given to the poor or needful in the above district."

The testator further provided that three directors be chosen by the householders in the district, and that "this be called the Paterson Bequest; that it be amongst themselves, independent of any other outside relief, and that it be continued with them as long as grass grows and water runs." The testator appointed two trustees to realise and divide his estate.

This special case was presented by (1) Paterson's testamentary trustees, (2) the directors chosen to administer the "Paterson Bequest," and (3) three inhabitants and ratepayers in the district, to determine the following question in law, among several others—"4. Whether the annual proceeds of said bequest fall to be applied exclusively for behoof of persons entitled to parochial relief, or may be applied for behoof of poor and needful persons whether in receipt of or entitled to such relief or otherwise?"

The second parties maintained that the objects of the bequest might be selected both from needful persons in receipt of or entitled to parochial relief and from those who were not so. They referred to *Liddle* v. *Kirk-Session of Bathgate*, July 14, 1854, 16 D. 1075, and *Presbytery of Deer* v. *Bruce*, January 20, 1865, 3 Macph. 402.

The third parties contended that the bequest was for behoof solely of persons entitled to parochial relief, and referred to the opinion of Lord Rutherfurd in *Liddle*, *ut sup.*, p. 1082, to the effect that "the poor" must generally be understood in the legal sense.

LORD PRESIDENT—Upon the fourth question it seems to me, upon the language employed and the authorities cited, that the bequest is not confined to persons in receipt of parochial relief. That is the question put to us, and I think that we should answer that the fund may be applied for poor and needful persons whether in receipt of or entitled to parochial relief or otherwise.

LORD M'LAREN and LORD KINNEAR concurred.

LORD ADAM was absent.

The Court answered the fourth question to the effect that the fund might be applied for poor and needful persons whether in receipt of or entitled to parochial relief or otherwise.

Counsel for the First Parties—M'Lennan.

Counsel for the Second Parties—Loutitt Laing.

Counsel for the Third Parties—W. E. Mackintosh.

Agents for all the Parties—Macpherson & Mackay, S.S.C.

Wednesday, February 1.

SECOND DIVISION.

RAMSAY'S TRUSTEES *v.* RAMSAY.

Husband and Wife—Policy of Insurance—Wife's Policy on Her Own Life—Whether Part of Wife's Executry.

In an antenuptial marriage-contract dated in 1851, a wife conveyed to her husband and his heirs and assignees the whole property, heritable and moveable, then belonging to her or that should pertain and be owing to her during the subsistence of the marriage. The husband's *jus mariti* was not excluded in the contract.

By mutual settlement dated in 1887 the husband and wife conveyed to trustees the whole means and estate, heritable and moveable, then belonging to them or that should belong and be addebted to them at the time of their deaths.

In 1892 the wife insured her life for £1750, to be paid to her, her executors, administrators, and assignees after her death. In the same year the husband borrowed, under a bond and assignation in security, £1500 from the insurance company, which he bound himself to repay, and in security of the personal obligation, the wife, with her husband's consent, disponed to the insurance company the policy of insurance.

The wife died in 1897. Up to the time of her death she paid the premiums out of her separate estate. On her death the trustees under the mutual settlement were confirmed as her executors, and the insurance company paid over to them the sum payable under the policy *minus* the £1500 borrowed by the husband.

Held that the policy was not assigned to the husband under the marriage-contract or under his *jus mariti*, and that the trustees were entitled to the whole sum due under it, while the husband was bound to repay to them the £1500 borrowed by him with accrued interest.

By contract of marriage between James Ramsay and Mrs Euphemia Wilson Baxter or Ramsay, second daughter of Edward Baxter, merchant in Dundee, with the special advice and consent of the said Edward Baxter, dated 23rd July 1851, James Ramsay made certain provisions for Euphemia Wilson Baxter, for which causes, and on the other part, Euphemia Wilson Baxter assigned, disponed, and made over to Mr Ramsay, and his heirs and assignees, all and sundry lands and heritages, goods, gear, debts, and sums of money, and generally the whole property, heritable and moveable, then belonging or resting-owing to her, or that should pertain and be owing to her during the subsistence of the said marriage, excepting always her provisions provided to her by Mr Ramsay and before specified in the said contract of

marriage. In the marriage-contract there was no exclusion of the *jus mariti* or right of administration.

By mutual settlement, dated 14th December 1887, executed by Mr and Mrs Ramsay, they gave, granted, assigned, and disponed to trustees all and sundry lands, heritages, goods, gear, debts, and sums of money, and in general the whole means and estate, heritable and moveable, of what kind or nature soever, or wheresoever situated, then belonging and addebted to them, or that should belong and be addebted to them at the time of their deaths, with the whole vouchers and instructions, writs, titles, and securities of and concerning the same, and all that had followed or that might be competent to follow thereon; and particularly, and without prejudice to the said generality, Mrs Ramsay assigned to the trustees the provisions in her favour in the trust-dispositions of her aunt Miss Baxter of Balgavies, her father Edward Baxter, and her uncle Sir David Baxter of Kilmaron, Baronet.

The purposes of the trust constituted by the said mutual settlement were, *inter alia*, for payment of the trusters' just and lawful debts, deathbed and funeral expenses, and the expenses of executing the trust, to pay over to the survivor of the spouses the interest or annual proceeds of the residue of the trust-estate during all the days of his or her lifetime, but for his or her liferent use allenarly, for payment to the survivor of them, as soon as the trustees could conveniently do so, of a legacy of £1000, to give certain specific articles as legacies to certain persons therein named, and to divide the residue among certain persons also therein named. The trustees by the said settlement were nominated sole executors of the moveable estate. The parties reserved right jointly at any time during their joint lives to alter, innovate, or revoke the said settlement in whole or in part as they should see fit.

By codicil to the said mutual agreement, dated 17th September 1891, Mr and Mrs Ramsay, in virtue of the power reserved to them by the said settlement, revoked and recalled that part thereof which authorised the trustees to apply the trust funds for payment of all their just and lawful debts, deathbed and funeral expenses, and also that part directing the trustees to pay to the survivor of them as soon as they could conveniently do so a legacy of £1000, and in lieu and in place thereof they directed the trustees to pay to the survivor of them as soon as they could conveniently do so a legacy of £2000, to be applied by him or her in payment of the just and lawful debts, deathbed and funeral expenses, of the predeceaser, and the balance, if any, to be applied for his or her use as he or she should think proper.

On 11th August 1892 Mrs Ramsay insured her life for £1750 with the Northern Assurance Company. By the policy of assurance the said company, provided Mrs Ramsay year by year during the subsistence of the policy should pay or cause to be paid the premium therein stipulated, undertook to pay and make good the said sum of £1750 to Mrs Ramsay, her executors, administrators, or assignees, after her decease.

In or about the month of August 1892 Mr Ramsay borrowed from the said Northern Assurance Company a sum of £1500, and by bond and assignation in security, dated and ratified by Mrs Ramsay on 16th August 1892, he granted him to have instantly borrowed and received from the Northern Assurance Company the sum of £1500, which he bound himself to repay, and in security of the personal obligations therein contained, Mrs Ramsay, with her husband's special advice and consent, and Mr Ramsay for himself and for his own rights and interests under the marriage-contract, or otherwise or howsoever constituted or arising, and also as taking full burden on him for his spouse, assigned, conveyed, and made over to the company the policy of assurance, and also in further security assigned, disponed, and conveyed, and made over to the company the annual income payable to her out of the share of residue of the estate and effects of Miss Baxter of Balgavies. The premiums on the said policy of assurance were paid by Mr Ramsay from moneys received by him from Mrs Ramsay out of the separate estate held by her exclusive of her husband's rights. The receipts were granted and taken in name of Mrs Ramsay. The greater part of her income was derived from her father's and her aunt's trusts, and the income from them was payable to her strictly exclusive of her husband's *jus mariti* and right of administration.

Mrs Ramsay died on 18th October 1897, and the trustees under the mutual settlement gave up an inventory of her personal estate and obtained confirmation thereto. In the inventory they included the sum of £1750 due under the policy of assurance effected on her life, but deducting therefrom the £1500 which had been borrowed from the said company, together with a small sum of accrued interest due upon the loan. The surplus received by the trustees from the company was £212. At the settlement with the company the policy of assurance was discharged, and a discharge of the bond and assignation in security was also taken

Questions regarding the insurance policy arose between the trustees under the mutual settlement and Mr Ramsay, and for the settlement of these questions a special case was presented to the Court by (1) the trustees, and (2) Mr Ramsay.

The questions of law were—"(1) Does the sum payable under the said policy of assurance belong to the first parties subject to the security held by the company, or does it fall within the conveyance by Mrs Ramsay in favour of the second party under the said marriage-contract? (2) Is the second party entitled to revoke the mutual settlement, and if so, would he upon revocation be entitled under the marriage-contract to the amount in the said policy of assurance, or

would he be entitled to the sum of £1500, being the amount of the debt due by him under the said bond and assignation in security? (3) In the event of the sum in the policy being held to belong to the first parties, is the second party bound to repay to them the amount of the second party's debt deducted by the insurance company in paying the policy?"

Argued for the first parties—The policy of assurance formed part of the executry estate in their possession. The policy was not conveyed by Mrs Ramsay to her husband in the marriage-contract. By that deed she conveyed only to him the property then belonging to her or that should pertain to her during the subsistence of the marriage. The sum in the policy did not fall due till after her death, when the marriage had ceased to subsist. The policy did not fall under the goods in communion; the mere fact of its existence during the marriage did not make it do so—*Wight* v. *Brown*, Jan. 27, 1849, 11 D. 419, opinions of Lord Justice-Clerk Hope, 462 and 463, of Lord Medwyn 467, of Lord Moncreiff 469, and of Lord Cockburn, 472; *Smith* v. *Kerr*, June 5, 1869, 7 Macph. 863, opinions of Lord Justice-Clerk Patton 867, and of Lord Neaves 873. The sum due under the policy was carried to the trustees by the mutual settlement. The money was addebted to Mrs Ramsay at the time of her death. Both under the settlement as trustees, and in terms of the policy as Mrs Ramsay's executors, the first parties had right to the policy —*Muirhead* v. *Muirhead's Factor*, Dec. 6, 1867, 6 Macph. 95. The second party had no power to revoke the mutual settlement, as it was provided in that deed that the revocation must be joint. The result of the bond and assignation in security was to make Mr Ramsay the primary debtor under it, and as such bound to relieve Mrs Ramsay, whose policy had been conveyed in security of his debt. The second party was therefore liable to reimburse the first parties for the payment made by them. It was contended by the second party that by being a cautioner Mrs Ramsay became a creditor, and that her *jus crediti* was conveyed to her husband by the marriage-settlement. This argument was fallacious, because a cautioner was not a creditor.

Argued for second party—The life assurance effected by Mrs Ramsay fell within the conveyance by Mrs Ramsay in his favour contained in the marriage-contract. Even if it did not, there was no exclusion of the *jus mariti*, and the policy of insurance during the subsistence of the marriage fell within the communion of goods. If Mrs Ramsay had wished the policy to be exclusively her own she should have insured her life in terms of the Married Women's Property Act. But she did not. This was just an ordinary policy, and the husband had full right to use it in any way the law allowed him. The money obtained by him on the security of the policy fell within the *jus mariti*—*Thomson's Trustees* v. *Thomson*, July 9, 1879, 6 R., opinion of Lord Justice-Clerk, 1227. With regard, therefore, to the £1500 obtained during Mrs Ramsay's life, the second party was entitled to do with it what he pleased. Even supposing that he was a debtor to his wife in the obligation arising out of the bond, the debt in which his wife was creditor was assigned in the marriage-contract conveyance. In any event, the second party was entitled to revoke the mutual settlement *pro tanto* so as to give effect to his rights either under the marriage-settlement or under his *jus mariti*.

At advising—

LORD YOUNG—The question relates to the sum of £1500 which was borrowed on the security of the policy of insurance and handed to the husband. His contention is that he was entitled to turn this policy on his wife's life to account so as to raise £1500 upon it, and that he is now entitled to keep that sum. I am of opinion that that is not maintainable. I think that the policy of insurance is the property of the wife. We are told that the policy was effected by her as a contract between her and the insurance office, she undertaking to pay the premium, and we are further told that the premium was paid out of her separate estate—that is, the estate held by her exclusive of her husband's rights of *jus mariti* and right of administration. The policy of insurance is her property on the face of it. After her death the Insurance Company paid to the trustees the balance of the sum due under the policy after deducting the amount borrowed by the husband. The right of the trustees to that balance is exactly in the same position as their right to the rest of the sum due under the policy which the Insurance Company lent to the husband. The trustees are the heirs, executors, and successors of Mrs Ramsay with respect to the whole estate, and as such they will carry out her instructions by giving the liferent of that estate to the husband, and the capital to those persons mentioned in the deed of trust.

LORD TRAYNER—I am of the same opinion. I think, on the authority of the cases cited, that the policy of insurance was not assigned to Mr Ramsay by the marriage-contract, and that the first parties are the only persons who have any right to it or any claim under it. If that conclusion is arrived at, the second question does not require to be answered. On the third question I entertain no doubt whatever. Mr Ramsay borrowed the £1500 from the Insurance Company, and he as the sole debtor is bound to pay it back. As the Insurance Company have deducted this sum from the amount due under the policy to the trustees, Mr Ramsay is now bound to make it good to them. The third question must therefore be answered in the affirmative.

LORD MONCREIFF and the LORD JUSTICE-CLERK concurred.

The Court pronounced the following interlocutor:—

"Answer the questions therein stated by declaring that the first parties are entitled to the sum payable under the

policy of assurance for £1750 by the Northern Assurance Company on the life of the deceased Mrs Euphemia Wilson Baxter or Ramsay, dated 11th August 1892, subject to the security held by the said company, and that the second party is bound to repay to the first parties the debt of £1500 with the accrued interest, being the amount of the debt due by him under bond and disposition in security, dated 16th August 1892, all as deducted by the said Northern Assurance Company on paying over the proceeds of the said policy for £1750: Find and declare accordingly, and decern."

Counsel for the First Parties — Cooper. Agents—Henry & Scott, W.S.

Counsel for the Second Party — E. H. Robertson. Agents—W. & J. Cook, W.S.

Wednesday, February 1.

FIRST DIVISION.

RATTRAY'S TRUSTEES *v.* RATTRAY AND OTHERS.

Succession—Fee or Liferent—Liferent with General Power of Disposal

A testator directed his trustees upon the death of himself and his wife to realise his estate and to divide and set apart the residue in certain proportions for his daughter and his son's children, directing them at the same time to pay to those beneficiaries "during their respective lives the annual income or revenue of said shares, and at their respective deaths they—the trustees—shall pay over their respective shares to their respective heirs or assignees, declaring that no part of my said estates shall vest in my said daughter and grandchildren until the death of the survivor of me and my said wife except to the extent that they may test thereon."

The daughter and the grandchildren having survived the testator's widow, *held* that the liferent and power of disposal was equivalent to a fee, and that their respective shares vested in them at the date of the widow's death.

Re Weddell, February 3, 1849, Scottish Exchequer Reports; *Morris* v. *Tennant*, July 6, 1855, 27 S.J. 546, March 26, 1858, 30 S.J. 493; *Alves* v. *Alves*, March 8, 1861, 23 D. 812; *Pursell* v. *Elder*, June 13, 1865, 3 Macph. H.L. 58, *explained and commented on.*

By his trust-disposition and settlement Peter Rattray, who died in 1874, conveyed his whole heritable and moveable estate to trustees for the following among other trust purposes:—"(Twelfth) On the death of me and my said wife, my trustees shall realise my said estates as they shall think proper, and invest the proceeds for the benefit of this trust, but should they consider it to be most advantageous not to realise it, or part thereof, they shall use their discretion and act accordingly, and they shall divide and set apart the residue into three shares as follows, videlicet:—one-half of said residue shall be set aside for my said daughter, one-fourth thereof for my said grandson David Rattray, and one-fourth for my said granddaughter Margaret Rattray, and they shall pay to them, or for their behoof, during their respective lives, the annual income or revenue of said shares, and at their respective deaths they shall pay over their respective shares to their respective heirs or assignees, declaring that no part of my said estates shall vest in my said daughter and grandchildren until the death of the survivor of me and my said wife, except to the extent that they may test thereon: Declaring further, that in the event of my said daughter predeceasing me and my said wife, and dying intestate, my said trustees shall retain my daughter's said share for behoof of her children, and shall maintain those who are unable to maintain themselves until the youngest is twenty-one years of age, when my said trustees shall divide their mother's share equally among her said children."

The testator was survived by his wife, who died in March 1895, by a married daughter Mrs Chatham, and by two grandchildren, the children of the testator's son who predeceased him.

By her trust-disposition and settlement Mrs Chatham, who died in July 1875, conveyed to trustees for certain purposes her whole estate, heritable and moveable, and more particularly the share of the estate destined to her and her family by her father's settlement.

This special case was presented by (1) Mr Rattray's trustees, (2) Mr Rattray's grandchildren, (3) Mrs Chatham's trustees, to determine the following questions, *inter alia*, arising upon the construction of Mr Rattray's settlement, viz.—"(1) Did Mrs Chatham, prior to her death, acquire a vested right to the fee of one-half of the residue? (2) Have the second parties acquired a vested right to the fee of their respective shares of residue? (5) If the first question is answered in the affirmative, are the third parties, as representing Mrs Chatham, entitled to immediate payment of the shares of residue destined to her? (6) If the second question is answered in the affirmative, are the second parties entitled to immediate payment of their respective shares of residue?"

The first parties contended that the testator's intention was to restrict the interest of his daughter and grandchildren in the residue of his estate to a liferent with a power of disposal, and that consequently no share of the residue had vested in Mrs Chatham or in the second parties.

The second and third parties contended that the shares of residue vested and became divisible at the date of the death of the testator's widow, and further that the first parties were bound immediately to divide the whole estate among the beneficiaries.