

LORDS DEAS, MURE, and SHAND concurred.

The Court affirmed the determination of the Commissioners in both cases.

Counsel for Appellants—Asher—Robertson. Agents—Campbell & Smith, S.S.C.

Counsel for Inland Revenue—Solicitor-General (Balfour, Q.C.)—Rutherford. Agent—D. Crole, Solicitor of Inland Revenue.

Wednesday, October 20.

SECOND DIVISION.

SPECIAL CASE — CAMPBELL'S TRUSTEES AND OTHERS.

Trust—Administration—Legacies—Time of Payment—Intention.

C. died leaving a trust-disposition and settlement in which she directed her trustees, *inter alia*—(1) to realise her whole estate with all convenient speed; (2) to pay certain enumerated legacies “at the first term of Whitsunday or Martinmas six months after my death;” (6) As an alimentary provision to the heir of entail who should succeed to her estate of D., to pay him the free income arising half-yearly as soon as convenient after the same falls due, beginning the first term's payment as at the term of Whitsunday or Martinmas twelve months after my death for the half-year preceding, and so on termly and continually during the life of the heir-of-entail.” She died at 9 o'clock on the morning of 15th May 1880. Held that, looking to the intention of the testatrix as shown by the various clauses of the trust-deed, the legacies fell to be paid on Martinmas 1880.

Opinion (per Lord Young) that the word “month” must, unless where otherwise expressed, be computed according to its primary signification as a lunar month.

Miss Laura Islay Campbell of Dunstaffnage, in the county of Argyll, died in London at 9 o'clock on the morning of the 15th day of May 1880, leaving a trust-disposition and settlement in which she directed her trustees, after collecting her whole estate and effects, and paying her debts, &c., to (2), “as soon as convenient after my death, deliver, and, at the first term of Whitsunday or Martinmas six months after my death, pay or account for all such bequests and legacies as I may thereafter direct.” The fourth and fifth purposes of the trust contained a list of the legacies, which amounted to £3900, exclusive of legacy-duty, and the last purpose of the trust was in the following terms:—“(Lastly) I hereby direct my trustees to hold the whole residue and remainder of my said estate and effects for the liferent behoof of Alexander James Henry Campbell, at present in Australia or elsewhere abroad, or failing him the heir-of-entail who shall at the said term of Whitsunday or Martinmas six months after my death be in possession of the family estate of Dunstaffnage; and my trustees shall pay to such heir-of-entail the free income arising from the said residue half-yearly, as soon as convenient after the same falls due, beginning

the first term's payment as at the term of Whitsunday or Martinmas twelve months after my death for the half-year preceding, and so on termly and continually during the life of the heir-of-entail,” the same being declared alimentary; “and upon the decease of such heir-of-entail my trustees shall, as soon as convenient thereafter, pay and make over the whole free residue and remainder of my said estate and effects to the heir-of-entail who shall thereupon succeed to the said estate of Dunstaffnage as his own absolute property.” The said Alexander James Henry Campbell returned from Australia in the end of 1879, and was the heir in possession of the entailed estate of Dunstaffnage.

The trustees, who appeared as the first parties in the case, contended that Miss Campbell having died on the morning of the Whitsunday term 1880, the first term of Whitsunday or Martinmas six months after her death was the term of Whitsunday 1881; that her pecuniary legacies were not payable till that term; and that the residue of her trust-estate would fall to be liferented by the heir-of-entail who should at the said term be in possession of the said estate of Dunstaffnage. It was, on the other hand, contended for the second parties, who were the heir-of-entail and the legatees, that the first term of Whitsunday and Martinmas six months after Miss Campbell's death was the term of Martinmas 1880.

The question proposed for the opinion and judgment of the Court was—What is the first term of Whitsunday or Martinmas six months after Miss Campbell's death within the meaning of the trust-disposition and settlement?

Argued for first parties—The word “month” was declared by Act of Parliament to signify a calendar month, just as in the case of bills of exchange. The six months after the death of the testatrix were therefore to be computed as calendar months, and thus the legacies did not fall to be paid till Whitsunday 1881.—13 Viet. c. 21, sec. 4; Chitty on Bills, p. 264.

Argued for second parties—This was not a case where the somewhat artificial rules of law for the computation of time arrived at in regard to deathbed and the construction of the Bankruptcy Statutes were to be applied, but a case where the intention of the testatrix must be given effect to. She made the term of payment six months after her death in order to give her executors time to realise her estate. By computing the term of payment of the legacies at Whitsunday 1881 the alimentary provision made to the heir of entail, to take effect at the first term of Whitsunday or Martinmas twelve months after her death, would fall to be paid on the same day as the legacies which she had specially declared to be payable at the first term of Whitsunday or Martinmas six months after her death, whilst her intention clearly was that the first alimentary payment out of the residue should only be made six months after the legacies were disposed of. (2) The computation must be made by lunar months in the absence of authority to the contrary, and therefore on either view the legacies fell to be paid at Martinmas 1880.

At advising—

LORD JUSTICE-CLERK—As a reasonable result of the whole case, and without going into subtle-

ties, but looking to the intention of the testatrix, I am of opinion that the first term six months after her death brings us to Martinmas 1880.

LORD GIFFORD—I concur in thinking that such a result is entirely in accordance with the intention of the testatrix.

LORD YOUNG—I have arrived at the same opinion with your Lordships. We have got the word "month" to interpret, and we must do so. We are called on to say what is the meaning of six months in a will which directs something to be done at the first term six months after the death of the testatrix.

Now, north and south of the Tweed "month" means two things. Its primary signification is the period of the moon or twenty-eight days. The other and only other signification is a calendar month—that is to say, one of the twelve months into which the year is divided in the almanac. In Scotland we have had very little occasion for referring to the distinction, and consequently there is a paucity of decision on the point, but we are nevertheless alive to the distinction, and this is specially evident in every sentence of the Supreme and Inferior Court. Where a prisoner is ordered to be confined for six or twelve months, we say it is to be for calendar months, and I know no authority to regard it as mere surplage. If not expressed, I take it that the law would adopt the primary sense of the word, and this shows that we make and know the distinction.

In the case of bills of exchange, merchants who deal with them have by long usage made a law unto themselves, and fortunately the same custom on both sides of the Tweed has adopted in this case the use of calendar months.

In other respects, if, as far as I can ascertain, we have no decisions nor practice on which rights are founded and established, there is a great advantage in having the same law all over the land. At the same time, the computation by calendar months is more easily made, and therefore in 1850 a general statute was passed directing that in Acts of Parliament a month should be a calendar month unless otherwise expressed, and this Act extends to Scotland, and further, goes on the assumption of a distinction between calendar and lunar months. Now, here I think the first term six months after the death of the testatrix, taken in the primary signification of the term, leads to Martinmas following on the Whitsunday on which she died, and this is a reasonable result, and probably accords with the intention of the testatrix. There is nothing to show that she meant to make the six months after her death exactly twelve and the anniversary of her death; and so reasoning strictly on this I come to the same conclusion as your Lordships, and answer the question put to us that the first term six months after Miss Campbell's death was Martinmas 1880.

The Court answered the question put to them in terms of these opinions, and found that the first term six months after the death of the testatrix was Martinmas 1880.

Counsel for First Parties—Guthrie Smith—A. Gibson. Agents—Mitchell & Baxter, W.S.

Counsel for the Second Parties—Solicitor-General (Balfour, Q. C.)—Ferguson. Agent—W. G. L. Winchester, W.S.

Thursday, October 21.

SECOND DIVISION.

[Lord Adam, Ordinary.]

MP.—LYONS v. ANDERSON AND OTHERS.

Poinding of Ground—Right in Security—Service of Summons.

Held that a heritable creditor who has served a summons of poinding of the ground on his debtor has thereby asserted his real right so as to interdict his debtor from removing the moveables or otherwise defeating his right in them.

This case arose out of a multiplepoinding to have the right ascertained to the proceeds of certain furniture which had been handed over by Matthew Thomas Anderson and others to Isaac Lyons, an auctioneer, residing at Greenock, for the purpose of being sold by public roup. The sale took place on the 15th of October 1879, and the sum of £76, 15s. 0½d. was realised, out of which Lyons deducted the sum of £41, 4s. 10½d., being the amount of certain advances made by him and expenses as detailed in the roup-roll, leaving a balance of £35, 10s. 2d., which he alleged to be the amount of the fund *in medio*.

Francis Woodrow Manford, who was called as a defender, objected to the condescendence on the fund *in medio* on the following grounds:—By bond and assignation and disposition in security, dated 3rd, 4th, and 7th August 1876, Matthew Thomas Anderson and others, who were also called as defenders, granted them to have borrowed from him the sum of £2000, which they bound themselves to repay at Martinmas 1876, and in security they disposed to him certain heritable subjects therein particularly described. As they however failed to pay the interest due under the said bond after September 1877, in order to secure his right to the subjects in the bond, he on 7th August 1879 raised an action of poinding the ground against them, which was duly served on 13th, 15th, and 19th August 1879, and decree in absence was pronounced against them on 21st October 1879. After the service of the summons the furniture belonging to the said heritable subjects was conveyed to Lyons' premises on the instructions of the defenders Anderson and others; on this coming to the knowledge of the objector he presented a note of suspension and interdict against them, praying, *inter alia*, for interdict against the sale and against the said Isaac Lyons paying the proceeds thereof to any other person than the objector. The said note was served on Lyons on 12th October 1879, and on 25th November 1879 the Lord Ordinary pronounced an interlocutor suspending and interdicting in terms of the prayer and declaring the interdict perpetual. It was explained that Lyons had no knowledge of the proceedings referred to before 12th October, when the said note was served upon him.

The objector pleaded—that "Having by the execution of the said summons of poinding the