participate therein. Forrest's Trustees v. Rae, etc., December 20, 1884, 12 R. 389, followed. *Morrison's Trustees* v. *Ward and others*, 30 Scot. Law Rep. 823.

LORD KINNEAR.—(After reading clause of settlement.)—If the words of the clause I have read are to be construed literally, there can be no question as to their meaning. The word "surviving" must refer to the event on which devolution to survivors is to take place, and the accrescing shares must be given in liferent to those of the testator's children who may survive the predeceasing liferenters, and in fee to the issue of such surviving children. Passing from the form of the expression and going on to the substance of the bequest, it is certain the children who are to take an accrescing share must be those alone who are still in life when accretion takes place, because the interest they are to take is "for their liferent use allenarly," and a gift in liferent to certain persons upon the determination of a predeceasing interest cannot possibly be read except in favour of those persons who are still alive. So far, therefore, as the immediate children of the testator are concerned, the word "surviving" certainly does not admit of construction. It can bear no other meaning than that found by the Lord Ordinary. It is a difficult question whether their issue may not receive a wider interpretation, but here again, if the clause is to be read according to the plain grammatical construction of the words in their sequence, there can be no question. The fee of an accrescing share is given to the issue of those surviving children who are to take the liferent. If the clause is to be taken by itself, it seems to me to raise no implication of any intention to benefit the issue of predeceasing children.

But we have been referred to a series of decisions in England in which it has been held that very similar expressions ought to receive a wider interpretation than the literal meaning of the specific words would bear, and on these it is maintained that "surviving children" means "surviving *stirpes*," so that the grandchildren of the deceased must take the same share of the fee whether their parents have survived to take the corresponding liferent or not. The reasoning on which the cases of Wake v. Varah, L. R. 2 Ch. Div. 348; Waite v. Littlewood, L. R. 8 Ch. App. 70, were decided appears to me, if I may say so, to be very convincing, and if it were applicable to the will we are construing I should have no difficulty in following these decisions. But in these cases the Court inferred from the whole tenor of the will that a literal interpretation of specific words would not effectuate the testator's intention. In the present case there is nothing in the will to throw any light upon the clause in question except the language which the testator has used in the clause itself. We are asked to disregard the language he has used because it imports a provision which is said to be capricious, and because in certain possible events it may result in a partial intestacy. These considerations have been thought to be very material in construing a will, which, elsewhere than in the clause immediately under construction, which is supposed to raise the difficulty, expresses clear intention to distribute the testator's estates in all possible contingencies, and to preserve entire equality in the ultimate distribution. Taken by themselves in the present case, I am not sure that they are very weighty considerations. The argument in regard to a possible intestacy loses its force when we find that there is no gift over in the event of all the liferenters dying without issue, and therefore on a possible contingency there might be total intestacy—a contingency no doubt which is to be provided for, and I am not satisfied that, taken by itself, there is anything so capricious in an intention to benefit the immediate children of the testator rather than the issue of predeceasing children, as to justify the Court in refusing to accept the plain meaning of words which indicate such an intention. What is probably more material is, that both of these criticisms of the result of a literal interpretation of this clause are entirely negative. They might be of great importance if they could be taken in connection with any positive expression of intention in an opposite direction. But taken by themselves they will not justify the Court in refusing to give effect to the plain meaning of the words which the testator has used. In the case of Wake v. Varah (March 17, 1876, L. R. 2 Ch. Div. 348). Lord Justice Baggally gives the general principle on which he proposes to construe the will there under consideration in this way:—After pointing out the inconsistencies of a very similar kind, indeed altogather similar with those I have referred to, which existed between the presumed intention of the testator and a literal interpretation of the clause of accretion, he goes on to say, "But neither the consideration that a literal interpretation of the language used would lead to intestacy in particular events, nor the consideration that such an interpretation would lead to a construction which, if really intended by the testator, would have been capricious, would justify the Court in attributing to the language used by the testator other than its literal interpretation, unless satisfied, upon a consideration of the whole contents of the will, not only that the language used was insufficient to effect his full intention, but that the will itself afforded sufficient evidence of what his intention was," and therefore the ground of construction is, that when the particular clause is subjected to a literal interpretation, it appears to the Court to be imperfect or inadequate as an expression of the testator's will, because they find in other parts of the deed clear indications that he intended to do something different or something more than the clause in question does. In order, therefore, to bring these decisions into operation it is necessary in the first place to find from the indications in the will, apart from the clause immediately under construction, some reason for holding that the literal language of that clause is insufficient, and then to find in the will some clear indication of the intention to do something different from what a literal interpretation of the clause