for the session. The advertisement which appeared all through the first three weeks of October 1877 has been founded on by the pursuer, but be that as it may, the terms of such a notice are by no means conclusive, unless by the evidence they are shown to have formed a part of the contract between the parties. Even were they shown to be connected with the contract, I do not think they would be sufficient proof that a definite period of duration was fixed for the engagement.

The parties totally differ as to the terms of the contract, and I think I am justified in laying aside the evidence of both pursuer and defender, and in looking elsewhere to see if there is any corroborative item such as might lead to some inference in the matter. Now we find that this was not an engagement to take up Miss Robson's whole time; she was only to be employed in teaching for one hour and a half five days in the week. Had it been an engagement for her whole time, the case in favour of a longer period would have been strengthened, but we may fairly inquire here whether it was likely the pursuer would bind herself for a whole year or session to an engagement of such a kind, and so possibly preclude herself from obtaining or even seeking a larger employment of her time. I cannot think this probable. The advertisement indeed may have meant anything, and I can only conclude that the period was left undetermined. If that is the case, the engagement was one capable of being terminated on reasonable notice by either party. Three months' notice was given, and that it seems to me was ample. I do not say that the defender has proved a three months' notice, but, on the other hand, the pursuer has failed to prove the length of the engagement she averred.

Therefore I am for adhering, though certainly not upon the grounds stated by the Sheriff-Substitute, whose findings appear to me to be entirely inconsistent with one another. I cannot assent at all to the first finding, and further, I demur to the law laid down in the interlocutor; but without expressing any opinion as to the question of fault, I agree with Lord Ormidale, and am for finding accordingly.

Lord Justice-Clerk—I entirely concur, and shall not therefore enter into any details of the case. One observation I will add as to the ground, and the only ground, on which my opinion is based. Parties here agree that the contract was made in October 1877, but they are at variance as to its period of duration. Both allege a condition attached to the admitted engagement. Each have their own views as to that condition. Now I think that neither party has proved their condition. It is not proved Miss Robson was engaged for the session. It is not proved Mr Overend had made an arrangement with her for three months' notice.

In these circumstances, all being indefinite, three months was, I think, reasonable notice, and upon this ground I agree entirely with your Lordships.

The Court dismissed the appeal, and sustained the judgment appealed against, with expenses.

Counsel for the Pursuer (Appellant)—M'Kechnie—Millie. Agents—M'Caskie & Brown, S.S.C.

Counsel for the Defender (Respondent)—Asher—Kennedy. Agents—Tods, Murray, & Jamieson, W.S.

Saturday, November 23.

FIRST DIVISION.

[Lord Adam, Ordinary.

MUNRO AND ANOTHER, PETITIONERS *v.* MACARTHUR.

Trust—Discharge where only Remaining Purpose of Trust was Payment of an Annuity which had been Secured.

Where under a testamentary trust only one special interest remains to be provided for, and that is of a partial kind, and can be provided for as effectually in some other way, the Court will liberate the estate from the trust.

A truster conveyed certain lands to testamentary trustees for payment of various provisions, directing them after satisfaction thereof to convey the lands to a certain series of heirs named in a deed of entail also executed by him. All the purposes of the trust having been satisfied, except payment of a small annuity out of the rents, and certain other provisions, all in favour of one beneficiary — *held* (distinguishing the case from that of *White's Trustees* v. *Whyte*, June 1, 1877, 4 R. 786) that the judicial factor on the trust estate was entitled to convey it to the heir of entail then in right of the succession, the annuity and other provisions in question being made real burdens upon the estate, and being declared in the disposition and deed of entail executed by the judicial factor under sight of the Court to be still payable to and prestable by him, and authority of the Court accordingly interponed thereto.

Hugh Munro by trust-disposition and settlement conveyed his lands of Barnaline and Altacaberry and others to certain trustees for various purposes, and, *inter alia*, for payment of an annuity of £10 to his niece Susan Macarthur, and on her death of a legacy of £200 equally among her lawful children, whom failing her own heirs and assignees whomsoever, and he also directed his trustees to provide her "a good and sufficient dwelling-house, not under three couples, with the necessary quantity of peats for fire, and a garden, as also grass and winter provender for one cow, with a reasonable quantity of potato-ground, adequate at least to the manure of the said cow, and that upon the said lands of Barnaline, during all the days of her life." The said annuity and legacy were to be payable out of the "rents and yearly profits of the lands of Barnaline and Altacaberry," and were declared real burdens thereon. Thereafter, when the purposes of the trust were fully satisfied, he directed that his trustees should divest themselves of the lands, and reconvey them under the fetters of an entail to the series of heirs mentioned in a deed of entail which he had previously executed in favour of himself and others, and under which he had reserved power to execute such a trust-disposition or other deed as that in question. The rents falling due during the subsistence of the trust were to be paid to the person entitled to succeed under that destination.

After the death of the truster, and the failure of the trustees whom he had nominated, F. Hayne

Carter, C.A., was appointed judicial factor on the estate, and managed and administered the trust in terms of the truster's directions.

This was a petition presented by the Rev. Hugh Munro, who was entitled to the estate under the tailzied destination, and by the judicial factor, and it set forth that there was now no provision of the trust-deed to be carried out except those already mentioned in favour of Miss Macarthur. She was now seventy years old, and the petitioners asked the Court to grant warrant to the judicial factor to divest himself of the lands, and to reconvey them to Mr Munro and the heirs of entail pointed out in the trust-disposition and deed of entail. But the conveyance was to be subject to the real burden in favour of the judicial factor of the provisions conceived in favour of Susan Macarthur and her children contained in the trust-disposition. The prayer then asked the Court to recal the appointment of the judicial factor so far as regarded the lands in question, "except the real burden of the foresaid provisions therein, and to discharge him of his whole actings and intromissions as judicial factor in regard to the lands, except as aforesaid."

Miss Susan Macarthur lodged answers to the petition, in which she stated that if the Court thought a conveyance in the terms asked would carry out the truster's instructions and also not prejudice present rights, she, while not consenting thereto, would not press objections.

A draft of the proposed deed of entail was lodged with the reporter to whom the Lord Ordinary (Adam) had remitted to inquire into the facts of the petition. It was in terms of a minute subsequently lodged for the petitioners, in which it was stated that the proposal was that the factor was to have lodged in his hands a sum of £200 for payment of (1) legacy duty on the £200 legacy, (2) succession duty payable by the heir of entail upon the falling in of the annuity of £10, and (3) expenses of eventually winding-up the factory.

Under the deed these provisions were "to be payable to and prestable by" the judicial factor, "by and against the heir in possession of the said lands and others, and that for behoof of the parties beneficially interested therein out of the rents and yearly profits of the said lands," and they were constituted real burdens.

A clause was added to the deed at the instance of the Lord Ordinary, securing Miss Macarthur in a dwelling-house in the possible event that the one she had was destroyed by fire or otherwise.

The petitioners submitted that in this way the provisions would be as well secured as under the trust-deed, and as the factor was made responsible for the payment the difficulty felt by the Court in the case of *White's Trustees* v. *Whyte*, June 1, 1877, 4 R. 786, did not exist.

The Lord Ordinary (Adam), after it had been reported that the disposition and deed of entail had been duly recorded, pronounced an interlocutor approving of it, and interponing authority thereto.

Miss Macarthur reclaimed.

At advising—

Lord President—I am for adhering. I do not think that I thereby interfere with our decision in the case of *White's Trustees* v. *Whyte*, 4 R. 786, where the annuitant it was proposed should discharge the trustees, and so put an end to the only means provided by the truster for her protection. I think the present case falls under the rule which I ventured to state in that case, that "wherever there is left only one special interest to be provided for, for which alone it is necessary that the trust should be kept up, and that interest is of a partial kind, and may be provided for just as effectually in some other way, and thus the estate be liberated from the trust and set free, so as to be conveyed directly to the residuary legatee or heir at law, this may competently be done." The only question here is, Whether the annuity is "provided for just as effectually in some other way." It appears to me that the petitioner and the heir of entail have succeeded in devising with considerable ingenuity just as good a provision for the annuitant as she had under the original deed.

Lord Deas, Lord Mure, and Lord Shand concurred.

The Court adhered.

Counsel for Petitioners (Respondents)—Balfour—Lorimer. Agents—Macbrair & Keith, S.S.C.
Counsel for Respondent (Reclaimer)—Thoms. Agents—M'Neill & Sime, W.S.

HOUSE OF LORDS.

Tuesday, November 12.

(Before Lord Chancellor (Cairns), Lord Penzance, Lord O'Hagan, and Lord Selborne).

MAGISTRATES AND TOWN COUNCIL OF EDINBURGH *v.* THE EDINBURGH ROPERIE AND SAILCLOTH COMPANY.

(*Ante*, July 10, 1877, vol. xiv. p. 644, 4 R. 1032).

Superior and Vassal—Conveyancing (Scotland) Act 1874 (37 *and* 38 *Vict. cap.* 94), *sec.* 15—*Casualty—Entry—Composition.*

Held (*aff.* judgment of First Division) that a vassal who had purchased a part of a feu, and was entered with the superior by virtue of the provisions of the 2d subsection of section 4 of the Conveyancing Act 1874, was entitled under section 15 of that Act to redeem the casualties applicable to his portion of the feu on payment of one year's rent effeiring to it; and objection by the superior that he must pay the casualties applicable to the whole original feu, *repelled*.

This was an appeal from a decision of the First Division of the Court affirming a judgment of the Lord Ordinary (Young). A feu now held by the Edinburgh Roperie and Sailcloth Company had originally formed part of a larger feu given out by the Magistrates and Town Council of Edinburgh in the last century. Part of the feus had been sold off, and a portion had become the property of the Leith Roperie Company. That Company's trustees were in 1862 entered with the superiors by writ of confirmation, and there was an express proviso that the subjects should