VII, cap. 69) a petition for the winding-up of the Broughty Picture House, Limited. The petitioners were creditors of the company to the extent of £113, 15s. 10d., being the balance of an account due to them by the company for plumber work in connection with the erection of a picture house at Broughty Ferry in 1916. Various other creditors of the company whose claims remained unsatisfied approved and concurred in the petition, and Mr J. E. Miller, C.A., Dundee, was suggested as liquidator. Answers to this petition were lodged by the directors of the company and by various creditors and shareholders, who, although not opposing the petition, desired the appointment by the Court either of their own nominee, Mr R. J. Logie, C.A., Dundee, or of an entirely neutral liquidator.

LORD JUSTICE-CLERK—I do not think this was a case in which answers should have been lodged. The parties should simply have appeared at the bar and stated the facts. I do not think that in this case there is any reason to suppose Mr Miller, who is the nominee of a large majority of the creditors of this company, will do otherwise than discharge his duties properly, and I am therefore for granting the prayer of the note.

LORD DUNDAS—I concur.

LORD SALVESEN—I think what we have chiefly to regard is the desire of those who are most interested in the realisation of the assets of this company, and Mr Garson's clients are in that position. They include nearly three-fourths of the unsecured creditors, and they accordingly have an interest in securing the best possible price for the assets. So far as Mr Fraser represents unsecured creditors, his interests are identical. I agree with your Lordship that answers ought not to have been lodged, and that any objections to the appointment of the liquidator proposed should simply have been stated at the bar. It is very desirable in liquidations that all unnecessary expense should be avoided when parties are attempting to induce the Court to appoint a neutral liquidator because an objection of some kind is taken to the nominee of the majority of the creditors. Objection to receive effect should be of a tangible or definite nature, and nothing that is not of that nature should be put forward.

LORD GUTHRIE—I agree. I think the objections to Mr Miller's appointment are too vague and unspecific to receive effect.

The Court granted the prayer of the petition.

Counsel for Petitioner—Garson. Agents—Oliphant & Murray, S.S.C.

Counsel for Respondents—M. P. Fraser. Agents—Clark & Macdonald, S.S.C.

Friday, July 6.

FIRST DIVISION.

[Lord Hunter, Ordinary.

MURRAY *v.* BRUCE.

Superior and Vassal—Ground Annual—Casualties—Grassum—"A Duplication of the Ground Rent or Ground Annual."

A contract of ground annual granted in 1877 stipulated for a ground rent or ground annual payable at two terms in the year, Whitsunday and Martinmas, beginning the first term's payment at a certain date. There followed a clause stipulating for liquidate penalty and interest, and then the following words—"And also under the real lien and burden of the payment of a duplication of the said ground rent or ground annual in respect of the said subjects in name of grassum therefor at the expiry of every nineteenth year from and after the term of Martinmas 1877 over and above the ground rent or ground annual . . ., with interest and penalty as provided with regard to the said ground rent or ground annual." *Held* (*sus.* Lord Hunter, Ordinary) that the sum payable to the granter of the contract in every nineteenth year was a sum equal to the amount of the ground rent or ground annual in addition to the ground rent or ground annual for the year.

Finlay v. *Adam*, 1917, 54 S.L.R. 388; *Commercial Union Assurance Company, Limited* v. *Waddell*, 1917, *ante*, p. 497, *distinguished*.

Governors of George Heriot's Trust v. *Lawrie's Trustees*, 1912 S.C. 875, 49 S.L.R. 561, *doubted per* Lord Johnston.

Bertram Murray, *pursuer*, brought an action of maills and duties against Mrs Ada Davis or Bruce, *defender*, and others, her tenants, to obtain payment of £133, 6s. 8d., the alleged amount of a grassum stipulated for in a contract of ground annual.

The *contract of ground annual*, which was dated 21st February and recorded 7th March 1877, after disponing a plot or area of land to the defender's authors, provided as follows—"And which plot or area of ground thereby disponed was so disponed always with and under the burdens, conditions, restrictions, declarations, and others therein specified or referred to; and particularly with and under the real lien and burden of the payment of a yearly ground rent or ground annual of £66, 13s. 4d. payable out of the subjects disponed under the said first-mentioned contract of ground annual, which ground rent or ground annual was declared to be a *debitum fundi* to be paid to and uplifted and taken by the [pursuer's authors] furth of and from the said plot or area of ground thereby disponed and houses and buildings erected or to be erected thereon on any part or portion thereof, and from the readiest rents, maills, and duties of the same, at two terms of the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment of the said

ground annual at the term of Martinmas 1877, with one-fifth part further of each term's payment in case of and for each failure in the punctual payment thereof in name of liquidate penalty, the said termly payments themselves bearing interest at the rate of five per centum per annum for each term's payment from and after the term at which they respectively become due till paid; And also under the real lien and burden of the payment of a duplication of the said ground rent or ground annual in respect of the said subjects in name of grassum therefor at the expiry of every nineteenth year from and after the term of Martinmas 1877 over and above the ground rent or ground annual payable for the said subjects thereby disponed, and that for the year then current but for that year only, beginning the first payment of the said grassum at the term of Martinmas 1896, and so forth continuing in the regular payment of the said grassum at the expiry of every nineteenth year from and after the said term of Martinmas 1896, with interest and penalty as is provided with regard to the said ground rent or ground annual."

The pursuer *pleaded*—"The pursuer being entitled, in virtue of said first-mentioned contract of ground annual, to enter into possession of said subjects, and uplift the rents thereof, decree should be pronounced in terms of the conclusions of the summons."

The defender pleaded—"2. On a sound construction of the contract of ground annual the 'duplication' of the ground annual therein stipulated for being a sum of £66, 13s. 4d., and these defenders being ready and willing to pay the said sum of £66, 13s. 4d., they are entitled to be assoilzied from the conclusions of the summons."

The *facts* of the case appear from the opinion of the Lord Ordinary (HUNTER), who on 6th December 1916 sustained the second plea-in-law for the defender, and found that the amount payable in name of grassum was £66, 13s. 4d., and, on 18th January 1917, in respect that the defender had paid the said sum with interest assoilzied the defender.

Opinion.—"In this action of maills and duties the question which I have to determine is the amount of a grassum payable by the principal defender to the pursuer at Martinmas 1915.

"By contract of ground annual dated 21st February 1877 the pursuer's authors sold and disponed to the defender's author a plot of ground in the parish of Govan under the real burden of payment of a yearly ground rent or ground annual of £66, 13s. 4d., and also '. . . [*His Lordship then quoted the clause.*] . . .' The ground itself was disponed to the granter of the contract of ground annual in security of the ground rent and the grassum.

"At Martinmas 1915 a grassum became payable by the defender to the pursuer, who claimed payment of £133, 6s. 8d., being twice the amount of the ground annual. The defender was willing to pay £66, 13s. 4d., but resisted payment of the larger amount.

"From the phraseology of the clause there is no doubt that the grassum is payable in addition to the feu-duty payable. The question is whether a duplication of the ground annual means once or twice the amount of the ground annual giving the owner twice or three times the amount of the ground rent for the year when the grassum is payable. The pursuer maintains that the question is concluded in his favour by the cases of *Earl of Zetland* v. *Carron Company*, 1841, 3 D. 1124, and *Governors of George Heriot's Trust* v. *Lawrie's Trustees*, 1912 S.C. 875, 49 S.L.R. 561 (followed by Lord Cullen in the *Commercial Union Assurance Company, Limited* v. *Waddell*, 1917, *ante*, p. 497).

"In the former of these cases the reddendo clause in a feu charter was for yearly payment to the superior of a certain sum of feu-duty, 'and paying a duplicand of the said feu-duty at the end of every twenty-five years, upon payment of which duplicand, over and above the feu-duty of the year in which it fell due,' the superior should be obliged to enter the vassal. It was held that the superior was entitled at the term in question to payment of a sum equivalent to three years' feu-duties.

"In dealing with the meaning of the duplicand the Lord Ordinary (Lord Jeffrey) said—'The duplicand, or double, that is to be actually paid, is not one but two years' duties.' In the Inner House the Lord Justice-Clerk said—'I am unable to find any ground for differing from the Lord Ordinary or for saying that "duplicand" is anything but double of the feu-duty.'

"In *Governors of George Heriot's Trust* v. *Lawrie's Trustees*, where the obligation in a feu contract was to pay 'a double of the said respective feu-duties before mentioned in name of composition,' the First Division of the Court held that the amount so payable for composition was in each case a sum equivalent to double of the annual feu-duty over and above the half-year's feu-duty due at the term when the composition fell to be paid.

"The Lord President said—'This is a pure question of construction of what the parties meant, and I cannot say that personally I have had much difficulty in coming to a conclusion.'

"Certain cases were quoted to us, and in such a matter cases are useful, but unless the cases deal with words which are exactly similar they are not absolutely authoritative.'

"The language which I have to construe arises in a contract of ground annual and not in a feu contract, as in the cases of *Earl of Zetland* and *Governors of George Heriot's Trust*. If, however, the words used had been 'the duplicand' or 'a double' of the ground rent I should not have considered myself justified in taking a different view from what was there taken. I do not, however, think that 'a duplication of the ground annual'—the words used in the contract—have the same meaning as 'the duplicand' or 'a double,' the words used in the cases founded upon by the pursuer. A duplication of a thing or of an amount does not appear to me to be two copies or twice the

amount of the thing or amount duplicated. I do not think that there is any distinction between a duplication and a duplicate. One thing is said to be a duplicate of another if it is similar thereto in all respects, and one amount is a duplicate of another similar amount. It appears to me to be an unnatural use of language to employ the words a duplication of a ground rent as referring to and including twice the amount of the ground annual. In the case of *Governors of George Heriot's Trust* Lord Johnston, though not dissenting from the judgment of the Court, said—'I must say that the impression which the words used have made upon me is that "a double of," in the collocation in which the words occur, naturally means "a replica of"—that is (as the "double" is something to be calculated in money), that these words mean a sum which is the same as, and not twice as much as, the feu-duty.' I think that what is there said is directly applicable to a stipulation in a contract of ground annual for payment of a grassum amounting to 'a duplication of the ground rent.' In my opinion the defender's contention ought to prevail."

The pursuer reclaimed, and argued—The word "duplication" meant the act of making two duplicates and was used to mean the duplicates so produced taken together, not one or other of them. Similarly a triplication did not mean one of the three similar things produced by that act but the product. In exactly similar circumstances a double of the feu-duty was held to mean two feu-duties—*Governors of George Heriot's Trust* v. *Lawrie's Trustees*, 1912 S.C. 875, 49 S.L.R. 561—and a "duplicand" had been similarly interpreted—*Finlay* v. *Adam*, 1917, 54 S.L.R. 388—and "duplication" had been regarded as equivalent to a duplicand—*Magistrates of Dundee* v. *Duncan*, 1883, 11 R. 145, 21 S.L.R. 107—and the two terms had been regarded as interchangeable—*Commercial Union Assurance Company* v. *Waddell*, 1917, *ante*, p. 497. The pursuer was therefore entitled to twice the annual rent as grassum.

Counsel for the defender were not called on.

LORD PRESIDENT—The success of the Lord Ordinary in distinguishing between this case and the cases of the *Earl of Zetland* v. *The Carron Company*, 3 D. 1124, and *Heriot's Trust* v. *Lawrie's Trustees*, 1912 S.C. 875, is, I think, complete. We can with equal success distinguish this case from *Adam* v. *Finlay*, 1917, 54 S.L.R. 388, and *Commercial Union Assurance Company* v. *Waddell*, 1917, 54 S.L.R. 497, both of which were decided on appeal after the date of his Lordship's interlocutor. In the contract of ground annual before us I think the expression duplication signifies a duplicate copy or version—a counterpart. My opinion can therefore be expressed in the language of the Lord Ordinary where he says—"I do not think that there is any distinction between a duplication and a duplicate." Accordingly I am for adhering to his interlocutor.

LORD JOHNSTON—I am glad that your Lordships have found it possible to distinguish between the present case and that of *Adam* v. *Finlay*, 1917, 54 S.L.R. 388, recently before a Court of Seven Judges. But I do not think that it is possible to do so without indirectly condemning, though not directly overruling, the case of the *Heriot's Trust*, 1912 S.C. 875.

LORD MACKENZIE concurred.

LORD SKERRINGTON—I was of the majority in *Adam* v. *Finlay*, 1917, 54 S.L.R. 388, solely because I agreed with the view of the Lord Justice-Clerk in that part of his judgment where he said—"In the *Earl of Zetland's* case, 3 D. 1124, the Court interpreted the term 'duplicand' as meaning two years' feu-duties. That interpretation, I assume, has been acted on by the profession since then." I thought that it would not be right for the Court to alter a rule of conveyancing laid down in 1841 and presumably acted upon ever since. In the case of *Heriot's Trust*, 1912 S.C. 875, the Court interpreted the expression "a double" as equivalent to "a duplicand" in the technical sense. That is a very recent judgment, and it therefore stands in an entirely different position from that of *Zetland*. In the present case the word to be construed is "duplication," a word of ambiguous meaning, which may signify either the result of the process of doubling, *i.e.*, a "duplicand" on the one hand, or a single duplicate or replica on the other hand. It is for the pursuer to show that in the deed under construction the word "duplication" was used in the larger and more onerous sense of "duplicand," and in my opinion he has failed to do so.

The Court adhered.

Counsel for the Pursuer (Reclaimer)—Forbes—A. M. Mackay. Agents—Menzies, Bruce-Low, & Thomson, W.S.

Counsel for the Defender (Respondent)—The Lord Advocate (Clyde, K.C.)—C. H. Brown. Agent—S. F. Sutherland, S.S.C.

Saturday, July 7.

FIRST DIVISION.

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

Succession—Faculties and Powers—Exercise of Powers—Marriage Contract Giving Wife Power to Appoint amongst Children—Exercise of Power by Will.

By an antenuptial marriage contract the wife, in the circumstances which occurred, was given over funds provided by the husband, and had reserved to her over funds provided by herself, a power to appoint amongst the children of the marriage. She died leaving a trust-disposition and settlement which conveyed to trustees her whole means and estate, "including therein all means and estate over which I have power of disposal by will or otherwise." The trust-disposition and settlement contained no other refer-