reservation, if it had been inserted, would have been ineffectual. A reservation has no effect in law except in so far as it saves an existing right, and the defender's case is not rested, as the Lord Ordinary had supposed, upon the superior's omission to reserve a legal claim, but on the stronger ground that he had no claim to reserve. I think this follows from the judgment of the House of Lords in *Stirling* v. *Ewart*. Composition is not a casualty payable out of the land from time to time. It is the price of the charter. The superior's right to demand a year's rent as the price, rests upon the Acts of 1469 and 1669, and upon the Act of George II. But these statutes give the right upon the entry of an adjudger or a disponee and upon no other occasion. They give no right "upon the succession of anyone claiming under such entry." These propositions being established, the right of an heir of entail to enter for relief duty depended on the Act of 1685. It was maintained for the superior that an entail which departs from the legal line of succession is, in substance, an alienation to strangers by anticipation, and each substitution which departs from the line of the vassal last entered is a repetition of the alienation, so that every substitute who is not an heir of line as well as an heir of provision under the deed of entail, is, in truth, a disponee or singular successor, and bound to pay a composition accordingly. The answer to which the judgment of the House of Lords, affirming the decision of this Court, gave effect, is thus expressed in the opinion of Lord Cottenham. The Statute of 1685 "in giving power to make tailzies, gave a right against the lord to give effect to that right, and as the claim in question did not exist before that time, and was not within the reservation" to the superior of casualties of superiority, "and certainly was not given by that Act, there can be no legal foundation for it." I think it follows that if composition were exigible by law, as the price of a charter confirming a deed of entail, the claim must have been enforced on the entry of the institute or not at all. For the superior had no claim except against a disponee, and no remedy except by withholding a charter. He might enter the institute as disponee, if he pleased, for a lesser price than the law entitled him to exact. But he could not, by entering the institute for relief duty, when he was entitled to composition, acquire a right which the law did not give him, and which the institute could not give him by contract, to demand composition from the future heirs of entail. For the Act of 1685 had a double effect. It deprived the superior of his right of refusing to give effect to an entail notwithstanding that it might operate as an alienation, and it brought in a series of heirs who do not represent the institute, and are not bound by his personal contracts. When the charter has once been granted, therefore, in such terms as the superior has thought fit to exact, within his legal right, the right is determined. He cannot control the series of heirs in whose favour the charter will operate, and he has no right by law, and can acquire none by contract, to treat them as singular successors, for whatever reason he may have chosen to treat the institute as an heir.

I am therefore of opinion that Charles Drummond Moray must be held to have been entered to the same effect as if a writ of confirmation had been granted in absolute and unqualified terms. The payment to which the superior was entitled in respect of his entry has been satisfied and discharged, and the defender has no concern with the terms on which the discharge was granted. The claim against him is for his own entry, and as he is entered in the character as an heir of provision, the claim is for relief duty and not for composition.

LORD ADAM and the LORD PRESIDENT concurred.

LORD M'LAREN was absent.

The Court recalled the Lord Ordinary's interlocutor and assoilzied the defender.

Counsel for the Pursuer—Guthrie—C. N. Johnstone. Agent—Donald Beith, W.S.

Counsel for the Defender — Graham Murray, Q.C.—Dundas. Agents—Dundas & Wilson, C.S.

Friday, February 16.

SECOND DIVISION.

BEVERIDGE AND ANOTHER (SPINKS' EXECUTORS) *v.* SIMPSON AND SPINKS.

Succession—Fee—Liferent—Intestacy.

A testator left his whole estate to his two surviving daughters "during their lifetime, share and share alike," and appointed two trustees "to see the provisions of this my will carried into effect." He was predeceased by a daughter who left one child. *Held* that the testator conferred only a liferent on the surviving daughters, and died intestate as regarded the fee of his estate.

Thomas Spinks, watchmaker, Edinburgh, died on 24th March 1893 leaving a settlement in these terms—"I will and dispose of all my money, goods, chattels, household property, furniture, merchandise, stock-in-trade, and all my earthly belongings, etc., in favour of my daughters — Margaret Galloway Spinks, and Alexandrina Ramsay Spinks, during their lifetime share and share alike. I hereby appoint the following trustees to see the provisions of this my will carried into effect—John Beveridge, residing at 3 Comely Green Crescent, Edinburgh, and Alexander Miller, residing at Queensberry House, Edinburgh." The trustees accepted office as executors and were confirmed. Mr Spinks was predeceased by

his wife and one daughter Mrs Euphemia Richardson Spinks or Simpson, who left one daughter Mary Ramsay Simpson, who along with the two daughters mentioned in the will survived the testator.

A special case was presented by (1) the executors, (2) the grandchild and her father as administrator-in-law for her, and (3) the surviving daughters, for the opinion of the Court on the following questions of law—"(1) Whether the third parties are entitled to immediate payment and conveyance of the deceased's whole estate, share and share alike, in fee; or whether the right of the third parties in the said estate is limited to a liferent. (2) Whether, in the event of it being held that the right of the third parties in the said estate is limited to a liferent, the survivor of these parties, on the death of one of them, is entitled to liferent the whole estate; or (3) Whether, in the event foresaid, on the death of each of the third parties, the share liferented by her will pass to the testator's grandchild, the said Mary Ramsay Simpson; or (4) Does the fee of the estate, on the death of either or both liferentrices, fall into intestacy; and in that event are the third parties entitled to two-thirds thereof."

Cases cited—*Mackinnon's Trustees*, July 19, 1892, 19 R. 1051; *Jamieson* v. *Lesslie's Trustees*, June 19, 1889, 16 R. 807; *Sanderson's Executors* v. *Kerr, &c.*, December 21, 1860, 23 D. 227; *Clouston's Trustees* v. *Bullock*, July 5, 1889, 16 R. 937.

At advising—

LORD YOUNG—The testator by his settlement wills and disposes of his money, household property, and all his earthly possessions "in favour of my daughters," naming them, "during their lifetime, share and share alike," and then he appoints certain persons as trustees. Now, I think it is impossible to disregard these words "during their lifetime" as being a limitation on the gift, and to read the clause as if it was an absolute gift to his daughters. In my opinion the will gives only a liferent to the daughters; their interest during their lifetime is protected by the appointment of trustees and there is intestacy as regards the fee. Had the will gone on, "I give all my property to A, B, and C, after my daughters' death," that would have been disposing of the fee, but he dies intestate as regards the fee and the law of the matter is not doubtful.

The testator had three daughters, one of whom predeceased him but left a child. They are his heirs and must take the fee of his estate. Upon the decease of the two surviving daughters their two-thirds share of the fee will go as they may please to direct. With respect to the other third, upon the termination of the life interests that will go to the grandchild.

Each sister takes the liferent of one-half of the estate, and upon the death of one of them the half liberated will have to be disposed of as fee.

LORD RUTHERFURD CLARK—I concur.

LORD TRAYNER—I also concur. I confess I have had more difficulty in the matter than your Lordships, but I do not dissent.

The Court pronounced this interlocutor:—

"Answer the first alternative in the first question in the negative, and the second alternative of said question in the affirmative: Answer the second question in the negative and the fourth question in the affirmative: Find it unnecessary to answer the third question: Find and declare accordingly, and decern."

Counsel for First and Third Parties—C. J. Guthrie. Agent—W. Marshall Henderson, L.A.

Counsel for Second Party—G. L. Macfarlane. Agents—Tait & Crichton, W.S.

Friday, February 16.

SECOND DIVISION.

[Lord Stormonth Darling, Ordinary.

CUTHILL *v.* STRACHAN.

Bankruptcy — Cautioner — Cash - Credit—Cautioner's Bankruptcy—Composition—Payments into Principal Debtors' Account after Discharge of Cautioner.

C, S, and F were cautioners in a cash-credit bond in favour of a bank for a credit upon account-current in name of the principal debtor for £600. In September 1888, when a balance of £599, 7s. 6d. was due to the bank, the estates of S were sequestrated. He paid under contract a composition of 7s. 6d. in the pound. The bank did not claim, nor did they demand a new cautioner. They continued the cash-credit until June 1891, when the principal debtor granted a trust-deed for his creditors. The cash-credit was then closed. C was forced by the bank to pay £615, 5s. 8d., the amount of principal and interest due under the bond. He then sued S for the amount of the composition at the rate of 7s. 6d. in the pound, on one-third of the amount of the overdraft at the date of the defender's composition contract. It appeared that between the date of the defender's sequestration and the closing of the account, the principal debtor paid into the account sums equal to the amount for which the defender was liable at the date of his sequestration.

Held (following the case of *Laing* v. *Brown*, December 2, 1850, 22 D. 113), that on the principle that unappropriated payments of a debtor in an account-current extinguish the items of debt in order, the payments of the principal debtor, after the defender's sequestration, had extinguished the debt of the defender.

In March 1887 George Cuthill junior,