the farm the tenant has committed a breach of the regulations of the lease. He has done so, I assume, with the tolerance of the landlord, but the landlord will be sufficiently punished for his remissness in not interfering sooner by having to compensate the tenant for improvements made subsequently to the commencement of the Act.

LORD YOUNG was absent.

The Court adhered.

Counsel for the Complainer—Guthrie, Q.C.—Deas. Agents—John C. Brodie & Sons, W.S.

Counsel for the Respondent, David Whytt Ewart Smith—Salvesen, Q.C.—Cook. Agent—John Richardson, Solicitor.

Wednesday, July 11.

FIRST DIVISION.

SHAW'S TRUSTEES *v.* WHITE.

Succession—Vesting—Legacy—Direction to Trustees to Pay Interest and Convey Capital at Majority—No Destination-over or Survivorship Clause—Dies incertus—Condition of Gift or Merely Postponement of Payment.

By his trust-disposition and settlement a truster directed his trustees, *inter alia*, "to invest the sum of £1500 and pay the annual interest or produce thereof to my grandniece A B; and I provide and declare that during the years of her pupilarity and minority the said interest be paid to her legal guardian, and on the said A B attaining her majority my said trustees shall pay over to her the said sum of £1500." There was no destination-over as to this particular legacy, but the trust-deed contained a general residue clause. A B survived the truster, but died in minority, leaving a settlement by which she disposed of her whole estate. *Held*, on a construction of the testator's intention, that the legacy of £1500 vested in A B *a morte testatoris*.

Opinion (*per* Lord M'Laren) that in a case where there is an unconditional gift of income to a legatee and there is no destination-over, there is a strong presumption that a direction to pay at majority is to be regarded as merely an administrative direction.

John Shaw, residing in Thorn Street, Earlston, died on 5th September 1892 leaving a trust-disposition and settlement whereby he conveyed his whole estate to David Allan and others, as trustees for the purposes therein mentioned.

The sixth and seventh purposes were in the following terms:—(Sixth) "I direct my trustees to invest the sum of £1500, and pay the annual interest or produce thereof to my grandniece Jessie White, daughter of Thomas White, draughtsman, Glasgow; and I provide and declare that during the years of her pupilarity or minority the said interest be paid to her legal guardian, and on the said Jessie White attaining her majority my said trustees shall pay over to her the said sum of £1500." (Seventh) "I direct my trustees to pay over to my grandniece, the said Alison Gow, one-half of the residue and remainder of my means and estate, and the other half thereof I direct my trustees to hold, apply, and convey on such conditions and under such restrictions as I may direct by any writing under my hand, and failing any such writing then the same shall be dealt with and disposed of by my said trustees in such way or ways as to my trustees may seem best; my wish being that failing such instructions my trustees should have full power and liberty to dispose of such residue in any manner that may approve itself to them."

Jessie White, referred to in the sixth purpose *supra*, survived the truster, but died on 15th November 1899 while still in minority. She left a settlement, by which she conveyed her whole estate to her mother Mrs Jessie Shaw or White. During her lifetime the trustees had paid the income of the sum of £1500 first to her father, and on his death to her mother, the said Mrs Jessie Shaw or White.

The truster left no writing dealing with the one half of the residue of his estate (other than the half bequeathed to Alison Gow), and in an action of multiplepoinding Mrs Jessie Shaw or White and Alison Gow, as his sole next-of-kin, were found entitled thereto on 14th November 1893.

Questions having arisen as to whether the legacy of £1500 had vested in Jessie White, a special case was presented for the opinion and judgment of the Court by (1) John Shaw's trustees, (2) the said Mrs Jessie Shaw or White, and (3) the said Alison Gow as residuary legatee. The second party maintained that the said legacy vested in the said Jessie White *a morte testatoris*, and was carried by her settlement to the second party. The third party maintained that in consequence of the said Jessie White having died before attaining majority the said legacy fell into residue.

The questions for the opinion of the Court were—"(1) Did the said legacy of £1500 vest in the said Jessie White? or (2) Did it fall into residue?"

Argued for the third party—This was a case in which there were two gifts, an absolute gift of the income and a conditional gift of the fee. The latter gift was conditional because it was only to take effect on Jessie White attaining majority—*dies incertus pro conditione habetur*. There was no gift of the fee before majority, and there was no authority for holding that a gift of income implied a gift of fee. That would be to read in to the direction to invest a direction to invest "for behoof of" Jessie White. In all the cases cited on the other side there were words of gift and postponement of payment. The fact that

there was no destination-over was not material, because its absence was supplied by the residuary clause. In *Adam's Trustees* v. *Carrick*, June 18, 1896, 23 R. 828, it was held, on a clause very similar to the present, that vesting was postponed till majority. In that case there was a destination-over, but the Court did not proceed on that ground.

Argued for the second party—As a question of intention the testator intended this legacy to go to Jessie White and not to the residuary legatee. The third party overlooked the fact that the reading of the clause proposed by her would have resulted in Jessie White, after majority, taking the income and the fee under two gifts, for there was nothing to limit the gift of income to the period of her minority. On the authorities, an immediate gift of income to A, and a direction to pay over the fee to him on his attaining majority, implied vesting *a morte testatoris* if there was no destination-over or survivorship clause—*Wood* v. *Burnet's Trustees*, July 2, 1813, Hume, p. 271; *Ralston* v. *Ralston*, July 8, 1842, 4 D. 1496, *per* the Lord Justice-Clerk; *Alves' Trustees* v. *Grant*, June 3, 1874, 1 R. 969; *Brodie* v. *Brodie's Trustees*, June 13, 1893, 20 R. 795, *per* Lord M'Laren; *Mackinnon's Trustees* v. *M'Neill*, June 29, 1897, 24 R. 981, *per* Lord Kinnear. The case of *Adam's Trustees* v. *Carrick*, *cit. supra*, on which the third party relied, was distinguishable, in respect that there was a survivorship clause, and its authority had been questioned in *Ballantyne's Trustees* v. *Kidd*, Feb. 18, 1898, 25 R. 621.

LORD ADAM—The question is, whether a certain legacy of £1500 vested in Jessie White? That means, did it vest in her *a morte testatoris*, or was vesting postponed till she should attain the age of twenty-one? Of course this case, like all other cases on wills, depends on what we are to gather was the intention of the testator in the expressions he used—whether he intended to postpone the vested interest until the young lady was twenty-one years of age, or whether the postponement till the age of twenty-one was merely for administrative purposes, and so on? That is really what it comes to. What are we to gather from his expressions was his intention?

Now, the question as to the meaning of the will seems to have been almost confined to construction of the sixth clause, because there are no other clauses referring to the sum. We have only to deal with the proper construction of the sixth clause; and I think the only question comes to be, what intention are we to draw from the construction of that clause? I confess I think there may be a difficulty in the case. The difficulty is this, the direction is—"I direct my trustees to invest the sum of £1500, and pay the annual interest or produce thereof to my grandniece Jessie White;" and then it goes on, "and I provide and declare that during the years of her pupillarity or minority the said interest be paid to her legal guardian; and on the said Jessie White attaining her majority my said trustees shall pay over to her the said sum of £1500." Now, here we have a direction to the trustees to invest the £1500; and the rest is in regard to paying her the interest. And if the words which Mr Hunter wishes us to read in were there, there would be no difficulty about the case at all. He wanted us to read in, "I direct my trustees to invest the sum of £1500 for behoof of Jessie White;" and he thinks that is a fair inference from the statements used—that that is really the testator's meaning; that they were to hold the sum of £1500 for the sole maintenance of Jessie White, and that the process by which he provides that the interest is to be paid to her legal guardian, and so on, were merely administrative clauses, and that the condition of payment to Jessie White on her attaining the age of twenty-one was merely postponing the payment; the meaning being, that when she was twenty-one and was able to administer her own funds, that was to fly off—in other words, it was merely an intention to postpone the payment, and not a condition of giving the legacy. As I have said before, my difficulty is a different one. My opinion is that the testator intended the clause to deal with and dispose of the whole £1500; and so far as I can gather, it is not the intention that anybody should have a right to it except Jessie White herself. There is not, as there is in some cases, any survivorship clause or destination-over, or anything to show that anybody but Jessie White should have any interest in this £1500 which the testator directed to be set aside from his estate. No doubt Mr Macfarlane said there is a residue clause; and if there was any actual failure in respect of Jessie White not attaining twenty-one years of age, that clause would carry the £1500. But I confess that, in the construction of the clause, that has not much weight on my mind, because when a testator in his settlement directs the disposal of a legacy in this way, he does not contemplate the failure of the legatee, but contemplates his taking; and the disposal by a residuary clause is quite a different matter from destination-over to somebody else. There is nothing of that sort here. Here we have a case of a gift given to Jessie White. She is to draw the interest during her pupillarity, and the direction is given to pay her over the fee. That is to say, that this is sufficient for disposal in one view of the whole interest in this £1500. Now, I confess that I think, from the way the clause is worded, that that was the intention of the testator in this matter—that Jessie White, and nobody else, should have an interest in this sum of £1500; and accordingly, I take the view that though we have not the words that the £1500 was for behoof of Jessie White, I think that, in fact, that is what the testator intended. Accordingly, the construction I would put on the will is, that the direction to pay on Jessie White attaining majority was just to postpone payment, but that it was not

a condition of actual payment that she should attain majority before taking. The only difficulty on my mind is, that I think the authorities referred to by Mr Hunter show that what I have now expressed is to some extent not altogether covered by these authorities, but that they go very far in the direction of covering it; and on the whole matter, I am of opinion that that is what the testator intended, and that the first question should be answered in the affirmative.

LORD M'LAREN—It is always to be remembered that the rules of construction applicable to wills are only presumptions—presumptions which may or may not be guides to the true interpretation of the testator's meaning, but which would certainly be misleading if applied in too absolute a manner. The distinction between a condition annexed to a gift and a condition annexed to a direction to pay a sum, may, subject to the observation I have made, be a sound one. I think, for example, that a legacy expressed in this way, "I leave £1500 to A B in the event of his attaining majority," would, according to an ordinary use of language, convey a different meaning from "I leave £1500 to A B, payable upon majority," because in the first case the time of payment is expressed as a condition of the gift, while in the second place the gift is absolute, the direction to pay being only an apparent condition, not a real one, because it is only annexed as a direction as to payment. In the present case, in one way of regarding it, we have to consider whether the condition of majority is annexed to the gift or to the direction to pay. Now, it is true that we have not an independent gift of £1500, but it is a circumstance as, I think, very material that there is an independent and unqualified gift of the income to the minor, and, as was pointed out by Mr Hunter, the original gift of income is not limited to the period of majority; it is an unqualified gift taking effect immediately. Then the direction to pay to the guardian during minority, and the direction to pay the fee upon majority, are provisions of a cognate character. They seem both to have reference to the benefit of the legatee, and to intend that the income and capital should reach the legatee in the manner that would be most beneficial and most suitable in the case of a minor person. In that view my decision would be in conformity with what has been indicated by Lord Adam. But I think also that the decisions have given even greater weight to a gift of the intermediate income where the capital is payable on majority, because we have not been referred to any case where, with income destined wholly or in part to minor legatees, and the capital made payable at majority, a legacy has been held to be affected by a condition of the nature of a *dies incertus*. Though it may not be necessary for the disposal of this case, I may express my opinion on the import of the authorities that have been cited, that at all events there is a very strong presumption where income is given unconditionally to the legatee that a direction to pay at majority is to be regarded as merely an administrative direction, for the two rights of income and eventual fee are given to the same person, and in the case supposed no other person is mentioned in the bequest as having any interest.

LORD KINNEAR—I have great difficulty in this case, because I do not think it a question to be determined by authority, but one that depends entirely upon the intention of the testator, which can be ascertained only from the words which he has used. Now, I confess I am not quite satisfied that the words which the testator has used express very clearly the intention which Lord Adam's opinion and Lord M'Laren's ascribe to them. I must say at the same time that I cannot find that they clearly express the contrary intention, and indeed my difficulty is whether the testator entertained any intelligent intention with reference to the event which has happened, or whether he did not rather fail to contemplate the death of his grandniece in minority as a probable contingency. But I do not know that that would necessarily displace the view which Lord Adam has explained, and it probably tends to confirm it, that the testator certainly intended that all his directions with reference to the disposal of this particular sum should be found in the sixth clause of his will, and not elsewhere, and that he intended this sixth purpose, however well or ill expressed, to dispose effectually and in all events of the legacy in question. In that view, although I certainly entertain difficulty, I do not think myself justified in dissenting from the view in which Lord Adam and Lord M'Laren concur, and with which I understand your Lordship in the chair also is prepared to agree.

The LORD PRESIDENT concurred.

The Court answered the first question in the affirmative and the second in the negative.

Counsel for the First and Third Parties—Macfarlane. Agents—Romanes & Simson, W.S.

Counsel for the Second Party—Hunter. Agents—Reid & Guild, W.S.