Counsel for the pursuer and respondent was not called upon.

LORD PRESIDENT—I consider this a very preposterous contention. It really comes to this, that the Corporation of Edinburgh, by not having done what the statute clearly tells them to do, viz., deduct the income-tax payable in respect of interest, have escaped a debt which otherwise would have been due by them to the Crown. It turns upon a section of the Customs and Inland Revenue Act 1888, which imposes a duty to deduct income-tax and to keep an account, and then says that such amount, so deducted, shall be a debt to Her Majesty and recoverable as such. It seems to me that the whole matter must be taken together. The debt is the sum the retention of which is put as a duty along with the liability to render an account. But the idea that by not doing it they can get rid of a debt is a thing which seems to me, as I say, preposterous. I consider that to give any countenance to this attempt to escape a duty clearly imposed would be to throw confusion upon the administration of the Revenue law without the slightest reason for the Corporation or anyone else being allowed such a concession.

LORD M'LAREN—I think this is a case to which the maxim applies—*quod fieri debet infectum valet.* The duty is laid upon the Corporation to collect income-tax by way of deduction from the interest payable on borrowed money, to render an account of the amount of income-tax so deducted, and to pay it over to the Crown. That is a duty which consists of two parts—the collection and the paying to the Crown. It is clear to my mind that the account must be a complete account. It is no defence to an action of accounting to say that the debtor had in fact neglected part of the duty cast upon him. In such a case the debtor must pay as on a complete account, but would probably have a claim against the creditor to whom he had paid the interest without making the deduction.

LORD ADAM and LORD KINNEAR concurred.

The Court adhered.

Counsel for the Pursuer and Respondent—The Solicitor-General (Salvesen, K.C.)—A. J. Young. Agent—P. J. Hamilton Grierson, Solicitor of Inland Revenue.

Counsel for the Defenders and Reclaimers—Cooper, K.C.—Spens. Agent—Thomas Hunter, W.S.

Thursday, July 6.

SECOND DIVISION.

LAWRIE'S TRUSTEES *v.* LAWRIE.

Succession — Vesting — Postponement of Vesting by Express Declaration — Conditional Institution of Issue — Declaration that Vesting to be on Youngest Child Attaining the Age of Twenty-five—Claim for Immediate Payment by the only Still Surviving Child before Attaining Age Specified.

A testator directed his trustees to hold and pay the residue of his estate to and for behoof of his children equally among them, "payable to them on the youngest attaining the age of twenty-five years," the lawful issue of any child dying before the period of division being entitled to their parent's share, and the share of any child dying before that period without leaving lawful issue to be divided among the survivors or survivor jointly with the lawful issue of predecessors. "Declaring that the period of vesting of my said children's provisions under these presents shall be as at the date when my youngest child shall attain the age of twenty-five years." The testator was survived by two children, one of whom died before the period of payment without leaving issue. The survivor, aged twenty three years, claimed immediate payment, as sole fiar of the trust estate with a vested interest therein. *Held* that the sole survivor was not entitled to immediate payment, vesting being effectually postponed by the testator's express declaration—*Maitland's Trustees* v. *M'Dermaid and Others*, March 15, 1861, 23 D. 732, *distinguished.*

John William Lawrie, grocer and wine merchant, Hanover Street, Edinburgh, died on 10th June 1891, leaving a trust disposition and settlement whereby he provided for the payment of sundry annuities, and directed his trustees with regard to the residue of his estate as follows—"That my said trustees shall hold, apply, pay, and convey the whole rest, residue, and remainder of my means and estate, and the interest and other annual produce thereof, including the principal sum or sums which may be set apart to meet the annuities hereinbefore provided, when and as the same or any part thereof may be set free by the death or second marriage of my said wife, or by the death of the other annuitants before named, to and for behoof of my children equally among them, payable to them on the youngest attaining the age of twenty-five years complete, and in the event of any of my children dying before the said period of division leaving lawful issue, such issue shall be entitled equally among them to the share to which their parent would have been entitled if in life, and in the event of any of my children dying before the said period of division without leaving lawful issue, the share of

such deceaser shall fall to and be divided equally among the survivors and survivor of my said children jointly with the lawful issue of any of them who may have deceased leaving lawful issue, such issue succeeding equally among them to the share to which their parent would have been entitled if in life: Declaring that until the said period of division my said trustees shall apply so much of the income of each child's share as they may see fit, *first*, in defraying the cost of his or her education, which I desire to be of a high class; and *second*, in paying to their mother such a moderate annual allowance as to my said trustees shall seem proper for his or her maintenance, clothing, and upbringing from the period between the dates when my children respectively attain the age of fifteen and the period when they respectively attain the age of twenty-five, when my said children shall be entitled to the whole income of their respective shares: Declaring that the period of vesting of my said children's provisions under these presents shall be as at the date when my youngest child shall attain the age of twenty-five years as aforesaid, but that, notwithstanding, my said trustees shall, in addition to paying for their education and maintenance, have power, should they see fit, to advance to one or more of my said children out of their prospective share or shares such sum or sums as they may deem advisable in the case of sons for the purpose of educating them for a profession or setting them up in business, and in the case of daughters, for moderately fitting them out in the event of their being married."

The testator, predeceased by his wife, was survived by two children, one of whom, however, died in 1898 without having had issue. The other, John Fulton Lawrie, was born on 30th November 1881, and after attaining twenty-three years in November 1904 he intimated to the trustees that he considered himself sole fiar of the trust estate with a vested right therein, and entitled to an immediate conveyance thereof in his favour. The trustees refused to convey the trust estate to him,.

In 1905, therefore, when all the parties entitled to annuities under Mr Lawrie's settlement were dead with the exception of one, Miss Betsy Wanless, a special case was presented for the opinion and judgment of the Court by (1) the Rev. John Methven Robertson, D.D., minister of St Ninians, Stirling, and others, the testator's trustees, and (2) John Fulton Lawrie, his sole surviving child.

The first parties contended that upon a sound construction of the said trust disposition and settlement the second party was not entitled to receive payment of the trust estate until he attained the age of twenty-five years.

The second party maintained that he had a vested interest in the said trust estate, and that he was now entitled to call upon the first parties to denude in his favour, after making provision for the annuity to the surviving annuitant. He maintained that the clauses in the said trust-disposition and settlement postponing vesting and payment, and the clauses conditionally instituting the issue of a predeceasing child, were not applicable to the case of there being only one child of the testator surviving.

The questions of law were—"(1) Are the first parties bound now to pay and convey to the second party the trust estate, with the exception of such part thereof as is necessary to secure the annuity to Miss Betsy Wanless? or (2) Are they bound to retain and administer the same until the second party attains the age of twenty-five years."

Argued for the first parties—The testator's express declaration whereby vesting was postponed was conclusive of the question between the parties, and apart from that the conditional institution of issue suspended vesting—*Bowman* v. *Bowman*, July 25, 1899, 1 F. (H.L.) 69, 36 S.L.R. 959; *Parlane's Trustees* v. *Parlane*, May 17, 1902, 4 F. 805, 39 S.L.R. 632; *Thompson's Trustees* v. *Jamieson*, January 26, 1900, 2 F. 470, 37 S.L.R. 346; *Forrest's Trustees* v. *Mitchell's Trustees*, March 17, 1904, 6 F. 616, 41 S.L.R. 421; *Snell's Trustees* v. *Morrison*, November 4, 1875, 4 R. 709. The case of *Maitland's Trustees* v. *M'Dermaid and Others*, March 15, 1861, 23 D. 732, did not apply.

Argued for the second party—The testator's declaration as to vesting did not apply in the circumstances which had arisen, and should be held *pro non scripto*. The second party was entitled to immediate payment—*Maitland's Trustees* v. *M'Dermaid and Others*, *cit. sup.*; *Duncan's Trustees*, *&c.*, July 17, 1877, 4 R. 1093, 14 S.L.R. 650.

LORD KYLLACHY—It is not necessary in this case to lay down or refer to general rules, or to do more than express shortly what in our opinion is the true construction of this trust-disposition and settlement. All I need say is, that I am unable to hold, on the just construction of this settlement, that the second party, who is the last survivor of the truster's children but is not yet twenty-five years of age, is in the position of having a vested interest in the trust estate—a vested interest sufficient to bring his claim to immediate possession within the principle of the case of *Miller* (December 19, 1890, 18 R. 301). It is, I think, quite unnecessary to consider what would have been the result in the absence of the express declaration as to vesting which the deed contains. In that case the question would have depended simply on the effect of the postponed term of payment, taken along with the destination over to grandchildren, and failing grandchildren to the surviving children; and I am far from saying either (1) that the survivorship clause could have operated to suspend vesting when the survivors had been reduced to one, or (2) that the destination over to grandchildren could have suspended vesting, or done more at the most than make the vesting subject to defeasance as explained in the recent decisions. But the position in fact is that we have

here an express clause fixing the time of vesting—fixing it like the term of payment at the date when the youngest child of the truster reaches twenty-five years of age—and so fixing it quite generally, with respect to the interest of each child, and without so far as appears any reference to the question whether there were ultimately more children than one. I am not, I confess, prepared to expunge and read out of the settlement this express clause and the clauses which form its context; and, standing these clauses, they appear to me conclusive against the claim now made. It may be true that the expression "youngest child" is not strictly appropriate where only one child survives. The same might be said where only two children survive. But the expression is in a quite intelligible sense applicable to a youngest surviving child—a child, that is to say, who has ceased to have any brother or sister younger than himself. At all events, it seems to me that that is the sense in which the term is used in this settlement.

Reference was made to the case of *Maitland*, 23 D. 732, where it was said that a different view had been expressed as to the construction in a similar deed. Now, I am sure we should all be unwilling to treat, or appear to treat, that judgment with any want of respect. But it does not appear to me that anything of that kind is involved. In the first place, there has been no suggestion that the decision in that case is open to doubt. The only suggestion has been that if the case were to be decided now it would probably be so upon a simple ground, viz., this, that there was there no express postponement of vesting, that the destination-over to survivors had become inoperative, and that the destination-over to issue involved, as is now settled, only a resolutive condition. But apart from that, and with respect to the assigned grounds of judgment, we do not require or propose to express any adverse opinion. As applied to the particular deed those grounds may have been quite right. But it does not of course follow that they are applicable to a deed such as that which we have here—a deed which differs from the deed in *Maitland's* case, amongst others, in this important particular, that it contains, as I have pointed out, an express clause regulative of vesting, with a context before and after which has at least considerable significance.

On the whole matter I am of opinion that we should answer the first query in the negative and the second in the affirmative.

LORD KINCAIRNEY—I am of the same opinion as Lord Kyllachy. We must look at the deed as it stands. Vesting is postponed till the youngest child is twenty-five. There is now only one child. In that state of affairs I concur in the opinion that vesting does not take place until this sole survivor is twenty-five. It is not necessary to say what would happen if the second party died without issue.

LORD STORMONTH DARLING—I concur. The argument for the second party goes so far as to say that because there is now only one child surviving we must read out the whole of the elaborate provisions for benefit of grandchildren and for the maintenance and education of children until the youngest attains twenty-five. I cannot assent to that. I think the clause postponing vesting till the youngest child is twenty-five is of binding force, although there is now only one child.

The LORD JUSTICE-CLERK concurred.

The Court answered the first question in the negative and the second in the affirmative.

Counsel for the First Parties—Younger, K.C.—Hunter. Agents—J. & J. Milligan, W.S.

Counsel for the Second Party—Sandeman—W. J. Robertson. Agents—J. S. & J. L. Mack, W.S.

Thursday, July 6.

SECOND DIVISION.

[Sheriff Court of Lanarkshire at Glasgow.

KELLY *v.* ARROL & COMPANY, LIMITED.

Master and Servant — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 7 (2) (*b*)—"*Dependants*"—"*Wholly or in Part Dependent*"—*Father Earning Equal Wages with Son but Receiving Allowance from Latter—Father Receiving Allowance from Son whose Income Partially Derived from Betting—Parent and Child.*

A father with no dependants earned an average wage of £1, 4s. 11d. a-week, in spite of his suffering from bronchitis and rheumatism, which sometimes prevented him from working. He was in the habit of receiving payments from a son amounting on an average to 10s. a-week. The son's average weekly wage was £1, 4s. 1d., but he practised a systematic course of betting which brought him a substantial profit. The son was accidentally killed.

Held that the father was not "in part dependent" upon the deceased's earnings at the time of his death within the meaning of section 7 (2) (*b*) of the Workmen's Compensation Act 1897.

Legget & Sons v. *Burke*. November 18, 1902, 4 F. 693, 39 S.L.R. 448, *distinguished.*

Section 7 (2) of the Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37) provides—"In this Act 'dependants' means . . . (*b*) in Scotland, such of the persons entitled according to the law of Scotland to sue the employer for damages or solatium in respect of the death of the workman, as