exercise the rights which the Court now hold the husband can put in force. The same ground upon which the husband may get a warrant to eject his wife will equally entitle the wife, if the circumstances permit, to get the same warrant to eject her husband, with the accompanying interdict against his return. On these grounds I agree with your Lordships in thinking that the interlocutor of the Sheriff should stand, but limited in the manner proposed.

LORD PRESIDENT—With regard to what Lord Mackenzie has said, I should like to make it clear that in my opinion I did not use the proof for coming to any conclusion upon the drunkenness. But I did use the proof for this purpose (on which I fancied there was no dispute between counsel), namely, that the husband wishes the wife to go and the wife wishes to stay.

LORD KINNEAR—In regard to the same matter I expressed no opinion on the question of fact. My view was that as the appellant did not ask us to consider whether the Sheriff was right or wrong on the question of fact, we must determine whether his law could be sustained, assuming his finding in fact to be correct.

The Court pronounced this interlocutor—

". . . Recal the interlocutors of the Sheriff and Sheriff-Substitute dated respectively 11th August 1910 and 23rd June 1910: Find in fact that the pursuer is tenant of the Arisaig Hotel described in the initial writ, and has requested the defender to remove from said hotel, but she declines to remove: Find in law that the pursuer is entitled to a warrant ordaining the defender to remove from said hotel: Therefore of new ordain the defender to remove from said hotel, and that on a charge of seven days: Interdict her from returning thereto: Remit to the Sheriff to proceed as accords: Of new find the pursuer liable in expenses of process prior to said 23rd June 1910, subject to modification by the Sheriff-Substitute if he shall think proper after taxation: Grant authority to him to modify and decern for said expenses accordingly: *Quoad ultra* find no expenses due to or by either party, and decern."

Counsel for the Pursuer (Respondent) — Maclennan, K.C. — Black. Agents — Forrester & Davidson, W.S.

Counsel for the Defender (Appellant) Constable, K.C.—James Stevenson. Agents —P. Gardiner Gillespie & Gillespie, S.S.C.

HOUSE OF LORDS.

Wednesday, December 7.

(Before the Lord Chancellor (Loreburn), the Earl of Halsbury, Lord Macnaghten, Lord Atkinson, Lord Shaw, and Lord Robson.)

ANDERSON AND OTHERS (BINNIE'S TRUSTEES) *v.* PRENDERGAST AND OTHERS.

(*Ante*, January 21, 1910, 47 S.L.R. 271, and 1910 S.C. 735.)

Succession—Gifts to Classes—Division per stirpes or per capita.

A testator directed as to the share of his estate falling to his daughter Agnes, the interest to be paid to her "and failing her to be paid and apportioned to her children equally, share and share alike, in liferent . . . and to the issue of her said children in fee," with a destination-over failing issue of the children. In a codicil he directed "and failing the children of my said daughter Agnes leaving lawful issue of their bodies, then I direct and appoint the fee of her said share . . . to be paid to the lawful issue of her said children, and that equally, share and share alike," with a destination-over failing issue of the children. Later in the same codicil, in dealing with accretion to Agnes's share, he directed that such accretion "as in the case of her own share of my means . . . shall . . . be retained and the interest" paid as previously stated, "and failing her children leaving lawful issue, then the fee . . . shall, as in the case of her the said Agnes's own share of my means . . . be allotted and paid equally among the issue of her children, and that equally, share and share alike."

Held (*rev.* judgment of the Second Division) that the division amongst the issue of Agnes's children was *per capita* and not *per stirpes*.

This case is reported *ante ut supra*.

Alexander C. Anderson and others, claimants and reclaimers, appealed to the House of Lords. Mrs Prendergast and others appeared as respondents.

At the conclusion of the argument—

LORD CHANCELLOR—The question in this case is whether the share of the testator's daughter Agnes is to be distributed between her grandchildren stirpitally or *per capita*.

There are two documents which are relevant for this decision. The first is the codicil or settlement of 1832, which provides that Agnes's share "shall not be payable to her or her children; but I do hereby direct and appoint that the interest or produce of the same shall be paid and apportioned to her in liferent for her liferent allenarly, and failing her to be paid

and apportioned to her children equally, share and share alike, in liferent for their liferent uses allenarly, and to the issue of her said children in fee."

There is then the codicil of 1842, which confirms the destination of the share of Agnes as contained in the earlier document to which I have referred, and it proceeds —"and failing the children of my said daughter Agnes leaving lawful issue of their bodies, then I direct and appoint the fee of her said share of my means and estate to be paid to the lawful issue of her said children, and that equally, share and share alike."

Now I think the effect of this is to give the fee to the issue of Agnes's children *per capita*. That is indeed admitted in the argument as regards the document of 1832, and I do not understand that it is disputed —if it is disputed I do not think it is really disputable—as regards the passage I have quoted from the document of 1842. But the learned Judges in the Inner House have expressed the opinion that this construction is put aside by the consideration of a later passage in the codicil of 1842 which deals with a possible accretion to Agnes's share. I will not read the whole of that passage, but the substantial part of it is as follows—"and failing her children leaving lawful issue, then the fee of said portion of the share of the one half of the share of my said daughter dying without lawful issue falling to my said daughter Agnes, shall, as in the case of her, the said Agnes's, own share of my means and succession, be allotted and paid equally amongst the issue of her children, and that equally, share and share alike."

Now if it were necessary I should myself be of opinion that this passage referring to Agnes's own share is a reference or allusion, and that it is not intended as an explanation of any doubtful antecedent destination of her share. But still it is necessary in this case to decide what would be its effect if these were the operative words, because, as I understand it, part of the fund which is to be distributed proceeds from an accretion and does not represent Agnes's original share. That being so, I think myself that the true construction of the words which I have read is that the fee is to be distributed *per capita* among the issue of Agnes's children, that is to say, among Agnes's grandchildren. It seems to me that that is the natural meaning of the words, and that it would be a forced meaning to say that it was intended in the first instance that there was to be a stirpital division among Agnes's children and after that a distribution *per capita* among the children of each several child.

These things really depend upon the meaning which you attribute after careful examination to the words themselves, and are not really elucidated by analogies to be derived from other words in other deeds which have been the subject of decision in earlier cases.

In regard to the question of expenses I do not think there is any sufficient ground for departing from the usual course in this House that the successful party should have his costs of the appeal. But of course if there has been any undue expense incurred by the fault of the successful appellant that is a matter to be dealt with on taxation.

EARL OF HALSBURY—I am entirely of the same opinion, and I cannot say I have had the least doubt throughout the course of the argument.

LORD MACNAGHTEN—I am of the same opinion. So far as I am concerned I think it is a very plain case. The whole difficulty —if there be a difficulty—at any rate the whole of the question that has been argued —turns upon one sentence in the codicil of the 11th July 1842, and the ground of the decision in the Court below appears in the opinion of the Lord Justice-Clerk. His Lordship says—"Where such a word as 'equally' is used twice in stating the detail of a destination, it is the duty of the Court not to hold the word in either case to be mere redundancy." And finding the word "equally" occurring twice the learned Judges have discovered a double process or a double operation. But in reality there is only one process or operation in the sentence in the codicil—it is to be "allotted and paid equally amongst the issue of her children, and that equally, share and share alike." If the testator had said that it was to be allotted between them and then divided between the issue, that would have been a different thing altogether, but, as I say, there is only one process and only one division. I entirely agree. I think there is no substance in this appeal.

LORD ATKINSON — I entirely agree. I think the matter is perfectly plain on the face of the documents themselves.

LORD SHAW — One cannot peruse the judgments of the learned Judges in the Court of Session without feeling that the case has been considered by them with much care. I was at first inclined to think that there might be considerable doubt with regard to the duplicate expression "equally" which has just been referred to by my noble and learned friend Lord Macnaghten. But in view of the care of the learned Judges to which I have alluded, I desire expressly to found my opinion upon this proposition—that in the supplemental deed of 1832 and the deed of 1842 I do not think there was any ambiguity in the settlement of the share falling to the issue of the children of Agnes.

As your Lordships will remember, as far as the deed of the 17th December 1832 is concerned, the destination of the fee is in the simplest language, namely, it is "to the issue of her said children in fee." That is clearly a distribution of the fee *per capita*. In the subsequent deed of 1842 I find no confusion introduced by the testator into that destination. For he treats the distribution of the fee in this language —"To the lawful issue of her said children, and that equally, share and share alike." Up to that point, namely, the 11th July

1842, there was no doubt whatever as to the distribution being *per capita*.

Now coming to the parenthetical clause —because I agree with my noble and learned friend on the Woolsack that it is really parenthetical—what view is to be taken of that clause with regard to this distribution? The clause occurs in the last but one of the testator's deeds, and it is to this effect—"shall, as in the case of the said Agnes's own share of my means and succession, be allotted and paid equally amongst the issue of her children, and that equally, share and share alike."

The learned Judges in the Court below treat the fact that there was a double use of the word "equally" as if the first use applied to one generation and the second use applied to another generation. The words "equally, share and share alike," are very familiar in Scotch conveyancing. They are a time-honoured and inefficacious redundancy which to this hour still unfortunately survives. The use of the words "share and share alike" adds in no particular to the word "equally." But this testator or his lawyer was apparently attached to the old expression, and so it was inserted. I interpret this destination in the following way:—I think the expression "shall be allotted and paid equally amongst the issue of her children, and that equally, share and share alike," simply means "shall be allotted and paid equally amongst the issue of her children—that is, equally, share and share alike." Interpreted in that way there is no difference between the word "equally" repeated with the old-fashioned redundancy and the word "equally" if it had been left by itself.

Now I turn to the judgment of the Lord Ordinary to see how he has disposed of this case. In the later part of a very elaborate opinion he thus treats the expression in the later testamentary writing to which I have referred—"He, the testator, thus himself supplies an interpretation for the previous involved and doubtful expressions." I respectfully dissent from both the propositions there laid down. I do not think that the previous expressions were involved or doubtful; in the candid argument presented by the learned counsel for the respondents it was admitted that those previous expressions pointed to a distribution *per capita*, and to nothing else. I secondly differ from the learned Judge's holding that this last declaration by the testator was by way of interpretation of the former. It required no interpretation; it was not ambiguous; and in the sense even as laid down it has not altered or varied that destination in any degree.

I conclude with a reference to the judgment of Lord Ardwall. That learned Judge, agreeing with the Lord Ordinary, says this with regard to the mode of construing this settlement—"There was a general idea in favour of a division *per stirpes* throughout, and such a division, as we know, may be said to be a favourite scheme in family settlements." If the expression "general idea in favour of a division *per stirpes* throughout" refers to the use of language in other parts of the deeds by the testator, it may be legitimate to consider such use in the construction of the expression now under consideration. But beyond that I cannot affirm any such doctrine as that indicated as applicable to this case. So far as the expressions used in this will are concerned they are capable of simple construction; they are clear in themselves; and I think it would be of the highest danger to introduce here general ideas or ideas of suitable or favourite modes of distribution or any inclination of preference for a family instead of an individual sharing of the estate. Such things only confuse the proper interpretation, which is, I humbly agree with your Lordships, a clear interpretation in this case. I concur in the course proposed from the Woolsack.

LORD ROBSON—I entirely agree.

Their Lordships reversed the order appealed from, and declared "that upon a sound construction of Mr Binnie's testamentary writings the share of his estate liferented by Mrs Craig and her children in succession, and the accruing share, fall to be divided in equal shares *per capita* among her grandchildren who survive her children."

Counsel for the Appellants—Buckmaster, K.C.—Chree. Agents—Ronald & Ritchie, S.S.C., Edinburgh—Maude & Tunnicliffe, London.

Counsel for the Respondents—Younger, K.C.—Leadbetter. Agents—Mackenzie & Black, W.S., Edinburgh—Grahames, Currey, & Spens, Westminster.

REGISTRATION APPEAL COURT.

Friday, December 23.

(Before Lord Ardwall, Lord Mackenzie, and Lord Skerrington.)

MACLELLAN *v.* NISH.

Election Law—Parish Elector—Disqualification—Failure to Pay Burgh Rates—Local Government (Scotland) Act 1894 (57 *and* 58 *Vict. cap.* 58), *sec.* 12 (8)—*Town Councils (Scotland) Act* 1900 (63 *and* 64 *Vict. cap.* 49), *sec.* 28.

A person whose name appears in the register of those entitled to vote at municipal elections in a burgh, but with a mark denoting that he is disqualified from voting in consequence of failure to pay burgh rates, is not entitled to be enrolled as a parish elector.

The occupier of a dwelling-house, who had failed to pay the burgh rates which had become payable by him, but who had timeously paid the poor rates which had become payable by him, claimed that, although disqualified to