That being so, it appears to me that the provisions of the Thellusson Act as interpreted in such a case as *Logan's Trustees* v. *Logan*, 23 R. 848, or in any other of the leading cases, apply to the circumstances here, unless it can be said that the accumulations come within certain exceptions introduced in the Thellusson Act.

The defenders have pled two of these exceptions in their answer 5, because they quote section 2 of the Act, which provides—"Nothing in this Act contained shall extend to any provisions for payment of debts of any grantor, settler, or advisor, or other person or persons, or to any provision for raising portions for any child or children of any grantor." I must say I do not follow the argument which brings what has occurred here within the scope of these exceptions. No provision at all was made by the truster, and the first exception allows of a provision being made. Further, I don't see that what was done was in any proper sense payment of debt—debt either of the truster or of anyone else. It has not been suggested that the second exception that it was a provision for a child or children of the grantor or settler is applicable.

That being so, I hold these accumulations to be unlawful accumulations under the Thellusson Act. The Act itself provides that the illegal accumulations should go to the person or persons who would have been entitled to them if such an accumulation had not been directed. That, of course, would give these illegal accumulations to any person who under the settlement has what has been described in English legal phraseology, and I think also adopted in Scotch phraseology, as a gift in possession.

There is no such case here. In fact it is admitted by the defenders that if there are unlawful accumulations under the Thellusson Act these constitute intestate succession of the testator. The only person entitled thereto is the pursuer. I do not think that any argument has been submitted which deprives her of her right as heir of her father to take whatever was undisposed of by him. She has taken nothing under the will of her father. She merely got in the first instance her legal rights and surrendered her liferent, and now she claims the accumulations which in consequence of the operation of the Thellusson Act have become intestate succession of her father.

I therefore hold that the pursuer is entitled to decree against the defenders, but as this was a case where the trustees were entitled to bring the action, I think the expenses should come out of the unlawful accumulations.

Counsel for the Pursuer—Sandeman, K.C. — Lippe. Agents — Dove, Lockhart, & Smart, S.S.C.

Counsel for the Defenders — Blackburn, K.C.—R. C. Henderson. Agents—Cuthbert & Marchbank, S.S.C.

Friday, June 27.

OUTER HOUSE.

[Lord Dewar.

KEIR *v.* OUTRAM & COMPANY, LIMITED.

Process—Proof—Diligence for Recovery of Documents — Income Tax Receipts — Action of Damages for Slander—Injury to Business.

In an action of damages for slander, in which the pursuer averred that his business of hotelkeeper had been injured by the alleged slander, *held* (*per* Lord Dewar) that the defender was not entitled to a diligence for recovery of the income-tax receipts of the pursuer.

Duncan Keir, proprietor and manager of the Caledonian Temperance Hotel, Cowcaddens Street, Glasgow, raised an action of damages for slander against the proprietors and publishers of the *Evening Times*.

The alleged slander was contained in a paragraph which appeared in the issue of the *Evening Times* of 9th May 1913, which stated that the pursuer had failed to answer to a charge of having used his hotel for improper purposes, that he had been liberated on bail of £20, that the bail money had been forfeited, and that a warrant had been issued for his apprehension.

The pursuer averred that his business had been an increasing one, but that it had been injured by the alleged slander, and had fallen off in consequence thereof.

The defenders sought a diligence for the recovery of documents, and, *inter alia*, they called for production of "the receipts for income tax paid by the pursuer during the period between December 1910 and June 1913."

The pursuer objected to this call, and at the discussion the following authorities were referred to:—*Gray* v. *Wylie*, February 25, 1904, 6 F. 448, 41 S.L.R. 342; *Christie* v. *Craik*, March 7, 1900, 2 F. 1287, 37 S.L.R. 503; *Macdonald* v. *Hedderwick & Sons*, March 16, 1901, 3 F. 674, 38 S.L.R. 455; *Johnston* v. *Caledonian Railway Company*, December 22, 1892, 20 R. 222, 30 S.L.R. 222; *Craig* v. *North British Railway Company*, July 3, 1888, 15 R. 808, 25 S.L.R. 600.

The Lord Ordinary, in refusing the call for income-tax receipts, stated that on a review of the authorities he found the latest case, viz., *Gray* v. *Wylie* (*supra*), directly in point and against granting the call, and that the law as laid down by Lord Adam in that case clearly applied to the present case.

Counsel for the Pursuer — Watt, K.C.—Aitcheson. Agents—Steedman & Richardson, S.S.C.

Counsel for the Defenders — Hon. W. Watson. Agents—Webster, Will, & Company, W.S.

Tuesday, July 1.

OUTER HOUSE.

[Lord Dewar.

MEADES *v.* BEARDMORE & COMPANY, LIMITED.

Process—Jury Trial—Motion for Trial at Vacation Sittings—Motion Enrolled Prior to a Day Three Weeks before the Sittings, but not Made in Court until after that Day—Codifying Act of Sederunt, 1913, *F, i*, 4.

The Codifying Act of Sederunt, 1913, F, *i*, 4, enacts that if the day appointed by the Lord Ordinary for the trial of a cause by jury "is later than the next ensuing vacation of the Court or Christmas recess, as the case may be, it shall be in the power of the party to the cause at any time prior to a day three weeks before the said ensuing vacation or recess to enrol the cause before the Lord Ordinary, and to give intimation to the other party that he wishes the cause tried at the sittings in the said vacation or recess. . . ."

A motion for trial of a cause at the ensuing sittings was enrolled more than three weeks before the ensuing vacation, but the motion itself was not made in Court until a day which was within three weeks thereof.

Held (*per* Lord Dewar) that the motion for trial at the sittings was not timeously made.

This was an action of damages at the instance of William Meades, tailor, against William Beardmore & Company, Limited, based upon fatal injury to the pursuer's son caused by a motor car belonging to the defenders. An issue had been approved and a date fixed in the Winter Session 1913-14 for trial of the cause by jury.

On Saturday 28th June 1913 the pursuer enrolled the case for the Lord Ordinary's motion roll of the following Tuesday, 1st July, in order to have the cause tried at the sittings which began on Monday, 21st July.

The Lord Ordinary held that the notice of motion, although lodged with the enrolling clerk prior to a day three weeks before the sittings, was too late, and that the motion to have a cause sent to the sittings must be made "prior to a day three weeks before the sittings."

Counsel for the Pursuer—A. M. Stuart. Agents—Hume, M'Gregor, & Company, S.S.C.

Counsel for the Defenders—W. Wilson. Agents—Bonar, Hunter, & Johnstone, W.S.

Saturday, October 18.

FIRST DIVISION.

SCOTTISH INSURANCE COMMISSIONERS *v.* PAUL AND ANOTHER.

Insurance—National Insurance—Employment—Contract of Service—Assistants to Ministers—Lay Missionaries—Student Missionaries—National Insurance Act 1911 (1 *and* 2 *Geo. V, cap.* 55), *sec.* 1 (1) *and* (2), *and First Schedule, Part I* (*a*).

The National Insurance Act 1911 enacts—Part I, section 1 (1) and (2), and First Schedule, Part I (*a*)—that persons employed within the meaning of the Act shall include all persons who are engaged in any "employment in the United Kingdom under any contract of service. . . ."

Held (1) that assistants to ministers of the Church of Scotland and of the United Free Church of Scotland, and (2) student missionaries of both these Churches, were not persons employed within the meaning of the Act, in respect that they were not employed under any contract of service in the sense of the Act, but (3) that lay missionaries of both these Churches were so employed.

The National Insurance Act 1911 (1 and 2 Geo. V, cap. 55), sec. 1, enacts—"(1) Subject to the provisions of this Act, all persons of the age of sixteen and upwards who are employed within the meaning of this part of this Act shall be, and any such persons who are not so employed but who possess the qualifications hereinafter mentioned, may be insured in manner provided in this part of this Act, and all persons so insured (in this Act called 'insured persons') shall be entitled, in the manner and subject to the conditions provided in this Act, to the benefits in respect of health insurance and prevention of sickness conferred by this part of this Act. (2) The persons employed within the meaning of this part of this Act (in this Act referred to as 'employed contributors') shall include all persons of either sex, whether British subjects or not, who are engaged in any of the employments specified in Part I of the First Schedule to this Act, not being employments specified in Part II of that schedule." Part I (*a*) of the said First Schedule is as follows:—"(*a*) Employment in the United Kingdom under any contract of service or apprenticeship, written or oral, whether expressed or implied, and whether the employed person is paid by the employer or some other person, and whether under one or more employers, and whether paid by time or by the piece, or partly by time and partly by the piece, or otherwise, or except in the case of a contract of apprenticeship without any money payment." Part II of the First Schedule contains, *inter alia*, the following provision:—"*Exceptions.*—