that the open space in question is a court forming a common access to pemises in terms of section 4, sub-section 10, of the Act. In accordance with section 152 such a court must be at least 36 feet wide. But it is admitted that the open space laid down on the plan is only 15 feet wide. Again, by section 170 it is provided that every building erected for the purpose of being used as a dwelling-house shall have all the rooms sufficiently lighted and ventilated from an adjoining street or other open area directly attached thereto, equal to at least three-fourths of the area to be occupied by the intended building. The petitioner argues that he is not contravening this section because there is a bowling-green in front, at present unbuilt on, and that there is therefore an open space attached to the building of the area required by the statute. But I do not think that he is entitled to take advantage of the fact that the bowling-green is at present unbuilt upon. The proprietors of the bowling-green would hereafter be entitled to increase the height of their wall, or to build a pavilion, or a granary, or other high building, at the edge of their property, which would block up the light and ventilation of the petitioner's buildings. I therefore think that the space allocated to the buildings in terms of section 170 must either belong wholly to the petitioner or consist, in whole or part, of a public street or other ground, such as links or a common, which no one can hereafter build upon.

It is certainly somewhat of a hardship that the petitioner should be compelled to provide the whole 36 feet, and that the persons on the opposite side of the street, if they hereafter resolve to build on their land, should get the benefit of the open space which the petitioner leaves. But I do not see how the statute can be carried out otherwise, unless people manage to agree to build at the same time and provide the requisite space between them, viz., 36 feet.

I am therefore of opinion that the interlocutor of the Dean of Guild should be affirmed.

LORD YOUNG—I am of opinion that the judgment appealed against is right.

LORD TRAYNER—I also think that the judgment of the Dean of Guild is right.

LORD MONCREIFF—I am of the same opinion, and only add that while not dissenting from what your Lordship in the chair said about section 152, I should prefer to rest my judgment on section 170, which I think plainly applies.

The Court pronounced the following interlocutor:—

"Dismiss the appeal, affirm the interlocutor appealed against, and decern."

Counsel for the Petitioner—J. B. Morison. Agent—Marcus J. Brown, S.S.C.

Counsel for the Respondent Moncur—Shaw, Q.C.—Salvesen. Agents—Campbell & Smith, S.S.C.

Friday, December 3.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary in Exchequer.

LORD ADVOCATE *v.* SAWERS.

Revenue—Property and Income-Tax—Failure to Deliver True and Correct Statement—Property and Income Tax Act 1842 (5 *and* 6 *Vict. cap.* 35), *secs.* 52 *and* 55.

Held (*aff.* judgment of Lord Stormonth Darling) that sec. 55 of the Income Tax Act 1842, which imposes a penalty for refusing or neglecting to deliver a statement "as aforesaid," strikes at failure to deliver "a true and correct statement" as required by sec. 52, and that the penalty is incurred either if no statement be delivered at all or if the statement delivered be untrue or incorrect.

Revenue — Property and Income Tax — Prosecution in High Court—Property and Income Tax Act 1842 (5 *and* 6 *Vict. cap.* 6), *sec.* 55.

Held that under sec. 55 of the Income Tax Act 1842 it is not necessary that proceedings against an offender should have been taken before the commissioners antecedent to a prosecution in the High Court.

Revenue— Recovery of Penalty—Limitation—Taxes Management Act 1880 (43 *and* 44 *Vict. cap.* 19), *sec.* 21 (4)—*Inland Revenue Regulation Act* 1890 (53 *and* 54 *Vict. cap.* 21), *sec.* 22.

Held (*aff.* judgment of Lord Stormonth Darling) that sec. 21 (4) of the Taxes Management Act 1880 does not impose a limitation of twelve months on the recovery of penalties in any manner of way; and even assuming that it did, it is superseded by the express enactment of sec. 22 of the Inland Revenue Regulation Act 1890.

This was an information presented at the instance of the Lord Advocate against George Bowie Sawers, Glasgow, for neglecting to deliver to the assessor to the Income Tax Commissioners for the city of Glasgow a true and correct statement in writing of the amount of his profits and gains chargeable with income tax under schedule D of the Act 16 and 17 Vict. cap. 34, for the year ending 5th April 1896, contrary to the provisions of the Act 5 and 6 Vict. cap. 35, secs. 52 and 55. The penalty sought to be recovered was £50.

Sawers lodged answers, in which he denied that he was guilty, and pleaded, *inter alia*, "(1) The pursuer's statements are not relevant to support the penalty sued for. (2) Proceedings for recovery of the penalty sued for being excluded by the limitation of twelve months contained in sub-section (4) of section 21 of the Taxes Management Act of 1880, the proceedings ought to be dismissed."

The Property and Income-Tax Act 1842 (5 and 6 Vict. cap. 35), sec. 48, enacts that

the assessors shall deliver notices at the houses of persons chargeable with duties under the Act, and that if any person "shall refuse or neglect to make out such lists, declarations, or statements as may be applicable to such person and deliver the same in manner directed by this Act . . . such commissioners shall forthwith issue a summons . . . to such person . . . in order that the penalty for such refusal or neglect may be duly levied."

Sec. 52. "Every person chargeable under this Act shall . . . prepare and deliver to the person appointed to receive the same . . . a true and correct statement in writing . . . containing . . . the amount of the profits or gains arising to such person from all and every the sources chargeable under this Act."

Sec. 55. "If any person who ought by this Act to deliver any list, declaration, or statement as aforesaid shall refuse or neglect to do so within the time limited in such notice . . . and if information thereof shall be given, and the proceedings thereupon shall be had, before the commissioners acting in the execution of this Act, every such person shall forfeit any sum not exceeding twenty pounds, and treble the duty at which such person ought to be charged by virtue of this Act . . . but, nevertheless, subject to such stay of prosecution or other proceedings by a subsequent delivery of such list, declaration, or statement in the case following; (that is to say) if any trustee, agent, or receiver, or other person hereby required to deliver such list, declaration, or statement on behalf of any other person, shall deliver an imperfect list, declaration, or statement, declaring himself unable to give a more perfect list, declaration, or statement, with the reasons for such inability, and the said commissioners shall be satisfied therewith, the said trustee, agent, or receiver or other person as aforesaid shall not be liable to such penalty in case the commissioners shall grant further time for the delivery thereof . . . and every person who shall be prosecuted for any such offence by action or information in any of Her Majesty's Courts, and who shall not have been assessed in treble the duty as aforesaid, shall forfeit the sum of fifty pounds."

The Taxes Management Act 1880 (43 and 44 Vict. cap. 19), sec. 21 (3), enacts: "All penalties exceeding twenty pounds imposed by virtue of this Act, the Tax Acts, or Land Tax Acts, excepting such as are directed to be added to the assessments, shall be recoverable in the High Court. (4) In default of prosecution within the space of twelve months from the time of any penalty being incurred under the provisions of this Act, or of the said Acts, no penalty or forfeiture shall afterwards be recoverable in any other manner. (5) Subject to the above restriction as to time, all pecuniary penalties not exceeding twenty pounds . . . shall be recoverable before the Land Tax Commissioners and General Commissioners respectively, and in Scotland either before the said Commissioners or before the sheriff-depute or substitute."

The Inland Revenue Regulation Act 1890 (53 and 54 Vict. cap. 21), sec. 22, enacts: "(1) Any fine or penalty incurred under any Act relating to Inland Revenue may be sued for or recovered in the High Court. (2) The proceedings for the recovery of any such fine or penalty shall be commenced within two years next after the fine or penalty is incurred."

The Lord Ordinary in Exchequer (STORMONTH DARLING) on 22nd October 1897 repelled the first and second pleas-in-law for Sawers, and granted leave to reclaim.

Opinion.—"The defender's plea to relevancy is laid upon two grounds, and I shall first deal with that part of it which maintains that the action is brought too late. The argument of the defender is that the Taxes Management Act of 1880 obliges any prosecution for a penalty to be brought within twelve months from the time of the penalty being incurred; and he further says that the period between the incurring of the penalty and the raising of this information exceeded that time. On the construction of the Taxes Management Act I agree with the view presented by counsel for the Lord Advocate, that the words in sub-section 4 of section 21 really mean that in default of prosecution within twelve months no penalty or forfeiture shall be recoverable in any other manner than before the High Court. Any other contention seems to fail altogether to give any meaning to the word 'other,' and the defender's argument really comes to this, that the section means that after twelve months no forfeiture or penalty shall be recoverable in any manner of way. The section does not say that. On the other hand, though perhaps it may be said that the words are a little elliptical, the reasonable interpretation of them seems to be that the penalty shall not be recoverable except in the manner which has just been dealt with in the immediately preceding sub-section. But then it is of much less consequence to construe the Taxes Management Act, section 21, because it seems to me that the Inland Revenue Regulation Act of 1890 is quite clear upon this matter. Mr Abel has courageously maintained that the Inland Revenue Regulation Act of 1890 has nothing to do with the Income Tax, but I fail to see how that can be supported. It seems to me that the Income Tax is one of the main sources of revenue which are under the charge of the Commissioners of Inland Revenue, and 'inland revenue' is defined in that Act as 'revenue of the United Kingdom, collected or imposed as stamp duties, taxes, and duties of excise, and placed under the care and management of the Commissioners.' To read the word 'taxes' as applicable to excise is altogether inadmissible, and when you find that the proper word relating to excise—namely, 'duties'—is expressly used, 'taxes' must mean nothing else than all taxes which are under the charge of the Commissioners. If that be so, section 22 is perfectly explicit in saying that any fine or penalty incurred under any Act relating to Inland Revenue

(and the words are as comprehensive as they could be) may be sued for and recovered in the High Court. Further, it says, sub-section 2, that the proceedings for the recovery of any such fine or penalty shall be commenced within two years next after the fine or penalty is incurred. Well, this information satisfies that provision. It is brought in the High Court, and it is brought within two years of the penalty being incurred. That objection seems to me, therefore, to fail.

"Next, it is said by the defender that the Crown has laid this information upon the wrong sections of the statute of 1842—namely, sections 52 and 55; and the argument for the defender is that section 52, which requires a statement to be made by Her Majesty's lieges with reference to their income, is studiously made different from section 55, because section 52 says that the statement which the subject is to deliver is to be a true and correct statement, while section 55 on the other hand omits the words 'true and correct' and says that if a person who ought by this Act to deliver any statement as aforesaid shall refuse or neglect so to do, then certain consequences are to follow. It seems to me that when section 55, coming as it does immediately after section 52, refers to 'any statement as aforesaid,' it must be understood as meaning the true and correct statement which is required by section 52. Anything else would really lead to absurdity. If a man were to put in a piece of blank paper and call it a statement, or if he were to lodge a statement flagrantly and extravagantly deficient or incorrect, then, according to the argument of the defender, he would be exempt from prosecution—at all events under section 55. The reasonable reading of section 55 is, that if there is a failure to deliver the kind of statement required by section 52, either by delivering no statement at all, or by delivering a statement which is untrue or incorrect, then the penalty is incurred and may be recovered in the prescribed manner.

"I have nothing to do with the motives of the defender, or with his conduct in a moral sense. I can only say whether the penalty has been incurred by the failure to deliver a correct statement. At present the defender justifies his statement by a plea of not guilty. If he adheres to that plea there must of course be inquiry."

Argued for the defender—The information was irrelevant. 1. The offence struck at by sec. 55 of the Income-Tax Act was not the giving in of an incorrect return, but the failure to make any return at all. Trustees were the only class of persons whose failure to make a correct return was mentioned by the section. The section merely dealt with the mode of recovering the penalty for a breach of the duty imposed by sec. 48. This information should have been presented under sec. 127. [Lord M'Laren—Does sec. 55 not imply that before an information is presented in Court there should have been proceedings before the Commissioners?] That was so; and there had been no such proceedings here. 2. Sec. 21 (4) of the Taxes Management Act of 1880 introduced a limitation. To interpret it as the Lord Ordinary did was to contradict sub-sec. (1), which implied that there were certain penalties not recoverable in the High Court. The Act of 1880 had not been repealed by the Inland Revenue Act of 1890 either expressly or by implication. Express repeal was what one would have expected, if so important a limitation was intended to be altered; but as a matter of fact, in the schedule of Acts repealed attached to the Act of 1890, while certain sections of the Act of 1880 were named as being repealed, sec. 21 was not mentioned—Maxwell on the Interpretation of Statutes, p. 242; *Tennent* v. *Magistrates of Partick*, March 20, 1894, 21 R. 735; *Arthur* v. *Lord Advocate*, February 20, 1895, 22 R. 382. The present information having been presented beyond the statutory twelve months was invalid.

Argued for the pursuer—The fact that trustees were specially exempted from penalties under sec. 55 showed that the whole section applied to incorrect returns. Proceedings had been taken under that section for this offence—*Attorney-General* v. *Alexander*, 10 Ex. 20. Sec. 55 provided the Inland Revenue authorities with alternative methods of procedure—one before the Commissioners, the other before the High Court. [The remainder of the pursuer's argument sufficiently appears from the opinions.]

At advising—

Lord President—A question was mooted during the debate before us which had not been argued in the Outer House or opened by the reclaimer. The structure of section 55 is such that it looks at first sight as if no person could be prosecuted under it in any of Her Majesty's Courts unless proceedings had first been taken against him before the Commissioners. It seems to me, however, that, on the hypothesis of failure or neglect stated in the opening of the section, such failure or neglect is made by its closing words directly to found a prosecution in a court of law. I omit, and deem it legitimate to omit, the words relating to proceedings before the Commissioners; and then, interpolating no single word, I read as follows:—"If any person who ought by this Act to deliver any list, declaration, or statement as aforesaid, shall refuse or neglect so to do within the time limited in such notice, or shall under any pretence wilfully delay the delivery thereof . . . any person who shall be prosecuted for any such offence by action or information in any of Her Majesty's Courts, and who shall not have been assessed in treble the duty as aforesaid, shall forfeit the sum of £50."

Turning now to the points dealt with by the Lord Ordinary, I am of his Lordship's opinion that an action lies under the 55th section, even where a return of some kind has been given in, if that return be not true and correct. To the considerations adduced by the Lord Ordinary I would add another. The provision in favour of trustees in the 55th section does not apply

directly to a prosecution in one of Her Majesty's courts. But it bears on the present question, because the necessary implication of the provision is that a trustee who gives in an imperfect return would be liable for the penalty but for the relaxation which is enacted in his favour, and the implication necessarily applies to everybody else as well as a trustee.

On the plea that the action is too late, I again agree with the Lord Ordinary. Had the matter stood on the Taxes Management Act 1880 alone, I should hold, with the Lord Ordinary, that the plea was bad. The scheme of sub-sections (3) (4) and (5) of sec. 21 is the following: (3) and (4) define the jurisdiction of the High Court as including, under (3), suits for penalties exceeding £20, and, under (4), belated suits for penalties of all amounts. Then (5) defines the jurisdiction of the other courts as applying to suits instituted within twelve months for penalties not exceeding £20. This system is not perhaps expressed in the section in the most luminous order, but the meaning is perfectly plain.

On the Act of 1890 I have nothing to add to what the Lord Ordinary has said.

I am for adhering.

LORD ADAM and LORD M'LAREN concurred.

LORD KINNEAR was absent.

The Court adhered.

Counsel for the Pursuer—D.-F. Asher, Q.C.—Young. Agent—Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Counsel for the Defender—Ure, Q.C.—Abel. Agents—Gill & Pringle, W.S.

Friday, December 3.

SECOND DIVISION.

[Lord Low, Ordinary.

EDMOND *v.* LORD PROVOST OF ABERDEEN AND OTHERS.

Succession—Fee and Liferent—Disposition to A in Liferent and "After his Death" to B in Fee—Intestacy.

A executed a disposition of the lands of K. to B, his son and heir-at-law, "in liferent, but for his liferent use only, and after his death to the Provost of Aberdeen [*here followed the names of certain other officials*] and their successors in their respective offices, and Gray Campbell Fraser, advocate in Aberdeen . . . as trustees for the uses, ends, and purposes specified or to be specified by me in any writing under my hand."

B, after his father's death, raised an action for the purpose of having it declared that the effect of the words "after his death" in the dispositive clause was to prevent the deed operating as a disposition either *de presenti* or *a morte testatoris*, and that he was entitled to the fee as intestate succession.

Held (*aff.* Lord Low) that there was a valid conveyance of the fee of the lands of K. to the trustees named, and that the intention of the truster by the use of the words "after his death" was merely to postpone the period when the trust would become operative.

Trust—Constitution of Trust—Conveyance to Trustees for Purposes to be Specified by Separate Writing — Order to Open Sealed Envelope before Period Prescribed by Truster to Ascertain whether it Contained Specification of Trust Purposes—Resulting Trust.

By holograph disposition A disponed the lands of K. to his son B "in liferent, but for his liferent use only, and after his death" to the holders of certain offices and an individual named, "and such others as he might nominate as trustees, for the uses, ends, and purposes specified or to be specified by me in any writing under my hand." A also reserved his own liferent and dispensed with delivery. A died leaving a trust-disposition and settlement in which he dealt with his whole means and estate, heritable and moveable, except the lands of K., of which (he stated) he had granted a separate disposition. In his repositories was found a sealed envelope bearing a holograph endorsation, whereby he directed that the enclosed deed was not to take effect till after his son's death, and enjoined his trustees and executors not to open the envelope until that date. Unless this envelope contained directions as to the trusts on which the lands of K. were to be held, A left no such directions. After his father's death, B brought an action in which he concluded for declarator that the holograph endorsation upon the sealed envelope did not, either by itself or along with the document, if any, which the said sealed envelope contained, affect the succession to the lands of K. He claimed accordingly that there was a resulting trust in his favour as heir-at-law. The pursuer called as defenders (1) the trustees mentioned in the disposition of K., and (2) his father's testamentary trustees. The former averred that the sealed envelope contained a specification of the trust purposes relating to the lands of K., and moved for an order that it should be opened.

The Court (*diss.* Lord Trayner) *ordered* the Clerk of Court to open the sealed envelope and to communicate to the parties the terms of the specification of the trust purposes, if any, relating to the lands of K., contained in the enclosed document.

On 30th May 1888 Mr Francis Edmond, advocate in Aberdeen, granted the following holograph disposition of his lands of Kingswells: — "I, Francis Edmond, advocate in Aberdeen, for certain good causes and considerations, do hereby give and dispone to and in favour of John Edmond, advocate in Aberdeen, my young-