was given and demand made, and another (the Sheriff) whether the demand was well founded. Is it contended that the Sheriff ought to have declined to consider the objection that the claim was not timeously made, and delayed the case till this objection was decided in an ordinary action, or is the contention this, that it was within his jurisdiction to take evidence upon it and determine it, but that to this extent his determination, whatever it might be, was not final?

I can well believe that the Sheriff may in this case have found the question of timeous notice and demand one of difficulty. I do not suppose that the structural damage to a house caused by adjacent underground operations necessarily occurs fully developed with all its evil-producing powers manifested in a moment, or even in a week or a month. I assume the accuracy of the Sheriff's determination that down to 17th February 1894 the respondent sustained damage to the amount of £30 and no more. When did she discover the damage? I cannot adopt the view that the discovery of the damage means the discovery of the structural damage to the building, and think it rather means the discovery of the damage resulting to her therefrom, for on this alone her claim for compensation is founded. I think the manner in which the respondent states her loss is fair and unobjectionable, and the Sheriff must have so regarded it, although he thought the sum claimed excessive. I also think that the Sheriff properly dealt with the case on the footing that the loss or damage for which compensation was claimed terminated in February 1894, when it amounted in his judgment on the facts to £30. There is no reason whatever that I can see for the suggestion that he awarded this £30 for loss and damage which accrued and was discovered six months before the presentment of the claim. Some of it possibly may, but it is according to our common law and familiar practice in dealing with prescriptions to look only to the termination of the account and to date therefrom. In the complainers' last amendment of the record (Stat. 5) they say no notice of damage was given by the respondent till 5th February 1894 — "though said damage and the cause thereof were known to her day by day as the said damage accrued." But according to this view a separate six months' prescription would run on each day's damage —a new term running and counting from every day that a lodger left without a successor coming.

I am of opinion that the Sheriff's determination complained of is within his jurisdiction, is final and conclusive, and that we cannot review it.

LORD RUTHERFURD CLARK—I think the interlocutor of the Lord Ordinary should be affirmed. I regret it, but do not see how any other course can be followed.

LORD TRAYNER—I agree in thinking that the interlocutor of the Lord Ordinary should be affirmed. I abstain from expressing any opinion at present as to the limit of the defenders' liability under the 73rd section of their Act until the inquiry allowed by the Lord Ordinary has been made. It will then appear what is the particular damage or injury for which compensation has been awarded, and therefore whether the compensation has been awarded for which under the complainers' Act the complainers are or are not responsible.

The Court adhered.

Counsel for the Complainers — R. V. Campbell—W. Thomson. Agents—W. & J. Burness, W.S.

Counsel for the Respondents—A. S. D. Thomson — Hunter. Agents — Ronald & Ritchie, S.S.C.

Saturday, March 16.

FIRST DIVISION.

[Lord Low, Ordinary.

ELDER'S TRUSTEES *v.* ELDER, &c.

(*Ante*, vol. 31, p. 594, and 21 R. 704.)

Succession — Settlement — Conditio si sine liberis decesserit—Implied Revocation—Prior Will—Intention of Testator.

A testator executed a general trust-disposition and settlement in 1858 in favour of children born or to be born. In 1886 he executed a trust-deed in which he expressly revoked all prior settlements, and settled his whole means and estate upon his then existing children. The Court having held that this settlement had been revoked in consequence of the subsequent birth of a child, it was attempted to revive the prior deed on the ground that the revocation destroyed the clause cancelling prior settlements.

Held that the prior settlement was not revived.

Opinion per Lord M'Laren that, whenever a last will is cut down by the operation of the *conditio si sine liberis decesserit*, all previous testamentary settlements must fall along with it, except such as are obligatory and matter of contract.

Process—Multiplepoinding—Claims—Competency—Res judicata.

In a multiplepoinding the Court decided that a will had been revoked in virtue of the *conditio si sine liberis*, and ranked and preferred one of the claimants. Thereafter while the fund was still *in manibus curiæ*, certain of the claimants, who had unsuccessfully maintained that the will had not been revoked, lodged new claims pleading that the revocation had the effect of setting up a prior settlement in which they were interested.

Held that these new claims were incompetent, it being *res judicata* that the claimants had no right to the fund.

Thomas Elder died on 24th October 1891, having been twice married, leaving a trust-disposition and settlement dated 26th March 1886 by which he directed his trustees to hold his whole means and estate for behoof of his three daughters, being all his children then alive. No provision was made for children *nascituri*. A son was born to the testator on 18th December 1890, and in an action of multiplepoinding brought to determine the distribution of his estate the Court, by interlocutor dated 16th March 1894—see 31 S.L.R. 594, and 21 R. 704—ranked and preferred his widow as guardian or tutor to her said son to the whole heritable property of the deceased, on the ground that the said trust-disposition and settlement had by implication been revoked under the condition *si sine liberis decesserit*, and remitted to the Lord Ordinary (Low) to proceed.

The testator had executed three prior trust-settlements, dated respectively in 1858, 1872, and 1884. In the first of these he directed his trustees to hold the whole residue of his estate for the use and behoof of any child or children he might have, equally among them, if more than one, share and share alike. In the other two subsequently destroyed (in the first of which he expressly revoked the former deed of 1858) he made no provision for children *nascituri*. By the deed of 1886 he expressly revoked all previous settlements.

Upon the case being remitted to the Lord Ordinary the two eldest daughters, Mrs Reid and Mrs Lockhart, and the trustees under the settlement of 1858, lodged claims to have the estate administered under that deed, on the ground that it had been revived through the subsequent deeds having been revoked in consequence of the birth of Thomas Elder junior.

Mrs Elder, as guardian of her infant son, pleaded that these claims should be repelled as in conflict with the final judgment of the Court of Session, and as guardian of both of her son and of the remaining daughter, who was also a pupil. She maintained that her husband's estate fell to be divided according to the rules of intestate succession.

Upon 2nd November 1894 the Lord Ordinary (Low) pronounced the following interlocutor:—"Finds that the effect of the implied revocation of the trust-disposition and settlement of the deceased Thomas Elder, dated 24th March 1886, which was operated by the subsequent birth of a son, was not to revive the trust-disposition and settlement executed by him on 10th November 1858, and that the means and estate of the said Thomas Elder fall to his heirs *ab intestato*."

"*Opinion.*—On the question of the competency of the claims which have now been made I do not desire to give any opinion, because it seems to me to be a question of some novelty and not unattended with difficulty.

"But in regard to the merits of the claims which are now before me, I have come to an opinion, and I do not think there is any good purpose to be served by taking the case to avizandum instead of expressing it at once.

"The argument is that the birth of a child subsequent to the execution of the last will made by his father, having by implication revoked that will, the result is to bring into operation a will made many years before which had been expressly revoked, but which, if it had been existing at the date of the father's death, would have been admittedly not open to challenge on the ground that it was revoked by the birth of a child. I cannot assent to that proposition. It seems to me that the law in regard to the revocation of a settlement by the subsequent birth of a child is this, that if a child is born subsequent to the date of the will, the presumption of law is—unless circumstances show the contrary to be the case—that that will no longer expresses the final testamentary intention of the father as to the disposal of his property. Now, if that be the case, I am unable to see upon what ground it can be said that you must then hold as the final expression of the father's intention as to the disposal of his property a will made many years before, which he himself had by writing under his hand declared to be no longer the expression of his will. I am unable to see any ground on which that result can be arrived at.

"Further, I think the statement of the law as to express revocation, and the difference between express revocation and implied revocation stated by Lord Eldon in the case referred to (*Crawford* v. *Coutts*, 5 Paton's App. 73), and by the late Lord President in the case of *Leith*, 1 Macph. 955, are applicable to this case. The late Lord President lays down the law with great distinctness. He says:—'Where a revocation of a previous settlement is merely implied in a new conveyance it is impossible to set aside the conveyance without sweeping away also the effect of the implication; and where revocation is made conditional by express words on the new conveyance receiving effect, there also it is impossible to defeat the new conveyance without setting aside the conditional revocation. But,' he goes on to say, 'in the present deed there is a substantive and independent revocation expressed in words and not conditional but absolute; and that being so, the heir-at-law is not only entitled to exclude the revocation from his reduction of the conveyance, but I am disposed to think that he could not have set aside the revocation *ex capite lecti*, even if he had been inclined to attempt it."

"Now, all that the presumption arising from the subsequent birth of a child does, in my opinion, is to revoke the operative part of the settlement as to the disposal of the property; and I do not see how it could—either upon principle or authority—do away with the express revocation which the testator has made of his former wills."

The claimants Mrs Reid and Mrs Lockhart reclaimed.

Argued for the trustees under the will of 1858—(1) They had not been previously in the case, and, as to the reclaimers, although they had previously joined issue as to their rights under the will of 1886, they were not thereby debarred from pleading

the will of 1858, since the fund *in medio* was still *in manibus curiæ—Dymond v. Scott*, November 23, 1887, 5 R. 196, was conclusive. The case might have been different and an action of reduction might have been necessary had the estate been distributed. (2) The previous judgment was in their favour. It had been held that the deed of 1886 had been revoked by virtue of the *conditio si sine*. There could be no partial revocation; that deed must be regarded as revoked *in toto*. Accordingly the clause of revocation it contained must be held as *pro non scripto*, and the deeds of 1874 and 1884 having been destroyed or similarly revoked by implication, the deed of 1858 was the ruling settlement. There was no case of partial revocation, nor was the law that the child participated. The birth displaced the will absolutely—Ersk. iii, 8, 46; *Colquhoun* v. *Campbell*, 1829, 7 Sh. 709; *Dobie's Trustees* v. *Pritchard*, October 19, 1887, 15 R. 2; *Munro's Executors* v. *Munro*, November 18, 1890, 18 R. 122; *Howden* v. *Crichton*, July 18, 1815, F.C.; *Kerr* v. *Erskine*, January 16, 1851, 13 D. 492; *Dove* v. *Smith*, 1827, 5 S. 684; *Oliphant*, December 10, 1794, Bell's Folio Cases 126, *rev. Spalding* v. *Spalding's Trustees*, December 18, 1874, 2 R. 237; *A* v. *B*, February 1874, 11 S.L.R. 259; *Hughes* v. *Edwards*, January 25, 1892, 19 R. (H. of L.) 33.

The reclaimers adopted the arguments of the trustees.

Argued for Mrs Elder—(1) The new claims were incompetent. The case was ruled by that of *Morgan* v. *Morris*, March 11, 1859, 18 D. 797, see p. 817. In *Dymond* there had been a complete change of circumstances. Here the case was remitted to the Lord Ordinary, to give effect to the judgment of the Inner House. His duty was solely to distribute the estate. He should not have admitted these claims. Although the trustees had not been in the case before, they were here merely in the interests of the reclaiming beneficiaries. The case was *res judicata* against all the new claimants. (2) The revocation of the deed of 1886 was implied, and that did not necessarily destroy the clause of revocation which that deed contained. It only affected the dispositive part of the deed. It was a question of intention, and the testator could not be regarded as having intended to set up a deed executed thirty years previously, and which he had more than once expressly revoked. The Lord Ordinary's judgment and the reasons given in support of it were sound—*Crawford* v. *Coutts* (1806), 5 Pat. App. 73, see Lord Eldon's opinion p. 94; *Leith* v. *Leith*, June 19, 1863, 1 Macph. 949; *Kirkpatrick's Trustees* v. *Kirkpatrick*, June 23, 1874, 1 R. (H. of L.) 37.

It being apparent that the pupil son and pupil daughter, although both represented by their mother Mrs Elder, had adverse interests, the Court appointed Mr Henry Aitken, advocate, curator *ad litem*, to the pupil daughter. Mr Aitken lodged a new claim on her behalf, wherein he pleaded that the deed of 1858 had been revived. He adopted the arguments put forward by the trustees under that deed.

At advising—

LORD ADAM—When this case was last before us, we pronounced an interlocutor ranking and preferring Mrs Elder as guardian to her son Thomas Elder to the whole heritable property of the deceased.

Since that interlocutor was pronounced the state of matters has changed—a new claim has been lodged for the minor daughter, an amended claim has been made for Mrs Reid and Mrs Lockhart, and a new claim has been lodged for the trustees under the prior settlement by the deceased dated in 1858.

What took place before the Lord Ordinary is contained in the interlocutor now submitted to review, and it appears that the new claims and amended claims lodged by the parties were entirely inconsistent with our previous interlocutor of 16th March. It was pleaded before the Lord Ordinary, and the plea was renewed before us, that these claims were therefore incompetent, and could not stand along with our previous decision. The Lord Ordinary having a clear opinion on the merits of the case, did not express, as he says, any opinion on the competency of those claims. The plea, however, was renewed and pressed before us, and we shall have to dispose of it. My opinion is that the interlocutor of 16th March is *res judicata* against all the parties to the proceedings in which that judgment was pronounced; and therefore it is *res judicata* in my view as regards the claim of Mrs Reid and Mrs Lockhart. I think it is also *res judicata* as regards the new claim for Messrs Neville and Urie as trustees under the will of 10th November 1858; and for this reason, that the trustees having no interest of their own, but merely as representing the beneficiaries under that will, and Mrs Reid and Mrs Lockhart being the claimants under that will, and the question having already been decided against them, the trustees cannot insist upon their claim.

Now, in the course of the proceedings which took place before us, we observed that Mrs Margaret Blair or Elder, who is guardian or tutor to her pupil son Thomas, and who in that character was the successful claimant, was also sole tutor to her pupil daughter Margaret Ewing. It was obvious that her interest as tutor to her son was entirely adverse to that of her interest as tutor to her daughter. The claims were entirely inconsistent with each other—in fact they were the very opposite. That being so it appeared to us that the pupil daughter had never been properly represented in this case, and therefore we appointed a tutor *ad litem* to her, with the result that Mr Aitken, whom we appointed tutor, thought right to lodge a new and distinctive claim for this minor daughter; and as he is not affected by the plea of *res judicata*, it appears to me that we must now consider that claim, and dispose of the case on the merits.

We have already decided in this case

that a trust-disposition and settlement, executed by the late Mr Elder on 24th March 1886, was impliedly revoked by the subsequent birth of a son in December 1890.

The question which we have now to decide is, whether the effect of that implied revocation is to bring into operation a trust-disposition and settlement previously executed by him on 10th November 1858—that is, thirty-two years before.

The ground on which it was decided that the trust-disposition and settlement of 1886 could not receive effect was that the subsequent birth of a child raised a *presumptio juris* that the deed did not, in the altered circumstances of the family, express the testamentary intentions of the truster, and that there were no facts averred in the case sufficient to overcome that presumption. But I do not think that the presumption goes any further than that—in particular, I do not think that there is any presumption that any deed or deeds which may have been previously executed by the truster, and may happen to have been left undestroyed, do express the testamentary intentions of the truster, and so should receive effect. It is to be remembered that we have to consider a question of presumed intention on the part of the truster, and not the legal effect of any act or deed done by him. It may be that if the last deed executed by the truster—that of 1886—had contained a provision in favour of children *nascituri*, it would not have been impliedly revoked, but that would have been because the truster was presumably satisfied that the deed, in the then existing state of the family, contained a sufficient provision for the new-born child. But it is quite a different thing to say that a deed containing, *inter alia*, such a provision executed by the truster in 1858, and which no doubt expressed his testamentary intentions at that date, is to be presumed to express his testamentary intentions at the date of his death thirty years afterwards. In this particular case we know that it did not do so in 1872, because it was expressly revoked by a deed executed in that year. For my part I cannot see that there is any presumption that the deed of 1858 or 1872, or any other deed executed before the deed of 1886, expresses the testamentary intentions of the truster at his death in 1891, and so should receive effect.

I think the case of an implied revocation is quite different from that of an express revocation. In the case of an express revocation the testator is dealing with and regulating his succession. If he expressly revokes a subsequent will, any prior will that may be in existence necessarily becomes his last will and testament. That is the legal effect of his own act, and there is no room for any question of presumed intention in the matter.

In this case, accordingly, if the truster had, on the birth of his son, expressly revoked the deed of 1886, that would have brought into operation the deed of 1884, and, if he had also revoked that deed and the deed of 1872, that would have brought into operation the deed of 1858. But in that case there would have been no question of presumed intention at all. I think the question in this case is, what is the effect of the revocation implied from the birth of the child? Is the presumption simply that the deed is revoked as not expressing the last will of the testator in the new circumstances which have emerged, leaving his succession to be settled by law, as presumably his intention, failing his making a new settlement; or is the presumption not only that the deed does not express the will of the testator in the changed circumstances of the case, but also that, if there be in existence a previously executed will which does contain, among other provisions, a provision in favour of children *nascituri*, that will is to be presumed to express the testamentary intentions of the testator, and so is to receive effect in the absence of a new will? In my opinion the former is the true presumption and not the latter, and therefore I agree with the Lord Ordinary.

I think therefore the Lord Ordinary's interlocutor should be affirmed.

LORD M'LAREN—This action seems to have raised two new points, and one of these is now for consideration. There is a very well known and considerable series of decisions which establishes the principle that if a testator at the time he has no children makes a testamentary settlement of his estate the subsequent birth of a child renders that testamentary act of no effect. This has sometimes been treated in the judicial opinions that have been given in the cases as a condition which is supposed to have been implied in the will, and sometimes, I think, especially in the more recent cases, it has been treated as a rule of equity by which a will made under circumstances that are very different from the real circumstances at the death ought not to be treated as the testator's last will. But whether we adopt one or other of these principles, or take the Roman view of the case, that the will is inefficacious because it disinherits the issue of the testator, the result is the same, that the will so far as operating a transfer or gift of the testamentary estate to persons other than the issue is set aside. On the other hand, I think it is perfectly clear that, where a childless testator makes in his last will provision for any issue that may be born to him, that is a good will; and it is outside the province of the Court to enter into any question as to whether the testator has made the most judicious distribution of his heritable and moveable estate among the different members of his then unborn family.

But in the first branch of this case the question arose, so far as my recollection serves me, for the first time, whether that principle should apply to the case of a will made providing only for the existing members of the testator's family in the case of a child being subsequently born to him, and your Lordships held that the principle was applicable, and as the child born after the execution of the will was a

son, the others being daughters, you adjudged the heritable estate to the son and the residue to the children equally according to the rules of intestate succession.

Now, on behalf of the infant daughter, who was not duly represented, and also on behalf of other legatees, although probably they would not be entitled to claim a reconsideration of the judgment, the question is raised whether the estate is not really distributable under a previous will in which the testator contemplates the case of his having other children and provides for that. The question then is, whether the rule to which I have referred is a rule which revokes only the gifts in the will made before the birth of children, or whether it revokes every part of the will, including any clause of revocation of previous testamentary instruments. Now, on that question, which I think is a new question in our practice, it may be observed, first, that up to this time there is no authority for extending the rule so that it should prevent a clause of revocation taking effect. Lord Adam has put the case of a testator who has by a will made provision for children who may be born to him—or it might be that he has made a will in favour of collateral relatives—and in view of marriage executes a testamentary deed which simply revokes all previous wills without making any new testamentary disposition, and I am unable to see any reason why such an instrument should not receive full effect according to its tenor. So far from it being a deed which would be affected by the principle of this equitable rule, it is rather a deed which is intended to prepare the way for a subsequent testamentary Act in which provision would be made for the children. The revocation in no way prejudices the rights of children as heirs or next-of-kin on the testator's death; its effect is to let in those rights provided no subsequent inconsistent disposition of the estate be thereafter made. I therefore cannot doubt that if we were here considering the case of a mere deed of revocation we should hold that such a deed was practically valid, and was in no way cut down by the subsequent birth of children. That being so, it is difficult to see why the complication of a revocation with a new disposition should have any effect in impairing its efficacy. Accordingly, agreeing with the opinion which has been delivered, I think that the equitable rule in question must be confined to testamentary gifts, and that a clause of revocation must receive effect according to its tenor.

The result of that is that in the present case where there is a revocation in the testator's last will—a revocation of all previous wills and testamentary gifts—the old will of 1858 stands revoked. Even in the absence of any express revocation I must say I should see very great difficulty in applying the principle of an implied revocation in such a way as to set up a deed thirty years old, which certainly could not be held to be a deed more applicable to the testator's circumstances when he died, than any of those which succeeded it; and, although it is perhaps going beyond the actual necessities of the case to dispose of the question, if it were necessary, I should be disposed to hold that wherever a last will is cut down by the operation of the rule or presumption that we are now considering, all previous testamentary settlements must fall along with it except such as are obligatory and matter of contract.

I therefore concur in the judgment which has been proposed by Lord Adam.

LORD KINNEAR—I agree, and have only to add that the question seems to me to have been already decided, if not by the judgment we have already pronounced, at all events by the reasoning on which the judgment was founded, as that was explained by Lord Adam in his opinion in which the rest of the Court concurred. Two different views have been taken in different systems of jurisprudence of the principle on which a will may be displaced by the subsequent birth of children. One is that it is a condition implied by law that in case of the subsequent birth of a child the will shall become void. In that view the will is ineffectual in consequence of an absolute rule of law irrespective of any change of intention on the part of the testator which may be inferred from a change of circumstances. The other view is that it is a question of intention to be presumed from a change of circumstances; because if the birth of a child in the circumstances of the particular case alters the testator's condition so as to give rise to new interests and new moral obligations which he had not in view when he made his will, the law will presume a change of intention corresponding to the change of circumstances. Now, we have held on the former occasion that the rule of the law of Scotland was in accordance with this last view. But if that be sound it appears to me that the question must be, as it is put by Sir John Nicoll, "a question of presumed intention whether to die intestate, or, notwithstanding the change of circumstances, to leave the will existing and effectual."

There may be reasonable ground for presuming that the testator did not intend his only son to be excluded from all share of his succession by the operation of the will executed when he had no reason to anticipate that a son would be born to him, and which therefore took no account of the new affection and new duties which such a birth would bring into existence. At all events there is authority for that presumption. But there is no ground in reason and no authority has been cited for presuming that he intended to revert to an old will executed more than thirty years before his death, and revoked by a subsequent will which was in its turn revoked. It is not a sufficient reason that the first will contains a provision for children, for that provision cannot be revived without at the same time reviving all the other dispositions of the will, contrary to the intention of the testator. The testator has expressed his intention to revoke the first will. The law presumes, in

the circumstances that have occurred, that he did not intend to disinherit his son. The conclusion seems to be that his estate must be distributed as intestate succession.

The LORD PRESIDENT concurred.

The Court adhered.

Counsel for Mrs Elder—Lord Adv. Balfour, Q.C.—Sol.-Gen. Shaw, Q.C.—W. Campbell—Hunter. Agents—J & J. Galletly, S.S.C.

Counsel for Mrs Reid and Mr Lockhart—Salvesen—M,Clure. Agents—Simpson & Marwick, W.S.

Counsel for the Trustees under the Settlement of 1858—Asher, Q.C.—Craigie. Agents—Dalgleish, Gray, & Dobbie, W.S.

Tuesday, March 19.

FIRST DIVISION.

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

Succession—Liferent or Fee—Repugnancy.

A testator directed his trustees "to hold and retain the whole residue and remainder of my means and estate for behoof of my children, and to divide the same amongst them" in certain proportions, . . . "the shares of sons and of daughters respectively being to be set aside and held and invested and otherwise dealt with as after mentioned, . . . and as regards the shares falling to sons, I direct and appoint my trustees to hold and invest the same in their own names for behoof of my said sons respectively in liferent for their alimentary liferent uses allenarly, and for behoof of their respective issue in fee, . . . but notwithstanding such restriction to a liferent in the case of my sons, it shall be in the power of my trustees to make to any one or more of my said sons such advances out of the capital of their respective shares as my trustees shall judge proper and expedient for the purpose of establishing any of my said sons in any business, . . . and further . . . in the event of any child or children predeceasing me or surviving me and dying before the term of vesting, payment, or setting aside of their shares or provisions without issue, then the shares of such predeceasers shall . . . be divided" among the surviving children and the issue of predeceasers in the same manner and subject to the like conditions as the original shares.

The testator died survived by all his children, and his trustees divided the estate in their hands into specific shares effeiring to each of them. Subsequently a son died survived by a widow, but without issue, leaving a trust-disposition and settlement.

Held that, the son's right being restricted to a liferent, he had no power to test upon the share set aside for him, which fell to be dealt with as provided in his father's settlement.

The late Matthew Andrew Muir, Glasgow, died on 23rd January 1880, possessed of very large estate, the general residue amounting to about £400,000. He left a trust-disposition and settlement whereby he conveyed his whole estate, heritable and moveable, to trustees. The deed contained, *inter alia*, the following provisions — "In the fifth place, I direct and appoint my trustees to hold and retain the whole residue and remainder of my said means and estate . . . for behoof of my children, and to divide the same amongst them in such proportions as to give to those of them who may be sons one-third each more than those of them who may be daughters; . . . the shares of sons and of daughters respectively being to be set aside and held and invested and otherwise dealt with as after mentioned: And upon my decease I direct and appoint my trustees to pay to, or expend for behoof of, my children the annual proceeds of their shares, or so much of such annual proceeds as my trustees shall think necessary for their maintenance and education, accumulating the remainder, if any, for their behoof respectively, and adding the same to the capital of their shares until they shall respectively attain the age of twenty-five years if sons, or attain majority or be married, whichever of these events shall first happen, if daughters; and as regards the shares falling to sons, I direct and appoint my trustees, in the first place, to hold and invest the same, or so much thereof as may be available from time to time, in their own names as trustees foresaid for behoof of my said sons respectively in liferent for their alimentary liferent uses allenarly, and for behoof of their respective issue in fee, in such proportions among such issue respectively, if more than one child, and whether there be one or more children, subject to such restrictions, limitations, and conditions (including the restriction of the share of any child to a liferent) as such sons may respectively appoint by any deed under their hand, and failing such appointment equally among such issue, if more than one child, share and share alike: But notwithstanding such restriction to a liferent in the case of my sons, it shall be in the power of my said trustees, . . . in the exercise of the full and unlimited discretion which I hereby confer upon them in that respect, to make to any one or more of my said sons such advances out of the capital of their respective shares as my trustees shall judge proper and expedient (of which they shall be the sole judges in every case), for the purpose of establishing any of my said sons in any business or profession, or for the purchase of any land or other heritable property intended to be used or employed by such sons, or any of them, either for business purposes or for farming, or partly both, or for any other object or purpose which shall meet the approval of my said