cision now. I have already in a previous judgment said that I could not recognise a claim to arrears, because that would be burdening the present ratepayers with an annuity which, if matters had been amicably settled, ought to have been paid year by year by the ratepayers of the respective years.

"I have some difficulty in arriving at a clear conclusion whether the compensation to which I think Mr Watson is undoubtedly entitled for the future should be given in the form of an annuity or in the form of a lump sum of money, because I have great difficulty in seeing under which clause of the various statutes cited the annuity could be awarded. It could not be given under the Act of 1861, because that must be settled at the time in the exercise of the power given by section 6; and if it could not be given under that section I think that probably the same objection would apply to the Court settling an annuity under the Act of 1872. I rather incline to think that I must fall back upon the remedy of damages, which is the universal remedy in all cases for breach of contract when other modes of compensation fail. It appears to me, to express the ground of judgment in a single sentence, that the School Board wrongfully dismissed Mr Watson in proceeding upon an error of judgment regarding his position as a schoolmaster. But that having done so they agreed with him to consider his claim not to full compensation under the statute, but to a reasonable equivalent for the injury that they had done him, he at the same time looking out for another situation. In short, they agreed to treat the case in the same way that a master is bound to treat the case of a servant whom he has wrongfully dismissed. And I think I will best dispose of the case by giving what the School Board would probably have given if they had acted on the arrangement made when Mr Watson retired.

"In all the circumstances of the case I think that a sum of £190, being equal to two years' emoluments of the office, is fair compensation having regard to the time that has elapsed and that we are only dealing with the future. If the compensation were to be made on the basis of the full salary, of course two years would be inadequate, but the sum that I give is a sum which is to be spread over a larger number of years in instalments of considerably less amount than salary, it is unnecessary to say in what way it may be competent, whether it may be six years' salary at a third, or four years at half salary, and of course I also find the pursuer entitled to expenses."

Counsel for Pursuer — M'Kechnie — Crole. Agent—W. B. Rainnie, S.S.C.

Counsel for Defenders—Guthrie Smith—Ure. Agents—Adamson & Gulland, W.S.

Saturday, January 22, 1887.

OUTER HOUSE.

[Lord M'Laren.

MARTIN'S TRUSTEES *v.* MARTIN AND OTHERS.

Succession—Donatio mortis causa.

Held (by Lord M'Laren, Ordinary)—The three requisites which have been laid down as essential to the constitution of a *donatio mortis causa*—viz., that the gift must be made *intuitu mortis*, that it must be made by a *de presenti* act or deed, and that the subject, or document of title representing the subject, must be delivered to the donee or to some-one on his behalf—have not been abrogated, but it is sufficient that the gift is made in contemplation of death, although the giver is not apparently in immediate danger of death, that the donor states to the donee or man of business or confidential friend that the subject is given in the manner intended, and that the delivery is *longi manu*.

Circumstances in which *donatio mortis causa* as thus explained *held* to be proved.

Mrs Jane Brown or Martin died at Strathaven in July 1885. She left a settlement dated in 1876, by which she conveyed her whole estate, heritable and moveable, to trustees, specially including in the conveyance the estate of her deceased brother John Brown, to which she had succeeded. She directed the residue, after payment of certain legacies, to be divided into six equal shares, five of which were to be paid to her children and grandchildren, and the sixth as she might by subsequent writing direct, and in the event of no such writing being made, it was to be divided by her son among such missionary or charitable and religious objects as might be pointed out by him.

She left certain other legacies by separate writing in 1882. After her death there were found in her house a number of deposit-receipts all dated subsequent to 1882, and all bearing that the various sums had been deposited by her for behoof of the objects therein respectively specified, *e.g.*, "for the Aged Ministers and Aged Missionaries Fund of the United Presbyterian Church," "for the Foreign Mission Fund of the United Presbyterian Church," &c. The said receipts were endorsed by deceased, and were renewals of others which had been framed in the same terms, the interest on which had been uplifted by the deceased from time to time and handed to the various charities named in each, the principal sums being re-deposited. This had been done for several years before her death, and it was proved in this action that she had so deposited the money with the intention, which she had often expressed, of making donations of the sums contained in them to the various objects named in them.

In this process of multiplepoinding for distribution of her estate, the various Schemes mentioned in these receipts claimed the amount contained in them as *mortis causa* donations.

After a proof the Lord Ordinary (M'Laren) sustained these claims to the sums contained in the receipts.

"*Opinion.*—In this case fortunately there can

be no question as to the intention of the donor, but there really is not very much beyond the intention to support the gift. I am anxious, as there are many cases of this kind coming before me every year, that, so far as my opinion can contribute to the elucidation of the law, the solution of these cases should be reduced to some sort of principle, and I have been aided in thinking it over by a most excellent argument on both sides of the bar.

"The facts may be very shortly stated. Mrs Martin, the donor, came through a brother into the possession of a very considerable fortune for her—about £22,000 in all—which came over to her in instalments from America. From the time she became aware of her succession she appears to have resolved to divide it amongst her five next-of-kin—sons and daughters—and also to give a share to objects of a religious and benevolent character, treating benevolence as entitled to equal participation along with her children in her fortune. As the sums of money came in she made such a rateable distribution of each sum until, I think, the last considerable payment came in, and then, after giving what she thought proper to her family, she resolved—as she was not likely to have any subsequent large amount of money to dispose of—to deposit a certain portion in bank. Out of the money so deposited Mrs Martin continued, I think, from the year 1880 to make annual gifts to different public objects, chiefly in connection with the United Presbyterian Church, and she took the deposit-receipts for this reserved money in the names of the different parties and objects which are set forth in the record. These are chiefly, so far as the case is in controversy, the schemes of the United Presbyterian Church in general, and of the congregation in connection with it at Strathaven. It is in evidence that Mrs Martin took the deposit-receipts in this form with the intention of constituting donations. That appears from the evidence of her agent, but still more from that of her daughter, who is perfectly clear and distinct upon the point.

"Now, until those cases became frequent I think it was rather understood in the profession, from the study of the older authorities, that the law of *donatio mortis causa* was somewhat strictly fenced. There were three requisites to the constitution of what is virtually a testamentary gift by way of donation—first, that the gift must be made *intuitu mortis;* secondly, that it must be made by a *de presenti* act or deed, but defeasible in the event of the granter's recovery from the illness which is the inducing cause of the donation; and, thirdly, that the subject, or the document of title representing it, should be delivered to the donee, or to some-one on his behalf. It has been argued to me with much force for the claimants that all these requisites or conditions of such gifts are abrogated, or have been found to be non-existent under the later authorities, and particularly under the cases of *Crosbie* v. *Wright* and of *Blyth* v. *Curle.* I should prefer to put the change of practice in this way—not that the conditions which I have referred to are abrogated, but that they have passed into what I may call the ceremonial stage, in which something requires to be done to satisfy the theoretical requirements of the law, but which has really no substance in it beyond giving point to the expression of intention. I may illustrate what I mean by referring to what I think is the typical case of the *donatio mortis causa*—a settlement of heritable estate at common law prior to the alteration made by the recent Conveyancing Acts. It was the theory of the law of Scotland that in regard to heritable property the *testamenti factio* did not exist, and that no man could dispose of his heritable estate otherwise than by a regular *de presenti* conveyance made in his lifetime, and therefore all wills of land were really donations *mortis causa.* We see how the conditions of such a gift were reduced to a mere form in the history of that law. It was enough to make it a gift *intuitu mortis* that it was so described in the narrative or introductory clause of the deed. It was enough to make it a *de presenti* gift that the words of *de presenti* conveyance—practically the word 'dispone'—were used in the clause of conveyance; and it was unnecessary to say anything about its being defeasible, because that was the condition of the gift; and, lastly, delivery was dispensed with on the theory that as the granter retained his liferent he was the proper custodier of the deed, and the delivery took effect upon death at the time when the interest was to vest in the donee. Now, apparently the law as to gifts of moveable estate has, like that of heritable estate, passed into the ceremonial stage as regards these requirements, because it is now settled that such a gift will be sustained although the giver is not apparently in immediate danger of death, and it is enough that the gift is made in contemplation of death at some future time. It is held that the condition of its being a *de presenti* gift is sufficiently satisfied by the donor stating—it may be verbally or otherwise—to the donee or man of business or confidential friend, that the subject is given in the manner intended; and then, if the case of *Crosbie* v. *Wright* is to be relied on, it is not even necessary that delivery should be made to anyone. But I think there ought to be delivery *longi manu* at least; the document must be shown to some-one, and pointed out as the security which the donor intends to transfer. There is another condition which has not been so much referred to in the cases, but on which I should wish to say a few words, and that is as to the form of conveyance that is necessary to the constitution of such a gift. I think it will be found upon a comparison of the different views that have been expressed that the transference or disposition is to be made, or at least is sufficiently made, if such words are used as would be required for the transference of the subject or security for any of the ordinary purposes of life. Hence if the property is one that can only be transferred by a deed *inter vivos*, the *donatio mortis causa* must be by deed. That is the one extreme; and the other is the case of a gift of mere corporeal moveables, which are given, and lawfully given, by being handed over. Between these extremes we have the various descriptions of moveable property in the transference of which writing intervenes. For obvious reasons deposit-receipts constitute the most common case; and I think that where the deposit-receipt contains the name of the donee, then if it is endorsed—even blank endorsed—the requirements of a gift in point of form are satisfied, because that is the way in which the fund would be

transferred if it was intended to make a transfer taking immediate effect.

"Applying these principles to the present case, it appears to me that we have, in addition to evidence of the intention, all those ceremonial requisites to which I have referred. It is true that the lady was not under any immediate apprehension of death when she told her daughter what she wished to be done with her money, but she was suffering from an infirmity from which she could never recover, because she was eighty-five years of age; and I think that great age combined with infirmity is enough as regards the gift being *mortis causa*. Then I think that you have, both in form and in substance, a gift of the fund deposited. You have the names of the donees inscribed in the deposit-receipts, and this with endorsation in blank, and accompanied by the expression of intention to the daughter, who was to be the lady's chief executor and trustee, is sufficient. And then we have also delivery *longi manu*, because the daughter saw the receipts, and had them pointed out to her, and knew where they were to remain in safe custody until her mother's death.

"On these grounds I am of opinion that the case for the claimants has been made out; and I do not see any reason for making a distinction between the different persons and objects that have been represented."

Counsel for Trustees of Mrs Martin—Readman. Agents—Adamson & Gulland, W.S.

Counsel for Schemes of U.P. Church—Comrie Thomson—Shaw. Agents—J. & A. Peddie & Ivory, W.S.

HOUSE OF LORDS.

Tuesday, February 15.

(Before Lord Chancellor (Halsbury), Lords Bramwell, Herschell, and Macnaghten.)

AULD *v.* GLASGOW WORKING MEN'S BUILDING SOCIETY.

(*Ante* vol. xxii., p. 883, and 12 R. 1320.)

Building Society—Withdrawing Member—Resolution of Society to Reduce Sum at Credit of Unadvanced Members Invalid.

The rules of a benefit building society incorporated under the Building Societies Act 1874 provided that any unadvanced or investing member might withdraw the whole or any portion of the sum at his credit in the society's books after giving certain notice. At the annual general meeting the society approved by a majority of a report by the directors recommending that as the property over which the society held securities had fallen in value, a sum of 7s. 6d. per £1 should be deducted from the amounts at the credit of the members, and placed to a suspense account. There was no rule of the society regulating the manner in which losses were to be borne. *Held* (*rev.* judgment of the Court of Session) that the resolution was *ultra vires*, and that an unadvanced member who subsequently gave notice of withdrawal was entitled to be paid the whole amount at his credit.

This case is reported *ante*, vol. xxii., p. 883, and 12 R. 1320.

The pursuer appealed.

At delivering judgment—

Lord Chancellor (Halsbury)—My Lords, in this case I confess I am unable to share the doubts which appear to have existed in the minds of the learned Judges in the Court of Session.

This contract between the parties is a contract to be judged of by the ordinary rules, and the society or association which has made this contract with one of its members is precisely in the same contractual relation with its member as if it was with a stranger. The association itself is what it is. It is not a partnership at common law; it is not a joint-stock company. Associations of this character have been under the consideration of your Lordships' House before—*Russell* v. *Brownlie*, 8 App. Cas. 235; *Walton* v. *Edge, in re Blackburn Building Society*, 10 App. Cas. 33; *Tosh* v. *North British Building Society*, 11 App. Cas. 489. The result of those simple propositions is this, that the pursuer here had a right to enforce the contract between himself and the association of which he was a member. If the alteration, against the will of one of the contracting parties, which is insisted on here as within the competency of the other were valid and effectual, I do not really know why the association should not have made a rule preventing withdrawal altogether, because it was inexpedient and contrary to their interests that anybody should withdraw, or a rule that if anybody did withdraw he should forfeit all interest whatsoever. The truth is, that when once it is ascertained that this is a contract which is to be kept between the parties, all the observations of the learned Judges, appropriate and reasonable enough if they were dealing with the relations between two copartners at common law, and that which should regulate the division of profits between them, become absolutely inappropriate and entirely beside the question when the consideration is whether or not a contract which has been made is to be kept.

I observed that Sir Horace Davey felt of course the pressure of the observation, and endeavoured so to construe the contract between the parties as to bring the respondents' contention within the language of the contract itself, and accordingly, instead of reading the rules of this association, which in truth constituted the contract between the parties, in their ordinary and natural sense, he ingeniously suggested that the words "the sums standing to the credit of the withdrawing member" would mean, not the sums as they actually do stand and as they have been actually ascertained and signed by the proper officer of the society (which according to the rules is to be binding between the society and its members), but that they should mean that sum which, taking the true value of the assets and liabilities of the society, should be the sum appropriated to the particular member. My Lords, it appears to me not only that that is not the language of the rule, but also that it is not the meaning and intent of the rule. The meaning and intent of the rule seem obvious enough, namely, that when once