half. In the whole circumstances, therefore, I think the father should be held liable to contribute to the age of twelve and no longer.

Lords Deas, Mure, and Shand concurred.

The Court recalled the interlocutor of the Sheriff-Substitute of 24th May 1883 [quoted above], and all subsequent interlocutors; found that in October 1867 the pursuer gave birth to an illegitimate male child of which the defender admitted that he was the father; that the defender had not paid the pursuer the inlying expenses, or any aliment for the said child, with the exception of a sum of £10 paid on 5th July 1880; that the agreement and discharge alleged in the defender's statement was not proved; that it was not proved that the defender at any time offered to take charge of the said child and maintain it himself; that the said child was by reason of weak health unable to do anything for his own subsistence until he was twelve years of age in October 1879; therefore found in law that the defender was liable to the pursuer in £1, 10s. of inlying expenses, and in twelve years' aliment at £4 per annum with interest at 5 per cent. on the said sum of £1, 10s., and on each term's aliment from the time at which it fell due until payment, under deduction of the said £10 paid to account with corresponding interest; decerned against the defender for £49, 10s. with interest as aforesaid to the pursuer, under deduction of £10 as aforesaid with corresponding interest; found the pursuer entitled to expenses in both Courts, &c.

Counsel for Pursuer (Appellant)—M'Lennan. Agents—Sutherland & Clapperton, W.S.

Counsel for Defender (Respondent)—Campbell Smith—Lyell. Agents—Horne & Lyell, W.S.

Tuesday, December 11.

SECOND DIVISION.

[Lord M'Laren, Ordinary.

MACKIE *v.* MACKIE'S TRUSTEES.

Husband and Wife—Antenuptial Marriage-Contract—"Goods in Communion"—General Term followed by Enumeration of Particulars.

By an antenuptial contract of marriage the spouses disponed to the survivor, in liferent only, and to the child or children of the marriage in fee — "All and sundry goods in communion, household furniture, silver plate, books, and bed and table linen, sums of money now belonging or due and addebted, or that may be acquired by the contracting parties by their own industry during the subsistence of the marriage, and which shall belong to them at the dissolution thereof," but excepting from the generality the paraphernalia, watch, jewellery, and clothes of the wife, upon which she might test as she might see proper. The marriage was dissolved by the death of the wife, leaving one son. On the husband's death, a question having arisen between the son and his father's trustees as to the meaning of the clause—*held* that on a sound construction of it, the term "goods in communion" with which it began was not limited by the enumeration of the particulars which followed, and that therefore the son had right to the moveable estate which his mother acquired *stante matrimonio* by donation and succession.

By antenuptial contract of marriage (dated 23d September 1845) between the Rev. Philip Jervis Mackie and Mrs Margaret Glas or Mackie, his spouse, the parties with mutual advice and consent disponed "to and in favour of each other, and the longest liver of them in liferent, for their joint liferent and the survivor's liferent use only, and to the child or children to be procreated of their marriage in fee, according to such proportions as the said Philip Jervis Mackie may appoint by writing under his hand, and failing his doing so, share and share alike, All and sundry goods in communion, household furniture, silver plate, books, and bed and table linen, sums of money now belonging or due and addebted, or that may be acquired by the said contracting parties by their own industry during the subsistence of the marriage, and which shall belong to them at the dissolution thereof, excepting from the said generality the paraphernalia, watch, jewellery, and clothes of the said Margaret Glas, upon which she may testate as she may see proper." The *jus mariti* was excluded from the wife's "interest in the means and estate of the said marriage." The marriage was dissolved by the death of Mrs Mackie; she died on 21st July 1874 intestate, and her husband was decerned executor-dative to her *qua* surviving spouse, and an inventory of her personal estate amounting to £1826, 19s. 9d. was given up by him.

There was one child of the marriage, Andrew Mackie.

In 1877 the Rev. Mr Mackie contracted a second marriage. By antenuptial contract he bound himself, within five years of this marriage, to convey to the Rev. James M'Donald and others, as trustees, £1500, of stocks or other funds of that value, also to insure his life for £500 and assign the policy to them. In the event of his second wife surviving him, and there being no children of this marriage (which events happened), these sums of £1500 and £500 were to be paid to her. In terms of this obligation he conveyed securities to the value of £1506, and assigned a life policy for £500. He died in April 1882, leaving a trust-disposition, dated 7th January 1882, whereby he disponed to and in favour of the Rev. James M'Donald and others, as trustees, his whole means and estate, heritable and moveable, then belonging or which might belong to him at the time of his death, directing them after payment of debts, &c., to hand over to his wife, who survived him, the whole free residue of his estate, to be used by her as her own absolute property. The trustees entered on the management of the deceased's estate.

Andrew Mackie raised this action against these trustees and his father's widow, claiming an account of the means and estate which belonged to his mother at the dissolution of the marriage, in order that the sum due to him at his father's death under the antenuptial contract might appear and be ascertained; also for an account of the

estate which belonged to his father at the dissolution of the marriage. The summons also concluded for payment of certain railway stock alleged to have been transferred to Mr Mackie, but to have belonged to the pursuer's mother exclusive of the *jus mariti*, and to which pursuer had therefore right as his mother's next-of-kin; and for an account of the pursuer's father's estate at his death, and £500 as legitim due to the pursuer.

The pursuer averred that under the contract he became entitled on his mother's death to the fee of the means and estate which then belonged to his father, including the whole household furniture, silver plate, books, and table linen then in the dwelling-house occupied by him, and also to the fee of the estate belonging to his mother, including railway stock left to her by her mother, from which by the antenuptial contract the *jus mariti* was excluded.

The defenders in answer averred that at the date of marriage between the pursuer's parents neither of them was possessed of any means or estate. During the subsistence of the marriage the money acquired by Mr Mackie by his own industry was annually spent, and no part of it fell under the provisions of the marriage-contract. Mrs Mackie during the same period did not acquire any sums of money by her industry. The antenuptial contract of marriage only applied to the means and estate of the parties so far as belonging or due and addebted to them at its date, or acquired by them subsequently by their own industry during the subsistence of the marriage. It did not cover sums of money coming to the spouses during the subsistence of the marriage by bequest or donation, and did not exclude the *jus mariti* over sums so coming to the wife, except in the event, which did not happen, of his predecease. The pursuer's mother had, they averred, acquired £1826 during the marriage by succession, being the amount given up by her husband in the inventory, which sum all passed to him *jure mariti*, with the exception of a small sum from which the *jus mariti* was excluded.

The pursuer pleaded—"(1) The pursuer being entitled under the said antenuptial contract of marriage on the death of the said Rev. Philip Jervis Mackie to the means and estate which belonged to the said Mrs Margaret Glas or Mackie at the dissolution of the said marriage, the defenders are bound to count and reckon with the pursuer, and make payment to him of the balance of the said means and estate as concluded for."

The defenders pleaded—"(3) On a sound construction of the marriage-contract entered into between the pursuer's parents he is not entitled to any part of his mother's estate other than that which belonged to her at the commencement of the marriage, or which she acquired during the subsistence of the marriage by her own industry, or from which his father's *jus mariti* was specially excluded, and the defenders having all along been ready to account to the pursuer for these last-mentioned portions of his mother's said estate, if any, the first conclusion of the summons was unnecessary, and ought to be dismissed."

The Lord Ordinary (M'Laren) pronounced this interlocutor:—"Finds that under the contract of marriage entered into by the parents of the pursuer the pursuer has right to the fee of the whole goods in communion, including moveable estate which Mrs Mackie acquired during the continuance of the marriage by donation and succession, and appoints the case to be enrolled that an order may be made for ascertaining the amount or value of said estate."

"*Opinion.*—This is an action by a son against his father's trustees, claiming an account of the means and estate which belonged to the pursuer's mother at the dissolution of the marriage, in order that the sum due to the pursuer under the antenuptial contract of his father and mother may appear and be ascertained. The summons also concludes for payment of certain specific funds alleged to be the mother's property, and for £500 as legitim due from the father's estate. The pursuer is the only child of the marriage of his parents. That marriage was dissolved by the death of the pursuer's mother, and thereafter his father contracted a second marriage with a lady whom he has constituted his universal legatee.

"By the antenuptial contract in question, which is dated 23d September 1845, the spouses, by their joint act of disposition, assigned and disponed to each other, in terms which admittedly vest a liferent in Mr Mackie, the father, and a fee in the pursuer Mr Andrew Mackie, as child of the marriage. The question is, What is the extent of the estate which was conveyed?

"The subject of conveyance is described as 'All and sundry goods in communion, household furniture, silver plate, books, and bed and table linen, sums of money then belonging or due and addebted, or that might be acquired by the said contracting parties by their own industry during the subsistence of the marriage, and which should belong to them at the dissolution thereof, but excepting from the said generality the paraphernalia, watch, jewellery, and clothes of the said Margaret Glas or Mackie.' The estate specifically claimed is money which came to Mrs Mackie by succession or donation during the continuance of the marriage, and the pursuer says that such estate, although falling under the *jus mariti*, is 'goods in communion,' and therefore settled by the contract to the spouses in liferent and to himself in fee. Now, as the term 'goods in communion' undoubtedly embraces property falling under the *jus mariti*, and apportionable between the husband and the wife's executors at her death, the claim of the pursuer would be well founded if the clause of disposition had disposed of goods in communion in these terms alone. But it is contended by the defenders that the words 'goods in communion,' with which the clause sets out, lose their force by reason of their association with other words of more limited signification. The words in question, it will be observed, are followed by an enumeration of corporeal moveables and 'of sums of money then belonging or due and addebted, or that might be acquired by the said contracting parties by their own industry.'

"(1) It has been suggested as a possible construction that the whole of the explanatory words here quoted are to be taken as qualifying 'goods in communion' as well as 'sums of money,' with the effect of limiting the scope of the conveyance to industrial acquisitions, and excluding from it property coming by succession. I do not adopt this reading. I think that qualifying words, whether consisting of mere appellatives or of descriptive phraseology, will in general agree

with or have relation to the nearest antecedent, unless they are applied by proper words of reference to remoter antecedents or to the whole subject of the sentence. Now, in the present case the qualifying expression or predicate includes the words 'due and addebted,' as well as the words 'acquired by their own industry.' I think the subject of this predicate is 'sums of money'—the last antecedent. The defenders think it is 'goods in communion, household furniture, plate,' &c. 'Household furniture due and addebted' will not read at all, therefore the context does not support the defender's construction. On this point I come to the conclusion that the words 'goods in communion,' and all the rest down to money, are unqualified, and that the qualifying expressions referred to (whatever may be their value) apply to money, and to money alone.

"(2) The defenders maintain separately, or as a separate argument in favour of the restricted construction they put on the general words 'goods in communion,' that these words being general are to be confined in construction to things *ejusdem generis* with those enumerated, and are not to be extended so as to embrace the railway stock claimed under the summons. I do not concur in this view. There is, indeed, such a rule of construction applicable to an enumeration of particulars concluding with generic words or words descriptive of category. In such a case the category or *genus* is inferred from the enumeration. One is not to suppose a larger *genus* than is sufficient to include the particular things enumerated and their like. Therefore by a gift of 'furniture, plate, and moveables,' I should understand corporeal moveables. But by a gift of specific articles, and 'all my estate, heritable and moveable,' I should understand a universal disposition, because in this case the generic words clearly embrace a larger class than that which contains the things enumerated. I am not sure that the rule of construction of general words is the same where they occur at the beginning, as in the present case, instead of at the end of an enumeration. But supposing it is so, the question remains, what is the *genus*? The words in question 'goods in communion' are descriptive of a universal gift of the moveable estate of the spouses. They are not ambiguous. They do not describe property as property, but property as vested in particular persons by marriage. They do not constitute a class or *genus* into which such things as furniture, plate, or money—things which belong to a different order of ideas—can be fitted. I think therefore that I must give effect to the conveyance of goods in communion as a substantive and sufficient gift of the moveable estate of the spouses, treating the enumeration of particulars as merely illustrative or precautionary. I shall make a finding to this effect, and if the parties are agreed as to what that estate consists of, the finding will be applied by a subsequent interlocutor."

The defender reclaimed, and argued—On a sound construction of his parents' marriage-contract the pursuer was only entitled to that part of his mother's estate which belonged to her at the commencement of the marriage, or what she acquired during the subsistence of the marriage by her own industry. The phrase "goods in communion" was applicable to conquest, and it was observed in *Muirhead* v. *Muirhead's Factor*, December 6, 1867, 6 Macph. 95, that the phrase really applied only to that part of a man's moveable property which was capable of actual enjoyment by the spouses *stante matrimonio*, and of being expended *ad matrimonii onera sustinenda*. But further, the phrase "goods in communion" lost any force it might have, when standing by itself, by reason of its connection with the words which followed, and which had a more limited signification. These words were "due and addebted," and they were the predicate of which the phrase "goods in communion" was the subject. Further, the phrase was general, and must be confined in construction to things *ejusdem generis* with those enumerated. It could not therefore embrace railway stock.

The pursuer replied—The phrase was used in order to effect a general settlement of the whole estate, and included all that came to Mrs Mackie during the subsistence of the marriage by succession or donation. It was said that the phrase is qualified by the predicate "due and addebted;" but that predicate also included the words "acquired by their own industry." The subject of this predicate was "sums of money," the last antecedent. The phrase, then, was unqualified, and applied to money alone. The enumeration of particulars relied on by the defenders was merely illustrative.

At advising—

Lord Craighill—I concur with the Lord Ordinary, and therefore think that his interlocutor should be affirmed. I may say in the outset that I have little to add to the grounds of judgment which have been presented by, and what I may say will probably be to some extent repetition of, some of his Lordship's views.

The question at issue depends on the interpretation to be put on the clause in the marriage-contract of Mr and Mrs Mackie, by which they make over "to and in favour of each other and the longest liver of them in liferent, for their joint liferent, and the survivor's liferent use only, and to the child or children to be procreated of their marriage in fee, according to such proportions as the said Philip Jervis Mackie may appoint by writing under his hand, and failing his doing so, share and share alike, All and sundry goods in communion, household furniture, silver plate, books, and bed and table linen, sums of money now belonging or due and addebted, or that may be acquired, by the said contracting parties by their own industry during the subsistence of the marriage, and which shall belong to them at the dissolution thereof, excepting from the said generality the paraphernalia, watch, jewellery, and clothes of the said Margaret Glas, upon which she may testate as she may see proper."

The defenders maintain that nothing has here been conveyed except what has been acquired by the industry of the contracting parties. This appears to me to be an unsound contention, being as I think inconsistent with the language in which the clause has been expressed. The reasoning of the Lord Ordinary on this point seems to me to be conclusive.

The defenders, in the second place, say that even if they are wrong in placing this interpretation upon the clause, nothing can pass as goods in communion except those particularised in the

clause which has been quoted. Thus, household furniture, silver plate, books, bed and table linen, sums of money belonging to the parties or due and addebted to the parties, or that might be acquired by them by their industry—are included, but nothing else is included. This appears to me to be an erroneous interpretation. The specification may have been, indeed I think was unnecessary, but there is nothing to show that it was resorted to for the purpose of contracting the comprehension of the conveyance of goods in communion. There is nothing that suggests such an idea, much less that forces upon us its adoption. The truth is, that were this reading to be taken, the words "goods in communion" would be as good as blotted out from the contract. The inappreciation of this consideration is the flaw in the reclaimers' argument. They are misled by what they think an analogy between the *voces signatæ* goods in communion with which the disposition begins, and general words often used to wind up a series of particulars representing the things intended to be conveyed. These general words, according to a well known rule of construction, take their quality from the class of things which are the subjects of specification, but though their effect is to this extent limited, there may be, and for the most part there is, carried something which but for them would not be included in the disposition. If, however, the words "goods in communion" as here used are to be limited in their signification to the particulars which follow, they are rendered insensible, and are in effect expunged from the contract. But these, I think, must be held to have been introduced into the clause, not that they might be disregarded, but that something which without them would not be carried might be covered by the contract. This is the natural, and appears to me to be the only reasonable conclusion, and there is no rule of construction with which I am acquainted that to any extent militates against it. Plain it is to me that the parties did not mean that the specification of particular things following the words "goods in communion" should be a limitation or extinction of this part of the clause. A similar peculiarity occurs in the concluding part of the clause of the contract, where there is exception from the "said generality, the paraphernalia, watch, jewellery, and clothes of the said Margaret Glas, upon which she may testate as she may see proper." In the first place, What is the generality? Not, I apprehend, the items which are specified, but those which are covered by words denoting everything which is comprehended in the expression "goods in communion," and this itself is the key to the true interpretation. But, in the second place, is it not obvious that all paraphernalia were to be excepted from the conveyance? And yet there is a specification of only some of the things of which the paraphernalia consists. For some reason in both cases particular items have been specified, but there is no reason for concluding in the one case or in the other—on the contrary there is the strongest reason for not concluding—that it was the purpose for which these particulars were introduced to limit the comprehension of the *voces signatæ* by which everything was conveyed.

These and the Lord Ordinary's are my reasons for thinking that his interlocutor should be affirmed.

LORD YOUNG and LORD RUTHERFURD CLARK concurred.

The LORD JUSTICE-CLERK was absent.

The Court adhered.

Counsel for Pursuer—Trayner—Shaw. Agent—Andrew Gentle, L.A.

Counsel for Defenders — Jameson—Guthrie. Agents—Boyd, Jameson, & Kelly, W.S.

Tuesday, December 11.

SECOND DIVISION.

SPECIAL CASE—RUSSELL'S TRUSTEES AND OTHERS.

Writ — Holograph — Subscription — Unsubscribed Testament — Authentication from Circumstances.

A lady delivered to her nephew a packet sealed-up, and bearing on the outside the words, "To James Henderson, from Margaret Russell," in her own handwriting, stating when she did so that it contained her will and was not to be opened till after her death. Fastened to the packet by a string there was a letter in an envelope addressed to her nephew. Upon being opened after the lady's death the packet was found to contain a testamentary writing entirely holograph, and commencing, "I, Margaret Russell," but not subscribed. The letter, which was also holograph, was signed with her first name only, and referred to the document which it accompanied as her will. *Held* that the writing should receive effect as her will since the accompanying circumstances supplied sufficient evidence of authentication to overcome the legal presumption, arising from the absence of subscription, that it had been purposely left incomplete.

Succession—Provision to Child—Limitation of Power to Test—Exercise of Power to Test.

A testator by his will gave his daughter power to test upon a sum of £2000 in favour of such descendants of his body as she should think proper. The daughter, in professed exercise of this power, apportioned a sum of £100 to her executor as her funeral expenses, the remainder in special legacies to various of her nephews and nieces. *Held* that her will contained a valid exercise of the power to test conferred on her by her father's settlement, but that the apportionment of £100 for funeral expenses could not receive effect, and that these expenses fell to be paid out of her general estate.

This was a Special Case relating to the succession to Miss Margaret Russell, the facts of which, as set forth by the parties, were as follows:—"Miss Margaret Russell died on 14th May 1883, at Aspen Lodge, Harrow, where she was temporarily residing with her nephew Mr James Henderson. She was at the time of her death a domiciled Scotchwoman.

"In November 1881, being then also on a visit at Aspen Lodge, she delivered to Mr Henderson a