stances, that the petitioner has no competent grounds for demanding from the respondent the restoration or delivery to him of his said horse, gig, and harness, or for their value, whatever claim on the part of the petitioner said respondent may have made himself liable to otherwise for having illegally, if it so turn out, molested the lieges, and stopped him on his road, as above mentioned, and demanded toll-dues from him contrary to law: Assoilzies the respondent accordingly, and refuses the prayer of the petition: Finds him entitled to his expenses," &c.

The Sheriff (MONRO) adhered.

Roberts advocated.

STRACHAN (CLARK with him) for advocator.

LANCASTER and DEAS, for respondent, were not called on.

At advising—

LORD PRESIDENT—We have read this proof, and we think it unnecessary to call for a reply, or to enter upon the other questions in this case.

This is an application at the instance of Roberts, the advocator, "to decern and ordain the respondent instantly to deliver up to the petitioner the said horse and machine and harness illegally, wrongously, and unwarrantably seized and detained as aforesaid, the property of the petitioner, and failing the respondent doing so within such period as your Lordship shall appoint, to decern and ordain the respondent to pay to the petitioner the sum of £100 sterling, as the price and value of said horse, machine, and harness, or such other sum as shall be ascertained to be the price or value thereof, reserving the petitioner's claim for loss and damages already sustained by him, or which he may sustain in consequence of the respondent wrongously and unwarrantably withholding and refusing delivery of the said horse and machine and harness." The question is, whether, in the circumstances of the case, as disclosed in evidence, this application can be entertained? I am decidedly of opinion that it cannot. The Road Act, 1 and 2 Will. IV. c. 43, (sec. 44), provides 'That if any person subject to the payment of any toll by any local Turnpike Act shall, after demand thereof made, wilfully neglect or refuse to pay the same, it shall be lawful for the person authorised to collect such tolls at the time when the same shall be due and payable, or within twelve hours thereafter, taking such assistance as shall be necessary, to seize and detain (1) any horse, beast, cattle, carriage, or (2) other thing upon or in respect of which any such toll is imposed, or (3) any carriage in respect of the horses or other beasts of draught drawing the carriage on which such toll is imposed, or (4) any of the goods or effects of the person so neglecting or refusing to pay (except the bridle or reins of any horse or other beast separate from the horse or beast.)" Now, the allegation of the petitioner is, that he was asked for toll at West Whitburn toll-bar, that he declined to pay, and that thereupon his horse and gig were seized by the respondent. The question is, whether he is well founded in that allegation? I think he is not. The whole history of the affair comes out very clearly on the proof. Roberts, the petitioner, had made up his mind to have a controversy with the toll-keeper. He says, "I had resolved not to pay the toll at West Whitburn toll-bar, before the 10th October last." Mrs Melvin, the women who keeps the toll-bar, says she had occasion before this to threaten to shut the bar in his face, and he answered, "You can do it." So that both parties were prepared for the controversy, and there is really no difference in the evidence as to what occurred. Roberts drove right through the toll without stopping. Mrs Melvin asked him to show his ticket, but he refused. After he was through Wilson ran up to him and took hold of the reins and stopped the horse, and required Roberts either to pay or to show a ticket. Whether the controversy lasted for only a few seconds or for ten minutes is of no consequence. Probably it lasted for some time, for in such controversies people say the same thing so often, over and over again, that they must take some considerable time to say it. Roberts thought he saw his way to put the tacksman in a false position, so he jumped out of the gig, Rankin having preceded him, left the horse and gig in the hands of Wilson, and declared that Wilson had made a seizure. I don't think that was making a seizure, or anything like making a seizure within the meaning of the Act. All that Wilson did was to stop this man on the road when endeavouring to evade payment of toll, and undoubtedly he was quite entitled to do so. Roberts did quite wrong in driving through the toll-bar, knowing that a demand for toll would be made, without stopping and coming to an understanding with the toll-keeper. The important thing in the case is, that, instead of a seizure on the part of Wilson, the attempt was all on the part of Roberts to suffer seizure. The petitioner must have known that no such thing was intended. He knew in a very short time that the horse and gig were entirely at his disposal, for he passed along the road in a cart and saw them, but declined to take them, being desirous of having the present litigation instead. In these circumstances there is no ground for the present application, and therefore I am of opinion that the Sheriff has rightly decided.

The other Judges concurred.

Agent for Advocator—T. M'Laren, S.S.C.

Agents for Respondent—Duncan, Dewar, & Black, W.S.

Thursday, January 28.

INGLIS *v.* INGLIS AND OTHERS.

Succession—Heir—Widow. A widow cannot take benefit from a bequest to the lawful heirs of her husband, she not being one of his heirs.

Inglis, who died in 1860, provided by his settlement as follows:—"Thirdly, whereas it is my purpose in my own lifetime, and as soon as I can accomplish it, to invest in heritable or other security, in the name of certain trustees, a sum of £1600, in trust, for behoof of my grandson and heir-at-law James Inglis, son of my said deceased son George Inglis, in liferent, for his liferent use only, and of the parties after-mentioned in fee: And whereas it may happen that I shall fail to accomplish the said investment during my lifetime, then, and in that case only, I direct my trustees to lay out and invest on such heritable or other security as they shall consider good and sufficient a sum of £1600 sterling, for behoof of the said James Inglis, my grandson, in liferent, for his liferent use allenarly, and after his death, the fee of the said sum of £1600, to be divided into two equal parts or shares, one whereof shall be payable to or amongst the lawful heirs of the said James Inglis, the liferenter," &c.

James Inglis, the liferenter, died in 1867, leaving no issue. His widow claimed a part of the fund as

one of the heirs *in mobilibus* of her deceased husband.

The Lord Ordinary (BARCAPLE) found "that, according to a sound construction of the deed of directions executed by the truster, James Inglis, on 22d May 1860, the direction therein contained that one-half of the sum of £1600 thereby directed to be invested for behoof of the truster's grandson, James Inglis junior, for his liferent use allenarly, should be divided into two equal parts or shares, one whereof should be payable to or amongst the lawful heirs of the said James Inglis, the liferenter, constituted a bequest or destination of the fee of said half of said sum to the proper heirs *in mobilibus* of the said James Inglis junior, and did not confer any right to any portion thereof upon his widow in the event, which has happened, of his dying survived by a widow."

"*Note.*—The primary question is as to the intention of the truster in the destination of the fee of half of the sum of £1600, which he directed to be invested for behoof of his grandson in liferent allenarly, and the fee 'to be divided into two equal parts or shares, one whereof shall be payable to or amongst the lawful heirs of the said James Inglis, the liferenter.' It is contended for the widow of the liferenter that the truster's intention was merely to tie up the fund so as to prevent it being squandered or dilapidated by his grandson leaving it at his death to go to the parties who would have taken it if it had been moveable property vested in his person, including his widow, if he should leave one. The Lord Ordinary thinks that that construction is excluded by the terms of the provision giving the fund to the lawful heirs of the liferenter. That is, no doubt, a very flexible expression, and one requiring construction in the present case. The Lord Ordinary has no doubt that it must be held to apply to heirs *in mobilibus*, and not to heirs at law in heritage, the direction to invest in heritable or other security being merely for the purpose of securing a fund for payment of the liferent, and the £1600 being directed to be divided and paid by the trustees to the parties to whom the fee was destined. But the widow is not, in any sense, one of the lawful heirs, and the Lord Ordinary does not think she can be held to be included by that description of the parties to whom the fee is bequeathed. The truster may possibly have had the intention for which the widow contends, but there is no evidence of that to be found in the deed, according to any construction which can be legitimately put upon its terms."

Mrs Inglis reclaimed.

SCOTT and BRAND for reclaimer.

Lord Advocate (MONCREIFF) and RETTIE for respondents.

GEBBIE for trustees.

At advising—

LORD PRESIDENT—This case is at first sight clear enough, and I think it is also clear enough after careful consideration. But I am disposed to think that it was quite worthy of serious argument and consideration, for it is concerned with very delicate principles of law. The words of the settlement on which the whole question turns are few and simple. A sum of £1600 is settled on James Inglis in liferent, "for his liferent use allenarly, and after his death the fee of the said sum of £1600 to be divided into two equal parts or shares, one whereof shall be payable to or amongst the lawful heirs of the said James Inglis, the liferenter." Now, the lawful heirs of the said James Inglis may mean either the heirs *in mobilibus* of James Inglis, the fund being moveable, or it may mean those parties, whoever they may be, who would have taken the fund on the death of James Inglis intestate, if it had been vested in him, as the reclaimer contends. In the latter case the reclaimer is entitled to prevail, for then she would have been entitled to one-half of this sum *jure relictæ*, there being no children of the marriage with the deceased James Inglis. The question is, whether a widow, claiming to take her legal rights on the death of her husband, is in any sense an *heir* of her husband? I am of opinion that she is not. I think, however loosely the term heir may be used in settlements, it never can be understood to comprehend such a right, or the person in such a right, as is possessed by a widow on the death of her husband. The character of heir, of every class, is that of succession to the deceased in respect of a right of blood, but it does not, and never can, involve in any sense or degree a *jus crediti*. As regards the widow's *jus relictæ*, she is a creditor, just as the children are creditors for their legitim. She is a creditor in this most important sense, that she is entitled to insist on payment of one-half or one-third of the moveable estate of her husband against his express will, unless previously excluded. Certainly in that sense she could hardly be called an heir, and if her right is of such a nature that she can take it against the express will of the testator, it must be the same when she takes it out of his intestate estate. It has been settled that she claims her *jus relictæ* against the executry, and as a matter of debt due by the executor to her. She does not confirm to her *jus relictæ*, and so it appears to me that there never can be a legal right in her, in respect of her position as widow, that can be properly described as a right of succession. In a popular and loose sense, no doubt, it may be so called. A purchaser is in one sense a successor—he is called a singular successor. The case of *Muirhead*, when properly understood, raises no difficulty. All it appears to settle as matter of general doctrine is clear, that the right of a widow *jure relictæ* lies against the executry estate of the deceased husband. But not the less for that reason is it a *jus crediti* preferable in competition with legatees or next of kin, or any persons taking from or representing the intestate. I therefore come without any difficulty to the conclusion that the Lord Ordinary is right.

The other judges concurred.

Agent for Reclaimer—D. F. Bridgeford, S.S.C.

Agent for Respondent—D. T. Lees, S.S.C.

Agent for Trustees—M. Macgregor, S.S.C.

Thursday, January 28.

JARDINE *v.* PENDREIGH.

Sale—Delivery — Timeous Rejection — Guarantee—Retention in Security. Held that a purchaser, who intimated on receipt of goods that they were disconform to contract, but that he would not allow the sellers to remove them until they sent him other goods in their place, and did not withdraw that restriction for about a fortnight, had failed timeously to reject the goods, and was liable for the price.

J. & J. Pendreigh, corn merchants in Edinburgh, sued Jardine, corn merchant, Ecclefechan, for the price of goods sold and delivered. Jar-