trustees must meanwhile pay over the income of these shares under the testamentary directions.

I agree with your Lordship that we cannot at present say whether the fee will go to the heirs of John and George or to the testator's heirs in intestacy, for there is not an eventual gift of fee to these sons except in so far as an inference to that effect may be drawn from the subsequent provision to the effect that in certain circumstances the sons may have advances out of capital.

LORD KINNEAR—I agree with your Lordship that the questions in the case are not put in such a form that a direct answer in the affirmative or negative would correctly determine the rights of parties, but the decision which your Lordship proposes entirely satisfies the difficulty which had occurred to me in that respect. The first question is not properly stated any more than the third. The true question in the case is raised by the contentions of the parties as set forth in condescendence 7—"The first party and the second party contend that the intention of the truster was to confer on the first party and on the said John Millar the sole right and title to and beneficial interest in the fee of one-ninth part or share of the residue of his whole means and estate in each of them; that the provisions of the trust-disposition and settlement make an absolute gift to the first party and to the said John Millar of a right to the fee of one-ninth part or share of said residue, and are ineffectual to limit their respective interests to a right of liferent merely"; and as a consequence of that contention they maintain further that the trustees "are bound immediately to divide the estate among the testator's children, and to pay or convey to the first party and to the second party as *curator bonis* of the said John Millar their respective one-ninth shares."

Now, for the reasons your Lordship has stated I am of the opinion that the first and second parties are not entitled to immediate payment of their shares. The truster has clearly directed his trustees to pay to these two sons the income of their shares for their alimentary use, and there is no direction to pay the capital. The inference to be drawn is clear enough in itself, and is strengthened when we consider the different way in which the truster directs his trustees to deal with the shares of his other sons, viz., that they are to be paid over at once. But not only is there no direction to pay over the whole shares in question here, but there is a direction to pay over, in the discretion of the trustees, a sum not exceeding £400 to each of the beneficiaries, if the trustees think fit. Now, that appears to me equivalent to an express direction not to pay over more than £400, and, subject to the discretionary power to advance that amount, to hold the capital in their own hands, paying the income only to the two sons in question during their lives. For these reasons I concur with your Lordship.

LORD PEARSON concurred.

The Court pronounced this finding:—

"That the trustees are bound to hold the shares in question for the liferent alimentary use of the said first and second parties to the case respectively, with the discretion and power as to payment and advancement of capital expressed in the fourth purpose of the testator's settlement, and that the first and second parties are not entitled to an immediate conveyance of said shares."

Counsel for the First and Second Parties—Welsh. Agents—Welsh & Forbes, W.S.

Counsel for the Third and Fourth Parties—Craigie, K.C.—D. P. Fleming. Agents—R. H. Miller & Company, S.S.C.

Wednesday, October 16.

FIRST DIVISION.

(SINGLE BILLS.)

M'GREGOR *v.* BUCHANAN (LIQUIDATOR OF THE BALLACHULISH SLATE QUARRIES COMPANY, LIMITED).

Expenses—Company—Winding-up—Petitioning Creditor—Taxation—Agent and Client—Creditor Petitioning for Winding-up Order and Company Petitioning for Supervision Order, and Latter Granted.

A creditor having presented a petition for an order for the winding-up of a company, and the company, which had on the day when the creditor's petition was presented resolved on a voluntary winding-up, having through its liquidator presented a petition for a supervision order, the Court continued the voluntary liquidation subject to supervision, but granted the petitioning creditor his expenses "as these may be taxed" out of the company's estate.

Held that the petitioning creditor's expenses were rightly taxed as between agent and client.

On August 13, 1907, John M'Gregor, colliery agent, Dunblane, a creditor of the Ballachulish Slate Quarries Company, Limited, presented a petition for an order for the winding-up of that company. On the same date, at an extraordinary meeting, a resolution for the voluntary winding-up of the company was adopted by its shareholders, and John Hamilton Buchanan, C.A., Edinburgh, was appointed liquidator. The company and liquidator lodged answers to the creditor's petition, and petitioned for the continuance of the voluntary winding-up subject to supervision. On August 29, 1907, the Lord Ordinary on the Bills (KINNEAR) continued the voluntary winding-up, under the supervision of the Court, refused the prayer of the petitioning creditor's petition, and found "the petitioner and the respondents entitled to their expenses as these may be taxed by the Auditor . . . and directs these expenses to be expenses in the liquidation."

The Auditor having taxed the petitioning creditor's expenses as between agent and client, the liquidator lodged a note of objections maintaining that such expenses, there being nothing to the contrary in the interlocutor, must be as between party and party.

In the Single Bills counsel for the petitioning creditor moved for decree for the expenses as taxed. Counsel for the liquidator resisted, and the Court intimated that the Auditor would be communicated with.

At advising—

LORD PRESIDENT—This is a case in which a petition was presented for the compulsory winding-up of the Ballachulish Slate Quarries Company, Limited. Upon the same day as that petition was presented, a meeting was held at which an extraordinary resolution was passed by which the company was wound up voluntarily and a liquidator appointed, and the liquidator was directed to present a petition for the continuation of the voluntary winding-up under the supervision of the Court. These two petitions, with cross answers which were lodged, came to depend before Lord Kinnear, the Lord Ordinary on the Bills in vacation, and his Lordship after hearing parties dismissed the compulsory winding-up petition and pronounced an order in the other petition for the continuation of the voluntary winding-up subject to the supervision of the Court. He also pronounced an interlocutor finding the petitioner in the petition for the compulsory winding-up and the liquidator entitled to expenses out of the estate.

That is a perfectly ordinary proceeding and the usual interlocutor, and the reason of it is of course plain enough, that even although the Court in its discretion may hold that the better form of winding-up is not a compulsory winding-up but a winding-up under the supervision of the Court, the Court is still entitled, indeed bound in proper cases, to give the petitioner who comes into Court with a petition for compulsory winding-up, his expenses, as having brought the matter into Court, the view being that the whole parties concerned have the benefit of his initial proceedings in the liquidation which is then instituted.

Now, the expenses were taxed, and they were taxed by the Auditor upon the scale of agent and client, and the present question has arisen upon the objection taken by the liquidator that, inasmuch as the interlocutor does not in terms mention agent and client, the expenses ought to be taxed as between party and party. As to the general rule in ordinary actions upon this matter there can be no doubt. "Expenses" without any more being said means taxation upon the scale of party against party, and anyone who wishes taxation on another scale must take care that it is mentioned in the interlocutor. As to that there is no doubt. But upon inquiry there seems to be as little doubt as to the rule in the present case. The finding of expenses here really means taxation as between agent and client, because there is in the proper sense of the word no question of party against party. The petitioner here was not found entitled to expenses because he had been in any sense successful against his only opponent, the liquidator. As a matter of fact, so far from being successful, he was really unsuccessful, because while he contended that the order should be for compulsory winding-up, the liquidator contended, and with success, that it should be a supervision order. He was not found entitled to expenses as having been the victor in a litigation against another party. He was found entitled to expenses because it was his petition that initiated the whole matter and really formed the true basis of the liquidation, although technically it was found in this particular instance convenient to write on the other petition.

Now in this case the truth is there is no question of party against party to whom the rule is to apply. Accordingly, I think the Auditor here has done according to the ordinary practice and according to the right practice in allowing this petitioner the expenses he has incurred so far as reasonable, that is, his expenses taxed as between agent and client.

LORD M'LAREN, LORD KINNEAR, and LORD PEARSON concurred.

The Court repelled the objections and approved of the Auditor's report.

Counsel for the Petitioner—A. A. Fraser. Agent—William Calder, Solicitor.

Counsel for the Respondents—J. A. T. Robertson. Agents—Inglis, Orr, & Bruce, W.S.

Thursday, October 17.

SECOND DIVISION.

RANKEN'S TRUSTEES *v.* RANKEN AND OTHERS.

Succession—Fee and Liferent—Mines and Minerals—Rent and Royalties of Mine Leased after Testator's Death — Fixed Rent before Minerals Worked—Accumulations—Thellusson Act (39 *and* 40 *Geo. III, cap.* 98).

A testator who died in 1848 directed his trustees to divide the income of his whole estate into ten equal shares, and to pay these half-yearly to certain beneficiaries, and on the failure by death of all the beneficiaries to convey and pay over the fee of his whole estate to the person who should then be the heir-male of his father. The trust estate consisted of two landed estates fifteen miles apart, both of which contained coal. The coal in the one was being worked at the date of the testator's death, but that in the other had not been worked, nor was it let. The trustees let the latter for a fixed rent of £200 or royalties. While the fixed rent was being paid and before