adequate ground for believing the shares to be fully paid although he did so believe. The allottee Bloomenthal had been induced to lend money to a company on the faith of a security to be given him in the form of fully paid-up shares in it. The shares were allotted to him as fully paid up, but in fact they were not. The decision of the Court of Appeal was against Bloomenthal, on the ground that while he believed the shares were fully paid up he was not justified in this belief. The decision was reversed by the House of Lords, where the plea of estoppel against the company was sustained and Bloomenthal was held not liable to pay anything on the shares.

In the present case the defender did not make an application to the company for an allotment of shares. Nor is there evidence that he authorised Mr Wemyss to apply for shares in his name. There is no evidence that Wemyss did so. The position was that Wemyss had offered to procure to any of the depositors who consented to put the amount of their deposits in the company 14 shares of 100 dollars each for each £100 of deposit. The defender had indicated to Mr MacLaverty that he favoured this proposal, but he had not bound himself. He did not sign the letter of authority asked by Wemyss. When the share certificates were sent to him by Mr MacLaverty on 28th May July 1904 he might, I think, have rejected them. He accepted them, however; in accepting them I have no doubt that he believed in the truth of the company's statement that they were fully paid up. He acted in perfect good faith. And I am of opinion in these circumstances that he is entitled to plead the company's said representation against their present demand. The pursuers maintained the special point that even if the defender was justified in believing that the shares had been paid up to the extent of his deposit (£400) he was not justified in believing that the balance of the share value in dollars (total value was 5600 dollars) had been paid up. Now it is true that the defender's deposit of £400 was not of the value of 5600 dollars, although it is left uncertain what the exact amount of shortage was. Let it be stated at 1600 dollars. But the defender's position was that Wemyss had offered, if he agreed to put his deposit of £400 in the company, to procure him 14 shares of the value of 100 dollars each. And he had no information as to how Wemyss was to procure him these shares, so far as their nominal value exceeded his deposit, which might have been by Wemyss paying the amount of the excess in each, or, what is the same thing, setting off the cash price of the business under the agreement *pro tanto* against the value of the shares. The defender simply accepted the shares when offered to him by the company, and he accepted them on the footing on which the company tendered them to him, namely, that they were fully paid up, and fully believing in the truth of the company's representation to that effect.

I am accordingly of opinion that the defender is entitled to absolvitor. . . .

Counsel for the Pursuer—Sandeman, K.C.—Smith Clark. Agents—W. & F. Haldane, W.S.

Counsel for the Defender—C. D. Murray, K.C.—J. R. Christie. Agents—Simpson & Marwick, W.S.

Friday, June 6.

OUTER HOUSE.

[Lord Hunter.

HUTCHISON *v.* GRANT'S TRUSTEES.

Succession — Accumulations — Thellusson Act (39 and 40 Geo. III, cap. 98), secs. 1 and 2—Accumulations Continued beyond Twenty-one Years in order to Effect Equitable Compensation for Legitim Taken by Liferentrix of Trust Estate.

The Thellusson Act (39 and 40 Geo. III, cap. 98), sec. 1, provides that no one shall thereafter settle any real or personal property by will or otherwise in such a manner that the interest thereof shall be "accumulated for any longer term than the life . . . of any such . . . settler . . ., or the term of twenty-one years from the death of such . . . settler . . ., and in every case where any accumulation shall be directed otherwise than as aforesaid, such direction shall be null and void. . . ."

By trust-disposition and settlement A directed his trustees to hold the residue of his estate for B, his only daughter in liferent, and for her children in fee. On A's death B elected to take her legal rights, and the income of the estate was thereafter accumulated by the trustees in order to compensate the trust estate for the sum paid to B as legitim. At the termination of twenty-one years from A's death, equitable compensation to the trust estate having not yet been fully effected, the trustees continued to accumulate the income for that purpose. *Held* (*per* Lord Hunter) that the accumulations of income subsequent to the expiry of twenty-one years from A's death were illegal under the Thellusson Act, and fell to be paid to B as heir *ab intestato* of A.

The Thellusson Act (39 and 40 Geo. III, cap. 98) enacts—Section 1—". . . No person or persons shall after the passing of this Act by any deed or deeds, surrender or surrenders, will, codicil, or otherwise howsoever, settle or dispose of any real or personal property so and in such manner that the rents, issues, profits, or produce thereof shall be wholly or partially accumulated for any longer term than the life or lives of any such grantor or grantors, settler or settlers, or the term of twenty-one years from the death of any such

grantor, settler, devisor, or testator, or during the minority or respective minorities of any person or persons who shall be living or in *ventre sa mère* at the time of the death of such grantor, devisor, or testator, or during the minority or respective minorities only of any person or persons who under the uses or trusts of the deed, surrender, will, or other assurances, directing such accumulations, would for the time being, if of full age, be entitled unto the rents, issues, and profits, or the interest, dividends, or annual produce so directed to be accumulated: And in every case where any accumulation shall be directed otherwise than as aforesaid, such direction shall be null and void, and the rents, issues, profits, and produce of such property so directed to be accumulated shall, so long as the same shall be directed to be accumulated contrary to the provisions of this Act, go to and be received by such person or persons as would have been entitled thereto if such accumulations had not been directed." Section 2—". . . Nothing in this Act contained shall extend to any provision for payment of debts of any grantor, settler, or devisor, or other person or persons, or to any provision for raising portions for any child or children of any grantor, settler, or devisor, or any child or children of any person taking any interest under any such conveyance, settlement, or devise . . ., but that all such provisions and directions shall and may be made and given as if this Act had not passed."

The following *narrative* of the *circumstances* of the case is taken from the Lord Ordinary's opinion—"The pursuer in this case is the daughter and only child of the late William Grant, wine and spirit merchant, Dunoon, who died on 14th January 1890. She brings the present action against her father's trustees for payment of a sum of £255, 6s. 5d., as unlawful accumulation of interest upon her father's estate to which she as his heir-at-law is entitled. Under her father's settlement the pursuer was entitled to a liferent of his whole estate, the fee being destined to her children, with a destination-over to others named in the settlement. She elected, as she was entitled to do, upon her father's death to take her legal provisions. The result of that election was that, temporarily at all events, although as is admitted not absolutely, her liferent interest in her father's estate was set free. As there was not a forfeiture clause, she was entitled, on the estate being recouped in the amount that she had taken out in respect of her legal claims, to be restored to her interests under the will, *i.e.*, to enjoy the remainder of her liferent interest. More than twenty-one years, however, elapsed before equitable compensation had effected restoration to the estate from the liferent interest of the amount that had been taken out in order to pay the pursuer's legal claims. Consequently there is no room in this case, I think, for considering equitable compensation at all. The question is, What is to be done with the accumulations after twenty-one years from the death of the testator?"

The pursuer pleaded, *inter alia*—"(1) The accumulation of income on the trust estate after 14th January 1911 being prohibited by the Thellusson Act, all such accumulations form undisposed of residue and belong to the pursuer as heir *ab intestato* of the testator."

The defenders pleaded, *inter alia*—"(5) The defenders being bound to accumulate and apply the income set free by the pursuer's election of legitim in compensation of the parties injured by said election, and the accumulation of income for this purpose not being within the operation of the Thellusson Act, the defenders are entitled to decree of absolvitor."

The following authorities were referred to:—By the pursuer—*Lord* v. *Colvin*, December 7, 1860, 23 D. 111; *Logan's Trustees* v. *Logan*, June 24, 1896, 23 R. 848, 33 S.L.R. 638; *M'Gregor's Trustees* v. *Kimbell*, July 14, 1911 S.C. 1196, 48 S.L.R. 950; *Mathews* v. *Keble*, 1868, 3 Ch. App. Ca. 691, at p. 696; *Tench* v. *Cheese*, 1855, 6 De G. M. & G. 453, at p. 462; *Lees' Trustees* v. *Tinzies*, January 9, 1897, 4 S.L.T. 227; *in re Heathcote*, [1904] 1 Ch. 826; *Gollan's Trustees* v. *Booth*, July 5, 1901, 3 F. 1035, at p. 1038, 38 S.L.R. 762. By the defenders—*Macfarlane's Trustees* v. *Oliver*, July 20, 1882, 9 R. 1138, at p. 1160, 19 S.L.R. 850; *Gray's Trustees* v. *Gray*, 1907 S.C. 54, at p. 57, 44 S.L.R. 39; *Lombe* v. *Stoughton*, 1841, 12 Simon 304; *Bryan* v. *Collins*, 1852, 16 Beavan 14, at p. 17; *in re Gardiner*, [1901] 1 Ch. 697.

LORD HUNTER—[*After stating the facts of the case as above quoted*]—I think the real point in the case is, what has caused those accumulations? On behalf of the trustees it is maintained that it was not the settlement that caused the accumulations but the election on the part of the beneficiary to take her legal rights. Now under the Thellusson Act what is struck at is illegal accumulations of income arising by direction of the truster, that direction being either express or implied. At first sight there does seem to be a considerable amount of force in the defenders' argument to the effect that it was the beneficiary's act and not the truster's act that caused the accumulation. But when one asks onesself the further question, why should the pursuer's election cause accumulation? it is impossible to answer the question as the trustees desire. After the election the life interest was, no doubt, set free, but neither the election nor any rule of law necessitated its accumulation. It went back to the trust, and if it was accumulated at all it was accumulated in virtue of the trust.

When one looks at the clause of residue in this case one finds ample provision for the accumulation, and in fact the accumulation in the hands of the trustees just now is just going on in virtue of the powers conferred on the trustees by this clause. They have no power, and no right to accumulate except such as is thereby given them.

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.