formal notice to a party called as a defender who appears in a court to the jurisdiction of which he admits he is subject. Now, the Caledonian Company here were cited at their place of business, and that provision of the statute has therefore been complied with. They entered appearance and stated defences to the action, and therefore, according to a provision of the same statute, it is too late for them to say that they had not sufficient notice, for they have appeared in answer to the citation, and the sole purpose of the citation has been fulfilled, for a citation is just a formal notice to appear. What do they say in the record here, referring not to the Act of 1876, but to the Act of 1845? They say in answer to article 1 of the condescendence, that they have a place of business in Aberdeen—that means in the county of Aberdeen, for the city is within the county—they admit that they carry on business and have an office at Aberdeen, but "subject to the explanation that the said office is not the principal office of the defenders;" and then their plea-in-law upon that is that there is "no process, in respect that the defenders have not been competently cited at their principal office." Now, I think the statute law and the common practice applicable to the Court to whose jurisdiction they are subject do not require citation at the principal office, but require citation only at their place of business, where they carry on business. That has been complied with, and I cannot read any provision in the Act of 1845 as at all at variance with that provision of the Act of 1876 and with the practice following upon it. I am therefore of opinion with your Lordship that this objection is unfounded. If it were necessary—which I think it is not, for the reasons which I hope I have satisfactorily explained in my opinion—to determine whether their office at Aberdeen was one of the principal offices of the Caledonian Railway Company, I should as a matter of fact, and upon what the Court may take cognisance of as a matter of very common knowledge, assume that Aberdeen was one of the principal offices of the Caledonian Railway Company; but for the reasons which I have stated it is not necessary to determine that. I therefore think that this plea ought to be repelled, and the case proceeded with upon the appeal of the pursuer for a jury trial.

LORD TRAYNER—I concur. The objection has been stated with great clearness, but I think it is not tenable. The Act of 1876 provides that any person carrying on business in a county shall be subject to the jurisdiction of that county, and that service of any action brought against him there shall be sufficient if it is served at the place where he carries on business. That has been done here.

If it were necessary to consider the provision of the Act of 1845, and disregard the Act of 1876, I should be prepared to hold that Aberdeen was one of the principal places of business of the Caledonian Railway Company. But I think the Act of 1876 and its provisions govern this question, and that there has been good citation.

LORD MONCREIFF was absent.

The Court pronounced this interlocutor:—

"Affirm the interlocutor of the Sheriff-Substitute of 5th February last, and of new repel the first plea-in-law for the defenders: Further, approve of the issue as the issue for the trial of the cause: Find the pursuer entitled to expenses since 22nd February last," &c.

Counsel for the Pursuer—Glegg. Agents—Alex. Morison & Company, W.S.

Counsel for the Defenders—Dundas, Q.C.—Deas. Agents—Hope, Todd, & Kirk W.S.

Friday, March 9.

FIRST DIVISION.

NORMAND'S TRUSTEES *v.* NORMAND.

Succession—Vesting—Conditional Institution.

A truster directed his trustees to hold a certain sum for three of his grandchildren in liferent, and made the following disposition of the fee:—"Upon the death of any one of my said grandchildren, or at any later period of division which he or she may appoint, my said trustees shall pay over his or her share of the said funds to or among his or her children when and as they arrive at majority or are married, whom failing to his or her assignees, whom failing to my own nearest heirs."

Held that on the death of each liferenter the fee of the share so liferented vested in his or her children then existing.

Trust—Power to Make Advances—Advances to Minors without Express Authority.

A truster directed his trustees to hold a certain sum for a grandchild in liferent and his great-grandchildren in fee. Under the terms of the bequest the fee vested in the great-grandchildren on the death of the liferenter, but the term of payment was postponed until they respectively attained majority or were married. There was no express direction to accumulate the income during the period between the death of the liferenter and the majority or marriage of the fiars, nor any express power to the trustees to make advances to the fiars during that period. The liferenter died leaving children in minority, and the trustees, on the representation that advances were necessary for their education, paid the income of the trust to their guardian for their benefit. *Held* that these payments were properly made.

James Normand, manufacturer in Dysart, died on 25th August 1874, leaving a trust-disposition and settlement, by which he made, *inter alia*, the following disposition—"(*Primo*) To hold and apply the same for

behoof of William Normand Newall, Joanna Crestian Newall, and James Normand Newall, children of my daughter, the now deceased Mrs Joanna Normand or Newall, and to pay to them equally, share and share alike, during their respective lives, and for their liferent use allenarly, the annual interest and proceeds of the said sum and of any accumulations which the said trustees may add to capital as hereafter authorised, but with this proviso, that as the education and upbringing of my said grandchildren are sufficiently provided for otherwise, the said trustees, in the event of my death while my grandchildren or any of them are under twenty-five years of age, shall not pay to them the said liferent interest but shall accumulate the same until the children respectively attain the age of twenty-five years, when my said trustees shall in their discretion either pay the said accumulations of interest to my said grandchildren or add them to said capital sum, and administer them as capital. (*Secundo*) Upon the death of any one of my said grandchildren, or at any later period of division which he or she may appoint, my said trustees shall pay over his or her share of the said funds to or among his or her children when and as they arrive at majority or are married, whom failing to his or her assignees, whom failing to my own nearest heirs."

William Normand Newall died on 16th December 1886, survived by his widow and two daughters. After his death Mrs Newall requested the first parties, as trustees of the said fund which had been set apart for his behoof, to pay over to her the income received by them on the investments. It was represented to them that the payment was absolutely required for the maintenance and education of the said William Normand Newall's daughters. The trustees resolved to accede to the request, and they paid over the revenue received from May 1887, which was the date of their first payment, till November 1897. The sums paid over by them in good faith and for the purpose specified amount in all to £1972, 1s. 10d.

The lady referred to in the trust-deed as Joanna Crestian Newall, but whose name was in reality Elizabeth Maude Newall, married James Tennent Inglis and died in 1897, leaving three children, who were all in minority or pupillarity.

Questions having arisen as to the disposal of the income of the shares liferented by the said William Normand Newall and Mrs Inglis, a special case was presented to the Court in which the first parties were the surviving and acting trustees under the settlement of the said James Normand. The second parties were the residuary legatees under the said settlement, the third parties were the children of William Normand Newall, and the fourth parties were the children of Mrs Inglis. There were certain other parties to the case, representing interests which in the view of the case taken by the Court did not arise for decision.

The second parties maintained that on a sound construction of the said trust-disposition and settlement, the shares of revenue aforesaid do not belong to the respective great-grandchildren of the testator, in respect that the only gift to them in the said trust-disposition and settlement is a gift of capital at the date of their respectively attaining majority or being married, neither of which events may ever happen. The destination-over to the assignees of the liferenters, whom failing, to the heirs of the testator, prevents the shares of the £11,000 from vesting in the great-grandchildren until they respectively attain majority or are married. They further maintained that the income, amounting to the said sum of £1972, 1s. 10d., was improperly paid over, and that the same truly belongs to the second parties as the testator's residuary legatees. They further maintained that the income accruing after November 1897, both upon the shares appropriated to Mr William Norman Newall and his family and to Mrs Inglis and her family, until the date of their respective children attaining majority or being married, or dying without having attained majority or married, form part of the testator's residuary estate, and falls to be divided among his residuary legatees. Alternatively, the second parties maintained (1) that on a sound construction of the said trust-disposition and settlement the income accruing on the share set apart for the said William Normand Newall and his family after his death and until the said share becomes payable, and the income accruing on the share set apart for the said Mrs Inglis and her family after her death and until the said share becomes payable, must be accumulated for behoof of the parties who may be ultimately entitled to the said shares; and (2) that in terms of section 1 of the Thellusson Act accumulation cannot take place after the 25th day of August 1895, being twenty-one years from the date of the death of the said James Normand; and they accordingly maintained that the income accruing on said shares after that date until each of the said great-grandchildren shall attain majority, or marry, or shall die without having attained majority or married, forms part of the residue of the testator's estate, and falls to be divided among his residuary legatees.

The third and fourth parties maintained that the whole income of the shares liferented by the said William Normand Newall and the said Mrs Elizabeth Maude Newall or Inglis, may be paid by the first parties to the said Mrs Maria Anna Pritchard Lee or Newall and the said James Tennent Inglis for behoof of their respective children, until they respectively attain majority or are married and become entitled to payment of the capital thereof, in respect (1) that upon a sound construction of the said trust-disposition and settlement the testator's great-grandchildren took a vested right at birth, or at all events upon the death of the said William Normand Newall and the said Mrs Newall or Inglis, in and to the capital of said shares, although payment was postponed until majority or marriage, or otherwise that

they took such right as aforesaid subject to defeasance in the event of their not attaining majority or being married; (2) that even if vesting be postponed until majority or marriage, the first parties are entitled in their discretion either to pay over the said income to or for behoof of the said great-grandchildren or accumulate the same with the capital of said shares; (3) that the Thellusson Act has no application to the circumstances of the present case; and (4) that if the said Act be held to apply, then the said income falls to be paid over for behoof of the said great-grandchildren as aforesaid in respect that they are the persons who would have been entitled thereto if they had been of full age and accumulation had been unnecessary. The third party further maintained that the payment of said sum of £1972, 1s. 10d. was properly made.

The questions for the decision of the Court (besides certain other questions which it was found unnecessary to deal with) were —"(1) (*a*) Does the income accruing upon the shares of capital set apart for the said William Normand Newall and Mrs Elizabeth Maude Newall or Inglis respectively from the date of their respective deaths to the dates of their respective children attaining majority or being married, or dying without having attained majority or been married, belong to the said children? or (*b*) Does it fall to be accumulated for behoof of the said children? or (*c*) Does it fall to be accumulated for behoof of the persons who may be ultimately found entitled to the said shares of capital? or (*d*) Does it fall into residue? or (*e*) Not having been effectually bequeathed, does it fall into intestacy of the testator? (2) Was the income, amounting to the said sum of £1972, 1s. 10d., properly paid over by the first parties to the third party for behoof of her children?"

Argued for the first, third, and fourth parties—Vesting took place either *a morte testatoris* in the great-grandchildren as a class, or at latest on the death of each liferenter with regard to his or her share. The power to assign in the trust-deed must be read as granted to the grandchildren, and, so read, was quite intelligible, because it might very well happen that a grandchild might know that he was likely to die without issue. The opposite contention, that it was a power given the great grandchildren, involved the unlikely assumption of a power to minors to assign a sum, which on that view had not vested in them. So reading the clause, vesting at latest at the death of the liferenters was consistent with the authorities so far as applicable to the specialties of the case—*Gillespies* v. *Marshall*, December 7, 1802, M. App. *v.* Accessorium, No. 2; *Alves' Trustees* v. *Grant*, June 3, 1874, 1 R. 969; *Waters' Trustees* v. *Waters*, December 6, 1884, 12 R. 253. (2) The payments made by the trustees to Mr Newall's children were properly made, even although the term of payment was thereby anticipated. The trustees could have obtained authority from the Court to make these advances if necessary for the education of the beneficiaries—*Baird* v. *Baird's Trustees*, February 24, 1872, 10 Macph. 482; *Douglas* v. *Douglas' Trustees*, July 6, 1872, 10 Macph. 943; *Muir* v. *Muir's Trustees*, December 10, 1887, 15 R. 170; and what the Court could authorise, it could also ratify when done.

Argued for the second parties—Nothing vested in any grandchild until he or she came of age or was married. The "nearest heirs" of the testator were conditional institutes. There was nothing but a direction to pay at a certain time, with a conditional institution in the event of the heirs first instituted failing. That postponed vesting until the term of payment, as had been held in a series of cases from *Bryson's Trustees* v. *Clark*, November 26, 1880, 8 R. 143, to *Bowman* v. *Bowman's Trustees*, July 26, 1899, 36 S.L.R. 959. Assuming that the vesting was postponed, the trustees had no right to make advances to Mr Newall's children.

At advising—

LORD ADAM—The late James Normand of Blairhill died on 25th August 1874, leaving a trust-disposition and settlement dated 21st June 1873. He was survived by his three sons and predeceased by an only daughter, Mrs Newall.

By the fourth purpose of his settlement Mr Normand directed his trustees to set aside out of his means and estate the sum of £11,000 sterling, and to hold and apply the same for behoof of William Normand Newall, Elizabeth Maud Newall (called by mistake in the settlement Joanna Crestian Newall), and James Normand Newall, children of his deceased daughter Mrs Newall, and to pay them equally, share and share alike, during their respective lives, and for their liferent use allenarly, the annual interest and proceeds of the said sum. Then follows a clause by which the testator postpones payment of the liferent interest to them until they should respectively attain the age of 25 years—and provides for the accumulation and disposal of the interest in the meantime. The testator then provides that, upon the death of any one of his grandchildren, or at any later period of division he or she may appoint, his trustees shall pay over his or her share of the said fund to or among his or her children when and as they arrive at majority or are married, whom failing to his or her assignes, whom failing to his own nearest heirs.

The questions at issue in this case depend principally on the construction of this fourth purpose of the settlement; and the one which first arises for consideration appears to me to be whether this legacy, bequeathed by the testator to his great grandchildren, vested in them *a morte testatoris*, or at some later period. It will be observed that in the provision clause in question, failing great-grandchildren, there is a destination-over to "his or her assignees." A question was raised as to whether this meant the assignees of a grandchild or the assignees of a great grandchild. It appears to me that the

context shows that it means the assignees of a grandchild; and this I think becomes clear when we consider that if it meant the assignees of a great grandchild it could only have effect as a conditional institution, in the event of the great grandchild dying before attaining majority, and it is not probable that the testator had in view the case of a minor assigning. Although the law would not recognise that the great grandchildren had failed until the death of the grandchild, still, of course, the grandchild must know perfectly well whether or not there would be such failure, and therefore it was that the testator gave him or her power to assign his or her share, that is, the share liferented by him or her. The assignation would have no effect during his or her life, but would receive full force and effect after death. It seems to be a similar power to that which we so often see given to a parent to test on a provision to children in the event of their failure.

The direction to the trustees is that upon the death of a grandchild, or at any later period of division he or she may appoint, they shall pay over his or her share of the funds to or among his or her children when and as they arrive at majority, or are married. Now, it would appear that the testator contemplated one period of division only, either the death of the grandchild or such other later period as the grandchild might appoint. In this case no later date has been appointed, therefore the period of division would appear to be the death of the grandchild Mrs Newall. But if the death of the grandchild be the period of division, among whom was the division to be made? Surely among the great-grandchildren existing at the time. To say that no great-grandchild took a vested right to a share until he or she attained majority or was married appears to imply that there might be as many periods of division as there were great-grandchildren successively attaining majority, or being married. That would be the result of holding that no right to a share vested in the great-grandchildren till the period of payment should arrive. The clause therefore requires construction, and the construction I am disposed to put upon it is, that the testator assumes, rather than directly states, that the period of division, and therefore of vesting, is to be the death of the grandchild, and that it is payment only which is postponed until the great-grandchild should attain twenty-one years of age or be married.

I think that it is difficult to hold that the legacy vested in the great-grandchildren as a class *a morte testatoris*, because there is, failing great-grandchildren, a destination-over to the assignees of the grandchild (as I read it), whom failing to his own heirs. This cannot mean failure before his death, because before that event a grandchild could not know she had anything to assign.

But I do not see anything in the settlement to suggest that vesting was intended to be postponed to any later date than the death of the liferentrix. The money then became free for distribution, and I think vested in great-grandchildren then in life.

If I am right so far the result is this—William Normand Newall died on 16th December 1886, and his share of the fund then vested in his daughters Maud and Gwendolen Newall. Mrs Inglis died on 12th September 1897, and the share liferented by her then vested in her children John, Sybil, and James Inglis.

If that be so, then question 1 (*a*) will be answered in the affirmative, and the alternative questions in the negative.

As regards question 2, the sum of £1792, 1s. 10d., there referred to, was income arising from the investments of William Normand Newall's share of the fund from his death till November 1897. It was paid from time to time to Mrs Newall, as his children's guardian, for their behoof.

It does not seem to be disputed that if the trustees had power to make these payments they were proper payments to make, but the power of the trustees is disputed.

I do not see in the testament any express power to make these payments, but there is a direction to the trustees to accumulate the income till the period of payment of the capital. But the capital, in my view, belonged to the children, and I think they were entitled to have the accruing interest applied, if necessary, for their behoof. Accordingly, I think question 2 should be answered in the affirmative.

If my view of the vesting be right, no question under the Thellusson Act arises, and questions 3, 4, and 5 are superseded.

The LORD PRESIDENT and LORD KINNEAR concurred.

LORD M'LAREN was absent.

The Court answered the first alternative (*a*) of the first question in the affirmative, and the other alternatives in the negative, and answered the second question in the affirmative.

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

Counsel for the Second Parties—Campbell, Q.C.—Cullen. Agents—Mackenzie, Innes, & Logan, W.S.

Counsel for the Third and Fourth Parties—C. K. Mackenzie—Pitman. Agents—J. & F. Anderson, W.S., and Dundas & Wilson, C.S.

Counsel for Other Parties—Macpherson. Agents—J. S. & J. W. Fraser Tytler, W.S.