south-east corner of the subjects, and to adjust the plans accordingly: Find the petitioner entitled to the expenses of the appeal," &c.

Counsel for the Petitioner—W. Campbell, Q.C.—Hunter. Agent—David Dougal, W.S.

Counsel for the Respondent—Solicitor-General (Dickson, Q.C.)—Clyde. Agents—Macpherson & Mackay, S.S.C.

Thursday, February 22.

SECOND DIVISION.

MAY'S TRUSTEES *v.* PAUL.

Succession — Legacy — General Legacy — Interest on General Legacy.

The general rule is that legacies of sums of money, apart from some provision in the will to the contrary, bear interest as from the date of the testator's death.

A testator by his trust-disposition and settlement left and bequeathed certain legacies of sums of money, "all to be payable free of legacy-duty at the same time as soon after my death as funds can be realised for the purpose." The testator died leaving estate, heritable and moveable, of sufficient value to pay all these legacies, but more than a year elapsed before the trustees, in the course of a proper and prudent realisation of the estate, had in fact funds to pay all the legacies at once. *Held* that interest was due to the legatees upon the amount of their legacies as from the date of the testator's death.

M'Innes v. *M'Allisters*, June 29, 1827, 5 S. 801 (863), *distinguished* and *commented on per* the Lord Justice-Clerk.

The late Mrs Brodie Gordon May, widow, who resided at No. 21 Palmerston Place, Edinburgh, by her trust-disposition and settlement dated 25th September 1896, disponed to certain persons as trustees her whole estate, heritable and moveable.

By her said trust-disposition and settlement the truster provided—"(*Second*) For payment of the following legacies, which I hereby leave and bequeath to the parties after mentioned, all to be payable, free of legacy-duty, at the same time, as soon after my death as funds can be realised for the purpose, *videlicet*." Then followed a long list of legacies of various sums of money, and among them a legacy of £1000 to Mrs Julia MacGregor or Paul the testatrix's niece. By the last purpose of her settlement the truster directed her trustees to make over the residue of her estate to the Society for the Relief of Indigent Gentlewomen of Scotland and The Church of Scotland's Association for Augmenting the Smaller Livings of the Clergy, equally between them, and appointed them to be her residuary legatees.

The truster died on 9th February 1898. The accounts, which were then prepared for Government purposes, showed her estate to consist of heritable property valued at £11,875, and moveable estate of the value of £17,372. The pecuniary legacies payable under the settlement amounted to £24,750—a sum considerably in excess of the value of the moveable estate. There were also Government duties, debts, and charges to be paid. The truster's heritable estate consisted of (1) her house No. 21 Palmerston Place, Edinburgh; (2) property in Raeburn Place there, embracing two tenements of shops and dwelling-houses and five separate residences; and (3) the estate of Drum in Stirlingshire. The truster having died in February 1898, there was not time to advertise and sell the various heritable properties that spring, and it was found by the trustees that the properties could not be sold with reasonable and fair advantage to the trust-estate until the spring of 1899, for settlement at the following term of Whitsunday. When sold they realised a total sum of £14,600.

The trustees had at Whitsunday 1899, for the first time since the death of the truster, sufficient funds to pay all the legacies at the same time.

Questions then arose as to whether the legatees were entitled to interest, and if so at what rate. The trustees paid the legacies under reservation of the claim of the legatees for interest. The present special case was then presented for the opinion and judgment of the Court.

The parties to the special case were (1) the trustees; (2) Mrs Paul, with consent of her husband, and her husband for his interest; and (3) the residuary legatees.

The second party originally maintained that she was entitled to interest from the date of the truster's death upon the amount of her legacy at 5 per cent., or at least at the average rate which the trust funds had yielded.

On the other hand, the third parties maintained that the legatees were not entitled to any interest upon their legacies, or, alternatively, that it did not begin to run until the expiry of a year from the testator's death.

The questions of law for the opinion and judgment of the Court were as follows—"(1) Is the second party entitled to payment out of the trust-estate of interest upon her legacy of £1000 (*a*) at 5 per cent., or (*b*) at what other rate? (2) In the event of either branch of the preceding question being answered in the affirmative, is the second party entitled to interest (*a*) from the testator's death, or (*b*) from the expiry of a year after the testator's death?"

The parties ultimately agreed that if interest were due it should be at the rate of 4 per cent.

Argued for the second parties — The general rule was that interest was due upon legacies as from the date of the testator's death, and that general rule must receive effect unless there was something in the will which indicated a contrary intention upon his part—Bell's Prin., 1885; *Duff's Trustees* v. *Societies of Scripture*

Readers, February 19, 1862, 24 D. 552; *Kirkpatrick* v. *Bedford*, November 15, 1878, 6 R. (H.L.) 4. There was nothing in the will here to prevent the application of the general rule. The direction that the legacies were to be payable as soon as funds could be realised did not postpone the period after which interest was payable till the date when the trustees in fact had funds sufficient to pay the legacies. Here the trustees could have had funds to do so almost immediately after the testatrix's death, but in the exercise of a prudent discretion and to the great ultimate benefit of the estate they delayed realising the heritage. The residuary legatees took benefit from that delay, and it would be most inequitable that where that was the case the other legatees should suffer by it, which would be the result if they had to lie out of their money without receiving interest.

Argued for the third parties—(1) By the provisions of the will here the legacies were only to be payable as soon as sufficient funds could be realised to pay them all at once. This was in effect equivalent to a provision that interest should not be payable till funds were in fact available for that purpose. (2) Where, as here, distribution was postponed, interest accruing in the meantime fell into residue, unless there was some express provision to the contrary in the will—M'Laren on Wills and Succession, 585 (3rd ed.); *Pursell* v. *Elder*, June 13, 1865, 3 Macph. (H.L.) 59; *Sturgis* v. *Meiklam's Trustees*, June 13, 1865, 3 Macph. (H.L.) 70, *per* Lord Westbury (L. C.) at page 72. Here there was nothing to prevent the application of this general rule. (3) There was no general rule to the effect that interest was due upon legacies for the period between the testator's death and the date when the trustees had funds to pay. In *Duff's Trustees*, *cit.*, the decision proceeded upon the ground that the testator had expressly directed the income to be paid to the legatees. In *Kirkpatrick*, *cit.*, the House of Lords proceeded upon an admission given by English counsel. See *Inglis' Trustees* v. *Breen*, February 6, 1891, 18 R. 487, *per* Lord M'Laren and L. P. Inglis at page 490. (4) In any view, interest was not due except as from a year after the testatrix's death—*M'Innes* v. *M'Allisters*, June 29, 1827, 5 S. 801 (863). That case had never been overruled, the decisions in *Duff's Trustees*, *cit.*, and *Kirkpatrick*, *cit.*, being explained *ut supra*.

Lord Adam—This case is a very short one and involves a short point. There are two questions. The first question is with regard to the rate of interest payable, but I understand it has been arranged that the rate should be four per cent. The second question is this—"Is the second party entitled to interest (*a*) from the testator's death, or (*b*) from the expiry of a year after the testator's death?"

The question arises in this way. A certain lady, Mrs May, residing in Palmerston Place, Edinburgh, bequeathed a number of legacies, and among others a legacy of £1000 to the second party. If the interest upon the amount of this legacy does not go to the legatee, it falls into residue, and accrues to the benefit of the residuary legatees. There is no-one else to whom it can go. The question arises upon the construction of a clause in the will. That clause is in the following terms:—"(*Second*) For payment of the following legacies which I hereby leave and bequeath to the parties after mentioned, all to be payable free of legacy-duty, at the same time, as soon after my death as funds can be realised for the purpose." The facts as set forth in the special case are as follows:—The truster died on 9th February 1898. The accounts prepared for Revenue purposes showed that she left heritable property valued at £11,875, and moveable property valued at £17,372. The pecuniary legacies amounted to £24,750. There can be no doubt, therefore, that if the legacies were immediately payable there was plenty to meet them. But then we are told that part of the estate was house property, and that it was not judicious to sell that part of the estate at the time of year when it first became possible to sell it. The parties are agreed that it would not have been judicious to sell till spring 1899 for settlement at Whitsunday 1899, that is, about fifteen months after the testatrix's death.

This is the state of facts which gives rise to the question, whether the second party is entitled to interest from Whitsunday 1899, or whether she is entitled to interest from the date of the testatrix's death, or whether she is entitled to interest from twelve months after the testatrix's death.

My understanding of the law of Scotland has always been that where a testator gives a legacy to A B without specifying any particular term of payment, interest is due from the date of the testator's death. But this case does not depend upon that rule only, because the clause is to the effect that the legacies are to be payable as soon "as funds can be realised for the purpose." That seems to me to put this case in the same position as the case of *Hutcheon* v. *Mannington*, 1 Vesey Junior 366, in which Lord Thurlow gave the opinion which is approved by Lord Selborne in the case of *Kirkpatrick* v. *Redford*, 6 R. (H.L.) at page 12. Where no term of payment is specified the date from which interest is to run cannot depend upon the term when the trustees see fit to realise, and must be held to be the date of death if at that date funds could have been obtained to pay the legacies. However reasonable the trustees' delay was their delay cannot affect the rights of the legatees. Here there was plenty of means to pay at once. The trustees might have gone into the market immediately after the testatrix's death, and if they had done so they would have had funds sufficient to meet the legacies.

I am therefore of opinion that the second party is entitled to interest at 4 per cent. upon her legacy from the date of the testatrix's death.

LORD TRAYNER—I agree. The general rule is that legacies bear interest like any other money debt from the date when they are due and payable. We must therefore ascertain when the legacies in question were payable in order to fix the time when interest (if any) began to run.

At first I was under the impression that the third parties were right. The trustees are bound to pay the legacies only when they can realise funds sufficient to pay all the legacies at the same time. Now, the statement in the case is that the trustees had at Whitsunday 1899, for the first time since the death of the truster, sufficient funds to pay all the legacies at the same time. I concluded that this amounted to an admission that the trustees could not have realised sufficient funds before that date. But I now understand that this statement only means that the trustees then first in fact had sufficient funds. It does not mean that they could not have realised sufficient funds sooner. On the contrary, it appears that there was estate which could have been realised at once after the testator's death, and which would if realised have provided funds sufficient to pay all the legacies. The trustees could and therefore should have so realised and paid the legacies. They were then due and payable, and if not then paid must bear interest from that time till paid.

I make no reflection upon the trustees for holding up the estate, and indeed their action has been justified by the result; but it would not be fair that they should be allowed to hold up the estate for the benefit of the residuary legatees at the expense and against the interest of the other legatees.

LORD JUSTICE-CLERK—I am of the same opinion, and have nothing to add except this, that I see in the case of *M'Innes* that there are no opinions given in the report but only the decision of the Court on the questions requiring to be solved. There is nothing to show that the case was not decided upon special circumstances. Indeed it appears from the report that much of the estate was in India, which might well have been the ground of the judgment, because the difference between British and Indian currency might give reason for holding that the executors could not readily realise with advantage to the beneficiaries, and therefore that there might be special reason for not compelling them to pay interest till after a reasonable time had elapsed.

LORD YOUNG and LORD MONCREIFF were absent.

The Court pronounced this interlocutor—

"The Lords having heard counsel for the parties to the special case, Find in answer to the questions therein stated, that the second party is entitled to payment out of the trust-estate of the deceased Mrs Brodie Gordon May of interest, which by consent of parties is to be taken at the rate of Four pounds per centum per annum, on the legacy of £1000 bequeathed to her, from the date of the testator's death: Find and declare accordingly, and decern: Find the whole parties to the special case entitled to their expenses, as the same may be taxed, out of the residue of the said trust-estate."

Counsel for the First and Second Parties — Johnston, Q.C. — C. K. Mackenzie. Agents—Gillespie & Paterson, W.S.

Counsel for the Third Parties—J. J. Cook —J. G. Spens. Agents—W. & J. Cook, W.S.

Thursday, February 22.

SECOND DIVISION.

[Lord Stormonth Darling, Ordinary.

BO'NESS PARISH COUNCIL *v.* BO'NESS KIRK-SESSION.

Local Government — Parish Trust or Ecclesiastical Charity — Local Government (Scotland) Act 1894 (57 *and* 58 *Vict. cap.* 58), *secs.* 30 *and* 54—*Trust—Charitable Trust—Poor.*

In the year 1707 the kirk-session of a parish in order to "improve the poor's money to the best advantage" purchased certain lands with money taken from a box generally called in the minutes the "poor's-box," but sometimes referred to as the "kirk-box." This box contained the general funds of the kirk-session derived mainly from church collections, but also from such sources as proclamation dues, funeral dues, payments for the use of mort-cloths, payments for ringing the church bell, and the like. The funds belonging to the kirk-session were expended mainly for relief of the poor, legal and occasional, but also on a number of church disbursements, such as payments to beadle and to bellringer, and for heating and lighting, and expenses incurred in connection with the use of church. The title to the lands purchased was taken in name of the box-master of the poor's-box and eleemosynar of the kirk-session, for the use and behoof thereof and of the poor of the parish. After the date of the title the lands were referred to as "the lands belonging to the poor" or "the poor's acres," and it was admitted that the kirk-session expended on behalf of the poor of the parish a sum greater than that derived from the lands. In a minute of the kirk-session dated 5th May 1856 they "reiterated their resolution to expend the income from the poor lands for the relief of the poor exactly in the same manner as it had been expended for the last 150 years."

Held (*rev.* judgment of Lord Stormonth Darling) that these lands and the revenues derived therefrom did not form an ecclesiastical charity within the meaning of section 54 of the Local