answer to the suggested practical difficulty of finding out the amount of the profits upon which the assessment is to be laid, I can only say this, that it is not necessary to arrive at any satisfactory conclusion upon that matter, because it is not one with which the Court have to deal. If the Act of Parliament says the amount of profits is to be ascertained, ascertained they must be, whether that can be done in a satisfactory manner or not. Accordingly I do not think we require to go into that matter in order to arrive at a conclusion in regard to this case. I am of opinion that the determination of the Commissioners is right.

LORD CULLEN—I entirely concur.

LORD KINNEAR and LORD JOHNSTON were not present.

The Court dismissed the appeal.

Counsel for the Appellants—Macmillan, K.C.—Hon. William Watson. Agents—J. W. & J. Mackenzie, W.S.

Counsel for the Respondent—Solicitor-General (Anderson, K.C.)—J. A. T. Robertson. Agent—Sir Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Friday, July 19.

FIRST DIVISION.

(SINGLE BILLS).

[Lord Dewar, Ordinary.

CAREY *v.* CAREY'S TRUSTEES AND OTHERS.

Process — Jury Trial — Postponement of Trial — Material Witness Abroad — Address of Material Witness Unknown to Pursuer—Act of Sederunt, November 19, 1910.

The pursuer in an action which had been remitted by the Lord Ordinary to the sittings for jury trial, moved for postponement of the trial on the ground that one material witness was abroad, that the address of another material witness was unknown to the pursuer, and that neither of these witnesses would be available on the day fixed for the trial.

Held that these were not sufficient grounds for postponement, and the motion *refused.*

William Carey, *pursuer*, brought an action against the trustees of the late Frederick Charles Carey and others, *defenders*, for reduction of a will executed by the said Frederick Charles Carey. The summons was signeted on 27th January 1912 and called on 20th February. On 19th March the production was held satisfied and the adjustment continued until 14th May. Issues were approved on 22nd May, when a diet of trial was fixed for 21st November. On 27th June the defenders moved the Lord Ordinary (DEWAR) to remit the case to the sittings for trial. This motion was opposed by the pursuer, but was granted by the Lord Ordinary, and the trial was thereafter fixed for 26th July. On 19th July the pursuer moved in Single Bills for postponement of the trial on the ground that two material witnesses would not be available if the trial took place on the date fixed, as the one was in Switzerland and he was unable to communicate with the other, who was of roving habits, and whose present address was unknown to him. The motion was opposed by the defenders.

LORD PRESIDENT—This is a motion for the postponement of a trial which has been fixed for the sittings and was to have been tried next Friday. As your Lordships are aware, the practice in jury trials has been very much modified by a recent Act of Sederunt, which swept away a great deal of the somewhat cumbrous and antiquated procedure which formerly obtained, and under the present Act of Sederunt the general scheme for the disposal of jury trials—a scheme which I may say was entirely conceived in the interest of the public—is that jury trials should if possible be tried by the Lord Ordinary. If, however, the Lord Ordinary should be unable to give a day for the trial before the next ensuing sittings, then it is intended the trial should take place at the sittings in order to avoid delay. In this case the Lord Ordinary was applied to to fix a day for the trial after the adjustment of issues, which took place on 22nd May, but he could not give a day till November. Accordingly the defenders took advantage of their right to move the Lord Ordinary to remit the case to the sittings for trial. It was in the power of the pursuer to object to this, as he did, and give any good reason why he could not be ready for trial then, but the Lord Ordinary did not consider the reasons then tabled were sufficient, and he sent the case to the sittings. It is still perfectly competent, notwithstanding that, that either party should come to us and ask that the trial should be postponed, but I wish to lay it down for the guidance of the profession that such a motion will not be granted unless very strong grounds can be shown for interfering with the decision of the Lord Ordinary, or unless there has been a change of circumstances since the date of the Lord Ordinary's interlocutor, *e.g.*, the death or illness of one of the parties.

That being the general rule, I come to the application for postponement in this case. I cannot see that we have before us any good grounds for interfering with what the Lord Ordinary has done. There has been no undue haste on the part of the pursuer. The summons was signeted on 27th January 1912, but the pursuer, who has in his hands the progress of a case in its early stages, did not have the production held satisfied till 19th March, and the adjustment of the record was continued until the beginning of the summer session. Now all along the pursuer must have known that the trial was coming on, but

the only thing he can say in moving for postponement is that one witness who is very material is in Switzerland and that another material witness is a roving gentleman whose present address is unknown to the pursuer. I therefore think this motion should be refused.

LORD KINNEAR—I concur.

LORD MACKENZIE—I also concur.

LORD JOHNSTON was not present.

The Court refused the motion.

Counsel for the Pursuer — Macquisten. Agents—Purves & Simpson, S.S.C.

Counsel for the Defenders — Moncrieff, K.C.—J. M. Hunter. Agents—Simpson & Marwick, W.S.

Friday, July 19.

SECOND DIVISION.

SOUTER *v.* WATT.

Succession—Faculties and Powers—Power of Appointment — Exercise by General Bequest of Residue—Exercise by Gift of a Liferent.

By his trust-disposition and settlement a testator left a share of the residue of his estate to his trustees to hold for his three daughters equally in liferent and their children, if any, in fee, and in case of any of the daughters dying without leaving issue "to pay over her portion to such person or persons, and, if more than one, in such proportions as she shall by any writing under her hand direct or appoint." One of the daughters, who died without issue, left a holograph will, which commenced with the words—"I, Eliza Watt or Ferguson, do hereby state and record my wishes as to the disposal of my property and belongings after my death"; and by the will, after using the expression "As regards my own estate I do hereby leave and bequeath . . ." she thereupon bequeathed a number of special legacies, and made a bequest of residue in the following terms—"I desire that the residue of estate shall be divided between my sisters . . . in liferent," and thereafter destined the fee to her nieces. In a special case brought to determine whether the daughter by her will had or had not validly exercised the power of appointment conferred on her by her father's settlement, *held* that a power of appointment, as distinguished from a power of apportionment, was validly exercised by an appointment to a liferent—*Baikie's Trustees* v. *Oxley*, February 14, 1862, 24 D. 589, *distinguished*—and, following *Bray* v. *Bruce's Executors*, July 17, 1906, 8 F. 1078, 43 S.L.R. 746, that the daughter had exercised the power of appointment by the residuary bequest in her will.

James Francis Souter, bank agent, Inverness, and another, the trustees of the deceased Alexander Watt, shipowner, Macduff (*first parties*); Major Donald Munro Watt and others, the trustees of the deceased Alexander Watt, solicitor, Banff (*second parties*); James Watt, San Francisco, and others, some of the next-of-kin of the deceased Mrs Eliza Watt or Ferguson, widow of Dr John Ferguson, Mooltan, Punjab, India (*third parties*); Mrs Helen Watt or Jamieson, wife of the Rev. John Jamieson, United Free Church Manse, Canonbie, and others, the other next-of-kin of the said Mrs Eliza Watt or Ferguson (*fourth parties*); and George Watt, K.C., Edinburgh, as executor-nominate of the said Mrs Eliza Watt or Ferguson and others, the residuary legatees of the fee of her estate (*fifth parties*), brought a Special Case to determine whether the said Mrs Ferguson had or had not validly exercised a power of appointment conferred upon her by the will of her father the said Alexander Watt, Macduff.

The following *narrative* is taken from the opinion of Lord Dundas, *infra*—The sole question raised in this case is whether or not a power to dispose of certain funds by way of appointment has been validly exercised by the late Mrs Ferguson. The power was conferred upon her by the trust settlement of her father Mr Alexander Watt, who died in 1874. By that settlement, dated in 1873, Mr Watt, *inter alia*, directed in regard to a certain share of the residue of his estate that his trustees should hold it in trust "for the use and behoof of my daughters Helen Watt, Eliza Watt" (Mrs Ferguson), "and Jane Watt, equally between them in liferent for their liferent use allenarly, paying to each during her life the annual income or produce of" one-third of the said share, "and on the death of each of my said daughters my trustees shall pay over the capital or fee to her children, if any, in such proportions as she by any writing under her hand shall appoint, or failing any such writing, to and among her children equally between them, share and share alike; and"—here comes the part of the clause which raises the question in this case—"in the case of any of my daughters dying without leaving issue, my trustees shall pay over her portion to such person or persons, and if more than one, in such proportions, as she shall by any writing under her hand direct or appoint; and failing such direction and appointment, my trustees shall pay and divide the portion of any daughter or daughters dying without leaving issue to and among her surviving brothers and sisters and the issue *per stirpes* of any predeceasing brothers or sisters equally among them, share and share alike." Mr Watt's daughter Eliza became the wife of Dr John Ferguson. She died on 14th July 1911, predeceased by her husband, and without issue. The question whether or not Mrs Ferguson validly exercised the power thus conferred upon her depends upon the terms of her holograph