In this process the stipend was modified on 30th January 1867. A locality was prepared, and by interlocutor, dated 15th July 1875, a rectified locality was approved of as a second interim scheme of payment. In July 1877 the case was put to the roll by Smith Sligo's Trustees, who were heritors in the parish, to have the scheme approved final, and on that date the motion was allowed to drop, in respect that there was no appearance for the common agent. When the case appeared again on the motion roll in October following, the common agent resisted the motion, on the ground that it would be necessary to allocate the stipend due from certain lands in the parish among new feuars who had recently acquired rights. Nothing was done on that date, but on 8th February 1878 the Lord Ordinary pronounced an interlocutor approving of the scheme as a final locality.

The common agent reclaimed, and when the case came up in the Single Bills he stated, in answer to a motion by Smith Sligo's Trustees to refuse the reclaiming note, that he had had no other notice of the motion to the Lord Ordinary than the appearance of the case in the Teind Roll; that in consequence of the transference of certain lands in the parish to new feuars an adjustment of the share of stipend among these feus was necessary, and if it was not allowed the minister would be put to great inconvenience in collecting his stipend. What he now intended to ask was that the feuars should be held as cited, and a remit made to re-adjust the locality.

The respondents answered—If the giving off of feus was to be held a sufficient excuse for delaying the finality of a locality in such a parish as South Leith, a final locality would never be pronounced at all.

At advising—

Lord President—I am for refusing this note, and I hope our judgment in this matter will be taken as a precedent for avoiding delay in similar cases. If such a motion as this is to be entertained in consequence of every fresh feu that is given off from every estate in the parish, I cannot see how any locality in such a parish as South Leith is ever to come to an end, and I cannot see any object in keeping it open. It has been said that the minister will be prejudiced. I am quite unable to understand how that can be, and both the Lord Ordinary and the teind clerk, as I have learned, are equally unable to do so. As the minister has not come here, I cannot in these circumstances give any weight to such a suggestion. It is stated by the parties whom the reclaimer represents that they have no interest in the matter whatever, and the conclusion therefore seems to be that there is no party who has any interest whatever to keep this locality open any longer, and therefore I cannot justify the view of the common agent that it should be kept open.

Lord Deas and Lord Mure concurred.

Lord Shand—I am of the same opinion, and I may say that I very willingly take any opportunity of putting a stop to the grievous delays that are taking place in these localities. It may be a proper practice that when a locality is being kept open by some reason beyond the control of the common agent he should use the time thus occupied in redistributing the stipend among the feuars who have acquired their property in place of the one or more heritors who have sold it. But after a locality is ready to be closed I can see no reason to keep it open for the purpose of allocating the stipend among new feuars who are in a position to be brought in. A locality may be closed, and the very next day a feu may be given off which would alter the locality were it allowed to be opened up. In the case of such parishes as South Leith there never would be a final locality if we were to sustain a reclaiming note in circumstances such as the present.

The Court refused the reclaiming note.

Counsel for Common Agent (Reclaimer)—Kinnear. Agent—Party.

Counsel for Respondents—Thoms. Agents—Hill & Fergusson, W.S.

Wednesday, March 6.

FIRST DIVISION.

[Lord Rutherfurd Clark, Ordinary.

FERRIER (CONNELL'S TRUSTEE) *v.* BUSHNAN AND OTHERS.

Process—Multiplepoinding—Competency.

Where there was neither double distress nor the refusal of beneficiaries to concur in granting a discharge—*held* that a trustee is not entitled to raise a multiplepoinding in order to try the question, whether the only claimant of the fund in dispute has a valid title to grant a discharge.

The pursuer in this action was the surviving trustee under the trust-disposition and settlement of the late Miss Susan Graham Connell, and the subject in dispute was a legacy of £500 which the truster left to her nephew Mr Newton O. R. Bushnan. This legacy was subject to the liferent of the truster's sister Mrs Bushnan, who died in September 1875. Previous to this date, on 30th November 1866, Mr Bushnan executed an indenture of mortgage, in English form, by which he assigned all that he might become entitled to receive under the will of Miss Connell to Mr John Laws Milton, his executors, administrators, and assigns, with power to them to sue in his name. On the 15th October 1868 Mr Bushnan, becoming bankrupt, assigned his estate and effects to Mr Smallpage, one of his creditors in London, as trustee under the Bankruptcy Act 1861. In 1876, on the death of the liferentrix Mrs Bushnan, Mr Smallpage demanded payment of the £500 upon a discharge to be granted by himself alone. The pursuer objected to accept this discharge without satisfactory evidence that the preferable creditor's claim was satisfied. Eventually Mr Smallpage withdrew his claim, and assented to the whole legacy being paid to Mr Chalk, as assignee of the first mortgagee Mr Milton. The mortgage was assigned to Mr Chalk on the 7th September 1876. He offered the pursuer a complete discharge, but the pursuer doubting Chalk's title considered it

necessary to raise this action of multiplepoinding, calling as defenders Bushnan, Smallpage, Chalk, and Milton.

The defender Chalk pleaded, *inter alia*—"The action is incompetent, in respect that there is no double distress, and that in any view this is an incompetent process for the purpose of trying the question—Whether the only claimant of the fund in question has a valid title to grant a discharge?"

The Lord Ordinary dismissed the action, finding the pursuer liable in expenses.

The pursuer reclaimed, and argued—If there was no judicial discharge, Smallpage might repeat his claim—indeed, it might be doubted whether he was legally entitled to waive it. There was no actual double distress, but that was not absolutely necessary.

Authorities—*Taylor* v. *Robinson and Others*, May 24, 1836, 14 S. 817; *Dunbar* v. *Sinclair*, Nov. 14, 1850, 13 D. 54; *Mitchell* v. *Strachan*, Nov. 18, 1869, 8 Macph. 155 (Lord Benholme); *Park* v. *Watson*, Nov. 21, 1874, 2 R. 118.

Argued for Chalk—The discharge offered was a good and sufficient one; but even were it otherwise, a multiplepoinding was not a proper form of action for trying this question of title, as there was no double distress, and the authorities showed that where there was no double distress those bound to grant a discharge must have refused to do so in order to make a multiplepoinding competent.

Authority—*Moncrieff* v. *Thomson*, June 1, 1844, 6 D. 1100.

At advising—

Lord President—It is of course the object of the pursuers in this multiplepoinding to represent it as one of those cases in which trustees holding the *universitas* of an estate are permitted to throw the estate into Court for distribution by a multiplepoinding, not because there are competing and hostile claimants, but because the beneficiaries will not concur in granting a complete discharge. It is an established rule that trustees in these circumstances are entitled to come into Court by a multiplepoinding. But what is the position of the pursuer here? He has a definite sum of money—£500—which, under deduction of legacy-duty, makes a net sum of £484, 2s. 6d. He is debtor in that sum, and the fact that he is debtor as trustee does not affect the question at all. He is not entitled to bring a multiplepoinding unless he can show that there is double distress. Now, this he has totally failed to do. His only object is that it may be settled what discharge he is entitled to get. I have not the least hesitation in saying that a multiplepoinding is an incompetent form of action for this purpose. I think the case of *Moncrieff* is directly in point. If the debtor is not satisfied with the discharge which is offered he has an obvious remedy. If the debt is on a bond and disposition in security, as it was in *Moncrieff*, it is suspension. If it is an ordinary debt, the remedy is to let the creditor raise an action for payment, and in defence the debtor will have an opportunity of saying that the discharge offered is not enough. That is the proper form of action here.

Lord Deas, Lord Mure, and Lord Shand concurred.

Counsel for Pursuer and Reclaimer—Campbell Smith. Agent—Party.

Counsel for Defender and Objector (Chalk)—Kinnear.—Jameson. Agents—Mylne & Campbell, W.S.

Wednesday, March 6.

SECOND DIVISION.

[Lord Young, Ordinary.

GEORGE BEVERIDGE *v.* BEVERIDGE'S TRUSTEES.

JAMES BEVERIDGE *v* BEVERIDGE'S TRUSTEES.

MICHAEL BEVERIDGE *v.* BEVERIDGE'S TRUSTEES.

Fee and Liferent—Destination—To A in Liferent and his Children nascituri *in Fee—Where Restriction against Sale of the Liferent.*

A testator directed his trustees to convert his estate into cash, "and so soon as they may find it convenient they shall deliver and pay the following legacies to my nephew A B in liferent, and his children in fee, failing children to his own nearest heirs equally, £7000." In a codicil he provided that A B, who was unmarried, should not be entitled to sell the liferent of the sum provided for him, "and if he attempt to do so, believing he has power, said liferent shall be null and void." There was no provision in the settlement for the continuance of the trust. *Held*, in an action for payment at the instance of the nephew against the trustees—(rev. judgment of the Lord Ordinary, Young)—that the fee of the sum named must be held to have vested in the pursuer, but *observed* that in any discharge to be given by him to the trustees the conditions under which the legatee appeared to be subjected under the deed should be inserted.

Observations (per the Lord Justice-Clerk and Lord Ormidale) upon the construction of a bequest to a parent in liferent and his children *nascituri* in fee.

These were three actions, raised against the trustees of the late Mathew Beveridge, writer in Kirkcaldy, wherein the pursuers respectively concluded for payment of £3000, £2000, and £2000, alleged to be bequeathed to them by Mr Beveridge. The truster died on 16th November 1876, leaving a trust-disposition and settlement dated 19th August 1876, with relative codicils dated 25th August, 28th and 30th September, and 23d and 30th October, all in the same year. The material parts of these deeds, as affecting the pursuers, were as follows:—

Directions as to George Beveridge: —(1) Legacy in the original deed in these terms—"To my nephew George Beveridge, master mariner, in liferent, and his children in fee,