

I am therefore not prepared to sanction the pursuer's proposal. The interlocutor of the Sheriff-Substitute, which has been adhered to by the Sheriff, seems to me to dispose of the case in a perfectly satisfactory manner.

The other Judges concurred.

The Court accordingly refused the appeal, with expenses.

Counsel for the respondent pointed out that the Sheriff had merely affirmed the interlocutor of the Sheriff-Substitute, without saying anything about the expense of the appeal in the Sheriff-court.

LORD DEAS—I think we have had occasion before now to observe that such an interlocutor ought to be understood to carry the expenses of the appeal. If the point has not been previously reported, it should be reported now.

Agents for Appellant—Philip, Laing, & Monro, W.S.

Agent for Respondent—William Officer, S.S.C.

Thursday, March 7.

## SECOND DIVISION.

### SPECIAL CASE—ROOPE AND BALL.

*Legacy—Clause of Survivance—Vesting.*

A. died leaving a trust-disposition to trustees, with directions that they should hold his whole means and estate for the life of his wife, and on her death, after paying certain legacies, to pay over the residue among their nieces "equally among them and the survivor of them." One of the nieces predeceased the widow. *Held* that her share had not vested in her, and could not be claimed by her representatives.

The late John Strang, LL.D., Chamberlain of the city of Glasgow, by his trust-disposition, dated 30th May 1863, and codicil, dated 5th December 1863, conveyed to the parties therein named the whole estate, heritable and moveable, which should belong to him at the time of his death, as trustees for the purposes therein written; and by the said codicil he made certain additional bequests, and gave some directions to his trustees. The truster, by the said trust-deed, directed his trustees to hold the whole residue of his means and estate, heritable and moveable, for the life of his wife, and in behoof of his wife, Elizabeth Anderson, and to pay the whole free annual produce of said residue to her during her life; on the death of his wife to pay certain legacies; and, lastly, to pay and divide the residue of his whole means and estate to and among his three nieces, Elizabeth Machen or Roope, daughter of Mrs Ramsay Strang or Machen, his sister, and Mary and Elizabeth Knox, daughters of Mrs Isabella Strang or Knox, now deceased, also his sister, and that equally among them, and the survivors of them, share and share alike. Mrs Isabella Strang or Knox was the wife of Edmond Dalrymple Hesketh Knox.

Dr Strang died on 23d December 1863, survived by his wife and by Mrs Elizabeth Roope, Mary Knox, and Elizabeth Knox, who is now the wife of William Clare Ball. Mrs Strang enjoyed the life of the residue, and died on 9th August 1871, survived by Mrs Roope and by the said Elizabeth Knox, now Mrs Ball. Mary Knox died unmarried and intestate on 18th December 1868.

Mary Knox's domicile at the time of her death was in Ireland, and, according to the law of that country, her father, the said Edmond Dalrymple Hesketh Knox, was entitled to her whole personal estate.

With reference to the foregoing facts, the parties respectively requested the opinion and judgment of the Court on the following question:—

"Whether the said Mary Knox, at the time of her death, had a vested right and interest, to the extent of one-third, in the residue of the estate of the said Dr John Strang?"

The clause in the deed upon which the question principally turned was as follows:—"and *Lastly*, I direct said trustees to pay and divide the residue of my whole means and estate to and among my three nieces, Elizabeth Machen or Roope, daughter of the said Ramsay Strang or Machen, and Mary and Elizabeth Knox, daughters of the said Isabella Strang or Knox, and that equally among them and the survivors of them, share and share alike, but not subject to the *jus mariti* of any of their husbands, or to the debts or deeds or the diligence of the creditors of any of said husbands."

MILLAR, Q.C., and KEIR for Mrs Elizabeth Machen or Roope.

WATSON, for Mr Ball, as administrator for the Rev. E. D. H. Knox.

The Court unanimously answered the question in the negative, being of opinion that the vesting was postponed until the death of the lifeentrix, and that, as Mary Knox had predeceased before that event, her representatives could claim no share in the residue of Dr Strang.

Agents—John Auld, W.S., and Melville & Lindsay, W.S.

Friday, March 8.

## FIRST DIVISION.

CHARLES COWAN AND COLIN MACKENZIE  
v. LORD PROVOST LAW AND OTHERS  
(TRUSTEES UNDER THE EDINBURGH  
AND DISTRICT WATERWORKS ACT,  
1869).

*Interdict—Trustees, Powers of Statutory—Expenses of unsuccessfully promoting a Bill in Parliament—Edinburgh and District Waterworks Act, 1869—Waterworks Clauses Act, 1847 (10 and 11 Vict., c. 17).*

Interdict granted (*diss.* Lord Deas) at the instance of two ratepayers within the district over which the trustees acting under the Edinburgh and District Waterworks Act, 1869, have power to levy assessments, against the said trustees applying the trust-funds in their hands in payment of the costs incurred by them in an unsuccessful application to Parliament for powers to bring in a supply of water from new sources, or levying assessments for the purpose of paying such costs.

This was a note of suspension and interdict presented in July 1871 by Mr Charles Cowan of Logan House, and Mr Colin Mackenzie, W.S., two of the ratepayers within the district over which the Edinburgh and District Water Trustees have power to levy assessments.

The respondents were the whole body of Trustees acting under the Edinburgh and District Water-