or to the other party, but the estate kept as a joint-estate, with all the profits and losses arising on the investments of the trust-estate falling on the parties equally if they had equal shares, and proportionally if they had not—I say the proper way to state the account when a division comes to be made is to put into the account the present value of this trust-estate—the present value of those investments—and having thus ascertained the gross amount of the joint undivided estate, then to divide it into the respective shares of the parties. It may be one-half each originally, but if one of the parties has got payment of nine-tenths of his share of the estate, then he will only now get the remaining one-tenth. That is the way that this question should be treated, and accordingly I think in the account which is proposed to be dealt with here, to those sums of £920 and £864, which represent the purchase value of these two ground-annuals, there should be added (which is another way of coming to the same amount) the sum of £556 of increased value. Of course, the more correct way to do with them would be that the increased value of each annual-rent should be stated in the account. I think the account should be dealt with in that way, and that to the amount of £4664 there should be added £556 of increased value, because it has increased the value of the joint-estate which is now for division.

LORD TRAYNER—The third party having conceded that the second question should be answered in the affirmative and the sixth question in the negative, there remains only the fourth question to be determined by us. In reference to it I confess to feeling some sympathy with the argument offered by the second party. The ground-annuals in question were bought by the judicial factor in December 1880, and at that time the estate held by him belonged, taking it roughly, in the proportion of one-third to the third party and two-thirds to the second party. Now, as the capital invested in the ground-annuals was furnished by the factor in this proportion, it is not unreasonable to maintain that the profit or gain (by way of increased market value) made on the investment should be divided between the parties in a like proportion. But the answer to this view is, I think, that neither party was investing capital—no part of the capital of the factory estate had been appropriated or set aside for any beneficiary. In the due administration of his office the judicial factor invested part of the estates held by him, and any profit made on that investment must go to the estates generally just as a loss (if loss had been sustained) would have been borne by the estate generally. The profit goes into the residue of the estate, and falls to be divided among the beneficiaries according to their rights in the residue. This was the view given effect to in the cases of *Teacher* and *Scott*, and I think the same view must be given effect to here. That leads to the fourth question being answered in the affirmative.

LORD JUSTICE-CLERK—I am of the same opinion.

LORD YOUNG and LORD MONCREIFF were absent.

The Court pronounced this interlocutor—

"The Lords having heard counsel for the parties to the special case, Find it unnecessary to answer the first, second, third, and sixth questions therein stated: Answer the fourth and fifth questions therein stated by declaring that the enhanced value of the ground-annuals falls to be credited equally to the second and third parties: Find and declare accordingly, and decern: Find the third parties entitled to their expenses as against the second parties: Allow them to lodge an account thereof," &c.

Counsel for the First and Second Parties—Younger. Agents—Morton, Smart, & Macdonald, W.S.

Counsel for the Third Parties—W. Campbell, Q.C.—Grainger Stewart. Agents—Gray & MacDermott, W.S.

Wednesday, February 21.

SECOND DIVISION.

[Dean of Guild, Coatbridge.

BROWN *v.* YOUNG.

Police—Buildings—Light and Ventilation—Open Space Attached to Dwelling-Houses—Burgh Police (Scotland) Act 1892 (55 *and* 56 *Vict. cap.* 55), *sec.* 170.

The Burgh Police (Scotland) Act 1892, section 170, enacts that "every building erected for the purpose of being used as a dwelling-house . . . shall have all the rooms sufficiently lighted and ventilated from an adjoining street or other open space directly attached thereto equal to at least three-fourths of the area to be occupied by the intended building." All the rooms in a proposed building were designed to have each a door and a chimney and one window which opened upon a court containing more than the minimum area specified in the section, and belonging to the proprietor of the proposed building. *Held* that the provisions of the statute as to ventilation and lighting had been sufficiently complied with.

The section does not require that there should be any open space upon more than one side of a proposed building, provided that all the rooms in it have windows which look out upon some open space which satisfies the requirements of the statute.

When all the rooms are each provided with a door, a chimney, and a window opening upon a space which satisfies the requirements of the statute, the Dean of Guild is not entitled to refuse a lining upon the ground that, looking to the

character of the locality, of the proposed building, and of the buildings already erected upon the proprietor's ground, and to the class of tenants to be expected, the arrangements made are not such as in fact to secure the adequate lighting and ventilation of the rooms.

William Brown, baker, Coatbridge, presented a petition in the Dean of Guild Court of the burgh of Coatbridge, whereby, *inter alia*, he craved warrant to add one storey to the back buildings then existing upon certain ground belonging to him, and to erect a block and a-half of dwelling-houses two storeys in height adjoining same, with the necessary conveniences. To this part of the petitioner's craving Mr Christopher Young, Master of Works, Coatbridge, objected upon various grounds, and, *inter alia*, because the plans did not make provision for the proposed new buildings being sufficiently lighted and ventilated as required by the Burgh Police (Scotland) Act 1892. He also alleged that if the warrant were granted the petitioner's ground would become congested and the operations would be calculated to create a nuisance.

The Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55), section 170, enacts as follows—"Every building erected for the purpose of being used as a dwelling-house, or any building not previously used as a dwelling-house when the same is altered for the purpose of being so used, shall have all the rooms sufficiently lighted and ventilated from an adjoining street or other open space directly attached thereto, equal to at least three-fourths of the area to be occupied by the intended building; and such space shall be free from any erections thereon other than water-closets, ash-pits, coal-houses, or other conveniences, all which conveniences shall, as to height, positions, and dimensions, be erected subject to the consent and approval of the Commissioners."

The objector alleged that the buildings proposed to be erected by the petitioner along the eastern and southern boundaries of his property were designed to contain two houses of two apartments and thirteen of one apartment, and were proposed to be lighted by windows in the back wall thereof; that the petitioner had no servitude of light or air on the adjoining proprietors' ground on the north, south, or east of his property, and could not prevent them from building so as to shut out the light and stop the through ventilation of the petitioner's buildings. The petitioner admitted that he had no servitude of light or air over the adjoining proprietors' ground, and that he had built up to within between 2 and 4 feet of his eastern boundary, but he explained that each separate dwelling-house in the buildings proposed to be erected had a window in the front wall, which front windows were sufficient to light the houses, and with the doors and chimneys were sufficient to ventilate them to the extent required by the Burgh Police (Scotland) Act 1892, section 170. The front windows referred to opened upon a court which was the property of the petitioner, and contained an open space free of erections other than offices of an area considerably greater than three-fourths of the area now proposed to be built upon. Other buildings belonging to the petitioner were erected upon the west side, and upon part of the north side of this court. These buildings contained shops and houses of one and two apartments. The petitioner's property was a plot of ground about 205 feet in length from north to south, and about 140 feet in breadth from east to west. The Court was about 165 feet in length, and about 90 feet in breadth. The Master of Works averred that if the buildings were completed as proposed there would be accommodation for fifty-six families upon the petitioner's property. He further alleged that the adjoining proprietor on the south had also erected buildings at the back of his feu; that the offices connected therewith had been erected close to the petitioner's southern boundary; and that if the petitioner's craving were granted it would have the effect of causing congestion and rendering the buildings insanitary, and more particularly those proposed to be erected on the southern boundary.

On 3rd October 1899 the Dean of Guild (WILSON) issued the following interlocutor:—[*After granting part of the petitioner's craving which was not objected to*]—"As regards the prayer of the petition asking warrant to add one storey to 'the existing back buildings and erect a block and a-half of dwelling-houses two storeys in height adjoining same, with the necessary conveniences,' in respect that from the character of the proposed buildings, which are on the margin of the petitioner's own property, it is impossible that the provisions of section 170 of the Burgh Police (Scotland) Act 1892, which enacts that 'Every building erected for the purpose of being used as a dwelling-house shall have all the rooms sufficiently lighted and ventilated from an adjoining street or other open space directly attached thereto,' can be complied with, as the ground to the east and south of the petitioner's property does not belong to him, nor is a common which no-one can hereafter build upon, but belongs to other parties who might hereafter build upon the same at any time; and in respect further that privies and ash-pits are built close to the south wall of the two-storey tenements which the petitioner proposes to build along the south side of his property, and which would be overlooked by the back windows in said tenements, Refuses to grant lining for the additions to existing buildings and the erection of the new buildings which is craved: Finds the petitioner liable in expenses, and decerns."

The petitioner appealed.

It was found to be impossible to light all the rooms in the part of the proposed buildings which was situated at the south-east corner of the petitioner's property, and he ultimately abandoned the prayer of his petition in so far as this part of the proposed buildings was concerned. The effect of this modification was that every apart-

ment in the proposed buildings had a window which opened on to the court.

Argued for the petitioner and appellant—The case of *M'Lelland* v. *Moncur*, December 2, 1897, 25 R. 238, did not apply, because here there was open ground of the required area, which was all the property of the petitioner. The space in the court was amply sufficient to satisfy the Act—See *Hoy* v. *Magistrates of Portobello*, July 15, 1896, 23 R. 1039. Section 170 did not require that each apartment should be lit and ventilated on both sides. The ground of refusal here was that there was no free space to the east and south, but that was not necessary.

Argued for the respondent—The primary requirement of the section was that the houses should have all the rooms sufficiently lighted and ventilated. It did not merely provide that there must be a certain minimum open space. The Dean of Guild was entitled and bound to see that the lighting and ventilation were sufficient. It must be conceded that if there was an open space equal to three-fourths of the area proposed to be built upon, then *prima facie* that was enough; but it was not conclusive. The question whether the light and ventilation provided were sufficient was a matter primarily within the discretion of the Dean of Guild, and his judgment upon such a subject ought not to be readily interfered with—*Mitchell* v. *Dean of Guild of Edinburgh*, March 18, 1885, 12 R. 844. If in any case there was the minimum open space, but it was so situated as not to effect the light and ventilation of the proposed building, that was not sufficient. Here there was a large number of one-room houses which the petitioner proposed to light and ventilate solely from one small common court. The Dean of Guild was entitled to say, "These houses will not be sufficiently lighted and ventilated by the arrangements proposed." In determining whether the lighting and ventilation were sufficient he was bound, or at least entitled, to have regard to the situation, the character of the houses, the nature of the air to be expected, and the class of tenants to be anticipated in such a locality. Taking all these elements into account here, the Dean of Guild's judgment was justified by the circumstances, and should not be interfered with by the Court.

LORD JUSTICE-CLERK—The houses which are proposed to be built here are, no doubt many of them, houses of a single room, and it is quite possible that any person of experience might come to the conclusion that whatever means of ventilation are provided, those means of ventilation may not be efficiently used, but that is not a question which we have to decide. The question of ventilation inside a house depends upon two things—the means provided, and the use made of those means by the person who inhabits the house. With the latter of these matters, in my opinion, the Dean of Guild has nothing whatever to do. If it is found that insanitary consequences follow from any use of houses which are in themselves according to law, and that there is any need to interfere as regards the mode of use, that is a matter which the Legislature may deal with as it thinks proper, but it has not dealt with it hitherto. Now, here in the matter which the Dean of Guild has got to do with, I think he is entitled to consider under section 170 of the Burgh Police Act the space which is provided outside a particular house or room for the purpose of giving that house or room ventilation. He is entitled to stop any houses being built which do not provide space outside the house equal to at least three-fourths of the area to be occupied by the intended building in order that there may be a space outside the house if the house is properly used. I understand that in this case the Dean of Guild does not consider that there is not sufficient space provided to give ventilation to these houses if these houses are properly used; and it is very difficult looking at these plans to suppose that anyone could come to the conclusion that these houses, consisting as they do of rooms of 17 feet by 12 feet, cannot be properly ventilated from such a space by a window, door, and chimney. The Dean of Guild has decided against allowing this lining. In my opinion the decision of the Dean of Guild is erroneous. Holding as he does that there is sufficient space provided to give ventilation to these houses, I think he had no ground for refusing the lining in respect of any question relating to ventilation. I do not think it was maintained that there is not sufficient light, because the space is obviously such that any interference with the light which may take place is very small indeed. Indeed, the light which can reach this place is much greater than in many places it would be, even if the requirements of the statute were fulfilled. The only difficulty I see is as regards the corner tenement where the space may have been insufficient, but we are relieved from considering any question of that kind, because the appellant here undertakes that no house shall be built upon that space at present. Therefore I think the proper course for us to follow is that the lining should be granted in accordance with the plans as the Dean of Guild may revise them, leaving that corner block out of them.

LORD ADAM—As I understand, the plans which the Dean of Guild had to consider showed a proposal to convert certain houses, now of one storey high, into houses of two storeys high. There was one of these tenements, being the corner tenement, in a somewhat different position from the other houses. These houses were houses of a single room, and with a certain depth, which permitted that each house should be ventilated from one window. There was to be only one window in each room. The corner tenement was in this different position, that no window could be put in it, and that it could not be lighted where the other windows were lighted from, namely, from the Court. But that being so, to treat the whole tenement as one building did not mean that the Dean

of Guild was right in rejecting the whole. I do not think he was. I think he should have given the opportunity of having this corner tenement dealt with separately from the other. The fact that one part of a building could not be sufficiently lighted is no reason for refusing a lining for the rest of the building. We are now in this position that it is not now proposed to erect the corner tenement, and the only thing we have to deal with is the conversion of the single room tenement from one storey high to two storeys high. Now, the Dean of Guild has refused a lining with regard to this tenement of houses, and the ground that he goes upon is, as he says in his interlocutor — "In respect that from the character of the proposed buildings, which are on the margin of the petitioner's own property, it is impossible that the provisions of section 170 of the Burgh Police (Scotland) Act 1892 . . . can be complied with, as the ground to the east and south of the petitioner's property does not belong to him, nor is a common which no one can hereafter build upon, but belongs to other parties who might hereafter build upon the same at any time." It is clear therefore from the Dean of Guild's judgment that he has refused this lining in respect of this want of space. If there be sufficient space around the tenement, he says nothing about the proposed character of the building, and nothing about the structure of the building itself. He says that if the adjoining proprietor builds up, as he is entitled to do apparently, to the margin of the petitioner's property, there will not be sufficient space to comply with section 170 of the Act of Parliament. From the best consideration I have been able to give to that section, I think it is a section that deals with space only, and what it requires is that in any particular building there shall be space around it sufficiently large, if the building be properly constructed, to afford light and ventilation. I think that is the meaning of the section, because it says—"Every building erected for the purpose of being used as a dwelling-house shall have all the rooms sufficiently lighted and ventilated from an adjoining street or other open space" of a certain area. The way in which the Dean of Guild has dealt with the case is that although it is now surrounded with sufficient area, in the future there may not be sufficient area, because it may be built upon by the adjoining proprietor; and that raises a question of fact, whether or not it is surrounded by a sufficient area. Now, I quite agree that an area "sufficient" may vary according to the circumstances. I think the specification in section 170 specifies a minimum, and says that no building shall be erected unless it has at least a certain amount of space around it. I quite understand the Dean of Guild saying, that looking to the situation of these buildings, looking it may be to the height of the buildings around them, looking to the character of the tenements—namely, single room tenements—the minimum area specified by the Act is not sufficient, and there should be a larger area round the building to afford proper means of ventilating and lighting. But he does not say so. In the way he puts his judgment he raises the question of fact, whether even supposing the adjoining ground to be built close up to the margin of the petitioner's property there will still be the statutory area. I think the fact is not disputed that there would be that area —that the requisite area is obtained from the court, which is the property of the petitioner himself. Therefore the objection of the Dean of Guild that the area would be diminished can never be true, because it is in the power of the petitioner to prevent it. On these grounds I think the judgment is wrong, and there being no other objection by the Dean of Guild I think the lining should be granted.

Lord Trayner—The Dean of Guild has refused this lining on the ground that the plans presented to him show a tenement which cannot possibly comply with the provisions of section 170 of the Burgh Police Act 1892. His interlocutor and the statement from the bar of what he had expressed as his opinion rather indicate that he was under some misapprehension as to the proper meaning of section 170, for I think it may reasonably be inferred from what is in the interlocutor and what is stated that he regarded it as necessary that there should be a certain prohibited area of space on more sides than one of the proposed tenement. If that was the view of the Dean of Guild I think he fell into error. The purpose of the statute is to provide for sufficient light and ventilation by an open space—an open street or an open space—adjoining the tenement. It may therefore be on any side of the tenement. If there is the prescribed open space, then it is presumed that from that space there will be and can be got sufficient lighting and ventilation. It was maintained that the Dean of Guild had a discretion in this matter, and might refuse a lining where he thought that the prescribed space was not in the particular case sufficient to ensure sufficient light and ventilation. I think this is not so. If there is the prescribed open space adjoining the proposed tenement, the statutory requirement is satisfied, and the Dean of Guild has no right to require more. In this view, I am of opinion with your Lordship that the Dean of Guild should have granted the lining, except as regards the south-east corner of the proposed building, because we have here admittedly space that fully complies with the requirements of the statute. The difficulty about the house to the south-east corner has been removed by the petitioner consenting to exclude it from his plans.

Lord Young and Lord Moncreiff were absent.

The Court pronounced this interlocutor—

"Sustain the appeal: Recal the interlocutor of the Dean of Guild of 5th October last: Remit to him to grant decree of lining as craved except as regards the two houses forming the

south-east corner of the subjects, and to adjust the plans accordingly: Find the petitioner entitled to the expenses of the appeal," &c.

Counsel for the Petitioner—W. Campbell, Q.C.—Hunter. Agent—David Dougal, W.S.

Counsel for the Respondent—Solicitor-General (Dickson, Q.C.)—Clyde. Agents—Macpherson & Mackay, S.S.C.

Thursday, February 22.

SECOND DIVISION.

MAY'S TRUSTEES *v.* PAUL.

Succession — Legacy — General Legacy — Interest on General Legacy.

The general rule is that legacies of sums of money, apart from some provision in the will to the contrary, bear interest as from the date of the testator's death.

A testator by his trust-disposition and settlement left and bequeathed certain legacies of sums of money, "all to be payable free of legacy-duty at the same time as soon after my death as funds can be realised for the purpose." The testator died leaving estate, heritable and moveable, of sufficient value to pay all these legacies, but more than a year elapsed before the trustees, in the course of a proper and prudent realisation of the estate, had in fact funds to pay all the legacies at once. *Held* that interest was due to the legatees upon the amount of their legacies as from the date of the testator's death.

M'Innes v. *M'Allisters*, June 29, 1827, 5 S. 801 (863), *distinguished* and *commented on per* the Lord Justice-Clerk.

The late Mrs Brodie Gordon May, widow, who resided at No. 21 Palmerston Place, Edinburgh, by her trust-disposition and settlement dated 25th September 1896, disponed to certain persons as trustees her whole estate, heritable and moveable.

By her said trust-disposition and settlement the truster provided—"(*Second*) For payment of the following legacies, which I hereby leave and bequeath to the parties after mentioned, all to be payable, free of legacy-duty, at the same time, as soon after my death as funds can be realised for the purpose, *videlicet*." Then followed a long list of legacies of various sums of money, and among them a legacy of £1000 to Mrs Julia MacGregor or Paul the testatrix's niece. By the last purpose of her settlement the truster directed her trustees to make over the residue of her estate to the Society for the Relief of Indigent Gentlewomen of Scotland and The Church of Scotland's Association for Augmenting the Smaller Livings of the Clergy, equally between them, and appointed them to be her residuary legatees.

The truster died on 9th February 1898. The accounts, which were then prepared for Government purposes, showed her estate to consist of heritable property valued at £11,875, and moveable estate of the value of £17,372. The pecuniary legacies payable under the settlement amounted to £24,750—a sum considerably in excess of the value of the moveable estate. There were also Government duties, debts, and charges to be paid. The truster's heritable estate consisted of (1) her house No. 21 Palmerston Place, Edinburgh; (2) property in Raeburn Place there, embracing two tenements of shops and dwelling-houses and five separate residences; and (3) the estate of Drum in Stirlingshire. The truster having died in February 1898, there was not time to advertise and sell the various heritable properties that spring, and it was found by the trustees that the properties could not be sold with reasonable and fair advantage to the trust-estate until the spring of 1899, for settlement at the following term of Whitsunday. When sold they realised a total sum of £14,600.

The trustees had at Whitsunday 1899, for the first time since the death of the truster, sufficient funds to pay all the legacies at the same time.

Questions then arose as to whether the legatees were entitled to interest, and if so at what rate. The trustees paid the legacies under reservation of the claim of the legatees for interest. The present special case was then presented for the opinion and judgment of the Court.

The parties to the special case were (1) the trustees; (2) Mrs Paul, with consent of her husband, and her husband for his interest; and (3) the residuary legatees.

The second party originally maintained that she was entitled to interest from the date of the truster's death upon the amount of her legacy at 5 per cent., or at least at the average rate which the trust funds had yielded.

On the other hand, the third parties maintained that the legatees were not entitled to any interest upon their legacies, or, alternatively, that it did not begin to run until the expiry of a year from the testator's death.

The questions of law for the opinion and judgment of the Court were as follows—"(1) Is the second party entitled to payment out of the trust-estate of interest upon her legacy of £1000 (*a*) at 5 per cent., or (*b*) at what other rate? (2) In the event of either branch of the preceding question being answered in the affirmative, is the second party entitled to interest (*a*) from the testator's death, or (*b*) from the expiry of a year after the testator's death?"

The parties ultimately agreed that if interest were due it should be at the rate of 4 per cent.

Argued for the second parties — The general rule was that interest was due upon legacies as from the date of the testator's death, and that general rule must receive effect unless there was something in the will which indicated a contrary intention upon his part—Bell's Prin., 1885; *Duff's Trustees* v. *Societies of Scripture*