

The Lord Ordinary pronounced the following interlocutor:—"The Lord Ordinary, on the motion of pursuer, who has produced a letter duly registered at the Post Office, and endorsed on the envelope as a citation by the authority of the Court of Session, addressed to Mr Robert White, blacksmith, 13 Main Street, Lochgelly, a material witness in the cause, said letter duly citing him to compare before the Lord Ordinary as a witness at the trial of the cause on the 17th July 1886 at o'clock forenoon, and marked by the Post Office authorities as "refused" by him, thereby indicating the refusal of the said Robert White to obey the said citation, to the injury of the pursuer and of the due administration of justice, grants warrant to macers of Court, messengers-at-arms, and other officers of the law, to search for, apprehend, and keep the person of the said Robert White, and to bring him before the Lord Ordinary on the said 17th day of July 1886 at ten o'clock forenoon, within the Parliament House, Edinburgh, with continuation of days, to answer at the instance of the pursuer, and authorises and empowers the said officers of the law to act upon a certified copy of the interlocutor by the Clerk or Assistant Clerk of Court, all in terms of the Act 45 and 46 Vict. cap. 77."

Counsel for Pursuer—Forsyth. Agent—N. Briggs Constable, W.S.

Counsel for Defender—Hay. Agent—James Skinner.

Friday, July 16.

FIRST DIVISION.

CONNELL'S TRUSTEES v. MRS CONNELL'S TRUSTEES AND OTHERS.

Succession — Deposit-Receipt — Deposit-Receipt Payable to A and B or Survivor.

A deposit-receipt taken by A in favour of himself and of B, and payable to either or survivor, has no effect as a destination, and on the death of A the sum contained in it does not pass to B but belongs to A's estate. Lord Shand *dissented* in the particular circumstances of the case.

Parent and Child — Succession — Destination — Personal Bond.

A bond was taken by a father bearing that the sum contained in it had been advanced by himself and his son, and was to be payable to himself and his son, and the survivor, and their or his executors, administrators, or assignees. The father died leaving a general settlement, executed after the date of the bond, by which he directed his trustees to pay any legacy bequeathed by any writing under his hand however informal or defective. *Held* (1) that the bond was not of the testamentary character referred to in this case; but (2) that the effect of it, *proprio vigore*, was a special destination to the son of the sum in it, which remained operative and effectual notwithstanding the subsequent general settlement.

Stocks and Shares—Destination—Greenock Harbour Debt—Railway Stocks—Stock Placed by Father in Own Name in Trust for Child.

A father applied for and obtained a sum of the funded debt created by the Greenock Harbour Act 1880, the certificate for the sum being made out by his instructions so as to certify that the father and son and the survivor were holders of the sum of funded debt. *Held* that the certificate was to be regarded as in the same position as a bond having the same destination, and therefore that the sum contained in it fell on the father's death, not under his settlement, subsequently executed, but to the son as survivor. *Held* also that the same rule applied to certificates of railway stocks taken by the father in favour of himself and his son and the survivor, and to certificates of railway stock taken by the father in favour of himself in trust for his son.

Husband and Wife—Succession—Shares—Joint-Ownership.

A husband took certificates of railway stocks in favour of himself and his wife, the certificate making no mention of the survivor. *Held* that the effect was to make the husband and wife joint-proprietors, so that on her death the stocks belonged to his estate and to his wife equally.

Stocks and Shares—English Company.

A husband took a share certificate in an English company in name of himself and his wife, the effect of which admittedly was by the English law to confer, *prima facie*, on the survivor a right to the whole. *Held* that the husband must be held to have contemplated that such would be the effect of his so taking the certificate, and therefore that on his death the shares did not fall under his settlement but belonged to his wife.

Charles Connell senr., shipbuilder, Whiteinch, near Glasgow, died on 14th February 1884. He was survived by his wife and by ten children, of whom at the date of this case two were major and the rest in minority or pupillarity. He left a settlement dated in 1883 conveying his whole estate to trustees, the first parties to this Case, for his wife in life, and after her death for his children equally in life only and their issue in fee. His estate consisted of valuable heritable and of upwards of £200,000 of free moveable estate in addition to the investments about which the questions after mentioned arose.

Mrs Connell died in September 1884, and her trustees were the second parties to this Case. After Mr Connell's death there was found in his repositories a deposit-receipt with the National Bank for £3000 dated in 1881 in name of "Charles Connell and Mrs Elizabeth Connell, Rozelle, Whiteinch," and "payable to either or survivor." It was endorsed by Mr Connell. With regard to this receipt Mrs Connell's trustees maintained that the sum contained in it formed part of her trust-estate, because it was (1) a donation unrevoked, or (2) a special legacy, or (3) because the money had come from her father's estate. Mr Connell's trustees maintained that such a receipt had no testamentary effect as a legacy, nor was it a donation *inter vivos* or *mortis causa*, and that even if it were such the subsequent trust-disposition and settlement of Mr Connell revoked it, and it therefore belonged to his estate.

There was also in Mr Connell's repositories a

certificate of two hundred £10 preference shares of the Glasgow and South-Western Railway Company dated 1st May 1879. These shares had been applied for by Mr Connell in a letter requesting the company to allot to him and Mrs Connell "jointly" the shares in question, and the certificate for them bore that Charles Connell, Esq., and Mrs Elizabeth Connell, were "proprietors of two hundred £10 preference shares [here followed the numbers of the shares] subject to the regulations of the said company." Mrs Connell's trustees maintained that this investment formed part of her trust-estate on the same grounds as they founded on in the case of the deposit-receipt. Mr Connell's trustees maintained that it belonged to his estate, not having been a donation to his wife, and the certificate not being a sufficient destination to make it a special legacy, and in any view on that matter being carried by the general settlement of 1883.

There were also in Mr Connell's repositories (1) a certificate for 180 shares of £15 each in the Mississippi and Dominion Steamship Company (Limited) (dated in 1880), and (2) a certificate for 25 shares of £100 each in the Kansas Steamship Company (Limited) (dated in 1882). These companies were both English companies. The transfers bore that the sellers, in consideration of the sum paid to them "by Charles Connell, Esq., and Elizabeth Connell, his wife," transferees, sold the shares "to hold unto the said transferees, their executors, administrators, and assignees," and that the spouses, transferees, agreed to accept the shares, and that the share certificate bore that "Charles Connell, Esq., and Elizabeth Connell, his wife, of Glasgow, is the registered holder of fifty shares" in the company.

The certificate of the Kansas Steamship Company's share was in similar terms.

With regard to these certificates the following statement was agreed on by the parties to this case—"The Mississippi and Dominion Steamship Company (Limited) and the Kansas Steamship Company (Limited) are English companies. Certificates for shares in terms of " the certificates just narrated, "whether issued in virtue of a transfer, or of an application for allotment, would in the Courts of England be held *prima facie* to confer on the survivor a right to the whole of the shares if there be no evidence to the contrary. Evidence of surrounding circumstances, of contemporaneous acts, and of the intention of parties, could be admitted and considered, and might rebut the presumption in favour of the survivor."

The contentions of the respective trustees of Mr and Mrs Connell as to these shares in English companies were the same as has just been explained.

There were also in Mr Connell's repositories (1) a certificate in name of Mrs Connell, "exclusive of the *jus mariti*, &c., of her husband," for five £10 preference shares in the Glasgow and South-Western Railway Company; (2) a transfer to her of preference consolidated stock and 5 per cent perpetual guaranteed stock (afterwards converted into guaranteed 4 per cent stock and deferred stock) in the same railway company, and certificates for the same, all in favour of Mrs Connell, her executors, administrators, and assigns, excluding the *jus mariti* and right of administration of her husband, and not subject to his debts and deeds.

The contentions of the respective trustees of Mr and Mrs Connell as to these were the same as have been already explained.

Mr Connell also left in his repositories certain other documents relating to investments wherein the names of his children occurred as follows— (1) He left ten bonds by the Clyde Navigation Trustees for £500 each. Each of these was in the name of Mr Connell, and one of his ten children in the following manner (which is taken from that in which his son C. B. Connell was named). The bond bore that the Clyde Trustees in consideration of the sum of £500 paid to them by Charles Connell, shipbuilder, residing at Rozelle, Partick, and Charles Broadfoot Connell, his son, "bind themselves to pay to the said Charles Connell and Charles Broadfoot Connell and the survivor of them, and their or his executors, administrators, or assigns" the sum of £500 with interest at 4 per cent. (2) Mr Connell also left ten certificates of £500 each of the Greenock Harbour Trust Fund Debt, each in name of himself and one child, thus (to take that in which W. C. S. Connell, his son, was named)— "This is to certify that Charles Connell . . . and William Cuthbert Smith Connell, his son . . . and the survivor of them, are the holders of £500" of the funded debt. (3) There were also seven certificates found in Mr Connell's repositories each for £250 in the Glasgow and South-Western Railway Company consolidated stock, each dated 14th December 1883, and made out in name of Mr Connell and one of the seven eldest children thus (to take the transfer of C. B. Connell), "in consideration of the sum of £286, 11s. paid to us [the sellers] by Charles Connell and Charles Broadfoot Connell . . . and the survivor . . . do hereby sell . . . to the said transferees £250 consolidated stock of and in" the company, while the stock certificate bore that "Charles Connell and Charles Broadfoot Connell and the survivor" were holders of £250 consolidated stock in the company.

There were seven similar certificates of North British Railway ordinary stock.

Lastly, there were three certificates of £250 each of Glasgow and South-Western Railway Company consolidated stock, and three certificates of £250 each of North British Railway ordinary stock. In these the three youngest children were interested thus:—The certificate (to take the case of Allan Macgregor or Connell, the 8th child) bore that Charles Connell, Esq. . . . in trust for Allan Macgregor or Connell, is at this date the proprietor of "£250 consolidated stock of the Glasgow and South-Western Railway Company."

With regard to all these investments the children (of whom those who were major were third parties, those in minority, and those in pupilarity, through their curators and tutors respectively, being fourth and fifth parties) maintained that they belonged to the child respectively named in each, while Mr Connell's trustees took up the same position as they did in controversy with Mr Connell's trustees, namely, that these investments had not been given or operatively destined to the respective children, and that even assuming them to be so, they were dealt with by the settlement of 1883, and thus were under their management for the purposes of his will and as part of his estate.

It was admitted that there was no evidence of

Mr Connell's intention beyond the contents of the documents, and further that the money contained in them in each case had come from Mr Connell himself except certain investments (mentioned by Lord Adam *infra*) in which Mrs Connell claimed an interest, and wherein the money had come from her father's trust-estate.

This Case was stated for the solution of the questions thus arising.

Argued for Mr Connell's trustees—*1st. With reference to the deposit-receipt payable to either or survivor*—It was not a legacy, being a deposit-receipt, not a donation *inter vivos*, nor a donation *mortis causa*, because there was no extraneous evidence which in such cases was necessary—see cases of *Cuthill v. Burns*, March 20, 1862, 24 D. 849; *Watt's Trustees v. M'Kenzie*, July 1, 1869, 7 Macph. 930; *Miller v. Miller*, June 27, 1874, 1 R. 1107; *Crosbie's Trustees v. Wright*, May 28, 1880, 7 R. 823; *Jameson v. M'Leod*, July 13, 1880, 7 R. 731; *Lord Advocate v. Galloway*, February 8, 1884, 11 R. 541; *Blythe v. Curle*, February 20, 1885, 12 R. 674. *2d. As to the certificates of funded debt and of shares*—They still formed part of the executory estate, and they belonged to the same class of documents as deposit-receipt (see specially *Crosbie's Trustees* above quoted, and opinion of Lord Shand), and though bearing the joint-names of the spouses, they were not thereby taken out of the husband's executory estate—see *Thomas v. City of Glasgow Bank*, January 31, 1879, 6 R. 607, and *Steedman v. City of Glasgow Bank*, October 31, 1879, 7 R. 111. *As to the Clyde Trust bonds*—They remained *in bonis* of the trustee—see *Walker's Executors v. Walker*, June 19, 1878, 5 R. 965, and cases there cited, and special destination revoked by words in general settlement and by scheme of trust—*Thoms v. Thoms*, 1868, 6 Macph. 704; *Glendonwyn v. Gordon*, 1870, 8 Macph. 1075, and 11 Macph., H. of L. 33; *Campbell v. Campbell*, December 11, 1878, 6 R. 310, and 7 R., H. of L. 100.

Replied for the second, third, fourth, and fifth parties—There were four classes of investment referred to in the case (1) deposit-receipts; (2) personal bonds; (3) certificates of Greenock Harbour Trust; (4) certificates of railway shares. To take first the personal bonds: These were documents by which a creditor could express his testamentary intentions, and in the event of their not being uplifted the intention would be given effect to—see case of *Walker's Executors v. Walker*, June 19, 1878, 5 R. 965; *Buchan's Trustees*, February 7, 1880, 7 R. 570. A distinction was to be taken between personal bonds and deposit-receipts—case of *Miller v. Miller*, June 27, 1874, 1 R. 1107. These bonds were really bonds of provision to the children—*Lang's Trustees v. Lang*, July 14, 1885, 12 R. 1265. These investments were all part of a scheme by the father to make a provision for the children. Each child was to get a bond, and some of them were taken prior to the date of the settlement and some after it.

At advising—

LORD ADAM—The parties to this case are the trustees of the late Mr Connell, the trustees of his widow, and his children.

The questions submitted for our decision are whether and to what extent the sums contained in certain documents which were found in Mr Connell's repositories after his death belong to

his trust-estate? or whether and to what extent they belong to the trustees of his widow and to his children respectively?

These documents, generally speaking, consist of a deposit-receipt, certificates of shares in railway and shipping companies, bonds of the Clyde Navigation Trustees, and certificates of the Greenock Harbour Trust Funded Debt.

It is stated in the Case that the parties admit that no evidence exists of the intentions of Mr Connell beyond what is shown by the terms of the documents printed or referred to in the appendix. It is also agreed that the Court shall deal with the case on the footing that all the money contained in the deposit-receipt and various investments belonged originally to Mr Connell, with the exception of certain specified investments which were derived from the trust-estate of the late Charles Campbell, Mrs Connell's father.

It appears from these documents, and from the statements in the Case, that Mr Connell died on 14th February 1884, leaving a widow and ten children, some of whom are in minority, and some in pupilarity. His widow died on 1st September 1884.

Mr Connell left a trust-disposition, dated 8th January 1883, by which he left his whole estate to trustees, to be held for his wife in life, and after her death for his children equally in life, and their children in fee, with power in certain cases to make advances to the children—the shares of the daughters being restricted to £15,000 each.

It is stated that Mr Connell, in addition to the investments which form the subject for consideration in the present case, left upwards of £200,000 of free moveable estate besides valuable heritable property.

It will be observed that Mr Connell gave a right to the fee of no part of his large estate either to his wife or children.

With reference to the documents taken in favour of his wife, they are all dated prior to his settlement.

With reference to the documents taken in favour of his children, they are dated partly before and partly after the date of his settlement.

The first of these documents is a bond, dated 7th June 1881, for £500, by the Clyde Navigation Trustees, in favour of himself and his eldest son, and the survivor, and there are nine similar bonds in favour of himself and each of his nine younger children and the survivor. Subsequently he invests £5000 in the Greenock Harbour Funded Debt. In making application for this investment he writes on 9th February 1882 to the treasurer of the Harbour Trust—“If your arrangements will allow, I will take £5000 as an investment for ten members of my family, along with my own name, so as the interest would be payable to either of them or me.” Accordingly there are ten certificates for £500, each in name of himself and one of his sons, and the survivor.

After the date of the settlement there are seven certificates for £250 consolidated stock of the Glasgow and South-Western Railway Company, each in favour of himself and one of his seven eldest children and the survivor, and seven certificates for £250 ordinary stock of the North British Railway Company, each in like manner in favour of himself and one of his seven eldest

children and the survivor; and obviously with the view of making the shares of his three younger children equal to those of the elder children he subsequently takes three certificates for the same amount of the same respective stocks to himself in trust for each of his younger children.

Now, seeing that Mr Connell had by his settlement given a right to no part of the fee of his large estate to his children, that these documents are taken partly before and partly after the date of his settlement, that in making certain of these investments he describes them as investments for ten members of his family, and that there is an equal amount taken in name of each of his children, I think that he intended that his children should have a right to these sums after his death over and above the provisions made for them in his settlement; but it seems that he retained the possession and entire control of the documents during his life, and as there is no evidence, so far as I can see, that he made a donation of the sums therein contained either *inter vivos* or *mortis causa* to his children, I think that he did not intend to give any right to these sums to them during his life. If that be so, it may also be inferred that he had a similar intention with reference to the investments made in name of his wife. It appears to me, therefore, that the answers to be given to the questions put to us in this case must depend on the nature and effect of the documents themselves, and whether they are sufficient *proprio vigore* as operative destinations to give a right to the persons named in them.

Before, however, proceeding to consider these in detail I would refer to a clause in the settlement to which our attention was specially directed. It is the second purpose of the trust, by which the trustees are directed to hold the trust funds "for payment and fulfilment of all such legacies or bequests, instructions or directions, as I may leave, bequeath, or give by any codicil hereto, or by any writing under my hand (however informally executed or defective) showing my wishes and intentions." It was argued to us that the documents in question were codicils or writings of the kind here referred to, and must therefore receive effect in virtue of this clause of the settlement. I think, however, that the documents referred to in the settlement are documents of a testamentary nature. It appears to me, however, that the documents we have to consider are not documents of a testamentary nature, and that therefore they can receive no support from this clause. For the same reason I think that the clause in the settlement by which the trustor revokes all former settlements executed by him has no reference to the documents in question, and therefore does not revoke those of them which are dated before the settlement.

Turning now to the documents which we have to consider, I purpose to take first those which bear the names of the children—the first of which is No. 13 of the appendix. It is a bond for £500 by the Clyde Navigation Trustees. The consideration bears to be paid by "Charles Connell, shipbuilder, residing at Rozelle, Partick, and Charles Broadfoot Connell, his son," and the destination is taken in favour of "the said Charles Connell and Charles Broadfoot Connell, and the survivor of them, and their or his

executors, administrators, or assigns." We have here a bond with a destination to Mr Connell and his son, and to the survivor, and to their or his executors, administrators, or assigns. The question is, whether this is an operative and effectual destination? Now, I think that the case of *Walker's Trustees v. Walker*, 5 R. 965, is an authority directly in point as to the effect to be given to such a destination. In that case Alexander Walker lent a sum of £500 to the trustees of the Dundee Harbour on an assignment which bore that the money was paid by him and Mrs Walker, his spouse. The destination was to the said Alexander Walker and Mrs Walker, equally between them, and to the survivor, and to the heirs and assignees of the survivor. There was no delivery of the bond. Mr Walker afterwards executed a testament conveying his whole estate to an executor. The Court decided two points—1st, that the husband, who predeceased, had not been divested of the sum in the assignment; but, 2d, that the general disposition in the testament did not interfere with the special destination in the assignment, and therefore that the widow was entitled to the £500. With regard to the first point the Court followed the case of *Hill v. Hill*, M. 11,580, in which it was held that where a father took a bond for money lent by him, payable to his son, but retained it in his own custody, it continued to be the father's property.

In the case of *Buchan v. Paterson* [Feb. 7, 1880], 7 R. 211, in which a father took two railway debenture bonds, payable to himself and his wife in life and their children in fee, the father died intestate, and effect was given to this destination. The Lord Justice-Clerk expresses the opinion that there was no *jus crediti* in the children when the investment was made, but that if the parent or investor dies leaving the investment standing in such terms, it will receive effect; and Lord Gifford said—"The owner of a sum of money may, I think, invest it in railway debentures or similar securities, taking the destination in any terms he pleases. I think the destination will be effectual if left unaltered, just as if he had purchased an heritable subject and taken the title in similar terms."

These cases, I think, establish this, that this bond by the Clyde Trustees did not become the property of Mr Connell's son, Charles Broadfoot Connell, during his father's life, but that under the special destination therein contained to him as the survivor it now belongs to him. And the same rule of law applies to the other nine bonds by the Clyde Trustees to which I have referred.

The next document to which I would refer is a certificate for £500 of the Funded Debt of the Greenock Harbour Trust. It is No. XV., and is to be found in the Case. It is in these terms—"This is to certify that Charles Connell, Rozelle, Broomhill Drive, Partick, and William Cuthbert Smith Connell, his son, also residing there, and the survivor of them, are holders of five hundred pounds of the Greenock Harbour Funded Debt." This document is not in the form of a bond, but it forms the title to the sum contained in it. It contains a destination to Mr Connell and his son, or the survivor. I cannot distinguish this document from the case of a bond, and I think it must go to the son as the survivor. The other nine certificates of the Greenock Harbour Trust, taken in name of Mr Connell and his

children or the survivor, also fall to be governed by this rule.

Then we have the certificate No. XV., which is in these terms—"This is to certify that Charles Connell, Esq., and Charles Broadfoot Connell, Esq., Rozelle, Broomhill Drive, Partick, and the survivors, are at this date the proprietors of two hundred and fifty pounds consolidated stock of the Glasgow and South-Western Railway;" and that too must be governed by the same rule. And there are six similar certificates which will also fall under this rule.

There is also the certificate No. XIX. in these terms—"Charles Connell, Esq., Rozelle, Broomhill Drive, Partick, and Arthur Cuthbert Connell, Esq., and the survivor, proprietor of two hundred and fifty pounds North British ordinary stock," which as well as six similar certificates all fall to the children as the survivors.

Then again there are a number of documents in which Mr Connell takes the title to himself in trust for one or other of his children. I think that is just the same in effect as if he had taken the title to the children expressly, and therefore with regard to all these documents I am of opinion that they belong to the children named in them; and that exhausts the documents in favour of the children.

There is also a series of documents in which the title is taken to Mr and Mrs Connell, and laying aside for the present the deposit-receipt, I shall proceed to examine these. And first I would take document No. IV. It is a certificate in these terms—"This is to certify that Charles Connell, Esq., and Mrs Elizabeth Connell, Broomhill Drive, Partick, are proprietors of two hundred £10 preference shares 1879, numbers 26,658 to 26,857 inclusive, of the Glasgow and South-Western Railway Company." Now, it appears to me that what Mr Connell intended when he took these shares in the joint names of himself and his wife, the certificate making no mention of the survivor of them, was that his wife should take these shares to the extent of one-half, and that he should retain the other half to himself. The certificate by its terms makes them joint-proprietors, and that is the result of the law of Scotland, and so I am of opinion that these shares belong to Mr Connell's trustees and Mrs Connell's trustees equally.

The next (VI. B) is a certificate of fifty shares in the Mississippi and Dominion Steamship Company. The certificate bears that Mr and Mrs Connell are the holders of these shares upon the terms of the articles of association of the company. And the next document is a certificate (B VIII) in similar terms for twenty-five £100 shares of the Kansas Steamship Company (Limited).

With reference to these shares the following statement is made in the Case—"The Mississippi and Dominion Steamship Company (Limited) and the Kansas Steamship Company (Limited) are English companies. Certificates for shares in terms of Nos. VI. and VIII. of the appendix, whether issued in virtue of a transfer, or of an application for allotment, would in the Courts of England be held *prima facie* to confer on the survivor a right to the whole of the shares if there be no evidence to the contrary. Evidence of surrounding circumstances, of contemporaneous acts, and of the intention of parties, could be admitted

and considered, and might rebut the presumption in favour of the survivor." Here there is no such evidence, because it is made matter of admission in the Case that no evidence exists of the intentions of Mr Connell beyond what is shown by the terms of the documents.

The title therefore which has been taken to these shares is one which has the effect of vesting them in the survivor. After Mr Connell's death Mrs Connell was the only person whom the shipping companies would recognise as having right to their shares. I think that Mr Connell must be presumed to have known that that would be the result of his taking a title to the shares in the terms in which he did, and that he intended that they should belong to her should she survive him. I think therefore that they now belong to her trustees.

The next is No. 9. It is a certificate of five preference shares of the Glasgow and South Western Railway Company, and is in these terms—"This is to certify that Mrs Elizabeth Campbell or Connell, wife of Charles Connell, Esq., shipbuilder, Whiteinch, Partick, exclusive of the *jus mariti*, &c., of her husband, is proprietor," &c. This is a very clear case, and upon the same grounds as I have stated I think they go to Mrs Connell's trustees.

The next two are Nos. 11 and 12, which are also certificates in her name, and with regard to these there is this additional fact, that the money with which they were purchased came from the trust-estate of Mrs Connell's father, and not from Mr Connell, and therefore I have no doubt whatever that these go to Mr Connell's trustees.

And that exhausts all the documents but the one I have left over, namely, the deposit-receipt in favour of Mrs Connell, and which is in these terms—"National Bank of Scotland's Office, Glasgow, 13th September 1881. Received from Charles Connell, Esq., and Mrs Elizabeth Connell, Rozelle, Whiteinch, three thousand pounds sterling to their credit in deposit-receipt with the National Bank of Scotland, payable to either or survivor."

If this deposit-receipt is to be considered as a document of the same character as the certificates and bonds which I have been considering, the contents of it would undoubtedly have gone to Mrs Connell as the survivor. But the decided cases show that it is not in the same category. The cases of *Hill*, *Walker's Trustees*, and *Buchan's Trustees*, to which I have already referred, show that in the case of bonds, railway debentures, and such-like documents, the destination is an operative destination, and gives *per se* a right to the contents to the person named in them.

I think, on the other hand, that it has been equally conclusively settled that a deposit-receipt standing by itself has no such effect.

In the case of *Crosbie's Trustees*, 7 R. 823, the terms of the deposit-receipt there under consideration were very similar to those in this case. They were—"Received from Robert Crosby, Gilmerton, Mr Alexander Wright, and Mrs Christina Wright, £3500, to be paid to any, or survivor, or survivors." With reference to this document the Lord President said—"I quite agree with the Lord Ordinary that this is not sufficient to operate as a bequest of £3500 in favour of Mr and Mrs Wright. A document of this kind can have no operation or effect. I think that is well

settled by three consecutive cases, those of *Cuthill v. Burns*, *Watt's Trustees v. Mackenzie*, and *Millar v. Millar*. . . . I hold it therefore as settled that a document of this kind cannot of itself operate as a will containing a bequest of money in favour of the person in whose name it is conceived failing the deceased. But while all that is clear, there still remains the question whether the sum contained in this deposit-receipt was not gifted *mortis causa* to Mr and Mrs Wright, and in that inquiry the terms of the deposit-receipt are very important evidence, because they indicate some purpose of the deceased when he took the deposit-receipt in these terms. . . . From the terms of the deposit-receipt, which must be held to be a very important article of evidence as to whether a gift *mortis causa* can be here made out, we have undoubtedly indications of a purpose of some kind in Mr Crosbie's mind, continued for a series of years, that the money contained in the receipt should in some way be for the benefit of his sister and her husband. All that, however, would not make the deposit-receipt effectual as a bequest or a testamentary paper." And his Lordship thought that there was sufficient evidence to show, as regards the money deposited in bank, that the intention and desire of the deceased was to make a present gift of it to those relations, and that he effectually did so.

Now, it is in this last respect that in my opinion this case differs from that of *Crosbie's Trustees*, because I think that there is no evidence that Mr Connell intended to make a present donation *mortis causa* or otherwise to his wife.

I think, therefore, the deposit-receipt must be considered a document standing by itself, and that as such it has no testamentary operation or effect. I am therefore of opinion that the contents of it belong to Mr Connell's trustees.

Turning now to the questions, the answers which in my opinion ought to be given are these—To the first question, "Does the sum of money contained in the deposit-receipt fall to Mrs Connell's trust-estate as a special legacy, or an unrevoked donation *inter vivos et uxorem* or a donation *mortis causa*, or does it form part of the trust-estate of Mr Connell?"—I think the answer to that should be that it forms part of the trust-estate of Mr Connell.

The second question is—"Do the shares vouched by the certificates specified in article V. B,* belong in whole or in part to Mrs Connell's trust-estate, or do the said shares belong to Mr Connell's trust-estate." I think the answer to that is that the certificate B IV. belongs one-half to Mr Connell's trust-estate, and one-half to Mrs Connell's trust-estate, and that the certificates B VI. and B VIII. belong to Mrs Connell's trust-estate.

The third question is this—"Do the investments vouched by the share and stock certificates specified in article V., C, belong to Mrs Connell's trust-estate, or do they belong to Mr Connell's trust-estate?" I think these belong to Mrs Connell's trust-estate.

The fourth question is—"Do the ten bonds in article V., D, operate as special provisions in favour of Mr Connell's ten children respectively, or are these bonds to be regarded as part of the trust estate of Mr Connell?" I think these belong to the children.

* As to these references see interlocutor printed *infra*.

Then the fifth question is—"Do the certificates vouching the investments set forth in article V. under the heads E, F, G, or any of them, confer a right to these investments upon the individual children whose names they respectively bear, or do these investments all belong to Mr Connell's trust-estate?" I think they all go to the children.

Then the last question is—"If any of the investments are to receive effect as special provisions in favour of the children of Mr Connell, is the value of these investments in the case of daughters to be reckoned as part of the £15,000 to which by the settlement their respective shares are restricted?" I think they are not to be taken into consideration—the answer to that is in the negative.

That is my opinion in this case.

LORD MURE—I agree in all that Lord Adam has stated with reference to these different questions, and I shall not trouble your Lordships by going over the grounds of opinion which his Lordship has so fully explained.

I may simply say, with reference to the first question about the deposit-receipt, that I conceive that it is governed by the rule laid down in *Crosbie's* case, or rather by the rule adopted there as having been laid down in other cases, that a deposit-receipt in these terms does not operate as a testamentary writing or a donation *de presenti* or *mortis causa*, and I see no evidence in this case except the deposit-receipt itself that leads me to think—and I do not think it has been proved—that it was Mr Connell's intention to make a donation of this money to his wife, and therefore the first question must be answered in the negative.

LORD SHAND—The only question of novelty and importance which this case raises is, I think, that which relates to the stock certificates, in which we find that there is not only inserted the name of Mr Connell, who took these certificates, but also the name of the child or children in whose favour he obviously desired to take the title to the stock. The question that has arisen with reference to these certificates is, whether they are to be regarded in the same light as deposit-receipts which admit of parole evidence in order to shew what is to be the effect of them, or whether they are not to be regarded in the same light as bonds and other documents—I mean personal bonds and other documents of title containing a destination to which the Court has given effect. I am of opinion with Lord Adam that stock so taken, either upon the application of the father or any other relative, followed by certificates, or upon a transfer as upon a purchase taken in such terms as we have here, again followed by certificate, are subject to the principle applicable to bonds and other documents. In substance these are simply destinations of property, and after full consideration I see no reason for holding that these destinations should not receive effect, and so I agree with the opinion which Lord Adam has expressed in regard to these documents, which form the bulk of the writings with which we have to deal in this case.

In the results which Lord Adam has arrived at upon the other documents I also entirely concur, with one exception, for I am of opinion, differing

from your Lordships, that there ought to have been no distinction between the deposit-receipts and the other documents. That receipt which was taken on 13th September 1881 is in these terms—"Received from Charles Connell, Esq. and Mrs Elizabeth Connell, Rozelle, Whiteinch, three thousand pounds sterling, to their credit in deposit-receipt with National Bank of Scotland, payable to either or survivor." The money deposited was not drawn by Mr Connell during his life, and in my opinion, in the circumstances of this case, the right to the receipt and its contents belongs to Mrs Connell, the survivor. The receipt, it will be observed, was taken in September 1881. Mr Connell died in February 1884, so that for a period of two and a-half years it was left in terms which may properly be described as a destination.

It is further to be observed besides the duration of this deposit-receipt that in reference to delivery it is settled by a series of cases that delivery of such a document is not necessary. The case of *Crosbie's Trustees v. Wright*, to which Lord Adam has referred, makes that quite clear, all the Judges having expressed an opinion with reference to documents of this kind, and so expressed that if it was brought out that there was a clear intention to make a donation thereby that was effectual even though delivery had not been made. But on this case I hold that the delivery was quite complete, because I think in reference to documents of this kind that the husband is the proper custodian of writs and titles belonging to his wife, and there no necessity that he should hand such a paper as this to his wife to keep in her own escritoire rather than retain it in his own keeping among his other documents and titles so as to constitute delivery. So far, then, as delivery is concerned, I am satisfied that no point against the right of the late Mrs Connell can be made.

Then as to intention, I confess upon the pleadings and evidence before us that is to my mind free from doubt. Mr Connell was a gentleman of large means. The case is not like one in which the testator places the whole or a large portion of his means upon a receipt of this kind. It is not a case in which there is a strong presumption that he intended to make this deposit for the mere purpose of administration. He died worth £200,000, and this sum was laid aside by him specially. The only explanation that I can give is that it was, on the face of it, deposited for the purpose of giving it to his wife should she survive him.

In the case of *Crosbie's Trustees* I took occasion to observe that in reference to documents of this kind the taking of the title in this way must necessarily mean one of two things, and one of two things only. It is either a trust in favour of the person named who takes the document or it is a donation. It was either intended in inserting the words "payable to either or survivor" to be a trust in the wife on behalf of the husband's representatives or a donation. Is it possible to conceive after the light that has been thrown upon this that he meant this for a trust? I humbly think not.

In the case of *Crosbie's Trustees* I took occasion to observe—"In cases of this kind the relation of the parties is perhaps the most important element in determining whether trust or gift was in-

tended. If the money is taken in name of a clerk or man of business or other person to whom the granter might naturally entrust the management of his affairs, it is extremely difficult to establish donation. On the other hand, in such a case as this, where the receipt is taken by the deceased in favour of one of his nearest relations" (in that case it was the case of a sister) "with whom he was on terms of the closest intimacy, and for whom he had the warmest affection, the presumption of trust is very much weaker and therefore more easily overcome by evidence of the surrounding facts, and of the statements and conduct of the deceased." If that was true with reference to a sister, I should say that with reference to a wife, and looking to the amount of this gentleman's estate, the very slightest evidence outside of the document—expressed as it is—should be sufficient to establish this as a donation and not as a mere trust; and that evidence I do not think it is difficult to find. We find that the system upon which this gentleman proceeded for some years was to set aside from time to time small portions of his large fortune and invest these in the names of different members of his family. He did so even in favour of his wife, two of them before the date of this receipt and one of them, the Kansas Stock, afterwards. He did so with reference to every member of his family on various occasions, taking so many shares in this company or the other—shares in the Glasgow and South-Western Railway Company, bonds of the Clyde Trustees, shares in the Greenock Harbour Trust, and in the North British Railway Company, and so on, and all within a short time of the date that this deposit-receipt was taken in favour of his wife. I think there is evidence outside of this receipt in the actings of the deceased Mr Connell which to my mind is quite as forcible as any parole evidence would have been to support this as a donation. In the language which has been added to this Special Case with reference to certain of the stocks I am of opinion that there is "evidence of surrounding circumstances, of contemporaneous acts, and of the intention" of parties in the other documents, and the circumstances to which I have referred, particularly the large amount of the testator's estate, which satisfies me that he meant to make this money a donation to his wife, and therefore that there is no good ground for drawing a distinction between this deposit-receipt and the other documents. I think that the money represented in this receipt belongs to the trustees of this lady.

LORD PRESIDENT—I agree in all points in the opinion of Lord Adam.

The Court pronounced this interlocutor :—

"The Lords having heard counsel on the Special Case, Find and declare—1. That the sum contained in the deposit-receipt here referred to forms part of the estate of Mr Connell: 2. That the certificate B IV. referred to in article V. of the Special Case [being that in favour of Mr and Mrs Connell] belongs, one-half to Mrs Connell's trust-estate, and one-half to Mr Connell's trust-estate, and that the certificates B VI. and VIII., mentioned in said article V. [the shares in the English companies], be-

long to Mrs Connell's trust-estate; 3. That the investments vouched by the certificate specified in article V., C. [being that in her favour exclusive of the *jus mariti*, &c.] belong to Mrs Connell's trust-estate: 4. That the ten bonds in article V., D. [the Clyde Trust bonds] belong to Mr Connell's ten children respectively: 5. That the certificates vouching the investments in article V. under heads E, F, and G, confer a right on the individual children whose names they respectively bear [those in favour of Mr Connell and a child or the survivor, and those in favour of Mr Connell in trust for a child]: 6. That the investments here referred to are not to be reckoned as part of the £15,000 here mentioned; and decern; and authorise the expenses of the parties to be paid out of Mr Connell's trust-estate."

Counsel for Mr Connell's Trustees (First Parties)—Gloag—Penney. Agents—C. & A. S. Douglas, W.S.

Counsel for Mrs Connell's Trustees and the Children of the Marriage (Second, Third, Fourth, and Fifth Parties)—R. V. Campbell—Crole. Agents—Davidson & Syme, W.S.

Saturday, July 17.

SECOND DIVISION.

[Sheriff of Aberdeen, Kincardine, and Banff.]

WALKER'S TRUSTEES *v.* MANSON'S TRUSTEES.

Lease—Renunciation—Tenant's Bankruptcy—Landlord's Claim of Damages.

A lease provided that the tenant's bankruptcy or insolvency should, "in the proprietors' option, be an irritancy of the lease." The tenant became insolvent, and the landlords accepted a renunciation of the lease, the deed of renunciation, *inter alia*, providing that it was "hereby specially agreed that all the rights and claims of parties, whether of landlords or of tenant or tenants, are reserved for settlement and adjustment, and that the landlords shall in no way be prejudiced by accepting this renunciation in place of terminating the lease as otherwise therein provided for." The landlords claimed damages in respect that the tenant had given up the lease before its natural termination, and they had been obliged to let it at a lower rent. *Held* that as the acceptance of the renunciation was a voluntary act on the part of the landlords, and as they had not reserved a claim to damages they were not entitled to the damages claimed.

Lease—Meliorations, Discount on, in Respect of Termination of Lease through Tenant's Bankruptcy.

A lease provided that whereas the incoming tenant had paid the waygoing tenant the sum to which the waygoing tenant was entitled as meliorations, the incoming tenant bound himself to maintain the houses on the

farm at the value of £126 and to leave them of that value at least, "in which event he shall then be entitled to repayment of £63," being the sum paid to the waygoing tenant, and on the other hand he was to be bound to pay for any deterioration that might have occurred. The incoming tenant became bankrupt, and with consent of the landlord renounced the lease before its natural termination. *Held* that the landlord was not entitled to discount on the sum of £63 in respect of the period of the lease still to run but for the renunciation.

By contract of lease dated May 1880, Robert Stewart Walker of Orrok, with consent of the trustees acting under a trust-disposition executed by him, let the farm of Westburn, part of the lands of Orrok, to Alexander Manson for a period of 19 years and at a rent of £152, 10s. per annum, the lease providing, *inter alia*, that "whereas the said Alexander Manson has paid, or is hereby taken bound to pay, to the waygoing tenant of Westburn the sum to which he is entitled as meliorations on houses over and above the heritor's inventory under his expiring lease, he, the said Alexander Manson, hereby obliges himself and his foresaids to keep up and maintain the said houses on Westburn to the value of one hundred and twenty-six pounds sterling as fixed at the commencement of this lease, and to leave them of that value at least, in which event he shall then be entitled to repayment of the sum of sixty-three pounds sterling paid to the waygoing tenant of Westburn as for meliorations; and on the other hand he shall be bound to bear the loss or pay for any deterioration which may have taken place;" and it being also declared "that the tenant's bankruptcy or insolvency, or a pouncing of his effects, cattle or bestial, not discharged within ten days after execution, shall, in the proprietors' option, be an irritancy of the lease, and he shall, in any of these events, be entitled to possession, and to have the tenant removed by any competent process of law."

On 11th November 1884 Manson executed a trust-deed for behoof of his creditors, and on 27th and 29th December he and his trustees executed a renunciation of the lease of Westburn, which proceeded on the narrative that it had been decided that such a deed should be granted, and that the landlords had agreed to accept a renunciation on certain terms, and, *inter alia*, bore that it was "hereby specially agreed that all the rights and claims of parties, whether of landlords or of tenant or tenants, are reserved for settlement and adjustment, and that the landlords shall in no way be prejudiced by accepting this renunciation in place of terminating the lease as otherwise therein provided for." This renunciation was accepted by the landlord and his trustees.

In June 1885 Walker's Trustees brought an action in the Sheriff Court at Aberdeen against Manson's Trustees for payment of £372, 5s. 10d., or alternatively for such sum as might be found to be a dividend in respect of £372, 5s. 10d. on Manson's estate.

The pursuers lodged a state bringing out the sum above claimed, which was made up of a variety of individual claims—of these the only items necessary to be referred to in this report are (1) a sum of damages in respect of the termination of the lease before its natural termi-