Tuesday, January 25.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

THE GOVAN NEW BOWLING GREEN CLUB *v.* GEDDES AND OTHERS.

Proof—Limitation of Proof to Writ or Oath of Party—Bargain concerning Heritage —Trust.

The proprietor of a certain plot of ground conveyed the same to two persons in trust for themselves and twenty other persons to the extent of one twenty-second part *pro indiviso* each, with full power to the trustees to sell the ground. In an action raised by the Govan New Bowling Green Club against these twenty-two persons to have it declared that the Club had the beneficial right to the ground in question, or alternatively that the conveyance was a trust in the persons of the two disponees for behoof of the Club, the pursuers averred that they had been desirous of acquiring for their own the said ground; that the Club not having funds, it was arranged that each of the twenty-two members should contribute a sum of money to make up the purchase price; that an agreement had been entered into by the twenty-two members to take the title as it was actually taken; that the Club had regularly paid the interest on the price to the subscribers; that it was understood and agreed upon between the Club and the twenty-two contributors that the Club should have the right to repay the sums so advanced by them, and thereupon should have the entire beneficial interest in the ground; and that this agreement was embodied in an undated document signed by the contributors and delivered to the Club.

Held (*aff.* judgment of Lord Kincairney, though on a different ground) that these averments could be proved only by writ or oath of the defenders, the substance of the averment being an agreement concerning heritage.

In 1867 Archibald M'Vicar, with the special advice and consent of twenty-two persons named (including the disponees), disponed a piece of ground in Govan in favour of John Hinshelwood and Robert Smith and the survivor of them, and the heir of the survivor in trust, and as trustees or trustee for behoof of themselves and the remaining twenty of the said twenty-two persons and their assignees or representatives, to the extent of one twenty-second part or share *pro indiviso* each, "with full power to the said trustees or trustee and their foresaids to sell and dispone the said lands and others after disponed . . . and to borrow money on the security of the subjects."

In 1897 the Govan New Bowling Green Club and the directors thereof (acting on the instructions of the Club) raised an action against Mrs Grace Pearson or Geddes and the remainder of the said twenty-two persons or their representatives to have it declared that the pursuers "are now entitled to the full rights and beneficial interests of the said twenty-two parties and their representatives" in the piece of ground in question, "and to the whole of the said one twenty-second parts or shares" thereof "as fully and effectually in all respects as if the said subjects had been conveyed to the said John Hinshelwood and Robert Smith . . . in trust for the said Club instead of for the purpose named in the said disposition," and that the club "is now entitled to demand and obtain from Mrs Geddes . . . a valid and effectual disposition and conveyance of the said subjects executed by herself . . . to such person or persons as the said Club may nominate to hold the same as trustee or trustees for the said Club," upon the Club making repayment to the parties in right of the said twenty-two parts or shares of the amount paid by them towards the purchase of the said shares. There was an alternative conclusion of declarator that the disposition granted by M'Vicar to Hinshelwood and Smith was a trust in the persons of the latter for the use and behoof of the members of the Club.

The pursuers averred that in 1867 they became desirous of acquiring the ground, which they had hitherto rented as a bowling-green. "(Cond. 2). . . All the ground in the neighbourhood was being feued, and the nature of the district altered in consequence. The ground was becoming too small for the increasing number of members, and its turf had gone out of condition. In these circumstances the Club felt it expedient to acquire from the landlord by purchase the whole of his feu (the green being only a part thereof). There were, however, no funds, or at all events no sufficient funds, in the Club available for the purchase, the price demanded by Mr M'Vicar being £100. After much negotiation and discussion, however, an arrangement was made for providing the money required, which arrangement is embodied in an undated document, which was delivered to the Club at the time it was signed, and has remained in its repositories ever since. The document is in the following terms:—'Mr M'Vicar, the proprietor of the feu of which the Govan Bowling Green forms a part, having offered to take the sum of £100, and assign his whole right and interest in the whole feu, the undersigned agree to take the following shares of £1 each, repayable by the Club, with interest at 5 per cent. per annum.' It is signed by sixteen of the then members of the Club, who agree to take among them the whole 110 shares, one taking ten shares, another twenty, a third fifteen, and the remaining thirteen five shares each. It is believed that these three members, who took more than five shares, retained five shares each and distributed the rest of their holdings to other members, giving five to each of these other members and bringing up the total number of holders to twenty-

two. The arrangement which the said document embodies was duly carried out, and a minute of agreement, dated 25th, 27th, and 29th November, 7th, 13th, and 24th December 1867, was entered into and executed by and between the said twenty-two members who advanced to the Club the purchase price in terms of the foregoing arrangement, and the price thus provided having been paid by the Club to Mr M'Vicar, he granted the disposition after mentioned." (Cond. 3) The pursuers here set forth the substance of the minute of agreement, the material parts of which were as follows:—Upon the narrative that the parties hereto have mutually agreed to purchase from Mr M'Vicar the said ground at the price of £100, to be contributed by the parties thereto in equal proportions, and that for the purpose of continuing the same as a bowling green so long as the parties should resolve; and whereas it has been agreed to take a conveyance of the said subjects to certain parties in trust on certain terms and conditions, therefore the parties have agreed as follows, viz., (1) the conveyance shall be in name of John Hinshelwood and Robert Smith, and the survivor of them, in trust, for behoof of themselves and the whole other parties thereto, to the extent of one twenty-second *pro indiviso* part or share each. (2) The absolute powers of sale and borrowing to be conferred on the trustees shall not be exercised by them unless and until so resolved upon by a majority in number of shares held by those present at some meeting to be convened. (3) The said trustees shall be entitled, without the consent of any party whatever, to enter into such arrangement for leasing the said subjects, or any portion of them, for the purpose of a bowling green or other similar purpose, and on such terms as they may in their discretion consider proper. "(Cond. 5) The price which Mr M'Vicar accepted for said subjects was greatly less than their real value at the time, as he and all concerned well knew, and he only agreed to accept so small a price upon the urgent representation on behalf of the Club by several of its members, including the twenty-two members who were parties to the said agreement, that he should, out of public spirit, accept that price, which was all that the Club or its members could afford to give. Mr M'Vicar accordingly, after some persuasion, agreed on these grounds to accept the sum offered, but he could have obtained, as he well knew, five or six times the price if he had exposed the ground to sale in the ordinary way. Since the disposition was obtained, and down to the present time, the Club has constantly occupied and used the said ground, and it has always been looked upon and treated as the Club's property by the members generally, and by the original contributors, and, until quite recently, by the representatives of such as are deceased. (Cond. 6) At a meeting of the Club held on 17th November 1878 it was resolved to contribute £10 towards the cost of erecting a boundary wall between the green and the adjoining ground held by one Mr Leadingham. A former lease, dated 28th and 29th January and 16th February 1869, was entered into for nineteen years from Martinmas 1868, the rent being £17, 10s. The Club, however, have never been asked to pay said rent, nor have they in fact done so. They have, however, regularly paid interest on the price at 5 per cent. to the said Robert Smith, who granted receipts therefor in the following or similar terms:—'Received from the Treasurer of "Govan Bowling Club" as interest due to Govan Bowling Green Feu Trustees at Martinmas last, five pounds and five shillings. (Signed) ROBERT SMITH (trustee) £5, R.S. 5s.' The said Robert Smith, it is believed and averred, distributed the sums he thus received as interest among the twenty-two holders and their representatives, who granted receipts expressly acknowledging receipt of 'interest on their shares.' The said Robert Smith was trustee and agent for them in signing said receipts. The Club have also regularly paid the feu-duty direct to the superior. They have, moreover, regularly paid poor rates both as proprietors and occupiers. They are entered as proprietors in the valuation roll, and are assessed for and pay property tax under Schedule A. In the valuation roll for 1868 the Govan Bowling Green Club is entered as proprietor. In 1869 the entry is 'Trustee for Govan Bowling Green Club.' These entries were made from returns by Mr W. M. Wilson, writer, who was law-agent for the shareholders, and prepared the deeds in connection with the transaction, including the said minute of agreement and disposition. Further, following upon said disposition, the Club appealed to the public for, and obtained upwards of £400 in subscriptions, which sum they applied towards the improvement of the said subjects. They also about the same time borrowed a sum of from £300 to £400, which they likewise expended upon the improvement of the said subjects. Debentures were issued to the members for the debt, and the Club has since paid them off. (Cond. 7) The facts above set forth were well known to and acquiesced in by the twenty-two holders of the 110 shares. They were all directors of the Club, and they took an active part in obtaining subscriptions on behalf of the Club, and represented to parties from whom they solicited subscriptions that it was for the improvement of the Club's property. It was their intention and that of all the other members of the Club, and it was understood and agreed upon between them and the Club at the time the above arrangement was come to, that the Club had right to repay, and might at any time insist upon repaying, the twenty-two contributors the £110, in so far as that sum had been advanced to the Club for the purchase of the property, with interest at 5 per cent. so far as unpaid; and that the Club would thereupon have the sole and entire beneficial interest of the said twenty-two members in the said subjects, and might call

upon the trustees feudally vested in the subjects to denude themselves thereof, and to convey the subjects in favour of any parties who might be named to hold the same as trustees for the Club. The undated document above referred to embodied and gave effect to this agreement, and was entered into and signed and delivered for that purpose. In any view, the said disposition and the deed of assumption and conveyance, and the charter of novodamus after mentioned were really a trust in the persons of the grantees for behoof of the said Club and the members thereof. (Cond. 8) Notwithstanding the facts and the terms of the deeds above referred to, certain of the owners, or representatives of the original owners of the 110 shares, have announced their intention to have the green sold, and to appropriate the proceeds of the sale as their own property. The Club, however, are anxious to retain the green, which has greatly increased in value, and they claim it as being truly their property. They are willing to make good to the holders of the 110 shares the purchase price and all other sums, if any, which they can show to be due to them in virtue of their right to the said shares. Accordingly, a special general meeting of the Club was held on the 28th October 1896 for the purpose of considering and taking action in the matter. It was unanimously resolved to raise the present action, and the meeting instructed that the proceedings be taken in the names of the Club and of the president, Mr James Allison, and the other parties, who are the individual pursuers in the present action. The present proceedings have accordingly been instituted."

The pursuers concluded by explaining that the defender Mrs Geddes was the heir-at-law of Robert Smith, the last survivor of the three trustees to whom on the death of Hinshelwood the property had been conveyed by Mr Smith himself.

The pursuers pleaded—"(1) The said Club, being now the sole parties beneficially interested in the said subjects, are entitled to have declarator of their right and interest therein in terms of the conclusions of the summons to that effect."

The defenders pleaded—"(1) No title to sue. (2) The pursuers' statements are irrelevant, and insufficient to support their pleas. (3) In any view, the pursuers' averments are proveable only by writ or oath."

On 10th December 1897 the Lord Ordinary (KINCAIRNEY) repelled the defenders' plea to title, and on 17th December 1897 his Lordship sustained the defenders' third plea-in-law.

Opinion.—"The disposition referred to in the summons and the subsequent deeds under which the feu which includes the bowling green is held have now been produced. The disposition was registered in the Register of Sasines on 24th December 1867. It is a somewhat peculiar deed, for it is granted, not by the owner of the land alone, but by him with the consent of twenty-two individuals named in favour of two of them (Hinshelwood and Smith), in trust for behoof of themselves and of the other parties named, and it contains a power to the two trustees to sell or to dispone in security. The present action is of a remarkable kind, and no similar case was referred to. There are two conclusions of declarator expressed alternatively. The first is for declarator that the Club are entitled to the full rights and beneficial interests of the twenty-two defenders in the subjects as fully as if they had been conveyed to Hinshelwood and Smith in trust for the Club instead of for the purpose named in the disposition, and that the Club is entitled to obtain from the defender Mrs Geddes, the person now feudally vested in the subjects, a disposition in favour of such person as the Club may appoint to hold the subjects in trust for the Club. The alternative conclusion is for declarator that the disposition was in trust in the persons of Hinshelwood and Smith for the members of the pursuers, the said Govan New Bowling Green Club.

"I am unable to distinguish these two conditions. I think they are substantially the same, and that each is a conclusion of declarator of a trust in the person of Hinshelwood and Smith (and, of course, their successors) for behoof of the Govan Bowling Green Club. That being so, the defenders maintain that the Act 1696, c. 25, which provides that no 'action of declarator of trust shall be sustained as to any deed of trust . . . except upon a disposition or back-bond by the trustee,' or unless the same be referred to 'oath of party *simpliciter*' applies; and they have accordingly pleaded 'The pursuers' averments are proveable only by writ or oath.'

"Had the disposition been in favour of Hinshelwood and Smith absolutely, or of the twenty-two individuals directly, this conclusion could not have been disputed. But this case presents this remarkable speciality, that the deed, the trust character of which is sought to be declared, is expressly a trust-deed, and no declarator to ascertain that is necessary. But what the pursuers say is, that although it bears to be a trust for the twenty-two individuals, it is really a trust not for them at all but for the Bowling Club. What is suggested is that the trust was expressly constituted in their favour in order to secure repayment to them of the money which they had advanced, which money the pursuers now offer to repay. The pursuers conclude that Hinshelwood and Smith held, and that Mrs Geddes, their successor in title, now holds, the property in trust for them. But I think it impossible to hold that the trust which the pursuers allege could ever have been proved by the writ or oath of Hinshelwood or Smith as against the twenty-two beneficiaries, or can now be proved against the twenty-two defenders by the writ or oath of Mrs Geddes, their successor in title. I think the true view of the case is this, that the disposition bears to confer on the twenty-two individuals an absolute beneficial interest, and that the case that the pursuers have to make out is that the right of these individuals to that beneficial interest was not an unqualified right, but a right in

trust for the Govan Bowling Club. In that view, it appears to me that these twenty-two individuals are to be regarded as the alleged trustees. It appears to me, however, that the action is not the less a declarator of trust, that the Act 1696, c. 25, applies, and that therefore the defenders' plea that the pursuers' averments are proveable only by writ or oath must be sustained. If this judgment be against the real truth and justice of the cause, that is only the untoward result which happens always when parties grant an absolute deed which is truly in trust and fail to provide the statutory proof of the trust.

"I daresay a reference to the oath of the defenders would in all probability be idle. But it is for the pursuers to consider whether they shall endeavour to establish that any of the writs referred to on record can be made out to be the writs of the defenders, or of those whom they represent, and to establish the rights of the Club to the subjects.

"In sustaining the third plea for the defenders I do not touch such questions."

The pursuers reclaimed, and argued—The Act 1696, cap. 25, had no application here. What the pursuers were maintaining was that a certain qualification attached to the interest of the beneficiaries. Such a contention did not fall within the scope of the statute, which only applied as between truster and trustee—*Montgomery's Executors*, February 7, 1811, F.C.; *Elibank* v. *Hamilton*, November 16, 1827, 6 S. 69; *Stewart* v. *Sutherland*, December 19, 1868, 7 Macph. 298; *Pant Mawr Quarry Company* v. *Fleming*, January 16, 1883, 10 R. 457; *Laird & Company* v. *Laird & Rutherfurd*, December 9, 1884, 12 R. 294; *Hastie* v. *Steel*, March 19, 1886, 13 R. 843, *per* Lord Craighill, 851; *Gardiner* v. *Cowie*, January 28, 1897, 4 S.L.T. No. 355; Dickson on Evidence, sec. 577. [The LORD PRESIDENT referred to *Duggan* v. *Wight*, 3 Pat. App. 610.] The present case was analogous to one of partnership—*Baptist Churches* v. *Taylor*, June 17, 1841, 3 D. 1030; *Forrester & Company* v. *Robson's Trustees*, June 5, 1875, 2 R. 755. A proof before answer should be allowed.

Argued for the defenders — Assuming that there was here a relevant averment of trust, the Lord Ordinary was right in holding that proof must be limited to the defenders writ on oath, though how such a proof could be worked out in practice was difficult to see. But there was no relevant averment of trust or of any other contract entitling the pursuers to declarator as sued for. It was not averred that the so-called agreement conferred any rights upon the club or subjected it to any obligations. Even if partnership had been relevantly averred, proof was limited to party's writ on oath—*Laird, ut sup.*

At advising—

LORD PRESIDENT—I am not surprised that there should be some doubt as to the true nature of the pursuers' case, but I am unable to agree with the Lord Ordinary in holding the facts alleged to constitute a case of trust falling under the Act 1696, cap. 25. What influences my opinion is not at all the peculiarity in the case to which the Lord Ordinary refers in the last paragraph on page 2 of his opinion. The circumstance that in the disposition by the seller of the bowling-green Hinshelwood and Smith are made trustees for the twenty-two does not create any real difficulty in the way of the theory that the twenty-two were trustees for the Club. The disposition, it is true, confers on Hinshelwood and Smith the formal title, but it also confers on the twenty-two the beneficial right; and to my thinking a declarator of trust might quite competently be pronounced against the twenty-two (if the facts allowed it) that the beneficial interest was truly vested in them in trust for the Club; they might be required to convey that interest to the Club or its nominee, and the Club would then exercise, in relation to Hinshelwood and Smith (or their heirs), the rights of the twenty-two.

But then comes the question—Is a case of trust set out on record? Now, the pursuers do not allege that from the beginning the property was theirs, and that the twenty-two were only their trustees. On the contrary, the theory of the record is that the twenty-two bought the property with their own money and became owners of the bowling-green for themselves beneficially, and all the right ascribed to the Club is a right to demand a conveyance of the property if and when the Club raised the money and tendered it. Unless and until this happened, the twenty-two were owners of the property, and their right was only qualified by this obligation to sell in a certain event. In the present case, therefore, the land was not the Club's, nor was the money that bought it the Club's, and the only right relating to the bowling-green which the Club is said to have had was an obligation granted by the twenty-two to sell to the Club if and when they tendered the price.

This is the pursuers' story, and it seems to me not to be a case of trust under the Act 1696, cap. 25. On the other hand, if there is a relevant averment of an agreement at all, it is most certainly an agreement about heritage, which can only be proved by the writ or oath of the defenders. I may add that it is only with difficulty that I have contented myself with the opinion that there is a relevant averment of an obligation.

It happens that the terms of the Lord Ordinary's interlocutor require no alteration to give effect to the views which I have expressed.

LORD ADAM—As I read the pursuers' averments they come to this, that the Club was desirous of purchasing the ground on which the bowling green was laid out, that the price asked by Mr M'Vicar, the landlord, was £100, that the Club had not this amount of money available, but that it entered into an arrangement under which certain of its members, twenty-two in number, agreed to advance the money to the Club, that the

twenty-two members did advance the money to the Club, who paid Mr M'Vicar for the land, and that the Club thus became debtors for the £100 to the twenty-two. Now, the averment of the agreement between the Club and the twenty-two members is that "an arrangement was made for providing the money required, which arrangement is embodied in an undated document which was delivered to the Club at the time it was signed, and has remained in its repositories ever since. The document is in the following terms—'Mr M'Vicar, the proprietor of the feu of which the Govan Bowling Green forms a part, having offered to take the sum of £100, and assign his whole right and interest in the whole feu, the undersigned agree to take the following shares of £1 each, repayable by the Club, with interest at 5 per cent. per annum,'" which clearly means repayable to the twenty-two members. The pursuers go on to say that the arrangement embodied in this document was duly carried out, and that a minute of agreement was entered into and executed between the twenty-two members who advanced the purchase price of the bowling-green to the Club in terms of the foregoing arrangement, and that the price thus provided having been paid to Mr M'Vicar he granted a conveyance of the land. As I read the record, this is an averment by the pursuers that the arrangement between the Club and the twenty-two members was duly and properly carried out by the execution of the agreement between the twenty-two members, and that the conveyance of the land followed. Now, if we turn to the minute of agreement we find that after narrating that the parties had agreed to purchase the subjects occupied by the bowling green, and that for the purpose of continuing the same as a bowling green so long as the parties shall resolve, and that it had been agreed to take the conveyance of the subjects to certain parties in trust on certain terms and conditions, it proceeds to set forth that the conveyance shall be taken in name of John Hinshelwood and Robert Smith "for behoof of themselves and the whole other parties hereto to the extent of one twenty-second *pro indiviso* part or share, and shall contain power to sell and dispone the same by public roup or private bargain," but that these powers of sale shall not be exercised unless it is so resolved by a majority in number of shares held by those present at a meeting of the parties to the deed. Then follows a provision entitling the trustees to enter into arrangements for leasing the subjects for the purposes of a bowling green or other similar purpose.

Now, if that minute of agreement is part of the agreement between the pursuer and defenders, it is absolutely clear that there is no trust vested in the twenty-two members. They were by the terms of the agreement put in the position of absolute owners, with power to sell at any time.

But then there is another averment in article 7 of the condescendence which I think is relevant, and it is this—[*his Lordship read the averment in article 7, quoted above*]. I think that is a relevant averment of agreement between the parties that so long as the property remains in the hands of the twenty-two members the Club had a right to go to them and say, "Here is your money; grant us a conveyance of the land." It is not an averment of a trust at all, but that in a certain event the Club, if they handed over the money, were entitled to require a conveyance of the land. That, I think, is a relevant averment, but it is an averment of an agreement with respect to land, and can only be proved by writ or oath. Therefore I arrive at the same result as your Lordship, namely, that the interlocutor of the Lord Ordinary should be adhered to. Whether the proof under the Act and the proof of bargains about land are identical is a matter on which I need say nothing just now.

LORD M'LAREN—I think it is very important that no unnecessary obstacle should be allowed to stand in the way of declaring a trust. If an owner of property conveys his estate to twenty-two persons, taking no acknowledgment of trust from them, this may be a foolish thing, but still the truster will not be entirely without protection, because he would be entitled to put the twenty-two gentlemen on their oath, and if they all agreed in admitting the trust he would then get his estate back. What would happen if eleven admitted and eleven denied the trust I do not need to consider. What I wish to point out—agreeing with the first part of the Lord President's opinion—is that it can make no difference in the right of the true owner that those twenty-two persons conveyed the property to some-one else to hold for them. I think it is immaterial whether that was done for convenience, which is the pursuer's contention, or from a less legitimate motive, with a view to making it more difficult for the true owner to vindicate his right. His right lies against the persons whom he has entrusted, and if they have without consideration made over the estate to another the estate is still affected by the trust, and can be got at through the original disponees, probably by calling both sets of owners—the owners of the legal and the owners of the beneficial estate—in the same action.

But then I agree with all your Lordships that this is not a case of trust. I think the true history of the case is this—the Govan Bowling Club had no capital, and certain members who desired to secure the use of the green for the Club in perpetuity on their own responsibility, approached the proprietor and bought this piece of land, paying the price in equal shares. These parties did not hold any authority from the Club to make the purchase, nor were they under obligation to convey to the Club or to hold in trust for the Club when they did so. This view of the facts is consistent with the pursuers' averments, and it does not make the case less probable that the defenders give the same account of the matter. But then it is said that the

property was really bought for the purpose of enabling the purchasers and their fellow members to enjoy the amusement of bowling, and that an agreement was come to that whenever the Club should be able to raise the necessary sum of money, the purchasers should make over the ground to the Club, which, I suppose, would be done by means of a declaration of trust, declaring that the disponees were in future to hold for the Club. Such an obligation, it is said, is constituted by a document quoted on record, to which I need not further refer. In any case, the result of the agreement is sufficiently averred, but that is not a trust, it is an obligation undertaken by the owners of the estate to another body of persons who never were the owners of the estate, and could not declare a trust regarding it. The obligation to convey (if the paper amounts to an obligation) would, of course, be conditional on payment of the price or rental of the green.

I come therefore to the same conclusion as your Lordships, that this is an agreement relating to heritage, and as such can only be established by writ or oath.

LORD KINNEAR, who had been absent from the greater part of the debate, pronounced no opinion.

The Court adhered.

Counsel for the Pursuers—The Dean of Faculty—Clyde. Agents—George Inglis & Orr, S.S.C.

Counsel for the Defenders—Ure, Q.C.—Cook. Agents — Simpson & Marwick, W.S.

Thursday, January 27.

SECOND DIVISION.

ANDERSON *v.* SMOKE.

Trust—Construction—Conveyance to Trustees with Power of Disposal—Resulting Trust for Representatives of Truster.

In 1889 a father placed on deposit-receipt in name of his two daughters a certain sum, and handed them a memorandum for their guidance in administering the sum for behoof of his son Archibald. He desired them to pay this money and the interest on it "to and for behoof of Archibald, at such times and in such ways and sums as I may direct, and failing direction from me, at such times and in such ways and sums as they or the survivor of them may think proper. . . . Should the whole not be disposed of in the lifetime of Archibald, my said daughters may dispose of the balance in any way they should think proper."

The father died in 1892, and Archibald in 1897, both leaving trust settlements. Prior to Archibald's death his sisters had made payment to him from time to time of part of the sum deposited.

Held that no direct gift of the sum had been made in the memorandum either to Archibald or to the two daughters, and that the balance of the sum remaining at Archibald's death formed part of the father's trust-estate.

On 3rd December 1889 John Anderson, Denham Green, Edinburgh, placed on deposit-receipts in the names of his daughters Victoria and Alicia the sum of £1980, and delivered the deposit-receipts to them, one for £1200 with the Chartered Mercantile Bank of India, London, and China, and the other for £780 with the Commercial Bank of Scotland, Limited. He also handed to them a writing in the following terms:—"*Denham Green, Trinity, Edinr., 3rd Dec.* 1889.—Memorandum for the guidance of my daughters Victoria and Alicia in administrating the sums which I have recently placed in their names in trust for behoof of my son Archibald. The sums amount to £1980, being £2000 less £20, remitted by me on the second instant to Archibald at Toronto, of which £1208 is on deposit with the Chartered Mercantile Bank of India, London, and China, and £780 on deposit with the Commercial Bank of Scotland. This money and any interest and dividends arising from it or any part of it I wish them to pay to or for behoof of Archibald, at such times and in such ways and sums as I may direct, and failing direction from me, at such times and in such ways and sums as they or the survivor of them may think proper. I recommend them to keep an account of how the money, principal and yield, is applied, but they are under no obligation to account for it to Archibald or any other person, and Archibald has no right to and cannot claim it or any part of it. Should the whole not be disposed of in the lifetime of Archibald, my said daughters may dispose of the balance in any way they should think proper. They may invest the funds in any way they like, and they shall not be responsible to any one for loss which may arise out of the investment.—JOHN ANDERSON."

On 5th May 1892 John Anderson died leaving a trust-disposition and settlement disposing of his whole property.

In July 1897 Archibald Anderson died leaving a last will and testament disposing of his whole estate. Down to the date of his death his sisters Victoria and Alicia had made payments to him from time to time out of the sum of £1980. At his death the sum still held by them in terms of their father's writing amounted to £1000 or thereby.

Disputes having arisen as to the person or persons to whom this sum of £1000 belonged, a special case for the settlement of the question was presented by (1) the two daughters; (2) Archibald Anderson's trustee; and (3) John Anderson's Trustees.

The question of law was—"To which of the parties hereto does the said sum of £1000 or thereby belong?"

Argued for the first parties — On the death of Archibald they became entitled to the £1000 absolutely, and were not