1882, and so he had realised before his death the fact that the condition which he had thought fit to introduce regarding his son attaining the age of twenty-three no longer operated. He had to consider therefore how his four farms were to be carried on, and how his widow and children were to be provided for. Now, I think he has expressed himself clearly in reference to these matters—[*His Lordship here read the direction in the will above quoted*]. So far there is no difficulty in understanding the intention of the testator. Till he attains the age of twenty-three, his son is to have nothing to do with the farms, but when he reaches that age he is to have the use of the stock in the three farms mentioned, until his death upon payment of £300 a-year as interest, and he is also at his mother's death to get Lochend upon payment of £50 a-year to each of his sisters. Then he leaves to his two daughters and their heirs £3000 each reduced by a subsequent codicil to £2000. He then proceeds as follows—"and in consideration of the foregoing arrangements my son David is to succeed to whatever may remain of my estate and effects after these payments are made." Now, it is said that these words necessarily imply that until the payments were made there was no succession in the son, that there was no gift, and therefore no right to the accrued residue until after the payments were made. It was urged that the word "after" was referable to a point of time, but I do not think that that is the correct interpretation. I think that the testator meant in this clause to give his son an immediate gift subject to the payments provided for in the preceding clause. That is the more natural meaning to give to the words used, and is also more in accordance with the general rule of law as to vesting *a morte testatoris*. There is nothing to militate against it. Therefore, giving due effect to the presumption of law as to vesting *a morte*, there is no difficulty in giving effect to the plain meaning of the testator. I am therefore for answering the question in the affirmative.

LORD ADAM—I do not think that this is at all a difficult case, and I think that your Lordship has said everything that can be said upon the point. The question is whether the son's share vested in him *a morte testatoris*, and I have no doubt that your Lordship has put the true construction on the words of the residuary clause. The son in my opinion was to get the whole estate subject to the payments mentioned in the preceding clause. I am therefore prepared to concur with your Lordship.

LORD M'LAREN—I concur, and desire to add only a single observation. It is no doubt laid down in the leading cases that words of conditional institution or limitation, as they are called in the House of Lords, *prima facie* are to be taken to refer to the distribution of the estate. But while that is so, it is also to be observed that in determining the period of distribution there is an important distinction between the case where a general liferent of the estate is given with a destination of the capital at the time of distribution and the case (which we have here) of an unlimited fee burdened with an annuity. The rule of vesting is perfectly satisfied in the latter case, and I therefore concur with your Lordships in the proposed judgment.

LORD KINNEAR concurred.

The Court answered the question in the affirmative.

Counsel for First and Second Parties—Vary Campbell—C. K. Mackenzie. Agents—Ronald & Ritchie, S.S.C.

Counsel for Third Party—Jameson—Cullen. Agents—J. & J. Milligan, W.S.

Friday, July 17.

FIRST DIVISION.

THE PAROCHIAL BOARD OF THE PARISH OF BORTHWICK *v.* THE PAROCHIAL BOARD OF THE PARISH OF TEMPLE.

Local Government (Scotland) Act 1889 (52 *and* 53 *Vict. cap.* 50), *sec.* 50, *sub-sec.* 3—*Special Case—Relevancy.*

By sub-section 3 of section 50 of the Local Government (Scotland) Act 1889, the Boundary Commissioners are empowered, when making an adjustment under that Act, to state a special case for the opinion of the Court on any question of law arising.

The Boundary Commissioners for Scotland, acting under their statutory powers, detached an outlying portion of the parish of T, and annexed it to the parish of B. When the liabilities of the two parishes came to be adjusted, a question arose as to which parish would be bound to support persons who had at the date of the transference a settlement by birth or residence in the detached portion of T, and might thereafter require parochial relief.

Held that no question of law had been submitted, and case *dismissed*.

Opinions (*per* Lord M'Laren and Lord Kinnear) that the questions submitted to the Court were just those which the statute intended the Commissioners to deal with and to dispose of.

By order dated 24th November 1890, the Boundary Commissioners for Scotland declared that a detached portion of the parish of Temple, containing 228 acres or thereby, situated at or near Gorebridge, should cease to be a part of the parish of Temple, and should form part of the parish of Borthwick. The order came into operation on 15th May 1891. Before the transfer the population of Borthwick was 1902, and of Temple 1646. The population of the

portion detached from Temple and added to Borthwick is 1191, making the present population of Borthwick 3093 and of Temple 455.

The Parochial Boards of the two parishes failed to agree as to an adjustment of liabilities consequent upon the transfer of the detached portion, and applied to the Boundary Commissioners to make such adjustment.

Thereafter the present case was stated for the opinion of the Court by the Boundary Commissioners, at the desire of the Parochial Boards of Borthwick and Temple.

It was stated in the case that before the Commissioners could adjust the liabilities of the parishes, it was necessary to settle the questions of law as to the settlement of those persons who, residing in the said detached portion, possessed at the date of the transfer on 15th May 1891 a settlement by birth or residence in the parish of Temple, and who might thereafter become chargeable; that the Parochial Board of Borthwick maintained that the settlement of such persons continued to be in Temple, while the Parochial Board of Temple contended that it was transferred to Borthwick; that since the date of the transfer on 15th May 1891, Alexander Wyllie, who immediately preceding that date possessed a settlement in the parish of Temple by residence in the said detached portion, had made application to the parish of Borthwick for relief, and had been temporarily relieved, pending the settlement of the questions between the two parishes.

The opinion of the Court was craved on the following questions—"(1) Whether the settlement of the said Alexander Wyllie is still in Temple, or has been transferred to Borthwick? (2) If it be held that his settlement is in Temple, will residence by him for four years and a day in the said detached portion after the date of the transfer destroy his residential settlement in Temple? (3) Will a person born in the said detached portion prior to 15th May 1891, and becoming chargeable to the parish of his birth subsequent to that date, fall to be supported by the parish of Temple or by the parish of Borthwick?"

The Local Government (Scotland) Act 1889 (52 and 53 Vict. cap. 50), sec. 49, provides, *inter alia*—"When an order under this Act has taken effect, the Boundary Commissioners may provide for the adjustment and disposal of the property, debts, and liabilities of the various authorities affected by the order, and for the settlement of differences arising out of the order." Section 50, sub-section (2), provides—"In default of an agreement as to any matter requiring adjustment for the purposes of this Act, then if no other mode of making such adjustment is provided by this Act, such adjustment may be made or determined by the Commissioners;" and sub-section (3) provides—"The Commissioners, when making an adjustment under this Act, shall be deemed to be a single arbiter within the meaning of the Lands Clauses Consolidation (Scotland) Act 1845, and the Acts amending the same, and the provisions of those Acts with respect to an arbitration shall apply accordingly; and further, the Commissioners may state a special case on any question of law for the opinion of either Division of the Inner House of the Court of Session, who are hereby authorised finally to determine the same, along with any question of expenses."

Argued for Borthwick Parish — The pauper had no settlement by residence in Borthwick, therefore there was no obligation on Borthwick to relieve him. At the date of the transfer any pauper who had a residential settlement in Temple retained it for four years and one day, and anyone who had a birth settlement retained it for five years. The two questions of law for the Court were—(1) Whether in transferring a pauper from one parish to another his settlement was transferred with him? (2) whether the transferred paupers were paupers of the new parish or merely of the transferred area?

Argued for Temple Parish—With the transfer of a portion of the area of the parish the liabilities were also transferred. The parish of Borthwick could assess the transferred portion, and must therefore be liable for the paupers transferred, as the right to assess and the liability for relief are co-extensive.

At advising—

LORD PRESIDENT—This is a special case presented for the Boundary Commissioners for Scotland in a process of adjusting claims between the Parochial Boards of the parishes of Borthwick and Temple.

I do not see that we have much to do with the interests of either of these two bodies; what we are more concerned with is the competency of the present proceedings. The application is by means of a special case in order to obtain our decision upon certain questions which have been submitted to us, in order that we may assist the Commissioners to adjust the liabilities which have arisen between the Parochial Boards of these two parishes.

The Court fully recognises the duty which lies upon it to aid the Commissioners in the determination of any question of law which may arise in the discharge of the duty that has been imposed upon them; but the question which first presents itself for determination in this case is, whether there is here any question of law at all upon which the opinion of the Court can be obtained, and upon that matter I am very clearly of opinion that there is not.

The effect of what the Commissioners have done is simply this—to detach an outlying portion of the parish of Temple and to annex it to the parish of Borthwick. So long as the boundaries of these two parishes remained unadjusted, questions might have arisen between them involving principles of law upon which our opinion and judgment might competently have been obtained, but the order of the Commissioners here, out of which these questions have arisen, was pronounced so long ago as November 1890, and so it is not a

question as to the boundaries of these parishes that we have here to deal with.

The law of settlement is entirely statutory, and I do not find in the statutes any guide or assistance in answering the questions which have been submitted to us. What we are asked is this—[*His Lordship then referred to the questions*]. Now, these are either questions depending for their answer upon the statute, or they are not questions of law at all. For my own part, I may say that I can find nothing in the long list of statutes between 1579 and 1848 that can in any way aid us in the determination of these questions, and I therefore come to the conclusion that there is no question of law here at all.

The Legislature has placed these parishes in an anomalous and not very intelligible position. When they altered the law, so far as the division of parishes was concerned, they did not consider what would be the effect of the alteration upon residential settlements. The difficulty is one entirely created by the Legislature, and the Legislature must remove it. I am therefore of opinion that there is no question of law here at all.

There is no question of common law, because there is no common law upon the subject. The question is one of statute law, and we look in vain to the statute for any light on the subject.

LORD ADAM concurred.

LORD M'LAREN—Under the statute the Commissioners are empowered to deal with and to settle just such questions as are here submitted to us. No doubt such questions relating to settlement would be better determined by lawyers, as it is a subject not free from difficulty; but it does not by any means follow that the questions which have been presented to us, and which involve this and other matters, are really questions of law. I view them as belonging to the class of questions which the Legislature contemplated that the Commissioners themselves should determine.

LORD KINNEAR—The whole argument was directed to point out the convenience which might arise from the solution of the present question in one way or another. But none of these arguments affect any question of law, or present any question of law for our consideration. No doubt the effect of the statute is to put these two parishes in a very anomalous position towards each other, but the Legislature might have taken another course, and it appears to me to be very probable that it may have intended that all questions should be settled and decided on the principle of convenience, as cases might arise, by the Commissioners, to whom they had committed the practical resolution of the scheme of the Act.

If there is any question of liability arising between the two parishes in consequence of the detachment of one portion and its junction with another parish, that looks like a question of liability which the Commissioners might decide. At all events, I am clear that the Commissioners have not presented to the Court any question of law which they can ask us to decide or which we are able to decide.

The Court dismissed the case.

Counsel for the Parish of Borthwick—Wallace—C. K. Mackenzie. Agent—A. J. Napier, W.S.

Counsel for the Parish of Temple—J. A. Reid. Agents—J. & F. Anderson, W.S.

Saturday, July 18.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

GILMOUR *v.* THE CALEDONIAN INSURANCE COMPANY.

Insurance—Action on Policy—Arbitration—Arbiters not Named.

A policy of fire insurance provided, *inter alia*, that if a difference arose at any time between the company and the insured as to the amount payable in respect of any alleged loss or damage by fire, any such difference when it arose should be referred to the arbitration of a person or persons to be chosen by the parties.

Held that the terms of the clause of reference imputed more than a mere assessment of damages and that the reference being to arbiters unnamed, was invalid, and could not exclude an action by a party suing under the policy.

Andrew Gilmour, Blantyre, founding on a fire insurance policy, sued the Caledonian Insurance Company, Edinburgh, to recover the loss occasioned by a fire which took place on his premises in February 1891. The property was insured for £1700.

After the fire the defenders tendered £1350, which sum the pursuer refused. The policy provided—"Where the company does not claim to avoid its liability under the policy on the ground of fraud or non-fulfilment of any of the conditions hereinbefore set forth, but a difference at any time arises between the company and the insured, or any claimant under this policy, as to the amount payable in respect of any alleged loss or damage by fire, every such difference, when and as the same arises, shall be referred to the arbitration of one person to be chosen by both parties, or of two independent persons, one to be chosen by the party claiming and the other by the company, and in case either party shall refuse or neglect to appoint an arbitrator within twenty-eight days after notice, the other party shall appoint two arbitrators to act for both parties. Where two arbitrators are appointed they shall choose an umpire before entering on the reference, to provide for the possibility of a disagreement between them. And in