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ACCOUNTS.—A full description is given of the procedure adopted in Scotland in the preparation of executry and trust accounts and schemes of division, illustrated by specimen accounts. A special feature is the explanation of apportionments between capital and income, with numerous examples to elucidate this source of difficulty.

ESTATE DUTY.—The valuation of property for duty purposes is explained and details are given of allowances and deductions. There is a complete specimen inventory in the official form.

INCOME TAX.—The administration of trusts is constantly involving income tax questions, and the exposition of the points arising in this connection should therefore be particularly useful. The treatment of apportionments for tax purposes receives full consideration.

LAW.—The main differences between Scots and English trust law are detailed. Trustees' powers and duties are summarised, and the rights of liferenters and fiars are explained. Intestate succession is described by diagrams and examples, and particulars of legal rights are given. The current law and practice relating to judicial factories are detailed in a separate chapter.

AUDITS.—This edition contains a revised and amplified chapter on the audit of executry and trust accounts which gives examples of auditors' reports and docquets.

TRUST ACCOUNTANCY

by

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assisted by

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OLIVER AND BOYD
EDINBURGH: TWEEDDALE COURT
LONDON: 98 GREAT RUSSELL STREET, W.C.1

1950

FIRST PUBLISHED 1936
SECOND EDITION REVISED 1950

PRINTED IN GREAT BRITAIN FOR OLIVER AND BOYD
BY ROBERT CUNNINGHAM AND SONS LTD., ALVA

PREFACE TO SECOND EDITION

IN preparing this edition, the contents have been thoroughly revised, while I have entirely re-arranged and amplified the chapter on the audit of executry and trust accounts. Extensive changes have occurred in the law of income tax and death duties since the original publication of this book. The chapters formerly dealing with legacy duty and succession duty are now eliminated because these duties were repealed in 1949.

The chapters on Scots law have been brought up to date and many additional references to statutes and cases are given in this edition. I am very greatly indebted to Sheriff Wm. Jardine Dobie, LL.D., for his assistance in this work. I also sincerely thank all those others who have helped me to prepare this edition for publication, particularly Professor Annan and Messrs. Francis S. Gamley, George P. Graham, George G. McGregor, John Mitchell and John S. Robertson.

CHARLES A. SCOTT.

JUNE, 1950

FOREWORD

BY

EMERITUS PROFESSOR WILLIAM ANNAN, M.A., C.A.

IN dealing with our own affairs it is a matter of choice whether we shall have accounts made up at regular intervals, and if so, what form they will take. It is different, however, when we are dealing with monies placed in trust for other people. The question of accounting then assumes a more serious aspect. Although there is no statutory obligation on trustees to keep accounts of their intrusions, there is an implied obligation to do so under Section 17 of the Trusts Act, 1921, which provides that, on application by trustees, the Court may order the Accountant of Court to superintend the investment and distribution of the trust funds and to audit the accounts. There is also case law to the effect that trustees are bound to keep clear and accurate accounts of their intrusions and produce them for inspection by beneficiaries.

To keep clear and accurate trust accounts a knowledge of trust law and administration is imperative. This can be acquired by practice, but the student needs guidance, and for both law and accounting students the author has produced a comprehensive survey of the administration of a trust from its inception to its close, couched in simple and popular language. Further, as a work of reference the volume should appeal to solicitors and accountants practising in Scotland, and probably also to many laymen who might be glad of a guide to their duties and responsibilities when acting as executors or trustees.

If all the transactions in a trust consisted of cash receipts and payments for behoof of one class of persons or for an individual, the framing of an account would be a simple matter. It would be merely an account of receipts and payments suitably classified. In practice, however, more than one class or person is usually interested in a trust, and the receipts and payments must be allocated accordingly. The common case is that of fee and liferent, where, although many of the cash transactions can be definitely assigned to either the fiar or the liferenter, there are others which affect both and thus fall to be apportioned between them.

The author has dealt fully with this question of apportionment in Chapters VII and VIII. It will be seen from perusal of Chapter VII that there are divergent views on the question of apportionment of dividends. Circumstances occur where it is difficult to reconcile the rules of apportionment laid down in the Apportionment Act with Common Law, *e.g.* the Common Law rule of *in bonis* as applied to payments in advance, and inconsistency often arises in practice through the interpretation of the Apportionment Act, *e.g.* in the case of recurring payments made in portions during a year. There is a question whether the unit of time should be the year, the half-year or the quarter. My view is that the unit should be the period specified in the original contract under which the payment is made. This is usually, though not invariably, a period of a year, whether it be for the leasing of property, the lending of money, or the investing in shares with fixed rates of dividends. The contract is for a specified return of so much *per annum*, and although payment of portions of rent or

interest may be stipulated for at two or more dates in the year, that does not alter the original bargain and make these payments apply to shorter periods.

Unhappily the phraseology of the contracts is not always free from ambiguity. For example, it is not uncommon to find in a lease a clause to the effect that the rent will be, say, £100 per annum "to be paid at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment thereof, £50, at the term of Martinmas next for the half-year preceding and the like sum at Whitsunday thereafter, and so on yearly and termly." These were the terms in the case of *Graham (Tennent's Executor) v. Lawson*, 35 S.L.R. 72, which is quoted, unjustifiably I think, as authority for a general adoption of the half-year instead of the year as the unit for apportioning rents.

Again, in the *Royal Bank* case, 12 S.L.R. 121, which is sometimes quoted as authority for adopting the half-year as a unit for apportionment of dividends, the circumstances were of a special nature, as perusal of the whole report of the case will show. An additional circumstance of importance, not mentioned in that report, is that the Bank then made up its accounts half-yearly at 14th April and 14th October. A general application of this decision is also unjustified.

Court decisions are few in number, mainly because the amount involved is small, but, such as they are, they should not be applied to particular cases unless it is evident from a perusal of the report that the circumstances are identical, or at least very similar. Under present conditions the call for the Court's intervention is not likely to increase. The possessions of the average citizen are much more widespread than they used to be, and, while this has the effect of decreasing the amounts involved in individual items of apportionment, it also increases the number of calculations to be made, so much so that there is a growing tendency to stipulate in wills that the Apportionment Act is not to apply.

The chapter on Income Tax (Chapter VI) is of exceptional interest to those who are responsible for the administration of trusts at the present time, and accountants will welcome that chapter, and also Chapter XII on Estate Duty, for reference in the course of the audit of trust accounts. Not the least useful part of the book is the series of illustrations explaining the text and the examples of complete trust accounts. These are carefully chosen, lucidly explained, and well set out.

I repeat my commendation of the author's work as a valuable addition to the literature on the subject.

JANUARY 1950

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ABBREVIATIONS

[*Note.*—The number prefixed in the text is the volume number.]

A.C.	. . .	= Law Reports—Appeal Cases.
A.T.C.	. . .	= Accountant Tax Cases, now Annotated Tax Cases.
All E.R.	. . .	= All England Law Reports.
Beav.	. . .	= Beavan's Reports of Cases in Chancery.
Bing. N.C.	. . .	= Bingham's New Cases in the Court of Common Pleas.
Ch. (or Ch.D.)	. . .	= Law Reports, Chancery Division.
D.	. . .	= Court of Session Cases, 2nd Series, edited by Dunlop.
Eq.	. . .	= Law Reports, Equity Cases.
F.	. . .	= Court of Session Cases, 5th Series, edited by Fraser.
F.A.	. . .	= Finance Act. (The Finance (1909-10) Act 1910 is referred to as F.A. 1910.)
I.T. Act	. . .	= Income Tax Act.
K.B.	. . .	= Law Reports, King's Bench Division.
L.T.	. . .	= Law Times Reports.
M.	. . .	= Court of Session Cases, 3rd Series, edited by Macpherson.
Mor.	. . .	= Morison's Dictionary of Decisions.
Paton	. . .	= Paton's Reports of Cases decided in the House of Lords on Appeal from Scotland.
R.	. . .	= Court of Session Cases, 4th Series, edited by Rettie.
Rules of Court	. . .	= Rules of Court of Session, 1948.
S. (N.E.)	. . .	= Court of Session Cases, 1st Series, edited by Shaw (New Edition).
S.C.	. . .	= Session Cases.
Sh. Ct. Rep.	. . .	= Sheriff Court Reports.
Sim.	. . .	= Simon's Reports of Cases decided in the High Court of Chancery.
S.L.R.	. . .	= Scottish Law Reporter.
S.L.T.	. . .	= Scots Law Times.
S.N.	. . .	= Session Notes.
T.C.	. . .	= Tax Cases.
T.L.R.	. . .	= Times Law Reports.
Ves.	. . .	= Vesey's Chancery Cases.
Wight.	. . .	= Wightwick's Reports in the Exchequer.
Y. and J.	. . .	= Younge and Jervis's Reports of Cases in the Court of Exchequer.

TRUST ACCOUNTANCY

CHAPTER I

ADMINISTRATION OF TRUSTS

I. INTRODUCTION

ALTHOUGH the title of this book is *Trust Accountancy* it seems advisable to give here some general notes on trust administration in Scotland in order that the chapters on accountancy questions may be more readily understood. Throughout the book technicalities have been avoided so far as possible in order that the student may follow the explanations, but for certain chapters—particularly as regards income tax and estate duty—a more advanced knowledge is probably required. Notes have been inserted as to judgments in numerous cases decided in the courts, including English decisions where these are applicable to Scotland, and statutes are also quoted for reference purposes.

II. EXECUTRY PROCEDURE

Executors are persons appointed to administer the affairs of a deceased person. Their duties consist of burial of the deceased in a suitable manner, then realising the estate and paying debts, funeral expenses, estate duty and legacies. They must then pay over the residue of the estate to those entitled to share in it, or to the trustees if there is a continuing trust. In practice the executors and trustees are usually the same persons but this is not essential.

Duties of
Executors

Executors should be named in all wills and if so appointed are known as executors-nominate. If there is none named, or if those named have previously died, or do not accept office, those named as trustees may act as executors-nominate, and failing them a residuary legatee, general donee or universal legatory is entitled to act (Executors (Scotland) Act, 1900, sec. 3). If none of these is available an executor-dative may be appointed by the court on a petition being presented to that effect.

Appointment
of Executors

The executors should appoint a solicitor and factor to administer the estate and it is usual for one person or firm to combine these two offices. In trusts with extensive interests, separate persons may however be appointed, and in such cases the solicitor's duties include the negotiation of estate duty and all legal work, while the factor is responsible for cash transactions, supervision of investments and preparation of trust accounts. Where the factor is a solicitor, he will require to comply with any rules as to maintaining separate bank accounts for clients' money which are made in terms of the Legal Aid and Solicitors (Scotland) Act, 1949, sec. 20. If an executor or trustee acts in a professional capacity, *e.g.*, as solicitor to the trust, no remuneration may be paid to him unless specifically authorised in the will (Lord Gray and Others, 1856, 19 D. 1, and Lewis' Trustees *v.* Pirie, 1912 S.C. 574).

Factor

First Minutes
of Executors

Minutes should be drawn by the solicitor for signature by the executors who accept office, giving him formal instructions and authority as to the administration of the estate.

These may be in the following style:—

Minutes of First Meeting of the [Trustees and] Executors of the late THOMAS SMITH held at 180 Princes Street, Edinburgh, on 11th December 1948.

Present; Messrs John Smith, Albert Smith and John Williams [Trustees and] Executors; and Mr T. Stewart of Messrs Williams & Stewart, W.S.

Mr Stewart reported that Mr Thomas Smith died in Edinburgh on 30th November 1948 and was buried at the Dean Cemetery, Edinburgh, on 2nd December 1948. By his will dated 31st January 1939 and codicil dated 24th August 1940 Mr Thomas Smith appointed Mrs Elizabeth Smith, and Messrs John Smith, Albert Smith and John Williams to be his [trustees and] executors. Mrs Elizabeth Smith predeceased him, and the other [trustees and] executors accepted office.

The [trustees and] executors hereby appoint Messrs Williams & Stewart, W.S., to be their solicitors and factors and instruct them:—

- (1) To register the will in the Books of Council and Session.*
- (2) To ascertain the amount of the estate, and take possession of securities and other documents.
- (3) To advertise for claims against the estate.
- (4) To prepare an inventory of the estate, pay the estate duty and take out confirmation.
- (5) To complete the [trustees' and] executors' title to the moveable estate.
- (6) To intimate to the beneficiaries the bequests in the will.
- (7) To pay the debts and funeral expenses.

(Executors sign here.)

Commencement
of Administration

The solicitor is thus enabled to proceed with administration in the following manner. He informs the executors as to the effect of the will, stating the approximate amount of the estate so far as known, and the will is at once registered in the Books of Council and Session for preservation and an extract copy obtained there. Further extract copies can be obtained at any time if required. Unless the unpaid accounts are easily ascertained by correspondence, an advertisement is inserted in the local newspapers instructing creditors to lodge claims on the estate. All business papers belonging to the deceased, including titles to heritable property, share-certificates, bank pass-books, etc., are taken into the solicitor's possession, but delivery of documents held by banks or other solicitors, etc., cannot legally be demanded until the confirmation of executors has been completed, and they have given the solicitor a written mandate.

The solicitor prepares the estate duty inventory which includes all

* If the deceased died domiciled in England, the will must not be registered in the Books of Council and Session. Probate should be obtained in England in such cases.

funds passing on the death, as explained in a separate chapter (see page 133). The inventory is signed by one of the executors before a Justice of the Peace or Notary Public, and lodged with the Estate Duty Office within six months of date of death. If any additional estate is discovered an additional or corrective inventory is required within two months of the discovery.

After a preliminary scrutiny of the inventory by the Estate Duty Office it is returned with duty and interest assessed. Unless the proceeds of life policies can be made payable direct to the Inland Revenue, as is sometimes possible, none of the deceased's estate is yet available for payment of the duty because the executors' title is not complete. Accordingly a temporary loan or overdraft is required, and in practice this is frequently obtained from the bank where deceased had an account, and secured by any balance at credit of that account, or deposit of investments, life policies or heritable titles, etc.

When the estate duty is paid, the inventory is sent to the Inland Revenue with the cheque, and the receipted inventory and the extract will be then lodged with the Sheriff Court (in Edinburgh the Commissary Court) of the Sheriffdom where deceased died domiciled. The Edinburgh Sheriff Court deals with Scottish estates where deceased died domiciled "furth of Scotland" or had no fixed domicile.

On payment of the dues of confirmation, the Sheriff, or in Edinburgh the Commissary Court, issues an official document known as the confirmation, which vests the moveable estate in Scotland in the executors. For each corrective inventory an eik (or additional confirmation) is issued, if required, confirming the executors to the further estate, on payment of the additional duty, or if duty has been overpaid it is refunded. Additional copies or certificates in respect of separate items in the confirmation may be obtained on payment of additional fees. The confirmation requires to be resealed at the Probate Courts in London or Belfast before it is effective as regards any estate in England or Northern Ireland, and for this purpose local agents are necessary to pay the dues there. Foreign and dominion estate requires special treatment, which is beyond the scope of this book. Before confirmation is obtained the solicitor should have informed the executors of the cash required to meet government duties and debts, etc., with a view to early realisation of such part of the estate as is necessary for payment of immediate liabilities. The executors decide how these will be met and which investments must first be realised. After confirmation is obtained, the executors' title to the estate is intimated by exhibition of the confirmation (or certificates of confirmation) to banks, secretaries of companies in which the deceased had invested, and any others concerned. Fees for registration are usually charged by companies. At the same time the solicitor lodges dividend mandates signed by the executors authorising payment of future income to the bank or to the factor on behalf of the executors. It is then possible to realise the estate, and bank balances are uplifted and investments realised as required.

Confirmation
and Eik

Debts due by deceased are not payable until six months after date of death (Act of Sederunt, 1662). Claims lodged within the six months but after the distribution of the estate fall on the executors personally if there are not sufficient funds left to meet them, but this is not so in

Payment of
Debts

the case of claims lodged after that date, so executors are well advised to delay the final distribution until then. Creditors who hold security for their debts may realise the property secured, and account to the executors for any surplus. Certain debts are privileged and take preference over other creditors, and all ordinary creditors rank before legatees.

All available claims for recovery of income tax must be made by the executors as soon as possible, and they should also ascertain the total amount of tax payable, by correspondence with the Inland Revenue authorities. Sur-tax is not payable until nine months after the close of the year of assessment. (See separate chapter on "Income Tax", page 43).

Distribution
of Estate

All legacies and bequests of residue are subject to the prior legal rights of the surviving spouse and family of the deceased, explained in chapter on "Succession" (page 29). They must be informed of these rights and supplied with an estimate of the amount due, and they must then elect in writing either to accept the provisions of the will or to claim their legal rights.

If no term of payment is appointed, a legacy is due at the date of the testator's death, but payment cannot be enforced until six months have elapsed (McLaren on Wills, 3rd edition, vol. 2, page 1161; Duff's Trustees, 1862, 24 D. 552). Unless specific instructions are given, interest is payable from the date when the legacy is due, at the average rate earned on the trust funds (May's Trustees, 1900, 2 F. 657; Waddell's Trustees v. Crawford, 1926 S.C. 654; see also Kearon v. Thomson's Trustees, 1949 S.L.T. 286).

The order of ranking of debts and legacies is as follows:—

(1) *Expenses of realisation*—

In view of the fact that the estate cannot be realised without paying dues of confirmation, these dues and the solicitor's fees for preparation of the estate duty inventory rank as first charges on the estate. Similarly, legal expenses *re* completing the title of the executors to the estate also rank equally with the above items. (No case seems to have been decided as to ranking of expenses of realisation.)

(2) *Privileged Debts*—

- (a) Expenses of administration of the estate (apart from items already included above).
- (b) Deathbed expenses—restricted to suitable sums (Sanders v. Hewat, 1822, 1 S. 310).
- (c) Funeral expenses—restricted similarly (Peter v. Monro, 1749, Mor. 11852).
- (d) Reasonable mournings for widow, children in the house, and servants, also aliment for widow and children (Sheddan v. Gibson, 1802, Mor. 11855; Barlass v. Barlass' Trustees, 1916 S.C. 741).
- (e) Wages of domestic and farm employees for current term (McLean v. Shireffs, 1832, 10 S. 217).
- (f) Local rates and imperial taxes for a period not exceeding one year. (See, however, Bankruptcy (Scotland) Act, 1913, sec. 118 (1) (a), and Renfrew County Council v. Allison, 1932, 48 Sh. Ct. Rep. 266).

Note.—All the above rank proportionately.

- (3) *Other debts* due by deceased.
- (4) *Estate duty*.
- (5) *Legal rights* of surviving spouse and family.
- (6) *Special legacies*, i.e., legacies of specified funds or articles.
- (7) *General legacies*, i.e., legacies of fixed sums.
- (8) *Residue of estate*.

The case of *Re Pullen* (1910, 1 Ch. 564) deals with the payment of debts where moveables are insufficient to meet these in full. If the estate is insufficient to pay all the debts and legacies the privileged debts form the first charge on the estate. Next, all the other debts due by deceased rank for payment, and so on. The following examples explain the "abating" of debts and legacies, that is, settling them by partial payments, in these circumstances.

Examples

I. *Insufficient Estate for Payment of Debts—*

Assuming estate of £200, privileged debts £20, and other debts £180, the estate is divisible thus:—

Privileged debts	£20
Other debts 2s. per £1 on £180	180
	£200

There is nothing available for legatees.

II. *Insufficient Estate for Payment of Special Legacies—*

Assuming estate consisting of £1000 War Loan (worth say par), privileged debts £50, other debts £200, and two special legacies of £600 and £400 War Loan (=£1000 altogether), the estate is divisible thus:—

Privileged debts	£50
Other debts	200
	£250

The above sum is met by sale of £250 War Loan, leaving £750 stock for payment of the two legacies. They are then settled thus:

$$\begin{aligned}
 \text{A. } & \frac{750}{1000} \times £600 = £450 \text{ War Loan} \\
 \text{B. } & \frac{750}{1000} \times £400 = £300 \text{ War Loan} \\
 & \underline{\hspace{10em}} \\
 & \underline{\hspace{10em}} \text{ £750 War Loan}
 \end{aligned}$$

There is nothing available for general or residuary legatees.

III. *Insufficient Estate for Payment of General Legacies—*

Assuming estate of £3000 War Loan (worth say par) privileged debts £100, other debts £200, estate duty £150, one special legacy of £1000 War Loan and three legacies (£1000, £500 and £500) £2000, with the residue to a charity specified, the estate is divisible thus:

Privileged debts	.	.	.	.	£100
Other debts	.	.	.	.	200
Estate duty	.	.	.	.	150
					£450
Special legacy of £1000 War Loan				.	1000
					£1450
Legacy A.	$\frac{1550}{2000}$	× £1000	.	£775	0 0
„ B.	$\frac{1550}{2000}$	× £500	.	387	10 0
„ C.	$\frac{1550}{2000}$	× £500	.	387	10 0
					1550
					£3000

In practice £2000 War Loan would probably be sold to pay the debts and general legacies, and the special legacy would be satisfied by transfer of £1000 War Loan. The charity gets nothing as there is no available residue.

Legacies are said to vest in the legatees when the right to the property belongs to them absolutely and indefeasibly, even although possession may be deferred until a later date. If the legatee's right has not vested and is dependent on circumstances, such as the attaining of a certain age, the legacy is known as contingent. Questions of vesting arising out of the interpretation of wills may involve very complicated points of law as to which it may be necessary to obtain judicial interpretation by way of "special case" in the courts. Actions of multiple-pounding are sometimes raised in order that all claiming to share in the funds of an executry or trust estate may have their respective rights determined by the court.

Unless the contrary is stated in the will, specific legacies of investments are vested in the legatees on the date of death of the testator, and the legatees are entitled to the proportion of dividends which accrues after that date (Apportionment Act 1870, and *Pollock v. Pollock*, 1874, 18 Eq. 329). Specific legacies of heritable property also vest on the date of death, and apportionments of rents and burdens are made as on a sale. An exception to this general rule seems to be necessary where rents are receivable in advance. The sums received by deceased are "in bonis" (see page 58) and no apportionment thereof can therefore be made.

In terms of the Rules of Court, Chapter IV, section 6, trustees may apply to the court for direction on questions relating to the investment, distribution, management or administration of the estate.

After an estate duty clearance certificate has been obtained the executors may make a final distribution of the estate. The expenses of management are first ascertained and the solicitor's legal business account may be taxed by the Auditor of Court if desired by the executors. The executry accounts and scheme of division can then be completed and may be audited by the Accountant of Court or by an independent

accountant appointed by the executors. Details of the procedure on division are given in separate chapters on "Schemes of Division" and "Audits" (pages 139, 150). If there is a continuing trust and the executors and trustees are different persons, the estate is transferred to the latter for subsequent administration by them. The executors are entitled to require receipts for any funds transferred by them to legatees or trustees, and these receipts should include approval of the accounts and acknowledgment of settlement of all claims. If the executors and trustees are the same persons the administration is then carried on as described below.

III. TRUST PROCEDURE

At the commencement of a trust unless it is merely a continuation of an executry the trustees should sign formal minutes appointing a solicitor and factor as in the following style:—

First Minutes of Trustees acting under the Ante-
Nuptial Contract of Marriage between Mr JOHN
JONES and Miss ELIZABETH BROWN.

March 1949.

Messrs Williams & Stewart, W.S., intimated that Mr John Jones had instructed them to prepare an Ante-Nuptial Contract of Marriage between himself and Miss Elizabeth Brown. This has since been prepared, and after approval by both parties it was signed by them on 11th February 1949 and registered in the Books of Council and Session on 25th February 1949. In terms of the deed, Mr Jones assigned to Messrs James Williams, W.S., and Alexander Brown, C.A., as Trustees for purposes specified, £10,000 3½% War Loan for which a transfer has been prepared and is signed by the trustees along with this minute.

First Minutes
of Trustees

Mr Jones and Miss Brown were married at St Giles' Cathedral, Edinburgh, on 12th February 1949.

The trustees hereby appoint Messrs Williams & Stewart, W.S., to be solicitors and factors in the trust and instruct them:—

- (1) To retain in their possession the Extract Registered Ante-Nuptial Contract of Marriage.
- (2) To register the said transfer of £10,000 3½% War Loan and retain the relative certificate.
- (3) To prepare a mandate instructing the payment of interest on the War Loan to Mr Jones.

(Trustees sign here.)

After appointment the solicitor completes the trustees' title to the trust funds and prepares and lodges mandates instructing payment of the trust income to the beneficiaries or as may be otherwise arranged. A separate bank account may be opened by the trustees and any sums temporarily uninvested should be lodged on bank deposit. If the accounts may involve large sums, it is advisable that income be remitted direct to a bank account from which regular remittances may be made to the beneficiaries. Any surplus income which has been accumulated in terms of the trust purposes must be invested from time to time. (See

Completion
of Title

page 1 as to cases where separate bank accounts may be required by law.)

Investments should be registered in the names of all the trustees, and in Scotland it is usual to add the words " Trustees of the late ——— ", but in England (save in the case of certain government stocks) this registration is not accepted, and if any holdings are registered in the trustees' names as individuals they should sign an acknowledgment that they hold these securities for the trust.

Local Factors

If a local factor is appointed by the trustees in respect of heritable property, it is essential that he should render detailed statements of his transactions and remit the cash balance not less than once per annum, and the trust factor should audit these statements. It must be clearly arranged that only routine repairs may be ordered by the local factor, and any exceptional requirements should be reported to the trustees.

Income

The respective rights of annuitants, liferenters and fiars are described in a separate chapter on " Liferent and Fee " (page 22). It may be noted that trust purposes generally direct that the income is to be applied in one or more of the following ways for the benefit of specified beneficiaries:—

- (1) payment of life-annuities of fixed sums;
- (2) payments at the trustees' discretion to meet costs of maintenance and education, and accumulation of any surplus income until the occurrence of some specified event;
- (3) payment of the free income to the liferenters.

In order to make arrangements for the benefit of the liferenters and annuitants, an estimate of the annual income of the trust should be prepared by the factor. A conservative basis should be adopted, and allowances must be made for possible reductions in dividends, and changes in taxation, etc. As regards rents of heritable property, a reserve is required for exceptional repairs, in addition to normal deductions in respect of annual charges and ordinary repairs. If apportionments are required (see separate chapter, page 51) these have the effect of diminishing the free income for the first year of the trust. Periodical remittances of income to the beneficiaries should be commenced as soon as possible, but, in the case of a testamentary trust, the trustees may not be in safety to make income payments while there remain creditors of the deceased whose claims are outstanding (*Heritable Securities &c. Assoc. v. Miller's Trustees*, 1893, 20 R. 675; *Campbell v. Borthwick's Trustees*, 1930 S.N. 156).

Taxes and
Death Duties

The factor must arrange for any income tax returns and claims which may be required. He should send all the beneficiaries annual certificates of their shares of the statutory income as computed for income tax purposes. The solicitor is responsible for negotiations as to estate duty which may fall due on the deaths of any of the annuitants or liferenters. (Separate chapters deal with income tax and estate duty, pages 43, 122.)

Trust Accounts

The factor should prepare the trust accounts annually and submit them to the trustees and beneficiaries. If an audit by an independent accountant is required, the factor should send all the necessary documents to the auditor in order that he may be satisfied as to the accuracy of the accounts. If no independent audit is to be made the trustees should

themselves examine all the documents. Many trust accounts are not audited, and in some cases accounts are only prepared at irregular intervals.

For convenience, the factor should keep a sederunt book or minute book in which may be engrossed the will, confirmation, minutes of trustees' meetings, deeds of assumption and resignation of trustees, etc. Trust accounts may also be engrossed there, or, alternatively, may be placed in a permanent binding. A record of the births, marriages and deaths of the beneficiaries may conveniently be kept in the sederunt book. Minute Book

The trustees should meet from time to time, and minutes of the meetings should be prepared by the solicitor, in which it is desirable to record fully all capital transactions. The trustees should approve of the trust accounts, and reconsider all the trust investments. Sometimes trustees' decisions may be made by correspondence, and in such cases formal minutes of trustees are desirable in order that the trust records may be complete. Unless the deed provides to the contrary, a majority and quorum of the trustees have full powers (see page 11). All minutes should be signed by every trustee, but if a quorum signs minutes these are legally binding on all the trustees. The procedure on changes in trustees by assumption and resignation is described later (page 11). Meetings of Trustees

After completion of the primary trust purposes, the remaining funds may be divided among the beneficiaries entitled to share in the residue (See chapter on "Schemes of Division", page 139). They should be asked to sign a receipt and discharge, acknowledging full settlement of all claims against the trustees and discharging them from office. Discharge of Trustees

Trustees may also be discharged on placing funds in court for distribution in terms of an action of multiple-pounding, or on petition to the court if no other discharge can be obtained (Trusts (Scotland) Act, 1921, sec. 18).

CHAPTER II

THE LAW OF TRUSTS

I. SCOTLAND

IN the following pages some of the principal points of the law as affecting trust accountancy are described. This chapter must be regarded merely as an introduction to the law of trusts.

The Trusts (Scotland) Act, 1921, governs all trusts constituted by deed, act of parliament, or royal charter, etc., and the common law of Scotland must also be kept in view.

Constitution
of Trusts

The principal types of trusts are (a) *mortis causa* or testamentary trusts, constituted by the will of the testator, and (b) *inter vivos* trusts, constituted by deed of trust setting aside funds belonging to the truster during his lifetime. The latter type includes marriage-contract trusts, under either ante-nuptial or post-nuptial contracts of marriage.

Purposes of
Trusts

Under common law, trust purposes must not include any illegal act nor be contrary to public policy or morals, and unless the purposes are clearly specified the trust may be void through uncertainty. Trusts for charitable or educational purposes may be continued in perpetuity, but restrictions on accumulations of any trust income were made by the Accumulations Act, 1800—known as the Thellusson Act. Under that act the period of accumulation is restricted (a) to the life of the truster in an *inter vivos* trust (see *Stewart's Trustees v. Stewart*, 1927 S.C. 350), and (b) in other trusts to the period expiring on the last of the following dates (1) the expiry of twenty-one years from the death of the truster, (2) the minority of any specified persons living at the date of his death, (3) the minority of any persons entitled to the accumulated trust income on attaining majority. In terms of the Trusts (Scotland) Act, 1921, sec. 9, a life-rent of moveable estate may not be constituted in favour of persons unborn at the date of the deed. As regards successive life-rents of heritage see Entail Amendment Act, 1848, sec. 48.

Authorised
Investments

The Trusts (Scotland) Act provides in secs. 10-15 as to authorised investments, and the principal classes of trustee securities are:—

- (1) British government stocks, and stocks on which interest is guaranteed by parliament.
- (2) Debentures, mortgages, bonds, or annuities, issued by municipalities in Great Britain, Scottish local authorities, the Metropolitan Water Board, etc., subject to certain conditions. (Sec. 10, subssecs. 6-8, 14, 15.)
- (3) Feuduties and ground annuals.
- (4) Loans on security of certain trustee investments.
- (5) Loans on security of heritable property in Great Britain.
- (6) Purchase or loans on security of stocks approved by the court.
- (7) Stocks registered under the Colonial Stock Acts, *i.e.*, issued by governments of the British Dominions, provided that the

price paid is (a) not over redemption value if the stock may be redeemed within fifteen years, or (b) not over 15% above redemption value in other cases.

In terms of sec. 33 a trustee is not to be liable for breach of trust merely because an investment has been retained which has ceased to be an authorised investment. Trustees must not hold bearer securities beyond the time required for realisation or conversion into registered or inscribed form (sec. 15). If wider powers of investment are given by the trust disposition, the Trusts (Scotland) Act is not to be held as restricting them to those referred to above, which powers are, however, implied in all trusts as a minimum unless specifically prohibited (secs. 10, 11, 14). But even a specific direction to retain certain investments may not absolve trustees from their primary duty to preserve the estate (Thomson's Trustees v. Davidson, 1947 S.C. 654). Unauthorised investments should be sold as soon as possible, and any available capital balances should be invested in securities authorised by the Trusts (Scotland) Act and the trust disposition.

If it is proposed to lend any part of the trust funds on bond and disposition in security over heritable property, a valuation of the property should be made by an independent valuer, and the loan should not exceed two-thirds of the stated value. (Trusts (Scotland) Act, sec. 30.) On making such a loan the trustees' rights as heritable creditors should be intimated to the insurance company which has insured the property against fire. Heritable Bonds

The Trusts (Scotland) Act, 1921, sec. 4, gives powers to trustees *inter alia* to do the following acts unless they are at variance with the trust disposition:— Trustees' Powers

- (1) Sell the trust estate.
- (2) Borrow money on security of the trust funds.
- (3) Appoint factors and solicitors and pay them suitable remuneration. No remuneration may be paid to trustees, either directly or indirectly, unless specifically authorised (see page 1).
- (4) Discharge trustees who have resigned and the representatives of those who have died.

On a petition to the court by trustees the court may, if it is considered expedient, grant certain powers (including the above powers) even if these are at variance with the terms of the trust (sec. 5).

Unless the contrary is expressed, a quorum of trustees is constituted by a majority of those accepting and surviving, and such a quorum has full powers to act without the minority (sec. 3 and sec. 7). Other points of importance in the Trusts (Scotland) Act as to the trustees' powers are (1) the court may in certain circumstances authorise trustees to advance capital to beneficiaries not of age, unless prohibited by the trust disposition (sec. 16), and (2) trustees may apply to the court for audit of their accounts by the Accountant of Court (sec. 17).

Sec. 3 provides that unless the contrary is expressed all trusts include power to trustees to assume additional trustees, or to resign, except (1) in the case of a sole trustee who cannot resign until new trustees or a judicial factor have been appointed, and (2) trustees who have received legacies, annuities, etc., given on condition of accepting office, Assumption and Resignation of Trustees

who cannot resign unless this is expressly authorised, or permission is granted by the court. Secs. 19 and 20 describe the procedure on resignation. If trustees cannot be assumed in terms of a trust deed the court may appoint one or more trustees (sec. 22).

A deed of assumption which includes a general conveyance is effective in conveying to the new trustees all Scots estate—both heritable and moveable. If owing to the absence or incapacity of a trustee the necessary quorum of trustees cannot be obtained for such a deed, the court may grant consent to the assumption (secs. 3 and 21). In order that full effect may be given to a deed of assumption and/or resignation it should be recorded in the Books of Council and Session, and the extract registered with all companies in which the trustees have investments. Investments registered in the trustees' individual names (not described as trustees) require transfer on common form from the whole old trustees to the whole new trustees, with a 10s. stamp on each transfer.

If a sole trustee dies or is incapable of acting in the trust, any person who is entitled absolutely to any trust property may apply to the court for authority to complete his own title to the property, and the court may grant this authority (sec. 24). If no one is so entitled, the heir at law or the executors of a deceased sole trustee may complete their title to the trust property, but only in order immediately to transfer it to some other party having a beneficial or administrative right thereto. The court may appoint trustees in place of a sole trustee who has been absent from the U.K. for six months, or is insane or otherwise incapable of acting (sec. 22). It is always preferable that at least two trustees should act in all trusts in order to prevent delay and difficulties which inevitably arise on the death or incapacity of a sole trustee.

If a sole trustee desires to resign he may first assume additional trustees, or if this is impracticable he must apply to the court for appointment of trustees or a judicial factor (secs. 3 and 19).

The truster, if alive, can appoint new trustees if the original trustees have resigned or died, and this is sometimes necessary, for example, in marriage contract trusts.

On the death of any trustee the death certificate should be registered with all companies in which investments are held by the trustees.

Trustees may be removed by the court if (1) insane, (2) incapable either physically or mentally, or (3) absent for more than six months from the United Kingdom or having disappeared for a like period (sec. 23). Under common law the court may remove a trustee for breach of trust, or obstructing the administration, or where he is proved to have endangered the trust property.

Trustees become personally liable to the beneficiaries for any losses arising through their negligence or breach of trust (*Town and County Bank v. Walker*, 1904, 12 S.L.T. 411). It has been said that a trustee must use the same diligence that a man of ordinary prudence would exercise in his own affairs (*Raes v. Meek*, 1889, 16 R. (H.L.) 31). Under common law a trustee must not be *auctor in rem suam*, that is, his duty as trustee must not conflict with his personal interest. Arising from this, trustees must not receive any financial reward for their services, nor receive loans from the trust funds, nor purchase any of the trust property, unless any of these are specifically authorised in the trust disposition. Another important rule of common law is that profits

arising from unauthorised investments or from other breaches of trust belong to the trust, despite the fact that losses must be made up by the trustees as noted above.

There have been many court cases on questions arising out of trust administration and the following decisions are considered to be of special importance. In *Speight v. Gaunt* (1883, 9 A.C. 1) it was held that trustees cannot delegate their supervisory powers which are essentially personal, but they may employ skilled assistance, and in certain circumstances this may, in fact, be a duty. Solicitors and factors must, however, be appointed and supervised with prudence and must not be left in control of large sums. In *Re Hotham* (1902, 2 Ch. 575) it was decided that even investments specially directed or authorised must be carefully considered. Though duly authorised they might in certain circumstances be undesirable. (See also *Thomson's Trustees v. Davidson*, 1947 S.C. 654). The case of *Ross v. Ross* (1896, 23 R. (H.L.) 67) decided that proper accounts must be kept and exhibited to the beneficiaries. In *Clarke v. Clarke's Trustees* (1925 S.C. 693) it was held that (1) investments must be reconsidered by the trustees from time to time with a view to selling any of them which cannot wisely be retained, and (2) capital must not be retained uninvested whether in cash or on bank deposit, and if this is done the trustees may be liable to make up the income to the amount which should have been earned.

Sec. 3 grants an indemnity to trustees to the extent that unless the contrary is expressed they are liable only for their own acts and not liable for acts of their co-trustees nor for omissions. It must be noted, however, that neither this section nor an indemnity clause in a trust disposition protects trustees who have acted negligently (*Ferguson v. Paterson*, 1900, 2 F. (H.L.) 37). Indemnity

For further details of the law of trusts, readers are referred to the Trusts (Scotland) Act, 1921. Separate chapters of this book describe the principal points of the law as to judicial factories, succession, life-
rent and fee, income tax, estate duty and apportionments.

II. COMPARISONS BETWEEN SCOTS AND ENGLISH TRUST LAW

It is not within the scope of this book to deal adequately with the differences in trust law and practice as between Scotland and England, but in the following pages a brief survey of this subject has been attempted. The law of trusts in England is based on the Trustee Act, 1925, which is in many respects similar to the Trusts (Scotland) Act, 1921, although the former is more comprehensive.

Trustees' statutory powers of investment in Scotland and England are different in various respects. For example, in England trustees may invest in the following, which are not authorised in Scotland:— Powers of Investment

- (1) Bank of Ireland stock.
- (2) Certain Indian railway company annuities.
- (3) Stocks issued by authorised water commissioners with power to levy rates over an area with a population of at least 50,000.

Bearer securities are permitted as authorised investments in England, unless specifically prohibited in the will, if the registered stock of the same issue is authorised, but they must be deposited with a bank (Trustee Act, sec. 7). No such powers are given in Scotland (Trusts (Scotland)

Act, sec. 15). Restrictions on purchases of certain stocks at a premium in England are made by Trustee Act, sec. 2, and these have no parallel in Scotland except as regards stocks issued under the Colonial Stock Acts (Trusts (Scotland) Act, sec. 11).

Powers of Trustees

The Trustee Act, sec. 10 (3), gives power to trustees to concur in schemes of arrangement for reconstruction, etc., of companies in which investments are held, and sec. 10 (4) deals with rights to new shares, but there are no similar statutory provisions in Scotland. There is another interesting difference as regards audits which in England are not normally required more than once every three years (Trustee Act, sec. 22 (4)). In Scotland trustees have power under common law to have their accounts audited.

Advances to contingent beneficiaries in respect of capital are permitted in England at the trustees' discretion under certain restrictions (Trustee Act, sec. 32), while in Scotland it is necessary to obtain court authority for these payments (Trusts (Scotland) Act, sec. 16).

Changes in Trustees

In Scotland there are no restrictions as to the number of trustees, and one trustee may legally act alone, but in England in certain circumstances not more than four nor fewer than two trustees are required (Trustee Act, secs. 14, 34, 37). Provision is made by English law for a trustee who is temporarily abroad delegating his powers by power of attorney (Trustee Act, sec. 25), but in Scotland no delegation is permissible. A majority in Scotland may, however, act without the minority (secs. 3 (c) and 7) which is not allowed in England, where in general all trustees must concur in any decision.

In England if a sole trustee has died new trustees can in certain circumstances be appointed by deed signed by his personal representatives (Trustee Act, sec. 36), whereas in Scotland an application to the court would usually be required in those circumstances. Other differences in procedure as to changes in trustees may be observed on comparison of Trustee Act, sec. 36 with Trusts (Scotland) Act, secs. 19-23. It is important to note that in England trustees who are absent from the U.K. for over twelve months, or who are unfit or refuse to act as trustees, may be removed from office by their co-trustees or certain other persons. In Scotland in such circumstances an application to the court is required, but the limit for absence from the U.K. is only six months.

Executors

An administrator under general grant of administration in England is similar to an executor-dative in Scotland, *e.g.*, where there is a will but no executor is appointed, or none has accepted office. In certain circumstances the court grants only limited powers to an administrator under "special grant" in England, which has no parallel in Scotland.

Probate in England corresponds generally with confirmation in Scotland, but neither is effective as regards investments in the other country until the deed has been resealed by the court there, although this is merely a formality. The English probate act is usually known as the probate, *i.e.*, the document authorising the executors to realise the estate, and this consists of a copy of the will with an official seal attached. The Scots confirmation gives the names of executors, etc., and also details the whole moveable estate in Great Britain.

Executors and administrators in England are known as the legal personal representatives of the deceased, but this term is not used in Scotland.

The Administration of Estates Act, 1925, details the powers of an administrator in an intestacy in England and gives the basis of division of such estates, which may be summarised thus:— Intestacy

- (1) Personal chattels, that is motor-cars, horses, furniture, jewellery, etc., pass to the surviving husband or wife, who also receives the first £1000 with 5% interest from date of death.
- (2) Residue of estate falls to children, subject to *liferent* by surviving spouse of one-half thereof, but if any children are under twenty-one years of age and are unmarried, their rights are not vested until the earlier of these two events. Children of predeceasing children rank *per stirpes*.
- (3) If no children survive, the whole residue is *liferented* by the surviving spouse passing on his or her death to the next-of-kin, *i.e.*, parents, whom failing brothers and sisters, etc.

Details of intestate succession in Scotland are given in chapter on "Succession" (page 35).

In Scotland a surviving spouse and children have rights which cannot be defeated by the will. In England immediate dependants are merely entitled to apply to the court for an order giving them a part of the trust income if a reasonable provision for them has not been made in the will. Legal Rights

Contrary to Scots law, apportionments are not required on purchases and sales of investments during a *liferent* in England, but if a dividend has been declared on an investment bought "cum. div." the dividend is applicable to capital. (See *Re Sir Robert Peel's Estates*, 1910, 1 Ch. 389). Apportionments

Under English law equitable apportionments may arise in certain circumstances, unless apparently excluded by the will. For example, under *Howe v. Earl of Dartmouth* (1802, 7 Ves. 147) the income on unauthorised investments or wasting assets, etc., is all applicable to capital, and the life tenant is entitled only to the rate earned on trustee investments. The principle of equitable apportionment has been seldom applied in Scotland.

The Public Trustee in England has no parallel in Scotland. His powers are stated in the Public Trustee Acts, 1906 and 1939, Public Trustee Rules, 1912 and 1916, and Judicature Act, 1925, sec. 175 (1), and include the audit of trust accounts, in addition to the administration of trusts, in which he can act either solely or along with other trustees. The Trusts (Scotland) Act, however, gives power to trustees to place the administration under court supervision by annual audit by the Accountant of Court (sec. 17). The law of Scotland also gives power to the court to appoint judicial factors to administer trusts where there are no trustees surviving, and in certain other circumstances. A judicial factor is usually, although not necessarily, an accountant or solicitor. (See separate chapter, page 16). Official Supervision

The style of trust accounts is different in Scotland and England, as explained in chapter on "Preparation of Trust Accounts" (page 82).

A life tenant in England is comparable with a *liferenter* in Scotland, and a remainderman, similarly, with a *fiar*. Other legal terms which are dissimilar will be found in other chapters of this book.

CHAPTER III
JUDICIAL FACTORIES

I. INTRODUCTION

JUDICIAL factors may be appointed by the court to administer specified funds under superintendence of the Accountant of Court so as to protect the interests of all those entitled to share in them. The following acts govern the appointment and powers of such factors:—Judicial Factors (Scotland) Acts, 1849, 1880 and 1889; Guardianship of Infants Acts, 1886 and 1925; Bankruptcy (Scotland) Act, 1913; Trusts (Scotland) Act, 1921; and Rules of Court, 1948.

Definition

A judicial factor is any person judicially appointed factor, either on the estate of a person who is legally incapable of managing his own affairs, or on a trust or other estate, and also includes certain guardians where caution is required. See Trusts (Scotland) Act, sec. 2, and Rules of Court, 217.

Circumstances
of Appointment
and Discharge

The principal types of judicial factories are as follows:—

- (1) *Factor loco tutoris* appointed on behalf of a pupil (*i.e.*, a boy under fourteen or a girl under twelve years of age), if the pupil is in Scotland, or has property there. On the pupil attaining minority the factor automatically becomes *curator bonis* (1889 Act, sec. 11).
- (2) *Curator bonis to minor* appointed in similar circumstances on behalf of a child who is under twenty-one but over fourteen years of age (or twelve if a girl). The appointment requires the minor's consent. On the attaining of majority the funds may be paid over to the ward and the factor then petitions for discharge.
- (3) *Curator bonis to incapax* appointed on behalf of a person who is physically or mentally incapable of managing his own affairs, if no legal guardian is available. The incapacity must be certified by holograph writing by two medical practitioners who are independent of each other, and the incapax must be either domiciled or resident in Scotland or possessing property there. If the ward recovers from his incapacity the funds may be paid over to him, and the factor then petitions for discharge.
- (4) *Factor loco absentis* appointed on behalf of a person who is missing but who is believed to be alive, and who has rights or property in Scotland of which he is believed to be ignorant. If the ward returns, or appoints an agent to act for him, the funds may be paid over as instructed by him, and the factor then petitions for discharge.
- (5) *Factor on a trust estate*.—The appointment may be made on lapse

of trustees, *e.g.*, (a) if no trustees were named in the will, (b) if those named have declined office, (c) if those named have predeceased the testator, (d) if all the original trustees have died without assuming others to act along with them, (e) if the trustees are removed by the court.

The appointment may also be made (a) where there is a deadlock in administration owing to disputes among the trustees, or (b) in respect of the estate of any person who has died intestate.

In all these cases the factor cannot be discharged until the estate has been wholly distributed on completion of the trust, or until another factor is appointed in his place. Such an appointment is made by the court on a petition for discharge of the former factor and appointment of a new factor.

In these circumstances discharge is not granted until the whole estate has been transferred to the latter.

- (6) *Factor on a deceased's estate under the Bankruptcy (Scotland) Act, 1913, sec. 163.*—The appointment is made where no trustees have been appointed or none accepts office, on the petition of a creditor or successor, and the factor must administer the estate and divide the funds in accordance with the rules of the Bankruptcy Act.
- (7) *Factors under Rules of Court.*—The appointment is made for the administration of sums of damages awarded by the court to minors and pupils, in terms of Chapter I, section 7, of the Rules of Court. The court must be satisfied either (1) that no person is available to give a full and valid discharge for such sum, or (2) that the administration of the sum for the benefit of the child cannot otherwise be reasonably secured.
- (8) *Factors under Partnership Act, 1890, secs. 35 and 39.*—The appointment is made for the purpose of winding up the affairs of a firm. As to the circumstances in which the court will appoint a judicial factor, see *Dickie v. Mitchell, 1874, 1 R. 1030.*

II. NOTES AS TO FACTORIES, TYPES 1-5 (ABOVE)

The appointment is made by the court on a petition by any person interested in the preservation of the funds in question, such as relatives, trustees, creditors, or heirs. A petition may be lodged by an incapax for appointment of a curator bonis on his own estate, although this is unusual. The Lord Advocate may petition for the appointment of a judicial factor on a charitable trust or on the estate of an incapax, and the Accountant of Court may also petition in the latter case. The Sheriff may make the appointment (1) of a factor loco tutoris, or a curator bonis, if the annual income does not exceed £100, or (2) if the petition is under the Bankruptcy Act and the total assets do not exceed £500. Otherwise the Court of Session must make the appointment.

The person on whose estate the factor acts is known as his ward.

Caution is required to be found by the factor in terms of 1849 Act, secs. 2 and 27, and may be granted by an individual giving his personal guarantee, or by an approved guarantee association. A bond of caution

is signed by the cautioner, who thus becomes a surety (or guarantor) against loss through default by the factor.

Premiums on guarantee bonds may generally be charged in the judicial factor's accounts. It is necessary that the bond of caution should be lodged with the Accountant of Court within three weeks of the appointment in cases under the Sheriff's jurisdiction or appointments under the Bankruptcy Act, but one month is allowed in other cases. Additional caution may be required by the Accountant of Court during the subsistence of a factory, or reduction may be allowed. (See Rules of Court, 218 and 219.)

Completion of
Title

An extract act and decree of the court appointing the judicial factor is obtained, and after this is stamped by the Inland Revenue it constitutes the factor's authority to complete his title to the moveable estate. Exemptions from stamp duty are conferred in cases of factors *loco absentis*, or *loco tutoris*, and in any estates which are wholly heritable, but where special powers to make up title are granted this exemption does not apply. Stamping of the extract must be effected within thirty days of extracting the original act and decree. The factor's title to heritable property in Scotland is completed (where this is necessary) by recording the extract authorising the completion of title in the Register of Sasines, and his title to investments by registering the extract appointment with the companies concerned. (See Judicial Factors Act, 1889, and F.A. 1916, sec. 66; the position in regard to heritable title in the case of factors on trust estates is now simplified by the Conveyancing Amendment (Scotland) Act, 1938, sec. 7.)

Inventory

A printed form is supplied by the Accountant of Court on which is prepared an inventory of the whole estate as at the date of the appointment of the factor, which must be lodged with the Accountant within six months (1849 Act, sec. 3). In addition to details of the funds, particulars are required as to the age of the ward, and the caution which has been found. The Accountant of Court requires for perusal all share certificates, titles to heritable properties, valuations of furniture, certified bank pass-books, etc., in order to vouch the inventory, and no realisations should be made before these have been examined by him.

Notes on subsequent administration of judicial factories are given below (Sec. V). If the ward dies, the factor pays over the estate to the executors on exhibition of confirmation in their favour.

After the final account has been prepared showing the distribution of the estate, it is audited by the Accountant of Court. The printed instructions for the guidance of judicial factors give full particulars of his requirements in this connection. The discharge of a judicial factor may be granted on petition to the court, but cannot be obtained until the final account has been audited.

III. NOTES AS TO BANKRUPTCY ACT FACTORIES

The following notes summarise the principal points of procedure in terms of the Rules of Court, Chapter IV, section 2. Within seven days of extracting his appointment, a notice calling for claims must be inserted by the factor in the *Edinburgh Gazette*, and in such newspapers as he thinks proper. The notice should be in the form No. 22 prescribed

in the Rules of Court, and a copy of that *Gazette* must be lodged in process. The factor then examines the claims and ranks them for payment, treating the date of his appointment as equivalent to the date of sequestration. Caution is necessary as noted above, and the usual inventory of the estate is required within six months of appointment, and there is also required to be lodged a detailed statement of the creditors' and successors' claims against the estate.

Interim distributions may be made to the creditors after six months from date of death of the deceased, at the factor's discretion, subject however to examination of the scheme of division by the Accountant of Court and approval by the court. Deathbed and funeral expenses, and other preferential claims, may be paid before the expiry of six months if sufficient funds are available.

After the whole estate is realised, a state of funds and scheme of division must be lodged with the Accountant of Court. After his report thereon has been completed the factor lodges it in court, and must intimate this to each creditor individually, also by notice in the *Edinburgh Gazette* (Form No. 23). Each creditor must be informed of the amount for which he has been ranked and the proposed dividend due to him. Any persons interested in the distribution may lodge objections to the proposed division within three weeks, and the court hears counsel for the objectors and for the factor, before approving of the scheme either with or without amendment.

Any surplus estate, after payment of the creditors, must be reported to the Accountant of Court, and may be paid over to those claiming to be successors, or retained by the factor, under the directions of the court. When the factor has distributed the whole funds and wishes to petition for discharge, he must serve the petition on the representatives of the deceased and on his cautioner, and also insert a notice in the *Edinburgh Gazette* (Form No. 24). The petition will not be disposed of by the court until the expiry of fourteen days after such service and notice, nor until formal executions or acceptances of service of the petition and a copy of that *Gazette* are lodged in process.

In the case of Sheriff Court appointments the ordinary procedure relating to Sheriff Court factors applies (Sheriff Courts Act, Rule 170).

IV. NOTES AS TO FACTORIES UNDER RULES OF COURT *re* DAMAGES AWARDED TO MINORS AND PUPILS

The procedure is simplified and the factor's duties are more or less restricted to dealing with the sum awarded by order of court, although the court may grant him additional powers in his ward's interest. Application for the appointment is by motion at any time before the extract of the court decree is obtained, and this application may be enrolled by any party to the action. After appointment the factor must find caution and obtain an extract of his appointment.

When the factor's duties are completed his application for discharge is made by letter to the Principal Clerk of Session, who, with the concurrence of the Accountant of Court, may bring the application before a Lord Ordinary sitting in Chambers. Appointments on the factor's death or resignation may be effected similarly.

V. ADMINISTRATION OF JUDICIAL FACTORIES

Cash
Transactions

A separate bank account should be opened for each judicial factory, and all cash received should be paid into this account (1849 Act, sec. 5). The amount of cash in hands of the factor must not exceed £50 for over ten days, and in Sheriff Court factories is restricted to £25 for that period.

Intimations
of Changes

Changes such as the death or insolvency of a cautioner, recovery of ward from incapacity, or death of the factor, ward or other beneficiary, should be reported to the Accountant of Court at once.

On death of a factor, a petition for appointment of a new factor may be lodged in court by any persons interested in the estate, or the Accountant of Court may submit a report to the court to the same effect. The executors of the deceased factor must account to the new factor for the whole funds of the factory (1889 Act, sec. 10).

Factor's Powers
and Duties

All documents relating to the factory must be taken into the factor's possession as soon as possible after his appointment. Any sums which are due to the estate should be collected and all unauthorised investments must be sold. The funds may require to be distributed immediately, but if there is a continuing trust the whole available funds should be invested in authorised trustee investments. Investments in English companies should be registered in the name of the judicial factor as an individual, as trusts are not generally recognised by them, but in this connection a letter acknowledging the trust or an endorsement by the factor on the certificates is required for audit purposes.

The powers of judicial factors are in general similar to the powers of trustees, but a judicial factor cannot resign his office without the authority of the court and cannot assume trustees to act with him (Trusts (Scotland) Act, sec. 3). Before entering into legal proceedings a report of the circumstances should be made to the Accountant of Court whose approval is required. Special powers may be granted by the court on petition, and a report on the powers asked should first be submitted to the Accountant (1849 Act, sec. 7). A case dealing with the powers of judicial factors in relation to heritage is *Annan—Leslie's Factor*, 1925 S.C. 464. The question of title—referred to in that case—is now simplified by the Conveyancing Amendment (Scotland) Act, 1938, sec. 1 (see *Boazman*, 1938 S.L.T. 582; *M'Murtrie*, 1939 S.N. 48). A curator may in certain circumstances obtain special powers to claim his ward's legal rights in an estate (*Walker's Curator v. Walker's Trustees*, 1939 S.L.T. 91). If a factor is negligent he may be fined and removed from office by the court (1849 Act, sec. 6).

Accounts

Except as regards the first account, when the period of the account may be fixed by the Accountant of Court as between six and eighteen months, accounts are required by the Accountant of Court annually and these must be prepared in the prescribed form as shown in the printed instructions issued by him. A note as to income tax recovered should be inserted stating to what date claims have been made, and an account current and rental are shown in addition to the usual form of account charge and discharge. If any additional estate has been discovered full particulars must be stated (1849 Act, sec. 3). A docket must be appended stating whether or not feuduty receipts and adequate fire insurance premium receipts have been seen in respect of all heritable property over which bonds and dispositions in security are held. Such

bonds should be first bonds and preferably not in excess of one-half of the value of the property.

The Accountant of Court fixes the remuneration of the factor on a commission basis each year at the time of the audit, and no charge should be made in the first account—each year's commission appearing in the next account. Legal business accounts incurred by the factor must be taxed by the Auditor of the Court of Session or Sheriff Court.

After completion of the account it must be signed by the factor and lodged with vouchers for audit by the Accountant of Court usually within one month of the end of the period (1849 Act, sec. 4), although in special circumstances an additional period of two months is allowed. Securities are examined by the Accountant. In connection with heritable bonds, a solicitor's certificate of ranking of the bonds, a valuation of the property, and a certificate by the Assessor as to its rental, are all required at the first audit. Notes may be issued by the Accountant of Court along with his draft report for answer and comment by the factor, and when these notes have been satisfactorily answered the Accountant issues his note of audit fee, but the factor does not receive the report.

CHAPTER IV

LIFERENT AND FEE

Liferenter
and Fiar

A LIFERENTER (fem. liferentrix) is any person entitled to the liferent of property, that is, its use and enjoyment without destruction of the corpus or capital.

A fiar is any person entitled to the fee or absolute ownership of property, although simultaneously a liferent may exist in favour of another person, in which case the fiar's interest is restricted accordingly.

In general, capital belongs to the fiar and income to the liferenter, and the trustees of property which is subject to liferent must always keep this in view and act in the best interests of both. There is, of course, to some extent a conflict of interests between liferenter and fiar.

Alimentary
Liferents

Alimentary liferents cannot be waived and are not assignable, that is, the liferenter cannot transfer his right to another person. Such liferents also cannot be attached by creditors for payment of the liferenter's debts, and they are not brought to an end if the liferenter also becomes fiar, nor can they be discharged by the liferenter. In non-alimentary liferented trusts the trust may be wound up and the funds transferred to the fiar, if liferent and fee are vested in the same person. (See *Miller's Trustees v. Miller*, 18 R. 301 and *Main's Trustees v. Main*, 1917 S.C. 660, as to the right of a fiar to bring a trust to an end.)

Liferents may be granted for the whole life of the beneficiary or for a specified shorter period, for example, until marriage. Liferenters may assign their rights, unless declared to be alimentary, but this does not affect the period of the liferent.

Legal and
Conventional
Liferents

Liferents may arise (a) through operation of the legal rights of terce and courtesy, or (b) by creation under deed or agreement. The former are known as legal liferents and the latter as conventional liferents.

Formerly, deeds sometimes created direct liferents, that is, the property continued to be owned personally by the grantor of the deed and no trustees were appointed, but this is now unusual. These direct or "proper" liferents were either "by constitution" in favour of another person, but reserving the fee to the grantor, or—the converse—"by reservation" where the liferent was reserved to the grantor, but the fee was conveyed to another. It may be noted that a liferent "by constitution" is any conventional liferent which is not a liferent by reservation in favour of the grantor.

The usual form of liferent is now the indirect or "beneficiary" liferent where trustees are appointed in the deed which creates it. These trustees hold the property until the expiry of the liferent when it is conveyed to the fiar.

Capital and
Income

In practice it is important to keep in view the distinction between capital and income in the various transactions of the trust, and as explained in a separate chapter (page 51) it is sometimes necessary to make apportionments of rents, dividends and burdens on property, which are *prima facie* applicable to income.

In testamentary trusts the original capital consists of all property owned by deceased at his death, subject to deduction of debts payable, and deathbed and funeral expenses. In other trusts the capital at the beginning is made up of the whole funds placed in trust.

Debts due by deceased include tradesmen's accounts, wages, income tax to date of death, and a proportion of current year's rent, rates, feuduty and bond-interest, etc. Debts in respect of deceased's wife and family, who were maintained by him, are included if incurred prior to the date of death.

Deathbed and funeral expenses consist of nursing home and doctors' fees, undertaker's account, price of ground in cemetery, and tombstone.

Additions to the capital of the trust may arise owing to the receipt of legacies and gifts, or increases on realisation of investments over the value when received or purchased by the trustees. Deductions from capital include estate duty, legacies, management expenses chargeable to capital, and decreases on realisation of investments.

There are many points in the allocation of transactions between capital and income which require further consideration and some of these are now described briefly. These matters are fully explained in Dr W. Jardine Dobie's book, *Liferent and Fee*.

I. *Heritable Properties* :—

Farm stocks must be maintained approximately in the same state throughout the "life" of the trust. (See Rogers, 1867, 5 M. 1078.) Timber on the estate is part of the capital, but ordinary windfalls and mature coppice wood may be used by the liferenter, who is also entitled to sufficient wood for maintenance of buildings and fences, etc., on the estate. (See Dickson, 1823, 2 S. 152 (N.E. 138).)

Difficulties may arise as to proceeds of minerals found on the estate, but usually there are specific instructions in the trust disposition. If no directions are given the liferenter is entitled to minerals required for the estate and also to profits from mineral rights let by the testator, but not profits arising from mineral leases created by the trustees. (See *Campbell v. Wardlaw*, 1883, 10 R. (H.L.) 65.)

Improvements to heritable property are chargeable to capital as additional investments in the property. Restoration of property which has fallen into decay is an "improvement" (see generally *Shaw's Trustees v. Bruce*, 1917 S.C. 169).

Annual payments such as repairs, rates and taxes, bond-interest, minister's stipend, teind, ground-annual and feuduty are payable out of income. Unless there is an agreement by the fiars to pay part of the fire and other insurance premiums, such premiums must be charged wholly to income (*Glover's Trustees v. Glover*, 1913 S.C. 115). Where heritable property is to be liferented it is usually necessary that the trustees should set aside investments, the income from which will meet the property expenses. This is unnecessary where the whole residue of the trust, including heritable property, is liferented by the same person. In this case the burdens are payable out of the income on the trust investments and only the balance of the free income is payable to the liferenter. Another

exception arises if there is a provision in the will that the liferenter will pay no rent but will pay all burdens and costs of upkeep of the property.

II. *Investments* :—

Heritable
Bonds

Where heritable bonds carrying arrears of interest are realised at a loss, it is necessary to allocate the proceeds between capital and income. The leading case is *Dempster's Trustees v. Dempster* (1898, 35 S.L.R. 657). Under this decision the sum applicable to capital is the amount which, if invested at a reasonable rate of interest (compounded annually under deduction of tax) as from the date to which interest was paid in full, would have produced the actual sum received. If arrears of interest began before the testator's death the latter date is taken instead of the former for the calculation. The total proceeds for this purpose include any surplus rents over expenses, during the period when the bondholder was in possession of the property, pending sale.

Thus, if a bondholder p. £2000 at 5% was in possession of a property for two years and then sold the property the apportionment is as follows :—

Total rents for two years (say)			£200
Proceeds of sale (say)			1500
			£1700
<i>Less</i> Two years' rates, etc. (say)	£120		
Expenses of sale (say)	25		
		145	
Net total proceeds			£1555

£1 with interest thereon amounts to £1.0275 in one year at 5% less tax at 9s. per £1, because the net interest is $2\frac{3}{4}\%$. It can therefore be shown that the sum which would produce £1555 in two years at 5% compound interest (less income tax at 9s. per £1) is as follows :—

$$£ \frac{1555}{(1.0275)^2} = £ \frac{1555}{1.05576} = £1472 \ 17 \ 6$$

This calculation can be proved by calculating the interest on this sum thus :—

First year's interest at 5% on			
£1472, 17s. 6d.			£73 12 11
<i>Less</i> tax at 9s.			33 2 10
		40 10 1	
Second year's interest at 5% on			
£1513, 7s. 7d.			£75 13 5
<i>Less</i> tax at 9s.			34 1 0
		41 12 5	
			£1555 0 0

The sum of £1555 is therefore allocated £1472, 17s. 6d. to capital and £82, 2s. 6d. to income.

A question not free from doubt arises on purchases of redeemable investments at a price in excess of the redemption price. It is prudent to write off this premium against income during the "life" of the investment, but there is no general rule of law which authorises this. (See *Heath v. Baxter's Trustees*, 1902, 10 S.L.T. 462.) Premium on Redeemable Investments

Bonus shares and cash bonuses may be applicable to capital or income, depending on whether or not they are issued from profits which have been capitalised. Even if the company had no power to capitalise the profits, they might be deemed to have been capitalised if the accumulations had in fact been used as part of the capital. (See *Irving v. Houston*, 1803, 4 Paton, 521, and *Bouch v. Sproule*, 1887, 12 A.C. 385.) Bonuses

The deciding factor is the primary intention of the company as expressed or implied, in respect of capitalisation—thus a regular dividend in shares would probably be treated as income, while a bonus described as "a capital bonus of 1 share for every 3 held" would be applicable to capital. Leading cases on this subject are *Bouch v. Sproule*, 1887, 12 A.C. 385; *re Alsbury*, 1890, 45 Ch.D. 237; *Cunliff's Trustees v. Cunliff*, 1900, 3 F. 202; *Howard's Trustees v. Howard*, 1907 S.C. 1274; *Inland Revenue v. Blott*, 1921, 2 A.C. 171; *Inland Revenue v. Fisher*, 1926 A.C. 395; *MacIver v. Rae*, 1936, 1 Ch. 198; *Forgie's Trustees v. Forgie*, 1941 S.C. 188; and *In re Doughty*, 1946, 176 L.T. 173.

In general it may be taken that any cash payment made by a limited company (not in liquidation) to its shareholders cannot be a capital payment unless it is a step in an authorised reduction of capital. Any other cash payment must be from profits (*Hill v. Permanent Trustee Company of New South Wales*, 1930 A.C. 720 at p. 731; *Forgie's Trustees v. Forgie*, *supra*; *Inland Revenue v. Reid's Trustees*, 1949 S.L.T. 217).

Proceeds of sales of rights to new shares are applicable to capital, but discount on prepayment of calls on new issues is income.

Arrears of interest on government or debenture stocks should be apportioned over the period in respect of which they were declared. The apportionment of arrears of dividends on cumulative preference shares, where the payment is dependent on profits, is a matter on which there is controversy, and the following alternative methods are available:— Arrears of Income

- (1) Under this method any arrears of cumulative preference dividends are apportioned in the same way as arrears of interest, as explained above. There is no legal decision supporting this basis.
- (2) By this alternative method, following the English case of *Wakley v. Vachell* (1920, 2 Ch. 205), arrears of cumulative preference dividends are regarded as subject to apportionment over the year(s) in which the profits were earned, not necessarily the period for which the dividends were declared.

In the case referred to, the question before the court related to the apportionment of three years' arrears of 6% cumulative preference dividends which were received in a trust in 1907, the testator having died on 7th February, 1905. In the course of the judgment it was observed that the shareholders acquired no right to any dividend until these two conditions were fulfilled :—(1) existence of profits and (2) the determination to distribute the profits. It was held that no dividends were therefore to be regarded as due or payable for the years 1905 or 1906 and the sum received was, in effect, deemed to be a dividend at the rate of 18% for the year 1907.

That decision was based on the fact that the declaration of a dividend for a year in which there were no profits was *ultra vires*. It was therefore inferred that, where the Apportionment Act states that dividends are to be deemed to accrue over the period in respect of which they are "declared" to be made, this must mean "declared *intra vires*" (i.e. within the legal powers of the Company).

It is understood that the case of *Wakley v. Vachell* has not been universally followed in Scots practice, and that method (1) shown above is then accepted instead. In the *Scots Law Times*, 1937, page 60, Professor Annan expressed the opinion that the court's decision seemed to be contrary to the rule of equity, and that directors of companies have not only a right, but a duty, to declare dividends on cumulative preference shares for each consecutive year after the issue of the shares out of any profits available, whenever they may have been earned.

Where ordinary shares are received in lieu of arrears of cumulative preference dividends, these shares are to be treated as income (*MacIver v. Rae*, 1936, 1 Ch. 198, and *Smith's Will Trust*, 1936, 155 L.T. 248).

III. *Annuities* :—

An annuity is a right to receive a fixed sum each year for a specified number of years, or until the occurrence of a stated event, or in perpetuity. In trusts, annuities are frequently payable either for life or until marriage of the annuitant. While annuities are primarily charges against income, they are payable whether or not there is sufficient income unless the contrary is stated. (*Kinmond's Trustees v. Kinmond*, 1873, 11 M. 381.)

Sometimes other provision is made for dealing with deficiencies of income, for example, by deferring the date of payment until income is available, or by restricting the annuities to the actual free income. (The latter is really a restricted life interest with a maximum limit.)

In practice therefore the annuities are chargeable to income, but generally subject to a transfer from capital account to meet any deficiency. Where capital is used to make up an annuity there is apparently no right of reimbursement from a later surplus of income (In *re Croxon*, 1915, 2 Ch. 290). As to income tax on arrears of annuities, see *Lord Westbury's Settlement* (1943, 2 All E.R. 463).

IV. *Legal and Management Expenses* :—

These expenses are divisible between capital and income according to the general nature of the work. Thus capital account is charged with expenses of completion of title by the trustees, such as costs of valuations prepared for estate duty purposes, and registration fees of confirmation. Brokerage and stamp-duties on investments, and legal expenses regarding heritable properties sold and purchased, are also chargeable to capital. Expenses of changes in trustees, such as preparation and registration of deeds of assumption and resignation, are also capital payments.

Solicitors' business accounts require to be analysed in detail. Capital is chargeable with fees for ascertaining the amount of the estate and debts due by deceased, negotiations *re* estate duty, realisation and re-investment of trust funds, protection of the estate in legal processes, improvements to heritable property, payment of legacies, and division of the residue.

Income is chargeable with fees *re* leases and factoring heritable property (except in respect of improvements), adjustments of income tax, and commission on collection of income.

It is usual to divide the fee for preparation and extension of trust accounts between capital and income according to the number of pages in each section. Engrossments in the sederunt book (or minute book) should be allocated between capital and income in accordance with the nature of each document.

Audit fees are divisible between capital and income, generally according to the time required by each, and the auditor should state the appropriate figures.

V. *Estate Duty* :—

Any estate duty which may be payable out of trust funds is chargeable to capital. Interest paid thereon is chargeable against income. (See page 137 as to incidence of duties.)

VI. *Equitable adjustment in respect of debts* :—

In Scotland a liferenter or income beneficiary receives the net income of the whole estate as from the testator's death irrespective of the fact that part of the capital producing that income may be needed to pay off debts or meet other capital charges. But the English rule of equitable adjustment, which denies a life tenant the income from the part of the capital required to pay debts, has been applied in Scotland to adjust the situation in an exceptional case where revenue had to be impounded to help to pay debts and some equitable arrangement had to be made at a later date when the debts had been cleared off (*Wilson's Trustees v. Morton*, 1938 S.L.T. 215). In that case it was held that the debts should be paid out of (1) such a sum of capital as, with simple interest thereon at the net rate earned by the estate from the date of the testator's death to the respective dates of payment, was sufficient to satisfy the debts, and (2) interest ascertained as above. Thus the income beneficiaries were not recouped the whole of the revenue applied to pay the debts, but recovered that amount less the interest required

(along with the capital ascertained as above) to make up the full amount of the debts paid off.

VII. *Equitable compensation* :—

The rules of equitable compensation in connection with claims for legal rights were explained by Mr Hugh Ferguson, C.A., in the *Accountants Magazine* of July 1948, page 205.

CHAPTER V
SUCCESSION

SUCCESSION to heritage is entirely distinct from succession to moveables although both are founded on common law. Heritage consists of land, houses, buildings, fixed machinery, and other fixtures in buildings, mines, minerals, timber, feu duties, and rights secured upon land. Moveables include debts due to deceased, cash, sums in bank accounts, shares in companies, trademarks, and corporeal moveables, such as furniture and stock-in-trade. Unless executors are specifically excluded, heritable bonds are treated as moveable for purposes of succession. In calculating legal rights, however, they are always included in heritage. (31 and 32 Vic. c. 101, sec. 117.)

Heritage and
Moveables

If, for example, an intestate dies survived by a wife and two sons, leaving no estate except heritable bonds for £3000 bearing 5% (£150 p.a.) the division is as follows :—

- (1) *Legal rights* :—
 - (a) *Widow*.—Terce is calculated as one-third of the income from the bonds, which for this purpose are heritage = £50 per annum.
 - (b) *Children*.—There are no children's legal rights in heritage.
- (2) *Intestate Succession*.—Subject to terce, the sons share the estate equally under the rules of intestate *moveable* succession. If the estate had been heritable the elder son would have taken the whole.

Conversion of property arises when heritage owned by deceased is subject to a completed contract of sale at the date of death, and in questions of succession such property is then treated as moveable. Similarly heritage includes for succession purposes the money required to meet the unpaid price of any heritable property purchased but not settled prior to death. A direction in the will to sell heritage converts it to moveable estate but power to sell has not this effect. Conversion by will does not affect legal rights.

Conversion of
Property

As regards illegitimate children's rights of succession, the subsequent marriage of the parents renders the children legitimate if they were free to marry when the child was conceived. (See *Kerr v. Martin*, 1840, 2 D. 752.) On the death of an illegitimate child intestate (*i.e.* leaving no will) if the mother survives she has the same interest in the estate as she would have had if the child had been legitimate and she had been the only surviving parent. On the death intestate of the mother of an illegitimate child, leaving no surviving legitimate issue, such child and his issue are entitled to the same interest as they would have had if the child had been legitimate. (Legitimacy Act, 1926.)

Illegitimate
Children

If a deceased leaves a valid will he is said to have died testate. If there is no will he is intestate, and partial intestacy may arise if the will does not completely dispose of the estate.

Testate and
Intestate

Legal Rights

Under the common law, the estate of a deceased person remaining after payment of debts and estate duty is subject to claims by the surviving spouse and family in respect of their legal rights which cannot be defeated by the terms of the will. The Married Women's Property Act, 1881, sec. 7, gave the right to claim legitim against the mother's estate in addition to the previously recognised claim against the father's estate. The balance after payment of legal rights is known as dead's part and is divisible either in terms of the will or under the law of intestate succession as explained later (page 35).

Dead's Part

Divorce

Claims to husband's and wife's legal rights also arise on divorce (other than divorce in respect of incurable insanity) except as regards *jus relictii* which only applies on death. (Married Women's Property (Scotland) Act, 1881; *Eddington v. Robertson*, 1895, 22 R. 430.) The innocent party is entitled to claim his or her rights as if the other had died. The guilty party has no rights, and if both are held guilty there are no claims available to either.

Ascertaining
Legal Rights

All legal rights vest in the successor on the date of death, and so the sums due are not conditional on any subsequent events. They are usually calculated on the valuation of the estate as at date of death, less expenses of realisation (*Russel v. Attorney General*, 1917 S.C. 28); but see *Warrack v. Warrack's Trustees* (1934 S.L.T. 302). Interest on the sums due is payable at the average rate earned by the trust funds (*McCall*, 1901, 3 F. 1065; *Reid v. Reid's Trustees*, 1927 S.L.T. 18). Heritable bonds are deducted from the heritable property over which they are secured, in ascertaining the amount of the heritable estate. Various deductions are made from moveable property before the legal rights in respect of moveables are calculated, including deathbed and funeral expenses and estate duty on moveable property. (*Russel v. Attorney General*, 1917 S.C. 28.) The examples given below are based on net figures after providing for the foregoing deductions.

The beneficiaries must be informed of their legal rights and they then elect whether they will claim their legal rights or accept the provisions of the will and marriage contract. They cannot take both legal rights and provisions. The legal rights of the surviving spouse and children may be discharged in terms of an ante-nuptial marriage contract. Whatever the terms of the will may be, the surviving spouse and children are entitled to their legal rights if they prefer these to the provisions under the will, and, if there are pupil or minor children, it may be necessary to provide for a claim being made at their instance, if such has not been discharged by marriage contract. The beneficiaries should be advised as to questions regarding their legal rights by a solicitor who is not acting for the executors.

The legal rights are now detailed :—

I. *Husband's rights* :—Husband's
Legal Rights(1) *If wife intestate and no issue, the first £500 of the estate* :—

Under the Intestate Husband's Estate Acts, 1911 and 1919 (as now extended by 3 and 4 Geo. VI, c. 42, sec. 5) the surviving husband of any woman dying intestate after 17th July, 1940, leaving no lawful children or remoter issue surviving, is entitled, in a case of total intestacy, to the whole estate, if not over £500, or, if it is over £500, to the first £500 of the estate. This is met

rateably out of heritable and moveable estate, that is, each contributes in proportion to the respective totals. The husband's legal rights are calculated only after this has been met. In the case of partial intestacy the same rule applies with certain modifications to the part of the estate that has fallen into intestacy. Notwithstanding the Legitimacy Act, 1926, an illegitimate child is not lawful issue in the above sense. (*Osman v. Campbell*, 1946 S.C. 204.)

(2) *Jus Relicti*—

Half of the wife's moveable estate vests in the surviving husband on her death if there are no surviving children. If there are surviving children the *jus relictii* is one-third of the moveable estate, unless they have all discharged legitim, when it is one-half.

(3) *Courtesy*—

The surviving husband is vested in the liferent of the whole heritable estate owned by his wife, provided a child had been born of the marriage who was the mother's heir for however short a time.

Examples

- (1) Assume death of a woman leaving a valid will and owning heritable estate £1000 and moveable estate £1500, and survived by her husband and one child. The husband is entitled to one-third of the moveables as *jus relictii* = £500.

He may also claim the liferent of the whole heritage as courtesy.

The child's rights, as explained below, are one-third of the moveables as legitim = £500.

- (2) In similar circumstances except that the child had discharged legitim, the husband is entitled to one-half of the moveables instead of one-third = £750.

The right to courtesy remains as before.

- (3) If there was no child born of the marriage the husband would not be entitled to courtesy.
- (4) If the wife had a surviving son by a former marriage this child would be the mother's heir, and any child of the second marriage would not be the mother's heir, so no claim to courtesy is then available.
- (5) If a widow with one or more daughters remarries and has a son, the second husband is entitled to courtesy.
- (6) If the wife died totally intestate, and no lawful children or remoter issue survived her, the husband is first entitled to £500 (see par. (1) above) provided to the extent of £200 from heritage and £300 from moveables. *Jus relictii* is one-half of the remaining moveables of £1200 = £600. The husband may also be entitled to liferent the whole remaining heritage of £800 if there had been a child born of the marriage who was the mother's heir.

II. *Wife's rights* :—

- (1)
- If husband intestate and no issue survive, the first £500 of the estate—*

In terms of the Acts above referred to, if the estate of an intestate deceased husband is not over £500 the whole estate vests in the surviving wife, and if it is over £500 the first £500 vests in her, provided there are no lawful children or remoter issue surviving. This must be met rateably out of heritable and moveable estate, and the wife's other legal rights are calculated on the balance. These provisions originally applied only in cases of total intestacy, but, in relation to deaths after 17th July, 1940, they apply as in the case of the husband's rights to partial intestacy as well (3 and 4 Geo. VI, c. 42, sec. 5).

- (2)
- Jus relictæ*
-

Half of the husband's moveable estate vests in the surviving wife on his death if there are no surviving children. If there are surviving children the *jus relictæ* is one-third of the moveable estate unless they have all discharged legitime, when it is one-half.

- (3)
- Terce*
-

The surviving wife is vested in the liferent of one-third of the deceased husband's heritable estate, but the mansion house, superiorities, feuduties, and minerals are excluded. (*Constable's Trustees v. Constable*, 1904, 6 F. 826.) If *terce* is payable out of lands already subject to a prior *terce*, the second *terce* is known as lesser *terce*, calculated as one-third of the remaining two-thirds. On the death of the first *tercer* the second *terce* becomes a full *terce*.

Examples

- (1) Assume the death intestate of a man survived by his wife and no children, and whose estate, wholly moveable, amounted to £1200.

The wife is entitled to the first £500 under the Intestate Husband's Estate Act, also *jus relictæ* amounting to one-half of the remaining £700 = £350.

- (2) Assume the estate had consisted of £1800 heritage and £600 moveables, but other facts as above.

The wife is entitled to the first £500 whereof £375 is chargeable against heritage and £125 against moveables—being taken in proportion from each fund. *Jus relictæ* is then one-half of the remaining £475 moveables = £237, 10s. In addition she is entitled to *terce*, being the liferent of one-third of the remaining heritage. Discharge of the widow's *terce* can now be required under a statutory scheme of redemption (see Conveyancing Act, 1924, sec. 21, and Conveyancing (Amendment) Act, 1938, sec. 5). In practice, if the anticipated free annual income of the heritable property was £90 (after payment of the above sum of £375) the widow's share of £30 could be capitalised according to annuity tables, and if at her age £400 would purchase a life annuity of £30 a settlement could be made by paying her that amount. The

value of the liferent of the heritage for calculating terce is worked out thus :—

Gross rents receivable per annum	£300 0 0	
Less—(1) Net amount of annual feuduty payable, after deducting income tax at standard rate	£10 0 0	
(2) Owner's rates (say) 6s. per £1 on rental	90 0 0	
(3) Land tax	2 0 0	
(4) Income tax schedule A (at standard rate on net annual value)	70 0 0	
(5) Net amount of annual stipend payable, after deducting income tax at standard rate	4 0 0	
(6) Fire insurance*premium	6 0 0	
(7) Factorage and management	15 0 0	
	197 0 0	
Free annual income	£103 0 0	
Terce—one-third thereof	£34 6 8	

(3) Assume the death of a man owning estate of £1200, wholly moveable, and survived by his wife and one child.

The wife is entitled to *jus relictæ* amounting to one-third of £1200 = £400. The child's rights are, as explained below, one-third of £1200 as legitim = £400.

(4) In similar circumstances, except that the child has either predeceased or discharged legitim, *jus relictæ* is one-half of £1200 = £600.

III. *Children's rights (not restricted to minors) :—*

Children's
Legal Rights

Legitim—

Half of the deceased parent's moveable estate vests in the surviving children on the death of either father or mother if the other parent has predeceased. If the other parent survives the right is to one-third of the moveable estate unless *jus relictæ* or *jus relicti* has been discharged by the survivor, when it is one-half. The children of children who have predeceased do not share in legitim, and the heir-in-heritage has no claim unless he collates (see below).

Examples

(1) Assume death of a man leaving a surviving wife and two children and whose moveable estate amounted to £1200. The wife is entitled to one-third = £400 as *jus relictæ* and

the children to one-third = £400 as legitim. This legitim fund is divisible equally between the children, each receiving £200.

- (2) In similar circumstances except that the wife has either discharged her *jus relictæ* or has predeceased, the legitim fund is one-half = £600 and each child receives £300.
- (3) If there is also another child who has discharged legitim, the division is unaffected.
- (4) If there had been another child who had predeceased leaving a family—grandchildren of deceased—they would have no legal rights, and the division is unaffected.
- (5) If the estate was wholly heritable instead of moveable the children would have no legal rights.

COLLATION

Collation of
Advances

The collation of advances made by the father to his children is known as *Collatio inter Liberos*. (Collation of heritage by the heir is called *Collatio inter Haeredes* and this is dealt with under Intestate Succession, page 35.) A child claiming legitim must collate advances received from the parent in his lifetime unless the advances are exempt from collation. The following are the principal exemptions:—

- (1) Advances from heritage.
- (2) Cost of education.
- (3) Alimentary payments and recompense for services.
- (4) Sums expressed to be in addition to legitim.
- (5) Loans repayable to the executors and so forming part of the estate.
- (6) Casual gifts of small amounts.

No difference arises in the division of the estate except as between the children, and the fund available for legitim plus advances to be collated is divisible equally among them.

In calculating the share of the child collating there is set off the sum advanced and only the net amount is payable to him.

Example

Assume advances had been made by deceased to his youngest son amounting to £300. The estate divisible amounted to £3900 (all moveable) and deceased was survived by his wife and three sons. If the youngest son wishes to claim legitim he must collate thus:—

Legitim Fund one-third of £3900	.	.	£1300	0	0
Add Advances to be collated	.	.	300	0	0
Adjusted Legitim Fund	.	.	£1600	0	0
One-third whereof to each son	.	.	£533	6	8
Less Youngest son's advances	.	.	300	0	0
Net sum due to youngest son	.	.	£233	6	8

The total is divisible thus :—

Wife— <i>jus relictæ</i> —one-third of moveables (unaffected by collation)	£1300 0 0 ^r
Eldest son—one-third of adjusted legitim fund	533 6 8
Second son—one-third of adjusted legitim fund	533 6 8
Youngest son—one-third of adjusted legitim fund, less advances	233 6 8
	<hr/>
	£2600 0 0
Dead's part, divisible in terms of Will	1300 0 0
	<hr/>
	<u>£3900 0 0</u>

INTESTATE SUCCESSION

After the legal rights have been satisfied, the remainder of the estate is known as the dead's part, which may be divided in any way instructed by the testator in his will. If no valid distribution of any part of this has been made, such part falls into intestacy, that is either if no will has been made or the will does not dispose of the whole estate. Intestacy

The estate is vested in the next of kin immediately on the death of the intestate. Moveable estate passes to the executors for distribution but heritage passes direct to the heir-in-heritage unless conveyed to the trustees in the trust disposition. If no relatives claim the estate the Crown inherits as *Ultimus Haeres*.

INTESTATE HERITABLE SUCCESSION

This is extremely complicated and only an outline can be given here. As a general rule heritage all passes without division to the nearest male heir, but if the nearest relatives are females all the females equally nearly related to deceased inherit in equal portions. They are known as *Heirs-Portioners*. (Further particulars as to their heirs' rights are given later, page 37.) There is no division even in such circumstances of certain classes of heritage (for example, where the heritage consists of a right of superiority); these fall to the eldest heir-portioner. The lineal descendant of a deceased heir takes his place as heir, and this is known as *representation*. Succession descends to sons and daughters and their heirs in preference to passing to collaterals, *i.e.* brothers and sisters. The rule of *primogeniture* applies, and this means that the elder excludes the younger, except when the succession falls to collaterals, in which case it descends first to the younger members and their heirs in descending order, but if there are none it then ascends first to the next elder brother of deceased and his heirs, then to the next again, and so on. Rules of Intestate Heritable Succession

Males are preferred to females of the same degree of relationship, and there is no succession by the mother or her representatives.

Collation of heritage by the heir is known as *Collatio inter Haeredes* (normally arising in intestate succession). This is explained in Glog & Henderson's "Introduction to the Law of Scotland", 4th edition, pages 509 and 510, thus:— Collation

“The heir must collate not merely what he takes by intestate succession, but also whatever he may have received by gift or by deed, whether *inter vivos* or testamentary, provided he would otherwise have succeeded to it as heir.”

“The rule of collation applies also where a testator invokes the law of intestate succession for the purpose of identifying a legatee.”

The effect of collation of the heritage is to add it to the general estate for division along with the moveables among the same beneficiaries. *Jus relicti* and *jus relictae* are not affected by collation.

Example

Assume the death intestate of a man who owned heritage £300 and moveables £6300, and leaving three sons surviving him. The eldest son is the heir-in-heritage who has no claim to legitim or dead's part unless he collates, so he is *prima facie* entitled only to heritage £300. The two others may then each claim one-half of the moveables as successors to both legitim and dead's part.

If the heir decides to collate the heritage, which is clearly to his advantage in this case, the whole estate is divisible equally among the three sons, and each receives £2200.

There is a further type of collation in terms of the Intestate Moveable Succession (Scotland) Act, 1855, sec. 2, arising where an heir-in-heritage (being a descendant of the intestate or of his brothers and sisters) has predeceased the intestate. On the heritage passing to that heir's child he is entitled to collate the heritage, and, if he does not collate, his brothers and sisters and their descendants may do so. In the case of *Innes v. Coghill* (1897, 25 R. 23) it was held that where the heir-in-heritage is the issue of a predeceasing heir and has brothers and/or sisters, the effect of collation is that he is entitled to (1) the value of the heritage, and also (2) an equal share with his brothers and sisters in the excess of the collated estate over the value of the heritage.

Examples

I. X died intestate, leaving heritage £60 and moveables £900 (total £960), having no children, but survived by two elder brothers S and T, and two nephews A and B both sons of a predeceasing younger brother Z. A being the elder son of a younger brother is the heir-in-heritage, and the moveables *prima facie* fall to S, T, and B equally = £300 to each. A, however, decides to collate, taking the heritage £60 and also £130 being one-half of the share of moveables falling to Z's family, and B taking the remaining £130 of this share—A and B together being entitled to £320. S and T each take one-third of the whole estate of £960 = £320, according to the rules of intestate moveable succession.

II. Assume the facts as above, except that Z's family consisted of eight children instead of two. Collation by A has the following effect :—

A receives heritage	£60 0 0
Do. one-eighth of £260 moveables	32 10 0
	£92 10 0
A's seven brothers and sisters, each £32, 10s.	227 10 0
	£320 0 0
Total falling to Z's family	£320 0 0
S—one-third of total estate	320 0 0
T— do. do.	320 0 0
	£960 0 0

The following list gives the heirs in order of preference. The numbers correspond with the diagram appended, but those heirs who are not numbered are not shown on the diagram to avoid unnecessary complications :—

Note.—Those marked * are heirs-portioners.

I. *Descendants* :—

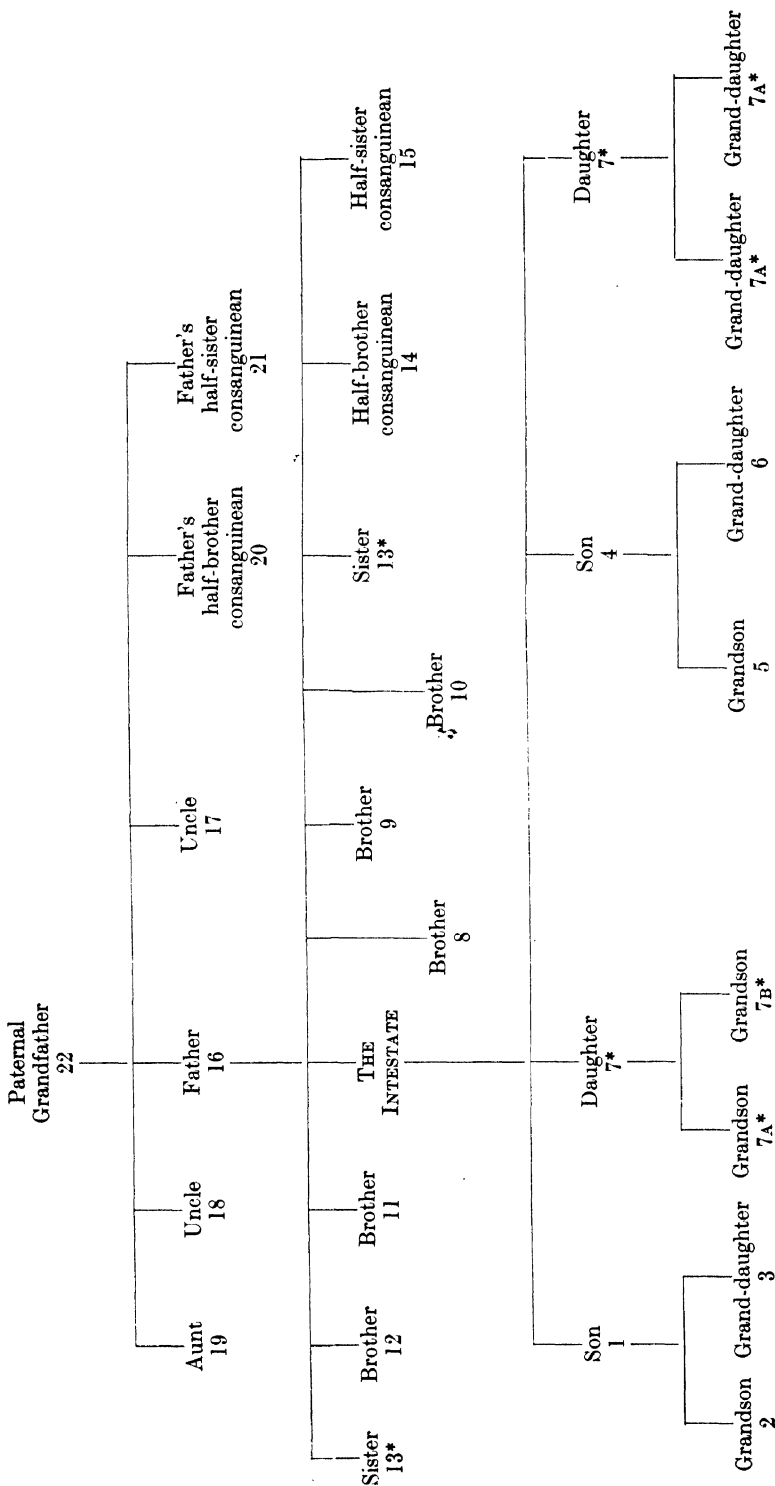
1. Eldest son.
2. *Grandson* by eldest son.
Then Eldest surviving *great-grandson* by him.
Younger *grandson* by same son.
Eldest surviving *great-grandson* by him, followed by younger grandsons and their representatives in the same way.
- *3. Equally among *grand-daughters* by eldest son and their representatives (see No. 7 for explanation of representatives).
4. Younger son.
5. *Grandson* by younger son.
Then his descendants as under 2.
- *6. Equally among *grand-daughters* by younger son and their representatives (see No. 7).
- *7. }
*7A. } *Daughters as heir-portioners and their representatives* :—
*7B. }

The division is made equally among surviving daughters and the descendants of any daughters who had predeceased, according to the following rules :—

- (a) If a daughter has predeceased leaving as surviving issue one or more grandsons of the intestate, the eldest grandson is her representative and takes her share. If there are also grand-daughters they do not share.
- (b) If a daughter has predeceased leaving as surviving issue one or more grand-daughters of the intestate and no grandsons, all the grand-daughters are her representatives (as heirs-portioners of an heir-portioner) and divide her share among them.

Note.—In the example on diagram there are two grandsons by the elder daughter (numbered 7A and 7B respectively). The elder grandson (7A) takes the share his mother would have

INTESTATE HERITABLE SUCCESSION
Order of Priority



Notes (1) * = Heirs-portioners.
(2) Representation applies throughout, i.e. the heirs of any of the above take their place if predeceased.

received, and failing his survival the other grandson (7B) takes this share.

There are two grand-daughters by the younger daughter (both numbered (7A)) who divide equally the share their mother would have received.

II. Collaterals :—

8. Younger brother (then his heirs).
9. do. do.
10. do. do.
11. Elder brother do.
12. Eldest brother do.

Note.—The younger brothers are in order of seniority but the elder brothers are in the reverse order.

- *13. Equally among sisters and their representatives.
14. Half-brother by same father (then his heirs, then other half-brothers).
- *15. Equally among half-sisters by same father (and their representatives).

III. Ascendants :—

16. Father.
17. Father's younger brother (then his heirs).
18. Father's elder brother (then his heirs).
- *19. Equally among father's sisters (and their representatives).
20. Father's half-brother by same father (then his heirs).
- *21. Equally among father's half-sisters by same father (and their representatives).
22. Father's father (then his collaterals, etc., as for father above).

INTESTATE MOVEABLE SUCCESSION

Moveables pass on intestacy to those persons who are the nearest relatives of deceased, and the funds are divisible among them. In terms of the Intestate Moveable Succession (Scotland) Act, 1855, lineal descendants of a deceased relative take his place (by representation) if that relative was (1) a descendant, or (2) a brother or sister, or (3) a descendant of a brother or sister of the intestate. Such representation cannot be claimed by cousins if the estate is divisible among uncles and aunts of deceased, some of whom have predeceased the intestate leaving issue.

Rules of
Intestate
Moveable
Succession

There is no rule of primogeniture or preference of males as in intestate heritable succession. Maternal relatives have no claims.

Where children of predeceasing relatives are entitled by representation to share in the succession along with brothers and sisters of these persons, the basis of division is "*per stirpes*" (by stems, *i.e.* by family), that is, the share which would have been taken by the person predeceasing is divided among his children. On the other hand, where the division is among persons of the same class, *i.e.* all grandchildren, the basis is "*per capita*" (by heads)—that is, equally among all participants.

Per Stirpes
and
Per Capita

Examples

- (1) Assume the death of an intestate person with moveable estate of £2400 after settlement of legal rights, leaving two sons

surviving and with one son who had predeceased leaving two children—grandchildren of the intestate. The dead's part is primarily divided into three equal parts and one of these parts is subdivided into two equal parts for the grandchildren, thus :—

Surviving son A—one-third		£800
do. B do.		800
Family of C—(<i>Per Stirpes</i> basis) :		
Grandchild D—one-half of one-third	£400	
do. E do.	400	
	—	800
		<u>£2400</u>

- (2) Assume the death of an intestate person with moveable estate of £3600, all of whose sons had predeceased him, but who had four grandchildren surviving him, three being sons of A and one son of B. C left no sons. There are no claims for legitim, as no children survive. The estate is divisible on the "*per capita*" basis, thus :—

Grandchild D (son of A) one-quarter		£900
do. E do. do.		900
do. F do. do.		900
do. G (son of B) do.		900
		<u>£3600</u>

Step-Brothers
and -Sisters

Brothers and sisters by the same father but a different mother are known as half blood brothers and sisters consanguinean. If they had the same mother but a different father they are half blood brothers and sisters uterine. Half blood relatives are always postponed to those of full blood of the same line.

The following rules are provided by the Intestate Moveable Succession Acts, 1855 and 1919.

Special Rules
of Intestate
Moveable
Succession

- (1) If the intestate is survived by his father, and brothers and sisters of full blood or their descendants, but left no issue, the father is entitled to one-half.

Note.—If there are no surviving brothers and sisters nor descendants, the father is entitled to the whole estate by common law.

- (2) Where an intestate leaves no issue and his father has predeceased him, the mother has the same rights as the father would have had.
- (3) On the death of an intestate (without issue) whose father, mother, brothers and sisters of full blood or consanguinean (and their descendants) have all predeceased him, the brothers and sisters uterine and their descendants are entitled to one-half of the estate.

Priority of
Heirs

The diagram on page 42 shows the basis of division of the dead's part *after payment of legal rights*.

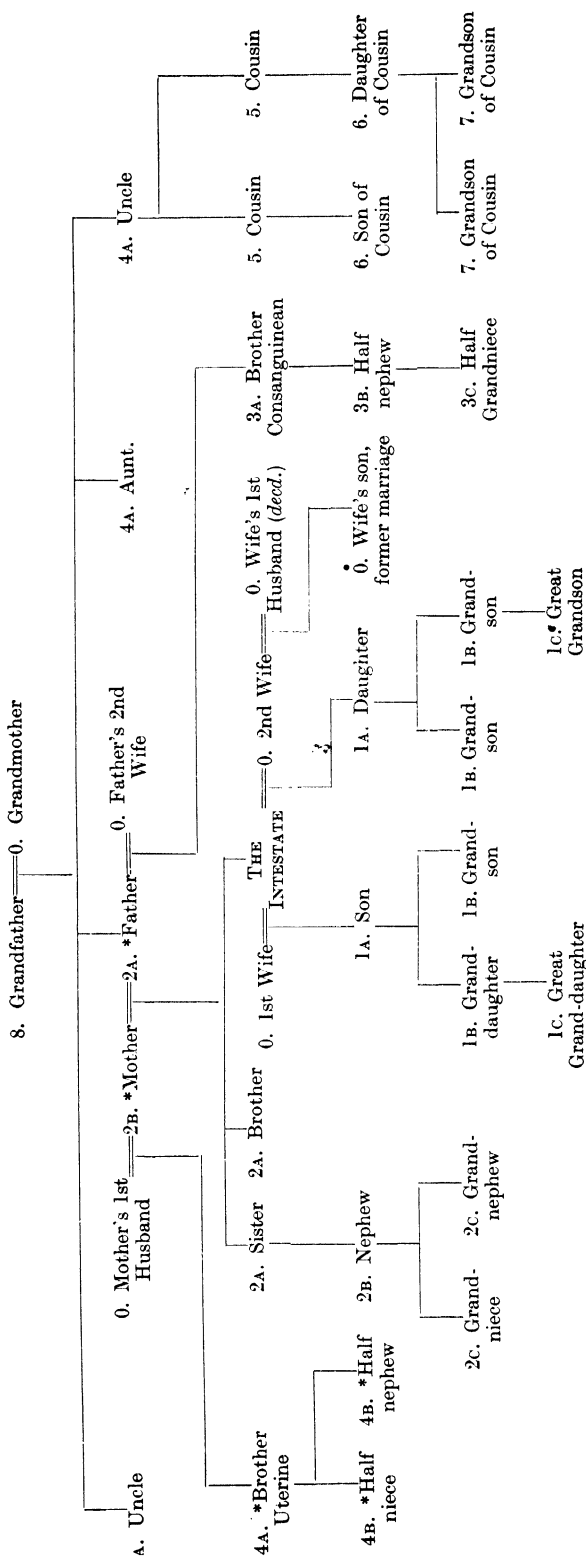
The following explanations should be read with reference to the diagram :—

- (1) *The order of priority* of classes is 1A, 1B, 1C, 2A, 2B, 2C, etc.
- (2) *Division of Estate in ordinary circumstances* :
 - (a) All surviving members of the same class take equal shares except where marked * (2A, 2B, 4A and 4B), described below.
 - (b) If some members of an A class predeceased the intestate leaving issue, their shares fall to such issue (B class) and are divisible *per stirpes*—i.e., the children dividing equally the share their parents would have received.
 - (c) If all members of an A class predeceased the intestate, the members of the B class divide the estate *per capita*, i.e. equally among all members of the class.
 - (d) Similar rules apply between B and C classes, etc.
- (3) *Special rules re father and mother* (2A and 2B) :
 - (a) The father takes one-half share if any other members (except mother) of second class (2A, 2B, or 2C) survive the intestate and the other half falls to them. If the father but no others except mother survive, he takes the whole.
 - (b) *The mother has the same rights as the father if he has predeceased, but none otherwise.*
 - (c) Others of second class share the balance in the usual way.
- (4) *Special rules re step-brothers and -sisters* (4A and 4B) :

The uncles and aunts (4A) are entitled to one-half share divisible equally among them unless no brothers and sisters uterine or their descendants survive (4A and 4B), when they take the whole. The brothers and sisters uterine and their descendants share the balance in the usual way.
- (5) *On death of a woman* the rights of her relatives and family are identical with those shown on diagram, which refers to a male intestate.
- (6) No representation is admitted by descendants of deceased uncles and aunts. Thus a cousin gets nothing unless all the uncles and aunts are dead, when he shares equally with all others of the same class.

INTESTATE MOVEABLE SUCCESSION—(DEAD'S PART)

Order of Priority on Death of a Male Intestate



Notes.—Order of priority 1A, 1B, 1c, 2A, etc.
 0=No claim.

CHAPTER VI
INCOME TAX

ON the death of any person his executors become liable to pay his income tax and sur-tax for the period to date of death, and similarly they may make any claims which he could have made had he survived. Assessments on heritable property under schedules A and B for the year of death should be apportioned between the deceased and his executors in proportion to the number of days applicable to each. Assessments on deceased under schedules D and E for the year of death must be adjusted to the actual income of the period prior to death, and the previous year's assessments may also require to be adjusted. Untaxed income receivable by the executors is assessable separately as a "new source" of income, without reference to sums received by the deceased. (F.A., 1926, secs. 29-31; F.A., 1927, secs. 23 and 45; and F.A., 1930, sec. 15.)

Tax Prior to
Date of Death

Where the deceased was domiciled in Scotland or Northern Ireland and had incurred penalties under the Income Tax Acts, the executors are not liable for any unpaid penalties which therefore must be cancelled. Where the deceased was domiciled in England, any penalties which are capable of being sued for in the High Court are recoverable from the funds held by the executors. (Law Reform (Miscellaneous Provisions) Act, 1934, sec. 1 (1); and Attorney General *v.* Canter, 22 T.C. 422.)

In connection with the adjustment of the income tax of the deceased the following points should be noted :—

- (1) As regards dividends, etc., only sums *received* are included in his statutory income for period to date of death. (See Commissioners of Inland Revenue *v.* Henderson, 10 A.T.C. 292; 1931 S.C. 681; Wood *v.* Owen, 23 T.C. 541; and Bryan *v.* Cassin, 24 T.C. 468.)
- (2) Personal allowances are available as follows :—
 - (a) *On death of a married woman* the husband includes her income to date of death in his statutory income and he is entitled to full married allowances for the fiscal year of death. He is not allowed a housekeeper allowance as a widower for the same year.
 - (b) *On death of a married man* the combined income of husband and wife up to that date is taken as his statutory income for the fiscal year of death, against which full married allowances are granted. The wife claims full allowances (not restricted by the short period) as a single person against her income from date of his death until the following 5th April.
 - (c) *On death of a single person* full allowances for fiscal year of death are granted against statutory income from the previous 5th April until death.

**Tax on Trust
Income**

Executors and trustees must make returns of the income received by them, and they are liable to pay tax on all untaxed items. Apart from certain small exceptions, foreign income is assessable even if not remitted to the United Kingdom. (See page 50 as to sur-tax chargeable on minor beneficiaries.)

**Rent-Free
Houses**

As regards any beneficiary of a trust who is provided with a rent-free residence under the will, such beneficiary's income is computed for income tax and sur-tax purposes by including the net schedule A assessment of the house, under deduction of the feuduty, ground-annual, minister's stipend, etc. Further, if the will provides that the trustees are to pay all expenses of keeping up the property, the beneficiary is assessable to sur-tax in respect of the gross equivalent of the sums expended. (*Lady Miller v. Commissioners of Inland Revenue*, 1930, 15 T.C. 25 ; 1930 S.C. (H.L.) 49.)

Claims

Trustees cannot claim personal allowances but they are entitled to make claims for repayment or relief from tax payable, on the following grounds :—

(1) *Businesses*—

If trustees carry on a business either alone or in partnership, claims may arise for relief in respect of adjustments of tax on commencement or cessation of trading, or changes in partnership. Wear and tear and initial and balancing allowances for plant are also given (I.T. Act, 1918, sch. D, cases I and II, rule 6 ; F.A., 1925, sec. 16 ; F.A., 1926, secs. 29-32 ; F.A., 1927, sec. 23 ; F.A., 1930, secs. 15-16 ; and I.T. Act, 1945, secs. 15, 16, 17, 20 and 23). If a business is carried on by trustees, no earned income allowances are granted under present practice except (1) on the salaries paid to trustees or beneficiaries, or (2) on a share of profits earned by any beneficiary who is also a trustee and is actively engaged in the business (see *Inland Revenue v. Shiels's Trustees*, 1915 S.C. 159).

(2) *Trading Losses*—

Tax on losses in trade (including farming) may be recovered against other trust income, or the losses may be carried forward (I.T. Act, 1918, sec. 34 ; F.A. 1926, sec. 33 ; and F. (No. 2) A. 1945, sec. 22).

(3) *Farms and Woodlands*—

Prior to 5th April 1949, where the total assessed rent of the farm lands was not in excess of £100 during the relevant period, the sch. B assessment was charged on three times the assessed rent (except for limited companies which were assessed on sch. D basis), but a claim could be made for adjustment of the assessment to the actual profits. (I.T. Act, 1918, sch. B, rule 6 : F.A. 1941, secs. 10 and 11 ; and F.A. 1942, sec. 28.) After 5th April 1949, all farms are assessable on the profits under sch. D, and the above claim will not be admissible for 1949/50 and subsequent years. (F.A. 1948, sec. 31.) Woodlands are normally charged on one-third of the annual value under sch. B, but there is an option to be assessed under sch. D where operated on a commercial basis (I.T. Act, 1918, sch. B, rule 7 ; F.A. 1942, sec. 28 ; and F.A. 1948, sec. 31).

(4) *Heritable Property Alterations and Maintenance—*

Where the average cost of repairs, insurance and management exceeds the statutory repairs allowance, a claim may be made under I.T. Act, 1918, sch. A, V., rule 8, for relief on the excess up to the amount assessed under sch. A. The Income Tax Act, 1945, sec. 32, provides also for further relief for such excess expenditure (duly apportioned in the case of a mixed estate) to be given against other income of the owner of an estate which consists of (or includes) agricultural land. In terms of the Income Tax Act, 1945, sec. 33, the owner or tenant of agricultural or forestry land who incurs expenditure on the construction of buildings, fences, etc., is entitled to relief in respect of such sums. Where expenditure has been incurred on the construction of an industrial building, relief is provided by Income Tax Act, 1945, secs. 1-3.

(5) *Empty Property—*

Tax may be recovered in respect of unoccupied houses under I.T. Act, 1918, sch. A, VII, rule 4, and F.A. 1930, sec. 21.

(6) *Bank Interest—*

If interest is paid on bank overdrafts without deduction of tax a claim may be made for recovery of tax on this sum (I.T. Act, 1918, sec. 36).

(7) *Changes in Holdings of Investments—*

Where investments are held on which untaxed income is received, the assessments are normally on preceding year's basis but adjustments may be made when there are sales and purchases (F.A. 1922, sec. 17, and F.A. 1926, sec. 30).

(8) *Non-resident Beneficiaries—*

If the beneficiaries are resident abroad, the trustees should claim such exemption from tax on trust income from British government securities issued in terms of the Income Tax Act, 1918, sec. 46, or from foreign investments (see rules applicable to cases IV and V) as would apply if the beneficiaries were themselves assessed. If, for example, one-half of the trust income belongs to a non-resident, claims will be admitted for repayment of tax paid on his half share of the trust income from securities which would be exempt if held in his own name.

(9) *Charities—*

Exemptions are conferred on charities (including religious, benevolent or educational societies) if they are of a permanent nature and bound by irrevocable deeds of trust. (See I.T. Act, 1918, sch. A, VI and sec. 37; F.A., 1921, sec. 30; and F.A., 1927, sec. 24.)

Difficulties frequently arise in connection with free of tax annuities. As a general rule an agreement to pay an annual sum free of tax is void, but this does not apply to annuities under wills (*Pratt v. Gamble*, 1917, 117 L.T. 545; see also *Kinloch's Trustees v. Kinloch*, 1880, 7 R. 596). If sur-tax is also to be paid by the trustees it should be specifically mentioned.

Free of Tax
Annuities

Where there is a direction in the will to pay an annuity without deduction of tax, there may be a claim available to the trustees against the annuitant for recovery of the proportion of his personal income

tax allowances applicable to the annuity. The decisions are not all easy to reconcile, and the question will turn on the precise terms of the provisions to be construed. The following cases on the subject should be referred to :—

In re Pettit, 1922, 2 Ch. 765.

In re Jones, 1933 Ch. 842 ; 12 A.T.C. 595.

In re Kingcome, 1936 Ch. 566.

In re Maclellan, 1939 Ch. 750 ; 18 A.T.C. 123.

In re Eves, 1939 Ch. 969 ; 18 A.T.C. 401.

Fitzgerald v. Commissioners of Inland Revenue, 1944 K.B. 668 ; 26 T.C. 126.

In re Tatham, 1945 Ch. 34 ; 23 A.T.C. 283.

In re Williams, 1945 Ch. 320 ; 24 A.T.C. 199.

In re Bates, 1946, 1 Ch. 83 ; 24 A.T.C. 300.

Cook, 26 T.C. 489 ; 1945 S.C. (H.L.) 52.

See also the following other Scottish cases :—

Richmond's Trustees, 1935 S.C. 585.

Milne's Trustees, 1936 S.C. 706.

Rowan's Trustees, 1940 S.C. 30.

In terms of F.A. 1941, secs. 25, 26 and 27 ; F. (No. 2) A. 1945, sec. 20 ; and the decision in *Berkeley v. Berkeley*, 1946 A.C. 555, 25 A.T.C. 209, the amounts of tax-free annuities bequeathed by a testator who died before 3rd September, 1939, are reduced in accordance with this formula, so long as the standard rate of income tax exceeds 5s. 6d. per £1 :—

A = Free-of-tax annuity originally provided.

Q = 29, minus the excess of the standard rate of tax compared with 5s. 6d. per £1, stated in multiples of 6d.

$$\text{Amount of adjusted annuity} = \frac{AQ}{29}$$

For example, if the standard rate of tax is 9s. per £1, $Q = 29 - 7 = 22$, because 9s. exceeds 5s. 6d. by 3s. 6d. (7 times 6d.). The sum payable in respect of an annuity of £58 free of tax is therefore $\frac{£58 \times 22}{29} = £44$.

Where an annuity is free of both income tax and sur-tax, and the testator died before 3rd September 1939, the trustees' share of the annuitant's sur-tax is computed by applying the above formula to the amount which would have been payable if the rates of sur-tax for 1937/38 had remained effective. For example, if the sum assessable to sur-tax 1946/47 in respect of a tax-free annuity (including tax thereon) was £6000, and the annuitant had other income of £2000, the total sur-tax on £8000 would be (1946/47 rates) £1437, 10s. The sur-tax on £8000 at 1937/38 rates would have been £969, 7s. 6d. The trustees' proportion of sur-tax 1946/47 is restricted to $\frac{22}{29} \times \frac{6000}{8000} \times £969, 7s. 6d. = £551, 10s. 10d.$

The statutory income of a trust must be ascertained annually because it is this sum which is allocated among the beneficiaries in the proportions directed in the will, for their personal income tax purposes. The actual payments to them may generally be ignored, but see pages 49, 50.

At present the Inland Revenue authorities prefer to adopt the year to 5th April for this purpose, but in certain circumstances where this is inconvenient and there are many investments it is permissible to adopt the date when the trust accounts close. The factor should issue to the beneficiaries annual certificates, on appropriate forms, showing their shares of the trust income (or amounts of annuities) and income tax deducted.

In ordinary circumstances the statutory income of a trust consists of (1) dividends receivable during the year, plus (2) the sums assessed under all schedules for the year in question, after deduction of relief in respect of business losses, cessation of trade, wear and tear, maintenance of heritable property, unoccupied houses, bank interest paid, or sales of investments producing untaxed income (see page 44). Annual charges, *e.g.*, feuduties, interest, annuities, etc., payable during the year, and management expenses, are deducted. Sums receivable or payable on account of bond-interest, feuduties, or ground-annuals, at Whitsunday term, are deemed to be applicable to the previous fiscal year.

Two cases have been decided as to expenses of management incurred under the testator's directions—*Murray v. Commissioners of Inland Revenue* (1926 S.L.T. 714; 11 T.C. 133) and *Macfarlane v. Commissioners of Inland Revenue* (1929 S.C. 453; 14 T.C. 532). The practical effect of these judgments is that only the net sum remaining after payment of the proportion of expenses chargeable to income (excluding factoring heritable property) is available for the beneficiaries, and under present practice the gross equivalent of the expenses is deducted. Thus expenses £11 are equivalent to £20 when tax is at 9s., and to £22 when tax is at 10s. The expenses are allocated to the fiscal year in which they are incurred, and grossed up at the standard rate of tax which is then applicable.

If the annual charges exceed the available income, tax is payable to the Inland Revenue on the excess at the standard rate (I.T. Act, 1918, general rule 21). Difficult questions of law may arise where supplementary payments to the liferenters are authorised to be made from capital in addition to the payments from trust income (see *Trustees of H. K. Brodie v. Commissioners of Inland Revenue*, 1933, 17 T.C. 432; and *Morant Settlement (Trustees) v. Commissioners of Inland Revenue*, 1948, 1 All E.R. 732; 30 T.C. 147). Where part of an annuity is paid out of capital, or where trustees make up a payment to an income beneficiary out of capital (whether by express direction or in the exercise of a discretion) those making the payment may be assessed in respect of the tax thereon. (See *Lindus & Hortin v. Commissioners of Inland Revenue*, 1933, 17 T.C. 442; *Williamson v. Ough*, 1936 A.C. 384; 20 T.C. 194; *Cunard's Trustees v. Commissioners of Inland Revenue*, and *McPheeters v. Commissioners of Inland Revenue*, 1946, 1 All E.R. 159; 27 T.C. 122.)

An example of a trust income statement as required for Inland Revenue Form R. 59 follows (rate of tax assumed to be 9s.):—

A. (1) *Sources of Income*—

	Gross.	Tax.
o Schedule A. assessment on Black-acre	£80 0 0	£36 0 0
do. D. assessment on War Loan interest	20 0 0	9 0 0
£400 4% Funding Loan	16 0 0	7 4 0
(2) <i>Charges</i> —	£116 0 0	£52 4 0
Annuity to Miss J. Jones	16 0 0	7 4 0
	£100 0 0	£45 0 0
	£100 0 0	£45 0 0

B. *Allocation of Income to Specific Purposes* nil.

Note.—This refers, for example, to sums set aside for repayment of bonds and not available for beneficiaries.

C. *Expenses Incurred by Trustees*—

Solicitors' fees <i>re</i> Income	£8 10 0
Audit fee—proportion	2 10 0
	£11 0 0
	£11 0 0

D. *Summary*—

Total amount of income less charges p. Section A	£100 0 0
<i>Less</i> Income Tax on above	
less charges p. Section A	£45 0 0
Income allocated p. Section B	<i>nil</i>
Expenses p. Section C	11 0 0
	56 0 0
Net Income	£44 0 0

E. *Division of Income*—

	Fractional Share.	Share of Income.	Payments Made.
James Jones	$\frac{1}{2}$	£22	£20
William Jones	$\frac{1}{2}$	£22	£21

In the beneficiaries' certificates of income (used for vouching their claims) the share of income of each is taken as £40 less tax £18, irrespective of the actual payments. (The payments to beneficiaries are taken into account if the trust is a discretionary trust, see page 49.) The effect of the above calculations may be more easily understood thus:—

	Gross.	Tax.
Income less charges	£100	£45
<i>Less</i> expenses—gross equivalent	20	9
Income available for beneficiaries	£80	£36
	£80	£36

For the whole period of administration of executry estates and of new testamentary trusts, in circumstances detailed in F.A. 1938, sec. 36 (1), rules for ascertaining the statutory income are contained in F.A. 1938, secs. 30-37. The main points are now given.

Pending the completion of the period of administration, the gross equivalents of payments made to the liferenters are regarded as being their income in the years of payment. Such sums are, however, to be adjusted at the end of the period of administration, when the aggregate sums paid to the liferenters (including the balances payable on completion of the administration) are then deemed to have accrued at a constant rate throughout the period. Thus, if the period of administration was 20 months from 5th July 1944 to 5th March 1946, and payments to a liferenter were £50 in 1944/45, while in 1945/6 it was ascertained that a further £150 was payable to him, the liferenter's adjusted gross income for the whole period is to be taken as £200 net = £400 gross, whereof 1944/45 - 9/20ths = £180, and 1945/46 - 11/20ths = £220. (The standard rate of tax was then 10s. per £1. Calculations should strictly be based on the number of days.)

Income of
Period of
Administration

Interest on estate duty is payable in full, without deduction of tax. Such interest cannot be set against, nor deducted from, untaxed income received by trustees, in connection with the income tax assessment of the latter (*Lord Inverclyde's Trustees v. Inland Revenue*, 1924 S.C. (H.L.) 103 ; 9 T.C. 14). Interest on estate duty is regarded as a charge on the statutory trust income—the gross equivalent being taken (*e.g.* when the standard rate is 9s., £11 paid is equivalent to £20 gross).

In liferented trusts where there are apportionments of income, there are exceptions to the usual basis of ascertaining the statutory income referred to above, thus :—

Apportionments

(a) *At Commencement of Liferent*—

As explained in a separate chapter (page 51) income which accrued prior to the date of death of the testator is apportioned to capital in the trust accounts. Under present practice such sums are also excluded from the statutory trust income available for beneficiaries for income tax purposes. These sums are not income of any person, and are neither available for repayment nor liable to sur-tax.

(b) *During the Liferent*—

Apportionments of dividends arising on sales and purchases of investments are ignored for income tax purposes because the Inland Revenue practice is based on English law which does not require such apportionments. On the death of an annuitant the amount of annuity accrued due since the last payment is not regarded as his income prior to death, and accordingly is excluded from the claim by his executor. This sum, however, must appear as a deduction from the statutory trust income.

(c) *At Cessation of Liferent*—

Under present practice, the dividends accrued on the death of a liferenter are excluded entirely from statutory income and are not available for any repayment. On the cessation of a liferent owing to the marriage of the liferentrix the accrued income is similarly excluded entirely from her income, and from the trust income, although it might well be argued that this is inequitable.

In trusts where payments to beneficiaries are at the trustees' discretion and the income is wholly or partly accumulated, the

Discretionary or
Contingent
Trusts

beneficiaries are said to have a contingent right to income. Such a right does not entitle them to treat the whole or fractions of the statutory income of the trust as their income, and instead only the gross equivalents of sums expended in each year may be taken. Claims for personal allowances may be made each year.

In trusts where accumulations of income are later payable to the beneficiary if he attains a specified age or marries, claims may be made each year during the period of accumulation, on the basis referred to in the preceding paragraph. In addition, on the vesting of the accumulations a claim may be made for any balance of personal allowances made available by treating accumulated income as if it had originally belonged absolutely to the beneficiary. This involves reopening each year's income tax claims for the whole period of accumulation (I.T. Act 1918, sec. 25, and F.A. 1923, sec. 30). Questions as to sur-tax assessments on minors are dealt with at the end of this chapter.

Inter Vivos
Trusts

For income tax purposes, certain *inter vivos* trusts are void and the income from such trusts is deemed to be the income of the original owner of the trust funds, known as the "grantor", or "settlor". (See F.A. 1922, sec. 20; F.A. 1936, sec. 21; F.A. 1938, secs. 38-41; and F.A. 1946, sec. 28.)

Post-war
Credits

Post-war credit certificates were issued for the years 1941/42 to 1945/46 inclusive, and payment of these falls due when the owner attains sixty-five years of age (if male) or sixty (if female). On the death of the owner of any post-war credits, his or her executors become the owners thereof, and they may assign these to any one or more of the beneficiaries (F.A. 1941, sec. 7; F.A. 1946, sec. 26; and F.A. 1947, sec. 16).

Special
Contribution

The Special Contribution was imposed on the 1947/8 investment income of individual taxpayers whose total income exceeded £2000 and aggregate investment income exceeded £250. Questions as to income from trust funds may involve considerable difficulty. The general rule is that, where part of the investment income arose from a trust, the corresponding proportion of the Special Contribution is payable out of the trust capital (F.A. 1948, secs. 47-68).

Parents' and
Guardians'
Duties

Incapacitated persons and children under twenty-one years of age are liable to income tax and sur-tax but entitled to the usual personal allowances. Their income tax returns and claims should normally be signed by a parent or guardian. Where a minor's total income exceeds £2000, he is assessable to sur-tax. (F.A. 1933, sec. 34; and see Earl of Longford, H.L. 1928, 13 T.C. 573; and Stern, H.L. 1930, 15 T.C. 148.) Where an incapax has a vested right to income from a trust, his proportion of the statutory income of the trust is computed for income tax purposes on the normal basis as shown on page 48.

Where a minor beneficiary has only a contingent right to income, his sur-tax liability on the trust income is calculated on the gross equivalent of sums expended each year on his behalf. Thus £110 expended is equivalent to £200 gross when the standard rate of tax is 9s. (Blackwell Minor's Trustee, 10 T.C. 235; Kidston 20 T.C. 603.) It may be noted that in the English case of Stanley (C.A. 1944, 26 T.C. 12) it was decided that sur-tax cannot be assessed on accumulated income which has vested in a minor, but the decision turned on the provisions of the Trustee Act 1925, which do not apply to Scotland.

CHAPTER VII
APPORTIONMENTS

I. INTRODUCTION

APPORTIONMENT is the division of receipts and payments among those legally sharing them. The Apportionment Act 1870 states that rents, annuities, dividends, and other periodical payments in the nature of income shall, like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly.

This act is interpreted differently in England and Scotland, as in England, as a general rule, it is unnecessary to make apportionments on sales and purchases of investments, while in Scotland these are always made on transfers of income-bearing investments. In any case it is essential that the basis should be consistent throughout the period of the existence of the trust. Cases deciding questions of apportionment were *Donaldson v. Donaldson's Trustees*, 1851, 14 D. 165; *Cameron's Factor*, 1873, 1 R. 21, and *McLeod's Trustees v. McLeod*, 1916 S.C. 604.

As a general rule apportionments are necessary when a trust is life-When requiredrented, and if annuities are payable which are declared to be restricted to the free income this constitutes a partial lifeferent and also involves apportionments. If specific instructions are given in the will all apportionments may be excluded.

Apportionments are required (1) at the beginning of a lifeferent, (2) on sales of property or investments during a lifeferent, (3) on purchases of property or investments during a lifeferent, and (4) at the end of a lifeferent. The object of apportionment is to find the true accrued income Object over the whole period of lifeferent ascertained primarily from the dividends, etc., received, but adjusting these by (1) excluding from income any sums receivable in respect of a period during which the investments were not held in lifeferent, and (2) conversely adding to income sums accrued but not received in that period.

The procedure in apportioning dividends may be summarised thus :— Dividends

- I. All dividends received are *prima facie* income, but adjusted as shown in the next two paragraphs.
- II. Deduct from income, and transfer to capital, apportionable sums, (1) at beginning of lifeferent, and (2) on purchases. At the beginning of a lifeferent these sums consist of the proportion of dividends which accrued prior to the date when the lifeferent commenced, *e.g.*, dividends declared after the testator's death but partly applicable to the period prior to his death. On purchases, the apportioned sums are made up of the proportion of dividends received after purchase but which accrued prior to the date of purchase.
- III. Add to income, and deduct from capital, apportionable sums (1) on sales, and (2) at end of lifeferent. On sales the apportioned

sums are made up of the proportion of the sale proceeds which represents accrued dividends on the investments. At the end of the liferent the accrued dividends are similarly calculated on all investments.

Heritable
Properties

Rents are usually allocated between purchaser and seller in terms of the agreement between them, and the proportion of rates, taxes, and other accrued burdens is usually deducted from these rents. The sale price of a heritable property is thus entirely exclusive of accrued income while the price of an investment generally includes the accrued dividend. Rents receivable, and feu duties and rates and taxes, etc., payable are apportioned at the beginning and end of the liferent according to the same principles as dividends, as explained later (page 60).

Form of
Accounts

In preparing trust accounts the apportionments should always be fully detailed. The examples in this book show these by cross-entries transferred from income account to capital account and *vice versa*, but, alternatively, entries may be shown in a columnar statement analysing capital and income. In the following pages, questions arising in apportionment are discussed, first as to dividends and income tax thereon, and second as to rents and burdens on property.

II. APPORTIONMENTS OF DIVIDENDS AND INCOME TAX THEREON

Other things being equal, the value of stocks and shares is assumed to increase *daily* by the amount of accrued dividend or interest, and when a dividend is received the value is assumed to decrease by the net amount thereof. In practice, many factors other than accruing dividend or interest affect the market value from day to day.

As an example, assume 5% tax free debentures are issued at 96%. One day after the issue the amount of accrued interest is £0.0137 on each £100—or approximately 3d.—being $\frac{1}{365}$ of £5, and the next day 6d., then 9d., and so on. (Apportionments are usually taken to the nearest penny.) Assume that after six months expire, the debentures have a market value of 95% “cum div.,” which means that the half-year’s interest is included in the price. If the debentures are sold at this date and price, the accrued interest is credited to income leaving a net capital value of $95 - 2\frac{1}{2} = 92\frac{1}{2}\%$.

If the interest is not payable until 14 days after the expiry of the six months to which it refers, the accrued interest on a sale on the 12th day of this period is (1) first half-year’s interest £2, 10s., (2) interest for 12 days of second half-year = $\frac{12}{365}$ of £5 = 3s. 3d., thus making the total sum accrued, £2, 13s. 3d.

Sales and
Purchases

A summary of Stock Exchange procedure as to dividends may be of interest. A contract note is issued on the date of each transaction which must be stated as either (1) for cash settlement, or (2) for settlement on a specified date—known as settlement day. Any dividends declared after the date of the transaction belong to the buyer. After the declaration of a dividend, transactions may be either “cum div.” or “ex div.”—the former meaning that the buyer is entitled to the dividend and the latter meaning that the buyer is not entitled to it (the seller taking it instead). Apart from (1) British government

stocks and certain other similar securities, which are marked "ex dividend" about five weeks before payment of the interest, and (2) bearer securities, which are marked "ex dividend" on the day when the interest is payable, the "ex dividend" marking is generally on the contango day which immediately precedes the closing of the transfer books. (The contango day is the first day of a new Stock Exchange account.)

Sometimes owing to the closing of transfer books a dividend is paid to a seller of shares cum div., in which case he is liable to pay it over to the buyer who should see that all due dividends on purchases are actually received. Before apportionments are made, such dividends as are received and paid away must be excluded from the cash transactions. For an example of apportionments on a sale cum div., see No. 10 apportionment in specimen account (page 111).

The date to be taken as the date of the sale or purchase is the date of the contract if the transaction is "for cash," and the specified "date for settlement" in other cases. (See *Londesborough v. Somerville*, 1854, 19 Beav. 295.) It has alternatively been suggested that the date to be taken where the transaction is "for cash" should be the first Stock Exchange business day after the transaction was effected. This is perhaps logical, but it is too complicated and is not recommended.

The general rule is that dividends accrue during the period in respect of which they are declared or expressed to be payable. The first day of a period is excluded in apportionment calculations—*e.g.*, 1st to 11th January is ten days. The practical application of this rule depends on information contained in the dividend warrants and reports issued by the companies, which are sometimes lacking in detail and consistency. The report should be taken in preference to the warrant if there is doubt.

Ascertainment
of Income

Dividends and interest may be declared in respect of each quarter-year or half-year, as is done in the case of British government securities. Rents and feu duties are also payable half-yearly. The apportionment of such sums presents some difficulty, and three methods are available—each producing slightly different results. The method adopted at the beginning should be continued throughout the trust's life, as variations in method might have the effect of benefiting some beneficiaries at the expense of others, while consistency of method produces a more equitable result.

Half-Yearly
Dividends

First Method—

In apportioning a dividend under this method the calculation is based on the number of days in the quarter or half-year for which it is declared. Thus if a dividend of £13, 11s. 3d. is payable in respect of the half-year to 1st June 1949 the sum accrued from 1st December 1948 to 2nd February 1949 is:—

$$\frac{63}{182} \times \text{£}13, 11\text{s. } 3\text{d.} = \text{£}4, 13\text{s. } 11\text{d.}$$

Note.—63 days from 1st December 1948 to 2nd February 1949.

182 days from 1st December 1948 to 1st June 1949.

This method is largely adopted for examination purposes, but is not free from criticism. It is rather complicated in operation, as the calculations cannot be done by using interest tables, which may conveniently be used for the other two methods.

Second Method—

Under this method the first half-year's dividend received by the trustees is treated as an interim dividend, and the second half-year's dividend as a final dividend, both on account of the first year of the company during which the investment was held. The third dividend is treated as an interim dividend for the second year and so on.

Thus to find the accrued dividend up to the date of sale of the investment referred to in the above example (2nd February 1949) the amount depends on the date of purchase.

- (a) If the December payments are to be treated as interim dividends the amount is :—

Accrued dividend from 1st June 1948 to 2nd Feb. 1949	
(246 days) = $\frac{246}{365} \times \text{£}27, 2s. 6d.$	£18 5 8
Less interim distribution received 1st Dec. 1948	13 11 3
	£4 14 5

- (b) If on the other hand the June payments are to be treated as interim dividends the amount is :—

Accrued dividend from 1st Dec. 1948 to 2nd Feb. 1949	
(63 days) = $\frac{63}{365} \times \text{£}27, 2s. 6d.$	£4 13 8

This method was recommended by Professor Annan in the *Scots Law Times*, 1937, page 57, on the grounds that the original contract for payment of interest, dividend, or rent, specifies the *annual* payment to be made, and that if the warrants issued with dividends, etc., are not consistent with this contract, they should be ignored. The number of days in a "half-year" may be 180, 181, 182, 183, 184, 185, or 186, and the first method allocates each half-yearly payment to one of these unequal periods, resulting in variations in the daily yield.

Under the second method, the interest is treated as accruing equally in respect of each day of the year, which is a more logical result. Where it is impossible to apply this method, owing to difficulty in ascertaining which half-yearly payment is the interim and which is the final distribution, Professor Annan recommends that the third method should be used.

Third Method—

Under this method the accrued dividend is taken at the *annual rate* for the number of days since the close of the period up to which the previous dividend was paid.

Thus in the circumstances given in the second example the accrued dividend is calculated as shown there under (b) = £4, 13s. 8d.

This method produces approximately correct results in a simple manner, and is frequently adopted in practice.

Leap-Years

Where the period of apportionment includes 29th February in a leap-year it is necessary, in theory, to include this day. The effect on annual apportionments is to make these on a basis of 366 days instead

of 365, giving the answer in multiples of 1/366. In practice, as the difference is small, 29th February may generally be ignored.

Special difficulties arise in connection with British government issues and certain other similar securities which are marked "ex div." before the date of payment, although interest is paid on the basis of the half-year to date of payment. This means that purchasers during the period between ex div. date and date of payment receive no interest for this period, and conversely sellers receive interest on stock sold possibly some weeks previously. In theory, the price is assumed to discount this interest. When sales and purchases take place between the date when the stock is marked "ex div." and the date of payment of interest, apportionments are made in order to include in the trust income the amount of accrued interest for the period during which the investment was held as in the following examples :—

Securities
bought
"ex div."

On Sales—

The accrued interest for period from date of sale until date of payment of interest is applicable to capital, and must be subtracted from income and added to the sale price. Thus, if £2000 4% Funding Loan is sold ex div. on 5th April 1949 the interest for half-year to 1st May 1949 is afterwards received although the stock is no longer owned. The apportionment is shown as follows (assuming income tax at 9s. per £1) :—

(a) *Income Account—*

1st May 1949. Received half-year's interest to date £40 less tax £18 . . .	£22 0 0
<i>Less</i> Applicable to capital from 5th April 1949 (date of sale) to date (26 days) £5, 13s. 11d., less tax £2, 11s. 3d. . .	3 2 8
Balance applicable to income	£18 17 4

(b) *Capital Account—*

5th April 1949. Proceeds of sale of stock as per contract note, less expenses	£2190 0 0
<i>Add</i> Accrued interest due by income	3 2 8
	£2193 2 8

On Purchases—

The accrued interest from date of purchase until date of payment of interest is applicable to income and must be added to the purchase price. Thus, if £1000 4% Funding Loan is bought ex div. on 15th October 1948, no interest is receivable until 1st May 1949 for the half-year from 1st November 1948. The apportionment is:—

1st Nov. 1948. Amount of accrued interest from 15th October 1948 to date (17 days) applicable to income £1, 17s. 3d., less tax 16s. 9d. . .	£1 0 6

The sum of £1, 0s. 6d. is added to the purchase price thus :—

• Price as per contract note, including expenses	£1120	0	0
<i>Add</i> Accrued interest due to income		1	0
			6
			<hr/>
Adjusted capital cost of investment	£1121	0	6
			<hr/> <hr/>

Foreign
Exchange

As explained in the chapter on "The Preparation of Trust Accounts" (page 71), foreign cash transactions are converted to sterling, either (1) at the rate actually realised (if remitted at once), or (2) at the rate ruling at the time (if balances are retained abroad). All these sterling sums are apportioned in the usual way, but special difficulties may arise as to anticipated dividends. (See page 59.)

Income Tax

In terms of the Apportionment Act, 1870, apportionments must take into account all "just allowances" from income. This clearly covers income tax deducted from dividends at the source. The question of apportionment of income tax payable on assessments is not definitely settled by statute, but in equity such tax ought to be apportioned in the same way as the income on which it is charged. In practice, therefore, net dividends from which tax has been deducted before receipt should be apportioned on the amounts actually received. Where dividends or interests are received gross, tax should be deducted for the purpose of apportionment, or a separate apportionment of the tax should be made instead when the assessment is paid. It is necessary to keep in view also that separate assessments are made on the executors in respect of (a) income received prior to date of death of deceased, all of which tax is a debt due by deceased, and (b) income received after death, tax on which is dealt with as noted above.

On the Stock Exchange, certain short-dated Government issues such as 2½% National War Bonds 1949/51 are dealt in at a price exclusive of interest. For example, if the quotation of these Bonds on both 1st and 2nd October 1947 was 101%—the previous half-year's interest having been paid on 1st August—a purchaser on 1st October pays 101% plus 8s. 4d.% for accrued interest, while a purchaser on 2nd October pays 101% plus 8s. 6d.%, the difference of 2d.% being one day's interest. Tax is not deducted from this interest which is part of the price and not taxable.

Example—

Assume £2000 2½% National War Bonds 1949/51			
were purchased on 1st October 1947 at 101%	£2020	0	0
Plus interest from 1st August 1947 (61 days)		8	7
			2
			<hr/>
Actual sum payable	£2028	7	2
			<hr/> <hr/>

In the trust accounts, when the first interest is received on 1st February 1948, £25 less tax at 9s, £11, 5s. = £13, 15s., the following apportionment is necessary :—

Proportion of interest applicable to capital, from 1st			
August to 1st October 1947 (61 days) £8, 7s. 2d.,			
less tax £3, 15s. 3d.			
			£4 11 11
			<hr/> <hr/>

The capital cost as adjusted in the accounts is :—

Price of bonds plus interest (excluding tax)	£2028 7 2
Less accrued interest applicable to capital (less tax)	₹ 11 11
	£2023 15 3

(The effect is to add tax on the accrued interest to the net capital value. Brokerage has been ignored for simplicity.)

Where liferenters are abroad and not liable to United Kingdom tax, all apportionments of income must be made exclusive of tax on income from British government securities issued in terms of the Income Tax Act 1918, sec. 46, and foreign investments, which are exempt in such circumstances.

Before the balance of income is paid over to the executors of a deceased liferenter, provision must be made for all income tax assessments outstanding, thus assuring that all apportionments of income due to the liferenter are made less tax.

III. GENERAL NOTES ON APPORTIONMENTS OF DIVIDENDS

The allocation of arrears of interest and dividends is dealt with on page 25. Apportionments are now described under appropriate headings.

1. *At Commencement of Liferent*—

After taking as *prima facie* income all dividends received, the proportion of each dividend applicable to the period before commencement of the liferent is deducted and treated as a capital receipt. These sums are best treated in the accounts as partial realisations of the investments.

(In the examples below, it is assumed that the liferent commences at the date of the testator's death, but a liferent may commence on the setting aside of a fund in terms of a scheme of division. In such cases the procedure is similar, and the rules of apportionment apply as if the words "date of division" were substituted for "date of testator's death".)

For example, if a dividend is received for year to 1st December 1949 amounting to £365 net, and deceased died on 28th April 1949, the amount applicable to capital for period from 1st December 1948 to date of death (148 days) is $\frac{148}{365} \times £365 = £148$. Several points require special mention here :—

(a) *Interim and Final Dividends*—

(i) *Where an interim dividend was received by the testator and a final dividend by the trust.*

If the period for which the dividend is declared ended before date of death, the whole final dividend is capital. If not, on receipt of the final dividend add this dividend to the interim dividend to give the total dividends for the period, and take as income the proportion of this total from the date of testator's death until the close of the period for which the dividends were declared. The remainder of the final

dividend after deduction of this sum is applicable to capital. See paragraph (b) as to cases where the final dividend is insufficient to meet the sum due to income.

- (ii) *Where no interim dividend was received by the testator on account of the year current at date of his death.*

Each dividend received by the trust must be apportioned between capital and income on the basis of the number of days of the period to which it applies which are before and after the testator's death respectively. Some dividends may be entirely applicable to capital.

- (b) *Dividends which are "in bonis" of the Deceased—*

If an interim dividend which had been received prior to the date of death was greater than the final dividend received by the trustees, it may be found that the interim dividend exceeded the accrued proportion of both interim and final dividends which should have fallen to capital. Thus, when an apportionment is made as in paragraph (a) (i), if there appears to be a sum due from capital to income (to make up the final dividend to the total which is applicable to income) the procedure is—make no apportionments and take the whole final dividend as income. This is based on the common law rule which prevents trustees from treating as income any sums which are "*in bonis*" of the testator, and the Apportionment Act by implication excludes sums received by deceased. All dividends due and exigible before date of death are "*in bonis*."

- (c) When investments are sold during the period of the first account of the trust, it is preferable for simplicity in the accounts to make only one apportionment covering the two distinct calculations arising (1) at beginning of life tenent, and (2) on sale. For this purpose, dividends received on investments sold are added to the price realised on sale of each, and one calculation is then made of the sum due to income account according to the number of days in the period from the commencement of the trust until the date of sale of the investment. The rate of dividend may require to be anticipated as explained below.

The above rule cannot be usefully applied in the following cases which require two distinct apportionments—one at the commencement of the trust and one on sale of the investment.

- (i) Investments on which quarterly or half-yearly dividends are declared, on which at least one dividend is received prior to sale.
 (ii) Investments on which annual dividends are declared, on which the final dividend for any year is received prior to sale.

2. *Apportionments on Sales—*

The price of investments sold is assumed to include the accrued dividend from the date up to which dividends have been received prior to the sale. In order to estimate this, where investments are not fixed-interest-bearing, it is necessary to anticipate the rate of dividend for the year of sale, as explained below, taking into account *only the facts known at date of sale*. The amount of accrued dividend is subtracted from the

capital proceeds of sale and credited to income account. See below as to calculations where an interim dividend has been received.

Apportionments on sales must be made on the basis of dividends anticipated at the time and not in the light of subsequent information. Income tax rates must be anticipated similarly, and also the rate of exchange where dividends are receivable in foreign currencies. Questions as to anticipated rates may require negotiation with the liferenter or his executors if large sums are involved. In calculating the rate of anticipated dividends, the following basis may conveniently be adopted unless reliable contrary information is available at the time of sale regarding the probable rate :—

- (1) If no interim dividend is yet declared for the current year take the previous annual rate for the year.
- (2) If an interim dividend has been declared and it is the same as the previous year's, take the previous annual rate for the year.
- (3) If an interim dividend has been declared and it is different from the previous year's rate, apply the same ratio to the year's rate. Thus, if the interim dividend is 1% against 2% the final dividend should also be taken as one-half of the previous year's rate.

The total accrued dividend is calculated as from the end of the period for which the last final dividend has been paid ; this sum is taken as income, less any interim dividends already received.

3. *Apportionments on Purchases*—

The price of each investment is assumed to include the accrued dividend since the date up to which the last dividend has been paid. The first dividend received after purchase is apportioned so that the sum accrued prior to the date of purchase is taken as applicable to capital, and deducted from the cost price. It is sometimes argued that in equity the anticipated dividend basis is also applicable here, but see sec. 3 of Apportionment Act as to recovery of sums when payable.

For convenience, interim and final dividends may be added together and apportioned in one sum if both appear in the same trust account.

If the trust account closes between the date of purchase of an investment and the receipt of the first dividend, the apportionment of the first dividend should be shown in the account in which it appears. This is preferable to making a pro forma apportionment in the account which shows the purchase, as difficulty may arise if the rate of dividend changes. A note should be made in the account in which the purchase appears, referring to the apportionment, in order to bring this under notice when the next account is prepared.

4. *Apportionments on Cessation of Liferent*—

All dividends accrued at the date of cessation of the liferent are regarded as income payable to the liferenter's executors. There is some controversy as to the correct legal basis of computation, as no relevant cases are reported from the Scots courts. The two alternative methods are as follows :—

- (1) Each dividend received after the close of the liferent is apportioned, so that the sum accrued prior to the date of death of the liferenter is taken as applicable to income. It may be

noted that the total of the sums accrued cannot be finally calculated until all dividends have been paid up to that date.

- (2) Alternatively, all dividends accrued, for the period from (a) the date to which the last final dividend was paid to (b) the date of death of the liferenter, must be anticipated according to information available at the time in the same way as apportionments on sales (see page 59).

Differences between the answers obtained by these methods may arise in the cases of (a) ordinary shares, or (b) debenture stocks or cumulative preference shares on which interest or dividends are in arrear. It is expedient that the sum payable to the liferenter's executors should be computed without delay and the second method is therefore recommended for practical purposes.

If, however, an increase in an ordinary dividend is unexpectedly declared soon after the date of the liferenter's death, before the trust has been wound up, a claim by the liferenter's executors based on the increased dividend would be difficult to refute. (See Apportionment Act, secs. 2 and 3.)

The total sum accrued is treated as income due to the liferenter's executors. The corresponding entry in capital account may be made in two ways:—

- (1) The value of the investments at the close of the account may be increased by the addition to each investment of the dividend accrued thereon. This is the converse of the usual procedure at the beginning of the liferent, when the accrued dividends should have been subtracted from the value of investments as at date of death, and treated as partial realisations of investments.
- (2) The total accrued dividends may be shown as a single capital payment. This method is generally adopted in practice, but the first is more correct in theory.

It is uncertain whether the same rules, regarding dividends which are "*in bonis*" of the deceased liferenter, apply as they would do at the testator's death (see page 58). In equity it appears logical to use the same basis, but no case appears to have been decided on the point. In practice, if the interim dividend received during the lifetime of the liferenter is greater than the anticipated income accrued for the period, it is, therefore, usual to make no apportionment, and the final dividend received after his death is all taken as applicable to capital. (See, however, the first alternative method described above, under which actual sums received are apportioned.)

IV. APPORTIONMENTS OF RENTS AND BURDENS ON HERITABLE PROPERTY

The principles are as described above in connection with dividends, but there are certain difficulties which are now described. House rents are generally payable half-yearly on 15th May (Whitsunday) and 11th November (Martinmas) but the removal terms are 28th May and 28th November. The former dates must be taken for apportionments (Campbell, 1849, 11 D. 1426, Horsburgh, 1892—unreported, quoted in

Lisle, "Accounting", 1899, pages 161/2, and Balfour's Executors *v.* Inland Revenue, 1909 S.C. 619). Shooting rents are apportioned over the actual period of occupation and not over the whole year (Earl of Glasgow's Trustees *v.* Clark, 1889, 16 R. 545).

Farms may be either arable or pastoral—according to their pre-dominant character—and different methods are applicable to each. If they are arable farms the legal term of entry is Martinmas and the first half-year's rent is normally payable at the following Whitsunday. In pastoral farms, on the other hand, the legal term of entry is Whitsunday and the first half-year's rent is payable on entry—the last half-year's rent of the previous tenant having been due at the previous Martinmas. The above basis is the "legal term" basis, but by agreement rents may be payable at other terms—known as "conventional terms". These may be either forehand (in advance) or backhand (in arrear), generally either six months or one year. Farm Rents

The legal position of forehand farm rents is somewhat obscure, and the following is a summary. In *Herries v. Maxwell's Curator* (1873, 11 M. 396) it was held that the first rent received after the testator's death was apportionable between fiar and liferenter as if it had accrued during the preceding half-year. In this case, the rent was for a composite farm (*i.e.*, including both arable and pastoral lands). The lease provided (1) entry to the houses, grass and hay lands was at Whitsunday and to other lands at the separation of the crop (*i.e.*, Martinmas), and (2) the first payment of rent was due at Martinmas for the half-year preceding, although no occupation had then been given to any arable lands. Professor Annan has expressed the opinion that it is doubtful if the decision in *Herries v. Maxwell's Curator* would be followed by the court in any future case except in exactly similar circumstances, and that it is not justifiable to use it as an authority for treating forehand farm rents in a different manner from house rents paid in advance. (Scots Law Times 1937, page 74.) The decision appears, however, to have been accepted by subsequent legal writers as laying down a general rule (see McLaren, "Wills & Succession", 3rd edition, vol. I, pages 215-216, and Rankine, "Leases," 3rd edition, page 352).

All rents received by the testator before his death are *in bonis* and therefore not apportionable (see page 58). Where a forehand rent had become due before the date of death, but was actually received after that date, it is wholly applicable to capital. House rents may be payable in advance, and, if so, no apportionments are necessary either at the beginning or end of a liferent, applying the *in bonis* rule.

If it is agreed to ignore the decision in *Herries v. Maxwell's Curator* for the reasons given above, the first payment received after the testator's death in respect of the forehand rent of an arable farm is wholly applicable to income. Alternatively, the following example is based on the decision in *Herries v. Maxwell's Curator* :—

Assume the death on 30th September 1947 of a testator owning an arable farm of which the rent is £720, payable forehand. The present tenant took occupation of the farm at Martinmas 1946, and had paid to the testator, before his death, one half-year's rent, £360, at that term, and a further half-year's rent, £360, at Whitsunday 1947. The rent received at Martinmas 1947 is apportioned by the trustees, thus :—

Sum applicable to capital from 15th May to 30th

September 1947 (138 days) = $\frac{138}{180} \times \text{£}360$	.		£276	0	0
Balance applicable to income				84	0 0
					£360 0 0

It will be observed that the application of the decision in *Herries v. Maxwell's Curator* results in the testator and his trustees' capital being credited with £996, although prior to the testator's death the tenant had occupied the farm only for 323 days from 11th November 1946 at a rent of £720. Fortunately, this apparently illogical conclusion is more academic than real, as very few farms are now leased on forehand rent terms.

Arable farm rents due at the legal terms are apportioned in respect of the period up to the due date of payment, and require no further comment. Backhand arable rents are apportioned over the period to which they apply as stated in the lease. For example, the first payment of rent due six months backhand is payable one year after entry, but is apportioned over the first half-year of occupation.

The postponement of payment of rents does not affect the basis of apportionment which is still made according to the legal terms of payment.

Apportionments of pastoral farm rents cause most difficulty because it is uncertain to which period these legally apply. (See *Baillie v. Fletcher*, 1915 S.C. 677.) Such rents should be treated as applicable to the crop-year ending at Martinmas. The half-year's rent legally due on entry at Whitsunday is thus taken as accruing during the preceding half-year when the crop was growing, despite the fact that the tenant had then no right of possession. (The rent may be payable backhand, but it still applies to that period.)

Burdens

The following are the burdens on heritable property and the periods applicable to each :—

1. *Feuduties and Ground Annuals* are payable at Whitsunday and/or Martinmas either yearly or half-yearly at the end of the period, under deduction of tax.
2. *Local Rates*.—These are payable to County Councils and Town Councils usually in respect of the year to 15th May, at dates varying according to local custom. Rates in Scotland are separately charged on owners and occupiers and are assessed on the annual rental value. (In Edinburgh the year of assessment ends on 28th May.)

In terms of the Local Government Scotland Act, 1929, the assessable value for rating of (a) agricultural lands and heritages is the annual value less a deduction of 87½%, and of (b) industrial and freight transport lands and heritages similarly less a deduction of 75%. These reductions are known as "De-rating." Further, occupiers of agricultural lands under leases dated prior to 1st June 1928 are entitled to recover from the owners a sum equal to 2½ times the owners' rates for

each year. Occupiers of industrial lands and heritages under such leases are entitled to recover three times the owners' rates for each year.

3. *Land Tax* is payable to the Inland Revenue in respect of the year to 24th March, and the tax is due on the preceding 1st January. See Finance Act, 1949, secs. 37-45, as to redemption, etc.
4. *Income Tax Schedule A* is payable in respect of ownership of heritable property for the year to 5th April, and the tax is due on the preceding 1st January. The assessment may be made on the tenant and in that case the tax is recoverable from the owner by deduction from the next payment of rent.
5. *Income Tax Schedule B* is payable in respect of occupation of land and is usually due in two instalments on 1st January and 1st July in respect of the year to the 5th April falling between the dates of payment.
6. *Ministers' Stipends* are payable to local ministers or to the Church of Scotland General Trustees by the owner of heritable property. These may accrue either (a) for the crop-year, the period of which is doubtful but which is generally taken as the year to Martinmas, or (b) half-yearly at Whitsunday and Martinmas, and payment is made under deduction of tax.
7. *Teinds* are payable to the titulars, *i.e.*, the present owners of the tithes. They are payable either for the crop-year (see stipends) or half-yearly at Whitsunday and Martinmas, and income tax is deducted.
8. *Insurance Premiums* are payable in advance, from the date the insurance is effected. The owner usually pays for insurance of buildings and the tenant for insurance of contents or stocks on farms, but this is subject to agreement and other arrangements may be made.

The term days in Scotland are as follows :—

Term Days

Candlemas	. Rent due 2nd February.	Removal term 28th February.
Whitsunday	do. 15th May.	do. 28th May.
Lammas	. do. 1st August.	do. 28th August.
Martinmas	. do. 11th November.	do. 28th November.

For insurance purposes, the following English term days should be noted :—

Lady Day—25th March.	Michaelmas—29th September.
Midsummer—24th June.	Christmas—25th December.

CHAPTER VIII

EXAMPLES OF APPORTIONMENTS

I. EXAMPLES OF APPORTIONMENTS OF DIVIDENDS

I. *At Commencement of Liferent—*

Assume the death on 12th June 1953 of X whose estate is liferented by his widow. His investments consisted of £1000 4% deb. stock A.B. Co. and 2000 £1 ord. shares A.B. Co. Income tax is taken at 5s. per £1.

(1) *Apportionment of Interest on £1000 4% Deb. Stock A.B. Co.—*

On 1st August 1953 interest is received for the half-year to 1st June 1953, and this is all applicable to capital, as it refers to a period before date of death. On 1st February 1954 the half-year's interest to 1st December 1953 is received = £20 less tax £5 = £15, apportioned as follows :—

Sum applicable to capital—from 1st June (date to which last interest accrued) to 12th June 1953 (date of death)—11 days = £1, 4s. 1d.	£0 18 1
less tax 6s.	14 1 11
Balance applicable to income ss.	£15 0 0
	£15 0 0

(2) *Apportionment of Dividend on 2000 £1 Ord. Shares A.B. Co.—*

On 30th September 1953, a 4% dividend is received for year to 1st August 1953 = £80 less tax £20 = £60, apportioned as follows :—

Sum applicable to capital—from 1st August 1952 (date to which last dividend accrued) to 12th June 1953 (date of death)—315 days = $\frac{315}{365}$	
× £60	£51 15 7
Balance applicable to income	8 4 5
	£60 0 0
	£60 0 0

II. *On Sales and Purchases—*

- (1) Assume that the above holding of £1000 4% deb. stock A.B. Co. is sold on 1st March 1954. The proportion of the sale price applicable to income represents interest from 1st December 1953 (to which last interest accrued) to 1st March 1954 (date of sale)—90 days = £9, 17s. 3d. less tax £2, 9s. 4d. = £7, 7s. 11d.
- (2) Assume that the proceeds of this sale are re-invested on 20th March 1954 in £1000 4½% deb. stock C.D. Co. on which the next interest is due on 1st April 1954 for half-year to that date. When this interest is received = £22, 10s. less tax £5, 12s. 6d. = £16, 17s. 6d., it is apportioned as follows :—

Sum applicable to capital from 1st October 1953 (date to which last interest accrued) to 20th March 1954 (date of purchase)—170 days =£20, 19s. 2d. less tax £5, 4s. 10d.	£15 14 4
Balance applicable to income	1 3 2
	£16 17 6

III. *At Cessation of Liferent*—

Assume the death of the liferenter of the above trust on 3rd April 1954. If the anticipated rate basis is adopted (see page 60), the accrued sums apportioned to income as at that date are as follows :—

(1) *On 2000 £1 Ord. Shares A.B. Co.*—

Sum accrued at 4% less tax at 5s. p. £1 (being the anticipated rate) from 1st August 1953 (date to which last dividend accrued) to 3rd April 1954 (close of liferent)—245 days = $\frac{245}{365} \times £60$	£40 5 6
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Note : Dividend p.a. = £80 less tax £20 = £60.

(2) *On £1000 4½% Deb. Stock C.D. Co.*—

Sum accrued from 1st April (date to which last interest accrued) to 3rd April 1954 (close of liferent) = 2 days = 4s. 11d. less tax 1s. 3d.	0 3 8
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Note : The interest is taxable at the anticipated rate of 5s. p. £1.

Total accrued income as at 3rd April 1954	£40 9 2
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II. EXAMPLES OF APPORTIONMENTS OF RENTS, ETC.

I. *At Commencement of Liferent*—

Assume the death on 11th August 1950 of a testator owning two farms—Blackacre—a pastoral farm with rent payable at legal terms—and Whiteacre—an arable farm with rent payable six months backhand.

The following apportionments are required :—

(1) *Rents Receivable*—

(a) *Blackacre*.—The first half-year's rent of a pastoral farm due at legal terms is payable on entry. The present tenant occupied the farm as from Whitsunday 1950 and paid one half-year's rent, £182, 10s. at that term. The next payment of rent (at Martinmas 1950) is legally held to refer to the half-year immediately preceding the due date of payment, *i.e.*, the half-year to Martinmas 1950, and is apportioned as follows :—

Proportion applicable to capital for period to 11th	
August 1950 (273 days) = $\frac{273}{365}$ of rent for year	
to 11th November 1950 of £365 =	£273 0 0
<i>Less</i> : Half-year's rent already included in capital (having been received by deceased on 15th May 1950)	182 10 0
Net sum applicable to capital	£90 10 0
Balance applicable to income	92 0 0
	£182 10 0

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(b) *Whiteacre*.—The first half-year's rent of an arable farm due six months backhand is payable one year after entry. The present tenant occupied the farm as from Martinmas 1949 and had therefore paid no rent prior to death of the testator. The rent received at Martinmas 1950 refers to the first half of year to that date, and the rent received at Whitsunday 1951 refers to the second half of the same year. These rents are added together and apportioned as follows:—

Sum applicable to capital from 11th November 1949 to 11th August 1950 (273 days) =	
$\frac{273}{365}$ of rent for year to 11th November 1950 of	
£182, 10s.	£136 10 0
Balance applicable to income	46 0 0
	<hr/>
	£182 10 0
	<hr/> <hr/>

(2) *Burdens Payable*—

(a) *Feuduty* of £10 payable under deduction of tax annually at Martinmas:—

On 11th November 1950 the following apportionment is made, assuming income tax at 4s. 6d. per £1:—

Proportion applicable to capital—from 11th November 1949 to 11th August 1950 (273 days) =	$\frac{273}{365} \times £7,15s.$ (being £10 less tax £2, 5s.)	£5 15 11
Balance applicable to income		1 19 1
		<hr/>
		£7 15 0
		<hr/> <hr/>

(b) *Local Rates*.—On 1st January 1951 £40 is payable in respect of owner's rates for year to 15th May 1951. The proportion applicable to capital is from 15th May to 11th August 1950

(88 days) =	$\frac{88}{365} \times £40$	£9 12 10
Balance applicable to income		30 7 2
		<hr/>
		£40 0 0
		<hr/> <hr/>

(c) *Income Tax Schedule A*.—The 1950/1 gross assessed rental is £700 less allowances for owner's rates £40 and repairs (statutory allowance) £120, making net Schedule A for year to 5th April 1951, £540. Tax payable at 4s. 6d. = £121 10s. due on 1st January 1951. The proportion applicable to capital is from 5th April 1950 to 11th August 1950 (128 days) =

$\frac{128}{365} \times £121, 10s.$	£42 12 2
Balance applicable to income	78 17 10
	<hr/>
	£121 10 0
	<hr/> <hr/>

(d) *Minister's Stipend.*—The amount for crop 1950 is £5 less tax, £1, 2s. 6d. = £3, 17s. 6d., and this is assumed to refer to the year to 11th November 1950.

The proportion applicable to capital is from 11th November 1949 to 11th August 1950 (273

days) = $\frac{273}{365} \times \text{£3, 17s. 6d.}$	£2 18 0
Balance applicable to income	0 19 6
	£3 17 6

(e) *Land Tax.*—The assessment for year to 24th March 1951 shows tax of £2, 5s. due on 1st January 1951.

The proportion applicable to capital is from 24th March 1950 to 11th August 1950 (140

days) = $\frac{140}{365} \times \text{£2, 5s.}$	£0 17 3
Balance applicable to income	1 7 9
	£2 5 0

Note : Any burdens falling due before date of death are wholly payable by the deceased, and need not be apportioned. See notes on dividends “ *in bonis* ” under “ Apportionment of Dividends ” (page 58).

It has been suggested that burdens on property should follow the rent, so that, where the testator had prepaid rates for a period ending after the date of death, a proportion thereof would be recoverable by capital from income. This is incorrect. No apportionment can be made unless it is authorised by the Apportionment Act. Under sec. 4, any part of a sum apportioned is recoverable when payable, allowing a deduction of a proportionate part of all just allowances. This may operate as a restriction of the sum in question by deduction of burdens, but cannot operate so that it is increased. Thus the rent accruing for the period ending on the date of death of the testator is the maximum sum which can be apportioned from income to capital, and no apportionment of prepaid rates can be made in the above circumstances.

II. *On Purchases and Sales*—

The apportionments here are between seller and purchaser. In addition to the price of the property the burdens for the year of sale must all be taken into account.

Rents.—In transactions affecting farms the amount of rent to be apportioned depends on the terms of the agreement for sale and no general rule can be stated. In other cases of sales of property, entry is commonly at a legal half-yearly term and no apportionment of rent is therefore necessary. If otherwise, the rents must be apportioned as between purchaser and seller on the basis of the number of days in the period applicable to each.

Burdens.—Assume that a house assessed at £50 is sold at Martinmas (11th November) 1950 for £750. The following apportionments are necessary :—

(a) *Feuduty.*—This is paid half-yearly and the seller pays it up to Martinmas 1950. The purchaser pays future feuduties and so no apportionment is made.

(b) *Local Rates.*—It is known that the rates for 1950/1 will be at 10s. per £. The seller pays the purchaser the accrued rates from 15th May to 11th November 1950 (180 days)

$$\frac{180}{365} \times £25 = £12, 6s. 7d.$$

(c) *Income Tax Schedule A.*—The net Schedule A assessment is £30 and tax for 1950/1 at 4s. 6d. thereon = £6, 15s. The seller pays the purchaser tax from 5th April to 11th November 1950 (220 days) = $\frac{220}{365} \times £6, 15s. = £4, 1s. 4d.$

Note : 15th May is frequently taken in practice as the end of the Income Tax year, for convenience, but this is not strictly correct.

III. At End of Liferent—

Apportionments are generally on the same basis as at the commencement of liferent. In addition, some doubt exists as to burdens paid before the date of death of the liferenter, such as insurance premiums or rates partly applicable to the period after close of the liferent. In equity these remain wholly payable out of income and no apportionment need be made, applying the “*in bonis*” rule to the liferenter, as at date of death of the testator (page 58).

Assume death of liferenter on 15th February 1953, income tax at 5s. per £1, and the same farms as shown above at commencement of liferent. The following apportionments are necessary :—

1. Rents receivable due to Income—

(a) *Blackacre :* (Pastoral farm—rent payable at legal terms). The amount of accrued rent applicable to income is from 11th November 1952 to 15th February 1953 (96 days) = $\frac{96}{365} \times £365 = £96.$

(b) *Whiteacre :* (Arable farm—rent payable six months back-hand). The amount of accrued rent applicable to income is :—

(a) Rent for half-year to 11th November 1952 (due at Whitsunday 1953) £91 5 0

(b) Accrued rent from 11th November 1952 to 15th February 1953 (96 days) = $\frac{96}{365} \times £182, 10s. 48 0 0$

Total accrued rent £139 5 0

2. *Burdens due by Income*—

(a) *Feuduty* of £10 per annum less tax £2, 10s. = £7, 10s. p.a.

The amount accrued payable applicable to income is from 11th November 1952 to 15th February 1953 (96 days) =

$$\frac{96}{365} \times £7, 10s. = £1, 19s. 5d.$$

(b) *Local Rates*.—The whole owner's rates for 1952/3, £45, were paid before death of the liferenter. If any apportionment is made it is as follows :—

Sum applicable to income—from 15th May 1952 to 15th

$$\text{February 1953 (276 days)} = \frac{276}{365} \times £45 = £34, 0s. 6d.$$

Note : Applying the “*in bonis*” rule no apportionment is necessary.

(c) *Income Tax Schedule A*.—The tax for 1952/3 was paid on 1st January 1953—£540 at 5s. = £135. If any apportionment is made it is as follows :—

Sum applicable to income—from 5th April 1952 to 15th

$$\text{February 1953 (316 days)} = \frac{316}{365} \times £135 = £116, 17s. 6d.$$

Note : Applying the “*in bonis*” rule no apportionment is necessary.

(d) *Minister's Stipend*.—It is anticipated that this will amount to £5 less tax £1, 5s. = £3, 15s. for year to Martinmas 1953, and the sum applicable to income is therefore from 11th

$$\text{November 1952 to 15th February 1953 (96 days)} = \frac{96}{365} \times £3, 15s.$$

= 19s. 9d.

(e) *Land Tax*.—The tax for 1952/3 was paid on 1st January 1953 amounting to £2, 5s. If any apportionment is made it is as follows :—

Sum applicable to income—from 24th March 1952 to 15th

$$\text{February 1953 (328 days)} = \frac{328}{365} \times £2, 5s. = £2, 0s. 5d.$$

Note : Applying the “*in bonis*” rule no apportionment is necessary.

CHAPTER IX

THE PREPARATION OF TRUST ACCOUNTS

Advantages of Annual Accounts

PERIODICAL trust accounts are required for information of the trustees and beneficiaries. Such accounts should be prepared annually even if few transactions have taken place during the year, unless there are special reasons to the contrary, in which case a slightly longer period is admissible. The principal advantages of an annual account, compared with longer periods, are the increased simplicity of smaller statements, the more ready explanations of transactions, the benefits of comparison, and the earlier detection of errors and defalcations. It is also convenient to ascertain frequently the exact balances due to and by liferenters which depend on the income brought out in the trust account. In judicial factories annual accounts are required.

Accounts should be prepared as at the dates of death of liferenters, and also in theory when there are changes in trustees.

Requirements in Accounts

The principal points to be kept in view in trust accounts are accuracy, simplicity, and early issue. Many trustees have no experience of accounts and it is essential that they should be clearly informed as to the funds for which they are responsible. It is frequently found in practice that non-professional men who are appointed trustees take little interest in the trust administration, and there can be little doubt that delayed and obscure accounts are partly to blame for this. Trustees should always insist on receiving proper accounts soon after the annual balancing date. If the factor makes a preliminary draft in advance of the time of closing the account, final entries can then be added and the account is easily completed soon after it is due.

Summary

Many trust accounts which are otherwise admirable fail to show the results in summarised form. The omission of a summary is fatal to the clarity of an account, except in the smallest trusts in which perhaps a single page may show the whole transactions.

The summary is not a substitute for a detailed account which is still required, and the summary should be prefixed or appended to the account so that details may readily be found.

Non-Cash Transactions

While cash transactions comprise the main part of trust accounts there may also be non-cash transactions, such as transfers of property and investments, requiring to be included in the accounts. If apportionments of income are necessary these are shown by cross-entry between capital and income, as explained in a separate chapter (page 51). The non-cash transactions occur in various circumstances of which the following are the most important. Funds are received at the beginning of the executry or trust by transfer to the executors or trustees of property and investments, in terms of the will or deed of trust, etc. Additional funds may be received as legacies or gifts to the trust, and stocks and shares in companies are sometimes received as bonuses or on reconstruction of the companies.

Funds may be distributed in settlement of specific legacies of houses,

furniture or investments. Pecuniary (cash) legacies and legacies of residue may also be settled by transfer of investments for convenience.

Non-cash transactions require to be shown on both sides of the account, so that the cash balance is not affected. Funds received are added to the cash receipts and also shown as investments made, and conversely funds distributed are added to the payments and also appear as investments realised.

The original records of cash must be kept in such detail that full particulars of the transactions are available, and it is recommended that all letters and receipts be filed and arranged in order of date for reference. In large trusts a cash book and ledger should be kept, and ledger accounts should be opened for the different classes of capital and income transactions, also separate accounts for each investment showing capital and income separately as described under "English Trust Accounts" (page 82). In other cases it is sufficient if the factor keeps an account in his ledger containing details of his cash transactions on behalf of the trust, and another account for the trust bank account (if any).

Cash may have been received or paid by sub-agents, for example, local factors of heritable property in other districts. Statements of their transactions must be obtained frequently and should be audited by the factor and incorporated in the trust account.

It is sometimes arranged for convenience that trust dividends should be remitted direct to beneficiaries, instead of being collected by the factor, and full information regarding these sums should be obtained for inclusion in the trust accounts.

Foreign transactions settled by immediate transfer of funds to the United Kingdom are taken into account at their sterling equivalents. On the other hand if cash has been received or paid by foreign bankers and balances have been retained by them, such transactions should appear in the trust account at the exchange rates ruling on the dates when cash was received or paid. Transfers to or from the foreign account do not affect these calculations, but the remaining balance should be brought into account at the exchange rate ruling at the date of closing of the trust account, and any difference arising owing to transactions at other rates is then written off as gain or loss on exchange. As an example, the following account shows transactions on a New York bank account for year to 30th June 1953.

	Dollars.	Exchange Rate \$=£1.	Per Accounts Sterling Equivalent.
Balance 30th June 1952	\$375	3.75	£100
Dividend received 1st August 1952	190	3.80	50
	<hr/> \$565		<hr/> £150
Paid beneficiary 31st December 1952	320	3.20	100
	<hr/> \$245		<hr/> £50
Transfer to Scotland on 1st March 1953	165	3.30	50
(No entry in trust account required as this is a cross entry)	<hr/> Forward \$80		<hr/> Nil

Cash Transactions

Foreign Exchange

	<i>Forward</i>	\$80		Nil
Dividend received 1st April 1953	40	4.00	£10
Balance	<u>120</u>		<u>£10</u>
The balance at 30th June 1953 is \$120 at 4.80 (carried to next year)				
				25
Gain on exchange				<u>£15</u>

Note.—The sterling equivalent column is purely a bookkeeping record and the balances there are not otherwise required.

In such an account, where no questions of apportionment arise and there are no capital transactions, the exchange rate may be calculated for all items at the closing rate instead of bringing in each dividend, etc., at different rates. This is much simpler than the above method, but is not correct when it is necessary to apportion any foreign dividends between capital and income.

Cost of Investments

As explained below, the investments are brought into each year's account at cost. In arriving at the cost figure, difficulty may arise through partial sales, new issues, reconstruction of companies, etc., and the general principles which should be observed are now described. For convenience all adjustments of the cost should be detailed in the trust accounts.

(1) *Original Investments retained Unchanged—*

The cost to the trust is the value when received, *i.e.*, at date of testator's death in a testamentary trust, and at date of transfer in other cases.

(2) (a) *Brokerage Expenses on Sales and Purchases, and (b) Stamp Duty and Registration Fees on Purchases—*

It is usual to add such expenses to the cost of investments purchased and deduct them from the proceeds of investments sold. Thus if £100 4% deb. stock X.Y. Co. is purchased at 80% the expenses amount to £2 13s. 6d. (Stamp duty £2, Brokerage 10s., Contract Stamp 1s. and Registration Fee 2s. 6d.) and the investment is shown at a cost of £82, 13s. 6d.

(3) *Partial Sales—*

There are two alternative methods of treating such sales, each of which ultimately produces the same result:—

(1) Proceeds of sales are set off against the cost of the total holding until (a) this is exhausted, or (b) the last share is sold (whichever first occurs) when the remainder whether profit or loss is written off. This method may result in a holding with no book cost if the proceeds of part are greater than the original cost of the whole. A minor alteration in method may be adopted by carrying the remaining holding at £1 instead of nil.

(2) Alternatively, the cost of the total investment may be regarded as an average figure, and the proportion applicable

to the shares sold is written off on the occasion of each sale until the last instalment is written off on the final sale. For example, if half the shares are sold half the cost figure is written off.

The first method is simpler, but the second is more correct in theory, and the following example shows the effect of the two methods. Assume 1000 shares in a company cost £1800 including expenses, whereof 500 were sold in January 1952 for £2000 and the remaining 500 in September 1952 for £700 after deducting expenses in each case. The trust accounts close annually on 31st March.

Method (1)—

Account 1951/2—

Proceeds of sale of 500 shares	£2000
Cost of 1000 shares	1800
	<hr/>
Increase on Realisation	£200
	<hr/> <hr/>

500 shares held at close of account at nil.

Account 1952/3—

Proceeds of sale of 500 shares	£700
Cost—nil	—
	<hr/>
Increase on Realisation	£700
	<hr/> <hr/>

Note : Total increase £900.

Method (2)—

Account 1951/2—

Proceeds of sale of 500 shares	£2000
Proportion of cost of these shares : $\frac{500}{1000} \times 1800$	900
	<hr/>
Increase on Realisation	£1100
	<hr/> <hr/>

500 shares held at close of account at £900.

Account 1952/3—

Proceeds of sale of 500 shares	£700
Proportion of cost as above	900
	<hr/>
Decrease on Realisation	£200
	<hr/> <hr/>

Note : Net increase £900.

(4) *Additions to Existing Holdings—*

There is little advantage in showing separately in the list of investments similar shares which have been purchased at different prices or dates, so these should be merged. For example, assuming £500 War Loan is bought in January 1951 at 101% = £505, and £500 in November 1951 at 95% = £475, including expenses in each case, the investment should appear in subsequent accounts as £1000 stock at cost of £980.

(5) *New Investments* appear at actual cost, including expenses.

(6) *Apportionment of Income—*

In theory, sums received from income account should be treated as partial realisations of the investments and deducted from the cost of the individual items. Similarly sums transferred to income account are best treated as additions to the cost of the individual investments. The effect of this method is to leave the total capital fund unchanged as the cash balance held on account of capital is increased or decreased correspondingly. In practice apportionments are not always shown in this way, being instead taken as additions to the capital or deductions from the capital as the case may be. The latter method leaves the cost of the individual investments unchanged, but while it is simpler in operation it is not strictly correct.

As an example of the two methods assume £1000 5% deb. stock X.Y. Co. is held by trustees at the close of a liferent on 13th June 1953—the last interest having been paid up to 1st April 1953, and the cost per accounts being £980, 17s. 1d. The accrued interest due to the liferenter must be transferred to income account, that is 73 days interest £10 less tax £2, 10s. = £7, 10s.

First Method—

Funds per previous account—	
£1000 5% deb. stock X.Y. Co.	£980 17 1
Cash balance	19 2 11
	<hr/>
	£1000 0 0
	<hr/> <hr/>

Funds as at 13th June 1953—

£1000 5% deb. stock X.Y. Co. at cost as before plus £7, 10s. accrued income now added	£988 7 1
Cash balance	11 12 11
	<hr/>
	£1000 0 0
	<hr/> <hr/>

Second Method—

Funds per previous account as before	£1000 0 0
	<hr/> <hr/>
Funds as at 13th June 1953—	
£1000 5% deb. stock X.Y. Co. (as before)	£980 17 1
Cash balance	11 12 11
	<hr/>
	£992 10 0
	<hr/> <hr/>

In an account charge and discharge, the account balances in a different way in each case. Under the first method the payment of £7, 10s. is an investment made and not separately extended into the discharge total, being added to the cost in the funds at the close of the account. Under the second method the payment is shown as a capital outlay and is extended into the discharge total.

(7) *Proceeds of Fractional Bonus Shares or Rights to New Issues—*

In strict theory these should be treated as partial realisations

of the individual investments, as there is really no profit on the transaction until it is completed by sale of the investment itself. In practice these sums are frequently entered as additional funds and there is thus no need to adjust the cost of the investments.

(8) *Bonuses*—

Capital *cash bonuses* are theoretically similar to partial sales of shareholdings or fractional bonus shares and should therefore be deducted from the cost of the investment, but see (7) above as to the alternative method. (See also page 25.) *Share bonuses* do not affect the cost which should remain as before, but applied to the adjusted holding, thus: 600 ord. shares X.Z. Ltd.—being former holding of 400 shares plus 50% bonus, 200 shares = at cost (as before) £720, 3s. 8d.

(9) *Company Reconstructions*—

If two classes of shares are merged the cost figure should also be merged, as no useful purpose is served by carrying forward two separate items.

On the other hand if shares of two or more classes are issued in lieu of shares of one class, the former cost price of the total holding should become a joint-cost figure bracketed against all the shares thus :—

500 ordinary shares of £1 each fully paid	}	£1107 8 8
T. Jones Ltd.		
100 deferred shares of 1s. each fully paid		
T. Jones Ltd.		

(formerly 1500 6% preference shares of £1 each fully paid).

Alternatively, it may be desired to allocate the cost between these holdings although this causes difficulty and is not recommended. For this purpose the prior security is always taken at market value leaving any balance for the junior shares. For example, assume the market value of the ordinary shares to be 7s. 6d. per share = £187, 10s.; this is taken as the cost of these shares leaving £919, 18s. 8d. (the balance) as the cost of the deferred shares irrespective of the market value. Any decrease in value should not be written off the cost before the date of sale.

Full details of all schemes of reconstruction should be shown in the succeeding trust account. It should be noted that shares received in lieu of dividend as distinct from bonus shares are excluded from the trust capital if liferented, as these belong to the liferenter (see page 26). If they are held by the trustees on his behalf a note may be made to this effect. An example of such scrip dividends was provided by the issue of Brazilian Funding Bonds, to meet interest on Government Loans, when transfer of currency was impossible.

(10) *Share Sub-divisions*—

If shares are divided into two classes the cost should for simplicity be bracketed against both classes, or, if desired, an allocation of the cost may be made on the basis of market value. (See (9).)

(11) *Nationalisation of Companies*—

Where government stock is issued in exchange for shares in a

nationalised company, the cost of the new stock should be shown in subsequent accounts at the former cost price of the total holding. Full details of the basis of exchange must be given in the first trust account which is prepared after the date of nationalisation.

GENERAL NOTES ON TRUST ACCOUNTS

Arrangement of Accounts

All accounts should be divided into classified sections—sometimes known as headings or branches—each of which is headed and numbered, and with sub-headings added where necessary. The first account commences with the funds received at the beginning of the trust, which in a testamentary trust are detailed in the estate duty inventory and corrective inventories. All items forming part of the funds appear in the same order each year, and the income is classified with a sub-heading for each property or investment *arranged and numbered in the same order as the list of funds*. Sometimes the details are shown in a columnar statement which also serves as the list of investments. If no income is received from any investment this should be stated with a short explanation. Expenses of heritable properties are sub-headed for each block of property.

Method of Preparation

In preparing a trust account it is generally advisable for simplicity to draft it and reconcile the balance without apportionments, but leaving space for these. If apportionments are required, each property and investment sub-heading in the income account is then considered individually and the calculations and cross-entries are made, followed by a further reconciliation.

Legal Rights

Payments to beneficiaries in settlement of claims for legal rights should be shown under a separate heading, and a detailed computation of the amount payable should be appended to the trust account for future reference.

Advances to Beneficiaries

Advances to residuary legatees on account of their shares should be treated as investments and included in the list of funds, as this is the best way to preserve the record of these which is required for the ultimate division of the estate. Where interest on advances is chargeable but has not been received, the amount should appear as an income receipt each year and on the other side as a further advance.

Liferents

Trust accounts must always be prepared so as to conform to the terms of the trust disposition. As explained in a separate chapter (page 22) the liferenter is entitled only to the income on the trust funds. A strict division must therefore be made between capital and income if the trust is liferented, by keeping separate accounts for capital and income and making apportionments of rents and dividends, etc., unless these are specifically excluded in the trust disposition.

If the income is not liferented (e.g., if held for annuitants) it is seldom necessary to draw any line of distinction between capital and income, but for convenience it is usual to separate the capital transactions except that the capital and income balances at the end of each account may be merged together.

If separate funds are directed to be held for different individual liferenters by the terms of the trust disposition, it is necessary to set aside separate investments and subsequently show the trust funds in two or more separate accounts—one for each liferented fund. In other

cases, depending on circumstances, it may be sufficient to show a general fund and divide the income in the specified proportions.

All trust accounts should include a detailed list of the investments List of Funds showing the cost and present value of each investment. If these are numerous it is an advantage to classify them under sub-headings giving both cost and valuation sub-totals for each section. Appropriate headings may be selected from the following list or further headings may be introduced as required :—

- (1) Heritable Property.
- (2) Government Stocks.
- (3) Debentures and Debenture Stocks.
- (4) Preference Stocks and Shares.
- (5) Ordinary Stocks and Shares—Banks and Financial.
- (6) Do. —Insurance.
- (7) Do. —Commercial.

In the summary of accounts referred to above, it is desirable to give Summary of Accounts the following information :—

- (1) Valuation of investments total as at close of the account and comparative figure for previous year.
- (2) Reconciliation of balances in bank and in factor's hands with previous year's figures.
- (3) Reconciliation of total capital of the trust at cost with previous year's account.
- (4) Summary of income and reconciliation of income balances at beginning and end of year.

It is not correct to use the words "To" and "By" in trust accounts. Account Details Wherever possible the words "Received" and "Paid" should also be eliminated to avoid repetition. All entries should be dated and the following details should be given :—

Interest and Dividends—

- (a) Name and amount of the holding in the company.
- (b) Annual rate received and whether interim or final.
- (c) Period for which declared.
- (d) Gross amount.
- (e) Income tax deducted.
- (f) Net amount.

Note : Interest is receivable on government and debenture stocks and on terminable debentures, deposits, etc.

Dividends are receivable on other investments.

Rents—

For convenience these should be shown in a rental appended to the account, thus :—

- (a) Postal address of the property.
- (b) Tenants' names.
- (c) Annual rent.
- (d) Additional charges receivable, e.g., insurance, or interest on improvements.
- (e) Period for which receivable.
- (f) Arrears of rent at beginning and end of period, stating whether expected to be doubtful debts.

- (g) Sums actually received.
- (h) Dates of expiry of leases.
- (i) Alterations in rents, new leases, etc.
- (j) Fire insurance.

Investments—

State the full description as on the share certificates with rate of interest or dividend (if any is fixed) and date of repayment if specified. Preference stocks and shares should be marked as non-cumulative, if appropriate. They are cumulative unless the contrary is stated. (*Partick Gas Co. v. Taylor*, 1888, 15 R. 711, and *Ferguson & Forrester v. Buchanan*, 1920 S.C. 154.)

THE STYLE OF TRUST ACCOUNTS

There are three principal styles in common use in Scotland in addition to various less orthodox combinations of these. The simplest style is the Statement of Receipts and Payments, which is appropriate for any size of trust account if completed by appending a list of investments and reconciliation of the totals. Secondly, there is the Statement of Income and Expenditure frequently adopted by charities, which is based on the former style, but also allows for outstanding items at both ends of the period. This is not suitable for testamentary trusts. Thirdly, there is the Account Charge and Discharge—a complex arrangement required in judicial factories and commonly used in other trusts, but which cannot be given unqualified recommendation under modern conditions. In practice it will be found that this name is wrongly given to many accounts which are purely cash statements. The main advantage of this style is the check on accuracy through the inclusion of the funds at cost at both beginning and end of the period.

It may also be of interest to refer to the English style of double-entry accounts although this is not in common use in Scotland.

The various styles are now described in detail.

I. STATEMENTS OF RECEIPTS AND PAYMENTS

This style of account is simply a classified cash account in which the receipts and payments are analysed under suitable headings, firstly separating the capital and income transactions, and secondly, distinguishing between the various sub-divisions of these. The account is incomplete if it does not also include a list of the investments at the close of the period showing the cost and present value of each. There should be appended reconciliations with the previous account of the totals of investments and capital and income cash balances, as shown in examples below. In order to reconcile the investments when there have been realisations during the year it is necessary to compare the cost and proceeds of each.

Example—

Investments at beginning at cost—

£200 3½% War Loan	£196 13 2
£100 4% Victory Bond	94 3 0
	£290 16 2
	£290 16 2

The Victory Bond was repaid at par during the year = £100, giving an increase over cost of £5, 17s., and there was invested £90 in a debenture of the Aberdonian Investment Company.

Investments at close of account at cost—

£200 3½% War Loan	£196 13 2
£90 4% deb. Aberdonian Investment Co.	90 0 0

£286 13 2

Add Cash Balance 10 0 0

£296 13 2

Reconciliation—

Funds at beginning £290 16 2

Add Increase on Realisation 5 17 0

Funds at end £296 13 2

Further particulars are shown in examples later (pages 84 to 90).

II. STATEMENTS OF INCOME AND EXPENDITURE

This style is also based on the classified cash account, *but takes into account outstanding sums*—whether receivable or payable—at both ends of the period. The income thus consists of sums received plus items receivable at the close of the period, less sums receivable at the beginning of the period, thus giving net actual earnings for the year. Expenditure is treated similarly.

It is usual to append a balance sheet in common form showing all assets and liabilities as at the close of the year, including the income balance in the same way as a profit and loss account balance. The income summary for publication to subscribers to the charity is generally prepared in the profit and loss account style, with income on the right and expenditure on the left.

See example on pages 91 to 94.

III. ACCOUNTS CHARGE AND DISCHARGE

The principle of these accounts is that the factor charges himself with funds at the beginning of the period plus receipts, and discharges on the other side an equal sum made up of payments plus funds remaining at the close of the period. In this style it must be noted that investments realised are excluded from the receipts as they are already included in the charge by forming part of the funds at the beginning, but differences due to increases or decreases on realisation are brought in to charge and discharge respectively. Similarly, investments made are not included in the payments as they are shown in the discharge by forming part of the funds at close of the period.

Examples of accounts charge and discharge appear on pages 95 to 101, and further particulars of the principal difficulties are now given:—

1. *Estate Realised—*

As all the trust funds are already included in the charge by forming part of the funds at the commencement of period (Charge

Branch I.) the proceeds of realisation are excluded, but any increase (or decrease) on realisation is included in the charge (or discharge). The usual procedure is to show the estate realised in an inner column which is not included in the sum of the charge, being merely a note, and from this the increases and decreases are ascertained in either of the following ways:—

- (a) By entering in a further column the cost of all items realised and comparing the total realised with this figure, showing in one sum the net increase or decrease over the whole period.
- (b) By subtracting the relative cost of each item realised giving an increase or decrease on each item, which are entered in additional columns for increase and decrease. These columns are then totalled and set off against each other to ascertain the net result. Both methods give the same result, but the latter method is recommended as being clearer.

II. *Estate Invested*—

As the new investments are included in the sum of the discharge by inclusion in the funds as at close of the account, these must be excluded from the payments forming part of the discharge. This is effected by showing the estate invested in an inner column which is not extended. It is not advisable to omit the heading altogether although this is sometimes done.

III. *Advances to Beneficiaries on Account of Residue*—

Such advances form part of the funds at close of the account (in the same way as estate invested) and must not be included again in the sum of the discharge. They are shown in an inner column which is not extended.

IV. *Bank Transactions*—

Bank balances are shown as part of the trust funds at each end of the period, and all sums drawn and lodged should be omitted altogether from the account, as this does not affect the reconciliation and they are of no interest.

V. *Revaluation of Estate*—

As an alternative to the correct basis of including investments at the same (cost) figure in the list of funds each year, they are sometimes revalued each year and the increase or decrease on revaluation is added to the charge or discharge respectively. This is not recommended as it does not preserve a record of the actual cost of each investment and is more complicated in operation. When the trust is to be wound up the last account should, however, include a revaluation.

As explained elsewhere (page 77) it is advisable to make a valuation of the investments, but this is only an appendix and does not form part of the account charge and discharge.

VI. *Liferents as affecting Accounts*—

Where there is a liferent of the trust funds there should be a division of the account so that there are a capital charge and discharge and an income charge and discharge, as this is simpler than

merging them all together. In this case the income bank and cash balances at beginning and end are excluded from the funds in the capital account, and appear in income charge and discharge respectively. The capital and income cash balances must together equal the net cash balance per the factor's books, and similarly for bank balances.

VII. *Rents*—

The amount of rents included in the charge should be the total falling due and not the sum actually received, but arrears are included in the funds at both ends. Irrecoverable rents should be deducted from the total falling due. If there is a separate income account (see VI. above) all these items are shown there.

Example—

Charge—

1. <i>Included in Funds at beginning of period</i>	
Rents in arrear at this date	£20
2. <i>Included in Income of period</i>	
Rents receivable (less sums written off as irrecoverable)	200
	<u>£220</u>

Discharge—

<i>Included in Funds at end of period</i>	
Rents in arrear at this date	£15
	<u> </u>

The difference between sums in the charge and discharge, £205, represents sums received, and thus reconciles with the addition to the cash balance.

An alternative method, sometimes adopted, is to bring into income the actual cash received, and show arrears in a note. This is not strictly correct, but is simpler than the other method.

VIII. *Partnerships and Trading Profits*—

The actual earnings of the period as shown by the accounts of the business are included in the income, not the sums drawn out of the business, in the same way as rents. The detailed trading accounts are sometimes appended to the trust account. The capital and accumulated profits are included in the funds at each end of the period, and the difference between profits earned and drawings is shown in the accounts by changes in the accumulated profits figure.

IX. *Judicial Factories*—

The account must include all the usual particulars described above, and in addition an account-current must be appended showing all transactions including bank transactions and closing with the cash balance shown in the Account Charge and Discharge. Accounts must be prepared annually, and signed by the factor, then lodged

for audit with the Accountant of Court along with vouchers arranged and numbered. The factor is remunerated by commission fixed by the Accountant of Court.

IV. ENGLISH STYLE

This style may conveniently be based on a set of double-entry books consisting of cash-book, journal and ledger. At the beginning a ledger account is opened called estate account (or corpus account) which is credited by journal entry with the whole assets and debited with any liabilities, such as debts due by deceased. In executries this account should bring out the amount per estate duty inventory as the balance after the opening entries are made. Corresponding entries appear on the other side in accounts for (assets) investments, bank current account, heritable property, and (liabilities) debts due by deceased, etc. The investments account may conveniently be in the form of a control account, and if so a separate investment ledger is required in which there are accounts for the individual investments, showing details of the holdings and the cost (or inventory value) of each, which in total should agree with the control account. A second control account, for income on investments, reconciles with the total of the income balances appearing in the separate accounts for the various investments. In the investment ledger it will be found convenient to have a page for each investment showing income on one part of the page and the capital transactions on another part. The income balances are closed off by transfer to revenue account annually.

Profits and losses on realisation are transferred from investments account to estate account after sales are made. Apportionments may be shown by journal entry from investments account to income on investments account, or alternatively the original cash book entry is made in two parts—one crediting each of these accounts.

Payments are charged to accounts for government duties, debts due by deceased, legacies, annuities, management, etc. At the end of the year all these accounts are closed off by transfer to capital expenditure account, or revenue account, as the case may be. These accounts are in turn transferred to estate account and surplus revenue account. The free income is subsequently transferred to the credit of the liferenter from the latter account.

The cash book is preferably ruled with capital and income columns as this shows separate balances for each, but in practice it must be remembered that it is frequently necessary to make transfers from capital to income account, for example, for apportionments omitted or wrongly calculated. Bank columns are also required unless every transaction is direct to or from the bank account, in which case the balance per the cash book is the balance in bank, subject to outstanding cheques.

The trust account shows in summarised form (1) the transactions on the estate account, capital expenditure account and revenue account, (2) surplus revenue account, and (3) balance sheet, and there should be appended a schedule of investment ledger balances—both capital and income—reconciled with the totals per balance sheet and revenue account.

The present valuation of the investments may be shown on the schedule, and comparative figures for the previous period may also conveniently be appended to the balance sheet and accounts. •

Recommendations by the Council of the Institute of Chartered Accountants in England and Wales as to the form and contents of trust accounts were published in *The Accountant* dated 13th August 1949.

CHAPTER X

SPECIMEN TRUST ACCOUNTS

Specimen Executry Account of Receipts and Payments

EXECUTRY OF THE LATE ALEXANDER JOHN MURRAY

SUMMARY OF ACCOUNTS from 11th January 1952 (date of death)
to 30th September 1952 (close of executry)

Estate Realised	£375	10	11
Add Income Received	30	13	10
Miscellaneous Receipt		7	6
	£406	12	3
<i>Less</i> Debts due by Deceased	£12	11	5
Deathbed and Funeral Expenses	10	16	6
Government Duties and Interest thereon	26	11	4
Legacy	300	0	0
Income Tax	5	15	0
Management	18	10	6
	374	4	9
Cash balance payable to Miss Elizabeth Murray as residuary legatee	£32	7	6
Add Value of investments transferred to her as at 15th July 1952	1773	15	0
Total Residue of Estate	£1806	2	6

STATEMENT OF RECEIPTS AND PAYMENTS by Thomas Murray, W.S.,
as Factor for the Executors of the late ALEXANDER JOHN
MURRAY

From 11th January 1952 (date of death)
To 30th September 1952 (close of executry).

RECEIPTS

I. ESTATE REALISED:—
1952

Note of Values as at Date of Death	Feb. 10. Received sum at credit of current account with Bank of Scotland	£82	10	3
£82 10 3	„ 15. Proceeds of 20 National Savings Certificates	21	8	6
21 0 0	Mar. 20. Uplifted Deposit Receipt with Bank of Scotland dated 6th October 1951	50	0	0
50 0 0	Apl. 15. Received proceeds of £200 3½% War Loan at 98½ less expenses	194	15	0
202 0 0	June 10. Received proceeds of household furniture sold by auction	23	5	6
27 10 0	„ 24. Income tax recovered to date of death	3	11	8
3 11 8		£375	10	11

II. INCOME RECEIVED:—
1952

0 15 0	Mar. 20. Interest on Deposit Receipt with Bank of Scotland p. £50 dated 6th October 1951	£0	18	10
£387 6 11		£0	18	10
	Forward	£375	10	11

SPECIMEN TRUST ACCOUNTS

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RECEIPTS—(Continued)		Forward	£375	10	11
II. INCOME RECEIVED—(continued)		Forward	£0	18	10
1952					
Mar. 21.	Imperial Chemical Industries, Ltd., ½ yr's div. on £200 7% pref. stock £7 less tax at 5s, £1 15s. (This div. was due on 1st Feb. 1952.)		5	5	0
June 1.	½ yr's int. on £1250 3½% War Loan (no tax deducted)		21	17	6
July 1.	Lever Brothers Ltd., ½ yr's div. on £100 7% pref. stock £3, 10s. less tax at 5s., 17s. 6d.		2	12	6
Note (1) Subsequent dividends are payable direct to Miss Elizabeth Murray.					
(2) <i>Author's Note only:</i> When there are few dividends as in this case it is not necessary to show sub-headings for each investment on which income should be receivable.					
III. MISCELLANEOUS:—					
1952					
June 15.	Received rebate on insurance premium on furniture		0	7	6
TOTAL RECEIPTS			£406	12	3

PAYMENTS

I. DEBTS DUE BY DECEASED:—					
1952					
Jan. 15.	John Wilson, Grocer		£1	8	2
	James Smith, Butcher		0	15	6
Feb. 28.	Burgh Consolidated Rates (on house occupied) 1951-52		2	7	9
May 15.	½ yr's rent of house to date		8	0	0
Note.—Part of this rent applies to period after death, but the house could not be sub-let and the rent was not subject to rebate on vacating occupation before Whitsunday.					
			£12	11	5
II. DEATHBED AND FUNERAL EXPENSES:—					
1952					
Jan. 15.	Dr. Johnson—fee for professional services	£1	11	6	
,,	28. McGregor & Co., Undertakers, for funeral	7	10	0	
Feb. 20.	James Duncan—for inscription on tombstone	1	15	0	
			10	16	6
III. GOVERNMENT DUTIES AND INTEREST THEREON:—					
1952					
Jan. 31.	Estate Duty 1% on £2150	£21	10	0	
	Interest thereon	0	1	4	
Feb. 7.	Dues of Confirmation	5	0	0	
			26	11	4
IV. LEGACY:—					
1952					
Feb. 28.	Mrs Isabella Whytock		300	0	0
Note.—Personal effects (valued at £5) were handed to Miss Johnson as instructed in Will.					
Forward			£349	19	3

		PAYMENTS—(Continued)	Forward	£349	19	3
V. INCOME TAX:—						
Sum reserved to meet tax on 18s. 10d. Deposit Receipt interest received						
20th March 1952 and £21, 17s. 6d. War Loan Interest received 1st June						
1952 (taken as £23 at 5s. per £1)						
VI. MANAGEMENT:—						
1952						
Feb. 10.	John Edgar—fee for valuation of personal effects and furniture	£0	10	6		
Mar. 15.	Registration fee of Confirmation—Lever Brothers, Ltd.	0	2	6		
„ 20.	Registration fee of Confirmation—Imperial Chemical Industries, Ltd.	0	2	6		
July 15.	Stamp on transfer of Lever Brothers stock to residuary legatee—Miss Murray	0	10	0		
	Stamp on transfer of Imperial Chemical Industries stock to residuary legatee—Miss Murray	0	10	0		
	Registration fee of transfer Lever Brothers, Ltd.	0	2	6		
	Registration fee of transfer Imperial Chemical Industries, Ltd.	0	2	6		
Sept. 30.	Thomas Murray, W.S., Business Account for preparation of Estate Duty inventory, payment of duty, realisation of estate, payment of debts and legacy, etc., and transfer of residue—restricted to Thomas Murray, W.S., posts and outlays	16	0	0		
		0	10	0		
				18	10	6
TOTAL PAYMENTS				£374	4	9

CASH SUMMARY

Receipts	£406	12	3
Less Payments	374	4	9
Balance payable to deceased's sister—Miss Elizabeth Murray—as residuary legatee	£32	7	6

Note of Values as at Date of Death
£1262 10 0
175 0 0
337 10 0
£1775 0 0

The following investments have also been transferred to Miss Murray—valued as at 15th July 1952:—

1. £1250 3½% War Loan at 101½	£1268	15	0
2. £100 7% pref. stock Lever Brothers, Ltd., at 34s.	170	0	0
3. £200 7% pref. stock Imperial Chemical Industries, Ltd., at 33s. 6d.	335	0	0
	£1773	15	0

Note.—The estate at date of death per Confirmation amounted to £2162, 6s. 11d., whereof £387, 6s. 11d. is included in estate realised, and the balance is £1775, as stated above.

*Specimen Account—(with Liferent of Trust Income)—
Receipts and Payments Style*

WILLIAM MCGREGOR'S TRUST

SUMMARY OF ACCOUNTS for year to 31st December, 1952

CAPITAL

Estate as at close of last account (at cost)	£1341	0	0
Add Increase on Realisation	12	11	10
	£1353	11	10
Less Management Expenses proportion	2	2	0
Estate as at close of this account (at cost)	£1351	9	10

The present value of the trust funds is £1201, 9s. 10d., compared with £1186, 5s. 6d. in 1951—an increase of £15, 4s. 4d.

INCOME

Rents Received	£80	0	0
Add Dividends Received	21	13	2
	£101	13	2
Less Burdens on Heritable Property	£29	7	6
Repairs to Heritable Property	20	6	5
Annuity paid	7	10	0
Management Expenses (proportion)	8	2	0
Income Tax	4	10	0
	69	15	11
Free Income for year	£31	17	3
Add Balance of Income per last account	11	7	6
	£43	4	9
Less Payments to Mrs McGregor—the liferentrix	31	7	6
Balance of Income as at close of this account	£11	17	3

CASH:—

	Capital.			Income.		
Balance in hands of factor as at close of last account	£15	10	0	£11	7	6
Add Capital Receipts	188	1	10			
Income Receipts				101	13	2
	£203	11	10	£113	0	8
Less Capital Payments	202	2	0			
Income Payments				101	3	5
Balance in hands of factor as at close of this account	£1	9	10	£11	17	3

STATEMENT OF RECEIPTS AND PAYMENTS by Thomas Murray, W.S.,
as Factor for the Trustees of the late WILLIAM MCGREGOR.

From 31st December 1951
To 31st December 1952

CAPITAL RECEIPTS

1952			
June 10. Received proceeds of £200 4% Funding Loan 1960-90 at 95% less expenses	£188	15	0
<i>Author's Note.</i> —The contract date is taken here as the sale was for cash settlement (although the proceeds were not received until 18th June) according to rules of apportionment.			
<i>Less</i> Interest accrued from 1st May to 10th June 1952 included in price, but applicable to income (40 days) 17s. 6d., less tax 4s. 4d.	0	13	2
	£188	1	10
<i>Note.</i> —Cost of stock per last account	175	10	0
Increase on Realisation	£12	11	10
TOTAL CAPITAL RECEIPTS	£188	1	10

CAPITAL PAYMENTS

I. INVESTMENT MADE:—			
1952			
June 20. Placed on deb. with Aberdonian Investment Company at 5% for 3 years	£200	0	0
II. MANAGEMENT:—			
1952			
Dec. 31. Thomas Murray, W.S., fee for capital transactions during year including above investments and preparation of this account	2	2	0
TOTAL CAPITAL PAYMENTS	£202	2	0

INCOME RECEIPTS

I. RENTS per Appendix		£80	0	0
II. INTEREST AND DIVIDENDS:—				
1. On £600 3% Defence Bonds				
1952				
Jan. 1. ½ yr's int. (no tax deducted)	£9	0	0	
July 1. ½ yr's int. (no tax deducted)	9	0	0	
	£18	0	0	
2. On £200 4% Funding Loan 1960-90				
1952				
May 1. ½ yr's int. to date £4 less tax £1	£3	0	0	
June 10. Accrued int. to date of sale per Capital Receipts 17s. 6d. less tax 4s. 4d.	0	13	2	
	3	13	2	
<i>Note.</i> —This stock was sold during year.				
Forward	£21	13	2	£80 0 0

INCOME RECEIPTS—(Continued)

	Forward	£80	0	0
II. INTEREST AND DIVIDENDS—(continued)	Forward	£21	13	2
3. On £200 5% deb. Aberdonian Investment Co., Ltd.				
No interest yet received. The first interest is due on 1st January 1953. This debenture was taken up on 20th June 1952 .				
		21	13	2
TOTAL INCOME RECEIPTS		£101	13	2

INCOME PAYMENTS

I. BURDENS ON HERITABLE PROPERTY—36-40 MEADOW WALK, EDINBURGH:— 1952				
Feb. 28. Local Consolidated Rates 1951-2—Owner		£10	15	0
May 15. ½ yr's feu duty £1, 10s. less tax 7s. 6d.		1	2	6
Nov. 11. Do. Do.		1	2	6
Insurance premium on comprehensive policy		3	17	6
Dec. 31. Income Tax Schedule A, 1952-3		12	10	0
		£29	7	6
II. REPAIRS TO HERITABLE PROPERTY:— 1952				
Mar. 31. John Simpson, Painter	£12	6	6	
July 15. William Dunbar, Plumber	1	14	7	
Sept. 30. Do.	1	18	1	
Nov. 15. John McAllister, Slater	4	7	3	
		20	6	5
III. ANNUITY:— 1952				
May 15. George McGregor annuity for year to date £10 less tax £2, 10s.		7	10	0
IV. MANAGEMENT:— 1952				
Dec. 31. Thomas Murray, W.S., commission, etc., for year to date—restricted to	£7	7	0	
Thomas Murray, W.S., posts and bank charges	0	15	0	
		8	2	0
V. INCOME TAX:— 1952				
Dec. 31. Income Tax Schedule D, 1952-3, on Defence Bonds interest £18 at 5s.		4	10	0
VI. PAYMENTS TO LIFERENTRIX—MRS MCGREGOR:— 1952				
Jan. 31. Per British Linen Bank—balance per last account	£11	7	6	
Feb. 28. Do. —for quarter	5	0	0	
May 31. Do. Do.	5	0	0	
Aug. 31. Do. Do.	5	0	0	
Nov. 30. Do. Do.	5	0	0	
		31	7	6
TOTAL INCOME PAYMENTS		£101	3	5

RENTAL OF PROPERTY for year to 31st December 1952

Address.	Tenants.	Annual Rent.	Period due.	Arrears at beginning.	Sums Received.	Arrears at end.	Notes.
36 Meadow Walk (Shop)	J. Mackay	£20 0 0	Year to Marts. 1952	....	£20 0 0	....
38 Meadow Walk	A. Baillie	12 0 0	Year to 1st Jan. 1953	£0 10 6	11 7 6	£1 3 0	Payable monthly in advance Do. Do. Do.
Do.	T. McGregor	9 0 0	Do.	1 0 0	10 0 0		
Do.	J. Dalkeith	10 0 0	Do.	....	9 15 0	0 5 0	
Do.	W. Nelson	11 10 0	Do.	1 10 0	10 0 0	3 0 0	
40 Meadow Walk (Shop)	Miss Johnston	20 0 0	Year to Marts. 1952	....	18 17 6	1 2 6	
		£82 10 0		£3 0 6	£80 0 0	£5 10 6	

Insurance of the property is covered by comprehensive policy p. £500 with XY Co. (premium £3, 17s. 6d.).

Note.—Rents Receivable	£82 10 0
Add Arrears at beginning	3 0 6
	<hr/>
	£85 10 6
Less Cash Received	80 0 0
	<hr/>
Arrears at end	£5 10 6

VALUATION OF TRUST FUNDS at at 31st December 1952

	Cost.		Present Price.	Present Value.	
	£	s		£	s
£600 3% Defence Bonds	£600	0 0	say par	£600	0 0
Heritable Property 36-40 Meadow Walk, Edinburgh	550	0 0	say	400	0 0
£200 5% deb. Aberdonian Investment Co., Ltd., due 20th June 1955	200	0 0	say par	200	0 0
Capital Balance at credit with Factor	1	9 10		1	9 10
	<hr/>			<hr/>	
	£1351	9 10		£1201	9 10

Note.—There is a balance of income at credit with Factor of £11, 17s. 3d. and arrears of rents outstanding of £5, 10s. 6d.

Specimen Statement of Accounts of Charity—Income and Expenditure Style
THE BENEVOLENT INSTITUTION

SUMMARY OF ACCOUNTS for year to 31st December 1952
INCOME ACCOUNT

<i>Expenditure</i>	<i>Income</i>
1. Expenses of Property occupied by Beneficiaries	£39 7 6
2. Annuities to Beneficiaries	261 8 6
3. Special Payments to Beneficiaries	108 10 0
4. Inspector's Salary and Expenses	20 0 0
5. Management Expenses—including Staff Salaries and Office Expenses	85 7 6
Surplus Income for year	£514 13 6
	63 19 0
	£578 12 6
	£530 0 0
	43 5 0
	5 7 6
	£578 12 6

BALANCE SHEET as at 31st December 1952

<i>Assets</i>		<i>Liabilities</i>	
I. Cash in Bank	£73 18 3	I. Expenses of Property accrued	£14 10 0
II. Income accrued on Investments	152 6 6	II. Annuities accrued	2 2 9
III. Subscriptions unpaid	0 10 0	III. <i>Capital Reserve</i> :—	
IV. Income Tax Recoverable	65 0 0	Per last Account	£7350 0 0
V. Investments (at cost)	10,478 10 0	Add Legacies received during year	75 0 0
Note.—The present value of the Investments is £13,500.		IV. <i>Income Surplus</i> :—	
VI. <i>Heritable Property—Land and Buildings</i> :—		Per last Account	£4512 5 6
Per last Account	£1163 15 0	Add Surplus for year	63 19 0
Add Price of land purchased and improvements to property during year	83 17 6		
	1,247 12 6		4,576 4 6
	£12,017 17 3		£12,017 17 3

COMPUTATION of certain items of Income and Expenditure for the above accounts of THE BENEVOLENT INSTITUTION for year to 31st December 1952. (Not shown in published accounts.)

INCOME

I. INCOME FROM INVESTMENTS:—

1. On £3000 4% Funding Loan—
1952

May 1. ½ yr's int. to date £60 less tax £15	£45	0	0
Nov. 1. Do. Do.	45	0	0

2. On £10,000 4% Victory Bonds—
1952

Mar. 1. ½ yr's int. £200 less tax at 5s. 6d. (correcting 6d. in previous deduction) £55	£145	0	0
Sept. 1. Do. tax at 5s., £50	150	0	0

	295	0	0
	£385	0	0
Add Sum at credit of income tax account	145	0	0
	£530	0	0

Note.—The amount of accrued income tax at 31st December 1952 was the same as at 31st December 1951 (£152, 6s. 6d.) as detailed below:—

On £3000 4% Funding Loan from 1st November to 31st December 1952 (60 days)	£19	14	6
On £10,000 4% Victory Bonds from 1st September to 31st December 1952 (121 days)	132	12	0
	£152	6	6

IA. INCOME TAX:—
1952

Apl. 20. Sum recovered in respect of year to 5th April 1952	£135	0	0
May 15. Tax deducted on payment of feuduty £10 at 5s. (This is paid over to Inland Revenue by set-off against claim.)	2	10	0
	£137	10	0

Add Sum recoverable as at 31st December 1952—

(1) On 4% Funding Loan interest received 1st November 1952	£15	0	0
(2) On 4% Victory Bond interest received 1st September 1952	50	0	0
	65	0	0

	£202	10	0
Less Sum recoverable as at 31st December 1951 per last Balance Sheet	57	10	0

Total at credit of account transferred to Income from Investments Account	£145	0	0
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INCOME—(continued)

II. SUBSCRIPTIONS:—

Sums received during year	£44	10	0
Add Sums outstanding as at 31st December 1952	0	10	0
	£45	0	0
Less Do. Do. 1951	1	15	0
	£43	5	0

EXPENDITURE

I. EXPENSES OF PROPERTY OCCUPIED BY BENEFICIARIES:—

1952			
Jan. 31. Local Consolidated Rates 1951-2—Owner and Occupier	£25	10	0
May 15. Year's feuduty	10	0	0
<i>Note.</i> —Income Tax was deducted on payment and this is included in Income Br. I.			
June 10. James Brown, Painter	3	5	0
	£38	15	0
Add Accrued expenses at 31st December 1952 (estimated)	14	10	0
	£53	5	0
Less Accrued expenses at 31st December 1951 per last Balance Sheet	13	17	6
Net expenditure for year	£39	7	6

Note.—No rents are receivable from beneficiaries.

II. ANNUITIES TO BENEFICIARIES:—

Actual payments during year (10 annuitants at 10s. per week for 52 weeks)	£260	0	0
Add 3 days' annuities outstanding at 31st December 1952	2	2	9
	£262	2	9
Less 1 day's annuities Do. 1951	0	14	3
	£261	8	6

III. SPECIAL PAYMENTS TO BENEFICIARIES:—

1952			
July 15. Miss Maxwell—gift on 80th birthday	£5	0	0
Sept. 10. Miss Dryburgh—allowance for medical attention	3	10	0
Dec. 25. Christmas allowance of £10 to each annuitant	100	0	0
	£108	10	0

IV. INSPECTOR'S SALARY AND EXPENSES:—

1952			
Dec. 31. James Nelson—allowance for year	£20	0	0

V. MANAGEMENT EXPENSES:—

1952			
Dec. 31. William Robertson—amount of salary as treasurer for year	£50	0	0
William Robertson—Clerk's salary (part time)	26	0	0
Do. Allowance for stationery	6	15	0
Do. Postages, etc.	2	12	6
	£85	7	6

TRUST ACCOUNTANCY

INCOME CASH SUMMARY for year 1952

RECEIPTS:—

Dividends received	£385	0	0
Income tax recovered	137	10	0
Subscriptions	44	10	0
Donations	5	7	6
	£572	7	6

Less PAYMENTS:—

Expenses of Property	£38	15	0
Annuities to Beneficiaries	260	0	0
Special Payments to Beneficiaries	108	10	0
Inspector's Salary and Expenses	20	0	0
Management	85	7	6

Income Cash Surplus for year	£512	12	6
	£59	15	0

RECONCILIATION OF INCOME AND EXPENDITURE ACCOUNT

OUTSTANDING INCOME:—

	1951			1952		
Income Tax	£57	10	0	£65	0	0
Interest on Investments	152	6	6	152	6	6
Subscriptions	1	15	0	0	10	0
	£211	11	6	£217	16	6

INCREASE IN OUTSTANDING INCOME

	211	11	6
	£6	5	0

OUTSTANDING EXPENDITURE:—

Expenses of Property	£13	17	6	£14	10	0
Annuities	0	14	3	2	2	9
	£14	11	9	£16	12	9

INCREASE IN LIABILITIES

	14	11	9
	£2	1	0

Increase in Assets

Cash Surplus	£6	5	0
	59	15	0

Less Increase in Liabilities

	£66	0	0
	2	1	0

NET IMPROVEMENT

	£63	19	0
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Specimen Account Charge and Discharge

TRUST OF THE LATE ALEXANDER MURRAY

SUMMARY OF ACCOUNTS for year to 31st December 1951

I. CAPITAL:—

(a) Amount of Funds plus cash balance per last Account (at cost)	£2883	17	0
Add Additional Funds—Legacy from the late Mrs Annie Murray	100	0	0
	£2983	17	0
Less Estate Duty	£5	0	0
Management—proportion	1	3	6
	6	3	6
Amount of Funds plus cash balance at close of account (at cost)	£2977	13	6

(b) <i>Reconciliation Note.</i> —The investments (excluding cash) per last account	£2877	13	4
Add Investments made	180	6	2
	£3057	19	6
Less Investments realised	2	10	0
Investments (excluding cash) at close of account (at cost)	£3055	9	6

(c) The present value of the total funds is £3048 compared with £3200 in 1950.

II. INCOME:—

Income Received	£203	1	2
Less Management—proportion	7	12	6
Free Income for year	£195	8	8
Add Balance at close of last account	18	7	6
	£213	16	2
Less Paid to Liferentrix	140	0	0
Balance at close of this Account	£73	16	2

ACCOUNT CHARGE AND DISCHARGE of the Intromissions of
Thomas Murray, W.S., as Factor for the Trustees of the late
ALEXANDER MURRAY.

For year to 31st December 1951

CAPITAL CHARGE

I. ESTATE AS AT CLOSE OF LAST ACCOUNT AT COST:—				
1. £1000 4% deb. stock XX, Ltd.		£742	13	4
2. 500 6% partic. pref. shares of £1 each fully paid XX, Ltd.		485	0	0
3. Share of capital of the partnership of Murray & Murray, Ironmongers, Edinburgh, including undrawn profits		1500	0	0
4. Advances to Frederick T. Murray on account of residue		150	0	0
5. Capital Balance at credit with Factor		6	3	8
		£2883	17	0
II. ADDITIONAL FUNDS RECEIVED:—				
1951				
June 30. Legacy from the late Mrs Annie Murray, deceased's grandmother		100	0	0
<i>Note.</i> —This legacy was vested in the deceased, but was not payable until the death of deceased's last surviving sister. No estate duty was paid on this legacy at the time of testator's death. For payment, see Capital Discharge I.				
III. INVESTMENT REALISED:—				
1951				
May 18. Received proceeds of rights to 10 new ord. shares of £1 each XX, Ltd., at 6s. 3d. market premium less expenses		£2	10	0
<i>Note.</i> —Cost of 500 6% partic. pref. shares per Br. I., 2 £485 0 0 <i>Deduct</i> above receipt 2 10 0				
Cost of 500 6% partic. pref. shares now converted into 500 6% cum. pref. (non-partic.) and 50 ord. shares all of £1 each fully paid, per Funds at close of account £482 10 0				
SUM OF CAPITAL CHARGE		£2983	17	0

CAPITAL DISCHARGE

I. ESTATE DUTY:—

1951

Aug. 10. Additional Estate Duty at 5% on £100 legacy re-
ceived per Cap. Charge II.

£5	0	0
£5	0	0

Forward

CAPITAL DISCHARGE—(Continued)		Forward	£5	0	0
II. INVESTMENTS MADE:—			•		
1. 4% <i>Victory Bonds</i> :—					
1951					
July 10. Paid for £50 Bond at 96% and expenses		£48	15	0	
<i>Less</i> amount of accrued interest included in price transferred from Income Charge II., 5, from 1st March to 10th July 1951 (131 days) 14s. 4d. less tax 3s. 7d.		0	10	9	
Cost of £50 Bond per Funds at close of Account		£48	4	3	
2. <i>Advances to Frederick T. Murray</i> :—					
1951					
June 30. Further advance	£50	0	0		
Dec. 31. Interest on advances due per Income Charge II., 4, unpaid and added to capital sum due by him	6	11	5		
		56	11	5	
<i>Note.</i> —Advances p. Capital Charge					
I., 4	£150	0	0		
<i>Add</i> above sums	56	11	5		
Advances p. Funds at close of account	£206	11	5		
3. <i>Share of partnership capital of Murray and Murray</i> :—					
1951					
Dec. 31. Amount of undrawn profits for year to date		75	10	6	
<i>Note.</i>					
(1) Share of profits per Income Charge II., 3	£135	10	6		
<i>Less</i> sums drawn during year	60	0	0		
Balance as above	£75	10	6		
(2) Amount of capital plus undrawn profits per Capital Charge I., 3	£1500	0	0		
<i>Add</i> above sum	75	10	6		
Amount per Funds at close of Account	£1575	10	6		
		£180	6	2	
		Forward	£5	0	0

CAPITAL DISCHARGE—(Continued)		Forward	£5	0	0
III. MANAGEMENT:—					
1951					
Dec. 31. Thomas Murray, W.S., commission, etc., for year		£1	1	0	
Thomas Murray, posts, etc.		0	2	6	
					1 3 6
IV. ESTATE AS AT CLOSE OF THIS ACCOUNT AT COST:—					
Present Value.					
£800	1. £1000 4% deb. stock XX, Ltd.	£742	13	4	
475	2. 500 6% cum. pref. shares of £1 each fully paid XX, Ltd.	482	10	0	
20	3. 50 ord. shares of £1 each fully paid Do.				
1576	4. Share of Capital of the partnership of Murray & Murray, Ironmongers, Edin- burgh, including undrawn profits	1575	10	6	
207	5. Advances to Frederick T. Murray on account of residue	206	11	5	
48	6. £50 4% Victory Bond	48	4	3	
£3126		£3055	9	6	
78	Less Capital Balance due to Factor	77	16	0	
£3048					2977 13 6
SUM OF CAPITAL DISCHARGE Equal to CHARGE					£2983 17 0

INCOME CHARGE

I. INCOME BALANCE at credit with Factor as at close of last Account		£18	7	6
II. INTEREST AND DIVIDENDS RECEIVED:—				
1. On £1000 4% deb. stock XX, Ltd.				
1951				
Mar. 31.	½ yr's int. to date £20 less tax at 5s., £5	£15	0	0
Sept. 30.	Do. Do.	15	0	0
		£30	0	0
2. On 500 6% partic. pref. shares of £1 each fully paid XX, Ltd.—				
1951				
Feb. 28.	Yr's div. for 1950 of 8% £40 less tax at 5s., £10	30	0	0
<i>Note.</i> —These shares have been exchanged for 500 non-partic. 6% pref. shares and 50 ord. shares per Capital Charge III.				
2a. On 50 ord. shares of £1 each fully paid XX, Ltd.— These shares were received during year per Capital Charge III. No dividend yet received.				
3. Share of profits of partnership of Murray and Murray—				
1951				
Dec. 31.	Share of profits earned for year 1951	135	10	6
Forward		£195	10	6
		£18	7	6

INCOME CHARGE—(Continued)

		Forward	£18	7	6
II. INTEREST AND DIVIDENDS RECEIVED—(continued)					
Forward		£195	10	6	
4. On advances on account of residue to Frederick T. Murray at 5%—					
1951					
Dec. 31.	Yr's int. to date on sums advanced per last account —£150	£7	10	0	
	Int. to date on £50 advanced on 30th June 1951 (184 days)	1	5	2	
	Less tax at 5s.	£8	15	2	
		2	3	9	
Note.—This int. was unpaid and has been added to advances per Capital Discharge II., 2			6	11	5
5. On £50 4% Victory Bond—					
1951					
Sept. 1.	½ yr's int. to date £2 less tax at 5s., 10s.	£1	10	0	
	Less accrued int. included in price from 1st March to 10th July 1951 (131 days) 14s. 4d. less tax at 5s., 3s. 7d.	0	10	9	
			0	19	3
			203	1	2
SUM OF INCOME CHARGE			£221	8	8

INCOME DISCHARGE

I. PAYMENTS TO LIFERENTRIX—Mrs Murray—					
1951.					
Feb. 28.	Per Bank of Scotland, Edinburgh		£35	0	0
May 31.	Do. Do.		35	0	0
Aug. 31.	Do. Do.		35	0	0
Nov. 30.	Do. Do.		35	0	0
			£140	0	0
II. MANAGEMENT:—					
1951					
Dec. 31.	Thomas Murray, W.S., commission for year to date	£7	10	0	
	Thomas Murray, W.S., posts, etc.	0	2	6	
			7	12	6
III. BALANCE OF INCOME at credit with Factor as at close of account			73	16	2
SUM OF INCOME DISCHARGE Equal to CHARGE			£221	8	8

CHAPTER XI

SPECIMEN TRUST ACCOUNTS SHOWING APPORTIONMENTS

INDEX AND SUMMARY OF APPORTIONMENTS IN SPECIMEN ACCOUNTS

1. *At Testator's Death.*—Preference stock held at date of testator's death is sold after receipt of an interim dividend, which is transferred to capital, in order to avoid two calculations, and added to the price realised. The apportionment is completed under No. 3.
2. *At Testator's Death.*—Preference stock is held at date of testator's death and the accrued dividend applicable to capital is calculated from the close of the previous year of the company until date of death.
3. *On Sale.*—This is the continuation of apportionment No. 1. The accrued dividend from date of death until date of sale is applicable to income, and deducted from the price realised.
4. *On Sale.*—Preference stock is sold during a company's year before any interim dividend is received. The amount of accrued dividend included in the price is calculated from the close of the previous year of the company until date of sale.
5. *On Sale.*—Ordinary stock held at date of testator's death is sold before any dividend is received. The accrued dividend included in the price was anticipated to be at 10% per annum, and is calculated from date of death until date of sale.
6. *At Testator's Death.*—Ordinary stock is held at date of testator's death. An interim dividend has been received prior to death, and the final dividend is apportioned, so as to make the sum remaining applicable to income equal to the accrued dividend calculated at the *total annual rate* from date of death until the close of the company's year.
7. *On Sale.*—Ordinary stock is sold during a company's year before any interim dividend is received. The amount of accrued dividend is calculated at the anticipated annual rate of 10% from the close of the previous year of the company until date of sale.
8. *On Sale.*—Ordinary stock is sold during a company's year after receipt of an interim dividend. The amount of accrued dividend is calculated at the anticipated annual rate of 10% from the close of the previous year of the company until date of sale (8a), less the amount of interim dividend received (8b).
9. *On Sale.*—This is similar to No. 8 except that the sale is made after the close of the company's year, but before the receipt of the final

dividend, thus leaving accrued dividend for a period greater than a year (9a), subject to deduction of interim dividend received (9b).

10. *On Sale*.—Ordinary stock is sold as in No. 9, but the rate of final dividend has been declared prior to sale, although this dividend passes to the purchaser. The accrued dividend is, therefore, taken in two parts, (1) the final dividend completing the previous year of the company, (2) the anticipated dividend from the close of that year until date of sale.
11. *On Sale*.—Ordinary stock is sold as in No. 5. In this case the rate of dividend anticipated at date of sale is 6%, but only 5% is actually paid. The latter rate must be ignored in the account, although declared before the account is prepared.
12. *At Testator's Death*.—Ordinary stock is held at date of testator's death, on which no interim dividend has been received for the current year prior to death. The dividends received are added together and apportioned, so as to make the sum applicable to capital equal to the accrued dividend at the total annual rate from the close of the company's previous year until date of death.
13. *At Testator's Death*.—This is similar to No. 12 except that the first dividend received is declared as in respect of a half year and, accordingly, is apportioned without reference to any other dividend.
14. *On Purchase*.—Debenture stock (on which interest is declared half yearly) is purchased, and the first interest is apportioned so that the interest accrued from close of the previous half year until date of purchase is applicable to capital.
15. *On Purchase*.—Participating preference stock is purchased after an interim dividend has been paid for the current year. The final dividend is apportioned so as to make the sum remaining applicable to income equal to the accrued dividend (calculated at the total annual rate) from date of purchase until the close of the company's year.
16. *On Purchase*.—Preference stock is purchased after the close of the company's year, but before the final dividend is paid. The dividends which are received are added together and apportioned so as to make the sum applicable to capital equal to the total accrued dividend from the close of the *previous* year of the company until the date of the purchase, *less* the interim dividend paid prior to purchase.
17. *On Purchase*.—5% Consolidated Loan (a fictitious British Government Security) is purchased after the stock is marked "ex dividend", but before the interest is due. No interest is receivable on this stock until 1st December (6½ months later). An apportionment is made so that accrued interest from date of purchase (15th May) until date of next interest (1st June) is *added* to the purchase price and credited to income.
18. *On Purchase*.—Further 5% Consolidated Loan is purchased. The accrued interest applicable to capital is calculated from the last

date of payment of interest (1st June) until date of purchase (15th August).

19. *On Sale*.—Part of the Consolidated Loan holding is sold after the stock is marked “ex dividend”, but before the interest is due, so that interest is received in respect of the period of 16 days after the stock is sold. When the interest is received an apportionment is made, so that the accrued interest for the period from date of sale to date of payment is taken as applicable to capital and, therefore, deducted from income.
20. *On Cessation of Liferent*.—Ordinary stock is held on which no interim dividend has been received for the current year. The accrued dividend applicable to period of the liferent is calculated from the close of the previous year of the company, at the rate anticipated at the time (see page 60).
21. *On Cessation of Liferent*.—Ordinary stock is held on which two interim dividends have been received for the current year. The calculation is similar to No. 20 except that the interim dividends are deducted from the total sum accrued.
22. *On Cessation of Liferent*.—Debenture stock is held at close of the liferent. The accrued interest is calculated from the close of the previous half year.
23. *On Cessation of Liferent*.—Participating preference stock is held on which an interim dividend has been received. The calculation is similar to No. 21.
24. *On Cessation of Liferent*.—Preference stock is held on which an interim dividend has been received similarly to No. 23.
25. *On Cessation of Liferent*.—5% Consolidated Loan is held at the close of the liferent. The accrued interest is calculated as in No. 22.
26. *On Cessation of Liferent*.—A deposit is held on which the accrued interest is ascertained by enquiry from the building society.

Note.—Examples of dividends *in bonis* are given as follows:

- (1) At commencement of liferent—Income Charge I 6 (A/c of 1958-9).
- (2) At cessation of liferent—Income Charge I 3 (A/c of 1960-1). (See page 60 as to anticipated rate basis in this example.)

3. *Sum at credit with Clydesdale Bank:*

1958. June 30. Received amount thereof

1,500 0 0

4. *5% Consolidated Loan:—*

1959. Nov. 15. Received proceeds of £1000 Stock at 101% x.d. net after deduction of brokerage

£1,010 0 0

(19.) *Add* accrued interest from 15th Nov. to 1st Dec. 1959 (16 days) due by income £2, 3s. 10d. less tax 8s. 9d.

1 15 1

1,011 15 1

543 13 3

£117,265 0 4

£6,209 12 0

6,209 12 0

Note of Accrued Income as at 31st March 1958:—

(12). CD Co., Ltd., £10,000 ordinary stock

(13). EF Co., Ltd., £10,000 Do.

	Value as at Date of Death		Less Accrued Income		Net Amount of Capital	
£12,000	0	0	£265	4	£11,734	15 10
13,000	0	0	278	9	12,721	10 11
£25,000	0	0	£543	13	£24,456	6 9

SUM OF THE CAPITAL CHARGE

£155,359 12 0

CAPITAL DISCHARGE

I. DEATHED AND FUNERAL EXPENSES:—

1958. Apr. 30. Dr Merrilees' fee for professional services

Burke & Co., undertakers for funeral

Aug. 1. Bruce Brothers for tombstone

£105 0 0
95 0 0
150 0 0

II. DEBTS DUE BY DECEASED:—

1958. July 1. Mrs Jones for household accounts and wages

Bank of Scotland repayment of overdraft

£250 0 0
1050 0 0

£350 0 0

Forward

£1,650 0 0

CAPITAL DISCHARGE—(Continued)

III. GOVERNMENT DUTY:—

1958. May 31. Estate Duty 22% on £147,500 (being net estate after deduction of funeral expenses and debts)
Author's Note.—The above rate of duty is not the current rate (see page 132).

IV. LEGAL AND MISCELLANEOUS EXPENSES:—

1959. Dec. 31. Factors' Business Account and Outlays including commission on cash transactions

V. INVESTMENTS MADE:—

1. XX Ltd.—

1958. Sept. 30. Cost of £20,000 5% debenture stock at 90% including stamp and brokerage £18,000 0 0
 Less amount of interest included in purchase price from 30th June to 30th Sept. 1958 (92 days) 201 12 10
 £252, 1s. 1d. less tax £50, 8s. 3d. £17,798 7 2

2. YY Ltd.—

1959. Apr. 30. Cost of £15,000 5% participating preference stock at 105% including stamp and brokerage £15,750 0 0
 Less amount of dividend included in purchase price, per Income Charge I., 8 523 11 2

3. WW Ltd.—

1959. June 30. Cost of £20,000 5% preference stock at 85% including stamp and brokerage £17,000 0 0

Less amount of dividend at 5% per annum included in purchase price from 31st May 1958 to 30th June 1959 (1 year and 30 days)

£1082, 3s. 10d. less tax £216, 8s. 9d. £865 15 1

Less dividend paid prior to purchase £500 less tax £100 400 0 0

(16.) 465 15 1

4. 5% Consolidated Loan—

1959. May 15. Cost of £1000 stock at 101% x.d. including stamp and brokerage £1,010 0 0

Add accrued interest from 15th May to 1st June 1959 (17 days) due to income 1 17 3

£2, 6s. 7d. less tax 9s. 4d. £1,011 17 3

£1,650	0	0	Forward
32,450	0	0	
1,500	0	0	
£18,000	0	0	
201	12	10	
£17,798	7	2	
15,226	8	10	
16,534	4	11	

1959. Aug. 15. Cost of £15,000 stock at 102% including stamp and brokerage £15,300 0 0
 Less amount of interest included in purchase price from 1st June to 15th Aug. 1959 (75 days) £154, 2s. 2d. less tax £30, 16s. 5d. 123 5 5

£15,300	0	0
123	5	5

Note.—Cost of £16,000 stock as above £16,188 11 6
 Less proceeds of £1000 stock, per Charge Br. II., 4 1,011 15 1
 Cost of £15,000 stock per Funds at close of account £15,176 16 5

15,176	14	3	16,188	11	6
£65,747	12	5			

VI. DEPOSIT:—
 1959. Sept. 1. Placed on Deposit with Scottish Amicable Building Society £15,000 0 0

VII. ESTATE AS AT CLOSE OF THIS ACCOUNT AT COST:—

1. £10,000 ordinary stock CD Co., Ltd. £11,734 15 10
2. £10,000 ordinary stock EF Co., Ltd. 12,721 10 11
3. £10,000 ordinary stock GH Co., Ltd. 14,000 0 0
4. £20,000 5% debenture stock XX Ltd. 17,798 7 2
5. £15,000 5% participating preference stock YY Ltd. 15,226 8 10
6. £20,000 5% preference stock WW Ltd. 16,534 4 11
7. £15,000 5% Consolidated Loan 15,176 16 5
8. Furniture and personal effects 650 0 0

£11,734	15	10	£103,842	4	1
12,721	10	11	15,000	0	0
14,000	0	0	917	7	11
17,798	7	2			
15,226	8	10			
16,534	4	11			
15,176	16	5			
650	0	0			
119,759	12	0			

Add Sum on Deposit with Scottish Amicable Building Society £103,842 4 1
 Capital Balance uninvested 15,000 0 0

SUM OF CAPITAL DISCHARGE equal to CHARGE £155,359 12 0

119,759	12	0	£155,359	12	0
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INCOME CHARGE

I. DIVIDENDS AND INTEREST RECEIVED:—

1. On £30,000 5% Preference Stock XY Co., Ltd.—

1958. May 31. First half of div. for year to 30th Nov. 1958 on £30,000 stock £750 less tax £150

Less transferred to capital in respect of:—

(1.) Whole div. on £20,000 stock sold 30th June 1958 £500 less tax £100

(2.) Amount of dividend at 5% per annum on remaining £10,000 stock from 30th Nov. 1957 to 31st March 1958 (121 days) £165, 15s. 1d. less tax £33, 3s.

£400	0
132	12
132	12

(3.) Balance representing net dividend on £10,000 stock (part retained) from 31st March to 31st May 1958
 1958. June 30. Accrued div. on £20,000 stock from 31st March to 30th June 1958 (date of sale) (91 days) £249, 6s. 4d.
 less tax £49, 17s. 4d.

Nov. 30. Second ½ yr's div. on account of year to date on £10,000 stock £250, less tax £50

(4.) Dec. 30. Accrued div. on £10,000 stock from 30th Nov. to 30th Dec. 1958 (date of sale) (30 days) £41, 1s. 11d.
 less tax £8, 4s. 5d.

2. On £50,000 Ordinary Stock XY Co., Ltd.—

(5.) 1958. June 30. Accrued div. on £10,000 stock at 10% per annum from 31st March to 30th June 1958
 (date of sale) (91 days) £249, 6s. 4d. less tax £49, 17s. 3d.

Sept. 1. Final div. for year to 31st May 1958 on £40,000 stock at 7% (making 10% with the interim div. received by testator) £2800 less tax £560
 Less transferred to capital (being the difference to bring out the undernoted balance)

£2240	0
£1705	4
534	15

Balance representing accrued div. at 10% per annum from 31st March to 31st May 1958 (61 days) on £40,000 stock £668, 9s. 10d. less tax £133, 14s.

(7.) 1958. Aug. 31. Accrued div. on £10,000 stock at 10% per annum from 31st May to 31st Aug. 1958 (date of sale) (92 days) £252, 1s. 1d. less tax £50, 8s. 3d.

1959. Feb. 28. Interim div. for year to 31st May 1959 on £30,000 stock at 3% £900 less tax £180

Apr. 30. Accrued div. on £10,000 stock at 10% per annum from 31st May 1958 to 30th Apr. 1959 (date of sale) (334 days) £915, 1s. 4d. less tax £183, 0s. 3d.
 Less interim div. of 3% included above (part of £720) on 28th Feb. 1959 £300 less tax £60

£199	9
534	15
201	12
720	0
492	1

£600	0
532	12
£67	7
199	9
200	0
32	17
£499	14

0	0
12	1
12	1
17	6
14	5

- (9a.) 1959. June 30. Accrued div. on £10,000 stock at 10% per annum from 31st May 1958 to 30th June 1959 (date of sale) (1 year and 30 days) £1082, 3s. 10d. less tax £216, 8s. 9d.
- (9b.) Less interim div. of 5% included above on 28th Feb. 1959 (part of £720) £300 less tax £60
- (9.) 625 15 1
- (10.) 1959. Aug. 20. Accrued div. on £10,000 stock sold this date:—
 - (a) Final div. of 7% for year to 31st May 1959 £700 less tax £140
 - (b) Div. at 10% per annum from 31st May to 20th Aug. 1959 (date of sale) (81 days) £221, 18s. 4d. less tax £44, 7s. 8d.

£865	15	1
240	0	0
625 15 1		
£560	0	0
177	10	8
737 10 8		

3,511 4 7

Notes—(1). On 1st Sept. 1959 a final dividend of 7% was received on £10,000 stock = £700 less tax £140, £560, but this stock had been sold cum dividend and this sum was therefore paid over to the purchaser.
 (2). The anticipated rate of div. was 10% at the time of each sale and in fact this was the actual rate.

- 3. On £10,000 *Ordinary Stock AB Co., Ltd.*—
 - 1958. Apr. 30. Accrued div. at 6% per annum from 31st March to 3 April 1958 (date of sale) (30 days) £49, 6s. 3d. less tax £9, 17s. 3d.
- (11.) Notes—(1). No dividends received by Trustees during period prior to sale.
 (2). At the time of sale 6% was the anticipated rate for the year, but the rate actually paid was 5% and this was known before the account was prepared, but must not be considered.

39 9 0

- 4. On £10,000 *Ordinary Stock CD Co., Ltd.*—
 - 1958. May 28. Interim div. of 5% for year to 30th Nov. 1958 £500 less tax £100
 - 1959. Jan. 31. Final Do.
- (12.) Less Proportion thereof applicable to capital at 10% per annum from 30th Nov. 1957 to 31st March 1958 (121 days) £331, 10s. 2d. less tax £66, 6s.

£400	0	0
400	0	0
£800 0 0		
265	4	2

584 15 10

Forward

£4,585 3 10

INCOME CHARGE—(Continued)

I. DIVIDENDS AND INTEREST RECEIVED—(continued)

5. On £10,000 Ordinary Stock EF Co., Ltd.—
 1958. July 31. Div. of 7% for half-year to 30th June 1958 (181 days) £700 less tax £140
 Less Proportion thereof applicable to capital from 31st Dec. 1957 to 31st March 1958 (90 days)
 90/181 × £700 = £348, 1s. 4d. less tax £69, 12s. 3d.

1959. Apr. 30. Div. of 3% on account of year to 30th June 1959 £300 less tax £60
 Note.—No further dividends were received for year 1958-59.

6. On £10,000 Ordinary Stock GH Co., Ltd.—
 1958. Aug. 31. Final div. of 3% for year to 31st July 1958 £300 less tax £60
 Note.—The interim div. of 7% was paid on 28th Feb. 1958 (prior to the death of the testator). The pro-
 portion of dividends which should have been applicable to income from 31st March to 31st July 1958
 at 10% per annum (122 days) is £334, 4s. 11d. less tax £66, 17s. = £267, 7s. 11d. No further sum can
 be apportioned as it is against the legal principles of apportionment to take from capital any part of
 the estate at date of death.

1959. Feb. 28. Interim div. of 3% for year to 31st July 1959 £300 less tax £60
 Aug. 31. Final Do.
 Nov. 30. Interim div. of 3% for year to 31st July 1960 £300 less tax £60

7. On £20,000 5% Deb. Stock XX, Ltd.—
 1958. Dec. 31. ½ yr's int. to date £500 less tax £100
 Less interest included in purchase price from 30th June to 30th September 1958 (92 days)
 £252, 1s. 1d., less tax £50, 8s. 3d.

1959. June 30. ½ yr's int. to date £500 less tax £100
 Dec. 31. Do.

Forward		3	10
£560	0	0	0
278	9	1	
£281	10	11	
240	0	0	
		521	10 11
£240	0	0	
240	0	0	
240	0	0	
		960	0 0
£400	0	0	
201	12	10	
£198	7	2	
400	0	0	
400	0	0	
		998	7 2

8. On £15,000 5% *Participating Preference Stock YY, Ltd.*—
 1959. July 31. Final div. of 5% (making 7½%) for year to 31st May 1959 £750 less tax £150 .
 Less dividend included in purchase price, being the difference to bring out the undemerged balance

£600	0	0
523	11	2
£76	8	10
300	0	0

Balance representing accrued div. at 7½% from 30th April to 31st May 1959 (31 days) £95, 11s. less tax
 £19, 2s. 2d.
 1959. Dec. 15. Interim div. of 2½% for year to 31st May 1960 £375 less tax £75

376 8 10

9. On £20,000 5% *Preference Stock WW, Ltd.*—
 1959. July 31. Final ½ yr's div. on account of year to 31st May 1959 £500 less tax £100
 Dec. 31. First ½ yr's div. on account of year to 31st May 1960 £500 less tax £100

£400	0	0
400	0	0
£800	0	0

(16.) *Less div. included in purchase price at 5% per annum from 31st May 1958 to 30th June 1959 (1 year and 30 days) £1082, 3s. 10d. less tax £216, 8s. 9d.*
Less div. paid prior to purchase £500 less tax £100 (being the first half year's div. on account of year to 31st May 1959)

£865	15	1
400	0	0
465	15	1

334 4 11

(17.) 10. On £1000, *afterwards £16,000, now £15,000 5% Consolidated Loan*—
 1959. May 15. Accrued int. on £1000 stock from 15th May to 1st June 1959 (17 days) £2, 6s. 7d. less
 tax 9s. 4d.

£1	17	3
----	----	---

(18.) Dec. 1. ½ yr's int. to date on £16,000 stock (no tax deducted)
Less int. included in purchase price of £15,000 stock from 1st June to 15th Aug. 1959 (75 days) £154, 2s. 2d. less tax £30, 16s. 5d.

£400	0	0
123	5	9
£276	14	3
1	15	1

(19.) *Less int. accrued on £1000 stock from 15th Nov. (date of sale) to 1st Dec. 1959 (16 days) £2, 3s. 10d. less tax 8s. 9d.*

274	19	2
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276 16 5

SUM OF THE INCOME CHARGE

£8,052 12 1

TRUST ACCOUNTANCY

INCOME DISCHARGE

I. INCOME TAX:—					
	Sum reserved at 4s. per £ on £400 Consolidated Loan interest received 1st December 1959			£80	0
	<i>Note.</i> —Apportionment between capital and income has been made by taking all items net.				
II. INTEREST:—					
	1958. May 31. Interest on estate duty	£216	18	6	
	Dec. 31. Bank overdraft interest to date in respect of temporary advances to pay duties	151	2	0	
				368	0
III. ANNUITY:—					
	1959. Mar. 31. Miss Jemima Jones—annuity for year to date £100 less tax £20			80	0
IV. MANAGEMENT:—					
	1959. Dec. 31. Factors' commission for collection of income and preparation of this account			450	0
V. FREE INCOME for period transferred to the Liferenter's personal account appended				7,074	11
	<i>Author's Notes.</i> —(1). This is a balancing figure to square off the account.				
	(2). Personal account not detailed, but should form an appendix showing receipts and payments for period.				
	SUM OF INCOME DISCHARGE equal to CHARGE			£8,052	12
					1

Example of Account in a Trust at close of Liferent to show Apportionments.

ACCOUNT CHARGE AND DISCHARGE of the Intrusions
of Messrs Thomson & Co., Writers, as Factors for the Trustees
of the late J. JONES.

From 31st December 1959
To 31st December 1961.

Notes—(1). The liferenter died on 31st January 1961.
(2). Income tax assumed to be at 4s. per £ throughout.

CAPITAL CHARGE

I. ESTATE AS AT CLOSE OF LAST ACCOUNT AT COST:—				
1. £10,000 ordinary stock CD Co., Ltd.		£11,734	15	10
2. £10,000 ordinary stock EF Co., Ltd.		12,721	10	11
3. £10,000 ordinary stock GH Co., Ltd.		14,000	0	0
4. £20,000 5% debenture stock XX Ltd.		17,798	7	2
5. £15,000 5% participating preference stock YY Ltd.		15,226	8	10
6. £20,000 5% preference stock WW Ltd.		16,534	4	11
7. £15,000 5% Consolidated Loan		15,176	16	5
8. Furniture and personal effects		650	0	0
		£103,842	4	1
<i>Add</i> Sum on Deposit with Scottish Amicable Building Society		15,000	0	0
Capital Balance uninvested		917	7	11
		£119,759	12	0
II. ESTATE REALISED:—				
1961. Mar. 1. Received proceeds of £15,000 5% Consolidated Loan at 102% net after deduction of brokerage		£15,300	0	0
<i>Note.</i> —Cost per Branch I., 7		15,176	16	5
	Increase		123	3
	<i>Note.</i> —No distinction need now be made between Capital and Income so no apportionment is required.			
III. INCREASE ON REVALUATION OF ESTATE per Discharge V.			334	12
IV. FREE INCOME RECEIVED AFTER CESSATION OF LIFERENT per Income Discharge V. transferred for division with residue of estate			5,049	15
V. DEPOSIT UPLIFTED:—				
1961. Mar. 1. Deposit with Scottish Amicable Building Society		£15,000	0	0
	SUM OF CAPITAL CHARGE	£125,267	3	0

CAPITAL DISCHARGE

I. ESTATE DUTY:—				
1961. Mar. 1. Estate Duty 25% on amount of estate at date of liferenter's death £124,320		£31,080	0	0
<i>Author's Note.</i> —The above rate of duty is not the current rate (see page 132).				
	Forward	£31,080	0	0

CAPITAL DISCHARGE—(Continued)		Forward			£31,080	0	0
II. ADVANCES TO BENEFICIARIES:—							
1961. Dec. 15. Thomas Jones on account of share							
	of residue	£1000	0	0			
	James Wilson Do.	500	0	0			
		£1500	0	0			
III. AMOUNT OF ACCRUED INCOME AS AT 31ST JANUARY 1961 (the date of death of the liferenter)							
					1,551	15	8
<i>Note.</i> —This sum has been transferred to Income Charge, as follows:—							
£10,000 ordinary stock CD Co., Ltd.		£471	4	8			
£10,000 ordinary stock EF Co., Ltd.		71	4	8			
£20,000 5% deb. stock XX Ltd.		67	18	11			
£15,000 5% participating pref. stock YY Ltd.		304	2	2			
£20,000 5% pref. stock WW Ltd.		136	19	9			
£15,000 5% Consolidated Loan		100	5	6			
Deposit with Scottish Amicable Building Society		400	0	0			
		£1551	15	8			
IV. MANAGEMENT:—							
1961. Dec. 31. Factors' business account and commission on cash transactions to date including winding up trust							
	Factors' outlays	£325	0	0			
		10	0	0			
					335	0	0
V. ESTATE AS AT CLOSE OF THIS ACCOUNT AS REVALUED FOR DIVISION:—							
		Note of Cost.			Present Revaluation.		
1.	£10,000 ord. stock CD Co., Ltd.	£11,734	15	10	£11,500	0	0
2.	£10,000 ord. stock EF Co., Ltd.	12,721	10	11	12,750	0	0
3.	£10,000 ord. stock GH Co., Ltd.	14,000	0	0	14,200	0	0
4.	£20,000 5% deb. stock XX Ltd.	17,798	7	2	18,000	0	0
5.	£15,000 5% participating pref. stock YY Ltd.	15,226	8	10	15,150	0	0
6.	£20,000 5% pref. stock WW Ltd.	16,534	4	11	16,750	0	0
7.	Furniture and personal effects	650	0	0	650	0	0
8.	Advance to T. Jones on account of Residue	1,000	0	0	1,000	0	0
9.	Advance to J. Wilson on account of Residue	500	0	0	500	0	0
		£90,165	7	8	£90,500	0	0
	Add Balance at credit with Factors	1,800	7	4	1,800	7	4
		£91,965	15	0	£92,300	7	4
					91,965	15	0
					£334	12	4
	Increase transferred to Charge III.						
					92,300	7	4
SUM OF CAPITAL DISCHARGE equal to CHARGE					£125,267	3	0

TRUST ACCOUNTS SHOWING APPORTIONMENTS 117

INCOME CHARGE

I. DIVIDENDS AND INTEREST APPLICABLE TO PERIOD FROM 31ST DECEMBER 1959 TO 31ST JANUARY 1961 (DATE OF DEATH OF THE LIFERENTER):—

Author's Note.—The anticipated rate basis has been adopted throughout. See page 60.

1. On £10,000 <i>Ord. Stock CD Co., Ltd.</i> —				
1960.	Feb. 28.	Interim div. of 5% for year to 30th June 1960 £500 less tax £100	£400	0 0
	July 31.	Final Div. Do. Do.	400	0 0
(20.) 1961.	Jan. 31.	Div. accrued to date at 10% per annum from 30th June 1960 (215 days) £589, 0s. 10d. less tax £117, 16s. 2d.	471	4 8
		<i>Note.</i> —10% was the anticipated rate at that date.		
			£1,271	4 8
2. On £10,000 <i>Ord. Stock EF Co., Ltd.</i> —				
1960.	Jan. 1.	Quarter's div. of 2% on account of year to 30th June 1960 £200 less tax £40	£160	0 0
	Apr. 1.	Quarter's div. of 2½% on account of year to 30th June 1960 £250 less tax £50	200	0 0
	July 1.	Final div. of 2½% (making 7%) for year to 30th June 1960 £250 less tax £50	200	0 0
	Oct. 1.	First quarter's div. of 2½% on account of year to 30th June 1961 £250 less tax £50	200	0 0
1961.	Jan. 1.	Second Div. Do. Do.	200	0 0
(21.)		Jan. 31. Div. accrued to date at 10% per annum from 30th June 1960 (215 days) £589, 0s. 10d. less tax £117, 16s. 2d.	£471	4 8
		<i>Less</i> two interim dividends already received £500 less tax £100	400	0 0
			71	4 8
		<i>Note.</i> —10% was the anticipated rate at that date.		
			1,031	4 8
3. On £10,000 <i>Ord. Stock GH Co., Ltd.</i> —				
1960.	Aug. 31.	Final div. of 3% for year to 31st July 1960 £300 less tax £60	£240	0 0
	Dec. 31.	Interim div. of 3% and special bonus of 2% for year to 31st July 1961 £500 less tax £100	400	0 0
			640	0 0
		<i>Note (a).</i> —No further apportionment can be made as the position is similar to that arising at commencement of a Trust where the testator has received a larger share of income than would be due if apportioned, thus:—		
		The amount of dividend at 8% per annum which should have been applicable to income for period from 31st July 1960 to 31st January 1961 (184 days) £403, 5s. 9d. less tax £80, 13s. 2d.	£322	12 7
		Sum actually received	400	0 0
		Excess	£77	7 5
		<i>(b).</i> —8% was the anticipated rate for the year at that date, as the final dividend was expected to be 3%.		
Forward			£2,942	9 4

		INCOME CHARGE—(Continued)			Forward	£2,942	9	4
I. DIVIDENDS AND INTEREST, ETC.—(continued)								
4. On £20,000 5% Deb. Stock XX Ltd.—								
	1960.	June 30.	½ yr's int. to date £500 less tax £100	£400	0	0		
		Dec. 31.	Do. Do.	400	0	0		
(22.)	1961.	Jan. 31.	Interest accrued to date from 31st Dec. 1960 (31 days) £84, 18s. 8d. less tax £16, 19s. 9d.	67	18	11		
						867	18	11
5. On £15,000 5% Participating Pref. Stock YY Ltd.—								
	1960.	July 31.	Final div. of 5% (making 7½%) for year to 31st May 1960 £750 less tax £150	£600	0	0		
		Dec. 15.	Interim div. of 2½% for year to 31st May 1961 £375 less tax £75	300	0	0		
(23.)	1961.	Jan. 31.	Div. accrued to date (made up as below)	304	2	2		
			7½% per annum from 31st May 1960 to 31st Jan. 1961 (245 days) £755, 2s. 9d. less tax £151, 0s. 7d. £604 2 2					
			Less interim div. already received £375 less tax £75	300	0	0		
				£304	2	2		
<i>Note.</i> —It was anticipated at that date that the final div. would be at 5%.								
						1,204	2	2
6. On £20,000 5% Pref. Stock WW Ltd.—								
	1960.	June 30.	Final ½ yr's div. on account of year to 31st May 1960 £500 less tax £100	£400	0	0		
		Dec. 31.	First ½ yr's div. on account of year to 31st May 1961 £500 less tax £100	400	0	0		
	1961.	Jan. 31.	Div. accrued to date (made up as below)	136	19	9		
(24.)			5% per annum from 31st May 1960 to 31st Jan. 1961 (245 days) £671, 4s. 8d. less tax £134, 4s. 11d. £536 19 9					
			Less first ½ yr's div. already received £500 less tax £100	400	0	0		
				£136	19	9		
						936	19	9
7. On £15,000 5% Consolidated Loan—								
	1960.	June 1.	½ yr's int. to date (no tax deducted)	£375	0	0		
		Dec. 1.	Do. Do.	375	0	0		
(25.)	1961.	Jan. 31.	Int. accrued to date from 1st Dec. 1960 (61 days) £125, 6s. 10d. less tax £25, 1s. 4d.	100	5	6		
						850	5	6
8. On Deposit—								
(26.)	1961.	Jan. 31.	Int. accrued to date on £15,000 from 1st Sept. 1959, as certified by Scottish Amicable Building Society	400	0	0		
					Forward	£7,201	15	8

TRUST ACCOUNTS SHOWING APPORTIONMENTS 119

INCOME CHARGE—(Continued)

Forward

£7,201 15 8

II. DIVIDENDS AND INTEREST RECEIVED FROM 31ST JAN. 1961 TO 31ST DEC. 1961:—

Author's Note.—No distinction is now necessary between Capital and Income as the liferent has ceased, so no apportionments are made. A proportion of the undernoted income is already included above on cessation of the liferent. See page 49 as to the allocation of income among the beneficiaries for income tax purposes.

1. On £10,000 *Ord. Stock CD Co., Ltd.*—

1961. Feb. 28. Interim div. of 5% for year to 30th June 1961 £500 less tax £100	£400	0	0
July 31. Final Do. Do.	400	0	0
	£800	0	0

2. On £10,000 *Ord. Stock EF Co., Ltd.*—

1961. Apr. 1. Third quarter's div. of 2½% on account of year to 30th June 1961 £250 less tax £50	£200	0	0
July 1. Fourth Do.	200	0	0
Oct. 1. First quarter's div. of 2½% on account of year to 30th June 1962 £250 less tax £50	200	0	0
	600	0	0

3. On £10,000 *Ord. Stock GH Co., Ltd.*—

1961. Aug. 31. Final div. of 4% for year to 31st July 1961 £400 less tax £80	320	0	0
<i>Note.</i> —In Branch I., 3, the estimate of this div. was 3% which at 31st Jan. 1961 was in accordance with the information available.			

4. On £20,000 5% *Deb. Stock XX Ltd.*—

1961. June 30. ½ yr's int. to date £500 less tax £100	£400	0	0
Dec. 31. Do.	400	0	0
	800	0	0

5. On £15,000 5% *Participating Pref. Stock YY Ltd.*—

1961. July 31. Final div. of 5% (making 7½%) for year to 31st May 1961 £750 less tax £150	£600	0	0
Dec. 15. Interim div. of 2½% for year to 31st May 1962 £375 less tax £75	300	0	0
	900	0	0

6. On £20,000 5% *Pref. Stock WW Ltd.*—

1961. June 30. Final ½ yr's div. on account of year to 31st May 1961 £500 less tax £100	£400	0	0
Dec. 31. First ½ yr's div. on account of year to 31st May 1962 £500 less tax £100	400	0	0
	800	0	0

7. On £15,000 5% *Consolidated Loan*—

1961. June 1. ½ yr's int. to date (no tax deducted)	£375	0	0
Dec. 1. Do.	375	0	0
	750	0	0

Forward £4,970 0 0 £7,201 15 8

INCOME CHARGE—(Continued)		Forward		£7,201	15	8
II. DIVIDENDS AND INTEREST, ETC.—(continued)		Forward		£4,970	0	0
8. On Advances to Beneficiaries at 5%—						
1961. Dec. 31. Thos. Jones int. on £1000 from 15th inst. (16 days) £2, 3s. 10d. less tax 8s. 9d.		£1	15	1		
James Wilson int. on £500 from 15th inst. (16 days) £1, 1s. 11d. less tax 4s. 5d.		0	17	6		
				2	12	7
9. On Deposit Uplifted—						
1961. Mar. 1. On £15,000 on deposit with Scottish Amicable Building Society				450	0	0
					5,422	12
						7
SUM OF INCOME CHARGE					£12,624	8
						3

INCOME DISCHARGE

		Period from 31st December 1959 to 31st January 1961.		Period from 31st January 1961 to 31st December 1961.	
I. INCOME TAX:—					
1960. May 1. Income Tax 1959-60 on £400 Consolidated Loan int. received 1st Dec. 1959		£80	0	0	
Less reserved per last account		80	0	0	
Dec. 31. Income Tax 1960-61 on £750 Consolidated Loan int. received 1st June 1960 and 1st December 1960		£150	0	0	
1961. Dec. 31. Income Tax 1961-62 on Do. 1st June 1961 and 1st December 1961				£150	0
Note.—Apportionment as at date of liferenter's death has been made by taking accrued interest net.					
		£150	0	0	£150
					0
					0
II. ANNUITY:—					
1960. Mar. 31. Miss Jemima Jones—annuity for year to date £100 less tax £20		£80	0	0	
1961. Mar. 31. Do.		80	0	0	
June 30. Do.—annuity to date of death (91 days) $91/365 \times £100 = £24, 18s. 8d.$ less tax £4, 19s. 9d.		19	18	11	
		£179	18	11	
Whereof applicable to period of liferent from 31st March 1959 to 31st Jan. 1961 (1 year and 306 days) £183, 16s. 9d. less tax £36, 15s. 4d.		147	1	5	
				147	1
					5
				32	17
					6
Forward		£297	1	5	£182
					17
					6

INCOME DISCHARGE—(Continued)

	Period from 31st December 1959 to 31st January 1961.			• Period from 31st January 1961 to 31st December 1961.		
Forward	£297	1	5	£182	17	6
III. MANAGEMENT:—						
1961. Jan. 31. Factors' commission for collection of income and preparation of this account to date	330	0	0			
Dec. 31. Do. Do.				190	0	0
IV. FREE INCOME FOR PERIOD FROM 31ST DEC. 1959 TO 31ST JAN. 1961:—						
Transferred to Liferenter's personal account in appendix (not shown)	6574	14	3			
<i>Author's Note.</i> —This is a balancing figure to square off this part of account.						
V. FREE INCOME FOR PERIOD FROM 31ST JAN. TO 31ST DEC. 1961:—						
Available for division and transferred to Capital Account				5,049	15	1
	<u>£7201</u>	<u>15</u>	<u>8</u>	<u>£5,422</u>	<u>12</u>	<u>7</u>
				7,201	15	8
SUM OF INCOME DISCHARGE equal to CHARGE				<u>£12,624</u>	<u>8</u>	<u>3</u>

CHAPTER XII

ESTATE DUTY

I. INTRODUCTION

ESTATE duty was first imposed by the Finance Act, 1894, but its scope and complications have been very much increased by subsequent Finance Acts. The other death duties (legacy duty and succession duty) were abolished by the Finance Act, 1949, and accordingly no particulars of these duties are given in this book. Numerous cases as to the interpretation of the law have received the attention of the courts, and some of the most important of these are noted in the following pages. (Sections of an Act are in Finance Act, 1894, unless otherwise stated.)

Liability to
Duty

Estate duty is primarily a duty on property (including investments, money and other assets) which passes to another person on the occasion of a death. In order to prevent evasion there is also liability on some other property which does not pass, but which is "deemed to pass" for duty purposes. The effect of Section 1 is that property passes if it has a continuous existence both before and after the death, and if it falls to a new owner on the death, such as investments and bank balances owned by deceased. Debts payable and deathbed and funeral expenses are allowable deductions. As explained below in more detail, under section 2 property passing is also deemed to include, for example, life policies maturing on the death, and property given away by the deceased shortly before his death.

Time of
Property
Passing

For duty purposes, property passing on the death includes property passing either immediately or after any interval, either certainly or contingently, and at a period ascertainable only by reference to the death (sec. 22, 1 (1)).

Settled
Property

Settled property is the name given to property held in trust under will, deed of trust, or other settlement, and, it has been said, "includes every device by which property may be enjoyed by different persons succeeding to the estate under the same deed". The settlor is the trustor—*i.e.* he who places the property in trust.

Cesser of
Interest

The death of an annuitant or liferenter sets free the property which has been enjoyed, which is thus held to pass on the death, and this is known as cesser of an interest (see page 124). In general, the death of successive liferenters involves the whole liferented funds in duty on each death (subject to certain exemptions described on page 125) but, on the death of an annuitant, only the part of the property formerly required for payment of the annuity is liable to duty. (See page 133 as to relief in respect of legacy and succession duty.)

Domicile of
Deceased

Where the deceased died domiciled out of Great Britain, only the property in Great Britain is liable. If he died domiciled in Great Britain the situation of property passing on the death is immaterial, except as regards heritable property which is exempt if abroad (F.A. 1949, sec. 28 (2) (c)). The ascertainment of domicile presents many difficulties and

is beyond the scope of this work. Generally speaking it may be said that a person's domicile is in the country where he has his home. If deceased died domiciled abroad, questions may arise as to where property is situated for duty purposes, and the general principles are as follows:—

- (1) Shares in companies pass in the country where the company has its head office or keeps its register. If two registers are kept it depends on the situation of the certificates.
- (2) Bearer bonds pass in the country in which they are held at the date of death if they are capable of being sold there.
- (3) Shares in partnerships are situated where the business is carried on.
- (4) Settled property is situated in Great Britain if (a) under the will of a person domiciled in Britain, or (b) the settlement was originally British, or (c) the settlement has become British before the death of the liferenter on whose death the claim for duty has arisen. (See, however, F.A. 1949, sec. 28 (2).)
- (5) Debts are situated where the debtor resides and where proceedings can be taken to enforce payment.

II. PROPERTY DEEMED TO PASS ON DEATH

Liability to estate duty may arise where the deceased has made a transfer of property to a company and "benefits" from that company have accrued to him during the five years prior to his death (see F.A., 1940, secs. 46 to 59; F.A., 1944, secs. 35 to 39; and F.A., 1946, sec. 47 and eleventh schedule). In view of the complexity of the provisions as to companies, no further reference is made to them owing to considerations of space.

Under Finance Act, 1894, sec. 2, property is deemed to pass if it falls under any of the following classes:—

- (1) *Property of which Deceased was competent to dispose* at his death, which is defined by sec. 22 (2a) as including property in which he had such an estate, or interest, or power of appointment, as would enable him to dispose of the property if he were *sui juris*. Persons are *sui juris* if they are legally entitled to enter into contracts and administer their affairs. Those who are not *sui juris* include children and lunatics.

Property falling under this heading includes, for example, (a) an interest in expectancy, *i.e.* property vested in the deceased as *fiar* but held by trustees for the liferent of another person, or (b) property held by trustees but over which deceased had a power of appointment, that is, he could dispose of it.

- (2) *Donationes Mortis Causa, i.e.* death-bed gifts, made in anticipation of the death of the donor, are liable to estate duty on his death.
- (3) *Gifts Inter Vivos*.—Gifts made by the deceased within five years of death are liable to duty except in the following cases (see F.A., 1910, sec. 59, F.A., 1946, sec. 47, and F.A., 1949, sec. 33).
 - (a) Gifts for charitable or public purposes made more than one year before death.
 - (b) Gifts in consideration of marriage.

- (c) "Reasonable" gifts forming part of deceased's normal expenditure, but not gifts out of capital.
- (d) Absolute gifts made without reservation and not exceeding in the aggregate £500 to any one person, provided no part of the gifts consists of settled property.
- (e) Gifts as at (d) above of any property not exceeding in the aggregate £100 to any one person.

Note.—The general rule is that, where estate duty is payable on gifts, they must be valued as at the date of death of the donor (see page 127). In order to find out if gifts are exempt they may (by concession) be valued either at date of gift or date of death, but one date only is to be used in the case of each donee.

- (4) *Gifts by Deceased*, of which complete *bona fide* possession was not taken. This covers fictitious gifts where the donor actually retained possession of, or an interest in, the property.
- (5) *Property placed in Trust by Deceased* if the trust could have been revoked by him, or if he reserved to himself the income or any part thereof.
- (6) *Life Policies.*—Money receivable under life policies is liable if these were effected by deceased on his own life and kept up (by payment of premiums) by him for the benefit of another person. If they were kept up by another person for his own benefit the proceeds are not liable to duty on the death of the insured. Fully paid policies given away by the deceased outside the five years' limit are not liable to duty.
- (7) *Interests and Annuities* wholly or partly purchased by deceased, for example, (a) pensions to which deceased contributed, (b) pensions from employers' pension funds, or (c) annuities purchased by him for others, of which payment commences at his death. Widows' pensions payable by the State are not chargeable, nor are voluntary gifts of pensions. Annuities or other interests indirectly derived from the deceased are liable for duty under F.A., 1939, sec. 30, and F.A., 1943, sec. 26.
- (8) *Property formerly liferented by deceased* which has been disposed of, surrendered, or forfeited within the terms of F.A., 1940, sec. 43, as amended by F.A., 1946, sec. 47. In general, transactions of this nature are liable if they were effected within five years before the death (or one year where the recipients were charitable or public trusts).
- (9) *Cesser of Interests.*—If any person had an annuity or liferent interest which ceased on a death, there is liability to duty on the property set free. It is not essential that the person who died should be the same person as he whose interest ceased. Where the interest which ceased is restricted to a share of the income from settled property, only the proportionate part of the property set free is held to pass. This is known as the Slice Theory. If the whole trust income was payable to deceased the total settled property is liable.

As examples of interests ceasing may be taken (a) a trust liferented by deceased until death, or (b) a trust liferented by

a woman during the life of her husband, or (c) trust funds set aside to provide an annuity to deceased during his life.

The following example shows the operation of the Slice Theory:— Slice Theory

An annuitant received £140 per annum from trust funds valued at £40,000 on which the total income was £1400. The sum liable is therefore $\frac{140}{1400} \times £40,000 = £4000$. For the purposes of the Slice Theory the net income is taken after deducting repairs and public burdens on heritable property. (Lord Advocate *v.* Fotheringham, 1924 S.C. 52.)

If for any reason there is difficulty in ascertaining the actual trust income, the average ruling yield of trustee investments on the Stock Exchange can be applied to capitalise the annuity. The ruling yield may be ascertained on application to the Estate Duty office. For example, if the average present yield is 4% the amount liable in respect of an annuity of £40 is £1000.

Trusts where the income is only payable to the beneficiaries at the discretion of the trustees are known as “Discretionary Trusts”; for example, trusts where the income is directed to be applied in payment of the cost of maintenance or education of any persons. On the death of one out of several joint recipients of such income, no property passes for duty purposes; but on the death of the last survivor, when the discretionary trust terminates, the whole fund is held to pass. The reason is that the fund is then completely set free, for the first time. Discretionary Trusts

III. EXEMPTIONS FROM DUTY

As shown on page 132 no duty is payable where the net estate does not exceed £2000.

Property is not chargeable with duty if it is in any of the following categories:—

- (1) Property in which deceased was only interested as holder of an office (such as a treasurer of a society) or recipient of the benefits of a charity (sec. 2 (1b)).
- (2) Heritable property situated out of Great Britain (F.A. 1949, sec. 28 (2) (c)).
- (3) Property held by deceased as a trustee (sec. 2 (3)).
- (4) On the death of a surviving spouse, settled property which has already borne estate duty, on the death of the other spouse since the date of settlement, is exempt, provided deceased was not competent to dispose of it. (F.A., 1894, sec. 5 (2), and F.A., 1914, sec. 14.) For example, if a husband has died leaving his property in trust for life by his wife and then absolutely to his children, no duty is payable on her death if duty has already been charged on his death. But if he leaves his property to his wife absolutely, or settled in such a way that she has a power of appointment over it, duty is again chargeable on the property on her death.
- (5) Income tax post-war credit certificates. Such certificates were issued for years 1941-42 to 1945-46 inclusive and are repayable when the owner attains the age of 65 (if a man) or 60 (if a woman). If the owner dies after applying for repayment, but

before the money is received, the amount is liable to estate duty. Otherwise post-war credits are exempt (F.A., 1946, sec. 26 and F.A., 1947, sec. 16).

- (6) Annuities provided by deceased—a single annuity if less than £52 or the first of such annuities if there are more than one. (F.A., 1894, sec. 15 (1) and F.A., 1935, sec. 33.) This refers to annuities falling under (7) of property deemed to pass (above).
- (7) British Government Securities held in the beneficial ownership of persons who are neither domiciled nor ordinarily resident in Great Britain or Northern Ireland. This exemption includes stocks liferented by deceased as liferent is a beneficial ownership for this purpose. In the case of an *inter vivos* gift, it is the domicile and ordinary residence of the donee (not the donor) at the date of death of the donor which determines whether the exemption applies, the stock being then in the donee's beneficial ownership (*Re Demarest's Settlement Trusts*, Chase National Executors and Trustees Corporation v. Attorney General, 1940 Ch. 661). The principal securities to which this exemption applies are:—
 - (a) 3½% War Loan 1952.
 - (b) 4% Funding Loan 1960-90.
 - (c) 4% Victory Bonds.
 - (d) National Savings Certificates if (1) issued before 1st September 1922, or (2) Seventh Issue of 15/- each (1939-1947) or (3) £1 Issue (1943-1947) or (4) Eighth Issue of 10/- each (1947 onwards).
 - (e) 3% War Loan 1955-59.
 - (f) 2½% National War Bonds (all issues made prior to 1950 except 1954-6 issue).
 - (g) 3% and 2½% Defence Bonds.
 - (h) 3% Savings Bonds 1955-65, or 1960-70 or 1965-75.
 - (i) Monies lent to the Treasury free of interest are also regarded as covered by this exemption.
- (8) Miscellaneous exemptions are also conferred by F.A., 1894, secs. 3, 5 (3), 8 (1), 15; F.A., 1896, secs. 14, 15; F.A., 1900, sec. 14 as adjusted by numerous amending statutes; F.A., 1910, sec. 61 (5); F.A., 1912, sec. 9; F.A., 1928, sec. 30; F.A., 1930, sec. 40 as amended by F.A., 1936, sec. 26; F.A., 1931, sec. 40 as amended by F.A., 1936, sec. 27; and F.A., 1937, sec. 31, as amended by F.A. 1949, sec. 31. Allowances are given under F.A., 1896, sec. 21; F.A., 1907, sec. 15; F.A., 1914, sec. 14 (b), and F. (No. 2) A. 1945, sec. 57 (1) as amended by F.A. 1949, sec. 32.

IV. VALUATION OF PROPERTY

The value at which property is liable is the price which could be obtained in open market at the date of death, except shares in certain private companies as to which there are statutory provisions (see page 123). Joint moveable property is liable on the part provided by deceased. The following notes give details of the basis to be adopted for various types of property.

- (1) *Heritable Properties*.—A valuation may conveniently be made by a qualified valuer, although this is not legally necessary and is not binding even if made. It is usual in the first place to estimate the value, keeping in view the value of adjoining property and any other relevant circumstances, leaving the final figure for subsequent negotiation with the Valuation Department of the Inland Revenue. If the property is sold soon after the death, the sale price will generally be adopted as the value.

On the death of an owner-occupier, where the house passes to a near relative who resided with the deceased and has no alternative accommodation, the Estate Duty office may allow some relief. If the house is let or sold within (say) two years, the full saleable value as at the date of death must be substituted, and further estate duty thus becomes payable.

Special provisions as to agricultural property (including mansion-house and cottages) are given by F.A., 1894, sec. 7 (5); F.A., 1910, secs. 60 and 61 (1); F.A., 1911, sec. 18; and F.A., 1925, sec. 23, as amended by F.A. 1946, sec. 46 (b) and F.A. 1949, sec. 28 (1).

- (2) *Furniture and Personal Effects*.—It is usual to obtain a detailed valuation by a qualified valuer except in cases where the total value is negligible, when an estimate may be made by the executors
- (3) *Goodwill of Businesses* carried on by deceased, either with or without partners, must be estimated on the basis of the probable sum receivable on a sale in the open market at the time of the death. Goodwill may be valued in terms of the partnership agreement (see next paragraph).
- (4) *Shares in Partnerships* owned by deceased are valued according to the circumstances of each case. There are usually provisions in the agreement for the deceased's share being bought by the surviving partners, and if a fair price can be calculated on this basis that is the value for duty purposes. In the absence of special provisions in the agreement, the assets (including goodwill) should be valued as at the date of death and incorporated in a balance sheet which shows the capital of the individual partners.
- (5) *Life Policies*.—Bonuses are included—the value for duty being the total sum receivable under the policies.
- (6) *Debts due to Deceased*.—Bad debts are not liable to duty and doubtful debts are liable only on the sums estimated to be recoverable.
- (7) *Gifts*.—If *inter vivos* gifts are liable to duty they are chargeable on the value of the property as at the date of death. (See *Strathcona v. Inland Revenue*, 1929 S.C. 800.)
- (8) *Investments*—
- (a) *Defence Bonds*.—These may be included in the inventory at the encashment value, i.e. (1) 3% Defence Bonds at 98½% plus accrued interest, and (2) 2½% Defence Bonds at 98¾% plus

amount which has accrued since the date up to which interest had previously been received. No income tax is deductible from such accrued interest.

(b) *Quoted Investments.*—If stocks or shares are quoted on a Stock Exchange, the official list of prices forms the basis of valuation. The list for the date of death is adopted unless that day was a Sunday or Stock Exchange holiday, when the price for the day either before or after is taken. By concession the Estate Duty Office has adopted the quarter difference basis under which a price of 99-100 is taken as 99 $\frac{1}{4}$, being the lower of the two prices plus one quarter of the difference. The London list should be used whenever there is a quotation there, unless it can be shown that the list of a provincial exchange gives a fairer price owing to more frequent dealings.

In the London lists the closing prices are always given, but in provincial lists there are columns also for last price (*i.e.* previous price) and business done, and there may not be entries in all columns. The price for duty purposes in provincial lists is taken primarily from "closing prices" on the quarter difference basis, or, if no closing price, from "business done" —taking the price midway between the minimum and maximum of the quoted dealings. If there is neither closing price nor business done the "last price" should be taken. "Odd lot" prices may be ignored.

If prices are quoted "ex div." the dividend must also be included as an item of estate unless it had been collected by deceased, when it is presumed to be included in the bank balance.

In the case of stocks and shares in which there is not a free market, where the price quoted is nominal—that is, no actual buyers or sellers, an adjustment to a fair price should be made. If there are actual dealings soon after the death, at a price widely different from the quoted price at the date of death, the Inland Revenue may endeavour to claim the more recent price if it is higher, but conversely the executors should claim it if it is lower.

Advice as to these points should be obtained from a stockbroker.

- (c) *Heritable Bonds, Terminable Debentures or Deposits.*—If deceased had lent money on bond or debenture, or had made deposits repayable at a fixed date, it is usual to include these at par plus interest accrued since the last date of payment (less tax). This basis is subject to negotiation with the Inland Revenue, and if there is any question as to the insufficiency of funds to meet capital or interest a deduction should be claimed. If the rate of interest on loans, which are not yet due for repayment, is less than the current rate, an allowance may be granted depending on the unexpired period. Heritable bonds subject to the Rent etc. Restriction Acts may be subject to an allowance accordingly.
- (d) *Unquoted Shares in Public Companies.*—The secretary should

be asked to state the last price at which a transfer was made and the date of the transaction, and this price will generally be accepted. If no transfers have occurred recently it is necessary to negotiate the value of the shares with the Inland Revenue Authorities, keeping in view the assets and earning power shown in recent years, as for private companies (see below).

If sold soon after death the sale price may be accepted as the basis of valuation.

- (e) *Unquoted Shares in Private Companies.*—Owing to the fact that each case must be judged on its own merits it is difficult to give definite guidance as to such shares. There are two methods of approach—the first method being based on capital and the second on income—and a combination of the results of these usually gives a fair value.

In calculating the capital value the question of rights to share in any surplus assets on liquidation must be considered. If there are such rights these must be valued, including goodwill at the sum which might be received on a sale of the business, allowing for changes in profits owing to new fashions, local conditions, and competition in the trade, etc.

As to income, the earnings and dividends for recent years should be noted. If the trend of earnings is moving up or down this affects goodwill (see above). It is important to observe whether dividends have been fully covered by earnings and if an apparently conservative financial basis is maintained. Where the shares in question bear a fixed rate of dividend, the value of the shares depends on the rate earned on trustee securities at the date of valuation, adjusted to allow for the additional risk.

Leading cases on this subject are *Salvesen's Trustees v. Commissioners of Inland Revenue* (1930 S.L.T. 387; 9 A.T.C. 43), *Attorney-General v. Jameson* (1905, 2, Irish Reports 218), and *In re Crossman; In re Paulin* (1937 A.C. 26).

- (f) *Shares in Companies controlled by Deceased.*—The provisions of F.A., 1940, sec. 55 and F.A., 1946, Eleventh Schedule, are applicable to certain companies in which (at any time during the five years prior to the death of the deceased) (1) he had a beneficial interest in more than half of the shares and debentures or (2) he had the controlling interest or (3) he was entitled to more than half of (a) the interest on debentures plus (b) the dividends payable. These complicated sections cannot be explained in a book of this size. The general effect, however, is that the sum chargeable is based on the proportion of the net assets of the company which is applicable to the deceased's holding.

- (g) *Foreign Assets.*—Where the rate of exchange is quoted at a range of prices, the extreme of the quotation which gives the lowest sterling value is to be taken; thus rupees quoted at date of death at 1s. 6d. to 1s. 6½d. are taken at 1s. 6d.

Property abroad which is liable to duty may be subject to an allowance not exceeding 5% for expenses incurred, owing

to its situation, for purposes of administration and realisation (sec. 7 (3)).

V. DOUBLE TAXATION

Assets which are situated outside Great Britain may be liable to death duties both abroad and in Britain. Relief from such double liability is allowable as follows:—

- (1) *Property liable in a country to which double taxation relief is applicable.*—(F. (No. 2) A., 1945, secs. 54-56.) Arrangements of this nature have been made by Great Britain with Canada, the Union of South Africa, and the United States of America. The relative Orders not only provide for relief from estate duty, but also determine where the property is to be deemed to be situated for the purposes of estate duty. Their operation is frequently most complicated.
- (2) *Property liable in certain British Dominions and Colonial Possessions.*—Where there is an arrangement for reciprocal relief in terms of F.A., 1894, sec. 20, Foreign Jurisdiction Act, 1913, sec. 1, and F.A., 1922, sec. 45, such relief is given by allowing the duty paid abroad as a deduction* from the British estate duty. The deduction is not to exceed the amount of the British duty chargeable on the property in question. Nearly all the British Dominions and Colonies have come under such arrangements.

Examples.—Assuming a balance was held in an Australian bank amounting to the sterling equivalent of £300, and 6% Australian death duty had become chargeable, relief from British estate duty is calculated thus:—

 - (a) If the British rate is 8%, the relief granted in Britain is £18 (the whole sum paid in Australia).
 - (b) If the British rate is 4%, the relief granted in Britain is restricted to the amount of British estate duty on the Australian property, £12.
- (3) *Property liable in Northern Ireland and Eire.*—Arrangements similar to those in the preceding paragraph have been made (a) as regards Northern Ireland by the Government of Ireland Act 1920, sec. 28, and (b) as regards Eire by the Irish Free State (Consequential Provisions) Act 1922, sec. 5.
- (4) *Other Countries.*—Property in other countries (*i.e.* where the preceding paragraphs are not applicable) which is chargeable with death duties abroad, is assessable to British estate duty on the sum remaining after deducting the foreign death duties from the value of the property (sec. 7 (4)).

VI. AGGREGATION

In ascertaining the rate of duty, the whole estate passing on the death is aggregated unless falling under exemptions described below (F.A., 1894, sec. 4; F.A., 1900, sec. 12; F.A., 1939, sec. 30 (2); F.A., 1940, secs. 45 (3) and 52). If there are large trust funds passing on the death this has the unfortunate effect of involving small personal estates in high

rates of duty, as the scale of duty is steeply graduated. In general, each property passing on the death bears its own duty.

Exemptions from aggregation are as follows:—

Exemptions
from
Aggregation

- (1) Any property passing on the death in which deceased never had an interest. Such property is an estate by itself for duty purposes.

Examples.—(a) Life policies on husband's life but expressed to be for wife's benefit, and which would not have reverted to him if she had died first, or (b) widow's pension or annuity liable under heading (7) of "property deemed to pass" (see page 124).

- (2) Property exempted from estate duty.
- (3) Property given for national purposes on which duty is remitted.
- (4) (a) The deceased's free estate (whether or not settled by his will), and (b) all other property passing on the death except property settled otherwise than by his will—if the total of (a) plus (b) does not exceed £2000. This forms an estate by itself (F.A., 1894, sec. 16 (3), F.A., 1946, part III of schedule X, and F.A., 1947, sec. 50). In computing the total for this purpose the Inland Revenue include the following:—
 - (a) Annuities, etc., provided by deceased.
 - (b) Interests in provident funds chargeable with duty although deceased had no personal interest.
 - (c) Property over which deceased had, and exercised, a general power of appointment by his will.
 - (d) *Donationes mortis causa*.
 - (e) Gifts *inter vivos* if chargeable to duty.

If advantageous to the executors, a fiar's vested interest in a trust subject to liferent (*i.e.* an interest in expectancy) may be treated as part of the free estate.

Example—

The property liable to duty is—

Free estate	£1600
Interest in expectancy	350
Settled property over which the deceased had no power of disposal	4800
	£6750

If strictly charged, the £1600 free estate would not be liable for duty (being under £2000) but all the other property would be aggregated, making £5150 which involves 3% duty = £154, 10s. Under the concessional treatment, as the interest in expectancy added to the free estate amounts to £1950, no duty is payable thereon (being under £2000). The settled property of £4800 is liable at 2% = £96, giving a saving of £58, 10s.

Similarly, if desired (1) property devolving under an entail and (2) property held in joint ownership by the deceased and others (and the survivors of them) may also be treated as part of the free estate.

- (5) Miscellaneous exemptions from aggregation are also provided, as noted in any standard book on death duties. See, for example, F.A., 1912, sec. 9, which exempts the value of growing timber from aggregation.

VII. RATES OF DUTY

The rates of duty which are effective at the time this book is written are given in F.A., 1949, as shown below. (As to duty chargeable on interests in expectancy which have been sold or mortgaged, see F. (No. 2) A., 1940, sec. 17). Agricultural property is allowed 45% abatement of duty (F.A., 1949, sec. 28 (1)).

Where the amount of the estate liable to duty is relatively little in excess of one of the limits on the scale of duties, marginal relief is allowed (F.A., 1914, sec. 13 (1)). Such relief is apportioned rateably over the whole aggregable property, so that each part receives a share of it.

Example—

Estates not exceeding £30,000 pay 18% and between £30,000 and £35,000 pay 21%. An estate of £30,650 would be charged at 21% if there were no marginal relief = £6436, 10s.

Marginal relief is given by charging duty on the limit figure (£30,000 at 18%) £5400, plus the amount of the estate in excess of the limit, £650, making the total payable £6050.

The scale of duty payable on non-agricultural property in terms of F.A., 1949, is shown in the following table, which also shows the appropriate limits of marginal relief.

Principal Value of Estate			Rate per cent. of Duty	Margins
	Not exceeding	£2,000	Nil	
Exceeding	£2,000 and not exceeding	3,000	1	£2,020 4 1
"	3,000 "	5,000	2	3,030 12 3
"	5,000 "	7,500	3	5,051 10 11
"	7,500 "	10,000	4	7,578 2 6
"	10,000 "	12,500	6	10,212 15 4
"	12,500 "	15,000	8	12,771 14 10
"	15,000 "	17,500	10	15,333 6 8
"	17,500 "	20,000	12	17,897 14 6
"	20,000 "	25,000	15	20,705 17 8
"	25,000 "	30,000	18	25,914 12 8
"	30,000 "	35,000	21	31,139 4 10
"	35,000 "	40,000	24	36,381 11 7
"	40,000 "	45,000	28	42,222 4 5
"	45,000 "	50,000	31	46,956 10 5
"	50,000 "	60,000	35	53,076 18 5
"	60,000 "	75,000	40	65,000 0 0
"	75,000 "	100,000	45	81,818 3 8
"	100,000 "	150,000	50	110,000 0 0
"	150,000 "	200,000	55	166,666 13 4
"	200,000 "	300,000	60	225,000 0 0
"	300,000 "	500,000	65	342,857 2 10
"	500,000 "	750,000	70	583,333 6 8
"	750,000 "	1,000,000	75	900,000 0 0
"	1,000,000		80	1,250,000 0 0

In cases of quick succession to land or businesses carried on otherwise than by a company (*i.e.* by partnerships or individuals) relief from duty is given on a subsequent death involving liability on the same property, if deceased succeeded on the previous death, as follows:—

Relief on Quick Succession

Where the second death occurs within one year the relief is 50% of the duty, 2 years 40%, 3 years 30%, 4 years 20%, and 5 years 10% (F.A., 1914, sec. 15). If the value for duty purposes has increased at the second death the relief is calculated only on the lower value. No relief is given where the property passing consists of shares in limited companies, but the relief is applicable where deceased was a life tenant and the testator died within 5 years (*Warren's Trustees v. Lord Advocate*, 1928 S.C. 806). Heritable bonds are not "interests in land", nor is money on loan to a business an "interest in a business" within the meaning of the section (see *Glen v. Commissioners of Inland Revenue*, 1926 S.C. 44).

Where estate duty becomes payable on the cesser of an interest in settled property, relief is allowable in respect of any legacy or succession duty which had been charged on the capital value of that property, provided (1) the deceased was not competent to dispose of the property, and (2) the property had not passed on another death occurring after 30th July 1949. Where the rate of estate duty payable on the cesser of the interest is less than the appropriate rate of legacy or succession duty, it is possible that a repayment may be made, but only on a claim being intimated. (See F.A. 1949, sec. 29.)

Relief re Legacy or Succession Duty

Example—

In terms of the will of A who died on 31st July 1943, the residue of his estate was life tenanted by his niece B, and on her death fell to his nephew C. B died on 1st October 1949. The rate of legacy duty paid on the whole residue on A's death was 5%. Assuming the normal rate of estate duty payable on all property passing on B's death to be 8%, relief is given by charging estate duty on the settled fund at $8\% - 5\% = 3\%$.

VIII. ESTATE DUTY INVENTORIES

Within six months of the date of death the executors must lodge an inventory of the whole property passing on the death, and if additional estate is subsequently discovered an additional inventory must be lodged within two months of the discovery. It is necessary to include all property passing or deemed to pass on the death, less debts due by deceased and funeral expenses.

The capital and accrued profits of each partnership business may be shown in one sum, but all other items of estate must be fully detailed.

Examples of items of estate are houses, furniture, debts due to deceased, uncashed cheques and dividend warrants, pensions, salaries and fees receivable, accrued income on funds life tenanted, rents accrued to date of death, income tax recoverable, and cash in house. Values are placed on each on the basis explained above.

Deductions are allowed for debts due by deceased, and reasonable funeral expenses. A moderate sum may be deducted for mournings actually incurred by the widow and dependent children of the deceased. Debts include income tax and sur-tax, rent, rates, feu duty, etc. (see Chapter "Life tenanted and Fee," page 23). Secured debts are deducted from

the property over which they are secured (sec. 7). No allowance is given for debts incurred without full consideration, e.g. contributions promised to charities. The cost of a tombstone is also not allowed. If there are partly paid shares which are of no value, calls due on these may be treated as debts. A debt due by the deceased to a person to whom he had previously made a gift is disallowed up to the amount of the gift (F.A., 1939, sec. 31, and F.A., 1943, sec. 26).

The accrued interest up to the date of death on deposit receipts, deposit accounts, savings bank accounts, etc., is regarded as an asset for the purposes of the inventory. It is, however, allowable to claim as a deduction the amount of any income tax on such interest so far as it will, in fact, be paid. This sum should be included as a debt due by the deceased.

Where the deceased was liferenter of $3\frac{1}{2}\%$ War Loan (or any other British government stock on which the interest is receivable without deduction of tax) the gross accrued interest is regarded as an asset of the deceased. Income tax thereon is allowable on the same basis as tax on accrued bank interest (see above).

Where the deceased held $3\frac{1}{2}\%$ War Loan and died after the quotation had become "ex dividend" in respect of the next half-year's interest, this interest is therefore an item of estate (see page 128). It is, however, allowable to enter any income tax actually payable thereon as a debt due by the deceased (see above as to tax on accrued bank interest). For example, if the deceased died on 15th November 1947 holding £1000 $3\frac{1}{2}\%$ War Loan then valued at 103% (ex dividend due on 1st December 1947) and tax is found to be payable on the interest at the standard rate, the following entries are made in the inventory:—

Moveable Estate.—

£1000 $3\frac{1}{2}\%$ War Loan at 103% ex div.	£1030	0	0
Add $\frac{1}{2}$ yr's int. due 1st December 1947		17	10 0
		£1047	10 0

Debt due by Deceased.—

Income tax at 9/- per £1 on £17, 10s. War Loan interest receivable on 1st December 1947	£7	17	6
--	----	----	---

The following is an example of particulars required for the estate duty inventory for insertion on the official form A.1:—

*Estate of the late Thomas Jones, late of 10 Meadow Walk,
Edinburgh, who died there on 10th October, 1948.*

I. MOVEABLE ESTATE—SCOTLAND

British Government Stocks—

1. £2000 $3\frac{1}{2}\%$ War Loan at 101 $\frac{1}{2}$ £2030 0 0

Stocks of Companies, etc.—

2. Edinburgh Corporation £100 $4\frac{1}{2}\%$
Mortgage at par £100 0 0

Add accrued int. from 15th May 1948

(148 days) £1, 16s. 6d. less tax

16/5 1 0 1

101 0 1

Forward £2131 0 1

	Forward	£2131	0	1
3. Cash at house		5	0	0
4. <i>Cash at Bankers</i> —				
Sum at credit of current account with Bank of Scotland, Meadows, Edinburgh		• 188	9	7
5. <i>Personal Effects</i> as per Inventory dated 31st October 1948 by John Smith & Sons, licensed valuers		22	10	0
<i>Income due</i> —				
6. Income Tax recoverable to date of death		17	15	0
7. Accrued Income on £4000 3½% War Loan liferented by deceased under Will of late James Jones (per account No. 4 annexed). Interest from 1st June 1948 (131 days)		50	4	11
8. Accrued rent of property, 1428 High Street, Edin- burgh		4	15	8
		<hr/>		
Total Moveable Estate in Scotland		£2419	15	3
		<hr/>		
	II. MOVEABLE ESTATE—ENGLAND			
9. Imperial Chemical Industries Ltd.—200 7% pref. shares of £1 each fully paid at 37/6		375	0	0
		<hr/>		
Total Moveable Estate in Great Britain		£2794	15	3
		<hr/> <hr/>		

SUMMARY OF ACCOUNTS

Inventory Account or Schedule.	Gross Value of Property.	Amount of Debts and Incumbrances.	Net Value of Property.
Moveables—Account No. 1	£2794 15 3	£55 2 4	£2739 12 11
do. 2	.....	.....	.....
do. 3	.....	.....	.....
do. 4	4009 15 1	.....	4009 15 1
Heritage—Account No. 5	200 0 0	100 0 0	100 0 0

Total Aggregate for determining rate of Estate Duty £6849 8 0

The rate of estate duty is 3%

Deduct any parts of total aggregate in respect of
which duty is not *now* paid—

- (a) Value of interests in expectancy Nil
- (b) Value of property in Account No.
4 (to be accounted for on form
C.1 by trustees of that property) £4009 15 1
- (c) Value of property in Account
No. 5 (may be paid later on
form C.1 if not already sold) 100 0 0

4109 15 1

Amount whereon Estate Duty is *now* to be paid £2739 12 11

Author's Note.—For simplicity, the calculation of total duty and interest
is omitted.

<i>Account No. 1</i> —Amount of moveable estate in Great Britain per Inventory	£2794 15 3
<hr/>	
<i>Schedule No. 1</i> — <i>part 1</i> — <i>Funeral Expenses</i> —	
John Wilson & Sons, undertakers	£18 10 0
<i>The Scotsman</i> —intimation of death	0 10 0
	<hr/>
	£19 0 0
<hr/>	
<i>Schedule No. 1</i> — <i>part 2</i> — <i>Debts due by deceased</i> —	
Dr. Wilson, Edinburgh, professional attendance	£3 3 0
John Murray, 42 Middle Street, Leith, chemist's account	1 11 2
Mrs. Macnaughton, 10 Meadow Walk, Edinburgh, board and lodging	4 10 0
Income Tax (at 9/- per £1) on £50 4s. 11d. accrued interest on £4000 3½% War Loan	22 12 3
Accrued interest on Heritable Bond p. £100 over 1428 High Street, Edinburgh, at 4% from 15th May to 10th October 1948 (148 days) £1 12s. 5d. less tax (at 9/- per £1), 14/7	0 17 10
Accrued feuduty at £2 per annum from 15th May to 10th October 1948 (148 days) 16/3 less tax (at 9/- per £1), 7/4	0 8 11
Accrued rates at £8 per annum from 28th May to 10th October 1948 (135 days)	2 19 2
	<hr/>
	£36 2 4
Add amount of part 1	19 0 0
	<hr/>
	£55 2 4
<hr/>	
<i>Account No. 2</i> —Amount of moveable estate outside Great Britain	Nil
<i>Schedule No. 2</i> —Debts due by deceased outside Great Britain (to be deducted from estate p. Account No. 2)	Nil
<i>Account No. 3</i> —Moveable property of which deceased at the time of his death was competent to dispose but did not dispose of	Nil
<i>Account No. 4</i> — <i>Moveable property chargeable with Estate Duty on deceased's death</i> (other than in Inventory or Accounts 3 and 6)—	
Property liferented by deceased under will of the late James Jones who died on 10th March 1923—Trustees William Macdonald and Charles Maxwell—£4000 3½% War Loan at 101½	£4060 0 0
Less income accrued due to deceased already included in inventory and not again liable here	50 4 11
	<hr/>
	£4009 15 1
<hr/>	

Account No. 5—Heritable Property—

House, 1428 High Street, Edinburgh, passing under deceased's will, estimated at £200 0 0

Note.—Details of rental and burdens to be supplied on Form 16, if duty is now to be paid on heritable property.

Schedule No. 5—Incumbrances upon Heritable Property in Account No. 5—

Bond and Disposition in Security dated 10th March 1896 by the deceased in favour of John Jackson over 1428 High Street, Edinburgh £100 0 0

Account No. 6—Property chargeable as an estate by itself. Nil

Note.—This applies where aggregation is not required.

IX. PAYMENT OF DUTY

The duty on moveable property is due on the date of death, and 2% interest is chargeable on unpaid duty from that date. The duty on heritable property is payable one year after the death, or on earlier sale, and if desired may be paid in eight yearly instalments or sixteen half-yearly instalments, commencing twelve months after date of death, with 2% interest on the balance due as from the date the first instalment is due. All instalments fall due on the sale of the property if it occurs before the whole duty has been paid (sec. 6).

Due Date

If there is liability on a vested interest in expectancy in settled property, the executors have the option to postpone payment until it falls into possession (sec. 7 (6)). Estate duty on timber is payable only when sales are effected (F.A., 1912, sec. 9). The duty on annuities may be paid in four annual instalments—the first being due one year after date of death, with 2% interest from the date the first instalment is due (F.A., 1896, sec. 16; F.A., 1943, sec. 27).

Government securities which have been held by deceased for at least six months prior to his death may be surrendered for duty as follows:—

Surrender of Government Securities

- 4% Funding Loan at 80% plus accrued interest since last payment of interest.
- 4% Victory Bonds at par plus accrued interest since last payment of interest.

If such securities have been held by a partnership shared by deceased they may be surrendered for duty to the extent of the proportion belonging to deceased. When these prices are less than market prices it is, of course, not advisable to surrender securities in this way.

Settled property passing on the death is chargeable with the duty thereon and as a general rule each property bears its own duty. Duty on gifts *inter vivos* (if liable) is chargeable on the recipient (*re Foster*, 1897, 1 Ch. 484), and estate duty on annuities provided by the deceased is payable by the annuitant, unless the contrary is expressed in the will. The estate duty on legacies is usually payable out of the residue of the trust. It is so payable if (1) the legacies are declared to be free of duty, or (2) the legacies are pecuniary legacies payable out of the free moveable estate in Great Britain and the residue is not exhausted (*re Morrison*, 1910, 102 L.T. 530). In other circumstances, which in practice are exceptional, the duty is payable by the legatee. It should be noted that

Incidence of Duty

where a legacy, which is not declared to be free of duty, is payable on the expiry of a liferent, the legatee bears a proportion of any estate duty charged on the settled fund on the liferenter's death (*Berry v. Gaukroger*, 1903, 2 Ch. 116; *re Hicklin, Public Trustee v. Hoare*, 1917, 2 Ch. 278). Estate duty is a charge on capital and the interest thereon is payable out of income (*re Parker-Jervis*, 1898, 2 Ch. 643).

Where the deceased had made payments to any legatees within five years of his death and the will directs that these sums are to be regarded as payments to account of the beneficiaries' shares of the trust estate, it is the net amounts remaining after deduction of estate duty which are taken for this purpose. (*Re Beddington, Micholls v. Samuel*, 1900, 1 Ch. 771.)

Example of incidence of estate duty.

A died leaving property (after deduction of debts) with a net value of £7500. Within five years of death he had given his son investments which at date of his death were valued at £1500. He received income from funds of £1500 in trust under the will of his wife (who had predeceased him). These funds were previously charged with duty on her death and accordingly no further duty is payable thereon on his death. He also received an annuity of £100 from another trust where the funds were valued at £20,000 and the total income was £800. Duty is payable as follows:—

(1) Aggregation of property passing:	
Personal estate	£7,500
Gift to son	1,500
Trust funds applicable to annuity	
100	
$\frac{100}{800} \times £20,000$	2,500
Total estate liable to aggregation	<u>£11,500</u>

Note.—Wife's trust is excluded from aggregation as it is not liable.

(2) The rate of duty is 6%—the total being over £10,000 and under £12,500.

(3) Incidence of duty:

Payable by executors on personal estate	
£7500 at 6%	£450
Payable by son on gift £1500 at 6%	90
Payable by trustees from trust funds	
£2,500 at 6%	150
	<u>£690</u>

CHAPTER XIII

SCHEMES OF DIVISION

INTERIM schemes of division may be necessary if part of the residue of a trust is to be handed over to the beneficiaries—the remainder being retained to meet annuities or other sums payable in terms of the will. Another type of interim scheme of division is required where there is a provision in the will for setting aside for liferent some part of the trust funds, so that it is necessary to allocate specific investments for the purpose. When
Required

Final schemes of division are required in executry estates where there are several beneficiaries, and where the executors divide the funds after they are satisfied that all debts, duties and legacies have been paid. In trusts the final division is deferred until all the trust purposes are completed, and so the division is made after the death of the last annuitant or liferenter. The balance of income due to the executors of such deceased beneficiary must be paid or reserved before any division is made.

A certificate should be obtained from the Inspector of Taxes that no income tax remains unpaid, before paying over this balance.

Estate duty may be payable on the death of an annuitant or liferenter, and before dividing trust funds a clearance certificate should be obtained from the Estate Duty Office. Deductions
from Estate

An account should be prepared showing the whole cash transactions up to the date of division, and in this account it is convenient to show the expenses of winding up the trust—reserving a sum to cover unpaid items. On each transfer of stock or shares to beneficiaries there is a stamp duty of 10s. (except on transfers of British Government securities which are exempt) and usually also a registration fee of 2s. 6d. Particulars of registration fees charged by companies are given in *The Stock Exchange Official Year Book*. Stamp duties and recording dues are payable in respect of dispositions of heritable property and discharges by beneficiaries. Solicitors and factors are entitled to fees for realisation of the estate, adjustment of estate duty, and preparation of account, scheme of division, transfers, dispositions of property, and discharge by beneficiaries. If there is to be an audit, the auditor's fee must be taken into account also.

It is frequently more convenient and economical to divide the investments among the beneficiaries instead of realising them on the Stock Exchange and paying out cash. As to the duty of trustees as between realisation and division, see *Center's Trustee v. Center's Executrix*, 1948 S.L.T. (Notes), p. 83. Where a division of investments is made, these must all be revalued as at the date of the division. It is recommended that the expenses of division should all be charged against the trust, instead of allocating them to the beneficiaries individually. Division of
Investments

There is an exception to this rule which applies where trust funds are to be held until the various minor beneficiaries attain a specified age. In these circumstances, the investments may all be originally registered in the same trustees' names although separate accounts are kept. When the first beneficiary becomes entitled to have his fund paid to him, it is necessary to prepare transfers of the relative investments. The transfer stamps and registration fees, and legal expenses, should be charged to that individual beneficiary. The same treatment is given to subsequent transfers, and each beneficiary thus pays his own expenses when they are incurred.

Valuation of Funds

In revaluing the trust funds for division, quoted investments are taken either at middle prices in stock exchange lists, or on the estate duty basis (see page 128), but values of unquoted investments must be estimated. Prices of such shares on recent transfers may sometimes be obtained from the secretary or auditor of the company, but these are not conclusive and the following points must also be taken into account:—

- (a) Estate Duty Office valuation for death duty purposes.
- (b) Recent earning capacity, reserves and goodwill, as shown in the accounts.
- (c) Restrictions on transfers of shares in terms of articles.

If any shares are quoted ex div., the dividend must also be included in the funds for division, even if it is receivable at a later date.

Basis of Allocation

If each beneficiary receives an equal holding no hardship can arise to anyone, even if the value of the shares is afterwards found to have been wrongly estimated. It is therefore preferable where possible to divide each investment into as many parts as there are beneficiaries, except perhaps for rounding off holdings. For example, 1000 shares divided among three beneficiaries might be taken as 350, 325 and 325. There may be restrictions in the company's articles as to the minimum number of shares or units of stock transferable, and before transfers are prepared inquiry should be made on this point. Where the investments are too small to divide, each beneficiary may be given small lots in different companies. Heritable properties are sometimes taken by individual beneficiaries in order to avoid difficulties through joint ownership. In order to preserve an equitable basis, care must be taken to give each beneficiary investments of approximately equal status—*not* giving one nothing but government stocks and another nothing but ordinary shares.

Advances

If advances have been made to residuary legatees, interest (less income tax) should be calculated on these sums for the period to the date of division, and the advances and interest together form part of the available residue and are deducted from the respective beneficiaries, thus:—

Previous advances to A (including interest)	.	.	£300
do. B do.	.	.	200
Cash available for division	.	.	480
Total funds	.	.	£980
			£980

<i>A's share</i> $\frac{1}{2} = \text{£}490$		
whereof previously advanced	.	£300
do. cash payable	.	190
		<u>490</u>
<i>B's share</i> $\frac{1}{2} = \text{£}490$		
whereof previously advanced	.	£200
do. cash payable	.	290
		<u>490</u>
		<u>£980</u>

If any beneficiary has already received more than is due to him, and the excess cannot be recovered from any source, his advances must be excluded and the remaining estate is then divisible among the others, thus:—

Funds per accounts—

•Advances to A	.	.	.	.	£400
do. B	.	.	.	.	90
Cash	.	.	.	.	750
					<u>£1240</u>

There are four beneficiaries with equal shares.

A's share $\frac{1}{4} = \text{£}310$ is less than the sum advanced. If the excess is not recoverable, the funds are therefore divisible among the remainder as follows:—

<i>B's share</i> $\frac{1}{3}$ rd of £840 =	.	.	.	.	£280
whereof advances	.	.	.	.	£90
do. cash payable	.	.	.	.	190
					<u>£280</u>
<i>C's share</i> $\frac{1}{3}$ rd of £840 (cash)	.	.	.	.	280
<i>D's share</i> do. do.	.	.	.	.	280
					<u>£840</u>

In dividing the funds of any executry or trust it is necessary to keep Legal Questions in view the legal rights of the surviving spouse and family of the deceased unless these have been previously waived or discharged. The executors or trustees should also be satisfied that every legatee named in the will or claiming under the law of intestate succession is satisfactorily identified, and that death has actually occurred of those whose legacies appear to have lapsed through their predeceasing the testator.

The proposed division of the estate should first be shown in a draft Procedure scheme of division prepared by the factor, and after approval by the executors or trustees this may conveniently be submitted to the beneficiaries for comment. If an audit is required the scheme should then be submitted to the auditor with the final accounts of the trust

before payments are made to beneficiaries. The auditor may, if desired, check the transfers of stocks and shares before they are signed. After the auditor has made his report, further adjustments may be required, and the final scheme of division is then prepared and submitted to the trustees and beneficiaries along with transfers and discharge for signature. The factor then arranges for stamping and registration of the transfers, and, when certificates are received for the sub-divided investments, he must deliver these to the beneficiaries along with any cash balances.

Dividends may be received by the factor after the date of division of the investments before the transfers are lodged, and these sums must be paid over to the respective beneficiaries. (See, however, page 140 as to dividends where the price was quoted ex div. at the date of division.)

The following examples show different types of schemes of division:— Examples.

Example I

The annexed scheme of division commences with the funds shown at close of the trust account included in the chapter "Examples of Trust Accounts showing Apportionments" (p. 116).

SCHEME OF DIVISION of the Trust Estate
of the late J. JONES.
As at 31st December 1961.

Estate as revalued per Account Charge and Discharge—

1. £10,000 ord. stock CD Co. Ltd., at 115%	£11,500	0	0
2. £10,000 ord. stock EF Co. Ltd., at 127½%	12,750	0	0
3. £10,000 ord. stock GH Co. Ltd., at 142%	14,200	0	0
4. £20,000 5% deb. stock XX Ltd., at 90%	18,000	0	0
5. £15,000 5% partic. pref. stock YY Ltd., at 101%	15,150	0	0
6. £20,000 5% pref. stock WW Ltd., at 83¼%	16,750	0	0
7. Furniture and personal effects	650	0	0
8. Advances to T. Jones on account of residue	1,000	0	0
9. Advances to J. Wilson on account of residue	500	0	0
	£90,500	0	0
<i>Add</i> Balance at credit with Factors	1,800	7	4
	£92,300	7	4

Note.—Interest has been received on advances to the beneficiaries up to the date of division.

Divisible thus:—

T. Jones—one-third	£30,766	15	10
J. Wilson— ..	30,766	15	9
C. Smith— ..	30,766	15	9

£92,300 7 4

	T. Jones.				J. Wilson				C. Smith			
	Holding.	Value.			Holding.	Value.			Holding.	Value.		
1. £10,000 ord. stock CD Co. Ltd.	£3,340	£3,841	0	0	£3,330	£3,829	10	0	£3,330	£3,829	10	0
2. £10,000 ord. stock EF Co. Ltd.	3,330	4,245	15	0	3,340	4,258	10	0	3,330	4,245	15	0
3. £10,000 ord. stock GH Co. Ltd.	3,330	4,728	12	0	3,330	4,728	12	0	3,340	4,742	16	0
4. £20,000 5% deb. stock XX Ltd.	6,670	6,003	0	0	6,665	5,998	10	0	6,665	5,998	10	0
5. £15,000 5% partic. pref. stock YY Ltd.	5,000	5,050	0	0	5,000	5,050	0	0	5,000	5,050	0	0
6. £20,000 5% pref. stock WW Ltd.	6,665	5,581	18	9	6,670	5,586	2	6	6,665	5,581	18	9
7. Furniture and personal effects	....	300	0	0	....	200	0	0	....	150	0	0
8. Advances to T. Jones	....	1,000	0	0	....	.....	.....	.....	....	.....	.....	.....
9. Advances to J. Wilson	....	.....	.....	.....	....	500	0	0	....	.....	.....	.....
		£30,750	5	9		£30,151	4	6		£29,598	9	9
10. Cash		16	10	1		615	11	3		1,168	6	0
		£30,766	15	10		£30,766	15	9		£30,766	15	9

Example II

In the following example it is assumed that the last trust account was made up to 30th April 1954 and that the liferenter died on 10th September 1954. No further death duties were payable on his death and the estate is to be divided as at 31st December 1954. Income tax assumed to be at 4s. 6d. per £.

The account showed the trust funds as at 30th April 1954 to be as follows:—

£1800 3½% War Loan.

£500 3½% Conversion Loan.

Deposit Receipt with Bank of Scotland dated 15th July 1953 p. £17, 16s. 10d.

Cash balance at credit with factor £12, 16s. 3d., whereof capital 11s. 8d. and income £12, 4s. 7d.

Since the close of that account £15 was paid to the liferenter on 1st July 1954.

STATEMENT OF ACCRUED INCOME due to the deceased JAMES JOHNSTON from Mrs Johnston's Trust as at date of death—10th September 1954.

Balance of income as at 30th April 1954				£12	4	7
<i>Add</i> Interest received—						
½ year's interest on £1800 3½% War Loan to 1st June 1954				31	10	0
<i>Note.</i> —Tax reserved below.						
				£43	14	7
<i>Add</i> Interest accrued—						
On £1800 3½% War Loan from 1st June to 10th September 1954 (101 days) £17, 8s. 8d. less tax £3, 18s. 5d.	£13	10	3			
On £500 3½% Conversion Loan from 1st April to 10th September 1954 (162 days) £7, 15s. 4d. less tax £1, 14s. 11d.	6	0	5			
On Deposit Receipt p. £17, 16s. 10d. from 15th July 1953 to 10th September 1954 per Bank certificate 4s. less tax 11d.	0	3	1			
				19	13	9
<i>Note.</i> —Income tax deducted from apportionments (see page 56).				£63	8	4
<i>Less</i> Payment on account on 1st July 1954	£15	0	0			
Sum reserved for income tax at 4s. 6d. per £ on £31, 10s. War Loan interest received 1st June 1954	7	1	9			
Management Expenses—proportion of factor's fees applicable to income	2	2	0			
				24	3	9
Balance of income paid to Executors on 30th October 1954				£39	4	7

STATEMENT OF RECEIPTS AND PAYMENTS by
John Thomson as factor for the Trustees of the late
Mrs ELIZABETH JOHNSTON.

From 30th April 1954
To 31st December 1954.
(Close of Trust.)

RECEIPTS

I. INCOME RECEIVED:—			
1. On £1800 3½% War Loan—			
1954.			
June 1.	½ yr's int. (no tax deducted)	.	.
Dec. 1.	Do.	Do.	.
		£31	10 0
		31	10 0
2. On £500 3½% Conversion Loan—			
1954.			
Oct. 1.	½ yr's int. £8, 15s. less tax £1, 19s. 4d.	.	.
		6	15 8
3. On Deposit Receipt—			
1954.			
Dec. 20.	Int. on Deposit Receipt p. £17, 16s. 10d. from 15th July 1953	.	.
		0	4 8
		£70	0 4
II. DEPOSIT RECEIPT UPLIFTED:—			
1954.			
Dec. 20.	Deposit Receipt with Bank of Scotland dated 15th July 1953	.	.
		17	16 10
TOTAL RECEIPTS			
		£87	17 2

PAYMENTS

I. MR JAMES JOHNSTON (DECEASED)—THE LIFERENTER:—			
1954.			
July 1.	Sum paid on account of income	.	.
Oct. 30.	Balance of income to 10th September 1954 (date of death) paid to his Executors	.	.
		£15	0 0
		39	4 7
		£54	4 7
II. INCOME TAX:—			
1954.			
Dec. 31.	Sum reserved to meet income tax on £63 War Loan int. and 4s. 8d. Deposit Receipt int. = £63, 4s. 8d. at 4s. 6d.	.	.
		14	4 7
III. MANAGEMENT AND LEGAL EXPENSES:—			
1954.			
Dec. 31.	John Thomson—fee for preparation of account, scheme of division, transfers, and discharge by beneficiaries, restricted to 25 guineas	£26	5 0
	Do. posts and outlays	0	10 0
	Reserved to meet stamp on discharge and recording dues thereof	2	0 0
		28	15 0
TOTAL PAYMENTS			
		£97	4 2

SUMMARY

Balance at credit with factor as at 30th April 1954	£12	16	3
Add Receipts	87	17	2
	£100	13	5
Less Payments	97	4	2
Balance at credit with factor as at 31st December 1954	£3	9	3

SCHEME OF DIVISION of the Estate of the late
Mrs ELIZABETH JOHNSTON as at 31st December
1954.

Estate as revalued at this date:—			
£1800 3½% War Loan at 108¾%		£1957	10 0
£500 3¼% Conversion Loan at 111%		555	0 0
Balance at credit with factor		3	9 3
		£2515	19 3
Divisible thus:—			
Mr John Johnston—one-third	£838	13	1
Miss Joan Johnston—one-third	838	13	1
Miss Elizabeth Mary Johnston—one-third	838	13	1
	£2515	19	3

The above sums will be met thus:—

<i>Mr John Johnston—</i>			
£600 3½% War Loan at 108¾%		£652	10 0
£166 3½% Conversion Loan at 111%		184	5 2
Cash		1	17 11
		£838	13 1
<i>Miss Joan Johnston—</i>			
£600 3½% War Loan at 108¾%	£652	10	0
£167 3½% Conversion Loan at 111%	185	7	5
Cash	0	15	8
	838	13	1
<i>Miss Elizabeth Mary Johnston—</i>			
£600 3½% War Loan at 108¾%	£652	10	0
£167 3½% Conversion Loan at 111%	185	7	5
Cash	0	15	8
	838	13	1
	£2515	19	3

Example III

A trust estate has been liferented equally by A, B and C, and on their respective deaths the fee of one-third of the estate is payable to their representatives. C died on 1st June 1947. His share of the trust income falling due before that date had previously been paid to him. It is resolved by the trustees that they will pay the sum due to his representatives as at 1st October 1947.

There is only one investment, £3000 3% Savings Bonds 1965-75, valued on 1st October 1947 at 101% = £3030. There had been a capital cash balance of £500 but no income balance as at 1st June 1947 and there was subsequently received on 15th August 1947 a half year's interest on £3000 Savings Bonds £45 less tax at 9s. £20, 5s., £24, 15s.

C's representatives agree to take £900 3% Savings Bonds and the balance in cash. (Expenses ignored for simplicity.)

SCHEME OF DIVISION as at 1st October 1947.

I. <i>Capital—</i>				
• £3000 3% Savings Bonds 1965-75 at 101%	.	£3030	0	0
Cash (being previous capital balance)	.	500	0	0
		<u>£3530</u>	<u>0</u>	<u>0</u>
<i>Less</i> Accrued interest included above due to Income, being interest on £3000 3% Savings Bonds from 15th August 1947 to 1st October 1947 (47 days) £11, 11s. 9d. less tax £5, 4s. 3d.			6	7
				<u>6</u>
Net capital for division	.	£3523	12	6
Whereof one-third now payable to C's representatives		1174	10	10
Balance retained for liferent of A and B	.	<u>£2349</u>	<u>1</u>	<u>8</u>
II. <i>Sum due to C's Representatives—</i>				
Capital balance per Scheme of Division	.	£1174	10	10
<i>Less</i> Value of £900 3% Savings Bonds transferred to C's representatives as at 1st October 1947 at 101%	.	909	0	0
		<u>£265</u>	<u>10</u>	<u>10</u>
<i>Income—</i> (1) One-third share of half- year's interest on £3000 3% Savings Bonds 1965-75 due on 15th August 1947 (1/3rd x net sum £24, 15s.)	.	£8	5	0
(2) One-third share of accrued interest on do., from 15th August to 1st October 1947 (1/3rd x net sum (see above) £6, 7s. 6d.)	.	2	2	6
			<u>10</u>	<u>7</u>
				<u>6</u>
Cash payable	.	<u>£275</u>	<u>18</u>	<u>4</u>

*Extracts from Accounts of 1947-48, showing above Transactions**Capital Receipts*

1947 Oct. 1	Value of £900 3% Savings Bonds transferred to C's representatives at 101%	£909 0 0
1948 Feb. 15	Accrued interest applicable to Capital on £2100 3% Savings Bonds from 15th August to 1st October 1947 (47 days) £8, 2s. 3d. less tax £3, 13s.	4 9 3
<i>Note.</i> —This accrued interest had arisen before the remaining Fund was set aside for A and B's liferent		
		£913 9 3

Capital Payments

1947 Oct. 1	Sum payable from Capital to C's representatives per Scheme of Division	£1174 10 10
<i>Note.</i> —Stock valued at £909 and cash £265, 10s. 10d. were applied in settling this. Sum transferred to Income being accrued interest on £3000 3% Savings Bonds from 15th August to 1st October 1947 (47 days) £11, 11s. 9d. less tax £5, 4s. 3d.		6 7 6
		£1180 18 4

Capital Summary

Balance at credit as at 1st June 1947	£500 0 0
Add Receipts	913 9 3
	£1413 9 3
Less Payments	1180 18 4
	£232 10 11

Income Receipts

1947 Aug. 15	½ yr's interest to date on £3000 3% Savings Bonds £45 less tax £20, 5s.	£24 15 0
Oct. 1	Accrued interest transferred from Capital on £3000 do. from 15th August 1947 to 1st October 1947 (47 days) £11, 11s. 9d. less tax £5, 4s. 3d.	6 7 6
1948 Feb. 15	½ yr's interest to date on £2100 3% Savings Bonds £31, 10s. less tax £14, 3s. 6d.	17 6 6
		£48 9 0

Income Payments

1947 Oct. 1	Sum payable from Income to C's representatives per Scheme of Division	£10 7 6
1948 Feb. 15	Accrued interest applicable to Capital on £2100 3% Savings Bonds from 15th August to 1st October 1947 (47 days) £8, 2s. 3d. less tax £3, 13s.	4 9 3
		<u>£14 16 9</u>

Income Summary

Receipts	£48 9 0
Less Payments	14 16 9
Balance at credit as at 15th February 1948	<u>£33 12 3</u>

Note.—This is divisible equally between A and B.

Explanatory Notes :—

(1) Apportionments are necessary at the beginning and end of a *lifereint*. The date of division (1st October 1947) constitutes, for practical purposes, the end of the *lifereint* by A, B and C, and also the beginning of the *lifereint* by A and B alone. The fact that C died on 1st June 1947 can be ignored for apportionment purposes in view of the special circumstances (a) C's share of the capital is payable to his representatives after his death, and (b) C's share of income is also payable to these same beneficiaries.

(2) The sum of £6, 7s. 6d. is the net accrued interest on £3000 3% Savings Bonds as at the date of division. It is *deducted* from the *capital* per Scheme of Division, but C's one-third share is *added* to the *income* payable to his representatives. In the account £6, 7s. 6d. is a capital payment and an income receipt.

(3) The sum of £4, 9s. 3d. is the net accrued interest on the remaining £2100 3% Savings Bonds as at the date of division. This appears in the account as a capital receipt and an income payment.

CHAPTER XIV

THE AUDIT OF EXECUTRY AND TRUST ACCOUNTS

I. INTRODUCTION

THE examination of the accounts in executries and trusts by an independent auditor is desirable so that the trustees and beneficiaries may be satisfied that the whole funds have been properly accounted for. In small trusts, however, it is not uncommon for the trustees to examine the accounts and vouchers themselves and accordingly to dispense with an audit. There is no statutory reference to the independent audit of trust accounts, but trustees have power under common law to appoint auditors and pay their fees from the trust funds. (See Trusts (Scotland) Act, 1921, sec. 17, as to audit by the Accountant of Court.) As noted on page 27, audit fees are divisible between capital and income, generally allocated according to the time required for the audit work.

If it is resolved by the trustees that the accounts are to be audited, minutes should be signed by them in which the auditor's appointment is recorded. The factor then sends the account to the auditor along with the documents detailed on this page and page 151. The auditor's duty includes a review of the administration in order to ascertain whether the trust purposes have been properly carried out in compliance with Scots law and with the terms of the will or deed under which the trust was constituted.

II. THE AUDIT OF EXECUTRY ACCOUNTS

Executry accounts are similar in many respects to the first year's accounts in a testamentary trust. It is proposed to mention now the principal points which arise only in such audits. In the next section of this chapter (pages 151 to 155) normal trust audit procedure is explained and that is also applicable to executries.

The following documents are required in the audit of (a) executry accounts, or (b) the accounts of the first year in a testamentary trust:—

- (1) Will of testator. (A copy of this document or a full abstract or précis of it should be retained by the auditor.)
- (2) Confirmation. (See page 3.)
- (3) Valuations of heritable property and furniture as at date of death, and roup roll for furniture sold. If furniture is liferented, the liferenter should acknowledge in writing that he holds it in terms of the will and does not claim absolute ownership.
- (4) Copy or draft of estate duty inventory.
(See also page 151 as to other productions.)

The auditor examines the will in order to ascertain the trust purposes and also the duties and powers of the trustees, particularly observing whether or not they are directed to make apportionments between capital

and income. Unless there are specific directions to the contrary, apportionments must be made in liferented trusts in terms of the Apportionment Act 1870.

The investments of the trust are checked from the confirmation, which shows moveables in the United Kingdom; details of other property are compared with copies of the estate duty inventory and corrective inventories. These also show debts due by deceased and funeral expenses, which should be reconciled with the corresponding entries in the trust account.

Dues of confirmation are sometimes vouched by receipts, but if no receipt is available the amount can be checked by referring to the scale of charges appearing in *The Parliament House Book*.

Estate duty and interest thereon are vouched by (1) the receipt for the total amount paid (which does not give details) and (2) the factor's copy or draft of the estate duty inventory or corrective inventory. If any estate duty has been recovered, a copy of the corrective inventory forms the voucher, and the relevant correspondence with the Estate Duty Office should also be examined. Any necessary allocation of estate duty and interest against the capital and income of the various trust funds is verified by the auditor. (See page 137.)

III. NORMAL TRUST AUDIT PROCEDURE

The following productions are required by the auditor:—

- (1) The account under audit, accompanied by the previous year's account (if any) for reference.
- (2) Vouchers (as detailed below).
- (3) Minute book (or sederunt book) containing copies of minutes of trustees, will, confirmation, etc.
- (4) Signed minutes of trustees covering the period under audit.
- (5) Letters and computations re income tax assessments and claims, with copies of returns.
- (6) Leases and missives of let of heritable property and rental with full particulars of rents and expenses.
- (7) Feu-chartulary showing feuduties receivable.
- (8) Evidence that annuitants and liferenters are still alive—such as certificates of life signed by an independent person, or letters from the beneficiaries which may be accepted if the signatures are known.
- (9) Factor's account-current, showing cash transactions in order of date.

A voucher is required by the auditor for every item of cash transactions Vouchers during the period, and these should first be arranged by the factor, either in order of date or in the order in which the entries appear in the trust account. (If there is a separate cash book for the trust, the former method is usual.) Some accountants prefer to have the vouchers arranged in order of date, so that they may be readily compared with the entries in the account-current, before checking the posting thereof to the trust account. The documents which are required as vouchers are now described.

Heritable properties sold and purchased are vouched by solicitors' (1) Heritable Properties states for settlement. Rents of properties, where there are local factors, are vouched by their accounts which should be rendered half-yearly, and

expenses such as rates, taxes, and repairs are checked with receipted statements. The auditor should see whether all rents have been received in accordance with the leases and rental, and inquiry ought to be made regarding any arrears. Irrecoverable rents should be written off, leaving only those recoverable to be treated as arrears in the accounts. Repairs and other outlays may be partly recoverable from adjoining proprietors, and it should be seen whether such sums have been claimed. It should be observed whether all burdens, such as feuduties, rates, taxes and insurance premiums have been duly paid (see page 62). The insurance policies should be examined. Burgh (or county) owners' and occupiers' rates are usually charged on the actual rental, while burgh (or county) owners' rates are chargeable also on unlet property.

(2) Investments

If investments have been redeemed or exchanged for other securities, circulars or letters from the companies are examined by the auditor. Investments sold and purchased are vouched by stockbrokers' contract notes. If a bond due by the estate is wholly paid up, the bond and disposition in security and the discharge thereof should be seen. Partial repayments ought to be endorsed on the bond at the time of payment. Interest received on heritable bonds is sometimes vouched by certificates of deduction of tax signed by the borrowers. If these are not available, the amount of interest due may be checked by reference to the formal acknowledgments obtained as noted on page 156. Income on investments is checked with dividend counterfoils, but interest on British government stocks on the Post Office register can only be verified by calculation as no counterfoils are issued. Interest on deposit receipts can be checked with certificates of interest issued by the bank, and interest on deposit accounts with the pass-books.

The auditor must be satisfied that all due income has been received, taking sales and purchases of investments into consideration. *The Stock Exchange Official Year Book* gives particulars of dividends and bonuses of most public companies. Where trust income arises from private companies the directors' reports must be examined, while profits and drawings from partnerships should be reconciled with their audited accounts. Where trusts have interests in other trusts, the audited accounts of these ought also to be seen, in order to check corresponding entries therein. If there are investments which have not yielded income, these should be noted for reference in the auditor's report.

See page 155 as to the examination of securities held at the close of the account.

(3) Estate Duty

On any death affecting the trust funds the auditor calls for clearance certificates to be issued by the Estate Duty Office, so that it may be seen whether further duty has fallen due and remains unpaid. Receipts and payments of duty are vouched as explained on page 151.

(4) Income Tax

Income tax assessments and claims are checked, and the auditor should see whether returns of untaxed income and all possible claims for recovery of tax have been made and properly settled.

(5) Management Expenses

The solicitor's legal business account may be remitted for taxation (*i.e.* audit) to the Auditor of the Court of Session in Edinburgh, the Auditor of the Faculty of Procurators in Glasgow, or a Sheriff Court Auditor elsewhere in Scotland. The auditor who taxes the account will normally also allocate the charges between capital and income. Where arrangements had been made before 1947 for the taxation of business

accounts by chartered accountants, subsequent accounts in these trusts may continue to be taxed by them. With this exception the Scottish Societies of Accountants have agreed that their members should now abstain from taxing business accounts in the course of the audit of trust accounts. If the business account has already been taxed before the trust account is audited, the auditor merely checks the total from the business account, noting that it has been correctly allocated between capital and income (see page 27). Where the auditor is taxing the business account, in terms of the exceptional arrangement noted above, he should see that no charges are in excess of the scale shown in the Table of Fees for Conveyancing and General Business. Commission on the cash transactions of the factor, who may be a solicitor, is verified or fixed either by the official who is taxing the business accounts or by the trust auditor. Such commission should be authorised by the Table referred to, taking into account any commission already received, *e.g.* from stockbrokers. (Stockbrokers allow a share of their brokerage as commission to solicitors and accountants whose names appear as agents on the Stock Exchange register, and to the trustee departments of banks.) A receipt should be seen for any fees charged by solicitors either in a business account or as commission. Unless specifically authorised by the trust disposition, no remuneration may be given to trustees, either directly or indirectly, even where they have acted as solicitors or factors, or in any other executive capacity (see page 1).

Payments to beneficiaries should all be formally acknowledged, and receipts for legacies and annuities are usually obtained on payment. A formal letter acknowledging that the whole income has been received must be signed by the liferenter when the income balance is paid to him after the close of each year's account. Any over-payments should be noted and referred to in the report. Where payments have been made to a bank for credit of a beneficiary, it is necessary to obtain a receipt from the latter, because the auditor cannot be certain that the mandate in favour of the bank remains effective. (6) Beneficiaries

Stamped receipts are required for all payments, unless specifically exempt from stamp duty, such as wages, salaries, income tax and estate duty. After all the vouchers have been checked, a list of missing vouchers is included in the notes on the audit which are submitted to the factor for his attention, as explained below. (7) General

The posting of the entries from the account-current to the trust account should be checked. The summations of all statements of accounts should be verified, and the auditor should see that the cash balance at the close of the trust account is in accordance with the account-current. If there is a separate bank account for the trust, the auditor compares the bank pass-book with the account-current, and also verifies that all cash received has been promptly lodged in the bank. The bank balance at the close of the year should be reconciled with a certificate issued by the bank. Interest should be allowed to the trust on any balance in hands of the factor, but such balance should always be restricted to a reasonable amount. Conversely, interest may be charged by the factor on any advances by him. The auditor checks the calculations of interest on the factor's interest-state. It may be noted that it is almost impossible to ascertain from an account charge and discharge whether the factor has retained any large cash balances during the year, and that is why an Bank and Cash Balances

account-current is required. It is not advisable for the trustees to borrow from a bank or from the factor except for temporary reasons. Minutes of trustees should authorise all borrowings by the trust, stating the rate of interest payable, and any permanent loans must be within the trustees' powers. It is the duty of the trustees to invest all surplus funds, and these must not be retained for protracted periods on bank current account or on deposit receipt.

Trustees'
Administration

The signed minutes of trustees must be examined by the auditor. (See page 9 as to the contents of minutes.) It is convenient for him to retain a copy of any agreements which may be entered into by the trustees with the beneficiaries, *e.g.* regarding the retention of non-trustee investments. In this connection he should keep in view that agreements with minors are invalid. As to the administration of the trust, the auditor should ascertain whether the trustees have carried out the trust purposes, and should verify that they have not exceeded their powers. The minutes should be checked with the account, noting whether all decisions have been properly recorded and executed, and also observing whether anything has been omitted from the minutes. There may be questions as to legal rights of beneficiaries and the factor should produce documentary evidence if these have been waived (see page 30).

Advances to beneficiaries on account of residue should be minuted and must not exceed sums authorised in the will. No advances should be made to a minor beneficiary without his curator's consent.

The sederunt book (or minute book) forms a convenient record to which the auditor may refer, but only copies of documents appear in this book and so it is not acceptable as final evidence for audit purposes.

Details in
Accounts

Unless apportionments are excluded by the trust disposition, the auditor must see that all items have been properly apportioned between capital and income in a liferented trust. The account should show clearly the capital and income balances at the close of the account, and a complete list of all investments at that date must be given. The auditor compares this with the list of investments held at the beginning of the period under audit, allowing for sales and purchases. A note should be made of any investments which are not authorised by the trust disposition or the Trusts (Scotland) Act (see page 10). These should be referred to in the auditor's report (see page 155). Where the account does not show the current value of the investments in detail, mention should be made in the report of any outstanding depreciation in value of the holdings.

Notes on Audit

A list of notes on the audit can now be prepared for answer by the factor, in which list should appear all questions not satisfactorily dealt with in the accounts. It is convenient to state the questions on the left side of the page so that the respective answers may be placed opposite.

When answers have been considered, a list of supplementary notes arising from these may require to be sent to the factor. It is the auditor's duty to include in his report particulars of any points on which complete satisfaction is not obtained. As regards minor questions, it may, however, be sufficient for the factor to give a written agreement to make any necessary adjustments in the next account.

Audits of
Continuing
Trust Accounts

The audit of subsequent accounts is usually less extensive than that of a first account. Similar principles are followed, however, and the productions required are as detailed above.

The funds must be checked from the list at close of the previous

account. Notes on the last audit should be read, and items carried forward for attention must be cleared up. A list of notes may be required on the occasion of each audit, and, in practice, it is often necessary to ask the same questions year after year. Securities are examined in the same way as at the first audit, as explained below. The auditor should note whether changes in trustees have been intimated to the various companies. The duties of trustees as to the investments have been described on page 11. If the trustees do not regularly consider all the investments and minute their findings, the auditor should recommend them to do so. Where the auditor is of opinion that the retention of any of the investments requires to be reconsidered, a clause should be inserted in the report thus:

“ I observe that certain of the investments are not trustee securities and I advise that consideration should be given from time to time as to the advisability of their retention, and the decisions minuted.”

IV. EXAMINATION OF SECURITIES

After completing the detailed audit, the examination of securities is usually carried out at the factor's office. Apart from the following exceptions, share certificates for all investments should be examined and initialled by the auditor. The exceptions are:—

Share
Certificates

- (1) *Investments realised since the close of the account.*—Where there have been sales of investments before the audit of the securities is effected, the auditor should examine the relative contract notes and obtain evidence as to banking or re-investment of the proceeds.
- (2) *Securities not in custody of factor.*—Where any share certificates are not in the possession of the factor, a letter should be obtained from a bank or stockbroker confirming the safe custody of the securities at the close of the period.
- (3) *Missing Certificates.*—Where a certificate has been mislaid or destroyed, the auditor should ask the trustees to obtain a duplicate certificate from the company concerned, which will usually be issued on receiving a letter of indemnity signed by the trustees.

Investments in Scottish companies should be registered in names of the trustees as such and not as individuals. English companies do not usually recognise trusts, and investments registered in individual names should be detailed in a formal acknowledgment of trust signed by the trustees, or such an acknowledgment may be put on the relative certificates. As regards inscribed stocks, title is obtained by inscription of the holders' names in the register, and verifications are required from the registrars at the time of each audit. Such stock certificates are worthless for audit purposes since these do not require to be surrendered on sale, as is necessary with certificates for registered stocks. Incribed stocks are generally British or Dominion government issues, *e.g.* Defence Bonds, but the stocks of the Bank of Scotland and the Royal Bank of Scotland are also inscribed. Bearer securities should be certified by a bank as held for the trustees, with all future coupons attached. These coupons are required because the interest or dividend payments on bearer securities are made to the holder of the appropriate coupons.

**Heritable
Titles**

Dispositions of heritable property in favour of the trustees (or the testator) should be seen, although it is not part of an auditor's duty to examine in detail the titles of such property. The solicitor should certify that all the titles are in his possession and are in order. Where there are heritable bonds, the solicitors for the lenders hold the titles to the property over which the bonds are secured, and a certificate by the solicitors that they hold the titles (and that they are in order) is required in auditing the accounts whether of borrower or lender.

The following procedure is necessary where trustees have lent money on heritable bonds:—

- (1) The receipts for feuduty and fire insurance premium should be seen. If the feuduty remains unpaid, the property may fall to the feu-superior, whose claim to receive regular payments of feuduty is legally secured over the property. Failure to keep up the fire insurance policy involves the risk of financial loss in the event of fire damage.
- (2) It should be noted that bonds are not in excess of two-thirds of the value of the property.
- (3) Formal acknowledgments by each borrower, confirming the amounts still outstanding and stating the current rate of interest, may be called for by the auditor. This is recommended as the most satisfactory method of guarding against the omission of partial repayments.
- (4) The bonds and dispositions in security should be examined by the auditor, to see that they are properly stamped and that they have been recorded in the Register of Sasines. That register shows the owners of heritable property in Scotland and any securities charged thereon.

Bank Balances

As mentioned above, any balances on bank current accounts are verified by certificates issued by the bank. Deposit receipts are examined by the auditor. (These are usually in the name of the factor "for the trustees of AB".) Certified passbooks should be seen in respect of deposits with savings banks and building societies.

V. AUDITOR'S REPORTS**Report on
First Account**

A report on the audit should be drafted, containing an abstract of the accounts. A reference is made therein to all points as to which satisfaction has not been obtained or which in the auditor's opinion require the trustees' attention. This report should be submitted to the factor for comment before extension, and it may be desirable to modify the wording as suggested by him. The auditor then docquets the account "This is the account referred to in my report of this date" (or similar wording) and signs his report, which may be in the following style:

REPORT by JOHN JOHNSTON, C.A., on the
accounts of the Trustees of the late Miss
AGNES WILSON who resided at 48 Meadow
Walk, Edinburgh.

From 31st January 1957 (date of death)
To 31st January 1958.

Miss Agnes Wilson died at Edinburgh on 31st January 1957, leaving a trust disposition and settlement dated 18th December 1955 with codicil

dated 11th February 1956, whereby she disposed her whole estate to Messrs William Wilson and George Wilson, and the survivor, as executors and trustees for the following purposes:—

- (1) To pay all lawful debts, deathbed and funeral expenses, and the expenses of trust administration.
- (2) To pay the following legacies free of duty six months after the date of death:—

(Here detail these.)

- (3) To pay the free annual income of the remainder of the estate to her sister, Miss Margaret Wilson.
- (4) On the death of Miss Margaret Wilson, to transfer the residue of the estate to the R.A.F. Benevolent Fund.

Both the trustees nominated accepted office and they appointed Mr Thomas Brown, W.S., to be their solicitor and factor. The trust disposition and settlement was registered in the Books of Council and Session on 10th February 1957, and an inventory of the estate was prepared for estate duty purposes showing estate of £5748, 6s. 3d.

The trustees completed their title to the moveable property belonging to deceased, and paid the estate duty. The trustees have carried out the first two purposes of the trust, and have made payments totalling £100 to Miss Margaret Wilson on account of income, leaving a balance of £36, 3s. 2d. due to her as at 31st January 1958, as shown in the Abstract of Accounts appended.

The trustees remitted the account of their intromissions for year to 31st January 1958 to me for audit and report, and I beg to state that I have examined the account and found it to be correctly stated and sufficiently vouched and instructed closing with a balance of £82, 16s. 3d. due to the factor. The factor's business account has been taxed by the Auditor of the Court of Session in the sum of forty-five pounds seven shillings and sixpence (£45, 7s. 6d.) sterling of which £42 is chargeable against capital and £3, 7s. 6d. is chargeable against income. The Auditor of the Court of Session has also fixed the commission on cash transactions in the sum of eighteen pounds seven shillings and sixpence (£18, 7s. 6d.) sterling of which £10, 10s. is chargeable against capital and £7, 17s. 6d. against income.

I have examined the securities for the investments held as at the close of the account, as to which the following points have been noted for the information of the trustees:—

- (1) No valuation has been exhibited to me in respect of the heritable property, 88 Meadow Walk, Edinburgh, over which £800 is held in Bond and Disposition in Security.
- (2) There is an uncalled liability on the investment in 30 A shares Lloyds Bank of £5 each £1 paid.
- (3) The following investments are in bearer form, and are held by the Bank of Scotland:—
300 shares common stock Shell Union Oil Corporation.
£50 4% Victory Bond.
- (4) A certificate has been granted by the factor in respect of the titles to the heritable property held by him, stating that these are in his possession and are in order.

- (5) No income has been received from the Shell Union Oil Corporation during the year.

Subject to these remarks the investments have been found to be in order. I have prepared the annexed Abstract of the Accounts of the trustees for year to 31st January 1958.

Reported by

(Signed) JOHN JOHNSTON, C.A.

EDINBURGH, 10th March 1958.

(Here follows a summary of the accounts.)

Report on
Subsequent
Accounts

When the audit of an account in a continuing trust (other than the first account) has been completed, the auditor may prepare a detailed report as in the example above, and this is essential if the trust is complicated or the account is unsatisfactory. Alternatively, a docquet may be appended to the account certifying that it is in order, as in the following example:—

GLASGOW, 10th February 1958.—I have examined the foregoing account of the intromissions of X and Y as factors for the trustees of the late AB for the year to 31st December 1957. I have to report that I have found the account to be correctly stated and sufficiently vouched and instructed. The factor's business account amounting to thirty-one pounds ten shillings (£31, 10s.) has been taxed by the Auditor of the Faculty of Procurators. I have fixed the factor's commission on cash transactions in the sum of fifty-two pounds ten shillings (£52, 10s.) sterling, chargeable wholly to income. These sums have been included in the account under audit. I have examined the securities for the investments and have found them in order.

(Signed) ALEXANDER SIMPSON, C.A.

VI. AUDITS OF SCHEMES OF DIVISION

In auditing final trust accounts and schemes of division, in addition to the usual audit programme, the auditor should observe that all outstanding estate duty, taxes, and expenses have been included in the account, and should see the clearance certificates regarding estate duty and income tax.

The will or other deed constituting the trust should be re-examined to see whether all the trust purposes have been carried out. As regards those persons who share in the division of the estate, the auditor must be satisfied that none is omitted and that all advances to them have been correctly included. The auditor should see proof of death of beneficiaries who have died before the vesting of their legacies or shares of residue. The revaluation of the funds for division is checked and the allocation of the investments examined (see page 140 as to allocation). If requested, the share transfers may be checked by the auditor before signature. The allocation of dividends should be effected as described on page 142.

After the auditor has completed his examination of the scheme of division he appends a docquet stating that he has found it in order, as in the following style:—

EDINBURGH, 10th February 1958.—I have examined and audited the Docquet
foregoing Scheme of Division of the estate of the late John Jones
as at 1st January 1958, and I have found the figures to be correct,
and in accordance with the trust purposes. I have examined the
receipt and discharge granted by the beneficiaries in acknowledgment
of payments made to them representing the residue of the estate.

(Signed) JOHN JOHNSTON, C.A.

VII. EXAMPLES OF QUALIFIED REPORTS OR DOCQUETS ON TRUST ACCOUNTS

The following are specimen qualified or special reports, based on
cases which have arisen in practice:—

(1) *Failure to obtain proper receipts*

We suggest that all the beneficiaries should sign the trust
account in acknowledgment of the income credited to their bank
accounts during the year.

(2) *Delay in collecting money due to the trust*

The capital falling to the trust from the estate of the late AB
has not yet been made over. Payments to account of income
thereon have, however, been received during the year.

(3) *Errors in apportionments*

In the accounts the factors have apportioned the half-year's
rents payable at Martinmas 1948 between capital and revenue,
although the farm rents then payable were for the first half of
crop and year 1948. The accountants are of the opinion that all
the rents payable at Martinmas 1948 fall to capital, as the testator
died on 30th August 1948. It is therefore necessary to make
the following amendments: (*Here detail these*).

Author's Note.—See pages 60 and 65 as to farm rents.

(4) *Disagreement as to incidence of estate duty*

In the Trust Disposition and Settlement by the late Miss AB,
clause fourth provides as follows: "I direct my trustees to set
apart the sum of £4000 and hold the same for the following
purposes ———" The trustees have only set aside £3528, having
deducted certain estate duty. The accountants requested the
trustees to consider very carefully whether they were not bound
to invest the sum of £4000 and to pay the duty out of other estate
belonging to Miss AB. The solicitors have replied to the effect
that in their opinion this duty is properly payable out of the
£4000 fund.

(5) *Disagreement as to allocation of management expenses*

The accountants pointed out to the solicitors that they had
debited the capital of the trust with £—— in respect of a pro-
portion of the expenses of management which, in the opinion of
the accountants, should be debited to income. The solicitors
advise the accountants that these expenses of management, as

charged in the accounts, are in their opinion properly debited to capital.

Author's Note.—See page 27 as to allocation of such expenses.

(6) *Special report on allocation of transactions*

REPORT by XY, C.A., on the allocation of Receipts and Payments by the Trustees of the late AB as between Capital and Income.

For period from 10th October 1942
To 31st October 1947.

The accounts in this trust did not make any distinction between capital and income, as it was apparently originally considered that the surplus income fell to be added to capital. The accountants have now been informed that it is necessary that an allocation should be made of all receipts and payments as between capital and income. A statement has been prepared accordingly, and is annexed hereto, showing that the balance of funds as at 31st October 1947 was £784, 6s. 3d. whereof £601, 1s. 8d. represents Capital and £183, 4s. 7d. represents Income.

(7) *Special clauses in first report on a Trust (re interpretation of Will)*

(a) The trustees submitted a Memorial to Counsel for his opinion as to whether the estate of AB vested in CD at Whitsunday 1947, being the first term of Whitsunday or Martinmas occurring six months after the testator's death. This query was answered in the affirmative. A further Memorial was also submitted to Counsel in regard to various points arising from the interpretation of the Will, and his opinion thereon was obtained and given effect to in the accounts under review.

(b) The codicil dated ——— contained the following clause dealing with the residue: (Detail). The codicil dated ——— was in the following terms: (Detail). Questions having arisen with the beneficiaries as to the interpretation of these codicils, a Memorial was submitted to Counsel, who advised that a compromise be effected. The trustees subsequently offered Mr X the sum of £1000, without interest, in settlement of all claims by him, on condition that he should obtain an indemnity policy by an insurance company to cover the risk of claims being raised against the trustees at a later date. This policy was duly issued, and the single premium thereon was paid by Mr X. The trustees and Mr X signed an agreement incorporating the above terms, and payment of the sum of £1000 was then made to him.

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