waive the objection the case would have been different. That would have been equivalent to a fresh submission entered into in knowledge of the disqualification, and therefore would have implied waiver of it. But there is no such waiver here, and it seems to me that in the absence of waiver either party is entitled to refuse to submit his case to an arbiter who has become disqualified. I am therefore of opinion that the Lord Ordinary's interlocutor should be adhered to.

LORD ADAM concurred.

LORD M'LAREN—I also concur. I think the question of disqualification is the same in the case of a judge who derives his authority from the law of the country and an arbiter appointed by the parties. For all practical purposes the objection is the same whether the body of which the arbiter has become a member is a public body like a town council or a private body like a commercial company. In either case it is a good objection that the arbiter has become so identified with one of the parties to the case that he can no longer be regarded as a neutral person. In the present case Mr Ormiston was originally qualified to act as arbiter, but he became disqualified by acceptance of the office of Dean of Guild, whereby he became a member of the Town Council. It seems unnecessary to inquire whether it was part of Mr Ormiston's duty as Dean of Guild to take cognisance of this contract, because the objection would be the same if he had been elected an ordinary member of the Town Council. I do not think it was seriously disputed that so long as Mr Ormiston was a member of the Town Council he was disqualified, but it was contended that the effect of this disqualification was not to disqualify him absolutely but rather to suspend his power to act so long as the relation exists, and that as Mr Ormiston has ceased to hold the office of Dean of Guild he is no longer disqualified. No doubt after the arbiter's relation to the Town Council ceased it might have been a reasonable and sensible thing if both parties had concurred in requesting him to act. But that is a matter for the parties themselves, and I am not prepared to say that the disqualification of Mr Ormiston was removed by his ceasing to hold the office of Dean of Guild. I should not wish it to be understood that a director of a company might sell his shares and thereby put himself in the position of adjudicating in a matter in which he had been interested as a director. Such a rule might have other inconvenient results; it might lead to the hanging-up of arbitrations indefinitely in the expectation that in time the arbiter might have his disqualification removed. As no authority has been cited for this, I think we must hold that on an arbiter becoming disqualified his appointment as arbiter ceases, and the arbitration must be worked out in some other way.

LORD KINNEAR concurred.

The Court adhered.

Counsel for the Complainers and Respondents—Guthrie, K.C.—Cooper. Agent—Thomas Hunter, W.S.

Counsel for Mr Lownie—Campbell, K.C.—Hunter. Agents—Thomson, Dickson, & Shaw, W.S.

Counsel for Mr Ormiston—Crole. Agents—Duncan Smith & MacLaren, S.S.C.

Friday, March 20.

FIRST DIVISION.

HARPER'S TRUSTEES *v.* HARPER'S TRUSTEES.

Succession—Legacy—Construction—Money in Bank—Deposit-Receipt with Colonial Bank.

A truster directed his trustees to pay to his wife "all moneys in the house or in the Bank of Scotland or the City Bank of London, or in any other bank or banks in my name." *Held* that the bequest carried a deposit-receipt for £2000 with a colonial bank, repayable four years after its date.

By his trust-disposition and settlement the late Dr George Harper, who died on 7th October 1886, conveyed his whole estate to trustees for certain purposes therein mentioned. He directed that his wife Mrs Ellenor Maria Campbell or Harper should during her lifetime be his sole executrix and should have a liferent of his whole estate.

In the testing clause the following direction occurred:—"Declaring that it is further my will and desire that all moneys at my death in the house or in the Bank of Scotland or the City Bank of London, or in any other bank or banks in my name, shall be paid over to the said Mrs Ellenor Maria Campbell or Harper for her own exclusive use and behoof immediately after my death."

By a codicil Dr Harper directed his trustees, *inter alia*, "after providing for all my just and lawful debts, deathbed and funeral expenses, and others, as mentioned in the first purpose of the foregoing trust-disposition and settlement, and after payment to my wife Mrs Ellenor Maria Campbell or Harper of all moneys in the house or in the Bank of Scotland or the City Bank of London, or in any other bank or banks in my name, as provided by a clause to that effect inserted in the testing clause of said trust-disposition and settlement, and which clause is hereby confirmed, but before setting apart the residue of my estate to be liferented by my said spouse, to pay" certain legacies to the parties therein named.

Dr Harper's moveable estate amounted to about £10,300. It included, *inter alia*, the following items:—

Cash in the house £20.
Balance on account-current with Bank of Scotland, £467, 14s. 7d.
Deposit-receipt with the Queensland National Bank, Limited, for £2000, repayable four years after its date, bearing interest at 5 per cent.
£500 in debenture by the National Mortgage and Agency Company of New Zealand.

The said Mrs Ellenor Maria Campbell or Harper claimed as falling under the absolute bequest to her under said settlement, and took possession of, the cash in the house, the sums standing at the deceased's credit with the Bank of Scotland, and the deposit-receipt with the Queensland National Bank, Limited.

In 1902 Mrs Harper died.

Questions having been raised as to whether the deposit-receipt for £2000 was carried by the above-quoted bequest to Mrs Harper, the present special case was presented for the opinion and judgment of the Court.

The parties to the special case were (1) Dr Harper's trustees; and (2) the trustees under the last will and settlement of Mrs Harper.

The questions for the opinion of the Court were (in addition to another which it is not necessary to refer to)—"(1) Did the £2000 contained in the deposit-receipt with the Queensland National Bank, Limited, fall under the bequest contained in her husband's testamentary writings to Mrs Harper? or (2) Did the same form part of the trust estate under her management, as trustee and executrix foresaid, and fall, after payment of debts, &c., and legacies, to be dealt with in terms of the provisions of the testamentary writings in regard to residue?"

Argued for the first parties—The bequest to Mrs Harper did not carry the deposit-receipt. It was confined to money in bank *ejusdem generis* with money in the house or money on current account. The deposit-receipt was an investment like the debenture of the New Zealand company. Supposing Dr Harper's whole estate had consisted of deposit-receipts in Australian banks, could it have been said that the bequest operated as a universal legacy to his wife?

Counsel for the second parties were not called upon.

LORD PRESIDENT—The first question in this case is whether the £2000 contained in a deposit-receipt of the Queensland National Bank falls under the bequest to Mrs Harper of "all moneys at my death in the house or in the Bank of Scotland or the City Bank of London, or in any other bank or banks in my name." There is no doubt that money on deposit is money in a bank, and I think that the case would not have been arguable if the £2000 had not been deposited for a certain fixed period. But although it was deposited for a fixed period, it appears to me that this did not alter the quality of the money as money in a bank. Mr Lorimer argued, somewhat on the principle of *noscitur a sociis*, that because the bequest was associated with a bequest of money in the house, it could only mean money in bank at call and of which the legatee could claim immediate possession. But that is not in my judgment a sufficient reason for denying to the words used their ordinary and plain meaning. When money is deposited in a bank, it is not intended that the individual sovereigns or notes deposited shall be kept for the depositor, but that the bank shall become his debtor for the amount deposited, and although that debt may not be payable until the expiry of a specified period, it still remains money deposited in a bank. On this short ground I think the first question in the case should be answered in the affirmative, and this makes it unnecessary to answer the other question.

LORD ADAM—I am of the same opinion. I understand Mr Lorimer to maintain that the bequest to Mrs Harper does not refer to all money in bank, but only to money in bank at call. His contention is that if the money is not at call it must be treated as money invested. I am quite unable to take that view, because it requires that the moment it ceases to be at call it ceases to be money in bank. I do not think we should be authorised in limiting the testator's words in this way.

LORD M'LAREN—There might be some difficulty if the question were whether the money owing to Dr Harper by the Queensland Bank was money held under a contract of the same nature as the contract regulating his money in the Bank of Scotland. The ordinary case is that money is placed in bank for safe keeping and is payable on demand, and this is the case whether it is on deposit or on account-current. The contract under which Dr Harper placed his money in the Queensland Bank was of a different kind, because the money could not be demanded back until the expiry of four years. The bank got the benefit of the loan as part of its working capital, and allowed a higher rate of interest accordingly.

But then I do not think the construction of Dr Harper's will is to be determined by these considerations, because he has used a very wide term to describe the subject of the bequest—"money in bank." The descriptive words refer rather to the institution than to the contract. It is no answer to the view that this must include the money in the Queensland Bank to say that money was lent by the testator to other companies on similar contracts. These other companies are not banks, and therefore the money lent to them does not fall within the words of the bequest. On the other hand, as the money in question is in bank it satisfies the words of the bequest under whatever contract it may be held.

LORD KINNEAR—I entirely agree. The testator leaves to his wife all moneys in any bank or banks in his name, and it turns out that he had a deposit-receipt with the

Queensland National Bank in his name. I have not heard any sufficient reason for saying that that deposit-receipt does not fall within the plain meaning of the words of bequest. It makes no difference that the money is on deposit-receipt; it is still money in the bank in the testator's name. Nor can I see that it makes any difference that the money was only repayable at a fixed date. The peculiarity that the money is on deposit-receipt does not alter the quality of the money or of the contract between the bank and its customer. Their relation is that of debtor and creditor in a contract of loan. It is immaterial to the customer or to the contract how the bank employs the money, and their relations are the same even although it is a condition of the contract that the money is to remain for a certain fixed period. The quality of the money is not thereby altered, and, what is perhaps more to the present purpose, the locality of the money is not altered—it still remains money in the bank, and in the name of the testator.

The Court answered the first question in the case in the affirmative.

Counsel for the First Parties—Lorimer—A. D. Smith. Agents—J. & J. Galletly, S.S.C.

Counsel for the Second Parties—Guthrie, K.C.—Tait. Agents—Alex. Morison & Co., W.S.

Friday, March 20.

WHOLE COURT.

GIFFORD'S TRUSTEES *v.* GIFFORD.

Succession—Fee or Liferent—Provision that Residue "shall belong" to A in Liferent and His Issue Nascituri in Fee, whom failing, Certain Others in Fee.

A testator by his trust-disposition and settlement provided with regard to the ultimate surplus residue of his estate—"it shall belong one-half to my son H. in liferent and to his issue other than the heirs of entail in fee, whom failing, to my unmarried nieces equally in fee; and the other half shall belong equally among my unmarried nieces." By previous clauses of his settlement the testator directed his trustees to "hold" certain sums for various beneficiaries "for their respective liferent uses allenarly" and for their issue in fee. He had also directed his trustees to employ a certain sum in the purchase of lands to be entailed on his son H. and a specified series of heirs. *Held*, by a majority of the whole Court (*abs.* Lord Low, *diss.* Lord Justice-Clerk, Lord Moncreiff, and Lord Kyllachy), that H. was entitled to a liferent only, and that the trustees were bound to hold one-half of the surplus residue until his death for behoof of his issue other than the heirs of entail, whom failing, the truster's nieces.

Frog's Creditors v. *His Children*, 1735, M. 4262, *held* not applicable where intention ascertainable to the contrary.

This was a special case for the opinion and judgment of the Court presented by (1) the trustees acting under the trust-disposition and settlement of the late Lord Gifford; (2) Herbert James Gifford, the truster's son; and (3) certain nieces of the truster.

Lord Gifford died on 20th January 1887. He left a trust-disposition and settlement whereby he disponed his whole estate, heritable and moveable, to trustees for the purposes therein mentioned.

The testator, after making various bequests, and directing his trustees to purchase lands to be entailed upon his son and a series of heirs, directed his trustees with regard to the residue of his estate, after providing for the previous purposes, to pay certain sums amounting together to £80,000 for certain purposes specified, and then finally provided as follows:—"If there is any surplus over and above the said sum of £80,000 sterling I direct the residue to be disposed of as follows . . . it shall belong one-half to my son, the said Herbert James Gifford, in liferent, and to his issue other than the heirs of entail in fee, whom failing, to my unmarried nieces equally in fee; and the other half shall belong equally among my unmarried nieces." The final surplus residue of the estate to which this direction applied amounted to £15,000.

For the purpose of showing what was the true intention and effect of the above provision with regard to the surplus residue the following other clauses of the settlement were referred to in argument and in the judgments, viz.—

The *Sixth* trust purpose, which was as follows:—"To pay, dispose of, invest, and apply the sum of £2500 to and for each of my nephews and nieces, who at present are ten in number. . . . Now, my will is that my trustees shall hold for each of my said nephews and nieces who may survive me, and for their respective issue equally, the said sum of £2500 each in liferent for their respective liferent uses allenarly, the issue of each nephew or niece taking the fee. . . . my meaning is that my said trustees shall hold the amount of the said legacies for behoof of my said nephews and nieces, and invest the same in heritable or personal property, or in the purchase of heritage, and pay the free income or produce thereof to my said nephews and nieces as an alimentary fund, exclusive of the *jus mariti* of husbands and of the diligence of creditors, at such times and in such sums as my trustees may think proper; and in case of the death of any of my said nephews and nieces their respective children shall take their parents' share of the capital equally, and failing children they shall each have power to dispose of their shares of the capital at pleasure, and failing their doing so, it shall go to the survivors equally, share and share alike, and the issue of any predeceasing nephew or niece." . . .

The *Seventh* trust purpose, which was as follows:—"In order to interest my son, the said Herbert James Gifford, in the said ali-