difficulty in figuring a case where a company has been dissolved and reconstructed but where the accounts due to the two companies should be treated as one account.

"I accordingly sustain the first plea-in-law stated for the defenders so far as applying to the portion of the account prior to 31st July 1904, and to that extent and effect I dismiss the action.

"There remains the question as to the portion of the account from 31st July 1904 onwards. The defenders set forth in their statement of facts (particularly in statement No. 6) various facts and circumstances from which they say that it may fairly be inferred that the work was done on the footing that no charge was to be made therefor. The pursuers' counsel founded on the case of *Taylor* v. *Forbes*, 1853, 24 D. 19, and maintained that this defence could be established only by the pursuers' writ or oath. If it were necessary I should hold that I am not bound to follow the decision in *Taylor's* case, because I think it appears from the subsequent case of *Scotland* v. *Henry*, 1865, 3 M. 1125, that *Taylor's* case was a very special one, and I do not think that it would be held nowadays that a contract of the kind referred to is an innominate contract of such an extraordinary character that proof ought to be limited to writ or oath. But, as I have already indicated, I do not read the averments as meaning that the defenders undertake to prove by the testimony of witnesses that a parole agreement was entered into between the two brothers that the work was to be done gratuitously. The defenders' case is that there exist a number of circumstances which give rise to the inference that no charge was to be made. There is an analogy between the present case and a case where the defender undertakes to prove presumed payment. It is not competent to prove money payments except by writ or oath, but a defender may prove facts and circumstances which give rise to the inevitable inference that the debt has been satisfied or discharged in some way or other. I allow the defenders a proof before answer of their averments in statement 6."

The pursuers reclaimed, on the point as to title to sue, and in addition to *Wotherspoon* v. *Henderson's Trustees* (July 10, 1868, 6 M. 1052, 5 S.L.R. 689), referred to Bell's Prin., sec. 357.

The defenders were not called on for a a reply.

LORD PRESIDENT — This case seems so clear that it is impossible to state an argument on the other side. The Lord Ordinary has dealt with it clearly, and I entirely agree with his Lordship. The matter can be put even more shortly. There is no authority for firm B suing for a debt due to firm A unless it has something in the nature of an assignation. I am therefore for refusing this reclaiming note.

LORD KINNEAR, LORD JOHNSTON, and LORD SALVESEN concurred.

The Court pronounced this interlocutor—

". . . Adhere to the said interlocutor: Refuse the reclaiming note: Remit the cause to the Lord Ordinary to proceed as accords, and decern."

Counsel for the Pursuers (Reclaimers)—Sandeman, K.C.—Spens. Agent—Party.

Counsel for the Defenders (Respondents) — Blackburn, K.C. — Chree. Agents — Cooper & Brodie, W.S.

Thursday, July 14.

FIRST DIVISION.

STEEL AND OTHERS (ROBERTSON'S TRUSTEES) *v.* ROBERTSON.

Succession—Testamentary Writings—Construction—Denuding of Trust Funds—Vesting—Repugnancy—Acceleration of Payment—"One-third Part of the Annual Income of the Residue"—Direction to Pay at Majority with Subsequent Direction in Codicil not to do so but to Pay One-half at Twenty-six.

By his trust-disposition a testator provided for his trustees paying certain small annuities "out of the free annual produce of the remainder" of his estate, and directed—"(Fifth) That my trustees shall pay one-third part of the annual income or produce of the residue of my means and estate" to his widow, "and (Lastly) That my trustees shall hold the residue of my said means and estate (subject always to the foresaid liferents) for behoof of the whole of my children, . . . and my trustees shall pay over to such of my children as may be sons their or his share on attaining the age of twenty-one years complete. . . . But declaring that the said provisions in favour of my children shall not vest until the respective terms of payment of the same, and until the terms of payment my trustees shall apply the free annual proceeds or income of the presumptive portion of each child for his or their maintenance and education: And notwithstanding what is above written, my trustees shall have power to make payment to any of my sons, out of the capital of his presumptive portion, of a sum or sums not exceeding in whole one-half of such son's portion, for his advancement in life." And by a holograph codicil, dated when his only son was approaching majority, he directed his trustees "not to pay my son . . . his share of my estate at the age of twenty-one years as stated in my will, but to pay him half of his share at the age of twenty-six years should he want it."

After the testator's son had attained twenty-one years but was under twenty-six, the widow still surviving, *held*, in a special case, (1) that "one-third of the

annual income of the residue" was on a sound construction of the will equivalent to the annual income of one-third of the residue; (2) that the trustees were therefore entitled during the widow's life to make provision for payment to her of the income of one-third and thereafter to pay away the capital of the estate to the beneficiaries; and (3) that one-half of the share destined to the son had under the terms of the will vested in him.

Opinion (*per* Lord Johnston) that the whole of the share destined to the son had vested in him.

On 30th June 1910 a Special Case was presented to the Court by James Steel and others, testamentary trustees of the deceased Samuel Robertson, grocer and wine merchant, Edinburgh, who died on 4th August 1909, *first parties;* Mrs Isabella Stephenson or Robertson, the deceased's widow, *second party;* Samuel Herbert Robertson, his only son, who was over twenty-one but under twenty-six years of age, *third party*; and Mrs Hilda Robertson or Black, wife of Stuart Black, with her husband's consent and concurrence, and Miss Cecil Robertson, the two daughters of the deceased, *fourth parties*, for the purpose of settling certain difficulties arising out of the deceased's testamentary writings.

By his trust-disposition and settlement, dated 3rd January 1891, the deceased conveyed his whole estate to his trustees for the following purposes—(*First*) Payment of debts: (*Second*) Giving a liferent of the household furniture to his widow: "(*Third*) That my trustees shall pay out of the free annual produce of the residue or remainder of my said property, means, and estate to my mother . . . if she shall be alive at the term hereinafter appointed for the commencement thereof and so long as she shall survive thereafter, an annuity of thirty pounds sterling, and to . . . my sister . . . if she shall be alive at the term hereinafter appointed for the commencement thereof and so long as she shall survive thereafter, an annuity of thirty pounds sterling, which respective annuities shall be paid at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment thereof at the first of those terms which shall occur six months after my death for the half-year succeeding, and so forth yearly and termly thereafter so long as the said parties shall be respectively entitled thereto in terms of this provision. (*Fourth*) That my trustees shall pay out of the free annual produce of the remainder of my said property, means, and estate to my niece . . . and my nephew . . . if they or either of them shall be alive at the term hereinafter appointed for the commencement thereof and until they attain the age of twenty-one years complete, an annuity of twenty pounds sterling each, which annuities shall be paid at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment thereof at the first of those terms which shall occur after my death for the proportion of said annuity from the date of my death, and the next term's payment at the term of Whitsunday or Martinmas thereafter for the half-year preceding, and so forth yearly and termly thereafter so long as the said parties shall be respectively entitled thereto in terms of this provision. (*Fifth*) That my trustees shall pay one-third part of the annual income or produce of the residue of my means and estate to the said Isabella Stephenson or Robertson during all the days of her life after my death at the terms of Whitsunday or Martinmas in each year, or at such other terms as my trustees may consider most suitable, beginning the first term's payment thereof at the first of those terms which shall occur six months after my death for the proportion then due, and termly and proportionally thereafter during the life of the said Isabella Stephenson or Robertson. (*Sixth*) That my trustees shall pay and deliver all such legacies, gifts or provisions, and implement all such instructions as shall be contained in any codicil or in any separate memorandum or writing by me clearly expressive of my will though not formally executed: Declaring that the same, whether formal or informal, shall be held and taken to be part and parcel of these presents. And (*Lastly*) That my trustees shall hold the residue of my said means and estate (subject always to the foresaid liferents) for behoof of the whole of my children born or to be born of my present or any future marriage who shall survive me, in equal portions if more than one shall survive me, and my trustees shall pay over to such of my children as may be sons their or his share on attaining the age of twenty-one years complete, and shall hold the share of my said means and estate falling to such of my children as may be daughters for their or her liferent use allenarly, and shall pay the free yearly interest or income of such share so long as they or she shall survive me and remain unmarried, and that on their or her marriage my trustees shall settle such share on them or her in liferent for their or her liferent use allenarly and on the children of that or of any other marriage into which they or she may enter in fee, and failing issue of that or of any other marriage on their or her own heirs or assignees, and failing their or her marriage my trustees shall on their or her death dispose of the share of my said means and estate falling to them or her in such way as they or she shall direct by any writing under their or her hand, and failing such direction shall pay or convey the share falling to them or her to their or her heirs, and failing my children or their issue, my trustees shall divide the whole residue of my said means and estate to and among my heirs equally share and share alike: But declaring that the said provisions in favour of my said children shall not vest until the respective terms of payment of the same, and until the terms of payment my trustees shall apply the free annual proceeds or income of the presumptive

portion of each child, or so much thereof as my trustees may consider necessary, for his or their maintenance and education; and notwithstanding what is above written, my trustees shall have power to make payment to any of my sons, out of the capital of his presumptive portion, of a sum or sums not exceeding in whole one-half of such son's portion for his advancement in life. And I declare that the lawful issue of such of my sons as may have predeceased leaving lawful issue shall succeed to the share to which their parent would have been entitled if in life."

The deceased also left this holograph codicil dated 17th July 1908—"I, Samuel Robertson, grocer and wine merchant, desire my trustees not to pay my son Samuel Herbert his share of my estate at the age of twenty-one years as stated in my will, 3rd January 1891, but to pay him half of his share at the age of twenty-six years should he want it, and to my two daughters Hilda and Cecil half of their shares at the age of twenty-six years or at any other future time when they desire the same paid to them."

The following *questions of law*, as amended at the hearing, were, *inter alia*, submitted—"(1) Are the parties of the first part entitled during the lifetime of the second party to make provision for payment to the second party of the income of one-third of the trust estate, and thereafter to pay away the capital of the estate to the beneficiaries? or (2) Must they retain the whole estate in their hands in order to give effect to the fifth purpose of the settlement? (3) Has the one-half of his share destined to the third party on his attaining twenty-one years vested in him?"

Argued for the third and fourth parties—Payment to the children was subject to the liferent, but not to be defeated by the liferent. This meant that, subject to the liferent being sufficiently secured, the capital was to be paid over to the children. The truster had plainly contemplated this, and the codicil confirmed this view. What the widow was entitled to was one-third of the income as estimated at the testator's death. If the contention of the other parties was right, the power to advance capital would be rendered nugatory, and the period of payment and therefore of vesting would be postponed till the widow's death.

Argued for the first and second parties—It was only subject to the liferent that the money could be paid, and this meant that the estate must be kept intact in the hands of the trustees. The fact that vesting was postponed till payment did not mean that it was necessarily postponed till the widow's death, though it was only then that actual payment could take place. The clause making provision for the widow, if read alone, clearly meant that the trustees must retain the whole of the capital in their hands, because if any part of it was paid away it was impossible to say by how much the widow's share of the income might have been diminished. The codicil was intended to provide only for the contingency of the widow predeceasing the testator.

At advising—

LORD JOHNSTON—By his settlement Mr Samuel Robertson conveyed his estate to trustees for the following purposes, *inter alia—Third*, that his trustees should "pay out of the free annual produce of the residue or remainder of my said property, means, and estate," to his mother an annuity of £30, and to his sister Jane another annuity of the same amount. *Fourth*, that his trustees should "pay out of the free annual produce of the remainder of my said property, means, and estate" to a nephew and niece annuities of £20 each during minority. *Fifth*, that his trustees should "pay one-third part of the annual income or produce of the residue of my means and estate" to his widow during her survivance. And, *lastly*, that his trustees should "hold the residue of my said means and estate (subject always to the foresaid liferents) for behoof of the whole of my children born or to be born of my present or any future marriage who shall survive me, in equal portions if more than one shall survive me," to be paid over to sons on attaining the age of twenty-one years complete, and to be settled on daughters in liferent and their issue, and failing issue their heirs and assignees in fee, on marriage, they receiving the income of their shares while unmarried, with power of disposal failing marriage; and failing his children or their issue, the whole residue of his means and estate to be divided among his heirs equally, share and share alike.

This last provision of the settlement was followed by a declaration that the said provisions in favour of his children should not vest until the respective terms of payment of the same, and that until the term of payment his trustees should apply the free annual income of the presumptive portion of each child, or so much thereof as his trustees should consider necessary for their maintenance and education, which declaration continued, "and notwithstanding what is above written, my trustees shall have power to make payment to any of my sons out of the capital of his presumptive portion of a sum or sums not exceeding in whole one-half of such son's portion, for his advancement in life."

This Special Case has been brought to determine the mutual rights of the widow and the children, doubt being entertained whether during the widow's life any payment of capital can be made to or for behoof of the children consistently with fulfilling the testator's directions with regard to the widow's life interest in a third of the income of the residue. The testator's son has attained twenty-one, and one of the daughters has been married.

But the provisions of the settlement have been complicated by a holograph and informal codicil, executed, I understand, about the date of the testator's son attaining majority, which happened during his life. By this codicil he desired his trustees

"not to pay my son Samuel Herbert his share of my estate at the age of twenty-one years as stated in my will, 3rd January 1891, but to pay him half of his share at the age of twenty-six years should he want it, and to my two daughters Hilda and Cecil half of their share at the age of twenty-six years, or at any other future time when they desire the same paid to them." His son Samuel has not yet attained twenty-six years.

Taking the settlement by itself, some confusion is doubtless caused by the way in which the provisions are framed, but I think that it is susceptible of a reasonable construction, which will carry out the testator's intention of providing his widow with a third of the income or residue, which I read, on a consideration of the whole scope of the deed, as meaning the income of a third of the residue, without depriving the children of the right to require payment to account of capital, if otherwise entitled. No doubt the provisions for his children are subject always, not merely to his widow's liferent, but to the other smaller liferents provided. But there is nothing to indicate that they were to be subject to the widow's liferent to any greater extent and effect than to the other liferents. It might have been that the widow had died and the other liferents been reduced to one, say that of his sister. There is nothing to indicate that the capital was all to be held up till the death of the annuitant, as must be on the strict reading of the words "hold" and "subject" contended for.

But the declaration which follows the last head is to my mind all important. It follows that head indeed, but it is in no way restricted in its operation to that head. It governs the whole previous provisions or heads of the settlement. Vesting is not to take place until the respective terms of payment. That term is majority in the case of sons, if not earlier, at which age therefore at latest their portions vest. But the term vesting is not very accurate when applied to the case of daughters, and if any question should arise regarding their shares under the settlement I think that great difficulty would be found in determining the testator's intention. But what is important to the present case is that power to make payment to any of the sons out of the capital of his presumptive portion, of a sum not exceeding one-half of that portion, for his advancement in life is conferred on the trustees. The widow's right to a third of the income of the residue is as much subject to this power as the rights of the children are to her liferent. It is quite a common provision in a father's settlement that his widow should have the liferent not merely of a third but of the whole of the residue of his estate, the fee of which is destined to children, and yet that the trustees should have power of advancement to children similar to that conferred in the present case. The result is that the widow's liferent is reduced *pro tanto* if such an advance is made. There is the less inconsistency between the rights of widow and children when the widow's life interest is confined to one-third of the income of residue. Having regard to the declaration above referred to, to which the whole prior heads of the settlement are subject, it cannot I think be entertained in the present case that the power to advance is to be rendered entirely ineffectual during the widow's life at a period when probably its exercise is most wanted, and is only to have effect in the event of the widow's death if a son or sons are then still under age. The advance of one-half only of the sons' shares, even if all the children were sons, would still leave an ample margin to protect the widow in a liferent of a third of the estate, and that is, as I have said, what I think it must be held that the testator intended to give her when he speaks of a third part of the annual income of the residue.

Working back from the considerations which arise on the declaration to which I have just referred, if the widow's life interest in a third of the income of residue is no bar to the exercise of the power to advance, then I think that on vesting taking place in a son—that is, on his attaining majority—it would be as little bar to his obtaining payment of the share to which he would be then entitled, "subject always to the foresaid liferents," that is, subject to retention of such part of the estate as in a due course of administration might be considered necessary to protect the widow's interest. Similarly, I think it would be no bar to a daughter on her marriage requiring that a similar part of her share should be paid over to her settlement trustees, an unmarried daughter's entire share continuing to be retained in trust. And I do not think that the widow is entitled to oppose such part payment of capital to or for behoof of the children on the pretext that a third of the annual income of residue could not be paid to her with absolute precision if any part of the capital had to be paid away. I am not moved by the fact that the trustees are directed to "hold" the residue subject always to the foresaid liferents. They are to "hold," I think, in a sense consistent with reasonable trust administration, and in such way as to give the children the benefit of the bequests in their favour, as far as reasonably can be done consistently with securing the widow in what the testator must on a view of the whole scope of the deed he held to have intended.

But the codicil is very difficult of application. The testator says that he desires his trustees not to pay to his son at the age of twenty-one years as stated in his will, but to pay him one-half at twenty-six should he want it. What the precise modification of his original provision for his son, which the testator intended by this expression of his desire is, it is very difficult to determine. It is a misfortune that the testator did not consult the lawyers who drew his settlement, before framing, as he evidently did himself, this codicil. For it indicates pretty clearly that he has not altogether understood how

his own settlement would work out in the event, which has happened, of his son attaining majority during his mother's life. I think that he has mixed up in his mind the general direction to pay and the special power to advance. His son is not to have his share at twenty-one, but that is not to say that he is not to have it at all, or not to have the whole of it at some time. He is to have half at twenty-six. When is he to have the rest? Looking to the circumstance of the execution of this codicil seven and a half years after the settlement, at a time when the testator's wife was alive, when the son had either attained or was on the eve of attaining twenty-one, and when the testator presumably had a fuller view of his son's future in life than when he executed his settlement, what I think the testator meant was, that instead of a possible advance under the power, and of payment of the free amount of his vested share at twenty-one, the son should have, if he desired it, even during his mother's life, payment of one-half of his share at twenty-six. It would not be possible that he should have payment at twenty-one of that part of his share which was free, and at the same time payment of a half of his share at twenty-six, if the necessary provision was to be made for his mother's liferent. And therefore, though I think that the whole of the son's share must still be held to have vested at twenty-one, the practical result of the testator's codicil is that payment of one half of his share is expressly postponed till twenty-six, and payment of the other half cannot be made at twenty-one so long as the widow's life interest subsists consistently with retaining sufficient to secure her. On his mother's death he would receive the whole of the balance of his vested share.

The effect of the codicil upon the shares of the daughters is a still more difficult question, but the case does not contain all the materials necessary for its determination, and I understand that the fourth question is withdrawn.

LORD SALVESEN—[*After a narrative of the facts*]—The trustees maintained that in order to give full effect to the fifth purpose of the trust, which gives one-third of the income of the residue to the widow, they must retain the whole estate in their hands; and I agree with their counsel that they cannot give literal effect to the testator's direction with regard to his widow unless they do so. But this construction involves that the last purpose of the testator's settlement must be read as taking effect only on the death of the widow, and as giving the son even after attaining majority no right whatever in the capital during his mother's survivance. No such condition is expressed; and I cannot read the words "subject to the liferent" as having the same effect. If the testator's intention had been to give his son no rights in the capital so far as not required to provide an income for his widow, until after her death, I think he would have said so; and the words "subject to the liferent of the widow," must be read as meaning subject to making due provision for the widow's liferent. The trustees' contention further involves the proposition that the discretionary power to advance capital to a son can also not take effect during the widow's lifetime, because if once capital is paid away the widow cannot receive year by year one-third part of the actual income of the residue, for, to the extent to which advances are made out of capital that part of the residue ceases to be an income-producing subject under the control of the trustees.

I think the codicil supports the construction at which I have arrived from a consideration of the settlement itself. The testator's son had either attained or was close upon majority at that time, and the testator seems to me to have had in view that whenever he died his son would be entitled to get immediate payment of such share of the estate as was destined to him under the settlement. Apparently he did not desire this, and he accordingly qualified the provision in the will by directing that the son should not get any part of his share till he was twenty-six, and then only one-half of what he would have been entitled to under the will. I think it is in the highest degree improbable that the testator was providing only for the case of the emergence of the son's rights after the death of both of his parents; for it is plain that if the widow did not survive the testator the shares of the children would vest immediately on his own death, and would be payable to such of his sons as had attained majority. In the codicil the testator only postpones payment of one-half of his son's share until he attains twenty-six, without saying when the other half is to be paid. On the assumption therefore that the liferent was not to continue after the testator's death, the right of the son to this half would immediately emerge, provided he had then attained majority. The result therefore of the codicil, so far as the son's provisions were concerned, was to restrict to one-half his right to immediate payment of the whole share of the estate to which he was entitled, subject to his mother's liferent, and to postpone payment of the remaining half until he attained twenty-six.

On the view I take of the construction of the settlement it is impossible to give literal effect to both the fifth and the last purposes of the will, but, in my opinion, it does much less violence to the testator's intention to assume that he did not appreciate the distinction between one-third part of the annual income of the residue and the annual income of one-third of the residue. To the ordinary lay mind there is no practical distinction between these two things; and if the provision to the widow is so read there is no obstacle at all to giving effect in its entirety to the last purpose as modified by the codicil. According to the other view, the testator must have contemplated that his son should remain a mere liferenter of his share of the estate so long as the widow

survived, although there was no necessity for the trustees, in the interest of the widow, holding more than would yield her the income to which her right was restricted.

I am accordingly of opinion that the trustees will carry out the intentions of the testator by, in the first place, setting aside a sufficient sum to meet the widow's liferent, and that they are bound to deal with the capital of what is not necessary for that purpose by paying such portion of it to the testator's son as they are directed to distribute by the last purpose of the will as modified by the codicil. I propose, therefore, that we answer the first question in the affirmative, the second in the negative, and the third, in the amended shape in which it is now put, in the affirmative.

LORD KINNEAR—I concur in the result of the opinions delivered. I only wish to add that while I agree in answering the first question in the terms proposed, I do not wish to express any opinion upon the various points which have been raised on the third question, and which are said to be of difficulty, because they do not appear to me to be properly before the Court. The only question put to us under that head is whether the vesting of one-half of the son's share takes place at twenty-one notwithstanding the postponement of the term of payment of the other half till twenty-six. I think it does vest under the will, and there is nothing in the codicil to affect the right so created.

The LORD PRESIDENT, who was absent at the hearing, delivered no opinion.

The Court answered the first and third questions of law, as amended, in the affirmative, and the second question in the negative.

Counsel for the First and Second Parties—Hon. Wm. Watson. Agents—Deas & Co., W.S.

Counsel for the Third and Fourth Parties—Moncrieff. Agents—P. Gardiner Gillespie & Gillespie, S.S.C.

Friday, July 15.

FIRST DIVISION.

PATERSON'S TRUSTEES *v.* JOY AND OTHERS.

Succession—Faculties and Powers—Power of Apportionment — Separate Funds under Power—Exercise by Will—Power not Expressly Referred to — Funds not Separately Apportioned—Intention.

A, the liferentrix of three several sums under three different Scottish settlements, died domiciled in England. The fee of the sums was destined to A's children, but A had power "to divide and apportion" it among them. A left a document styled her last will and testament, invalid as a will by the law of England, the place of execution, by which, after appointing executors, she bequeathed various sums to her children, and divided "the residue" equally among them. She made no reference to the different settlements nor to the various powers of apportionment. The sums bequeathed, however, practically amounted to the sum of the funds which she had power to apportion exclusive of her own private estate.

Held that, even assuming the document to be valid as a holograph will, it was invalid as an exercise of the power of apportionment, in respect that no distinction was made between the several funds held by the different sets of trustees.

Kennion v. *Buchan's Trustees*, February 7, 1880, 7 R. 570, 17 S.L.R. 380, *distinguished.*

Henry E. Richardson, W.S., Edinburgh, and others, trustees acting under the trust-disposition and settlement of the late Adam Paterson of Whitelee, W.S., Edinburgh (*first parties*); Mrs Ada G. Duckworth or Joy and others, the children of the late Mrs Elizabeth Paterson or Duckworth, wife of the late W. N. Duckworth, Copford Place, Colchester (*second parties*); and Ralph Richardson, W.S., Edinburgh, and others, trustees acting under the contract of marriage between Adam Black Richardson of New Park and Alice Maud Duckworth or Richardson, daughter of the said Mrs Elizabeth Paterson or Duckworth, and others (*third parties*), brought a Special Case to determine whether Mrs Duckworth had or had not effectually exercised a power of apportionment conferred upon her by the trust-disposition and settlement of her father the late Mr Adam Paterson of Whitelee.

By his settlement the late Mr Paterson directed his trustees to hold his estate for behoof of his four daughters in liferent and their children in fee. He further declared—"Each of my said four daughters respectively shall have power to divide and apportion the income and capital of the respective provisions hereby made for them among their respective children, subject to such conditions and payable at such times as they may appoint, and failing issue of any of my said daughters the fee or capital of their provisions shall belong to their nearest heirs and assignees whomsoever."

Mr Paterson died in 1875 survived by his four daughters, one of whom was the late Mrs Elizabeth Campbell or Duckworth.

Mrs Duckworth was also liferentrix of a share of the estate of her uncle the late Mr Paterson of Ettrickhall, and of the estate held by her own marriage-contract trustees. Over both she had powers of apportionment similar to those which she possessed with regard to her share of her father's estate. The whole net funds over which she had powers of apportionment amounted to about £26,220. Mrs Duckworth was aware of the powers of apportionment conferred upon her with