But the offer has not been accepted, and the reclaiming-note must be disposed of according to the legal rights of parties. Now, on full consideration I am of opinion that the Lord Ordinary is right, and his Lordship's grounds of judgment are so well stated that I do not think it necessary to go over them.

LORDS ADAM, M'LAREN, and KINNEAR concurred.

The Court adhered.

Counsel for George Heron—C. S. Dickson—Clyde. Agents—Drummond & Reid, S.S.C.

Counsel for Mrs Martin—W. Campbell—Ure. Agent—James S. Sturrock, W.S.

Friday, June 16.

FIRST DIVISION.

RAE AND OTHERS.

Succession—Fee or Liferent—Substitution.

A testator by trust-disposition and settlement left his whole means and estate, heritable and moveable, to trustees to divide among his two sons and a daughter, with power either to dispone the heritage or sell it and divide the proceeds.

By subsequent holograph codicil the testator directed that "none of the properties or houses at R. or G. to be sold so long as Christina lives during her lifetime if she joines with a man and gets lawful married but after her death the husband to have no claim on her money coming from R. or G. houses her money after her death to be divided between." . . . The daughter survived her father, and died unmarried leaving a general settlement, the heritable estate remaining unsold.

Held that the codicil had not reduced to a liferent the right of fee in a third of her father's heritable estate which vested in her by virtue of his trust-disposition and settlement, and which passed under her settlement.

The late James Rae, grocer, Gilmerton, who died in 1887, by trust-disposition and settlement dated 1875 conveyed his whole means and estate, heritable and moveable, to trustees.

By the fourth purpose of the deed the trustees were directed at the first term of Whitsunday or Martinmas that should happen six months after the testator's death, in their own option, and as to them might seem more expedient, either to dispone the said heritable subjects, and assign or pay over the residue of his moveable estate to the parties thereafter named, or otherwise to sell and dispose of the subjects, and to divide and pay over the price thereof, as also the said moveable means and estate, to and in favour of Gilbert Rae, John Rae, and Christina Rae, his children, equally between them, share and share alike.

By holograph codicil dated 1883 the testator directed—"3rd, None of the properties or houses at Roslin or Gilmerton to be sold as long as Christina lives during her lifetime if she joines with a man and gets lawful married, but after her death the husband to have no claim on her money coming from Roslin or Gilmerton houses her money after her death to be divided between." . . .

The truster was survived by his said three children. The heritable property was not sold by the trustees. Christina died in 1892, leaving a general disposition and settlement in favour of the children of her brother John, who had died in 1888.

Doubts having arisen as to whether the fee of one-third of the heritable estate given to her by the trust-disposition of 1875 had or had not been reduced to a liferent by the codicil of 1883, a special case was submitted to the Court by her father's trustees of the first part, her brother Gilbert Rae of the second part, the children of a deceased sister, Mrs Mary Rae or King (who had died in 1873), of the third part, and her executor-nominate of the fourth part, to have the following questions of law settled—"(1) Was Christina Rae's interest in the said heritable properties in Gilmerton and Roslin limited under the said holograph codicil to a third of the rents during her life, and did the fee of that one-third fall to be paid after her death (*a*) to the second party; or (*b*) one-half thereof to the second party and one-half to the children of John Rae; or (*c*) one-third thereof to the second party, one-third to the children of John Rae, and one-third to the children of Mrs King? Or (2) Was Christina Rae, at the period of her death, vested, under the said trust-disposition and settlement and codicils of her father, in one-third of the fee of the said properties, and did that third share pass under her settlement to the children of her deceased brother John Rae?"

At advising—

LORD PRESIDENT—I think it is clear that under James Rae's trust-disposition and settlement his daughter Christina, who survived him, took a gift of fee, or would have taken such a gift had the trust-disposition stood alone. The question before us is, whether the codicil reduces or abates that gift of fee so as to make it only a liferent?

I cannot discover anything in the codicil leading to that result. Whereas the trustees had under the trust-disposition a right to sell certain properties, directions are given by the codicil (1) that these properties are not to be sold during Christina's lifetime if she marries; (2) that after her death her husband is to have no right to the proceeds; and (3) that these proceeds are to be divided among certain persons. Even if effect is to be given to the last direction in the event of her not marrying, it is of the nature of a substitution merely, and cannot prevent her disposing of the fee

which vested in her as she has done. I am for answering the second question in the affirmative.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

Counsel for the First and Second Parties—Dundas. Agent—James Marshall, S.S.C.

Counsel for the Third Party—Constable. Agent—James Marshall, S.S.C.

Counsel for the Fourth Party—Young—Crabb Watt. Agent—G. Meston Leys, Solicitor.

Friday, June 16.

FIRST DIVISION.

HARRISON AND OTHERS, PETITIONERS.

Trust—Removal of Trustee ex officio—Nobile Officium—Amendment of Petition.

One of the trustees of an Episcopal chapel, charged with the nomination of the clergyman, &c., was "the bishop of the diocese." By trust-disposition the building and its site was heritably vested in trustees, one of whom was the Bishop of G., in whose diocese the chapel was then situated, under declaration that the bishop of the diocese and his successors in office were always to be members of the trust. Upon the transference of the chapel to the diocese of E., the trustees under the trust-disposition prayed the Court to remove the Bishop of G. and his successors, and to substitute the Bishop of E. and his successors, or alternatively to sanction the resignation of the Bishop of G., and the assumption of the Bishop of E. and his successors. The prayer of the petition was, at the suggestion of the Court, amended into a prayer for authority to the trustees to transfer the property from themselves including the Bishop of G. to themselves without that Bishop., and to the Bishop of E. and his successors in the diocese in which the chapel might be situated. Thus amended, the prayer of the petition was *granted.*

By resolution of 1845 fixing the constitution of Trinity Episcopal Chapel, Melrose, it was determined that the nomination of a clergyman should be in the hands of five trustees, viz., "the bishop of the diocese" and four laymen. Difficulties have arisen in raising money for the chapel's erection, &c., the then Duke of Buccleuch acquired a site and built the church at his own expense. He then, by trust-disposition dated 16th April 1849, conveyed the subjects to "the Right Rev. Walter John Trower, M.A., presently Bishop of the diocese of Glasgow, whom failing his successors in that See," himself, and three other laymen, these being the trustees under the constitution, although the constitution was not specifically referred to.

The trust-disposition contained a declaration "that on the death of the present Bishop of the diocese, the surviving trustees or their quorum shall be obliged to grant such deed of nomination and assumption as shall be necessary for formally investing his successor in the office of trustee, and in the feudal right to the said subjects, and on the death of any one of the before-mentioned lay-trustees, the remaining trustees or their quorum shall have the power of naming and assuming another lay-trustee in place of the party so dying.

In 1888 the county of Roxburgh, in which the chapel is situated, was, by the Episcopal Synod, by virtue of their code of canons, validly transferred from the diocese of Glasgow to the diocese of Edinburgh of the Scottish Episcopal Church.

In 1893 the Right Rev. William Thomas Harrison, Bishop of Glasgow, the Duke of Buccleuch, Mr Murray of Wooplaw, Lieutenant-General Sprot, Mr Charles Erskine, then acting under the said trust-disposition, presented a petition to the First Division of the Court of Session, in which they set forth that the Bishop of the diocese contemplated in the constitution of the chapel was plainly the Bishop of the diocese in which the chapel might for the time being be situated, that that Bishop was now not the Bishop of Glasgow, but the Bishop of Edinburgh, and that it was intended and desirable that the same Bishop should be one of the trustees in whom the heritable subjects were vested. They accordingly prayed the Court "to remove from the office of *ex officio* trustee, under the trust-disposition narrated in the petition, the Right Reverend William Thomas Harrison, the present Bishop of the diocese of Glasgow and Galloway, in the Scottish Episcopal Church, and his successors, and to appoint in his room and place as trustee the Right Reverend John Dowden, Bishop of the diocese of Edinburgh, in the Scottish Episcopal Church, and his successors, being the Bishop of the diocese in which Trinity Church, Melrose, is now situated, or otherwise to sanction the resignation by the said Right Reverend William Thomas Harrison, Bishop of Glasgow, of his said office of *ex officio* trustee, and the assumption into his place of the said Right Reverend John Dowden, Bishop of Edinburgh, and his successors, so long as the said Trinity Church, Melrose is situated in the diocese of Edinburgh, and thereafter the Bishop of the diocese in the Scottish Episcopal Church in which Trinity Church, Melrose, may for the time be situated, or to do otherwise in the premises as to your Lordships may seem proper."

The petitioners argued that this was a *casus improvisus* requiring the intervention of the *nobile officium* of the Court, that all parties interested were agreed that the change should be made, and that the only difficulty was as to how it should be carried out. One difficulty was that the successors *ex officio* of the Bishop of Glasgow were nominated to this trust, but in removing the present Bishop the Court