challenge the bond on the ground—First, that it was *ultra vires*, because the transaction was of the nature not authorised by the rules of the Society, and because no consideration was received for the bond; and second, that it was irregularly granted, its execution having been unauthorised by the board of directors. Both of these are important questions, but entertaining the views I do on the first, it is unnecessary for me to express an opinion on the second on the present occasion.

On the face of the deed no consideration is set forth. The only thing there to be found that suggests a motive or cause for granting is, that the Society had come to be vested with the subjects of the security by disposition from M'Donald. But the right which they received was only a security right, though the disposition was *ex facie* absolute. The case, it may be added, would hardly have been better for the defenders even if the disposition had not only in form but in reality been absolute, inasmuch as the directors were not entitled to speculate in the purchase of house property. Plain it is, at anyrate, that the granting of such a deed was no way obligatory on the Society. In these circumstances what is there in the shape of consideration to support the deed? All that the defenders allege is, that "in consideration of the granting of the said bonds of corroboration the defenders departed from their intimation calling up their bonds which they otherwise would have insisted in."

This appears to me by itself quite insufficient as a justification. The transaction was not one within the letter of the rules, and there is nothing to suggest even that it was within the spirit of the rules—that is to say, was in the circumstances so obviously a provident, if not an absolutely necessary measure, that the power which the directors professed to exercise must be taken to be ancillary to the power which they exercised when they gave the loan for £1000 on the security of M'Donald's property. There is no allegation of urgency, no allegation of loss prevented, none of benefit gained, and in these circumstances the true conclusion is, that the granting of the bond of corroboration, which was not obligatory, and for which nothing can be regarded as a reasonable consideration rendered by the defenders, was grossly improvident, and the granting of it beyond the power of the directors. What might have been said on the question of powers if the granting of the bond had been called for or justified by reasonable regard to the interests of the society is a question on which, as there is no occasion, I refrain from expressing an opinion. As things are, and for the reasons already explained, I concur with the Lord Ordinary in thinking that this bond should be reduced.

Lord Rutherfurd Clark concurred.

Lord Justice-Clerk—I should be slow to affirm as a general proposition that a building society carrying on their business under these rules, might in no circumstances have granted such an obligation as is now before the Court. On the contrary, I think that if they had power—and I do not at all doubt that they had power—to become creditors in a second or postponed heritable security they might have paid up the first bond, or have granted a corroborative security in a commercial crisis or in a period of depression in the building trade, provided that appeared to be a beneficial and reasonable act for the protection of the company. But I am not prepared to differ from the proposed judgment, because in order to support such a transaction it ought to have been shown to be likely to prove for the benefit of the Society and its members. This was plainly not the case in the present instance. I think it was of a doubtful character from the first. The original security should never have been accepted at all when the margin was so very narrow, and the additional risk undertaken by the bond of corroboration was manifestly indefensible.

Lord Young having been absent on Circuit during the hearing, gave no opinion.

The Court adhered.

Counsel for Pursuers—Gloag—Strachan. Agents—Davidson & Syme, W.S.

Counsel for Defenders — Mackintosh — H. Johnston. Agents — Henderson & Clark, W.S.

Friday, July 13.

FIRST DIVISION.

[Lord Fraser, Ordinary.

TENNENT *v.* TENNENT.

Evidence — Character of Witness — Credibility — Divorce.

Observed (*per* Lord President), in advising an action of divorce for adultery, that the evidence of prostitutes and persons trading in prostitution is not to be rejected *in toto* though uncorroborated, but that it must be strictly examined.

In the action of divorce at the instance of Mrs Tennent against her husband Charles Tennent, on the ground of adultery, the Lord Ordinary (Fraser) assoilzied the defender. On a reclaiming-note the First Division adhered, and the following observations were made by the Lord President on the character of the evidence.

Lord President—This is an action of divorce at the instance of a wife against her husband, on the ground of adultery, alleged to have been committed in brothels in Edinburgh, and also in London. . . . The occasions set forth in the condescendence are spoken to by the keeper of the house in which the adultery is said to have been committed; her evidence is supported by that of a prostitute in the house, and is further confirmed by that of her own husband.

This evidence is of course of such a character as to require very strict attention and scrutiny, but I am not able to concur with the views of the Lord Ordinary in regard to this class of evidence, and think it necessary to express my dissent from them somewhat emphatically.

After going over the evidence of these three persons, the Lord Ordinary says—"Now if all this was credible evidence, only one conclusion could be arrived at. But then the evidence is the evidence of prostitutes, and such evidence without corroboration is not credible. Everyone who has had experience in dealing with it knows that

the evidence of such persons is the least trustworthy that can be presented to a Court of Justice. Other wicked people have some sense of honour that may be appealed to, but as regards prostitutes, they are restrained by no scruples of conscience, and their evidence always reflects the views that have been put into them by the last detective that has precognosced them." And a little further on he says—"No number of prostitutes will make up one credible witness, so as to outweigh the denial given to them by the person accused. There must be corroboration of some kind." Now, it appears to me that this would be a very dangerous doctrine to introduce into the practice of the Criminal Courts of this country; if it had ever been acted upon, many crimes would have gone unpunished which have been proved to the satisfaction of judge and jury by very clear evidence indeed. I therefore consider that the Lord Ordinary's doctrine is entirely inconsistent with the practice of the Courts of this country, and one which can never be received. At the same time I fully appreciate the duty there is on the Court, in dealing with evidence of this kind, to examine very carefully, and to give full effect to the considerations arising out of the moral conduct and occupation of the witnesses in considering the weight which is to be attached to their testimony.

[His Lordship then examined the evidence, and arrived at the conclusion that the adultery had not been proved.]

Lords Mure and Shand concurred.

Lord Deas was absent on Circuit.

The Court adhered.

Counsel for Pursuer — Trayner — Graham Murray. Agents—Macandrew, Wright, Ellis, & Blyth, W.S.

Counsel for Defender—D.-F. Macdonald, Q.C.—J. P. B. Robertson—Rhind. Agents—Hagart & Burn Murdoch, W.S.

Friday, July 13.

SECOND DIVISION.

CATHCART'S TRUSTEES *v.* HENEAGE'S TRUSTEES.

Succession—Vesting.

A testatrix directed her trustee to hold the residue of her estate for behoof of the daughter or daughters, and failing them the son or sons, to be procreated of the marriage of a nephew. In the event of the whole of the nephew's daughters being married, the whole trust-estate was to be a fund of division among them. In the event of the nephew leaving a son but no daughters, or leaving daughters who should die without issue, then the fee was to the younger son or sons, or if there should be only one son, to him. The nephew was survived by a son, and by a daughter who was married. *Held* (*aff.* judgment of Lord M'Laren) that the fee vested in the daughter on her father's death.

Succession—Accumulation of Income—Thellusson Act (39 *and* 40 *Geo. III. c.* 98), *sec.* 1.

A truster directed her trustees to hold the residue of her estate for behoof of the children of a nephew, declaring that during the nephew's lifetime the whole income should be accumulated by the trustees, and no part of it paid to the nephew or his children, with power to the trustees, if they saw cause, to insure the life of the nephew for their behoof, so that they might at his death receive a sum to be applied for the purposes of the trust. The trustees insured the life of the nephew as they were empowered to do. He lived for thirty-six years after the death of the truster, and at his death the trustees received the amount of the policies. They had paid in premiums a sum more than equal to that which they received. *Held* (*rev.* judgment of Lord M'Laren—*diss.* Lord Craighill) that this transaction was not an indirect accumulation, and was not struck at by the Thellusson Act.

The Act 39 and 40 Geo. III. cap. 98, section 1, provides—"That no person or persons shall, after the passing of this Act, by any deed or deeds, surrender or surrenders, will, codicil, or otherwise howsoever, settle or dispose of any real or personal property so and in such manner that the rents, issues, profits, or produce thereof shall be wholly or partially accumulated for any longer term than the life or lives of any such grantor or grantors, settlor or settlors, or the term of twenty-one years from the death of any such grantor, settlor, devisor, or testator, or during the minority or respective minorities of any person or persons who shall be living or *en ventre sa mere* at the time of the death of such grantor, devisor, or testator, or during the minority or respective minorities only of any person who under the uses or trusts of the deed, surrender, will, or other assurances directing such accumulation, would for the time being, if of full age, be entitled to the rents, issues, and profits, or the interests, dividends, or annual produce so directed to be accumulated, and in every case where any accumulation shall be directed otherwise than as aforesaid, such direction shall be null and void, and the rents, issues, profits, and produce of such property so directed to be accumulated shall, so long as the same shall be directed to be accumulated contrary to the provisions of this Act, go to and be received by such person or persons as would have been entitled thereto if such accumulation had not been directed."

Miss Helen Cathcart died on 15th June 1841 leaving a trust-disposition and settlement dated 17th June 1836. By this settlement she gave to trustees the whole of the heritable and moveable property which should belong to her at her death for certain purposes. The trustees were directed to realise the heritable property, to pay deathbed and funeral expenses, and to pay certain legacies and annuities. The fourth purpose directed them to invest the whole funds under their management in Government funds or bank stock, or on heritable security. By the fifth purpose the trustees were directed to hold the whole residue of the estate (subject to certain annuities) for behoof of the daughter or daughters, and failing them, of the son or sons, to be procreated of the body of her nephew, Sir John Andrew