as falling to him from his father's estate *ab intestato*.

In these circumstances this Special Case was adjusted between Mrs Ford's testamentary trustees of the first part, and Thomas Ford of the second part, who submitted the following question for the opinion and judgment of the Court:—"Whether the said subjects in Lauriston Place, Edinburgh, were conveyed by the settlement and codicils executed by the said James Ford, and form part of the trust-estate of the said Mrs Elizabeth Ford?"

Argued for the parties of the first part—The first part of the settlement made a universal disposition of the testator's estate. It left all "he had in the world" to his widow, and he could not have more than that. The question was entirely one of intention to include or exclude heritage. Here the terminology used, keeping in view the nature of the deed, an informal one, not prepared by a law-agent, was wide enough to instruct such intention. Though the first part of the settlement was made before the change in the law (Titles to Land Act 1868, sec. 20) which dispensed with words of *inter vivos* conveyance in *mortis causa* settlements of heritage, it was confirmed in equally universal terms by the second writing, which was subsequent to the Act. Besides, it was settled that a bequest was to the heirs pointed out by the law at the time of the testator's death, not at the date of the will—*Maxwell* v. *Maxwell*, December 24, 1864, 3 Macph. 318; *Ewart* v. *Cotton*, December 6, 1870, 9 Macph. 232. The words used here were comprehensive enough to prevent the case being ruled by *Pitcairn* v. *Pitcairn*, February 25, 1870, 8 Macph. 604; *Edmond* v. *Edmond*, January, 30, 1873, 11 Macph. 348; *Aim's Trustees* v. *Aim*, December 15, 1880, 8 R. 294; or *Farquharson* v. *Farquharson*, July 19, 1883, 10 R. 1253. If, then, the words of the writing of 1861 were wide enough to carry heritage, the confirmatory writing of 1870 made them convey heritage acquired between these dates, and the special destination in the title to the Lauriston Park subjects was evacuated by the general disposition contained in these two writings, following the rule of *Campbell* v. *Campbell*, July 8, 1880, 7 R. (H. of L.) 100.

Argued for the second party—The words of these writings were clearly not habile to carry heritage. They were merely another example of such words as had been held inhabile to do so in the cases of *Edmond*, *Aim's Trustees*, and *Farquharson* (*supra cit.*). The words of the writing of 1861 were admittedly inhabile to settle heritage *mortis causa* at its date, and even assuming that they were habile at the date of death, this was an important element of interpretation in arriving at the testator's intention when the writing was executed—*Farquhar* v. *Farquhar's Executors*, November 3, 1875, 3 R. 71.

At advising—

Lord Young—I have read carefully the instruments which constitute the settlements of the testator in this case, and also the title which he took in 1864 to the heritable subjects in Lauriston Park of which he died possessed, and my opinion is that these heritable subjects cannot pass to his widow. I do not think the language used is fitted to pass them, and I am quite satisfied that it was not his intention to pass them, but that his intention was that his widow should have his property generally, but only the liferent of those subjects.

Lord Craighill—I agree with your Lordship.

Lord Rutherfurd Clark—I am of the same opinion. I think it very clear that the deceased's settlement is confined to moveable estate, and does not include heritage.

The Court answered the question in the negative.

Counsel for Parties of the First Part—Graham Murray. Agents—Curror & Cowper, S.S.C.

Counsel for Parties of the Second Part—Strachan. Agent—John Walls, S.S.C.

Saturday, July 19.

SECOND DIVISION.

[Sheriff of Inverness-shire.

SINCLAIR *v.* FRASERS.

Arbiter—Action to Compel Arbiter to go on with Reference — Sheriff — Jurisdiction — Competency.

Two arbiters on a submission to fix the price to be paid for certain subjects by an incoming to an outgoing tenant, agreed as to the value of all but one subject, one of them desiring to have some evidence of its value from skilled persons, while the other refused to allow any inquiry, and insisted on having the value fixed along with the others. They failed to adjust the disputed item in a short period, and neither issued an award nor made a devolution on the oversman. The outgoing tenant raised an action against the arbiter who declined to proceed without inquiry, to have him ordained to join with the other arbiter in issuing an award fixing the value of all the subjects at certain specified rates, or alternatively to join with the other arbiter in executing a devolution on the oversman. *Held* (1) that the defender could not be ordained to concur with the other arbiter as first concluded for; but (2) (*diss.* Lord Young) that the Sheriff could competently ordain him to concur with the other arbiter in devolving the submission on the oversman; and that the arbiters had so differed in opinion as to make that course the proper one.

William Sinclair was the outgoing tenant of the farm of Balnafettack, in the parish of Inverness, at Whitsunday 1883, and the incoming tenant was Huntly Fraser. These parties, on 3d May 1883, executed a minute of reference to Donald Paterson, farmer, and James Fraser, civil engineer and surveyor, as joint arbiters (with power to appoint an oversman in case of their differing in opinion), for fixing the value of first year's grass, ploughing of fallow land, fencing, gates, &c., and certain lead water-piping to the house and fields on the farm.

The arbiters accepted office, and on 26th May, by minute endorsed on the minute of reference, appointed Alexander Winton, farmer, to be oversman, who accepted office. On the same day the arbiters met on the farm, the oversman accompanying them, viewed the subjects of the reference, and took memoranda of their value. They agreed upon the value of the other subjects, but did not fix the value of the lead piping. They had several other meetings and some correspondence, but did not pronounce an award, nor was any joint minute of devolution on the oversman issued by them. On 15th August 1883 Sinclair wrote Huntly Fraser, the incoming tenant, inclosing a note of valuations drawn up by Donald Paterson, amounting in all to £529, 3s. 3¼d. In this note the lead piping, the length of which was stated at 690 yards, was valued at £77, 12s. 6d., being at the rate of 2s. 3d. per yard. In his letter Sinclair said—"I am sure I need not tell you that I regret to be informed that your man Mr James Fraser would not sign the award, owing, no doubt, to some disagreement amongst themselves, but, as appears to me, forgetting that he is subject to the decision of the oversman. This matter has been kept by them (the valuators) for an unusually lengthened period in hand, and I was obliged to press parties for the award, which I got signed only by Mr Paterson and their oversman Mr Winton."

In September following Sinclair raised the present action against James Fraser (calling also Huntly Fraser) in the Sheriff Court of Inverness to have James Fraser ordained to join with Donald Paterson "in making and issuing an award" under the minute of reference, fixing the values specified in the prayer of the petition, which were those contained in the note of valuations prepared by Paterson, or otherwise to join with Paterson "in executing a minute of devolution devolving the said submission" on the oversman.

The pursuer averred that the arbiters when they met and viewed the subjects of the submission, "found and fixed their value and prices at the sums specified in the prayer of the petition, at least the said Donald Paterson did so, and understood and believed from the said James Fraser that he agreed therein," and that after repeated meetings between the arbiters Donald Paterson had declared that he abode by the values already fixed by him; that James Fraser had declared the subjects to be of a different value; and that Paterson had repeatedly required Fraser, in respect of their difference of opinion, to devolve the submission on Winton, the oversman, but that Fraser had refused to do so.

Both defenders appeared. They stated that at the meeting of the arbiters, Paterson and the defender James Fraser, the latter "objected to fixing the value of the lead pipes on the spot, and suggested that information should be got regarding their value from a skilled tradesman that the arbiters might form a just judgment thereon, but the said Donald Paterson refused, and still refuses, to make inquiry or to concur with the said James Fraser in getting the opinion of a skilled tradesman for enabling them to arrive at a fair value for the said lead pipes. The said Donald Paterson on the said 26th day of May 1883 insisted on putting a value on the said lead pipes on the spot, and named a very high price for them, and when the said James Fraser again objected to a price for them being fixed on the spot, the oversman very improperly interfered, and insisted that the price should be fixed at once, and suggested a sum as their value, which sum so named was adopted by the said Donald Paterson. The said James Fraser thereafter sent the said Donald Paterson estimates or offers, received by him from responsible and skilled tradesmen for furnishing and laying new pipes, similar to the said lead pipes, at one-half of the price which the said oversman suggested as the value of the old pipes, and at less than one-third the value which the said Donald Paterson named for them, and the arbiters are in correspondence on the subject." They further stated that the arbiters had not differed in opinion, and that the subject-matter of the reference was in a tentative and preparatory stage for arriving at a just award when their deliberations were put an end to by the pretended award alleged to have been, and which the defender believed to have been, issued by Paterson and Winton as above referred to in the pursuer's letter to Huntly Fraser; that the defender James Fraser had never agreed to devolve the submission on the oversman.

The pursuer pleaded—"The said James Fraser having accepted of the said submission and proceeded therein, is bound to bring the same to a conclusion, either by agreeing in and issuing the award proposed by his co-referee, or in respect that a difference has arisen between him and his co-referee, by devolving the reference on the oversman already selected by them."

The defenders pleaded—"(1) The defender James Fraser not being bound to accept the valuation of his co-referee, cannot be ordained to agree to the same, or issue an award in terms thereof. (2) The arbiters not having differed in opinion as to their valuations, the said James Fraser cannot be ordained to devolve the submission upon the oversman. (4) There being no minute of devolution of the submission upon the oversman subscribed by the arbiters, the oversman had no authority to act in the submission and give an award, and by giving his award he has disqualified himself from the office of oversman under the submission. (5) The said Alexander Winton having already given his opinion as to the value of the articles embraced in the minute of reference, he is legally incapacitated from acting as oversman, and the said James Fraser is not bound to devolve the submission upon him."

The Sheriff-Substitute (Blair) appointed the arbiters to appear before him personally, and after having examined them, pronounced this interlocutor:—"Finds in point of fact—1st, That the arbiter James Fraser is willing to proceed in the reference, and to make an award, but is desirous that further evidence in the matters embraced in the said reference be produced before making it; and 2d, that the arbiter Donald Paterson declines to proceed in the said reference, and refuses to allow further evidence to be produced in the matter: Finds in point of law—That this declinature and refusal on the part of the arbiter Donald Paterson is such a disagreement or non-agreement as to call the umpire's powers into exercise: Therefore appoints the arbiters, the said James Fraser and Donald Paterson, on or before Wednesday the 12th instant, to execute a

devolution in favour of the umpire Alexander Winton, farmer, Viewhill, Ardersier, and failing their doing so, ordains the umpire, the said Alexander Winton, to proceed in the submission as shall be just; and in respect the defenders are dissatisfied with this order, and crave leave to appeal, grants leave to appeal, the appeal to be taken within eight days from the date of this interlocutor; and meantime reserves all questions of expenses.

"*Note.*—I have adopted the present course of procedure as the most expedient in the circumstances of the case. If carried into effect it will quicken the proceedings under the submission, render the submission itself of some utility, which hitherto it has not been, and cause the beneficial consequences of a decree-arbitral to be sensibly felt. It is no doubt true that an arbiter, after accepting, may be compelled to execute and issue a decree-arbitral—*Marshall* v. *Edinburgh and Glasgow Railway Company*, March 26, 1853, 15 D. 603; *Thallon* v. *Wemyss*, November 22, 1855, 18 D. 80. But as to what compulsitors can be used for this purpose, 'the question is one of delicacy and difficulty' — Bell on Arbitration, 205."

The defenders appealed to the Sheriff (IVORY), who pronounced this interlocutor:—"Finds that the action brought by the pursuer was incompetent as regards the first alternative prayer of the petition; and that it was unnecessary as regards the second alternative prayer thereof: Therefore dismisses the action, and decerns: Finds the pursuer liable in expenses, &c.

"*Note.*—In the first alternative prayer of the petition the pursuer asks for a decree ordaining the defender James Fraser to join with Donald Paterson, his co-arbiter, in fixing the value of certain subjects on the farm of Balnafettack (21 in number) at the prices mentioned in the said prayer. The pursuer states in the condescendence annexed to the petition that these prices were fixed by the said Donald Paterson, but that James Fraser did not agree to them, and was of opinion that some of the subjects were not of the value set forth in the prayer of the petition. The Sheriff therefore is asked to ordain James Fraser to join with and fix the value of the said subjects at the prices fixed by his co-arbiter, although James Fraser himself was of opinion that some of the subjects were not of that value. Such an application appears to the Sheriff to be incompetent. In the second alternative prayer the pursuer asks for a decree ordaining James Fraser to join with Donald Paterson in executing a minute of devolution devolving the submission on Alexander Winton, the oversman appointed by them in a minute dated 26th May 1883, on the ground that the arbiters had differed in opinion in regard to the value of the said subjects. But if, as the pursuer alleges, the arbiters have so differed in opinion, it appears to the Sheriff that no such minute is required to devolve the submission on the oversman. The arbiters having at the outset appointed Mr Winton as oversman in the event of their differing in opinion, the difference of opinion between them was of itself sufficient to devolve the submission on the oversman whenever the arbiters differed. The proper course for the pursuer was to have called on the oversman to proceed with the submission, which had in consequence devolved on him. The action therefore, as regards the second alternative prayer of the petition, appears to the Sheriff to have been quite unnecessary, and in the whole circumstances the Sheriff is of opinion that the action ought to be dismissed."

The pursuer appealed to the Court of Session, and argued—It was clear that there must be some way of compelling a person who had voluntarily accepted of the office of arbiter to go on with the reference. He could not be permitted to bring matters to a deadlock, as here, by refusing either to agree or to devolve. If resort could not be had to the oversman, it might be had to a court of law. The remedy lay in either of the alternative ways prayed for by the pursuer. The Court, having the subject-matter of the submission before it, and deciding which arbiter was in the wrong, could either order him to agree with the other or to join with him in devolving on the oversman. Even if the first alternative of the prayer was incompetent, it was merely superfluous, and did not affect the second, which was clearly competent—*Marshall* v. *The Edinburgh and Glasgow Railway Company*, *supra cit.*; Bell on Arbitration, pp. 189 and 196; Russell on Arbitration, p. 242. Such an action, being one substantially on contract, was within the Sheriff's common law jurisdiction — Ersk. i. 41. The question had, however, never been the subject of decision.

The defenders replied—The Sheriff's judgment was right—clearly on the first finding, and also on the second, for there was here no refusal on the part of the defender Fraser to perform his function as arbiter, nor was there any such difference between the arbiters as amounted to a deadlock, but merely one on a question of procedure. The defender was in his right in demanding evidence as to the price of the pipes; it was the other arbiter who in refusing to submit to legitimate inquiry was causing the delay — *Mackenzie* v. *Viscount Hill*, June 2, 1868, 40 Scot. Jur. 499. The action, which was one to compel the defender James Fraser to perform an act, was incompetent in the Sheriff Court. No precedent could be shown for it. If there was any competent procedure it was by action in the Court of Session containing declaratory conclusions.

At advising—

LORD CRAIGHILL—[*After stating the facts*]—With regard to the first finding in the Sheriff's interlocutor, I have no doubt whatever. It is quite plain that to conclude against any arbiter that he must concur with another whose opinion (in regard to pipes in this instance) was different, is a conclusion that never could be sustained. As regards the second finding, I think he has given quite an erroneous view of the rights of parties as to that which was not only necessary but expedient in the circumstances. I think it was of the highest expediency that there should be a devolution, because otherwise there was prevented any certainty as to whether the duties of the arbiters had been devolved. Supposing matters had been allowed to proceed in that shape, there would have been certain to be a controversy as to whether there was a difference of opinion or not. Besides, it is just as likely as not that a controversy would have been raised between the parties as to whether the action of the oversman —the duties not having been properly devolved— was *ultra vires* of his powers, and therefore could

be of no avail. Therefore I am of opinion that this finding ought not to be affirmed.

The next question that arises is, Should we go back to the interlocutor of the Sheriff-Substitute? I have not heard anything against that interlocutor being affirmed, assuming that the Sheriff has erred. No doubt there was in the end a contention maintained on the part of the respondents that the action was incompetent in the Sheriff Court. I always look upon such questions of jurisdiction with more or less of distrust, especially in a case where no plea is stated to that effect, and where no argument was presented on the subject until the very close. And it must be remembered that the *onus* of proving that there is no jurisdiction rests on the party upholding this plea. I am not at all satisfied with the way they have done so. The contract related to the manner in which certain prices were to be fixed, and the parties nominated arbiters and an oversman, who accepted office and agreed to give their opinion. If the arbiters differed they were to devolve on the oversman. They did differ. Was the matter to be hung up because they differed, or were they to be compelled to execute the functions of arbiters who had accepted office? I see no incompetency in making them do their office. It is quite true that we have no similar case in the Sheriff Court—that is to say, we have no case quoted—nor a statement by the institutional writers. But there has been nothing shewn to us to the opposite effect. There are cases of a similar character in the Court here, with which we are quite familiar, but these are not absolutely binding in this instance. If it had been necessary in every such case as this that an operative finding or decerniture could only be granted after there had been a declarator of the rights of parties, then another decision might have been necessary. But in the cases to which I have alluded, a conclusion for declarator was not absolutely necessary. In some cases the operative conclusions were preceded by a conclusion of a declaratory nature, but in other cases there was no declaratory conclusion at all.

I am therefore for reverting to the judgment of the Sheriff-Substitute.

Lord Rutherfurd Clark—I agree.

Lord Young—I have been considering whether I ought to say anything in this case, and I rather think it is my duty to express my views, because I feel that your Lordships' view does not commend itself to my mind as the just result. The dispute is between two tenant farmers, an outgoing and an incoming tenant. The incomer was to take certain articles from the outgoer. They referred the dispute to qualified men to fix the values, I suppose without any evidence at all; and these valuators agreed upon all the items with the exception of one, the value of the whole being £529, and the value of that item about which alone they differed being about £77. The valuators were farmers I suppose, but the one article about which they did not agree was lead pipes (about which naturally they knew nothing). One of them, however, it is stated in the record, with the assistance of the oversman, put a value upon those pipes of £77, and declined to hear any evidence on the subject. The other, who agreed to all the other items, said, "I should like some evidence about the pipes, because I have no knowledge of the value of lead pipes," and at the particular stage when this action was raised—and no great length of time had elapsed—he declined to agree as regards that item, or devolve the matter upon the oversman on the footing that they were agreed upon everything except the pipes; with reference to them, he said, "I wish to have some evidence." We have no evidence on the subject at all. The Sheriff-Substitute tells us that he had an interview with the two gentlemen themselves. The result of that interview is these findings in fact—that the arbiter James Fraser, the gentleman who is made a party to this process, is willing to proceed in the reference and to make an award, but is desirous that further evidence in the matters embraced in the said reference be produced before making the award. I cannot conceive a more justifiable—a more commendable—position to be taken up by any man under the circumstances. It is certainly a position which I should myself have advised him to take up, and a position which I should think any man of sense would advise him to take up. He knows nothing about lead pipes. Now, this is the position of the other, Donald Paterson, who is not made a defender; he "declines to proceed in the said reference, and refuses to allow further evidence to be produced in the matter." That is the position in which the two gentlemen are when the Sheriff-Substitute is called upon to judge, and order what shall be done. My brother Lord Craighill said he regarded with great suspicion any question of jurisdiction raised on the record. The question of jurisdiction was raised by myself, and I am sorry that my brother should regard it with great suspicion. It occurred to me to be a grave question of jurisdiction, whether when two arbiters took up the position that the Sheriff-Substitute has recorded as the result of his interview with those gentlemen, the Sheriff-Substitute can be called in to adjudicate between them as to which is right, or what ought to be done. I think it is a very delicate matter involving what we have been accustomed to speak of as *nobile officium*. If there is a hitch, or a lock which prevents further procedure in such circumstances, I do not think it is a magistrate that is to be called in to relieve the parties of any difficulty. I think an appeal must be made to, and an order may be made by, the Supreme Court. That would be a simple and reasonable solution of my difficulty, but I repeat my doubt, which still exists, as to an Inferior Court being the proper tribunal to be resorted to in such circumstances. But the question is, what are we to do? Or what is the Sheriff to do? He has called the arbiters before him and judged what is fitting to be done; and he appoints the two arbiters to devolve the matter on the oversman because the arbiters had differed in opinion. How is he to determine that? There has not been any very great delay. If the matter were to be hung up until they had further time to consider what should be done about the price of the one article no great skaith could be taken from that, for it seems that payment of everything else was tendered. But the Sheriff is to order them to execute a devolution upon the footing that they have differed about everything I suppose; whereas it was explained at the bar, both sides concurring in the statement, that they had agreed to everything except a matter of £70. Now, are they to devolve the whole thing on the oversman

now? That is what we are going to do by affirming the Sheriff's judgment. In short, we are going to pronounce James Fraser to be in the wrong, who I think was entirely in the right, and order him to concur with Donald Paterson in devolving the whole matter on the oversman, and that in the face of a statement that the oversman had interposed already and expressed an opinion on the subject. However, I have relieved my conscience by stating my own doubts and difficulties, and to a certain extent my own decided opinion in the matter.

The Court pronounced this interlocutor—

"Find in fact (1) That there is a disagreement or non-agreement between the valuers James Fraser and Donald Paterson as to the course of procedure in the valuation and the value of the articles which are the subject of valuation; (2) that they have not executed a minute of devolution upon Alexander Winton, the oversman, and that it is not only expedient but right and proper in the circumstances that such minute of devolution should be executed: Therefore recal the interlocutor of the Sheriff appealed against: Affirm the interlocutor of the Sheriff-Substitute of 7th December 1883," &c.

Counsel for Pursuer (Appellant)—Mackintosh—Kennedy. Agents—Gordon, Pringle, Dallas, & Co., W.S.

Counsel for Defender (Respondent)—Guthrie Smith—M'Kechnie. Agent—W. B. Glen, S.S.C.

Saturday, July 19.

SECOND DIVISION.

BRADFORD, PETITIONER (FOR OPINION OF COURT).

Succession—Vesting—Destination-Over.

A domiciled Scotsman left an unsigned deed of settlement whereby he appointed the whole residue of his estate to belong to his daughter, and directed his trustees to secure the same for her exclusive of the rights of any husband she might marry, such residue to be enjoyed during her life, with the fee to her children. Failing her or her issue, he appointed his brother, for his liferent use and his children and their issue in fee, to be his residuary legatees. The daughter survived the testator, but died unmarried. In a Case stated for the opinion of the Court, by the Chancery Division of the High Court of Justice—*held* that, assuming, as the Court was asked to do, the validity of the settlement, the residue passed to the daughter's representative, and not to the children of the testator's brother.

This was a Case stated, in terms of the Statute 22 and 23 Vict. cap. 63. by Mr Justice Pearson in a suit depending in the High Court of Justice (Chancery Division) in England, between Wilmot Henry Bradford as plaintiff and William Baird Young and others, defendants, for the opinion of the Court of Session with reference to the law of Scotland as administered by it, and so far as the same was applicable to the facts as set forth in the Case. These facts were, that Hugh Falconar died on 23d February 1827 domiciled in Scotland, leaving a trust-disposition and settlement prepared by a Writer to the Signet in Edinburgh, but undated and unsigned, containing *inter alia* this residuary bequest—"And lastly, I appoint the whole residue and remainder of my funds and estate to belong and be paid to or secured, under the restriction after inserted, for the behoof of the said Jeanne or Jane Falconar (an illegitimate daughter of the said Hugh Falconar), whom I hereby name, constitute, and appoint my residuary legatee; and I appoint my said trustees to be the guardians of my said daughter in the care and disposal of the funds devolving on her under this my settlement, with power to them, whether or not my said daughter shall have attained majority or be married at my decease, and I hereby specially enjoin them, to secure the residue of my funds and estate falling to my said daughter so as that the same shall not fall under the right or administration of her husband, or be attachable by his creditors, or affectable by his debts or deeds, but be enjoyed by herself during her life, with the fee or remainder to her children according as she shall divide the same among them: And failing of her and her issue, the liferent of the residue to belong to and be enjoyed by her husband, if she shall have left a husband surviving her; and failing my said daughter and her issue, and on the decease of her husband, either before or after my decease, I appoint my said brother John, for his liferent use and his lawful children and their issue in fee or remainder, my residuary legatees." This unsigned trust-disposition and settlement was on 29th March 1828 admitted to probate by the Prerogative Court of Chancery in England, and as the "probate has never been revoked, it is to be assumed that according to English law the said unsigned trust-disposition and settlement is a valid testamentary disposition."

The executors realised the estate and paid the income to Jeanne or Jane Falconar during her life. She died unmarried on 10th February 1882, and the plaintiff (W. H. Bradford) was her legal personal representative appointed by her will. After her death Hugh Falconar's trustees paid his estate into the Chancery Division, where it awaited distribution.

At the date of Hugh Falconar's death he had one brother alive, who had four children. Of these two left issue. The only child of one of them died in 1874 leaving four children. The other had two children, one of whom died in 1881 leaving five children alive at the date of this Case, some of whom were married and had issue. There was thus at the death of Jeanne Falconar great-grandchildren and great-great-grandchildren of John Falconar.

The questions submitted were—"(1) What interest was taken by the said Jeanne or Jane Falconar in the residuary bequest, ... and what interest is now taken by her legal representative? (2) If the said Jeanne or Jane Falconar did not take an absolute interest in the said residuary bequest, what interest, if any, therein, after her death, was taken by the children, grandchildren, great-grandchildren, and great-great-grandchildren of the said John Falconar respectively?"