

Counsel for Petitioner (Reclaimer)—Brand.  
Agent—J. Watson Johns, L.A.

Counsel for the Trustee—Guthrie Smith—  
M'Kechnie. Agent—John Ronald, S.S.C.

Counsel for concurring Creditors—Scott—  
R. V. Campbell. Agents—A. Kelly Morison,  
S.S.C., and A. Kirk Mackie, S.S.C.

Friday, November 2.

FIRST DIVISION.

VINCENT, PETITIONER, v. LINDSAY  
(CHALMERS & CO.'S TRUSTEE).

Process—Petition for Recall of Arrestments—Com-  
petency of Proof.

A petition prayed for the recall of arrestments used by the respondent on the goods of a third party, the petitioner stating that the goods had become his property before the execution of the arrestment. It was averred by the respondent that there had been no real *bona fide* transaction between the parties, and that the alleged sale was a pretence to avoid the diligence. On a motion by the petitioner to allow the respondent a proof of his averments, the Court held that these being statements respecting the validity of the arrestments, must be tried in the action of furthcoming, and that no proof on such questions could be allowed in the petition.

Observed (*per* the Lord President) that under such a petition the Court must be able to say "either (1) that arrestments should never have been used at all, or (2) that they should be recalled upon caution being found."

Counsel for Petitioner—Trayner. Agents—  
Boyd, Macdonald, & Co., S.S.C.

Counsel for Respondent—A. J. Young. Agents—  
Wallace & Foster, solicitors.

Friday, November 2.

FIRST DIVISION.

[Lord Young.

CRAWFURD'S TRUSTEES v. BROWN AND  
OTHERS.

Succession—Residue—General and Special Bequest of  
Residue.

A truster in a settlement containing a destination of the residue of the estate, directed the trustees to make payment of a sum of £10,000 to an individual, and in a codicil recalled that direction and substituted for it a direction to pay out of that sum various legacies to the amount of £6700 to certain charitable institutions, and "the balance of the fee of the said principal sum of £10,000, being £3300," to A and B. One of the charitable bequests having failed, *Held* (*revq.* the Lord Ordinary, Young) that the sum thereby set free fell

into the general residue dealt with by the original deed; *diss* Lord Deas, who held that it fell to A and B as being part of the balance of the fee of the £10,000.

Observed (*per* Lord President) that "where there is a general residuary legatee there is a presumption against the creation of a special residue."

This was a question arising out of the terms of a trust-disposition and settlement dated 12th January 1839, executed by Miss Janet Crawford, and a codicil thereto annexed, of date 3d February 1841. The trustees appointed under Miss Crawford's settlement raised an action of multiplepounding against the Glasgow Emancipation Society, Alexander James Dennistoun Brown, and the trustees of the late Mrs Maclae, each of which three parties claimed a sum of £1000 under Miss Crawford's settlement and the relative codicil, under the following circumstances:—

Miss Crawford in her original settlement, amongst other legacies, directed her trustees to pay "to Mrs Jean Brown, otherwise Ewing Maclae, in liferent for her liferent use allenarly, and the foresaid Major James Dennistoun Brown in fee, the sum of £10,000 sterling; Declaring that in case the said Mrs Jean Brown shall die survived by the said Humphrey Ewing Maclae, her said husband, he shall be entitled to the liferent of one half of said sum during the period of his survivance."

The provisions of this deed as to the residue of her estate were these—"Fifth, In the event of the free residue of my estate, after paying or providing for the whole legacies and provisions hereinbefore mentioned, amounting to the sum of £5000, I direct my said trustees to lay out, mortify, and invest the said sum of £5000; and in case the residue of my estate shall not be sufficient to yield that sum, then the amount of said residue, whatever it may be, in the purchase of heritable property in Scotland, in one or more lots, as they may find necessary or judge most advisable and beneficial, and to take the titles thereof in manner and for behoof as aftermentioned; and in case the residue of my estate, after paying and providing as aforesaid, shall amount to more than the foresaid sum of £5000, to be mortified and invested as before and after mentioned, then I direct my said trustees, after mortifying and investing said sum, or providing for such investment, to pay over the whole of the remainder of such residue to the foresaid Mrs Jean Brown, otherwise Ewing Maclae, her heirs or assignees."

In the codicil Miss Crawford made this alteration on her settlement—"In exercise of my reserved powers, I do hereby recall the appointment upon my trustees therein named, and the survivors of them, to pay to the said Major James Dennistoun Brown and his heirs the sum of £10,000 sterling, by said settlement provided to Mrs Jean Brown, otherwise Ewing Maclae, in liferent, and the said Major James Dennistoun Brown and his foresaids in fee;" and "in regard to the said sum of £10,000, I direct my said trustees to hold the same in trust for the ends, uses, and purposes following: viz., in the first place, for behoof of the foresaid Mrs Jean Brown, otherwise Ewing Maclae, in liferent, for her liferent use allenarly, whom failing, survived by the