

thus conferred. On the contrary, the possession and the charter are quite consistent. That being so, the principle of the decision in *Auld v. Hay* is applicable to this case, and being applied leads to the pursuers being successful in their claim.

It was said that certain changes had been made on the marches of the land in question after the date of the charter, and that the boundaries now claimed by the pursuers are not the boundaries as they existed when the grant was executed. It does appear that in or about 1856 or 1857 some changes were made on the boundaries, although what these exactly were is not, in my view, satisfactorily established. That such changes increased the total extent of the land possessed under the charter is not certain, and if such changes were to be relied on as materially affecting the pursuers' right or title, we should have had fuller information regarding them both by way of averment and proof than has been afforded. But these changes, whatever they were, do not affect the view I take of the case. For more than the prescriptive period the pursuers have possessed the whole land now claimed by them, under a title which can be construed as embracing the whole of that land. I think, therefore, as in a question of right of property, the pursuers are entitled to our judgment.

The Court pronounced the following interlocutor:—

“Find in fact (1) that the pursuers and their predecessors in title are, and have been for upwards of twenty years prior to the raising of this action, in exclusive possession of all and whole the subjects described in the prayer of the petition, under and in virtue of the charter of novodamus by Keith Macalister, Esquire, of Glenbarr, in favour of the Society in Scotland for Propagating Christian Knowledge, dated 20th September 1854, and instrument of sasine following thereon recorded in the New General Register of Sasines, &c., at Edinburgh, 15th January 1855, but always with and under the burdens, reservations, conditions, declarations, and others specified in the said charter of novodamus, and in the instrument of sasine following thereon and executed as aforesaid; and (2) that the defender has recently entered and encroached on the said subjects and erected a wire fence thereon: Find in law, that the pursuers are in virtue of the said charter of novodamus and sasine and possession following thereon, proprietors of the said subjects, viz., all and whole that piece of ground, extending to five acres and one hundred and fifty-nine decimal or one-thousandth parts of an acre imperial measure or thereby, part of the lands of Glenbarr, with the houses and others erected thereon, as the same is fenced off from the other lands of Glenbarr by a turf fence-dyke, and is marked Nos. 679 and 680 on the Ordnance Survey map of the united parish of Killean

and Kilkennie, bounded the said piece of ground as follows, viz., on the west by the high road leading from Campbeltown to Tarbert, and on the east, north, and south by the said lands of Glenbarr, lying in the parish of Killean and shire of Argyll: *Quoad ultra*, in respect that the defender by his counsel at the bar, has undertaken not to trespass on the said subjects, and forthwith to remove the said wire-fence, and to restore the said subjects to the condition in which they were before the defender's interference therewith, Find that it is unnecessary further to dispose of the prayer of the petition, and dismiss the same accordingly, and decern.”

Counsel for Pursuers and Appellants—
Clyde. Agents—Mackenzie, Innes, &
Logan, W.S.

Counsel for Defenders and Respondents—
Mackay—Kincaid Mackenzie. Agents—
Melville & Lindesay, W.S.

Tuesday, July 11.

FIRST DIVISION.

M'KENDRICK AND OTHERS (TRUSTEES OF “JOHN REID” PRIZE),
PETITIONERS.

Trust—Educational Endowment—Cy-près.

A truster “for the purpose of assisting students in the sciences and practice of medicine” disposed certain heritable subjects to trustees in 1882, and directed that the annual proceeds should be applied for the foundation of a prize of the annual value of £25, declaring that the competition for the prize should only be open to “students in the sciences and practice of medicine of not less than two years standing,” who had attended a course of instruction in certain subjects in the University or one of the medical schools of Glasgow, and that the prize should be awarded for the best original research relating to the sciences and practice of medicine, and should be held for not more than three years.

In 1893, the Court, on the petition of the trustees, who stated that the prize had not so far been useful for its intended purpose, *authorised* the petitioners, while continuing to admit students of two years standing and upwards to the competition, also to admit qualified medical men of not more than two years standing, who could show that they were still attached to the University or one of the medical schools of Glasgow, “as *bona fide* students not engaged in practice,” and who should undertake to give up the prize in the event of their entering upon practice.

By disposition dated 10th May and recorded in the register of sasines 30th June 1882, Miss Mary Reid, on the narrative that

her brother, John Reid, surgeon, had bequeathed to her his whole estate and effects, and that she had resolved, for the purpose "not only of perpetuating his memory, but also of assisting students in the sciences and practice of medicine," to found a prize or bursary, disposed certain heritable subjects to William Tennant Gairdner, Professor of Practice of Medicine in the University of Glasgow, and his successor from time to time in said chair, and to certain other persons, as trustees, declaring that the annual feu-duty of £26, 7s. 7d. payable from said subjects should be applied for the following purposes, viz.—(First) For payment of the expenses of the trust; "(Second) For the foundation of a prize or bursary to be called the John Reid prize, of the annual value of £25 or thereby; and it is hereby provided and declared that the competition for the said prize shall only be open to students in the sciences and practice of medicine of not less than two years standing, and who must have attended at least one course of instruction on four of the following subjects, viz., medicine, clinical medicine, surgery, clinical surgery, materia medica, physiology, or pathology, given either by a professor of the University of Glasgow or by a teacher of one or more of these several subjects in one of the medical schools of Glasgow, such course of instruction having been received in whole or in part within two years of competing for the said prize or bursary; and it is further hereby provided and declared that the said prize shall be awarded for the best original research relating to the sciences and practice of medicine, or some recognised division thereof, conducted in one of the hospitals or scientific laboratories in Glasgow; and that the said prize or bursary shall be held for not more than three years by any one holder thereof, but the said trustees and their foresaids shall have the power and liberty of awarding the same for one year or more, according to their estimate of the value of the work done, of which they shall be examiners and sole judges."

This petition was presented by the trustees in 1893. They stated that owing to the existing arrangements for the medical curriculum in the various medical schools, and the early stage in their medical education at which the students were at present eligible to compete, the prize had not so far been useful for the object for which it had been founded, and the intention of the founder had been to a great extent defeated; and that since the institution of the prize in 1882 they had only seen it to be their duty to award it on five occasions. They proposed that the clause in the disposition should be amended so that the prize should be rendered open not only to students, but also to qualified medical men of not more than two years' standing, who should have attended at least one course of instruction in four of the subjects specified by the truster.

The petitioners accordingly craved the Court to authorise them to admit to competition for the prize the persons described

in the amended clause, and to administer the prize as proposed in the amended clause.

The Court remitted to Mr Maconochie, advocate, to inquire and report. In his report Mr Maconochie stated that in his view the primary object of the truster's intention was to benefit students during their curriculum; that the proposed change would practically result in ousting students from any chance of winning the prize; and that, accordingly, in his opinion it involved not merely a change in the administration, but an alteration in the fundamental objects of the endowment. On these grounds he reported against the alteration proposed by the petitioners.

At the discussion on the report, the petitioners argued that the term "students" might include qualified medical men who were not in practice, but were still devoting themselves to the study of medicine, and from remarks which fell from the bench in the course of the discussion this view seemed to find some favour with the Court.

Mr Maconochie subsequently, by direction of the Court, communicated with the petitioners with reference to the views expressed by the Court on the petition and report, and thereafter made an additional report in which he stated that the petitioners had agreed to modify their original proposal in a way which, in his opinion, would ensure that only *bona fide* students would be admitted to compete for the prize. The amended clause now proposed was in these terms:—"(Second) For the foundation of a prize or bursary, to be called the 'John Reid Prize,' of the annual value of twenty-five pounds or thereby; and it is hereby provided and declared that the competition for the said prize shall be open to the students in the sciences and practice of medicine of not less than two years' standing, and who must have attended at least one course of instruction on four of the following subjects, viz., medicine, clinical medicine, surgery, clinical surgery, materia medica, physiology, pathology, given either by a professor of the University of Glasgow, or by a qualified teacher of one or more of these several subjects in one of the recognised medical schools of Glasgow, and to qualified medical men of not more than two years' standing who have taken such course of instruction in the University of Glasgow, or in one of the medical schools of Glasgow as aforesaid, and who can show evidence that they are still attached to the University of Glasgow, or to one of the medical schools of Glasgow, as *bona fide* students not engaged in practice, and who shall undertake to give up the prize in the event of their entering upon practice before the expiry of the term for which it has been awarded; such course of instruction having been received in whole or in part within three years of competing for the said prize or bursary: And it is further hereby provided and declared that the said prize shall be awarded for the best original research relating to the sciences and practice of medicine, or some recognised division thereof conducted in one of the hospitals or scientific laboratories

in Glasgow; and that the said prize or bur-
sary shall be held for not more than three
years by any one holder thereof, but the
said trustees and their foresaids shall have
the power and liberty of awarding the
same for one year or more according to
their estimate of the value of the work
done, of which they shall be examiners and
sole judges."

At advising—

LORD PRESIDENT—The Court have seen
the additional report by Mr Maconochie,
and are satisfied that the scheme may be
settled in accordance with it.

LORD ADAM, LORD M'LAREN, and LORD
KINNEAR concurred.

The Court approved of the additional re-
port by Mr Maconochie, and authorised the
"John Reid Prize" to be administered in
accordance with the conditions proposed in
the clause contained therein.

Counsel for the Petitioners—Sym.
Agents—M'Gregor & Cochrane, S.S.C.

Thursday, July 13.

FIRST DIVISION.

[Lord Low, Ordinary.

MORRISON'S TRUSTEES v. WARD AND OTHERS.

*Succession — Settlement — Construction —
"Survivors."*

A testator, after providing for the
payment of certain annuities, directed
that the residue of the income of his
estate should be paid equally among his
children in liferent, and that upon the
death of any of his children, leaving
lawful issue, the share liferented by
such child should be paid to and among
his or her issue equally, upon their
attaining majority or being married,
declaring that in the event of any child
dying without issue, "his or her share
of the liferent of my means and estate
shall thereafter be divisible and pay-
able equally among my surviving child-
ren and their issue in liferent and fee
respectively, in the same manner, and
subject to the same restrictions as are
specified in regard to the provisions in
favour of my children and their issue
generally."

Held (aff. Lord Low) that upon the
death of a child without issue the
share liferented by him fell to be
divided equally among the surviving
children and their issue in liferent and
fee respectively, and that the issue of
predeceasing children had no right to
participate therein.

Forrest's Trustees v. Rae, &c., Decem-
ber, 20, 1884, 12 R. 389, followed.

Alexander Morrison, died on 18th April
1860, leaving a trust-disposition and settle-

ment whereby he conveyed his whole es-
tate, heritable and moveable, to trustees.
After providing for payment of certain
annuities, the testator directed that his
trustees should divide among and pay to
his children, share and share alike, the
remainder of the income arising from his
means and estate, during their respective
lifetimes, and for their liferent use alien-
ably. He further provided as follows—"Seventhly,
Upon the death of any of my children leav-
ing lawful issue, that portion of my means
and estate which was liferented by him or
her shall be paid, or disposed, or assigned,
to his or her children equally among them
upon their attaining the age of twenty-one
years or being married, whichever of these
events shall first happen respectively; and
until such event my trustees shall apply
the interest or income arising from their
respective portions of my estate or such
part thereof as my trustees shall consider
necessary for their maintenance and educa-
tion; and declaring that in the event of
any of my children dying without leaving
lawful issue, his or her share of the liferent
of my means and estate shall thereafter be
divisible and payable equally among my
surviving children and their issue in life-
rent and fee respectively, in the same
manner and subject to the same restric-
tions as are above specified in regard to the
provisions in favour of my children and
their issue generally."

The testator was survived by several
children. Of these, three daughters—Mrs
Janet Morrison or Collins, Mrs Mary Dal-
gleish Morrison or Ward, and Mrs Annie
Campbell Morrison or Lacy—died in 1877,
each leaving issue; James died without
issue in 1885; Adam, leaving issue, in 1887;
Mrs Hannah Morrison or Barr, without
issue, in 1890; and Mrs Margaret Morrison
or Lang was then left as sole survivor of
the testator's children.

In 1892 the trustees under the testator's
settlement brought an action of multiple-
pounding for the settlement of certain
questions which had arisen as to the dis-
tribution of his estate. Claims were lodged
for the issue of Mrs Collins and of each of
the other children of the testator who had
deceased leaving issue, and for Mrs Lang
and her family.

The following question was raised—
"Whether the issue of those children of
the testator who had survived him, but
had predeceased James Morrison and
Hannah Barr respectively, were excluded
from participation in the fee of the shares
liferented by the said James Morrison and
Mrs Barr respectively?"

On 22nd November 1892 the Lord Ord-
inary (Low) pronounced an interlocutor
wherein he found—"(1) That the said James
Morrison died without issue on 25th Novem-
ber 1885, and that of the share of the
testator's estate liferented by him one
third accrued to Adam Morrison and his
issue in liferent and fee respectively, one
third accrued in liferent to Mrs Hannah
Morrison or Barr, and one third accrued
to the claimant Mrs Margaret Morrison
or Lang, and her issue in liferent and fee