facts and circumstances which went to show the pursuer was *in mala fide* when he said he was of opinion that the defender was endangering the licence—*Houldsworth, cit.* There were no such averments here. (2) The defender was bound to transfer the licence. The provision in the original lease was made binding upon the defender by the general clause in the sub-tack. A licence was transferable on application to two justices of the peace. The defender had no interest to object to this conclusion; indeed, his interest was the other way, as the transfer of the licence would increase the sum payable for goodwill.

At advising—

LORD JUSTICE-CLERK — This is a very peculiar case. The pursuer desires to have the defender removed from the occupation of premises which he occupies as a licensed house. The defender defends himself on the ground that the pursuer is not entitled to turn him out in the circumstances. The stipulation to which the defender agreed by his lease was that if in the opinion of the said James Lyon Guild or his heirs and successors, the said Donald M'Lean has so misconducted himself or neglected the business as to endanger the licence, the said James Lyon Guild and his heirs and successors shall have it in their power to terminate this lease on giving a month's notice. Now, that seems to be an agreement very absolute and clear in its terms, that if Mr Guild is of that opinion he is entitled to have the defender removed on one month's notice. The defender, I do not think, has stated any relevant defence against the landlord, who averring that that is his opinion, desires to remove him, and I have come to the same conclusion as the Sheriff-Substitute, which he expresses very neatly in the latter part of his judgment, when he says—"It seems to me that were all the averments of the defender proved, they would not overcome the fact that the pursuer, who is entitled to have and express an opinion, has done so in a manner unfavourable to the defender." Therefore I am for adhering.

LORD YOUNG—I concur.

LORD TRAYNER—I concur, not only in the Sheriff's judgment, but on the grounds on which he has put it.

LORD MONCREIFF—I agree.

The Court pronounced the following interlocutor:—

"Dismiss the appeal, and affirm the interlocutor appealed against: Of new decern against the defender in favour of the pursuer in terms of the prayer of the petition: Find the defender liable in expenses in this Court, and remit the same, and the expenses found due in the Inferior Court, to the Auditor to tax and to report.

Counsel for the Pursuer and Respondent —G. Watt — P. J. Blair. Agent — John Macmillan, S.S.C.

Counsel for the Defender and Appellant —Salvesen — Hunter. Agents — Boyd, Jameson, & Kelly.

Tuesday, November 16.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

ROSS'S TRUSTEES *v.* ROSS.

Succession—Vesting—Destination to Persons Named, and whom Failing to their Issue.

By trust-disposition and settlement a testator directed his trustees to pay to his widow "the whole annual proceeds of the trust-estate," and they were also "required," if the annual proceeds should fall short of £150, "to apply as much of the principal of the trust-funds and estate" as would make up that amount; and it was further declared that if the widow should marry again, the provisions in her favour should be restricted to an annuity of £50, which the trustees were empowered, if they should think fit, to purchase from Government or from an insurance company.

By the seventh purpose the trustees were directed as follows:—"On the death or marriage of my said spouse, or on my death should she predecease me, my trustees shall with all convenient speed proceed to realise the residue and remainder of my estate." They were then directed to divide the residue of the estate into three shares, and to pay one share to Peter Ross, the truster's brother, another share to David Forbes Walker, otherwise called David Ross, and to divide the remaining third share equally among eight persons named, "declaring that in the event of any of the said several parties predeceasing me or the period of division and leaving lawful issue, such issue shall succeed equally to the portion of said share which their parent would have received had he or she survived." It was further declared that in the event of Peter Ross predeceasing the said period of division the trustees should divide "the share destined to him among the several parties to whom the third share is above provided," and in like manner it was declared that if David "shall predecease the said period of division, or die before he attains majority," the share destined to him shall be divided in like manner.

The testator was survived by his wife. All the persons named as entitled to the last-mentioned one-third share of residue predeceased her, some of them without issue, and the others leaving issue who survived her.

In a multiplepoinding brought after the death of the widow, the issue of legatees who died leaving issue maintained that vesting in that share was

postponed until the death of the widow, and the representatives of the other legatees maintained that vesting took place *a morte testatoris*. Peter Ross and David Forbes Walker, otherwise David Ross, also predeceased the widow, and it was admitted that in consequence of their decease nothing vested in them.

Held (*aff.* judgment of Lord Kincairney) that the last-mentioned share of residue vested *a morte testatoris* in the legatees named as entitled thereto.

Question, whether the vesting of the shares of residue left to Peter Ross and David Forbes Walker, otherwise David Ross, took place *a morte testatoris* in the other legatees named, subject to defeasance in the event of Peter and David respectively surviving the widow, or was postponed until the deaths of Peter and David respectively, the widow then surviving.

John Ross, candlemaker in Perth, died on 7th September 1863, leaving a trust-disposition and settlement dated 24th July 1856, and six codicils thereto. By the fourth purpose of the trust-disposition and settlement the truster directed his trustees to pay to his widow the whole annual proceeds of the trust-estate, and they were also "required," if the annual proceeds should fall short of £150, "to apply as much of the principal of the trust-funds and estate" as would make up that amount; and it was further declared that if the widow should marry again the provisions in her favour should be restricted to an annuity of £50, which the trustees were empowered, if they should think fit, to purchase from Government or from an insurance company. The seventh purpose was in these terms — "*Seventh.* On the death or marriage of my said spouse, or on my death should she predecease me, my trustees shall, with all convenient speed, proceed to realise the residue and remainder of my estates, which they shall divide into three shares, and shall pay one share thereof to the said Peter Ross, a second share to the said David Forbes Walker, otherwise David Ross, and the third share my trustees shall divide equally among the parties after mentioned, videlicet—James Ross, George Ross, and Andrew Ross, my brothers, Isabella or Bell Ross, my sister, spouse of Robert Peters, residing at Rait, Margaret Ross, my sister, spouse of David Smith, residing at Saucher, the said Alexander Forbes and John Forbes, my brothers-in-law, Margaret Forbes, Ann Forbes, and the said Helen Forbes or Ross, my sisters-in-law, and Robert Wanless, residing at Saucher, my cousin; declaring that in the event of any of the said several parties predeceasing me or the period of division, and leaving lawful issue, such issue shall succeed equally to the portion of said share which their parent would have received had he or she survived; and in the event of the said Peter Ross predeceasing the said period of division, I hereby direct my trustees to divide the share destined to him among the several parties to whom the third share is above provided, and, in like manner, should the said David Forbes Walker, otherwise David Ross, predecease the said period of division, or die before he attains majority, the share above destined to him shall be divided among the said several parties to whom the third share is above provided."

By two of the codicils, dated respectively 29th November 1858 and 24th August 1863, the bequests of residue to Isabella Ross or Peters, Margaret Ross or Smith, and John Forbes, and their respective issue were revoked, and the residue was directed to be divided among the other persons named in the third branch of the seventh purpose or their issue.

By another of the codicils, dated 20th August 1863, the truster, *inter alia*, directed his trustees "to pay to my brother, the said Peter Ross, the sum of £300 sterling, and to the said David Forbes Walker, otherwise David Ross, the sum of £200 sterling, both payable on the elapse of three months after the death or marriage of my wife, the said Elizabeth Forbes or Ross, or after my own death, should I survive her, declaring that the two last-mentioned legacies, as also the legacy of £300 given to the said David Forbes Walker, otherwise David Ross, by the codicil of 3rd April 1861, shall not vest unless the said Peter Ross and David Forbes Walker, otherwise David Ross, shall respectively survive the period of payment thereof; and I hereby declare these several bequests in favour of my brothers Robert and Peter Ross, and of the said David Forbes Walker, otherwise David Ross, to be in addition to the other provisions in their favour contained in the foregoing deed or codicils and standing unrevoked by me; and with these alterations I hereby confirm the said deed and codicils."

The truster's widow died on 15th April 1896.

On her death questions arose as to persons entitled to take the residue under the seventh purpose of the trust-disposition and settlement, and the trustees brought an action of multiplepoinding for the determination of these questions.

The primary question was as to whether vesting in the one-third share of residue, directed to be divided among James Ross and others, took place *a morte testatoris* or was postponed until the death of the widow. All the legatees named as entitled to share in this one-third of the residue (and whose legacies were unrevoked) predeceased the widow. Of these four—George Ross, Andrew Ross, Alexander Forbes, and Robert Wanless—left issue, who survived the widow; and the remaining four—James Ross, Ann Forbes, Margaret Forbes, and Helen Forbes or Ross—died without issue. The issue of George Ross and of the other three legatees named who left issue, maintained that vesting was postponed until the death of the widow, and they accordingly claimed the one-third of the residue now in question on the footing that it was divisible into four equal parts *per stirpes*. The representatives of the remaining four legatees named (other than James Ross, whose representatives did not appear) maintained

that vesting took place *a morte testatoris*, and they accordingly claimed that the division should be into eight equal parts *per stirpes*. In the event of its being held that vesting was postponed until the death of the widow, further questions arose between different classes of the first mentioned set of claimants, but as the Lord Ordinary and the Court held that vesting took place *a morte testatoris*, it is unnecessary to detail these questions here.

With respect to the two one-third shares of residue left respectively to Peter Ross and David Forbes Walker, otherwise David Ross, it was admitted that nothing vested in these legatees in respect that they both predeceased the widow, both having died in 1871. A question might have arisen as to whether the vesting of two one-third shares thus set free was postponed absolutely until the deaths respectively of Peter Ross and David Forbes Walker otherwise David Ross, or took place *a morte testatoris* in the legatees of the remaining one-third share, subject to defeasance in the event of Peter Ross and David Forbes Walker otherwise David Ross respectively surviving the widow; but in the events which actually occurred (and on the assumption that the vesting of the remaining one-third share took place *a morte testatoris*) this question was of no practical importance, since only one of the legatees named as entitled to share in the remaining one-third of the residue predeceased Peter Ross and David Forbes Walker, otherwise David Ross, viz., Robert Wanless, and as he died intestate and leaving children, who survived the widow, the interest of these children was the same whether they shared in the two one-third shares as conditional institutes or heirs *ab intestato* of their father.

On 25th June 1897 the Lord Ordinary (KINCAIRNEY) pronounced the following interlocutor:—"Finds that on a sound construction of the testamentary writings of the deceased John Ross, and especially of the seventh purpose of his trust-disposition and settlement, and of his first and sixth codicils, the right to that portion of the residue of his estate termed in the seventh purpose of his trust-deed the third share vested *a morte testatoris*, and that the right to the share of the residue of the estate destined primarily to Peter Ross vested on the death of Peter Ross; and that the right to the share destined primarily to David Forbes Walker, otherwise David Ross, vested on his death and that in the parties called thereto in said events by the said seventh purpose of the trust-deed: Appoints the cause to be enrolled for application of the above findings: Grants leave to reclaim."

Opinion.— . . . "It may simplify the consideration of the question of vesting to inquire in the first place what is the nature of the provisions conferred by the seventh purpose; are they joint, as is maintained by those who contend for accretion, or are they several? And I am of opinion that they are several, and that there is no joint bequest. [*His Lordship then detailed his reasons for holding that the case was ruled by Paxton's Trs.* v. *Cowie*, July 16, 1886, 13 R. 1191.]

"More than one consequence follows from that conclusion. In the first place it follows that, if the bequests did not vest until the death of the liferentrix, the four shares provided for those who predeceased without issue would fall into intestacy, which is a consideration affecting the question of vesting; and in the second place, it follows that, in considering the question of vesting, the number of the legatees of the third share is of no consequence whatever, and that that bequest may be read as if it were to one legatee.

"I will consider, first, the provision as to the third share of the estate, and will afterwards advert to the other shares destined primarily to Peter and David Ross. If I am right in holding that this direction to the trustees involves a several legacy to each legatee mentioned, the provision is of this simple and general type — a direction to trustees, on the occurrence of the marriage or death of the liferentrix, to pay to A B a share of the estate, declaring that if A B should predecease the term of payment his issue shall succeed to his share; the question is, when under such a destination will the right of A B vest? Will it vest *a morte testatoris*, or will vesting be suspended by reason of the destination over in favour of issue?—in other words, is the right of A B under that destination conditional on his survivance of the term of payment? It would have been so had the destination over been to C D, a stranger to A B. Does it make a difference that the destination over is to A B's issue? That is a question which, but for certain very recent decisions, I should have felt to be of great difficulty. It may seem strange that there should be any doubt about the meaning of a destination so uncomplicated, and, one might say, so common. Nevertheless, at least until very recently, the point seems to have been open to serious question. There are certainly considerations both ways. On the one hand, it was argued that there are well-established presumptions in favour of vesting at as early a period as possible, and that in every case cause must be shown for postponement of vesting (*Gilbert* v. *Taylor's Trs.*, July 12, 1878, 5 R. (H.L.) 217), a presumption strengthened when, as here, the effect of postponement is intestacy; that it was favourable to vesting at death when the only apparent reason for postponing payment was to secure a liferent, and was not a reason connected with the realisation of the estate, or relating to the legatee, as, for example, to his or her minority; and where the period of payment was a time certain to arrive. It had also been recognised that a conditional institution of issue had a weaker effect in postponing vesting than a destination-over to a stranger to the institute—*Byars' Trs.* v. *Hay*, July 19, 1887, 14 R. 1034, especially when there is no clause of survivorship. It may also be noticed that the truster uses the expression that the issue shall 'succeed'

to the share of their predeceasing parents, which may seem to show that he understood that the parent's right had vested. On the other hand, it was maintained that the circumstance that the gift was contained in the direction to pay at a specified time has generally been treated as of much importance as favouring postponement of vesting, as in *Bryson's Trs.* v. *Clark*, November 26, 1880. 8 R. 142; *Adam's Trs.* v. *Carrick*, June 18, 1896, 23 R. 828, and many other cases; that a destination-over to issue is a proper conditional institution, at least when the institutes are not children of the truster, and when the *conditio si sine liberis* does not apply; that a destination to issue is superfluous and meaningless if it were held that the right vested before the time when the issue were called, and would never have been inserted except to provide for the event of the right not vesting in the primary legatee; and that here the truster put his own death and the death of his widow in the same position as regarded the rights of the legatees.

"A great number of cases were quoted in support of these arguments, which I have studied. But I do not think it necessary to refer to more than one or two of the more recent, nor to discuss these difficult questions, because I have come to think that these recent decisions have come so near the present case as to leave me little else than the duty of applying and following them.

"In *Ross' Trustees* v. *Ross*, December 18, 1884, 12 R. 378, the deed to be construed was very like that in this case. There was a liferent to a widow. There, as here, the gift was in the direction to pay at death of the widow, and the only destination-over in the event of the decease of the primary beneficiary before that event was to the children of the institutes. Thus far the case was the same as this case, except that in *Ross' Trustees* the primary legatees were the children of the truster. But in that case there was an additional speciality which is not in this case, viz., that the trustees were authorised to make advances to the children out of capital. Moved by that last circumstance, the Court held that the rights vested *a morte testatoris*, but all the judges indicated that but for that speciality they would have regarded the case as one of great difficulty—a difficulty readily apprehended—for the difficulty certainly is great, of holding that the destination to issue was inserted without any object or meaning of any kind. Lord Shand, however, indicated a leaning in favour of vesting apart from the speciality mentioned.

"But in *Hay's Trustees* v. *Hay*, June 19, 1890, 16 R. 961, that difficulty appears to have disappeared at least in the Inner House. There were in that case no direct words of gift, only a direction to pay after the expiry of a liferent to A B and his heirs. The only differences between the destination and the destination of the third share of the estate under consideration were that there the destination-over was to the heirs of the institute; here it is to the issue, and there is also a difference in the form of expression, the conditional character of the destination-over being more clearly expressed in this case. For it is to be observed that in neither case is the primary gift expressly said to be conditional. But Lord M'Laren in the leading opinion took no distinction between a destination-over to issue and to heirs. He observed, 'The true criterion is that where 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 issue or heirs of the institute (there being no ulterior destination), these 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 it is not intended to interfere with the fullest benefits previously given to liferenters or other persons.' This is a very plain expression of opinion on the point reserved in *Ross' Trustees*, and I think it applies directly to this case. Lord Shand and the Lord President express their concurrence with Lord M'Laren, and Lord Adam concurs in the judgment, and although he does not expressly adopt Lord M'Laren's reasoning, he does not expressly dissent from it. I am not sure that I fully appreciate the distinction by which Lord M'Laren solves the difficulty which in the case of *Hay* was felt to be so great, but I do not think it is for me to question it.

"In the case of *Richard's Trustees* v. *Rolland*, December 7, 1894, 22 R. 141, decided by the Second Division affirming Lord Low, the judgment was to a similar effect, although the deed was more complicated, and the similarity to the present case not so marked.

"I have considered the authorities referred to on the other side, in particular *Laing* v. *Barclay*, July 20, 1865, 3 Macph. 1143; *Sloan* v. *Finlayson*, May 20, 1878, 3 R. 678; *Bryson's Trustees* November 26, 1880, 8 R. 142; *Reeves* v. *Reeves' Trustees*, June 14, 1892, 19 R. 1013, but these cases are special, and differ materially from the present case.

"The case of *Hughes* v. *Edwards*, July 25, 1892, 19 R. (H.L.) 33, seems at first sight not wholly consistent with Lord M'Laren's doctrine. But it must be observed that in that case vesting in the primary beneficiary was excluded by the express declaration of the truster. — *See* Lord M'Laren on Wills, vol. ii., p. 792, *note*. In *Adam's Trustees* v. *Carrick*, June 18, 1886, 23 R. 828, vesting was held to be postponed in a case somewhat like this, but there the legatee's enjoyment of the provisions was postponed until his majority, making it conditional on an event which might never happen. *Cumming's Trustees* v. *Cumming*, November 14, 1896, 24 R. 153, was also quoted, but it appears inapplicable because of the ultimate destination-over.

"I therefore consider that I am bound by authority to read the provisions as to the third share as conferring a right at the testator's death, if the specialities of this case do not prevent the application of these cases.

"One of these specialities is the power conferred on the trustees to encroach on capital. That is said to be adverse to vesting until the widow's death, but it only affects the amount of the estate, and I do not think there is any real difficulty in holding that the right might vest, although the amount of the provision might be subject to reduction.

"The more serious speciality relates to the shares which are destined primarily to Peter and David Ross. It is not possible that they could vest in them before the death of the liferentrix. It is still plainer, if possible, that no right to these shares could vest in the legatees of the third share as conditional institutes while Peter and David were alive. It has been argued that unless the period of vesting is held as postponed until the death of the liferentrix, it is necessary to hold that the truster contemplated more periods of vesting than one, which is said to be improbable and not to be presumed. The difficulty or speciality is illustrated by the case of Robert Wanless. He predeceased Peter and David Ross, and therefore no part of their shares vested in him. A right to a part of their shares, however, vested in his issue as conditional institutes, and it is said to be difficult to hold that his issue were conditionally instituted in regard to the two-thirds of the estate, and not so in regard to the remaining third. The difficulty, however, may be more apparent than real. There seems no good reason why a truster should not contemplate more periods of vesting than one, if the various portions of his estates are differently situated; and it is not uncommon to find testamentary deeds so expressed as to make it necessary to hold that there are more periods of vesting than one whether the testator consciously intended that or not.

"Where words substantially the same as those which in this case confer the third share have been made the subject of judgment, and have been held to give a vested right at the testator's death, I do not see that the force or effect of these words should be invalidated because the truster has conferred an additional and contingent gift of an estate, which, by reason of the contingency, cannot be vested at the same time.

"With regard to that part of the fund *in medio* which consists of the first and second shares of the estate, it is, as I have said, certain that no right to these shares could vest in the legatees of the third share at the death of the testator. It was then uncertain whether Peter and David would or would not survive the period of division. But when they died that uncertainty ceased, and no contingency attached to the right of the legatees of the third share, if the destination-over to issue did not cause it.

"The principle that rights to provisions should be held to vest as soon as possible then applied to these shares. I think, therefore, that the right to the shares destined to Peter and David vested on their respective deaths in the other legatees. Practically the result is the same as if the right to the whole estate vested *a morte testatoris*." . . .

James Ross and Annie Ross or Gowans, the children of George Ross, reclaimed, and were heard in support of the view that vesting was postponed until the death of the widow.

Edward Jackson, Margaret Forbes' executor, was heard in support of the view that vesting took place *a morte testatoris*.

At advising—

LORD MONCREIFF—The questions which we have to decide depend upon the construction of the seventh purpose of the settlement of the deceased James Ross which disposes of the residue of his estates. He died in 1863. By the said purpose he directed that on the death of his widow, who survived him and died in 1893, the residue should be divided into three shares, which were to be paid to the parties therein named. It is in regard to the period or periods at which the three shares in question vested that our judgment is asked.

1. Leaving out of view in the meantime the shares which the truster directs his trustees to pay to Peter Ross and David Forbes Walker, otherwise David Ross (who both survived the truster but predeceased his widow the liferentrix), the Lord Ordinary has found that the third share of residue which the trustees are directed to divide equally among James Ross and others vested on the death of the truster, and I am of opinion that his judgment is right. The directions in regard to that share are in the following terms—"And the third share my trustees shall divide equally among the parties after mentioned, videlicet, James Ross, George Ross, and Andrew Ross, my brothers, . . . the said Alexander Forbes, my brother-in-law, Margaret Forbes, Ann Forbes, and Helen Forbes or Ross, my sisters-in-law; and Robert Wanless, residing at Saucher, my cousin; declaring that in the event of any of the said several parties predeceasing me or the period of division and leaving lawful issue, such issue shall succeed equally to the portion of said share which their parent would have received had he or she survived."

On consideration of the authorities I am of opinion that as a general rule, in the absence of evidence of a contrary intention, a bequest in these terms, when made to a party and his issue, does not import suspension of vesting in the party first called if he survives the testator; and that it is immaterial whether the destination runs "to A B, whom failing to his issue," or "to A B, and should he predecease the date of payment then to his issue."

In both these cases, notwithstanding the form of the destination which would, if the parties called in succession to A B were not

his issue, import a proper conditional institution and suspension of vesting in A B, the issue are called, not as persons independently favoured, but from favour to A B.

However anomalous this may appear, there is ample authority for it. This view of the law is stated concisely by Lord M'Laren in *Hay's Trustees* v. *Hay*, 17 R. 961-965, in the passage which is quoted in the Lord Ordinary's note; and the law was stated to the same effect by the Lord Justice-Clerk Moncreiff in a previous case, which I do not think was cited—*Jackson* v. *Macmillan*, 3 R. 627-629—"In order, therefore, to determine in any given case whether survivance of such a term be a condition of the gift or the postponement be only a burden on it, it is of the last importance to ascertain what is the primary object of the testator in postponing payment, and if the words indicate that the primary object was to secure an interposed interest, especially if they disclose no other, the presumption is strong that the legacy is not conditional, and that its enjoyment only is qualified. It is this consideration which gives importance to any ulterior destination which may be adjected to the gift, for if there be any separate and independent interest contingently favoured, it will then be easier to presume that favour to that interest was in part at least the reason for postponing payment. But to have this effect the interest must be substantially separate, and such as to indicate specific favour on the part of the testator. But a legacy to A and his heirs, or A and his children, is not the separate institution of a new and independent object of the testator's bounty, but the expression of a derivative interest favoured by the testator only out of regard to the legatee whose children or heirs are mentioned. They only find a place in the destination through the relation which they bear the *persona prædilecta*, and in cases like the present, in which the gift is only inferred from the direction to divide, the instruction to the trustees to pay to the heirs of the legatee, if he predecease the period of division, may be regarded more as the natural result of the legacy having vested than as an indication of the reverse."

It was maintained on behalf of the parties who contend that the third share did not vest until the death of the liferentrix, that the destination in the present case imports a proper destination-over, because the issue are called in a separate and distinct clause. I do not think that this affects the question. In a number of the cases cited in which it was held that vesting was not postponed, the bequest is framed in the same terms—for instance in *Wilson's Trustees* v. *Quick*, 5 R. 697; *Byar's Trustees* v. *Hay*, 14 R. 1034; *Richard's Trustees* v. *Rolland*, 22 R. 140. Indeed, there is more room for contending that as the gift to the parents is unqualified it cannot be cut down by the subsequent limitation. But I do not proceed upon that ground.

The same parties also rely upon this, that admittedly in the case of the two shares of residue destined to Peter Ross and David Forbes Walker, otherwise David Ross respectively, vesting is postponed as regards Peter and David Ross till the death of the liferentrix, and they argue that the presumption is against there being two periods of vesting. While this is an element not to be disregarded, we are familiar with cases in which different periods of vesting are fixed for different legacies. A testator often has reasons for fixing different periods of vesting. In the present case it is to be observed that in the case of the bequests to Peter and David Ross their issue are not called; and we see by the terms of the codicil of 20th August 1863 that, for some reason which is not disclosed, the truster did not intend their shares to vest before the time fixed for payment.

I think that the Lord Ordinary has successfully distinguished the authorities referred to on the other side.

2. As I have already stated, Peter Ross and David Ross died in 1871, before the period of division arrived. The direction as to the disposal of their shares in the event of their predeceasing the period of division is that they are to be divided among the several parties to whom the third share is provided. The Lord Ordinary has held that right to their shares vested on their respective deaths. Speaking for myself, I am disposed to think that right to those shares vested in the parties entitled to the third share *a morte testatoris*, subject to defeasance in the event of Peter and David Ross surviving the period fixed for division, but as I am told that the interests of none of the parties will be affected by affirming the finding of the Lord Ordinary that those shares vested on the respective deaths of Peter and David Ross, it may not be necessary to alter the interlocutor.

The result will be that if your Lordships agree with me, the Lord Ordinary's interlocutor will be affirmed, and the case remitted to him.

The Lord Justice-Clerk and Lord Young concurred.

Lord Trayner was absent.

The Court adhered.

Counsel for James Ross and Annie Ross or Gowans—Balfour, Q.C.—Neish. Agents—Macrae, Flett, & Rennie, W.S.

Counsel for Margaret Forbes' Executor—W. Campbell—W. Thomson. Agent—W. Croft Gray, Solicitor.

Counsel for the Other Parties—Craigie—Aitken—Hunter—A. S. D. Thomson—Napier—J. Purves Smith—Baxter—Burnet. Agents—Lewis Bilton, W.S.—John Veitch, Solicitor—Clark & Macdonald, S.S.C.—Sturrock & Sturrock, S.S.C.—Cairns, M'Intosh, & Morton, S.S.C.—J. & J. Milligan, W.S.—J. Murray Lawson, S.S.C.—Kirk, Mackie, & Elliot, S.S.C.