itself, and it was thus obligatory and compulsory to refer differences only not to the ordinary tribunals, but to the arbiters. Then there remains the question whether the particular difference now pending between the parties was such a difference as the statute contemplates. The nature of the difference was this—When the Caledonian Company agreed to lease the Wemyss Railway, they agreed to raise £30,000 of the capital, and the Wemyss Railway Company the other £90,000. Then, for the trouble of working the line, the Caledonian Company were to have half of the gross earnings and the Wemyss Company the other half. Out of this half belonging to the Wemyss Company certain expenses were first to be deducted. Up to that point both parties were quite agreed. But then the balance was to be dealt with as follows:—The Wemyss Company were authorised to borrow £40,000, and after paying interest and other expenses, the residue was to be divided as net revenue between the Caledonian Company, who were to have the fourth, and the Wemyss Company the other three-fourths. The mortgagees who lent the £40,000 could of course enforce their rights against the Wemyss Company and sweep away all this surplus of net revenue, while, on the other hand, if any net revenue was left, then it was to be divided as already mentioned. The great dispute therefore is, whether the working out of the agreement as to the disposal of the net revenue could be reconciled with the rights of the mortgagees. Surely that was a difference as to the mode of carrying out the agreement and nothing else. Then, also, it was clearly a matter to be referred to the arbiters, and it did not fall at all to be disposed of by a Court of law. This was what the Court of Session decided, and it was obviously a right decision, and he (Lord Chancellor) proposed that it should be confirmed, and that the appeal should be dismissed, with costs.

LORD CHELMSFORD said his noble friend had so clearly stated his views of this case, and with every point of that judgment he so entirely agreed, that he would not add a single word to what had been already so well said.

LORD HATHERLEY—I say the same.

LORD SELBORNE—I also say the same.

Affirmed with costs.

Counsel for Appellants — Solicitor-General (Haggallay). Agents—Hope & Mackay, W.S., and

Counsel for Respondents — Lord Advocate (Gordon) and Mr Cotton, Q.C. Agents—M'Ewen & Carment, W.S.

Monday, April 27.

(Before Lord Chancellor Cairns, Lords Chelmsford and Selborne).

GLEN AND OTHERS *v.* STEUART.

(*Ante* vol. x. p. 92.)

Succession—Testament—Destination—Heritable and Moveable—Conversion—Heir and Executor.

A testatrix left to trustees her whole property, consisting principally of heritage, with directions to sell and dispose of it, and after payment of legacies to pay over the residue "to my heir-at-law, whom failing, to my next of kin." These instructions were carried out, and in a competition between cousins of the testatrix claiming as her next of kin, and a cousin's child claiming as her heir-at-law, *Held* (aff. judgment of Court of Session) that the testatrix did not by "heir-at-law" mean her heirs *in mobilibus*, but her heir in heritage—her intention being to give the residue to the person who would have succeeded to it had a sale not been necessary.

By trust disposition and settlement, dated 15th May 1852, Mrs Grant, afterwards Mrs Sillars, "gave, granted, assigned, and disponed to the Reverend Peter Gardiner, chaplain in the prison, Ayr, John C Haldane, surgeon, Ayr, and William Pollock, writer, Ayr, and to the survivors or survivor of them, all and whole her *pro indiviso* half of certain subjects in St Enoch's Wynd, and others, in the burgh of Glasgow; as also her *pro indiviso* half of the lands of Davidston, in the county of Ayr, all therein specially described; as also, her whole estate and effects, heritable and moveable, pertaining to her at her death. She also thereby appointed her said trustees to be her executors, but in trust always for the ends, uses, and purposes therein mentioned; and she directed them, immediately after her decease, to sell and dispose of her whole means and estate, and after paying her debts, deathbed and funeral expenses, and the legacies and annuities therein named (all of which have been paid and settled), to pay over the residue of her estate to her heir-at-law, whom failing, to her next kin, and that at the first term of Whitsunday or Martinmas that should occur six months after her death, as the said trust-disposition and settlement in itself more fully bears." On 5th June 1852 Mrs Grant executed an antenuptial contract of marriage with Thomas Sillars, whereby, under certain burdens and reservations, she disponed to herself, whom failing the children of her intended marriage, whom failing to herself and her heirs and assignees whomsoever, the subjects therein described, (being the same as those specially described in and conveyed by her said trust disposition and settlement), but excluding her said husband's *jus mariti*, right of courtesy, and right of administration in relation to the said subjects, and the rents and proceeds thereof, which the said Thomas Sillars thereby renounced. It was, however, thereby provided and declared, that in the event of Mrs Jean Oswald Calder Glen or Grant predeceasing the said Thomas Sillars, he should have the liferent enjoyment of the whole rents and profits of her means and estate thereby conveyed, and the foregoing conveyance was burdened with the said liferent accordingly." The testatrix died in June 1853 without issue, and in 1859 the lands left by her were sold, the debts, legacies, and annuities paid, and her husband received a sum equivalent for his liferent until 25th March 1872, when he died. The residue of the said trust estate, amounting to £2300, constituted the fund *in medio* in this action. The claimant, William Steuart, as heir-at-law served to the testatrix, claimed the whole fund, which was also claimed by the Rev. John Glen, Miss Margaret Glen, and Mr Wilson, as next kin of the testatrix at the time of her death.

The Lord Ordinary (ORMIDALE) held that the words were to be read as meaning next of kin, but

the Second Division recalled his interlocutor, and held that it was to be taken in its ordinary legal meaning, whether the words following were capable of any intelligible meaning or not. The next of kin appealed against this decision to the House of Lords.

For the Appellants it was contended that the Lord Ordinary had put the only construction on the deed which gave a meaning to all the words, whereas by the argument of the respondents the words "whom failing, to the next kin," were struck out as unintelligible.

Counsel for the respondents were not called upon.

In delivering judgment—

LORD CHANCELLOR—The question in this appeal turns upon the proper construction of the word "heir-at-law" in the trust disposition made by Mrs Grant. I gather from the opinions of the whole of the Judges in the Court below, not excluding that of the Lord Ordinary, that at all events the ordinary *prima facie* meaning in Scotland of the words "heir-at-law" is the "heir in heritage," just as the same word would be construed in England. But it has been argued for the appellants that the word has not that meaning here, and after following those able and elaborate arguments, they all seem to be resolvable into two reasons. Firstly, it is maintained that the words, "heir-at-law" have a flexible meaning, according to the subject matter, and that in this case they were used with reference to moveable estate, and therefore must mean "next of kin." This argument, however, is founded on a fallacy, for the succession now under the consideration of your Lordships' House was not a moveable one, and there was just as much reason for the lady selecting her heir-at-law in heritage as her heirs in moveables to succeed. The other reason relied on by the appellants is, that as there must always be an heir-at-law if there are next of kin, it is absurd to suppose she could have meant by the words, "heir-at-law," the heir in heritage. Hence, to avoid what they call an irrational bequest, the appellants not only gave a different construction to the words, "heir-at-law," but also to the words, "next of kin,"—which last words they say mean "the nearest in kindred on the mother's side." By this construction of the words, "next kin" are put as intelligibly if the word heir-at-law be construed to mean the heir in heritage as the heir in moveables. Both grounds of the appellants' argument therefore have failed, and there being no sound reason for refusing its natural meaning to the word "heir-at-law," the appeal must be dismissed, with costs.

LORD CHELMSFORD—I entirely agree. Your Lordships have been asked to give a strained construction to a well known word merely on conjectural grounds. It is scarcely necessary for this House to trouble itself to explain the words following the word "heir-at-law," as it will be sufficient to adhere to the ordinary meaning of that word.

LORD SELBORNE—I entirely concur. No decided case has been cited at the bar to justify the construction of this deed contended for by the appellants, and nothing is relied upon by them except a casual expression in a text book, which cannot be deemed sufficient to sustain a contention which is opposed to well settled rules of construction.

Interlocutor appealed against affirmed, and appeal dismissed, with costs.

Counsel for Appellants—Lord Advocate (Gordon), Q.C., Horn, and Paterson. Agents—J. C. & A. Stewart, W.S.

Counsel for Respondent—Cotton, Q.C., J. T. Anderson, and Grosvenor. Agents—J. & A. Peddie, W.S.