THE

SCOTTISH LAW REPORTER.

WINTER SESSION, 1893–94.

In order to secure regularity of publication, it is occasionally necessary to insert the Reports of Cases slightly out of the order of dates on which they have been decided.

COURT OF SESSION.

Tuesday, October 17.

SECOND DIVISION.

YEATS AND OTHERS (CHIVAS' TRUSTEES) *v.* CHIVAS AND OTHERS.

Succession — Settlement — Construction — Widow's Annuity — "Free Rental of Lands to Form Part of Annuity," whether in Addition to or in Security of Annuity.

A truster directed his trustees to pay an annuity to his widow, with power to her to bequeath the amount of the annuity to any one or more of the children she might chose. After retaining a security for the annuity, the estate was to be realised and divided equally among the children. By codicil he directed that the "free rental of" certain heritage "form part of the annuity bequeathed to my wife during her life; . . . after her death the free rental to be divided equally among my children."

The widow contended that she was entitled to the free rental of the lands in addition to the annuity provided.

Held that the truster intended that the free rental of the lands should be held by the trustees as part of the funds set apart for the annuity.

James Chivas, merchant in Aberdeen, died upon 8th July 1886, survived by his widow and four children.

By his settlement of 9th March 1881 he directed his trustees "to pay to my said spouse, free of all deductions, an annuity of £500 sterling, . . . with power to my said spouse to bequeath the amount of said annuity to any one or more of our children as she may think fit: In the fourth place, I appoint my said trustees to allow my said spouse to occupy, until the final division of my estate after mentioned, free from rent and feu-duty, my said dwelling-house in King Street and my said dwelling-house at Thornhill; . . . and after retaining what is sufficient to provide for the said annuity to my said spouse, and a further sum of £75 sterling to be paid to her yearly during her life in lieu of her right of occupancy of said dwelling-houses: . . . Declaring that on the death of my said spouse the amount retained to provide for said sum of £75 yearly to her, and also the amount retained to provide for said annuity of £500 to her in the event of her not having exercised her power of bequeathing the same above mentioned, shall be divided among my said four children equally in the manner above pointed out in regard to the remainder of my estate."

By holograph codicil dated 16th April 1885 he directed his trustees—"First, that the free rental of Thornhill lands form part of the annuity bequeathed to my wife during her life: Second, that the houses and grounds of Thornhill be kept in my family during their lives, and in equal shares: . . . Seventh, after the death of my wife the free rental of Thornhill, after all expenses are paid, to be divided equally amongst my four children, and when any of my family dies, then their children (if any) to succeed to their share."

A special case was presented by (1) the trustees, (2) the widow, and (3 and 4) the surviving children and trustees of deceased children, for answer to, *inter alia*, the following question — "Is the testator's widow entitled under the deed of settlement and third codicil to the liferent of Thornhill House, offices, grounds, and agricultural lands, or to any and which part thereof, over and above the annuity of £500 and the yearly payment of £75?"

Cases cited—*Straton's Trustees* v. *Cunningham*, March 10, 1840, 2 D. 820; *Horsbrugh* v. *Horsbrugh*, January 12, 1847, 9 D. 329; Jarman on Wills, i. 499.

At advising—

LORD JUSTICE-CLERK — [*Having stated the facts*]—I am unable to read this clause as giving a new legacy of the rents of Thornhill lands to the widow. That result can only be reached by implication, and I see no reason for such an implication. I think the clause means this only, that the trustees are to apply the rents of Thornhill lands so far as they may go to payment of the annuity, and in this way to relieve the moveable estate to that extent of the burden of paying the annuity, so that only so much of the moveable estate is to be retained as will be sufficient to meet the balance of the annuity. Therefore I propose to answer the first question in the negative.

LORD YOUNG—I may say I am generally of the same opinion. I cannot say however that the decision of the first question is altogether free from difficulty. The question is whether the widow Mrs Chivas is entitled under two deeds by her late husband, in addition to a liferent of £575, to the liferent of the house and grounds of Thornhill House? She is certainly not entitled to any such liferent under the original deed, but it was contended—and I cannot say without plausible grounds for the contention—that she was so entitled under a codicil. This codicil is in the form of a letter by the testator to his trustees, by which he indicates his intention to make certain alterations on his original settlement, and which he desires should be carried out if he does not find any opportunity of putting them into a more formal deed with the help of a practised conveyancer. I think any document of that kind should be read liberally and with a desire to carry out what was the intention of the testator.

Now, it is clear, when he wrote this codicil that he intended his widow should have an annuity of £500, and that his trustees should lay aside sufficient funds to pay this annuity, and the free rental of the lands to form part of the annuity. Now, there are difficulties in holding that he intended this liferent should be held by the trustees only as part of the funds put aside to meet the payment of the £500 annuity, and therefore I say it is a plausible contention that he meant his wife's income should be increased by the rent brought by the villa and grounds. That contention receives some confirmation from a clause which occurs later in the codicil, that after his wife's death the free rental of Thornhill is to be divided equally among his four children. But on the best consideration I have been able to give to the subject, I have come to the conclusion that it would be unsafe to read this provision as giving the rental of Thornhill to his widow, in addition to the annuity formerly provided for her. To do so would mean that we should read into the codicil the words "in addition to" instead of "form part" of the annuity.

Then with respect to the argument that there is an implied gift of the liferent of Thornhill to his wife by the delay which he says is to take place in the payment of it to his children, that would have been very strong if it had not been for the previous words which explain the reason for delaying the payment until her death.

LORD TRAYNER concurred.

The Court answered the first question in the negative.

Counsel for First and Second Parties—Comrie Thomson—Abel. Agents—Auld & Macdonald, W.S.

Counsel for Third Parties — Glegg. Agents — J. Douglas Gardiner & Mill, S.S.C.

Counsel for Fourth Parties — Lees. Agent—S. Greig, W.S.

Wednesday, October 18.

SECOND DIVISION.

[Lord Low, Ordinary.

NATIONAL BANK OF SCOTLAND, LIMITED *v.* WILLIAM DIXON, LIMITED, AND COWANS.

Bankruptcy—Husband and Wife—Married Women's Property Act 1881 (44 *and* 45 *Vict. cap.* 21), *sec.* 1, *sub-secs.* 3 *and* 4—*Deposit-Receipt in Name of Husband and Wife.*

The Married Women's Property Act 1881 provides that the wife's separate estate shall not be liable to diligence for the husband's debts if invested in the wife's name, or in such a way as clearly to distinguish it from the husband's estate, but (sub-section 4) if entrusted to the husband or inmixed with his funds, it shall be treated as assets of the husband's estate in bankruptcy.

At her marriage a wife had a sum of £70 invested in deposit-receipt in her own name. She afterwards drew and re-deposited this sum in the joint names of herself and husband, and to this she subsequently added various sums received from her husband, the money being lodged on deposit-receipts in the names of the spouses and repayable to either or survivor. The husband was seques-