H.L. 175. Now that case, I need hardly say, is one of very high authority, having been decided in the highest Court in the land by judges of eminence. But the scope of *Martin* v. *Holgate* has always appeared to me to be a narrow one; and I think that view is illustrated by the fact—I think it is a fact—that *Martin* v. *Holgate* has only once been applied in this Court, viz., in the case of *Campbell* (1915 S.C. 100), whereas it had been distinguished and not applied in a good many more. The reason I do not think it can here be held to apply is that on a sound construction of the language used I am quite unable to say that there is here any original and independent gift to the issue free from the condition as to survivance which affected their parents. We must therefore, I think without much doubt, answer questions 3 and 5 in the affirmative.

LORD SALVESEN—I agree with the decision which your Lordships propose to pronounce. I think we cannot draw the inference here which was drawn in the case of *Ross's Trustees* (12 R. 378) that the testatrix intended that vesting should take place in the four sons as at the date of her own death, but that on the contrary she intended that vesting was not to take place until the death of the liferenter, and that notwithstanding the declaration (which never received effect) that if a plan could be devised for securing the liferent, then the principle sum might be uplifted and divided among the four other sons. That clause is different from the one which the Court was considering in the case of *Ross's Trustees* which enabled them to come to the result that they did, for it contemplated the possibility of a plan by which it was left to the discretion of the trustees as to whether they would divide the estate at an earlier period.

LORD ORMIDALE—I agree with your Lordship entirely.

The Court answered questions 1 and 2 in the negative, 3 in the affirmative, 4 in the negative, and 5 in the affirmative.

Counsel for the First and Second Parties—Burn Murdoch. Agents—Mackenzie & Kermack, W.S.

Counsel for the Third Parties—A.R. Brown. Agents—W. & J. Cook, W.S.

Counsel for the Fourth Parties—Burnet. Agents—Dalgleish, Dobbie, & Company, S.S.C.

Friday, October 21.

SECOND DIVISION.

SIMSON'S TRUSTEES *v.* SIMSON.

Succession—Testament—Subject of Gift—Words Importing Gift of Heritage—"All my Monies and Belongings"—Titles to Land Consolidation (Scotland) Act 1868 (31 *and* 32 *Vict. cap.* 101), *sec.* 20.

A testator left several testamentary writings, of which the latest in date was a holograph document executed on the day before his death, in the following terms:—"I leave and bequeath all my monies and belongings to my dear wife A B . . ." The deceased's estate consisted mainly of urban property. There were no children of the marriage surviving. *Held* that the holograph writing was habile to convey to the testator's wife his whole estate, both heritable and moveable.

Adam Simson and others, the trustees nominated under a trust-disposition and settlement and codicil of the late Alexander Simson, 9 South George Street, Dundee, *first parties*, and Mrs Janet Gibson Alexander or Simson, wife of the said deceased Alexander Simson, *second party*, brought a Special Case to determine the effect of a holograph testamentary writing executed by the deceased.

The Case stated—"1. The late Alexander Simson (hereinafter called 'the truster') died upon the 3rd day of May 1920 survived by his wife, the second party hereto. There were no children of the marriage surviving, the nearest relatives of the truster being his brother the said Adam Simson and the children of his deceased sister Mrs Catherine Simson or Wilson, viz., Mrs Maggie Simson Wilson or Alexander, wife of William Alexander, 88 Hyndland Road, Glasgow; Mrs Blanche Edward Simson or Anderson, wife of George Stoddart Anderson, 24 Hunter Street, Kirkcaldy; Ada Jessie Wilson, 14 West Albert Road, Kirkcaldy; and Kate Rennie Wilson, 14 West Albert Road, Kirkcaldy. The truster left a trust-disposition and settlement dated 23rd April 1900, and codicil dated 22nd March 1915, by which he conveyed to the trustees therein named and for the purposes therein mentioned, the whole estate and effects, heritable and moveable, real and personal, then belonging or which should pertain and belong to him at the time of his decease, and he nominated and appointed his trustees to be his sole executors. The parties of the first part are the trustees nominated by the said trust-disposition and settlement and codicil. The said trust-disposition and settlement was prepared by John D. Bruce, S.S.C., Dundee, and the said codicil was prepared by Johnstone, Simpson, & Thomson, solicitors, Dundee, in whose custody the trust-disposition and settlement and codicil were at the date of the truster's death. . . . 2. The settlement was granted by the truster in trust for the purposes therein mentioned, viz.—(First) For payment of debts, funeral charges, and the expenses of executing the trust; (second) for the use and possession by the second party of his whole household furniture that might be in or about his dwelling-house at the time of his death, and that during all the days of her life, and so long as she should remain unmarried; (third) for payment to the second party of a reasonable sum for mournings; (fourth) for payment to the second party as soon as convenient after his decease of the sum of £150; (fifth) for payment to the second party during all the days of her life so long as she remained unmarried of the net annual income or proceeds of the whole residue of

the estate and effects, and in the trustees' discretion for making such advances from the capital of such residue as they should consider proper; but it was provided that in the event of his wife again marrying the foresaid provisions of the liferent use of his furniture, and of the payments of the annual proceeds of the residue of his estate, and any claim to advances from the capital thereof, should as and from the date of her second marriage cease and determine, and she should no longer have any right to said provisions, and on that event happening it was provided she should deliver up to his trustees the whole of said furniture, &c., and in lieu of said provisions his trustees were directed on and after that event to make payment to his wife of an annuity of £30 sterling during all the days and years of her life. (Lastly) On the second marriage of his wife, in the event of her again marrying, his trustees were directed, after setting apart from said residue a portion thereof for said annuity, to pay and divide the remainder thereof among such of his brothers and of the children of his late sister Mrs Catherine Simson or Wilson as might be then surviving, and the issue of any of said brothers who might be then deceased, and that in the proportion therein mentioned, and on the decease of the second party his trustees were directed to pay and divide the whole residue or remainder thereof remaining undivided among such of his brothers and the children of his late sister as might be then alive, and the issue of any of his brothers who might be then deceased, and that in the proportions therein mentioned. The said codicil of 22nd March 1915 recalled the appointment of certain of the trustees appointed by the said trust-disposition and settlement, appointed new trustees, cancelled the legacy of £150 to the second party, and subject to said alterations confirmed the settlement. 3. After the truster's funeral there was found in the deceased's repositories a holograph writing by him to the following effect, viz.—'9 *South George Street, Dundee, 2nd May* 1910.—1920.—I leave and bequeath all my monies and belongings to my dear wife Janet Gibson Alexander Simson.—ALEXANDER SIMSON; Witness, David Allan; Witness, Agnes S. Allan.' The parties are agreed that the true date of the said writing is 2nd May 1920. Subsequently there were also found in the deceased's repositories two holograph writings dated 2nd August 1901 and 29th October 1907 respectively. The writing of 2nd August 1901 is as follows:—'*2nd August* 1901.—I, Alexander Simson residing at Gilmour Place, 11 Bonnybank Road, Dundee, wish all my properties and monies and household effects paid over to my wife Janet Gibson Alexander or Simson after my death. The will I have at present in the hands of John Duff Bruce, S.S.C., Reform Street, Dundee, should now be void.—ALEXANDER SIMSON.' The writing of 29th October 1907 is in these terms:—'I, Alexander Simson, house proprietor, residing at 11 Bonnybank Road, Dundee, do hereby give and bequeath my whole estate and effects, real and personal, of which I may die possessed or be entitled to unto my wife Janet Gibson Alexander or Simson. The will written out by the late John Duff Bruce, solicitor, 69 Reform Street, Dundee, and now in the possession of Johnstone Simpson, & Thomson, solicitors, 87 Commercial Street, Dundee, I declare void.—ALEXANDER SIMSON, *29th October* 1907.' 4. The truster's moveable estate consists of moveable furniture and personal belongings valued at £105, 4s., together with cash in house amounting to 19s. 1d. The funeral expenses amount to £21, 19s. 6d., and there are claims against the estate amounting together to £13. The truster's heritable estate consists of a property in Union Place, Broughty Ferry, valued at £1000, subject to a bond for £700, and another property in Ramsay Place, No. 77 to 79a St Vincent Street, Broughty Ferry, valued at £1200, subject to bonds amounting to £640. 5. Certain questions have arisen among the parties hereto with reference to the meaning of the truster's various testamentary writings. The first parties contend that if the effect of the writings of 2nd August 1901 and 29th October 1907 was to revoke the trust-disposition and settlement of 23rd April 1900 said trust-disposition and settlement was subsequently confirmed by the codicil of 22nd March 1915, and that the writing of 2nd May 1920, if testamentary in character was not framed in such terms as to carry heritable estate, and that accordingly the heritable estate falls to be administered in terms of the said trust-disposition and settlement and codicil. The second party contends that it was the intention of the truster by the said holograph writing of 2nd May 1920 to revoke all previous testamentary writings, and that the said writing leaves and bequeathes to her the whole property of the deceased whether heritable or moveable; alternatively, however, if the said writing does not bequeath heritage, she contends that she is entitled to succeed to the heritable estate by virtue of the writings of 2nd August 1901 and 29th October 1907 or either of them, which writings are not revoked by the codicil of 22nd March 1915.

The *questions of law* were—"1. Is the second party in virtue of the holograph writing by the truster of 2nd May 1920 entitled to the whole estate of the truster, heritable and moveable? 2. If the first question be answered in the negative, (1) is the second party by virtue of said writing of 2nd May 1920 entitled to the moveable estate of the truster, and (2) does the heritable estate (*a*) fall to be administered in terms of the trust-disposition and settlement of 23rd April 1900 and codicil of 22nd March 1915, or (*b*) fall to be administered in terms of the writings of 2nd August 1901 and 29th October 1907, or either of them?"

Argued for the second party—The expression "all my monies and belongings" was equivalent to "all that belongs to me." The use of the word "all" showed an intention to deal with everything which the testator had to dispose of, and the word "belongings" covered everything disposable—

Smith's Executors v. *Smith*, 1918 S.C. 772, 55 S.L.R. 716; *Dunlop* v. *M'Crorie and Others*, [1909] 1 S.L.T. 544. If the expression "all my monies and belongings" were interpreted to mean moveable estate excluding heritage the testator's wife would get practically nothing. Such an interpretation should be rejected, because it was unlikely that the testator intended that his wife should be left with nothing—*Easson* v. *Thomson's Trustees*, (1879) 7 R. 251, 17 S.L.R. 239, *per* Lord Ormidale at 7 R. 254, 17 S.L.R. 241. *Scott's Trustees* v. *Duke*, 1916 S.C. 732, 53 S.L.R. 551, was also referred to.

Argued for the first parties—The expression "monies and belongings" did not cover heritage. Unequivocal evidence was necessary to show that it did. The testator was not an illiterate person. He had previously executed testamentary writings, and knew what were the proper words to use in order to express his intentions. The word "monies" did not cover heritage—*Easson* v. *Thomson's Trustees; Dunsmure, &c.* v. *Dunsmure*, (1879) 7 R. 261, 17 S.L.R. 134. The conjunction of the words "and belongings" with the word "monies" did not add to the limited meaning of the word "monies"—*Edmund* v. *Edmund*, (1873) 11 Macph. 348, 10 S.L.R. 210. "Belongings" was an unusual word to use to describe heritable estate. The testator's intention to exclude the heritage from the bequest was not an unlikely intention. His wife was not left unprovided for. She got a liferent of the whole estate.

LORD JUSTICE-CLERK—This case raises a very sharp point, and I do not think the authorities carry us very far. But so far as the authorities do go, the judgments of Lord Kyllachy in *Macintyre* (7 S.L.T. 435) and Lord Mackenzie in *Dunlop* v. *M'Crorie* (1909, 1 S.L.T. 544) rather support the wider reading, although they cannot be said to give a decision in a case like the present where there is both heritable and moveable estates. I think the word "belongings" really means that which belongs to the person, or the property of the person. It is used here in collocation with the word "monies," and these words are prefaced by the word "all." On a fair construction it seems to me that the true interpretation of this codicil is that the man meant his wife to get all he had, and he has said that in language sufficiently clear to enable us to give that construction to the settlement. It is not without importance, I think, that there were no children, and that the only competitors would be a brother and nephews and nieces by a deceased sister.

I am therefore of opinion that we should answer the first question in the affirmative and find it unnecessary to give any answer to the second.

LORD SALVESEN—I confess that on the first review of this short will my impression was that "belongings" might have the restricted meaning for which Mr Christie contends, as it is not a word that is usually employed in common parlance as describing heritable estate; but looking to the circumstances in which the writing was executed—a day before the man's death—and the whole history of his testamentary writings, I come to be of opinion with your Lordship that the testator's intention was to make a universal settlement in favour of his wife by this short writing.

The word "belongings," like the word "property" or "estate," seems to me habile to convey both heritable and moveable estate, and I do not think that the circumstance that it is conjoined with the word "monies" necessarily takes away from the effect that would otherwise attach to it. Mr Christie, for the first party, admitted that if the words "my monies and" had been omitted he could scarcely have resisted the view that the writing had universal effect. I do not see any sufficient reason in the fact that the testator specified one class of his property to take away from the meaning that would otherwise have pertained to the word "belongings." And if authority is needed for that proposition I think we have it in Lord Mackenzie's opinion in the case of *Dunlop* v. *M'Crorie* (1909, 1 S.L.T. 544) which did, I think, unlike the previous case (*Macintyre* v. *Miller*, 7 S.L.T. 435) which Lord Kyllachy decided, embrace both heritage and moveables, although there were specialties in that case which are not present here.

I have therefore no difficulty in agreeing with your Lordship that the testator's intention was to convey his whole estate to his wife, and that he has sufficiently expressed it in this last testamentary writing.

LORD ORMIDALE—I agree, and have nothing to add.

LORD DUNDAS was absent.

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

Counsel for the First Parties—Christie. Agents—Aitken, Methuen, & Aikman, W.S.

Counsel for the Second Party—Dickson. Agent—D. C. Oliver, Solicitor.

Wednesday, July 20.

SECOND DIVISION.

[Sheriff Court at Glasgow.

DOWLING *v.* JAMES METHVEN, SONS, & COMPANY, LIMITED.

Contract—Principal and Agent—Principal's Option in Favour of Principal Terminating Selling Agency if Stipulated Sum not Reached—Failure of Agent to Effect the Stipulated Turnover—Failure of Principal to Supply the Goods Necessary for its Attainment—Right of Principal to Exercise Option of Terminating Agency—Meaning of Word "Turnover."

A wholesale firm concluded an agreement with a selling agent whereby the latter was to receive a certain commission in the event of the sales effected by him amounting to a specified sum. The