the firm to documents. All these things the Court held to be beyond the manager's powers, but there were two points which the Court held to be within the manager's power, and of which the appellant now complains. One point was that the manager had taken upon him to enter into contracts binding the firm for a term of years to employ certain clerks. and the other point was that he had ordered a large number of power-looms, at great expense, to supersede the hand-looms then in use. These things were done without and against the assent of the appellant James Beveridge. Now, these were things which no manager had any right to do; and this gentleman clearly mistook his position, which, perhaps, was not to be wondered at, considering the deeds and mutual relations constituted thereby between him and his nephew James Beveridge. It appears to me that such things could not be done without the express concurrence of the partners, or either of them. What Robert Beveridge could really do, in respect of being one of the trustees, who were partners jointly with James Beveridge, may be a more difficult question, but, at all events, as a manager, he was not entitled to do such things. No doubt, what the manager did in the present instance turned out to be for the benefit of the firm. Still, such things must be done with the consent of the firm and each of the partners. That being so, another question is, whether the manager was entitled to sign the name of the firm to deeds and documents? The Court below held it would be better for him to write his name as manager of the firm. But the proper course undoubtedly was, that the firm should execute a procuratory or special mandate authorising him to do this, and defining the circumstances under which he should do it. Another point raised is, whether the surviving partner James Beveridge could use the name of the firm in pursuing this action? That is a point which the Court below said it was unnecessary to decide, and your Lordships also do not think it necessary to decide it. The appellant's counsel has handed in a form of order from the House embodying the points already alluded to, and this form the House proposes to adopt. As regards the costs of the appeal, the Court below reduced the appellant James Beveridge's costs by one-fourth. Your Lordships think that all the questions raised have been matters peculiarly for the benefit of the partnership; and that it is not unreasonable that all the costs of settling these questions should be paid out of the partnership funds, and, of course, as the appellant has only one-fourth share of the profits, he will bear only that proportion. The order drawn up will thus substantially reverse the parts of the of the interlocutor complained of by the appellant, and the cause will be remitted to the Court of Session to settle the terms of the special mandate which the firm should execute, defining the powers of the manager.

Lord Chelmsford—I cannot help regretting that these parties should not have been able to agree amicably upon some mode of carrying on this prosperous business without resorting to a court of law. The business has certainly prospered under the management of Robert Beveridge, but it is equally clear that he has taken an erroneous view of the powers which he can exercise as manager, and those powers exercised as he has exercised them might have ended in hazard and loss. It was therefore most natural that James Beveridge, who had been reduced to a cypher by this course of management, should want to know how far these things were legal and competent, and what was his own position. The manager clearly was not entitled to the powers of a partner, for the deed expressly treated his powers as distinct from those of a partner, and though the trustees were to represent the deceased Erskine Beveridge, yet they were not each partners, but were only collectively one partner. That was clearly intended by the deeds to be the mutual position of the parties. The manager had claimed to leave blank cheques to be filled up by his clerks, but he had not only no right to do so, but he had no right even to fill up cheques for small sums and leave them at the disposal of clerks, and, more especially, as the other partner, James Beveridge, was at hand ready at any time to sign such cheques as were needed. For similar reasons, the manager was not entitled to order, as he had done, the power-looms, and to engage for a term of years certain clerks, which might have involved the firm in serious liabilities. The proper course, therefore, was to reverse the findings of the Court below, and to remit the case, that the terms of a procuratory might be granted by the firm to Robert Beveridge, settling his powers as regards the signing of the name of the firm to deeds and documents hereafter.

Lord Westbury concurred.

Sir R. Palmer, for the appellant, reminded their Lordships that there was a cross appeal, and that it ought to be dismissed with costs.

Lord Westbury said, that having regard to the future conduct of the business, it would be much better for the parties to agree to merge this cross appeal in the principal appeal, so that the costs might all go together in one sum. Without weighing minutely the conduct of the parties during the past, it would be better to let all the costs of both appeals come out of the partnership funds.

Interlocutors reversed, and cause remitted with direction. Costs of all parties to be paid out of the partnership funds.

Agents for Appellant—Wotherspoon & Mack, S.S.C.

Agent for Respondent—T. J. Gordon, W.S.

Thursday, February 22.

HARVEY *v.* FARQUHAR.

(*Ante*, vol. viii, p. 441.)

Husband and Wife—Divorce—Adultery.

Held (affirming the judgment of the Court of Session) that a husband divorced for adultery forfeits all the rights under his contract of marriage.

This was an appeal against a judgment of the Second Division of the Court of Session, as to the forfeiture by a husband of his rights under a marriage-settlement by reason of adultery. The appellant was the third son of the late John Harvey of Kinnettles, who died in 1830. By the father's settlements, the estate of Kinnettles was left to the eldest son, and the rest of the property divided equally among the younger children. In 1812 the appellant married Miss Rachael Hunter, the eldest daughter of William Chambers Hunter, of Tillery and Auchiries, Esq., and her father was a party to a marriage-contract executed before marriage. By this contract the appellant bound

himself to pay to his marriage trustees, of whom the respondent is the surviving trustee, and assigned to the trustees in security thereof all his right under his father's trust-disposition. On the other hand, Miss Hunter, with her father's consent, assigned a bond of provision, executed by her father, over his entailed estates, and the interest she had in a mortgage for £4000, conditioned to be executed by her father over his unentailed estate in favour of his children. The object of these assignments was that the sums of money falling under the trust were to be held by the trustees exclusive of the husband's *jus mariti* and right of administration, and were not to be liable for his debts or deeds, or right legal diligence of his creditors. The funds were to be invested on security during the joint lives of husband and wife. The trustees, after deducting necessary expenses, were to pay the annual proceeds to the husband for the maintenance and support of himself and his spouse and family. It was also provided that on the dissolution of the marriage by the death of either of the contracting parties, in the event of there being issue of the marriage alive at the time, the annual proceeds were to be paid to the survivor, and on his or her death the principal sum was to be divided equally among the children at majority. There was in the marriage-contract no discharge on the part of Miss Hunter of the provisions settled upon her by the marriage-contract of her parents. The trustees of the marriage-contract had all died or resigned except the respondent.

In 1844, by way of implementing his obligation, the husband granted to his marriage trustee a heritable bond for £4000 over his estate of Monecht in Aberdeenshire.

The husband (the appellant) alleged that he never could get from the trustees any satisfactory account of what sums of money they had received under the assignations of the wife's property. There were three children of the marriage, of whom one only survived—namely, a daughter, now married.

In January 1848 the appellant's wife raised an action of divorce for adultery, and obtained a decree in absence against him, as he was then in Canada, with a view to settle there. The want of pecuniary means prevented the appellant instituting an action of reduction till May 1850, but the action was then dismissed, on the ground that a year and day had elapsed since the date of the decree, and the same want of funds prevented his appealing to the House of Lords. Down to the year 1847 the appellant received from the trustees the annual proceeds of the trust funds, but they had refused to make any payment to him. In 1850 the appellant, as administrator for his infant children, raised an action of count and reckoning against the marriage trustees, but for part of the expense the trustees, in the course of the action, obtained warrant to incarcerate him, and he was compelled to execute a disposition *omnium bonorum* in favour of John Ligertwood, advocate in Aberdeen, as trustee for his creditors, whereby his interest under his marriage-settlement purported to be conveyed. As, however, Mr Ligertwood would not appear in the action, it was, in the absence of the appellant, dismissed. The appellant having thus been for twenty-three years deprived of any benefit from the marriage-contract even for his own property, and the trustees having contended that he had forfeited all benefit by his divorce, he raised the present action against his trustee for a count and reckoning, concluding for payment of the funds to which he was entitled, namely £3500, and interest.

The respondent, in his defence, said that after the divorce in 1847 the wife's trustees took the opinion of counsel, and were advised that the decree of divorce had the same effect on the wife's rights as his natural death would have had. Accordingly, the trustees had ever since paid the interest of the sums of £4000 and £1750 to the wife, who had since married Mr Jopp, wine merchant in Aberdeen.

In his pleas in law the appellant contended that the decree of divorce had not the effect of depriving him of his own share of the property settled by the marriage-contract, while the respondent contended the contrary. The Second Division ultimately, after ordering the appellant to find security for costs, assoilzied the defender, the now respondent. All the judges said that divorce was the same thing as the natural death of the husband. The husband now appealed from that decision.

The Solicitor-General (Sir G. Jessel), for the appellant, said this was an appeal on a very important point of law in Scotland. This marriage-contract contained a clause which amounted to this, that the husband sets apart his own property to form a provision for himself, independent of his creditors. That was a perfectly competent and legal thing to do in Scotland, being what is called an alimentary provision, though in England it was not allowable. The law of England was, no doubt, peculiar in that particular. The object of this appeal was to upset a series of decisions under one of the old Divorce Acts, but as those decisions had never been reviewed by this House, it was proposed that this shall now be done. The Scotch Courts had, by an extraordinary misapprehension of a very plain statute, interpreted it in such a way as to create a new law altogether, and it was clear law that however old a statute may be, no length of misreading or misconstruing it is to be allowed to alter that statute, and in effect to make a new statute. The theory the Scotch Courts had gone upon was this—That when a man committed adultery, and a divorce followed, the divorce had the same effect on the marriage-contract as if he were naturally dead, and that he was to lose not merely the property of his wife given to him, but his own property included in the settlement. How could it be possible to arrive at this result on any legal principle? The Courts had proceeded on what they call analogy to the law as to desertion. They thought because forfeiture was said to follow on desertion, it would be strange if the same thing did not follow on adultery. Such a mode of construing a statute would not be allowed in modern times. There was no common law on the subject, for divorce was not allowed at all till the Reformation, when some statutes passed on the subject. By the first Act of 1551 notour adultery was punished by escheat of moveables, but no loss of patrimonial rights by the offending party to the other was declared. By the later Act of 1573, if one party maliciously deserted the other, the party, on an action of adherence, would tyne and lose the tocher and marriage gifts. But there was no such consequence declared in case of adultery, nor has any Court power to say that divorce for adultery means the same thing as death, unless the marriage-contract say so. Nothing but a contract could declare it to be so.

LORD CHELMSFORD—It is not a very usual thing for marriage-contracts to provide for the effect of a divorce.

SOLICITOR-GENERAL—That may be so. It is, no doubt, a delicate thing to do to introduce on such occasions, but I have met with one or two instances of it.

LORD WESTBURY — What is the difference between notour adultery and simple adultery?

SOLICITOR-GENERAL — I believe that until the adultery was brought before the kirk-session, and an ecclesiastical censure pronounced, it was not notour adultery.

LORD CHANCELLOR — The kirk-session might look over the matter once or twice, perhaps.

SOLICITOR-GENERAL—Yes; and when the person became incorrigible, the church then dealt with him. It was true there were several decisions in the Scotch Courts which assumed that adultery was equivalent to civil death, and Stair and Erskine were said to be authorities to that effect. But it has been suspected that both those works, having been posthumous, or printed from an incorrect copy, the whole doctrine originated from some printer's error. But, at all events, it was admitted that the Courts had reasoned by analogy as to adultery from the statute as to desertion.

LORD WETSBURY—What is analogy? Lord Mansfield said that no rule or supposed rule had been so fruitful of errors as that.

SOLICITOR-GENERAL—That is clearly so. It is a loose and uncertain way of arriving at a conclusion. Therefore the decisions, even though apparently against me, ought now to be overruled by the House.

LORD CHELMSFORD—When do you say a decision comes of age?

SOLICITOR-GENERAL—I say, if it contradicts the plain meaning of a statute, never.

LORD CHANCELLOR—But statutes may go into desuetude in Scotland.

SOLICITOR-GENERAL — However the error may have originated, the error is plain, and the whole series of the decisions ought to be overruled at once.

Mr ANDERSON followed on the same side, and called their Lordships' attention to the terms of the marriage-contract, that the provision to the husband was alimentary, and not to be attached for any of the husband's debts and deeds.

LORD WESTBURY—Then do you say that the divorce was the deed of the husband, at least in this sense?

Mr ANDERSON—Yes. The adultery is the deed of the husband. The divorce follows upon the adultery.

LORD WESTBURY—Then the man will divorce himself.

LORD CHELMSFORD—The House has already held that a man cannot marry himself, but it has not yet held that he cannot divorce himself.

Mr ANDERSON contended that the word "deed," and the word "misdeed" too, was used in the law of Scotland so as to include acts of adultery, and the divorce might well be called the deed of the husband who committed adultery. There was in this case, no doubt, a series of decisions, but these were all founded on an erroneous construction of a statute, and this House had on several occasions reversed decisions, though they had been of long standing.

The LORD ADVOCATE said that the law in question was too ancient to be now overruled. There were no authorities that did not treat this doctrine as the part of the then existing law. Indeed, it was part of the common law, and should not at all depend on statute. The rule was that the delinquent party who committed adultery forfeited all the provisions contained in the marriage-contract for his or her benefit.

LORD WESTBURY—The main question is whether the rule extends to the delinquent party's own property, and which he has himself provided for an alimentary provision to himself.

The LORD ADVOCATE said he would show both doctrines to be well founded on authority in the law of Scotland. The doctrine in question was well settled, and the appellant's counsel were wrong in assuming that it originated in the construction of the old statute as to wilful desertion. It was founded on the common law and the law of Europe prevalent before the Reformation statutes; and though it was insinuated that the text of Stair and Erskine on this point was corrupt, that assumption was not founded on fact, for all the manuscripts from which "Stair's Institutes" were printed were in the Advocates' Library, and contained the words which are said to be since inserted without authority.

LORD WESTBURY — Do you go the length of saying that if a man has, say, £20,000, and by his marriage-settlement included that sum, and had given the interest to himself for life, and after his death to his wife, and he is divorced for adultery, the whole benefit of this part of the settlement goes over at once to the wife? That is a large and formidable proportion. Are you not frightened at the extent of the contention?

LORD ADVOCATE—I am not frightened at all by it, and will contend that it is sound law. The husband by the old law would have been hanged for his conduct; and though that part of the old statute has gone into desuetude, there is no reason why the more lenient consequence should not follow. This was so ancient a part of the law of Scotland that it was impossible to find the origin of it. At the same time, I may incidentally mention that it is a law which might now be very properly altered, and I had it in my intention to propose some alteration at an early date, so as to introduce into Scotland the law that was applied to England by a recent statute.

LORD WESTBURY—Are there any statistics as to the number of cases of divorce for adultery, for these are serious consequences as regards the husband's property? The Scotch are known to be a very moral people of course.

LORD ADVOCATE — They are a moral people, without the superlative "very." I think there are no statistics of the kind.

LORD WESTBURY — You see, if the husband should commit adultery, and the interest of a sum like £20,000, should be forfeited to the wife, she could marry next day a second husband, and carry over to him the whole of the money.

LORD ADVOCATE—That may be so. It is probably a very rare case, but we go that length. The doctrine of forfeiture by reason of adultery is laid down by all the authorities—by Stair, Erskine, Kames, and Bell; and there are numerous authorities all assuming this law as indisputable. There was also a case before Lord Eldon on appeal from Scotland, which recognised the same doctrine.

LORD WESTBURY—If a man married in 1820 with such a settlement, was sequestrated in 1830,

and divorced for adultery in 1850, would his wife come in and take away the creditors' property, and supersede all their rights also?

Lord Advocate—That would be so if the same effect would follow upon his death at the date of the divorce. The doctrine having been acted on for hundreds of years, it was too late now to overrule it.

Sir R. Palmer, Q.C., followed on the same side, and said that, whether the law was right or not, still it could not be described as intrinsically unjust; and though the consequences might be startling in the case of large sums being settled by the husband, still, that would no doubt be corrected by legal advisers warning parties against such possible consequences if large funds were included in the settlement.

Mr Anderson, Q.C., replied, and said that the appellant's counsel had quite failed to show that this doctrine was founded on the common law before the Reformation. The utmost that was then accepted as law was that the guilty party should not profit by the marriage gifts. There was no forfeiture, but merely a restitution to the wife of what had been her own. The proper meaning of a *donatio propter nuptias* did not include what property came from the husband, and was settled on himself. The old Act as to forfeiture upon wilful desertion was not interpreted to mean what the respondent contended, but it was limited only to this—that the husband forfeited what he got from the wife, and what he had given to the wife, but he did not lose the benefit of the settlement arising from his own property settled upon himself. If there had been any ambiguity in the statute, and a series of decisions had interpreted in one way, the House would no doubt be slow to overturn such a rule; but as the statute was clear, there was nothing unusual in the House overruling erroneous decisions and restoring to the statute its natural meaning. The interlocutor ought therefore to be reversed.

At advising—

Lord Chancellor—In the first case the appellant Mr Harvey seeks a reversal of the judgment of the Court of Session as to certain rights which he put forward to the interest of some of the funds settled on his contract of marriage with a Miss Hunter. The marriage proved not to be a happy one, for it was some years after dissolved by a decree of divorce, on the ground of the appellant's adultery. It was said that the decree had been obtained in his absence, but however that may be, or whatever was the reason, it was never, at all events, set aside. The wife so divorced had since married Mr Keith Jopp. The question that arose was as to the effect of the divorce so obtained in the interest of the appellant in the funds vested in the marriage trustees. On the marriage a sum of £4000 was settled by the husband, and about £1700 by the wife and her father. Those funds were vested in the marriage trustees, and they were held to be not liable for the husband's debts or deeds, or the legal diligence of his creditors. The interest was to be paid during the joint lives of the married parties to the husband for the maintenance and support of himself and his spouse and family: and at the dissolution of the marriage by death of either party, if there were issue alive, the income to be paid to the survivor, and on the survivor's death the principal to be equally divided among the children. There was one child now alive and married. The Court of Session had held that, by virtue of the divorce, all the interest of the husband in this fund had ceased as if he had been actually dead, and that the wife's interest came into full operation. That was so decided on the authority of a law which had existed for 200 or 300 years in Scotland, but it had been argued at the bar that there had never been an opportunity for the House of Lords to review and confirm the doctrine. It was said that in 1573 a statute had passed, providing that in case of wilful desertion by a married person, that person, after decree, should lose and forfeit all the *donationes propter nuptias*. It was said that the Court had, by analogy, without authority, extended the statute to the case of divorce for adultery, and that by an error in Lord Stair's work there had grown up a doctrine of this kind, which had been acted on ever since, though quite unwarranted. Now, it seemed to him (the Lord Chancellor) that the error alleged could not be relied on as the source of this doctrine. Nor could it be contended that there was no common law on the subject before the Reformation, for it had always been allowed in the Church to obtain a divorce *a mensa et thoro*, and an old authority in the books in Scotland in 1540 showed that was then the law of Scotland, and that a forfeiture like that now in question then existed as a consequence of the divorce. The doctrine of the law of Scotland as to adultery had always been more severe than that of the law of England, and an early statute in Scotland made adultery a capital offence. Then the series of decisions for two hundred years was too strong an authority in favour of this doctrine to justify any Court in now disregarding it. The House could not take upon itself to overrule all the chain of authority merely because some dicta of Judges and text writers occasionally suggested doubts as to the true origin of the rule. Then, if the doctrine was well founded, did it apply to the property brought into the marriage-settlement by the husband as well as by the wife? There seemed no ground for any distinction between them. For these reasons, the judgment of the Court below should be affirmed, with costs.

Lord Chelmsford concurred, and observed that it had been satisfactorily shown that the origin of this rule of law in Scotland was part of the common law, and anterior to the Reformation; and Stair, Erskine, Bankton, Kames, and Bell, all agreed that it was well-settled law. There was no reason for supposing there had been any misprint in the editions of Stair to account for the doctrine otherwise. There was no sound reason for drawing a distinction between the forfeiture of the husband's contribution to the funds of the marriage trustees out of his own property, for every *donatio propter nuptias* was forfeited, except where the tocher had been received and spent, in which case the husband was not called upon to restore it. It was argued that the fund was not liable to the husband's acts and deeds, and that divorce was his act or deed; but it was not the divorce, it was only the adultery that was his act, and that made all the difference. That clause in the marriage-contract had now ceased to have any operation, and considering the long series of decisions in favour of the judgment below, it ought to be affirmed, with costs.

Lord Westbury concurred, and said this was an attempt to reverse not only a long series of decisions, but also to upset a rule of law in Scotland

which had become almost part and parcel of the institution of marriage. It was not surprising such a rule had been adopted, seeing the extraordinary severity with which adultery had been treated in that law. The husband's fund fell within the rule of a *donatio propter nuptias*, and was forfeited upon the divorce for his adultery. It was not for the House, which was bound to administer the law of Scotland, to arrogate the right of overturning a law which had existed so many years, and which had become an established basis for dealing with property in that country. The decision should therefore be affirmed, with costs.

Judgment affirmed with costs accordingly.

HARVEY *v.* LIGERTWOOD.

The LORD CHANCELLOR said he had very little to say in this case. The appellant sought to reduce and set aside a disposition which he had executed of all his goods under a well-known process for the relief of insolvent debtors, called a *cessio bonorum*. He said that that disposition included something that was incapable of alienation, and therefore the deed was to that extent void. The House had already decided that the appellant had no vested interest in the funds arising out of his marriage contract, but it was said that he had still a contingent interest in the event of his surviving his former wife. The case had been very ably argued by the junior counsel for the appellant; but there was really no substantial ground for interfering with the judgment of the Court below. The contingent interest referred to would not be an alimentary provision at all, but would be alienable, and therefore was carried by the *dispositio omnium bonorum*. The interest, in any event, is very small, and the Lord Ordinary took the proper view of the case, and his interlocutor should be affirmed.

LORD CHELMSFORD concurred, and said that by the previous decision of the House the appellant had forfeited all the interest which he took by virtue of the marriage-contract. If there was a contingent interest which he might have over and above in the event of his surviving his wife, that was an interest which he could dispose of, and which he had disposed of. The decision below was perfectly right; and it was painful to think of the money and time that had been wasted in such a litigation as this.

LORD WESTBURY also concurred, and said one of the reasons for reducing this deed was that it had been executed in a dark and dirty dungeon, when the husband was a debtor; but the law expressly provided that the debtor could, in such circumstances, execute a valid deed called a *dispositio omnium bonorum*. The other ground was that a wrong construction had been put on the marriage-contract; but that was no ground for reduction. If the interest which the appellant still has in his marriage-contract is inalienable, then it has not been alienated. If it was alienable, then it was conveyed by the disposition, and cannot now be altered. This case was an instance of great pertinacity in litigation, and it was to be regretted that, owing to the respondent not appearing, it could not be dismissed with costs.

Judgment affirmed.

Monday, March 11.

CATTON *v.* MACKENZIE.

(*Ante*, vol. vii, p. 687, also pp. 250 and 410.)

Entail—Provision to Children—Entail Amendment Act (11 *and* 12 *Vict. c.* 36, § 43).

Terms of a clause in an entail authorizing provisions to younger children, *held* not to render the entail invalid under 11 and 12 Vict. c. 36, § 43.

The late Hugh Mackenzie died on 30th July 1869, possessed of the entailed estate of Dundonnell, valued at about £150,000. He held the estate of Dundonnell as institute under an entail executed by his father in 1838, and on the death of the latter, in 1845, he completed a feudal title to the lands under the entail. He also acquired certain lands called Mungusdale, in fee simple, of much smaller value.

Mr Mackenzie was never married. He left a natural daughter, Miss Mary Mackenzie, who was married in November 1865 to Mr Alfred Catton.

By a trust-disposition and settlement dated July 1854, Mr Mackenzie conveyed to trustees the estate of Mungusdale, as also his whole heritable and moveable estate, directing them to hold the same for behoof of his daughter.

In December 1869 Mrs Catton and her husband raised a declarator against Kenneth Mackenzie, brother of the late Hugh Mackenzie, being the first substitute in the entail of Dundonnell, to have it found that the entail of Dundonnell was invalid, and that the estate was carried by the trust-settlement of 1854.

The objections maintained by the pursuers to the validity of the entail were chiefly these:—

The usual prohibitions were inserted, with this "exception" (1) "That it shall be lawful to the said Hugh Mackenzie and to the heirs of tailzie above specified, notwithstanding the limitations before written, to provide their younger children with three years' free rent of the said lands and estate; but declaring that where such power has been exercised, it shall not be lawful or in the power of any subsequent heir of tailzie to burden the lands and estate with new provisions until the former provisions are satisfied and paid; and in case a part thereof shall be paid, then it shall be lawful to the said heirs of tailzie to provide their younger children in so far as the prior provisions are extinguished, so that the lands and estate shall at no time be burdened with provisions to younger children to the extent of more than three years' free rent thereof after deduction of all other burdens,—and declaring further, as it is hereby expressly provided and declared, That no adjudication or other legal execution shall [lie] or be competent against the fee or property of the said lands and estate, or of any part thereof, for payment of such provisions to younger children;—nor shall it be lawful to, nor in the power of any of the said heirs of tailzie, to sell or dispone the said lands and estate or any part thereof for payment of the said children's provisions."

The pursuers maintained that no limitation was imposed by the entail on Hugh Mackenzie, the institute, as to the mode in which, or the time when, he might have granted and made payable the provisions to younger children; that he was permitted to contract debt for children's provisions, for which the entailed estate might be adjudged during his life or after his death, and, further, they maintained, that although the subsequent