that there are always two inquiries in such a case, namely, there is an inquiry, first, whether the *de facto* absence of an absent spouse is an absence which must be attributed to an intention to stay away and desert, or an absence which is consistent with other motives. But then, having finished that inquiry and resolved it in the sense that the absence is a deserting absence, there is still the second inquiry, whether the spouse who, so to speak, stays at home is really acquiescent in agreeing in the absence of the other spouse, or is willing and anxious that he or she should return. The precise proof of that fact must vary, as proof will always vary, according to the circumstances of each case.

Now in this case, first of all, no question is raised as to the absence, and the meaning of the absence, of the wife. It is not disputed that the wife went away without excuse and had no intention of coming back; and therefore the only question is, has the husband sufficiently shown that the absence of the wife is not approved of by him? The Lord Ordinary has held that he has not, and he has put the conditions of the problem thus. He has said—"I find that in an action of separation raised at the instance of the wife there were defences put in by the husband and a formal offer by him to receive back the wife;" and then he has found, as in law, that that formal offer by itself is not sufficient—that there must be something else. And then, going to the proof of what happened between the parties afterwards, he has held that in that proof he cannot find sufficient positive evidence of the husband having intimated to the wife that he wished to receive her back.

Where I do not agree with the Lord Ordinary is in the way in which he has stated the question. It seems to me that if in a process of separation a formal offer is made by the husband to take back the wife, that by itself is enough—unless, of course, something else follows. I quite agree that the effect of that offer may be got over in one of two ways. It may, in the first place, be got over by proof showing that the offer did not represent a genuine offer; and it may, in the second place, be got over by showing that, notwithstanding that offer, there had been afterwards a change of disposition on the part of the husband—in other words, that the offer did not remain a standing offer. Now, my Lords, all I can say is that there has been no proof on one side or the other to show that this offer was not a genuine offer. The Lord Ordinary says it may have been of the nature of a strategical movement. It may have been, or it may not have been; but there does not seem to me to be any presumption that an offer made formally in the process is not a genuine offer. It seems to me that it remains a genuine offer until you show that it is not. Well, then, when you come to the proof of what happened afterwards, it is sufficient to say that there again I find no affirmative proof to show that the husband had in any way gone back on the offer that he made. Accordingly, on these grounds I think that the husband is entitled to the decree of divorce which he desires.

LORD KINNEAR—I am of the same opinion.

LORD PEARSON concurred.

LORD M'LAREN was absent.

The Court recalled the interlocutor reclaimed against and granted decree.

Counsel for the Pursuer (Reclaimer)—A. M. Anderson. Agent—W. R. Mackersy, W.S.

Counsel for the Defender and Respondent—Wark. Agent—J. & J. Galletly, S.S.C.

Friday, November 27.

SECOND DIVISION.

ALLAN'S EXECUTOR *v.* UNION BANK OF SCOTLAND.

Arrestment — Bank — Breach — Deposit-Receipt Payable to A or B — Arrestment of Funds Due to A — Payment by Arrestee to B — Knowledge and Bad Faith of Arrestee.

Arrestments upon the dependence of an action against A were used in the hands of the local agent of a bank upon a particular sum of money due by the bank to A. This sum was lying upon a deposit-receipt, which was in these terms—"Received from A and B, payable to either or survivor." The arrestor obtained decree in the original action, but during its dependence the bank paid the sum in question to B upon presentation of the deposit-receipt endorsed by B. In an action against the bank for breach of arrestment the pursuer averred that payment had been made with knowledge and in bad faith.

Held that the bank was not bound to pay to B, and that the averments of knowledge and bad faith were relevant to the action.

John Stanger Copland, solicitor in Stromness, as executor-nominate of the late Miss Catherine Allan, raised an action against the Union Bank of Scotland, Limited, in which he claimed the sum of £126, 13s. 7d., with interest thereon at deposit-receipt rates from 18th April 1901, in name of damages for breach of arrestments in the hands of the bank's agent at St Margaret's Hope.

The following *narrative* of the *facts averred* upon record is taken from the opinion of Lord Low:—"The case averred by the pursuer is as follows:—In 1897 a sum of £116 was deposited with the branch of the National Bank of Scotland at Stromness in the names of Miss Allan and Mrs

Nicholson, and payable to either or the survivor. Miss Allan—who is now dead, and whose executor is pursuer in the present action—was over ninety years of age. In an action, to which I shall presently refer, which was brought by Miss Allan in the Sheriff Court at Kirkwall, the Sheriff found that the sum in the deposit-receipt belonged exclusively to her. The interlocutor in which that finding occurred is now final. The Sheriff further found that 'in April 1901 Mrs Nicholson obtained possession of the said deposit-receipt endorsed by Miss Allan, and on or about 19th April 1901 cashed the said deposit-receipt, uplifted the proceeds thereof, and lodged the amount so uplifted in bank in name of herself and her daughter Catherine Allan Nicholson.' The bank in which that deposit was made was the defenders' branch bank at St Margaret's Hope. The precise terms of the deposit-receipt were—'Received from Mrs Elizabeth Allan or Nicholson and Miss Catherine Allan Nicholson, payable to either or survivor, £126, 13s. 7d.' The excess of that sum over the amount (£116) originally deposited appears to represent accrued interest.

"The action in the Sheriff Court to which I have referred was raised in June 1903. It was an action by Miss Allan against Mrs Nicholson for payment of the £116, with interest at deposit-receipt rates. The defence was that Miss Allan had made a donation to Mrs Nicholson of the money. In regard to that defence the Sheriff found that Mrs Nicholson had failed to prove that the deposit-receipt or the amount therein had been donated to her, or transferred to her so as to become her property, and that she had also failed to prove that Miss Allan had authorised her to uplift the sum in the deposit-receipt, and either retain the same as her (Mrs Nicholson's) property, or transfer the same to the names of herself and her daughter. The Sheriff accordingly gave decree in the pursuer's favour for the sum of £116, with £18, 1s. 6d. of accrued interest, and expenses, which amounted to £86, 6s. 9d. The pursuer has been unable to recover any part of these sums.

"Arrestments had been used by Miss Allan upon the dependence of the Sheriff Court action 'in the hands of Alexander Campbell, agent at St Margaret's Hope for the Union Bank of Scotland, Limited, of the sum of £120 sterling, more or less, due and addebted by the said bank to the said Mrs Elizabeth Allan or Nicholson.'

"The defenders have a plea to the effect that the arrestment being directed against their local agent, was not effectual to attach funds in their hands. The Lord Ordinary, however, was against the defenders on that point, and the plea was not maintained before us.

"The defenders state in answers 2 and 3 that when the arrestment was used 'the only money in the hands of the defenders was the sum of £126, 13s. 7d., which had been recently received from Mrs Elizabeth Nicholson and Miss Catherine Allan Nicholson.' That being so, the defenders could, it seems to me, have had no doubt that what the arrestor described as '£120,' more or less, due by said bank to Mrs Nicholson, was the money in the deposit-receipt, and that it was that fund which it was desired to attach.

"Subsequently, during the dependence of the action, and, the pursuer avers, after the proof had been taken, Miss Nicholson presented the deposit-receipt, endorsed by her, to the bank, and received payment of the amount.

"The pursuer avers that when the money was uplifted by Miss Nicholson, the defender's agent Mr Campbell knew of the action at Miss Allan's instance against Mrs Nicholson, and had been examined as a witness in the cause; and he further avers that the defenders' secretary had applied for and obtained information in regard to that action, and the circumstances in which it was brought. . . ."

The defenders pleaded, *inter alia*—"(6) The defenders having paid the said sum as in duty bound under their contract on the indorsation of Miss Nicholson, are entitled to absolvitor."

On 21st December 1907 the Lord Ordinary (MACKENZIE) sustained this plea and assoilzied the defenders.

Opinion. — "The first question in this case is whether the arrestments set out are effectual to attach any funds in the defenders' hands.

"The defenders found on the case of *Graham* v. *Macfarlane & Co.*, 7 Macph. 640, as an authority in favour of their argument that the arrestments are inept. The arrestment was used on the dependence of an action at the instance of Miss Allan against Mrs Nicholson, by which there was 'lawfully fenced and arrested in the hands of Alexander Campbell, agent at St Margaret's Hope for the Union Bank of Scotland, Limited, the sum of £120 sterling, more or less, due and addebted by said Union Bank of Scotland, Limited, to the said Mrs Elizabeth Allan or Nicholson.'

"The question to be considered (as stated by the Lord President in *Graham*) is, whether this can be read as an arrestment in the hands of Alexander Campbell in his representative capacity as agent of the bank, and as such holding *de facto* funds belonging to the bank at St Margaret's Hope, the office which issued the deposit-receipt in question. I think it can and should be so read. The terms of the arrestment in *Graham's* case were different. There the schedule of arrestment bore that the arrestments were used 'in the hands of you Messrs H. & A. M'Ewan, agents of the Union Bank of Scotland at Lochgilphead, the sum of £200, less or more, due or addebted by you to the said Duncan Graham, defender.' There was there nothing to show that the arrestment was not simply in the hands of the firm of H. & A. M'Ewan.

"The next question is, whether the defenders have in breach of the arrestment paid away money attached by it. The pursuer alleges that they have paid away in breach of the arrestment the contents of a deposit-receipt for £126, 13s. 7d. issued by their branch at St Margaret's Hope in name

of Mrs Nicholson and her daughter Catherine Allan Nicholson 'payable to either or survivor.' There is no dispute that the deposit-receipt in question was not indorsed by or paid to Mrs Nicholson. It was endorsed by and paid to her daughter Catherine Allan Nicholson. The pursuer's case is that the bank should have refused to pay to the daughter after the arrestments had been used to attach the sum of £120, more or less, due and addebted by the bank to her mother. The argument was that the bank when called on to pay by the daughter should have treated the case as one of double distress, and have raised a multiplepoinding. The bank's answer is the case of *Anderson* v. *North of Scotland Bank, Limited*, 4 F. 49. The deposit-receipt there was in favour of A and B 'payable to either or the survivor of them.' B sued the bank with concurrence of A. The bank averred that the money truly belonged to A, and pleaded that they were entitled to retain it in security of a debt due to them by A. This was held irrelevant, because the bank was bound, in respect of the express terms of their deposit-receipt, to make payment to A. The bank had given an unequivocal document binding them to pay to two people or either of them. Either was in a position to present the receipt to the bank and demand payment. If that is so I am unable to see in the present case why the fact that the bank were interpelled by arrestment from paying to one should furnish them with any answer to a demand for payment by the other. If they had no answer to a demand for payment made by Miss Nicholson, it follows that they were perfectly entitled to pay to her. There would only have been double distress had the competing claims been by the arresting creditor and Mrs Nicholson.

"There are averments that the defenders acted in bad faith in paying over the contents of the deposit-receipt, founded on statements that the bank's agents knew the whole circumstances of the case. These do not seem to me to be relevant. Whatever his knowledge was he could not refuse to pay to the bank's creditor who produced the document of debt duly endorsed. No arrestment had been used to interpel the bank from paying to the creditor who did present the deposit-receipt. They had no concern with the property of the money, and for this reason the case is different from *Matthew* v. *Fawns*, 4 D. 1242, cited by the pursuer.

"I am therefore of opinion that the sixth plea-in-law for the defenders should be sustained, and that they should be assoilzied with expenses."

The pursuer reclaimed, and argued—The bank was in fault, not so much in paying to the wrong person as in failing to hold the arrested sum until any question regarding it was settled. In the case of a deposit-receipt such as the present, a bank was free to pay to either of the alternate creditors, but only until interpelled by one of them from paying to the other—*Bank of Scotland* v. *Robertson*, January 12, 1870, 8 Macph. 391, 7 S.L.R. 232. When this occurred a bank might competently raise a multiplepoinding, there being double distress, but by simply holding and not paying to either the bank ran no risk of damages. The terms of a deposit-receipt were not conclusive evidence of the ownership of the money, and if there was a dispute the bank might be interpelled by arrestment or notice—*Anderson* v. *North of Scotland Bank, Limited*, October 31, 1901, 4 F. 49, *per* Lord M'Laren at p. 54, 39 S.L.R. 75. In fact the first of the two alternate creditors in the present case who made demand upon the bank was Mrs Nicholson in the person of her arresting creditor. The funds of a common debtor might competently be arrested although they were held by the arrestee in name of a third party—*Lindsay* v. *London and North-Western Railway Co.*, January 27, 1860, 22 D. 571; *Rigby* v. *Fletcher*, January 18, 1833, 11 S. 256. If this arrestment were ineffectual, anyone could make arrestment of his funds impossible by joining an alternate name in a deposit-receipt. [The following additional cases were referred to in the opinion of Lord Low—*Matthew* v. *Fawns*, May 21, 1842, 4 D. 1242; *Craig* v. *Thomson*, January 13, 1847, 9 D. 409; *Metzenburg* v. *Highland Railway*, June 25, 1869, 7 Macph. 919, 6 S.L.R. 587.]

Argued for the defenders (respondents)—Where a deposit-receipt was taken in the names of two alternate creditors a bank had no right to refuse payment to either who demanded it—*Anderson* v. *North of Scotland Bank, cit. sup.* *A fortiori* the bank was under no duty to refuse payment to either. The bank could not go behind the terms of its own contract, and on the face of the document there was no doubt as to Miss Nicholson's right to payment; accordingly the question of double distress did not arise. Further, there was no relevant averment against the bank of bad faith, for the knowledge of its agent did not affect it in this respect.

At advising—

LORD LOW—[*After narrating the facts, supra*]—In these circumstances the pursuer sues the defender for payment of the sum of £126, 13s. 7d., with interest at deposit rates from 18th April 1901. The defence is that the defenders having, by the terms of the deposit-receipt which they granted, contracted to make payment either to Mrs Nicholson or her daughter, were bound to pay to the latter, the arrestment being only directed against the former. The Lord Ordinary has sustained that defence, and he has done so upon the authority of the case of *Anderson* v. *North of Scotland Bank*, which he regards as being directly in point. I do not think that that is the case. On the contrary, I think that there is a very material distinction between *Anderson's* case and the present. The circumstances of the former case were these:—Miss Fyffe and Charles Fyffe Anderson deposited money in bank, taking a deposit-receipt acknowledging receipt of the money from them, "payable to either or the survivor." Subsequently the bank

accepted Miss Fyffe as co-obligant in a bond of cash credit granted to her brother William Fyffe, relying, they alleged, *inter alia*, upon the security of the sum contained in the deposit-receipt, which they averred belonged wholly to Miss Fyffe. The bank therefore refused to make payment of the money to Anderson, although Miss Fyffe consented to payment being made to him. The Court held that the bank were not justified in refusing payment, on the ground that they could not by a course of dealing with one of the parties altogether destroy the right of the other, but were bound by their obligation to pay to either, which they had undertaken by granting the deposit-receipt. I think that it is plain that that judgment has not much application to a case where arrestments have been used. Because a bank which has undertaken to pay either to A or B cannot refuse to make payment to A because they have chosen to make advances to B, it does not follow that they are bound to pay to A notwithstanding that the fund has been arrested by a creditor of B. A deposit-receipt is not a document of title, and no inference can be drawn from the terms in which the money is deposited as to the ownership of the money. On the contrary, it is well known that deposit-receipts in terms similar to those of the receipt in this case are frequently taken, although the money belongs wholly to one of the parties, merely for convenience of administration. I therefore do not think that the bank, in the event of the fund being arrested as belonging to one of the parties, is bound to pay it to the other party, because, for anything that appears upon the deposit-receipt, the fund may belong, either wholly or in part, to the former, and to pay it to the latter might be to defeat the just rights of creditors. That is illustrated in this case, because if the averments of the pursuer are true, then it is difficult to avoid the conclusion that by paying the money to Miss Nicholson the defenders have enabled her and her mother to commit a fraud, and to obtain possession of a considerable sum of money to which they had no right whatever. Suppose the defenders had refused to pay to Miss Nicholson and had thrown the fund into Court in a multiplepoinding, could Miss Nicholson have had the action dismissed on the ground that there was nothing in the nature of double distress which justified the course adopted by the bank? I do not think so. I think that in such a case it would be held that the bank, for their own protection, were entitled to refuse payment without judicial authority. But the question in that case would be just the question which is raised here, only in a different shape.

Hitherto I have been taking the case on the assumption that the defenders knew nothing in regard to the money except the terms of the deposit-receipt, but I think that the view which I have indicated is strengthened by the averments which the pursuer makes as to knowledge of the circumstances which the defenders or their bank agent had. If, as the pursuer avers, the bank agent (whose knowledge must, in my opinion, be regarded as the knowledge of the defenders) knew that the money originally belonged to Miss Allan and was deposited in her name and in that of Mrs Nicholson; that the latter uplifted it and deposited it in another bank in her own and her daughter's names; and that Miss Allan had brought an action, upon the dependance of which the arrestment was used, in which she averred that the money had been uplifted and re-deposited without her authority, and demanded repayment thereof from Mrs Nicholson—if, I say, the bank agent knew these things, and, notwithstanding, chose to disregard the arrestment and pay the money away, he did so, in my judgment, at the risk of the bank, whose agent he was.

The Lord Ordinary (again, apparently, following the case of *Anderson*) regards the averments of knowledge on the bank agent's part as irrelevant. I do not agree in that view. I consider the averments as to the knowledge of the bank agent as entirely relevant to the question whether or not he was bound to make payment to Miss Nicholson, and I think that that view is supported by authority.

There is first the case of *Matthew* v. *Fawns* (4 D. 1242). Matthew was the manager of a shipping company at Dundee, and a ship belonging to the company arrived at that port with certain packages of furniture addressed to Fawns. While the goods were still on board ship arrestments were used in the hands of Matthew of all sums of money, goods, &c., pertaining to one Crom, and, "in particular, a quantity of furniture presently on board the vessel 'Forth' of Dundee, addressed to Mr Robert Fawns, Dundee." In respect of the arrestment, Matthew refused to deliver the packages to Fawns. The latter accordingly presented a petition to the magistrates to have Matthew ordained to deliver the goods to him, and during the dependance of the petition the arrester raised a multiplepoinding in the Sheriff Court in name of Matthew. In the petition the magistrates ordained Matthew to deliver the goods to Fawns, but upon the cause being advocated to this Court the interlocutor of the magistrates was recalled, and it was held that Matthew had been justified in refusing delivery. It did not appear that Matthew had any knowledge as to the true ownership of the goods, and the only ground upon which he refused to deliver to Fawns was the arrestment, but Lord Murray in his opinion put the matter thus—"If the manager had actually known that the goods belonged to Crom, and were only addressed to Fawns as a cover, he would not have been entitled to disregard the arrestment; but if it shall appear that *de facto* that was the case, can he be in a worse situation by having *bona fide* obeyed a schedule to that effect?"

The next case is *Craig* v. *Thomson* (9 D. 409). In that case a quantity of stones and lime had been deposited with Craig in his stone-yard. Apparently the goods had been purchased by Thomson from one

Somerville. The evidence was very conflicting as to the person by whom and the terms in which the deposit had been made. Craig said that the deposit had been made by Thomson and Somerville jointly, both being present, and nothing being said as to whose property the goods were. Somerville said he was present part of the time when the goods were delivered, but that he gave no instructions in regard to them, and that Thomson was not present. Another witness, Logan, said that he and Thomson arranged with Craig for the deposit of the goods, and that Somerville was not present.

It was in these circumstances that arrestments were used in the hands of Craig at the instance of Dick, a creditor of Somerville. The arrestment was in general terms, namely, to arrest all goods, &c., "pertaining or in any manner of way belonging to the said Matthew Somerville." The messenger, however, deponed that Somerville was present when the arrestment was laid on, and stated to Craig that the goods belonged to him. That evidence appears to have been corroborated by Somerville. Thomson thereafter applied to Craig for delivery of the goods, but Craig declined to give delivery without judicial order. Thomson therefore presented a petition to the Sheriff for delivery of the goods, and in the course of the proceedings Thomson gave security to Craig against a second demand, and the goods were delivered to him. The question therefore came to be one of expenses, which the Sheriff awarded to Thomson, on the ground that Craig had not been justified in refusing delivery to him. This Court, however, recalled the Sheriff's interlocutor, and gave expenses to Craig. The Lord President and Lord Jeffrey laid much stress upon the fact that no definite contract of depositation had been proved, and they both indicated the opinion that if the goods had been deposited in Thomson's name, and Craig had undertaken to deliver to him, the arrestment laid on, as it was, in quite general terms, would not have justified Craig in refusing delivery to Thomson. I do not think that these indications of opinion are adverse to the view which I have taken of this case, because, as I have pointed out, the bank agent could have no doubt that this arrestment was intended to attach the sum in the deposit-receipt.

I quote the case of *Craig* v. *Thomson*, however, mainly because the opinion of Lord Fullerton seems to me to be very much in point in regard to the question of the relevancy of the averments of knowledge of the circumstances on the part of the bank agent. His Lordship said—"The arrestment was no doubt general—arresting all the effects belonging to Somerville; and some argument might be based upon the vagueness of the arrestment. . . . Here Craig knew that the subjects were claimed by Somerville, and he would not have been in good faith to have delivered them up in the face of that private knowledge to another. But is it not much more when the officer tells him formally that they belong to Somerville? How is it possible, after that, to hold that it would have been safe on the part of the arrestee to restore the goods?"

I may also refer to the case of *Metzenburg* v. *Highland Railway Co.* (7 M. 919), where the Court held that the laying on of general arrestments did not justify a depositary of goods refusing delivery to the depositor. The circumstances were these. Metzenburg, who was a rag merchant in Inverness, delivered to the railway company certain bales of rags to be sent to Mowatt, rag merchant in Aberdeen. The goods were delivered to the railway company by Rennie, a servant of Metzenburg, in his own name. The goods were duly carried to Aberdeen and tendered to Mowatt, who refused to accept them, and the railway company then intimated to Rennie that the goods were lying in their hands at his risk. Rennie then, with Metzenburg's authority, went to Aberdeen, and requested the railway company to deliver the goods to him for behoof of Metzenburg. The railway company, however, refused to do so, on the ground that arrestments had been used in their hands against a person of the name of Macdonald. The arrestments were entirely general in their terms, and bore no special reference to the particular goods, or to Rennie or to Metzenburg. The defence of the railway company was founded solely on the arrestment, although I gather from the opinion of the Lord Justice-Clerk that they had some vague information which led them to suspect that the goods might belong to Macdonald.

In giving judgment the Lord Justice-Clerk (Patton) said—"If they (the railway company) had had a claim properly put before them, other than anything appearing on the face of the arrestment, namely, a claim to these goods, made by other parties as belonging to Macdonald, they would have been in a situation in which they might have brought a multiplepoinding with a view to the contested question between different claimants being tried"; but, his Lordship pointed out, the railway company, acting on the erroneous belief that the goods belonged to Macdonald, took one side of the question, and took upon themselves the responsibility of keeping back the goods from the true owner.

Lord Cowan, who was the only other judge who delivered an opinion, said—"The arrestment did not contain any specification of these particular rags. It was an arrestment in general terms of all goods in the hands of the railway company that belonged to a man of the name of Macdonald. Of course I do not mean to say that had it been a specific arrestment of the goods, the case that has been referred to (*i.e. Matthew* v. *Fawns*) would not have been an authority for holding that the railway company was justified in refusing delivery; but that was not the nature of this arrestment." His Lordship then expressed the opinion that, although the arrestment was in general terms, if the railway company had brought a multiplepoinding, or even placed the goods

in neutral custody, they might have been justified in doing so, but that, having chosen to judge of the matter for themselves, and having refused to deliver the goods to the true owner, they must take the consequences.

I think that these authorities support the view which I take of the case, and in particular show that the averments of knowledge on the defenders' part are not irrelevant. I am therefore of opinion that the interlocutor of the Lord Ordinary must be recalled and a proof allowed. As this case is a very peculiar one, perhaps it would be well that the proof should be before answer.

LORD ARDWALL and the LORD JUSTICE-CLERK concurred.

The Court recalled the interlocutor of the Lord Ordinary and allowed a proof before answer, but in view of negotiations for a settlement postponed issuing an interlocutor.

Counsel for Pursuer (Reclaimer)—Sandeman—Moncrieff. Agent—Wm. B. Rainnie. S.S.C.

Counsel for Defenders (Respondents)—Fleming, K.C.—Pitman. Agents—J. & F. Anderson, W.S.

Tuesday, November 17.

FIRST DIVISION.

GREIG AND OTHERS (STEWART'S TRUSTEES), PETITIONERS.

Trust — Education — Bursary Scheme—Alteration of Administration—Power to Alter Scheme from Time to Time Granted by Court to Trustees subject to a Proviso Safeguarding Intention of Testator.

A testator gave specific directions for certain bursaries which were to be given to students who attended the Arts course. The specific directions fitted in with the Arts course as then existing, but subsequently the university altered its Arts course. A petition for alteration of the scheme was presented.

The Court, *holding* that the proviso after mentioned maintained the certainty that the scheme should be in accordance with the original wish of the testatrix, and was not a delegation of their power, *granted* to the trustees power to frame regulations for the tenure of the bursaries by students attending the Arts course, and to prescribe the period for which they should be tenable, and to alter from time to time the regulations so made, "provided that the holders of such bursaries shall be bound to attend the said Arts curriculum in the said university for at least three years, and to take such branches of study in each year as the trustees shall in each individual case approve."

On 17th July 1908 William Greig and others, the trustees acting under the trust-disposition and settlement of Miss Bethia Stewart, dated 27th March 1901, and relative codicil dated 2nd August 1901, both recorded 15th April 1902, presented a petition for authority to modify the regulations under which bursaries of the annual value of £20 each granted to students attending the Arts course at Glasgow University under the provisions of the said trust-disposition and settlement were tenable.

Miss Bethia Stewart, who resided at Mossside Park, Crossmyloof, Glasgow, and who died on 10th April 1902, by her trust-disposition and settlement and codicil had made over her whole estate to the petitioners as trustees for the purposes mentioned therein.

By the last purpose of the said trust-disposition and settlement it was, *inter alia*, provided—"(*Lastly*) . . . . . I direct my trustees to apply the income of the remainder of the said residue in perpetuity in forming bursaries for necessitous deserving students attending the University of Glasgow—the bursaries to be of two classes, whereof the first class shall be tenable for four years, consisting of bursaries of an annual sum of £20 each, to be given to students who shall attend the Arts course for four years, taking at least three branches of study in each of the first two years and two in each of the remaining two years, and the second class shall be tenable for three years, consisting of bursaries of an annual sum of £50 each, to be given to students who shall have gone through the curriculum of Arts to enable them to take the course prescribed for medicine or law, provided that all bursaries shall be payable annually in advance during such attendance, but shall be awarded after a competitive examination, both oral and in writing, to be made by two neutral gentlemen of standing and reputation for learning (who shall be paid a reasonable fee for their services), to be named by my trustees, and after they are satisfied that the applicant is of good moral character and in necessitous circumstances."

The petitioners averred—"That the total estate, heritable and moveable, left by the deceased amounted to £51,809, 11s. 2d. . . . The net residue is £24,689, 9s. 5d. The income from this sum, after meeting three annuities of £50 to three infirmaries and an annuity of £10 to Hugh Waterston, is available (subject to administration expenses) for the purposes of providing the said bursaries of £20 each and £50 each.

"That up to the present time the petitioners have accordingly applied the income of the remainder of the said residue to the formation of bursaries of £20 for four years and of £50 for three years, subject to the conditions as to attendance above set forth. So far as the bursaries for £50 are concerned the petitioners do not consider that any alteration is necessary. Owing, however, to changes in the regulations applicable to the course for the degree of Master of Arts at the University of Glasgow, it has become necessary for the petitioners