which it rests must be shortly stated. By the original feu-charter of 1870, which is produced, the defenders feued out four plots of ground, extending in all to about 3 acres imperial. But although there were nominally four plots, practically there were two only, as appears by a reference to the plan endorsed on the feu-contract, for plot 2 is a small piece of shore ground forming a mere adjunct or pertinent of plot 1, while plot 4 is a similar adjunct of plot 3. By this deed the superior, avowedly for the purpose of preserving the amenity of the neighbourhood and of the ground feued, imposed the restrictions already referred to, one of these being (in the view that the present judgment is well founded) a prohibition against using any house on either of the plots as a hotel. The property of plots 3 and 4 having changed hands, the defenders in 1876, by a formal agreement, have waived the condition or prohibition against the use of a hotel on these plots, and in return for an annual payment of £10, secured heritably by a conveyance over the property, they have authorised the use of a dwelling-house as a hotel for a period of twenty years. The bond and disposition in security of this payment is produced. There is no limitation, as your Lordships seem to have supposed, of the use of the ground for a "private" hotel, although if there had been such a restriction I do not think it would have made any difference. Accordingly the proprietor of plots 3 and 4, with the sanction of the defenders, now uses the house on his property as a hotel.

It is settled by a series of decisions, both in this country and in England, that conditions in a feu-contract intended for the preservation of the amenity of the ground affected by them, and the immediate neighbourhood, are to be regarded as inserted in the interest of the feuars as against each other, as well as in the interest of the superior, and I agree with your Lordships in thinking that the present pursuer (on the assumption that the prohibition bears the construction maintained by the defenders) could have enforced the prohibition against his neighbour Mr M'Coll, the proprietor of plots 3 and 4, He has, however, acquiesced in the defender's act, by which he waived the prohibition and consented to the proposed use of the property. The result, however, obviously is, that the locality is materially changed, and the amenity of the pursuer's property, which closely adjoins the plots 3 and 4, is directly affected. If it was of consequence to each property and the immediate neighbourhood that there should be no hotel on either of these plots, or in the immediate vicinity, the erection of a hotel on the property adjoining that of the pursuer must alter and affect the character of both. Can the defenders then enforce the restriction against one property while they have released it on the property adjoining, and thus materially altered the character of the immediate neighbourhood? Would the defenders be entitled to take £10 a-year from several feuars along the shore and keep the restriction up as against others? I apprehend this would be against the faith of the contract between the parties, and against the authority of a series of cases, of which the case of *Campbell* v. *The Clydesdale Bank* 6 Macph. 943, and *Fraser* v. *Downie*, 4 Rettie, and the English cases of *Roper* v. *Williams* and *Peck* v. *Matthews*, are examples, for the object for which the prohibition was inserted and agreed to would be frustrated by the act of the superior himself. It is said these cases are to be distinguished from the present, because there the superior had allowed or acquiesced in deviations in a number of instances. It is true that was so, but in these cases there had been a great many feus. In the present case the plots or feus extended to 3 acres only, and on nearly a half of the whole the superior has abandoned the restrictions, to the injury of the remainder. The object of the restriction is at an end. The principle of the cases referred to seems to me directly to apply, and to apply with peculiar force in a case in which the subject is a small property almost contiguous, and on which the conditions have been waived with reference to about one-half of the whole.

I have only to add, that I think no difficulty arises in this question from the circumstance that the defender Mrs Campbell is an heiress of entail. Whether other heirs of entail could object to what the pursuer proposes is not the question. The plea as stated is one of personal bar, and I am of opinion that the defenders are personally barred from insisting on the enforcement of the prohibition in question in respect they have waived these conditions in favour of the adjoining feuar, with the effect of altering the character of the immediate neighbourhood, and defeating the object of the restriction.

The Court adhered.

Counsel for Pursuer (Reclaimer)—Lord Advocate (Watson)—Kinnear. Agents—J. & A. Peddie & Ivory, W.S.

Counsel for Defenders (Respondents)—Asher—Mackintosh. Agents—J. & A. Campbell & Lamond, C.S.

Friday, November 23.

SECOND DIVISION.

[Sheriff of Lanarkshire.

COWAN *v.* DALZIELS AND MORE.

Reparation—Injury by Dog—Previous Knowledge of Ferocity—Liability where it had been Lent.

A dog was lent by its owner to protect certain premises, and there was kept chained. It had previously, when taken off the chain, bitten a man—a fact known both to the owner and the custodiers. Six weeks after it had been lent, the latter took it out for a walk, when it again, without provocation, bit a passer-by. In an action of damages at his instance against both owner and custodiers, the Court *held* the latter liable in the circumstances, and assoilzied the owner.

Expenses—Relief.

Held, in an action for damages for injury by the bite of a dog, brought against the owner and parties to whom it had been lent, where the former was assoilzied and the latter found liable, that the owner of the dog was entitled to his expenses in the Court of Session (though not in the lower Court, he having at first denied the ownership), and that the pursuer was entitled to relief against the custodiers.

This was an appeal from the Sheriff Court of Lanarkshire in an action raised by Hugh Cowan, joiner, Govan, against James Dalziel and Robert Dalziel, joiners, Glasgow, and also against Robert More, joiner, Glasgow. The pursuer concluded that the defenders should be found conjunctly and severally liable in £50 damages "in consequence of his having been attacked and severely bitten upon Sunday the 21st day of May last, while he was walking upon the Langlands Road, near Govan, by a large black Newfoundland watch-dog belonging to the defenders, or one or other of them, and which dog was at the time accompanying James Dalziel and Robert Dalziel, unrestrained by a muzzle or by any chain or other appliance by which he could be prevented from attacking or biting passengers, the pursuer having in no way interfered with the said dog, and the same being well known to the defenders to be a vicious or ferocious animal, having bitten several persons previously; or, at all events, the defenders having been aware that it was unsafe to permit the said dog, which was accustomed to be chained up as a watch-dog in their premises, to go at large unmuzzled or without being restrained by a chain or other appliance by any person whom the animal might accompany on the streets or highways, the pursuer, by and in consequence of the defenders' failure to take any means for restraining the said dog as aforesaid, was seized by the animal on the left hand, into which he inserted his teeth very deeply, and, by the hold which he thus got, he dragged the pursuer for several yards along said road, and finally pulled the pursuer violently to the ground, and worried him until he was taken off; and the pursuer sustained such injuries that he was obliged to undergo medical treatment both in Govan and in the Glasgow Royal Infirmary, and suffered great pain and loss of health, and was unable to do any work for eight weeks, and cannot even yet use his left hand as formerly, and does not expect that he will ever be able to use it as effectually as before."

In answer the Dalziels admitted that the pursuer was bitten as stated, and by a dog at the time accompanying them. Every other averment was denied. The defender More similarly denied all the averments, and further denied his ownership of the dog, and any knowledge of what took place on May 21. More also stated on record that when he was in the employment of the Dalziels as their manager it was deemed necessary for the protection of their woodyard to get a watch-dog, and he had got a dog, which was kept chained there. On 8th April Robert Dalziel had told him to have the dog sent to his (Dalziel's) house at Langlands to frighten away thieves. This More accordingly got done and thereafter took no more charge of it. More also stated that he left the Dalziels' service early in May 1876, and that the dog had after the 21st of May been killed by the Dalziels without consulting him. He did not receive any intimation as to the bite till 15th June 1876.

The Dalziels stated that the dog was the property of More, and besides that it had been interfered with by the pursuer before the bite was inflicted.

The pursuer pleaded, *inter alia*—"(2) The pursuer was entitled in the circumstances of the case to call all the defenders as parties to the present action, and, even assuming that More, as stated by the other two defenders, was the real owner of the dog, the latter are conjunctly and severally liable to the pursuer with him as concluded for, in respect that at the time the pursuer was injured the animal was in their possession and charge with the consent of the defender More."

The defender More, *inter alia*, pleaded—"(1) The dog referred to not being the property of this defender, the action *quoad* him should be dismissed, with expenses. (2) The dog referred to not being under the charge and control of this defender, he is not responsible for its actions."

The defenders Dalziels, *inter alia*, pleaded—"(1) The dog referred to not being the property of the defenders James and Robert Dalziel, the action ought to be dismissed *quoad* them, with expenses. (2) The dog referred to not being a vicious or ferocious animal, or at least not known to the defenders, the said James Dalziel and Robert Dalziel, to be such, they ought to be assoilzied from the conclusions of the summons with expenses. (3) In the whole circumstances before stated, the defenders James Dalziel and Robert Dalziel are entitled to decree of absolvitor, with costs."

A proof was taken, the purport of which sufficiently appears from the opinions delivered by the Court.

The Sheriff-Substitute (GUTHRIE) pronounced an interlocutor finding that on the evening of May 21, 1876, in Langlands Road, Govan, the pursuer was bitten by a dog then in the custody and possession of the defender Robert Dalziel; that it was not proved that the dog belonged to either of the defenders, or to all or any of them jointly, and that there were no other circumstances in evidence sufficient to infer liability against either of them; that the defender Robert Dalziel was aware that the dog had previously bitten a man named Horn, and that notwithstanding this he allowed it on the said occasion, on the said 21st of May, to be at large; therefore the defender Robert Dalziel was found liable in damages to the pursuer, these being assessed at £12; the other defenders were assoilzied, and found entitled to expenses against the pursuer; and the pursuer was found entitled to expenses against Robert Dalziel, including the expenses found due by him (the pursuer) to the other defenders.

The Sheriff (CLARK), on appeal, pronounced this interlocutor:—

"*Glasgow, 2d May* 1877.—Having heard parties' procurators upon the appeals and considered the process, for the reasons assigned in the subjoined note, recalls the judgment appealed against, and finds that on the date libelled the pursuer was bitten by a dog, for which, in a question with the public, the defenders must be held as responsible either as owners or as having it under their control, and as being fully aware that it was an animal of a dangerous and vicious kind: Finds that the pursuer suffered loss and injury in consequence of the said occurrence; therefore finds the defenders liable in damages; assesses the same at £15 sterling, for which, with interest from this date, decerns against the defenders jointly and severally: Finds the defenders jointly and severally liable to the pursuer in expenses, &c.

"*Note.*—That the pursuer was bitten by the dog in question, and in the circumstances libelled, is proved beyond doubt on the evidence, and is not matter of dispute. The main question for determination is the amount of damage due, and who are responsible for that amount.

"1. As regards the damage, this no doubt is a question with which, in ordinary circumstances, the Sheriff-Substitute, in whose presence the evidence was taken, is perhaps better able to form an opinion than the judge of appeal. At the same time, it appears to me that in this case damages, if found due at all, ought to be somewhat larger than those assessed by the Sheriff-Substitute. When a man receives such injuries as those established in this case, and more especially when he receives these from the bite of a dog, £15 appears to be the smallest sum that can well be awarded. If I had been assessing damages in the first instance myself, I should probably made them considerably more.

"2. As to the question of liability. This matter seems to me to depend on the principles of common law. I do not see that the Act of Parliament 26 and 27 Vict., cap. 100, referred to by the Sheriff-Substitute, has much bearing on the matter. That was an Act introduced to create a special ground of liability where sheep or cattle were injured by a dog, and it introduced a special exception to the rules of the common law, by which, in such circumstances, *scientia* required to be proved. The present case is entirely outwith that Act, and depends entirely on the law as it stood before the Act was passed. Now, I take it to be the common law that if one of the public is bitten by a dog, the ownership of which is fixed against certain parties, in the sense that they have so acted as to lead the public to believe that they were the veritable owners or custodiers of the dog, and if it be further established that they were previously well aware that the dog was of vicious and dangerous habits, they became responsible for what damage may accrue. It is quite possible that they may not, in a question among themselves, be all proprietors of the dog. It may be that they have a *pro indiviso* interest in it; it may be that if an accounting took place among them, or if the whole circumstances of their private transactions could be examined into, the legal ownership would be found to rest only on one of their number, that that one had delegated the care of the dog to the others, or that while some of them were owners, some of them had obtained the loan of the animal either gratuitously or for hire from the others.

"These, however, are questions with which the public have no concern, because in many cases it may be impossible for third parties who are sufferers to find out how such matters actually stand. It therefore seems to be sufficient to create legal liability that it is established that all the defenders so acted or so held themselves out by facts and circumstances as fairly and reasonably to warrant the public in believing that they were responsible for the animal in question. If I am right in that view of the law, the facts of the case appear to infer liability against all the defenders. They are as follows:—All the defenders were present when the dog was bought. The defender More conducted the bargain, and got the dog. He had it in his house, and it was fed from thence. He admits that if a demand were made upon him he considered himself bound for its price. On a previous occasion when the dog injured the man this defender paid the damage after consultation, though with some difference of opinion on the part of the other defenders. These other defenders, the Dalziels, were proprietors of the joiner's yard, and the dog was kept for the purpose of watching their premises. It was sent by the seller directly to their yard for that purpose. It was afterwards sent to Robert Dalziel's house in order to scare thieves and protect the premises against their depredations. Robert being from home, James Dalziel received the dog and took charge of it. These being the facts of the case as disclosed on the evidence, it seems to me that all the defenders are clearly liable jointly and severally. They may, it is true, be able to apportion the liability among themselves, but in so far as the pursuer is concerned they have, it seems to me, so acted as to render themselves responsible. They have, in short, held themselves out to the public as responsible for what the dog might do. Upon these grounds I have thought it necessary to recall the interlocutor of the Sheriff-Substitute, and to find the whole defenders liable jointly and severally."

The Dalziels and Cowan appealed.

Authorities quoted—*Beck* v. *Dyson*, 4 Campbell's Cases, 198; *Thomas* v. *Morgan*, 2 Meeson and Roscoe, 496 (Mr Justice Crompton); *Renwick* v. *Von Rotberg*, July 2, 1875, 2 R. 855; 26 and 27 Vict., c. 100, sec. 1.

At advising—

Lord Justice-Clerk—In this action, as regards the liability of the Dalziels, I am for adhering to the judgment pronounced by the Sheriff. This dog had a distinct tendency to ferocity; it had on a previous occasion assailed a man, and bitten him somewhat severely, and if there was provocation in that case inducing the dog to attack, I think that the *onus* of proof of such provocation lies with those who wish to prove it. I cannot doubt that in this instance the Dalziels at all events were liable, for they were the custodiers of the dog; it was with them when Cowan was bitten; it has been clearly proved that there was no provocation on his part, while a serious injury was inflicted.

The liability of More is another matter. I should be sorry, however, to lay down any general proposition, as I do not feel able to affirm a view which assumes that the owner of a dog is never liable for injuries inflicted by the animal unless he has it in his personal custody. It often may happen that liability is incurred when the animal is in the custody of a servant, or has been improperly entrusted to one who is ignorant of its fierce disposition. But all these are questions depending upon the special circumstances of the case, and we have to consider both the question of the ferocity of the dog and of the knowledge of that ferocity on the part of the master and of the custodier.

Now, in the present case, if the injuries had been inflicted by the dog when it was kept at the Dalziels' yard, and was under More's custody there, the matter would have assumed a very different aspect; but as the facts have come out we learn that the dog has been removed from the yard six weeks prior to the attack on Cowan. It was taken to Robert Dalziel's own house by

his request, with collar and chain upon it, in order to guard his premises against suspected depredators. Dalziel knew all about the dog and its character; he knew about the previous occasion on which it had attacked a man; and my opinion is that More was entitled to trust the Dalziels and their knowledge of the animal as a sufficient security against its doing further mischief. I think the liability of an owner would in these circumstances be stretched too far if the Court were to treat him otherwise than by assoilzieing him. On the question of damages, it appears to me that they should be increased to £20 — not an undue amount for the injury suffered.

Lord Ormidale—I entirely concur in the proposed judgment, and also in the views upon which it is based. As to the liability of the Dalziels, I cannot doubt. They knew all through that the dog had a propensity to bite when off the chain; yet knowing this, and when they had it in their custody, they released it from the chain. It had been brought up from their woodyard to their private house, and then after an interval they took it out, when this attack was made and Cowan was bitten. The dog was not in any way provoked, and it inflicted considerable injuries, the Dalziels not having it in hand at all. I do not require to dwell further upon the question of their liability.

As to More, however, the question is somewhat more delicate. The fact, I may observe, that this dog was fierce when off the chain, does not in any way indicate that he was not quite a proper dog to keep on the chain; but it may be remarked that the fact of his being so chained would be likely to increase his ferocity. To keep the dog in this way was a perfectly lawful act; it was not as if a man were to keep a mad dog; that would assuredly render the owner liable wherever the animal might be. What More did here was to give over the custody of the dog to the Dalziels, taking him to their house with chain attached. The Dalziels knew the character of the creature as well as the owner himself. It was not as if he had given the care of it to an idiot or an imbecile, by whom it could not be controlled, or who could not comprehend the danger arising from its fierce disposition. Again, it was not the case of a person entrusting the dog to a servant, when the maxim *qui facit per alium facit per se* might apply. Even, however, in the case of a servant, examples might be given where the master's liability would not be involved—such, for instance, as the servant's going away for a holiday unknown to his master, and taking the dog with him. But I do not require to say more upon this question, as I entirely concur in what your Lordship has said.

Lord Gifford—I am quite of the same opinion. It is right to make the Dalziels liable, who were at the time the keepers of the dog, and who were also perfectly acquainted with the dog's disposition. More stands in a different postion; he had not the animal under his control, but had lent it to those who knew it as well as he did himself.

On the question of expenses, the pursuer asked for expenses both against the Dalziels and against More.

Argued for him—It was necessary to call both, as each said the other was the true owner of the dog — *Caledonian Railway Company* v. *Greenock Sacking Company*, May 13, 1875, 12 Scot. Law Rep. 443, 2 R. 671.

More asked for his expenses against the Dalziels.

At advising—

Lord Justice-Clerk—I think, in the first place, that More is to a certain extent entitled to have his expenses. It is admitted that this was a narrow case and a delicate one, and he was justified in defending himself. I may refer to an authority which seems to me very nearly to touch the present, more so perhaps than any other, that is, the case of *Baldwin*, May 30, 1872, 7 L.R. Exch. 325. That was the case of a coachman, and the knowledge of the man was held to be the knowledge of the master. I may also here refer to the observations of Mr Justice Crompton in *Styles* v. *Cardiff Steam Navigation Company*, 33 L.J., Q.B. 310. I am disposed to give More expenses in this Court, but not in the lower Court. Then as to relief, the pursuer must have it against the Dalziels.

Lord Ormidale concurred.

Lord Gifford—I am of the same opinion; the whole case has been one of some difficulty and delicacy, but in nothing more so than in this question of expenses.

The Court pronounced the following interlocutor:—

"The Lords having heard counsel on the appeal, Find it proved that the dog in question was of a dangerous nature, and had, in the knowledge of the defenders, previously to the occasion libelled attacked and bit another man: Find that at the time when the dog inflicted the injuries libelled it was in the custody of the defenders James and Robert Dalziel, and was not in the custody or under the control of the defender More: Find that the defender More was the owner of the dog, but that, in respect the dog was not dangerous when on the chain, and that the defender Dalziel knew his character, the defender More is not responsible for the injury libelled: Find that on the occasion libelled the dog was loose, and was on the high road along with the defenders Dalziel, and that it attacked the pursuer, seized him by the hand and pulled him to the ground, without any provocation on the pursuer's part, and injured him severely: Therefore sustain the appeal, recall the judgment appealed from, assoilzie the defender More from the conclusions of the summons, and decern: Find the defenders James and Robert Dalziel liable to the pursuer in the sum of £20 in name of damages, and decern: Find no expenses due to More in the Inferior Court, and find him entitled to expenses in this Court: Find the defenders James and Robert Dalziel liable in expenses in both Courts to the pursuer, including the expenses now found due to Robert R. More, and remit to the Auditor to tax the whole expenses now found due, and to report."

Counsel for Pursuer—Brand—Millie. Agents—Wright & Johnston, Solicitors.

Counsel for Defenders (Dalziels)—J. A. Reid. Agents—Lindsay, Paterson, & Co., W.S.

Counsel for Defender (More)—Lang. Agent—Thos. Carmichael, S.S.C.

Saturday, November 24.

SECOND DIVISION.

SPECIAL CASE—HECTOR AND OTHERS (MAXWELL'S TRUSTEES).

Succession — Direction to Trustees to Accumulate Residue—Right to Accumulations where struck at by Thellusson Act.

A deed of settlement contained directions to trustees to invest a sum of money as a fund for payment of certain bequests to a variety of charitable institutions, and "for the purpose of increasing said fund" to add thereto yearly one-fourth part of the interest payable upon it, and to pay the remaining three-fourths of the interest after the decease of certain annuitants on the estate, and ever thereafter, to the institutions.—*Held* (1) that the accumulations were struck at by the Thellusson Act, 39 and 40 Geo. III. cap. 98; and (2) (*dub.* Lord Ormidale) that there having been by the deed a present gift of the fund itself, and the direction to accumulate having been merely a burden on that gift, the gift became at the expiry of the statutory period of limitation absolute in the person of the donees.

Title to Sue—Personal Bar—Thellusson Act.

Observed that personal bar cannot be pleaded so as to defeat the provisions of the Thellusson Act, it being an Act dictated by motives of public policy, and having for its object the repression of public evils.

This was a Special Case for the opinion and judgment of the Court presented by the following parties:—(1) William Hector, writer in Pollokshaws, and others, trustees under the trust-disposition and settlement of the late Miss Harriet Maxwell, of the first part; and (2) Sir William Stirling Maxwell, Bart., of the second part.

Miss Maxwell, who was an aunt of the party of the second part, had died on 18th October 1841, leaving a trust-disposition and settlement dated 21st June, and a codicil dated 19th August 1841. The codicil ran, *inter alia*, as follows:—"Farther, in the event of my father Sir John Maxwell surviving Tamar Bee and Archibald Macdonald senior, in whose favour I have granted annuities of £50 each by the said disposition and settlement, payable out of the interest of £4000 deposited by me in the Glasgow branch of the Royal Bank of Scotland, I do hereby leave and bequeath to him the sum of £2000, which sum I hereby appoint to be paid to my said father by my said trustees, or survivor of them, or any other trustee or trustees whom they may assume into the trust, out of the said sum of £4000, immediately after the decease of the longest liver of the said Tamar Bee and Archibald Macdonald senior: Farther, on the decease of the longest liver of the said Archibald Macdonald senior and Tamar Bee, my said trustees or their foresaids shall allow said sum of £4000, and surplus interest due thereon, after paying said annuities, but under deduction of the said sum of £2000 bequeathed to my father in the event foresaid, to remain deposited in the said bank, or otherwise securely to invest the same as a fund for payment of the bequests to the religious and charitable institutions after mentioned; and for the purpose of increasing said fund, my said trustees or their foresaids shall add thereto yearly one-fourth part of the interest payable on the said sum deposited in said bank, and they shall make payment of the remaining three-fourths of said interest at the term of Whitsunday yearly, and beginning at the first term of Whitsunday that shall arrive after the decease of the longest liver of the said Tamar Bee and Archibald Macdonald senior, and continuing thereafter for ever, to the following religious and charitable institutions, equally among them, viz.—The Glasgow Royal Infirmary, the Glasgow Deaf and Dumb Institution, the Glasgow Asylum for the Blind, the Glasgow Eastwood Club, and the British and Foreign Bible Society."

Both annuitants survived the testatrix, and one of them survived Sir John, who died in 1844, so that the legacy of £2000 to him did not take effect. The last annuitant died on 6th September 1855, when there stood at the credit of the trustees in bank £4000 of principal and £441, 1s. 9d. of surplus interest, leaving, after payment of all duties and expenses, £4000 applicable as directed by the codicil.

From Whitsunday 1856, when the above-mentioned charitable bequest came fully into operation, to Whitsunday 1877, being a period of twenty-one years, the trustees, in terms of Miss Harriet Maxwell's settlement and codicil, retained and accumulated one-fourth of the annual interest of the capital sum, and distributed the remaining three-fourths among the five charities. The sum thus accumulated as at Whitsunday 1877 amounted to £1211, 2s. 6d., which fell to be added to the capital, with the view of applying the income thereof as directed. Sir William Stirling Maxwell was the heir-at-law and sole next-of-kin and heir *in mobilibus* of Miss Maxwell. The trustees being in doubt whether they could lawfully make any further accumulation of income, the opinion and judgment of the Court was sought on the question as to the disposal of the one-fourth of the income, and possibly of the capital of Miss Maxwell's trust-fund. It was contended on behalf of the trustees that the whole fund was appropriated to purposes of charity, and that they were either bound to continue accumulating one-fourth of the revenue, or, if that purpose was illegal under the Thellusson Act, that the whole income was applicable to the charitable purposes specified by the testator. It was contended by the second party that the one-fourth of the income or revenue of the trust-fund to accrue from and after the expiration of the foresaid period of twenty-one years being no longer subject to accumulation, fell, under the operation of the statute, to him as heir-at-law and next-of-kin of the said Harriet Maxwell. He further maintained that, being thus entitled to a