do so he was necessarily under the corresponding obligation of paying off annually any provision made by the preceding heir of entail in possession to the extent of one half-year's rent. If he failed to do so, the obligation to pay that half-year's rent passed to his representatives, and ceased to affect any succeeding heir of entail in possession. Further, in the clause constituting the debt there was a direction to the heir of entail succeeding to pay. In the case of *Hope Johnstone*, November 27, 1880, 8 R. 160, relied on by the third parties, the burdening power was not limited as here to the amount of three years' rent in all. There there might be several such bonds. The only restriction was as to the amount the heir of entail in possession could be called upon to pay in one year. The Rutherfurd Act, here relied on, only applied where the charging was charging indefinitely, not where, as here, it was contemplated that the debt would be paid off within a certain limited period—*Campbell*, January 26, 1854, 16 D. 396, and *Baillie*, reported in Duncan on Entails, p. 239.

The other parties were not called upon.

At advising—

LORD JUSTICE-CLERK—The deed of entail before us is somewhat obscurely expressed, but presents in my opinion little difficulty as regards the point which has been argued. The question is, whether the sum of £10,857, which was placed as a burden upon the lands and estate of which the second party is now fee-simple proprietor, is to be dealt with as no longer due by him as heir of entail coming into possession of the estate with the burden upon it?

I do not find in the language of the deed which empowered the granting of the provision anything to indicate that if the creditor in the bond failed to exact from the heir of entail in possession during the lifetime of the latter the amount of the debt, the creditor's right was annulled as against the heir.

I do not see any distinction between this case and the case of *Hope Johnstone*. The two cases are on all fours; accordingly, the first question must be answered in the affirmative.

LORD YOUNG—I am of the same opinion. I think it is very clear that the first question must be answered in the affirmative. The only argument against the validity of the bond of provision is a clause in the deed of entail protecting the heir of entail in possession from being compelled to pay more than half-a-year's rent in any one year. I do not think that provision affects the question at all. It is a protection to the heir of entail in possession against creditors pressing him unduly, but to infer from it that if the creditor in the bond does not press him to the extent of half-a year's rent annually, the creditor's right as against the estate is gone, and his only action is against the representatives of the deceased heir, is almost extravagant. Is a bond of provision for the amount of one half-year's rent to be extinguished as against the estate upon the death of an heir of entail, who had only had possession for one year, nothing having been paid off, and no new bond having been put on in the course of the year? And if not, the length of time an heir is in possession can make no difference as to the creditor's right. I think this was a good burden on the estate at the date of the disentail.

LORD RUTHERFURD CLARK and LORD TRAYNER concurred.

The Court answered the question in the affirmative.

Counsel for the First Parties—W. C. Smith. Agents—John Clerk Brodie & Sons, W.S.

Counsel for the Second Party—Asher, Q.C.—Gillespie. Agents—Mackenzie & Kermack, W.S.

Counsel for the Third Party—Wilson. Agents—Auld & Macdonald, W.S.

Wednesday, June 3.

FIRST DIVISION.

WATSON AND OTHERS (SCOTT'S TRUSTEES) *v.* AITON AND ANOTHER.

Process—Special Case—Court of Session Act 1868 (31 *and* 32 *Vict. cap.* 100), *sec.* 63 *—Competency.*

A contract of copartnery provided that on the death of one of the partners, and in the event of the firm being employed to wind up his affairs, they should only be entitled to charge one-third of the usual professional fees and commission. The trust-deed of this partner provided for payment of any expenses incurred by the firm in terms of the partnership deed. The partner died in 1888, and prior to 28th March 1890 the firm had realised, ingathered, and invested the whole estate, and thereafter the trust subsisted for payment of certain annuities and the accumulation of the balance of income for the residuary legatee.

The trustees and the residuary legatee sought the opinion of the Court as to whether the restriction of professional fees and remuneration ceased to be operative after 28th March 1890.

The Court, on the ground that the questions submitted were hypothetical, and suited for the opinion of counsel, *dismissed* the special case as incompetent.

The deceased James Scott, law agent and banker, Stonehaven, died on 28th March 1889. He was a partner of the firm of Scott, Gardner, & Logan, the other partners being John Clanachan Gardner and David Logan.

By contract of copartnery, which was to endure for five years from June 1888, it was, *inter alia*, provided that "on Mr Scott's death, and in the event of Messrs

Gardner and Logan being employed to wind up his affairs, they shall only be entitled to charge one-third of the usual professional fees and commission for doing that business."

Mr Scott left a trust-disposition and settlement by which he nominated William Watson, John Clanachan Gardner, and David Cunningham Logan, trustees for carrying out the purposes therein set forth. The trustees accepted office, and employed the firm of Scott, Gardner, & Logan as law agents in the trust. Prior to 28th March 1890 the said trustees had realised, ingathered, and nvested the whole estate. Thereafter the trust subsisted only for the following purposes—the payment of certain annuities and provisions, and the accumulation of the balance of income for behoof of the residuary legatee until he attained twenty-five years.

This special case was presented (1) by the trustees, and (2) the residuary legatee, in which the following questions were submitted for the determination of the Court:—"(1) Did the clause in the contract of copartnery, and the relative provision in the trust-disposition and settlement, as to the payment of Messrs Gardner and Logan, cease to be operative as on 28th March 1890? (2) Assuming that the said John Clanachan Gardner and David Cunningham Logan continue to act as trustees and also as law agents in the trust, will they be entitled to charge and be paid out of the funds of the trust fees and commission for work done subsequent to 28th March 1890, and if so—1st, Will they be entitled to charge and be paid full fees and commission; or 2nd, Merely one-third thereof? (3) Assuming that the said John Clanachan Gardner and David Cunningham Logan resign office as trustees, and continue to act as law agents in the trust, will they be entitled to charge and be paid full fees and commission from the date of said resignation, or merely one-third thereof? (4) In the event of question No. 1 being answered in the negative, will the restriction as to fees and commission continue to be operative beyond 18th June 1893, being five years from 18th June 1888?"

After hearing argument on the competency of the Special Case.

At advising—

LORD PRESIDENT—I do not think that this is a case which we can possibly entertain under the 63rd section of the Court of Session Act, which provides that where parties are interested either personally or in some fiduciary or official character in the decision of some question of law, and are agreed upon the facts, and dispute only on the law applicable thereto, it shall be competent for them to present a special case setting forth the facts upon which they are agreed, and the question of law upon which they desire to obtain the opinion of the Court.

It is to be observed that it is not sufficient that the parties should be agreed upon the facts, but it is also essential that they should have a direct and immediate interest in the question of law.

In the present case the questions are entirely hypothetical, and are suited for the opinion of counsel and not for the decision of the Court.

LORDS ADAM and KINNEAR concurred.

LORD M'LAREN was absent.

Counsel for the First Party—Dickson—Abel. Agent—D. Lister Shand, W.S.

Counsel for the Second Party—M'Kechnie—Aitken. Agents—Carmichael & Miller, W.S.

Wednesday, June 3.

SECOND DIVISION.

[Sheriff of Lanarkshire.

LIFEBOAT COMPANY, LIMITED *v.* CHAMBERS BROTHERS & COMPANY.

Patent—Validity of Patent—Prior Publication.

Letters-patent for a boat suitable for use as a lifeboat with collapsible canvas gunwale rendering its stowage easy were taken out in November 1887. In September and October the patentee had exhibited such a boat in the basin at one of the shipbuilding yards at Glasgow, at the Royal Albert Docks London, and at Portsmouth. Invitations were issued to these exhibitions by the inventor, no precautions were taken to secure secrecy, and accounts of these exhibitions with a description of the boat exhibited appeared in the public press. *Held* that these exhibitions and descriptions amounted to prior publication, and were such as to invalidate the letters-patent.

Upon 5th November 1887 Robert Chambers, shipbuilder, and William Liddell, agent, both of 2 Oswald Street, Glasgow, applied for and obtained a grant of letters-patent for "'improvements in the construction of lifeboats,' their invention being the combination in a boat, suitable for use as a lifeboat, of a lower part or shell or hull, constructed of iron, steel, or wood, or other material, and an upper part of a flexible material attached by its upper edge to the rail and by its lower edge to the shell or hull, the boat being by preference fitted with water-tight compartments, so that when not in use the upper part may be folded down, and when in use it may be raised by self-locking or self-supporting stays; also the use in such a boat of folding mechanism made of jointed stanchions and jointed stays for the purpose of enabling the upper flexible part to be raised or lowered, and fixed or retained in either position, and further, the employment of the upper rail with rowlocks all as described in the said letters-patent."

The Lifeboat Company, Limited, 205 Hope Street, Glasgow, acquired right to the said letters-patent conform to assigna-