COURT OF SESSION.

Wednesday, March 19.

FIRST DIVISION.

[Lord Hunter, Ordinary.

BROWN AND OTHERS *v.* GREGSON.

(Reported *ante* November 12, 1915, 53 S.L.R. 80, and 1916 S.C. 97.)

Succession—Election—Surrender for Uses of the Trust of Property of Testator Taken in Reprobation of Trust Deed—Impossibility of Surrender for Trust Purposes.

A testator died domiciled in Scotland, leaving heritable and moveable property there, and moveable and immoveable property in the Argentine Republic. By his will, which contemplated a sale of his Argentine immoveables by his trustees, he divided the whole residue of his estate amongst his seven children in equal shares, declaring the bequests in each case to be in full of legitim, with a clause of forfeiture in the event of repudiation of these provisions by any of the beneficiaries. By a codicil he restricted the right of one of his daughters to a liferent with the fee to her children. The Argentine Courts applying the Argentine law, which did not recognise trusts with reference to immoveable property in the Argentine, declared the testator's writings null and void in so far as they dealt with his Argentine immoveables, and his seven children each took one-seventh of the Argentine estate as his necessary heirs under Argentine law. The daughter claimed her legitim, which did not affect the right of her children to the fee of her share, and was paid her legitim out of the testator's moveable estate, in addition to the one-seventh of the Argentine immoveable property taken by her as one of the necessary heirs. In a multiplepoinding the other six children of the testator claimed the provisions in their favour under his testamentary writings, but maintained that they were not bound to make available for the purpose of fixing the share of the testator's estate left in fee to his grandchildren the six-sevenths of the Argentine immoveable estate taken by them as necessary heirs. *Held* (*rev.* judgment of Lord Hunter, Ordinary) that the six children of the testator being unfettered owners of the shares of the Argentine immoveables taken by them as necessary heirs, and consequently being able to make those shares available for the purpose of the testator's testamentary writings, could not claim the bequests in their favour unless they made available their shares of the Argentine property for the purposes of the testator's testamentary writings.

Robert Charles Brown and others, the testamentary trustees of the late James Brown of Barlay, *pursuers and real raisers*, brought an action of multiplepoinding and exoneration against Miss Christina Isabella Brown and others to determine questions relating to the distribution of the estate of James Brown.

The testator died domiciled in Scotland on 12th March 1912 predeceased by his wife but survived by seven children, of whom one, Oswald Stanley Brown, was killed in action on 22nd December 1915.

James Brown (the testator) left a *trust-disposition and settlement*, dated 5th March 1901, which conveyed to the pursuers and real raisers his whole estate, means, and effects, heritable and moveable, wherever situated, for a variety of purposes, which included in the fourth place the following:—"I leave and bequeath the whole residue of my estate, means, and effects hereby conveyed equally among all my children who shall survive me, . . . declaring that if any child shall predecease me leaving lawful issue such issue shall be entitled equally among them to the share which their deceased parent would have taken had he or she survived me; and I declare . . . that the provisions above written conceived in favour of my children shall be accepted by them in full of legitim, portion natural, bairns' part of gear, executry or others whatsoever, which they or any of them can ask or demand by or through my decease or in any other manner of way; and if any of them shall repudiate this settlement and claim their legal rights, or shall in any way prevent this settlement taking effect, then such child or children shall forfeit all right to any share of that part of my estate, means, and effects which I may dispose of by law, and they shall have right only to their respective legal provisions, and the share or shares of such child or children shall in that event accresce and belong equally to my other children or their issue."

A *codicil*, dated 20th November 1901, was in the following terms:—"I direct my trustees, instead of paying and making over to my daughter Mrs Mary Brown or Gregson the share of residue of my estate, means, and effects bequeathed to her in the fourth purpose of said trust-disposition and settlement, to hold the said share and invest it in their own names for her behoof, and to pay the free income thereof to my said daughter during her life, or in their discretion to pay and apply the said income, or so much thereof as they may consider necessary for her behoof, and said income shall, if paid to my said daughter, be payable on her own receipt without the consent of her husband, and it shall be an alimentary provision and not affectable by her debts or deeds or the diligence of her creditors or by debts or deeds or diligence of the creditors of her husband: And on the death of my said daughter the share of residue retained as aforesaid, and any accumulations of income thereon in the hands of my trustees, shall be equally divided among the children of my said daughter then alive and the issue of any who may have predeceased *per stirpes*, and failing issue of my said daughter it shall be divided equally among my own children then alive and the issue of any who may have predeceased *per stirpes*."

The following *narrative of the facts* of the case is taken from the opinion of the Lord Ordinary (HUNTER):—"According to the statements made by the trustees of the settlement the truster left heritable property situated in the Argentine Republic valued at about £110,000. He also left moveable estate in the Argentine and moveable and heritable property in Scotland, the value of which was about £90,000. Mrs Gregson repudiated the provisions made in her favour by the trust-disposition and settlement and codicil of her father, and claimed her legitim out of her father's moveable estate in this country and in the Argentine. After the death of the truster testamentary proceedings were instituted in the Argentine Republic, in which it was decided by the Court that the testamentary writings were null in so far as regards the Argentine immoveable estate, and that that estate fell to be divided equally among the seven children of the truster. Mrs Gregson accordingly received one-seventh of this estate in addition to her legitim out of her father's moveable estate. In a Special Case decided on 12th November 1915 (1916 S.C. 97, 53 S.L.R. 80) it was held by the First Division of the Court—(1) that the election by Mrs Gregson to claim her legal rights did not involve forfeiture by her children of the provisions in their favour contained in the codicil, and (2) that the trustees were bound during the lifetime of Mrs Gregson to pay to the other children of the truster equally among them the interest accruing on Mrs Gregson's share. It is not disputed that the truster's estate other than the Argentine immoveable estate, and under deduction of the amount payable to Mrs Gregson in name of legitim, is divisible into seven parts, one-seventh share being held subject to the judgment in the said Special Case for Mrs Gregson's children. Considerable payments have been made by the trustees to the different members of the truster's family other than Mrs Gregson to account of their shares of residue."

The fund *in medio* consisted of the balance of the testator's estate other than the Argentine immoveable estate, and amounted to £6474, 4s. 11d.

Miss Christina Isabella Brown and others, five of the seven children of James Brown, *claimants*, claimed each to be ranked and preferred upon the fund *in medio* for such sum as should, along with such sums as they respectively had already received to account of their respective shares of that part of James Brown's estate, the succession to which was regulated by the law of Scotland, amount to a one-seventh share of the residue of the said part of James Brown's estate. They *pleaded*—"(2) The claimants not being required in the circumstances condescended on to elect between their legal shares of the testator's immoveable estate in Argentina and the benefits conferred upon them under the testator's testamentary writings, they should be ranked and preferred in terms of their claim."

George Birrell Carruthers and others, executors of Oswald Stanley Brown, *claimants*, claimed to be ranked and preferred on the fund *in medio* for such sum as would, with any sums paid to Oswald Stanley Brown by the pursuers and real raisers out of the estate under their charge, amount to an equal one-seventh share of the residue of the said estate. They *pleaded*—"(2) The claimants not being required in the circumstances condescended on to elect between their legal shares of the truster's immoveable estate in the Argentine and the benefits conferred upon them under the truster's testamentary writings, they should be ranked and preferred in terms of their claim. (3) The truster's trust-disposition and settlement being null and void *quoad* his immoveable estate situated in the Argentine Republic, his children were not put to their election as between their rights in the said estate and the benefits conferred on them in the said deed, and the funds and property which passed to the pursuers and real raisers fell to be administered and divided by them without reference to the said immoveable property. (4) The said Oswald Stanley Brown was not put to his election between his legal right in the said Argentine property and the bequest to him in the said trust-disposition and settlement, in respect that he had no power to make his said right available for the purposes of the said deed, *et separatim* that it was not competent for the pursuers and real raisers to acquire and administer the same in terms of that deed. (5) These claimants having no right or title to any part of the said immoveable property in the Argentine, no question of election arises *quoad* their claim."

Anita Mary Angelica Latham Gregson and another, the children of Mrs Mary Brown or Gregson, *claimants*, claimed—"(*c*) That the pursuers and real raisers should be ranked and preferred to a one-seventh share of the residue of said trust estate, including a one-seventh share of the said six one-seventh shares of the Argentine immoveable property or the proceeds or value thereof, to be held by them (subject to the rights of the parties entitled to the income thereof during the lifetime of the said Mrs Mary Brown or Gregson) in trust for the children of the said Mrs Gregson who may be alive at her death, and the issue of any who may have predeceased *per stirpes*." They *pleaded*—"(2) The children of the truster, other than Mrs Gregson, having elected to accept the provisions in their favour contained in the said trust-disposition and settlement and codicils, and having approbated the said trust-disposition and settlement and codicils, are not entitled to reprobate the same with regard to the disposal by the truster therein of the Argentine immoveable property, and the claimants are entitled to have the six one-seventh shares of said property claimed and possessed by the said children, or the proceeds or value thereof, brought into account in the division of the residue of the trust estate, or at least to have one-seventh of said six-sevenths or of the value or proceeds thereof surrendered to the trustees for administration and distribution in terms of the will. (3) The other claimants or their authors or predecessors having elected to accept the provisions in their favour under the said

trust-disposition and settlement and relative codicils, and being able to bring into account for the purpose of distribution by the trustees under the provisions of the said trust-disposition and settlement and codicils the six one-seventh shares of the said immoveable property in the Argentine, or alternatively one-seventh of said six-seventh shares or of the value or proceeds thereof, are bound to do so, and these claimants are accordingly entitled to be ranked and preferred in terms of their claim."

On 3rd September 1918 the Lord Ordinary, after a proof, repelled the pleas-in-law stated for the claimants Anita Mary Angelica Latham Gregson and another, and found the other claimants were not required to elect between their legal shares of the testator's immoveable estates in the Argentine and the benefits conferred upon them by the testator's testamentary writings; continued the cause and granted leave to reclaim.

Opinion.—[*After the narrative quoted supra*]—"It is maintained on behalf of Mrs Gregson's children that the final division of the trust-estate should be made upon the footing that the children of the truster taking under his settlement are entitled only to one-seventh each of the six shares of the Argentine immoveable estate taken by them, and that the value of the remaining seventh of the six shares should be taken into account in computing the amount of the share to be held for them.

"It may be noted that the decision of the Argentine Court declaring the late Mr Brown's testamentary writings null in so far as regarded the Argentine immoveable estate, and handing over that property to his children equally, had the effect of giving those children other than Mrs Gregson the exact share, neither more nor less, of that property which the truster under his trust-disposition and settlement intended them to receive. The terms of the codicil under which Mrs Gregson's children take do not indicate that it was the truster's intention in any way to cut down the shares of residue given under his settlement to the different members of his family. On the contrary, the truster clearly indicates that what his trustees are to hold for Mrs Gregson's family is the share of residue given to her under the fourth purpose of his settlement. So far as the Argentine immoveable property was concerned, the succession to which fell to be determined according to the law of that country, this share was the seventh part of that property, which Mrs Gregson has taken absolutely. Counsel for the Gregson family, however, argued that I was bound to give effect to their contention in consequence of the decision of the First Division in the Special Case, and the application of the equitable doctrine of approbate and reprobate. According to the latter doctrine, no one can take benefit under a document, and refuse the fullest effect they are able to give it—a requirement which, it is contended, necessitates the six members of the truster's family, who claim their provisions under his settlement, bringing into account, in the division of the residue of the trust estate the shares of the Argentine immoveable property taken by them.

"The doctrine of approbate and reprobate in Scotland is identical with that of election in England. The principle upon which the doctrine is founded, and the earlier leading cases in which it has been applied, are fully considered in the opinions of Lord Atkinson and Lord Shaw in the case of *Crum Ewing's Trustees* v. *Bayly's Trustees* (1911 S.C. (H.L.) 18, 47 S.L.R. 876. In that case a testator in his trust-disposition and settlement directed his trustees to hold a share of his estate for behoof of his daughter in liferent and her issue in fee, in such proportions as she might direct, and failing such direction equally among them. The daughter professed to exercise this power by a settlement under which she conveyed to trustees (1) this share of her father's estate; (2) a sum settled by her marriage-contract on her in liferent and her children in fee, subject to a power of apportionment by her; and (3) her own estate; and directed the trustees to hold the sums conveyed to them for her children in liferent for their liferent alimentary uses only and for their children in fee. So far as the share of her father's estate was concerned the appointment was bad, as it restricted the children's interest to a liferent, and conferred the fee upon persons who were not objects of the power. It was held that by the doctrine of approbate and reprobate the children could not by setting aside their mother's appointment take the fee of their grandfather's estate and at the same time take the benefits conferred on them by their mother's settlement with regard to the other estate dealt with therein.

"At page 21 of the report to which I have referred Lord Atkinson says—'It must I should think be assumed that every donor who executes a deed, and every testator who makes a will, intends that the gifts he purports to make and the benefits he purports to confer should be taken and enjoyed by those for whom he designs them, and none others, so that a beneficiary who asserts a claim to something given to another by their common benefactor necessarily defeats *pro tanto* the intention of that benefactor.' At page 23 the same learned judge quotes the following passage from Lord Eldon's opinion in *Ker* v. *Wauchope*, 1 Bli. 1, at p. 21:—'It is equally settled in the law of Scotland and of England that no person can accept and reject the same instrument. If a testator gives his estate to A, and gives A's estate to B, courts of equity hold it to be against conscience that A should take the estate bequeathed to him and at the same time refuse to effectuate the implied condition in the will of the testator. The Court will not permit him to take that which cannot be his but by virtue of the disposition of the will, and at the same time to keep what by the same will is given or intended to be given to another person.'

"Lord Shaw, who traces the doctrine in the civil law and deals with the state of the Scottish authorities, says—'In short, the

endeavour was simply to get at the real mind of the testator with regard to whether or not it was meant that the specific thing or its equivalent was to go in all the circumstances to the legatee.' The review of the previous authorities in *Crum Ewing's* case was undertaken with a view to show that the circumstance whether or not the beneficiaries' mother knew that her appointment of their grandfather's estate was bad was immaterial in considering whether a question of election had arisen.

"Among the earlier cases founded on by counsel for the Gregson family the only one which I need consider in detail is the case of *Dundas* v. *Dundas*, 4 W. & S. 460, referred to by Lord Cullen in the note to his interlocutor allowing a proof by the competing claimants as to Argentine law. In that case a settlement, probative according to the law of Scotland, was defective in point of form as to the conveyance of estate in England, and therefore null and void as regards its intended operation in England. It was held that the heir could not take that estate and at the same time claim a provision made to him in the trust deed.

"On behalf of the children who survived the truster, other than Mrs Gregson, it was maintained that they were never put to an election so as to impose upon them any obligation to communicate any benefit received by them outwith the settlement, and that by the law of the Argentine Republic which governs the succession to heritable estate situated in that country it was not in their power to surrender that estate for the purposes of the settlement. It appears to me that their contentions are well founded. As I read the decision of the Argentine Court these claimants did not repudiate the will. The proceedings, which led to a decree of nullity of the settlement so far as the Argentine estate was concerned were taken at the instance of Mrs Gregson and the public official who occupies in the Argentine a position somewhat similar to that of the Attorney-General in England. This circumstance seems to constitute a distinguishing feature between the present case and the other cases to which I was referred in which the doctrine of election was recognised.

"Upon the other point raised by these claimants, to the establishment of which proof on the Argentine law was allowed, I think it is proved that Argentine law does not recognise either in a direct or an indirect way a trust system such as we have in Scotland. According to the evidence given by Dr Palacios, a doctor of law of the National University of Buenos Ayres, anything preventing the free exploitation of property is prohibited by Argentine law, and it is not competent to bind yourself by contract not to part with property. In cross examination he explained that the spirit of the Argentine law is to prevent any difficulty in the transmission freely and easily of the property by the owner, and for that reason the owner is prohibited from binding himself not to dispose of the property, from mortgaging for more than ten years, and from leasing for more than five or ten years, while a testator may not appoint heirs to an heir. He further explained that it is so clear that a trust cannot be enforced in Argentina 'that most of the wills made in England regarding Argentina property have trust systems, and no one so far has been carried out.' The result of what I understand from the proof to be Argentine law is that the children could not surrender Argentine property to the purposes of the settlement. No doubt, in so far as they were *sui juris*, they might have sold the heritable property in the Argentine, and, if such an obligation had been imposed upon them, collated the free proceeds of sale as a condition of their participating in the residue *quoad ultra*. I was not, however, referred to any authority where a similar obligation had been imposed upon claimants under a will. The children of the truster claiming under his settlement founded upon the case of *Hewit's Trustees* v. *Lawson*, 1891, 18 R. 793, 28 S.L.R. 528. It was there held that a legatee who has also a claim *ex lege* to part of the testator's estate, included by that testator in a general settlement, cannot be called on to make his election between the legacy and his legal right if by his abandonment of his legal right the estate to which that right entitles him will not be surrendered to the uses of the will but will be treated as undisposed of. The truster had in that case directed that the residue of his estate should be divided among certain charities. Part of the estate consisted of English heritage. By an English statute neither that heritage nor the proceeds thereof could pass under the settlement to charities, while if the heir waived his right to it the effect of that statute was that the heritage would be treated as undisposed of. In these circumstances the heir, who was also a legatee, was held not to be put to an election.

"Lord Kinnear, the Lord Ordinary, in *Hewit's Trustees*, at p. 798 of the report, said—'It is obvious and elementary that a nullity can neither be reprobated nor homologated. The plea of approbate and reprobate assumes, as the Lord President explains in *Douglas* v. *Douglas*, 24 D. 1207, "the power of making an election and a consequent obligation to make an election," and his Lordship adds, that "to make a proper case of election the facts of the case must be such as to satisfy three conditions. In the first place the person making the election must have a free choice. In the second place the necessity of making the election must arise from the will, express or implied, of someone who has power to bind the person put to his election; and, in the third place, the result of the election of one or other of the alternatives must be to give legal effect and operation to the will so expressed or implied."'

"Lord M'Laren in the Inner House, at p. 804, said—'In the cases raising an election it is in general not necessary that the heir or person having the adverse interest should take any active step to set up the will, it is enough that he makes no adverse claim, in which case the trustees or executors may proceed to administer the estate

on the assumption that the testator's power of disposal is unchallenged. This much at least seems to be reasonably clear. In order to put a legatee to his election it must be in his power by waiving his objection to the will or adverse claim to perfect the right of the testamentary disponees.'

"In my opinion, as I have already indicated, the claimants under the settlement were not in a position to perfect the trustees' right. I therefore consider that the case of *Hewit's Trustees*, which is binding upon me, is an authority for holding that in the present case the claimants under the will are not put to an election. I propose to pronounce an interlocutor repelling the pleas-in-law for Mrs Gregson's family, finding that the other claimants are not required to elect between their legal shares of the testator's immoveable estate in Argentina and the benefits conferred upon them by the testator's testamentary writings, and continue the cause. As I am deciding the case in vacation I reserve the question of expenses, and grant leave to reclaim."

The claimants Anita Mary Angelica Latham Gregson and another reclaimed, and argued—The proof as to Argentine law did not disclose any difficulty, and certainly no impossibility, in making the Argentine immoveable property available for distribution in terms of James Brown's testamentary writings. No doubt the Argentine law would not admit of a trust with reference to immovables, and the pursuers and real raisers could not hold that property directly under the trust, but there was nothing to prevent the necessary heirs under Argentine law from conveying the immovables to the pursuers and real raisers as individuals absolutely, and receiving from them a back-letter embodying the trust purposes. Further, there was no difficulty in the necessary heirs giving the trustees a power of attorney embodying the directions in the trust, and empowering them to sell the immoveables and remit the proceeds to this country for distribution under James Brown's testamentary writings. Further there was nothing to prevent the necessary heirs themselves selling and remitting the proceeds for distribution to the pursuers and real raisers. Those expedients might have been more difficult if a continuing trust with reference to the Argentine immovables had been necessary or contemplated, but that difficulty was absent. No difficulty was caused by the fact that the trustees could not hold the Argentine immoveables upon a trust title. Trustees had constantly to take a title in their own names as individuals, as, *e.g.*, in the case of consols, and the case of trustees making up a title through the heir under the former law was closely analogous to the present case. Such formal difficulties were not sufficient to exclude the operation of the broad equitable principle underlying the doctrine of approbate and reprobate—*Cooper* v. *Cooper*, 1874, L.R., 7 E. & I. App. 53, *per* Cairns, L.C., at p. 63. James Brown's testamentary writings were clearly intended to take effect upon the Argentine immoveable property. The other claimants had taken the Argentine property as necessary heirs, *i.e.*, on the footing that the Argentine property was not effectively disposed of by the testamentary writings. Their right to it was based upon intestacy, and involved a repudiation of the testamentary writings. But they could not approbate and reprobate, and consequently they must if they claimed anything under the testamentary writings, as they did in point of fact, make the Argentine estate or what represented it available for distribution under the testamentary writings. They must do everything in their power to make the Argentine estate available, and unless it was absolutely impossible to make that estate available, which was not the case here, the obligation to elect was not excluded—*Davidson's Trustees* v. *Davidson*, 1871, 9 Macph. 995, *per* Lord Cowan at p. 1006, 8 S.L.R. 646; *Whistler* v. *Webster*, 1794, 2 Ves. Jun. 366a, *per* Sir Richard Arden, M.R., at p. 369; *In re Lord Chesham*, 1886, 31 Ch. D. 466, *per* Chitty, J., at p. 471; *Dundas* v. *Dundas*, 1829, 7 S. 241, 1830, 4 W. & S. 460; *Bennet* v. *Bennet's Trustees*, 1829, 7 S. 817; *Douglas-Menzies* v. *Umphelby*, [1908] A.C. 224; *Crum Ewing's Trustees* v. *Bayly's Trustees*, 1910 S.C. 484, *per* Lord Johnston at p. 492, 47 S.L.R. 423, 1911 S.C. (H.L.) 18, *per* Lord Atkinson at p. 23 and Lord Shaw at p. 27 *et seq.*, 48 S.L.R. 401. *Hewit's Trustees* v. *Lawson*, 1891, 18 R. 793, 28 S.L.R. 528, was distinguishable, for it was a case of impossibility—M'Laren, Wills and Succession, vol. i, p. 254. *Douglas' Trustees* v. *Douglas*, 1862, 24 D. 1191, was also a case of impossibility. But if either of those last cases did not turn upon impossibility they were inconsistent with *Crum Ewing's* case. *Brown's Trustees* v. *M'Intosh*, 1905, 13 S.L.T. 72, was not in point.

Argued for the claimants Miss Christina Brown and others—Those claimants had not repudiated the testator's writings either actively or passively. It was not suggested that they were precluded from taking a benefit under those writings by the forfeiture clause. All that they had done was to take up a neutral position in probate proceedings in the Argentine, and they simply found themselves in possession of the Argentine estate as the result of the operation of Argentine law, and without taking any steps to produce that result. If, however, their action amounted to repudiation, and consequently there was an obligation upon them to bring in the benefit they had obtained by repudiation, that obligation was limited, for as beneficiaries they were only bound to bring in the Argentine estate so as to give effect to the expressed intention of the testator, and only in so far as they could carry out that intention were they liable to make the Argentine estate available. In that connection election and collation were sharply distinguished in origin and object. Collation was confined to intestate succession. The law having determined the heir in heritage and the heirs in moveables by positive rules allowed an heir in heritage to come in as amongst the heirs in moveables upon such conditions as it chose quite irrespective of any intention of the deceased. The conditions were fixed by the law by an appeal to equity, not as a matter of giving effect to

the intentions of any testator, and when the heir could not bring in the land itself as in the case where it was entailed, the law allowed him to communicate its value. But election was applicable only to testate succession, it involved no question of equity, and it merely imposed upon a beneficiary who took under a will an obligation to make effective in so far as he could the expressed intention of the testator. That intention was the measure of the beneficiary's obligation. Here the testator's intention was that the trustees should hold the Argentine land for the purposes of the trust. Admittedly they could not do so, and nothing that those claimants could do would enable them to do so. The only methods of bringing the Argentine property under the will involved either a cash payment or the vesting of the trustees in the Argentine estate as individuals. A cash equivalent could not be demanded; there was no authority for such a proposition. Further, if it was sound it entirely eliminated the doctrine of impossibility, which was admittedly sound, for in the cases of *Douglas, Lord Chesham*, and *Hewitt* (*cit. sup.*), the value of the estate taken could have been calculated and communicated. Further, the equity of allowing a cash valuation of an interest, which could not be otherwise communicated, recognised in collation could not be applied in election, for that was in substance asking the Court to make a new will for the testator. If the testator intended his trustees to deal with land, they could only ask land from the beneficiary and not money. The same objection applied to the other expedient of vesting the trustees in the Argentine estate as individuals. The device of an *ex facie* absolute conveyance qualified by a back-letter was unknown in Argentine law, and it was at least certain that that device could never create a trust as regards Argentine land. But the testator's intention was that his trustees should hold the Argentine land in their capacity as trustees just as much as any other property of his. That was not a mere question of form of title. If that expedient were adopted, the trustees' title would be precarious and open to defeat by heirs or creditors. The testator did not intend his trustees to hold upon such a title. Moreover, it could not be presumed that the testator knew Argentine law and had that in view, for a testator was only presumed to know the law of his domicile. The truth was that the testator's directions as regards the Argentine law were impossible of fulfilment, and must be treated *pro non scripto* —Bell's Comm. i, 143. The present case was ruled by the cases of *Douglas, Lord Chesham*, and *Hewitt* (*cit. sup.*). *Crum-Ewing's* case (*cit. sup.*), per Lord Shaw at pp. 31 and 32, did not overrule the cases of *Douglas* and *Hewitt*. The general object of the testator was not a relevant consideration. All the Court had to consider was his expressed intention.

Argued for the claimants, Oswald Stanley Brown's executors—Those claimants adopted the argument of the immediately foregoing claimants. But their author had taken his share of the Argentine estate and had subsequently died, and by the operation of Argentine law his share had descended to his widow and children. As his executors those claimants had no right to it and consequently could not surrender it.

Argued for the pursuers and real raisers—As trustees they merely intervened to suggest that if it should be held that the value of the Argentine estate must be communicated for the purposes of the settlement, that could be done by a process of accounting with funds situated within this jurisdiction.

At advising—

LORD MACKENZIE—The general scheme of the testator's settlement is simple, being a direction to his trustees that the whole residue of his estate is to be equally divided among all his children who should survive him. By codicil he limited his daughter Mrs Gregson's interest to a liferent, the fee to go to her children, with a destination-over failing her issue. Seven children survived the testator. Mrs Gregson claimed and has been paid her legal rights, including one-seventh of the fee of the testator's immoveable property in the Argentine. As the result of a special case (reported 1916 S.C. 97, 53 S.L.R. 80) it was held (1) that Mrs Gregson's children did not forfeit their rights under the settlement in consequence of their mother having claimed her legal rights; and (2) that the interest accruing on Mrs Gregson's share goes during her life to the other children of the truster equally.

The testator left immoveable property in the Argentine worth about £110,000, and moveable estate in the Argentine and moveable and heritable estate in Scotland worth about £90,000. The property, other than the immoveable property in the Argentine, after deducting Mrs Gregson's legitim, is divisible into one-seventh shares. Under the Argentine law Mrs Gregson has received one-seventh of the immoveable property in the Argentine as one of the truster's necessary heirs. The result of this is that there are only remaining six of the one-seventh shares of the Argentine immoveable property.

Mrs Gregson's children claim one-seventh of these six shares, on the footing that the general scheme, being equal division of the whole estate, cannot be worked out as the testator planned if the testator's six children retain what the law of Argentine has given them; that they cannot take a portion of the testator's bounty and at the same time use the independent title which the Argentine law has given them in a way that will prevent the testator's wishes being carried out and frustrate his scheme; accordingly that this is a case for the application of the doctrine of election; and that the Court ought to make it a condition of their taking an equal share of the testator's property, other than the Argentine immoveable property, that they should permit the six shares of that property to suffer equal division into one-sevenths.

The doctrine of election rests upon the principle of equity, which forbids that a

person can disturb the general settlement of the deceased by claiming his legal rights and also the provision made by the settlement. There is in the present case an express forfeiture clause in the settlement applicable to anyone who prevents the settlement taking effect. The dispute in the present case is not as to the general doctrine of election, but in regard to its application to the present case. As against the contention of the Gregson family it is argued that there is no obligation to elect, because this cannot be done with effect. The argument was that according to Argentine law the testator was disabled from disposing of four-fifths of his immoveable property there, and that this went to his children as of right; that the Argentine law does not recognise trusts in regard to land, inasmuch as they are opposed to unfettered transfer. The result of this, it is said, is that the immoveable property cannot be conveyed to the testator's trustees and brought under the trusts of the settlement, and it was strenuously contended that there was no case in which the law had compelled election unless where the immediate consequence of the surrender was that the surrendered interest was brought within the sweep of the settlement. Stress was laid upon three cases—*Douglas* v. *Douglas*, *In re Lord Chesham*, and *Hewitt's Trustees*. In the first two of these the Court declined to compel what would have been a breach of trust. In *Hewitt's* case the English statute of mortmain prevented an effectual surrender being made. Here, however, the six children of the testator are owners in fee-simple of their shares of the Argentine immoveable property, and that not under the testator's settlement but under their legal rights. They are now in a position (apart from the question of those in minority) to elect effectually, and to give effect to the testator's wishes as regards equal division of the whole of his estate, including the immoveable property in the Argentine.

As regards the precise mode in which effect should be given to the settlement, various suggestions were made in the course of the argument in order to meet the difficulty created by the fact that Argentine law does not recognise a trust of immoveable property. It will, in my opinion, be sufficient to make a finding carrying out what Lord Brougham pointed out in the case of *Dundas* it was competent for the Court of Session to do, viz., to attach as a condition to the beneficiaries taking their shares of the property subject to the jurisdiction of this Court, that they should make available for the Gregson family their aliquot shares in the Argentine immoveable estate.

The terms of the settlement itself point to one method in which the share of the Argentine immoveable property may be made available. Power is conferred on the trustees to sell this estate, and to grant a power of attorney to one of themselves to realise it, with a recommendation, if they have not sold within six years from the testator's death, to sell as soon as conveniently may be thereafter. The trust contained in the codicil indicates that what was in the testator's mind was conversion. Now though the Argentine law does not recognise a trust, it does recognise a power of attorney. The testator's children might therefore grant a power of attorney to one of the trustees, or another person, for the purpose of selling and remitting the proceeds to this country; or the beneficiaries might themselves sell and hand the necessary proceeds to the trustees; or, alternatively, a conveyance might be granted to the trustees, not as trustees but as individuals, for the substantial purpose of getting in the trust estate, and a back-letter be granted. The criticism upon this method is that it involves risk either through breach of trust or the possible diligence of creditors. The testator must, however, be presumed to have intended such title as would carry out his intention. As is pointed out by Lord Cairns in *Cooper* v. *Cooper*, 1874, L.R., 7 E. & I. App. 53, at p. 67, the rule to be applied "does not proceed either upon an expressed intention or upon a conjecture of a presumed intention, but it proceeds on a rule of equity founded on the highest principles of equity." The principle of approbate and reprobate as was laid down by Lord Eldon in *Kerr* v. *Wauchope*, 1 Bli. 1, is the same as the English law of election. As Lord Robertson says in *Douglas-Menzies* v. *Umphelby*, 1908 A.C. at p. 232—"It is against equity that anyone should take against a man's will and also under it. This rests on no artificial rule but on plain fair dealing." The beneficiaries are in a position to vest themselves absolutely at any moment with the proceeds of a sale and thus give effect to the general scheme of the settlement. The case of the minor beneficiaries is different. They cannot be called on to elect until they attain majority.

The case of *Hewitt* was strongly founded on in argument, and especially the observation of Lord M'Laren that as it was not possible for the defender to surrender the real estate in England to the uses of the will, it followed that his right to the legacies bequeathed to him was not conditional on his making such surrender. Lord M'Laren also pointed out that in cases raising an election it is in general not necessary that the heir or person having the adverse interest should take any active step to set up the will. In *Hewitt's* case even if the heir had taken active steps under the English Mortmain Act, neither the English heritage nor the proceeds of it if it was sold could pass under the trust settlement to charities. From the opinion of the Lord Ordinary (Lord Kinnear) it appears that the heir could not dispose of the estates in favour of a charity except in accordance with statutory provisions, one of which was that he should live for twelve months after the gift was made. The case is therefore to be regarded in the same category as those of *Douglas* and *Lord Chesham* above referred to, in which effectual surrender was impossible. In dealing with the latter case, 31 Ch. D. at p. 472, Chitty, J., says that a court of equity never decrees an act to be done which is a breach of trust, or a mere idle act which could only lead to litigation. There was no interest in the

chattels (which were heirlooms) that Lord Chesham could make over for the benefit of his younger brothers, and the attempt to engraft a new doctrine of compensation on the doctrine of election failed. In the present case the three conditions necessary to make a proper case of election, as laid down by the Lord Justice-Clerk (Inglis) in *Douglas*, 24 D. at p. 1208, are satisfied. These are—"In the first place, I think the party who is put to his election must have a free choice, and that whichever alternative he chooses he shall have a right absolutely to that which he has chosen without the possibility of his right being interfered with or frustrated by the intervention of any third party. In the second place, the necessity of making the election must arise from the will, express or implied, of some-one who has the power to bind the person put to his election. And in the third place, the result of the election of one or other of the alternatives must be to give legal effect and operation to the will so expressed or implied." It may be that in no previous case has the doctrine of election been applied in similar circumstances to the present. In my opinion, however, the principle does apply, and in making a finding we are carrying the principle to its logical conclusion. The finding should in my opinion be in the following terms:—"Find that if any of the claimants shall take a share of the immoveable estate in the Argentine without making the same available for division in accordance with the general scheme of the testator's settlement, he or she cannot be entitled to claim under the settlement any share of the fund *in medio*." It only remains to add that I do not consider the argument advanced by the executors of Oswald Stanley Brown tenable. The fact of his death does not affect the position of the share to which he was entitled.

LORD CULLEN—The Argentine land or immoveable estate which belonged to the testator and is here in question was expressly included by him in the estates and effects which he purported to dispose of by his settlement, and the residue of which he directed his trustees in the events which happened to divide in fee equally in seven shares among the six surviving members of his own family and the family of Mrs Gregson, the one-seventh share falling to the latter having been intended to be liferented by their mother.

The evidence as to Argentine law establishes that the testator according to that law had no power of testamentary disposal of the said land save only as to one-fifth part thereof, and that the remainder passed of legal right on his death equally to and among his seven surviving children, including Mrs Gregson, as "necessary heirs." Of these seven children Mrs Gregson elected not to claim under the settlement. She received her legitim according to the law of Scotland, and she took the one-seventh share in the Argentine land falling to her as one of the necessary heirs. No question here arises regarding her rights. As regards the other six necessary heirs, the footing on which the present case proceeds is that if the circumstances call for an election on their part none of them have so far elected.

The testator, while including in his settlement the Argentine land on the bulk of which he had no power to test, as he did also the legitim fund, has not left to rest solely on implication his intention regarding the exclusion from benefit under the settlement of such of his intended beneficiaries as might claim legal rights interfering with the scheme of the settlement. The settlement provides "that the provisions above written conceived in favour of my children shall be accepted by them in full of legitim, portion natural, bairns' part of gear, executry, or others whatsoever which they or any of them can ask or demand by or through my decease in any manner of way, and if any of them shall repudiate this settlement and claim their legal rights or shall in any way prevent this settlement taking effect, then such child or children shall forfeit all right to any share of that part of my estate, means, and effects which I may dispose of by law, and they shall have right only to their respective legal provisions, and the share or shares of such child or children shall in that event accresce and belong equally to my other children or their issue."

It is on record admitted by those claimants who are the children of Mrs Gregson that the testator's settlement (including codicils) is contrary to Argentine law, and null in so far as it purports to regulate the succession to the Argentine land, and the settlement has been declared by the Argentine Court to be null and void to that extent and effect. There would appear to be two grounds for such nullity, one being the absence of testing power in the testator *quoad* the bulk of the said land, and the other being that the Argentine law does not allow land in that country to be held subject to such trusts as the settlement created.

In respect that the claimants, who are necessary heirs by the Argentine law, are entitled of legal right to the shares in the Argentine land which that law accords to them, while the testator intended that the land should wholly pass under his settlement, the children of Mrs Gregson, who take no interest in said land by Argentine law but were intended by the testator to share the proceeds thereof as part of his residue, maintain that if the necessary heirs are to be admitted to benefit under the settlement, it is a condition of their being respectively so admitted that they shall each bring in for distribution under the provisions of the settlement one-seventh of their respective shares of the said land or the proceeds thereof, so as to duly fill up the one-seventh share of residue which the testator destined to the children of Mrs Gregson. The necessary heirs, on the other hand, maintain that they are entitled to retain their respective shares of the said land, and at the same time each to claim full benefit under the settlement *quoad* the estate in the hands of the trustees forming the present fund *in medio*.

It is pertinent to the question thus raised to observe that for the accomplishment of the testator's scheme of distribution it is immaterial whether it be the Argentine land *in specie* or its realised price on sale that is brought into the hands of the trustees. The testator expressly contemplated a sale of the land by the trustees. I refer to the clauses in the settlement relating to said land.

On the question here at issue we had an excellent argument with a citation of numerous authorities bearing on the doctrine of approbate and reprobate or election. In the end the contention of the claimants, who are necessary heirs under the Argentine law, came to be this—that the condition which their opponents seek to attach to their claiming benefit under the settlement is one which is impossible of fulfilment, or at least is impossible of fulfilment without imposing on them active duties which the law does not call on them to undertake. The basis of this contention is found by them in the rule of Argentine law which forbids land in that country to be held on any title other than one of absolute and unrestricted ownership, and which would therefore render ineffective any conveyance by them to the testator's trustees, expressly *qua* trustees, for the trust purposes of the settlement. There appears to be no doubt that such a conveyance would be ineffective under the Argentine law. The said claimants do not maintain that a beneficiary under a will who is entitled to take on an independent title something which the testator intended ineffectively to dispose of by the will, and who is called on to "surrender to the uses of the will," that thing as a condition of his being admitted to benefit under the will, always does enough if he merely stands passively aloof and interposes no obstacle to the administrators of the will proceeding by virtue thereof to reduce the thing into possession for distribution. In many cases the will gives no title enabling the thing so to be reduced into possession by virtue thereof. Thus where land is taken *ex lege* by the beneficiary he ordinarily has the sole title to deal with it, but if it can be competently conveyed over by him for the purposes of the will he is bound, as a condition of receiving benefit under the will, to be active to the extent of making the necessary conveyance. The case of *Dundas*, 4 W. & S. 460, affords an illustration of this. But the said claimants say that such an active step by way of conveyance cannot here be taken *cum effectu*, inasmuch as a conveyance of the Argentine land to the trustees of the settlement *qua* trustees would be *ex concessis* an invalid conveyance according to Argentine law and of no use to the trustees. In answer to this the Gregson family propose that the conveyance should be one in the form which alone by Argentine law will give a valid title to the land with power to sell it—that is to say, a conveyance *ex facie* absolute in favour of the persons who are trustees, the latter at the same time granting a declaration of trust which will not encumber the title, but will bind them towards the beneficiaries to deal with the land and the proceeds of sale thereof as part of the trust estate under the settlement, The objection which the necessary heirs state to this proposal is that while such a form of transaction would by the law of Scotland be effectual to stamp the subjects conveyed with the character of trust estate to the effect of enabling them to be vindicated against the trustees and their creditors, it would not have the same effect according to Argentine law, for it appears that under that law (1) a declaration of trust such as is proposed could not be enforced by the beneficiaries against the holders of the *ex facie* absolute title, and (2) that creditors of the holders of the title would be in a position to ignore the trust altogether, and to take recourse against the subjects on the footing of their belonging in unrestricted ownership to the said holders.

Now it is true that when trustees acting under such a trust as the present one have to take documentary title to property of the trust it is the proper course to take a title which is *ex facie* in favour of themselves in their capacity of trustees where this can be done. Cases, however, are familiar in practice where such a form of title cannot be obtained. Trustees may, for example, have to take up shares left by a truster in companies which do not admit notice of trusts on their registers, or, again, they may take up Bank of England stock. In such cases the trustees must just take the form of title which they can get, so as to be enabled to administer the assets in fulfilment of the purpose of the trust. It is true, as pointed out by the necessary heirs, that according to the law of this country the *ex facie* absolute form of title, while it may lend itself to abuse on the part of dishonest trustees, does not involve the additional risk of the property held upon it being carried off by the personal creditors of the trustees, while by the Argentine law, as already stated, this risk does exist. But if the law of this country were the same as the Argentine law, there would be no doubt that trustees would, nevertheless, be acting in accordance with their duty in taking *ex facie* absolute title to property which the truster intended them to hold and administer if no other form of title could be obtained. Now we do not know how far the present truster was acquainted with the Argentine law relating to land. But we do know that his paramount intention regarding his Argentine land was that it should pass under his settlement and be held and administered by his trustees for distribution along with the rest of his estates. We know further that his intention was that if any of his beneficiaries should be entitled *ex lege* to rights in property included in his settlement which he had not power to defeat, such beneficiary should not be entitled to receive benefit under the settlement without passing from his legal rights to the effect of making the property available for distribution under the settlement. This being so, is it a reasonable inference that he intended his trustees to be debarred from accepting and acting

on whatever form of title granted by a beneficiary taking *ex lege* might be necessary to enable the particular thing so taken to be effectively made over to them and included in his intended scheme of distribution? I think not. Accordingly, as the form of title proposed regarding the Argentine land will, subject to disadvantages in quality which cannot be avoided, be an effective title enabling the trustees to hold and realise the land in question and bring its proceeds into distribution under the scheme of the settlement, and as it will impose on the necessary heirs no more active obligation than that of executing the required conveyance, I am of opinion that it is incumbent on each of them, as a condition of their being admitted to share in the fund *in medio*, to grant such a conveyance in favour of the trustees, the latter granting, *unico contextu*, the appropriate declaration of trust.

The cases specially founded on by the necessary heirs in support of their contentions were those of *Douglas' Trustees* v. *Douglas*, 24 D. 1191, *In re Lord Chesham*, L.R., 31 Ch. D. 466, and *Hewitt's Trustees* v. *Lawson*, 18 R. 793, 28 S.L.R. 528. They were all cases where the condition sought to be imposed on the beneficiary claiming benefit under the will was held not to affect him in respect of its being impossible of performance *cum effectu*. None of them appears to me to be near enough in its circumstances to the present case to form a direct guide. In *Hewitt's Trustees* v. *Lawson* a variety of considerations were used to found the judgment, but I think the judgment must ultimately be viewed as resting on these grounds—(1) that if the heir succeeding to the land in England had conveyed it to the trustees the conveyance would have been of no avail, as the trustees could not lawfully have made over the land or its proceeds to the charities; and (2) that at the time when the heir was by the terms of the will entitled to claim the benefits conceived in his favour thereunder he could not himself make an effective conveyance in favour of the charities.

An alternative mode of transaction is proposed by the children of Mrs Gregson. It is that the necessary heirs should sell the land in question and hand over the proceeds of sale to the trustees for distribution under the settlement. There is no doubt that this course would equally well subserve the fulfilment of the testator's scheme of distribution as would a conveyance of the land *in specie* to the trustees. The objection which the necessary heirs offer is that it would lay on them a degree of active duties and responsibilities which they say they are not called on to undertake. Whether they directly undertook the conduct of the realisation themselves or granted a power of attorney in favour of a nominee of the trustees for the purpose, it would be necessary for them, they point out, to undertake the obligations of vendors under a contract of sale, with all the possible attendant incidents of such a contract, out of which disputes and lawsuits might arise. The testator, they say, might no doubt have made his intention so express as to clearly throw on them the necessity of taking such a course as a condition of their being admitted to benefit under the settlement, but he has not done so, and none of the cases in this branch of law turning on implied intention have enforced such a degree of active obligation. This last-mentioned proposition appears to be true so far as the cases cited in the argument go. At the same time, if, as has been laid down by high authority, a beneficiary entitled to take something *ex lege* must do all he can to make that thing available for distribution under the will as a condition of his claiming thereunder, there would seem to be reasonable ground for saying that such beneficiary does not do all he can unless he sells the thing and hands over the proceeds where (1) it is fully within his power to do so, and (2) the adoption of such course will be effective, and will in the circumstances alone be effective, to fulfil the testator's purpose. I prefer, however, to rest my conclusion on the view that the necessary heirs being able to make the Argentine land in question available to the trustees by direct conveyance in the manner already referred to should do so.

A separate question was raised by the claimants, who are the executors of the late Oswald Stanley Brown. On the death of Oswald Stanley Brown in 1915 his share of the land passed by the Argentine law to his widow and child. His executors, on the other hand, claim right to his interest in the remainder of the testator's estate under the settlement. And they advance this proposition, that on the hypothesis that the other necessary heirs who here claim are bound to communicate their interests in the Argentine land as a condition of claiming benefit under the settlement, they, the said executors, are not affectable by the like condition, in respect that they have no right in or power over Oswald Stanley Brown's share in the Argentine land. This appears to me to be an untenable contention. It means that the said executors have taken under the will of Oswald Stanley Brown a species of right which their author did not *ex hypothesi* himself possess and therefore could not transmit to them. If, on the hypothesis stated, these executors are to be admitted to share in the fund *in medio*, it seems to me that this can only proceed on some arrangement come to between them and the widow and child of their author which will permit of the latter's share in the Argentine land being treated in the same way as the shares of the other necessary heirs.

LORD PRESIDENT—I agree with the opinions wich have just been delivered. It was not contended at the debate before us that the children of the testator other than Mrs Gregson *could* take under the settlement if it was possible for them to make the land in Argentina available for the purposes of the settlement, and they refused to do so. For in the words of Lord Cowan in *Davidson's Trustees*, 9 Macph. 1006, "equity forbids that a party can at once disturb the general settlement of the deceased by claiming his

legal rights and take advantage of the settlement by claiming under it." The sole question in controversy therefore came to be—Is it within the power of the necessary heirs to give effect to the intentions of the testator? To which I think the answer can only be in the affirmative, and that for the best of all reasons—They are, according to Argentine law, the absolute untrammelled owners of the land in Argentina and can do with it what they please. They do not and cannot say that they have no assignable interest in the Argentine land, nor that to bring it within the trust purposes would be to commit a breach of trust or to do an idle act. Nor did they maintain that they were bound to take no active step. Their position was that they were bound, if it was within their power, to give effect to the intentions of the testator. "The necessary heir" may carry into effect the purposes of the settlement relative to the Argentine immoveable property in the various modes suggested in your Lordships' opinions without infringing Argentine law. They cannot therefore take under this settlement unless they make available for the purposes of the settlement in one form or another the land in Argentina. I propose therefore that we recal the Lord Ordinary's interlocutor and pronounce a finding in the terms suggested by Lord Mackenzie.

LORD SKERRINGTON was absent.

The Court pronounced the following interlocutor—

"Find that if any of the claimants shall take a share of the immoveable estate in the Argentine without making the same available for division in accordance with the general scheme of the testator's settlement, he or she cannot be entitled to claim under the settlement any share of the fund *in medio*."

Counsel for the Pursuers and Real Raisers—Hamilton. Agents—J. & J. Turnbull, W.S.

Counsel for the Claimants, Anita Gregson and Others (Reclaimers)—Chree, K.C.—T. Graham Robertson. Agents—Alex. Morison & Co., W.S.

Counsel for the Claimants, Miss Christina Brown and Others (Respondents)—Moncreiff, K.C.—Leadbetter. Agents—Macpherson & Mackay, S.S.C.

Counsel for the Claimants, Oswald Stanley Brown's Executors (Respondents)—Sandeman, K.C.—R. C. Henderson. Agents—Somerville & Watson, S.S.C.

Thursday, March 20.

FIRST DIVISION.

(SINGLE BILLS.)

THE ABERDEEN STEAM NAVIGATION COMPANY, LIMITED, PETITIONERS.

Company—Memorandum of Association—Alteration—Power to Sell Undertaking—Companies (Consolidation) Act 1908 (8 *Edw. VII, cap.* 69), *sec.* 9 (1).

The Companies (Consolidation) Act 1908, sec. 9 (1), enacts—"(1) Subject to the provisions of this section a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it (*a*) to carry on its business more economically or more efficiently; or (*b*) to attain its main purpose by new or improved means; or (*c*) to enlarge or change the local area of its operations; or (*d*) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or (*e*) to restrict or abandon any of the objects specified in the memorandum."

A company having power to amalgamate with any other company with similar objects under a contract of copartnery which formed its constitutive writ, presented a petition craving the Court to confirm an alteration of its form of constitution by substituting for the contract of copartnery a memorandum and articles of association which had been adopted by special resolution duly confirmed, and to confirm an extension of its objects. The memorandum included amongst the objects of the company power to "sell, transfer, or dispose of the undertaking, property, and rights, heritable or moveable, real or personal, and business of the company or any part thereof." The Court *confirmed* the alterations made in so far as they conferred power to sell, transfer, or dispose of any part of the property and rights, heritable and moveable, real or personal, and business of the company, but refused to confirm the alterations so far as they conferred power to sell or dispose of the undertaking.

The Aberdeen Steam Navigation Company, Limited, *petitioners*, brought a petition for confirmation of an alteration of its form of constitution and of extension of its objects. No answers were lodged.

The petitioners were originally constituted in 1845 as The Aberdeen Steam Navigation Company, under and in terms of articles of copartnery. They were thereafter registered in terms of the Companies Acts 1862 and 1867 as an unlimited company. On 22nd November 1918 they were registered under the Companies Acts 1908 to 1917 as a company limited by shares under the name of The Aberdeen Steam Navigation Company, Limited. The articles of copartnery were altered from time to time, and in November