Hope, 1500, and Lord Moncreiff, 1502; *Alves' Trustees* v. *Grant*, June 3, 1874, 1 R. 969.

Argued for the first and fifth parties—The date of vesting was the date when the youngest child of the respective families should attain the age of 25 years. As none of the three deceased grandchildren had survived this period no right vested in them. Consequently the shares which would have fallen to them if they had survived fell into the portion provided for each family respectively, with the exception of the share which would have fallen to Mrs Gibson, which share fell to her child—the fifth party—under the clause of substitution. The argument that there was no vesting *a morte testatoris* was founded on the following facts—(1) there was in this case a period of payment for each family; and (2) there was present in the deed words of survivorship. There was a double survivorship, a survivorship in the primary clause and a survivorship in the destination-over. Vesting was thus necessarily postponed till the period of division—*Fyfe's Trustees* v. *Fyfe*, February 8, 1890, 17 R. 450; *Bogle's Trustees* v. *Cochrane*, November 27, 1892, 20 R. 108; *Adam's Trustees* v. *Carrick*, June 18, 1896, 23 R. 828.

At advising—

Lord Trayner—The question which we have to decide is, when did the interests of the grandchildren of Mr Begg vest?

Mr Begg provided that the portion of his estate destined to his grandchildren should, "so soon as the youngest member of any family shall attain the age of twenty-five years complete," be divided amongst "the members of such family, and the survivors equally, share and share alike," providing also that if any grandchild should die "before the period of division" leaving issue, such issue should take their parent's share. Mr Begg further provided that in the event of any part of his estate provided to any family not having been paid over to such family (the members of which and their issue having failed), then such share should be paid over to the members of the other families equally among them by families. We have therefore here a clause of survivorship which affects the members of each family *inter se*, and a general destination-over which affects them all. In these circumstances it follows on well settled principles that vesting was postponed until the period of division or payment.

Lord Moncreiff—The question relates to the shares destined to the grandchildren of the testator. In my opinion no right vested in the grandchildren who predeceased the period of payment, because there is an effectual survivorship clause under which only those who survive the period of payment fixed for each family are entitled to take. Such a survivorship clause must receive effect so long as there remain in life any of the persons immediately favoured. An exception is recognised when by death the persons favoured are reduced to one survivor. In that case the whole fund will be held to have vested in that survivor even although the time fixed for payment may not have arrived. The case of *Maitland's Trustees*, 23 D. 732, which was pressed on us, is an illustration. See also M'Laren on Wills, p. 648, sec. 1174.

But that case does not arise here, and even if it did there is an ulterior destination which would prevent vesting in the last survivor of any one family before the time of payment. There is this provision which applies to all the shares destined to grandchildren:—"And in the event of any part of the foresaid shares of my means and estate provided to any family not having been paid over to such family, and of the members thereof and their issue all failing by death, then I direct the same to be paid over to the members of the other families equally among them by families." This provision would prevent the application of the exception recognised in *Maitland's Trustees*, and in the event of the last survivor of any family dying before payment, would carry the share to the other families.

The claimant William Henry Percy Gibson can have no higher right than his mother, as he merely comes in her place.

Lord Young and the Lord Justice-Clerk concurred.

The Court answered the question in the negative.

Counsel for the First, Third, Fourth, and Fifth Parties—Chisholm—W. K. Dickson—W. E. Mackintosh. Agent—R. C. Gray, S.S.C.

Counsel for the Second and Sixth Parties—Sym—Hunter. Agents—Reid & Guild, W.S.

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*Wednesday, February* 1.

## FIRST DIVISION.

## PATERSON'S TRUSTEES *v.* CHRISTIE AND OTHERS.

*Succession — Charitable Bequest — Legacy for Behoof of "the Poor and Needful" in a Certain District.*

A bequest to the inhabitants of a district of a sum of money, the yearly proceeds whereof to be given to "the poor and needful" in the said district, *held* to be for behoof of poor and needful persons whether in receipt of or entitled to parochial relief or otherwise.

*Liddle* v. *Kirk-Session of Bathgate*, July 14, 1854, 16 D. 1075, and *Presbytery of Deer* v. *Bruce*, January 20, 1865, 3 Macph. 402, *followed*.

By his holograph last will and testament Donald Paterson, farmer, Dunnet, *inter alia*, bequeathed "in the first place the sum of One thousand pounds to the inhabitants of Ratter, Scarfskerry, and the Burn of Ratter—the said money to be invested, and the yearly proceeds or interest to be

given to the poor or needful in the above district."

The testator further provided that three directors be chosen by the householders in the district, and that "this be called the Paterson Bequest; that it be amongst themselves, independent of any other outside relief, and that it be continued with them as long as grass grows and water runs." The testator appointed two trustees to realise and divide his estate.

This special case was presented by (1) Paterson's testamentary trustees, (2) the directors chosen to administer the "Paterson Bequest," and (3) three inhabitants and ratepayers in the district, to determine the following question in law, among several others—"4. Whether the annual proceeds of said bequest fall to be applied exclusively for behoof of persons entitled to parochial relief, or may be applied for behoof of poor and needful persons whether in receipt of or entitled to such relief or otherwise?"

The second parties maintained that the objects of the bequest might be selected both from needful persons in receipt of or entitled to parochial relief and from those who were not so. They referred to *Liddle* v. *Kirk-Session of Bathgate*, July 14, 1854, 16 D. 1075, and *Presbytery of Deer* v. *Bruce*, January 20, 1865, 3 Macph. 402.

The third parties contended that the bequest was for behoof solely of persons entitled to parochial relief, and referred to the opinion of Lord Rutherfurd in *Liddle*, *ut sup.*, p. 1082, to the effect that "the poor" must generally be understood in the legal sense.

Lord President—Upon the fourth question it seems to me, upon the language employed and the authorities cited, that the bequest is not confined to persons in receipt of parochial relief. That is the question put to us, and I think that we should answer that the fund may be applied for poor and needful persons whether in receipt of or entitled to parochial relief or otherwise.

Lord M'Laren and Lord Kinnear concurred.

Lord Adam was absent.

The Court answered the fourth question to the effect that the fund might be applied for poor and needful persons whether in receipt of or entitled to parochial relief or otherwise.

Counsel for the First Parties—M'Lennan.

Counsel for the Second Parties—Loutitt Laing.

Counsel for the Third Parties—W. E. Mackintosh.

Agents for all the Parties—Macpherson & Mackay, S.S.C.

*Wednesday, February 1.*

## SECOND DIVISION.

## RAMSAY'S TRUSTEES *v.* RAMSAY.

*Husband and Wife—Policy of Insurance—Wife's Policy on Her Own Life—Whether Part of Wife's Executry.*

In an antenuptial marriage-contract dated in 1851, a wife conveyed to her husband and his heirs and assignees the whole property, heritable and moveable, then belonging to her or that should pertain and be owing to her during the subsistence of the marriage. The husband's *jus mariti* was not excluded in the contract.

By mutual settlement dated in 1887 the husband and wife conveyed to trustees the whole means and estate, heritable and moveable, then belonging to them or that should belong and be addebted to them at the time of their deaths.

In 1892 the wife insured her life for £1750, to be paid to her, her executors, administrators, and assignees after her death. In the same year the husband borrowed, under a bond and assignation in security, £1500 from the insurance company, which he bound himself to repay, and in security of the personal obligation, the wife, with her husband's consent, disponed to the insurance company the policy of insurance.

The wife died in 1897. Up to the time of her death she paid the premiums out of her separate estate. On her death the trustees under the mutual settlement were confirmed as her executors, and the insurance company paid over to them the sum payable under the policy *minus* the £1500 borrowed by the husband.

*Held* that the policy was not assigned to the husband under the marriage-contract or under his *jus mariti*, and that the trustees were entitled to the whole sum due under it, while the husband was bound to repay to them the £1500 borrowed by him with accrued interest.

By contract of marriage between James Ramsay and Mrs Euphemia Wilson Baxter or Ramsay, second daughter of Edward Baxter, merchant in Dundee, with the special advice and consent of the said Edward Baxter, dated 23rd July 1851, James Ramsay made certain provisions for Euphemia Wilson Baxter, for which causes, and on the other part, Euphemia Wilson Baxter assigned, disponed, and made over to Mr Ramsay, and his heirs and assignees, all and sundry lands and heritages, goods, gear, debts, and sums of money, and generally the whole property, heritable and moveable, then belonging or resting-owing to her, or that should pertain and be owing to her during the subsistence of the said marriage, excepting always her provisions provided to her by Mr Ramsay and before specified in the said contract of