being done all at once the necessity for the renewal of the fittings had arisen item by item in the several houses. Accordingly I think the £233, 18s. 9d. representing the amount paid for these new fixtures or fittings ought to be charged by the trustees against the liferenters; and in regard to article 10 it was conceded, and quite properly conceded, that the painting not necessitated by constructional alterations was a proper charge against the liferenters. The result therefore is that these two sums of £233, 18s. 9d. and £91 are chargeable against the liferenters, and that the rest of the expenditure must be borne by the fiars.

LORD DUNDAS—I concur.

LORD SALVESEN — I am of the same opinion. I think the facts stated in the case lead necessarily to the conclusion which your Lordship has arrived at as regards the expense of reconstructing the tenements in question, because in article 3 it is set forth that the whole of the tenements were at the date of the testator's death of an antiquated description, and did not satisfy the requirements of the burgh authorities, that most of them were then and until recently in a dilapidated and ruinous condition, and that many of the houses in them were by reason of their condition unoccupied. In these circumstances it seems to me that the expenditure both on the new work undertaken by the trustees and on the proper reconstructional work falls, under the decision in the case of *Scott*, M. 8278, to be charged on the fee. The assumption is that the work is of a permanent nature, the benefit of which will substantially effeir to the fiars at the conclusion of the liferent, and that it is sufficient if the annual interest on the cost of these operations is charged against the liferenter as their contribution to the expense.

As regards the other two classes of expenditure described in article 8 and 10 of the case the opposite inference in fact falls to be drawn, namely, that they were primarily for the benefit of the liferenters, with a view to making the subjects more easily lettable, and that the work is not of the same permanent character as the other items with which I have already dealt. It is quite conceivable—indeed it is more than probable—that before the liferent runs out these new fixtures and fittings will have to be renewed, and it is certain that houses of this class will not be let unless periodical papering and painting are done for the benefit of the tenants. Such expenditure does not appreciate the value of the subjects when the fiars come into their own, but tends to increase the rental which the liferenter will be drawing; and accordingly I think it is only just that a distinction should be made between expenditure of that class, which must be held to have been made by the trustees presumably in the interests of the liferenters, and expenditure on more permanent work to which the contrary presumption will apply.

I therefore agree with your Lordships as to the manner in which the various heads of expenditure fall to be charged.

LORD GUTHRIE — I am of the same opinion. This Special Case does not deal with the kind of topic usually associated with this kind of procedure, but it shows that special cases may in certain circumstances be usefully resorted to in the course of trust administration, and for other purposes than the interpretation of settlements.

The Court found "that the expenditure set forth in articles 6, 7, and 9 of the case falls to be charged wholly against capital; and that the expenditure set forth in articles 8 and 10 thereof falls to be charged wholly against revenue."

Counsel for the First Parties — W. Mitchell. Agents—W. & J. Burness, W.S.

Counsel for the Second Parties — R. Candlish Henderson. Agents—Wishart & Sanderson, W.S.

Wednesday, December 20.

SECOND DIVISION.

CHENEVIX-TRENCH, PETITIONER.

Public Records—Exhibition of Deeds in the Custody of the Keeper of the Register at Commission for Examination of Witness.

Where in an action for reduction of a will registered in the Books of Council and Session it was desired to produce the will before a commissioner for taking evidence, the Court, on a petition, *authorised* the Keeper of the Register, or person authorised by him, to attend with the will and exhibit it.

Miss Mary Eliza Chenevix-Trench, residing at Callander Lodge, Callander, *petitioner*, against whom, as executrix and as an individual with others, an action had been raised by John Theodore Churchill and others for the reduction of the will of the late Colonel James Peter Robertson, C.B., issues for jury trial having been approved on 18th October 1916, presented a petition in which she craved the Court "to grant warrant to and authorise the Keeper of the Register of Deeds, or other person authorised by him, to attend at the trial by jury fixed to take place before Lord Dewar, Ordinary, on Tuesday the 9th day of January 1917, and subsequent dates of the trial, and also before commissioners appointed to take the evidence of any witnesses on commission in Edinburgh in connection with said trial, and to bring with him the principal will and codicils before mentioned, and to exhibit the same for inspection at said trial and commissions."

The petition stated—"That it is necessary for the purposes of the trial in said action that the will and codicils of the said James Peter Robertson, which were registered in the Books of Council and Session on the 3rd day of March 1916, and which are accordingly in the custody of the Keeper of the Register of Deeds, should be made available and exhibited at the said trial and at commission for the examination of witnesses,

whose evidence may be taken on commission for the purposes of said trial. That the present application has been duly intimated to the Keeper of the Register of Deeds."

Counsel for the petitioner moved the Court to grant the prayer of the petition, and cited in support of the production before Commissioners, C.A.S., B, ii, 4; *Mansfield* v. *Stuart*, (1840) 2 D. 1235. On the previous suggestion of the Court the petitioner's law agents had consulted the Keeper of the Register of Deeds, who informed them that there was a precedent for the exhibition of such deeds before a commissioner—the case of *Smith's Trustees* (not reported), —in which the First Division had granted warrant to that effect on 27th May 1909.

The Court granted the prayer of the petition.

Counsel for the Petitioner — Hamilton. Agents —Lindsay, Howe, & Company, W.S.

Thursday, November 16.

COURT OF SEVEN JUDGES.

DUNDEE COMBINATION PARISH COUNCIL *v.* SECRETARY FOR SCOTLAND AND OTHERS.

Local Government—Parish—Poor—Alteration of Boundaries—Adjustment of Liabilities—Local Government (Scotland) Act 1889 (52 *and* 53 *Vict. cap.* 50), *sec.* 51—*Local Government (Scotland) Act* 1894 (57 *and* 58 *Vict. cap.* 58), *sec.* 46.

A burgh annexed certain portions of an adjoining parish. The annexed portions were disjoined from the country parish and conjoined with the burgh parish, which was made liable for the paupers having their settlement by birth or residence in the annexed portions, 13 in number. The total number of paupers of the country parish prior to severance was 35, and according to assessed rental the share of the burden of maintaining these falling to the portions annexed was 22 out of 35. The Secretary for Scotland, having been asked to adjust liabilities between the country parish and the burgh parish under the Local Government (Scotland) Act 1889, section 51, and 1894, section 46, ordained the latter to pay the former a sum calculated as the present capital cost of maintaining the 9 additional paupers, *i.e.*, over and above the 13 transferred. The burgh parish challenged this as *ultra vires*, being as alleged a compensation for loss of assessable area. *Held* (*diss.* Lords Salvesen and Guthrie) that the Secretary for Scotland had acted *intra vires*. *Authorities* examined.

The Local Government (Scotland) Act 1889 (52 and 53 Vict. cap. 50), sec. 51 enacts—"*Alterations of Boundaries, Simplification of Areas, &c., by Provisional Order.*—On the representation of a county council or of a town council the Secretary for Scotland may at any time after the expiry of the powers of the Boundary Commissioners by order provide for all or any of the following things:— . . . (*f*) For the proper adjustment and distribution of the powers, properties, liabilities, debts, officers and servants of any local authority consequential on any consolidation, alteration of boundaries, or other act done in pursuance of this section. . . .'

The Local Government (Scotland) Act 1894 (57 and 58 Vict. cap. 58), sec. 46, enacts—"*Additional Powers to Alter Parish Areas* —An order of the Secretary for Scotland, under section 51 of the principal Act [*sup.*], for altering the boundaries of any parish or for uniting several parishes or parts of parishes into one parish by the creation of a new parish or otherwise, or annexing one or more of such parishes or parts of parishes to a larger parish or for dividing any parish or for uniting any sub-division of a parish with any other parish, shall have effect for all purposes, whether county council, justice, sheriff, militia, parochial board, parish council, school board, local authority, or other, save as hereinafter provided . . . . . In addition to the provisions of the principal Act any such order may be made on the representation of a parochial board or parish council, or the commissioners of a police burgh, or a school board. . . ."

The Dundee Combination Parish Council, *pursuers*, brought an action against, first, the Secretary for Scotland, and second, the Parish Council of the Parish of Mains and Strathmartine, *defenders*, to reduce an Adjustment Order of the first-named defender which purported to adjust liabilities between the pursuers and the second-named defenders and ordained the former to pay the latter £622.

The Adjustment Order was—"Whereas by the Order of the Secretary for Scotland published in the *Edinburgh Gazette* of the 7th March 1913 (No. XLVIII), the portions of the parish of Mains and Strathmartine, which by the Dundee Extension and Improvement Act 1892, and the Dundee Corporation Order Confirmation Act 1907, were respectively annexed to the City and Royal Burgh of Dundee, were transferred to the Dundee Combination Parish:

"And whereas all questions of adjustment consequential on the said Order were expressly reserved:

"And whereas the Parish Council of the Parish of Mains and Strathmartine has made a representation to me that I should, under section 51 of the Local Government (Scotland) Act 1889, and section 46 of the Local Government (Scotland) Act 1894, issue an Order for the adjustment of the liabilities of the said Dundee Combination Parish and the said Parish of Mains and Strathmartine:

"And whereas I am of opinion that it is expedient to give effect to the said representation:

"Now therefore I, the Right Honourable Thomas M'Kinnon Wood, His Majesty's Secretary for Scotland, do in virtue of the powers conferred upon the Secretary for