liable for damages caused by navigation of the vessel. The pilot can shift the responsibility from himself only by showing either (1) that the navigation of the vessel had been taken out of his hands, and that he had ceased to act as pilot; or (2) that the accident did not happen by reason of any fault on his part. I think the defender has failed to establish either the one or the other of these alternatives. [*His Lordship then dealt with the facts.*]

LORD MONCREIFF—I am of the same opinion, and have nothing to add.

The Court dismissed the appeal and affirmed the interlocutor appealed against.

Counsel for the Pursuers and Respondents—Jameson, K.C.—Sandeman. Agent—W. B. Rainnie, S.S.C.

Counsel for the Defender and Appellant—Salvesen, K.C.—Spens. Agent—Harry H. Macbean, W.S.

Thursday, November 28.

SECOND DIVISION.

CATTANACH'S TRUSTEES *v.* CATTANACH.

Succession—Faculties and Powers—Power of Apportionment—Validity of Exercise—Power to Apportion among Issue—Contingent Gift to Grandchildren—Marriage-Contract.

Terms of marriage-contract containing power of apportionment among issue upon which *held* that it was not competent to give a share to grandchildren in the event of their parent predeceasing a postponed period of vesting.

Succession—Faculties and Powers—Power of Apportionment—Validity of Exercise—Effect of Invalid Exercise—Election—Approbate and Reprobate.

Under an antenuptial contract of marriage a husband had a power of apportionment of the capital of the funds contributed by him to the trust among the issue of the marriage. In default of apportionment the trustees were directed to hold for the children who being sons should attain the age of twenty-one, or in the case of daughters should attain that age or be married, equally among them.

By his trust-disposition and settlement the husband directed his trustees to hold the residue for behoof of his children equally, the shares of sons to vest in them on their respectively attaining thirty years of age, the issue, if any, of them dying before that age being entitled to their parent's share, and further, in exercise of the power, directed that the marriage-contract funds were to be treated as part of the residue. The Court having found in view of the terms of the marriage-contract that the exercise of the power, in so far as in favour of grandchildren was invalid, and that consequently the daughter of a son who had died before attaining the age of thirty was not entitled in her own right to any share of the marriage-contract funds; *held per* Lord Justice-Clerk and Lord Trayner that the invalid provision in favour of grandchildren was to be held *pro non scripto*, the appointment in other respects remaining effectual; that the exercise of the power in so far as it postponed vesting in the case of sons till they attained the age of thirty was valid and effectual, and that consequently no share in the marriage-contract funds had vested in the son who did not attain the age of thirty so as to pass to his widow and children at his death; and that the whole of the marriage-contract funds fell to be held for the surviving children only; *diss.* Lord Moncrieff, who held that the fifth share which would have been payable to the son who died before attaining the age of thirty fell to be dealt with as unappointed, and that consequently one share of it vested in that son at the age of twenty-one, and on his death intestate passed to his widow and his daughter.

Held also *per curiam* that while the three surviving sons of the truster were not barred from calling in question the validity of the appointment, the child of the deceased son was entitled to have any loss occasioned to her by their doing so made up out of the three sons' shares of the truster's estate.

Succession—Vesting—Provisions to Children at Postponed Period, and Failing them to their Issue—Period of Vesting in Grandchildren.

A truster directed his trustees to hold the residue of his estate for behoof of his children equally, the shares of the sons to vest in them on their attaining thirty years of age, and not sooner, the issue of any of them dying before that age being entitled to their parent's share.

One of the truster's sons survived his father, but died before attaining thirty years of age leaving a pupil child.

Held that the right of the child of the deceased son to the share which her father would have taken had he lived to be thirty years of age vested in her at the date of her father's death.

By antenuptial contract of marriage between Alexander Cattanach of Auchentorlie and Agnes Aitken, dated 26th August 1868, Mr Cattanach conveyed £7000 to trustees for the purposes therein set forth. In this deed the trustees were directed to pay the free revenue of the trust funds to Alexander Cattanach "during all the days of his lifetime or so long as the said Agnes Aitken or any issue of the marriage survive, as an alimentary provision for the support of himself, his wife, and family." In the event of Mrs Cattanach surviving her husband the trustees were

directed to pay the liferent of the fund to her. The deed then provided as follows:—"(*Fourth*) Subject to the said rights of liferent, the said trustees shall hold the capital of the said trust funds in trust (first) for all or such one or more exclusive of the other or others of the issue of the said intended marriage at such age or time or respective ages or times, if more than one, in such shares and subject to such limitations, restrictions or conditions, and with such provisions for maintenance, education or advancement, and in such manner as the said Alexander Cattanach shall by his settlement, will, or other writing appoint, and in default of such appointment, or in so far as such appointment shall not extend, then in trust (second) for all the children or any child of the said intended marriage who being sons or a son shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age or be married, and that equally among them if more than one, and the capital of the said trust fund shall not vest in the child or children until the death of the said Alexander Cattanach, but on or after his death the same shall vest, in the case of a son or sons, on attaining majority, and in the case of a daughter or daughters, on attaining majority or on being married, even though the said Agnes Aitken should be then alive."

Alexander Cattanach died on 3rd May 1888, predeceased by his wife Mrs Agnes Aitken or Cattanach, and survived by five children—William, born 18th September 1869; Robert Aitken, born 9th June 1871; Agnes Margaret, born 18th August 1872; Alexander, born 30th May 1874; and Lorimer, born 25th May 1881.

Mr Cattanach left a general trust-disposition and settlement dated 17th June 1881, in which he conveyed his whole means and estate, heritable and moveable, to trustees. The deed proceeded on the narrative that the testator had resolved to make provision for the management and disposal of his estate in case of his death, "and also to exercise the power conferred on me in the antenuptial contract" between himself and his wife. The fourth purpose was as follows:—"My trustees shall hold the residue of my means and estate for behoof of my children equally, the shares of the sons to vest in them on their respectively attaining 30 years of age complete and not sooner, the issue of any of them dying before that age being entitled (equally, *inter se*, if more than one) to their parent's share, and the share falling to my daughter shall be held by my trustees for her behoof in liferent and her child or children in fee, such fee not to vest in my grandchildren until they respectively attain 21 years of age or be married, but such grandchildren being entitled after their mother's death until then to the income of their prospective shares; and I direct my trustees on my eldest son attaining 30 years of age, or my daughter attaining 27 years of age or being married, to make a division of the residue of my estate as it may then stand, including accumulations and extra advances that may have been made to any child or children as aftermentioned, the share of such son attaining 30 years of age to be paid to him, and of my daughter to be retained for behoof of her in liferent and her issue in fee, as above written, and on each of my remaining sons reaching 30 years of age, and my daughter reaching 27 years of age or being married, a sum similar in amount to the share paid to or retained for my eldest son or my daughter shall in the same way be paid to or retained for each younger son, and when my youngest son shall reach 30 years of age or my daughter shall reach 27 years of age or be married, whichever event shall happen last, the surplus residue of my estate shall be divided equally among all my children, the shares of my sons to be paid to them, and my daughter's share to be retained for her behoof in liferent, and her children in fee, as above mentioned. . . . *In the fifth place*, whereas by the antenuptial contract of marriage the trustees therein named are in the fourth place directed to hold the funds thereby placed in trust (*first*), for all or such one or more exclusive of the other or others of the issue of the said intended marriage, at such age or time, or respective ages or times, if more than one, in such shares and subject to such limitations, restrictions, or conditions, and with such provisions for maintenance, education, or advancement, and in such manner as I should by my settlement, will, or other writing appoint; and whereas it is my wish that the said trust fund, so far as concerning my children, should be treated as if it were part of the residue of my estate; therefore I hereby direct the trustees under the said contract of marriage to hold the said trust fund as if the provisions above written as to the residue of my estate applied to the said trust fund so far as regards my said children and their issue, and I make the above provisions applicable thereto accordingly."

The truster's eldest son, William Cattanach, was married on 5th July 1894 to Miss Martha Young Moffat. He died on 16th January 1897, without having attained the age of thirty, survived by his widow, and leaving one child, a daughter, Martha Moffat Cattanach, who was his heir *in mobilibus*, he having died intestate. All the other children of the truster still survived. Miss Agnes Margaret Cattanach was married on 19th July 1895 to John Abercrombie. The truster's youngest son, Lorimer Cattanach, would not attain thirty years of age until 25th May 1911.

In these circumstances no division of the residue of the trust estate having yet been made, questions arose as to whether Martha Moffat Cattanach was entitled to share in the marriage-contract trust estate, and as to the date at which the share in either or both of the estates vested in her was payable.

For the decision of these questions a special case was presented for the opinion and judgment of the Court.

The parties to the special case were (1)

the trustees acting under the marriage-contract and the trust-disposition and settlement; (2) Robert Aitken Cattanach, Alexander Cattanach, and Lorimer Cattanach, the surviving sons of the testator; (3) Mrs Agnes Margaret Cattanach or Abercrombie, the daughter of the testator, and her husband; (4) Mrs Martha Young Moffat or Cattanach, widow of William Cattanach, the testator's deceased son, as guardian of Martha Moffat Cattanach; and (5) Mrs Martha Young Moffat or Cattanach, as an individual and as executrix-dative *qua* relict of William Cattanach.

The questions of law were—1. "Is the said Martha Moffat Cattanach entitled to one-fifth share of the marriage-contract trust estate in her own right by virtue of the appointment thereof by the late Mr Alexander Cattanach in his said trust-disposition and settlement; or 2. Had one-fifth share of the marriage-contract estate vested in the said William Cattanach so as to pass on his death one-third to his widow *jure relictæ* and the remaining two-thirds to his only daughter as legitim and dead's part? . . . 4. Is the period of vesting in the said Martha Moffat Cattanach of her share of the late Mr Alexander Cattanach's testamentary trust estate (*a*) the date of William Cattanach's death, or (*b*) the date at which he would have attained thirty years of age, or (*c*) the period of final division? and when is such share payable? 5. In the event of its being held that a share of the said estates, or either of them, has vested and is payable to the said Martha Moffat Cattanach, are the first parties bound or entitled to make payment thereof to the fourth party as her only legal guardian? . . . 7. Are the second parties, or the first parties in their interest, barred from calling in question the validity of the provisions regarding the marriage-contract funds contained in the fifth purpose of the late Mr Alexander Cattanach's trust-disposition and settlement, and in the event of their not being so barred and of their being successful in maintaining that said provisions are invalid, is Miss Martha Moffat Cattanach entitled to have any loss thereby occasioned to her made up out of the second parties' shares of Mr Cattanach's estate? 8. In the event of the first question being answered in the negative, are the second parties put to their election between the provisions in their favour in the said marriage-contract and the provisions in their favour in Mr Cattanach's trust-disposition and settlement?"

Argued for the second parties—Martha Moffat Cattanach was not entitled to any portion of the marriage-contract fund. The word issue was a flexible term, and must be construed according to the terms of the deed. The terms of the marriage-contract showed that the word "issue" in the fourth clause meant children, and did not include grandchildren. If that were so, the appointment of grandchildren by the truster in his trust-deed was invalid—*Gillon's Trustees* v. *Gillon*, February 8, 1890, 17 R. 435; 27 S.L.R. 338; *Wright's Trustees* v. *Wright*, February 20, 1894, 12 R. 568, 31 S.L.R. 450. This part of the appointment being invalid did not cause the whole appointment to fall. The portion that was bad was merely read out of the deed—Lord M'Laren on Wills, vol. ii., sec. 2052; *Smith Cunninghame* v. *Anstruther's Trustees*, April 25, 1872, 10 Macph. (H.L.) 39, 9 S.L.R. 431; *Mackie* v. *Mackie's Trustees*, July 4, 1885, 12 R. 1230, 22 S.L.R. 813; *Matthews Duncan's Trustees* v. *Matthews Duncan*, Feb. 20, 1901, 3 F. 533, 38 S.L.R. 401. They were not barred from contending that the appointment of grandchildren by the truster was invalid because they had accepted the provisions in their favour in their father's settlement. Questions of election depended on the intention of the testator, and there was nothing in the deed to show that they had been put to their election. Any share of either the marriage-contract trust estate or the general trust estate which might be held to vest in Martha Moffat Cattanach fell to be retained as part of the general trust estate until the date of the final division, or at least until the date when her father would have attained the age of thirty years.

Argued for the fourth party—Her daughter was entitled in her own right to one-fifth of the marriage-contract estate. The word "issue" in the fourth purpose of the marriage-contract included direct descendants of every degree and not children only—*Turner's Trustees* v. *Turner*, March 4, 1897, 24 R. 619, 34 S.L.R. 468; *Macdonald* v. *Hall*, July 24, 1893, 20 R. (H.L.) 88, 31 S.L.R. 279; *Bowie's Trustees* v. *Black*, February 23, 1899, 36 S.L.R. 475. These cases showed that the primary signification of issue included remoter descendants than children, and there was nothing in the context of the marriage-contract to displace the rule. Even if the word "issue" in the marriage-contract were held to mean children, the *conditio si sine liberis* applied, and a grandchild would be entitled to her share of the succession—*Hughes* v. *Edwardes*, July 25, 1892, 19 R. (H.L.) 33, 29 S.L.R. 911. The appointment by the testator was therefore valid, and a right to a fifth share in both the marriage-contract estate and the general trust estate had vested in Martha Moffat Cattanach at the date of her father's death, or at any rate at 18th September 1899, when he would have attained thirty years of age, and was now payable to the fourth party as her legal guardian. If the appointment was held to be bad in part, it must be held to be bad as a whole—*Gillon's Trustees* v. *Gillon*, *supra*. If the appointment fell, Martha Moffat Cattanach was entitled to two-thirds of one-fifth of the marriage-contract estate, this share having vested in her father when he attained twenty-one years of age. In any event, the second parties having elected to take their provisions under the settlement, were barred from reprobating any part of Mr Cattanach's trust settlement, or from maintaining in a question with her that the provisions therein regarding the marriage-contract funds were inept as being *ultra vires*—*Darling's Executor* v. *Darling*, July 3, 1869, 41 S.J. 545; *Earl of Glasgow's Trus-*

tees v. *Earl of Glasgow*, December 13, 1872, 11 Macph. 218, 10 S.L.R. 144; *Bonhotes* v. *Mitchell's Trustees*, May 27, 1885, 12 R. 984, 22 S.L.R. 648; *Whistler* v. *Webster*, 1794, 2 Vesey Jr. 366; *White* v. *White*, 1882, L.R. 22 Ch. D. 555.

Argued for the fifth party—As regards the marriage trust estate, her husband William Cattanach was entitled to one-fifth share of that estate, which vested in him on his attaining twenty-one years of age, and transmitted on his death one-third to herself *jure relictæ*, and the remaining two-thirds to her daughter as legitim and dead's part.

Counsel for the third parties stated that the third parties did not wish to oppose the interests of the fourth party, and for their part consented to her getting a share of the marriage contract trust estate in accordance with the apportionment thereof by Mr Alexander Cattanach in his trust-disposition and settlement.

At advising—

LORD TRAYNER—By his antenuptial contract of marriage, dated in 1868, the late Mr Cattanach placed under trust "a sum of £7000 as a provision" for behoof of the spouses and the children of the marriage. This sum was to be liferented by the spouses and the fee held in trust for the children, subject to a power of appointment by Mr Cattanach by his "settlement, will, or other writing," and failing such appointment then for the children or any child of the marriage who being a son should attain the age of twenty-one or being a daughter should attain that age or be married, equally among them; no vesting to take place in the children until their father's death and the attainment of the foresaid ages respectively.

Mr Cattanach executed a trust-disposition and settlement in 1881, in the narrative of which he set forth that he had resolved to make provision for the management and disposal of his estate in case of his death, "and also to exercise the power conferred on me in the antenuptial contract." For the purposes of the present case it is not necessary to do more than attend to the provisions made in that deed for the disposal of the truster's residue, which were that the trustees should hold the same for behoof of the truster's children equally, the shares of the sons to vest in them on their attaining thirty years of age and not sooner (a restriction or limitation on the son's right which was warranted by the terms of the marriage-contract), the issue of any of them dying before that age being entitled to their parent's share, and the share falling to his daughter to be held for her behoof in liferent and her children in fee, such fee not to vest in the grandchildren until they had attained the age of twenty-one years or been married. With reference to the marriage-contract fund the truster provided as follows:—"Whereas it is my wish that the said trust fund, so far as concerning my children, should be treated as if it were part of the residue of my estate; Therefore I hereby direct the trustees under the said contract of marriage to hold the said trust fund as if the provisions above written as to the residue of my estate applied to the said trust fund so far as regards my said children and their issue, and I make the above provisions applicable thereto accordingly."

Looking to the provisions made as to the disposal of the residue of the truster's estate made by the truster applicable to the division of the marriage-contract funds, I am of opinion that this was not a valid exercise of the power of appointment conferred on Mr Cattanach by the marriage-contract. The truster exceeded his power in conferring any right to the marriage-contract fund on grandchildren, who were not objects of the power. It was maintained that the truster had power to confer such a right on grandchildren because the marriage-contract provided that the trustees under it were directed to hold the trust fund "for all such one or more exclusive of the other or others of the *issue* of the said intended marriage," and that *issue* included all lineal descendants and not children merely. It is quite true that the term *issue* has been interpreted to include more than the immediate children of the marriage, and would certainly be taken in its primary sense as including all lineal desendants if there were nothing in the deed to show that some other meaning than that was intended by the expression. Here I think it is very clear that the word "issue" was not intended to mean more than children—the whole context demonstrates this. Before and after the particular sentence, which I have above quoted, which contains the word "issue," the children of the marriage are (under that designation) the persons alone provided for or considered, and the only other place in which the words "issue of the marriage" are used shows, I think, what is meant by it. It occurs in the second purpose of the trust, where it is provided that the income of the trust fund is to be paid to Mr Cattanach so long as his wife "or any issue of the marriage survive" as an alimentary provision for the support of "himself, his wife, *and family*." "Issue" and "family" are here used as synonymous, and the "family" for whom the alimentary provision was thus being made could scarcely be the whole lineal descendants of any degree of Mr Cattanach, or otherwise the fee of the fund might never have become divisible. A man's family usually means his children, nothing more. But, as I have said, the whole context of the passage relied on as inclusive of grandchildren makes it clear to my mind that "issue" means children of the marriage alone. The question then arises, whether those parts of the appointment which were *ultra vires* of Mr Cattanach can be set aside and the appointment held good *quoad ultra?* This is a question in regard to which I have felt some difficulty, but I am of opinion that the exercise of the power may be sustained so far as within the power of the appointer and otherwise disregarded. These two parts are quite separable. The destination to grandchil-

dren may be held *pro non scripto*. The share however, destined to William Cattanach was not to vest in him until he attained thirty years of age. He never attained that age, and with regard to that part of the marriage-contract fund, therefore, no effectual appointment has been made. It will fall in these circumstances to be divided equally among the other children. The truster, however, intended William and his child or children to have an equal share in his estate (that is, of residue proper and marriage-contract fund combined) with his other children, and I am of opinion that Martha (William's only child) must be provided out of the residue proper with a sum equal to that taken by any of the truster's children. These latter are put to their election; if they take the marriage-contract fund under their father's appointment, they can take no share under his settlement until Martha is fully compensated for any loss she may sustain by their so electing.

The only other question requiring attention is, when did the right in Martha vest? The share destined for her father would not have vested until he was thirty years of age, but there is no such restriction as to the period of vesting in the case of his issue taking. There is a provision that the children of the daughter shall not take a vested right until they attain majority, but no such provision regarding the children of a son. I think the right of Martha vested at the date of her father's death. On that event she became entitled to the share her father would have taken had he lived to be thirty years of age. There could not be vesting in her *a morte*, because she was not then born, nor is vesting in her postponed until her father would have attained thirty. I think, therefore, no other date for vesting in her can be reached except the date I have mentioned, when the succession to her opened. Her share should now be paid over to her legal guardian.

I would answer the questions put to us in accordance with these views.

LORD MONCREIFF—I arrive nearly, but not quite, at the same results as your Lordships.

There is no doubt that Alexander Cattanach professed and intended to exercise the power of appointment conferred on him by his marriage-contract, by directing in his trust-disposition and settlement that the fund over which he had a power of appointment should be divided as part of the residue of his estate and subject to the same conditions. One of these conditions was that no right either to the marriage-contract or to the testamentary funds should vest in the sons of the marriage until they attained the age of thirty years. William Cattanach, the eldest son, died before reaching that age, and accordingly, if his father had power to postpone vesting, and otherwise made a valid appointment of the whole fund, nothing vested in William Cattanach. In my opinion, looking to the wide powers contained in the marriage-contract, Alexander Cattanach had power to postpone vesting. But if any part of the marriage-contract funds was not well appointed it must be dealt with as unappointed, and in that case right to an equal fifth part of such share must be held to have vested in William Cattanach in terms of the marriage-contract, he having attained the age of twenty-one years.

Now, the next objection is, that the appointment to William Cattanach's daughter Martha is bad because she is not an object of the power, in respect that the term "issue" in the marriage-contract does not include grandchildren. The tendency of decision has been to hold that if the word "issue" is not clearly shown by the context to be confined to immediate children it includes more remote descendants—*Macdonald* v. *Hall*, 20 R. (H.L.) 88; *Bowie's Trustees* v. *Black*, 36 S.L.R. 475.

I am not prepared to differ from the view expressed by Lord Trayner that the language used throughout the marriage-contract indicates that the word "issue" is there used in its more limited sense.

If so, the share of the marriage-contract funds which Alexander Cattanach appointed to his son William's issue, failing William, must be held to be unappointed in a question with any person entitled to impugn the appointment. But for the claims of the executrix and widow of William Cattanach this would be immaterial, because all the other objects of the power are content to take under the will, which must therefore receive full effect as in a question with them, and it is clearly in the interests of Martha Cattanach to do the same. But if the widow of William Cattanach desire to claim her legal rights, I am of opinion that she is entitled to do so. I understand Lord Trayner's view to be that even although the share in question must be held to be unappointed and divided accordingly, William Cattanach was effectually excluded because he did not reach the age of thirty years. I am not of that opinion. The share being unappointed must be divided among all the objects of the power in whom right vested under the marriage-contract (*Mackie's Trustees*, 12 R. 1230), and as William Cattanach reached the age of twenty-one, the time of vesting fixed by the contract, right to a share of any part of the marriage-contract funds which was not validly appointed vested in him. In this case I do not think that the share having been held to be badly appointed the condition as to vesting in the settlement can remain standing to the effect of excluding William Cattanach. How does it appear that if Alexander Cattanach had known that he had no power to appoint to grandchildren he would have fixed such a date of vesting in the case of his son?

I am therefore of opinion that the fifth party is entitled to be paid her *jus relictæ* out of the unappointed part of the fund. That, I fear, will amount to a very small sum, viz., a third of a fifth of a fifth of £7000. But such as it is I think she is entitled to it.

I am of opinion that under the settlement Martha Cattanach's share of the mixed funds vested in her at her father's death. I should add that in my opinion the two-thirds of the proportion of the unappointed fund which I hold vested in her father, to which she is entitled as legitim and dead's part, will just fall to be divided as part of the mixed funds falling under Alexander Cattanach's settlement.

While I cannot answer the questions exactly as your Lordships propose, the difference in the result is infinitesimal.

LORD JUSTICE-CLERK—I have had the opportunity of reading Lord Trayner's opinion, in which I entirely concur.

LORD YOUNG was absent.

The Court pronounced this interlocutor—

"Answer the first and second questions of law therein stated in the negative: Answer the fourth question of law therein stated by declaring that her share of Alexander Cattanach's testamentary trust estate vested in Martha Moffat Cattanach at the date of the death of her father William Cattanach, and that such share is now payable: Answer the fifth question therein stated in the affirmative: In answer to the seventh question therein stated, Find that the second parties are not barred from calling in question the validity of the provisions regarding the marriage-contract funds contained in the fifth purpose of Alexander Cattanach's trust-disposition and settlement, but that Martha Moffat Cattanach is entitled to have any loss occasioned to her by their doing so made up out of the second parties' shares of Alexander Cattanach's estate: Answer the eighth question therein stated in the affirmative: Find it unnecessary to give any answer to the third and sixth questions therein stated: Find and declare accordingly, and decern."

Counsel for the First and Second Parties — Dove Wilson. Agents — Mackenzie & Kermack, W.S.

Counsel for the Third Parties—C. N. Johnston. Agents — Thomson, Dickson, & Shaw, W.S.

Counsel for the Fourth Party—Jameson, K.C.—A. O. M. Mackenzie. Agents—J. & J. Ross, W.S.

Counsel for the Fifth Party — Spens. Agents—J. & J. Ross, W.S.

Thursday, November 28.

SECOND DIVISION.

HAMILTON'S TRUSTEES *v.* HAMILTON.

Succession — Testament — Construction of Testamentary Writings—Bequest or mere Expression of Wish.

In 1901 a testator died survived by two daughters, one married and the other unmarried, and leaving a trust-disposition and settlement, dated in 1877, by which he bequeathed the residue of his estate to his daughters and their children. He also left a holograph letter, dated in 1883, addressed to his trustees, in the following terms:—"Should a daughter marry, the single one to have at least £600 a year, and balance to go to the married sister. In the event of both being married, then my capital to be equally divided between them. I wish, however, that £200 be paid to Mrs G. S. (the testator's sister-in-law) annually during her lifetime, in consideration of her great kindness to me and for her care of my dear children. I do not think they will object to this." The testator also left a codicil, dated in 1897, in which he bequeathed a legacy of £100 to Mrs G. S., "as a small mark of my affection for her, and in grateful recognition of her unfailing kindness and assistance in the upbringing of my daughters."

Held that there was no valid bequest by the testator of an annuity of £200 in favour of Mrs G. S., nor any burden of such an annuity imposed on the shares of the daughters, but only the expression of a wish on his part that Mrs G. S. should receive such an annuity.

Succession — Testament — Construction of Testamentary Writings — Direction too Vague to Receive Effect.

A testator died leaving a trust-disposition and settlement and other testamentary writings by which, with the exception of certain legacies, he divided his estate among his two daughters and their children. In one of these testamentary writings, a holograph letter, to his trustees, dated eighteen years before his death, when his daughters were children and his sister-in-law, Mrs G. S., lived in family with him, the testator wrote—"In the event of my dying before Mrs G. S., my very dear sister-in-law, I solemnly request that you, my trustees, will see that my house at Row is carried on as in my lifetime. . . . *P.S.*—I have no wish to compel Mrs S. or my children to live at Row if they wish to go elsewhere." No provision was made in any of the testamentary writings for the upkeep of the house at Row after the testator's death. The testator died survived by his two daughters, one of whom was married, and by Mrs G. S.

Held that the direction in the letter as to carrying on the house at Row was too vague to receive effect.