reference in each to plans of such a kind make those plans for certain purposes part of the titles.

The question is, for what purposes? I think that, seeing there are no boundaries expressed in the disposition, it was, first of all, clearly for the purpose of showing the boundaries, and secondly, to indicate the extent or measurements of the ground, but certainly for no other purpose. Therefore, according to the well-known and well-established rule, these plans can be looked at for no other purpose than that for which they were referred to. On the plan of the defenders' property the fixed boundaries of the lands are quite distinctly laid down, and there they have been prolonged by the surveyor beyond the high water-mark to above the low water-mark. But in the table of contents of the plan which is called the "Abstract of Contents," which is just a measurement of its contents, and contains a complete statement of the lands which were conveyed by the disposition, we find that the entire quantity consists of so much arable land, so much pasture, so much wood land, and so much road, and that the total of these corresponds with the measurement given. So that that is a measurement of the whole of the subjects conveyed by the disposition. In other words, there is a precise statement in words of what was intended to be conveyed, and neither party can well say that the measurement is inaccurate, for both expressly acquiesce in it. Now, there is not in this abstract any mention of the foreshore or of any subject which by implication can include the foreshore. The disposition does not convey it in words or by implication, and if you cannot get anything like it in the disposition or the table of contents, and if the measurement is exclusive of the foreshore, and it can be shown that the measurement of the lands exactly applies to all that is above high water-mark, then the conclusion is irresistible that the disposition does not convey the foreshore.

The boundary line which has been prolonged on the plan across the foreshore we are not entitled to look at, for it is not referred to in the disposition nor drawn for any of the purposes for which reference has been made.

The same remarks apply to the other disposition in favour of the defender. The measurement is different, but the reference, and the purpose for which reference is made, is as clear in the one as in the other.

When that has been said it is apparent that all reference to occupation or possession of the foreshore subsequent to the conveyance is irrelevant. Suppose both parties to have acquired right to the foreshore under a clause of parts and pertinents, followed by possession for the prescriptive period, the foreshore is not given them by their titles, and the acquisition of it could not affect the question whether the surveyor had any authority to lay down these lines, or any lines, except the boundaries of the subjects conveyed. I think they can have no effect either upon the disponer or upon the disponee or any third party. They have no more effect than if they had never been laid down at all.

The only peculiarity in the case thus disappears, and I therefore think that the Lord Ordinary was right in applying the general rule which was laid down in *M'Taggart* v. *M'Dowall* to the case of salmon-fishings. I am therefore for adhering.

Lord Mure concurred.

Lord Shand—If it could be shown that in the conveyance of the lands of Usan there was also a conveyance of the foreshore in the line laid down on the plan referred to, and that the pursuer thereby acquired right to the foreshore *ex adverso* of his property, there might then be room for the argument that the salmon-fishings should be divided with reference to that line, and not according to the general rule.

I am, however, of opinion, on a sound construction of the conveyance, that the foreshore was not conveyed by it, and that it certainly was not conveyed in the line which was pressed by the reclaimer, on the setting up of which his whole argument depended. The plan is only made part of the title for the purposes for which it is referred to. And it is referred to for two purposes only. In the first place, to indicate the boundaries of the lands, and in the second place, to fix what was their measurement. But the disposition says, "by which plan it appears that the foresaid lands"—that is to say, the lands thereby conveyed—"including roads, contain 571 acres 3 roods or thereby, Scotch measure, in which measurement both parties acquiesce." And on the plan referred to there is a statement of the measurement of each block and field, with a summation of the total, which comes exactly to 571 acres 3 roods. Now, the whole of the subjects included in that measurement are arable, pasture, woods, and roads, so that the foreshore is necessarily excluded. The surveyor no doubt extended the boundary line beyond the subjects of the conveyance; whether he did that simply to finish off the plan I cannot tell, but it was not for the purposes of the conveyance.

Therefore the case here is just one in which there was a conveyance of lands down to the foreshore, and as it appears to me that the rule which regulates the division of the foreshore is equally applicable to the case of salmon-fishings, I think it should be applied here.

Lord Deas was absent.

The Court adhered.

Counsel for Pursuer — Gloag—H. Johnston. Agents—Mackenzie & Kermack, W.S.

Counsel for Defenders—Jameson. Agents—Macrae, Flett, & Rennie, W.S.

Saturday, November 8.

SECOND DIVISION.

[Lord Lee, Ordinary.

BLAIR'S EXECUTRICES *v.* PAYNE AND OTHERS.

Agent and Principal—Factor and Attorney—Responsibility of Agent placing Money in Private Banking House.

An agent who acted under a power of attorney on behalf of a foreign constituent, placed on deposit in the constituent's name in a private bank enjoying good credit funds coming into his hands belonging to the con-

stituent. The bank failed. *Held* that the agent was not liable for the loss.

Interest—Interest on Open Account for Professional Charges and Outlays—Period from which Interest runs.

The outlays in a law-agent's account being of the nature of loans, interest runs on them from their advance, but interest on his open account for services performed, or on a tradesman's open account, does not run until at least a demand for payment has been made.

Opinion per Lord Fraser, that interest does not run on an open account till after a judicial demand for payment.

This was an action of multiplepoinding in which the pursuers and real raisers were the executrices of the deceased John Blair, W.S., who died in 1858. Mr Blair acted for a long period as attorney for R. D. Knox, who resided in Wilkes County, Georgia, in the United States, and acting under his power of attorney conducted lawsuits for him, and managed certain heritages belonging to him. Blair sold one property on his behalf, and allowed him and his administrator John P. Kelly—Dent having died in June 1836—to draw on him for sums on account of the price. A balance of the estate remained in Blair's hands at his death, and in this process an account of his whole intromissions with the estate, and his disbursements and expenses incurred and connected therewith to the date of his death was produced. In this account the executrices (raisers) took credit for all payments made by Blair to or on behalf of his constituent in the management of his affairs, for the taxed expenses in the actions conducted on his behalf, and for Blair's business accounts in relation to all the work he had performed for him, with periodical interest thereon. It brought out a balance in Blair's hands of £353, 19s. 4¾d., which was the fund *in medio* stated in the condescendence annexed to the summons. The accounts were subsequently taxed under a remit from the Court, which had the result of bringing the sum to £360, 6s. 11¾d. The action was raised for distribution of this sum among those claiming to be representatives of Dent. Blair's business accounts had not been tendered to Dent for payment.

Objections to the fund *in medio* were stated by one of the claimants, Granville J. Kelly.

Two objections were the subject of the decision now to be reported. They arose on the interim report of an accountant (Mr D. Pearson, C.A.) to whom the Lord Ordinary (Lee) remitted to examine the proceedings, with the raisers' accounts and vouchers, and to report. The accountant in this interim report asked directions on these points—(1) Credit was taken by the raisers in stating Blair's accounts for sums lodged by him in Dent's name in the private banking-house of Kinnear, Smith, & Company, which failed in the summer of 1834. Blair kept his own funds also there, and it was in good repute at the time of the deposit of Dent's money. A loss of £64, 4s. 7d. to Dent's estate was the result of the failure, and the question was whether the credit claimed on sums thus lost by being entrusted to a private bank which failed could be allowed. (2) The second question was, whether the raisers, as Blair's representatives, were entitled to take credit annually at 31st December for his business accounts then due as taxed, including in the amount credited his professional charges as well as his outlay? The result of thus taking each year's account as at 31st December and allowing credit thereon in the accounting would be that interest would be credited to the raisers on Blair's business charges as well as upon his outlays.

The Lord Ordinary (Lee) again remitted the account to the accountant, with instructions to proceed on the footing "(1) that credit is to be allowed to Mr Blair for the sums lodged by him with Messrs Kinnear, Smith, & Company; and (2) that Mr Blair's representatives are entitled to take credit annually at 31st December for the business accounts then due as taxed, including in the amount credited the professional charges as well as the outlay.

"*Note.*—The objection that it was illegal to lodge the money of the constituent in a private bank was not pressed; and as to the objection that the agent was not entitled to lodge in bank, to the effect of limiting the interest credited to the constituent to the rate allowed by the bank, any sum beyond the amount of the balance in hand, after debiting him with the business accounts then chargeable, my opinion is, that so far as appears, Mr Blair did nothing to forfeit his claim as agent to receive credit for the amount due on his business accounts annually as incurred. There seems to have been no neglect or want of *bona fides* on his part, and the delay in settling accounts has arisen from causes for which he is not responsible. I think that the agent, being also factor and attorney for the principal, might have lodged the whole rents received by him in a separate bank account, and credited himself annually in account with the amount due on his business accounts as taxed."

The objector, having obtained leave, reclaimed, and argued—(1) Depositing clients' money in a private bank was not the same as depositing it in a chartered bank, for it was lending it to a trading concern, and the law-agent so lending it was responsible for the loss of it. (2) No account could bear interest before it was rendered, and this one had never been rendered. And even if it could, this was all one account, and Mr Blair could not make it up periodically, and charge interest on each year's account, so as to increase the capital sum due. Interest began to run only after a judicial demand.

Authorities—Begg on Law-Agents, 134; *Cardno and Darling* v. *Stewart*, July 9, 1869, 7 Macph. 1026; *Napier* v. *Balfour*, June 2, 1835, 13 S. 853; Bell's Comm. ii. 694; Hunter on Landlord and Tenant, ii. 531; *Bremner* v. *Mabon*, December 13, 1837, 16 D. 213.

Replied for raisers—This was a peculiar case, in which the general rule that unless a law-agent made up and rendered his accounts periodically he was precluded from charging interest was not to be applied. Mr Blair, as the letters produced showed, let his accounts stand to benefit his clients, who were not in a position to pay. He ought not therefore to be now debarred from any claim of interest.

Authorities—*Bremner* v. *Mabon (supra cit.)*; *Duke of Queensberry's Exrs.*, December 21, 1826, 5 S. 180, Bell's Prin. 32; *Forman* v. *Home*, June 20, 1844, 6 D. 1189.

While the action was pending the interest of Kelly had been acquired by C. E. F. Payne.

At advising—

Lord Craighill—There are two questions which have been argued, and which we are to decide—(1) Whether credit is to be allowed for the sums lodged by Mr Blair in the banking-house of Messrs Kinnear, Smith, & Co.? and (2) Whether Mr Blair's representatives are entitled to take credit annually at 31st December for the business accounts then due as taxed, including in the amount credited professional charges as well as outlay, the right so to do being claimed, that interest on several yearly balances may be charged in the account?

The first of these questions can be easily answered, and I concur in the Lord Ordinary' decision. Two objections were stated by the reclaimers—the first, that as Mr Blair was a creditor he ought to have kept the money and given credit for it in the account-current. That he might have done this, and that many would have done it, may be allowed, but that he failed in his duty when in place of so acting he lodged the money in bank to the credit of his constituent is plainly an unreasonable contention. He did what, to say the least, in the absence of instructions to the contrary, could not be wrong; and this, it may be added, is the first occasion on which I have known the conduct of an agent or a factor objected to because he had lodged money in bank to the credit of his employer, in place of keeping it in his hands to meet past or prospective claims. The second objection to the deposit in bank is that Kinnear, Smith, & Co. were not a chartered bank. But the company was in good credit at the time, and as there were no instructions on this subject given in the factory, Mr Blair was left at liberty to exercise his own discretion, which he did with the most perfect honesty.

In the second question there is in truth a two-fold inquiry, the one relating to cash advances, and the other to professional charges. The part of the debt which consists of cash advances must, I think, bear interest as claimed, and as the Lord Ordinary has found. A cash advance is a loan of money, and loans of money, as matter of legal implication, where the contrary is not stipulated, bear interest as if there had been an express provision to this effect—Bell's Pr., sec. 32, sub-sec. 4. The other inquiry involved in the second question is not so easily determined: Is interest to run on that part of Mr Blair's account which is made up of professional charges? This it appears to me on the authority of most of the cases which have been cited at the bar, is a question of circumstances, and there is room for regret that the rule on so important a point should be so undefined. Nothing can be conceived less amenable to a settled general principle than our law upon a creditor's right to interest. Interest upon bills and notes is settled by statute; that on bonds by express contract; that on loans by legal implication. But when this has been said, almost all that has been fixed is presented. We must bear in mind that every liquid debt past due does not bear interest. Feu-duties, ground-annuals, and rents are cases in point where payment of interest has not been made matter of express obligation. Why this should be so is not clear. Probably the reason is that if it had been intended that interest should run, that would have been introduced into the contract. But what of other debts—mercantile accounts, law-agent's business accounts, accounts for services of any description? The most that can be said is that where there is anything in the course of dealing, or in the custom of trade, which suggests that if the debt should not be paid at a particular period interest will run, that will be allowed; otherwise not. A demand for payment, more or less urgent, seems to me, apart from contract, to be a condition-precedent to liability for interest. Common sense itself suggests that a man who pays whenever payment is asked pays in good time. And there cannot be a demand for payment unless an account or claim of debt has been furnished to the debtor. Here there was none till an account in question was produced in this process, and for this omission it appears to me that no excuse has been offered, on the strength of which the representatives of Mr Blair are entitled to claim interest for as good as forty years. The cases on this branch of the law are not very satisfactory. All cannot be quite reconciled. And besides there is no general principle by which these or other cases may be governed that can be said to be established by all or any of these cases. I therefore rest my opinion on the ground which I have indicated, viz., that apart from contract in the case of a law-agent's claim for professional charges, interest may not be allowed where the account has not been rendered, because till then it cannot be said that payment had been asked or could be expected. Whether from the date of rendering an account interest would run is an open question, and upon that, as its decision is not required on the present occasion, I do not indicate any opinion.

Lord Rutherfurd Clark concurred.

Lord Fraser—The first question we have to determine is, whether credit is to be allowed to Mr Blair for sums deposited with Messrs Kinnear, Smith, & Co., bankers in Edinburgh, which deposit it is said was illegal, because that firm was a private banking company, and loss arose in consequence of their bankruptcy. That it was the duty of a law-agent to deposit his client's funds in bank there can be no doubt; and the simple question is, whether the deposit having been made with a private banking firm, this was an illegal act, and any loss which has accrued must fall upon the agent? I am of opinion that this objection is not well founded, and that the finding of the Lord Ordinary was right. If there had been any special directions given by the clients in regard to the bankers with whom the deposit was to be made, and these had been disregarded, the agent would be liable in the loss; but none such were given; or if, as in the case of *Methven's Executors* v. *Edinburgh, Perth, and Dundee Railway Company* (July, 1 1851, 13 D. 1262), a statute had ordered money to be consigned in a chartered or incorporated bank, a consignment in an unincorporated bank—the Edinburgh and Glasgow Bank—would not be held sufficient. The banking firm of Kinnear, Smith, & Co. were in good repute at the time when the deposit was made, and I can see no ground therefore for imposing personal liability for the loss upon the agent

As regards the claim for interest, a distinction must be drawn between cash advances and business charges. As regards cash advances, it is settled that interest is due upon these from the

date of advance, provided they are of the kind of advances usually put into a cash account. Ordinary judicial expenses paid out by an agent (*Macpherson* v. *Tytler*, &c., 1st June 1853, 15 D. 706), outlays for printing (*Barclay* v. *Barclay*, 5th March 1850, 22 Jurist 354), and similar payments, are not considered cash advances coming within the rule. All other outlays, however, made by an agent, such as advances incurred for the repair of property, payments for premiums of assurance, payments of debts due, counsel's and accountant's fees, stamps and such like, are advances on which the agent can claim interest, just as a banker can do on advances he makes.

But as regards professional charges for agency the case stands in a totally different position. It is claimed here,—and the Lord Ordinary has decided in favour of that claim,—that Mr Blair's representatives are entitled to take credit annually at 31st December for the business accounts then due; in other words, the account is to be summed up at every 31st of December, and interest is to run upon each sum so brought out. This raises a point of some practical importance.

Claims for interest cannot be brought under any general rule. They are said to arise *ex lege*, or *ex pacto*, or *ex mora*. With regard to interest due *ex pacto* the case is quite clear. It is lawful to stipulate for interest; and now that the usury laws are abolished, any amount of interest may be agreed upon and exacted. It is when the claim is founded not upon paction, but upon some rule of law, that the difficulty arises. Interest is due *ex lege* in various cases by statute; and it is in virtue of statutory enactment that it is claimable in Scotland upon bills of exchange and promissory notes (1681, c. 20; 1696, c. 36; 12 Geo. III. c. 72), and there are other instances in which the claim has statutory sanction. Interest is also due by law upon money lent; and it was so found, although there was no stipulation for interest, and the demand for it was only made thirty-four years after the loan was made, and when the lender and borrower were both dead (*Cunninghame* v. *Boswell*, 29th May 1868, 6 Macph. 890). But it is not correct to say that interest is claimable upon all debts, either from the date that the account was closed or from the date that it was rendered. It is sometimes said that interest is due as damages for the undue detention of money when a debt clearly ascertained remains unpaid. By those lawyers who hold this opinion, interest is considered incident legally to every debt, certain in amount and payable at a certain time. This is plainly not good law. There are many illustrations to the contrary. No debt can be more certain in amount, or certain as to the time of payment, than feu-duties or ground-annuals, and yet it has been determined repeatedly that interest is not claimable upon arrears of these (*Napier* v. *Spiers' Trustees*, 31st May 1831, 9 S. 655; *Wallace* v. *Earl of Eglinton*, 26th February 1835, 13 S. 564; *Wallace* v. *Crawfurd's Trustees*, 5th December 1838, 1 D. 162; *Moncrieff* v. *Dundas*, 24th November 1835, 14 S. 61). This does not arise from any peculiarity of feudal law in regard to such debts, because after a judicial demand interest is claimable upon arrears from the date of citation (*Marquis of Tweeddale* v. *Aytoun*, 4 D. 862). "The general rule of law," said Lord Mackenzie in this last case, "is, that arrears of feu-duties do not bear interest unless there be an express stipulation to that effect, or unless there have been a judicial demand for them." According to the principle of these decisions, interest would not be claimable upon rents unless expressly stipulated for; and for this latter proposition (which has not been expressly decided) there are judicial *dicta* of high authority. The ground of these decisions simply was, that the parties having stipulated for payment of a specific sum, without stipulating for interest on non-payment, it was not intended that interest in such circumstances could be claimed. The cases of bills and loans of money, in regard to which interest is due, though not expressly contracted for, rest on special grounds. Interest is due on bills by virtue of statute; and the law implies an obligation to pay interest on loans, arising from the very nature of the contract.

The mere fact, therefore, of delay in payment, after payment has been or could have been demanded, will not necessarily ground a claim for interest; and consequently there must be distinctions made, consequent upon the nature of the debt due and upon the reasons for the non-payment of it. Lord Westbury, in the case of *Carmichael* v. *The Caledonian Railway Co.* (28th June 1870, 8 Macph. H. L. 131), expressed himself as follows:—"Interest can be demanded only in virtue of a contract, express or implied, or by virtue of the principal sum of money having been wrongfully withheld and not paid on the day when it ought to have been paid." According to this opinion, the mere non-payment of the money was not sufficient. It must be "wrongfully withheld."

Claims for interest are dealt with very strictly by the law of England, and there was some uncertainty as to the conditions on which it should be allowed, which continued to prevail until the matter was settled by a modern statute. Before that Act was passed, the following was the rule of the English law as reported by Lord Campbell:—"In an action for money had and received the plaintiff is not entitled to interest, even from the time of making a demand of the principal, unless—1st, He give in evidence an express promise to pay interest; or, 2d, Shew something from which such a promise may be inferred; or, 3d, Prove that the money has been used by the defendant, and interest has been made of it."—*De Havilland (Bezoil's Executor)* v. *Bowerbank*, 1 Campbell's Rep. 50.

Interest was refused in England in circumstances where, according to the doctrine recognised in Scottish Courts, it would have been granted. Thus it was decided that an instrument for securing money lent, whereby the borrower promised to pay the lender £135 in one month after his arrival in England, carried no interest. (*Page* v. *Newman*, 8th May 1829, 9 B. & C. 381.) The ground of this judgment was, as stated by Lord Tenterden, thus,—"I think that we ought not to depart from the long-established rule, that interest is not due on money secured by a written instrument, unless it appears on the face of the instrument that interest was intended to be paid, or unless it be implied from the usage of trade, as in the case of mercantile instruments." According to the Scotch authorities, on the other hand, a loan of money implies the payment of interest

after the date of payment. The statute referred to (3 and 4 Will. IV. c. 42) enacts (sec. 28) "that upon all debts or sums certain, payable at a certain time, or otherwise, the jury" may allow interest from the time that the debts were payable, if "such debts or sums be payable, by virtue of some written instrument, at a certain time; or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand."

The statute does not apply to Scotland; and hence it is necessary to find out some principle from which a rule could be extracted. To confine one's self to the case in hand, of an open account, there are three views, any one of which may be taken—1st, That interest is claimable from the date of the last item of the account; or, 2dly, from the date that the account was rendered; or, 3dly, from the date when a judicial demand was made by citation in an action. In regard to this matter I hold a writer's account to stand in the same position as that of a joiner or a shopkeeper. The account of the one is for work and labour done, and that of the other for furnishings. They are still, however, both open accounts. In reference to such accounts Erskine (iii. 3, 80) says—"Where no term of payment is stipulated, *e.g.*, in an open account, decree is generally awarded for the interest from the time at which the account ought to have been regularly paid, viz., after the elapsing of a year from the date of the last article." Why a year should have been fixed upon may perhaps be explained by the fact that that may have been the period of credit in Erskine's time; and so the Court held that a law-agent could charge interest on the balance due to him after a year from the last entry in the account (*Henry* v. *Sutherland*, M. Appx. *v.* Annual Rent, No. 1, and *Young* v. *Baillie*, 8 S. 624). These decisions, however, only seem to recognise the doctrine that if there be a certain express or implied period of credit, interest is claimable if the debt be not paid at the end of that period.

But then it can hardly be accepted as law at the present day that there is an absolute period of credit of one year, and Professor Bell (i. 650), dealing with the case of an open account, puts the matter thus—"Interest on merchants' accounts of furnishings begins on the expiration of the accustomed credit, or if there be no special custom to regulate it, from the date of citation, when the money should have been paid." And Mr Brodie, in his notes to Stair (p. 156), repeats this doctrine a little more fully—"Having thus treated of usury we shall proceed to state in what cases interest is due. *Ex lege*, it is due on bills, decrees, &c., but on open accounts, though the price is to be paid at a certain day, it is not exigible without some paction to that purpose either expressed or implied from the usage of trade, previous transactions between the parties, or the debtor's knowledge when he took the credit that such was the creditor's practice."

Now, an open account upon which credit is given by a furnisher of goods, presents a case where by giving credit the creditor acquiesces in the non-payment unless he chooses to put upon his invoice, or otherwise specifically bargains, that the terms are "for cash," or that the credit is "for three months, and interest at 5 per cent. to be payable thereafter." In these cases the client or customer knows what is the bargain, and he must pay damages in the shape of interest if he violates the contract so made with him.

But, then, what is the effect of rendering an account? It is sometimes said that that was a demand of payment, from the date of which interest must be paid; and there is a case reported where interest upon a writer's account was given from the date of the demand (*Bremner* v. *Mabon*, 16 S. 213). But there was no question there raised as to whether the true period for the running of interest was not the time of citation to the action, as is the case of feu-duties, ground-annuals, rents, and other the like prestations. It was conceded in that case that interest should be allowed from the time of rendering, and this being conceded, the Court had no occasion to carry the matter any further. In my opinion no interest ought to be allowed on such claims on open account except when there is a judicial demand, or some such intimation given in writing as is required by the English statute, viz., that interest will be claimed from the date of the demand. In such a case the Court would in its discretion allow interest prior to the period of citation.

In the ordinary case, however, it cannot be implied that the parties must be understood as agreeing that the customer shall be liable not merely for the price agreed on, or for remuneration on a *quantum meruit*, but also for damages if payment be not made as soon as the account is rendered. There was good sense in the old rule which allowed the client a year in order to examine the account.

Finally the case seems to me to be concluded by authority. In the case *Cardno and Darling* v. *Stewart* (9th July 1369, 8 Macph. 1026) it appeared that a customer dealt with tradesmen, who, as is the practice with tradesmen, rendered their account at certain intervals, and who upon not receiving payment at last raised their action concluding for payment of the whole sum due to them, with interest upon each account rendered from the date of rendering. This was refused by the Court; and it seems to me to be a direct judgment to the effect that no such interest can be claimed. It is called a "current" account in the reports, but it was no further current than this, that the tradesmen received from their customer new orders, and rendered their account for each order. The defender in the action, instead of pleading that interest was only claimable from the date of citation in the action, pleaded merely that he was not liable for interest, except from the last item of the last account rendered. This saved the Court from deciding the general point here raised. The Lord President, observing that, "as the defender admits by his plea that the pursuers are entitled to charge interest after the date of the last item, it is not necessary to consider anything beyond the question whether the pursuers are entitled to charge interest periodically. On that point I will only say that I am against the pursuers, and I give no opinion as to whether interest would have run from the date of the last rendering of the account as that is admitted by the defender." The opinion here expressed is correctly reported, as I have taken means to ascertain, and the

objection taken at the bar to the report is not well founded. What the Lord President said with the concurrence of his brethren was, that interest was not due on the accounts rendered, during the course of the dealing, but as to whether it was claimable from the last rendering after the dealing was closed, he found it unnecessary to decide, in consequence of the defenders' admission of liability from the date of the last item. The opinion, however, which was here reserved may be inferred from what the First Division did. The same ground upon which the Court refused to allow interest from the date of rendering accounts during the course of dealing would lead to the same conclusion in reference to a claim for interest from the rendering of the account at the close of the dealing.

In these circumstances I am of opinion that the claim made in the present case for interest on the agents' account calculated on the sum brought out at each 31st of December cannot be admitted. The account was not rendered in the present case by Mr Blair at all. It was for the first time presented by his representatives when they lodged it in the present action. I am of opinion that interest can only be allowed on the sum-total of the account from the date at which it was lodged in this process, which was the period when the judicial demand was first made, unless there be some excuse for the delay. Now, it is said that the clients were poor, and that it was useless to demand payment from them in America. This is no excuse, if damages for non-payment in the shape of interest was intended to be claimed. It was further said that it was uncertain who the person in America was to whom the account should be sent, and by whom payment must be made. From the letters produced I infer the contrary, and that there was always a person in America who had a legal title to settle this matter with Mr Blair. Consequently upon the whole matter I think that while affirming the first instruction of the Lord Ordinary to the effect that credit must be allowed to Mr Blair for sums lodged with Kinnear, Smith, & Co., the latter part of the interlocutor should be altered, and the instruction should be given to the accountant to allow credit for the claim of interest on all cash advances from the date of each advance, and interest on the business-account only from the date of lodging these in this process.

The Lord Justice-Clerk and Lord Young were absent.

The Court pronounced this interlocutor:—

"The Lords having heard counsel for the parties on the reclaiming-note for Charles Edmond FitzHugh Payne and others against Lord Lee's interlocutor of 25th June last, Recal the said interlocutor: Find (1) that credit is to be allowed to Mr Blair for the sums lodged by him with Messrs Kinnear, Smith, & Co.; (2) that Mr Blair's representatives are entitled to credit annually at 31st December, as claimed by them, on the cash advances charged in their account-current; (3) that Mr Blair's representatives are entitled to take credit for their account so far as consisting of professional business only from the date of the production of the account in the present process: Remit the cause to the Lord Ordinary with instructions to give effect, or to remit to the Accountant to give effect, to the foregoing findings, and to proceed further as may be just: Find no expenses due by either party to the other since the date of the said interlocutor, reserving to the Lord Ordinary to dispose of the previous expenses in the case."

Counsel for Raisers (Blair's Representatives)—Goudy—Dickson. Agents—Scott, Bruce, & Glover, W.S.

Counsel for Objector—Pearson—Baxter. Agents—Boyd, Jameson, & Kelly, W.S.

Saturday, November 8.

SECOND DIVISION.

[Lord Kinnear, Ordinary.

MOORE *v.* BELL AND OTHERS.

Succession—Heritable and Moveable—Heir and Executor—Machinery.

Held in a question between heir and executor (1) that cisterns not affixed to the ground, but by reason of their weight immoveable without being taken to pieces, and which had been brought into the works in which they stood for the purposes of enhancing their use as a pottery, were heritable; (2) that printing-presses used in the pottery in connection with steam heaters which were fixed to the walls, but which presses were complete in themselves, detached from the building, and capable of being used elsewhere, were moveable.

Succession — Sale of Business Premises with Machinery, Plant, and Goodwill—Goodwill—Question whether Heritable or Moveable.

Business premises were, on the death of the proprietor, sold with the whole machinery and whole plant and utensils which had been in use in them, as also the goodwill of the business, and the purchaser was taken bound at the same time to take over and pay for the whole stock-in-trade of whatever kind at a valuation. The next-of-kin of the deceased proprietor, in addition to the price of the moveable machinery and plant admittedly belonging to them, claimed a share of the price realised for the whole subjects at the sale, in respect of their right to the goodwill of the business. *Held* that the price of the moveable machinery had been enhanced by being sold along with the heritable subjects for the purpose of enabling the purchaser to continue the business, and that there was no separate element of goodwill not covered by that enhanced price to which in a question with the heir-at-law they could lay claim.

Right in Security—Bond and Disposition in Security of Cash-Credit with Bank—Intention of Ancestor—Heir-at-Law and Next-of-Kin—Act 1696, *c.* 5—31 *and* 32 *Vict. c.* 101 (*Titles to Land Consolidation (Scotland) Act* 1868), *sec.* 117.

A proprietor of business premises, who had granted a bond and disposition in security