with conditions which are inconsistent with the right of fee, as, for example, with the condition that the person vested with the property shall not be entitled to assign his right to it, or that the estate shall not be liable for his debts or deeds.

Again, the estate may be conveyed to one in liferent and to another in fee, and the former right may be described as "in liferent" simply, or for "liferent use allenarly." The result is the same as regards the granter of the deed. He is entirely divested of the fee, and the terms of the conveyance mark and define the character and limits of the rights conferred on the respective disponees. Having conveyed away the entire property, he cannot, however, affect the estate of liferent or fee with conditions which shall protect either estate against the acts and deeds of the respective owners or the diligence of their creditors. I should say it is the same with an annuity made a burden on an heritable estate which the owner has conveyed to a third party. The right of annuity cannot any more than the right of fee or liferent, be affected by conditions against alienation or protecting the right against diligence.

There is a way by which a proprietor can effectually impose such restrictions as he desires to create either on the fee or liferent, or on any right of annuity granted, viz., by a conveyance to trustees, who hold the property for him so long as the trust subsists, and are bound to fulfil his directions, and in a position to enforce the fulfilment of the conditions which the truster has imposed. On the whole, being of opinion that if this trust is brought to an end this lady could discharge her right (whether the one proposal or the other to secure the annuity against her debts and deeds were carried out), I am of opinion with your Lordships that the question must be answered in the negative.

The Court pronounced the following interlocutor:—

"Find and declare that the parties of the first part are not bound or entitled to denude themselves of the trust committed to them by the trust-disposition and settlement of the late David White, or to convey the residue of the trust-estate to the party of the second part, on the terms and conditions proposed in this Case; and decern."

Counsel for First and Third Parties—Kinnear—Pearson. Agents—Macandrew & Wright, W.S.

Counsel for Second Party—Trayner—Young. Agent—W. R. Skinner, S.S.C.

Saturday, May 12.

SECOND DIVISION.

[Sheriff of Lanarkshire.

WALKER *v.* REID.

Process — Appeal — Competency—Printing—Act of Sederunt, March 10, 1870.

Circumstances in which the Court *repelled* an objection to the competency of an appeal that the provisions of the above Act of Sederunt had not been complied with, in respect of a failure to print timeously.

By Act of Sederunt of March 10, 1870, passed in terms of the authority to that effect contained in the Court of Session Act of 1868, it is provided as follows in reference to the procedure in appeals:—Section 3, sub-section 1—"The appellant shall during session, within fourteen days after the process has been received by the Clerk of Court, print and box the note of appeal, record, interlocutors, and proof, if any, unless within eight days after the process has been received by the Clerk he shall have obtained an interlocutor of the Court dispensing with printing in whole or in part; . . . and if the appellant shall fail within the said period of fourteen days to print and box or lodge and furnish the papers required as aforesaid, he shall be held to have abandoned his appeal, and shall not be entitled to insist therein except on being reponed as hereinafter provided."

By sub-section 2 provision is made with regard to appeals during vacation.

By sub-section 3 it is provided that it shall be lawful for the appellant, "within eight days after the appeal has been held to be abandoned as aforesaid, to move the Court during session, or the Lord Ordinary on the Bills during vacation, to repone him to the effect of entitling him to insist in the appeal, which motion shall not be printed except upon cause shewn, and upon such conditions as to printing and payment of expenses to the respondent or otherwise as to the Court or the Lord Ordinary shall seem just."

By sub-section 5 it is provided—"On the expiry of the said period of eight days after the appeal has been held to be abandoned as aforesaid, if the appellant shall not have been reponed, . . . the judgment or judgments complained of shall become final, and shall be treated in all respects as if no appeal had been taken against the same."

This was an appeal taken against a judgment of the Sheriff of Lanarkshire, and was received by the Clerk of Court on the 12th March 1877. The appellant did not print or box any papers within the fourteen days allowed by the Act of Sederunt, and he did not apply for an order to dispense with printing. The fourteenth day expired in vacation. The appellant allowed the period of eight days after the expiry of the fourteen days to expire without applying to be reponed. On the first box-day in vacation the appellant printed and boxed the whole papers.

On the appeal appearing in the Single Bills the respondent objected to the competency—(*Park* v. *Weir*, 15th Oct. 1874, 12 Scot. Law Rep. 11.)

It was not disputed that the failure to print in time had been an innocent omission on the appellant's part.

At advising—

LORD YOUNG—The Act of Sederunt is merely a rule of Court, and it is in the power of the Court to relieve from the penalties it provides. If the Act of Sederunt implied an *ipso facto* forfeiture of the statutory right of appeal, without motion or interlocutor, so as to exclude the discretion of the Court in the matter, the Act of Sederunt is clearly *ultra vires* of the Court. In the present case there is no suggestion of delay for an improper purpose, or of the respondent being put to the slightest inconvenience. In *Park* v. *Weir* the First Division had no doubt exercised a reasonable discretion in refusing to allow the appellant to proceed, but the circumstances of that case are not fully reported. I am therefore for repelling the objection to the competency of the appeal.

LORD GIFFORD—I concur. In *Park* v. *Weir* the appeal process had been retransmitted to the Sheriff Court.

LORD ORMIDALE—I concur in the result at which your Lordships have arrived, but I cannot assent to the view expressed by Lord Young as to the binding effect of the Act of Sederunt. I do not think, however, that the present case is provided for in terms by any sub-section of the Act of Sederunt. The appeal in this case was received in due course in session time, and the period of printing expired in vacation. I do not think that case is provided for.

The Court reponed the appellant.

Counsel for Appellant — Mair. Agent—J. Wilson, L.A.

Counsel for Respondent — Lang. Agents — Macrae & Flett, W.S.

Saturday, May 26.

SECOND DIVISION.

[Lord Rutherfurd Clark, Ordinary.

BUCHANAN'S TRUSTEES *v.* BUCHANAN.

Succession—Vesting—Direction to pay to Children "procreated or to be procreated"—Distribution where Provision is made for Payment of an Annuity.

A testator directed a sum of £20,000 to be held in trust, the annual interest of it to be paid to his sister, and, on her death, to the extent of £300 to her husband, in the event of his surviving her. On her death it was further provided that the trustees were to hold and apply the said sum and its proceeds "for behoof of all the lawful children of my brother . . . procreated or to be procreated . . . equally among them, share and share alike, payable the several children's shares to the sons on their attaining twenty-five years of age, and to the daughters on their attaining that age, or being married, whichever of these events shall first happen." There was a clause of survivorship in the case of children dying without issue after the decease of the liferenter, and there was a power in certain circumstances to make advances to the children. The deed contained a bequest of residue.—*Held*, upon a construction of the deed in conformity with the testator's intention—(1) that the right of the children could not vest till the death of the liferenter, but that thereafter, notwithstanding the subsistence of the annuity, each of them took a vested interest upon his or her attaining twenty-five years, or further, if a daughter, on her being married, and that payment could not be suspended by the possibility of future children; (2) that the surplus of capital, after provision had been made for payment of the annuity, fell to be divided amongst the beneficiaries; and (3) that, even in the view of the contingency of the subsequent birth of other children who might make good their claims to participate, it was unnecessary to ordain the beneficiaries to find caution for rapayment.

Opinions that the class of beneficiaries was limited to the children in life at the date of the liferenter's death.

This was an action of multiplepoinding and exoneration raised by the trustees of the deceased Peter Buchanan, merchant, Glasgow, in the following circumstances:—

The truster, Peter Buchanan, died on 5th November 1860, unmarried, and survived by his brother Isaac and one sister Jane, the wife of Major George Douglas. She died on 9th May 1875 without issue.

Peter Buchanan left a trust-disposition and settlement, dated 24th May 1860, by which he conveyed his whole estates to the pursuers, in the first place, for payment of his debts, and, in the second and third places, for conveyance of certain subjects to his sister Mrs Douglas. By the fourth purpose of the trust the said Peter Buchanan directed his trustees to set apart and invest in their own names the sum of £20,000, and to pay the annual interest or proceeds thereof to the said Mrs Jane Buchanan or Douglas, his sister, in the event of her surviving him, at two terms in the year, Whitsunday and Martinmas, by equal portions, and so continuing all the days of her life, which provision was declared to be alimentary, exclusive of her husband's *jus mariti*, and not assignable or arrestable for her own or her husband's debts; and upon the death of the said Mrs Jane Buchanan or Douglas he directed his trustees "to pay over the said interest or annual proceeds, to the extent of £300 sterling per annum, to the said George Douglas in the event of his surviving his said wife, and that likewise at the terms of Whitsunday and Martinmas, in equal portions, beginning the first payment at the first of these terms which shall occur after his wife's death, for so much as shall then be due, reckoning from the day of her decease, and the next payment at the next of these terms thereafter for the half-year preceding, and so continuing during all the days of his life, which provision shall in like manner be alimentary, and not assignable, arrestable, or affectable for his debts and deeds:" . . . "Further, upon