proposed for the direction of the Court is neither investment nor distribution, I am not anxious to define or dogmatise as to the scope of the words. But I think it sufficiently plain that in disposing of matters of distribution, the Court will not, under this section, apply what are really powers of administration to the determination of contentious rights. So long as distribution is more or less plain sailing or consequential the Court will sanction it; but should a conflict of right arise, the Court would presumably relegate it for decision *in foro contentioso*. In short, the jurisdiction would seem, as Lord M'Laren suggested, to be similar to that exercised by the Court in superintending judicial factors.

Now, the question reported by the Accountant is, whether the trustees shall now proceed to sell the estate of Cleland which is vested in them. It is to be observed that the truster expressly directed his trustees to sell certain lands of which Cleland forms part; and I do not know very well why the sale of Cleland has been so long delayed, as the discretion allowed is only the usual one—at such time as they think advantageous or expedient. It appears, however, that there is something to be said for further delaying the sale in order to prove the lower seams of the minerals (it might be at some expense), with a view to getting a higher price if the minerals were proved to be valuable. The pros and cons of this question may easily be imagined, and show it to be one of discretion, on which skilled opinion and good judgment in balancing alternatives would be chiefly of account. The matter is, however, further complicated by the effect which the postponement would have on the relative interests of the heirs in possession and the subsequent heirs.

It seems, however, quite clear that this is not a question of investment. The trustees are not even comparing the desirableness of some contemplated investment with the land which they now hold. As the Lord Ordinary says, the stage of investment has not been reached.

On the other hand, I do not see how the question reported by the Accountant is one of distribution. It is true that by the combined action of the trust-disposition, and the Thellusson Act, so long as Cleland is unsold the whole of the minerals go to the heir in possession. But that does not affect the quality of the question—sell or delay selling.

I am therefore for finding that the matter reported does not relate to the investment or distribution of the estate, and with that finding the case would go back to the Lord Ordinary.

LORD ADAM—Like your Lordship, I am of opinion that the questions raised in this case relate to the administration of the estate as regards neither investment nor distribution. It is on these questions alone that the Court is entitled to give its assistance. I therefore concur with your Lordship both as to this particular case and as to the general purpose of the Act.

LORD M'LAREN—I am, like all your Lordships, anxious to give full effect to the provisions of this Act for the relief of gratuitous trustees; and I think we do give it if we realise as the guiding principle that we should be prepared to give the same assistance to trustees as we would give to the officers of the Court. The Court has always declined to advise a judicial factor as to the exercise of his purely discretionary power. We have not the means of judging the circumstances which render the exercise of a discretion beneficial or the reverse to the trust, and I agree with your Lordship that it was not within the contemplation of the statute that the Court should either assist a trustee in the exercise of a discretion, or decide contentious matters.

LORD KINNEAR—I concur.

The Court pronounced the following interlocutor:—

> "Find that the question of the sale of the estate of Cleland submitted is not a question relating to the distribution or investment of the estate, and with that finding remit to the Lord Ordinary: . . . Find the trustees entitled to the expenses incurred by them out of the trust-estate."

Counsel for the Petitioners—Dundas. Agents—Dundas & Wilson, C.S.

Friday, July 17.

SECOND DIVISION.

[Sheriff-Substitute at Edinburgh.

BARR *v.* BAIN.

Proof—Admissibility of Evidence—Filiation and Aliment—General Statement in Record Allowed to Go to Proof without Objection.

In an action of filiation and aliment for an illegitimate child, born on 7th December 1895, the defender in his defences denied the pursuer's statements, and made a general averment "that about 1894 and 1895 the pursuer was indulging in sexual intercourse with several young men living in her own neighbourhood," among them being three persons named, and that one of them was the father of the child.

The case having gone to proof without objection on the part of the pursuer—*held* that the defender was entitled to ask two of the persons named, who appeared as witnesses for the defence, whether on particular occasions they had connection with the pursuer.

Jane Barr, with consent and concurrence of her father William Barr, farmer, Carnwath, raised in the Sheriff Court at Edinburgh, an action against Peter Horn Bain, insur-

ance clerk, Edinburgh, for (1) £2, 2s. for inlying expenses; (2) £7 per annum for fourteen years from 7th December 1895, for aliment for a female child borne by pursuer on that date, of which she averred the defender was the father; and (3) £200 as damages for breach of promise of marriage and seduction.

The pursuer averred that on 20th July 1894 the defender offered to marry her and she consented to be his wife, that on Sunday 10th March 1895 she, yielding to his importunities, and relying on his promise of marriage, permitted him to have connection with her, and that in consequence of this connection she gave birth to a daughter on 7th December 1895.

The defender in his defences denied the averments of the pursuer, and further averred—"The defender Peter Horn Bain believes and avers that about 1894 and 1895 the female pursuer was indulging in sexual intercourse with several young men living in her own neighbourhood, among them being Adam M'Kendrick, James M'Kendrick, and George Miller, and that one of them is the father of her child."

The case went to proof before the Sheriff-Substitute (HAMILTON). At the proof the pursuer, in answer to questions during her cross-examination, admitted that Adam M'Kendrick had walked home with her once from the choir singing in 1893, but denied that he had connection with her on that night or on any other occasion. She admitted also that she met George Miller at a social gathering on 17th May 1895, but denied that he had connection with her. Adam M'Kendrick and George Miller were both examined for the defender. Adam M'Kendrick spoke to four meetings he had had in the evening with the pursuer, the first about the end of 1893, the second in July 1894, the third on 17th February 1895, and the fourth in August 1895. When speaking to each of these meetings he was asked by his agent—"Had you connection with the pursuer that night?" These questions were objected to by the pursuer's agent, and the objection was sustained. George Miller spoke to a meeting he had with pursuer on the evening of 17th May 1895. He was asked—"Had you connection with her that night?" The question was objected to by the pursuer's agent, and the objection was sustained.

On 8th June 1896 the Sheriff-Substitute pronounced the following interlocutor—"Finds it proved that the defender is the father of the illegitimate child in question, but finds that the pursuer has failed to prove that the defender promised to marry her, or that she was seduced by him; decerns against the defender for payment of the inlying expenses and aliment sued for; *quoad ultra* dismisses the action and decerns."

The defender appealed, and argued in the first place, that the Sheriff-Substitute had erred in sustaining the pursuer's objections to his questions to his witnesses.

Argued for the pursuer — The evidence objected to was totally incompetent. Where charges of this kind were made against a pursuer, the time and place must be the least approximately tabled on record. No time and place were stated in the defender's averment, and thus no opportunity had been given to the pursuer to get evidence to rebut the averments. It was incompetent to prove particular acts without notice being given—*Macfarlane* v. *Young*, May 15, 1824, 3 Murray's Reports p. 412.

LORD JUSTICE-CLERK—The defender's averment is undoubtedly of a general kind, and I think a great deal might be said to show that such an averment should not have been allowed to go to proof. But no objection was taken to the averment, and no call was made for a more specific statement. The case went to proof on the record as it stood. The pursuer was asked questions as to particular acts of connection with the parties named on record, which she denied. I think it was competent for the defender to bring evidence to prove that she had connection on these occasions. I think we must remit the case back to the Sheriff-Substitute to receive this evidence.

LORD TRAYNER—I concur.

LORD MONCREIFF—I think there is no doubt that this evidence is competent. The defender's statement is absolutely irrelevant as it stands, and should not have been sent to proof, because it does not name either place or time. But both parties without objection were allowed a proof of the averments on record, and therefore I am of opinion that it was too late for the pursuer to take the objection at the trial. I think, however, both the Sheriff-Substitute and this Court, if the case again comes before us, can in deciding the case give weight to the fact that no notice was given.

LORD YOUNG was absent.

The Court recalled the interlocutor appealed against, and remitted the case back to the Sheriff-Substitute to take the evidence disallowed at the proof.

Counsel for the Pursuer—Jameson—Tait. Agent—Andrew White, W.S.

Counsel for the Defender — Salvesen. Agent—Charles Garrow, Solicitor.

Friday, July 17.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

CAMERON *v.* GLENMORANGIE DISTILLERY COMPANY, LIMITED.

Company — Ultra vires of Shareholders—Allotment of Fresh Issue of Authorised Capital—Right to Remunerate Servants.

The shareholders of a limited liability company registered under the Companies Acts duly passed a resolution to