availing if carried out. There is such a principle in our law, and the case of *Gordon* is an illustration of it. It was tried by a declarator, and the question was whether the party was to get the property in fee simple, or whether the directions of the testator were to be followed out. That is what the party of the first part wants here, and the question is, whether the case of *Gordon* is a precedent? If this case were identical with that of *Gordon's*, Mr Kinnear would have his right independent of the form of the action, but *Gordon's* case turned on a matter not included here. If our ground is to be that the directions of the testator if carried out would be unavailing, we must be quite clear these directions would be unavailing, and that we have the proper contradictors in the field. In the case of *Gordon* the Court held, on an axiomatic view of the law, that a destination to A and his heirs whatsoever is not an entail, and that in ordering an entail to be made in such terms the Court would be ordering a nullity, an entail suicidal of itself. The Court viewed such a deed as a nullity, to be disregarded. Can we say that the deed here imports such a nullity, such a self-contradiction, as to entitle us to disregard and supersede it? I cannot go so far. I give no opinion as to the possibility of a limited entail of such articles, because it is not necessary, and the parties are not all here. But I think the nullity of securing articles of this kind by a limited entail is not of such a kind as to entitle us to grant the demand made in contradiction of the testator's wish for a tailzied succession. I think the current of decisions on this point not so clear as to warrant this in such a case as we have here. The law is not so clear and plain in favour of Kinnear as to induce us to act on the case of *Gordon;* and I am for answering the first question in the negative, and the second in the affirmative.

The other Judges concurred.

Counsel for Party of the First Part—M'Laren. Agents—Melville & Lindesay, W.S.

Counsel for Party of the Second Part—Adam. Agents—Tods, Murray, & Jamieson, W.S.

Friday, June 4.

SECOND DIVISION.

[Lord Young, Ordinary.

FORRESTER AND COWIE *v.* ROBSON'S TRUSTEES.

Policy of Assurance—Copartnery—Evidence.

The companies of Forrester & Robson and George Cowie & Sons applied to an Assurance office for a loan of £3500, which was granted on the security of a policy of insurance for £5000 on the life of Robert Robson, one of the partners of the former company, repayable by instalments in five years. The policy was opened and assigned to the Assurance Company, who lent the money in 1870. The company of Forrester & Robson was dissolved two years afterwards on an agreement between Robert Robson and Robert Forrester, under which Robson retired with a sum of money and Forrester took the company property and its obligations, and after that date Forrester alone paid the instalment of interest on the loan and the premiums. Robson died in 1874, when the debt had been reduced to £1419. In an action at the instance of Forrester and Cowie & Sons against Robson's Trustees,—*held* that the policy was an asset of the company, which created it for company purposes, and was not the property of Robson individually.

The summons in this suit, at the instance of Robert Forrester of Carbeth, and Messrs George Cowie & Sons, Airdrie, and Archibald and Richard Cowie, sole partners of the firm of Cowie & Sons, against Mrs Forrester or Robson, widow of the late Robert Robson, coalmaster, Glasgow, and the other trustees and executors of the said Robert Robson, concluded for declarator that it "ought and should be found and declared, by decree of the Lords of our Council and Session, that the pursuers, in the proportions of 4-7ths to the pursuer Robert Forrester, and 3-7ths to the other pursuers, are entitled to, and to be paid, the sum of L.3570, 9s. 4d. sterling, being the proceeds of a policy of insurance on the life of the said Robert Robson with the English and Scottish Law Life Assurance Association for the sum of L.5000, numbered 12,954, and dated 22d December 1870, after deducting therefrom the sum of L.1429, 10s. 8d., being the balance remaining due to the said Assurance Association at 27th October 1874, of an advance made by them to the firms of Forrester & Robson, coalmasters, Glasgow, and the said George Cowie & Sons, in security of which advance the said policy was assigned to said Assurance Association, and which sum of L.3570, 9s. 4d. was deposited in the joint-names of the pursuers' and the defenders' agents with the British Linen Banking Company, Edinburgh, on said 27th October 1874, and the interest that may accrue thereon from 27th October 1874 till payment."

The facts, so far as material, are set forth in the following interlocutor of the Lord Ordinary:—

"3*d February* 1875.—The Lord Ordinary having heard counsel for the parties, and considered the proof, record, and conjoined processes, in the action at the instance of Robert Forrester and George Cowie & Sons, repels the defences for Robson's Trustees, and finds, decerns, and declares in terms of the conclusions of the summons; and in the relative counter action at the instance of Robson's Trustees, sustains the defences, assoilzies the defenders Robert Forrester and George Cowie & Sons from the conclusions of the action, and decerns: Finds the defenders, Robson's Trustees, liable in expenses in both actions; and remits the account thereof, when lodged, to the auditor to tax and report."

"*Opinion.*—The material facts of this case are hardly disputed on the record, and in the debate after the proof the parties were quite agreed upon them. They are as follows:—The companies of Forrester & Robson and George Cowie & Sons having occasion to borrow L.3500, applied to the Scottish Law Life Assurance Office, who agreed to lend them the money on the security of a policy of insurance for L.5000 on the life of Robert Robson, one of the partners of the former company, the money being repayable by instalments in five years. The policy was accordingly opened and assigned

to the Association, who lent the money in December 1870. The companies were interested in the loan in the proportions of 4-7ths to Forrester & Robson, and 3-7ths to George Cowie & Sons; and in these proportions they were liable *inter se*, and have paid the interest and premiums, and such of the instalments of principal as have been paid.

"The policy is in its terms undistinguishable from one which Robert Robson might have opened on his life for behoof of his executry, but there is no doubt that it was in fact opened (with Robson's knowledge and assent) by the two companies to serve as a security for the loan to them, in pursuance of the arrangement with the assurance office, and that they have paid the premiums and other charges in connection with it. Robson's life was selected, because he being the youngest partner of either company his life was insurable at a lower premium.

"The company of Forrester & Robson was dissolved as at 31st December 1872, on the terms specified in the agreement of 7th March 1873, between Robert Forrester (one of the pursuers) and Robert Robson, who were the only partners. These terms are stated in condescendence 7—the import of them being that Robson should retire with a certain sum of money, and that Forrester should have the company property and take their obligations. There is no doubt that Forrester was thereafter, as in a question with Robson, exclusively liable for Forrester and Robson's share of the interest, premiums, and principal connected with the loan, and that he met his liability accordingly.

"Robson died (aged about 30) on 13th June 1874, leaving a settlement, under which the defenders, as his trustees, have right to his estate. By this event the policy on his life realized L.5000, and the assurance office have consigned the amount for behoof of whom it may concern, under deduction of L.1429, 10s. 8d., being the balance of principal and interest remaining due to them on the loan, in security of which it was pledged to them. The money is claimed, on the one hand, by the pursuers, in the proportion of 4-7ths to Forrester, as in right of the dissolved company of Forrester & Robson, and 3-7ths to George Cowie & Sons; and on the other, by the defenders under Robson's settlement. In a relative action at their instance, the defenders insist that the pursuers (defenders in that action) shall pay the balance due on the loan, to the effect of enabling them to draw the full amount of the policy.

"The question is, to whom the policy belongs; and I am of opinion that it belongs to the pursuers in the leading action—viz., Forrester and George Cowie & Sons; and that the defenders have no right to it, or good claim under it. It was opened and kept up by the pursuers at their own expense, and for their own purpose, as a security for the loan which they obtained from the assurance association. Robson, while a partner of Forrester & Robson, had of course his share of the interest effeiring to that company, but on the dissolution of the company, when he was paid out and retired in favour of Forrester, the whole of that interest, with the corresponding liability, attached to Forrester alone. Nor do I attach importance to the circumstance that in the state made up at the time of dissolution the policy is not entered as a company asset, for at that time it had no surrender value, and was of no appreciable value in the market, but was in truth a burden necessary to be borne in connection with the loan.

"A life insurance is generally a very expensive kind of security, but it has a speculative element which may possibly (however greatly the chances are against it) render it very profitable to the borrower; for ordinary calculations may be falsified by the premature death of the assured, to the effect of enabling the borrower to pay the debt thereby secured, with the proceeds of a policy on which he has paid only a single premium. If in the present case Robson had died immediately after the loan was made and the policy opened, I cannot think it doubtful that the proceeds of the policy would have been applicable in payment of the debt, to the exclusive benefit of the borrowers, and that his executors could not have maintained a claim against them on the footing that their debt was in truth paid out of the estate of the deceased, which had passed to them. Then, if the policy was theirs to the extent of the debt for which they opened and pledged it, I am unable to find a principle for holding that the amount of the debt was the limit of their right, and that anything in excess belonged to others.

"According to the actual facts, the debt when the policy became payable had been reduced to L.1429, 10s. 8d. I am clearly of opinion that to this extent the policy is available to the pursuers; and being unable to divide the interest in it, either according to the original amount of the debt, or the amount remaining unpaid when it fell due, I am constrained to find that it is entirely the property of the pursuers, and that the defenders have no right to it. It has unexpectedly, and contrary to ordinary calculations, turned out a valuable property, by reason of the premature death of Robson; but, on what I conceive to be sound and established legal principles, I must give the benefit to those who paid for it, although having considerable sympathy with the family whose interests are represented by the defenders; for undoubtedly the premature death of their husband and father was the immediate event which brought unexpected gain to the pursuers."

The defenders reclaimed.

Authorities cited—*North Britith Assurance Coy.*, 3 Macph. 1; 14 Geo. III., c. 48; *Lindsay*, 13 D. 718; *Countenay*, 2 Giffard 337; Clark on Partnership, i. 176; *Baptist Churches*—M. 16,197; Tait on Evidence, 310; Dickson, 577.

At advising—

LORD JUSTICE-CLERK—I think the Lord Ordinary is right. If the proof is competent, it is clear that Robson never had an individual interest in this insurance, but was put forward by the joint action of the two firms to carry through a loan transaction with this company—the proposition for the loan was made in his name individually, he giving four sureties for the repayment of the loan. It is clear the proposition for a loan was made by Robson solely on account of the two firms, and I think he bore the same character in regard to the policy. The nature of the transaction, in my opinion, takes it out of the sweep of the Trust Act. On the whole matter, I think this was exclusively a company transaction.

LORD NEAVES—I think the proof here quite competent. In a question of joint property the Trust Act is out of the question. The whole pro-

ceedings of the co-partnery are proof of what they have done—the insurance here was kept up out of co-partnery funds. The company created it, and any accidental profit belongs to the company. I think this policy is the property, and must be dealt with as an asset, of the company.

LORD ORMIDALE—I concur. There are only two questions of any moment. First, of evidence whether the proof is excluded by the Trust Act? I think not. It is established that Robson was a partner of Forrester. Then the object of the policy was to enable the firms to obtain a loan; and how can Robson maintain that because the policy was in his name it is his property? Robson is not a trustee holding the policy for others, but the agent of the co-partners, and proof *prout de jure* is quite admissible. Looking to the evidence, it is clear that this policy never belonged to Robson but to the joint adventurers. As to the surplus proceeds, I am clear it must go to the company like any other asset.

LORD GIFFORD—I have a difficulty about the application of the Trust Act, but I think we have here evidence, which is in Robson's writing, sufficient to show that this policy formed part of a loan effected for behoof of the joint adventurers, and that it is not the property of Robson individually.

The Court pronounced the following interlocutor:—

"The Lords having heard counsel on the reclaiming-note for Mrs Robson and others against Lord Young's interlocutor of 3d February 1875, Adhere to the said interlocutor, except as to the finding for expenses; recall that finding, and, of consent, find neither party entitled to expenses in the cause, and decern."

Counsel for Forrester and Others — Solicitor-General (Watson) and Johnstone. Agent—T. J. Gordon, W.S.

Counsel for Robson's Trustees — Asher and Lorimer. Agents—Ronald, Ritchie, & Ellis, W.S.

Tuesday, May 18.

FIRST DIVISION.

CASE FOR THE COMMISSIONERS OF INLAND REVENUE AND THE GLASGOW CORPORATION WATER COMMISSIONERS.

Assessment—Income Tax—Profit.

Held that the revenue of the Glasgow Corporation Water Commissioners was not profit, assessable under schedule D. of the Income Tax Act—any excess of revenue over expenditure being devoted to the reduction of assessment.

The question raised by this case was whether the income of the Glasgow Water Commissioners was assessable under schedule D. of the Income Tax Act. The facts, concerning which there was no dispute, appear from the Lord President's opinion.

At advising—

LORD PRESIDENT—This is a case stated for the opinion of the Court by the Commissioners of Property and Income-tax of the City of Glasgow. The Glasgow Corporation Water Commissioners were charged, under schedule D of the Income-tax Act, with duty upon profits to the amount o £17,032, 15s., arising for the year 1872-3, upon their undertaking; and they maintain that sum of £17,032. 15s. does not consist of profits arising upon their undertaking, and is not assessable to Income-tax under schedule D. For the purpose of answering this case, it is necessary to attend very particularly to the constitution of this Water Corporation Commission, and to the clauses of the statute by which it was brought into existence. It is a local Act—18 and 19 Victoria, chap. 18—an Act which was obtained by the citizens of Glasgow for the purpose of obtaining a liberal supply of good water for the city, as we all know, by the importation into the city of the water of Loch Katrine. The Commissioners for executing the Act are the Municipal Corporation; but in so far as this question is concerned, and in so far as regards their powers as Water Commissioners, they are a separate corporation. The first step that was necessary in prosecution of the design of that statute was to buy up two old companies who had been in the habit of supplying the town with water, one on the north side and the other on the south side of the Clyde; and accordingly, the new corporation not only bought up the whole works of these two companies, but they also bought up the stock of the companies, and paid for this acquisition in the form of annuities to the shareholders of the two companies. It became necessary also to provide money for the purpose of executing the necessary works for bringing in the water of Loch Katrine, and it seems to have been estimated that that would cost somewhere about £700,000; and accordingly a power is given to the Commissioners to borrow money to that extent. The old companies were bought up, the annuities were granted, the money was borrowed, and the works have now been executed for several years, and are in active operation. The next question to attend to is what is the revenue of the Commissioners under this statute. They are required by the Act of Parliament to meet once a year, and make up an estimate of the probable expense for the year of the whole undertaking; and for the purpose of meeting that, they are empowered to levy a rate, which is called the Domestic Water Rate, from the occupiers of all dwelling-houses within the municipal boundary, which is otherwise called in the statute the limits of compulsory supply. That rate is laid on according to the rental of the dwelling-houses. Besides that, they are empowered also to impose a public water rate not exceeding a penny in the pound on the full annual value of all premises whatever—not dwelling-houses only, but every kind of premises within the same limits; and as regards what are called the limits of compulsory supply, these rates are payable whether the inhabitants of the district within these limits choose to use the water or no. In addition to that, the Water Commissioners are entitled also to deal with the inhabitants of a certain district beyond the limits of compulsory supply, and to give them water if they choose to have it; and if they choose to have it, hey are also empowered to lay on a rate upon