lease "shall be deemed and taken to be also the proprietor of such lands and heritages in the sense of this Act, but shall be entitled to relief from the actual proprietor," in manner therein mentioned. There is some apparent plausibility in this view; and it may be a hardship in some cases that the heritor should pay an assessment according to the actual value, and not according to the rent he receives. But it seems difficult to hold that the clause in question was intended to remedy this or any other hardship; and it is certain that, according to the pursuer's interpretation of it, it would create more injustice than it could possibly remedy. If equity had been the object of the clause it would have taken into view, not the original duration of the lease from the term of entry, but the period for which it had still to run at the time of the valuation and assessment. It may be hard that a proprietor, at an early part of a long lease, shall pay an assessment according to the actual value of a subject which he is to be kept out of for 100 years, and for which he is only to get in the meantime a nominal rent. But, on the other hand, it would be as hard or much harder that every tenant in a lease longer than 21 years should, even in the last year of his possession, pay a great share of the expense of building a church from which he is not to derive the slightest benefit, and for which he was in no respect liable by the law as it previously stood, and as contemplated when the lease was entered into. Such an inversion of the rights of parties, and such an alteration of a voluntary contract, would be eminently unjust, and is not to be presumed to have been intended. Again, under the clause in question, where long leases are dealt with, there are many cases where the hardship may lie quite the other way from what the pursuers urge. The tenant, though paying a small rent, may have begun by paying a large grassum; or he may be bound, as generally happens in a building lease, and as seems here provided for, to leave buildings on the ground such as will be a great boon to the landlord. To lay upon the lessee the church assessment would in such circumstances be most inequitable. Yet none of these considerations are here taken into view, although they were manifestly essential if equity was the object of the clause. Leases are matters of contract as to which parties are free to fix their own rights and liabilities. To alter the effect of subsisting leases in this way would be a violent proceeding on the part of the Legislature; and as to future leases the parties may always regulate their rights so as to meet this and special cases in any way they like. Looking to these considerations, it seems much more probable that the object in view in the 6th section was merely some matter of convenience with a view to the collection of assessments, without its being intended to effect any change of ultimate liability. The words used, indeed, in the 6th section are too narrow and limited to have the operation contended for. The only substantive enactment in the section that can be argued to impose liability is, that "the lessee under such lease shall be deemed and taken to be also *the proprietor* of such lands and heritages *in the sense of this Act.*" What follows relates not to the liability, but to the relief competent to the lessee. But the natural meaning of this substantive enactment seems to be far short of what the pursuer contends for. The lessee is to be the proprietor *in the sense of this Act*, and this may have certain effects, such as making him the party to whom notice is to be given under the 5th section. The clause may even go the length of making the lessee be considered the same as a liferenter or other person in the actual receipt of the rents and profits in terms of the interpretation clause of the Act. But this will not make the lessee any more than a liferenter liable to a church assessment. If such a result was intended it would have been easy in the 6th clause to say that the lessee in the long lease was to be deemed and taken as the proprietor or heritor in the sense of *all Acts of Assessment* imposing liability upon owners or heritors. That would have been a distinct and explicit enactment, but it would certainly not have been easily reconciled with the declaration at the end of the Act, that nothing contained in it was to render liable to assessment any person not previously liable. There is one case which may seem to explain and satisfy the words of the enactment in clause 6th. By the 44th section of the Poor Law Act it is enacted that lease-holders under a building lease shall, in reference to the poor assessment, be deemed and taken to be the owners of the houses built. Here, then, is an enactment in a previous statute, by which certain lessees are liable as owners, and in that case the enactment of the 6th section of the Valuation Act, that certain lessees shall also be deemed proprietors, may come into play. A lessee under a long lease who possesses both land and houses, may be called upon in the first instance to pay poor assessment for both, and may then get his relief from the proper owner to the extent of the rent which he pays for the mere land. I do not say that the 6th section is well expressed or framed even in this view; but this possible case may have been in the mind of the framers of the Act, and may account for its terms. I may express here my satisfaction that we thus escape the necessity of meeting the ulterior anomalies that the pursuer's view of the statute might lead to in reference to the division of the area of a church. The apportionment of the area and the liability for the assessment ought indisputably to go together. But it is as yet unheard of in the law of Scotland that the area of a church should be apportioned among any other parties than the true and proper heritors. Upon the whole we think that the only safe and sound construction of the statute is to hold that it does not impose on the defenders a liability to which they were not previously subject, and consequently that they must be assoilzied from the conclusions of the actions.

The judgment of the Lord Ordinary finding the Clyde Trustees liable was accordingly recalled.

R. N.—HENRY GARDINER.

Counsel for Reclaimer—Mr Gordon and Mr Guthrie Smith. Agent—Mr Livingstone, S.S.C.

Counsel for Respondent—Mr Gifford and Mr Black. Agent—Mr Curror, S.S.C.

The question in this case, the circumstances of which have been previously reported, is whether a bequest to "relations" by a testator was a good bequest, or one void from its uncertainty and vagueness. The case was advised to-day—LORD BENHOLME delivering the judgment of the Court. His Lordship having narrated the question as it arose in the case, said—The argument was addressed to us to the effect that had the testator intended to benefit a limited class such as the heirs, who would have taken *ab intestato*, he would just have left the law to take effect. But it is obvious that this testator did not intend the law to come into operation, for he makes the bequest of his furniture to both sides of the house. His relations were to get one half, and the other half was to go to the relations of his widow at her death, if she did not enter into a second marriage. Had she married a second time the half intended for her relations would have recurred to the parties who were to take the other half. The Lord Ordinary has found the bequest not to be void by reason of uncertainty. The tendency of our later law is to strive after an interpretation of a bequest which will give effect to a testator's will rather than make it void. I think the natural interpretation of the bequest in the present case is that "relations" should become heirs *ab intestato.*

The other Judges concurred.

Saturday, Nov. 18.

FIRST DIVISION.

PETN.—BAIRD AND OTHERS *v.* THE TOWN COUNCIL OF DUNDEE.

Counsel for Petitioners—Mr Patton and Mr Thoms. Agents—Messrs Lindsay & Paterson, W.S.