interpreted as "I bequeath the whole," or "I bequeath the liferent" as "I bequeath the fee." The testator knew he had houses and that they yielded rents. He gave the rents, but he did not give more. He has not disposed of the houses themselves, and they fall therefore to the testator's heir-at-law. It was said that because the testator had not disposed of the houses by this will that he must or might be presumed to have left them to the persons who were to get the rents or profits of them. I see nothing to warrant such a presumption, or anything to indicate that the testator intended to bequeath more than he said he bequeathed.

As to the rights of the parties respectively in the subject of the bequest, the language of the testator may leave room for difference of opinion. But taking what I think is the simple and common-sense meaning of the testator's words, the bequest amounts to this—The rents of my houses are to be divided equally—one-half to Colin and my sisters, and one-half to Jessie and her sisters. That is dividing the rents equally, one-half to one set of beneficiaries and the other half to another set.

I would answer these questions accordingly.

LORD MONCREIFF—1. I answer the first question in the negative. The bequest cannot be said to be void from uncertainty, although opinions may differ as to its meaning.

2. The subject of the bequest is limited, I think, to the rent of the testator's houses, and does not extend to the fee. If the bequest had been one of the income of moveable estate there would have been ground for contending that it carried the capital. But here the subject is heritage, or rather the rents of heritage, and looking to the favour with which the law of Scotland regards the rights of the heir-at-law, I think that in the absence of any native authority to support the argument of the third and fourth parties we cannot hold that it was intended to convey the fee.

3. I have felt more difficulty about the third question, viz., how the bequest falls to be apportioned among the parties. The question is very much one of impression. My own impression is in favour of the contention of the third parties, viz., that the bequest should be divided in the proportion of two-sevenths to each of Colin and his two sisters, and one-seventh equally among the testator's niece Jessie and her two sisters. I think that one-half share means half a share. But the bequest admits of another construction, and as I understand your Lordships are agreed that Jessie and her sisters get half of the whole I do not formally dissent.

The Court pronounced this interlocutor—

"Answer the first question therein stated in the negative: Answer the second question therein stated by declaring that the subject of the bequest is the rent of the testator's houses: Answer the third question stated by declaring that the said rent is divisible equally (1) one-half thereof being payable to the testator's nephew Colin and the testator's two sisters and the survivors and survivor of them, and (2) the other half to the testator's niece Jessie and her sisters in America and the survivors and survivor of them: Find and declare accordingly, and decern."

Counsel for the First and Second Parties—Kennedy—Macphail. Agents—Kinmont & Maxwell, S.S.C.

Counsel for the Third Parties—Cullen. Agent—Andrew H. Glegg, W.S.

Counsel for the Fourth Parties—A. S. D Thomson. Agent—Alex. Ross, S.S.C.

Friday, December 22.

FIRST DIVISION.

(Without the Lord President.)

MUIR'S TRUSTEES *v.* MUIR.

(Sequel of *Muir* v. *Muir's Trustees*, 10th December 1887, 15 R. 170.)

Trust—Accumulation of Income—Authority to Make Advances—Incidence of Advances of Shares of Beneficiaries.

By his trust-deed and settlement a testator bequeathed the residue of his estate equally among his grandchildren, and directed his trustees to accumulate the income until the beneficiaries respectively attained the age of twenty-five (or being granddaughters were married), when the share of each was to be ascertained and set apart. While the beneficiaries were in minority the trustees obtained authority from the Court to make advances for their education and maintenance, and in terms of the interlocutor charged all the advances made to the general accumulation account. On an application for authority to make further advances—*held* (1) that the previous interlocutor did not decide the incidence of the advances made, and (2) that all the advances made and to be made for behoof of each grandchild should be charged to and deducted from his or her individual share.

By his trust-disposition and settlement the late Mr William Muir of Inistrynich, Argyllshire, *inter alia*, directed his trustees to hold and administer the residue of his estate "for behoof of and equally among the children of the said William Campbell Muir, and to accumulate the interest, dividends, and annual proceeds thereof until the said children respectively attain the age of twenty-five, or, in the case of daughters, until they attain that age or be married, whichever of these events shall first happen; and the shares of the accumulated principal and interest shall, in the case of sons, be paid to them on their respectively attaining to twenty-five years of age; and in the case of daughters, on

their respectively attaining the said age, or at marriage (if sooner), their accumulated shares shall be ascertained and set apart and be held and applied for them respectively in liferent for their liferent alimentary use allenarly and their respective children in fee."

The said William Campbell Muir was married on 5th September 1867, and the following are the children born of the marriage:—1. Mary Esdaile Campbell Muir (now Mrs Cook), born 24th January 1869; 2. Annie Elizabeth Muir (died 28th Nov. 1887), born 4th March 1870; 3. Alice Muir (now Mrs Gifford), born 24th January 1871; 4. Esdaile Campbell Muir, born 5th November 1873; 5. David Esdaile Muir, born 8th July 1876; 6. Florence Muir, born 22nd December 1877; 7. Margaret Muir, born 21st April 1882; 8. Violet Muir, born 20th April 1885.

On 7th August 1890 Miss Mary Esdaile Campbell Muir was married to the Reverend Edward Barnwell Cook, and accordingly, in terms of the late Mr Muir's trust-disposition and settlement, the share of residue and accumulated revenue pertaining to her fell to be set apart and held and applied by the trustees for behoof of herself and her issue. The account of accumulating revenue (accumulation account No. 1), in which the whole children were interested, and which as at Mrs Cook's marriage amounted to £32,676, 16s. 6d., was accordingly closed in the books of the trust as at said date.

On November 5, 1898, the said William Campbell Muir presented a petition to the First Division of the Court of Session, praying their Lordships to authorise and ordain the trustees of the late William Muir of Inistrynich to make payment to him of an allowance for the maintenance and education of his children; and of this date (Dec. 10, 1887) their Lordships pronounced an interlocutor authorising and ordaining the said trustees to make payment to the said William Campbell Muir of a certain proportion of the sums annually expended by him upon the education of his children, and further, to charge such payments against the share of revenue of the trust-estate pertaining to the said children. The judgment is reported as *Muir* v. *Muir's Trustees*, 10th December 1887, 15 R. 170.

On the marriage of Mrs Cook a new accumulation account (No. 2) was then commenced, against which were debited the educational and other expenses of the children other than Mrs Cook, which the trustees were authorised to pay by the said interlocutor of 10th December 1887.

On June 25 Mr Muir presented an application for a further allowance, and the interlocutor allowing this, dated June 23, 1891, contained the following clause:—"Further authorise and direct the said trustees to make such payments, and also payment of the expenses incurred by the petitioner and respondents in this application, as the same may be taxed by the Auditor of Court, as between agent and client, out of the share of the revenue of the said trust-estate pertaining to the children of the petitioner other than Mrs Cook, and to charge the same as a general payment against the new accumulation account (No. 2): Declare that the present arrangement shall take effect until the further orders of the Court."

A later application, granted on the 31st January 1893, contained a clause in similar terms—In terms of the above interlocutors of the Court, the educational and other expenses incurred subsequent to 7th August 1890 were charged by the trustees against accumulation account No. 2, and the trustees continued to so charge them until 6th November 1894, when Miss Alice Muir (now Mrs Gifford) was married, and when her share of residue and accumulated revenue also fell to be set apart and held and applied by the trustees for behoof of herself and her issue. The trustees, following the course adopted by them upon Mrs Cook's marriage, then closed accumulation account No. 2, which amounted to £11,353, 12s. 6d., and opened a new account (accumulation account No. 3), in which the children of Mr Campbell Muir, other than the said Mrs Cook and Mrs Gifford, participate. The educational and other expenses incurred subsequently to 6th November 1894 were debited by the trustees against this account.

Upon 5th November 1898 Mr Esdaile Campbell Muir, the eldest son of Mr Campbell Muir, attained the age of twenty-five years, upon which event, in terms of the late Mr Muir's trust-disposition and settlement, he acquired a vested right to a share of residue and accumulated revenue.

The trustees accordingly presented an application to the Court, in which they prayed the Court, *inter alia*, "to charge as a general payment against accumulation account No 4 (*a*) all such educational and other expenses paid or payable by the said trustees subsequent to 5th November 1898, including therein the said sum of £153, 5s. 3d. incurred on behalf of Miss Florence Muir; and (*b*) the annual allowances paid by the trustees subsequent to said date, or that may hereafter be paid during the currency of said account; this arrangement to continue until any one of the remaining said children shall become entitled to any portion of his or her share of the said trust-estate; further to authorise and direct the petitioners as trustees foresaid as the events happen upon which each of the remaining children shall in terms of the said trust-disposition and settlement respectively become entitled to any part of their shares of the said trust-estate, to follow a like course as regards the incidence of such educational and other expenses and annual allowances—that is to say, to close the then current accumulation account and open a new accumulation account, against which such payments to be subsequently made by the trustees shall be chargeable."

A minute was lodged for Miss Margaret Muir and Miss Violet Muir, the youngest children of Mr W. C. Muir, in which, with the consent and concurrence of Mr Archi-

bald Leslie, W.S., their curator *ad litem*, they stated that the proposed incidence of the payments to be authorised was of serious prejudice to them, and submitted "that the intention of the truster and the terms of the previous interlocutors could both have been given effect to by paying the sums authorised by the Court as general payments at the time when they became due, but afterwards, when the time came for paying or setting apart the respective shares of residue, *i.e.*, on the attainment of the age of twenty-five for sons, and for daughters on their attaining that age or marrying, the whole amount of the sums previously paid for behoof of the party so taking over his or her interest in the residue should be deducted from the share of such party."

They submitted that this course should now be followed.

From a statement produced by the trustees it appeared that the advances and payments made during the period from 20th May 1891 to 5th November 1898 on account of Mr Esdaile C. Muir amounted to £1719, 3s. 6d., while those on account of Miss Margaret Muir amounted to £923, 1s. 4d., and on account of Miss Violet Muir to £458, 15s. 1d.

Argued for the minuters—The truster's intention was that each of his grandchildren should benefit equally. That could only be carried out by adopting the method proposed by the minuters. The previous interlocutors did not determine the incidence of the various advances; all they decided was that the trustees had authority to make them. Although the Court had power to authorise the trustees to make advances — *Paterson's Trustees* v. *Paterson*, February 19, 1870, 8 Macph. 575—yet none of the shares had vested, and it would have been premature to determine their incidence.

The petitioners argued that the previous interlocutors should be followed.

LORD ADAM—Three questions have been argued to us in this case, but the one of most importance is the question raised by the minute for the two children, viz., how certain payments made by the trustees during the period before each child's share vested are now to be dealt with—that is, whether payments made for the behoof of each child are to be deducted from that child's share, or whether these payments are to be charged as a general charge against the estate as a whole. The matter stands thus. The late Mr Muir of Inistrynich left a will by which he made certain provisions in favour of his son, which are not now before us, and directed his trustees to hold the residue of his estate for behoof of his grandchildren, equally among them, and to accumulate the interest, dividend, and proceeds thereof until they should respectively attain the age of twenty-five, or in the case of daughters should attain that age or be married. Now, whether the grandfather thought his son had sufficient means to provide for the education of his children does not appear. Probably he did, but as by his settlement he directed that the income of the shares of residue was not to be paid but to be accumulated, and as their father ceased to be able to contribute to their maintenance, there were no funds out of which the grandchildren could be educated and brought up, and that has led to successive applications being made to the Court.

So long ago as 1891 the trustees and the father came before us for authority to make advances for the benefit of the children. The Court, whether under the authority of the Trust Act or under its *nobile officium*, granted the trustees authority to make advances, and having authorised payments to be made for the children, their order concluded in these terms—"Further, authorise and direct the said trustees to make such payments out of the share of revenue pertaining to the children of the petitioner other than Mrs Cook, and to charge the same as a general payment against the accumulation account." What gave rise to that was that one of the daughters, Mrs Cook, was about to be married, and it was with reference to paying her share that the interlocutor was pronounced. She was paid off, and the trustees were directed, having got rid of her share, to open a new accumulation account, and to charge payments made for the children to that new account. Now, the difficulty was that none of the shares vested in the grandchildren until they respectively attained the age of twenty-five, or being daughters were married, and therefore there was no individual who had a vested right in the residue. Therefore it was impossible for the trustees, or was not their duty at that time, to divide the revenue into as many shares as there were children, for the obvious reason that no one could tell how many children would survive the period of vesting, and so the Court, in the exercise of their discretion, made what I think was a very proper order that payments should be made out of the accumulations of the revenue of the trust-estate, and should be charged as general payments against the new accumulation account. Now, it does not appear to me that by that interlocutor the Court meant to decide or could decide anything regarding the ultimate shares of residue which the children were to take. I think all that was meant was—"Here is a payment to be made to a class, and here is a general fund that belongs to that class; as long as payments require to be made to the class make them out of the general fund." Now, however, the question arises in this way. One of the sons has reached the age of twenty-five, and is entitled under the terms of the trust to have his share paid to him, and the question arises whether the sum of £1719 which has been paid for his behoof before he reached that age is to be deducted from his share, or whether it is to be treated as a general payment, and to be in part borne by the other children. It seems to me that the way which is most equitable and most in accordance with the will of the truster is that each child's share should be subject to

the deduction of the money expended on the education and upbringing of that child. What the truster directed was that the residue should be held for the children equally, and what we must aim at in the ultimate distribution is to bring out an equal share to each child. I agree with the Dean of Faculty when he says that the payments already made for each child were provisional payments, and were paid towards the prospective share of each child. If a share ultimately vested in each child, then I think the payments were made as payments to account of the share of each. That being so, I think that in making the division the sum of £1719 should be deducted from the individual share now payable.

LORD M'LAREN—On the first and main question argued I am clearly of opinion that nothing further was decided under the previous application than that the sums which the Court authorised to be expended on maintenance and education were proper charges against the trust funds in a question with the trustees—that is, no question could be taken to the trust accounts on the ground that this money was improperly expended. If we had been asked to go further, no doubt a finding could have been made regarding the incidence of these payments, but I am satisfied by the argument of the Dean of Faculty and his junior that that question was not argued, and was never considered by us, and is therefore open to consideration now. That being so, it appears to me that whether as regards past or future expenditure the just and proper mode of accounting is that whatever sums have been applied to the benefit of any individual child should be a charge on that child's succession in the event of his surviving the period of distribution. If any misfortune should happen to the family, of course the money advanced could be spread over the shares of the survivors.

LORD KINNEAR—I entirely agree and have nothing to add except that the construction of the interlocutor authorising the first payments of the class in question appears to me to be perfectly clear. I cannot say that the interlocutor creates any difficulty in my mind. I think it was quite rightly understood by the Dean of Faculty, and therefore I cannot say that I think it would have been necessary or appropriate to have added anything to the terms in which it is expressed.

The interlocutor of the Court, besides granting authority to the trustees to make advances as craved, contained the following clause:—

> "(5) Direct and ordain the said trustees, in ascertaining the share of said trust-estate to be set apart and held for behoof of or paid over to any child of the said William Campbell Muir in whom a right to a share has vested or may vest, to deduct from said share the sums paid or advanced for behoof of such child under authority of this interlocutor or of said interlocutors of 23rd June 1891 and 31st January 1893, without charging interest on the said sums so paid or advanced, such sums to be deducted from the first portion of the shares of capital to be paid to or set apart for the respective children of the said William Campbell Muir."

Counsel for the Trustees—Jameson, Q.C. —Grainger Stewart. Agents—Boyd, Jameson, & Kelly, W.S.

Counsel for the Minuters—Dean of Faculty (Asher, Q.C.)—Watson. Agents—Alex. Morison & Co., W.S.

Saturday, December 23.

FIRST DIVISION.

(Without the Lord President.)

THE GRIANAIG SHIPPING COMPANY, LIMITED, PETITIONERS.

Company—Reduction of Capital—Capital Lost or Unrepresented by Available Assets —Assets Consisting of Ships of Diminishing Value—Companies Act 1877 (40 *and* 41 *Vict. cap.* 26), *sec.* 3.

In a petition by the Grianaig Shipping Company Limited for confirmation of a resolution to reduce its capital by writing off capital lost and unrepresented by available assets to the extent of £25,116, the Court, there being no opposition, remitted the petition to Sir Charles B. Logan, W.S., to report.

Sir Charles Logan submitted a report, containing, *inter alia*, the following passage —"I have examined the audited and published balance-sheets, and profit and loss accounts of the company since its incorporation, and I am satisfied that the loss of capital which it has sustained, as therein shown, and as referred to on page 2 of the petition, is correctly stated at £24,167, and to this extent the proposed reduction of capital appears to be competent. It will be observed, however, that the petitioners propose to write off capital to the extent of £25,116, being £6 per share on 4186 issued and fully paid-up shares, or nearly £1000 above the total loss set forth in the petition. Looking at the assets which the company still hold, I find that these consist of 56/64th shares of the ship 'Lady Wentworth,' which were acquired during the financial year 1896-97 at the price of £17,477, 5s. 1d. These shares are stated in the petition to be worth, at the date when the reduction of capital was resolved on, £17,508, and if to that sum there be added a small balance on hand, the assets of the company exceed the capital as proposed to be reduced by about the sum of £1000. In view of this difficulty the petitioners have obtained from Messrs Lachlan & Company, valuators for the English Admiralty Court, a valuation as in May last (when the proceedings for the proposed reduction of capital were instituted) of the shares of the 'Lady