be shown from the deed itself that the dispositive clause is erroneous and the other clause correct. It appears to be just another way of stating the foregoing contention to suggest that there is an intermediate stage between *ex facie* validity and *ex facie* invalidity—a *tertium quid*—in which all that can be affirmed is that the deed is not *ex facie* valid. The dispositive clause, however, is *ex facie* valid, and the only reason which can be urged against the dispositive clause receiving effect is that the narrative clause does not harmonise with it. This, in my opinion, is not enough.

The problem for decision may also be stated in this way—the deed of entail contains all the essentials of a good conveyance of heritage. It is clear (1) as to the granter, (2) as to the subject-matter of the grant, (3) as to the grantees, for the language of the dispositive clause seems to be apt to carry the lands to the defender immediately after John Young Scott, and (4) the dispositive clause purports to dispone the lands to the grantees. A deed containing these essentials and nothing more is undoubtedly an *ex facie* valid deed. Does the present deed lose the condition of *ex facie* validity which the possession of these essentials gives it by reason of the fact that a subordinate clause, to wit, the narrative, cannot be fitted into the essential machinery of conveyance? I am of opinion that the character of *ex facie* validity is retained despite the discord between the two clauses. In my opinion, therefore, the deed of entail is an *ex facie* valid title on which to found prescriptive possession. There was admittedly possession on the deed by the institute John Young Scott for a period of forty years.

It was maintained at the former hearing that the defender was not entitled to found on the possession of the institute, but at the debate before Seven Judges this contention was abandoned.

The defender has thus an *ex facie* valid title to the lands in dispute fortified by possession on that title for the prescriptive period. It follows that his title to the lands is now unchallengeable, and that he must therefore be assoilzied.

The Court adhered.

Counsel for the Pursuer and Reclaimer—Wark, K.C.—Gilchrist. Agent—J. Dan Easson, Solicitor.

Counsel for the Defender and Respondent—Chree, K.C.—W. H. Stevenson. Agents—Mylne & Campbell, W.S.

Friday, December 21, 1923.

FIRST DIVISION.

LORD MACDONALD'S *CURATOR BONIS* AND ANOTHER, PETITIONERS.

Company — Winding-Up — Dissolution — Application to Declare Dissolution Void —Heritable Property Unsold and Derelict —Superior Seeking Reconveyance more than Two Years after Dissolution — Nobile Officium.

Eight years after the dissolution of a limited company the superior of certain property which the dissolved company held in feu and which had not been sold by the liquidator, and had become derelict, and the former liquidator petitioned the Court in virtue of its *nobile officium* to declare the dissolution of the company void, and to authorise the former liquidator to grant a disposition of the lands *ad perpetuam remanentiam* in favour of the superior. The feu-duties had not been paid since the dissolution of the company, and the petitioners stated that there was no legal *persona* in existence against whom a declarator of irritancy *ob non solutum canonem* could be brought.

The Court *refused* the petition.

On 25th June 1923 Arthur Herbert Kerr, *curator bonis* to the Right Honourable Ronald Archibald Bosvile Macdonald, Baron Macdonald, and George Allan Robertson, chartered accountant, Edinburgh, *petitioners*, presented a petition to the First Division craving the Court to declare the dissolution of the company known as Skye Marble, Limited, to have been void for the purpose of enabling the petitioner George Allan Robertson, as liquidator of the company, to grant a disposition *ad perpetuam remanentiam* "of the two pieces of ground disponed in the second and third places respectively by the . . . feu-charter, dated 5th and recorded in the Division of the General Register of Sasines applicable to the county of Inverness 29th May 1911, in favour of . . . the Right Honourable Ronald Archibald Bosvile Macdonald, Baron Macdonald, and to authorise the said George Allan Robertson to execute the said disposition *ad perpetuam remanentiam* without adhibiting the seal of the said company."

The petition stated—"That Skye Marble, Limited (hereinafter called the company), was on 16th August 1907 incorporated as a company limited by shares under the Companies Acts 1862 to 1900. The main object of the company was to work marble quarries in the Strath district of the Island of Skye. The company was proprietor of a feu consisting of three pieces of ground in the neighbourhood of Broadford, Skye, under and in virtue of a feu-charter in its favour granted by the Honourable Godfrey Evan Hugh Macdonald (now deceased), then *curator bonis* to the said Lord Macdonald, dated 5th and recorded in the Division of the General Register of Sasines applicable to the county of Inverness 29th May 1911.

. . . At the end of 1912 the company went into voluntary liquidation, and Mr Eustace Radcliffe Cooper the then secretary of the company was appointed liquidator, which appointment was of this date (December 17, 1912) superseded by the Court, and Mr George Allan Robertson the present petitioner was appointed liquidator, and a supervision order was pronounced in the liquidation and a remit made to Lord Cullen, Ordinary, to proceed in the subsequent proceedings in the winding-up. In the course of the liquidation the liquidator sold the piece of ground first described in the said feu-charter but the remaining two pieces of ground were never sold, and the company still remains on record as the proprietor thereof, the liquidator not having made up a title in his own name or otherwise dealt with the same. The feu-duties exigible in respect of said two pieces of ground have not been paid since Whitsunday 1913. Of this date (March 12, 1915) the Lord Ordinary pronounced an interlocutor approving of the liquidator's final account of intromissions and his whole actings and management as liquidator, dissolving the company, and authorising the liquidator after the lapse of three months from said date to destroy the books and documents of the company. The said books and documents and also the company's seal have since been destroyed. It is necessary that the unsold portions of the said feu should be reconveyed to the superior, the said Lord Macdonald, in order that the *curator bonis* may be in a position to look after his ward's interests in respect thereof. The ground is at present lying derelict. As there is no legal *persona* in existence against whom an action of declarator of irritancy *ob non solutum canonem* could be brought this means of rectification cannot be employed. Section 223 of the Companies (Consolidation) Act 1908 provides as follows:—'(1) Where a company has been dissolved the Court may at any time within two years of the date of the dissolution on an application being made for the purpose by the liquidator of the company, or by any other person who appears to the Court to be interested, make an order upon such terms as the Court thinks fit declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.' More than two years, however, have elapsed since the dissolution of the company, and the situation which has arisen as above set forth is a *casus improvisus*. This petition is accordingly presented to the Court in virtue of its *nobile officium*. The petitioner the said George Allan Robertson is agreeable to grant a disposition *ad perpetuam remanentiam* in favour of the superior of the said feu, but as the company has been dissolved he has no authority to do so."

The petition was intimated on the walls and in the minute book in common form and served upon the Right Honourable William Watson, K.C., His Majesty's Advocate, as representing the Crown as *ultimus hæres*. Thereafter on 11th July 1923 the Court remitted to Irvine R. Stirling, S.S.C., to inquire into the facts and circumstances set forth in the petition, and to report.

In his report Mr Stirling stated—"As more than two years have elapsed since the date of the dissolution of the company advantage of the provisions of the above section—section 223 of the Companies (Consolidation) Act 1908—cannot be taken, and the application is accordingly made in virtue of your Lordships' *nobile officium*. The proposal which your Lordships are asked to sanction is made to the end that the above difficulty may be overcome. The petitioners have called as respondent the Right Honourable William Watson, K.C., His Majesty's Advocate for Scotland, as representing the Crown as *ultimus hæres*, and of this date your Lordships appointed the petition to be intimated and served upon him. Evidence has been produced that that interlocutor has been implemented, that the *inducice* have expired, and that no answers have been lodged. There remains only the question of the creditors. These are represented by the second-named petitioner, the former liquidator of the company, and before closing the liquidation he was satisfied that the said pieces of ground were of no value whatever. From inquiries the reporter has made he is satisfied that this was the fact and that nothing since then has occurred to alter the position. The said pieces of ground are still lying derelict. . . . It appears to the reporter that the difficulty is a real one and the application reasonable, and in the whole circumstances he is respectfully of opinion that if your Lordships consider that in the circumstances the *nobile officium* of the Court may be exercised no person will suffer any prejudice."

At the hearing in the summar roll the petitioners argued—In the case of *Collins Brothers & Company* (1916 S.C. 620, 53 S.L.R. 454) the Court granted a similar application in analogous circumstances. The liquidator's position was similar to that of a trustee in bankruptcy—Companies (Consolidation) Act 1908, section 151 (6)—and an application by such a trustee to the *nobile officium* of the Court was competent. The case of *Campbell* (1890, 18 R. 149, 28 S.L.R. 147) was not in point.

At advising—

LORD PRESIDENT (CLYDE)—This is an appeal to our *nobile officium*. The limited company was dissolved nearly eight years ago and we are asked to declare the dissolution void, and to authorise the person who was liquidator of the dissolved company (and who happens to survive) to grant a disposition *ad perpetuam remanentiam* of two pieces of ground which the dissolved company held in feu in favour of the superior without adhibiting the seal of the company. By section 223 of the Companies (Consolidation) Act 1908 the Court is empowered to declare the dissolution of a company void on an application made by the former liquidator of the company or by any other person interested on such terms as the Court thinks fit, and "thereupon

such proceedings may be taken as might have been taken if the company had not been dissolved." It is because the statutory law regulating the constitution, affairs, and dissolution of limited companies restricts the power of the Court to revive the liquidation of a dissolved company by imposing a two-year limit that the present appeal to the *nobile officium* is made. The case of *Collins Brothers & Company* (1916 S.C. 620) was cited as a precedent. It is enough to say with regard to that case that it concerned heritable property belonging to a dissolved Scottish company, but situated in New South Wales, and taken over by a purchaser there subject to a mortgage by the dissolved company, which mortgage the purchaser had contracted to take over. The peculiar difficulties and complications thence arising, which were held to be special circumstances warranting the Court in treating the application as one dealing with a *casus improvisus*, find no counterpart in the present case. The vassal in the feus to which the present application relates was a corporation which has ceased to exist and has no heir unless it be the Crown. The feus, in short, constitute what are known to the law of Scotland as *bona vacantia*, and there seems to be no reason whatever for interfering by an exercise of the *nobile officium* with the law of Scotland which applies to caduciary estate. The remarks made by Lord President Inglis in *Campbell* (18 R. 149, at p. 151) apply to the present case—"It is not a case in which there can be any appeal to the *nobile officium*, because it is a matter depending entirely on the construction of the words of the statute. If we were to grant this power it might turn out that what we had done was after all of no avail." His Lordship goes on to point out that so far as title is concerned objections (which in the present case might be stated by a purchaser from Lord Macdonald) would be quite open notwithstanding that the Court had declared the dissolution void and authorised the former liquidator to grant a conveyance. I think therefore the petition must be refused.

LORD CULLEN—This application, in my opinion, lays a strain upon the *nobile officium* of the Court which it plainly will not bear, and I agree that it must be refused.

LORD SANDS—I concur with your Lordships in thinking that the petition must be dismissed on the ground that the *nobile officium* can only be called into play if matters are inextricable. One cannot but regret this result, because considerable trouble and expense have been incurred, and in view of the report in the case of *Collins Brothers & Company* (1916 S.C. 620) the action of the petitioners in presenting the petition was not unreasonable.

LORD SKERRINGTON was absent.

The Court refused the petition.

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

Wednesday, January 9.

FIRST DIVISION.

CHAMPDANY JUTE COMPANY, LIMITED. PETITIONERS.

Company — Winding-Up — Declaring Dissolution Void — Companies (Consolidation) Act 1908 (8 *Edw. VII, cap.* 69), *sec.* 223 (1).

In a petition under the Companies (Consolidation) Act 1908, section 223, to have the dissolution of a company declared void for the purpose of enabling the company to receive repayment from the Inland Revenue of excess profits duty, and to authorise the former liquidator to receive the money and grant a receipt therefor, the Court, after the prayer of the petition had been amended by deletion of the words specifying the purpose for which the voidance of the dissolution was craved, *declared* the dissolution to have been void.

The Companies (Consolidation) Act 1908 (8 Edw. VII, cap 69), section 223 (1), enacts —"Where a company has been dissolved, the Court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved."

The Champdany Jute Company, Limited, incorporated under the Companies Acts 1862 to 1867, in liquidation, and James Finlay Muir, Glasgow, the sole liquidator, *petitioners*, presented a petition craving the Court to declare the dissolution of the company to have been void "*for the purpose of the authority hereinafter mentioned being exercised, and to authorise the petitioner James Finlay Muir, as surviving liquidator of the said company, to receive payment of the sum of* £6026, 1s. *and to grant receipt therefor.*"

The company, after a voluntary liquidation, was dissolved on 12th July 1922.

The petition was duly intimated on the walls and in the minute book and served upon the Right Hon. William Watson, K.C., His Majesty's Advocate, as representing the Crown. No answers were lodged. Thereafter a remit was made to Irvine R. Stirling, Esq., S.S.C., to inquire into the facts and circumstances and to report.

In his report Mr Stirling stated—"On 1st October 1923 there was received at the office formerly occupied by the company a letter from the Comptroller of Inland Revenue intimating that a sum of £8914 had been certified as repayable to the company by the Inland Revenue in respect of excess profits duty, but that from that sum there fell to be deducted a sum of £2887, 19s., being arrears of income tax and corporation