direction to be found in the good sense of the thing. It seems natural enough that in stipulating that an experiment shall be made whether a station will pay, the proprietor should go on to say, "and during the experiment you shall stop all the trains, although the station is not one of your permanent stations;" while, on the other hand, once it took its place as a permanent station, the interests of the traffic might be left to protect themselves.

It remains to be considered how far the agreement of 1858 affects the matter. Now, so far as the present question is concerned, that agreement seems to do no more than determine that there was to be a permanent station, or, in other words, it is equivalent to a finding by arbiters that the temporary station had proved remunerative. It says nothing about the number of trains. If therefore the proprietor had a right under the statute to have all trains stopped once the station was made permanent, he has it now; if he had this right, as I think, only during the temporary period, he certainly has not acquired anything more by the agreement.

It is perhaps superfluous to say that it would be a fraud on the statute if the company were to stop no trains at all at the station, for a station is a place for the stopping of trains; but on the view which I take, the station being an ordinary station, its requirements are to be met in the usual way, and the service regulated according to the ordinary discretion. No suggestion was made to the contrary.

My opinion is that the interlocutor should be recalled and the defenders assoilzied.

LORD ADAM concurred.

LORD M'LAREN—My original impression was in favour of the pursuer, because the obligation to stop trains was unlimited in time, and might therefore be held to subsist as long as there was a station at Lundin Links. That was the Lord Ordinary's judgment; but after considering the views which your Lordships have expressed, I do not feel sufficient confidence in my first impression to dissent from the judgment proposed.

LORD KINNEAR concurred.

The Court recalled the interlocutor reclaimed against and assoilzied the defenders from the conclusions of the summons.

Counsel for the Defenders and Reclaimers—Rankine—C. S. Dickson. Agent—James Watson, S.S.C.

Counsel for the Pursuer and Respondent—H. Johnston—C. N. Johnston. Agents—Macpherson & Mackay, W.S.

Tuesday, February 28.

FIRST DIVISION.

[Lord Wellwood, Ordinary.

THE LORD ADVOCATE *v.* BOGIE AND OTHERS (METHVEN'S TRUSTEES).

(*Ante, Scott's Trustees* v. *Methven's Trustees*, Jan. 30, 1890, vol. xxvii. 314, 17 R. 389).

Revenue—Inventory Duty—Legacy Duty—Legacy to Executors and Representatives Whomsoever of a Predeceasing Legatee.

A testatrix bequeathed the residue of her moveable estate to R. M. and other two persons "equally, share and share alike, and failing all or any of them by their predeceasing me, to their several and respective executors and representatives whomsoever, whom I do hereby appoint to be my residuay legatees." R. M. predeceased the testatrix leaving a will by which he nominated executors and directed them to invest the residue of his estate for the liferent use of his brother, and thereafter to divide the fee among certain charities.

On the death of the testatrix her executors offered to pay inventory and legacy duty on R. M.'s share of residue, on the footing that it was a direct bequest from her to his executors, but the Crown claimed that double duty was payable as on the death of R. M., on the ground that his will was an effectual exercise of a power of disposal conferred on him by the testatrix.

Held (1) that R. M.'s executors took as conditional institutes under the will of the testatrix; and (2) that the one-third share of residue was not chargeable with a second duty as a legacy under R. M.'s will, in respect that he was not empowered by the will of the testatrix to dispose of her estate.

Miss Jessie Scott of Ferniebank, Newton of Panbride, Forfarshire, died on 20th July 1888. She left a trust-disposition and settlement dated 2nd September 1882, by which she appointed Robert Methven, of Hilton, Robert Russell, and James Russell, to be executors and intromitters with her whole moveable means and estate. After providing for payment of debts and legacies she disposed of the residue as follows—"With regard to the free residue of my whole moveable means and estate of every description, which may remain at the period of my death, after fulfilment of all my obligations and payment of all my debts and the foresaid legacy, I leave and bequeath the same to the said Robert Methven, Robert Russell, and James Russell, equally between and amongst them, share and share alike, for their own use and behoof, and failing all or any of them by their predeceasing me, to their several and respective executors and representatives whomsoever, whom I do

hereby appoint to be my residuary legatees."

Robert Methven predeceased Miss Jessie Scott. He died on 3rd April 1887. He left a trust-disposition and settlement and relative codicil, dated respectively 21st January 1885 and 4th October 1886. By his trust-disposition and settlement he appointed William Bogie of Balass and Newmill and others to be his trustees and executors, and conveyed to them, for the purposes therein mentioned, his whole heritable and moveable means and estate then belonging or which should belong to him, or which he might have succeeded to or acquired an interest in at his death.

The bequest by Miss Jessie Scott in favour of Robert Methven, whom failing, to his executors and representatives, did not lapse by his predecease, and in a competition between his trustees and executors and his next-of-kin it was held by the Lord Ordinary (Kinnear) and the Second Division of the Court of Session that the former were entitled to be preferred to the share of residue bequeathed. The Lord Ordinary's interlocutor preferring the trustees and execuors is dated 7th June 1889; and the interlocutor of the Inner House adhering is dated 30th January 1890 [reported *ante*, vol. xxvii. 314, and 17 R. 389].

By the residuary clause in Robert Methven's trust-disposition and settlement which furnished the rule for the distribution of the fund in question, his trustees were directed to invest the residue of his estate for the liferent use of his brother, Cathcart Lambert Methven, and on the death of the liferenter to divide the residue among certain charities.

Cathcart Lambert Methven survived Miss Jessie Scott for two years, and died on 24th July 1890.

In these circumstances the Crown maintained in the present action against the trustees and executors of the late Robert Methven, that two instalments of legacy duty became exigible on Cathcart Lambert Methven's liferent at the rate of three per cent., and that inventory duty was payable by the defenders on the share of residue falling to them as Robert Methven's executors and representatives on the ground that "Miss Jessie Scott's trust-disposition and settlement enabled Robert Methven to dispose of the said share of residue as he thought fit, and it forms part of the estate which the defenders behove to distribute according to the terms of his settlement."

The defenders answered—"(Ans. 5) It falls to Miss Scott's executors to pay legacy duty on the one-third share of residue of her estate left to Robert Methven's executors, Miss Scott's executors are willing to settle upon that footing, but there is no ground for the additional claim now made of legacy duty on that bequest as one made by Robert Methven to the beneficiaries under his settlement. (Ans. 6) The share of the residue of Miss Scott's estate formed no part of the estate of Robert Methven, and was not *in bonis* of him at the time of his death, and is not liable to the inventory duty on his personal estate."

The pursuer pleaded—"(1) Inventory and legacy duties are payable on the said share of residue, Miss Scott's trust-disposition and settlement having been an authority enabling Robert Methven to dispose thereof as he did by his will. (2) The said share of residue having passed to the defenders, Robert Methven's trustees and executors, for the purposes of his will, is part of his personal estate and effects, and liable to inventory and legacy duties. (3) Inventory and legacy duties are payable because the said share of residue is recoverable by the defenders *virtute officii*."

The defenders pleaded—"(1) The one-third share of the residue of Miss Scott's estate being a bequest by her direct to the defenders, as Robert Methven's executors, no legacy duty is payable thereon as on a bequest by Robert Methven. (2) Miss Scott's executors being ready to settle the legacy duty on the said one-third share of residue of her estate, the defenders are not liable to additional duty in respect of the same bequest. (3) The bequest of the one-third share of residue of Miss Scott's estate never having belonged to Robert Methven or been *in bonis* of him, no inventory duty is due by the defenders."

On 8th December 1892 the Lord Ordinary in Exchequer cases (WELLWOOD) sustained the defences and assoilzied the defenders.

"*Opinion.*—[*After stating the facts*]—The pursuer claims inventory-duty and legacy-duty upon the one-third share of residue on the ground that it must be dealt with as having been disposed of by Robert Methven by his will, under the power or authority conferred by Miss Scott's trust-disposition and settlement; or that it is liable to duty as being practically part of his personal estate and effects.

"The defenders, on the other hand, maintain that the share of residue of Miss Scott's estate was a bequest direct to them, that nothing vested in Robert Methven, and that by his will he did not execute any power of appointment, and in point of fact had no power or authority to deal with the funds in question.

"It is not maintained on either side that the funds vested in Robert Methven, or was *in bonis* of him at the time of his death. There is also no question as to the Crown's right to payment of duty from Miss Scott's executors. The question is whether double duty is to be paid as on the death of Robert Methven. I am of opinion that the pursuer is not entitled to succeed. The statutory provisions under which legacy and inventory duty is claimed are 8 and 9 Vict. c. 76, section 4, and 23 Vict. c. 15, section 4. Under the former statute every gift 'out of any personal or moveable estate or effects which such person hath had or shall have had power to dispose of' is to be deemed a legacy within the meaning of the statutes; and under the latter statute, the stamp duties payable by law upon inventories, are to be levied and paid 'in respect of all the personal or moveable estate and effects which any person hereafter dying shall have disposed of by will, under any authority enabling such

person to dispose of the same as he or she shall think fit.'

"Now, those are taxing statutes, and fall to be strictly construed; and I think that I should be putting a strained construction upon them if I were to hold that they covered the present case. When Robert Methven died he not only had no right vested or contingent in the fund in question, but he had no power or authority whatever to dispose of it. It is true that there was in existence, at the date of his death a will in which his executors were conditionally instituted; but the existence of that will is not said to have been known to him; it could have been revoked at any moment; and I think the question must be considered just as if Miss Scott's will had been executed after the death of Robert Methven.

"The true character of a bequest by A to the executors and representatives whomsoever of B is well described by the Master of the Rolls, Sir John Romilly, in the case of *Long* v. *Watkinson*, 17 Beavan, pp. 471-473. In that case the testator directed his executors to pay the residue of his estate and effects to his sister Mrs Fowler, and in the case of her death, 'to the executors or executrixes which my said sister Mrs Mary Fowler may appoint.' Mrs Mary Fowler predeceased the testator. Two questions were raised in the case—first, whether Mary Fowler's executrix took the estate beneficially. It was held that she did not. The second question was whether she held it in trust for the next-of-kin, or for the residuary legatee of the testatrix (Mrs Fowler). On this question Sir John Romilly said—'The question then remains, on what trusts does the executrix of Mrs Fowler hold the property? I think she holds it to be administered by her according to the trusts of her office; that is, I consider it as forming a part of the property which came to her hands as the executrix of Mrs Fowler, and that it is to be administered by her as if it formed part of the property of Mrs Fowler. It is the same as if the testator had said, "Let the residue of my estate be administered in the same manner and upon the same trusts as if it formed a part of my sister's estate." The result is that, in my opinion, the contest, whether the residuary legatee or the next-of-kin take the property is in many cases a contest arising from a misapprehension of the character in which the executor or executrix takes the property. The executor or executrix who takes the property does so as a trustee, and the person who takes the property beneficially takes it as a *cestui que trust*, and not as a *persona designata*. It is, in my opinion, inaccurate to lay down as a rule that in such cases the fund belongs either to the residuary legatee or to the next-of-kin; it belongs to the persons who are interested in the estate of the person to whose executor it is given. This disposition therefore will in some cases give the fund to the creditors, in others to the pecuniary legatees, in others to the residuary legatees, and in others to the next-of-kin.'

"The practical result of such a gift, then, is the same as if a sum of money were handed over by a living person to the executor of a deceased person in trust to be applied to the same purposes, and for the benefit of the same persons who would be entitled to claim against the means and estate of the deceased. In such a case it becomes part of the personal estate of the deceased only in this sense, that under the terms of the gift or bequest it must be applied in the same way as the deceased's proper personal estate. It cannot, either in the case of a bequest or gift, be said with propriety that the fund passes to the executor under an appointment made by the deceased. The bequest or gift is made by the bequeather or donor of the money directly, and not through the medium of a power of appointment.

"It was admitted on behalf of the pursuer that there is no precedent for the present claim; and I do not think that a case has been made out entitling the Crown for the first time to claim additional duty.

"The defenders will therefore be assoilzied with expenses."

The pursuer reclaimed, and argued—Methven's beneficiaries took in virtue of the direction in Methven's will, not by virtue of Miss Scott's will. Miss Scott conferred on him a power to regulate the rights after his death to a fund which did not belong to him in his life, and that power of disposal was equivalent to a power to appoint. The English cases construed a legacy to executors, not as a bequest to them beneficially, but as the setting aside of a fund to be administered by them as if part of the personal estate of the deceased. Double duties were exigible in respect, *first*, of the conveyance by Miss Scott to Methven, and *second*, of the devolution from him to the beneficiaries under his will—*Long* v. *Watkinson*, 17 Beavan, 471, and comment on it in *Webb* v. *Sadler*, 1873, 8 Ch. App. 419, at 427; *Trethewy* v. *Helyar*, 1876, 4 Ch. Div. 53; *in re Valdez's Trusts*, 1888, 40 Ch. Div. 159; *Clay* v. *Clay*, February 3, 1885, 54 L.J., Ch. Div. 648.

Argued for defenders—The Revenue Statutes (36 Geo. III. cap. 52. sec. 7; 8 and 9 Vict. cap. 76, sec. 4; 23 Vict. cap. 15, sec. 4) contemplated an absolute power of disposal in the person to be made chargeable. There never was a time when Methven had power to dispose of the one-third share of Miss Scott's revenue. She was alive at his death; her will conferred no *spes successionis*—it was only an expression of goodwill which created no right in anyone. The statutes taxed transmissions, and here there was only one transmission—from Miss Scott to the beneficiaries under Methven's will. *Platt* v. *Routh*, 1841, 3 Beavan, 257 was referred to, as well as the pursuer's authorities.

At advising—

LORD KINNEAR—The question is whether a legacy is chargeable with double legacy duty and double inventory duty, in respect that the persons favoured by the will are

the residuary legatees of another testator.

Miss Jessie Scott of Ferniebank bequeathed the residue of her estate "to Robert Methven, Robert Russell, and James Russell, equally between and among them, share and share alike, and failing all or any of them by their predeceasing me to their several and respective executors and representatives whomsoever, whom I do hereby appoint to be my residuary legatees."

Robert Methven died before Miss Jessie Scott. The bequest in favour of his representatives and successors came into effect on her death, and the residue of her estate is now payable to them as her residuary legatees.

There is no question that the residue is chargeable with duty as a legacy under Miss Scott's will. But the Lord Advocate maintains that it must also be charged with a second duty as a legacy under Robert Methven's will, because by 8 and 9 Vict. cap. 76, sec. 4, every gift "out of any personal or moveable estate or effects which" a testator "hath had or shall have power to dispose of" is to be deemed a legacy within the meaning of the statutes. The argument is that Robert Methven was empowered by Miss Scott's will to dispose of Miss Scott's estate, and that his will is to be treated as an exercise of the power notwithstanding that he died before her and knew nothing of her bequest to his executors. I think this untenable. It is not by force of Robert Methven's will, but of Miss Scott's will, that the executors of the former take their share of the residue of Miss Scott's estate. This was a ground of judgment in the competition between these executors and their testator's next-of-kin—*Scott's Executors* v. *Methven's Executors*, 17 R. 389—and I think it is the ground on which our judgment in the present case ought to proceed. Moveable property appointed by will, in pursuance of a general power for that purpose, is chargeable with duty as a legacy under that will. But to bring this enactment into operation, it is indispensable that a power to dispose shall have been vested in the testator, and effectually exercised by him. Now, Robert Methven had no power to dispose of Miss Scott's estate, because her will did not come into effect until after his death. His representatives take as conditional institutes in consequence of the lapse by his death of a bequest in his favour. It is playing with words to say that they take by virtue of a power of disposal in him.

The cases which have been cited as to the beneficial interest in a bequest to executors appear to me to have no direct bearing. The question of liability for duty must be determined with reference to the terms of the will by which a legacy is bequeathed. Methven's executors take under Miss Scott's will as *personæ designatæ*. It is of no consequence that her executors must have recourse to another will in order to identify the persons, because the legacy is not a gift by that other will, but by Miss Scott's will alone. Robert Methven's will has no force or effect except as evidence for the purpose of identifying Miss Scott's legatees. Nor is it material whether they take beneficially for themselves or in trust for others, because the beneficial interest in either case depends upon the true construction of Miss Scott's will, is given by her directly, and cannot with any correctness of language be said to arise from a power vested in anyone else.

For the same reasons I think that inventory duty is payable on the residue as part of Miss Scott's estate, and not as part of Robert Methven's. It did not belong to him but to Miss Scott at his death, and he had no power whatever to dispose of it by will.

The LORD PRESIDENT, LORDS ADAM and M'LAREN concurred.

The Court adhered to the judgment of the Lord Ordinary.

Counsel for the Pursuer and Reclaimer—Sol.-Gen. Asher, Q.C.—A. J. Young. Agent—P. J. Hamilton Grierson, Solicitor of Inland Revenue.

Counsel for the Defenders and Respondents—Lorimer—Baxter. Agent—William Black, S.S.C.

Tuesday, February 28.

FIRST DIVISION.

BOARD OF SUPERVISION *v.* LOCAL AUTHORITY OF LOCHMABEN.

Public Health (Scotland) Act (30 *and* 31 *Vict. cap.* 101), *sec.* 97—*Board of Supervision — Petition and Complaint — Procedure where Local Authority makes No Appearance.*

By a petition and complaint in terms of sec. 97 of the Public Health (Scotland) Act 1867, the Board of Supervision applied to the Court to find that the police commissioners of a burgh as local authority had refused or neglected to do what is required of them in the said Act or otherwise by law, by refusing or delaying to introduce a proper water supply and carry out a proper drainage system in their district, and to ordain the local authority forthwith to execute the necessary works at the sight of a person to be named by the Court. Reports by men of skill condemning the existing water supply and sanitary arrangements and correspondence passing between the Board and local authority were produced by the petitioners. The respondents did not lodge answers.

Held (1) that these documents showed a *prima facie* case of neglect of duty, and (2) that the local authority were bound to take the proceedings required by statute for carrying out a proper system of drainage and introducing an adequate water supply.

It was remitted to a man of skill to inquire and report upon a scheme for water supply and drainage.