of roup had not yet got into a feudal title. But the appellant here has no other title than that of the contract of sale, and there is no doubt that when he gets a feudal title it will be so expressed as to carry out the contract of sale according to its true meaning, and particularly that this clause will be inserted if the sellers insist upon it, which I presume they will. No one can be surprised that the sellers here, the Magistrates of North Berwick, charged with the public interest—namely, the interests of the community of the burgh of North Berwick—stipulated that there should be no buildings upon the feu except of a character and according to a plan which those charged with the interests of the community thought were fitting and proper in their interests. I think they would have neglected their public duty had they done otherwise than they did. There is no ambiguity as to the meaning of the clause. I can see none. They are to be the judges of the plans of all buildings, and the purchaser is required to submit the plans to them, and they may approve of them or not in all their details as they shall judge fit. They make themselves the arbiters in the matter, quite fittingly and appropriately, and it is just as binding as if they had required that all questions should be submitted to a certain architect, and that he should be the sole and only judge with respect to them.

If the Commissioners had stated any objection, or actively required anything particular to be done which was upon the face of it, and which the Court were satisfied was a dishonest exercise of their right under the contract, or an interference with the appellant's right, for an indirect purpose, there might be room for interference. But we have no such case to deal with, and therefore do not need to consider it. When the question is what is best or most proper to be done the Commissioners are the exclusive judges. I am of opinion, therefore, that the judgment of the Dean of Guild ought to be adhered to.

Lord Trayner — The appellant purchased a piece of ground from the Police Commissioners of North Berwick. It was sold to him on this condition, among others—"Before commencing any building the purchaser shall be bound to submit the elevation and whole detailed working plans, specifications, and measurements for approval to the exposers and their foresaids, and the building shall not proceed until such approval has been obtained in writing; and after such approval has been obtained the purchaser shall not be entitled to deviate from the said plans or to alter the building therefrom in all time coming without the consent of the exposers or their foresaids."

This language is not technical but plain and popular, and it shows what the bargain was. The appellant wishes to break the bargain, and I am not disposed to help him to do so. It is to be presumed that he never would have got the ground except upon the terms of that bargain, and if he keeps the land which he bought and got on these particular terms he must observe them. I am not careful to consider now whether there might be cases in which the Court would interfere with the exercise of a veto by a seller or by a superior under such a clause. I shall say only in this case that the rights of parties are best protected by strict adherence to the conditions which the parties to a contract have made for themselves.

I think the judgment of the Dean of Guild is sound, and I have heard nothing in the argument to lead me to a contrary view.

Lord Moncreiff—I agree. If an objection by a superior were contrary to the good faith of the contract a court of law might interfere. We have no such case here. The stipulation is unambiguous, and the right and interest of the respondents to enforce it are plain. They are charged with the care of the amenity of the town, and they made the conditions which they desire to enforce with a view to the discharge of their public duty. It is not necessary to decide any question under the Burgh Police Act 1892. It is enough that in the opinion of the respondents they ought not to allow this deviation from the plans which have already received their sanction. They think in the exercise of their discretion that the erection now proposed (a four storey house) would be unsuitable and improper in a narrow street like Quadrant Lane, and that is sufficient to warrant their interference.

The Court dismissed the appeal, affirmed the interlocutor appealed against, of new dismissed the action, and decerned.

Counsel for the Petitioner—Balfour, Q.C. —M'Lennan. Agents—Cumming & Duff, S.S.C.

Counsel for the Respondents—Graham Stewart. Agents—Mackay & Young, W.S.

Tuesday, January 31

SECOND DIVISION.

BEGG'S TRUSTEES *v.* REID.

Succession—Vesting—Clause of Survivorship—Power to Make Advances out of Capital before Period of Division.

A testator directed his trustees on the death of his widow to divide one-half of the residue of his estate equally among his grandchildren, one-third to each family, and as regards the members of each family equally among them share and share alike. The revenue of the grandchildren's shares was to be paid to them until the period of division of the capital, and the trustees had a discretionary power to advance to any of the grandchildren or their issue, before the period of division, such sum to account of their ultimate shares as they should think fit. As regards the period

of division, the deed provided that so soon as the youngest member of any family should attain the age of twenty-five years complete, the shares should be divided among the testator's "grandchildren, the members of such family, and the survivors equally, share and share alike"; providing also that if any grandchild should die before the period of division leaving issue, such issue should take their parent's share. In the event of any part of his estate provided to any family not having been paid over to such family (the members of which and their issue having failed) the testator directed that such share should be paid over to the members of the other families equally among them by families.

Held that in virtue of the clauses of survivorship, vesting in the grandchildren or their issue was postponed till the period of division.

John Begg, distiller, Lochnagar Royal Distillery, Aberdeenshire, died on 8th February 1882 leaving a general settlement dated 13th August 1880, by the fifth purpose of which he made provision for his grandchildren. By this purpose he provided that "on the death of my wife my whole means and estate, so far as not then already done, shall be converted into cash, and the whole of my means and estate shall then be divided into two halves, one of which halves . . . shall be divided equally among my children Isabella, Henry, and John, and the other half thereof (subject to the after-written provisions thereanent) shall be divided equally among my grandchildren, one-third to each family, and as regards the members of each family, equally among them, share and share alike. . . . . And I provide, with regard to the shares falling to my grandchildren, that the revenue thereof after my wife's death shall be paid to them until the period of division aftermentioned, and that so soon as the youngest member of any family shall attain the age of twenty-five years complete, the whole of the share of my means and estate falling to the members of such family, with all interests and profit thereof so far as not paid away, shall be divided amongst my grandchildren, the members of such family, and the survivors equally, share and share alike, it being, however, hereby provided that the shares of any of them dying before the period of division leaving lawful issue, shall fall to such issue equally as coming in their parent's place; and providing further that my trustees shall have power to advance to any of my grandchildren or their issue, before the foresaid period of division, such sum to account of their presumable shares as my trustees shall in the whole circumstances think reasonable and fit, which sums so paid to them shall be reckoned as payment to account of the shares ultimately falling to them. . . . And in the event of any part of the foresaid shares of my means and estate provided to any family not having been paid over to such family, and of the members thereof and their issue all failing by death, then I direct the same to be paid over to the members of the other families, equally among them by families." . . .

The testator died predeceased by his wife, and survived by his three children Isabella, Henry, and Eliza Begg.

Henry Begg married and had nine children. He died on 9th May 1896. One of his children, Alice, married Percy Gibson, and predeceased her father on 30th July 1893, leaving a mutual settlement between her and her husband dated 29th September and 11th October 1892, disposing of her whole estate, and survived by one child, William Henry Percy Gibson. Henry Begg's other eight children survived him, but one of them, George Hay Begg, died unmarried on 11th January 1898 leaving a settlement of his whole estate. The rest of Henry Begg's children still survived. The youngest, viz., Eveline Lucy Begg, would not attain the age of twenty-five years till 9th May 1907.

Eliza Begg married William Mitchell, and died on 29th June 1884, leaving six children. One of these, William Mitchell junior, survived his mother, and died on 4th October 1895, leaving a settlement disposing of his whole estate. The remaining five still survive. The youngest Henry Mitchell, would not attain the age of twenty-five years till 31st July 1900.

In these circumstances a question arose as to whether the shares falling to the grandchildren of the testator John Begg had vested in them at his death, and for the settlement of the point a special case was presented by (1) John Begg's trustees, (2) the surviving children of Henry Begg and Eliza Begg or Mitchell, (3) William Mitchell junior's executor, (4) Alice Begg or Gibson's executor, (5) William Henry Percy Gibson's curator *ad litem*, and (6) George Hay Begg's trustees.

The question of law was—"(1) Did the shares falling directly to grandchildren of the truster vest in them at the death of the truster?"

Argued for the second, third, fourth, and sixth parties—On the construction of the deed as a whole it was plain that the shares destined to grandchildren vested in them at the death of the testator. There was in the deed a gift of half of the residue to the grandchildren by a clause which was independent of the clause specifying a time for division. If the primary words in the first clause were looked at, there was a complete gift, and the subsequent clause, while it might affect the period of division, did not affect the gift. It was provided that the revenue should be paid to the grandchildren up to the period of division, and power was given to the trustees to make advances out of capital. All these things pointed out that it was the intention of the truster to benefit the grandchildren. The vesting in them should be held to be *a morte—Maitland's Trustees* v. *Macdermaid*, March 15, 1861, 23 D. 732, opinion of Lord Cowan, 738; *Wilson's Trustees* v. *Quick*, February 28, 1878, 5 R. 697; *Wood* v. *Neil's Trustees*, November 6, 1896, 24 R. 105; *Wallace* v. *Wallace*, January 28, 1807, M. App. *voce* Clause No. 6; *Ralston* v. *Ralston*, July 8, 1842, 4 D. 1496, opinion of Lord Justice-Clerk

Hope, 1500, and Lord Moncreiff, 1502; *Alves' Trustees* v. *Grant*, June 3, 1874, 1 R. 969.

Argued for the first and fifth parties—The date of vesting was the date when the youngest child of the respective families should attain the age of 25 years. As none of the three deceased grandchildren had survived this period no right vested in them. Consequently the shares which would have fallen to them if they had survived fell into the portion provided for each family respectively, with the exception of the share which would have fallen to Mrs Gibson, which share fell to her child—the fifth party—under the clause of substitution. The argument that there was no vesting *a morte testatoris* was founded on the following facts—(1) there was in this case a period of payment for each family; and (2) there was present in the deed words of survivorship. There was a double survivorship, a survivorship in the primary clause and a survivorship in the destination-over. Vesting was thus necessarily postponed till the period of division—*Fyfe's Trustees* v. *Fyfe*, February 8, 1890, 17 R. 450; *Bogle's Trustees* v. *Cochrane*, November 27, 1892, 20 R. 108; *Adam's Trustees* v. *Carrick*, June 18, 1896, 23 R. 828.

At advising—

Lord Trayner—The question which we have to decide is, when did the interests of the grandchildren of Mr Begg vest?

Mr Begg provided that the portion of his estate destined to his grandchildren should, "so soon as the youngest member of any family shall attain the age of twenty-five years complete," be divided amongst "the members of such family, and the survivors equally, share and share alike," providing also that if any grandchild should die "before the period of division" leaving issue, such issue should take their parent's share. Mr Begg further provided that in the event of any part of his estate provided to any family not having been paid over to such family (the members of which and their issue having failed), then such share should be paid over to the members of the other families equally among them by families. We have therefore here a clause of survivorship which affects the members of each family *inter se*, and a general destination-over which affects them all. In these circumstances it follows on well settled principles that vesting was postponed until the period of division or payment.

Lord Moncreiff—The question relates to the shares destined to the grandchildren of the testator. In my opinion no right vested in the grandchildren who predeceased the period of payment, because there is an effectual survivorship clause under which only those who survive the period of payment fixed for each family are entitled to take. Such a survivorship clause must receive effect so long as there remain in life any of the persons immediately favoured. An exception is recognised when by death the persons favoured are reduced to one survivor. In that case the whole fund will be held to have vested in that survivor even although the time fixed for payment may not have arrived. The case of *Maitland's Trustees*, 23 D. 732, which was pressed on us, is an illustration. See also M'Laren on Wills, p. 648, sec. 1174.

But that case does not arise here, and even if it did there is an ulterior destination which would prevent vesting in the last survivor of any one family before the time of payment. There is this provision which applies to all the shares destined to grandchildren:—"And in the event of any part of the foresaid shares of my means and estate provided to any family not having been paid over to such family, and of the members thereof and their issue all failing by death, then I direct the same to be paid over to the members of the other families equally among them by families." This provision would prevent the application of the exception recognised in *Maitland's Trustees*, and in the event of the last survivor of any family dying before payment, would carry the share to the other families.

The claimant William Henry Percy Gibson can have no higher right than his mother, as he merely comes in her place.

Lord Young and the Lord Justice-Clerk concurred.

The Court answered the question in the negative.

Counsel for the First, Third, Fourth, and Fifth Parties—Chisholm—W. K. Dickson—W. E. Mackintosh. Agent—R. C. Gray, S.S.C.

Counsel for the Second and Sixth Parties—Sym—Hunter. Agents—Reid & Guild, W.S.

Wednesday, February 1.

FIRST DIVISION.

PATERSON'S TRUSTEES *v.* CHRISTIE AND OTHERS.

Succession — Charitable Bequest — Legacy for Behoof of "the Poor and Needful" in a Certain District.

A bequest to the inhabitants of a district of a sum of money, the yearly proceeds whereof to be given to "the poor and needful" in the said district, *held* to be for behoof of poor and needful persons whether in receipt of or entitled to parochial relief or otherwise.

Liddle v. *Kirk-Session of Bathgate*, July 14, 1854, 16 D. 1075, and *Presbytery of Deer* v. *Bruce*, January 20, 1865, 3 Macph. 402, *followed*.

By his holograph last will and testament Donald Paterson, farmer, Dunnet, *inter alia*, bequeathed "in the first place the sum of One thousand pounds to the inhabitants of Ratter, Scarfskerry, and the Burn of Ratter—the said money to be invested, and the yearly proceeds or interest to be