saying that the word may have more than one meaning. I am not prepared to hold that the meaning put upon it by the pursuer is not one which may be reasonably put upon it; and if that meaning is put upon it, I think it would involve damages. The question is—are we entitled to withhold the case from a jury? I think we are not; and accordingly I move your Lordships to adhere to the interlocutor of the Lord Ordinary.

LORD SALVESEN and LORD ORMIDALE concurred.

The LORD JUSTICE-CLERK and LORD GUTHRIE were absent.

The Court adhered.

Counsel for the Reclaimer (Defender)—George Watt, K.C.—Macquisten. Agents—Alex. Morison & Company, W.S.

Counsel for the Respondent (Pursuer)—The Lord Advocate (Munro, K.C.)—Mackenzie Stuart. Agent J. Ferguson Reekie, S.S.C.

Tuesday, January 13.

FIRST DIVISION.

COLVILLE'S TRUSTEES *v.* COLVILLE.

Trust — Administration — Appropriation of Investments to Legacy—Depreciation of Investments—Incidence of Loss.

A testator directed his trustees to pay his daughter on her attaining twenty-five or being married, whichever should first happen, a legacy of £5000, the legacy to vest as at the term of payment. At the time of the testator's death his daughter was fifteen years of age. The trustees invested that sum in specific trust securities, which by the time she attained twenty-five had considerably depreciated. In so investing it the trustees were not influenced by any necessity for immediate distribution of the estate, but did so because they considered it expedient to set aside and secure a sum to meet the legacy.

Held that as there was no direction, express or implied, to make the appropriation in question, the trustees were not entitled to set aside and invest the sum mentioned, and that accordingly the daughter was entitled to payment of her legacy in full.

On 25th October 1913 Mrs C. M. Downie or Colville, widow of John Colville of Cleland, Lanarkshire, and others, Mr Colville's testamentary trusteees, *first parties*, Miss C. H. Colville, the testator's daughter, *second party*, and David J. Colville, his son, *third party*, presented a Special Case for the determination of certain questions as to the second party's rights in her father's estate.

By his settlement Mr Colville, who died in 1901, directed his trustees to pay a legacy of £5000 to his daughter, the second party, the legacy to be payable on her attaining twenty-five years of age or being married, whichever should first happen, and to vest as at the term of payment.

He further empowered his trustees to carry on any business in which he was engaged at the time of his death and to continue all or any part of the trust estate in the state or investment in or upon which the same should be at the time of his death, and that for such time as they might in their absolute discretion think proper.

The trustees having entered upon the administration of the trust estate, resolved in 1902 to apply £5000 in making investments to meet the legacy of £5000 to the second party. They accordingly made the following investments at the following expenditure:—

(1) £1200 3 per cent. debenture stock of the London and North-Western Railway Company	£1,216	14	4
(2) £1500 2½ per cent. debenture stock of the Midland Railway Company	1,260	18	3
(3) £950 4 per cent. debenture stock of the Caledonian Railway Company	1,269	0	2
(4) £1250 3 per cent. debenture stock of the North British Railway Company	1,239	9	2
	£4,986	1	11

At the date when the trustees came to said resolution the second party was under fifteen years of age, and the legacy of £5000 had not vested in her. In arriving at the said resolution the trustees were not constrained thereto by any necessity for immediate distribution of the trust estate, or any part thereof, and they came to it merely because they considered it expedient so to set aside and secure in such investments a sum to meet the legacy.

The second party having attained twenty-five, and considerable depreciation having occurred in the capital value of the investments set apart to meet the legacy, *inter alia questions* arose as to the right of the trustees to make the appropriation in question, and as to the incidence of loss on the investments so appropriated.

The *contentions* of parties as stated in the Case were:—"The first parties maintain that they were bound, or at any rate entitled, to set apart and appropriate the investments in question to the second party's legacy of £5000, and that the depreciation on said investments falls to be borne exclusively by said legacy. The third party concurs in these contentions. The second party maintains that in the absence of any direction to the trustees to set aside investments and appropriate them to the said legacy, and of any necessity requiring them so to do, the first parties were not entitled to appropriate the investments in question to her legacy. She therefore further maintains that she is entitled to payment of her legacy of £5000 in full, and that any depreciation which may have arisen on said investments does not fall to be borne by her."

The *questions of law* were—"1. Were the trustees entitled to set aside and appropriate said investments to the second party's

legacy of £5000? 2. Does the depreciation in the investments appropriated by the trustees to the second party's legacy of £5000 fall to be borne by the second party?"

Argued for first parties — The trustees were entitled to make the appropriation in question, for it was consistent with proper trust administration to do so—*Robinson* v. *Fraser's Trustees*, August 3, 1881, 8 R. (H.L.) 127, 18 S.L.R. 740. Where, as here, the trust estate was exposed to the risks of a fluctuating business the trustees would not have been in safety to leave the second party's legacy so invested. That being so, the depreciation on the trust securities in which they invested it fell to be borne by the second party.

Argued for the second party—The second party was entitled to a legacy of £5000, and not to investments which might be worthless. Where, as here, there was no direction, express or implied, to appropriate investments to the legacy, and where, as here, there was no necessity for an immediate realisation or division, the trustees were not entitled to set aside specific investments to meet it—*Scott's Trustees* v. *Scott*, November 1, 1895, 23 R. 52, at p. 59 foot, 33 S.L.R. 65; *Vans Dunlop's Trustees* v. *Pollok*, 1912 S.C. 10, 49 S.L.R. 7. That was especially so where, as here, the business in which the estate was invested was a prosperous one.

At advising—

LORD PRESIDENT — The questions submitted for our judgment in this case relate to the succession of the late Mr John Colville. He died in August 1901, survived by Mrs Colville, by one son, and by one daughter. The scheme of his settlement in so far as relates to the son and daughter, with whose interest alone we are concerned in this case, is simple. To the daughter he bequeathed a legacy of £5000 and a liferent of £20,000. This is her testamentary provision. To the son he bequeathed the residue of his estate, and, of course, the income. That is his testamentary provision. These provisions, "including" (to use the words of the settlement) "the legacy of £5000," he declared to vest not at the date of the testator's death but on his children respectively attaining twenty-five years of age, or, in the case of the daughter, being married. The daughter is unmarried and has attained twenty-five years of age. Her testamentary provisions have vested and are now payable. Accordingly she claims payment of her £5000 legacy. The trustees reply that they are ready to give her, not the £5000 which was bequeathed to her by her father, but certain railway debenture stock in which they say they invested the £5000 legacy in November 1902. That railway debenture stock, it is agreed, has now considerably depreciated in capital value.

It is certain that the trustees were not expressly authorised to sever the legacy of £5000 and place the money upon separate investments. It is equally certain that they were not impliedly authorised to do so, because it is agreed that they were "not constrained thereto by any necessity for immediate distribution of the trust estate" or any part thereof. They came to the resolution to make an appropriation merely because they considered it expedient so to set aside and secure in such investments a sum to meet the legacy."

In these circumstances I am very clearly of opinion that, there being no expressed or implied power to set aside specific investments to meet this legacy, the daughter is entitled to have her £5000, and her claim cannot be legally met by an offer to give her something different and something less.

LORD MACKENZIE—I agree in the result at which your Lordship has arrived.

As regards the first and second questions, I think that the trustees were not warranted in making an appropriation to meet the legacy of £5000. The direction to pay that legacy to the daughter on her attaining the age of twenty-five, or earlier in the event of her marriage, I do not think can be satisfied by tendering to her depreciated investments. It is clear that there is no express direction to appropriate. It is also clear that there may be in certain cases an implied direction to make an appropriation, and the case of *Robinson*, 8 R. (H.L.) 127, was said to be similar to the present. But I think that case is plainly not applicable, because the direction there was to make provision, first, for the payment of two specific legacies, which were to be held in liferent and in fee, and then for a division of the residue. The terms of that settlement indicate that in order that there might be no delay in dividing the residue it was necessary to appropriate. In the present case there is no ground for any such implication, and the statement set out in article 8 of the Special Case makes that point perfectly clear.

LORD SKERRINGTON — I concur with both your Lordships.

LORD JOHNSTON was not present.

The Court answered the first and second questions of law in the negative.

Counsel for the First and Third Parties—Clyde, K.C.—Watson, K.C.—C. H. Brown. Agents—J. & J. Ross, W.S.

Counsel for the Second Party—Chree, K.C. —Christie, K.C. — Hedderwick. Agents — Graham, Johnston, & Fleming, W.S.

Friday, January 16.

SECOND DIVISION.

[Lord Ormidale, Ordinary.

MENZIES *v.* M'KENNA AND OTHERS.

Jurisdiction—Court of Session—Declarator —Declarator of Heirship without Executorial Conclusions—Competency.

An action of declarator that the pursuer was the nearest lawful heir of line of A, brought in order that the pursuer might obtain such evidence of descent as would assist him in a claim to have his name inserted in an official roll of baronets instituted by Royal Warrant,