LORD YOUNG—The question in this case is whether the pursuers have proved as matter of fact that the defender is the father of the female pursuer's child, and I am of opinion that they have not. Indeed I am prepared to find in fact that he is not the father of the child. I am far from saying that there is no evidence tending to prove that he is, but there is no evidence convincing my mind that he is. The case is peculiar. The husband is an elderly man, the father of a family, and an elder in a Dissenting church, and he begins sweethearting a mill-worker of twenty-nine. He commenced his attentions about March or April, and his wife swears that he offered her marriage upon 12th April. Before that they were seen going about together at the place where the child is alleged to have been begotten by another man. He was seen with his arm round the pursuer's waist. I do not say there was the least impropriety in that. But she says she told him that she must speak to the defender, and that within three weeks of their engagement she told him that she was with child. She avers that she had connection with the defender five days before her husband proposed to her. Her information made no difference to Kerr, and he married her in August. When the child was born the attention of the kirk-session was aroused, and he then pointed to another man as the father of his wife's child. Has he proved that that other man is the child's father? I think that he has not. Irrespective of the evidence of the wife, it seems to me that the case is just as strong against the man who married her as against the defender, but when the marriage is taken into account, the presumption against the husband becomes infinitely stronger. I agree with your Lordship that the appeal should be sustained.

LORD RUTHERFURD CLARK concurred.

LORD TRAYNER—I am sorry to have to dissent, but I cannot reach the conclusion at which your Lordships have arrived, and I think that the judgment of the Sheriff should be affirmed. The question we have to decide is, whether or not the pursuers have proved that the defender is the father of the child in question? I do not think the pursuers need fear to face that question in the bald fashion in which I have stated it. I put aside the marriage for the moment, and without the marriage it was admitted at the bar—fairly admitted, I think, looking to the decisions in previous cases—that the evidence was sufficient to establish liability against the defender. But if the marriage were out of the way and the defender were not here, could you convict Kerr of being the father of this child? I am as clear against that view as I am in favour of finding the case proved against the defender. Now, look at the marriage. Even in the case of a child born in the ordinary time after marriage, the maxim *pater est quem* is not absolute. The existing husband is not necessarily held to be the father of his wife's child. There was a very strong case indeed where that presumption was held to have been redargued which has not been referred, viz., the case of *Mackay*, February 24, 1855, 17 D. 494. Here, however, we have not so strong a presumption to deal with as the presumption of law *pater est*. Here we have only a *præsumptio hominis et facti* arising from Kerr having married a pregnant woman. I fail to see that the presumption is irresistible. Lord Young has mentioned circumstances tending to show intimacy before marriage. I can see no signs of such intimacy except the night of the ball, and there is no evidence that the parties were five minutes alone together on that evening. The evidence about Kerr's arm being seen round pursuer's waist might be of consequence if that had taken place before the conception of this child, but it occurred when they were betrothed lovers, and when Kerr knew that she was pregnant. I do not say his conduct was in good taste. That should not affect our judgment any more than the fact that Kerr was an elder and his wife a mill-worker. Now, we have the defender's admission of improper intimacy. The Lord Justice-Clerk says he does not believe Hiddleston. I do, because the Sheriff believed him, and because the defender admits that the conversation he speaks to did take place, except as to the defender's saying the pursuer was going to have a child to him. That, the defender depones, he said would only be the case if the child was born within a certain period. I consider this case to be better proved than many in which I have seen the Court find the defender liable. To summarise my view—Without the marriage I think the case conclusive against the defender, and without the marriage I think there would be no case against Kerr. This is not a case of attempting to extort blackmail. The male pursuer only desired that the defender should remove the child from his house.

The Court sustained the appeal and assoilzied the defender.

Council for Pursuers and Respondents—G. W. Burnet. Agents—Emslie & Guthrie, S.S.C.

Counsel for Defender and Appellant—Sym. Agent—Alex. Wyllie, Solicitor.

Friday, December 19.

SECOND DIVISION.

(Before Seven Judges.)

SIR WILLIAM MILLER'S TRUSTEES.

Succession—Trust—Direction to Trustees to Manage until Beneficiary Attained Twenty-five—Right of Fiar to Demand Conveyance and Payment—Repugnancy.

A testator directed his trustees to manage certain heritable property until his son, the person entitled thereto, attained the age of twenty-five, and

thereupon to denude in his favour, declaring that the property should not vest in him until he attained the age of twenty-five, or married with the trustees' approval after attaining the age of twenty-one. The truster also left his son a share of the residue of his moveable estate, which was very large, with the same declaration as to vesting, but without any direction to the trustees as to holding or paying over. The son having attained the age of twenty-one, married with the approval of the trustees before attaining twenty-five. *Held* (by a majority of Seven Judges, Lords Young and Trayner *dissenting*) that the fee in both the heritable and moveable estates having vested in the son upon his marriage, the trustees were bound to cease managing those estates and to transfer them to him by conveyance and payment respectively.

The late Sir William Miller of Manderston, Bart., died on 10th October 1887, leaving a trust-disposition and settlement dated 6th January 1876, and recorded 24th October 1887.

The testator, after directing his trustees to allow his wife Dame Mary Leith or Miller the free liferent use, occupation, and enjoyment of, *inter alia*, the dwelling-house on his estate of Barneyhill, Haddington, provided as follows:—"(*Quarto*), Subject to the liferent provision in favour of my said wife before written, I direct my said trustees to hold my lands and estate of Barneyhill, and the whole other lands and heritable or real estate of every description situated within the shire or county of East Lothian . . . for behoof of my second son John Alexander Miller, and the heirs of his body in fee. . . . (*Quinto*), My said trustees shall manage, as absolute proprietors, my said estates in Berwickshire, and house in London, and estates in East Lothian, for the party entitled thereto under these presents, until said party attains the age of twenty-five years—my said trustees, subject to the before-written provision in favour of my said wife, allowing such party such occupation of the whole or any part thereof as they may consider best; and upon said events happening, my said trustees shall denude of said lands and estates in favour of the party to whom the same are respectively destined: . . . And I hereby declare that no part of my said several lands and estates shall vest in such of my children as may be entitled thereto under these presents until he or she attains the age of twenty-five years, or is married after attaining twenty-one years, with the consent and approbation of my said trustees, whichever event shall first happen. . . . . (*Septimo*), My said trustees shall hold the whole residue and remainder of my moveable or personal means and estate for behoof of my whole children, including the heirs who succeed to my heritable and real estates, in the following shares or proportions, viz., nine-twentieths for my eldest son, seven-twentieths for my second son, and two-twentieths for each of my daughters, but that in the case of my daughters for their liferent alimentary use only and for their children in fee: . . . And my said trustees shall have unlimited discretion in the application of the annual interest or proceeds of the share of residue to which each of my children may be entitled in fee or in liferent, and shall apply such part thereof as they may deem necessary and proper for the maintenance, clothing, education, upbringing, and advantage of the said children respectively: . . . And upon my said children attaining the age of twenty-five years, being sons, or attaining that age or being married in the event of their being daughters, they shall be entitled absolutely to any accumulations of annual interest or proceeds on their respective shares, and my said trustees shall pay and make over the same to them accordingly: And it is hereby specially declared that the provisions out of residue hereby conceived in favour of my sons shall not vest in them until they attain the age of twenty-five years, or marry after attaining twenty-one years of age with the consent and approbation of my said trustees, whichever event shall first happen."

Sir William Miller was survived by the four children mentioned in the trust-disposition and settlement. His second son, John Alexander Miller, upon 19th September 1889, having then attained the age of twenty-one, married with the consent and approbation of his father's trustees. Seven-twentieths of the residue—the portion left to him—amounted to about £425,000. After his marriage the trustees allowed him from £7000 to £11,000 a-year, but he maintained that upon his marriage after twenty-one with their approval the fee in both estates had vested in him, and that he was entitled to have a conveyance executed in his favour of the lands of Barneyhill under burden of Lady Miller's liferent, and also to have payment made to him of the said seven-twentieths of the residue with the accumulations thereof.

The trustees, however, maintained that they were bound by the terms of the trust-deed to continue in the management of the heritable estate and of the share of residue until he attained twenty-five.

A special case was in consequence prepared on behalf of the trustees of the first part, and John Alexander Miller of the second part, to have the following questions determined, viz.—"(1) Whether, in the circumstances above set forth, the parties of the first part are bound at once to convey to the party of the second part, subject to the liferent provision in favour of his mother Lady Miller, the lands and estates of Barneyhill, or whether they are bound to retain and manage them until he attains the age of twenty-five years? (2) Whether, in the circumstances above set forth, the parties of the first part are bound at once to make payment to the second party of his seven-twentieths of the residue of Sir William Miller's personal estate, or whether they are bound to hold the same, applying the annual income thereof as directed by

Sir William Miller until the second party attains the age of twenty-five years?"

The Second Division, after hearing counsel, appointed the case to be re-argued before them and three Judges of the Second Division.

Argued for the first party (the trustees)—Vesting took place upon the marriage of the second party, but the trustees were bound to continue the management until he attained twenty-five. The intention of the testator to this effect was expressed as to the management of the heritable estate, and was clearly implied as to the management of the moveable estate. The accumulations of interest upon their shares of residue were to go on until the sons reached twenty-five. The only question was, whether the testator had secured the carrying out of his intention by a method the law would recognise. There was no repugnancy here. It was a common, a legal, often a wise provision, especially in estates of such magnitude as this one, that the beneficiaries should not get the management of them until they were twenty-five. The fact that the testator allowed vesting to take place upon marriage before twenty-five was probably to enable the son to provide for his wife, and did not affect the question of management. Even if the fee was not absolutely protected from the diligence of creditors a certain amount of protection had been provided by the testator, and should be given effect to. In the cases of *Archibald's Trustees*, June 15, 1882, 9 R. 942, and *Brown's Trustees*, Feb. 27, 1890, 17 R. 517, there was no sufficient reason for continuing the trust management, the objects for which it had been instituted having been attained. This case was ruled by those of *Christie's Trustees*, July 3, 1889, 16 R. 913, and *Campbell's Trustees*, July 17, 1889, 16 R. 1007; see also the English cases collected by Williams on Executors, ii, pp. 1403-1404.

Argued for the second party—Admittedly the fee vested in him upon his marriage. The whole estate to which he had right then fell to be transferred to him. As regarded the moveable estate, no other date for payment was mentioned in the deed, and it by no means followed that the directions applicable to the heritable estate were intended to apply to the moveable estate. But even as regarded the heritable estate the testator's intention was only management until he attained twenty-five, provided he did not marry with the trustees' consent before that time. Supposing the testator had intended management after the estate had vested, that implied repugnancy, and could not be given effect to. An alimentary fee was unknown to the law. He could undoubtedly burden the fee for debts, but was not to be required to do so when the estate could be made available for direct and immediate payments. The case of *Christie's Trustees, supra*, was very special, and had not been followed in the more recent case of *Brown's Trustees, supra* which, along with the cases of *Archibald's Trustees, supra; Jamieson* v. *Lesslie's Trustees*, May 28, 1889, 16 R. 807; *Clouston's Trustees*, July 5, 1889, 16 R. 937; and *Duthie's Trustees*, July 17, 1889, 16 R. 1002, ruled this case—See also opinion of Lord President (Inglis) in the case of *White's Trustees* v. *Whyte*, June 1, 1877, 4 R. 786.

At advising—

LORD PRESIDENT—There is, in my opinion, a general rule, the result of a comparison of a long series of decisions of this Court, that where by the operation of a testamentary instrument the fee of an estate or parts of an estate, whether heritable or moveable, has vested in a beneficiary, the Court will always, if possible, relieve him of any trust management that is cumbrous, unnecessary, or expensive. Where there are trust purposes to be served which cannot be secured without the retention of the vested estate or interest of the beneficiary in the hands of the trustees, the rule cannot be applied, and the right of the beneficiary must be subordinated to the will of the testator. But I am not aware of any case in which the mere maintenance of a trust-management without any ulterior object or purpose has been held to be a trust purpose in the sense in which I have used that term. In this case the testator has directed his trustees to hold the estate of Barney-hill for behoof of his second son John Alexander, and a series of heirs substituted to him, subject to a liferent use of the mansion-house in favour of his widow. The trustees are to manage the estate as absolute proprietors till the party entitled thereto attain the age of twenty-five. But the testator further declares that no part of the estate shall vest in the party entitled thereto until he attain the age of twenty-five, or be married after attaining the age of twenty-one, with the consent and approbation of the trustees, "whichever event shall first happen." This declaration though expressed in a negative form is a negative-pregnant, and involves a corresponding affirmative that the estate shall vest on the beneficiary either attaining twenty-five years of age or being married after twenty-one with the consent of the trustees. Marriage with consent after twenty-one (the event which has happened) is thus made precisely equivalent in its effect to attaining the age of twenty-five. But on the heir attaining the age of twenty-five the trustees are expressly directed to denude in his favour. I am of opinion that the same effect must follow the equivalent event of the heir marrying after twenty-one with the consent of the trustees.

The same considerations, I apprehend, must regulate the question regarding the disposal of the second son's share of the residue of the moveable estate, the declaration as to vesting being expressed in terms identical with those of the corresponding declaration regarding the heritable estate destined to the second son.

I am therefore for answering in the affirmative the first alternative of each of the questions submitted to us in the special case.

LORD JUSTICE-CLERK—I entirely concur in your Lordship's opinion.

LORD YOUNG—I have listened with all attention to your Lordship's judgment, and I am not sure whether the conclusion at which you have arrived is put upon the construction of the will in this case — I mean of what is to be held the true intention of the testator under it—or whether it is put upon the ground that the testator's intention is such as the law will not give effect to? If the judgment is put upon the former ground, the question is one of no interest or importance whatever except to the parties in this case, and of very little to them. It is, then, a mere question of the construction of this particular will, which is a very long instrument, and certainly not taken from the style-books, and may never occur again, and I, for my part, would not have suggested the idea of sending such a question to be argued before Seven Judges as a question of difficulty and importance. If the judgment is put upon the other ground, that the intention of the testator is that his trustees shall hold and manage property after the right to it is vested in the beneficiary, but that that is an intention which cannot by the law of Scotland be accomplished, but that the testator shall be baffled in his intention, then I consider that we are discussing a question of first-rate importance. I think it was hardly argued to us, with respect to the estate of Barneyhill, that his intention was not clearly this, that although the estate had vested in the beneficiary to whom he had designed it, the trustees should nevertheless hold it and manage it, as if they were absolute proprietors for this boy until he attained the age of twenty-five. That his marriage after he attained the age of twenty-one with the consent of his trustees was equivalent in the truster's opinion to his reaching the age of twenty-five is an idea which I do not think was suggested in argument, and certainly did not occur to my mind.

The question of construction upon the will which was argued before us—and a very important question—is, whether the language taken throughout implies sufficiently the intention, so that we shall judicially act upon it, that the trustees are to retain and manage the present estate in the same way as this heritable estate, for, as was pointed out (and quite truly), while the intention is express with respect to the landed estate, it is not so with respect to moveables, but only to be implied. The contest between the parties was, whether there were just and sufficient grounds for implying it or not? and that is a question of construction. But that with respect to the landed estate the intention was expressed clearly—indubitably expressed—was not, as I understood, disputed, and in my opinion is not disputable. Whether that was an intention the law would give effect to, or whether it should be disregarded upon the ground of repugnancy, for there was no other, was the important and difficult question—which we of the Second Division, before whom the case came, thought an important and difficult question—upon which the opinions of Seven Judges should be taken. I shall deal with it accordingly.

It is the fifth purpose of the trust which we are interested in, and I begin by pointing out that the estate which is the subject of that fifth purpose was conveyed by the testator to his trustees on absolute legal title given to them. I shall withdraw the word "absolute." It was not a beneficial title, but it was a complete legal title that was given to them, and to no others. It was conveyed to them, and they are infeft in that estate at this moment as proprietors—no doubt with a trust imposed on them with respect to it, but they are the proprietors of the estate, and there are no others. Here is the trust purpose—"Subject to the liferent provision in favour of my said wife, *secundo* before written, I direct my said trustees to hold my lands and estate of Barneyhill" in East Lothian, with pictures, and so on, "for behoof of my second son John Alexander Miller, and the heirs of his body in fee." Now, that is plain enough. They are "to hold." There is nothing here about vesting, and there is nothing about withholding the conveyance; but then he says—"My said trustees shall manage, as absolute proprietors, my said estates in Berwickshire, and house in London, and estates in East Lothian" (that is, Barneyhill), "for the party entitled thereto under these presents until said party attains the age of twenty-five years." Now, who is "the party entitled thereto under these presents?" It is, as it happens, John Miller. He is said to be twenty-three now, and his father has been dead for three years. He might have been dead before his father died, and who would have been "the party entitled thereto under these presents" in that case? The heir of his body—a baby in the cradle it might have been. He would have been "the party entitled thereto under these presents." Now, is the direction I have read lawful or is it not? If it is a lawful direction it must be given effect to. The trustees to whom the property title was given are directed to hold until he is twenty-five. Is that bad? I have never heard a suggestion of a reason for holding that bad. It is said to be repugnant. Repugnant to what—to property—that a man should give to his son or his grandson an estate through the medium of trustees who are directed to hold it till he attains the age of twenty-five? I heard it suggested that that is just as repugnant as if he had directed the trustees to hold it for the beneficiary until he was fifty or a hundred. A hundred was put. Well, there might be repugnancy there. I think that would possibly come within the application of some language which your Lordship used, for it would be a cumbrous, unnecessary, and expensive trust, and I think the Court would very fittingly disregard it. But, for my own part, until this case occurred I never heard it suggested that a father might not give an estate to his son or to his grandson through

the medium of trustees, directing the trustees to hold and manage it for him until he was twenty-five years of age. Is there anything contrary to good sense in that—anything cumbrous, unnecessary, or so absurdly expensive that the Court will interfere with it and direct the trustees to pay no attention to that direction of the trust? It occurs to a father who is settling his estate—"It won't be for my boy's own interest that he should have it before he is twenty-five. The property is not likely to be so well managed by a young man under twenty-five as it will be after, and using my best endeavour and judgment to do what is best for him, I direct it to be managed by trustees for him till he is twenty-five, and then handed over." Is that void for repugnancy? I think it was an early idea impressed on my mind—I can hardly tell how it came there—that the bountiful giver, the person giving an estate to another, might prescribe the age—and twenty-five is the most common of all in practice—at which with respect to that estate he should be held to become of age. Is that contrary to the law of Scotland, or has it been suggested hitherto that that is contrary to the law of Scotland, or that it is void for repugnancy? Now, here this giver says—"Twenty-five is the age when I wish my son to be put into possession of my estate, and not before that;" and I think if the suggestion had been made to Mr Miller—"Oh, but he will be a first-rate manager of the estate if, with the approval of the trustees, he marries a girl of eighteen"—he would have expressed himself somewhat strongly.

Now, I want to know, is the thing absolutely illegal, so that it cannot be accomplished, or is the proposition merely this, that the right way to accomplish it has not been taken here? I think in a question of this interest and importance we should declare in terms the thing is illegal—the law will not sanction it, and there is no way in which it can be accomplished—or, "Oh, it may be accomplished, but this deed is bungled for that end; some different course ought to have been taken"—and then I think it would be only fair to point out what that course is. I must say that I am startled by the suggestion that that is illegal—that no father is entitled to have such an idea in his mind, and that the law will frustrate whatever he does in order to accomplish it. Vesting is a totally different thing. Being entitled to possession and coming of age has no more to do with vesting than any other period or event which the father makes the vesting depend upon. There is nothing more common, as I have pointed out already, than for vesting to take place in the merest infant—complete vesting. But the withholding of possession is another matter altogether. A father or any other—but the father being the best case to put by way of illustration, I take that; it is the existing case here—may have any of a variety of reasons for desiring that an estate shall not be put into the hands of his son whom he desires to be the proprietor of it—shall not be put into his hands for management until he is twenty-five. In the case of *Christie's Trustees*, July 3, 1889, 16 R. 913, we decided in terms and unanimously, the Lord Justice-Clerk giving the leading judgment, that a direction by a testator to his trustees not to convey an estate to his son who was completely vested with the beneficial right and interest in it, but to retain it and manage it, was good and effectual. It was not limited to five years—not at all limited to five years—yet on an application to the Court to order the trustees to disregard the direction of the testator to hold and manage the property and absolutely decline to hand it over to the beneficiaries, the Court refused to give any such order to the trustees.

There is no question here about creditors. This property may be subject to the debts of the beneficiaries. I suppose it is. We are saying nothing to the contrary, and the beneficiary may disregard his father's will, and disappoint all his father's expectations and the expectations of all his friends by getting involved in debt, even upon the most unfavourable terms, and his property may be taken in payment of it. We are not concerned with that. What we are asked to do now is to order these trustees at the instance of the son to disregard his father's express directions, and instead of holding and managing the estate till he is twenty-five, to convey it at once and directly to him. That is an order to the trustees at the instance of the beneficiary, the son, which I, for my part, will be no party to make, and which I must protest against. I think, and upon the same grounds that the Court unanimously proceeded upon in the case of *Christie*, that the trustees to whom has been given the property title with the above order should not be directed by this Court to disregard it. The rights of creditors are another matter altogether.

I have endeavoured to point out that this direction is irrespective of vesting, and that the clause about marriage after twenty-one with consent of the trustees refers to vesting only, but would have no more effect upon this direction to hold and manage with respect to John than mere birth would have with respect to the son of John. I suppose if John had predeceased the testator, leaving a son, the vesting would have taken place in that son *a morte testatoris*. I do not think that doubtful, but the direction to the trustees to hold in his behoof till he was twenty-five is irrespective of that vesting altogether. Now, that disposes of Barneyhill.

The question whether the direction to hold and manage till the beneficiary reaches the age of twenty-five is to be implied with respect to the residue is a difficult one, but I cannot read the will and resist the conclusion that that was the testator's intention. Indeed, it is very much more important that that direction should be carried out with respect to the residue than with respect to Barneyhill. The residue of his estate—that is to say, the personal estate, this young man's share of which is close on

half a million—is invested in a variety of ways. The trustees are to realise it, they are to ingather it; and does it occur to anybody as irrational on the part of the father to think and to direct his trustees accordingly, viz.—"All that property will not be safe in the hands of a young man under twenty-five. I direct you therefore to manage it till he attains twenty-five, and not to hand it over before then?" And it is no more startling—I think it is the same legal proposition—but it is no more startling to say no father or other bountiful giver can by the law of Scotland do such a thing. He can no more do that than he can tell them to hold it till the man is a hundred. I altogether dissent from that. I think it is foreign to the cases which are illustrative of the doctrine of repugnancy, the familiar and typical illustration of which is where a man gives another money or anything else—where he makes him proprietor—but on condition that he shall not pay his debts with it. Well, the law would not allow that. There is repugnancy in that. That is the typical case of repugnancy, but the notion that directing trustees to manage a property till a son attains years of discretion comes within the same rule of law to which that belongs is, I think, repugnant to good sense. I have already, I think, sufficiently pointed out that he does not make these beneficiaries proprietors. They have the trust-estate. The property is in the trustees, and all that they can call upon the trustees to do is to execute the trust with respect to it—that is to say, they are to execute the truster's directions in so far as they are lawful. If these are unlawful, of course they are to be neglected. Whether they are unlawful or not is a question of difficulty and importance at least, which we thought it expedient to take the judgment of the Seven Judges upon.

I am for answering the question in conformity with these views which I have stated.

LORD RUTHERFURD CLARK—I am of the same opinion as your Lordship in the chair.

It is admitted that the fee is vested in Mr Miller. I hold that as the absolute owner he is entitled to require the trustees to denude in his favour, and that any direction of the testator to the contrary cannot receive effect.

I do not think that the law allows of any restriction on the owner of an absolute fee, and in my opinion the direction that the trustees shall manage the estate till Mr Miller reaches twenty-five is just as repugnant to the right of fee which is vested in him as a direction to manage the estate till he reaches any other age, or it might be till his death.

I may say that in the case of *Christie* I had very great doubt, and I assented to the decision only because I thought that there were special circumstances connected with it which do not occur here.

LORD ADAM—I concur with your Lordship in the chair, and with Lord Rutherfurd Clark.

LORD M'LAREN—My opinion may be expressed very shortly.

Ever since I knew anything of the law of trusts I have considered it to be a settled and indeed an elementary proposition that where trustees hold property for a person in fee, that is a simple trust which the Court will execute by divesting the trustees at the suit of the person interested. It seems to me that a beneficiary who has an estate in fee has by the very terms of the gift the same right of divesting the trustees, and so putting an end to the trust which the truster himself possessed, because under a gift in fee the grantee acquires all the right in the property which the truster had to give. It seems to me to be not only an unsound proposition in law, but a logical impossibility, that a person should have an estate in fee, and that some other person should at the same time have the power of withholding it. This I understand to be a well-settled principle. It is laid down by writers of authority on the law of England, and I have never had any doubt about it being the law of Scotland, although in view of this case being sent to us for consideration, and of the difference of opinion expressed, I must admit that it is an undecided point. There are only two exceptions, so far as I know, to the operation of this general rule, as I understand it, and these are founded upon civil disability—I mean the case of marriage and the case of minority or infirmity. The case of minority or mental incapacity is only an apparent exception, because the trustees are only possessors in the character of guardians of the estate of a beneficiary who is not in a position to manage the property for himself. The case of a married woman is a real exception, but it is impossible to read the opinions of the eminent Judges by whom the doctrine of "separate estate" was established without seeing that they regarded it as an exception constituted for reasons of policy to a rule which was otherwise clear and invariable. My opinion therefore is in accordance with that delivered by your Lordship in the chair.

LORD TRAYNER—I concur in the result reached by Lord Young, and concur also in every one of the reasons which his Lordship has given for reaching the conclusion which he has expressed.

The Court answered the first part of both questions in the affirmative.

Counsel for the First Parties—H. Johnston—Macfarlane—Pitman. Agents—J. & F. Anderson, W.S.

Counsel for the Second Parties—Sol.-Gen. Pearson, Q.C.—G. W. Burnet. Agents—Henry & Scott, S.S.C.