irrespective of the condition that they must pay the proper fares. The public have right of access to the station on precisely the same conditions as they have right to enter a public conveyance on the street. The platform is a necessary provision made to enable the public conveniently and safely to enter or leave the trains. It is a place provided to be used by the public for these purposes. I am unable to hold it not to be "public" in the sense of this statute, which alone is being construed, and if it is just to hold it to be "public," then it is certainly a place and therefore a "public place."

On these grounds, which are substantially the same as those contained in the Lord Justice-General's opinion, I concur in holding that this suspension must be refused.

LORD JOHNSTON — That the offence should be committed it is necessary that the panel, in addition to being within the category of persons defined, should be found in any public place, or in grounds open to the public, or in any public conveyance, in possession of the insignia of his calling.

Before considering the interpretation of the words defining the *locus*, it is I think necessary to notice the subject-matter, which is "cardsharping" and similar practices. Where are these generally practiced? Not I think, at any rate as regards cardsharping and the majority of the acts defined, in places of a public nature in the widest sense of the term, as the street, but in places public in a more limited sense, and to which members of the public resort for a particular purpose, and have right to resort for that purpose. The customers or the victims of the class of cardsharpers are usually members of a limited public. While then a cardsharper in possession of the implements of his trade, apprehended while passing along the street, may be found in a public place in the sense of the statute, though only in course of going to or from the *locus* of his actual malpractice or intended malpractice, the object of the statute would not be met by confining public place or ground open to the public to places such as streets, where the general public is entitled to be as matter of right irrespective of special purpose, and which are just the sort of public places which the cardsharper, thimble-rigger, &c. does not frequent in the pursuit of his calling. Now a railway station on the other hand is a public place or a place open to the public within the more limited sense, to which the public have right of access though only for a particular purpose, viz., that of travelling by the company's line. A railway station is therefore, I think, a public place in the sense of the statute which we are called on to interpret.

I am confirmed in this view by the collocation of public place with the term "ground open to the public," which indicates something open to a more limited public than public place in the general, and still more by its collocation with the term "public conveyance."

I do not think the interpretation of the statute is affected by the decision of the House of Lords in the *Perth Station Case*, 24 R. (H.L.) 44. For the fact that the owners of the *locus* are entitled to close it to the public generally, though not to the travelling public, does not affect my view of the meaning of the statutory words with which we are concerned.

Nor do I think that we obtain assistance from consideration of cases decided under the Betting Act, the subject-matter of which is so different, and the definition of the *locus* not only so much more elaborate but appropriate to the subject-matter.

I therefore agree that the suspension should be refused.

The Court refused the bill of suspension.

Counsel for the Complainers — Crabb Watt, K.C. — Mair. Agent — James G. Bryson, Solicitor.

Counsel for the Respondent—Clyde, K.C. —Gentles. Agents—Campbell & Smith, S.S.C.

COURT OF TEINDS.

Friday, July 15.

(Before the Lord President, Lord Kinnear, Lord Johnston, Lord Salvesen, and Lord Cullen.)

DUNDAS (MINISTER OF CARRIDEN) *v.* CARRIDEN HERITORS.

Church—Glebe—Authority to Feu—Restriction in Feu-Charter—Glebe Lands (Scotland) Act 1866 (29 *and* 30 *Vict. cap.* 71), *secs.* 5 *and* 8.

On a motion to approve of a form of feu-charter, in an application by a minister for authority to feu his glebe, one of the heritors appeared and moved the Court to insert in the feu-charter a restriction against the sale of exciseable liquors or ice cream on the portion of the glebe proposed to be feued. The minister did not object to the proposed insertion.

The Court, while expressing the opinion that it was competent for them to insert restrictive conditions in a feu-charter, declined to insert the proposed restriction *ex proprio motu*, or on the motion of one heritor, and continued the application in order to give the presbytery and the heritors of the parish an opportunity of concurring in the motion to insert the restriction, if they so desired.

Boyd, July 17, 1882, 19 S.L.R. 828, *approved.*

The Glebe Lands (Scotland) Act 1866 (29 and 30 Vict. cap. 71), enacts—section 5—"Subject to the provisions of this Act, the

minister may from time to time, with the consent of the presbytery and of the heritors as hereinafter provided, make application to the Court by summary petition for authority to feu his glebe, or any part thereof . . . ." Section 6—"Previous to making any such application the minister shall intimate his intention so to do to the presbytery . . . . and if the presbytery are of opinion that it would be for the interests of the benefice that the glebe should be feued . . . . they shall signify their consent to such application, subject to such conditions, if any, as they think necessary or advisable, by a certificate to that effect . . . ." Section 7—"Upon such certificate being granted the minister shall call a meeting of heritors . . . ." Section 8—"At that meeting a copy of the proposed application to the Court shall be submitted to such meeting; and if approved of by two-thirds in value of the heritors of such parish, the clerk to the heritors shall grant a certificate to that effect under his hand to the minister."

The Rev. William Dundas, B.D., minister of the parish of Carriden, presented a petition in which he craved authority to feu his glebe. The application was subsequently restricted to a certain part of the glebe lands, and a remit was made by the Court to the Clerk of Teinds. The Clerk having reported that he had revised and adjusted the form of feu-charter, so far as applicable to the portion of the glebe to which the petition was now restricted, and that neither the presbytery nor the heritors imposed any conditions in their consents to the application, the petitioner applied to the Court to grant the authority craved, and to approve of the draft feu-charter as revised and adjusted.

Appearance was made for James Hope Lloyd Verney of Carriden, one of the heritors of the parish, whose mansion-house adjoined the glebe, who moved the Court to insert in the feu-charter a prohibition against the sale of exciseable liquors and ice-cream on the portion of the glebe proposed to be feued, and cited *Boyd* July 17, 1882, 19 S.L.R. 828. It was stated for the minister that he had no objection to the insertion of the suggested prohibition in the feu-charter.

The opinion of the Court was delivered by

LORD PRESIDENT—We consider that the case quoted—*Boyd*, 19 S.L.R. 828—shows that it is within the power of the Court to allow restrictive conditions to be inserted in a feu-charter, and we need not distinguish between restrictive conditions of one kind or another. Such conditions would not be inserted *ex proprio motu* of the Court, nor on the suggestion of a single heritor, but if they are suggested by the heritors as a whole the Court would not refuse. Mr Chree has quite frankly admitted that his client's suggestion has not at present the support of two-thirds of the heritors. It would be going beyond what we ought to do to insert *de plano* at his suggestion a restrictive condition. So we shall continue the case to give the other heritors and also the presbytery an opportunity of lodging minutes of *non renitentia*.

The Court continued the application.

Counsel for the Petitioner—J. B. Young. Agents—Purves & Simpson, S.S.C.

Counsel for the Respondent — Chree. Agents—J. C. Brodie & Sons, W.S.

COURT OF SESSION.

Friday, July 1.

FIRST DIVISION.

MURRAY'S JUDICIAL FACTOR *v.* MELROSE AND OTHERS.

Succession — Testament — Construction — "Nearest of Kin according to Law"— Intestate Moveable Succession (Scotland) Act 1855 (18 *and* 19 *Vict. cap.* 29).

Held that "nearest of kin according to law" does not signify those who on intestacy would succeed as heirs *in mobilibus* under the Intestate Moveable Succession (Scotland) Act 1855, but those who would have succeeded as heirs *in mobilibus* at common law, *i.e.*, before the passing of that Act.

A Special Case for the opinion and judgment of the Court was presented by David Todd, judicial factor on the trust estate of the deceased Thomas Murray, farmer, Braidwood, Penicuik, *first party;* Mrs Helen Murray or Melrose, a sister of the testator, *second party;* David Murray, Glenfalloch, Pukeran, New Zealand, and others, being four nephews and a niece of the testator, and the husband of the niece as her administrator-in-law, *third parties;* Agnes Robb and others, being (*a*) two nephews and four nieces of the wife of the testator, (*b*) the husband of one of the said nieces, and (*c*) the representatives of two other nephews of the wife, who had survived the testator but had since died, *fourth parties;* Thomas Brown and another, being a grandnephew and a grandniece of the wife of the testator, *fifth parties;* Mrs Minnie Brown or Sharp, another grandniece of the wife of the testator, and her husband as her administrator-in-law, *sixth parties.*

Thomas Murray, farmer, Braidwood, Penicuik, the testator, died on 16th January 1909, predeceased by his wife Mrs Joanna Forsyth or Murray, who died on 26th May 1906 leaving no property. They left a mutual disposition and settlement dated 10th December 1862, and codicil thereto dated 6th February 1878, which were both recorded in the Books of Council and Session 9th February 1909. There was no nomination of executors in the said mutual disposition and settlement and codicil, and David Todd, the party of the first part, was appointed judicial factor on the trust estate, conform to interim act and decree in his favour