for him to put into the business to enable him to begin the world again, I can perfectly well understand the reason why there was no notice taken of that contract in the declaration. Accordingly, he does say that he had not put a penny into this business, and had not a penny to put into it, and that after he had got his matters arranged friends lent him money, and he put that money subsequently into the business. I put it to the counsel for the liquidators if they were prepared to gainsay that, and if they were in a position to prove that this gentleman had funds of his own which he was improperly concealing, and I got the answer no. In these circumstances I have not the slightest doubt that the clear course in justice to the suspender was to pass the note, and that we ought to adhere to the Lord Ordinary's judgment.

I shall only say further that I think it will be matter of regret if the parties should think it necessary to go into a proof upon this matter unless they find on investigation that there is clear evidence of concealment here. On the one hand, I think the suspender is somewhat to blame for the very loose way in which his explanatory statement was framed. Perhaps he may not be himself at fault for that; it may be that his agent is to blame for it. There is undoubtedly enough in articles 5 and 6 of that statement to justify the liquidators in thinking for a time that there had been an improper concealment here. But when we come to the subsequent part of the statement, and the documents on which it is founded, I cannot help thinking that extra-judicial investigation should show one way or other quite clearly whether the sum of £600 put into the business was not got, as the suspender says it was, from friends after he had made the arrangement with the bank. If it should be found on such extra-judicial investigation—the suspender of course giving every facility in that direction—that this money was really borrowed from friends, and was not property of which he was possessed at the time he made this declaration, then I should hope that this litigation will proceed no further. It may be that the suspender ought to pay the expense caused by the loose statement in his declaration, but I think that this is a case in which the liquidators should make such extra-judicial investigation as I have pointed at, and if possible get this matter arranged.

The Court adhered to the interlocutor of the Lord Ordinary.

Counsel for Complainer and Respondent—J. G. Smith—Brand. Agent—Adam Shiell, S.S.C.

Counsel for Reclaimers and Respondents—Solicitor-General (Balfour, Q.C.)—Kinnear—Asher—Low. Agents—Davidson & Syme, W.S.

Friday, November 5.

SECOND DIVISION.

SPECIAL CASE—FERGUSSON AND OTHERS.

Succession—Trust-Disposition and Settlement—Legacy—Codicil—Construction.

By the eighth purpose of his trust-disposition and settlement D. directed his trustees to pay his nephew B. £18,000. By codicil dated nine months later he reduced the sum to £16,000. By later codicil he provided, "in addition to the legacy or legacies left to my nephew" B. "in the eighth purpose of my trust-disposition and settlement, I hereby leave him £2000." *Held* (*dub.* the Lord Justice-Clerk), on a construction of the trust-disposition and settlement and codicils thereto, that B. was entitled to a sum of £20,000.

Andrew Vans Dunlop, a surgeon in the service of the Honourable East India Company, died on 27th February 1880 leaving a trust-disposition and settlement dated 8th February 1879, and fourteen codicils thereto. By the said trust-disposition and settlement Dr Dunlop conveyed to trustees, of whom William Fergusson was the sole acceptor, his whole means and estate, and by the eighth purpose of the trust he directed them to pay "to Andrew Vans Dunlop Best, my nephew, if he survives me, or to his lawful issue if he predeceases me leaving lawful issue, the sum of eighteen thousand pounds sterling, declaring that in case the said Andrew Vans Dunlop shall predecease me without leaving lawful issue, the said sum of eighteen thousand pounds shall revert to and form part of my general estate at his death." The deed further left legacies and provisions to various persons, and finally constituted the Senatus Academicus of the University of Edinburgh to be residuary legatees.

The codicil of date 17th November 1879 (which was holograph of the testator) was as follows:—"With reference to the eighth purpose of my trust-disposition and settlement, which was executed by me in Edinburgh on the 8th day of February 1879, I hereby instruct my trustees and executors that I hereby reduce the sum of eighteen thousand pounds sterling to sixteen thousand pounds sterling, which I left in that eighth purpose to my nephew Andrew Vans Dunlop Best; and this I have done from a cause with which he is well acquainted. A. Vans Dunlop."

The codicil of date 5th February 1880 (which was also holograph of the testator) was as follows:—"In addition to the legacy or legacies left to my nephew Andrew Vans Dunlop Best in the eighth purpose of my trust-disposition and settlement which was executed by me in February last, I hereby leave him two thousand pounds sterling if my estate can afford it, and I have no doubt that it can do so. A. Vans Dunlop."

A question having arisen upon the construction of the codicil of date 5th February 1880, the parties submitted this Special Case to the Court for opinion and judgment, Andrew Vans Dunlop, who appeared as the second party in the case, maintaining that by the terms of the said codicil, of date 5th February 1880, the restriction imposed by the codicil of 17th November 1879 was implicitly revoked, and that he was therefore entitled to payment in all of £20,000, viz., £18,000 in respect of the eighth purpose of the trust-disposition and settlement, and £2000 in respect of the codicil of 5th February 1880; while the Senatus Academicus of the University of Edinburgh, who appeared as the third party, maintained that the restriction imposed by the codicil of 17th November 1879 was not revoked, and that the second party was therefore only entitled to £18,000 in all, viz., £16,000 in respect of the eighth purpose of the trust-disposition

and settlement as restricted by the codicil of 17th November 1879, and £2000 in respect of the codicil of 5th February 1880.

William Fergusson, the sole accepting trustee, appeared as the first party.

The question proposed to the Court was—"Upon a sound construction of the trust-disposition and settlement and codicils thereto of the late Dr Dunlop, is the party hereto of the second part entitled to payment of £20,000 from the party of the first part, or is he entitled to a payment of £18,000?"

It was argued for the second party—The second codicil cancelled the first and set up the eighth purpose of the trust-disposition and settlement.

It was argued for the third party that the writings must be read together. The sum to be paid was £18,000. A subsequent codicil did not revoke a prior one by implication—*Green* v. *Tribe*, June 18, 1878, 9 Chanc. Div. 231, 47 L.J. 783.

At advising—

Lord Young—This case as Mr Murray stated it is very simple, and does not admit of much argument. The question is more one of impression. The facts are within the compass of a single sentence. The testator left a legacy in his original trust-deed of £18,000 reduced by a codicil to £16,000, and then increased by a subsequent codicil which is in these terms:—"In addition to the legacy or legacies left to my nephew Andrew Vans Dunlop Best, in the eighth purpose of my trust-disposition and settlement which was executed by me in February last, I hereby leave him two thousand pounds sterling." The question being whether the legacy here referred to as the legacy left in the eighth purpose of the settlement is that legacy as diminished by the codicil of November, it is impossible to have a very confident opinion as to what was intended, as there is some ambiguity. The inclination of my own opinion—I do not give it with confidence, but it is the true legal result I think, and not contrary to the intention of the testator—is that he wishes to revert to the original legacy and to increase the amount of it by £2000. I do not mean to suggest anything approaching to a general rule as to the effect of a subsequent codicil on a prior one. I think it is clear enough that if the first codicil had simply cancelled the eighth purpose of the trust, and the last codicil left £2000 in addition, then I think without doubt the revocation would have been superseded and the legacy restored by the addition of £2000. The case here, however, is not so clear. As Mr Murray put it, there is some improbability in the argument that the testator intended first to leave a legacy, then to deduct from it, and then to add what had been deducted.

I think that the true meaning and legal effect of the second codicil is that the testator must be held to say—the legacy which I at one time intended to diminish I now wish to increase by £2000. I quite understand the argument and views of the opposite party, but putting them in opposite scales I think the views I propose to give effect to are the heaviest. I should suggest that the Court should answer the question put to them by saying that the second party is entitled to get £20,000 from the third party.

Lord Gifford—This case though short is a difficult one. It turns on two considerations very nearly balanced. There is certainly difficulty at getting at the will and intention of the testator. He made no less than fourteen codicils in one year, and was perpetually doctoring his settlement. Now, when he came to make the last of these two codicils, I am by no means sure that I can hold that he had all the former codicils distinctly in his mind. For if he had, I cannot think that he would have expressed himself as he did. He had, I think, reverted to the eighth purpose of the trust, and read it over so far as concerned his two nephews, and he deals with it as if he had said, Having reconsidered the eighth purpose of my settlement, I now want to make an addition to its provisions. That, I think, is a fair paraphrase of the codicil of February 5th, and, though with much hesitation, I have come to the same conclusion with Lord Young.

Lord Justice-Clerk—This case is so short that I am not disposed to make any remarks on your Lordships' opinions or to express a formal dissent. My hesitation would have rather led me in an opposite direction. I read the codicil as referring to all the settlements made for his nephews, and that the testator meant by the first codicil to deduct £2000, and by the second to add it on again. Still, I do not formally dissent, and agree in answering the question as your Lordships suggested.

The Court were of opinion that upon a sound construction of the trust-disposition and settlement and codicils thereto of the late Dr Dunlop, the second party was entitled to payment of £20,000 from the party of the first part.

Counsel for First and Second Parties — A. Graham Murray. Agents — Tods, Murray, & Jamieson, W.S.

Counsel for Third Parties—Dean of Faculty (Fraser, Q.C.)—Kirkpatrick. Agents—W. & J. Cook, W.S.

Friday, November 5.

FIRST DIVISION.

[Lord Rutherfurd Clark, Ordinary.

JAMIESON AND ANOTHER (LORD HUNTLY'S TRUSTEES) *v.* STEVENSON AND ANOTHER (LORD J. F. G. HALLYBURTON'S TRUSTEES).

Entail—Right of Heir of Entail in Possession to Cut and Sell Timber.

In 1838 A by a trust-disposition directed his trustees after executing the trust purposes to denude in favour of B, his nephew, and a certain series of heirs of entail, but provided that the heir in possession at the time should not be entitled to cut down the growing timber on the estate without consent and authority of the trustees, such consent to be given only when cutting was advisable for the preservation of the woods; "declaring also that the produce of all fallen trees or cut timber or bark shall be applied in discharge of the various burdens