laid down, under the heading "Powers and Capacities of Pupils," that "the curator *ad litem* has no authority to compromise an action." But the sole case cited in support of the proposition is *Stephenson* v. *Lorimer*, 1844, 6 D. 377. Now, that case seems to have had nothing to do with *pupils*. The wards were, as appears from the report, two *minors* whose curator *ad litem* had agreed to compromise the action in which they were pursuers on payment of a certain sum. "On proof of this arrangement the Lord Ordinary assoilzied the defender, although the minors made appearance by counsel to repudiate it; but the Court, holding that discharging the action was beyond the powers of the curator *ad litem*, altered, and remitted to his Lordship to proceed with the cause." The distinction between this case and that of a curator *ad litem* to a pupil is too obvious to require comment, and I cannot think that *Stephenson* v. *Lorimer* is an authority which can support the proposition of the learned writer which I have quoted. Similar statements of law are to be found in Thoms on Judicial Factors (2nd ed.) p. 181; Shand's Practice p. 144; Green's Encyclopædia of Scots Law, s.v. Curator *ad litem* (vol. iv, p. 46); but the only authority referred to is the case to which I have referred. Mr Mackay in his Manual of Practice, p. 150, properly refers to *Stephenson* v. *Lorimer* as supporting the proposition that "where the ward is capable of concurring, he and not the curator *ad litem* is *dominus litis*, with power to decide whether the litigation shall continue; so he"—that is, the curator—"can not . . . compromise an action . . ." The learned author proceeds to say—"Even where the ward is incapable, it is doubtful whether such curator has power to compromise. He may, however, under the guidance of counsel, conduct the suit in the manner he deems most advantageous, and this probably includes the right to compromise it." I confess that I do not share the doubt which is expressed in the first of these sentences, and I am prepared to adopt the second with the omission of the word "probably." I shall accordingly find that Mr Millar has power in the exercise of his discretion to compromise the present action.

His Lordship pronounced interlocutors finding that the curator *ad litem* had power to compromise the action and interponing authority to the joint minute containing the compromise.

Counsel for the Pursuers--Ingram. Agents—Pole, Graham, & Lawrence, S.S.C.

Counsel for the Curator *ad litem*—Lord Kinross. Agent—H. Morton, S.S.C.

Counsel for the Trustee (Cameron)—Morison. Agents—Webster, Will, & Company, S.S.C.

Counsel for the Trustee (Grant)—Fenton. Agents—Pole, Graham, & Lawrence, S.S.C.

Saturday, October 27.

SECOND DIVISION.

CHIVAS' TRUSTEES *v.* CHIVAS' TRUSTEES.

Succession—Subject of Bequest—Power to Bequeath Capital of Annuity—Capital Retained by Trustees in Excess of that Actually Required.

A testator directed his trustees to pay to his widow an annuity of £500 (to be in part derived from a certain heritable property), and gave her power to bequeath "the amount of said annuity" (except in so far as derived from the heritable property, which was otherwise disposed of) to any one or more of their children. The heritable estate provided an income of about £45 annually, and to meet the balance the trustees set aside a sum of £20,000, the result being that there was annually a surplus income of between £100 and £150.

The widow died, having exercised her power of bequest. In a special case it was maintained that her power of bequest was limited to such a sum as would have been reasonably sufficient for the purposes of the annuity.

Held that it extended to the whole sum of £20,000, the trustees having acted in good faith, and the amount set aside not being so extravagant as to suggest that they had failed to exercise a reasonable discretion.

Mr James Chivas died on 8th July 1886 leaving a settlement and codicils by which he conveyed his whole estates, heritable and moveable, to trustees for various purposes. The *third* purpose of his settlement was in the following terms:—"In the third place, I appoint my said trustees to pay to my said spouse, free of all deductions, an annuity of £500 sterling, payable half-yearly in equal portions at the terms of Whitsunday and Martinmas, commencing the first half-yearly payment thereof at the first term of Whitsunday or Martinmas which shall happen after my decease; and also to pay to her the sum of £200 sterling in full of mournings and interim aliment, with power to my said spouse to bequeath the amount of said annuity to any one or more of our children as she may think fit." By a codicil he provided as follows—"*First*, that the free rental of Thornhill lands form part of the annuity bequeathed to my wife during her life." There followed special provisions dealing with the fee.

In a special case presented to the Court in 1893 (*reported* October 17, 1893, 21 R. 1, 31 S.L.R. 1) it was decided that the rents of Thornhill were not bequeathed in addition to the annuity of £500, but formed part of it. The free rental of Thornhill taken over an average of years amounted to a sum of about £45 per annum.

The trustees accordingly set aside a sum of £20,000 to provide for the balance of the annuity, with the result that there was

annually a surplus of income of between £120 and £150.

The testator's widow died in 1904, leaving a holograph will in which she expressly disposed of the sum of £20,000 invested by the trustees to provide her annuity.

A special case was after her death presented to the Court containing, *inter alia*, the following question:—"Did the power of bequest conferred by the testator on Mrs Chivas extend to the whole sum of £20,000 set aside by the first parties (the testator's trustees) to meet her annuity?"

The second parties to the case contended that Mrs Chivas' power of bequest did not apply to the whole sum which the trustees might in their discretion and for their own protection set aside to meet the annuity, but only to such sum as was sufficient to provide such part of the annuity as was not provided by the rents of Thornhill. They maintained that while the trustees might be entitled to set aside such a sum as would insure that there should not in any contingency be a deficiency, the sum so set aside by the trustees was not the measure of the widow's right of bequest.

The third parties contended that the power of bequest conferred by the testator on Mrs Chivas extended to the whole amount set apart by the first parties out of the residue of the testator's estate to meet her annuity.

The following cases were referred to—*Forsyth* v. *Kilgour*, December 15, 1854, 17 D. 207; *Munro's Trustees* v. *Munro*, June 21, 1899, 1 F. 980, 36 S.L.R. 761; *Hicks* v. *Ross*, [1891] 3 Ch. 499.

The judgment of the Court was delivered by

LORD LOW—. . . By the third purpose of his settlement Mr Chivas directed his trustees to pay to his wife an annuity of £500, "with power to my said spouse to bequeath the amount of said annuity to any one or more of our children as she may think fit." It appears very clearly from the context that what the truster meant by the expression "the amount of said annuity" was the capital sum retained by his trustees to provide for the annuity. . . .

The third question relates to the sum (£20,000) retained by the trustees to secure Mrs Chivas' annuity. The second parties contend that that sum was excessive seeing that a considerable part of the annuity was met by the rents of Thornhill, and that accordingly Mrs Chivas' right to bequeath the sum retained to secure the annuity should be held to be limited to such an amount as would have been reasonably sufficient for that purpose after taking into account the average free rents of Thornhill. Now, I think that the sum retained by the trustees was very full, but it is not suggested that they acted otherwise than in good faith, and I am not prepared to say that the amount was so extravagant that they cannot be regarded as having exercised their discretion reasonably. I am therefore of opinion that the third question falls to be answered in the affirmative. . . .

The Court answered the question in the affirmative.

Counsel for the Second Parties—Wilson, K.C.—D. Anderson. Agents—Davidson & Macnaughton, S.S.C.

Counsel for the Third Parties—Cullen, K.C.—Blackburn, K.C.—Chree. Agent—F. J. Martin, W.S.

Tuesday, November 6.

FIRST DIVISION.

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

Succession—Heritable and Moveable—Conversion—Intention.

A testator directed his trustees to hold the residue and remainder of his estate and effects, "or of the prices and produce thereof," in trust for the use of his children, and on the youngest child attaining twenty-five years, at which time vesting took place, to pay, assign, and dispone whatever should remain (subject to the retention of sufficient to provide an annuity to the widow) to the children and grandchildren equally *per stirpes*; "declaring always . . . that it shall not be imperative upon my trustees for the purposes of this division to convert the residue of my means and estate into cash, but they shall be entitled . . . should they deem it more beneficial for any of my children or grandchildren to have parts or portions of my estate allocated to them, to have such parts or portions of my estate, whether heritable or moveable, as they shall resolve so to allocate, valued . . . and to assign and dispone the parts or portions so valued to the child or children, or the issue of such of my children to whom my trustees shall have allocated the same respectively, . . . but declaring that the exercise of this power and of the power of allocation before given by my trustees shall be purely at their own discretion, and shall be in no way compulsory upon them." The trustees divided at the period of payment the trust estate save the heritage, which formed the largest portion, and which, with the beneficiaries' consent, they continued to hold, paying the revenue in part as the widow's annuity, and as to the remainder to the beneficiaries. On the widow's death this heritable property, of an urban character, having been sold, *held* that the interest of a son who had died between the date of vesting and the death of the widow was moveable as to his succession.

James Henderson, civil engineer in Glasgow, died on February 8, 1870, leaving a trust disposition and settlement dated 11th July 1861, which was recorded in the Court Books of the Commissariat of Lanark 1st July 1870, and in the Books of Council and Session 15th June 1874.