and disposition in security only created a simple trust; on payment being made to the trustees at the father's death they were immediately to pay it over to the children who survived the father, and no provision was made for the trustees retaining the money in their own hands. The bankruptcy of the father brought about the same result as if he had died. The Bankruptcy Act 1856 (19 and 20 Vict. c. 79), sec. 53, contemplates the valuation and out-and-out payment of a contingent claim. The payment had been made here for a contingent claim, and the second parties were entitled to have the money handed over to them immediately.

At advising—

LORD YOUNG—I do not think the character of the funds in the hands of the trustees has been in any way altered by the sequestration of the estates. I think these funds are to be dealt with in terms of the bond. Under the bond the trustees were to pay nothing if all the children predeceased the father, and if any of the children survived, they were to pay in proportion to the number surviving. When the bankruptcy occurred, the estate was burdened conditionally and provisionally with the sum of £5000, and as the estate had to be cleared of this burden, the only way to do so was the mode adopted, viz., to have the value of the rights under the bond ascertained and the sum paid over to the proper parties.

The sum thus came into the hands of the trustees in lieu and place of the bond which they originally held, and, except as regards the amount to which the children are entitled, I do not think the bankruptcy alters the possession or in any other way affects the rights of the children. Who these may be when the period of payment comes we cannot tell. Although one of the children is major, one is minor, and therefore it is not in the power of the parties to come to an arrangement themselves to have the money paid at once. If both were major, there would probably not be much difficulty in the circumstances, though there might be some, as children might, even yet, possibly be born.

I think, therefore, that the trustees are not entitled to hand this money over to the two younger children. I think the trustees must hold this money for the purposes for which they held the original bond, and deal with it as trust money, and account for it to the persons entitled to it when the time comes for payment. I am of opinion that they are bound to retain the principal sum and accumulate the interest until the first term of Whitsunday or Martinmas which shall happen after the death of John Heron Maxwell.

LORD RUTHERFURD CLARK, LORD TRAYNER, and the LORD JUSTICE-CLERK concurred.

The Court answered the first question in the negative, the second question in the affirmative, the first alternative of the third question in the affirmative, and the second alternative of the third question in the negative.

Counsel for the First Parties—Howden. Agents—J. & F. Anderson, W.S.

Counsel for the Second Parties—Cooper. Agents—J. K. & W. P. Lindsay, W.S.

Counsel for the Third Parties—Blackburn. Agents—Macandrew, Wright, & Murray, W.S.

Thursday, June 23.

SECOND DIVISION.

[Lord Stormonth Darling, Ordinary.

HAMILTON *v.* INGLIS.

Succession — Construction — Division per capita or per stirpes.

A testator directed her trustees "to pay the whole residue of my means and estate equally between the said John Inglis and the said children of the said Daniel M'Neil, equally between them." John Inglis was a nephew of the testator; Daniel M'Neil the husband of her niece. *Held* that John Inglis was entitled to one-half of the residue, and that the other half fell to be divided equally among the children of Daniel M'Neil.

Mrs Marion Adam or Wilson, widow, No. 63 Abercromby Street, Glasgow, who died on 2nd May 1884, left a trust-disposition and settlement dated 15th April 1884, by which she conveyed her whole estate to John Adams, Comely Park Street, Glasgow, and Samuel Hamilton, merchant there, and the acceptors and survivors of them, as trustees and trustee for the purposes therein mentioned. The third purpose was in the following terms—"To pay the whole residue of my means and estate equally between the said John Inglis and the said children of the said Daniel M'Neil, equally between them." John Inglis was a nephew of the testator, and Daniel M'Neil was the husband of Mrs Margaret Inglis or M'Neil, a niece of the testator and a sister of John Inglis.

After all the purposes of the trust-deed had been carried out by the trustees except the third purpose, there remained a free balance of £782, 4s. 2d.

Questions having arisen among the parties interested as to the meaning of the third purpose of the deed, an action of multiplepoinding and exoneration was raised by Samuel Hamilton, the surviving trustee under the trust-deed, in order to have it decided how the residue was to be divided. The residue formed the fund *in medio*.

John Adams Inglis, named John Inglis in the trust-deed, lodged a claim in the said action in which he claimed to be ranked and preferred to one-half of the fund *in medio*. He maintained that the

terms of the bequest implied a bipartite division of the residue, one-half falling to himself, and the other half to the children of Daniel M'Neil.

Daniel M'Neil junior, and the other seven children of Daniel M'Neil, also lodged a claim, in which each of the claimants claimed to be ranked and preferred to one-ninth of the fund *in medio*. They maintained that the residue fell "to be paid equally between the claimant John Adam Inglis and the eight present claimants, equally between the said nine parties. The said residue therefore falls to be divided into nine equal parts or shares, one share for each of the claimants and one for the said John Adam Inglis." Alternatively, they claimed to be ranked and preferred to one-half of the fund *in medio*, equally between them.

On 18th May 1892 the Lord Ordinary (STORMONTH DARLING) sustained the alternative claims of Daniel M'Neil junior and the other children of Daniel M'Neil, and the claim of John Adam Inglis.

"*Opinion.*—This is a case which, like all cases of construction of testamentary writings, depends mainly on the impression made on the judicial mind by the words actually used by the testator, and as I have a distinct impression with regard to the true meaning of the words used here, I do not think it necessary to reserve judgment.

"The testator was survived by a sister, a brother, and by the descendants of another brother and sister. She does not seem in her will to have followed the rules of intestate succession, but she made a selection from her relatives, benefiting chiefly the claimant John Inglis, who was a son of one of her sisters, and the other claimants, the M'Neil family, who were the children of a sister of Inglis, and therefore grandnephews and grandnieces of her own. That being so, it would of course be improper to attach too much importance to the mere fact of propinquity in construing this will, because it is obvious that she did not look with equal favour upon all her relations, but made a certain selection from among them. At the same time I think it has a certain bearing, as I shall afterwards explain.

"The clause requiring to be construed is the residuary clause, which contains a direction to the trustees 'to pay the whole residue of my means and estate equally between the said John Inglis and the said children of the said Daniel M'Neil, equally between them, and the question is whether that imports a bipartite division or a division *per capita* into nine shares. I am of opinion that it imports a bipartite division, and in so deciding I do not think that I am running counter to any rule of law. There is a rule, or more properly perhaps a presumption, in favour of division *per capita* in the simple case where a fund is left to certain persons equally among them, although some of these persons are named and some are only described as a class, and probably that rule would hold even where, as here, the beneficiary named is one degree nearer in relationship than the beneficiaries who are called as a class. But then it is equally well established that any indication of a contrary intention must receive effect, and I think in the present case such an indication is afforded by the repetition of the words 'equally between them.' It was contended for the claimants, the M'Neils, that these words were merely redundant; but it is a well-settled rule of construction that some meaning must be found for every word in a will, if that be possible, and I think, according to the construction contended for by the claimant Inglis, it is possible to find an intelligible meaning for the repetition of these words. The clause then would simply mean that the division of the residue is to be bipartite—that is to say, an equal division between Inglis and the M'Neil family; and the purpose of the insertion of the words 'equally between them' a second time would be to provide, what no doubt the law would have provided, but what it was quite natural for the testatrix herself to provide, that the division among the M'Neil family should also be equal.

"Now, I confess that while that is the main ground which has led me to a conclusion in favour of Inglis, I am also to some extent, and I think legitimately, influenced by the consideration that he was a nephew, while the M'Neil family were only grandnephews and grandnieces. That consideration might not be enough by itself to overcome the presumption in favour of division *per capita*, but when you find words, as I think you do here, indicating a contrary intention, it is, as it seems to me, a perfectly legitimate thing to bring in aid of that construction the fact that the beneficiary named was one degree nearer in relationship than the beneficiaries called as a class, and that therefore a division *per stirpes* was a natural division, and indeed the kind of division which I think one would expect if there were nothing to the contrary. It is reasonable to conclude that the testatrix was more likely to deal with the family of a niece as coming in place of their mother than to put each of them on the same footing as her nephew, and if words can be found which fairly bear that construction, I have at all events the satisfaction of thinking that the construction which I am adopting is in accordance with the ordinary motives of the human mind. For these reasons I shall sustain the claim of Inglis to one-half of the fund *in medio*, and the claim of the M'Neils to the remaining half."

The claimants Daniel M'Neil and others reclaimed, and argued—It was a fixed rule of law that a division of residue is presumed to be *per capita* even when the residue is left to some individuals *nominatim* and the children of another person—M'Laren on Wills, i. 724; *Grant* v. *Fyfe*, May 22, 1810, F.C.; *M'Curtie* v. *Blackie*, January 15, 1812, Hume, 270; *Bogie's Trustees* v. *Christie*, January 26, 1882, 9 R. 453. The rule was the same in England—Jarman on Wills, ii. 194; *Payne* v. *Webb*, November 11, 1874, L.R. 19 Eq. 26. This was a carelessly framed will. The meaning the

present claimants put on it was in accordance with the general rule, and the *onus* was on the other claimant to take the case out of the general rule. Where "equally" occurred at the beginning of such a clause and "share and share alike" at the end, it was held to make no difference—*Renny* v. *Crosbie*, December 3, 1822, 2 S. 60.

Argued for claimant John Adam Inglis—The Lord Ordinary's decision was right. The word "equally" occurring twice showed that the testatrix had in her mind one division bipartite between her nephew and the children of her niece, and another division of the latter's share equally among the grandnephews and grandnieces. Where a division fell to be made between relations, some related to the testator in a more remote degree than others, there was always a presumption that the division was to be made *per stirpes*, although that presumption might be overcome by the words of the clause—Vice-Chancellor Malins in *Payne* v. *Webb*, 1874, L.R., 19 Eq. 29. The case of *Davis* v. *Bennet*, January 30, 1862, 31 L.J. Ch. 337, was directly in favour of the claimant's contention.

At advising—

LORD JUSTICE-CLERK — The usual rule which ought in all cases to be followed in the interpretation of a will is to give the words a meaning if a reasonable meaning can be found for them, and not to assume that words have been put into the will which have no meaning, and which do not add anything to the sense of the other words of the bequest.

Here the contention of the reclaimers proceeds practically on the footing that in this clause, "to pay the whole residue of my means and estate equally between the said John Inglis and the said children of the said Daniel M'Neil, equally between them," the two words "equally" express the same thing, and do not add anything to the sense except perhaps to emphasise it by repetition. I do not think this is a proper way of dealing with the words. We must attempt to give them some sense. I concur in the remark made on behalf of the respondent that the natural reading of such a will is that the bequest is *per stirpes* and not *per capita*, and that it will require some distinct words to show that the bequest is *per capita* and not *per stirpes*. Here there is a perfectly reasonable reading of the clause which permits the construction that the bequest is *per stirpes*. The word "equally" at the beginning means that the estate is to be divided between two sets of persons, viz., a nephew and the children of a niece, while the word "equally" at the end of the clause requires that an equal division of that share which comes to the children of the niece under this bequest is to be made among them.

I therefore think that the Lord Ordinary has come to a right conclusion and that his interlocutor should be affirmed.

LORD YOUNG—I am of the same opinion. I think, however, the case is not free from doubt; the language of the will is not at all clear. But while *in dubio*, I think the probability is in favour of the Lord Ordinary's view, although I would not put it so touchingly as the Lord Ordinary has done when he says—"I have at all events the satisfaction of thinking that the construction which I am adopting is in accordance with the ordinary motives of the human mind." Yet I think the construction of the Lord Ordinary is the more probable.

I do not know that in such a matter as this the expression of general rules from the bench is desirable. The only rule that should be followed in all these cases is a simple one, viz., that a man of business who writes a will should ascertain distinctly the intention and wishes of his client, and should express them in as clear language as he can.

LORD RUTHERFURD CLARK concurred.

LORD TRAYNER—I agree with the Lord Ordinary, and very much for the reasons and on the grounds which the Lord Ordinary has stated.

The Court adhered.

Counsel for the Claimants Daniel M'Neil junior and Others—M'Lennan. Agents—Cumming & Duff, S.S.C.

Counsel for the Claimant John Adam Inglis—Constable. Agent—P. J. Purves, Solicitor.

Thursday, June 30.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

CAMPBELL COLQUHOUN *v.* CAMPBELL COLQUHOUN'S TRUSTEES.

Succession — Accumulation — Thellusson Act 1800 (39 *and* 40 *Geo. III. cap.* 98).

In a trust-disposition and settlement the truster directed his trustees to accumulate the rents of his mines and minerals, and when the accumulation reached £25,000 to pay over the accumulated fund to the heir of entail in possession of his estates, and at the same time to convey to him the mines and minerals in the same form of entail as that under which the other estates of the truster were held by him. The truster further provided that in case from any unforeseen contingency the mines should cease to be worked, or the proceeds thereof be much diminished, the fund account was to be kept up during the lifetime of his two sons and of the first heir descending from either of them who should be in existance at the truster's death, and should have succeeded to his estates, and that thereafter the account should be closed, although the accumulated sum should not amount to £25,000, and the amount then accumulated should be paid to the