which they were unsuccessful, and were found liable in expenses. The question then simply is, whether the creditor for those expenses, who cannot obtain payment of them from the impecunious trustees, is entitled to adjudge the trust-estate which they defended. That estate is held by the trustees in trust for the defender Mrs Elizabeth Forbes in liferent, and for her children in fee. The Lord Ordinary was moved to sist the children as defenders in this action, which motion he has not seen any reason for granting. Decree has already been pronounced against the defenders William Moncur and John Howie, who appeared and defended the action. The present compearing defenders, Mrs Forbes and her husband, did not lodge defences, but after decree was pronounced against her co-trustees she appeared and obtained right to lodge defences as having been decerned against in absence, which the Lord Ordinary allowed, and now that the defences have been seen they come to nothing. There is no averment to the effect that the trustees committed any breach of trust in litigating the case in which they were unsuccessful, and therefore no ground for saying that the debt incurred was a debt for which the trust-estate was not responsible. If the trust-estate instead of consisting of heritage had consisted of furniture held by them, it could surely have been poinded for a debt incurred by the trustees in the administration of the trust, and the case is no way differentiated when the diligence is not poinding but adjudication."

The defenders Mr and Mrs Forbes reclaimed, and argued—It was not competent to adjudge a trust-estate for debt constituted against the trustees personally. They alone litigated, and they alone should be made responsible—M'Laren on Wills, ii. 555. The decree was against the trustees personally, though they were litigating for behoof of the trust-estate. They were willing to undertake the burden of this debt, and offered to pay it by degrees from the revenue of the trust-estate. The litigation was entered upon rashly by the trustees, and was of no benefit to the trust-estate. No authority could be cited for adjudging a trust-estate in such circumstances—*Graham* v. *Marshall*, November 22, 1860, 23 D. 41.

Counsel for the respondent was not called upon.

At advising—

Lord President—There can be no doubt that the Lord Ordinary has acted quite properly here in granting decree of adjudication. The question of importance in such a case always is, were the trustees really representing the trust-estate in the litigation? If the trustees have in the past entered recklessly upon a course of litigation which has got the trust-estate into difficulties, that is a question which they and the beneficiaries will have an opportunity of settling at some future time; it, however, is not the question now before us.

In the action of declarator of irritancy the trustees were obliged to come into Court in order to save the trust-estate from forfeiture, for had they not appeared and purged the irritancy the estate would undoubtedly have been lost to the beneficiaries. When the pursuer obtained a decree for his expenses in the action, he was quite within his rights in going against the trust-estate. No doubt the remedy of adjudication is a somewhat formidable one, still, if the debt remains unpaid, the pursuer is undoubtedly entitled to adjudge the trust-estate.

Lord Mure and Lord Adam concurred.

Lord Shand was absent from illness.

R. V. Campbell, for the pursuer and respondent, in respect more than sixty days had elapsed since 26th November 1887, when decree of adjudication had been pronounced against the defenders Moncur and Howie (within which time it was necessary that the abbreviate should be recorded), moved the Court to pronounce decree of adjudication *de novo* against these defenders. He cited *Cathcart* v. *Maclaine*, December 18, 1846, 9 D. 305.

The Court adhered to the Lord Ordinary's interlocutor and granted decree of adjudication *de novo*.

Counsel for the Pursuer and Respondent—R. V. Campbell. Agent—D. Cook, S.S.C.

Counsel for the Defenders and Reclaimers—Rhind—Salvesen. Agent—D. Howard Smith, Solicitor.

Thursday, February 9.

FIRST DIVISION.

MAGISTRATES OF IRVINE *v.* MUIR.

Succession—Legacy—"Natives of Irvine."

A testator who was born in the royal burgh of Irvine in 1807, died in 1859, leaving a will made in the same year, by which he bequeathed, on the expiry of certain liferents, a sum of money to the "Magistrates and Town Council of Irvine, to be applied by them in such way and manner as they shall deem proper towards the support of aged poor persons, natives of Irvine." The legacy became payable in 1886. A special case was presented to determine whether the expression "natives of Irvine" meant (1) natives of the old royal burgh; (2) natives of the Parliamentary burgh as defined by the Reform Act of 1832; (3) natives of the burgh as extended by the Irvine Burgh Act 1881; or (4) natives of the parish of Irvine.

Held that the persons intended were natives of the Parliamentary burgh.

Robert Rankine Holmes of Barloch, writer in Glasgow, died in 1859, leaving a testament dated 16th May 1859, by which he bequeathed, on the expiry of certain liferents, the sum of £500 to the Magistrates and Town Council of Irvine, "to be applied by them as they shall deem proper towards the maintenance of aged poor persons, natives of Irvine, not receiving parochial aid, and unable adequately to support themselves."

The legacy became payable in 1886, and was paid over to the Magistrates in terms of the testator's bequest.

A question then arose as to the meaning of the expression "natives of Irvine" occurring in the will.

A special case was accordingly presented by the Magistrates of Irvine, as parties of the first part; and James Muir, an inhabitant of the extended or Parliamentary burgh of Irvine, as the party of the second part.

The royal burgh of Irvine, as defined by its old Crown charters, was, with the exception of that part of it known as the harbour of Irvine, which lay within the parish of Dundonald, situated wholly within the parish of Irvine, and on the east bank of the river Irvine. The harbour of Irvine contained a number of dwelling-houses. The jurisdiction exercised by the first parties at the date of the testator's death, and until the passing of Irvine Burgh Act 1881, was limited to the royal burgh of Irvine as defined by its charters.

Adjoining the royal burgh, but separated from it by the river Irvine, was the large suburb known as Halfway or Fullarton. This suburb lay between the burgh and the harbour; it was not within the royal burgh at the date of the testator's death, and it was wholly situated within the parish of Dundonald. Though the first parties had, prior to the testator's death, acquired by royal grant and by purchase a large portion of the lands on which the houses in the Halfway or Fullarton district were built, and of which lands they were the feudal superiors, they did not at or prior to said date exercise any jurisdiction in this district. The Halfway or Fullarton district was connected with the royal burgh of Irvine by a four-arch carriage bridge, which was built in 1746, and widened and improved in 1837.

By the Reform Act of 1832 the Parliamentary burgh of Irvine was defined so as to include the old royal burgh of Irvine and the Halfway or Fullarton district above mentioned. This Act in no way extended the jurisdiction of the Magistrates of Irvine.

By the Irvine Burgh Act 1881 the boundaries of the burgh were further extended so as to include territory beyond the limits of the Parliamentary burgh, both within the parish of Irvine and within the parish of Dundonald, and by section 24 of this Act the jurisdiction of the Magistrates formerly exercised over the old royal burgh was to be exercised over the extended burgh.

The testator was born in or about the year 1807 in the old royal burgh of Irvine, in which he was also brought up.

The first parties maintained that "Irvine" must be held to mean the old royal burgh of Irvine as it existed at the date of the testator's death, or at most the parish of Irvine, and that the persons entitled to the benefits of the bequest must be natives of the old royal burgh as defined at that date, or at most of the parish of Irvine. The second party, assuming that the date at which the terms of the testament fell to be construed was the date of the testator's death, maintained that "Irvine" must be held to mean the Parliamentary burgh of Irvine as defined by the Reform Act of 1832. The second party further maintained alternatively, if it was held that the terms of the testament fell to be construed at the date of the death of the last survivor of the testator's sisters, when the bequest became operative, that "natives of Irvine" included natives of the burgh of Irvine as extended and defined by the Irvine Burgh Act 1881.

The following questions were submitted for the opinion of the Court—"I. Is the term 'natives of Irvine' to be construed as at the date of the testator's death, or as at the date of the death of the last survivor of the testator's sisters, when the bequest became operative? II. Must the persons entitled to the benefits of the bequest falling to be administered by the first parties be natives of the old royal burgh of Irvine, or at most of the parish of Irvine? III. Are the terms of the bequest to be construed so as to include either (1) natives of the Parliamentary burgh of Irvine as defined by the Act 2 and 3 Will. IV. cap. 65, or (2) natives of the burgh of Irvine as defined by the Irvine Burgh Act 1881?"

Argued for the second party—The gift should not be limited to the inhabitants of the royal burgh only, but should extend to Fullarton also. The word "Irvine" was to be interpreted at the date of the testator's death. The jurisdiction of the Magistrates did not affect the present question, which related solely to the administration of a charity. Their appointment as administrators was not *qua* magistrates, but as a continuing body. The burgh as known to the testator, and as existing at the date of his death, was what the testator meant—*Bogie's Trustees* v. *Swanston*, February 5, 1878, 5 R. 634; *Hunter* v. *Northern Marine Insurance Company*, March 4, 1887, 14 R. 544.

Argued for the first parties—The deed interpreted itself in the present case, and any ambiguity that existed arose from going outside its provisions. The mention of the Magistrates of Irvine in the same sentence with the bequest indicated that the testator intended to restrict the beneficiaries to persons under the jurisdiction of the Magistrates. The testator was born and brought up in the old royal burgh, and he naturally meant to benefit those only who were within its limits.

At advising—

Lord President—The direction in the will is to pay £500 "to the Magistrates and Town Council of Irvine, to be applied by them in such way and manner as they shall deem proper towards the maintenance and support of aged poor persons, natives of Irvine, not receiving parochial aid, and unable adequately to support themselves." The ambiguous expression in this clause is, "natives of Irvine." The testator was born in 1807 in the old royal burgh of Irvine, and seems to have been brought up there, while professionally he was a writer in Glasgow, and owned some land in the neighbourhood, so that he had not any continuing residence in Irvine. The question therefore comes to be, whether the testator by using the words "natives of Irvine" meant to confine the benefits of his bequest to persons living within the old royal burgh, or whether he meant those also to participate who were within the Parliamentary limits as fixed by the Reform Act of 1832.

It is to be observed that there is nothing technical in the words "natives of Irvine," so the question resolves itself into a balancing of probabilities as to which of these classes of persons the testator intended. It was observed by Lord Adam that the word "Irvine" was used twice in the same sentence, once in conjunction with the magistrates, and then in connection

with the expression natives, and that it would be difficult to attach a different meaning to it on the one occasion from that given to it on the other. I am not, however, much moved by that consideration, because in referring to the magistrates the testator could give them no other designation than Magistrates of Irvine, but when he speaks of those whom he is intending to benefit he is declaring his own purpose. Now, if one places oneself in the position of a man making a will in 1859, and having a general acquaintance with the town of Irvine and its boundaries, it seems to me that the more natural supposition is, that a person expressing himself in the way that the testator here did, meant Irvine in its larger sense—that is to say, the town of Irvine as it then existed. Now, the town of Irvine as it then existed, I should say, comprehended everything that was within the Parliamentary boundaries. I cannot give any effect to the Act of 1881, because the boundary thereby created was entirely unknown to the testator, and could not have been foreseen by him. It therefore appears to me that the true answer to the case is, that the expression "natives of Irvine" in the deed is to be interpreted as meaning persons born within the Parliamentary burgh as it stood at the time of the testator's settlement and death.

LORD MURE—There is no doubt that a little difficulty has been created by the use of the words "Magistrates of Irvine" and "natives of Irvine" in the same sentence, but that difficulty may, I think, be got over by taking the words "natives of Irvine" in a popular sense. Keeping in mind the date at which the testator made his will, I agree with your Lordship in thinking that by "natives of Irvine" he meant to include all those within the Parliamentary burgh.

LORD ADAM—The question here is, what did the testator mean when he used the words "natives of Irvine?" Four suggestions have been offered as to his meaning. The first limits the beneficiaries to persons within the old royal burgh; the second embraces those within the Parliamentary burgh; the third includes all within the burgh as extended by the Act of 1881; while the fourth takes in the natives of the parish of Irvine.

As to the last suggestion there is, I think, nothing to be said for it; while as to the third it is sufficient to observe that the Act of 1881 was passed after the death of the testator, so obviously its provisions cannot apply. I think that the proper interpretation of the words "natives of Irvine" is to hold them to be applicable not merely to the old royal burgh but also to the Parliamentary burgh as defined by the Reform Act of 1832.

LORD SHAND was absent from illness.

The Court found that the terms of the bequest were to be construed so as to include natives of the Parliamentary burgh of Irvine as defined by the Act 2 and 3 Will. IV. cap. 65.

Counsel for the First Parties—Macfarlane. Agents—Morton, Neilson, & Smart, W.S.

Counsel for the Second Party—Ure. Agents—Dove & Lockhart, S.S.C.

Thursday, February 9.

FIRST DIVISION.

[Lord Fraser, Ordinary.

HUNTER AND OTHERS (TRUSTEES OF T. O. HUNTER *primus*) *v.* HUNTER AND OTHERS (TRUSTEES OF T. O. HUNTER *secundus*).

Succession—Testament—Construction—Trust.

A truster died leaving a trust-disposition and settlement, by which he directed his trustees to hold certain shares of residue for behoof of his four nephews absolutely, and for behoof of his two nieces and their issue in liferent and fee, subject to the conditions after written. There was a survivorship clause under which the shares of nephews predeceasing, without issue, should belong to their surviving brothers and sisters. There were also these provisions—"The interest in the said residue, whether in fee or liferent of my said nephews and nieces and their issue, shall not vest in them till the term of payment shall have arrived." The term of payment was by the deed declared to be the first term of Whitsunday or Martinmas that should occur after the expiry of six months after the truster's death. The deed then declared, "that in case any of my said nephews or nieces or their issue shall be pupils or minors, and unmarried at the time of my death, or when their interest in my means falls to be paid . . . then the share of such pupils or unmarried minors shall be retained till they shall successively become major or be married." There was then a discretionary power given to the trustees either to accumulate the annual proceeds while they retained the capital, or to apply them for the support and education of such pupils or unmarried minors, "and that although the said fee or principal should not have vested in such pupils or unmarried minors."

One of the truster's nephews survived the term of payment fixed by the settlement, but died unmarried before attaining majority. The share of residue destined to him was claimed by his testamentary trustees on the ground that it had vested in him, and was also claimed by the surviving nephews and nieces under the survivorship clause. *Held* that the nephew's share of residue vested in him at the term of payment fixed by the settlement, and that his testamentary trustees were therefore entitled to payment.

Thomas Oliphant Hunter died unmarried on 18th September 1877, leaving a trust-disposition and settlement dated 31st October 1876, with codicils annexed, by which he conveyed to the trustees therein named his whole estate, heritable and moveable, for the purposes therein specified.

The *eighth* purpose of the trust was as follows:—"I direct my trustees to divide the rest, residue, and remainder of my estate, heritable and moveable, into two equal por-