Thursday, July 17.

FIRST DIVISION.

THE INDUSTRIAL AND GENERAL TRUST, LIMITED, PETITIONERS.

Process—Petition—Warrant to Sell.

Circumstances in which the Court *granted* warrant to a financial company to sell certain bonds deposited with them in security of an advance to a commercial company, unpaid and overdue.

The Industrial and General Trust, Limited, a financial company carrying on business in London, on 12th September 1889 made an advance to the Coats Iron and Steel Company of Coatbridge of £7500, who in return therefor granted a letter of obligation in the following terms—"We, The Coats Iron and Steel Company, hereby acknowledge the receipt from the Industrial and General Trust, Limited, of the sum of £7500, which sum we hereby agree to repay on or before the 12th day of March 1890, together with interest thereon at the rate of six per cent. per annum. By way of security for the repayment of the said loan and interest we have to-day transferred to the said Industrial and General Trust, Limited, 100 debenture bonds of £100 each, fully paid, Nos. A 649 to A 748 inclusive, of and in the undertaking called Goodwins, Jardine & Company, Limited, and we hereby expressly agree that there shall always be a margin of at least fifteen per cent. in the value of the security so given to the said trust for the said loan over and above the amount of the said loan, and that if the debentures now transferred to the said trust should at any time during the currency of the said loan show on their market value a margin of less than fifteen per cent., we will on demand repay so much of the said loan as may be necessary to bring the margin of security up to the said minimum of fifteen per cent. Dated this 12th day of September 1889."

The borrowers failed to repay the advance on its due date 12th March 1890, and the Trust Company on 11th June following presented a petition to the First Division of the Court of Session for authority to sell the debenture bonds held by them in security, in order to reimburse themselves for the said advance with interest and expenses.

At the date of the application the estates of the Coats Iron and Steel Company, as well as the estates of those of its individual partners were sequestrated, and a trustee had been duly appointed on the sequestrated estates.

The petitioners prayed for authority to sell by public roup or private bargain, and after such advertisement, if any, as the Court might see fit, the debenture bonds held by them in security of the loan above mentioned.

It was mentioned at the bar that there were no other parties interested in these securities except the creditors and the debtors; and the Court granted warrant to sell at the sight of the chairman of the Stock Exchange at Edinburgh, Glasgow, London, Manchester, and Liverpool, or any one of them.

Counsel for the Petitioners—Ure. Agents—J. & J. Ross, W.S.

Thursday, July 17.

SECOND DIVISION.

PLAYFAIR AND OTHERS (PLAYFAIR'S TRUSTEES), AND OTHERS.

Succession—Trust—Specification.

A truster conveyed his whole estate to trustees, appointed them his residuary legatees and sole executors, and directed them to divide and pay over to the children of his niece a specific sum "after the youngest child has attained the age of twenty-five years complete . . . and it is specially provided and declared that said provisions in favour of the children of my niece shall not become vested interests in them until the same shall be absolutely conveyed, paid, or made over to them by my said trustees."

Held that the vesting did not take place till the period named, that therefore the trustees were not bound to pay the interest of the sum to the beneficiaries, or to accumulate the same for their benefit, but must deal therewith as forming part of the residue of the estate.

The late Mr Peter Playfair died unmarried on 20th August 1888 possessed of heritable and moveable estate to the value of about £20,000. He was survived by five nephews, James, John, Patrick, William Menzies, and Patrick George Playfair, sons of his brother Charles Playfair. He was also survived by one niece, Mrs Hunter. There were five children of this marriage alive, the youngest of whom at the testator's death was about eight years of age.

Peter Playfair left a trust-disposition and settlement dated 13th November 1880, by which he appointed his nephews above named, and John Panton, banker and writer in Blairgowrie, for the purposes, *inter alia*—"(Second), I direct and appoint my said trustees to divide and pay over to the children of Margaret Constable or Hunter, my niece, wife of Patrick Hunter, farmer, Ardgaith, after the youngest child has attained the age of twenty-five years complete, but not till then, the sum of £13,000 sterling equally amongst them, share and share, and it is specially provided and declared that said provisions in favour of the children of my niece, the said Margaret Constable or Hunter, shall not become vested interests in them until the same shall be absolutely conveyed, paid, or

made over to them by my said trustees; . . . also declaring, as it is hereby specially provided and declared, that in the event of said children and their lawful issue all dying before said sum of £13,000 falls to be divided amongst them as aforesaid, then the whole sum shall be equally divided by my said trustees among my said nephews, James Playfair, Charles George Playfair, John Playfair, Patrick Playfair, and William Menzies Playfair; and in the event of any of my nephews dying before this sum comes to be divided among them, and leaving lawful issue, such issue shall be entitled to their deceased's father's share. (Third), That I direct and appoint my said trustees to hold as much of my means and estate as will pay the foresaid sum of £13,000 as aforesaid, and at the first term of Martinmas happening six years after my death, to divide, convey, and make over the whole remainder or residue of my means and estate, both heritable and moveable (in such way as my trustees shall think proper, and of which they shall be the sole judges, but as nearly equally as possible), amongst my nephews, James Playfair, Charles George Playfair, John Playfair, Patrick Playfair, and William Menzies Playfair." He also appointed his trustees to be his sole executors. He left a codicil dated 26th January 1882, by which he provided—"And farther, I hereby reduce and alter the sum to be paid by my trustees to the children of Margaret Constable or Hunter, my niece, in terms of my foregoing deed of settlement, to the sum of £10,000 instead of £13,000, that is to say, the sum to be paid to the children of my said niece when her youngest child reaches the age of twenty-five years, full and complete, shall be £10,000 and not £13,000, and whom failing said children by death as mentioned in the foregoing deed of settlement, the £10,000 shall be paid in every way the same as I had directed to be done with the £13,000 sterling."

By another codicil dated 26th March 1884, he revoked the nomination of his nephew Charles George Playfair as one of his trustees, and desired his trustees to divide the residue of his estate among the beneficiaries entitled thereto at the first term of Whitsunday or Martinmas happening six months after his death instead of six years after that event as originally provided.

Questions arose between the parties interested, and this special case was presented by (1) the trustees under the original trust-disposition and settlement; (2) the children of Mrs Hunter with the advice and concurrence of their parents, so far as necessary, and (3) Mrs Hunter herself as one of the next-of-kin of the deceased Peter Playfair.

The question proposed for the consideration of the Court was—"Are the first parties, as trustees foresaid, bound to pay over the interest or proceeds arising from the said sum of £10,000, by half-yearly payments, to or on behalf of the children of Mr and Mrs Hunter, until the period for payment of the said principal sum arrives? Or to accumulate the same for behoof of said children until said period arrives? Or to deal with the same as intestate succession of the said testator? Or are they entitled to deal with the same as forming part of the residue of his estate?"

The second parties argued that the interest of the £10,000 should be paid to them at half-yearly terms — *Ogilvie* v. *Cuming & Boswell*, January 27, 1852, 14 D. 363, *aff.* July 15, 1856, 28 Jurist 646; *Campbell* v. *Reid*, June 12, 1840, 2 D. 1084; Williamson on Executors, ii. p. 1434; *Ferguson* v. *Smith*, December 4, 1867, 6 Macph. 83. Alternatively it should be accumulated and be added to the fund. The testator did not intend it to become residue, because he had made a gift over to his nephews *nominatim*—*Glasgow's Trustees* v. *Glasgow*, November 30, 1830, 9 S. 87.

The first party argued—As matter of fact no interest did accrue upon this sum which could be paid to them. It was provided that the sum should not vest until the time of actual payment. All that the trustees were directed to do was to make provision that at a certain specified time they were to pay a specified sum. How that was to be done was a question of administration. The cases quoted by the second party did not bear, as they all turned upon the question whether vesting had taken place or not. That question did not arise here, as there was no vesting until the payment of the money was made. The £10,000 was really part of the residue. The bequest was a burden on the residue, but if all the children of Mrs Hunter died before the specified time of payment, that burden flew off, and the sum was divisible among the residuary legatees.

At advising—

LORD JUSTICE-CLERK—The testator Mr Peter Playfair, by his testament as modified by a codicil, directed his trustees to set apart £10,000 from the residue of his estate. They were directed to pay the sum over to the children of a niece, Mrs Hunter, when the youngest child should attain the age of twenty-five years, and it is declared that there is to be no vesting in them until the shares are "conveyed, paid, or made over" to them. The event anticipated is still distant, and it is maintained on behalf of the niece's children that the trustees are bound to apply the annual proceeds of the £10,000 for their behalf or to accumulate for them what is not necessary for this purpose.

It is contended on the other side that the sum of £10,000 is a fixed and definite sum to be retained by the trustees and applied in a certain event, and can neither be made a source of accumulation for those who may ultimately be entitled to it or be applied now as regards its proceeds for their benefit. It seems to me that this is a sound contention. No right exists till a certain event, nothing vests till the trustees on the occurrence of that event pay over the £10,000 to those then entitled to it. The decision in *Ogilvie* v. *Cuming* does not appear to me to have any bearing on this case. It turned practically upon a question of vesting, and the beneficiary being held to be fiar before the attainment

of majority, it was held that the annual proceeds must be applied for his maintenance and education. There is no such case here. This is not a case in which there is a right of fee with a postponement of the time of denuding in favour of the fiar. No right vests until the youngest child obtains majority. The time of vesting and the time of actual denuding in favour of the intended fiar is simultaneous with the vesting of the fiar.

This view of the case is further confirmed by the testator having gifted over this sum of £10,000 specially and *nominatim* to his residuary legatees in the event of there being no child of Mrs Hunter to take under the destination to her children.

In my opinion the first three alternatives of the question should be answered in the negative and the fourth alternative in the affirmative.

LORD RUTHERFURD CLARK—I think that this trust-deed directs the trustees to pay a specific sum at a specified time to the legatees entitled to receive it. I think that they cannot take more than this specific sum, and that everything else goes to the residuary legatees.

LORD LEE—I think everything is residue except this sum of £10,000. I think therefore no interest can run.

The Court answered the first three alternatives of the question in the negative, and the fourth in the affirmative.

Counsel for the First Party—Jameson—Craigie. Agents—Philip, Laing, & Co., S.S.C.

Counsel for Second and Third Parties—Graham Murray—Maconochie—Constable. Agents—Mackenzie, Innes, & Logan, W.S.

Friday, July 18.

FIRST DIVISION.

MAGISTRATES AND TOWN COUNCIL OF LANARK *v.* HONYMAN.

Superior and Vassal — Feu-Contract — Public Burdens—Relief.

A feu-contract bore that the lands were to be held in feu-farm, fee, and heritage forever for payment of a certain annual sum "in name of feu-duty, and in full of all casualties upon the entry of heirs and singular successors, cess, minister's stipend, school salary, and all other burdens whatsoever affecting or which may affect said lands." *Held* that the superior was not bound to relieve his vassal of stipend or poor-rates, the language of the deed importing neither a direct nor an implied clause of relief.

The question raised by this special case was whether the Town Council of the burgh of Lanark, as superiors of certain lands (originally forming part of the common muir of Lanark), were bound, in terms of two feu-contracts, to relieve their vassal Sir William Macdonald Honyman of Armadale and Graemsay of the payment of stipend and poor rates from 1886 to the date of the present action and in all time coming.

The first feu-contract was dated 5th June 1789, and by it the then provost of the burgh of Lanark, on behalf of the town council and community of the said burgh, conveyed to William Honyman of Graemsay, his heirs and assignees whatsoever, heritably and irredeemably, "All and Whole these 110 acres of land or thereby of 'the muir of Lanark,' as therein particularly set forth, together with the teinds thereof, to be holden of the burgh 'in feu-farm, fee, and heritage forever, for payment of the sum of £27, 10s sterling at the term of Martinmas yearly in name of feu-duty, and in full of all casualties upon the entry of heirs and singular successors and burdens affecting said lands, excepting as after mentioned, any law or practice to the contrary notwithstanding, beginning the first term's payment thereof at the term of Martinmas 1790 for the year immediately preceding, and so forth yearly and in all time coming thereafter, the said William Honyman, Esquire, his entry to said lands beginning at the term of Martinmas next." The exception referred to a clause of thirlage contained in the deed. By the said feu-contract the said William Honyman bound himself to pay to the said provost and his successors in office £27, 10s. of feu-duty at the terms specified.

By feu-contract dated 17th September 1791, and registered in the Burgh Court Books of Lanark 10th April 1849, the said John Bannatyne, acting as aforesaid, conveyed to the said William Honyman and his foresaids, for the yearly feu-duty after mentioned, "All and Haill these 125 acres of land of the muir of Lanark lying next and adjacent to the said William Honyman, Esquire, his other lands feued from the burgh of Lanark, as therein particularly set forth, together with the teinds thereof,' to be holden of the burgh 'in feu-farm, fee, and heritage for ever for payment of the sum of £27, 10s. sterling at the term of Martinmas yearly in name of feu-duty, and in full of all casualties upon the entry of heirs and singular successors, cess, minister's stipend, school salary, and all other burdens whatsoever affecting or which may affect said lands, any law or practice to the contrary notwithstanding."

By this feu-contract the vassal undertook to make an annual payment of £27, 10s. in respect of the lands mentioned in the feu-contract. From the date of the feu-contracts down to 1885 the *cumulo* feu-duty under them of £55 was paid by the original vassal and his successors in the feu without recourse or relief being obtained by them from their superiors for stipend, poor rate, or any other public burden.

In April 1886 Sir William Macdonald Honyman succeeded as heir of entail to the lands contained in the two feu-contracts