

one in which I think the petitioners have failed to show that they are entitled to have the services of Mr MacBean to the end of the contract, to which right it is no answer that he has become permanently ill, I am of opinion with your Lordships that they have failed to show any right to bring this partnership to an end, and that it must endure till 1st January 1890 under the terms of the contract. Your Lordship has suggested to me, and I feel the force of the suggestion, that with reference to the special provision that Mr MacBean had power to retire upon giving six months' notice, the curator might possibly avail himself of that power, but we have no question of that kind before us.

The Court adhered.

Counsel for Petitioners—J. P. B. Robertson—Pearson. Agents—Hamilton, Kinnear, & Beatson, W.S.

Counsel for Respondents—Mackintosh—Guthrie. Agents—J. & J. Ross, W.S.

Thursday, February 19.

SECOND DIVISION.

[Lord Kinnear, Ordinary.]

THE COUNTY ROAD TRUSTEES OF LANARK
v. LOCAL AUTHORITY OF BURGH OF
AIRDRIE.

Road—Roads and Bridges (Scotland) Act 1878
(41 and 42 Vict. cap. 51), secs. 32, 37, 44—
Disused Tollhouses.

Held that tollhouses situated within a burgh, and which prior to the Roads and Bridges Act 1878 had belonged to trustees having the management of roads not wholly situated within one county or burgh, were by that Act vested in the local authority of the burgh.

Prior to the passing of the Roads and Bridges Act 1878, two tollhouses situated within the burgh of Airdrie, and known as the Rawyards Tollhouse on the North and South Lanarkshire turnpike road, and the Old Tollhouse on the Bathgate and Airdrie turnpike road, belonged to the respective trusts (North and South Lanarkshire Turnpike Road Trust, and Bathgate and Airdrie Road Trust) having the management of these roads.

The Roads and Bridges (Scotland) Act 1878, (41 and 42 Vict. cap. 51) sec. 32, provides—“From and after the commencement of this Act the whole turnpike roads, statute labour roads, highways and bridges, within each county respectively, shall form one general trust, with such separate district management as shall be prescribed by the trustees as hereinbefore provided; and all the roads, bridges, lands, buildings, with rights, interests, moneys, property, and effects, right of action, claims, and demands, powers, immunities, and privileges whatever, except as hereinafter provided, vested in or belonging to the trustees of any such turnpike roads, statute labour roads, highways, and bridges within the county, shall be by virtue of this Act transferred to and vested in the county road trustees appointed under this Act, who, subject to the qualifications hereinafter expressed,

shall be liable in all the debts, liabilities, claims, and demands in which the trustees of such turnpike roads, statute labour roads, highways, and bridges are or were liable under any general or local Act then in force, except in so far as such debts, liabilities, claims, and demands may under the provisions of this Act be discharged, reduced, or extinguished.”

Section 37 provides:—“Where any trust existing at the commencement of this Act embraces a turnpike road which is not situated wholly within one county or burgh, the following provisions shall have effect; that is to say—(1) Where this Act shall have been adopted, or shall be in force in each of the counties in which such road is situated, (a) the portion of such road within each such county or any burgh therein shall be vested in and managed and maintained by the trustees, board and district committees of the county, or the local authority of the burgh, as the case might be, in which such portion is situated; (b) the whole assets of the trust shall, except as herein otherwise provided, be valued and allocated among the trustees of the counties and local authorities of the burghs respectively in the proportion and in the manner in which the debt affecting such turnpike trust shall be valued and allocated among the trustees of such counties and the local authorities of such burghs respectively under the provisions of this Act; (c) all lands, heritages, works, and buildings belonging to any such trust locally situated within any county or burgh shall be and are hereby transferred to the trustees of such county and local authority of such burgh, as the case may be, within which the same are so situated, and shall be applied and used or may be sold and disposed of under the powers and for the purposes of this Act.”

Section 44 provides:—“The trustees [which expression by sec. 3 means ‘County Road Trustees’] before selling any tollhouse or other building belonging to them, shall first offer the same, together with the site thereof, to the person or persons whose lands immediately adjoin thereto, at a price to be fixed by a valuator to be named by the Sheriff, and the price obtained for such tollhouse or other buildings shall be applied in the first place to the payment of road debts, if any, and the balance, if any, to the general purposes of this Act, provided always that in fixing such price the valuator shall take into consideration the terms and conditions upon which such site was originally acquired.”

The Provost and Magistrates of Airdrie, as local authority of the burgh under the Roads and Bridges Act, having in September 1884 advertised the Rawyards Tollhouse and Old Tollhouse for sale as belonging to them, the County Road Trustees of the County of Lanark raised this action against them as the local authority of the burgh, constituted and acting under the Roads and Bridges (Scotland) Act 1878, to have it declared that these toll-houses belonged to them (pursuers), and that the price of them, if sold, belonged to the pursuers, to be applied to extinguish local debt affecting turnpike and statute labour roads within the counties of Lanark and Renfrew, and the burghs therein. They also sought to have the defenders interdicted from selling, conveying, or otherwise disposing of the said toll-houses or either of them.

The pursuers averred:—The Rawyards Toll-house was situated on what was known as the North and South Lanarkshire turnpike road, which was situated partly within the burgh and partly within the county of Lanark, and partly in other counties, but no part was vested in the burgh. It did not traverse the burgh, but for a distance of about 1533 yards it formed part of its eastern boundary. The length of the road was over 47 miles, of which upwards of 4 miles was in the county of Dumbar-ton, and the remainder, being over 43 miles, was in the county of Lanark. The Old Toll-house was situated on what was known as the Bathgate and Airdrie road, which was made and maintained by the turnpike trust of that name, and of which 18 miles and upwards was in Lanarkshire, 20 miles and upwards in the county of Linlithgow, and 7 furlongs in the burgh of Airdrie. They founded on sections 32, 44, and 47 of the Roads and Bridges (Scotland) Act 1878, and further stated that they had sold several toll-houses situated in the landward part of the county, and that the County Road Trustees of the county of Renfrew had also done so, but the County Road Trustees of both counties used the proceeds of these toll-houses on behalf of the two counties and all the burghs therein, including Airdrie, both counties and burghs being liable in the several debts, all in terms of the said Act.

The defenders denied that section 32 conferred any right or title on the pursuers to the toll-houses within the burgh of Airdrie which were in question. They maintained that by section 3 of the Act the term "county" in the 32d and other sections meant the landward part of the county only,—that is, the county exclusive of any burgh (such as Airdrie) situate therein, and that the tollhouses in question were vested in them. They founded on section 37, subsection (1) (c), quoted above.

The pursuers pleaded—“(1) In respect of the provisions of the Roads and Bridges (Scotland) Act 1878, and of the facts and circumstances condescended on with reference to the said tollhouses, the pursuers are entitled to sell and to receive the proceeds of the sale thereof, and apply the same in terms of the said Act, and particularly section 44 thereof. (2) In any view, the pursuers are entitled to have the proceeds of the said tollhouses applied in payment of the road debts affecting the counties of Lanark and Renfrew and the burghs therein situated, as the said proceeds may be allocated in terms of the Roads and Bridges (Scotland) Act, 1878, and particularly section 37 (1) (b).”

The defenders pleaded—“(2) In respect of the provisions of the Roads and Bridges (Scotland) Act 1878, and of the tollhouses being situated within the burgh, this action is unfounded, and the defenders are entitled to absolvitor.”

The Lord Ordinary (KINNEAR) assolviced the defenders.

Opinion.—The question is whether the houses specified in the conclusions of the summons, both of which are situated in the burgh of Airdrie, are vested by the Roads and Bridges Act 1878 in the local authority of the burgh or in the County Road Trustees of Lanarkshire. Before the Act came into operation in Lanarkshire each of these houses belonged to a body of turnpike road trustees, and was occupied as a toll-house upon a

road situated partly within the burgh and partly in the county of Lanark and partly in other counties. One of these roads is said not to have traversed the burgh, but to have formed its boundary for a distance of 1533 yards, and of the remaining portion of the road upwards of 43 miles were in the county of Lanark and upwards of 4 miles in the county of Dumbar-ton. Of the other road 18 miles and upwards were in Lanarkshire, 20 miles and upwards in the county of Linlithgow, and 7 furlongs in the burgh of Airdrie. In both cases, therefore, there was only an inconsiderable portion of the road situated within the burgh, although it is probable that a considerable proportion of the tolls levied at the tollhouses in question may have been paid by persons travelling to and from the burgh, or resident within it, but neither of these considerations appears to me to be material to the question. The material facts are (1st) that the turnpike roads in question were not situated wholly within one county or burgh; and (2d) that the tollhouses are locally situated within the burgh of Airdrie.

“The provisions applicable to roads and buildings in this situation are contained in the 37th section of the statute, subsection 1. And it does not appear to me that there can be any question as to the construction or effect of these enactments. It is provided (a) that the portion of such road within each county, or any burgh therein, shall be vested in and managed and maintained by the trustees of the county, or the local authority of the burgh, as the case may be: (b) ‘The whole assets of the trust’—that is, of the former turnpike trust—shall, except as herein otherwise provided, be valued and allocated among the trustees of the county and local authorities of the burghs respectively, in the proportion and manner in which the debt affecting the turnpike trust is to be valued and allocated; (c) ‘All lands, heritages, works, and buildings belonging to any such trust locally situated within any county or burgh shall be and are hereby transferred to the trustees of such county or local authority of such burgh, as the case may be, within which the same are so situated, and shall be applied and used, or may be sold and disposed of under the powers and for the purposes of this Act.’ The only provision as to the assets of a trust in the position described, other than that contained in paragraph b, is that contained in paragraph c, and there can be no doubt as to the meaning of that provision. The assets of the trust, excepting the lands, works, and buildings, are to be allocated in the same proportions as the debts, but the lands, works, and buildings are to be transferred absolutely to the trustees of the county or the local authority of the burgh within which they are situated, irrespective of the amount of debt which may be allocated upon these bodies, and irrespective also of the extent of the road which they will hereafter be required to manage and maintain.

“It is admitted that the roads in question are partly situated within the burgh of Airdrie, and accordingly a proportion of the debt, although it is said to be an insignificant proportion, has been allocated upon the local authority. It follows that the transference of lands and buildings belonging to the trust must be governed by the enactment which I have quoted.

“It is said that the 44th section of the statute

regulating the conditions upon which disused tollhouses may be sold is applicable in terms to county road trustees alone, and that therefore it must be held that the Legislature did not contemplate that such buildings should in any circumstances be transferred to the local authority of a burgh. But the positive enactment of section 37 must receive effect; nor does it appear to me that there is anything in section 44 inconsistent with that enactment. There may be very good reasons for requiring that in the landward part of a county tollhouses that are to be sold should be offered first to the adjoining proprietors, which would have no force or validity with reference to property within burgh. But however that may be, the buildings in question cannot be held to have been vested by implication in the pursuers—contrary to the express enactment which vests them in the defenders. Nor is there any difficulty in reconciling that enactment with the other vesting clauses of the statute. The 32d section, upon which the pursuers relied, appears to me to be applicable to roads and bridges situated in a single county—exclusive of the burghs therein. The 47th section, in like manner, applies to roads and bridges within a burgh. The only provisions applicable to the property of a trust embracing roads which are not wholly within one county or burgh are those of the 37th section. There is no provision, therefore, in the statute to which the pursuers can point as vesting the buildings in question in them."

The pursuers reclaimed, and argued—Section 32 vested all the roads, bridges, land, &c., in the county road trustees under the exception of section 37, which gave to the local authority of such a burgh as Airdrie all that was necessary for the maintenance of the roads under the new system. Tollhouses, however, could not be said to be of such a nature, and it was against the spirit and meaning of the Act to include them in what was given by the 37th section. Section 44 regulating the conditions upon which disused tollhouses may be sold, was applicable in terms to county road trustees alone, and therefore the Legislature could never have contemplated transferring them to the local authority of a burgh.

The Court, without calling on counsel for the defenders, adhered to the Lord Ordinary's interlocutor.

The LORD JUSTICE-CLERK was absent.

Counsel for Pursuers—Mackintosh—Jameson. Agents—Bruce & Kerr, W.S.

Counsel for Defenders—R. V. Campbell. Agent—Alexander Wylie, W.S.

Friday, February 20.

FIRST DIVISION.

[Sheriff of Roxburghshire.

BLYTH v. CURLE.

Donation mortis causa—Bank Pass-Book—Apprehension of Death not Necessary—Delivery.

In order to the validity of a *mortis causa* donation it is not necessary that the donor be at the time of the gift in immediate prospect of death or ill of the disease of which he dies.

A man gradually accumulated money in a bank account kept in name of himself and his wife conjunctly and severally, and the longest liver of them. He gave his wife the bank book to keep, and told her repeatedly that the money was intended to be hers and to be a provision for her on his death. Held on the death of the husband that a good *mortis causa* donation had been effected, and that actual delivery of the money was not necessary.

William Curle died on 5th January 1882, intestate and without children, survived by his wife, Elizabeth Baptie or Curle, who was decerned executrix-dative *qua* relict of her husband.

This action was raised in the Sheriff Court of Roxburghshire at Jedburgh, by Agnes Curle or Blyth, wife of Walter Blyth, and only surviving full sister of the deceased, to enforce payment of what the pursuer alleged was her share in the succession of her deceased brother. The defender admitted the claim except in so far as the pursuer alleged right to share in a sum of £182, 10s. 1d. deposited in the National Security Savings Bank at Jedburgh in name of her deceased husband and herself. This, the defender said, was the subject of a *mortis causa* donation to her from her husband.

The material facts of the case, as brought out in the proof before the Sheriff, are given in the opinion of the Lord President, *infra*.

The Sheriff Substitute (RUSSELL) on 21st August 1883 pronounced an interlocutor by which, after several findings in fact, he found that the estate of the deceased, after deduction of the deposits in the Savings Bank, interest thereon, and debts and expenses, amounted to £25, 16s. 2d., and that the pursuer as one of the next-of-kin, was entitled to payment of one-fourth, being £6 9s. 6d. *Quoad ultra* he assolized the defender.

The pursuer appealed to the Sheriff (PATTISON), who on 24th May 1884 pronounced this interlocutor:—"Finds, as matter of fact, that the deceased William Curle, the husband of the defender, who died intestate and without children on the 5th day of January 1882, did during his life, and in the prospect of death, give and make over to the defender, his wife, the money which then stood deposited with the National Security Savings Bank at Jedburgh, in name of himself and his wife, and which at the 20th day of November 1881 as then accumulated amounted to £182, 10s. 1d., and that this donation remained unrecalled at his death: Finds that the defender, as executrix of the said defunct, is not liable to account for or to pay to the pursuers, Agnes Curle or Blyth and Walter Blyth, her husband, she being one of the nearest of kin of the said defunct, the sum of £183, 19s. 7d. (being the above-mentioned sum with interest to the