sense, but as taking them in their ordinary sense, prefixing something to them which it would be irrational to suggest that they comprehended. If there is not an entail directed on John Gordon and the heirs of his body, there is no entail at all, and *cadit questio*. If there is, then the direction is that upon the failure of this entail by John's death without issue, or the subsequent failure of his race, the estate shall return to the entailer's heirs whatsoever and their assignees? The pursuer says no; it must first go to A and the heirs of his body, whom failing to B and the heirs of his body, and so on, and then to entailers' heirs and their assignees; and that all this is implied by the later words in the sense in which they are used. I cannot regard this as a reasonable argument, and I am certainly not surprised that on a former occasion, referred to by the Lord Ordinary—I mean in the case of *Gordon* v. *Gordon*, in March 1862—I am certainly not surprised that upon that occasion the counsel for the gentleman who is now pursuer, but was there called as a defender, declined to contend that he was an heir of entail, and that the learned Judges should have observed that such a contention would have been hopeless. It is just as hopeless now; and indeed this case has appeared to me to be entirely so for the pursuer from the first.

Lord Craighill—Your Lordships have observed that this is an important case, both as regards the value of the property at stake and also the questions presented for review. But from the first time I began to consider it I have not found it attended with any difficulty, and it humbly appears to me that the questions are simple, and I have arrived at a conclusion without any hesitation. Concurring as I do not only in the conclusions at which your Lordships have arrived, but in the reasons which have been given for these conclusions, it is unnecessary that I should repeat what has been already said by your Lordships.

The Court adhered.

Counsel for Pursuer—Lord Advocate (Balfour, Q.C.)—J. P. B. Robertson—Darling—Russel Bell. Agent—A. P. Purves, W.S.

Counsel for Defenders—D.-F. Kinnear, Q.C.—Solicitor-General (Asher, Q.C.)—Pearson—D. Robertson. Agents—Skene, Edwards, & Bilton, W.S.

Saturday, October 29.

FIRST DIVISION.

TODD (PROVOST OF PEEBLES) AND OTHERS, PETITIONERS.

Burgh — Returning-Officer — Nobile Officium—*Where all Magistrates retire and seek Re-election—Act* 15 *and* 16 *Vict. cap.* 32, *sec.* 5.

Where all the magistrates of a burgh retired from office but sought re-election, and there was to be a contest, the Court appointed the Sheriff-Substitute of the county to act as returning-officer.

Burgh—Returning-Officer—Eligibility of Town-Clerk—Act 3 *and* 4 *Will. IV. cap.* 76, *sec.* 10.

At a municipal election all the magistrates being ineligible as returning-officer, the Court declined to appoint the town-clerk, on the ground that he had already the statutory duty laid on him of acting as poll-clerk.

All the magistrates of the burgh of Peebles fell to go out of office on 1st November 1881, the two bailies by rotation, and the provost as having been elected *ad interim*. They were all nominated for re-election, and as there were more candidates than vacancies, it was necessary that there should be a poll. By section 5 of 15 and 16 Vict. cap. 32, it is provided that "Whenever it shall so happen that the provost and magistrates of any of the said burghs shall all be included in the one-third of the council going out of office as aforesaid, they shall nevertheless retain and continue to exercise all the powers and functions of their several offices of provost and magistrates respectively until the election and coming into office of their successors, but they shall not after the period of their so going out of office be entitled to act or vote as councillors." In ordinary circumstances the duty of acting as returning-officer would thus fall upon the provost, but in the present case, in respect that the provost was himself a candidate for re-election, and that the other magistrates were in the same position, this application was presented for the appointment of a returning-officer.

The petition was at the instance of the provost, bailies, and town-clerk, with the concurrence of the members of council, and suggested that the town-clerk should be nominated as returning-officer—See *The Queen* v. *Owens*, June 11, 1859, L.J. (N.S.) 28, 2 B. 316.

The Court, without deciding that it was illegal for a candidate to act as returning-officer, expressed opinions that in such circumstances it was proper that some one else should perform that duty, and appointed the Sheriff-Substitute of the county, in respect that under 3 and 4 Will. IV. cap. 76, sec. 10, the town-clerk had already the statutory duty put upon him of acting as polling-clerk at the election.

Counsel for Petitioners—J. A. Reid. Agent—Henry Buchan, S.S.C.

Saturday, October 29.

FIRST DIVISION.

KEIR (PROVOST OF MUSSELBURGH) AND OTHERS, PETITIONERS.

Burgh—Returning-Officer — Nobile Officium—*Where Senior Magistrate declines to act—Acts* 3 *and* 4 *Will. IV., cap.* 76, *secs.* 8 *and* 10; 3 *and* 4 *Will. IV., cap.* 76, *sec.* 12; 15 *and* 16 *Vict., cap.* 32, *sec.* 5.

Where the senior magistrate remaining in office declined to act as returning-officer at the ensuing burgh election, as provided by 3 and 4 Will. IV., cap. 76, secs. 8 and 10, the Court appointed the next senior magistrate to act in his place.

Observed that it is not a ground sufficient to disqualify a magistrate from performing the duties of returning-officer at a burgh election that he has taken an active part in promoting the return of particular candidates.

The petitioners in this case were Peter Keir, provost of the burgh of Musselburgh; J. T. Riddock and William Brown, two of the bailies of the said burgh; and A. D. Macfarlane, the town-clerk.

At the election of councillors which fell to take place on 1st November 1881, Provost Keir and Bailie Riddock were included in the third of the council who had been longest in office, and fell to go out of office by rotation as provided by the statutes regulating the election of burgh councillors (3 and 4 Will. IV., cap. 77, sec. 12). Under the statutes regulating municipal elections, and particularly under the 3 and 4 Will. IV., cap. 76, secs. 8 and 10, Bailie Meikle, the remaining bailie, as next senior magistrate, was appointed to act as returning-officer on the day of election. Bailie Meikle, however, declined to act. On 24th October current he addressed the following letter to the petitioner Macfarlane: — "The Hollies, Musselburgh, Oct. 24th, 1881.—Dear Sir,—Looking at the present aspect of affairs, I think it would be injudicious on my part to act in the capacity of returning-officer at the ensuing election. You will therefore be pleased to intimate to the Council my declinature to so act, so that steps may be taken to provide against the contingency.—Yours truly (Signed) A. MEIKLE."

While 15 and 16 Vict., cap. 32, sec. 5, provided for the case of all magistrates of a burgh going out of office, there was no provision in any of the statutes regulating the election of burgh councils for the case of the senior magistrate remaining in office and refusing to discharge the duties thereby devolving upon him. In these circumstances the petitioners appealed to the *nobile officium* of the Court, and prayed the Court "to authorise and appoint the said William Brown [who was the magistrate next in seniority to Bailie Meikle] to act as returning-officer at the said election of councillors of the burgh of Musselburgh on first November 1881, to superintend the poll, and otherwise conduct and manage the said election in the same way and with the same powers, rights, and functions as if he were senior magistrate; and further, to find that the expenses incurred in presenting this application, and consequent thereto, shall form a good and lawful charge against the funds of the said burgh; or to do further or otherwise in the premises as to your Lordships shall seem proper."

It was stated by counsel that Bailie Meikle declined to act as returning-officer because he was taking an active part in promoting the return of particular candidates.

At advising—

LORD PRESIDENT—We are not favoured with the reasons which prevent Mr Meikle from performing his statutory duties, and that is a little embarrassing, because magistrates of burghs are not entitled to decline to perform the duties that were laid upon them by Act of Parliament. But it has been explained to us that Mr Meikle has been taking a very active part in the election of particular councillors. Now, I am quite clear that this is not a sufficient disqualification, because the statute must have contemplated that the provost and bailies would take an active interest in the return of particular candidates, and do what they could to promote their election, and yet it has laid upon them this duty. Therefore I cannot hold this to be a disqualification. But in the particular circumstances of this case, and looking to the fact that the gentleman whom it is proposed to substitute for Bailie Meikle is the person whom the statute itself chooses for that purpose, I am rather disposed to grant the prayer of this petition.

LORD DEAS, LORD MURE, and LORD SHAND concurred.

The Court granted the prayer of the petition.

Counsel for the Petitioners—Lord Advocate (Balfour, Q.C.)—Dickson. Agent—A. D. Macfarlane, Solicitor.

Tuesday, November 1.

SECOND DIVISION.

[Lord Rutherfurd-Clark, Ordinary.

COLLIE (CHIVAS' TRUSTEE) *v.* COLLIE AND OTHERS.

Succession—Will—Legacy—Ranking of Legacies—Demonstrative Legacy.

A testatrix left a settlement and several codicils. By one of these she bequeathed £1000 to a beneficiary, to be set apart and invested for that beneficiary out of the free residue remaining of her estate after paying legacies contained in writings "prior to the date hereof." *Held* (1) that this did not constitute the £1000 a demonstrative legacy to be paid out of the fund so marked out; (2) that (*rev.* Lord Rutherfurd-Clark) legacies subsequent in date to it, but containing no mention of residue, were not preferable to it, but fell to be ranked *pari passu* with it.

Mrs Christian Abercrombie or Chivas died in Aberdeen in November 1878, leaving a trust-disposition and settlement with eighteen codicils thereto, which latter were dated at various times between July 1872 and April 1877. The trust-disposition and settlement had for its purposes payment of debts and of legacies therein mentioned and to be mentioned by separate writings under her hand, the gift of a liferent to certain beneficiaries, and disposal of residue. Among the codicils was one of date March 16, 1875, whereby the testatrix, on the narrative of the settlement and preceding codicils, and of her desire to make certain bequests "should there be a sufficiency of funds after meeting the whole of the gifts, legacies, and provisions" already bequeathed, directed her executor in that event, "out of the residue of my said estate, to make payment of a legacy of £100 sterling to Miss Jane or Jeanie Adam," and also to invest a sum sufficient to yield certain small annuities to the poor of certain parishes named. Thereafter she left other legacies by codicils, dated in December