Now, it is obvious that two things are requisite —*First*, that the property shall be dedicated to charitable uses; and *second*, that it has been applied to educational purposes. It is quite obvious that the fact that the property has been applied to educational purposes is not of itself sufficient. In this case I have no doubt as regards the second requisite that this fund complies with the conditions contained in it. But the question remains, was the property dedicated to charitable uses? Now, I think to make it so it must be irrevocably destined, and not capable of being diverted without a breach of trust. The answer to the question depends entirely upon the construction of the feu-contract, and I have no doubt, on a proper construction of the feu-contract, that this fund is not so destined. I think the Magistrates have an option to apply this fund either to charitable purposes or to any other purpose they may think right. [*His Lordship here read the clauses in the feu-contract quoted by the Lord President.*] It appears to me that nothing can be clearer than that the Magistrates could use the subjects for other than charitable purposes, if they paid the larger feu-duty.

Now, supposing the Magistrates had made up their minds to apply the subjects to other than charitable uses, who could have prevented this? Sir Michael Shaw Stewart could have had no answer, and if the founder had no title to interfere, who else could object? I think nobody could have objected. This case appears to me to be simply one where the Magistrates held property to be used by them for charitable uses, or otherwise as they might in their discretion think proper.

I think this case is quite different from that of *Gold* v. *Houldsworth*, 8 Macph. 1006. In that case there was a permanent prohibition against using the property in a certain way, and that prohibition was fortified by a penalty, and therefore it was held in that case that the superior or proprietor had a right to insist that the property should be applied to no other purpose.

Upon the whole matter I agree with your Lordship that this is not an educational endowment in the sense of the statute.

Lord Kinnear—I think an educational endowment in the sense of the statute means an irrevocable gift, and that it must be (1) dedicated to charitable uses, and (2) applied or be applicable to a particular form of charity, *i.e.*, educational purposes.

I entirely agree that the question whether the money received in this case as compensation falls under the statute really depends on a construction of the title, and we have to decide whether the Magistrates held the property as trustees for charitable uses or as ordinary administrators for the burgh. I agree with the latter interpretation, which is the one your Lordships have put on this feu-contract. The ground is conveyed for a certain purpose, and it becomes clear on reading the whole deed that the reason for specifying the particular purpose is simply to make clear the special agreement for a variation of the feu-duty in certain events. What Sir Michael Shaw Stewart stipulates for is that he shall be entitled to a small feu-duty if the subjects are used for charitable purposes, and to a larger one if they are diverted from these purposes.

I entirely agree with your Lordships.

The Court pronounced this interlocutor:—

"Find and declare that the subjects in Ann Street and Sir Michael Street, Greenock, and the consigned money, being the price thereof, are not an educational endowment in the sense of the Educational Endowments Act, 1882; and find and declare that the scheme, so far as it includes the said sum of money, the price of the said subjects, consigned in bank, is not within the scope of the Educational Endowments Act, 1882, and is contrary to law, and decern."

Counsel for the First Parties—Sir C. Pearson—Dickson. Agents—Cumming & Duff, S.S.C.

Counsel for the Second Parties—Darling—C. N. Johnston. Agent—Donald Beith, W.S.

Saturday, February 25.

SECOND DIVISION.

[Sheriff of Lanarkshire.

CLARK *v.* KEIR AND ANOTHER.

Lease—Hypothec—Hypothec Abolition (Scotland) Act, 1880 (43 *Vict. cap.* 12).

Under the lease of a dairy farm there were let separately, and for separate rents, the lands, which exceeded two acres in extent, and the dwelling-house, with byres, milk-house, stable, and garden, which were adjacent to, but not situated on the lands. *Held* that the provisions of the Hypothec Abolition Act, 1880, did not apply to the rent for the house, byres, milk-house, stable, and garden.

The Hypothec Abolition (Scotland) Act, 1880 (43 Vict. cap. 12), sec. 1, provides that from and after 11th November 1881 "the landlord's right of hypothec for the rent of land, including the rent of any building thereon, exceeding two acres in extent, let for agriculture or pasture, shall cease and determine."

By a memorandum of lease, dated 22d January 1887, Andrew Clark, farmer, High Possil, near Glasgow, let to Finlay Keir and Walter Keir, dairymen, residing at Colston House, Bishopbriggs, "the dwelling-house of Colston, with byres, milk-house, three stalls in stable, and garden, for one year, from Whitsunday 1887 to Whitsunday 1888, at the rent of £30 sterling, payable at Martinmas, also three grass fields, namely, West Hill, Barn Park, and Todhole Park, 25 acres, till Martinmas, at the rent of £70 sterling, payable at Martinmas." The buildings were not upon the grass fields.

The rent was not paid at Martinmas 1887, and upon 12th November 1887 Clark presented a petition in the Sheriff Court at Glasgow, in which he prayed the Court "(first) to sequestrate and to grant warrant to officers of Court to inventory and secure the whole fittings, stock, furniture, goods, and other effects, so far as subject to the pursuer's hypothec, which are or have been in the dwelling-house of Colston, with byres, milk-house, and three stalls of stable, near Bishopbriggs, Glasgow, occupied by the de-

fenders since the term of Whitsunday 1887, in security and for payment to the pursuer of the sum of £30 sterling, being the year's rent thereof, from Whitsunday 1887 to Whitsunday 1888, payable at the term of Martinmas 1887; and (second) to grant a decree against the defenders, jointly and severally, for the sum of £70 as the rent of the lands."

The defenders pleaded—"The bestial are not now liable to the law of hypothec, nor the subjects in any buildings on the farm."

On 10th December 1887 the Sheriff-Substitute (Erskine Murray) pronounced this interlocutor and note—"Finds (1) that the pursuer Clark let to the defenders Keir, in January last, the dwelling-house of Colston with byres, milk-house, garden, &c., for a year, from Whitsunday 1887 to Whitsunday 1888, at the rent of £30, payable at Martinmas, and three grass fields till Martinmas, at the rent of £70, payable at Martinmas: Finds (2) that both rents remaining unpaid, pursuer now seeks to sequestrate for the £30, and to get a decree for the £70: Finds in law that pursuer is entitled to succeed in both points." Warrant was then granted to sell as many of the effects sequestrated as would pay the year's rent of £30.

"*Note.*—Under the Hypothec Abolition Act 1880 agricultural hypothec was abolished. If therefore this had been the case of a single rent of £100 for the house and fields as for a dairy farm no hypothec would have existed, nor would sequestration have been competent. But here the two have been separated, a separate rent being put upon the house and the fields; and further, the lease of the house is for a year, while that of the fields terminates at Martinmas. The two sets are therefore quite distinguishable. The pursuer is therefore entitled to sequestrate the effects in the dwelling-house and its appurtenances as in the case of an ordinary dwelling-house. A nice question may arise, however, if he sequestrates the cattle. Had it not been for the Act of 1880, if the house and the fields had been held from different landlords, the landlord of the fields rather than that of the house would have probably been held entitled to sequestrate the cattle. As it is, if he sequestrates them for the rent of his house he may perhaps be held to have been trying to extend his hypothec for the rent of his dwelling-house over agricultural subjects in a manner which the Act of 1880 renders incompetent. On this point the Sheriff-Substitute reserves his opinion. But this does not affect the pursuer's right to sequestrate the effects in the dwelling-house, &c., 'so far as subject to the pursuer's hypothec,' which is all that he asks."

On appeal the Sheriff (Berry) on 7th January 1888 adhered.

"*Note.*—I think with the Sheriff-Substitute that the pursuer is entitled to the remedy of sequestration for the rent due at Martinmas of the house and buildings connected therewith. If there had been one letting of the house and fields the case would have fallen under the provisions of the Hypothec Abolition Act of 1880, and no right of hypothec would have existed. Here, however, although no doubt in one document we have separate lettings for the house and buildings on the one hand, and for the fields on the other; separate rents are payable for these two sets of subjects, and there are separate periods of duration, the lease of the house and buildings extending to Whitsunday 1888, while that of the fields expired at Martinmas last; and when this petition for sequestration was brought the lease of the fields was at an end. In these circumstances I think that the case in as far as regards the house and buildings does not fall within the operation of the Act of 1880, and that the pursuer is entitled to sequestration for the rent of the house and buildings. The Sheriff-Substitute in the latter part of his note says that he abstains from expressing an opinion as to whether the cattle belonging to the defender are liable to sequestration for the rent of the house and buildings. But it has been pointed out to me that the cattle are included in the inventory, and I have been asked to express an opinion on the point. I think that under the head of *invecta et illata* the cattle are liable to sequestration as being property of the tenant, in the byres or stables belonging to the landlord, for the rent of which he seeks sequestration."

The defenders appealed to the Court of Session, and argued—This sequestration was incompetent. The lands and house with byres attached had been let as a pastoral subject, and exceeded two acres in extent; therefore they fell under the provisions of the Hypothec Abolition Act 1880—Rankine on Leases, p. 327. The whole of the subjects had been let as one pastoral subject. The separation of rent in the lease was merely formal, and did not entitle the landlord to act as if the subjects had been let as two different subjects. In many agricultural leases there were separate ishes for the house and for the lands.

The respondent argued—The grass parks had been let as one subject for a rent of £70, and the house and byres at a rent of £30. There was a different ish for each of the subjects. These were really two separate transactions, and the Act of 1880 did not apply. The house and byres were not situated upon the lands, and that was necessary under the Act.

At advising—

Lord Justice-Clerk—I think there is no ground for disturbing the judgment of the Sheriff. We have here a transaction divided into two parts—a lease, by one part of which the land is let, and by the other part the buildings. I do not think that the buildings come within the category provided for in the statute of 1880. They are not situated on the land at all.

Lord Craighill—I am of the same opinion, and I have come to that conclusion without any difficulty. There are two subjects which are let under this lease, the one being the house and garden, the other being three grass parks, and two different rents are stipulated for. The period at which the occupation of these subjects was to come to an end was not the same in both cases; on the contrary, there was a different term for each separate subject. It seems to me that matters are in just the same position as if these two subjects had been let on two separate leases. The houses which are let are not on the ground at all, but are a separate subject.

Lord Rutherfurd Clark—I also think that the Sheriff is right.

The Court refused the appeal and affirmed the judgment appealed against.

Counsel for the Appellants — Salvesen — Shennan. Agents—Gill & Pringle, W.S.

Counsel for the Respondent—C. S. Dickson. Agent—James Coutts, S.S.C.

Wednesday, February 29.

SECOND DIVISION.

[Sheriff of Aberdeen, Kincardine, and Banff.

MILNE *v.* LESLIE.

Administration of Justice—Small Debt Court—Small Debt Act, 1837 (1 *Vict. c.* 41), *sec.* 14—*Law Agents* (*Scotland*) *Act*, 1873 (36 *and* 37 *Vict. c.* 63), *secs.* 2, 13, 16—*Enrolled Law Agent—Notary-Public.*

Held (*diss.* Lord Rutherfurd Clark) that a person who is not duly enrolled as a law agent under the Law Agents (Scotland) Act 1873, may with the leave of the sheriff, on special cause shown, conduct cases for remuneration in the Small Debt Court under sec. 14 of the Small Debt Act of 1837.

Administration of Justice—Law Agents (*Scotland*) *Act* 1873 (36 *and* 37 *Vict. c.* 63)—*Enrolled Law Agent—Objection to Appearance of Unqualified Person—Interdict.*

Held that the remedy of an enrolled law agent, who objects to the appearance of an unqualified person in any process, is not by way of interdict, but by stating his objection in court when appearance is made by the latter.

The Small Debt Act of 1837 (1 Vict. c. 41), sec. 14, provides—"That no procurators, solicitors, nor any persons practising the law shall be allowed to appear or plead for any party without leave of the court upon special cause shown, and such leave, and the cause thereof, shall in all cases be entered in the book of causes kept by the sheriff-clerk." . . . Section 15 provides—"That any defender who has been duly cited, failing to appear personally, or by one of his family, or by such person as the sheriff shall allow, such person not being an officer of court, shall be held confessed, and the other party shall obtain decree against him; and in like manner, if the pursuer or prosecutor shall fail to appear personally, or by one of his family, or by such person as the sheriff shall allow, such person not being an officer of court, the defender shall obtain decree of absolvitor unless in either case a sufficient excuse for delay shall be stated, on which account, or on account of the absence of witnesses, or any other good reason, it shall at all times be competent for the sheriff to adjourn any case to the next or any other court-day, and to ordain the parties and witnesses then to attend."

The Law Agents Act of 1873 (36 and 37 Vict. c. 63), provides by sec. 2—"From and after the passing of this Act no person shall be admitted as a law agent in Scotland except in accordance with the provisions of this Act. Every enrolled law agent shall be deemed to be admitted, and, subject to the provisions of this Act with respect to stamp duty and subscribing the roll of law agents appointed to be kept for the Court of Session, and the several Sheriff Courts respectively, shall be entitled to practise in any court of law in Scotland." Section 13 provides—"A roll of agents practising in any Sheriff Court shall be kept by the sheriff-clerk in such form as the Lord President of the Court of Session may direct, and every enrolled law agent who has paid the stamp duty exigible by law on admission to practise as an agent before a Sheriff Court, shall be entitled to subscribe the said roll, and the sheriff-clerk shall be paid a fee of five shillings for such subscription, and every agent shall, in subscribing the said roll, deliver to the sheriff-clerk a note specifying his place of business, and shall deliver a similar note so often as he shall change the same." Section 16 provides—"From and after the 1st day of February 1874 no person shall be allowed to practise as an agent in the Court of Session or any sheriff court until he shall have subscribed the roll of agents practising before such court, or after his name shall have been struck off such roll, unless the same shall have been subsequently restored thereto."

James Milne, enrolled law agent, Fraserburgh, Aberdeenshire, presented this petition in the Sheriff Court at Peterhead, to have James Leslie, writer, Fraserburgh, interdicted from "practising as a law agent for or on behalf of any litigant or litigants, in any of the courts to be held at Fraserburgh or elsewhere within the city or county of Aberdeen, by the Sheriff of Aberdeen, Kincardine, and Banff, or his Substitutes, until such time as he shall have legally qualified himself so to do, and to grant interim interdict."

The pursuer was a law agent duly qualified and enrolled in pursuance of the provisions of the Law Agents Act of 1873. He had subscribed as such the roll of law agents kept for the county of Aberdeen in terms of the Act, and he practised as an agent in the Sheriff Court of that county. The defender was a notary-public, and practised as such in Fraserburgh. The pursuer averred that the defender had never been legally admitted as a law agent in any court of law in Scotland, and was not qualified to act in that capacity; that he had never been enrolled as an agent pursuant to the provisions of the Act of 1873, nor was he entitled to be so enrolled. He further averred that the defender had unwarrantably, illegally, and publicly assumed the name of a solicitor, or at least usurped the functions of a law agent in or in connection with the Sheriff Courts of the county of Aberdeen held at Fraserburgh by the Sheriff or his Substitutes, and had been in the habit of conducting cases therein as an agent for or on behalf of litigants, whereby the pursuer had sustained, and would sustain, serious loss and damage. The defender in answer admitted that he occasionally appeared in small debt causes "by leave of the Court." In answer to this admission the pursuer replied that it was *ultra vires* of the Court to give the defender leave to appear in Court as an agent.

The pursuer pleaded—"(1) The defender not having signed the roll of law agents kept for the county of Aberdeen, and not being qualified to do so, he is not entitled to practise as an agent in