between the parties. The ordinary rule is that conventional irritancies are to be enforced according to their terms, and once incurred cannot be got the better of. But this was, besides, a most reasonable stipulation, for the meaning of it was that the partnership was to cease, not because the defender had not paid his debts, but because he was publicly known to have become an insolvent trader. This has a prejudicial effect on the business in which the insolvent trader is a partner, and therefore it is that it is so often stipulated that bankruptcy or insolvency shall terminate the contract. The irritancy therefore, if properly so called, can never be purged; the mischief has been done and can never be undone. The partners say, we will not have a partner who has been declared to be insolvent. Were it otherwise this man would come back into the partnership without capital and with a damaged commercial reputation, which is the very thing which the provision was intended to prevent. I think the interlocutor reclaimed against should be affirmed.

Lord Deas—There is no doubt a distinction between legal and conventional irritancies, and that distinction has been frequently recognised in late years in the decisions of the Court. In order to entitle a conventional irritancy to have effect, it is necessary it should be a fair and reasonable stipulation. But applying that doctrine to this case, I cannot say that this clause, looking at the whole terms of the contract and the position of the parties, is unfair or unreasonable. I am therefore disposed to concur with your Lordship.

Lord Mure concurred.

Lord Shand—I am of the same opinion. If the stipulation had been of a penal nature, and had involved not only the forfeiture of the defender's position, but the loss of large vested rights of property in the partnership funds, I am by no means sure that another principle might not have come in, and that the Court might have allowed the irritancy to be purged, or at least might have annexed conditions to the granting of a decree such as that now proposed. But in the circumstances I think the interlocutor should be adhered to.

The Court adhered.

Counsel for Pursuer (Respondent)—Dean of Faculty (Fraser)—Mure. Agent—G. M. Wood, S.S.C.

Counsel for Defender (Reclaimer)—M'Kechnie—Millie. Agent—W. Spink, S.S.C.

Friday, December 19.

SECOND DIVISION.

[Lord Rutherfurd Clark, Ordinary.

* EASSON AND ANOTHER *v.* BROWN OR THOMSON AND OTHERS (THOMSON'S TRUSTEES).

Succession — Testament — Construction of Term "Money."

In a holograph trust-disposition and settlement framed in popular language by the granter (who was not a conveyancer) the expressions "all money that I should leave, wherever deposited," and "the interest of all moneys left by me," occurred. *Held* that these expressions as used were capable of including, and in the circumstances were terms apt to include, the testator's whole moveable estate.

Various questions were raised in this case, which turned upon the construction of the trust-disposition and settlement and relative codicils of the late David Thomson, machine-maker, Leith. It is not thought necessary to report more than one of these.

The pursuer Mrs Mary Thomson or Easson was one of Mr Thomson's children by a first marriage, and she and her husband raised this action against Mrs Ann Forman Brown or Thomson, Mr Thomson's wife by his second marriage, and the other children of the testator, who were his trustees and executors. Mr Thomson's trust-disposition and settlement, which was dated February 8, 1878, was holograph, and was not prepared by a practised conveyancer, being informal and framed in popular language. After disposing of the heritable property, feu-duties, and household furniture, which he bequeathed to his wife, the deed proceeded—"All money that I should leave, wherever deposited, shall be divided amongst my wife and children, share and share alike; such division to take place when my youngest daughter arrives at the age of twenty-one years, but in the event of any of my daughters being married before that time, I leave it to my trustees to allow them such sums as to give them a suitable providing." Mr Thomson subsequently executed a codicil to the following effect:—"It is my express wish to my trustees that my daughter Mary's [the pursuer] share of everything I leave be given to her at the rate of thirty pounds per year, payable half-yearly, as long as there is funds to pay that amount." And on 20th June 1878 the testator executed a further codicil, which after disposing of his weighing-machine business, stock-in-trade, &c., concluded with a *P.S.* to the following effect:—"It is also my wish that my wife Ann Forman Brown shall receive the interest of all the moneys left by me up to the time of division of the same, as arranged for in my settlement dated the eighth day of February One thousand eight hundred and seventy-eight years." In consequence of these deeds, and doubts regarding their construction, the present

* See Special Case *Dunsmure and Others (Dunsmure's Trustees)* v. *Elliot*, Nov. 22, 1879, *ante*, p. 134.

action was raised, when the principal question argued by the parties was as to the meaning of the expressions "all money that I should leave, wherever deposited," and "all the moneys left by me," Mrs Easson (the pursuer) maintaining that these expressions only meant money deposited in bank on deposit-receipt or current account, and did not extend to a direction to divide the testator's other moveable estate; the defenders contending that all the testator's moveable estate was meant except corporeal moveables.

The following was an abstract of inventory given up of Mr Thomson's estate:—

"1. Household furniture,		£249	4 9
2. Stock-in-trade,		160	15 3
3. Money in different banks, contained in five deposit-receipts, with interest,	£1416 17 7		
4. Sum in bank on open account,	513 19 7		
		1930	17 2
5. Sums lent out to three individuals upon bill, amounting, together with interest,		1307	12 4
6. Shares in Fourth Property Investment Company,		151	2 0
7. Debenture Bond of Leith Heritages Company (Limited), with interest,		2016	8 9
8. Sum due on mortgage on ship, with interest,		589	0 3
9. Proportion of rents and feuduty current at date of deceased's death,		25	0 11
10. Sum due on policy on deceased's life,		364	10 0
11. Book debts,		227	4 9
12. Sum in bond and disposition in security, with interest,		705	15 0
13. Interest from date of death to date of giving up inventory,		32	16 3
		£7760	7 5"

Which it was maintained was all included under the above expressions.

The Lord Ordinary (Rutherfurd Clark) on 8th July 1879 pronounced an interlocutor, *inter alia*, finding that the deceased Mr Thomson had disposed of his whole estate, heritable and moveable, and therefore finding on this point in favour of the defenders' contention.

His Lordship added the following note:—

"*Note.*—. . . . 1. By his will the testator disposed of his heritable estate, and he directed that all the 'money' he should leave, 'wherever deposited,' should be divided between his wife and children, such division to take place when his youngest daughter attained majority. That event has not yet happened.

"By a codicil the testator gave his wife 'the interest of all the moneys left by me up to the time of the division of the same, as arranged for in my settlement.' He had given separate directions for the disposal of his stock-in-trade and household furniture.

"Besides his stock-in-trade and furniture, the testator left moveable estate as detailed in the fifth article of the condescendence (*supra*). It may be described as consisting (1st) of money deposited in bank; (2d) moneys on loan; (3d) shares in a company; (4th) sums due under a policy of insurance on his life; and (5th) book debts. The question is, whether this portion of his moveable estate has been validly disposed of under the description of 'money wherever deposited?' The Lord Ordinary thinks that it has.

"The will was written by the testator himself, and he expressed his meaning in popular language. The question is, what he intended the word 'money' to embrace. It appears to the Lord Ordinary that he meant to dispose of his whole estate, and that the word 'money' was used by him as including his moveable estate other than that part of it which was made the subject of special disposition. He thinks that the word is sufficient if the meaning is clear. In popular language the 'money left' by a deceased person is equivalent to his moveable estate, and though perhaps it might not extend to corporeal moveables, it seems to be sufficient to pass incorporeal moveables, viz., *nomina debitorum* and such like." . . . .

The pursuers reclaimed, and argued — The testator could not be regarded as a person who had only one term in his vocabulary for all moveable estate, especially in such a case as the present, where there was such a variety of investments. In England the term "money" had been restricted to moneys in hand or at will.

Authorities—*Williams* v. *Williams*, June 1, 1877, L.R., 8 Chan. Div. 789; *Larner* v. *Larner*, April 23, 1857, 3 Drewry 704; *Byrom* v. *Brandreth*, July 23, 1873, L.R., 16 Eq. 475; *Collins* v. *Collins*, L.R., 12 Eq. 454.

Argued for respondents—The term "money" was one apt to include all the testator's moveable property, the whole will being in popular language, and not written by a conveyancer. The whole estate had been committed to the trustees, and they had to administer it. The other construction would create intestacy to a certain extent.

Authorities—*Prichard* v. *Prichard*, Dec. 8, 1870, L.R., 11 Eq. 232; *Langdale* v. *Whitfield*, 4 K. and J. 426.

At advising—

Lord Justice-Clerk—The question here relates to the meaning of the term "money" or "moneys." The word occurs twice in the settlements,—once in the principal deed—"All money that I should leave, wherever deposited, shall be divided amongst my wife and children, share and share alike;" and a second time in the last codicil—"It is also my wish that my wife Ann Forman Brown shall receive the interest of all moneys left by me up to the time of division of the same, as arranged for in my settlement dated the 8th February 1878." It is contended that these terms are not sufficient to carry personal debts or investments. I am of opinion that these expressions "money" or "moneys," as here used, are capable of including, and are terms apt to include, the testator's whole moveable estate. Their meaning is of course to be collected from the context, the place where, and the subject in regard to which they are used; and the question is neither what the testator meant apart from the words, nor what the words might mean apart

from intention, but what the testator meant by using them.

We are not trammelled in Scotland by any obligation to read this word "money" in a restricted sense; and I gather from the case of *Byrom* (L.R., 16 Eq. 475) that it is matter of regret with the English Courts that they are fettered in this respect with a train of decisions. With us the word "money," like the Latin "pecunia," may signify only coined money, or may cover all the pecuniary resources of the man who uses it. A settlement which should bequeath "all the money in my purse," "in the till," "in the house," would probably be confined to coined money; while the words, "I leave all my money to build an hospital," or, as here, "I direct all my money to be divided equally among my children," would, if used as a general testamentary expression, carry the *universitas* of the testator's personal estate. In the present case the meaning is not to my mind doubtful. As the word occurs in the principal deed, it is manifestly intended to apply to the *universitas* of the testator's personal estate, although it is afterwards qualified in regard to the goodwill of the business; and the word as used in the codicil, referring back as it does to the passage in the principal deed, is both clear in itself and adds force to the construction of the original clause. The settlement is said to be holograph of the testator, and I entertain no doubt as to the sense in which he used these terms.

Lord Ormidale—[*After referring to the points which it has not been considered necessary to report*] —What the expression used by the testator, "all money I shall leave," must be held to comprehend, is to my mind attended with more difficulty. Its true solution must depend upon what can be gathered from the will of the testator, read in all its parts, as to his intention. Looking at the matter in this light, I have come to the conclusion that the Lord Ordinary is right. The word "money" as used by the testator cannot be held to comprehend his heritable estate, or even his moveable property, so far as corporeal, for he has otherwise provided in regard to these portions of his estate. But in regard to money deposited in bank, or debts outstanding due to him, I am inclined to think that it was the intention of the testator that they should be comprehended by the expression "all money I should leave." In any other view he must be held to have died intestate *quoad* some part of his estate—a result which is always, if possible, to be avoided, especially in such a case as the present, where it was manifestly the object and desire of the testator to dispose of his whole means and estate.

I am therefore of opinion that on this point the Lord Ordinary is right; and this view of the matter appears to me to be supported by the authorities referred to at the debate, and especially the cases of *Prichard* v. *Prichard*, Dec. 8, 1870, L.R., 11 Eq. 232, and *Langdale* v. *Whitfield*, 4 K. and J. 426.

Lord Gifford—I agree with the Lord Ordinary in thinking that by his will and codicils the late David Thomson validly and effectually disposed of the whole estate, heritable and moveable, of every description belonging to him at the time of his death.

I think it plain that the testator by the expression "all money that I should leave" meant his whole moveable estate excepting the business and stock, which he specially bequeathed to his two sons John and James. It is, no doubt, true that the word "money" may have a limited and restricted meaning, but I think it evident that it has the widest possible meaning in the present will. The testator begins by directing his debts to be paid "from any funds I might leave," thus implying that all his funds were to be under the management of the trustees named in the will. He then specially leaves his heritable property, feu-duties, and furniture to his widow in liferent while she remains his widow, and then to be divided amongst his children, share and share alike; and he directs that "all money that I should leave, wherever deposited," shall be divided amongst his wife and children, share and share alike. The first codicil directs "that my daughter Mary's share of everything I leave" be paid to her at the rate of £30 a-year. I think the expression "everything I leave" refers back to the former bequests in her favour, which the testator here describes as her share of "everything I leave." This shows that the settlement was a universal one, and that by the word "money" the testator meant his whole property not specially disposed of. The same inference appears to follow from other clauses in the deed — for example, from the provision in the last codicil, or *P.S.*, where the testator directs that his wife shall "receive the interest of all the moneys left by me up to the time of the division of the same." I entertain no doubt therefore that the settlements include the whole estate of the deceased, leaving nothing to the operation of intestacy.

The Court therefore adhered to the Lord Ordinary's interlocutor, in so far as regarded the question relating to the import of the term "money."

Counsel for Pursuers (Reclaimers)—M'Laren—J. P. B. Robertson. Agent — H. B. Dewar, S.S.C.

Counsel for Defenders (Respondents)—Kinnear—Millie. Agent—William Paterson, Solicitor.

Saturday, December 20.

FIRST DIVISION

[Lord Adam, Ordinary.

MACKENZIE *v.* THE BRITISH LINEN COMPANY.

Process — Proof — Commission — Evidence (Scotland) Act 1866 (29 *and* 30 *Vict. c.* 112), *sec.* 2.

The B. L. Coy. charged A B on a bill for £70 bearing to be drawn by him and C D on E F, and endorsed by them to the company. A B suspended, on the ground that his signature on the bill was a forgery, not having been written by him or by his authority. E F was in custody at Inverness on a charge of having forged the signature. A proof