motion was a simple matter. In *Findlay's* case the article was a heavy shutter which if let alone was harmless, but was so placed that with a very slight movement it would come down. No doubt if a horse were left unattended in a public street, most serious consequences might follow, but I cannot adopt the view that an ordinary hurley is in any sense a dangerous article, nor do I think that in leaving it where they did the defenders rendered themselves liable to an action of damages on the ground of fault.

LORD ADAM concurred.

The Court adhered.

Counsel for the Pursuer—Comrie Thomson—Burnet. Agent—T. Carmichael, S.S.C.

Counsel for the Defender—Jameson—W. Campbell. Agent—Fraser, Stodart, & Ballingall, W.S.

Tuesday, May 14.

SECOND DIVISION.

WRIGHT'S TRUSTEES *v.* WRIGHTS.

Succession—Double Legacy.

A testator by trust-disposition and settlement left a legacy of £1000 to both A and B. By a codicil he recalled A's legacy of £1000, and gave "said sum" to B. By a subsequent codicil he renewed the legacy of £1000 to A, and made no reference to B.

Held that the additional legacy of £1000 to B had not been revoked.

The late John Wright, W.S., Edinburgh, died on 2nd November 1888, leaving personal estate to the amount of £57,579. By holograph trust-disposition and settlement he directed his trustees to pay a legacy of £1000 to each of his nephews and nieces, and, *inter alios*, to the Rev. Maxwell James Wright and Charles William Ferney Tod.

He left several holograph codicils to the said trust-disposition, of which the last two were in the following terms:—

"I, John Wright, Writer to the Signet, recal the legacy of £1000 to my nephew Charles Ferney Tod, and I give said sum to my nephew the Revd. Maxwell J. Wright, now minister of Dornock in the Presbytery of Annan, to be paid to him at the same time with the like legacy of One thousand pounds already given to him: Written and signed by me at Edinburgh this 19th day of May 1888.—(Signed) JOHN WRIGHT, W.S."

"I, John Wright, Writer to the Signet, renew the legacy of One thousand pounds to my nephew Charles Ferney Tod, to be paid to him as at the time of the original legacy; and may God have mercy upon his soul: Written and signed by me at Edinburgh this 21st day of May Eighteen hundred and eighty-eight.—(Signed) JOHN WRIGHT, W.S."

A special case was presented by the trustees of the late John Wright of the first part, the Rev. Maxwell James Wright of the second part, and the residuary legatees of the fourth part, to have the following question of law determined by the Court—"Is the second party entitled to the legacy of £1000 bequeathed to him by the codicil of 19th May 1888, in addition to the legacy of £1000 left to him by the settlement?"

Argued for the first and fourth parties—The second codicil restored the will to its original state. The testator dealt with the £1000 to Charles Ferney Tod as a specific legacy. He moved it about as if it had been an article of furniture. He gave it, he took it away, he renewed it. It was the same gift, not £1000, but the "said sum," and when it had been restored to Charles Tod, Maxwell Wright ceased to have any interest in it. The question ought to be answered in the negative.

Argued for the second party—The question ought to answered in the affirmative. This was not the legacy of a specific article, but of £1000. There was nothing to show that because the testator had repented of taking away the legacy from Charles he had also repented of giving an additional £1000 to Maxwell. The said codicil was a renewal of Charles' legacy, but not a revocation of Maxwell's legacy.

At advising—

LORD JUSTICE-CLERK—By his trust-disposition and settlement dated 25th August 1883 the late Mr John Wright left certain legacies, and among them a legacy of £1000 to his nephew Maxwell James Wright, and another of the same amount to his nephew Charles Ferney Tod. On 19th May 1858, for some reason which we do not know, he wrote a codicil, which runs as follows—"I recal the legacy of £1000 to my nephew Charles Ferney Tod, and I give said sum to my nephew the Rev. Maxwell J. Tod." . . . Two days afterwards, on 21st May, having repented of the recal of the legacy to Charles Ferney Tod, the testator executed another codicil, in which he says—"I renew the legacy of £1000 to my nephew Charles Ferney Tod." . . .

The question for decision is, whether the renewal of the legacy to Tod implies, and necessarily implies, that the gift of the second thousand pounds to Maxwell Wright was recalled? for unless that is necessarily implied I think the gift to Mr Wright must stand. Now, it is not easy to decide this question, but there are, I think, two grounds for holding that that implication is not necessary, and if it be not necessary it cannot be implied. In the first place, as Lord Lee suggested during the debate, if the object of the codicil of 21st May 1888 was to restore matters to the condition in which they had been two days previously, there was no necessity for giving it the form of a new codicil at all. All the testator had to do was to revoke the codicil of 19th May. In the second place, it by no means follows from the testator's repenting of the act by which he deprived Charles of £1000 that he repented also of giving to Maxwell £2000. He had, for reasons satisfactory to himself, given £2000 to Maxwell (instead of £1000) on 19th May, and there is nothing to indicate that in the following two days he had repented of that. The giving to Charles again his legacy of £1000 was quite consistent with the legacy to Maxwell of the £2000 remaining valid.

Therefore I think that the codicil of 19th May must receive effect in so far as it gives to Mr Maxwell Wright £2000.

LORD YOUNG, LORD RUTHERFURD CLARK, and LORD LEE concurred.

The Court answered the question in the affirmative.

Counsel for the First and Fourth Parties—Wallace—Sym. Agents—Traquair, Dickson, & Maclaren, W.S.

Counsel for the Second Party—Sir C. Pearson—Guy. Agent—David Turnbull, W.S.

Thursday, January 3.

OUTER HOUSE.

[Lord Wellwood.

POLLOK, PETITIONER.

Entail—Mansion-house—Insurance—Fire Insurance—Obligation to Re-build.

The mansion-house on an entailed estate was partly destroyed by fire, and the heir in possession, who had insured it against the risk, received a sum of money in respect of the damage done. He died without having rebuilt. The next heir having done so, presented a petition under the Entail Acts of 1875 and 1882 for authority to charge the entailed estate with the amount expended. It was objected on behalf of subsequent heirs that the sum recovered by the late heir, in so far as it exceeded his life interest in the subjects destroyed, was received by him as trustee for the subsequent heirs, and ought to be recovered by the petitioner from his executor, and applied *pro tanto* to repay the expense of rebuilding, and that the amount with which the petitioner was entitled to charge the estate was the amount expended under deduction of that sum.

Held that the sum received by the late heir was his own absolute property, that he was not bound to rebuild, and that his executor was not liable to the next heir for any part of the sum recovered from the insurance company.

On 17th October 1888 Mrs Jean Johnstone Fergusson Pollok of Pollok, heiress of entail in possession of the entailed lands and estate of Over Pollok and others in the county of Renfrew, presented a petition to the Court for authority to charge said estate with various sums which she had expended in improvements thereon and on the mansion-house, offices, and policies. The next heirs, who were all in minority, were called as respondents, and curators *ad litem* were appointed to them. After the usual preliminary procedure the cause was remitted to Mr H. B. Dewar, S.S.C., to make the necessary inquiries and to report.

He reported, *inter alia*, as follows, viz.—"It is explained to the reporter that a fire took place at Pollok Castle on 1st August 1882, and that while Sir Hew recovered a sum of £2800 from the Caledonian Insurance Company as the estimated amount of the damage done by the fire, he never expended any part of that sum towards rebuilding or restoring the Castle, but, on the contrary, he retained the money and applied it to his own purposes, and that his executor maintained, when applied to by the petitioner on the subject shortly after her accession to the estate, that he was not bound to account for any part of the £2800 to the next heirs of entail, but that as Sir Hew had paid out of his own money the premiums on the fire policy he was entitled to receive and to retain the whole amount."

The reporter expressed an opinion "that in a question with the next heirs of entail Sir Hew was bound to apply the £2800 in reinstating *pro tanto* the mansion-house; or otherwise, that his executor may be bound to pay the £2800 to the petitioner under deduction of the fire premiums paid by Sir Hew between the commencement of the fire policy, 31st March 1869, and the date of the fire, but without interest, Sir Hew being entitled to the liferent of the £2800 as the *surrogatum* for what was burned between that date, 1st August 1882, and the date of his death, 14th December 1885. If the petitioner were to get the £2800 from Sir Hew's executor she would be entitled, in the reporter's humble opinion, to retain the same, but that only in respect that she has already, out of her own funds, applied more than an equal amount towards reinstating the buildings, but that in that event she would be bound to give credit in a question with the next heir for the £2800 in the account of expenditure which is the basis of the present application.

"The grounds upon which the reporter has humbly come to this conclusion are, that while it may be quite true that an heir of entail in possession is under no legal obligation to insure the mansion-house against fire he is undoubtedly entitled to do so, and that if he exercise his option by effecting an insurance, not merely for the value of his life interest in the building, but for the whole value of the building itself, just as if he had been a fee-simple proprietor, the true construction of his act in doing so is, that he effected the insurance in the interest of the whole corporation of heirs of entail. He thereby insured property in which he personally had only a partial interest, and in so far as the insurance was to an extent beyond the value of his partial interest he insured property belonging to other people, namely, the heirs next succeeding to him. So far as they themselves and their rights of property in the mansion-house were concerned, Sir Hew, in effecting the insurance in question, in the reporter's opinion, acted in a fiduciary character and in their interests, so that in the fund which forms the *surrogatum* for the entailed buildings burned down there is, after Sir Hew is repaid therefrom, the premiums abovementioned, and after he enjoys the liferent of the money, a resulting trust for the next heirs.

"So far as the reporter has been able to ascertain, the facts in regard to the fire insurance in question are as follows—1st. The policy was effected in 1869 by the late Sir Hew Crawfurd Pollok with the Caledonian Insurance Company over the mansion-house of Pollok Castle, with stables and other offices attached thereto, and over numerous farm-houses forming part of the entailed estate, for £11,800 in all, but as regards the mansion-house, for £3200. The policy is in Sir Hew's individual name, and there is nothing in it to indicate that the estate was entailed. 2nd. That Sir Hew recovered as the