forgotten that by the outlay of so large a sum on the lands, a much more valuable subject would be created, whereas the proper basis for estimating the true value of this estate is to take it as it at present stands, and determine the price by taking twenty-six years' purchase of the rental.

I therefore agree with your Lordship that we should adhere to the Lord Ordinary's interlocutor.

LORD M'LAREN—The value of the expectancies of heirs-substitute is recognised by statute, and that being so, what we have to determine is the capital value of this estate and also the mode in which this is to be ascertained. As it does not appear to me that the method adopted either by the Lord Ordinary or by Mr Menzies is the right one. I may state shortly the view which I hold upon this matter.

There may be various ways of ascertaining the value of an estate, but the way which Mr Menzies has taken seems to me to be open to serious criticism because he takes a low rental and applies to it a reduced number of years' purchase corresponding with the depreciation of the subject. I think such a method is unsatisfactory, because I agree with the Lord Ordinary in holding that it results in a double deduction.

But then I think the course adopted by the Lord Ordinary is also open to objection, because he proceeds upon a low rental, and he multiplies this by twenty-six. My difficulty about this method is, that it assumes, which I do not think that we are entitled to do, that a purchaser would give twenty-six years' purchase of the rental for an estate in the condition in which this one is reported to be. It appears to me that the capital value of an estate should, for purposes like the present, be estimated at what an intending purchaser would be inclined to give for it. This can be estimated at so many years' purchase of the rental, less the sum necessary to put the estate in good repair.

I think therefore the true value of this property is twenty-six years' purchase of the present rental, less the sum necessary to put it in good condition. By this method no injustice is done either to the heir in possession or to the heirs in expectancy.

LORD KINNEAR—I agree in the view taken by the Lord Ordinary.

The Court adhered, and remitted to the Lord Ordinary to proceed in the cause.

Counsel for the Petitioners—Graham Murray—C. K. Mackenzie. Agents—Murray & Falconer, W.S.

Counsel for the Respondents—D.-F. Balfour, Q.C.—Mackay. Agents—Gill & Pringle, W.S.

Friday, June 12.

SECOND DIVISION.

M'LEAN *v.* M'LEAN AND OTHERS.

Wills and Succession—Legacy "Payable as at my Death," and on Majority or Marriage—Interest on Legacy.

A testator provided for payment to each of his children of a legacy of £10,000, "which shall be payable as at my death, and on their respectively attaining twenty-one years of age, or, in the case of females, on their respective marriages before attaining such age, and the same shall not vest until the period of payment."

Held that interest accrued upon the legacies from the date of the testator's death.

Lachlan M'Lean, who died at Islay House, Argyllshire, upon 9th August 1880, left a trust-disposition and settlement dated 15th June 1880, appointing trustees, *inter alia*, (3) to hold forty thousand pounds for the liferent use of his wife, and to pay her the interest half-yearly in advance, "the first half-yearly payment to be made to her as at the date of my death"—the first half-year's payment to be made from his general estate at the rate of 4 per cent. upon the capital sum. "In the fourth place, as at the date of my death" the trustees were to pay to the widow two thousand pounds, to be disposed of by her as she thought proper. "In the fifth place, for payment to each of my children, sons and daughters, and their respective issue, of a legacy of ten thousand pounds sterling, free of legacy duty, which shall (unless my trustees shall otherwise resolve in their discretion as after mentioned) be payable as at my death, and on their respectively attaining twenty-one years of age, or in the case of females, on their respective marriages before attaining said age, and the same shall not (except in the discretion of my trustees as aforesaid) vest until the period of payment. . . . And it is hereby provided and declared with reference to the legacies hereby bequeathed to my sons and daughters respectively and their respective issue, and to the shares of residue hereby bequeathed to my sons and their issue, whom failing to my daughters and their issue, and notwithstanding anything hereinbefore contained concerning the terms of vesting and payment thereof, or concerning the conditions on which the income hereby provided to my said wife under the third purpose hereof is granted, that my trustees shall not only be entitled to apply the available income of the said legacies and shares of residue, or any part thereof, for the education and maintenance, or otherwise for the benefit of my sons and daughters respectively or their issue, before and until the terms of vesting and payment of the capital, but shall also, with consent of my said wife, if and while she survives me, and after her death at their own discretion, be entitled to anticipate the terms

of vesting and payment of the said legacies and shares of residue hereby fixed by me, and to advance and pay at any time to my sons and daughters or their issue the whole or any part of the capital of their legacies and presumptive shares of residue for their settlement or advancement in life."

The truster was survived by his widow and seven children, three sons and four daughters. The eldest was born on 2nd June 1866, and the youngest on 31st October 1877, and consequently all were in minority at the truster's death.

The truster left estate which consisted entirely of personalty of the nett value of £125,000. The trustees did not set apart any special investments to meet the legacies of £10,000 bequeathed by the truster to his children under the fifth purpose of his settlement. They made annual payments since his death to the children during their minorities either directly or to their mother for their behoof by way of allowances for their education and maintenance such sums as in their discretion they thought adequate. These allowances in each year were less than the proportion or average effeiring to these legacies of the amount of income earned upon the whole trust investments. When the truster's two eldest sons respectively attained twenty-one years of age the trustees paid to each of them his legacy of £10,000, but without any accumulations of interest. The eldest son, Alexander Colin M'Lean, attained the age of twenty-five upon 2nd June 1891, and the question arose whether the accumulated amount of interest, which amounted to £28,600, fell to be apportioned to each child's share, so as to be payable to him or her at the date of payment appointed by the truster, or whether the surplus amount of income not expended upon the education and maintenance of each child fell into residue.

This special case for the opinion and judgment of the Court was presented by (1) the trustees and executors; (2) the testator's daughters, with consent and concurrence of their curators; and (3) his sons, with the consent of the curators appointed to them.

The question for the consideration of the Court was in these terms as amended at the bar—"Whether each child of the testator on the arrival of the term of payment of his or her legacy of £10,000 will be entitled to payment of the accumulations of interest and profit effeiring thereto along with the capital?"

The second parties argued—The interest upon the respective legacies of £10,000, so far as it was beyond the amount expended for education and maintenance, should accrue to the capital and be payable along with it. No claim was made for present payment. It was admitted that no share vested until the term of payment arrived. Upon the terms of the deed it was plain that the truster meant the interest to accrue to the capital. This was a special legacy of a specific; sum it did not vest until payment, and that payment was to be to each of the daughters as she attained the age of twenty-five, or was married before that time. But the payment was to be made as at the time of the truster's death. If the daughters had received each her legacy at the actual date of the truster's death she would have been enjoying the whole income from the capital, and under that provision she was entitled to get the capital with the interest it had earned from the truster's death, subject to the amount expended upon her education and maintenance; that was the only meaning that could be given to the words "payable as at my death"—*Glasgow's Trustees* v. *Glasgow*, November 30, 1830, 9 S. 87; *Inglis' Trustees* v. *Breen*, February 6, 1891, 18 R. 487. The truster's statements as to what was to be done with the "available income" showed that he was thinking of the income arising from each special legacy and not of the income from his whole estate. Again, this was a family settlement made by a father in favour of his children, and that had always been held to infer a strong presumption that the income accresced to the special legacy and did not fall into residue—Roper on Legacies, ii. 1257; Williams on Executors, ii. 1435 (8th ed.) The case of *Playfair's Trustees* v. *Hunter*, July 18, 1890, 17 R. 1241, upon which the third parties might found, was easily distinguishable, as that was a legacy of a specific sum to be paid at a specific date, and did not become a debt against the estate until it was exigible, while here the legacy was to be paid as at the truster's death.

The third parties argued—The rule which obtained in England was very special and had never been adopted in Scotland, that the position of the truster as being *in loco parentis* to the legatee made it more likely that he intended the interest to accrue to the capital than if he was a stranger. It arose from a desire on the part of the English Courts to provide for the children of the testator if the legacy was not to be payable for some considerable time after his death—*In re George*, April 23, 1877, L.R., 5 C.D. 837; *Hill* v. *Grant*, March 9, 1885, L.R., 29 C.D. 331. But in Scotland the maintenance of the children was a debt on the father's estate, and it was provided for here by the express words of the deed. The words "payable as on my death" meant no more than "payable after my death," and indeed were superfluous. All the cases in which the interest of a legacy had been granted before the capital sum became exigible were easily distinguishable from this one, as they were legacies given to a class and the survivors, and were not specific legacies—*Campbell* v. *Reid*, June 12, 1840, 2 D. 1084; *Duncan's Trustees and Others*, July 17, 1877, 4 R. 1093. This case fell under the rule laid down in *Playfair's Trustees*, cited *supra*.

At advising—

LORD JUSTICE-CLERK—It does not appear to me that in deciding this case we need to decide any general question, although we had a very interesting argument upon the general question. The point appears to

rise upon the terms of the deed, and it is narrowed down to this small matter—What is the meaning of the words "payable as at my death?"

The testator gives £10,000 to each of his children, and declares that each sum "shall be payable as at my death," then he gives directions that the legacies shall not vest until the period of payment arrives, and that period is not to arrive until the legatee has attained the age of twenty-one, or, in the case of a female, has been married.

Now, the contention for the third party is, that these words to which I have referred have no practical application at all. According to all sound rules of construction when the testator uses words in his settlement by which he gives directions as to the disposal of his estate we must give a reasonable interpretation and effect to them if possible. Can such a reasonable interpretation be given?

As Lord Young pointed out in the course of the debate, the words used are the same as if the testator had used the words "shall be payable as at 9th August 1880," which happened to be the date of the testator's death. In endeavouring to find out the meaning of the words I think it is most important to take them in their ordinary sense. If that is done the words mean that this £10,000 is to be received by the legatee as at 9th August 1880, and as the period of payment is postponed the only way in which that can be done is to receive the sum with the interest which has accumulated. In construing this clause I think it is quite fair to consider the same words where they occur in other places in the same deed. They occur in two other places in connection with other purposes, and in both these places it is plain that they were inserted for the purpose of making interest run upon the principal sum from the date of the testator's death. That is quite consistent with this clause, and confirms me in the opinion I have come to that I am not straining the meaning of the words when I construe them as I have done. I wish further to say that in going through the deed to see if there are any provisions inconsistent with that view, I did not find any such.

Lord Young—I am of the same opinion. No question of vesting is raised here, although no doubt there might have been some such question raised.

I think, therefore, there is sufficient for our decision in the words "payable as at my death." Now these are familiar words, and there is no doubt of their meaning, and when Mr Dickson was pressed he admitted that he must rely on maintaining that these words were superfluous and had no meaning.

I do not think there is any difficulty in the question. A legacy which was payable as at the date of the death of the testator may never come to be payable at all. It may lapse by the death of the legatee, or there may be some contingency so that it may never be paid, but if the legatee survives the date and the contingency is purified, the legacy must be paid as at the date of the testator's death, and the meaning of that is that interest must be paid upon it from the date of the death.

Lord Rutherfurd Clark—I agree. I think that on the construction of these words there is no difficulty. It seems to me that the direction that the legacy is to be payable as at the date of the testator's death is conclusive.

Lord Trayner concurred.

The Court answered the question in the affirmative.

Counsel for the First and Second Parties—Jameson—H. Johnston—C. K. Mackenzie. Agents—T. & R. B. Ranken, W.S.

Counsel for the Third Parties—C. S. Dickson—Salvesen. Agent—C. E. Loudon, W.S.

Friday, June 12.

FIRST DIVISION.

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

Succession — Marriage-Contract — Provisions to Children — Faculty—Power of Appointment.

By marriage-contract a husband and wife each conveyed a sum of £5000 to trustees, directing them on the death of the survivor of the spouses to pay over the said principal sums "to or for the behoof" of the surviving children of the marriage, and the issue of predeceasers, "in such shares and proportions, and subject to such conditions, provisions, and limitations" as the spouses should appoint by any writing under their hand, and failing such appointment, equally among them, the shares of the sons to be payable on majority, and of the daughters on majority or marriage.

The spouses afterwards executed a mutual trust-disposition and settlement, wherein, after expressing their desire to exercise the power reserved to them in the marriage-contract, they conveyed their whole estate, including the sums conveyed in the marriage-contract, to trustees, directing them to pay a sum of £50 to any child who might have succeeded to the estate of L, and to hold the residue of the estate for the children who might survive them, and the issue of predeceasers, excluding any child who might have succeeded to L, in equal shares; to pay the annual income to or for behoof of their said children equally; to settle an equal share on each daughter on her marriage, for her sole and exclusive use during marriage, so that the same should be held by trustees for her behoof, exclusive of her husband's *jus mariti* and right of administration,