vesting, I am of opinion that the term "vesting," which is open to construction, is sufficiently shown not to be the date of distribution but the date of the death of the testatrix.

I am therefore of opinion that the first question should be answered in the affirmative.

LORD PEARSON concurred.

LORD YOUNG and LORD TRAYNER were absent.

The Court answered the first question in the affirmative.

Counsel for the First and Second Parties —Jameson, K.C.—C. H. Brown. Agent—F. J. Martin, W.S.

Counsel for the Third Parties—Solicitor-General (Dickson), K.C.—Balfour. Agents —Strathern & Blair, W.S.

Friday, March 14.

SECOND DIVISION.

MURPHY *v.* CLYDE NAVIGATION TRUSTEES.

Process — Proof — Jury Trial—Diligence—Recovery of Documents within Eight Days of Trial.

In an action of damages for personal injuries at the instance of a docker against the Trustees of the Clyde Navigation, the pursuer within eight days of the day appointed for the trial of the cause before a jury moved for a diligence to recover documents. The defenders objected, upon the ground that the documents if recovered could only be used for cross-examination, because they could not be put in evidence, as it was now impossible to lodge them eight days before the trial. They maintained that the case was ruled by the decisions in *M'Neill* v. *Campbell*, February 20, 1880, 7 R. 574, 17 S.L.R. 392; and *Livingston* v. *Dinwoodie*, June 28, 1860, 22 D. 1333. The pursuer offered no explanation of the delay in applying for a diligence. He maintained that he was entitled to recover the documents sought for, to make what use he could of them by putting them to witnesses.

The Court (LORD JUSTICE-CLERK, LORD MONCREIFF, and LORD PEARSON) *refused* the motion.

LORD YOUNG and LORD TRAYNER were absent.

Counsel for the Pursuer — Hamilton. Agents—Clark & Macdonald, S.S.C.

Counsel for the Defenders—Deas. Agents —Webster, Will, & Company, S.S.C.

Thursday, February 27.

FIRST DIVISION.

THE GOVERNORS OF MITCHELL'S HOSPITAL, ABERDEEN, PETITIONERS.

Charitable Trust—Administration—Settlement of Scheme — Cy-pres — Nobile Officium—Trust.

In 1801 certain funds invested in 3 per cent. Government annuities were conveyed to the holders of certain offices and their successors in these offices, under a declaration that they should not uplift or transfer the capital, for the maintenance and clothing, in a hospital built by the donor, of "five widows of and five maiden daughters of decayed gentlemen or merchants or trade burgesses of the city of Old Aberdeen not under 50 years of age, of virtuous and good moral characters, of the names of Mitchell and Forbes in equal numbers, if they are to be found, and in case of a deficiency of either of these two names and descriptions, the number, ten, to be completed from amongst the widows and maiden daughters aged 50 years and upwards of decayed gentlemen, or merchants, or trade burgesses of any other names, those born in Old Aberdeen of the names of Mitchell and Forbes always having the preference." Owing to the very limited number of those having the necessary qualifications a sufficient number of inmates for the hospital could not be obtained, and those who were obtained were consequently maintained at an excessive cost. As the burgh of Old Aberdeen had been merged in the city of Aberdeen, the number of qualified applicants was likely to be still smaller in the future. The Court *approved* a scheme whereby, when the number of inmates fell below ten, (1) widowed daughters and granddaughters of burgesses or widows of sons of burgesses, (2) widows and maiden daughters of residenters within the boundaries of what was formerly Old Aberdeen, and (3) widows or maidens who had lived in Old Aberdeen all their lives or for at least seven years prior to their claim, might be admitted; but *refused* (1) power to employ the surplus funds in giving grants to persons having the necessary qualifications but wishing to live in their own homes; (2) discretionary power at a future date, if sufficient inmates still could not be obtained, to sell the hospital and expend the whole revenue on annuities; and (3) power to invest the capital of the trust in other securities giving a larger return.

By deed of mortification, dated April 15, 1801, and recorded in the Sheriff-Court Books of Aberdeenshire May 25, 1801, David Mitchell of Holloway Down, in the county of Essex, upon the narrative that he,