

# The Scottish Law Reporter.

WINTER SESSION, 1873-74.

## COURT OF SESSION.

Wednesday, October 15.

### SECOND DIVISION.

#### SPECIAL CASE FOR SCOTT (CAMERON'S JUDICIAL FACTOR) AND OTHERS.

##### *Fee and Liferent—Apportionment.*

Certain shares in a company having been realized, the price fell to be apportioned between fiar and liferent,—*held* that the next subsequent dividend on the shares was not to be taken as the basis of calculation, but that regard was to be had to the current estimation of the probable dividend at the time of sale.

This question was presented to the Court in the form of a Special Case by Ralph Erskine Scott, C.A., as judicial factor on Captain Cameron's trust-estate, of the first part; Mrs Cameron, widow of the truster, of the second part; and Mrs Milroy and Others, of the third part.

Captain Cameron died without issue on 9th June 1862, leaving a trust-disposition of date 17th February 1840. The nominated trustees having declined, Mr Scott was on 21st January 1863 deputed executor-dative *qua* judicial factor. The purposes of the trust were—first, to pay all debts, &c., and expenses; second, to convey the household furniture to his wife, in the event of her surviving him, and of his leaving no issue; third, to allow her the use of his dwelling-house in Edinburgh during her life. The deed of nomination thereafter proceeds—“And further, I hereby direct them in the event of her surviving me as aforesaid, and my leaving no issue, to pay over to her the yearly interest of my whole estate during the whole period of her life, and that by half-yearly payments at the terms of Whitsunday and Martinmas; and also to pay to her as aliment £50 sterling per month till the first term's payment of said yearly interest falls due, together with £100 for mournings, said payments to be made as on the day of my decease, with interest.” These provisions were declared to be in full satisfaction of Mrs Cameron's claims under her contract of marriage, by which her claims at law had been discharged. On the death of the surviving spouse without leaving lawful issue, the whole free residue is directed to be divided among certain beneficiaries, in the proportions mentioned in the said deed of nomination. The parties of the third part are the persons who will take under the destination in fee upon the termination of the liferent of Mr. Cameron.

VOL. XI.

Powers to sell or vary stock and securities were also granted by the deed to the trustees. At the date of Captain Cameron's death, the trust-estate consisted, *inter alia*, of 355 original shares (£50 per share) and 223½ new or half shares (£25 per share) of the stock of the Shotts Iron Company. At that time these shares were yielding no dividend. The last quoted price was stated by the secretary for the company to have been £11 per share of £50, and £5, 10s. per share of £25, but there had been no sales of the stock for a considerable time, even at that price. At 21st January 1863, when the judicial factor was deputed executor-dative, the original shares had risen to £14, 10s., and the new or half-shares to £7, 5s., at which values they were given up in the inventory for confirmation. The shares continued to rise in value, and on 23d October 1863 an additional inventory was given up, in which the original shares were valued at £22, 10s., and the new shares at £11, 5s., and duty was paid on the difference between these values and those originally given up. The first dividend after Captain Cameron's death was declared on 10th September 1863, and was at the rate of three per cent on the stock for the year ending 30th June 1863. Dividends were declared annually thereafter in the month of September in each year except as after-mentioned. On 14th September 1864 a dividend of five per cent was declared for the year ending 30th June 1864. In December 1864 and June and August 1865 the judicial factor, with the consent of the beneficiaries and liferentrix, sold 230 of the original shares, representing stock to the amount of £11,500. The prices obtained amounted in all to £5970, 18s. 5d. Out of this latter sum the judicial factor, in making up his accounts with the liferentrix for the year to 6th December 1865, credited her with £120, being, as explained in his accounts, ‘the proportion of dividend in which Mrs Cameron is equitably entitled to participate’ in respect of the portion of the dividend period which had elapsed at the dates of the respective sales. A petition, however, having been presented, on 9th March 1871, to the Court by the judicial factor, for interim audit of his accounts down to 6th December 1870, the accounts were remitted by the Lord Ordinary to Mr Barstow, C.A. In his report, which was given effect to by the Lord Ordinary, the accountant altered the allowance made to the liferentrix, and fixed it at the rate of the dividend which was accruing to the shares at the date of the sales, but not declared till some time after the sales, namely, five per cent. The accountant also stated his opinion, which was given effect to, that the proportion to be allowed to the liferentrix should be calculated

NO. I.

at so much per cent, not upon the nominal value of the stock, but upon the prices actually received for the stock sold. No further sales were made until the end of 1871, when the judicial factor communicated with the liferentrix and beneficiaries as to realising the remainder of these shares, as the market price had risen, and was higher than it had been since his appointment. He was authorised by them to sell at a price not under £40 per share. Accordingly, the judicial factor proceeded to sell the whole remaining shares at prices ranging from £40 to £62, 10s. per share. These shares were all sold in the ordinary manner on the Stock Exchange between December 1871 and March 1872, at the current market prices, the purchasers getting right to all dividends subsequently payable. The shares sold in December 1871 realised in all £4021, 5s. 9d., and represented £5000 of nominal value. The remaining shares were sold during the month of March 1872, the last sale being on 28th March. These shares represented £6833, 6s. 8d. of nominal value, and the price realised was £7256, 5s. 10d. Prior to these sales, a dividend had been declared on 13th September, and paid on 3d October 1871, at the rate of three per cent per annum for the year ending 30th June 1871. On 21st February 1872 a dividend was declared at the rate of six per cent per annum for the half year ending 31st December 1871, and on 11th September 1872 a dividend was declared at the rate of thirty per cent per annum for the half year ending 30th June 1872. A dividend higher than had been declared for the preceding period was expected in December 1871 to be declared for the half year ending with that month, but one at so high a rate as six per cent. per annum was not anticipated. Subsequent to December 1871, in consequence of the rise in iron, expectations of an increased dividend had come to be entertained. The increase was estimated at from ten to fifteen per cent. per annum, but a dividend of thirty per cent per annum, which was the dividend subsequently declared for the half-year from December 1871 to June 1872, was not anticipated in the market during the period within which the shares in question were sold.

The parties craved the opinion and judgment of the Court on the following question of law:—"Is the liferentrix's proportion of the price of the shares in question to be calculated on the basis of the dividend expected or thought probable when the sale of such shares took place, or on the basis of that which turned out to be the dividend subsequently declared and paid for the period during which the respective sales were effected?"

It was maintained for the liferentrix, the second party to the case, that she was entitled to have her share of the prices obtained calculated on the basis of the next dividend declared subsequent to the sale in each instance, as the dividend for the period current at the date of the sales; and that she should be found to have a right to such part of it as corresponded to the proportion of the then current dividend period which had elapsed at the date of the settlements of the respective sales, and also to bank interest on the price for the rest of the half year.

Authorities—*Donaldson*, 14 D. 165; *Apportionment Act* 1870, (33 and 34 Vict. c. 35) §§ 2, 3, 5.

For the third parties (the fiars under the destination, who were to take on the termination of the liferent), it was argued that the proportion of the

to the liferentrix of the prices obtained for the shares sold should be calculated, not on the basis of the dividend subsequently declared, but on the basis of the dividend expected or thought probable when the shares were sold. It was admitted that no higher dividend than from 3 to 6 per cent was anticipated on the shares sold in December 1871; and no higher than from 10 to 15 per cent on those sold in March 1872. The view which would make the dividend of 30 per cent—so high and unexpected—a basis for calculation of the liferentrix's interest would be inequitable.

After hearing parties, the Court found in terms of the first alternative proposed in the question submitted to them, and, of consent, fixed the amount at 6 per cent in 1872, and 15 per cent in 1872, and allowed the expenses of the discussion to be paid out of the estate.

Counsel for First and Third Parties—Millar Q.C. and G. Watson. Agent—H. F. M'Lean, W.S.

Counsel for Second Party—Pearson. Agents—Gifford & Simpson, W.S.

Friday, October 17.

## SECOND DIVISION.

SPECIAL CASE—CRAWFORD & CRAWFORD'S  
MARRIAGE-CONTRACT TRUSTEES.

*Marriage Contract—Provisions—Fee and Liferent—Vesting.*

Circumstances in which held that trustees under a marriage contract were bound to denude in favour of beneficiaries.

Robert Crawford, S.S.C., and his son, James Stuart Crawford, of the first part, and the trustees under the marriage-contract between Robert Crawford and his late wife, of the second part, submitted a Special Case to the Court under the following circumstances:—Under his marriage-contract, Robert Crawford bound himself, and his heirs, executors, and successors, to pay to his wife a liferent annuity of £100 in the event of her surviving him; and, in the same event, disposed to her in liferent his household furniture and plenishing, and undertook to pay her £25 for mournings. In order that this liferent provision might be more fully secured, he further bound himself to invest, out of his own estate, such a sum as might be necessary for that end, when required by trustees then named by him—the money to be invested on good heritable or personal securities, in name of the trustees, or of himself and Marion King, in conjunct fee and liferent, for her liferent use alienary, in the case she should survive him, and to the children of the marriage, whom failing, to certain others named. And in security *pro tanto* of the implement of these provisions, he assigned to the trustees a policy on his life for £700. By the contract, on the other part, Marion King conveyed her whole means and estate, heritable and moveable, which she had or to which she might succeed, to the same trustees, for her own behoof in liferent, and after her decease, for the liferent use of Robert Crawford, in the event of his surviving her, but to be forfeited in the event of his again marrying, and for the children of their marriage in fee, whom failing, to her nearest heirs and assignees. The marriage was solemnised, and was dissolved by Mrs Craw-