them to have the whole of their fortune untouched at their entrance on life. It is the same as if he had said, "I leave and bequeath £1000, &c., but I direct that it shall not be payable till," &c. But he goes on to make a provision as to the income of this part of the estate, which is a most important clause, as enabling us to arrive at the mind of the testator. While the mother lived the trustees were charged with no duty in regard to the grandsons; but in the event of her death before her children reaching majority they are to apply the interests of the legacies for their aliment and education. The word "interests" in the plural means plainly interests accruing on each sum respectively of the three sums of £1000. Now, what, according to the testator's view, was to become of these interests during the life of the mother? Were they to fall into the residue? There is no indication of anything of the kind. The trustees were not in the same position towards these children as to the natural sons, to whom they were appointed tutors and curators; and accordingly the interests accruing during the mother's life are apparently to be administered by her, and applied to the maintenance of the household establishment in which the legatees were naturally brought up, the means of which were certainly limited enough so far as this testator is concerned. But he takes his trustees bound to step in on the death of the mother, which is a perfectly natural arrangement. I can see no other construction of the deed which is either harmonious or consistent.

Lord COWAN said it was important to observe what was the character of the trust-deed. It was not intended for accumulating, but for distributing; and what was conveyed was the whole estate. The fourth provision was an immediate bequest. The duty is imposed on the trustees of paying £1000 to each grandson. There is a subsequent declaration as to the time of payment, and the whole fallacy of the trustees argument lay in mixing up the bequest with the subsequent declaration. These are separate and distinct. I arrive at the same conclusion as your Lordship the more easily because I think interest is due *a morte testatoris* whether the mother lived or died. It is a necessary presumption in the circumstances that the interest should go for maintenance of the grandsons; and the last clause of this purpose of the trust is a mere provision for the administration of the interest in the event of the mother's death during the minority of any of her sons.

Lord BENHOLME—I also have a clear opinion, but I might not have had a clear opinion but for the clause as to interest. I cannot understand interest running on a sum not vested. I give no opinion as to what the result might have been had that clause not been here.

Lord NEAVES—There is no pretence that the legacy of £3000 to David did not vest; so also as to the residuary bequest to Robert. If there is vesting as to these two, that helps as to the other family who, though not so liberally provided for, had at least as strong claims on the testator. This is quite different from those cases in which a simple direction to pay is qualified *in gremio* by a condition. Here the condition is simply *morandæ solutionis causa*. The view of the testator was not to swell the benefit of the residuary legatee; but the provision was for the good of the young men themselves, by giving them the entire fund when they came of age. The interest payable infers a debt.

Tuesday, March 20.

FIRST DIVISION.

JAMIESON *v.* ANDREW (*ante*, p. 179).

Company — Limited Liability — Law Agent — Lien. Held that an English solicitor had no lien over the register and transfers of a limited liability company which was being wound up, for payment of an account due to him.

Counsel for Liquidator—Mr Gifford. Agents—Messrs Auld & Chalmers, W.S.

Counsel for Mr Andrew—Mr W. M. Thomson. Agents—Messrs C. & A. S. Douglas, W.S.

This is an application by Mr G. A. Jamieson, C.A., the official liquidator of the Garpel Hœmatite Company (Limited), for delivery of the books, deeds, and papers of the company. These were in the hands of Mr John Andrew, Solicitor in London, who retained them, claiming a lien over them for a sum of £768, 19s. 3d. due to him as solicitor of the company. Some time ago the Court ordered that the papers should be transmitted to the Clerk of Court in order that they might be inspected in his hands. The question as to Mr Andrew's lien was then argued in writing, and the Court on 23d February last expressed an opinion that the liquidator should, before getting access to the register and transfers of the company (to which he now restricted his demand), oblige himself to pay Mr Andrew's account, in the event of its being found that there was a lien over the papers. The liquidator refused to grant this obligation, but offered to bind himself to pay the claim, if the lien should be held to exist, out of the first recoveries of the estate. The Court to-day allowed him to get up the register and transfers without requiring him to grant the obligation they had previously suggested.

The LORD PRESIDENT said—In this case the liquidator tells us that the register and transfers are essential to him, and that he can do nothing in regard to the liquidation without them. It is therefore now necessary for us to determine this question in so far as the register and transfers are concerned. It is said that the register and transfers are in a different position from the other papers of the company, inasmuch as under the clauses of the Joint-Stock Companies Act of 1856 the register was a document requiring to be deposited and kept in the registered office of the company, which is at Garpel in Ayrshire, that all parties might have access to it; and that the company was bound to keep it there under certain penalties. It is very important to observe that when introducing the system of limited liability the Legislature have taken care that the public should have the benefit of access to the register of the company. Under the statute the register should have been at the registered office of the company. Had the company then power to remove the register not only from the office, but from the jurisdiction within which it was situated? Another question is—Could the company pledge the register of the company for their debts so as to give a creditor a lien over it? It appears to me they could legally do neither; but they have removed the register to England, and so deprived the public of the right of access to it which the statute provided. It is said, no doubt, that by giving up the register to the liquidator we will enable the company to undo its own illegal act; but it is to be kept in view that Mr Andrew was himself a shareholder of the company at the time when the register was placed in his hands. Then, in regard to the transfers, they are just a part of, or rather the foundation of, the register. But they belonged not to the company, but to the individual shareholders, who are now represented by the liquidator. The company had therefore no power to pledge them either.

The other Judges concurred.

The counsel for Mr Andrew moved that extract should be superseded for a few days, in order that he might have time to present an appeal to the House of Lords; but the Court refused the motion.

MURRAY *v.* MERRY AND OTHERS.

Judicial Factor—Powers. Circumstances in which held (aff. Lord Jerviswoode) that a judicial factor who had made necessary payments to a truster's widow and daughter, in excess of the

provisions in their favour, was entitled in a question with the beneficiaries to take credit therefor.

Judicial Factor—Duties—A.S. 1730. A factor having failed to lodge his accounts annually, in terms of the Act of Sederunt of 1730, held (per Lord Jerviswoode, and acquiesced in) that his salary should be restricted to one-half.

Counsel for Factor—Mr Fraser and Mr Trayner. Agent—Mr Thomas Wallace, S.S.C.

Counsel for Objectors—Mr Millar. Agents—Messrs Tait & Crichton, W.S.

This action is raised by Mr John Murray, S.S.C., judicial factor on the trust-estate of the late Alexander Thomson, for the purpose of distributing the deceased's estate.

Some claimants objected to the condescendence of the fund *in medio*, lodged by the factor, on various grounds. *Inter alia*, they objected—1st, that the factor had failed to fulfil the duty of lodging accounts annually, as required by the Act of Sederunt of 1730, whereby he had rendered himself liable "to such a mulct as the Lords of Session shall modify, not being under a half-year's salary;" 2d, that the factor had improperly debited the estate with certain outlays. Lord Jerviswoode sustained the first of these objections, and restricted the factor's salary to one-half. He also sustained the second objection to the extent of £13, 13s. The factor reclaimed, but abandoned his reclaiming note at the bar.

The claimants further objected that the factor had made payments for behoof of the widow and daughter of the truster in excess or violation of his duty. The Lord Ordinary found that the claimants had failed to establish this objection; and they reclaimed.

It appeared that by the truster's settlement the residue and remainder of his estate, or the prices and produce thereof, after payment of his debts, &c., and an annuity of £30 to his widow, was to be held for the use and behoof of Martha Thomson, his only child, while she remained unmarried. Betwixt 1846 and 1859 the clear revenue received by the factor was £435, 13s. 9½d., while the payments made by him during the same period on account of the widow and daughter amounted to £673, 9s. 7½d., being in excess of the provisions made in their favour, £237, 15s. 10d. The factor justified this overpayment by saying that the daughter was blind and unable to earn anything for herself, and that he was entitled to make the overpayments, because the truster's estate, notwithstanding the settlement, was liable for the maintenance of his child. It appeared also that the daughter had right to the rents of other property beyond what fell under the factory, and that Mr Murray was her agent, and collected the rents for her. These rents amounted to at least £20 a year; while the claimants averred that they amounted to £30, and that the fee of the property was vested in the daughter. Both widow and daughter are now dead.

The Court to-day adhered to the Lord Ordinary's interlocutor. The judgment of the Court was delivered by

Lord DEAS, who said—The question depends upon whether the factor before making the overpayments was bound to realise the heritable property belonging to the truster's daughter. It was not disputed that if this property had not existed the factor would have been in the circumstances entitled to make the overpayments. Neither was it disputed that Miss Thomson's property was liable for any necessary supplement of the allowance to her and her mother. It is putting it very high to say that the factor was first bound to exhaust Miss Thomson's property. That might have required considerable time, and the overpayments which he made could not be delayed. Another way of putting the objection is that the factor having made the overpayments, is bound himself to make good his recourse against the property. This is more plausible; but I am rather disposed to think that all that the reclaimers are entitled to is reimbursement out of the property; and this involves no hardship, because Mr Christopher Scott, who has succeeded to Miss Thomson's property as her heir-at-law, is a claimant in this multiplepoinding, and the claim may be made good against him and the property in this process.

The other Judges concurred, and the Court adhered, reserving to the reclaimers to make good their claim either in this process or otherwise.

SECOND DIVISION.

LOWSON AND OTHERS *v.* FORD AND OTHERS.

Testament. Terms of three writings found in a truster's repositories along with her settlement, which held (alt. Lord Ormidale, diss. Lord Benholme) not to be testamentary; and terms of another writing, also found there, which held (aff. Lord Ormidale) to be testamentary.

This is an action of multiplepoinding and exoneration brought by the accepting trustees and executors nominated and appointed by the late Miss Jane Bell, residing in Dundee. The action is brought to determine what writings are to be regarded as testamentary in regard to the distribution of the succession of Miss Bell, and who are the various parties entitled to participate in it. Miss Bell executed a trust-disposition and deed of settlement in 1853. By this deed Miss Bell conveys her whole estate to trustees for the purpose of discharging her debts, of paying a variety of legacies, and disposing of the residue. The deed concludes with a clause in the following terms:—"Reserving always my own liferent of the premises, with full power to me at any time of my life, and even on deathbed, by a writing under my hand, to alter, innovate, or revoke these presents, in whole or in part, as I shall think proper, and to alienate, burden, or otherwise dispose of the means and estate, heritable and moveable, hereby disposed; but in so far as these presents shall not be altered, the same shall be valid and effectual, though found lying by me, or in the custody of any other person for my behoof, undelivered at the time of my death, with the delivery whereof I have dispensed, and hereby dispense for ever." In the repositories of the truster there were also found after her death four papers, all holograph of her, written on separate sheets of letter-paper, and lying beside her trust-settlement. Various legacies are bequeathed in these papers. In the first, after the truster's signature, there are the words, "This is to be handed to Mr Reid, to add to my settlement;" and in the second the bequest of legacies was prefaced by the words, "To be handed to Mr Reid; a codicil to my deed; should I be taken away suddenly, my trustees would act upon it the same as if it were written as a codicil to my settlement." A minute of admissions was put in by the various claimants, in which a letter is admitted which is said by one of the claimants in his condescendence to have been written by the truster in her lifetime to her agent, Mr W. J. Thomson, writer, Dundee, to the following effect:—"Miss Bell presents respectful compliments to Mr Thomson. She begs to acquaint him that she will be much disappointed if her late brother's matter is not completely settled by the term of Whitsunday, as she intends to make some alterations in her deed, and cannot do it until she knows what part of her brother's property falls to her share."

The question in dispute in the action is, whether these four papers are to be regarded as testamentary writings of Miss Bell, and as such are to be taken along with her trust-settlement in the distribution of her estate, or are to be looked upon as mere memoranda for the instruction and information of her agent. The Lord Ordinary (Ormidale) found that they were valid testamentary writings Before dis