When Robert Cruikshank died on 27th July 1900 Agnes Forsyth had not attained the age of twenty-five years, and it is contended on behalf of the second party that right to the fee of the property has now devolved on her.

The clause of devolution occurs in a fee-simple disposition, and is not fenced with irritant and resolutive clauses. But such clauses of devolution or return, although not frequently met with in a fee-simple destination, are not necessarily to be refused effect. They are or may be a condition of the grant.

But if a clause of the kind is to receive effect, and the person who is infeft in fee in a heritable property is to be divested in respect of it, it must be expressed in clear and unambiguous language.

The difficulty in this case is that although we may surmise that some words (probably "and of her dying without leaving issue") have been omitted, the clause as it stands, taken literally and apart from its context, is grammatical and can be given an intelligible meaning, viz., that if the disponer predeceases Agnes before she reaches the age of twenty-five, the property is to devolve on her mother or revert to the disponer's heirs. So far there is no ambiguity, and improbable as it is that this clause as it stands expresses the disponer's intention, I have some hesitation in refusing to give effect to its apparent meaning.

But when it is contrasted with a clause of return, which occurs in an earlier part of the deed, I think we have sufficient grounds for holding that it may be rejected on the ground of repugnancy. The earlier clause runs thus—"And in the event of the said Agnes Forsyth dying before attaining the age of twenty-five (without leaving issue) survived by me, the said subjects shall revert to me, and these presents shall, *ipso facto*, become void and null, and in that event I shall be entitled to deal with the subjects as my own, and to sell or burden the same as freely as if these presents had never been granted."

Under this clause it will be observed (1) that if Agnes predeceases the disponer before attaining the age of twenty-five, the subjects do not transmit to her mother, but at once revert to the disponer absolutely, with the result apparently that even the second party's liferent vanishes.

But (2), if Agnes leaves issue, the subjects do not revert to the disponer, even although she predeceases him before reaching the age of twenty-five.

Turning now to the concluding clause of devolution, it provides that even if Agnes survives the disponer, and whether she has issue or not, the subjects are to transmit to the second party (who under the former clause would have got nothing at all if Agnes had predeceased the truster before reaching twenty-five without leaving issue, and who would not have got the fee of the estate if Agnes had left issue) and failing her to the disponer's heirs.

Suppose that the second party predeceased the disponer and Agnes, we should then have to deal with two clauses of return. Under the first one, if Agnes predeceased the disponer before reaching the age of twenty-five leaving issue, the property would not return to the disponer. But under the second clause, if the disponer predeceased her before she reached that age, she would, although she had issue, be immediately divested, and the subjects would revert to the disponer's heirs, which seems absurd.

Although with some difficulty, I think that the second clause is repugnant, and that we are entitled to refuse to give effect to it.

I therefore answer question 1 (*a*) in the affirmative, and 1 (*b*) and 1 (*c*) in the negative.

The Court answered the first branch of the question of law in the affirmative, and the second and third branches of the question in the negative.

Counsel for the First Party—Constable. Agent—James Skinner, S.S.C.

Counsel for the Second Party—Graham Stewart. Agent—Charles Munro, S.S.C.

Counsel for the Third Parties—J. C. Watt. Agent—J. W. Deas, S.S.C.

Saturday, June 15.

FIRST DIVISION.

[Lord Stormonth-Darling, Ordinary.

WHYTE *v.* WHYTE.

Parent and Child—Aliment—Son Engaged in Learning a Profession.

A young man engaged in learning a profession is entitled to reasonable aliment from his parents.

Circumstances in which *held* that a stockbroker's clerk, who was preparing to enter that profession, and was earning a salary of £40, with no other means of support, was entitled to aliment from his mother at the rate of £12 a-year.

David Whyte, stockbroker's apprentice, Edinburgh, brought an action against his mother, Mrs Sarah Jane Wildsmith or Whyte, widow of the late David Whyte, live-stock agent, Cupar-Fife. The conclusions of the summons were that the defender should be ordained "to make payment to the pursuer of the sum of £100 sterling yearly in name of aliment and expenses of learning his profession of stockbroker, or of such other sum, more or less, as our said Lords shall think just and reasonable in the situation of the parties . . . aye and until his mother shall receive him back into her house, or until he is set out in his profession and is able to support himself without the assistance of his mother."

In his condescendence Whyte averred that he was twenty years of age, had been well educated, and was now, with his mother's approval, a clerk in a stock-

broker's office in Edinburgh with a view to entering that profession, in which capacity he earned a salary of £40 a-year, which formed his sole means of support, and was insufficient to maintain him in his position in life. He further averred that the defender was possessed of considerable means, and had turned him out of her house and refused to receive him back.

Mrs Whyte lodged answers, in which she averred (Ans. 5) that the pursuer had "shown an overbearing and ungovernable disposition," and had caused her much grief and pain by his rude and unkind behaviour towards her. She denied that her means were considerable.

She pleaded, *inter alia*—"(3) The pursuer being nearly twenty-one years of age, and being well qualified and able to earn his own living, is not entitled to obtain a pecuniary allowance from the defender, and the defender is entitled to absolvitor."

Proof was led which established the facts as averred by the pursuer and summarised above. Mrs Whyte was examined as a witness, but no questions were put to her relative to the pursuer's conduct to her. She deponed that her income, apart from a house in Dublin Street, Edinburgh, in which she resided, was less than £100 a-year.

On 16th March 1900 the Lord Ordinary (STORMONTH DARLING) pronounced the following interlocutor—"Decerns against the defender to make payment to the pursuer of the sum of £12 sterling yearly in name of aliment, payable as concluded for in the summons: Finds the pursuer entitled to expenses," &c.

Opinion.—"The conduct of the defender here is so extraordinary that it is almost impossible to find anything analogous to it in the reported cases. She is the mother of a lad of twenty, her only son. She gave him an education at school where the cost of it was, on her own admission, something like £100 a-year. About a year and a-half ago he entered with her approval the office of a respectable firm of stockbrokers, where in reality, though not in name, he is an apprentice and anxious to learn that business. I am entitled to take it from the evidence of the representative of that firm, that he is learning his business and giving satisfaction to his employers. His conduct in every respect is regular and good. In these circumstances, six months ago the mother suddenly turned him out of her house, and intimated that she would on no account receive him back. He has ever since then been living in lodgings and doing the best he can upon the modest salary he receives in his office, namely, £40 a-year. He says that is not sufficient for his decent support, according to the station in life he occupies and the business in which he is engaged. I think it may be accepted that upon £40 a-year no man can live respectably and without incurring debt who has to appear every day at an office of the description in which the pursuer is, and to discharge the duties he has to discharge. Two things in law which are perfectly settled are, that aliment cannot be demanded by a child from a parent where the child is in a position to maintain himself, having health and strength to enable him to do so, but that aliment is awarded when it can be shown that the child is unable to keep himself. The age at which a youth may be expected to earn his livelihood differs according to his station in life. A youth of twenty in the working classes may quite well be able to maintain himself without any assistance, but a youth who has been educated like the pursuer, and kept at school till he was sixteen years of age, and who has since been living with his mother in a house the assessed rental of which is £60 a-year, is, I think, fairly entitled to expect that he shall be put into something of the nature of a profession, or at all events into a business which it may take him a little while to learn; and that is the position of the pursuer at this moment. The case of *Smith* v. *Smith* (13 R. 126) establishes that after a son has been put into a profession, although it may be totally insufficient to keep him, the father is not bound to pay aliment so long as he offers to take his son back to his house.

"There are two differences between that case and this. This young man has not been able to start in his business—he is still learning it; and the defender denies him the shelter of her house. At any moment she might have put an end to this action by offering to take him back, but she declines to do that. The question then is, whether the law can compel her to give that exceedingly modest rate of aliment, which is all that a Court can award, and which will to some extent take the place of her refusal to entertain him in her house. As to this, I think, there is not much doubt. The pursuer is, in my view, entitled to receive from his mother, while things remain as they are, some supplement to his small income. I think she is not entitled, living as she does — whether wisely or foolishly I have no right to inquire — she is not entitled in law any more than in good feeling to turn him out into the street, and throw him upon the benevolence of other people. On the other hand, when one comes to the rate of aliment, I say it must be reduced to the smallest possible proportions, because in the case of a youth who has the misfortune to have a parent whose affections have been alienated, and who is unwilling to do anything out of goodwill, the law will award only what is barely enough to keep him in the way I have described. I think I should not be justified in awarding this pursuer more than £12 a-year and the expenses of the action."

The defender reclaimed, and argued that the pursuer having attained an age at which he might be expected to maintain himself was not entitled to aliment from his mother. In support of this proposition the following authorities were cited — Fraser, Parent and Child, p. 104; *Ayton* v. *Colvil*, 1705, M. 380; *Maidment* v. *Lauder*, May 25, 1815, F.C.; *Maule* v. *Maule*, July 9, 1823, 2 S. 464, and June 1, 1825, 1 W. and S. 266; *A* v. *B*, March 9, 1848, 10 D. 895; *A* v *B*, March 6, 1858, 20 D. 778; *Bain* v. *Bain*, March 16, 1860, 22 D. 1021; *Thom* v. *Mac-*

kenzie, December 2, 1864, 3 Macph. 177; *Smith* v. *Smith*, November 4, 1885, 13 R. 126.

Counsel for the respondent were not called upon.

LORD PRESIDENT — The reclaimer Mrs Whyte is the defender in an action at the instance of her son David Whyte for aliment. The pursuer is at present a stockbroker's clerk or clerk apprentice. He received a good education from his mother and about a year and a-half ago he entered the stockbroker's office with her knowledge, and apparently with her approbation, and with the intention of learning that business. His salary was at first £30 a-year, but it was afterwards raised to £40, and this is now his whole income. Up till a few months ago he lived in his mother's house, but shortly before this action was raised she turned him out of the house and refused to take him back. Beyond what is stated in Ans. 5, which is very general, she assigns no reason for this, and there is no allegation made or suggested which could justify her conduct in this matter. Since then the pursuer has lived in lodgings. In this action he sues for an addition to his income on the ground that he is not able to live in his present position on £40 a-year. The Lord Ordinary has found him entitled to £12 a-year from his mother, which will only bring his income up to £1 a-week.

In my opinion we ought not to interfere with what the Lord Ordinary has done. In adhering to his interlocutor we decide nothing as to what the liabilities of the defender will be after the pursuer has completed his professional education. A different question may then arise, but at present the pursuer is only learning his business and the Court has recognised a distinction between permanent liability for aliment after a son has completed his education and professional or business training, and the case where he is still in the course of receiving his education or learning a business. In the former case the Court is unwilling to award aliment, especially where there is, as in *Smith* v. *Smith*, an offer by the parent to maintain the son in his own home. Here the mother has simply barred her son out of doors while he was in the course of learning his profession, without a penny, and without any reason assigned. In these circumstances it appears to me that the Lord Ordinary has acted with proper discrimination in ordering the defender to contribute for the present £12 a-year to her son's income.

LORD ADAM concurred.

LORD M'LAREN — Mr Young has very properly brought before us all the decisions bearing upon this question. These authorities are useful for the principles which should guide the Court, but they do not assist us very much as to the precise circumstances which will raise a case for granting aliment or as regards the amount of such aliment. The pursuer here is neither a mere copying clerk nor a fully qualified clerk. His object is to become a stockbroker after the requisite training and experience. His position in life therefore corresponds to that of an apprentice who in the meantime is earning wages at a lower rate than he may expect to receive when he has learned the business. I agree that the aliment allowed by the Lord Ordinary is reasonable, because it only brings up the income of the pursuer to the sum which he would be able to earn as a qualified clerk in the line of business to which his mother agreed that he should be brought up.

LORD KINNEAR concurred.

The Court adhered.

Counsel for the Pursuer and Respondent —J. Wilson, K.C.—R. S. Brown. Agent—Henry Wakelin, Solicitor.

Counsel for the Defender and Reclaimer —Guy—J. B. Young. Agent—F. M. H. Young, S.S.C.

Tuesday, June 18.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

MENZIES *v.* WENTWORTH.

Fishings—Trout-Fishing—Loch—Common Right of Fishing—Regulation by Court—Frontage as Measure of Right.

A joint-proprietor of a loch, in which, under previous judgments of the Court, all the riparian proprietors had a common right of trout-fishing, brought an action against the other riparian proprietors, concluding for declarator that the trout-fishing on the said loch was being injured and destroyed, that the injury was caused by excessive fishing by the defenders, or some of them, that the pursuer was entitled to have the right of fishing regulated by the Court, and that it should be regulated on the principle that no more than sixteen boats should be allowed on the loch, and that these should be allocated among the various proprietors in proportion to the extent of frontage held by each. Circumstances in which *held*, after a proof (*aff.* judgment of Lord Stormonth Darling Ordinary, *dub.* Lord M'Laren) that the pursuer had failed to establish such a case of injury to the fishing as would induce the Court to interfere by regulation.

Held by Lord M'Laren that the action was incompetent as laid, in respect that it concluded for allocation of boats according to frontage.

Observations (*per* Lord Kinnear) on the nature of a common right of trout-fishing in a loch.

This was an action at the instance of Sir Robert Menzies, Bart., Menzies, proprietor of the barony of Rannoch, Perthshire, to have the right of trout-fishing in Loch