

The LORD JUSTICE-CLERK was absent.

The Court answered the question of law in the affirmative.

Counsel for First Party—Gloag—Graham Murray. Agents—Mackenzie & Black, W.S.

Counsel for Second Party—Dundas. Agents—J. & F. Anderson, W.S.

Thursday, March 12.

FIRST DIVISION.

SPENCE *v.* BANFF TOWN AND COUNTY CLUB.

Sale—Sale of Heritage—Objection to Title—Fee and Liferent—Expenses of Objection to Title.

William Frazer Johnston purchased certain heritable subjects in Banff, and took a disposition from the seller in the following terms:—"To and in favour of the said William Frazer Johnston and Mrs Alexandra Augustina De Marchie or Johnston, his spouse, in liferent for her liferent use allanarly, and Mary Elizabeth Kerr Johnston and Alice Kerr Johnston, and the other children to be begotten of the marriage betwixt the saids William Frazer Johnston and Mistress Alexandra Augustina De Marchie or Johnston, share and share alike, in fee." The disposition bore that the purchase price had been paid by Johnston. The disposition was recorded in the Register of Sasines, the warrant of registration being in these terms—"Register on behalf of William Frazer Johnston and Mistress Alexandra Augustina De Marchie or Johnston, his spouse, for their respective rights and interests in the register of the burgh of Banff." Johnston sold these subjects to Spence. The disposition in favour of Spence was granted" by "the said William Frazer Johnston, with consent of the said Mistress Alexandra Augustina de Marchie or Johnston, his spouse, for all right of liferent, conjunct fee, terce, or other right which she had or could claim therein, or to any annual rent or annuity payable furth thereof, and by the said Alexandra Augustina de Marchie or Johnston for herself, her own right and interest, with the special advice and consent of the said William Frazer Johnston, her husband, and by them both with joint consent and assent." Spence sold the subjects to the Banff Town and County Club, who objected to the title he offered on the ground that the fee of the subjects was not in Johnston or his wife, but in the children named in the first-mentioned disposition, for behoof of themselves and the other children of the marriage. This Special Case was stated accordingly. *Held* that the fee of the subjects was in William Frazer Johnston, and that the title was good. The Court gave expenses against the Banff Town and County Club in respect that the question was free from any doubt.

Counsel for Spence—Darling—Shaw. Agent—George Andrew, S.S.C.

Counsel for Banff Town and County Club—Begg. Agent—Alexander Morison, S.S.C.

Friday, March 13.

FIRST DIVISION.

THE BOARD OF POLICE OF GREENOCK *v.* THE GREENOCK PROPERTY INVESTMENT SOCIETY IN LIQUIDATION.

Police Assessment for Streets and Sewers—Heritable Creditor—Preference—Greenock Police Act 1877 (40 and 41 Vict. c. ccciii.), secs. 407, 408, 441.

The Greenock Police Act 1877, by section 408, provides that the "expense of streets and sewers payable under the Act by the proprietor of any lands or heritages shall be a real burden and charge on such lands or heritages, in priority to any incumbrance or charge on or affecting the same and created subsequently to the date when the petition for authority to execute the work on account whereof the expenses are payable was presented." Section 441 provides that "when the proprietor of any lands or heritages shall be liable to the board in any sum due in pursuance of the provisions of this Act, it shall be lawful for the board to recover the amount from the occupier of such land or heritage to the extent of the rent due by such occupier at the date when notice of the claim is given, and the occupier shall after such notice be bound to retain and account to the board for any rent due by him, and shall be entitled to an abatement from his landlord corresponding to the sum so retained and accounted for." By the interpretation clause the word proprietor includes "heritable creditors, or other persons who shall be in the actual enjoyment of or who shall take the rents and profits or produce of the lands or heritages."

The Police Board made a claim under this Act against the liquidator of a Property Investment Society who had entered into possession of certain heritable properties in the burgh over which the society held bonds, for the sums due by and chargeable on the properties as their share of the expense of streets and sewers. The Board maintained that these assessments should be treated as charges upon the rents after deducting feu-duties, taxes, repairs, &c., but in priority to the interest on the bonds. The liquidator founded on section 408 and maintained that there was no preference, as the society's bonds were prior in date to the petitions for authority to execute the work. *Held* that the terms of section 441 were so inconsistent with the construction which the liquidator sought to put upon section 408, that his argument, rested as it was merely on an implication, could not receive effect, and that therefore he was bound to pay the past-due assessments