that a trustee who honestly acts in defence of the trust which he administers ought to be kept *indemnis* out of the funds of the trust; but no English or other authority has been cited to us in which a trustee who has incurred costs in defending himself or his own interest has been found entitled to recoup himself out of the pocket of a *cestui qui* trust. In the present case the bill promoted by the corporation of the city of Edinburgh aimed at the destruction of the municipal corporation of Leith. It had not for its object the destruction, alteration, or impairment of any one of the numerous statutory trusts administered by the Leith corporation beyond the abolition of the latter body. If that object were effected the ratepayers would have remained in the same position under the management of the extended corporation, in the election of which they would have had a voice.

I am, on these grounds, of opinion that the interlocutor appealed from ought to be affirmed, with costs.

Lord Davey — Speaking for myself, I so entirely concur in the judgment which I have just read of my noble and learned friend Lord Watson, that I do not intend to trouble your Lordships at any length.

I only desire to make one observation. I do not understand my noble and learned friend to have said anything in the judgment which I have read to impugn the correctness and authority of the decision of Sir George Jessel in the case of the *Attorney-General* v. *The Mayor of Brecon*, in the cases to which that decision is applicable. This case, in my opinion, differs in essential particulars from the *Brecon* case. In that case the question was whether the corporation could pay the expenses of resisting an attack upon their corporate privileges and duties out of the borough fund. In this case it is not disputed that the Corporation of Leith might lawfully defend themselves against an attack upon their existence out of their proper funds. Lord Moncreiff put the question thus in the Court of Session: "The true question which we have to decide," he says, "is not whether the respondents were entitled to defend their corporate existence, but whether the expenses of their opposition are to come out of this particular fund."

Therefore the question is whether the Corporation of Leith can lawfully charge the expenses of resisting the bill of the Corporation of Edinburgh on the rates leviable by them under the Public Health Act, which they administer for the purposes of that Act independently of their ordinary right, privileges, and duties. I am of opinion that they cannot, and therefore I concur in the judgment which has been proposed.

Lord Shand—Your Lordships are about to affirm the decision of the Second Division of the Court of Session, which again unanimously affirmed the judgment of the Lord Ordinary, and as I concur in the views expressed by my noble and learned friend Lord Watson I shall content myself by making a very few observations.

Whether it would have been possible for the appellants, whose existence as a Town Council was threatened by the bill which they successfully opposed, to have made some division of the expenses incurred, and to have framed a scheme of allocation and equitable distribution of these expenses or part of these expenses by requiring contributions by way of assessment from each of the various funds which they are entitled to raise in respect of the different trusts they administer, and in this way to impose an assessment to a small extent under the Public Health Act, as well as an assessment on funds of the other trusts and of the corporation, it is not necessary to consider. I quite agree that there is no possible ground on which it can be successfully maintained that the whole assessment can be levied under the Public Health Statute. The existence of the burgh was at stake, for its absorption into Edinburgh was proposed, and I see no reason to doubt that the appellants are entitled to be indemnified out of the capital funds of the burgh for the costs incurred in resisting that proposal. I concur, however, in thinking that the appellants were not entitled to impose a rate under the Public Health Act alone for that object, for those costs, if they could be said to be to some extent incidental to the carrying out of the purposes of that Act, were so to a small extent only—and while agreeing with the views of my noble and learned friend and of your Lordships, I may add that Lord Trayner has stated shortly and clearly the grounds on which I am ready to rest my decision.

Appeal *dismissed* with costs.

Counsel for the Appellants—J. B. Balfour, Q.C.—Cripps, Q.C. Agents—John Kennedy, for Irons, Roberts, & Company, S.S.C.

Counsel for the Respondents — Guthrie, Q.C.—J. D. Sym. Agents — Martin & Leslie, for Torry & Sym, W.S.

Tuesday, July 25.

(Before the Lord Chancellor (Halsbury), and Lords Watson, Shand, and Davey).

BOWMAN *v.* BOWMAN'S TRUSTEES.

(*Ante*, March 18, 1898, vol. xxxv. p. 608, and 25 R. 811.)

Succession—Vesting—Survivorship—Postponed Period of Distribution—Power of Trustees to Postpone Period of Distribution Indefinitely

A truster, who was a partner in a firm of coalmasters, gave his trustees power by his trust-disposition and settlement to represent him in the firm, and also to be parties to any new lease which the firm might enter into, and thus to continue the partnership indefinitely.

The trustees were directed to allow his widow the liferent use of his house, and such allowance as they should consider necessary for the maintenance of herself and of such daughters and their children as might be living with her, and were empowered to make advances during the currency of the trust to his children out of the shares of his estate "effeiring" to them. They were then directed, "on the dissolution and winding-up of the said firm, in the event of the predecease of my said wife, and, if she then survives, on her death," to divide his estate into four equal shares, and to pay one share to each of his children, A, B, C, and D, "or to their respective heirs."

The testator was survived by his wife, and the trustees represented him in the firm, and joined in taking new leases.

Held (*aff.* judgment of First Division, but on different grounds) that the fee of the truster's estate vested *a morte* in the truster's children, and that the survivorship clause only operated in favour of heirs in the event of a child dying in the lifetime of the truster.

Young v. *Robertson*, &c., 4 Macq. 319, *distinguished* by Lord Watson.

Opinion by Lord Watson and Lord Davey, that in determining the effect of a clause of survivorship as fixing the period of vesting, it is immaterial whether the conditional institutes are unnamed and called as heirs of the institute, or are named or called by a description independent of the institute.

The case is reported *ante*, *ut supra*.

The trustees of Mr Lawrence Bowman appealed against the First Division's judgment.

At delivering judgment—

LORD CHANCELLOR—I am satisfied that the Court below has arrived at the true construction of this will. Looking at the whole will I entertain no doubt that the exposition of it has been rightly arrived at, and the only reason I make any observation upon the subject is that I am not able to follow the reasoning which led the learned Judges below to that conclusion. I find myself, in I believe more than one instance, dissenting from the reasons which they have given for their judgment.

I have looked at this instrument as a whole. I have always protested and still protest against reading one man's will in the light of another man's will when they are in construction, in design, and in language often extremely different. I do not deny that what are called "canons of construction" are sometimes very useful for the purpose of making known the meaning which the law would attach to particular phrases and words, but I am very much disposed to say that canons of construction are, what has been popularly said of fire, very good servants but very bad masters. When I look at an instrument like this, I feel bound to see what the real view and intention of the testator was. I believe that in this case the Courts below have come to the right conclusion as to what the testator did intend, but I arrive at that conclusion by looking at the instrument as a whole seeing the circumstances with which the testator was dealing, and applying the words he has used in their natural meaning in the sentence in which they occur. Therefore I am prepared to affirm the judgment of the Courts below, although I regret to say not altogether for the reasons which have led the Courts to that conclusion.

LORD WATSON—I have come, not without hesitation, to the conclusion that the judgment appealed from may be affirmed, not for the special reasons assigned in the Court below, but on the grounds indicated by my noble and learned friend Lord Davey.

The testator Lawrence Bowman by his trust-disposition and settlement directed his trustees, on the dissolution and winding up of the firm of Bowman & Company, "in the event of the predecease of my wife, and if she then survives, on her death, "to realise my whole means and estate, and to divide the same into four equal shares, and to pay one share to each of my children—Archibald, Janet, Robert, and Isabella, or to their respective heirs."

I do not doubt, and to that extent I entirely agree with the learned Judges of the Court of Session, that the word "or," which introduces the respective heirs of the four children named is equivalent to "whom failing," and is an expression which imports the conditional institution of the heirs of each child to take the fourth share to which their predecessor is instituted in the event of the child dying before the point of time, whatever that may be, which was in the contemplation of the testator. I fail to see why a gift-over in favour of the heirs of an instituted child should be otherwise construed or have any different effect than a gift-over in favour of another relative or of a stranger *nominatim*. In every such case the question as to when the gift-over becomes operative depends upon the same considerations. The point to be ascertained is, at what period of time the testator must be held to have had it in view, or in other words, must be held to have intended that the right of the institute should come to an end if he was not then alive, and that the right of the conditional institute should emerge. Of course the intention of the testator in that respect must be matter of fair and reasonable inference from the whole terms of his will.

In the present case the time fixed by the testator for the division of his trust-estate into shares, and the distribution of these shares amongst the beneficiaries who are appointed to take is "on the dissolution and winding-up of the said firm of Bowman & Company in the event of the predecease of my wife, and if she then survives, upon her death." Had that direction stood alone, and had not been qualified by other provisions of the trust-settlement, it appears to me that the direction, in so far as it bears upon the date at which either the children named, if then in life, or in the

alternative, their then surviving heirs were to take, would have been more easy of construction. But the other provisions of the settlement disclose these peculiar features. From these it plainly appears that the main purpose of the trust was for accumulation of the profits of the colliery business carried on by the firm of Bowman & Company. No liferent right of the estate was thereby constituted. The trustees were merely directed to allow the testator's widow the liferent enjoyment of his dwelling-house, and to make her such allowance as they might consider necessary for the maintenance of herself and of such of the testator's daughters or their children as might be living in family with her. Provision was made for payment to his daughter Isabella and his son Robert of the sum of £1000 independently of any interest which they might take in the residue of the estate, and during the subsistence of the firm for payment to each of his sons Archibald and Robert of the sum of £2 per fortnight. And provision was made during the same period for payment to his son Archibald of a yearly salary of £104, payable quarterly, so long as he continued to perform his duty in attending to the interests of the trustees in connection with the firm of Bowman & Company.

That the accumulation of business profits before the realisation and distribution of the estate was the main purpose which the testator had in view is made apparent by the wide power which he conferred upon his trustee with respect to the conduct of the colliery business and the duration of the firm of Bowman & Company. In terms of the contract of copartnery under which the testator was carrying on that business at the time of his death in September 1882, the partnership did not necessarily expire until the termination in the year 1892 of the coal leases which it was formed in order to work. It was expressly covenanted that the firm should not be dissolved by the death of any partner, and that the representatives of a deceasing partner should have the option of retaining his share and interest in the business. By his trust-settlement the testator empowered his trustees, as representing him in the firm of Bowman & Company, "to be parties to any new lease or leases which the said firm may consider it expedient to enter into," and after providing that the trustees should not incur any personal responsibility from loss sustained by the firm in respect of such new leases, he directed that the profit or loss, as the case might be, should be added to or deducted from his trust-estate. In point of fact the trustees have already, with the other members of the firm, become parties to new leases of the collieries carried on by the company, which expire at 31st December 1904, Lammas 1905, and Whitsunday 1912, which meantime will probably have the effect of postponing the period of distribution of the trust-estate for no less than ten years.

If the time of the dissolution of the firm of Bowman & Company had been even approximately known to the testator, or had been ascertainable by reference to the provisions of his trust-settlement instead of being left to the discretion of the trustees, I am inclined to think that the actual time of distribution would have been the period at which the testator intended that the beneficiaries to whom payment was to be made should be ascertained, only such of his children as were still alive then taking, and failing them their heirs. The general frame of the trust-settlement favours that construction, because no right is constituted either in favour of the children named or their heirs, except the alternative right of the one or other of them to receive payment at that date.

The general canon of construction applicable to cases of this kind was discussed by the Lord Chancellor (Westbury), Lord Cranworth, and Lord Chelmsford, in the Scotch appeal of *Young* v. *Robertson et al.*, 4 Macq,, Ap. Ca. 314. The Court of Session had held, by a majority of ten judges against three, that the gift of residue vested *a morte testatoris*, and that the institutes who were then alive, but predeceased the period of distribution which was appointed to take place upon the death of the testator's widow, took in preference to the conditional institutes. The judgment was reversed by the House, who affirmed that the proper time for ascertaining the survivance of the institutes or conditional institutes, and their alternative right to take the shares provided to them, was the period appointed for distribution of the trust-estate on the death of the liferentrix, and not the decease of the testator.

Lord Westbury, in his opinion, which is entirely consistent with that of the noble and learned Lords who sat with him, refers to the "reasonable and established rules of construction" which are applicable to such a case, and these his Lordship states to be the same in the jurisprudence both of England and Scotland. One settled rule thus laid down by his Lordship is (4 Macq., Ap. Ca. 319), "that words of survivorship occurring in a settlement (that is, in a will) should be referred to the period appointed by that settlement for the payment or distribution of the subject-matter of the gift. That undoubtedly is the rule now finally established in this country, and it has been ascertained from the authorities which have been cited at the bar that the rule was established in Scotland even before it was finally recognised in this country."

Lord Westbury then proceeds to cite two instances in illustration of the natural and reasonable rule which he has thus stated. The first refers to the case where the testator gives a sum of money or the residue of his estate to be paid or distributed among a number of persons, and refers to the contingency of one or more of them dying, and then gives the estate or the money to the survivor "in that simple form of gift which is to take effect immediately on the death of the testator." In that case the words are construed to provide for the event of the death of any one of the legatees during the lifetime of the testator. His Lordship then goes on to say (4 Macq., Ap. Ca., 319,

320), "By a parity of reasoning, if a testator gives a life estate in a sum of money or in the residue of his estate, and at the expiration of that life estate direct the money to be paid, or the residue to be divided among a number of objects, and then refers to the possibility of some one or more of those persons dying, without specifying the time, and directs in that event the payment or distribution to be made among the survivors, it is understood by the law that he means the contingency to extend over the whole period of time that must elapse before the payment or distribution takes place. The result therefore is that in such a gift the survivors are to be ascertained in like manner by a reference to the period of distribution —namely, the expiration of the life estate."

Lord Cranworth, after stating his concurrence in all the views expressed by the Lord Chancellor, went on to say—"I take it that the rule is well established upon the authorities as well as upon principle, both in Scotland and in England, that where there is a clause of survivorship, *prima facie* survivorship means the time at which the property to be divided comes into enjoyment, that is to say, if there be no previous life estate, at the death of the testator; if there be a previous life estate, then at the termination of that life estate."

It appears to me to be in vain to contend that the provision of the trust-settlement which your Lordships have to construe in this appeal is in substance anything other than a clause of survivorship. The direction to the trustees is to divide the whole estate and to pay the shares to each of certain children named, and, in the event of their previous failure, to their respective heirs, who are the conditional institutes. The testator has not expressly or, so far as I can see, by plain implication, specified the time at which the failure of the *nominatim* institutes is to be ascertained for the purposes of and with reference to that alternative gift, and the time must therefore be determined according to the reasonable construction which the law supplies. I cannot avoid the conclusion that the words to be construed in the present case, if they are not differentiated by the single exceptional feature which they present, are within the rule of legal construction laid down by the members of this House in *Young* v. *Robertson*, *&c.*, and that if not so differentiated they disclose the testator's intention to be that the failure of his children named was a contingency which might occur at any time before the arrival of the period appointed by him for the division and distribution of his trust-estate.

The exceptional feature which I have referred to consists in the circumstance, already noticed, that the testator gave his trustees authority to enter into new mineral leases, which they have already done, and by that means necessarily to postpone the period appointed for division and distribution, so that the testator, who knew the terms of the leases under which his firm of Bowman & Company carried on business at the time of his death, and therefore knew the period at which the dissolution of the firm would probably take place if his trustees did not avail themselves of the power of prolongation, could not be aware of the period of the firm's dissolution if that power were exercised by the trustees. And if that period were taken as the date of ascertaining survivorship, then the testator must be held to have delegated to his trustees the duty and right of determining by their action at what date the shares of his trust-estate are to vest, and it may be of settling whether these shares are to be taken by his children as institutes, or by their heirs as conditionally instituted to them. To make the operative part of his settlement, the selection of the persons who were to succeed to the *corpus* of his estate, dependent in a great measure upon the option of his trustees was certainly an unusual if not a capricious provision; and that is one of the considerations which may fairly be taken into account in judging of the time at which the testator intended that survivorship should be ascertained. I have difficulty in holding that the provision was so capricious as to affect the application of the rule laid down in *Young* v. *Robertson, et al.*, but I do not entertain that opinion so strongly as to differ, if your Lordships were of opinion that it showed the testator's intention to be that his children named were to take, if alive at the period of his decease, although they should not survive the period of division. I do not think that the judgment appealed from can be supported on any other ground.

Lord Davey—The testator in this case, Lawrence Bowman, was at the time of his death a partner in the firm of Bowman & Company, coalmasters. By the contract of copartnery made between the testator and his partners, and dated the 20th May 1871, the partnership was to last during the term for which the colliery tacks or leases then held by the partners should be in subsistence, and by the 11th article it was declared that in case of the decease of any partner the copartnery should not then come to an end (unless the representatives of the deceased partners should so desire), but that the representatives of the deceased partner should come in his place and succeed to his rights and liabilities.

By his will, dated the 17th March 1882, the testator vested his whole estate, including his interest in the firm of Bowman & Company, in trustees. He gave to his widow the liferent use and enjoyment of his dwelling-house and furniture, and such allowance as his trustees might consider necessary for the maintenance and support of herself and such of the testator's daughters or their children as might be living in family with her, and in the event of her death he made similar provisions during the subsistence of the firm of Bowman & Company for his daughters Miss Isabella Bowman and Mrs Geddes, and the children of the latter. By the tenth purpose he empowered his trustees, as representing him in the said firm of Bowman & Company, to be parties to any new lease or leases which the said firm might consider it expedient to enter into.

The eleventh purpose is in the following words:—"On the dissolution and winding-up of the said firm of Bowman & Company, in the event of the predecease of my said wife, and if she then survives, on her death, I direct my trustees to realise my whole means and estate, and to divide the same into four equal shares, and to pay one share to each of my children Archibald, Janet, Robert, and Isabella, or to their respective heirs."

These are the words which your Lordships are called upon to construe.

The testator died on the 22nd September 1882. His daughter Isabella died on the 28th July 1891, and his son Robert on the 1st June 1893. The widow is still living.

The longer of the two leases in existence on the testator's death expired on Whitsunday 1892, but the trustees of the testator have joined with the other partners in taking new leases of the collieries carried on by the firm for terms the last of which will not expire until Whitsunday 1912. It has not been argued before your Lordships that this was in excess of the power contained in the testator's will. If so the effect would seem to be to postpone the dissolution and winding-up of the firm until the year 1912, and apparently the trustees have power to further postpone it for an indefinite period. For it can hardly be doubted that the testator intended if new leases were taken, as authorised by him, that the term of the partnership should be correspondingly enlarged, and his estate engaged for the purpose of working them.

This appears to me a material and admissible circumstance for consideration in construing the will. It is also material to observe that no liferent (except in the house and furniture) is given to the widow or to the testator's daughters. They are only entitled to an allowance at the discretion of the trustees. There is therefore an implied trust for accumulation, and (subject to the provisions of the Thelusson Act) the legatees will become entitled to the whole accumulation of income from the testator's death. It is obvious therefore that the postponement of the time of distribution is not merely for the purpose of making provision for the widow and daughters, but also and principally for the purpose of increasing the bulk of the property when it comes to be divided. Subject to the burdens, which do not exhaust the annual income, his legatees, whoever they may be, are by the provisions of the will entitled to the whole estate, capital, and income from the testator's death, though the period for distribution amongst them is postponed for the benefit of the estate.

It is agreed that the words "or his heirs" following a gift to a legatee create a conditional institution in Scotland as well as England, and that the heirs take as conditional institutes. A long series of authorities was referred to by the Dean of Faculty on behalf of the respondents in which a gift of that description, though preceded by a liferent, was held to confer a vested interest *a morte testatoris*, so that if the legatee survived the testator he acquired a vested and indefeasible interest. But it was argued by the learned counsel for the appellants that those cases were prior to and overruled by the decisions in this House, which established that if a gift be made after a liferent to a legatee, subject to a conditional limitation in event of the legatee's death, the event is referable to the period of distribution, and the legacy does not vest indefeasibly in the legatee unless he survives that period. That, no doubt, is the general rule, and it has been recognised in *Bryson's Trustees* v. *Clark*, 8 R. 142, and *Fyfe's Trustees* v. *Fyfe*, 17 R. 450, but like every other rule of construction its application may be modified by the context of the will. In his judgment on the present case Lord M'Laren refers to a previous decision of the Court of Session in *Hay's Trustees* v. *Hay*, 17 R. 961, in which a testator provided a liferent of his whole estate to his widow, and directed his trustees on the ceasing of the liferent to convey a certain specific heritable property to A B "and his heirs." It was held that the words "and his heirs" created a conditional institution in favour of the heirs in case of the death of A B. But the Court held that the gift vested *a morte*, and that A B was entitled though he predeceased the liferentrix. Lord M'Laren in delivering the judgment of the Court expressed himself thus—"We must endeavour to find some definite criterion to be applied to such cases, and I think the true criterion is this, that where the legatees of the second order are either mentioned by name or by some description independent of the first, then they may be taken to be *personæ delectæ*, and their contingent interest is sufficient to suspend the vesting of the estate. But if the legatees of the second order are described as the children or the issue or the heirs of the institute (there being no ulterior destination) they are to be considered in this question as persons instituted in consequence of their being the natural successors of the institute, and therefore as taking a right which is subordinated to his, and is not intended to interfere with his acquisition of the fullest benefit which it was possible for the testator to give him consistently with the benefits previously given to the liferenters or other persons."

I find great difficulty in concurring in this reasoning of the learned judge, or in seeing why a different construction as regards the time of vesting should be given to a conditional limitation in favour of persons unnamed, but described as heirs, issue, or the like, of the first legatee, and to one in favour of named persons or persons described by some description independent of the first legatee, *ex gr.*, of the other legatees or of their children. I cannot therefore assent to the proposition laid down by Lord M'Laren as a general rule of construction or criterion to be applied in such cases. But I think the circumstance that the gift over is not in favour of some *persona delecta* by name may be taken into consideration together with other circumstances appearing on the will which affect the construction.

In the present case the words of the will no doubt create a conditional institution, but I have arrived at the conclusion, in the special circumstances of the case (though not without difficulty), that the shares of the testator's children vested *a morte*, and that the effect of the words in question was merely to prevent a lapse in the event of the death of a legatee in the lifetime of the testator. As I have pointed out, the whole estate, income as well as capital (subject to the burdens) goes to the legatees from the death, and the time of payment only is postponed for the convenience of the estate. The testator has given his trustees a power which enables them to postpone indefinitely the winding up and dissolution of the partnership and consequent times of payment, and thereby indirectly, if the shares of the legatees do not vest *a morte*, to materially alter the rights of the parties entitled. It is extremely unlikely that the testator can have had any such capricious intention. Moreover, it is to be observed that the heirs to take would be the heirs ascertained at the time of the deceased legatees' death, who would take vested interests whether they survived the period of distribution or not (*Hood* v. *Murray*, 14 A. C. 124). If, therefore, the period of payment were prolonged there would be a strong probability of the substitution of one dead person for another, which is a construction to be avoided.

For these reasons I think that the judgment of the Court of Session should be affirmed.

Lord Shand—Like my noble and learned friend the Lord Chancellor, in coming to a decision as to the true construction of the testator's will in this case I do not think it necessary to inquire into any question as to the effect of the important judgments in other cases to which my noble and learned friends Lord Watson and Lord Davey have referred—cases undeniably materially different in their circumstances and in the terms of the wills or settlements which were there under consideration.

I agree in thinking that the judgment of the Court of Session ought to be affirmed, although not on the grounds which have been stated by the learned Judges. I find enough in the special terms of the testator's will to lead me to the conclusion that the testator's estate vested in his children, as I am satisfied he intended that it should, on his death. I may add, that in coming to that conclusion I do not feel that the decision is attended with the difficulties which my noble and learned friends Lord Watson and Lord Davey have expressed in the judgments they have now pronounced; and I believe the view which I take in this respect is also that of my noble and learned friend on the Woolsack.

The considerations which have led me to the conclusion that vesting took place under this will *a morte testatoris* are, in the first place, the great peculiarity we find in regard to the power given to his trustees, not only to receive the profits of the then existing copartnership, which had a short period to run, but also to renew the leases of the co-partnership from time to time. That power was taken advantage of, and although the testator, who was said to be anticipating immediate death in 1878, died in that year, the result of the power he gave to his trustees is that his funds are locked-up for a period extending to 1912. I can find nothing in the testator's will which indicates that he had any intention thereby to benefit any particular favoured individual who might survive the period of a renewed partnership, or to benefit any line of succession, or to found a family which should acquire a large amount of money. That provision was calculated and intended to benefit simply, I take it, his children—to benefit his family—and the circumstance that he gave that power without any indication that he thereby intended to benefit any particular future successor, indicates to me, or at least is a strong consideration with me, in holding that the vesting took place *a morte testatoris*. It is difficult to suppose that having given his trustees power to lock up his funds for a period of time he should have intended to deprive his children by a destination to their heirs of the power of using their shares of the estate as a present and useful fund of credit on his death.

In addition to that I think it is worthy of notice, that even in the will itself the testator seems to regard these provisions as provisions in favour of his children, for I find that in the eighth purpose of the trust he expresses himself in this way—"I hereby specially empower my trustees to advance during the currency of the trust out of the principal of the shares of my estates effeiring to any child, any portion thereof that my trustees may consider to be for their advantage," indicating that the testator himself regarded these bequests which he was making as bequests in favour of his children, as I have no doubt he did. He goes on to say, "and in like manner to the child or children of my deceased child." There is no suggestion there of any general heirs taking under the destination.

In that view of the will I have come to the conclusion that when the testator provides that this estate should be divided among his children "or heirs," he is simply providing for the case that a child might die before he died himself, in which event the heir would have taken his share, but taking the will as a whole I am clearly of opinion, and without difficulty, that this is a will under which vesting took place *a morte testatoris*.

Interlocutors appealed against *affirmed*.

Counsel for the Appellants—Haldane, Q.C.—W. Campbell, Q.C. Agents—A. & W. Beveridge, for Thomas White, S.S.C.

Counsel for the Respondents—The Dean of Faculty (Asher, Q.C.)—Ure, Q.C.—Sym. Agents—John Kennedy, W.S., for Macpherson & Mackay, W.S.