present claimants put on it was in accordance with the general rule, and the *onus* was on the other claimant to take the case out of the general rule. Where "equally" occurred at the beginning of such a clause and "share and share alike" at the end, it was held to make no difference—*Renny* v. *Crosbie*, December 3, 1822, 2 S. 60.

Argued for claimant John Adam Inglis—The Lord Ordinary's decision was right. The word "equally" occurring twice showed that the testatrix had in her mind one division bipartite between her nephew and the children of her niece, and another division of the latter's share equally among the grandnephews and grandnieces. Where a division fell to be made between relations, some related to the testator in a more remote degree than others, there was always a presumption that the division was to be made *per stirpes*, although that presumption might be overcome by the words of the clause—Vice-Chancellor Malins in *Payne* v. *Webb*, 1874, L.R., 19 Eq. 29. The case of *Davis* v. *Bennet*, January 30, 1862, 31 L.J. Ch. 337, was directly in favour of the claimant's contention.

At advising—

LORD JUSTICE-CLERK — The usual rule which ought in all cases to be followed in the interpretation of a will is to give the words a meaning if a reasonable meaning can be found for them, and not to assume that words have been put into the will which have no meaning, and which do not add anything to the sense of the other words of the bequest.

Here the contention of the reclaimers proceeds practically on the footing that in this clause, "to pay the whole residue of my means and estate equally between the said John Inglis and the said children of the said Daniel M'Neil, equally between them," the two words "equally" express the same thing, and do not add anything to the sense except perhaps to emphasise it by repetition. I do not think this is a proper way of dealing with the words. We must attempt to give them some sense. I concur in the remark made on behalf of the respondent that the natural reading of such a will is that the bequest is *per stirpes* and not *per capita*, and that it will require some distinct words to show that the bequest is *per capita* and not *per stirpes*. Here there is a perfectly reasonable reading of the clause which permits the construction that the bequest is *per stirpes*. The word "equally" at the beginning means that the estate is to be divided between two sets of persons, viz., a nephew and the children of a niece, while the word "equally" at the end of the clause requires that an equal division of that share which comes to the children of the niece under this bequest is to be made among them.

I therefore think that the Lord Ordinary has come to a right conclusion and that his interlocutor should be affirmed.

LORD YOUNG—I am of the same opinion. I think, however, the case is not free from doubt; the language of the will is not at all clear. But while *in dubio*, I think the probability is in favour of the Lord Ordinary's view, although I would not put it so touchingly as the Lord Ordinary has done when he says—"I have at all events the satisfaction of thinking that the construction which I am adopting is in accordance with the ordinary motives of the human mind." Yet I think the construction of the Lord Ordinary is the more probable.

I do not know that in such a matter as this the expression of general rules from the bench is desirable. The only rule that should be followed in all these cases is a simple one, viz., that a man of business who writes a will should ascertain distinctly the intention and wishes of his client, and should express them in as clear language as he can.

LORD RUTHERFURD CLARK concurred.

LORD TRAYNER—I agree with the Lord Ordinary, and very much for the reasons and on the grounds which the Lord Ordinary has stated.

The Court adhered.

Counsel for the Claimants Daniel M'Neil junior and Others—M'Lennan. Agents—Cumming & Duff, S.S.C.

Counsel for the Claimant John Adam Inglis—Constable. Agent—P. J. Purves, Solicitor.

Thursday, June 30.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

CAMPBELL COLQUHOUN *v.* CAMPBELL COLQUHOUN'S TRUSTEES.

Succession — Accumulation — Thellusson Act 1800 (39 *and* 40 *Geo. III. cap.* 98).

In a trust-disposition and settlement the truster directed his trustees to accumulate the rents of his mines and minerals, and when the accumulation reached £25,000 to pay over the accumulated fund to the heir of entail in possession of his estates, and at the same time to convey to him the mines and minerals in the same form of entail as that under which the other estates of the truster were held by him. The truster further provided that in case from any unforeseen contingency the mines should cease to be worked, or the proceeds thereof be much diminished, the fund account was to be kept up during the lifetime of his two sons and of the first heir descending from either of them who should be in existance at the truster's death, and should have succeeded to his estates, and that thereafter the account should be closed, although the accumulated sum should not amount to £25,000, and the amount then accumulated should be paid to the

heir in possession, and the entail of the mines and minerals should be executed.

On 17th April 1891, being twenty-one years after the date of the truster's death, further accumulation became illegal in virtue of the Thellusson Act.

Held that the trustees were bound as at that date to pay over the fund then accumulated to the heir of entail in possession, and to convey to him the mines and minerals in the same form of entail as that under which he held the other estates of the truster.

The Thellusson Act 1800 (39 and 40 Geo. III. c. 98) enacts—"Whereas it is expedient that all dispositions of real or personal estates, whereby the profits and produce thereof are directed to be accumulated and the beneficial enjoyment thereof is postponed, should be made subject to the restrictions hereinafter contained . . . be it enacted that no person or persons shall after the passing of this Act . . . settle or dispose of any real or personal property, so . . . that the rents . . . thereof shall be wholly or partially accumulated for a longer term than the life or lives of any such granter or granters, settler or settlers, or the term of twenty-one years from the death of any such granter, settler, divisor, or testator," and "in every case where any accumulation shall be directed otherwise than as aforesaid, such direction shall be null and void, and the rents, issues, profits, and produce of such property so directed to be accumulated shall, so long as the same shall be directed to be accumulated contrary to the provisions of this Act, go to and be received by such person or persons as would have been entitled thereto if such accumulation had not been directed."

Section 2 of the said Act enacts—"Provided always and be it enacted that nothing in this Act contained shall extend to any provision for payment of debts of any granter, settler, or divisor or other person or persons or to any provision for raising portions for any child or children of any granter, settler, or divisor, or any child or children of any person taking any interest under any such conveyance, settlement, or devise, or to any direction touching the produce of timber or wood upon any lands or tenements, but that all such provisions and directions shall and may be made and given as if this Act had not passed."

John Campbell Colquhoun of Killermont and Garscadden, who died on 17th April 1870, left a trust-disposition and settlement dated 30th January 1864, in which he conveyed his whole landed estates in Scotland to trustees for the purpose therein mentioned.

In the fourth purpose of the trust-deed the truster, considering that there were then belonging to him valuable mineral properties, and that it was his wish that the rents from these mines should not at first be at the disposal of the heir in possession of his other Scotch estates, directed his trustees to carry the rents to an account to be called the "Garscadden trust fund account," and apply the balance in payment of certain debts and provisions —"and lastly, after satisfying all the preceding purposes, they shall accumulate the rents and proceeds of my said mines and minerals until the same shall amount to the sum of £25,000, but they shall not accumulate the interest, dividends, or annual proceeds thereof, but shall pay the interest, dividends, or annual profits of the said accumulated fund as the same shall from time to time arise yearly to the heir who shall be in possession of my landed estates for the time, . . . and though there appears to me at present to be no reason to doubt that the proceeds of my said mines and minerals will be amply sufficient to meet all the burdens which I have thus laid upon them, and to admit of an accumulation to the extent of £25,000, after paying all the burdens which I have thus laid upon them, but in case from any unforeseen contingency the mines and minerals shall either cease to be worked, or the proceeds thereof be much diminished, yet the said 'Garscadden trust fund account' shall still be kept up during the lifetime of my two sons and also during the lifetime of the first heir descending from either of them who shall be in existence at the time of my death and who shall have succeeded to my lands and estates, and in case any other mines and minerals are subsequently discovered, the proceeds of these shall in like manner be entered in the said account, and accumulated till the total free balance at the credit thereof shall amount to the sum of £25,000; and this being accomplished, I authorise and direct my said trustees to close the said account and pay over the accumulated fund to the heir then in possession of my said lands and estate, to whom my said trustees shall then also convey the said mines and minerals themselves in the form of an entail, in like manner as is hereinafter directed in reference to my landed estates: And in like manner the said account shall be closed at the death of the last survivor of my said two sons and of the first heir descending from either of them who shall have been in existence at the time of my death, and shall have succeeded to my said lands and estates, although the accumulated sum should not then amount to the aforesaid sum of £25,000, and the amount then at the credit of the said account, whatever it may be, shall in like manner be paid to the heir then in possession of my said lands and estates, to whom the said mines and minerals themselves shall be conveyed in the form of an entail as aforesaid."

In the seventh purposes of the trust-deed the truster directed his trustees as soon as they thought proper after paying his debts, &c., to convey his whole landed estates and heritages except his mines and minerals in the form of a strict entail to Archibald Campbell Colquhoun, the trustee's eldest son, and the heirs-male of his body, whom failing to the Rev. John Erskine Campbell Colquhoun, the truster's second son, and the heirs-male of his body, whom failing

to the other heirs therein mentioned.

The trustees on the death of the truster accepted office, paid the debts and provisions mentioned in the fourth purpose, and accumulated the mineral rents in terms thereof.

On 20th March 1872 Archibald Campbell Colquhoun died unmarried.

In 1873 the trustees executed a deed of entail of the truster's whole landed estates except the mines and minerals in favour of the Rev. John Erskine Campbell Colquhoun and the other heirs of entail mentioned in the trust-deed. The eldest son of the Rev. John Erskine Campbell Colquhoun was William Erskine Campbell Colquhoun, born on 2nd June 1866.

On 17th April 1891, twenty-one years after the truster's death, the mineral rents which had accumulated in the trustees' hands amounted to £12,138, 6s. 5d.

In these circumstances the Rev. John Erskine Campbell Colquhoun raised an action of declarator against the trustees to have it declared (1) that the pursuer was entitled to the accumulations from 17th April 1870 to 17th April 1891 of the revenue of the mines and minerals, and (2) to the rents which had accrued since 17th April 1891 or which should thereafter accrue from the mines and minerals, and (3) that the defenders were bound to close the trust and pay over to the pursuer the whole rents derived from the said mines and minerals with interest, and to convey to him the mines and minerals themselves in the form of an entail, and (4) to have the defenders ordained to denude as at 17th April 1891 of the mines and minerals by executing and delivering to the pursuer a conveyance thereof in the form of a strict entail in favour of the pursuer and the heirs-male of his body, whom failing the other heirs called to the succession of the other landed estates of the said John Campbell Colquhoun under the existing deed of entail thereof, and (5) to make payment to the pursuer of £12,138, 6s. 5d., or such other sum as should be ascertained to be the amount of the mineral rents accumulated to 17th April 1891, and of £1000, or such other sum as should be found to be the amount of the rents accruing from said mines and minerals subsequent to 17th April 1891.

The trustees lodged defences, and pleaded —"(3) The fourth purpose of the said trust-disposition and settlement not being contrary to the provisions of the Thellusson Act, ought to be given effect to. (4) The defenders as trustees foresaid, being bound by the said fourth purpose to accumulate the proceeds of the said mines and minerals until they amount to the sum of £25,000, and to apply the same, and to hold the said mines and minerals themselves, all as therein provided, are entitled to absolvitor with expenses. (5) In the event of any accumulation subsequent to 17th April 1891 being held illegal, the defenders, as trustees foresaid, are entitled to hold the sum accumulated prior to that date, together with the said mines and minerals themselves, till the death of the pursuer and of the first heir descending from him who was in existence at the time of the testator's death, and who shall succeed to the testator's said lands and estates, and then to dispose of them as directed by the said trust-disposition and settlement."

On 29th March 1892 the Lord Ordinary (KINCAIRNEY) pronounced the following interlocutor:—"Finds (1) that John Campbell Colquhoun of Killermont and Garscadden died on 17th April 1870, leaving a trust-disposition and settlement directing that the rents of the mines and minerals on his estate should be retained and carried to an account called the Garscadden trust fund account for the purpose of paying therefrom certain debts and provisions, and that they should be accumulated thereafter until the accumulated sum should amount to £25,000; (2) that the said debts and provisions have been paid; (3) that at 17th April 1891 there had accumulated in the hands of the trustees the sum of £12,138, 6s. 5d.; (4) that the provisions of the Thellusson Act apply, and that in respect thereof the direction to accumulate the rents after said date became null and void; (5) that the provision in the trust-deed whereby the truster directed that in the events therein mentioned, the Garscadden trust fund account should be kept up during the life of the truster's two sons, and of the heir descending from either as therein specified, does not apply to the circumstances which have happened; (6) that under the provisions of the deed, the pursuer being the truster's only son, is entitled to payment of the accumulated fund and to a conveyance of the mines and minerals in the manner directed by the trust-deed: Therefore decerns and declares in terms of the first, second, and third conclusions of the summons: Decerns and ordains in terms of the fourth conclusion of the summons; and *quoad ultra* appoints the cause to be enrolled in order to adjust the terms in which decree shall pass under the fifth conclusion thereof, &c.

"*Opinion.*— . . . . The action is defended by the trustees, who have argued that the Thellusson Act does not apply, but that the case falls under the exception specified in the second section of the Act, which provides, *inter alia*, that nothing in the Act should apply to a provision for payment of the granter's debts or for raising portions for any child or children of the granter.

"I understood the argument to be that because the primary purpose of the fourth purpose is to provide for payment of the truster's debts, and for the provision to his second son, the Act does not apply. If the debts and provision had not been paid, that argument might have been sound, and probably accumulations might have been sustained until they were paid. But it is clear that the second section does not apply to directions to accumulate after the debts and provisions had been paid, but that the primary provision of the Act then applies. I think that is obvious without further explanation, and no authority to the contrary was adduced.

"If the argument was that the accumulated sum was itself a provision, and that on that account the second section applied,

the answer is that that argument has been conclusively negatived,—Jarmyn on Wills, i. 308, and cases there quoted; and, besides, the provision is not expressly to a child of the truster, or of any person taking interest under the deed, which are the only provisions mentioned in the Act.

"The rents have not been in fact accumulated for twenty-one years, seeing that they have been employed in payment of debts and provisions. But that circumstance does not prevent the application of the statute as was decided in the recent case of *Campbell's Trustees* v. *Campbell*, 30th June 1891, 18 R. 992, where the Act was held to apply, although there had been no accumulations at all prior to the lapse of the twenty-one years. I am therefore of opinion that the Thellusson Act applies, and so far the case presents no difficulty.

"If the deed had contained no provision as to accumulation except the direction to accumulate until the sum amounted to £25,000, the pursuer's claim would probably not have been resisted; for then the provision would have merely amounted to a direction to pay to the heir in possession of the other estates, and to execute a deed of entail in his favour subject to a condition which had by operation of the statute become impossible, and which must therefore be held *pro non scripto*, which is the view which the pursuer takes, and is, I think, the sound view; and it is less favourable to him than the only alternative, viz., that a direction to pay at a time which could never arrive might be held to be no direction at all, and to leave the estate to which it referred in the position of intestacy.

"The defenders did not seriously maintain that the pursuer's claim could have been resisted if the deed had contained no other direction as to the accumulation.

"The defenders' case truly depends, and indeed was rested by them, almost entirely upon the other or subsidiary provision in the last part of the fourth clause, which has been quoted, and which requires careful consideration.

"The provision is introduced by the truster's explanation that 'there appears to me at present to be no reason to doubt that the proceeds of my said mines and minerals will be amply sufficient to meet all the burdens which I have thus laid upon them, and to admit of an accumulation to the extent of £25,000 after paying all the burdens which I have thus laid upon them,' and then the clause proceeds, that in case, from the causes stated, it should not amount to that sum, still the fund should be kept up until the events mentioned.

"The defenders maintain that this clause means simply that so long as the accumulated fund did not amount to £25,000 it should not be paid until the death of the truster's two sons, and of the heir of either who might have taken the estates. It is argued that what the testator had in his view was the cessation or diminution of the annual accumulation, and not the circumstances by which that was brought about. The defenders therefore maintain that that is the provision which applies to the present circumstances; and that if that be so, it follows from the judgment of the majority in the case of *Campbell's Trustees* v. *Campbell* that the pursuer cannot be entitled to the accumulated fund or to the estate of mines and minerals. They maintain that the postponement of the term of payment is clearer in this case than it was in the case of *Campbell's Trustees*, because of the provision that even if the working of the minerals should cease altogether and the accumulation be thereby brought to an end (as it would be, seeing that under the provision of the deed the trustees are directed not to accumulate the interest on the accumulated rents), and that that shows that the desire to accumulate was not the sole reason for postponing the payment.

"If the defenders' construction of the clause be sound, and if they are right in saying that it applies to the circumstances which have occurred, then I think the case of *Campbell's Trustees* affords a very strong ground for the conclusion which they seek to deduce from it.

"While sensible of the force of the defenders' argument, I have found myself on consideration unable to adopt it.

"The clause on which they found is singularly obscure, for not only is the object of the postponement (at least if it were not the hope of accumulation) utterly unintelligible, but the words of the clause present great difficulties. For it does not appear what period of time the truster had in view when he speculated upon the adequacy of the mineral rents to produce £25,000, nor, except very vaguely, the modification of the mineral workings which he contemplated as sufficient to bring the clause into operation.

"Suppose the pursuer had died and his son had inherited the estates and had also died before the lapse of twenty-one years after the truster's death, I apprehend that the account could not have been closed and the fund and estates conveyed unless the sum of £25,000 had been reached, or unless it could be shown that there had been such a considerable alteration on the state of the mineral workings as would make the subsidiary provision applicable.

"It is to be observed that the clause in question is only a part—and a subordinate part—of a clause the primary object of which is the accumulation of rents, so that when it speaks of the contingency of the minerals ceasing to be worked, that is not to be read as indicating that payment was to be postponed without any reference to accumulation. I think that what was meant was that any temporary cessation of the workings should not operate the closing of the account, but that it should be kept open in the expectation of accumulations.

"There is no averment that the working of the minerals has ceased or that the produce of them has diminished. There would be no ground, but for the interference of the Act, for suggesting that the subsidiary clause had come into operation.

"Matters have been going on, so far as the record discloses, in the manner which the truster expected and provided for by his primary provision. The Thellusson Act intervenes, and puts a stop not to the working of the minerals but to the accumulation of the rents; and it is said that that fact warrants the introduction of the subsidiary provision of the deed.

"I am not able to hold that. I think it would be perilous to do so. It was not *ex hypothesi* within the view of the truster. I consider that there is a special necessity for following closely the very words when construing a trust-deed which is rendered partly inoperative by the Thellusson Act, and this especially, which is an important consideration, when the result and object of extending the provisions beyond the letter of the deed is to operate a partial disinherison of the heir-at-law.

"For these reasons I am of opinion that the circumstances have not occurred to which the provision on which the defenders found was meant to apply, and that for the reasons already stated the pursuer is entitled to decree.

"There is another reason of a simpler nature which would lead to the same result, and which I will merely notice in a word. In the absence of authority I would hardly be prepared to rest my judgment on it. It was not argued, and has never been argued, so far as I know, in any of the many cases which have occurred about the Thellusson Act. It is this—I do not see clearly why in cases of this kind it should be assumed that neither the truster nor his law-agents had ever heard of the Thellusson Act, and why there should not rather be imputed to them a knowledge of the Act, and an intention to make the provisions of the trust-deed in accordance with it. If that were assumed, and the assumption might well be in accordance with the fact, there would be implied in every direction to accumulate this qualification, that it should be subject to the restrictions of the Thellusson Act.

"I do not see that such an implied condition would conflict with the provisions of the deed in this case. In that view, the directions of the truster as to accumulation would be read as being that the conveyance of the accumulated fund or estate should in no case be postponed for more than twenty-one years after the truster's death, but should take place sooner if before that time a sum of £25,000 should be accumulated, or (in the event of the partial or total failure of the mineral rents) if the death of the two sons and of the first heir descending from either should occur.

"My judgment, however, is independent of that view, which no doubt is not supported by any authority so far as I am aware."

The defenders reclaimed. They did not insist in the contention that the present accumulation was not prohibited by the Thellusson Act, but argued that even if the present case did fall under that Act, the operation of the Act was one of the "unforeseen contingencies" provided for in the trust-deed, and the defenders were bound by the fourth purpose of the deed to hold the fund accumulated prior to 17th April 1891, together with the mines themselves, till the death of the pursuer and his son William Erskine Campbell Colquhoun—*Campbell's Trustees* v. *Campbell*, June 30, 1891, 18 R. 992. Where there were directions in the trust-deed that accumulations were to be made, and an indication by the truster of the date at which the principal sum was to be paid over, and where the accumulations were stopped by the Thellusson Act, the time of distribution was not accelerated by the Act—*Nettleton* v. *Stephenson*, March 12, 1849, 3 De G. & J. 366; *Eyre* v. *Marsden*, July 10, 1838, 2 Keen, 564; *Muirhead* v. *Muirhead*, May 12, 1890, 17 R. (H. of L.) 45 (opinion of Lord Watson, p. 48).

Counsel for the respondent were not called on.

At advising—

LORD PRESIDENT—I am bound to say I think the effect of this deed is too clear for argument. The Thellusson Act prevents effect being given to the object which the testator had in view in the leading part of this clause. The question, as Mr Dickson admitted, therefore comes to be, whether the event which has now happened, viz., the failure of the testator's main purpose in consequence of the operation of the statute, can be regarded as an "unforeseen contingency" bringing into operation the subordinate directions in the latter part of the clause. It seems to me that that part of the deed is clearly expressed, and points out without ambiguity the event against which it is intended to provide, and the way in which such provision is to be accomplished. The clause begins—"In case from any unforeseen contingency the said mines and minerals shall either cease to be worked, or the proceeds thereof be much diminished," that is the occurrence to be provided against. Then the deed goes on—"Yet the said 'Garscadden Trust Fund Account' shall still be kept up during the lifetime of my two sons, and also during the lifetime of the first heir descending from either of them who shall be in existence at the time of my death, and who shall have succeeded to my lands and estates, and in case any other mines and minerals are subsequently discovered, the proceeds of these shall in like manner be entered in the said account, and accumulated till the total free balance at the credit thereof shall amount to the sum of £25,000." Therefore we find that the first case the testator contemplates is the case of a going mine, supplying an amount of mineral sufficient to yield £25,000 by the system of annual accumulations he prescribes. But he goes on to direct the trustees, in the event of the supposed failure of the mine, or in the event of a diminished output, not to close the mine, but to keep it going in the hope that other minerals may be dis-

covered and the process of accumulation resumed. But the Thellusson Act having come into operation, and no further accumulation being possible, the desire of the testator that £25,000 should be accumulated can never be carried out, and the question is simply, whether the operation of the Thellusson Act can be held to be provided for by the subordinate provision of the deed. I think the contention that it can be held to be so provided for is simply hopeless.

I think therefore that the pursuer, who is the truster's only son, is entitled to a conveyance of the mines and minerals, and to payment of the accumulated fund.

LORD ADAM concurred.

LORD M'LAREN—We have in this case to consider a somewhat interesting development of the case law on the effect of the Thellusson Act. Most of the cases on the subject have applied to the appropriation of the rents or proceeds of the estate which according to the truster's directions fell to be accumulated, but which were left unappropriated by the effect of the Act. The statute expresses what is to be done with the rent and income of the estate, but in terms so general that it is sometimes difficult to find out the person entitled to the income. Here there is no question as to what is to become of the future income; the question is, whether we can, contrary to the form of words used by the testator, give the accumulated sum in its incomplete state to the heir presently in possession of the testator's lands and estates. I think if this had been a case where the testator had directed a process of accumulation to go on for a definite number of years, and had pointed out who was then to take the accumulated fund, the statute would not have interfered, because the trustees would have had to keep the fund in their hands until the appointed time. But in this case the time appointed for division was when the fund amounted to £25,000. No doubt the period of accumulation is limited to the lifetime of the testator's two sons, and of the first heir descending from either of them, but subject to that limitation, the period of division is postponed till £25,000 has been accumulated. Now, that sum can never be raised; there is a legal disability which prevents the sum at present accumulated from being further increased. It seems to me that the legal solution of the question is, that the sum now accumulated having attained its maximum amount should be treated as if it had reached the sum of £25,000, and given it to the person designated in the deed as the person entitled to it in the event of that sum being reached.

I therefore concur with the Lord President and the Lord Ordinary.

LORD KINNEAR—I am of the same opinion. If the testator has postponed the period of payment so as to suspend vesting, and directs that in the meantime the proceeds shall be accumulated for any purpose, and if the accumulation is interrupted by the operation of the Thellusson Act, that interruption will not accelerate vesting.

But in the present case the postponement of payment of the estate is only made for the purpose of effecting the desired accumulation, and accordingly the testator directs that when that purpose is served the accumulated fund is to be be handed over along with the mines to the heir in possession of his other landed estate. Now it appears to me that the purpose for which the period of payment was postponed has now been served, for the desires of the testator have been given effect to as completely as the law will allow in terms of the Thellusson Act. It therefore appears to me to be clear that, but for the special provisions on which the argument for the reclaimers was founded, there could be no question that the period of distribution has now arrived, and that the pursuer is entitled to the conveyance which he asks.

It is said, however, that the period of distribution should be postponed, because the provisions of the deed vests the trust estate not in the heir who is now in possession of the testator's land, but in the heir who will be in possession at a subsequent date. But these provisions were not made for the purpose of postponing payment, but for the purpose of accelerating the conveyance of the estate even if the purpose of accumulation was not served. The testator contemplates the possibility of his trustees failing to accumulate £25,000, and directs that if they fail they are to pay over the trust estate to the heir in possession of his landed estate after the death of his two sons and the first heir descended from either who shall be alive at the date of his (the testator's) death. That is a provision for putting a stop to further accumulation, and not for postponing payment.

I therefore agree that the sole purpose of postponing payment was to enable the desired accumulation to be made, and further accumulation having been rendered impossible by the Act, we must treat the estate as if the purpose of postponement had been fulfilled and the period of distribution had arrived.

The Court adhered.

Counsel for Pursuer—H. Johnston—P. J. Blair. Agents—Strathern & Blair, W.S.

Counsel for Defenders—Guthrie—W. K. Dickson. Agents—Livingston & Dickson, W.S.