defender to be liable in any circumstance—in fact to insure the safety of the public—we should be, I think, transgressing the principles applicable to such cases as the present by allowing this judgment to stand.

LORD ORMIDALE—I concur. It would be extravagant to hold that a person in possession or charge of firearms is to be responsible for the safety of third parties in all possible circumstances. All that can be expected is that reasonable precaution which a prudent man with a dangerous instrument will take against risk of injury to those about him.

Both the Sheriffs say well that the question is, did Pollock take this precaution?

In the first place, we must keep in view, as a fact, what Pollock tells us, that he had left the gun unloaded after the occasion of his last using it. Again, when the gun was brought to Pollock, he did not rely upon its being unloaded, but he took precautions to ascertain the fact so far as he could. He asked the boy Dun who brought it to him if it was loaded. Dun was not able to say, but Pollock took further precautions to ascertain about the loading—he examined the nipple of the gun and found no cap on. Taking this fact in conjunction with the other fact that he left the gun unloaded, he felt himself justified in believing that it was still in the same condition. Not content, however, with this evidence as to the loading, Pollock tried to get the ramrod out of its place to try the gun by means of it, and was only prevented by finding the ramrod immoveably fixed in its place.

Now, in my opinion, instead of the fact that Pollock tried to get the ramrod out and did not succeed, telling against him, it tells in his favour, and why? because we know as a fact that he had left the gun unloaded, and therefore when he found the ramrod immovable it was most natural to conclude that it had not been interfered with.

On a consideration of the whole circumstances of the case, I am not able to find any culpable neglect on the part of Pollock. It is with great reluctance that I disturb the judgment of the Sheriffs, but I think that we have here no other alternative.

LORD JUSTICE-CLERK—I concur, and I hold that the gun was not loaded; it was charged, but properly speaking a gun cannot be said to be loaded until it has a cap on, Here Pollock did not know that the gun was loaded, and not seeing any cap he reasonably concluded that it was not loaded.

Whether a person would not be guilty of culpa who leaves about a gun which he knows to be loaded, but which he believes to be safe because it has no cap on, is a different question from the present.

Counsel for Pursuer (King)—Kirkpatrick and Millie. Agent—Thomas Lawson, S.S.C.

Counsel for the Defender (Pollock)—Moncrieff. Agent—Alexander Morrison, S.S.C.

Thursday, October 29.

SECOND DIVISION.

SPECIAL CASE—MILLER AND ANOTHER (SUTHERLAND'S TRUSTEES) AND OTHERS.

Succession—Vesting.

Terms of settlement *held* to confer a discretion on the trustees to fix the period of payment and vesting of the shares of the truster's moveable estate; and facts *held* sufficient to show that the shares had vested.

This was a Special Case submitted for the opinion and judgment of the Court by (1) the trustees of the late John Sutherland, fishcurer, Greenigoe, near Wick; (2) by Mrs Sutherland or Clarkson, Robertson Place, Leith Walk, Edinburgh, his daughter; (3) by the widow and eldest son of the deceased (John); (4) by the youngest son George.

The truster died in May 1856, leaving heritable estate worth £850, and free moveable estate to the amount of £2000. He was twice married, and was survived by his second wife, one daughter of his first marriage (now Mrs Clarkson), and by three sons of his second marriage, John, Alexander, and George. By his trust-disposition and settlement he directed his trustees *inter alia*, "when the same can be conveniently done, to divide, pay, assign, and dispone the same accordingly, it being distinctly understood that my wife shall have the same share as one of my children; declaring that, in the event of any one of my children predeceasing me, or dying without lawful issue, before receiving his share under this trust, the share of such child shall be divided between my wife and my other children, equally amongst them, share and share alike; and declaring further, that in the event of my eldest surviving son, or his heirs, quarrelling this disposition and claiming right as heir to my heritage, he or they shall not have any right whatever to any share or portion of my moveable estate, and he is hereby in that case expressly excluded therefrom, and my trustees shall divide the same amongst my wife and other children." His will was, in so far as regarded the heritage, reducible *ex capite lecti*. The heritage was managed by trustees until the eldest son came of age, and the free rents were lodged in bank by them, and his board and education defrayed therefrom. When he came of age, in May 1874, John repudiated the settlement, and elected to take the heritage as heir-at-law; and the trustees thereupon allowed him to take possession of the heritage and paid him the balance of the rents in their hands, without requiring him to reduce the will. In June 1857, the widow and daughter of the deceased, under an agreement between them, each got payment from the trustees of a fourth share of the moveable estate, the other two fourths being retained and managed by the trustees for behoof of the other two sons, not yet of age. Alexander died in May 1872, aged nineteen years, without issue, unmarried and intestate, no portion having been handed over to himself, and the balance of his one-fourth share amounted to about £500. In these circumstances, the Court was asked to say—(1t Did this share vest in Alexander before his death? and (2) to whom and in what proportions did it fall to be paid?

Cases cited—*Howatt*, 8 Macph. 327; *Thorburn*, 14 S. 485.

At advising—

LORD JUSTICE-CLERK—The case here differs from those quoted to us, where the period of division had not arrived and there was no actual division. Here the trustees have it in their discretion to fix the period of payment and of vesting. The payment of one share proves that the convenient period of payment had come, and when the widow and daughter agreed as to the shares, and it was paid over, the shares vested. I think the facts here show that the period of vesting had arrived, and the period of payment was not postponed as in the cases cited.

LORD NEAVES—I concur. It would have been unjust to have postponed the division in the circumstances.

LORD ORMIDALE concurred.

The first question was answered in the affirmative. On the second question the answer of the Court was, that one-third was to be given to each of the third and fourth parties.

Counsel for the Trustees—Black. Agent—D. Curror, S.S.C.

Counsel for Mr and Mrs Clarkson—J. A. Reid. Agents—Philip, Laing & Monro, W.S.

Counsel for George Sutherland—M'Kechnie. Agent—H. W. Cornillon, S.S.C.

Friday, October 30.

SECOND DIVISION.

SPECIAL CASE—HILL AND OTHERS.

Succession—Trust-Settlement—Construction.

Where a trust-settlement devolved large discretionary powers as to division and apportionment of a share of residue on a trustee, who accepted, and after assuming another trustee, became insane—*held* that on the insanity of the original trustee the discretionary power came to an end, and the assumed trustee was entitled to divide the share equally amongst the beneficiaries.

This Special Case was presented for the opinion and judgment of the Court in the following circumstances:—

The deceased Mrs Flora Hill, widow of William Hill of Hillwood, by her trust disposition and settlement, dated 25th March 1865, conveyed her whole moveable property to her daughter Mrs Finnie, as her sole executrix and trustee.

The purposes of the trust were as follows, viz., (1) to defray the expenses of the trust and paying the deathbed and funeral expenses of the truster; (2) for payment of certain special bequests of certain articles of plate and furniture, and of certain funds therein mentioned; (3) for payment to the truster's sister Margaret Pretsell of a free yearly annuity of £50 sterling, and to Mrs Helen Hill or Veitch a free yearly annuity of £40 sterling, which last-mentioned annuity was by the codicil to her said trust-settlement increased to £50 per annum; (4) for payment of certain pecuniary legacies to relatives of the truster and charitable institutions.

The last purpose of the trust is expressed as follows:—"Lastly, to the end and intent that after the special and primary provisions and purposes of this trust as before specified, and any other provisions and purposes which I may hereafter direct and appoint shall have been fully paid, implemented, or provided for, my said trustee may divide the whole residue and remainder of my said moveable estate and effects into three equal parts or shares, and that she shall retain in her own hands one of the said parts or shares, and apply the same for the use and behoof of the surviving children of the marriage between the Rev. William Thomson, my son-in-law, and Catherine Hill or Thomson, my daughter, now deceased, and that at such time or times, and in such way and manner as my said trustee, in whose judgment and discretion I have perfect confidence, may think most conducive to the welfare of the said children, with full power to her to divide and apportion the said provision among the said children, or to apply the same for their behoof, in such shares and proportions as she may think proper, without the interference or control of any one or more of the said children, who shall have no vested interest therein; and the other two third parts or shares of the residue of my said moveable estate and effects shall belong to my said trustee herself, and be retained by her as her own absolute property: and I hereby revoke all former settlements or testamentary deeds executed by me at any time prior to the date hereof; reserving always to myself full power and liberty at any time of my life, and even on deathbed, to alter, innovate, or revoke these presents, either in whole or in part, and either onerously or gratuitously, at pleasure. But declaring that the same, in so far as not altered or revoked, shall be a good and valid deed, though found in my custody, or in the custody of any other person for my behoof, undelivered at the date of my death; dispensing with the delivery hereof." The trust-deed contained no power of assumption of new trustees. The said Mrs Flora Pretsell or Hill died on 12th April 1868, and her daughter Mrs Finnie accepted of the offices of trustee and executrix under the said settlement, and entered on the possession and management of the trust-estate, which consisted entirely of moveable property, which was duly realized, and she paid such of the debts and legacies as were immediately payable.

After payment of these there remained a sum of £6827, 2s. 10d. to be applied to the purposes of the trust; and after setting apart a sum of £2500, to be invested for the purpose of yielding a yearly interest sufficient to provide for the two annuities of £50 each bequeathed to Margaret Pretsell and Mrs Veitch, there remained a free residue of £4327, 2s. 10d., which was divisible between Mrs Finnie herself and the surviving children of Mr and Mrs Thomson, in the proportion of two-thirds to Mrs Finnie, amounting to . £2884 15 2
and one-third to the children of Mr and Mrs Thomson, . . . 1442 7 8

£4327 2 10

At the death of Mrs Hill there were in life five children of Mr and Mrs Thomson, viz., William, John, Mary, Catherine, and Margaret.

Under the discretionary power conferred upon her by the trust-settlement Mrs Finnie paid to the children of Mr and Mrs Thomson sums amounting in all to £1042, 7s. 6d. There was then left in Mrs Finnie's hands a balance of £400, 0s. 2d., with the reversion of one-third of the sum of £2500 on the falling in of the annuities to Miss Pretsell and Mrs Veitch, divisible amongst the