they also say that the trustees did nominate them. I shall assume that the pursuers are members of the class in question; and that that class is sufficiently designed in the deed to bring the case within the rule of *Ross* v. *Heriot's Hospital* and the other cases referred to. I do not think the proceedings of the trustees in any way aid the pursuers, since, while the other deed stands unredeemed, the trustees are not entitled to do any act in that capacity. But this is not an action against trustees to compel them to execute their trust. It is a direct action against a disponee of the deceased to set aside that disponee's title, and such an action can only be brought by a person who has or may have the character of representative of the deceased. This is strongly brought out in the case of *Rodgers* (9 Shaw 671), where Lord Moncreiff held that the pursuers had no title to sue, in respect they had not conformed as executor's creditors, and so vested themselves with the character of representatives of the deceased. And *Rodger's* case was more favourable than the present, because the pursuers here never could be in a position to make up a title in their own persons as representing the deceased. I do not think the cases quoted by the pursuers give any assistance. The case of *Gray* (M. 8062) was the case of a special legatee, and the question arose in a suspension of a charge given by the executor upon the bond which was the subject of the legacy to the father of the legatee who was the debtor in it. In the case of the *Creditors of Balmerino* (M. 10,421) the rubric is misleading. The Court did not sustain the pursuers' title to reduce, but only their title to pursue the declaratory conclusions, which were quite in a different position, since no man can be prevented from declaring any right which lawfully belongs to him. Whether the pursuers have any other remedy—whether they can bring executors into the field and compel them to sue—whether they can in any way compel them to assign their right to sue—I give no opinion. In the circumstances as presented, I concur with the Lord Ordinary's judgment.

The other Judges concurred.

Agent for the Pursuers—Alex. Morison, S.S.C.
Agent for the Defender—George Andrew, S.S.C.

Thursday, June 9.

FIRST DIVISION.

HOWARD *v.* MUIR.

Appeal—Process—Court of Session Act 1868, *sect.* 71—*A. S.*, 10*th March* 1870, *sect.* 1. The process in an appeal having been obtained by the appellant on a borrowing receipt from the the Clerk of the Division, *Held* (1) it was not necessary to return the process within fourteen days after the appeal had been received; and (2) the transmission from the Clerk of the Inferior Court to the Clerk of the Division effected the lodging of the process.

This appeal was taken during Session; and, within fourteen days after the process had been received by the Clerk of the Division, the appellant had printed and boxed the note of appeal, record, interlocutors, and proof. But his agent did not within this period return the process itself, which was held from the Clerk on the usual borrowing receipt. At the calling in the single bills, the Clerk said there was no process, and that the provision of the A. S. had not been complied with.

BRAND, for the appellant, stated that the enactment of the A. S. as to printing and boxing had been only complied with, that the words "Lodge and Furnish" in the section, referred only to unprinted or partially unprinted appeals, and that the process itself had already been lodged by being transmitted by the Clerk of the Inferior Court to the Clerk of the Division.

The Court held that the matter was regulated by the A. S., without reference to the 71st section of the Court of Session Act 1868, and that the acts done by the appellant or his agent amounted to a full compliance with the Act of Sederunt, there being nothing therein said as to lodging the process, which became "lodged" by the transmission from the Inferior Court to the Division.

The appeal was accordingly sent to the roll.

Agent for Appellant—A. K. Mackie, S.S.C.

Thursday, June 9.

SPECIAL CASE—STEUART'S TRUSTEES.

Trust—Succession—Vesting—Liferent and Fee—Curator ad litem *—Power of Sale—Sale—Title.* Under a trust conveyance the trustees were to hold a house, &c., for the liferent use of the widow, and, on her death, of her unmarried daughters. On the death or marriage of all of them the house was to be made over in fee to the eldest son and his issue, failing whom it was to be part of the residue as after provided. This after provision was to the son and his issue if they survived the truster's widow, if they did not there was to be an equal division of the residue. The trustees were in this last event to hold the house till the death or marriage of the last liferenter. The trustees had also a power of immediate sale if the son died without issue, and if the last liferenter died, or all the liferenters concurred in the sale. The son survived the widow and had issue, and the trustees sold the house. *Held* (1) a *curator ad litem* must be appointed to guard the interest of the son's issue; (2) the trustees had not in the circumstances a power of sale; (3) (*dub.* Lord Deas) the fee vested in the son on the death of the widow; and (4) the purchaser could not refuse a title formed by the concurrence of the fiar and liferenters in the sale of the house by the trustees.

The late Lieutenant-General George Mackenzie Steuart died on 25th June 1855, leaving a trust-disposition and settlement by which he conveyed his whole estate to trustees, and specially the house No. 48 Melville Street, Edinburgh. He directed his trustees, by the second purpose, to hold "for the liferent use and enjoyment of the said Mrs Mary Babington or Steuart, my spouse, in case she shall survive me, of my said house in Melville Street, with the whole household furniture, silver-plate, bed and table linen, wine and other liquors, which may be therein at the time of my decease, to be held and enjoyed by her during all the days of her lifetime; and upon the death of my said spouse, or on my decease, in case my said spouse shall predecease me, for the liferent use, possession, and enjoyment, while they remain unmarried allenarly, of my daughters who may be alive at the time, of