because the road is used on Sundays for persons going to church, the exemption shall receive effect. But it is an entirely new doctrine to me that in levying a toll such as this is, the levying of it is to depend upon the purpose for which the use of the river is taken. It appears to me, I must say, with great respect to your Lordships, that neither the toll-taker nor the person who pays the toll has anything to do with the purpose for which the use is made. If, in fact, the use of the highway, whether a road or river, is taken, then the toll is chargeable, and as I think the toll-takers here, the Clyde Trustees, have no right to ask for what purpose the timber is taken to these ponds, and therefore no concern with it, I think it is no answer to them to say, We are only using a small part of the river, and we only mean to keep the timber there for a time till we get it sold, and when we do so you will get your dues from somebody else. It appears to me that the Clyde Trustees, standing on their statutes, are entitled to say, This timber has passed along a part of the river, and so has used the river, and is therefore liable in dues. All the more is that clear to my mind because reading it the other way leads to this result, that a very large portion of this timber entirely escapes payment of dues although it uses the river in passing up to these ponds or woodyards and down again. Accordingly, I remain of the opinion I formerly expressed, that the Clyde Trustees are entitled to succeed in this case.

The Court therefore sustained the reasons of suspension and granted interdict.

Counsel for Suspenders—Trayner—J. Burnet. Agents—Duncan, Archibald, & Cuningham, W.S.

Counsel for Respondents (Clyde Trustees)—Mackintosh—Lorimer. Agents—Webster, Will, & Ritchie, W.S.

Tuesday, March 14.

FIRST DIVISION.

SPECIAL CASE—CHALMERS' TRUSTEES *v.* CHALMERS AND OTHERS.

Succession—Legitim—Policy of Insurance.

Held that policies of insurance taken by a husband for behoof of himself and his wife on the life of a son, and payable to the spouses or "to the survivor of them, their, his, or her heirs, executors, or assignees," formed part of the moveable estate of the husband, who predeceased his wife, and must be computed at their actuarial value at the time of his death, so as to increase the fund for legitim.

Succession—Vesting.

A certain share of a trust estate was, by a mutual trust-disposition and settlement executed by two spouses, destined upon the death of the survivor to a grandson, to be "payable on his attaining the age of twenty-one years." It was directed that if the beneficiary "should die previous to payment" of his provision it should be otherwise disposed of. The beneficiary attained the age of twenty-one years, and survived the survivor of the spouses by eighteen days, and no payment was made to him of his share. *Held* that it vested, according to the intention of the trusters, upon his survivance.

William Chalmers, residing in Aberdeen, and Jane Cruickshanks or Chalmers, his wife, executed a mutual last will and settlement on August 16, 1872. Mrs Chalmers survived her husband, who died on October 27, 1872, and in virtue of a power conferred on the survivor under the said mutual deed executed a codicil dated 11th June 1874. Part of the estate conveyed under the said mutual deed and codicil consisted of two policies of insurance, each for £300, which were effected by the said William Chalmers "for his own behoof and for behoof of Mrs Jane Cruickshanks or Chalmers, his spouse," on the life of their son William Leslie Chalmers, one of the second parties. These policies were payable to the trusters or to the survivor of them, their, his, or her executors or assignees. Mrs Chalmers after her husband's death regularly paid the premiums. She died on 4th August 1879, and after her death the premiums were paid by the trustees out of the trust-funds.

William Leslie Chalmers, one of the sons of the trusters, repudiated the provisions in his favour under the mutual deed and codicil, and claimed legitim, which was duly paid to him, he, under certain reservations, granting in return a formal discharge of all claims competent to him against the estates of the trusters or under the mutual deed and codicil. He specially reserved any claim which was competent to him to a share of the value of the said policies as forming part of the legitim fund, maintaining that the actuarial value of these policies as at the date of his father's death formed part of the free moveable estate of his father the said William Chalmers, and became subject to the claim of legitim.

By the said mutual settlement the estate of the spouses had been divided into twelve shares, which were allocated among the children and

grandchildren of the trusters. The seventh purpose provided one of these shares "to and for the use of the said William Chalmers Best, our grandson, payable on his attaining the age of twenty-one years, the annual proceeds of said share being till that period applied for his education and maintenance: And we declare and direct that in case any of our children before named, or the said William Chalmers Best, should die previous to payment of the foresaid provisions in their favour without leaving lawful issue, then subject to the liferents before expressed, the share of such deceasing legatee shall be divided among and paid to our other children and the said William Chalmers Best, or their lawful issue *per stirpes*, share and share alike." William Chalmers Best attained the age of twenty-one years, but died on August 22, 1879, eighteen days after his grandmother, the survivor of the two spouses by whom the mutual disposition was granted, leaving a will in favour of a brother and sister. No apportionment, payment, or transfer of any part of the estate was made to him.

The following questions were submitted for the judgment of the Court:—"1. Did the actuarial value of the said policies of insurance as at the death of the said William Chalmers form part of the free moveable estate left by him, and become subject to the claim of legitim? . . . . 5. Did the share of the trust-estate bequeathed to the deceased William Chalmers Best vest in him prior to his death?"

The parties submitting these questions were—First, The trustees appointed by the spouses; second, William Leslie Chalmers and his children; third and fifth, other children of the spouses, or representatives of children; and fourth, the brother and sister of the deceased William Best, who took under his will.

Argued for the first and fourth parties—These policies were in favour of William Chalmers and Mrs Chalmers, and were payable to the spouses or the survivor, their executors or assignees. They were a gift to or provision for Mrs Chalmers; she was vested in them, and their actuarial value was never *in bonis* of Mr Chalmers, and should not form any part of this fund. The time of payment was the falling-in of the policies; that time has not yet arrived, and the money is not at present available; therefore there can be no vesting until the arrival of the period of payment and the emergencies of the claim. The testator fixed no time for the vesting of the *universitas* of his estate. William Chalmers Best's share is to be payable on his attaining twenty-one years and his surviving the testators. In *Ferrier's* case, as here, there is a direction given as to when a special provision is to vest, quite apart from the rest of the estate. Executors being allowed a certain time in which to pay does not prevent vesting; there may be vesting though the money is not paid. The words "previous to payment" in the seventh purpose of the trust-deed must be read as equivalent to previous to the time of payment arising—this alone prevents hostility between the clauses—*Pringle's Trustees*, March 15, 1872, 10 Macph. 621; *Muirhead* v. *Muirhead's Factor*, December 6, 1867, 6 Macph. 95; *Smith* v. *Kerr*, June 5, 1869, 7 Macph. 863; *Wight* v. *Brown*, January 27, 1849, 11 D. 459; *Sloane* v. *Finlayson*, May 20, 1876, 3 R. 678.

Argued for the second, third, and fifth parties—Question 1 is ruled by the case of *Pringle's Trs.* At the death of William Chalmers the survivor had virtually a gift of the whole estate. These policies of insurance, therefore, were in no different position from the rest of the moveable estate of the predeceasing truster. Under question 5 no vesting took place, because no payment had been made. The sum could not be demanded until the debts and other prior claims had been paid. The test of vesting here was, Could William Chalmers Best have demanded payment before his death? It was maintained he could not—*Howat's Trustees* v. *Howat*, Dec. 17, 1869, 8 Macph. 337; *Thorburn* v. *Thorburn*, Feb. 16, 1836, 14 S. 485; *Ferrier* v. *Ferriers*, May 18, 1872, 10 Macph. 711.

At advising—

Lord President—In answer to question 1: It is a settled rule of law that policies of insurance which are current, and the premiums on which are paid by the testator, form part of his moveable estate; they have an actuarial value which is tangible, and which belongs to him. The question is, Does that rule apply in the present case? These two policies of insurance, each for £300, were effected in the years 1849 and 1852 by the deceased William Chalmers "for his own behoof and for behoof of Mrs Jane Cruickshanks or Chalmers, his spouse," on the life of their son William Leslie Chalmers, one of the second parties, and were to be made payable "to the said William Chalmers and Jane Cruickshanks or Chalmers, or to the survivor of them, their, his, or her heirs, executors, or assignees." It is to be observed that both these policies were taken on the life of the lady's son—consequently her prospect of succeeding was, in the course of nature, very remote, and as the result has shown impossible, inasmuch as she has predeceased. It is easy to see, both from the terms of the mutual settlement as well as from the way in which the trusters dealt with these policies, that they were not intended as a donation between the spouses, but were destined as a provision for one of the sons. These policies of insurance must therefore be held to have belonged to the testator William Chalmers, and their actuarial value must be held to form part of the free moveable estate left by him, and to become subject to the claim of legitim. Question 1 falls therefore to be answered in the affirmative.

The answer to question 5 depends upon the construction which is to be put on one of the clauses in the seventh purpose of the trust-deed. The words of this clause are these — "And we declare and direct that in case any of our children before named, or the said William Chalmers Best, should die previous to payment of the foresaid provisions in their favour without leaving lawful issue then subject to the liferents before expressed, the share of such deceasing legatee shall be divided among and paid to our other children, and the said William Chalmers Best, or their lawful issue *per stirpes*, share and share alike." Now, William Chalmers Best died on 22d August 1879, while Mrs Chalmers, the surviving truster, predeceased him on August 4, 1879. In the short space of three weeks that intervened, no apportionment, transfer, or payment had been made of the provisions in his favour, and therefore, literally speaking, he had

died "previous to payment." But along with this must be read the first clause of the seventh purpose in order to determine the true intention of the trusters. It is in these terms—"One share thereof to and for the use of the said William Chalmers Best, our grandson, payable on his attaining the age of twenty-one years." William Chalmers Best having attained twenty-one years, had fulfilled the only condition which the trusters had imposed, and his share of the trust-estate must therefore be held to have vested in him, although owing to his survivance of the truster Mrs Chalmers for so short a period it had not been paid. The first branch of question 5 falls therefore to be answered in the affirmative; the necessity of answering the two other alternative branches is superseded.

Lord Deas and Lord Mure concurred.

Lord Shand—I agree with your Lordships, and for the reasons already stated. We have to decide whether the value of these policies of insurance is to be held as subject to a claim of legitim. The answer must depend upon whether they formed any portion of the testator's moveable estate at his death. If these policies had been given as a provision to his widow they certainly then could form no part of the legitim. That that, however, was not the intention of the parties has been clearly shown. Besides, no wife's provision could well be made dependent, in the way in which this provision was dependent, on her son's life. As to the fifth question, what the testator really meant was that William Chalmers Best's share was to be paid to him as soon as he reached twenty-one years of age.

The Lords accordingly answered the first and fifth questions in the affirmative.

Counsel for First and Fourth Parties—Trayner—Pearson. Agent—H. B. Dewar, S.S.C.

Counsel for Second, Third, and Fifth Parties—Darling. Agent—John Bell, W.S.

HIGH COURT OF JUSTICIARY.

Tuesday, March 14.

H. M. ADVOCATE *v.* CLUNIE.

*Forgery and Uttering of Bank-Notes—Indictment—Relevancy—*45 *Geo. III. cap.* 89, *sec.* 6.

Held (*diss.* Lord Craighill) that section 6 of the above Act, so far as applicable to bank-notes, applies exclusively to those of the Bank of England, and cannot be libelled in a charge of forging notes of a Scotch bank.

Andrew Clunie was charged with forging and uttering bank-notes of the Royal Bank. The indictment libelled first the Act 45 Geo. III. c. 89, and after reciting the whole of the 1st section it proceeded as follows:—"And by section sixth of the said statute it is enacted, 'That if any person or persons shall from and after the passing of this Act purchase or receive from any other person or persons any forged or counterfeited bank-note, bank bill of exchange, bank post-bill, or blank bank-note, blank bank bill of exchange, or blank bank post-bill, knowing the same to be forged or counterfeited, or shall knowingly or wittingly have in his, her, or their possession or custody, or in his, her, or their dwelling-house, outhouse, lodgings or apartments, any forged or counterfeited bank-note, bank bill of exchange, or bank post-bill, or blank bank-note, blank bank bill of exchange, or blank bank post-bill, knowing the same to be forged or counterfeited (without lawful excuse, the proof whereof shall lie upon the person accused), every person or persons so offending, and being thereof convicted according to law, shall be adjudged a felon, and shall be transported for the term of fourteen years.'" It then further libelled 3 and 4 Will. IV. cap. 123, reciting the 1st section, and 7 Will. IV. and 1 Vict. cap. 84, reciting so much of the 2d section as applies to the punishment of persons convicted under the above Act of Will. IV. The indictment contained also the common law charges of forgery and "using and uttering as genuine any forged note or obligation for the payment of money." Two separate charges were set forth. The first charge averred that the panel "did wickedly, feloniously, and falsely make, forge, or counterfeit, or cause or procure to be wickedly, feloniously, and falsely made, forged, or counterfeited, or did willingly act or assist in the wickedly, feloniously, and falsely making, forging, or counterfeiting, forty-three or thereby notes or obligations for the payment of money, each in imitation of or purporting to be a note or obligation by the Royal Bank of Scotland for payment, or promising payment to the bearer on demand, of one pound, and each bearing to be dated '2nd Sept. 1878,' and numbered 'No. 1$\frac{99}{100}$,' or similarly dated and numbered, being the counterfeited or spurious one pound bank-notes to be lodged in the hands of the Clerk of Court as after mentioned which are contained in the following numbers of the inventory hereto annexed, . . . and did use and utter as genuine one of the forged or counterfeited notes or obligations above libelled." The second charge averred the panel's having "in your possession or custody, without lawful excuse, thirty-seven or part thereof forged or counterfeited bank-notes, being the whole of the spurious bank-notes or obligations of the Royal Bank of Scotland above libelled as forged or counterfeited by you," with certain exceptions, as inventoried.

Ure for the prisoner objected to the relevancy of the statutory charge so far as laid on section 5, and argued that the Act, so far as applicable to bank-notes, applied only to those of the Bank of England, and could not be extended to those of Scotch banks. In one case, indeed, it had been extended to notes of the Bank of Scotland (*Gray*, 1814, Hume's Com., i. 148), but that case had been condemned as bad law—Alison, Crim. Law, i. 389. In a subsequent case the charge was abandoned as unfounded—*Harris*, May 30, 1831, Shaw's Just. Cases, 242, Bell's Notes to Hume, 56; and in a recent one was withdrawn—*Greatre and Others*, May 9, 1867, 5 Irv. Just. Rep. 375. There was no instance of its having ever been held applicable to the notes of English private banks—Russell on Crimes, ii. 758.

Innes, A.-D., for the Crown, replied that while certain sections of the Act applied exclusively to Bank of England paper, the phraseology of the