to the above, answer the first query in the negative.

2. The second query I also answer in the negative. I do not regard the expenses of a special case as expenses incidental to the reference and in the sole discretion of the arbiter in the sense of the Act, and of the schedule of the Agricultural Holdings Act of 1908 which it incorporates. There is nothing to exclude the inherent power of this Court to decide questions of expenses in all cases coming before it, and though it may, if it thinks fit, remit to the arbiter to dispose of the expenses of a case along with those in the reference, it is not always desirable that this course should be taken. In this case I think that it is proper that I determine the question of expenses in this Court, and that there should be no expenses to either party.

3. I participate in the doubt whether the third question is a question of law. But I think that the course taken by the arbiter is correct. If it be a question of law I answer it in the affirmative.

4. It is also doubtful whether this is a question of law. But as I agree with the arbiter I may add that it was, I think, proper to debit such interest. The rate is in my view a matter for the arbiter.

5. I answer the fifth question in the negative. In any event the claimants must have borne the expense of realisation at the expiry of the lease. If they have to realise prematurely and are being compensated for disturbance, they must take the risk of hitting a bad market, just as they will have the advantage of a favourable one.

His Lordship answered questions 1, 2, and 5 in the negative, and 3 and 4 in the affirmative.

Counsel for the Claimants—Sandeman, K.C.—C. H. Brown. Agents—J. Miller Thomson & Co., W.S.

Counsel for the Respondents—Graham Robertson. Agent—Sir Henry Cook, W.S.

Friday, December 17.

SECOND DIVISION.

ANDERSON'S TRUSTEES *v.* MATTHEW AND OTHERS.

Revenue — Estate Duty — Relief—"Sum Charged on" Bequest — "Trustees or Owners of the Property"—Finance Act 1894 (57 *and* 58 *Vict. cap.* 30), *secs.* 9 (4) *and* 14 (1).

By his trust-disposition and settlement a testator bequeathed his paper-mill business with its whole assets to A and B in equal *pro indiviso* shares, but subject to a burden of £40,000 in favour of certain other beneficiaries, "which shall be a debt due to my trustees payable out of the whole of the foregoing assets," and he directed his trustees in place of conveying the business to A and B to form it into a company and to allot the shares equally between them, and to secure the £40,000 by a bond and disposition in security over the whole of the heritable property to be conveyed to the company. The heritable property was only worth about £18,000. The trustees having carried out the testator's instructions, *held* that the estate duty on the testator's estate which effeired to the heritable property was not exigible out of residue, but was accountable for by A and B and the donees of the £40,000 in rateable proportions.

The Finance Act 1894 (57 and 58 Vict. cap. 30) enacts:—Section 6—"(1) Estate duty shall be a stamp duty collected and recovered as hereinbefore mentioned. (2) The executor of the deceased shall pay the estate duty in respect of all personal property (wheresoever situate) of which the deceased was competent to dispose at his death on delivering the Inland Revenue affidavit, and may pay in like manner the estate duty in respect of any other property passing on such death which by virtue of any testamentary disposition of the deceased is under the control of the executor, or, in the case of property not under his control, if the persons accountable for the duty in respect thereof request him to make such payment." Section 8—". . . (4) Where property passes on the death of the deceased, and his executor is not accountable for the estate duty in respect of such property, every person to whom any property so passes for any beneficial interest in possession, and also, to the extent of the property actually received or disposed of by him, every trustee, guardian, committee, or other person in whom any interest in the property so passing or the management thereof is at any time vested, and every person in whom the same is vested in possession by alienation or other derivative title, shall be accountable for the estate duty on the property, and shall, within the time required by this Act, or such later time as the commissioners allow, deliver to the commissioners and verify an account to the best of his knowledge and belief of the property: Provided that nothing in this section contained shall render a person accountable for duty who acts merely as agent or bailiff for another person in the management of property." Section 9—"(1) A rateable part of the estate duty on an estate, in proportion to the value of any property which does not pass to the executor as such, shall be a first charge on the property in respect of which duty is leviable. . . . (4) If the rateable part of the estate duty in respect of any property is paid by the executor, it shall, where occasion requires, be repaid to him by the trustees or owners of the property, but if the duty is in respect of real property it may, unless otherwise agreed upon, be repaid by the same instalments and with the same interest as are in this Act mentioned. (5) A person authorised or required to pay the estate duty in respect of any property shall for the purpose of paying the duty or raising the amount of the duty when already paid, have power, whether the property is

or is not vested in him, to raise the amount of such duty and any interest and expenses properly paid or incurred by him in respect thereof, by the sale or mortgage of or a terminable charge on that property or any part thereof." Section 14—"(1) In the case of property which does not pass to the executor as such, an amount equal to the proper rateable part of the estate duty may be recovered by the person who, being authorised or required to pay the estate duty in respect of any property, has paid such duty, from the person entitled to any sum charged on such property (whether as capital or as an annuity or otherwise), under a disposition not containing any express provision to the contrary." Section 23—"(11) The expression 'executor' means every person who as executor, nearest-of-kin, or creditor, or otherwise, intromits with or enters upon the possession or management of any personal property of a deceased person."

William Verden Anderson and others, the testamentary trustees of the deceased Charles Anderson of Fettykil, Fife, paper manufacturer, acting under his trust-disposition and settlement, dated 22nd March 1906, with two relative codicils (*first parties*); the said William Verden Anderson as an individual, and George Anderson, to whom the testator had bequeathed, subject to payment of £40,000 to other beneficiaries, his paper-mill at Fettykil, Fife, and business of papermaker (*second parties*); Patrick Matthew, C.E., Edenton, North Carolina, U.S.A., and others, who claimed the said £40,000 (*third parties*); and the Foreign Mission Committee of the General Assembly of the Church of Scotland and others, the residuary legatees of one-half of the residue, the other half being held by the trustees for certain purposes (*fourth parties*), brought a Special Case, *inter alia*, to decide the incidence of the estate duty amounting to £1625, 12s. 8d. paid on the testator's heritable property other than Fettykil House.

The *trust-disposition* assigned and disponed the testator's whole estate, heritable and moveable, to the first parties for the purposes therein mentioned, and, *inter alia*, provided—"*Fourth.*—I leave and bequeath, free of legacy duty, to the said William Verden Anderson and George Anderson, in equal *pro indiviso* shares, my paper-mill at Fettykil aforesaid, and goodwill and firm name thereof, and also all my heritable property and fittings thereof lying in the parishes of Leslie and Kinglassie, and also the stocks of raw and manufactured material held in connection with said paper-mill or business of Smith, Anderson, & Company, and also the book debts and bills due to said mill or business, and whole moveable machinery, fittings, and working utensils in connection therewith, but under burden of any outstanding book debts or other liabilities in connection with said mill or business, and also subject to a sum of £40,000, which shall be a debt due to my trustees payable out of the whole of the foregoing assets, and which sum of £40,000 shall be secured to my trustees by a bond and disposition in security as after mentioned. It is my desire that the said William Verden Anderson and George Anderson shall arrange to continue to carry on my said paper-mill, and for the purpose of more conveniently carrying out my wishes I direct my trustees, in place of conveying said property and others to the said William Verden Anderson and George Anderson, to form, at the expense of my estate, the said paper-mill with the property above bequeathed to them and subject to the liabilities aforesaid, into a limited company under the Companies Acts, with such memorandum and articles of association and with a capital as may be fixed and adjusted by my trustees, putting such capital either solely into ordinary or partly into five per centum preference and partly into ordinary shares in such way and manner as my trustees may think desirable, and to enable my trustees to form such a company I authorise them to convey said property and other assets, subject to the liabilities aforesaid, to such a company in exchange for fully paid-up shares in such company, and the shares to be received therefor shall thereafter be divided into two equal lots, one of which lots shall be transferred and conveyed to the said William Verden Anderson or his heirs, and the other lot to the said George Anderson or his heirs. The said sum of £40,000, which is declared to be a burden on said bequest, shall be heritably secured in favour of my trustees by a first bond and disposition in security, with all the usual clauses over the whole of said heritable property, including heritable machinery to be conveyed to the said company, repayable said bond at the expiry of seven years from the date of my death, with interest thereon calculated from the date of my death, payable yearly at the rate of five pounds per centum per annum, but with power to the said William Verden Anderson and George Anderson or the said company to pay off the said bond in one sum earlier if they desire to do so at any term of Whitsunday or Martinmas on giving three months' notice of their intention. *Fifth.*—The said sum of £40,000, with any accumulated income thereof, shall, when the principal sum is collected, be distributed by my trustees amongst such of the survivors of my relatives alive at the date of distribution (always excluding the said William Verden Anderson and George Anderson and their issue) to whom I have bequeathed pecuniary legacies under my testamentary writings, and that in proportion to the amount of said pecuniary legacies to which said relatives are respectively entitled, but in the event of any of said legatees who are relatives dying before said date leaving issue, such issue shall take the share which their parent would have taken if he or she had survived, and I specially declare that relatives in this clause shall mean and include maternal as well as paternal relatives, and also legatees who are related to me through females as well as those connected through males. . . ."

The Case stated—"(5) In pursuance of the directions of the testator the first parties duly formed a limited company under the name of Smith, Anderson, & Company,

Limited, to which they transferred the testator's paper-mill at Fettykil, with the plants, stocks and goodwill of the business. The said company on 2nd March 1909 granted a bond and disposition in security for £40,000 in favour of the first parties over the heritable property transferred to the company. This bond, which was recorded in the Division of the General Register of Sasines applicable to the county of Fife on 4th March 1909, was repayable on 15th December 1914. The principal sum contained therein has now been repaid and the bond has been discharged. . . . The accumulations of interest thereon, which were partly invested and partly in bank, are available for distribution, along with the capital sum of £40,000, which has been repaid. (6) The amount of the testator's moveable estate, as given up in the inventory lodged for confirmation, was £275,869, 16s. In addition to this moveable estate the testator left heritable property valued immediately after his death at £21,495. (7) The first parties have realised the trust estate, except a number of shares in certain companies, most of which are difficult to realise, and some of which are of little or no value. The only primary purposes of the trust which have not been finally implemented are (1) the distribution of the legacy of £40,000, with the accumulated income thereon, in terms of the fifth purpose of the testator's trust-disposition and settlement. . . . (9) The bequest under the fourth purpose of the testator's trust-disposition and settlement in favour of the second parties embraced the following items, according to values put upon them at the date of the testator's death, viz.:—

Value of heritage, per valuation by Alexander Dowell . . .	£21,495	0	0
Papermaking and other machinery and effects, per valuation by Alex. Dowell	9,085	7	0
Stocks and stores . . .	17,733	12	0
Book debts, per balance sheet	13,529	5	10
Sum at credit in bank . .	1,829	18	0
	£63,673	2	10
Liabilities, per balance sheet	5,647	15	2
	£58,025	7	8

The above items represented moveables, except the first item of £21,495, which represented heritage. (10) The first parties have paid estate duty at eight per cent. on the whole of the trust estate, including estate duty amounting to £1719, 12s. on the said heritable property valued at £21,495. The whole of this heritable property was transferred to the said Smith, Anderson, & Company, Limited, and forms the whole subjects conveyed in security under the said bond and disposition in security for £40,000 by that company in favour of the first parties. The said heritable property includes the dwelling-house of Fettykil, valued at £1500. By the first purpose of a codicil dated 7th August 1907, the said William Verden Anderson has a conditional right of occupation of said dwelling-house free of estate duty. Parties are agreed that the estate duty effeiring to this property amounts to £93, 19s. 4d., and shall be charged against residue. The present case relates to the incidence of the balance of the estate duty amounting to £1625, 12s. 8d., effeiring to the testator's other heritable property."

The *questions of law* were—"(1) Does said estate duty on the heritable property left by the testator fall to be paid out of residue? or (2) Does it fall to be paid wholly by the second parties? or (3) Does it fall to be paid wholly by the beneficiaries of the said sum of £40,000? or (4) Does it fall to be paid by the second parties and the said beneficiaries in rateable proportions?"

Argued for the first and fourth parties—No part of the estate duty in question was payable out of residue. The estate duty in question was exigible in respect of heritable property, and therefore although the executors might pay it in the first instance—Finance Act 1894 (57 and 58 Vict. cap. 30), sec. 6 (1)—they were entitled to recover its amount from the beneficiaries—sec. 14 (1). It was merely for convenience of collection that the executors paid the duty. They were entitled to charge the property with the amount of the duty so paid by them—sec. 9 (1), (4), and (5), and sec. 23 (11). The conversion of the heritable property directed by the testator only affected the interest taken by the successor. It was altogether irrelevant to the question as to who was liable to pay the estate duty on the property. The answer to that question depended on what was the quality of the property passing at death, *i.e.*, whether it was heritable or moveable at the date of the testator's death—*Berry* v. *Gaukroger*, [1903] 2 Ch. 116; *Hacket, in re, Hacket* v. *Gardiner*, [1907] 1 Ch. 385. Estate duty was not a testamentary expense—*Sharman, in re, Wright* v. *Sharman*, [1901] 2 Ch. 280.

Argued for the second parties—No part of the estate duty was payable by them. Everything bequeathed to them was moveable, because the testator's intentions compelled conversion of the heritage before any interest passed to them. Even if it were held that the second parties were vested in unconverted heritable property, they still were not liable for the duty, because under section 8 (4) it was the person who took the beneficial interest who was liable, and in the present case that was not the second parties but was the trustees for the £40,000. In any event the second parties were only liable for a rateable proportion of the duty along with the third parties—*Dundas's Trustees* v. *Dundas's Trustees*, [1912] S.C. 375, *per* Lord President (Dunedin) at 382, 49 S.L.R. 417, at 420; *Alexander's Trustees* v. *Alexander's Trustees*, [1910] S.C. 637, 47 S.L.R. 537; *Avery, in re, Pinsent* v. *Avery*, [1913], 1 Ch. 208; *Winans* v. *Attorney-General*, [1910] A.C. 27, *per* Lord Atkinson at 34 and Lord Shaw at 49; *Morrison, in re, Morrison* v. *Morrison*, (1910) 102 L.T. 530; *Inland Revenue Commissioners* v. *Priestley*, [1901] A.C. 208; *Gray, in re, Gray* v. *Gray*, [1896] 1 Ch. 620.

Argued for the third parties—No part of the estate duty was payable by them, because the bequest to them, even if it was of a heritable nature, was a bequest which had been

rendered moveable by conversion, and under the trust-disposition and settlement there was no suggestion that the third parties should relieve the executors. Even if it were held that the heritage was not converted, the duty would fall to be paid by the second parties, because the third parties were not the creditors in a bond within the meaning of section 14 (1).

At advising—

LORD JUSTICE-CLERK—The question in this Special Case arises on the trust-disposition and settlement of the late Charles Anderson of Fettykil. In that settlement he bequeathed to William Verden Anderson and George Anderson his paper mill of Fettykil with the business and assets thereof, and provided that the bequest was to receive effect by the creation of a limited company which the trustees were to form, and to which company the subjects of said bequest were to be conveyed. The whole of the shares of said company were to be allotted to the said two gentlemen in equal shares. The said legacy was declared to be subject, *inter alia*, to a sum of £40,000, which was to be secured upon the heritable property, which was represented by the paper mill and the appurtenances thereof. The trustees accordingly duly constituted the limited company, and made over the property in question to that company, and the shares thereof to the two gentlemen named, and in accordance with the truster's instructions took from the company a bond and disposition in security for £40,000 secured on the said heritable property, which in point of fact was only worth about £18,000. The bond was to remain for seven years, the interest being accumulated, and at the end of that time the bond was to be repaid and the proceeds distributed amongst certain legatees, who were spoken of in the case as "the beneficiaries of the said sum of £40,000."

The first point raised for our decision is dealt with in the first four questions, and relates to the incidence of the estate-duty on the said heritable property. It involves the consideration of how far the beneficiaries of the £40,000 were liable for that estate-duty, how far William Verden Anderson and George Anderson, who really represent the interest in the limited company, were liable to pay it, or whether it fell to be paid by the trustees out of residue. On that question a number of cases were cited to us, but it appears to me that the two most apposite are *Berry* v. *Gaukroger*, [1903] 2 Ch. 116, and *Hacket* v. *Gardiner*, [1907] 1 Ch. 385. The result of these two cases comes to this, that in circumstances like the present those taking the beneficial interest are liable to pay the estate-duty, and residue is not liable, the effect of the statute being that those who get the benefit must bear the burden. I think that the question in reality turns mainly upon the application of two sections of the Finance Act 1894 (57 and 58 Vict, cap. 30), sec. 9 (4) and sec. 14 (1). The heritable property in question did not pass to the executor as such, and by section 9 (1) it is provided that "a rateable part of the estate-duty on an estate, in proportion to the value of any property which does not pass to the executor as such, shall be a first charge on the property in respect of which duty is leviable"—[*His Lordship read section* 9 (4) *and section* 14 (1)].

It appears to me that the parties of the second part, Messrs William Anderson and George Anderson, became ultimately the true owners of the property, and were indeed intended to be, through the machinery of the limited company, owners of the property all along, and that, on the other hand, the beneficiaries of the £40,000 had a charge on the property so far as the value of it went towards the payment of the £40,000.

Accordingly I am of opinion that the residue is not liable to any extent to pay the estate-duty in question, and, on the other hand, I cannot find sufficient justification in the statute or the authorities cited to us for holding that either the second parties, Messrs William Verden Anderson and George Anderson, or the beneficiaries of the £40,000, should pay the whole of it. It appears to me that the proper legal result is that these parties should bear the estate-duty upon this subject in rateable proportions. What these rateable proportions are we have, fortunately, not to determine, because the case states in article 12 that "if the said estate-duty falls to be paid rateably by the second parties and the said beneficiaries, these parties are agreed as to the mode of apportionment." The result accordingly, so far as the first four questions are concerned, is that questions 1, 2, and 3 fall to be answered in the negative, and question 4 in the affirmative. [*His Lordship then dealt with the other questions in the case with which this report is not concerned.*]

LORD DUNDAS—[*After summarising the facts*]—The first (and main) question we have to determine is whether or not estate-duty forms a proper charge on the residue; and if it does not, whether it must be paid by the Messrs Anderson or by the beneficiaries under the fifth purpose, or in rateable proportions by those beneficiaries and the Messrs Anderson respectively. I have come to the conclusion that the duty does not form a proper charge on residue, but must be paid in rateable proportions (as to which the parties are agreed) by the said beneficiaries and the Messrs Anderson respectively. I think that on the testator's death the beneficial interest in the heritage passed by virtue of his settlement to the Messrs Anderson, subject to a burden of £40,000 destined for certain beneficiaries by the fifth purpose; and that the estate-duty, which has been properly paid to the Crown by the executors, though they were not as such accountable for it, must be repaid to them by the Messrs Anderson and the beneficiaries in the £40,000 in rateable proportions. The important sections of the Act in this question appear to me to be sections 9 (4) and 14 (1). Section 9 (4) seems to me to provide that where, as here, estate-duty has been paid by the executor on property which does not pass to him as such, it shall be repaid to him "by the trustees or owners

of the property." If this section stood by itself it might be doubtful whether in the present case the "owners" meant only the limited company (or the Messrs Anderson, who for the purposes of the case are really the same as the company), or might include the beneficiaries in the £40,000. But I think that section 14 (1) makes it plain that the latter interpretation is correct, and that these beneficiaries must contribute rateably to the repayment of the duty to the executors; for it is provided that "in the case of property which does not pass to the executor as such, an amount equal to the proper rateable part of the estate duty may be recovered by" the executor who has paid the duty to the Crown "from the person entitled to any sum charged on such property . . . under a disposition not containing any express provision to the contrary." I am therefore for answering questions 1, 2, and 3 in the negative, and question 4 in the affirmative. [*His Lordship then dealt with the other questions.*]

LORD SALVESEN—I concur in the judgment proposed. I think it is plain in the first place that the executor is not liable as such for the estate-duty upon the land which forms part of the deceased's estate. That being so, the only question is—upon whom does that estate-duty fall to be charged? If the Messrs Anderson had received a bequest of this land by itself and without burdens I do not think it would have been argued that they would not have been liable for the full amount of the estate-duty which attached to the bequest. Equally I think it is plain that if they had received a bequest of the land burdened with a bond and disposition in security for exactly the same amount as the value of the land, the persons who would have been chargeable with the estate-duty would have been the bondholders, because they had received the entire benefit of the bequest.

In the present case we have a mixed state of matters. The Messrs Anderson received a bequest of the value of £58,000, of which £18,000 represented the value of the heritable subjects forming part of the bequest, but they received it under burden of a bond for £40,000, which was to be paid off in a specified manner. In those circumstances both parties derived benefit from the bequest, one to the extent of £18,000 and the other to the extent of £40,000, and accordingly the estate-duty must be borne in these proportions. [*His Lordship then dealt with the other questions in the case.*]

LORD GUTHRIE concurred.

The Court answered the first, second, and third questions in the negative, and the fourth question in the affirmative.

Counsel for the First and Fourth Parties—Constable, K.C.—Forbes. Agents—Boyd, Jameson, & Young, W.S.

Counsel for the Second Parties—Sandeman, K.C.—Gentles. Agents—Guild & Shepherd, W.S.

Counsel for the Third Parties—Solicitor-General (Morison, K.C.)—Lippe. Agents—R. Addison Smith & Co., W.S.

Thursday, January 13, 1916.

FIRST DIVISION.

[Lord Anderson, Ordinary.

WALLACE-JAMES *v.* BAIRD.

(See *ante*, 1915 S.C. 23, 52 S.L.R. 14.)

Reparation—Slander—Innuendo—Truth of Statements Made.

In an action of damages for slander the pursuer, who was medical officer of the parish of H., founded on a letter written by the defender as president of the District Nursing Association of H. to the chairman of the Parish Council of H., making statements as to the helpless condition of an old-age pensioner, and to her not having had the care of the district nurse. The issue was in the following terms:—"Whether the letter . . . falsely and calumniously represents that the pursuer, while medical officer of the parish of H., failed in breach of his duty as such medical officer to call in the district nurse" [to the case specified], to the loss, injury, and damage of the pursuer. At the trial counsel for the defender asked a direction to the jury that if the letter was substantially nothing but a correct statement of facts, the jury could not find for the pursuer, because his action was based wholly on the falsity of the statements in the letter. The Lord Ordinary having refused to give the direction asked, and counsel for the defender having excepted to his ruling, *held* that the Lord Ordinary was right.

Dictum of Lord President Inglis in *Campbell* v. *Ferguson*, 1882, 9 R. 467, at p. 469, 19 S.L.R. 404, at p. 405, *commented on.*

Reparation—Slander—Privilege—Parish Council—Parish Medical Officer—District Nursing Association—President of Nursing Association Writing to Chairman of Parish Council as to Failure of Medical Officer to Employ Nurse in the Case of an Old-Age Pensioner.

An action of damages for slander by a parish medical officer against the president of the district nursing association to which the Parish Council contributed, was founded on a letter written by the defender to the chairman of the Parish Council reflecting upon the conduct of the medical officer in failing to call in the association's nurse to attend to an old-age pensioner. The Parish Council had directed the medical officer to employ the nurse in such cases as he considered necessary. In a circular letter of the Local Government Board to inspectors of poor the inspector was directed to offer poor relief to any pensioner whose resources on consideration were found to be inadequate for his support, and the inspector was also informed that every pensioner who was in need of medical assistance, and who was unable to pay for it, was entitled to obtain it from the Parish Council without forfeiture of the pension. The old-age