therefore, that we should answer the questions accordingly.

LORD TRAYNER — I am of the same opinion. The doctrine established by the cases of *Lindsay* and *Dalglish*, and also in a later case, is one that we would not question. The Court is at one upon the soundness of the principle there laid down, and if it were applicable it would be followed. But that principle has no application to the present case, and for this reason—In these cases there was a gift of fee to the testator's daughters, but that gift was burdened with a trust for their children, if they should have any. The daughters died without issue, and the burden accordingly fell off. The circumstances of the present case are essentially different, because although the trustees were directed to hold one-half of the residue for behoof of the issue of John Turnbull, the testator expressly declared that no right should vest in them until they attained the age of 21. William Turnbull's share in ordinary course would have vested when he became 21, but the trustees had power to restrict the interest of any beneficiary of whose conduct they did not approve to a liferent, and to pass on the fee to his issue, if he had any. The trustees, prior to the period of vesting, exercised this power, and I think, with Lord Young, that the result is the same as if the testator had himself done so. The prospective right of fee was cut down to a liferent, subject to a provision for children. William Turnbull had no children, and I think therefore that the fee of his share of his grandfather's estate fell into the intestate succession of the latter.

LORD MONCREIFF was absent.

The Court answered the first question in the affirmative, and the second question in the negative.

Counsel for the First and Second Parties —M'Clure. Agents—Webster, Will, & Co., S.S.C.

Counsel for the Third and Fourth Parties —Dundas, Q.C.—Craigie. Agents—Forrester & Davidson, W.S.

Saturday, July 14.

FIRST DIVISION.

FACULTY OF PROCURATORS IN GLASGOW *v.* COLQUHOUN.

Administration of Justice — Law-Agent— Misconduct—Removal of Name from Roll —Title to Sue — Notary-Public — Law-Agents (Scotland) Act 1873 (36 *and* 37 *Vict. cap.* 63), *sec.* 22.

Held that the Faculty of Procurators in Glasgow had a good title to present a petition for the removal from the roll of law-agents and list of notaries-public, in respect of professional misconduct, of a law-agent who had recently been a member of their body but had been expelled from it.

A & B, the partners of a firm of law-agents and notaries-public, were each tried on a charge of embezzlement of money belonging to the clients of the firm. A was convicted; B was acquitted, but the jury added to their verdict a record of "their strong opinion of the gross carelessness and neglect he had shown as a partner of his firm." *Averments* on which, in a petition for the removal of B's name from the roll of law-agents and list of notaries-public for professional misconduct, the Court allowed a proof.

Process — Service — Petition to have Name of Law-Agent and Notary Struck Off.

In a petition to have the name of A, a partner of the firm of A & B, who practised as law-agents and notaries-public in Glasgow, struck off the roll of law-agents and list of notaries-public, the Court, in addition to service upon the respondent, ordered service upon the other partner in the firm, the Registrar of Law-Agents in Scotland, the Sheriff-Clerk of Lanarkshire, and the Clerk to the Admission of Notaries-Public in Scotland.

On 31st July 1899 the estates of the firm of J. & D. T. Colquhoun, law-agents and procurators in Glasgow, and of the partners thereof — James Colquhoun and David Turnbull Colquhoun — were sequestrated, when it appeared that there was a deficiency amounting to £150,000. Criminal proceedings were instituted against both of said partners. On 26th September 1899 the said James Colquhoun pleaded guilty, in the Sheriff-Court of Lanarkshire at Glasgow, to a charge of embezzling various sums of money, the property of clients of said firm, amounting in all to £50,511, 15s. He was remitted for sentence to the High Court of Justiciary, and at a sitting of said Court held in Edinburgh on 4th October 1899, sentence was pronounced upon the said James Colquhoun of five years' penal servitude. The said David Turnbull Colquhoun was served with an indictment charging him with embezzlement of £10,095, and after a trial, which proceeded upon 5th December 1899 and the three following days, he was acquitted. The verdict of the jury was in the following terms:—"The jury find the panel not guilty, but they record their strong opinion of the gross carelessness and neglect he has shown as a partner of his firm."

David Turnbull Colquhoun was admitted as a notary-public upon 23rd December 1871, and enrolled as a law-agent on 29th October 1873. He was admitted a member of the Faculty of Procurators in Glasgow on 16th November 1883. He was dismissed from that body on 2nd March 1900.

On June 1, 1900, the Faculty of Procurators in Glasgow; Joseph Macintyre Taylor, the Dean; and John Guthrie Smith, the treasurer, clerk, and fiscal of said Faculty, presented the present petition in the Court of Session.

The prayer of the petition was in the following terms:—"May it therefore please your Lordships to order service of this

petition to be made upon the said David Turnbull Colquhoun, and such further service or intimation as to your Lordships shall seem proper, and to ordain answers to be lodged hereto within such time as your Lordships may appoint; and thereafter, upon resuming consideration of this petition, with or without answers, to find that the said David Turnbull Colquhoun has been guilty of misconduct as a law-agent in the sense of section 22 of the Law-Agents (Scotland) Act 1873, and also of misconduct in his profession as a notary-public, and to order the Registrar of Law-Agents and the Clerk to the Admission of Notaries to strike the name of the said David Turnbull Colquhoun off the roll of law-agents, and off the list of notaries-public kept by them respectively; or to do further or otherwise in the premises as to your Lordships shall seem proper."

The Law-Agents (Scotland) Act 1873 enacts as follows:—Section 22—"Every enrolled law-agent shall be subject to the jurisdiction of the Court in any complaint which may be made against him for misconduct as a law-agent, and it shall be lawful for the Court, in either Division thereof, to deal summarily with any such complaint, and to do therein as shall be just."

In the petition averments were made of professional misconduct on the part of David Turnbull Colquhoun, both in the general conduct of the firm of J. & D. T. Colquhoun, and in particular instances in which money belonging to clients was alleged to have been embezzled. In particular it was averred that money lodged with the firm by clients was embezzled, while the clients were informed that it had been duly invested, and interest was paid to them half-yearly; and that it would have appeared from a cursory examination of the books that money was being paid to clients as interest while no corresponding sums were being received from debtors.

The petitioners also averred as follows:—(6) "If the results of the above-detailed operations upon the firm's bank account be roughly summarised, it appears that sums of £22,000 in 1896, £16,000 in 1897, and £17,000 in 1898, were drawn from a bank account which was replenished from business profits to the extent of not more than £2500 per annum, and probably much less. The difference was obtained by criminal misappropriation of clients' funds, and this ought to have been evident to David Turnbull Colquhoun. He could not have avoided knowledge that interest was overpaid, and that supposed investments were non-existent, if he opened his interest account books, or looked at the contents of the safe, and he had actual knowledge of the partners' drawings and of the Montaione payments. He knew that the firm's resources could not meet calls so disproportionate, and must have known that his clients' money was being used for purposes of the firm and of James Colquhoun, which these clients had never authorised. In these circumstances it was his duty as a law-agent to prevent such use or to inform said clients. He did neither, and his misconduct enabled James Colquhoun to commit a series of frauds from 1896 to 1899, which he ought to have rendered impossible. (7) David Turnbull Colquhoun had his attention specially drawn as early as 1884 to the question of fictitious investments on which the firm paid interest. His uncle Hugh Colquhoun, who had been the senior partner of the firm, retired shortly before that year, and after his retirement made allegations to various clients of the firm, which led some of these clients to make special inquiry as to their investments. In particular, Mrs Margaret Young, Annette Street, Govanhill, who had intrusted said firm with the sum of £2650 for investment, communicated directly with David Turnbull Colquhoun to find if an investment had been obtained. He informed Mrs Young that a good investment had been obtained, and regular payments in name of interest were made to Mrs Young until the sequestration in 1899. It was then found that there was not, and had never been, any investment of said £2650. David Turnbull Colquhoun knew this fact in 1884, and should have imformed his client."

David Turnbull Colquhoun lodged answers, in which, while admitting fraud on the part of his brother James Colquhoun, he denied that he was in any way cognisant of it. He stated that the case now made against him was fully investigated at his criminal trial, and that it was practically a reproduction of the case then presented for the Crown. His answers concluded as follows:—"The section quoted of the Law-Agents Act is referred to for its terms, and it is denied that the respondent has been guilty of misconduct in the sense of the section. It is respectfully submitted that it is not competent to re-try the respondent under said section of said statute in reference to matters which were included in the indictment from which the respondent was acquitted; or otherwise, that the Court should order the petitioners not to proceed further with this petition, in respect of the inquiry which took place at the respondent's criminal trial. The respondent further submits that the prayer of the petition should be refused, in respect that the petitioner has set forth no title to prosecute; that the petitioner's averments are irrelevant, and that the respondent has not been guilty of misconduct as a law-agent."

On a motion for intimation and service being made, the Court ordered service upon James Colquhoun prisoner in the prison of Peterhead, the Registrar of Law-Agents in Scotland, the Sheriff-Clerk of Lanarkshire, and the Clerk to the Admission of Notaries-Public in Scotland. None of these parties lodged answers.

Argued for the petitioners—(1) They had a good title to present the petition, in respect that a duty lay upon them to bring under the notice of the Court misconduct on the part of a member of their body in his professional affairs, whether they had already exercised their own powers in dismissing him from the Faculty or not—*Incorporated Society of Law-Agents* v. *Clark*, Dec. 3,

1886, 14 R. 161; *Solicitors before the Supreme Courts* v. *Officer*, July 20, 1893, 20 R. 1106, *per* Lord President at p. 1108; *In re Incorporated Law Society and Four Solicitors*, July 20, 1891, 7 T.L.R. 672. (2) The facts disclosed at least a *prima facie* case for inquiry, especially when the rider added to their verdict by the jury in the criminal trial was considered. The plea of *res judicata* was absurd, because in the criminal charge Colquhoun was tried for embezzlement; here he was charged with professional misconduct, which would be sufficiently established if it were proved that he knew of his brother's embezzlement and failed to warn his clients.

Argued for the respondent—The Faculty of Procurators had no title to present the petition. They had dismissed Colquhoun from the Faculty, and their rights and duties in the matter were thereby ended. Title to present a petition must depend on interest, and the Procurators had no interest *qua* Faculty in purging the roll of law-agents. The proper petitioners were the Incorporated Society of Law-Agents—*A.B.* v. *C.D.*, Oct. 28, 1899, 2 F. 67. (2) The verdict in the criminal trial, though it could not found a plea of *res judicata* in a charge of professional misconduct, was a sufficient answer to the charges made in the petition, because these practically amounted to a charge of embezzlement.

LORD PRESIDENT—The first objection stated by the respondent in the petition is that the Faculty of Procurators in Glasgow have no title to present it. I think that objection is not well-founded. We are told that the Faculty of Procurators have already exercised their disciplinary powers by expelling the respondent from their own body, but it does not follow from this that they may not also be well entitled, as a body of professional men practising in a particular locality, to bring under the notice of the Court conduct on the part of a fellow practitioner which they consider to be fitted to endanger the interests of clients, and to bring discredit upon an honourable profession. It therefore appears to me that the petitioners are acting within their powers, and that if they have satisfied themselves that the respondent has been guilty of the conduct which they allege, it is not only within their power, but also in accordance with their duty, to call the attention of the Court to it.

The respondent, in the second place, maintains that no relevant case is stated against him, and that, taken along with the statement as to the criminal trial, appears to amount to a plea of *res judicata*, in respect of the acquittal of the respondent on the criminal charge there made. The respondent was tried on certain criminal charges which are not before us now, and which we have no power in this Court to try. It is impossible to hold that an acquittal on a charge of embezzlement is such an answer to a petition like the present as should prevent the Court making inquiry into the facts now alleged. The averments here amount to a statement of a course of dealing having gone on for many years in the office of the firm of which the respondent was a partner of such a character that it is difficult to see how it could not have been known to both partners, unless one of them was guilty of complete and almost inconceivable neglect of the duties which he owed to the clients. That seems a fair summary of the statements made, and while we have, of course, at this stage no means of knowing whether they are or are not well-founded, they are perfectly relevant, and are proper subjects for investigation. I think therefore that we should allow to the petitioners the proof which they crave, and to the respondent a conjunct probation.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The following interlocutor was pronounced:—"The Lords . . . allow to both parties a proof of their respective averments on a day to be afterwards fixed."

Counsel for the Petitioners — M'Clure. Agents — Morton, Smart, & Macdonald, W.S.

Counsel for the Respondent—Shaw, Q.C. —Deas—T. B. Morison. Agent—J. Gordon Mason, S.S.C.

Saturday, July 14.

SECOND DIVISION.

[Sheriff-Substitute at Aberdeen.

GALL *v.* LOYAL GLENBOGIE LODGE (ODDFELLOWS FRIENDLY SOCIETY).

Friendly Society—Action to Enforce Order to Reinstate Member—Jurisdiction—Competency—Friendly Societies Act 1896 (59 *and* 60 *Vict. c.* 25), *sec.* 68 (1)—*Process.*

In an action brought in the Sheriff Court against a lodge of oddfellows and the trustees of the lodge, the pursuer prayed the Court to ordain the defenders to implement a resolution or order pronounced by one of the superior courts of the defenders' society, whereby the defenders' lodge were directed to reinstate the pursuer in his membership of the lodge, and to admit him to all the rights and privileges of membership.

Held that the action was not competent either at common law or under the Friendly Societies Act 1896, section 68 (1), in respect that the Court could not enforce such a decree as the pursuer craved, and was not bound to pronounce a decree which it could not enforce.

James Gall, postman, Clatt, Aberdeenshire, raised an action in the Sheriff Court at Aberdeen against the Loyal Glenbogie Lodge, No. 1078 of the Keith