did nothing more. As was pointed out by Lord Chelmsford in the case of *Harvey* v. *Farquhar*, (1872) 10 Macph. 32, the divorce was not his act, but was the act of the Court on the initiative of Lady Montgomery, and his forfeiture of his rights as in a question with her, which is not the same thing as a transfer of property, was the common law consequence of the divorce. Under the marriage contract he had nothing to transfer, and he was debarred from affecting any of the provisions in the contract by his deeds.

But if Sir Basil was not a disponer, and if there was no reverter to a disponer—for it must be noticed that the statute provides for a reverter to a disponer, not to an owner or to an owner of a radical right—can the word "disposition" be read as referable to some transaction in which he was not the disponer, and which was not his act but only the consequence of his act? I think this would be a strained construction of the exception, and one which the words used will not reasonably bear, for the words can receive an obvious application without employing them as proposed by the appellants. I may add that the impression which I at first formed in the appellants' favour from the words used by Lord Macnaghten in the case of *Duke of Northumberland* v. *Attorney-General*, [1905] A.C. 410, was removed by Mr Candlish Henderson's reference to the words of section 2 of the Succession Duty Act 1853. Lord Macnaghten, referring to that section, says—"It is clear that the terms 'disposition and devolution' must have been intended to comprehend and exhaust every conceivable mode by which property can pass, whether by act of parties or by act of the law." The appellants' counsel claimed this statement as a definition of the word "disposition" which would include not only, as the respondents maintain, an act of a party, but also an act of law such as we are considering in the present case. But on reference to the section with which Lord Macnaghten was dealing it appears that he had to consider two separate things—a disposition and a devolution by law. The passage on which the appellants relied, instead of being in their favour, seems to be in favour of the respondents, because Lord Macnaghten limits the scope of the word "disposition" to an act of parties.

It was admitted that if the appellants are liable in estate-duty they cannot escape payment of succession-duty.

The Court affirmed the Lord Ordinary's interlocutor.

Counsel for Pursuer and Respondent—The Solicitor-General (Morison, K.C.)—R. Candlish Henderson. Agent—Sir Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Counsel for Defenders and Reclaimers—Cooper, K.C.—Jameson. Agents—Lindsay, Howe, & Company, W.S.

Tuesday, March 3.

FIRST DIVISION.

(Before Seven Judges.)

COCHRANE'S TRUSTEES *v.* COCHRANE.

Succession—Accretion—Joint or Separate Bequest—Direction to Divide in Certain Proportions—Legatees' Mentioned nominatim.

A testatrix directed her trustees to pay to each of her three daughters respectively the income of one-third of the residue of her estate, and on the death of each to pay, divide, and convey the corresponding one-third of the capital "in the proportions following," viz., to four sons and one daughter, *nominatim*, "each two shares," and to a granddaughter "one share." She further provided that the issue of such as predeceased the terms of payment should take their parent's share, that vesting should be postponed until the period of payment, and that the interests "conferred on or accruing to" females should belong to them exclusive of the *jus mariti* or right of administration of their husbands. There was no clause of survivorship. One of the liferentrices having died predeceased by certain of the residuary legatees, the survivors contended that the shares which would have fallen to the predeceasers if alive had accresced to them (the survivors) in proportion to the original shares left to them under the settlement.

Held (*diss.* Lord Mackenzie) that the testatrix intended not a joint bequest but a series of separate bequests, and that, accordingly, the shares which the predeceasers would have taken had they survived did not accresce to the survivors, but became intestate succession of the testatrix.

Paxton's Trustees v. *Cowie*, July 16, 1886, 13 R. 1191, 23 S.L.R. 830, *followed.*

On 22nd November 1912 Archibald Cochrane, Abbotshill, Galashiels, and others, the testamentary trustees of the late Mrs Janet Lees or Cochrane, widow of Walter Cochrane, manufacturer, Galashiels, *first parties*; the said Archibald Cochrane and others, *second parties*; and John Chapman, solicitor, Galashiels, and others, the testamentary trustees of the late Adam Lees Cochrane, Kingsknowes, Galashiels, and others, *third parties*, brought a Special Case as to their respective rights in the one-third share of the estate liferented by the late Miss Jane Cochrane, a daughter of the testatrix.

By her *trust-disposition and settlement* Mrs Cochrane provided, *inter alia*, as follows—"With regard to the free residue and remainder of my means and estate hereby conveyed, my said trustees and executors shall pay over to each of my said three daughters, Jane, Mary, and Jessie respectively, the annual produce of one-third part of the said residue of my means and estate

during all the days and years of their respective lives : . . . And on the death of each of my said daughters, Jane, Mary and Jessie, my said trustees shall, at the first term of Whitsunday or Martinmas which shall happen six months thereafter, pay, divide, and convey the one-third part of the principal of the residue of my said means and estate of which she received the annual produce . . . in the proportions following, *videlicet*—To my said sons, Adam Lees Cochrane, John Cochrane, Archibald Cochrane, and Walter Cochrane, and to my daughter Mrs Agnes Cochrane or Roberts, spouse of William Roberts, manufacturer, Galashiels, each two shares, and to my granddaughter Jessie Roberts, one share ; and in the event of any of the said Adam, John, Archibald, or Walter Cochrane, or Mrs Agnes Cochrane or Roberts, or Jessie Roberts dying before the said period of payment leaving lawful issue, such issue shall be entitled equally among them to the share to which their parent would have been entitled to if in life; and I declare that the interests of the said Adam, John, Archibald, and Walter Cochrane, and Mrs Agnes Cochrane or Roberts and Jessie Roberts in the said residue shall vest in them at and only upon the arrival of the terms at which their shares of the residue of my said means and estate respectively become payable. And I declare that the interests in my means and estate conferred on or accruing to females in virtue of this settlement shall belong to them exclusive of the *jus mariti* and right of administration of their husbands, and shall be dischargeable by themselves alone."

Adam Lees Cochrane, John Cochrane, Archibald Cochrane, Walter Cochrane, Jane Cochrane, Mary Isabella Cochrane (afterwards Mrs Macgregor), Jessie Brown Cochrane, Mrs Agnes Cochrane or Roberts, and Jessie Roberts (afterwards Mrs Dickson) were the whole heirs *in mobilibus* of the truster at the time of her death. In consequence of the death of Jane Cochrane (one of the three liferentrices) upon 10th July 1911, the one-third of the principal of the residue of the truster's estate, of which she had received the annual produce, became available for division. Of the persons named in the said direction to pay, divide, and convey the said one-third of principal, Adam Lees Cochrane, John Cochrane, and Mrs Agnes Cochrane or Roberts, all predeceased Jane Cochrane without leaving issue. Walter Cochrane predeceased her, leaving issue, all of whom survived the said Jane Cochrane. Archibald Cochrane and Mrs Jessie Roberts or Dickson and the children of Walter Cochrane were the only residuary legatees who survived Jane Cochrane. Any share of or right in or to the residue falling to Jessie Roberts or Dickson was at the date of the case vested in her marriage-contract trustees.

The second parties *maintained* (article 10 of the Case) that on a sound construction of the said trust-disposition and settlement, the said one-third of the principal of the residue fell to be divided and conveyed to and among them in the proportions of two shares to the said Archibald Cochrane, two shares equally among the children of Walter Cochrane, and one share to the marriage-contract trustees of Mrs Jessie Roberts or Dickson. They contended that it was not the intention of the truster to direct or operate any severance of particular shares or interests before and until the period of division arrived, and that she intended the survivors and the issue of the predeceasers of those nominated under the clause dealing with division of the principal of residue to take the whole of each third as the succession opened, dividing it in the proportions pointed out by the shares appointed to each nominee or his issue. On the assumption that the truster intended an earlier severance of the bequests, the second parties contended that the shares which would have fallen to Adam Lees Cochrane, John Cochrane, and Mrs Agnes Cochrane or Roberts had accresced to the surviving residuary legatees (namely, the second parties) in proportion to the original shares left to them under the trust-disposition and settlement. In such event the division as among the second parties would be in the proportions hereinbefore stated.

The third parties maintained that under the said trust-disposition and settlement the respective shares of capital left to the residuary legatees were separate and distinct, and that there was no room for accretion in the event of any of them predeceasing the period of division without leaving issue. They accordingly contended that the respective shares of capital which would have fallen to the said Adam Lees Cochrane, John Cochrane, and Mrs Agnes Cochrane or Roberts had they survived the said Jane Cochrane, lapsed by their predecease without issue, and now fell under intestacy to the heirs *in mobilibus* of the truster as at her death.

The *questions of law*, as amended, were— "(1) Does the whole one-third part of the residue of the trust estate liferented by Miss Jane Cochrane now fall to be divided among the second parties in the proportions set forth in article 10 hereof ? or (2) Does the said one-third part fall to be divided to the extent of five-elevenths thereof among the second parties under the said trust-disposition and settlement, and to the extent of the remaining six-elevenths thereof as intestate moveable estate of the truster ?"

On 14th January 1914 the Court appointed the case to be heard before Seven Judges.

Argued for the second parties—The rule in *Paxton's Trustees* v. *Cowie*, July 16, 1886, 13 R. 1191, 23 S.L.R. 830, that when a legacy was given to a plurality of persons, named or sufficiently described for identification, "equally among them" or "in equal shares," there was no room for accretion, was not an arbitrary one, but might be displaced by indications of a contrary intention, as thus, where the right conferred was a conjunct one—*Tulloch* v. *Welsh*, November 23, 1838, 1 D. 94 ; or where the bequest was to an unascertained class — *Muir's Trustees* v. *Muir*, July 12, 1889, 16 R. 954, 26 S.L.R. 672 ; *Brown* v. *Warden*, January 11, 1905, 12 S.L.T. 670 ; or where a joint-gift was

intended—*Menzies' Factor* v. *Menzies*, November 25, 1898, 1 F. 128, 36 S.L.R. 116; *Roberts' Trustees* v. *Roberts*, March 3, 1903, 5 F. 541, 40 S.L.R. 387. The words "the proportions following," relied on by the third parties, did not imply severance, but only that the beneficiaries were to get different amounts. The bequest was one to a class, viz., the descendants of the testatrix. In dealing with her daughter's shares the testatrix had herself used words which implied accretion, for she had spoken of "the interests . . . conferred on or accruing to females." The cases (*cit. infra*) relied on by the third parties were distinguishable, for they contained words which clearly implied a severance of interests, or, where that was not so, were decided on specialties.

Argued for the third parties—Where, as here, the beneficiaries were named, and where, as here, specific shares were given to each, there was no room for accretion—Stair, iii, 8, 27; *Paterson* v. *Paterson*, (1741) M. 8070; *Rose* v. *Roses*, (1782) M. 8101; *Stevenson* v. *Macintyre*, June 30, 1826, 4 S. 776 (784); *Torrie* v. *Munsie*, May 31, 1832, 10 S. 597; *Buchanan's Trustees*, June 15, 1883, 20 S.L.R. 666; *Paxton's Trustees* v. *Cowie*, July 16, 1886, 13 R. 1191, 23 S.L.R. 830; *Crawford's Trustees* v. *Crawford*, July 8, 1886, 23 S.L.R. 787; *Stobie's Trustees* v. *Stobie*, January 27, 1888, 15 R. 340, 25 S.L.R. 250; *Wilson's Trustees* v. *Wilson's Trustees*, November 16, 1894, 22 R. 62, 32 S.L.R. 54; *Stirling's Trustees* v. *Stirling*, December 6, 1898, 1 F. 215, 36 S.L.R. 194; *Graham's Trustees* v. *Graham*, November 30, 1899, 2 F. 232, 37 S.L.R. 163; *Farquharson* v. *Kelly*, March 20, 1900, 2 F. 863, 37 S.L.R. 574; *Hunter's Trustees* v. *Dunn*, January 27, 1904, 6 F. 318, 41 S.L.R. 251; *M'Laren* v. *M'Alpine*, 1907 S.C. 1192, 44 S.L.R. 900; *M'Gregor's Trustees* v. *M'Gregor*, 1909 S.C. 362, 46 S.L.R. 296. That being so, the shares of such as had predeceased the period of distribution fell into intestacy. The cases of *Muir's Trustees* (*cit.*), *Menzies' Factor* (*cit.*), *Roberts' Trustees* (*cit.*), and *Brown* (*cit.*), relied on by the second parties, were distinguishable, for in none of them was there, as there was here, a clear severance of interests. *Esto* that the rule might be displaced by indications of a contrary intention, such *indicia* as were present here favoured its applicability, *e.g.*, the absence of any clause of survivorship and the use of the terms "share" and "respectively." The fact that distribution was postponed and that there was a conditional institution of issue, was immaterial.

At advising—

LORD PRESIDENT—Stated in a single sentence, the question for our consideration in this case is whether the rule of construction laid down by a Court of Seven Judges in the case of *Paxton's Trustees* v. *Cowie*, (1886) 13 R. 1191, applies to the residue clause of the trust-disposition and settlement of Mrs Cochrane, who died in the year 1877. The rule is as follows:—"When a legacy is given to a plurality of persons named or sufficiently described for identification 'equally among them,' or 'in equal shares,' or 'share and share alike,' or in any other language of the same import, each is entitled to his own share and no more, and there is no room for accretion in the event of the predecease of one or more of the legatees." These are the words of Lord President Inglis (13 R. at p. 1197) in delivering the judgment of the Court. They must, however, be taken with a note of explanation given in the case of *Roberts' Trustees* v. *Roberts*, (1903) 5 F. 541, at pp. 544-5, by Lord Kinnear, who said—"I rather think that in stating the condition that the persons favoured must be named or sufficiently described for identification the Lord President meant individually named or identified. For he cannot have intended merely the condition common to all legacies and indispensable for their validity, that the legatee must be capable of identification; and, on the other hand, the purpose of his statement was to distinguish between legacies of shares to individuals and a legacy of a common fund to a class." And further—"It makes no difference that the conveyance is directed to be made to them 'equally among them,' because that expression does not necessarily import a separation into specific shares."

The question is whether the rule as thus annotated applies to the settlement before us. Have we here a joint legacy or a series of separate legacies? Did the testatrix intend a joint bequest or a series of separate bequests? I turn to the residuary clause of the settlement for an answer to these questions. By it the testatrix directed that each of her three daughters, Jane, Mary, and Jessie, should enjoy the income of one-third of the residue of her estate, and on her death she directed that the capital of the sum so liferented should be divided "in the following proportions, viz.," two shares to her sons Adam, John, Archibald, and Walter, two shares to her daughter Agnes, and one share to her granddaughter Jessie Roberts; and then follows a clause by which she directs that in the event of predeceasers of any one of her three daughters leaving issue the issue should take their parent's share. There is no clause of survivorship. By the vesting clause she directed that vesting should be postponed until the period of payment.

Now we have present here, I think, in the clause I have just read, all the *indicia* of a bequest to separate individuals and not of a joint bequest. We have here a plurality of persons—four sons, a daughter, and a granddaughter. Each of these persons is separately named and identified. To each, as I read the clause, separate shares of residue are given. The bequest is not a bequest to a class in the proper sense. All the children are not included; three daughters are excluded. All the grandchildren are not included; one grandchild alone is embraced. The shares are unequal. To each child is given double the share that is given to the grandchild. This is not a bequest to a class of persons the number of which cannot be ascertained until the date of distribution or of vesting. There is here a distinct expression of intention that predeceasers who leave children should transmit their shares to their children, but there is no clause of survivorship.

Now all these features of this residue clause seem to me to point in favour of the application of the rule of construction with which we are here concerned.

It remains, however, to examine the rest of the settlement for the purpose of seeing whether or no we can find in it any indication of an intention that the rule should not apply, but, on the contrary, that accretion should take place. I can find none. To two features mainly our attention was directed —first, it is said that the vesting clause affected the question because vesting was postponed and did not take place *a morte*. I cannot understand the argument that because a fund falls to be distributed at one time rather than at another, the bequest of it should be interpreted as a joint bequest and not as a separate bequest, and therefore I am not prepared to discuss the question.

In the second place, our attention was directed to the fact that the residue clause proper was prefaced by the words to be divided "in the following proportions," and it was said that the word "proportion" indicated an intention to make a joint bequest rather than a separate bequest. I cannot agree. There is no magic in the word share. The use of the word proportion or of the word interest is as clearly indicative of an intention to sever and not to conjoin as the use of the word share. It signifies not how severance is to be effected. It may be effected by fixing proportions. It may be effected by carving out interests. It may be effected by allotting shares. It signifies nothing which of these expressions is used; and, indeed, if we substitute in the residue clause the word "share" for the word "proportion" we see that the meaning remains unchanged. An excellent illustration of the use of the word proportion in the sense I have indicated is to be found in the opinion of Lord Kinnear in the case I have just mentioned of *Roberts' Trustees*, where he says (5 F. at p. 544-5)—"If a legacy is given to a family jointly without naming or enumerating individuals, it must either be given equally or in specific proportions, and if it be clear, as in this case it certainly is, that the testator had no definite proportions in his mind, because he did not know how many persons might participate, it is of no consequence whether an equal division is expressed in terms or not." In that passage Lord Kinnear uses the expression "proportions" as equivalent to the expression "shares," and in my judgment there is no difference between the two when you are considering the question whether the testator intended a joint bequest or a series of separate bequests.

Of the authorities cited to us, with the case of *Paxton's Trustees* v. *Cowie*, I regard the two cases of *Crawford's Trustees* v. *Crawford and Others*, (1886) 23 S.L.R. 787, and *M'Laren* v. *M'Alpine*, 1907 S.C. 1192, as approaching nearest to the present case. In both of these cases, no doubt, the residue clause was prefaced by a distinct direction by the testator to his trustees to divide the residue into a specified number of parts. On that feature, however, the Court, in giving judgment in each of these cases, laid no stress; and I am not surprised, for if the bequest to individuals be clear and definite it signifies nothing whether it is prefaced by an instruction to divide into a certain number of shares. The arithmetic is easy. The words are superfluous. They add nothing to and subtract nothing from the meaning of the expression.

If, then, it is clear, as I think it is, that a series of separate bequests and not a joint bequest was intended by the testatrix, the solution of the two questions put to us is easy. The daughter Jane died in the year 1911, and at the date of her death the capital of the share of residue liferented by her became available for division. At that date all the sons of the testatrix except Archibald had died. Her daughter Agnes had died; her grandchild Jessie Roberts survived, and four children of a deceased son, Walter. The surviving son Archibald, the four children of the deceased son Walter, and the grandchild, now Mrs Dickson, claim the whole capital of the one-third of residue which was liferented by the daughter Jane. In other words, they ask us to divide this part of the residue of the estate into five parts, whereas the testatrix directed that it should be divided into eleven parts. In my opinion their claim cannot be given effect to. The shares which the predeceasers would have taken had they survived now, in my judgment, fall into intestacy, and accordingly I propose to your Lordships that we should answer the first question put to us in the negative and the second in the affirmative.

LORD DUNDAS—I am of the same opinion. This case raises no question of general application or importance. We are not here reconsidering—this Court has no power to reconsider—the rule of construction laid down in 1886 by Lord President Inglis with the unanimous concurrence of six other Judges, and described by him as being "settled by a series of decisions beginning in the last century, and coming down to the case of *Buchanan's Trustees* (1883, 20 S.L.R. 666) in 1883." The question is whether the application of the rule to the settlement here under construction is, in the Lord President's words, "avoided by the use of other expressions by the testator importing an intention that there shall be accretion in the event of the predecease of one or more of the legatees." I do not find that there are here any sufficient expressions or indications of a contrary intention, and I am therefore for answering the first question put to us in the special case in the negative, and the second (as amended) in the affirmative.

LORD JOHNSTON—When the case was heard in the First Division of the Court I felt some difficulty in the application of the leading authority of *Paxton's Trustees*, 13 R. 1191, not because I had any doubt about the correctness of the canon of construction there enunciated by the Lord President (Inglis), but because I had some doubt about its application to the present case, arising from the peculiarity of the somewhat complicated residue clause with which we have to deal. It seemed to me to contain one, if

not more, negative, and at least one positive note which made me hesitate to accept that the testatrix really meant in any one clause of it exactly what she said, or had in the whole taken together expressed completely what she meant.

Now that the case has been reconsidered with the assistance of your Lordships I am satisfied that we have to take Mrs Cochrane's settlement as it stands, and make the best of it, regardless of the fact that, while precise in each of its clauses taken separately, it does not make an entirely homogeneous whole, regarding it as, what it was intended to be, a universal settlement.

Mrs Cochrane gave each of her three unmarried daughters a life interest in one-third of the residue of her estate, and making no provision for their issue should they marry and leave issue; she directed that on the death of *each* her trustees should pay, divide, and convey the corresponding one-third of the capital "in the proportions following," viz., to four sons and one daughter *nominatim* "*each* two shares," and to a granddaughter one share. This was followed by a conditional institution of the issue of those dying before the period of payment leaving lawful issue, but by no destination-over. Jane Cochrane, one of the unmarried liferentrices, died in 1911, and questions have arisen as to the disposal of the capital of the share of residue liferented by her. She was predeceased by two of the brothers and the sister without issue, who were among those to whom the capital of the residue was destined. She was survived by one of the brothers, by the issue of the remaining brother, and by the granddaughter.

It appears to me that the keynote of the whole of the residue clause is severalty or segregation. It provides a several liferent to each unmarried daughter. It provides on the death of each for division of the share of capital effeiring to her liferent. And it divides that share in the proportions following, viz., to five persons *nominatim* each two shares, and to the sixth one share. The word "each" is predominant and permeates the whole.

All I think that we derive from *Paxton's* case is that where expressions are used in a testamentary bequest which express that the bequest is joint there is accretion, and that where expressions are used which express severalty, unless there are indications throughout the bequest that severalty is not really intended, accretion does not take place. What the late Lord President does is, I think, merely to give an example of the expressly several bequest, as where one is made not to a class but to selected individuals, even though selected out of a class, divisible equally among them, or equally share and share alike. *A fortiori* where the division is unequal.

In the present case the one and only possible indication that severalty is not intended is the use of the words "in the proportions following." The best that can, I think, be said for consequent accretion is that the term taken by itself is indeterminate, and would be consistent with either intention. But where it is overridden by the general conception of the clause, by its collocation with the word "each," and by the fact that inequality is provided for, it cannot, in my opinion, turn that which without it is emphatically a several bequest, into one intended nevertheless to be joint.

Following, then, *Paxton's Trustees*, I think that there is no accretion here, and that the questions should be answered accordingly in favour of those parties maintaining resulting partial intestacy.

LORD SALVESEN—I agree with your Lordship.

LORD MACKENZIE—[*Read by Lord Dundas*]—The question in this case is whether the rule of *Paxton's Trustees*, 13 R. 1911, applies to the share of residue in dispute. The rule, as explained in that case, is a rule of construction only. Its effect is that "when a legacy is given to a plurality of persons named or sufficiently described for identification, 'equally among them' or 'in equal shares,' or 'share and share alike,' or in any other language of the same import, each is entitled to his own share and no more, and there is no room for accretion in the event of the predecease of one or more of the legatees. The rule is applicable where the gift is in liferent or in fee to the whole equally, and whether the subject of the bequest be residue or a sum of fixed amount or corporeal moveables." The Lord President, who thus expressed the rule, adds this—"The application of this rule may, of course, be controlled or avoided by the use of other expressions by the testator importing an intention that there shall be accretion in the event of the predecease of one or more of the legatees." There have been a number of decisions upon this branch of the law, but it was admitted on both sides of the Bar that the present case is not concluded by authority. The first condition for the application of the rule is that the persons to whom the legacy is left must either be named or sufficiently described for identification —*Muir's Trustees*, 16 R. at p. 958. This condition was not satisfied in *Roberts' Trustees*, 5 F. 541, in which the bequest was in favour of an unascertained class. It is fulfilled in the present case, because the legatees are mentioned *nominatim*. It is, however, also necessary that there should be a severance of the shares—that is to say, supposing £5000 be given to five persons by name, it must be plain from the whole language of the deed that the testator meant to give £1000 to each of the legatees named. Typical illustrations of a bequest of this character are to be found in *Crawford's Trustees*, 23 S.L.R. 787, where the direction by the testator was that on the death of his wife "my whole free property and estate shall be divided into seven equal portions or shares," and then certain shares were given to each member of his family named; in *Hunter's Trustees*, 6 F. 318, where the testator directed his trustees "to hold the whole residue of my estate . . . for behoof of my three daughters A, B, and C, and the survivors and survivor of them equally, and for their liferent use allenarly and their issue in fee;" and

in *M'Laren* v. *M'Alpine*, 1907 S.C. 1192, where the opening words of the bequest of residue were these—"The said residue and remainder of my estate shall be divided into eight equal parts or shares"; and then the testator went on to bequeath these shares to members of his family *nominatim*. In the present case I do not construe the bequest as a direction by the testatrix that the shares of residue (as the liferents fell in) are to be divided into elevenths, and that two-elevenths are to be given to five individuals named and one-eleventh to another individual named. In my opinion that is not what the testatrix meant. The words which introduced that clause of bequest are that the trustees shall pay, divide, and convey the share of residue set free "in the proportions following, *videlicet*." These words seem to me to furnish the key to the meaning of those that follow—"To my said sons Adam Lees Cochrane, John Cochrane, Archibald Cochrane, and Walter Cochrane, and to my daughter Mrs Agnes Cochrane or Roberts, spouse of William Roberts, manufacturer, Galashiels, each two shares, and to my granddaughter Jessie Roberts one share." The use of the words "in the proportions following" shows that the testatrix intended the expression "shares" to apply to the proportions to be taken by the legatees *inter se*, and not to denote ascertained fractions of the subject-matter of the bequest—in other words, that she meant her children each to take double of what she gives to her granddaughter. It is evident that the testatrix had in contemplation three periods of distribution, for the bequest applies to three shares, each of one-third, liferented by her three daughters. The declaration that the "interests" of the legatees named in the fee of the residue should vest only at the terms at which their shares of residue respectively become payable is consistent with the construction I have put upon the words of bequest, according to which the class is not to be ascertained until the period of division arrives. It is evident the testatrix contemplated the possibility of some of the beneficiaries predeceasing the terms of payment, and accordingly makes provision for the issue getting the parent's share. Further, in excluding the *jus mariti* as regards the interest given to females, these are described as "conferred on or accruing to," which indicates that in the view of the testatrix an interest conferred was capable of expansion. I may here remark that in considering whether the rule of *Paxton's Trustees* should be applied, though I do not think that in principle there is much difference between cases of immediate distribution and postponed vesting, yet from the practical point of view there is this distinction, that while in the one case the testator may be presumed to have known what the state of matters is at the date of his death, he cannot be presumed to know what the state of matters is going to be at a period subsequent thereto. There is, no doubt, one noteable omission in the deed, because although the issue of residuary legatees dying before the period of payment are instituted to their parents, no provision is made for the case of any of the three daughters of the testatrix having children. Such children, if there were any, take nothing. This, however, does not supply any argument to support the view that in the circumstances which have arisen there is intestacy. For the reasons above stated, I am of opinion that the rule of *Paxton's Trustees* does not apply to the present case, and that there is accretion.

LORD GUTHRIE—I agree with your Lordship in the chair. As has been already said, the question is whether the rule laid down unanimously by a bench of Seven Judges in 1886 in the case of *Paxton* v. *Cowie*, 13 R. 1911, applies to the question which has arisen under Mrs Cochrane's trust-disposition and settlement. It is, no doubt, true that the statement of the rule by the Lord President, who gave the only opinion, involves expressions which do not occur in Mrs Cochrane's deed, namely, "equally among them," "in equal shares," and "share and share alike," but his Lordship adds "or in any other language of the same import." What that phrase stands for may be gathered from the same Judge's opinion in *Buchanan's Trustees*, (1883) 20 S.L.R. 666—a case to which he refers in *Paxton*. In *Buchanan's Trustees* he said—"When a legacy of this kind in liferent or fee is given 'in equal shares,' there is no room for accretion, while, on the other hand, if the gift is given 'jointly,' then the presumption is in favour of accretion, though that presumption may be overcome by other words in the deed." The distinction as taken in *Buchanan's Trustees* and in *Paxton* may at first sight appear to be academic, but it involves and, I think, was founded on a substantial difference, namely, between shares given without express division and shares given in the lump. If that be the essence of the contrast and the foundation of the rule, it is equally present here, because the shares in the present case were not given jointly, but to named persons, in what I read as definitely stated proportions. The presumption thus established does not seem to me to be overcome by any other words in the deed. I refer particularly to the absence of a clause of survivorship.

LORD SKERRINGTON—I agree with the majority of your Lordships.

The Court answered the first question in the negative, and the second question in the affirmative.

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