LORD TRAYNER—I agree with your Lordship that the determination of the Commissioners is right. This is not in my opinion the case of a company selling part of its property for a higher price than it had paid for it, and keeping that price as part of its capital, nor a case of a company merely changing the investment of its capital to pecuniary advantage. My reading of the appellant company's articles of association along with the other statements in the case satisfy me that the sale on which the advantage was gained, in respect of which income-tax is said to be payable, was a proper trading transaction—one within the company's power under their articles, and contemplated as well as authorised by their articles. I am satisfied that the appellant company was formed in order to acquire certain mineral fields or workings—not to work the same themselves for the benefit of the company, but solely with the view and purpose of reselling the same at a profit. The facts before us all point to this. The properties were bought for £24,000, leaving only a share capital of less than £6000—a capital quite inadequate (even if all subscribed, which it was not) to enable the company to work their minerals and bring them to market. It is said the company commenced business shortly after its incorporation in February 1901, and continued to carry it on until the sales which were effected in April 1902 and August 1903, but it is not said that in the course of that time—and the period was short—the appellants worked any part of the minerals. The business they carried on may have been solely connected with their efforts to sell the property, and selling it was part of the business which the company was formed and directly authorised to carry on. The price obtained, namely £300,000, for a subject which cost £24,000, points in the same direction.

But it was said that the profit, if it was profit, was not realised profit, and therefore not taxable. I think the profit was realised. A profit is realised when the seller gets the price he has bargained for. No doubt here the price took the form of fully paid-up shares in another company, but if there can be no realised profit except when that is paid in cash, the shares were realisable and could have been turned into cash if the appellants had been pleased to do so. I cannot think that income-tax is due or not according to the manner in which the person making the profit pleases to deal with it. Suppose, for example, a seller under a profit on a trade transaction, but leaves the price (including the profit) in the hands of the buyer at so much per cent. interest. That he so deals with it rather than take the cash into his own pocket would not affect the claim of the Revenue for the tax payable on the profit. No more, in my opinion, does it affect the liability for the tax that the appellants left their profit in the hands of the company they sold to and took that company's shares as their voucher.

LORD MONCREIFF was absent.

The Court affirmed the determination of the Commissioners.

Counsel for the Appellants—Clyde, K.C. —Cooper. Agent—R. Ainslie Brown, S.S.C.

Counsel for the Board of Inland Revenue —Campbell K.C.—A. J. Young. Agent—Philip J. Hamilton Grierson, Solicitor for Inland Revenue.

Friday, July 1.

SECOND DIVISION.

[Lord Pearson, Ordinary.

GRAHAM *v.* MILL.

Lease—Landlord and Tenant—Arbitration in Common Form—Construction of Lease —Valuation of Waygoing Crop and Manure—Quantum meruit.

A, the outgoing tenant of a farm, had been taken bound by his lease at its expiry to sell to the incoming tenant the whole dung produced on the farm subsequent to the turnip season in the year preceding the expiry, and also the waygoing crop, corn, and straw, at such price or prices as should be fixed "by arbitration in common form." B, the incoming tenant, came under a corresponding obligation in his lease in similar terms to purchase the subjects.

A and B not being agreed as to the amount payable, referred the matter by a formal submission to two farmers as arbiters. The arbiters chose another farmer as oversman, and had numerous meetings, but a year and a day having elapsed without any formal award having been signed the submission fell. Meanwhile B had consumed the waygoing crop, corn, and straw, and used up the dung.

Thereafter A raised an action against B for the value of the waygoing crop and the manure, but was met by the defence that arbitration was in terms of the lease the only mode competent for valuing the subjects.

Held (*rev.* judgment of Lord Pearson and *diss.* Lord Moncreiff) that the arbitration stipulated for in the lease was a valuation by skilled persons who had personally inspected the subjects, and that such a valuation having been rendered impossible by reason of the submission having fallen, A was restored to his common law right of suing for the value of the waygoing crop and manure.

John Graham, the outgoing tenant of the farm of Greenhill, Selkirk, raised an action against John Spottiswoode Mill and David Mill, the incoming tenants of the *said farm*, for the sum of £403, 13s. 6d., with interest at 5 per cent. from 18th June 1903.

The following narrative of the facts is taken from the opinion of the Lord Ordinary (PEARSON):—"The pursuer was tenant of the farm under a lease for ten years

from Whitsunday 1892. The defenders are now tenants of the farm in succession to him. In the pursuer's lease he was taken bound by the landlord at expiry to sell to the succeeding tenant the whole dung that might be produced on the farm subsequent to the turnip season in the year preceding the expiry, and also his waygoing crop, corn, and straw, at such price or prices as should be fixed 'by arbitration in common form.' In the defenders' lease the landlord lays a corresponding obligation upon them in the same terms to purchase the dung and the waygoing crop from the outgoing tenant. On the other hand, the outgoing tenant having been taken bound by his lease to leave the houses, fences, and drains on the farm in good tenantable order and repair at his expense, the landlord in the new lease assigned the defenders as incoming tenants into his part of the obligation, taking them bound to apply any sum they might receive thereunder towards repairs. Then as regards the houses, fences, and drains there is no express agreement to arbitrate, while as regards the dung and crop there is an agreement that the prices should be fixed 'by arbitration in common form.' The parties not being agreed as to the amounts payable took steps to have them ascertained. They might, it would seem, have named a valuator or valuators, and had the thing determined summarily. But instead of doing so they entered into a formal submission, dated 30th May 1902, whereby they agreed to submit and refer, and thereby submitted and referred, to the amicable decision, final sentence, and decreet-arbitral to be given forth and pronounced by two gentlemen named [farmers at Jedburgh and Lauder] as arbiters mutually chosen by them, and in the event of their differing in opinion, to an oversman to be named by said arbiters all the matters I have above referred to under five heads. The arbiters and oversman were expressly empowered 'to take all manner of proof by writ, oath, or otherwise, and to employ tradesmen and measurers, and whatever the said arbiters and oversman respectively shall do by interim or final decreet-arbitral, to be pronounced by them or him respectively betwixt and the day of ,or on or before any other day to which they or he shall prorogate this submission, which they or he are hereby empowered to do at pleasure, both parties bind and oblige themselves and their respective heirs and successors to implement and fulfil to each other under the penalty of £100 sterling, to be paid by the party failing to the party implementing or willing to implement, and that over and above performance.' Now, according to the pursuer's averments what happened was this. The arbiters named accepted office, and appointed an oversman [a farmer at Galashiels], who also accepted office. They had numerous meetings as to the matters referred. They did not, however, exhaust the reference within a year and a day, nor did they during that time execute any minute of prorogation. After the year and day had expired the arbiters signed a minute devolving two matters upon the oversman, and as they were not quite at one as to the other matters referred, they verbally agreed to leave everything to the oversman. The oversman thereupon drew out a note of proposed findings, and handed them to Messrs Curle & Erskine, who were supposed to be clerks to the reference, although they disclaim being such,' and Messrs Curle & Erskine intimated the terms of the proposed findings to the parties. These proposed findings drawn out by the oversman, run in name of the two arbiters and make no mention of the oversman. They bring out the sum now sued for, and add that 'if required by either of the parties the arbiters will issue a formal award.' But they are not signed by the arbiters, one of whom refuses to sign either the proposed findings or a minute devolving the whole questions upon the oversman. The pursuer adds that he is willing to have the action sisted until a final award is issued if the defenders consent to this course. Then follows in Cond. 6 a statement which discloses the real and as I think the only ground of action. 'The defenders have consumed the dung, corn crop, and straw belonging to the pursuer and are bound to pay him the value thereof.' The defenders' reply is that the amount to be paid by the defenders must in terms of the lease be ascertained by arbitration; that the submission of 30th May 1902 has failed through the lapse of year and day without prorogation, and that the defenders are willing to arbitrate."

The pursuer pleaded—"(1) The defenders having consumed dung, corn, and straw on the farm of Greenhill, belonging to the pursuer, are bound to pay him the value thereof. (2) The sum sued for being the value of said dung, corn, and straw, under deduction of the sums payable by the pursuer, decree ought to be pronounced in terms of the conclusions of the summons, with interest and expenses."

The defenders pleaded—"(1) The action is incompetent. (2) No relevant case. (3) The defenders having all along been, and still being, ready and willing to pay whatever sum may be due by them to the pursuer on the same being ascertained by arbitration in terms of the leases condescended on, the action is unnecessary, and should be dismissed, with expenses."

On 15th March 1904 the Lord Ordinary dismissed the action.

Note.—[*After the statement of facts as above*]—"I do not understand the pursuer to maintain that there has been any final or enforceable award, or that this can be regarded as an action for implement of an award. His case, as explained in argument, is this—the arbitration contemplated in the lease was and must have been a mere appointment of valuators with limited powers and duties, of skilled men who would visit the ground and fix the values; and the arbiters appointed, having inspected the subjects of reference at the time, are the only persons who can now carry out the intention of parties. In this

view, the obligation to refer, and the submission which followed thereon, are inseparable, and either both subsist or both have fallen. If they subsist, the action should be sisted to allow of the arbiters or oversman issuing a final award. If they have fallen, then this action should proceed as an action to ascertain the values.

"I am unable to adopt this view, to which I think there are several objections. In the first place, I hold that the submission set up by the formal deed of 30th May 1902 has fallen by the lapse of year and day without prorogation. It may be that an ancillary reference contained in a contract is not subject to the rule of year and day. That is a question of construction upon the contract, and in the ordinary case of an ancillary reference the rules as to prorogation are not applicable at all. It may be also, that the expression 'arbitration in common form,' which was used in the lease, would be satisfied by an appointment of valuators or a valuator. But that is not the view which parties took of it. They entered into a submission of the most formal description, and it was quite open to them to make such stipulation therein as they pleased as to the duration of that submission. They did so, by inserting a clause of style which has been uniformly interpreted as meaning that the submission is to fall if year and day elapse without either an award or a prorogation. I hold it to be clear, on the facts averred by the pursuer, that this submission to the arbiters named therein has fallen.

"But it does not follow that the obligation to refer, contained in the lease, has also fallen. On the contrary, it seems to me that this stands in full force, and that it is no answer to say that the arbiters named are the only persons who can now fix what the values were. The pursuer himself asks the Court to fix the values, which, I suppose, would be possible upon a proof, and if the Court could do it so could new arbiters. It is true that the arbiters and oversman already appointed may be the only persons whose inspection of the crops, fences, &c., in their then condition would enable them now to act as valuators in the narrower sense—that is, without taking evidence. But the values can still be ascertained by evidence, and it will be observed that this was expressly contemplated by the parties even as regards the arbiters named in the submission, which empowered the arbiters and oversman 'to take all manner of proof by writ, oath, or otherwise.'

"Now, if the obligation to refer subsists, it can be enforced, though not in this action; and the defenders have been and now are ready and willing to enter into a reference. It is by arbitration, and not by an action in Court, that the parties agreed in the lease that the values should be ascertained. Possibly this may be held to include only the values of the dung, corn crop, and straw, which are payable to the pursuer, for the arbitration clause of the lease appears to apply only to these, and not to the sum payable to the defenders in respect of the houses, fences, and drains. But, in any view, it covers the whole of the pursuer's claim.

"I hold, therefore, that the defences must be sustained."

The pursuer reclaimed, and argued—He was willing to accept the amount which the arbiter and oversman had found him entitled to in the incomplete reference, or to sist the action until the award was formally completed. The strict rules applicable to ordinary arbitrations were not applicable to references under the terms of a lease—*M'Gregor* v. *Stevenson*, May 20, 1847, 9 D. 1056. It was a case of two persons skilled in such matters being chosen to value dung, corn, and straw which they had seen and inspected on the spot, and no special formalities required to be observed in such a case—*Nivison* v. *Howat*, November 22, 1883, 11 R. 182, 21 S.L.R. 104, opinion of Lord Young, 191; *Robertson* v. *Boyd and Winans*, January 9, 1885, 12 R. 419, 22 S.L.R. 331; *Logan* v. *Leadbetter*, December 6, 1887, 15 R. 115, 25 S.L.R. 110. There should be no new reference to skilled men who could not now see the dung or crop, these having been consumed, but the *quantum meruit* of these should be proved before the Court in the ordinary way, the former arbiters and oversman being called as witnesses—*Clarke* v. *Westrope*, 1856, 25 L.J., C.P. 287.

Argued for the defenders and respondents—The lease bore that the value of the dung and waygoing crop was to be fixed by arbitration in common form. This meant that the value was to be fixed by arbiters, who if they pleased could take evidence. The submission to the first arbiters had fallen, more than a year and a day having elapsed since their appointment, but new arbiters could be appointed who could take evidence as to the facts and exercise their own judgment as to the result. It was impossible to take the proof before the Court. The mode of proof, namely arbitration, was distinctly named in the lease, and that mode must be followed—*Dixon* v. *Campbell*, June 25, 1830, 8 S. 970; *Smith* v. *Wharton*, February 28, 1843, 5 D. 749; *Cochrane* v. *Guthrie*, February 3, 1859, 21 D. 369, opinion of Lord Deas, 376.

At advising—

LORD JUSTICE-CLERK — The parties to this case had by the lease between them a mutual obligation to refer certain matters to arbitration. They entered into a formal minute of arbitration when the occasion arose which was contemplated by the lease, by which they referred five matters—(1) State of buildings, (2) state of fences, (3) state of watercourses and drains, (4) dung produced on farm, (5) price of waygoing crop and straw. As regards the first three of these items, they were not included in the obligation to refer; the fourth and fifth were the only items agreed to be so referred.

The arbitration has failed owing to the fact that a year and day expired without a final decree-arbitral being pronounced. It

is not a matter of dispute that no award can now be pronounced in that arbitration. The pursuer has raised this action to make good his claims at common law. The defenders maintain that he is not entitled to do so, but must agree with them in nominating new arbiters for a new arbitration proceeding under the original clause of reference, and the Lord Ordinary has upheld their contention and has dismissed the action.

I am unable to agree with the judgment of the Lord Ordinary. The procedure which was contemplated by the lease was that which is quite usual in such cases of removal from farms, that the values of certain things should be ascertained by arbiters. They plainly meant that the arbitration should be by skilled valuation, that being the common form of such an arbitration. The thing to be valued could be inspected, and referees having skill in such matters could form their own opinion of values, and decide what these were. Accordingly, the arbiters and oversman nominated were all men of skill in such a matter, and their proceedings, so far as they went, were conducted in exactly the way one would expect in such an arbitration.

Now, at the present time no such arbitration can take place. The subjects to be valued are no longer in existence. There is no room for the exercise of personal skill of arbiters in the matter. Whatever tribunal has now to dispose of the pursuer's claim must do so by a consideration of the evidence of others, it not being possible for the subjects to be valued by being exhibited. I hold that such an inquiry was not what was intended or contemplated. That seems to come to this, that no arbitration could now take place such as the parties had in view in making the contract.

I am of opinion in these circumstances the pursuer is entitled to his ordinary remedy by action, and that the interlocutor of the Lord Ordinary should be recalled and a proof allowed.

LORD YOUNG—I am of the same opinion, and I confess without any doubt or hesitation on the subject. A formal deed of submission was quite a superfluity, and I disregard it not only as superfluous when it was made but as terminated now by the fact that the arbiters therein appointed did not within a year and day pronounce any decree-arbitral. The case therefore stands exactly upon the lease. Now, the lease provides that the incoming tenant shall purchase the outgoing crop and the dung remaining upon the farm, the price to be fixed by arbitration in common form, that is to say, to be fixed by such arbitration as is common with regard to the fixing of the price to be paid by an incoming to an outgoing tenant for the waygoing crop and for the manure on the farm. Now, the most typical, familiar, and common mode of fixing the price of a waygoing crop and manure to be paid by an incoming tenant is by appointing a farmer or two farmers who are skilled in the matter to inspect the crop and ascertain and fix the price. In the present case two farmers were appointed as arbiters, and they chose another farmer as oversman, and these three skilled men inspected the crop and dung. But the reference to these skilled men has fallen by reason of the expiry of a year and a day, and meanwhile the crop has been consumed and the dung used up. The crop and dung are now extinct, and there is no room or place for the common form of arbitration in such circumstances. I think there is no obligation under the lease to appoint a new arbiter to determine what should be paid in such a case. The pursuer says in an article which I think is entirely creditable to him—and I cannot say that it is very sensible of the other side to disregard it—that he is willing to accept the amount found due to him in the unfinished reference, and to have the action sisted until a final award is issued. But if the defenders will not agree to this, he contends that the value must be decided by the Court. The defenders say "No. We will not accept that, we will not pay the sum which those skilled men have fixed for us as a proper sum to pay, neither will we take the judgment of the Court upon it. You must name new arbiters under the lease to take such evidence as a court would do." Upon my word I think that is a contention which cannot be regarded with any favour whatever. I think the fair and reasonable course is that which the pursuer proposes, either to accept from the men of skill selected by the parties themselves the sum fixed by them, or if that is not agreed to by the parties to go on with the proceedings in this action. I therefore agree with your Lordships in thinking that the judgment of the Lord Ordinary is wrong, and that his interlocutor should be recalled and the case remitted back to him to be proceeded with in common form.

LORD TRAYNER—The pursuer in this case was the tenant of the farm of Greenhill under a lease, the ish of which was Whitsunday 1892. Under the lease he was bound, *inter alia*, to leave the growing crop and straw at such a price as should be fixed by arbitration in common form. The incoming tenants, who are the defenders, are by their lease taken bound to purchase from the pursuer the outgoing standing crop and straw, and also the dung which had been produced upon the farm prior to the turnip season of 1891. In pursuance of the obligation thus put upon outgoing and incoming tenants, they entered into a formal deed of submission to have the rights of parties in respect to these different matters ascertained. The arbitration has fallen through the lapse of a year and a day without a final award being pronounced, and cannot now be resorted to or used in any way by the parties. That being so, the question arises whether the pursuer is restored to his common law right of suing for the price of the manure and straw and standing crop, or whether

he is still bound to go to arbitration upon that matter by arbiters to be now nominated of new. I am of opinion with your Lordships that the pursuer is restored to his common law right and can pursue this action. I keep quite in view that there are cases in which an arbitration coming to an end by the lapse of a year and a day, or by the death of an arbiter, or by any other cause, does not extinguish the original obligation to refer. And what I think distinguishes this case from other cases is this, that the arbitration which was here intended by the parties was not an arbitration proper but a valuation of certain subjects of which the persons named as arbiters or valuators were to assess the value by reason of their own skill and by personal inspection of the subjects which they were asked to value. I think that was the only arbitration in contemplation by the parties. The straw, crop, and dung are not now extant, and therefore no arbiter now named could value them by inspection and the exercise of his own skill. He can only inform himself by evidence in common form of the extent of the crop, the value of the crop, the quantity of the straw, the value of the straw, the quantity of the dung, and the value of the dung. But if that is to be a mere matter of evidence before arbiters to be now named, I see no reason why the pursuer should be deprived of the opportunity, and I think the right, of leading the same evidence before a court of law and taking the judgment of the Court thereon. The Lord Ordinary in his note gives as one of his reasons for supporting the view he has adopted that the deed of submission conferred powers upon the arbiters to take proof, and his Lordship has deduced from that that arbiters now appointed could take proof as well as those originally named. But this authority to take proof is just copied from the style book and is superfluous, because any arbiter is entitled to take such proof as he deems necessary to instruct him upon any question of fact upon which there is dispute and which he thinks essential for the determination of the question before him. I do not think, because the parties gave power to the arbiter to take proof, that that indicates in the least that they were not to proceed upon anything but proof. My impression, on the contrary, is that the original intention of the parties is expressed in their respective obligations to refer to persons who would exercise their own skill in fixing a value upon subjects after inspection of those subjects. Upon these grounds I agree that the arbitration which was intended by the parties was one which is not now possible, and that the pursuer is relegated to his ordinary common law rights to sue, as he does in this action, for the debt due to him. I therefore agree that the interlocutor of the Lord Ordinary ought to be recalled, and the case remitted to him to allow the parties a proof.

LORD MONCREIFF—The submission into which the parties to this action, the outgoing and the incoming tenants respectively, entered, has fallen on the expiry of a year and a day without an operative award. This is to be regretted, as very sensibly the parties submitted all the questions in dispute between them, although under the leases they were only bound to submit to arbitration the value of the dung and the waygoing crop, corn, and straw.

The question therefore is, what is the legal effect of this submission having proved abortive? At one stage of the argument I was disposed to think that it might be held that by entering into this formal submission, which embraced other matters than those which under the leases fell to be settled by arbitration, the parties might be held to have renounced the obligation to refer contained in the leases. But on consideration I am satisfied that this would not be a satisfactory ground of judgment, because the only effect of the formal submission was to submit to the arbiters certain matters which otherwise the parties were not bound to refer.

The formal submission then being out of the way, the question is, whether there are sufficient grounds for holding that the obligation to refer in the leases has fallen. I am disposed to agree with the Lord Ordinary that it has not. Your Lordships take a different view, and although I am not prepared to concur in it, I do not regret that you have seen your way to allow this action to proceed, because it will at least have this advantage, that all the questions between the parties may be decided in it.

It is true that the usual practice under such reference clauses is to submit the value of ground, straw, &c., and waygoing crop to farmers, skilled men, and that they usually satisfy themselves by personal inspection and do not take evidence. But I am not aware that under such clauses it is necessary that the arbiters who ultimately have to decide should fix the value of the produce by personal inspection before the dung and waygoing crop is used or removed. In the present case the submission failed owing to the delay of above a year; but it might have failed through the death or disqualification of the arbiters, or if they differed in opinion the oversman might not be invoked in time to satisfy himself by inspection as to the values.

In the present case there seems to be no greater difficulty in obtaining evidence under another reference than in obtaining evidence in this Court; and in those circumstances I am not prepared to hold that the bare fact of the reference having fallen, from whatever cause, renders the obligation to refer such matters in an agricultural lease null and void to the effect of entitling the outgoing tenant to make his claim in a court of law.

I am therefore for affirming the judgment of the Lord Ordinary.

The Court recalled the interlocutor reclaimed against and remitted the cause

to the Lord Ordinary to allow the parties a proof of their averments.

Counsel for the Pursuer and Reclaimer—Jameson, K.C.—Hunter. Agents—Boyd, Jameson, & Young, W.S.

Counsel for the Defenders and Respondents—Guthrie, K.C.—Macrobert. Agents—Macpherson & Mackay, S.S.C.

Saturday, July 2.

SECOND DIVISION.

[Lord Low, Ordinary.

M'CAIG *v.* GLASGOW UNIVERSITY COURT.

Process—Proof or Jury Trial—Reduction of Deed—Discretion of Lord Ordinary to Fix Mode of Trial.

A sister signed a deed homologating the will of her deceased brother, as the only person interested in his estate, and conveying to third parties her whole right and interest in his estate, with the exception of an annual payment of £300. Thereafter she raised an action for the reduction of the deed on the ground that she signed it under essential error, in the belief that she had no interest in her brother's estate apart from the provision of £300 per annum, and not being aware that he had not by his will disposed of his whole estate, that she had a claim to the undisposed portion as his next-of-kin, and that his will was of questionable validity on account of vagueness and uncertainty. She further averred that the essential error was induced by the lawyer who prepared the deed.

The pursuer proposed issues for the trial of the case, but the defenders contended that the case was not suitable for jury trial, and should be tried by proof without a jury.

The Lord Ordinary (Low) allowed issues, on the ground that although he was at first disposed to think that the case should be tried without a jury because the circumstances were peculiar, and the case was not of the class appropriated to jury trial, yet it was a case of a kind usually sent to a jury if the pursuer desired it, and he did not think the presiding Judge should have any difficulty in directing the jury on points of law that might arise.

The defenders having reclaimed, *held* that the Court should not interfere with the Lord Ordinary's decision in the exercise of his discretion as to whether the case should be tried by a jury or by proof without a jury except on very strong grounds, and that no such grounds had been disclosed.

Error—Error in essentialibus—Reduction of Gratuitous Unilateral Deed—Issue—Form of Issue.

In an action for the reduction of a gratuitous unilateral deed, *held* that essential error alone was a good ground for reducing the deed, and that the pursuer was entitled to the issue—"Whether in granting the deed she was under essential error as to its import and effect" without the addition of the words "induced by misrepresentation," as contended for by the defender.

In January 1904 Miss Catherine M'Caig, Oban, raised against the University Court of the University of Glasgow, incorporated under the Universities (Scotland) Act 1889, as such University Court, and also as representing the University of Glasgow as the trustees acting under the testamentary settlement dated 20th January 1900, and relative codicil dated 18th February 1902, of the now deceased John Stewart M'Caig of Muckairn, Soroba, and Oban, Argyllshire, and also against Donald Macgregor, solicitor, Oban, judicial factor *ad interim* on the estate of the said John Stewart M'Caig, appointed by the Lords of Council and Session on 6th August 1902 for any interest he may have in the premises, an action of reduction of a deed of corroboration and assignation dated 27th January 1903 granted by the pursuer in favour of the University Court of the University of Glasgow.

The facts leading up to the action were as follows:—The said John Stewart M'Caig died unmarried on 29th June 1902. His sole next-of-kin at the date of his death were his sister, the pursuer, and his brother Duncan M'Caig, banker in Oban, who died intestate and without issue on 22nd July 1902.

John Stewart M'Caig at the date of his death was possessed of extensive and valuable heritable property in the vicinity of Oban, with a yearly rental of between £2000 and £3000, and he was also possessed of moveable estate believed to have been of the value of about £10,000. He left a holograph testamentary settlement dated 20th January 1900, and a codicil relative thereto, also holograph, dated 18th February 1902. By the said testamentary settlement the said John Stewart M'Caig nominated and appointed the Court of Session or Supreme Court of Scotland as his trustees and executors, who should manage and administer the trust by the appointment of a judicial factor from time to time as the circumstances of the management and administration might require, and the purposes and intention of the testator were declared in the following language:—"The purpose of the trust is to pay all my legal debts and deathbed expenses; these debts are to be paid from the accumulations of the yearly income of the trust after the expenses of the management is paid. I also wish that Donald Macgregor, solicitor, Oban, be continued by the trustees as local factor over all my estate, both moveable and real, at a legal remuneration for his work. The purpose of the trust is that my heritable property be not sold but let to tenants, and the clear revenue or income be used for the purpose of erecting monuments and statues for myself, brothers, and sisters on the