Thursday, November 29.

SECOND DIVISION.

[Lord Johnston, Ordinary.

MACKENZIE'S TRUSTEES *v.* MACKENZIE AND OTHERS.

Succession—Trust—Entail—Testate or Intestate—Residue—Heir "Entitled to Succeed"—Gift of Beneficial Interests in the Residue to "the Heir for the Time being Entitled to Succeed under the said Deed of Entail" where no Entail Executed and Estate Acquired in Fee-Simple before Period of Payment of Residue.

A testator directed his trustees to hold certain estate until certain purposes had in their opinion been fulfilled, or in any event until the heir entitled to succeed as after mentioned should attain the age of twenty-one, and then to execute a strict deed of entail of, *inter alia*, the estate of K in favour of his eldest son A, with substitution to his sons and the heirs-male of their body, in their order. By a subsequent codicil the testator struck out A from the destination, and directed his trustees to execute the said entail directly and immediately in favour of A's eldest son B. The same codicil, after narrating the residue clause of the settlement, which had been for the benefit of "the heir succeeding to the said estates under the said deed of entail," stated that the testator desired to alter it, and directed the trustees to apply the residue in various specified ways for the benefit of "the heir for the time being entitled to succeed under the said deed of entail," on his attaining the age of twenty-four. B on attaining the age of twenty-one presented a petition to the Court, under section 27 of the Rutherfurd Act, for authority to have the estate of K conveyed to him in fee-simple, with consent of the next heirs, and this application was granted, and the deed of entail was accordingly never executed. Soon after B died, without having reached the age of twenty-four, and by his trust-settlement conveyed the estate of K to his father A, also in fee-simple.

Held that the person who, if the deed had been executed, would have been entitled to succeed to the estate under it, was entitled, on attaining the age of twenty-four, to the residue as against the testator's heirs *ab intestate*, seeing that in the circumstances the words "heir for the time being entitled to succeed under the said deed of entail" were a mere description of the person who was to take the residue, and did not import as a condition of his taking that he should actually be at the time in possession of K as heir of entail under the deed.

This was an action of multiplepoinding raised by Mrs Margaret Allan Stuart Mackenzie or Davidson, Shrivenham, Berkshire, and George Auldjo Jamieson, W.S., Edinburgh, the trustees and executors of the deceased Sir James Thompson Mackenzie, Bart., acting under his trust-disposition and settlement, dated 25th January 1883, to which he added four codicils, dated respectively 22nd March and 9th April 1887, and 29th January and 3rd June 1889. The defenders called were the whole next-of-kin, or representatives of next-of-kin, of the deceased, and the whole beneficiaries under the said deeds. Claims besides that for the said trustees were lodged for Ronald Mackenzie Logan and Marguerite Alice Logan, children of the deceased Mrs Mary Mackenzie or Logan, who was a daughter of the testator; for Flora, Baroness Wesselenyi, wife of Baron Niklos Wesselenyi, Hungary, administratrix of the personal estate of the deceased Claude Longueville Mackenzie, third son of the testator; and for Victor Audley Falconer Mackenzie, eldest surviving son of Sir Allan Russell Mackenzie, the eldest son of the testator.

The testator was survived by his eldest son Allan Russell Mackenzie, and by his said son's eldest son Allan James Reginald Mackenzie (the institute under the deed of entail directed by the testator to be executed as after mentioned), who died on 16th September 1903 unmarried.

The following explanation of the question at issue, and analysis of the testator's trust-disposition and settlement, is taken from the opinion of the Lord Ordinary (JOHNSTON) (Sir Allan Russell Mackenzie therein referred to as "the present Sir Allan" died subsequent to the hearing in the Outer House and shortly prior to the hearing in the Inner House, and, his eldest son having predeceased him, was succeeded in the baronetcy by a younger son, Sir Victor):—"The question raised at the present stage of this multiplepoinding has reference to the disposal of the residue of the estate of Sir James Thompson Mackenzie of Kintail. At the date of his settlement and of his death the testator was the proprietor of three estates in Scotland—Kintail in Ross-shire, Glenmuick in Aberdeenshire, and Bachnagairn, adjoining Glenmuick in Forfarshire. By his settlement of 1883 he directed the entail of these estates on a series of heirs, but he made certain alterations by codicil, directing the sale of Glenmuick and Bachnagairn, the investment of £60,000 of the proceeds in an English estate to be settled in tail according to English law, and the addition of the balance of the price to residue, and then, by a somewhat involved provision, practically bequeathed the residue to the heir for the time being entitled to succeed under the entail. Kintail having been disentailed, and the tailzied destination evacuated, the question at issue at present is, whether the bequest of residue has lapsed so as to pass into intestacy. The trustees and the testator's grandson, Victor Mackenzie, who would be heir of entail in possession of Kintail had it not been disen-

tailed, and who is, constructively, the English equivalent of the heir in possession of the English estate, which has not yet been purchased, maintain that there is no lapse. Certain of the next of-kin, on the other hand, maintain that there is lapse and resulting intestacy.

"The possibility of the question emerging has arisen from the fact that the entail falls to be executed on the majority of the institute, while the vesting of the residue is postponed until the heir attains twenty-four. The institute in the entail attained twenty-one, and at once applied to the Court for and obtained authority to acquire Kintail in fee-simple, thus avoiding the circuity of allowing the entail to be executed and then disentailing. He has died leaving a disposition of the estate in favour of his father in fee-simple, and has thus evacuated the tailzied destination, and dying as he did before twenty-four he took no right in the residue. The next heir in the destination is his younger brother Victor Mackenzie, who is on the eve of attaining twenty-four years of age. If it be a condition of his taking under the residue clause that Victor Mackenzie when he attains twenty-four should be heir of entail in possession of the estate of Kintail under the entail which the testator directed to be executed, the claim by the trustees and Victor Mackenzie cannot be supported, as it is clear that he cannot now answer that description. But if the terms of the bequest do not import a condition but merely a description, then if he survives twenty-four he will still take the residue, though he may have lost the estate of Kintail.

"I have endeavoured thus generally to state the question at issue, but owing to the necessity of deducing Sir James Mackenzie's ultimate directions from a complicated series of provisions contained in his settlement and four codicils, the language I have used must not be understood as strictly accurate in all details.

"The first and second codicils have no bearing on the question at issue. That depends upon a consideration of the settlement of 1883, the third codicil of January, and the fourth codicil of June, 1889. The third codicil, which is holograph, was really so far as this question is concerned superseded by the fourth codicil, which is a formal document. But the third codicil has been held to be part of the testamentary writings of Sir James, and must therefore be considered.

"The next-of-kin maintain that the placing of the estate of Kintail under a strict entail was the dominating idea of the testator upon which the whole provisions of his testamentary writings hinge. He intended, they maintain, to endow the descendant whom he proposed to create Mackenzie of Kintail, but he had no intention of endowing a particular descendant who could not appear to the world in that character, having divorced himself or been by circumstances divorced from that estate. The testator's motive therefore forms the main basis of their argument. What, however, I conceive I have to do is to deduce his intention from the directions which he has given. To bring the testator's motive so prominently forward may have, I think, a dangerous tendency to deflect the judgment from the true issue. But even if I had to consider motives I am by no means satisfied that I could altogether agree with the views of the next-of-kin on this subject. I do not think that there can be much doubt, though in this it is a little difficult to exclude prepossessions from common knowledge and to confine oneself strictly to the terms of the deed, that Sir James' ambition was to resuscitate the historic title of Mackenzie of Kintail and to transmit it to his successors. But I think that he also had the ambition of founding a family and leaving an heir. And I am unable to come to the conclusion, unless the terms of his testamentary directions compel me to do so, that because he has been disappointed in securing that the representative whom he has chosen as his *hæres factus* should continue to combine with that character the position of Mackenzie of Kintail, therefore he is to be stripped of the position of heir.

"Passing now, in the first place, to the provisions of the settlement.

"In these the next-of-kin have pointed out many indications favourable to their views, which must therefore be considered.

"Sir James designs himself as 'of Kintail,' but I must add also 'of Glenmuick,' under which he includes Bachnagairn. He designs his eldest son, the present Sir Allan, whom originally he appointed a trustee, as 'the younger of Kintail.'

"In the second purpose, Kintail having no residence upon it, he directs his trustees during the subsistence of the trust, out of the income of the trust-estate, to discharge all expenses to be incurred, *inter alia*, in maintaining any mansion-house on the estates which may be kept in their own hands, 'whether or not the same shall be occupied by the heir for the time entitled to succeed to the said estate of Kintail as hereinafter provided.'

"By the fifteenth purpose he directs a residence at Braickley, on the estate of Glenmuick, to be completed and to be made available as a jointure house 'for the free liferent use and possession of the widows successively of the heirs of entail who may have succeeded, or may have been entitled to succeed, to my said estate of Kintail under the destination hereinafter written.' And directed his trustees, 'in executing the deed of entail after mentioned, in case the same shall contain the said estate of Glenmuick,' to make provision either in the deed of entail or otherwise for securing as far as possible that his wishes in regard to the said jointure house should be carried into effect.

"By the seventeenth purpose he provided that so long as the estate of Glenmuick should remain unsold the person for the time being entitled to succeed to the said estate of Kintail as heir of entail under the destination hereinafter written should be

entitled to the free use and enjoyment of his establishment at Glenmuick, which should be maintained at the expense of his trust-estate as hereinbefore provided.

"By the eighteenth purpose he provided, with reference to Glenmuick and Bachnagairn, 'neither of which is in my opinion suitable as a residential estate for the personal occupation of the proprietor, . . . that in the event of any heir for the time being entitled to the estates to be contained in the said deed of entail requesting my trustees at any time while the same may be in their possession to sell the said estates of Glenmuick and Bachnagairn,' they should have power and authority to do so, and in the event of their doing so he directed his trustees to lay out a sum not exceeding four-fifths of the free proceeds in the purchase of a residential estate elsewhere in Scotland, 'which estate so purchased shall be added to the said estate of Kintail, and the same shall be included in the disposition and deed of entail to be executed as after provided.' The balance of the free proceeds of the sale was to be invested, and as far as possible settled by the trustees under the advice of the Lord Advocate 'upon the heirs called to the succession of the said estate of Kintail in such manner as to restrict, as far as the law for the time will permit, and for as long a period as possible, the interest of the respective heirs to a liferent only.'

"By the nineteenth purpose he directed that in event of the sale of Glenmuick and Bachnagairn his trustees should, 'upon the price of the said estates being reinvested in the purchase of other lands to be added to the said estate of Kintail,' provide on said other lands a jointure house to replace Braickley.

"By the twentieth purpose he gave directions as to the time the trustees were to continue to hold the lands and estates conveyed and the proceeds of the sale of Glenmuick and Bachnagairn should these be sold, and any lands which might be purchased with such proceeds. Shortly, they were empowered to hold them for such period as in their sole discretion they should think necessary for enabling them to carry out his wishes as above expressed, and particularly his wishes expressed in the fifteenth, seventeenth, eighteenth, and nineteenth purposes, 'or for any other purpose which may not have been implemented, and which should in their opinion be implemented before making over my estates to the heir entitled to succeed thereto as after mentioned.' But in any event they were to retain the said estates in their own hands until the heir entitled to succeed as aforesaid, if in minority at the time when they would otherwise divest themselves of the estate, or some subsequent heir succeeding to him 'should attain the age of twenty-one years complete; but declaring that notwithstanding anything contained in these presents it shall be in the power of my trustees, if they shall think proper, to convey the said lands and estates to the heir entitled thereto if and when he shall attain the age of twenty-one years complete notwithstanding that my wishes as expressed in the fifteenth, seventeenth, eighteenth, and nineteenth purposes hereof may not have been wholly or even partially carried out,' contenting themselves with the insertion in the deed of entail of provisions securing that so far as possible they should be carried out. This purpose further provided that 'until the said deed of entail shall be executed my trustees shall allow the heir for the time entitled to succeed to the said estates to occupy and possess free of rent any mansion-house on the lands and estates in Scotland hereby conveyed or to be purchased as aforesaid, which mansion-house shall be kept up and maintained by my said trustees as before provided, and they shall pay or apply the free annual income or produce of the trust-estate not otherwise disposed of . . . to or for behoof of the heir for the time being entitled to succeed to the estates under these presents.'

"The twenty-first purpose provided for the execution of the deed of entail. 'Upon the prior purposes of these presents being in the opinion of my trustees, who shall be sole judges, fulfilled, and my wishes as above expressed carried out to such an extent as to entitle them in their sole discretion to denude themselves of the said trust-estate, so far as regards the lands to be entailed, they shall' prepare and execute at the sight of the Lord Advocate a disposition and deed of strict entail 'of my said estate of Kintail and of my said estates of Glenmuick and Bachnagairn,' or of any lands purchased in substitution for the latter, upon the series of heirs specified. The institute was to be his eldest son Allan Russell Mackenzie, the present Sir Allan, with substitution to his sons and the heirs-male of their bodies in their order, with further substitution to his whole other descendants. It was to be a condition of the entail that the heir in possession of the said estates should take and bear the name of Mackenzie and the arms and designation of Mackenzie of Kintail, and all other conditions and clauses were to be expressed in terms which, in the opinion and under the advice and direction of the Lord Advocate, were 'best calculated to effect and carry out for as long a period and as strictly as possible, according to the law at the time, my desire and intention that my said lands and estates should be settled in the form of a strict entail according to the law of Scotland.' Power was also given to 'the heir for the time being entitled to succeed to the said estates, notwithstanding the same may not have been conveyed to him,' to provide a jointure to his wife, and he further declared his wish that the plenishing of Glenmuick mansion-house should 'as far as possible be settled by my trustees so as to descend along with my said lands and estates to the heir entitled to succeed thereto under the said deed of entail.'

"The twenty-second purpose provided for the interim disposal of the income of the residue, and in this connection it markedly

discriminates between the legatees provided for out of his personal estate, and 'my heir in the heritable estate.'

"By the twenty-third and last purpose he directed that the final residue itself should be 'settled or otherwise dealt with by my trustees, in such manner as they, acting under the advice of the Lord Advocate for the time, shall consider best calculated for securing, so far as the law for the time will permit, that the heirs succeeding to the said estates under the said deed of entail shall have the liferent of said residue in their order successively.'"

The following summary of the third codicil and of the fourth codicil up to and including article 10 thereof is also taken from the opinion of the Lord Ordinary:—"I shall only refer to the third codicil for the purpose of drawing attention to the fact that in expressing his wishes in his own words under his own hand Sir James pointedly accentuates his intention to leave an heir. After some provisions, which it is not necessary to notice, he cancels and annuls, for reasons presumably understood by those concerned, all the bequests made to his eldest son, the present Sir Allan, and revoked his nomination as executor, he not having in his father's opinion 'sufficient judgment and discretion to fill the position of executor to my estate or to occupy the position of my chief heir.' In lieu of these bequests he makes other and very handsome provisions for his son Allan.

"He then does not permit, as in his settlement, but positively directs the sale of Glenmuick, including Bachnagairn, and from the proceeds the purchase of a small property in England, say for about £60,000, and the expenditure of another £15,000 upon its improvement and plenishing. He then directs that his son Allan should be allowed during his life the occupation and revenue of this property, but with power to his trustees in certain circumstances to withdraw these benefits from him, in which case they were 'to give the same, and put my heir in charge whoever he may be. I wish this property so purchased to be a residence for my heirs, and this instruction to purchase a property in England cancels the instructions I left in my said trust-deed and settlement to purchase a property in Ross-shire. . . . my daughter can explain my reasons for not desiring to have more property in Scotland than Kintail in Ross-shire. In place of my eldest son being my heir, as I directed by my trust-deed and settlement, by this codicil I provide for him otherwise, and my heir I now make my son Allan's eldest son James (really Allan James Reginald) Mackenzie, and should he die my heir is to be in the succession as declared in my trust-deed and settlement.' After several other references to 'my heir,' he concludes by a postscript, 'heir always means the heir as declared in my trust-deed and settlement.'

"I have referred to these passages, though some of the directions they contain are not very intelligible, because they appear to me to give prominence to the idea of founding a family or leaving an heir, and not to give the same importance to the particular estate of Kintail as did the earlier deed—though no doubt it never occurred to him that the heir whom he designates by reference to the deed of entail should so soon be deprived of the estate of Kintail.

"But then the ideas, roughly and inartistically shadowed forth in the third codicil, are reduced to precision and put into conveyancing form by the more formal fourth codicil, and upon the terms of that codicil the questions at issue come, I think, ultimately to turn.

"By the eighth purpose of that codicil Sir James revoked the fifteenth, eighteenth, and nineteenth purposes of his settlement, which, it will be remembered, provided (fifteenth purpose) for making Braickley House on Glenmuick a jointure house; (eighteenth purpose) for the sale of Glenmuick and Bachnagairn at the request of the heir for the time being and in the discretion of the trustees; and (nineteenth) purpose) for the sale of Glenmuick and Bachnagairn at the request of the heir for the time being and in the discretion of the trustees; and (nineteenth purpose) for the provision of a jointure house on any other estate to be purchased in substitution for Braickley, and in lieu and place thereof he positively directed his trustees to sell his estates of Glenmuick and Bachnagairn, and on these being sold to lay out and invest a sum of £60,000 or thereby of the free proceeds in the purchase of a residential estate in some part of England, and to expend a further sum of £15,000 or thereby in improving and plenishing the mansion-house thereon. The remainder of the free proceeds he directed to be treated 'as part of my personal estate, and as such to be available for all the purposes of my said trust-disposition and settlement and codicil, and these presents, so far as applicable to my personal estate, in which expression as used throughout these presents it is my intention to include everything except my estate of Kintail in Ross-shire and the estate to be purchased by my trustees in England.'

"Passing over the provision of a qualified life-interest in the English estate to be so purchased to his eldest son Sir Allan, and the condition on which it would be forfeited, and so long as the estate remained vested in the trustees would pass to 'the heir who would for the time being be entitled to succeed under the entail or settlement of the said estate to be executed as after mentioned,' we come to the ninth and tenth purposes, which contain the modifications of the directions to entail which had been given in the principal settlement. These consist in striking the testator's eldest son Sir Allan out of the entail, in striking Glenmuick and Bachnagairn out of the entail, and substituting the English property to be acquired; and in respect that Kintail and the English property could not be entailed by the same instrument as might have been done with Kintail, Glenmuick, and Bachnagairn, in providing for the execution of two deeds

—one a strict entail, according to the law of Scotland, of Kintail to be 'granted directly and immediately in favour of the said Allan James Reginald Mackenzie, eldest son of the said Allan Russell Mackenzie, and the heirs-male of the body of the said Allan James Reginald Mackenzie, whom failing to the other son or sons of the said Allan Russell Mackenzie successively in the order of their seniority, and the heirs-male of their respective bodies, whom failing to the other heirs and substitutes appointed by my said trust-disposition and settlement to succeed to them in their order as therein set forth'—and the other an entail or settlement of the English estate to be purchased 'as nearly similar in effect to the entail of my said estate of Kintail, to be executed as provided in my said trust-disposition and settlement and these presents, as the law of England with reference to such settlements will permit,' and subject to the life interest provided to his eldest son, Sir Allan."

The eleventh purpose of the fourth codicil, which is given here more fully than in the Lord Ordinary's opinion, was as follows:—"And, *in the eleventh place*, whereas by the last purpose of my said trust-disposition and settlement it is provided with reference to any residue of my estate which might remain over, after fulfilling or providing for the complete fulfilment of the whole other purposes and directions thereof, that such residue should be settled or otherwise dealt with by my trustees in such manner as they, acting under the advice of the Lord Advocate for the time, should consider best calculated for securing, as far as the law for the time would permit, that the heirs succeeding to the said estates under the said deed of entail should have the liferent of such residue in their order successively, and for securing that the interests therein of the said heirs should be restricted to a liferent and that they should be excluded from the fee for as long a period as possible, all as more fully set forth in the said last purpose of my trust-disposition and settlement: And whereas I have resolved to alter my directions with reference to the said residue: Therefore I direct my trustees, after paying all debts, legacies, annuities, and life interests affecting my personal estate, to make payment to the heir for the time being entitled to succeed under the said deed of entail, if and so long as he shall be under the age of twenty-four years, such a sum annually for his education as they in their sole discretion shall consider amply sufficient . . . and after implementing and fulfilling all the obligations affecting my personal estate, and all the provisions, purposes, and directions of my said trust-disposition and settlement and codicil and these presents, so far as subsisting and unfulfilled at my death, I desire my trustees to hold the residue remaining in their hands and the investments and securities on which the same is placed, and to accumulate the income thereof until an heir for the time being entitled to succeed under the said deed of entail shall attain the age of twenty-four years complete, and on the said heir attaining that age I direct my trustees to pay over to him for his own absolute use and behoof the sum of £10,000, and to set aside a sum of £60,000 as a marriage provision for such heir, and in the event of his marriage with the approval of my trustees, they shall settle the sum so set aside either in the marriage contract of such heir, or otherwise in such way and manner as to secure a life interest in the said sum to the said heir, and after his death to his wife in the event of her surviving him, but providing that she shall forfeit her life interest in the said sum in the event of her marrying again without their being children of her marriage with the said heir then surviving; and after the death of both spouses to secure the capital thereof for the children of the marriage, and so as to provide that in the event of there being no children of the marriage the said sum shall revert and belong to the person next entitled to succeed under the said deed of entail; and with reference to the remainder of the said residue and accumulations after paying the said sum of £10,000 and setting aside the said sum of £60,000 as aforesaid, my trustees shall pay over the income thereof to the said heir, with power to them in their discretion to lay out and invest the said accumulations of income or a portion thereof in the purchase of a leasehold or freehold house and appurtenances in London, and in furnishing the same for the use of the heir for the time entitled to succeed under the said deed of entail, and my trustees shall settle and secure the said house and appurtenances on the said heirs in succession in the same manner as they are hereinbefore directed to settle the estate to be purchased by them in England; and any balance of the said residue and of the said accumulations of income which may remain in the hands of my trustees after purchasing and furnishing a house in London as aforesaid shall be applied by them (as far as required), if the heir for the time should desire them to do so, in erecting and furnishing a shooting lodge on my said estate of Kintail; and any balance still remaining over after the above purposes are satisfied may be expended by my trustees in any way they may consider most beneficial for the heir for the time being entitled to succeed under the said deed of entail; and with these alterations and additions I ratify and confirm my said trust-disposition and settlement and codicil: and I consent to the registration hereof along therewith for preservation."

The testator's trustees claimed "the whole trust estate and effects of the said deceased Sir James Thompson Mackenzie now held by them, or that may be recovered by them as trustees foresaid, that the said estate may be held, paid, and applied by them for the purposes directed by the truster in his said trust-disposition and settlement, and in the codicils thereto, dated respectively 22nd March 1887, 9th April 1887, 29th January 1889, and 3rd June 1889, so far as now subsisting and capable of receiving effect,

but subject always to the provisions of the Glenmuick Estate Act 1892."

They pleaded—"These claimants, as trustees under the foresaid testamentary writings, are entitled to be ranked and preferred in terms of their claim."

The claimants Ronald Mackenzie Logan and Marguerite Alice Logan pleaded—"(1) On a sound construction of the testamentary writings of Sir James Thompson Mackenzie, and in the circumstances set forth, the directions for disposal of residue made in the eleventh place in the said fourth codicil have become inoperative and incapable of receiving effect, and the said residue has fallen into intestacy. (2) In respect that there cannot now be an heir entitled to succeed under the deed of entail mentioned in the eleventh place in the said fourth codicil, the directions there made for the disposal of the residue there mentioned have become inoperative, and said residue has become intestate succession of the truster. (3) The said residue having fallen into intestacy these claimants, as two of the heirs *in mobilibus* of the truster, are entitled to be ranked and preferred in terms of their claim."

The pleas for the said administratrix of Claud Mackenzie's estate were similar.

The pleas of the testator's trustees in answer to both claims were as follows—"(1) The claimants' averments are irrelevant and insufficient to support their claim. (2) On a sound construction of the residuary purposes of said testamentary writings the residuary purposes are still operative and capable of being carried into effect, and the claim should be repelled."

The claimant Victor Audley Falconer Mackenzie pleaded, *inter alia*—"(1) On a sound construction of the said testamentary writings the residuary purposes thereof are still operative and capable of being carried into effect. (2) This claimant being the person at present in life who is entitled to succeed to the residue of said estate, his claim should be sustained. (3) The averments in the condescendence for the claimants Claud Mackenzie's administratrix, and for Ronald Mackenzie Logan and Marguerite Alice Logan, are irrelevant and insufficient to support their claims, *et separatim* the said claims are excessive."

On 20th January 1906 the Lord Ordinary (JOHNSTON) pronounced this interlocutor—"Finds on a sound construction of the testamentary writings of the late Sir James Thompson Mackenzie, Baronet, that the beneficial interests in the residue conferred by the testator under the 11th purpose of his fourth codicil of 3rd June 1889, upon the 'heir for the time being entitled to succeed under the said deed of entail,' are conferred upon the heir for the time being under the destination contained in the twenty-first purpose of the testator's trust-disposition and settlement, dated 25th January 1883, as altered by his said fourth codicil of 3rd June 1889, and that the said eleventh purpose of said fourth codicil does not import as a condition of such heir taking said beneficial interests that he should be at the time in possession as heir of entail under the deed or deeds of entail directed to be executed by said trust-disposition and settlement, as altered by said codicil, either of the estate of Kintail in Scotland or of the English estate directed to be acquired: Therefore sustains the claim for the trustees of the said Sir James Thompson Mackenzie, and ranks and prefers them in terms of their said claim: Repels the claims for the next-of-kin, and finds it unnecessary to dispose of the claim for Victor Audley Falconer Mackenzie, and decerns: Finds the claimants, the trustees of the said Sir James Thompson Mackenzie, Baronet, entitled to expenses in the competition against the claimants the next-of-kin, viz., Ronald Mackenzie Logan and another, and Ilona, Baroness Wesselenyi, as administratrix of the personal estate of the deceased Claud Longueville Mackenzie: Finds the claimant Victor Audley Falconer Mackenzie entitled to expenses out of the trust-estate," &c.

Opinion.— . . . [*His Lordship, after giving the statement of facts and of the question at issue, and giving the summary of the trust-disposition and settlement above quoted, proceeded*]—. . . "I have examined thus minutely the provisions in the settlement bearing on the question at issue, because the testator's intention is not to be deduced as in the cases of *Inglis* v. *Gillanders*, 22 R. 266 and (H.L.) 51, and *Schank*, 22 R. 845, from one definite and comparatively concise direction, but from numerous references in this most intricate deed, all culminating in the final provision of residue to 'the heirs succeeding to the said estates under the said deed of entail,' which are the words which would have required interpretation had the principal settlement remained the regulating deed.

"I have carefully studied the cases of *Inglis* v. *Gillanders* and *Schank* v. *Schank*. But I confess I do not get much assistance from them, though similar questions to the present arose in each. The question is one of intention and of the particular words used and to be interpreted.

"Had the question arisen under the principal settlement alone I think that it would have been a very difficult one—much more difficult than it actually is. There can be no doubt that there is much in the settlement to favour the view that the truster placed paramount importance on Kintail. But there is as little doubt that he was intent on founding a family, and that he massed his landed estates in Scotland, including Kintail, as the appanage of the series of heirs which he intended to establish. I am not indeed prepared to hold that an heir can succeed to an estate under a deed of entail without being in possession of such estate. But then I am also not prepared to hold that where the entailer intended to endow his heirs of entail in succession with an important interest in his moveable estate, requisite, as I assume he thought, to enable them to keep up their position, he made it a condition of their right to that benefit that they should be in possession of every part

of the estate as he originally entailed it. Whatever might have been the result had the entail been broken in its entirety, I could not have held the heir succeeding to the estate of Glenmuick and Bachnagairn under the said deed of entail to be deprived of all right to the residue because a prior heir had disentailed Kintail. If I could I should be driven to the same conclusion if the entail had been broken as regards Glenmuick and Bachnagairn, or either of them, though Kintail remained under the fetters.

"Before leaving the principal settlement there is a consideration to which I should give much weight, and which I think it is right to notice. The direction of the 23rd or residue clause is 'to settle or otherwise deal with'—and this must be by a separate deed—the residue so as to secure, 'as far as the law for the time will permit, that the heirs succeeding to the said estates,' &c. I think that it may well be held that this was really a direction to settle the residue in successive liferents on the same series of heirs as were contained in the destination in the entail, effective only of course so far as successive liferents are allowed by the law, and that the direction would have been effectually implemented without a clause irritant and resolutive in the event of the entail being broken.

"I pass now to the codicils."

[*His Lordship, after giving the summary above quoted of the third codicil and of the fourth codicil, up to the tenth purpose thereof, proceeded*]—"And then, lastly, there comes the eleventh purpose, which contains an entirely new and comprehensive disposal of residue. After narrating the twenty-third or residue clause of the principal settlement, the testator declares that he has resolved to alter his directions with reference to residue, and accordingly he directs his trustees—

"*First*, 'to make payment to the heir for the time being entitled to succeed under the said deed of entail, if and so long as he shall be under the age of twenty-four years,' of a sum for education, &c.

"*Second*, to hold the residue remaining in their hands, and to accumulate the income, 'until an heir for the time being entitled to succeed under the said deed of entail shall attain the age of twenty-four years complete,' and on the said heir attaining that age to pay over to him for his own absolute use the sum of £10,000, and to set aside a sum of £60,000 as a marriage portion for him, and to settle the same on him and his issue, and 'so as to provide that in the event of there being no children of the marriage the said sum shall revert and belong to the person next entitled to succeed under the said deed of entail.'

"*Third*. With reference to the remainder of the said residue and accumulations, to pay over the income thereof to the said heir, but with power

"*Fourth*. To lay out and expend the accumulations of income (assumed to have been made during minority) in the purchase of a house in London, to be settled in the same manner as the English estate; and

"*Fifth*. To apply any balance of the said residue, and of the said accumulations that may remain in their hands, in erecting and furnishing, if the heir for the time being should desire them to do so, a shooting lodge on the estate of Kintail; and

"*Sixth*. To expend 'any balance still remaining over after the above purposes are satisfied'—'in any way they may consider most beneficial for the heir for the time being entitled to succeed under the said deed of entail.'

"The keynote of this involved residue clause is the designation of 'the heir for the time being entitled to succeed under the said deed of entail,' as the person to whom all its benefits are destined. And I may draw attention to the difference between the phrase here used and that used in the principal settlement, 'the heir succeeding to said estates under the said deed of entail.' It was contended by the next-of-kin that 'the said deed of entail' could only now be the deed of entail of Kintail, and that there was no longer anyone entitled to succeed under that deed, as the entail had passed out of existence. I cannot accept that view.

"I think, in the first place, that the draughtsman of the codicil, when he came to the residue clause, omitted to remember that though there was still, as in the principal settlement, really only one entail, it now required to be expressed not in one deed but in two. In my opinion, when the testator speaks of the heir entitled to succeed under the said deed of entail, he intends to refer not to the entail of Kintail exclusively, but to the entail in the wider sense which he had directed of Kintail, and of the English estate to be substituted for Glenmuick and Bachnagairn.

"But I think, in the second place, that under the term 'entitled to succeed,' the testator intends to designate his heir, and not to impose on him, as the condition of taking, that he shall not only be entitled to succeed under the deed, but that he shall be heir in possession of the estates under the deed. Though the lands have been freed from the fetters of the deed, though the destination has been evacuated, and the estates will no longer pass under the deed, I think that the deed still exists as the declaration of the entailer's intention, and as capable of indicating the heir destined or entitled to succeed, though the succession be now a barren succession. I think that the whole provision of the settlement, as gradually evolved through its manifold modifications, leads to the conclusion that the true meaning of the term, 'the heir for the time being entitled to succeed under the said deed of entail,' is the heir of provision under the said deed of entail.

"While, therefore, I think that there is still an heir of entail in the sense of the provision of residue, the English entail not having been broken, I am prepared to go farther, and to hold that the residue clause designates the heir of provision under the entail as the heir to take the various beneficial interests in residue, without imposing

on him the condition of establishing that he is heir in possession under the entail of the estate of Kintail in particular, or of any other estate or estates.

"As regards the matter of expenses, the next-of-kin of Sir James T. Mackenzie have come forward, not with a disputed claim under the settlement, but with a hostile claim against the settlement, which the trustees were bound to resist. I think, therefore, that the trustees are entitled in ordinary course to their expenses against the unsuccessful next-of-kin. I cannot, however, also allow Mr Victor Mackenzie his expenses, as his claim is merely in support of that of the trustees. The matter at issue is, however, so important to himself and, should he predecease twenty-four, to succeeding heirs, that I think he was justified in appearing, and that I should grant his crave for expenses out of the trust-estate in which he and they, if my opinion is sound, are alone interested."

The claimant Ilona, Baroness Wesselenyi, administratrix as aforesaid, and the claimants Ronald Mackenzie Logan and Marguerite Alice Logan, reclaimed, and argued —The residue fell into intestacy. There was no person called by name to take the beneficial interests conferred by the residue clause. These benefits were conferred only on the person possessing the character or quality of "the heir for the time being entitled to succeed under the said entail." By "said deed of entail" was meant the deed of entail of Kintail, and no other. That entail had never been executed, and never now could be, hence there did not now exist, nor could there ever exist, any person possessing the necessary character or quality. "Entitled" was not equivalent to "called," nor to "who would have been entitled;" it implied the continued existence of a right to the entailed estate. The testator's testamentary writings, if read as a whole, showed that his wish and intention was to establish a family of Mackenzie of Kintail, and that Kintail should be retained in his family as an entailed estate. The object of the residue clause was to form a provision for the heirs of entail. "Entitled to succeed," &c., was not a mere description of the beneficiary; it was a condition of the benefit, as "possession" was a condition in *Schank* v. *Schank*, May 30, 1895, 22 R. 845, 32 S.L.R. 634. The case of *Inglis* v. *Gillanders*, December 22, 1894, 22 R. 266, 32 S.L.R. 164, *affd.* May 30, 1895, 22 R. (H.L.) 51, 32 S.L.R. 478, on the other hand, was a mere case of importing a list of names by reference. These cases had recently been considered in the Outer House by Lord Dundas in *Davidson* v. *Davidson*, July 26, 1906, 14 S.L.T. 337. If, as here, a testator proceeded on the assumption that an entail would not be broken, and did not make provision for the case of a disentail, there was no room for the presumption against intestacy. (2) Even if "said deed of entail" referred to a composite deed of entail, and included that of the English estate to be acquired, that also, they maintained, had been disentailed by a disentailing deed by Victor with consent of his father, dated 6th April 1904. The effect of this deed was, however, a question of English law.

Argued for the respondents—The intention of the testator was to bestow the beneficial interests in the residue clause on the person whom he had designated as entitled to succeed. "Entitled to succeed" did not require possession or import a condition; it was a means of designating the beneficiary, and did not denote a quality or character as a necessary condition—*Inglis, cit. sup.*, Lord Rutherfurd Clark, at p. 273, 274. In *Livingstone* v. *Waddell's Trustees*, March 16, 1899, 1 F. 831, 36 S.L.R. 580, the words "succeeding to the said estate," which were *a fortiori* of "entitled to succeed," were held not to import a condition. Moreover, a person succeeded or was entitled to succeed not to an estate but to a person—*Forbes* v. *Burness*, June 29, 1888, 15 R. 797, 25 S.L.R. 592, Lord Adam's opinion. The reclaimer's argument was based on the testator's supposed motive; his motive did not affect the construction of the gift. (2) The "said deed of entail" meant the composite deed of entail, and included the English estates directed to be purchased. The deed purporting to disentail the English estates was ineffectual. Victor had no title to disentail as yet, for under the Glenmuick Estate Act 1892 (55 and 56 Vict. c. 1), Glenmuick was not to be sold until the heir attained twenty-four.

At advising—

LORD STORMONTH DARLING—Sir James Mackenzie of Glenmuick, Bart., died on 12th August 1890, and this multiplepoinding was brought into Court in November 1892 having for its object the distribution of his estate. A number of questions have been decided in the course of it, and the question now arising for decision (stated shortly) is, whether the testator died testate or intestate as regards the residue of his estate. It would be a curiously cynical view if intestacy were held to result from the labours of so copious and anxious a testator. But if that were the inevitable or even the natural construction of the words used by the testator, there would be no help for it.

The particular question arises thus—By the fourth codicil to his settlement Sir James Mackenzie deposed from the position of his "chief heir" (to use his own phrase) his eldest son, who afterwards became Sir Allan, and directed his trustees to substitute for him in the deed of strict entail of his estate of Kintail, which was to be made in terms of his principal settlement, his eldest grandson Allan James Reginald Mackenzie as soon as he reached twenty-one years of age. Failing this grandson the other son of the testator's son Allan and the heirs-male of their respective bodies, whom failing the other heirs and substitutes appointed by the principal settlement were to succeed in their order as therein set forth. But when he reached the age of twenty-one Allan James Regi-

nald Mackenzie presented a petition to the Court under section 27 of the Rutherfurd Act for authority to have the estate of Kintail conveyed to him in fee-simple with consent of the next heirs, and this application was granted. On 16th September 1903 he died without issue, and without having reached the age of twenty-four, before which the residue was not to vest in him. He left a trust settlement conveying the estate of Kintail to his father Sir Allan also in fee-simple, and Sir Allan in turn died a few months ago.

In these circumstances the argument of the next-of-kin is—"There is no person called by name to take the beneficial interest in the residue. The only person called is described as possessing a certain character, viz., the heir for the time being entitled to succeed under a particular deed of entail. That entail has never been executed, and never now can be. Therefore there is a lapse and the result is intestacy." The trustees and the now Sir Victor, who is on the eve of attaining the age of twenty-four, maintain the contrary, and the question is, as the Lord Ordinary put it, whether it is a condition of Sir Victor taking under the residue clause when he attains twenty-four, that he should be heir in right of the estate of Kintail under the entail which the testator directed to be executed, or whether, instead of being a condition of the right to residue emerging, it is a mere description of the person who is to take.

I agree with the Lord Ordinary that the latter is the true view of the residue clause in the fourth codicil on which the question mainly turns. The Lord Ordinary has examined so fully and carefully the rather involved provisions of the settlement and codicils that it is quite unnecessary to go over them again. I quite admit that as shown by these writings the testator attached great—perhaps supreme — importance to the retention of Kintail in his family as an entailed estate, and that he made every effort to secure that end. But he must have known that disentail was not only possible but probable. He certainly made no provision for that event, and I see nothing to indicate that he desired to forfeit the rights of a descendant who had been personally innocent of any attempt to defeat his wishes, and who might be (as Sir Victor is) the actual head of his house and holder of his title, merely because a predecessor had exercised his legal rights in a manner which ran counter to these wishes. No doubt it was a peculiar conjunction of circumstances which made it possible for virtual disentail to take place before the right to residue had emerged, but the absence of any condition of forfeiture in the event of disentail confirms the construction which the words "for the time being entitled to succeed" are by themselves well fitted to bear, viz., that they are simply a mode of designating his heir and not a means of imposing upon him as the condition of his taking that he shall hold the estate under the prescribed fetters. The entail which the testator directed to be made has never, it is true, come into existence, but that is not the result of anything done or left undone by the testator. He has done his best to prescribe the order of succession, and the designated heir can always be discovered from his testamentary writings, which subsist if only as a list of names for purposes of reference. This view came to be the chief ground of judgment both in this Court and in the House of Lords in *Inglis* v. *Gillanders*, 22 R. 266, *affd.* same vol., 51. So far as one case can form a rule for another where the language of the two deeds and the circumstances of the case are not precisely the same I regard that case as very instructive. Here it seems to me you carry out the spirit, and do no real violence even to the letter of the residue clause if you read the words requiring to be construed as meaning "heir for the time being entitled to succeed under the said deed of entail *in terms of my directions*." It was these directions which "entitled" the heir to succeed, apart from the action of a third party, not in the testator's contemplation.

The Lord Ordinary towards the end of his opinion suggests a separate ground of judgment, which would require us to take steps for ascertaining whether by English law a deed, which is said to have had the effect of disentailing money directed to be invested in English land, and entailed or settled at the sight of the Attorney-General, has or has not had that effect. This suggestion, as I understand it, is founded on the view that when the testator speaks of the "heir entitled to succeed under the said deed of entail," he may be held as referring not to the entail of Kintail exclusively, but also to the similar deed of settlement applicable to the English estate to be purchased, so that if the English entail has not been broken, there may still be an heir of entail in the sense of the clause of residue. But in my opinion it is better to rest our judgment, not on this speciality, but on the broad ground that the reference in the clause of residue to "the heir for the time being entitled to succeed under the said deed of entail," even if it be confined to the entail of Kintail alone, is designative merely of the person intended to take. We may therefore, I think, adhere without further procedure.

In the petition at the instance of Sir Victor Mackenzie to authorise the trustees to make an allowance to him, we were not asked to pronounce any interlocutor, in view of his attainment within a few days of the age of twenty-four.

LORD LOW—The question in this case is, who is entitled to the residue of the means and estate of the late Sir James Thompson Mackenzie of Kintail? The answer to that question depends upon the meaning of the words used by him in the fourth codicil, namely, the "heir for the time being entitled to succeed under the said deed of entail." The deed of entail there referred to was an entail which the testator directed his trustees to execute of the estate of Kintail in the county of Ross. That

entail was never executed, because after the testator's death his grandson Allan James Reginald Mackenzie, the institute under the deed of entail which the trustees were directed to execute, carried through a disentail of the estate under the Rutherfurd Act and acquired it in fee-simple. He died in 1903, having previously disponed the estate to his father.

In these circumstances the testator's grandson, Victor Audley Falconer Mackenzie, being the person who if Kintail had not been disentailed, would have been entitled to succeed to that estate, claims that he is entitled to the residue; while, upon the other hand, certain of the testator's next-of-kin maintain that, in the events which have happened, the residue is undisposed of, because there being no entail and no entailed estates, there cannot be an heir "entitled to succeed under the entail."

I think that the words are in themselves capable of bearing either of the meanings contended for, and what is their true meaning as used in the residue clause of the fourth codicil must depend upon the context.

The next-of-kin argued, and with great force, that the main object of the testator was to secure that the estate of Kintail should remain in his family, and that there should always be (so far as he had power to secure it) a Mackenzie of Kintail, and that all his testamentary arrangements, except the provisions which he made for members of his family other than the heir, were designed to add to the wealth and importance of the heir in possession of Kintail.

That is quite true, but the testator must have known that his wishes might be frustrated by the estate of Kintail being disentailed and passing out of the family. My impression, however, is that he hoped, and perhaps believed, that his strongly expressed desire that the estate should remain in the line of succession in which he had destined it would be respected by those coming after him, and that he was unwilling to suggest any doubt upon the matter by providing directly and in so many words for the contingency of a disentail. Accordingly I think that he probably adopted the somewhat veiled language of the fourth codicil for the purpose of providing for such a contingency, and at the same time indicating that his wishes in regard to the estate had in no way changed.

But however that may be, I am of opinion that the fourth codicil does sufficiently provide for the contingency which has happened. In the first place there is a very significant difference in the phraseology employed in the principal deed and in the fourth codicil. In the former the phrase invariably or almost invariably used is "the heir succeeding to said estates under the said deed of entail," while in the latter it is "the heir entitled to succeed under the said deed of entail."

Now in carefully framed documents like the testamentary writings under consideration, the presumption is that such a change of phraseology was intentional and was designed to serve a definite purpose. And that presumption seems to me to be very strong when one finds that the eleventh purpose of the fourth codicil begins with a reference to the residue clauses of the principal deed, which are described as being for the benefit of "the heirs succeeding to the said estates under the said deed of entail," and that the purpose then goes on to revoke these clauses, and in lieu thereof directs the trustees to apply the residue in various ways for the benefit of "the heir for the time being entitled to succeed under the said deed of entail."

The two phrases are there brought into close juxtaposition, the one being used to describe the previous intention of the testator and the other his present intention. In such circumstances it is impossible to come to any other conclusion than that the change of phraseology was designed.

Now the phrase adopted in the codicil, read according to the natural meaning of the words used and without in any way straining them, appears to me to meet the case which has occurred of Kintail being disentailed, and it being no longer possible to carry out the testator's wishes in regard to that estate. I say so because in order to answer the question who is the heir entitled to succeed under the entail it would not be necessary to know anything about the estate. It would of course be necessary to ascertain who among the heirs called in succession under the entail were dead and who were alive, but when that information had been obtained there would be no need to go beyond the destination in the deed of entail in order to ascertain who at the time answered the description of the heir entitled to succeed under that deed.

No doubt it does seem somewhat absurd to talk of an heir entitled to succeed under a deed of entail when there is no entailed estate to which he could succeed, but unless it was to meet that very event I do not know why the change of phraseology was adopted, and it is also to be kept in view that unless the words describing the person for whose benefit the residue is to be applied mean what I have suggested, it would be necessary to hold that the large residuary estate fell into intestacy—a result which was certainly never contemplated by the testator.

I am therefore of opinion that the interlocutor of the Lord Ordinary should be adhered to.

LORD JUSTICE-CLERK — That is the opinion of Lord Kyllachy, and also my opinion.

LORD KYLLACHY was absent at the advising.

The Court refused the reclaiming note and adhered to the interlocutor reclaimed against.

Counsel for the Claimant and Reclaimer (Baroness Wesselenyi)—Clyde, K.C.—Macmillan. Agents — Mackenzie, Innes, & Logan, W.S.

Counsel for the Claimants and Reclaimers (Ronald Mackenzie Logan and Another)—

Clyde, K.C. — Macmillan. Agent—F. J. Martin, W.S.

Counsel for Pursuers (Respondents) — Fleming, K.C.—Hon. W. Watson. Agents —Tods, Murray, & Jamieson, W.S.

Counsel for Claimant (Respondent) — Victor A. F. Mackenzie—Dean of Faculty (Campbell, K.C.)—D. Anderson. Agents— Bruce, Kerr, & Burns, W.S.

Friday, November 16.

FIRST DIVISION.

[Exchequer Cause.

JARDINE *v.* INLAND REVENUE.

Revenue—Income-Tax — Deductions from Minister's Stipend—"Expenses Incurred by Him Wholly, Exclusively, and Necessarily in the Performance of His Duty"—Income Tax Act 1853 (16 *and* 17 *Vict. c.* 34), *sec.* 52.

A parish minister claimed repayment of income-tax, under the Income-Tax Act 1853, sec. 52, in respect of (1) the cost of keeping a horse and carriage; (2) the expenses incurred in a process of augmentation; (3) the outlays for pulpit supply during holidays; and (4) the allowance granted by the Court of Teinds for providing communion elements. The Commissioners for the General Purposes of the Income-Tax Acts allowed claims (1) and (4) in part, not being satisfied that more than the amount allowed had been expended, and disallowed claims (2) and (3).

The minister having appealed the Court *affirmed* the Commissioners' determination, holding (*a*) that the point raised on claims (1) and (4) was a question of fact which the statute laid on the Commissioners to decide, and (*b*), following *Lothian* v. *Macrae*, December 12, 1884, 12 R. 336, 22 S.L.R. 219, and *Charlton* v. *Corke*, May 22, 1890, 17 R. 785, 27 S.L.R. 647, that the claims (2) and (3) were rightly disallowed, inasmuch as they were not for expenses incurred by the minister "in the personal performance of the duty required of him by the law and practice of his church in return for the emoluments of his benefice."

Question in regard to claim (4) in respect of the allowance for providing communion elements, whether the minister had not mistaken his remedy in not having presented a claim that such allowance was not taxable, and whether such a claim if made could be presented to the General Commissioners or must go to the Special Commissioners.

The Income-Tax Act 1853 (16 and 17 Vict. c. 34), section 52, provides—"In assessing the duty chargeable under any schedule of this Act upon any clergyman or minister of any religious denomination in respect of any profits, fees, or emoluments of his profession or vocation, it shall be lawful to deduct from such profits, fees, or emoluments any sum or sums of money paid or expenses incurred by him wholly, exclusively, and necessarily in the performance of his duty or function as such clergyman or minister; and if such sum or sums or expenses shall not have been deducted as aforesaid, then a proportionate part of the duty charged and paid by such clergyman or minister shall, on due proof to the Commissioners of such sum or sums having been expended as aforesaid, be repaid to such clergyman or minister."

On 6th December 1905, at a meeting of the Commissioners for the General Purposes of the Income-Tax Acts for the County of Dumfries, the Rev. David Bayne Jardine, minister of the parish of Keir in that county, claimed repayment of £4, 0s. 8d. of income-tax for the year 1904-5, on the ground that in the performance of his duty as minister of the parish he had incurred in that year expenses amounting to £80. 15s. 3d., made up as follows:—

No. of Item.	Description of Expense.	Amount of Expense.	Repayment of Tax Claimed.
1.	Keep of Horse and Carriage	£30 0 0	£1 10 0
2.	Allowance for Communion Elements under Decree of Locality of Teinds	8 6 8	0 8 4
3.	Expenses of Process of Augmentation of Stipend	32 2 7	1 12 1
4.	Pulpit Supply during Holidays	6 6 0	0 6 3
5.	Attending Meetings of Presbytery and Synod	2 0 0	0 2 0
6.	Stationery	2 0 0	0 2 0
	Total	£80 15 3	£4 0 8

The Commissioners allowed the claim to the following extent only:—

No. of Item.	Nature of Item.	Expense Allowed.	Tax to be Repaid.
1.	Keep of Horse and Carriage	£20 0 0	£1 0 0
2.	Allowance for Communion Elements	5 0 0	0 5 0
5.	Attending Meetings of Presbytery and Synod	2 0 0	0 2 0
6.	Stationery	2 0 0	0 2 0
	Total	£29 0 0	£1 9 0

The claimant took a stated case.

By decree of the Court of Teinds, dated 19th December 1821, the minister of the parish of Keir was allowed £8, 6s. 8d. for furnishing communion elements. The amount so expended by the claimant was £5, and no particulars of the admitted balance of £3, 6s. 8d. were given by him.

The argument which had been submitted to the Commissioners as given in the stated case was—"The *claimant* in person contended (1) that a horse and carriage were necessary to enable him to perform his duties, especially in view of the position of the manse, and that the allowance claimed for the keep of such horse and carriage was reasonable. (2) That the allowance allocated to claimant for communion elements was separate from his stipend; that the balance of such allowance after payment of the communion expenses must be expended by him for pious purposes; and that the whole amount was trust money and exempt from income tax in terms of section 105 of 5 and 6 Vict. cap. 35. (3) That so long as there is un-