answer the first and third questions in the affirmative. The second question is not one which should have been put to the Court.

LORD M'LAREN—The 20th section of the Titles to Land Consolidation Act 1868 deals with the language necessary to pass estates from the dead to the living, and for the purpose of abolishing the peculiarity which existed in the old law with reference to heritable estate the statute made the provision that the language used to pass moveable estate should now be sufficient to pass heritable estate if it is used with reference to heritable estate. But the 20th section does not profess to solve the question what actual words will suffice to show that the testator intended to dispose of his heritable estate by will? Now I think the decisions upon the latter point are on the whole consistent, and they proceed upon the principle of ascertaining whether the testator had heritage in view when he made his will. In one case the word "property" was held to be sufficient to pass heritage, and the word "estate" seems to me to be quite as general and as sufficient to pass heritage unless where it is used in a more limited sense. I observe that in the case of *Grant* v. *Morren*, 1893, 20 R. 404, where it was held that the will was not habile to convey heritage, I expressed the view that the "estate" there conveyed was confined in meaning to such estate as an executor might administer. But that case is distinguished in two important elements from the case before us. First there was in *Grant's* case no formal gift or direction, but only a bare appointment of an executor to perform the duties of an executor; while here, after appointing an executor, the testator goes on to bequeath legacies and to direct that his estate shall be realised and divided. But I also agree with your Lordship in holding that the word "all" is important. In cases like that of *Grant* the words "my estate" may be controlled by subsequent expressions and by the terms of directions given to the executor, but that is only if the words themselves are ambiguous; and where, as in the present case, the word "estate" is joined with the word "all" there is no ambiguity, and there is no necessity for drawing inferences from other parts of the deed to explain what is already clear, and still less to limit the generality of a clause which on the face of it is a universal bequest of the testator's estate.

LORD KINNEAR—I think that the first question in this case is solved by a consideration of two propositions, both of which have been stated by Lord President Inglis in two different cases, viz.—(1) that the first question in cases of this kind is whether words importing a gift have been used in a will or testament with reference to land, and (2) that that question must be answered in the affirmative if the words employed describe either heritable estate in particular or the testator's whole estate without distinguishing between heritable and moveable. If this is sound the application is easy, because the testator here directs that "all" his "estate" is to be realised, and then, after certain legacies have been paid, that the residue of "my estate" is to be divided between his wife and his sons. I do not think it can be disputed that if he had said in terms "all my estate, heritable and moveable," his intention would have been quite plain in spite of the appointment only of an executor. It is just as plain in the will as it stands, because if a man has heritable as well as moveable estate the direction to realise "all my estate" is not carried out if only his moveable estate is realised.

Upon the question of the power to sell I think that follows as a matter of course, for the reasons stated by your Lordship.

LORD PEARSON was absent.

The Court answered the first and third questions in the affirmative, and found it unnecessary to answer the second question.

Counsel for the First Party—A. M. Anderson. Agent—C. Strang Watson, Solicitor.

Counsel for the Second Party—Wark. Agent—W. J. Haig Scott, S.S.C.

Saturday, March 7.

SECOND DIVISION.

[Sheriff Court at Greenock.

WALLACE *v.* R. & W. HAWTHORNE, LESLIE, & COMPANY, LIMITED.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *secs.* 3 (1) *and* 15—*Contracting Out—Scheme Certified under* 1897 *Act in Force at Commencement of* 1906 *Act—Workman Enters Employment Subsequent to Commencement of* 1906 *Act and Agrees to Accept Compensation Provided by such Scheme—Accident Prior to Re-certification of Scheme under* 1906 *Act.*

The Workmen's Compensation Act 1906 came into operation on July 1, 1907. It provides, sec. 3 (1), that the Act shall apply notwithstanding any contract to the contrary made after its commencement, save a contract under a scheme which shall have been certified by the Registrar of Friendly Societies. Section 15 provides, *inter alia*, that a scheme certified under the Workmen's Compensation Act 1897 shall, if re-certified, have effect as a scheme under the Act (sub-sec. 2); shall be re-certified if the Registrar is satisfied with its provisions (sub-sec. 3); shall have its certificate revoked if no re-certification is made within six months of the commencement of the 1906 Act.

A workman entered employment on 9th August 1907. He agreed to accept a scale of compensation provided by a

scheme certified under the Workmen's Compensation Act 1897 by certificate expiring on 31st December 1908. On 15th August 1907, before the scheme had been re-certified under sec. 15 of the Workmen's Compensation Act 1906, the workman was injured by an accident arising out of and in the course of his employment. *Held* that the workman was not excluded by having agreed to accept the provisions of the scheme from claiming compensation under the Act of 1906.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) enacts—Section 3—"(1) If the Registrar of Friendly Societies, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit, or insurance for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, provides scales of compensation not less favourable to the workmen and their dependants than the corresponding scales contained in this Act, and that where the scheme provides for contributions by the workmen the scheme confers benefits at least equivalent to those contributions in addition to the benefits to which the workmen would have been entitled under this Act, and that a majority (to be ascertained by ballot) of the workmen to whom the scheme is applicable are in favour of such scheme, the employer may, whilst the certificate is in force, contract with any of his workmen that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall be liable only in accordance with the scheme; but, save as aforesaid, this Act shall apply notwithstanding any contract to the contrary made after the commencement of this Act."

Section 15—"(1) Any contract (other than a contract substituting the provisions of a scheme certified under the Workmen's Compensation Act 1897 for the provisions of that Act) existing at the commencement of this Act, whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment, shall not, for the purposes of this Act, be deemed to continue after the time at which the workman's contract of service would determine if notice of the determination thereof were given at the commencement of this Act. (2) Every scheme under the Workmen's Compensation Act 1897 in force at the commencement of this Act shall, if re-certified by the Registrar of Friendly Societies, have effect as if it were a scheme under this Act. (3) The Registrar shall re-certify any such scheme if it is proved to his satisfaction that the scheme conforms, or has been so modified as to conform, with the provisions of this Act as to schemes. (4) If any such scheme has not been so re-certified before the expiration of six months from the commencement of this Act the certificate thereof shall be revoked."

Section 16—"(1) This Act shall come into operation on the first day of July 1907, but . . . shall not apply in any case where the accident happened before the commencement of this Act."

John Wallace, 9 Tobago Street, Greenock, claimed compensation under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) from R. & W. Hawthorne, Leslie, & Company, Limited, shipbuilders, Newcastle-on-Tyne, and H.M.S. "Agamemnon," Naval Construction Works, Dalmuir. In an arbitration the Sheriff-Substitute (NEISH) at Greenock refused his application and stated a case for appeal.

The case stated by the Sheriff set forth—"The appellant applied for compensation under 'The Workmen's Compensation Act 1906,' or alternatively under the Re-certified Scheme No. 107, which is marked B.

"The respondents maintained that the appellant is only entitled to compensation under the certified Scheme No. 7, which is marked A.

"Parties' agents were heard by me on the 16th December 1907. No proof was led.

"The following facts were admitted—On 15th August 1907 the appellant was employed by the respondents on board H.M.S. 'Agamemnon,' which was then lying at the Tail-of-the-Bank opposite Greenock for the purpose of undergoing official trials.

"On said date appellant was injured on board said ship by an accident arising out of and in the course of his employment.

"The appellant entered the respondents' employment on 9th August 1907 and agreed to accept the scale of compensation provided by the St Peter's Works, Newcastle-on-Tyne, Accident Compensation Fund Scheme, which is marked A.

"The said scheme was certified as Scheme No. 7 by the Registrar of Friendly Societies on 10th December 1903, and the certificate did not expire till 31st December 1908.

"On 18th October 1907 the said Scheme No. 7 was re-certified as Scheme No. 107 by the Registrar of Friendly Societies, in accordance with the provisions of section 15 of the Workmen's Compensation Act 1906.

"I held (1) that the appellant's claim for compensation under the Workmen's Compensation Act 1906 was excluded by his having agreed to accept the scale of compensation provided by the Scheme No. 7, marked A; and (2) that the appellant was not entitled to the increased compensation provided by the scheme No. 107, marked B."

The following *questions of law* were submitted:—"(1) Is the appellant entitled to compensation under the Workmen's Compensation Act 1906? (2) Is the appellant entitled to compensation under the Scheme No. 107, marked B?"

Argued for the appellant—The Sheriff was wrong. The accident took place after the Act of 1906 came into operation, and that statute only applied. The scheme A therefore could not apply because it was only under the Act of 1897. It was not at the date of the accident a subsisting scheme. Any scheme whose validity was founded on the Act of 1897 necessarily fell when that

Act was repealed, except in so far as it was expressly saved (sec. 3). It could only be saved by re-certification (sec. 15 (2).) In the present case the scheme had not been re-certified at the date of the accident. The appellant was therefore not barred, by his agreement to accept the provisions of a scheme which was inapplicable to his case, from claiming compensation under the Act.

Argued for the respondents — If the appellant's argument were sound, then there would be a period of six months after the passing of the Act of 1906, during which it was impossible for the employer and his workmen to contract out. That would not be presumed, and was not in accordance with sec. 3 (1). That section provided that unless there was a scheme under the Act of 1906 the Act should apply. There was here a scheme under the 1906 Act which the appellant had accepted. A scheme under the Act of 1906 would include a scheme certified under the 1897 Act, but saved by sec. 15 of the 1906 Act. The effect of sec. 15 was that a scheme certified under the 1897 Act remained in force till either (1) re-certification under the new Act (sub-secs. (2) and (3)) or (2) the elapse of six months from the date when the 1906 Act came into force (sub-sec. (4)). Scheme A had been certified under the 1897 Act, and six months had not elapsed at the date of the accident, and indeed it was re-certified before such elapse. It was therefore a subsisting scheme in force at the date of the accident, and the appellant having accepted it could not get compensation under the Act of 1906.

At advising—

LORD LOW—The appellant entered the employment of the respondents on 9th August 1907, and he agreed to accept the scale of compensation provided by a scheme which had been certified under the Workmen's Compensation Act 1897 by the Registrar of Friendly Societies, as Scheme No. 7, on 10th December 1903. The certificate bore that the scheme was to expire on 31st December 1908, and accordingly it had not expired when the Workmen's Compensation Act 1906 came into operation on 1st July 1907. On 18th October 1907 scheme No. 7 was, with certain modifications, re-certified by the Registrar of Friendly Societies in accordance with the provisions of sec 15 (3) of the Workmen's Compensation Act 1906, as scheme No. 107.

The appellant was injured on 15th August 1907 by an accident arising out of and in the course of his employment, and the question is, Whether he is entitled to compensation under the Workmen's Compensation Act 1906, or only under scheme No. 7? The answer to that question depends upon the construction of secs. 3 and 15 of the Act of 1906.

By section 3 it is provided that "if the Registrar of Friendly Societies, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme by compensation" satisfies certain requirements, "the employer may, whilst the certificate is in force, contract with any of his workmen that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this Act shall apply notwithstanding any contract to the contrary made after the commencement of this Act."

Now the initial words of that section providing for certification of a scheme by the Registrar of Friendly Societies plainly refers to what may be done after the commencement of the Act, and accordingly under the final clause in the section a workman cannot be deprived after the commencement of the Act of his right to compensation under the Act by entering into a contract to the contrary, unless it be a contract to substitute for the provisions of the Act the provisions of a scheme of compensation certified by the Registrar after the commencement of the Act.

Now the scheme of compensation which the appellant agreed to accept was not a scheme which had at the time when the agreement was made been certified by the Registrar after the commencement of the Act, and accordingly if the question raised depended only upon the 3rd section it is clear that the appellant would not be barred by the agreement from claiming compensation under the Act.

The 15th section, however, which deals with contracts and schemes existing at the commencement of the Act, requires to be considered.

Sub-section (1) provides that any contract whereby a workman relinquishes any right to compensation existing at the commencement of the Act, "other than a contract substituting the provisions of a scheme certified under the Workmen's Compensation Act 1897 for the provisions of that Act," shall not, for the purposes of the Act (of 1906), be deemed to continue after the time at which the workman's contract of service would determine if notice were given at the commencement of the Act.

Then by sub-section (4) it is provided that any scheme under the Act of 1897 in force at the commencement of the Act of 1906, which has not been re-certified before the expiration of six months from the commencement of that Act, shall be revoked. Accordingly if a workman had before 1st July 1907, the date of the commencement of the Act of 1906, agreed to accept the provisions of a scheme certified under the Act of 1897, and if the scheme was still in force at the commencement of the new Act it would regulate the right of the workman to compensation for a period of six months after the commencement of the Act.

That of course does not precisely meet the present case, because the appellant agreed to accept the provisions of a scheme (namely, scheme No. 7) certified under the Act of 1897 after the commencement of the Act of 1906, but it to some extent aids the respondents' contention that the appellant is bound to accept compensation under that scheme.

The respondents' argument was that

sub-sections (1) and (4) of section 15 when read together showed that a scheme certified under the Act of 1897, the period of which had not expired at the commence- of the Act of 1906, continued, at all events for the period of six months, to be an operative scheme under the latter Act, and that such a scheme continued to regulate the rights of a workman who had agreed to it before the commencement of the new Act. That being so, there was, it was contended, no reason why the scheme should not have the same effect in regard to a workman who had agreed to it while it was still in operation although after the commencement of the new Act.

I recognise the force of that argument, but I do not think that it can be sustained in face of the provisions of sub-sec. 2 of sec. 15. That sub-section provides that "Every scheme under the Workmen's Compensation Act 1897 in force at the commencement of this Act shall, if re-certified by the Registrar of Friendly Societies, have effect as if it were a scheme under this Act."

Now, at the time when the appellant agreed to accept the provisions of Scheme No. 7 it had not been re-certified by the Registrar, and therefore could not receive effect as if it had been a scheme under the Act. What is meant by a scheme under the Act is plainly a scheme certified by the Registrar in terms of section 3 after the commencement of the Act, and, as I have already pointed out, that section declares in unequivocal terms that no contract except a contract to accept the provisions of such a scheme shall bar a workman from claiming the compensation provided by the Act. No doubt if the construction which I put upon sub-sections (1) and (4) of section 15 be sound, an exception from the rule laid down in the third section is made in the case of a workman who at the commencement of the Act was under contract to accept the provisions of a scheme certified under the Act of 1897, but that is the only exception which I can find.

I have therefore arrived at a different conclusion from that of the learned Sheriff-Substitute, and am of opinion that the appellant is not restricted by having agreed to accept the provisions of Scheme No. 7 from claiming compensation under the Act. I accordingly think that the first question should be answered in the affirmative, and that being so the second question does not arise.

LORD ARDWALL—I concur in the course which is proposed by Lord Low. I am of opinion that the appellant is entitled to compensation under the Workmen's Compensation Act 1906, and that the Sheriff's decision ought to be recalled. I do not think that the appellant's claim for compensation under the Act is excluded by his having agreed to accept the scale of compensation provided by the Scheme No 7, marked "A." That Scheme had been certified in terms of the Workmen's Compensation Act 1897 on 10th December 1903, but at the time the appellant signed it it had not been re-certified after the passing of the Act of 1906, as provided by section 15, sub-sections 2 and 3, of that Act, and although subsequently the scheme is said to have been re-certified, yet that re-certification only took place after material alterations had been made upon it. The question is whether by signing the said Scheme "A" after the Act of 1906 had come into operation the appellant has contracted himself out of the operation of that statute. I am of opinion that he has not. Section 3 of the said Act of 1906 deals with the question of contracting out, and provides that that can only be done if the Registrar of Friendly Societies after taking steps to ascertain the views of the employers and workmen certifies that any scheme of compensation provides certain benefits therein specified, and if that shall have been done the Act goes on to provide as follows:—"The employer may, while the certificate is in force, contract with any of his workmen that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall be liable only in accordance with the scheme, but saving as aforesaid, the Act shall apply notwithstanding any contract to the contrary made after the commencement of this Act." Now, upon the facts stated in the case, it appears that the contract signed by the appellant had not been certified by the Registrar of Friendly Societies in terms of this section. Accordingly, as provided by the clause above quoted, the Act of 1906 applies notwithstanding the contract in question, which was made after the commencement of the Act. This matter is in my opinion quite clear so far as section 3 is concerned.

But it is said that the provisions of section 15 have the effect of rendering the scheme under the Workmen's Compensation Act of 1897 in force at the commencement of the Act of 1906 a valid scheme under the Act of 1906 if it is re-certified at any time before the expiration of six months from the commencement of the said Act, and in the present case this has been done. I cannot accept this reasoning. I think the result of sub-section 2 of section 15 is, that until what one may call an old scheme is re-certified by the Registrar of Friendly Societies it has not effect as if it were a new scheme under the Act of 1906 so far as regards workmen signing it after the commencement of the Act are concerned. Accordingly the scheme signed by the appellant was not at the time he signed it equivalent to a new scheme under section 3 of the Act of 1906. It was argued that if this be so the Act of 1906 makes it impossible for workmen or employers to enter into a contract taking themselves out of the Act during the period elapsing between the commencement of the Act and the adjustment of a scheme under section 3, or the re-certifying of an existing scheme under the Act of 1897. It is, I think, possible that this is the effect of the Act of 1906, but this defect is not of much moment, for it only affects workmen who are entering employment for the first time between

the commencement of the Act and the certification or re-certification of a scheme, and does not prevent even them contracting themselves out of the Act so soon as a new scheme shall have been certified or an old one re-certified. The terms of section 3 are quite absolute, and in my opinion they are not altered by the provisions of sub-sections 2, 3, and 4 of section 15, which are intended to save contracts current at the commencement of the Act and also under certain conditions to utilise in whole or in part schemes then in force as schemes under the 1906 Act.

LORD STORMONTH DARLING concurred.

The LORD JUSTICE-CLERK was absent.

The Court answered the first question of law in the affirmative.

Counsel for the Appellant—Craigie, K.C. —A. Mackenzie Stuart. Agents—Balfour & Manson, S.S.C.

Counsel for the Respondents—Murray—J. H. Henderson. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Wednesday, March 11.

FIRST DIVISION.

(Before Seven Judges).

M'ARTHUR'S EXECUTORS *v.* GUILD AND OTHERS.

Succession—Ademption—Special Legacy of Heritage—Sale of Subject under a Condition Unpurified at Testator's Death.

A hotel proprietor in his trust-disposition gave to a daughter a specific bequest of a hotel. Shortly before his death he had executed a minute of sale of the hotel, one of the conditions thereof being that the purchaser should apply for and obtain a transfer of the licence certificate. A part of the price was consigned in joint names to await the settlement of the price. The transfer of the licence certificate was only obtained by the purchaser on the day after the seller's death, and a formal conveyance of the property was executed thereafter.

Held that the hotel being still the property of the testator at the time of his death, the specific bequest of it had not been adeemed, and consequently that his daughter was entitled to the purchase money.

Heron v. *Espie*, June 3, 1856, 18 D. 917, and *Pollok's Trustees* v. *Anderson*, January 22, 1902, 4 F. 455, 39 S.L.R. 324, *commented on*, *explained*, and *reconciled*.

Peter M'Arthur, sometime spirit dealer in Perth, died on 16th April 1906, leaving a trust-disposition and settlement dated 28th July, with codicils dated 15th August and 22nd December, 1905, whereof the third purpose was—"(*Thirdly*) I dispone, assign, and bequeath to my daughter Mrs Margaret Anderson M'Arthur or Guild, residing in Strathmiglo, Fifeshire, wife of James Guild, hotelkeeper there, whom failing to her child or children in equal right (*first*) the property in Strathmiglo consisting of the Royal Hotel and premises therewith connected, with the pertinents and the writs and title-deeds thereof; . . . [*here followed other properties*] . . ." and the final purpose was the appointment of his two sons John Duncan M'Arthur and James Fenton M'Arthur as his executors, with a direction to divide any residue amongst themselves and his other surviving sons and his daughter.

A question having arisen with regard to the daughter's bequest, a special case was presented, to which (1) the testator's executors were *first parties*, (2) the testator's surviving sons were *second parties*, (3) the daughter, who was the testator's only daughter, was *third party*, and (4) the widow of Alexander Simpson M'Arthur, a predeceasing son, as mother and guardian of his only child, was *fourth party*.

The *question of law* submitted to the Court was—"Was the bequest by the testator to the third party of the said heritable property known as the Royal Hotel, Strathmiglo, adeemed?"

The *facts* bearing on the question were stated in the special case thus—"By minute of sale dated 5th March 1906 the testator sold to William Steven, Kinross, the said property known as the Royal Hotel, Strathmiglo, with stabling, outhouses, garden ground, and other premises thereto belonging, together with the whole grates, gas-fittings, and bar fittings ('exclusive of the beer pumps, which belong to Mrs Guild, the present tenant') at the price of £1400 sterling, with entry at Whitsunday (15th May) 1906, at which date the price was declared to be payable. It was declared to be a condition of the agreement of sale that the said William Steven should apply for and obtain a transfer of the licence certificate for the said hotel. It was also provided that the said William Steven, the purchaser, should within seven days from the date of the minute of sale consign £400 in the Bank of Scotland in Perth on deposit-receipt in the joint names of the testator and himself in part payment of the purchase price. The said minute of sale, which is signed by the said William Steven and the testator, is . . . also held to form part of this case. The said sum of £400 was consigned in said bank upon 12th March 1906 'to await the settlement of the price of the Royal Hotel, Strathmiglo, repayable on the joint endorsement of the said William Steven, Esq., and Peter M'Arthur, Esq., residing at 61 George Street, Perth.' A transfer of the licence certificate in favour of Mr Steven was obtained at the Licensing Court held on 17th April 1906, and a formal conveyance of the property was thereafter executed in his favour."

The first, second, and fourth parties *maintained* that the bequest of the said