

Tuesday, December 8.

FIRST DIVISION.

[Lord Fraser, Ordinary.

CLARK v. YOUNG AND OTHERS.

*Process—Proof—Jury Trial—Reduction—Fraud.*

Three of the next-of-kin of a testatrix raised separate actions of reduction of her trust-deed on the grounds of facility and circumvention, and the Court (*rev.* the Lord Ordinary, who had appointed a proof) ordered issues, *holding* that there were no such special circumstances as to warrant a departure from the ordinary mode of trying such cases.

The deceased Mrs Jane Purvis or Taylor, widow of George Taylor, mahogany merchant, London, died at Glasgow on or about the 30th August 1884 in the house of Mr and Mrs Hollis, who were defenders in this action. Mrs Taylor left a deed of settlement, executed on the night on which she died. It was not signed by herself, but by a notary public, and was prepared by a writer in Glasgow.

The deed was a trust-disposition and settlement, the trustees being John Young and others, including Mrs Hollis. Mrs Hollis also received under the deed £2400 and the whole of the residue of Mrs Taylor's estate.

Three actions of reduction of the said trust-deed and settlement were raised by Walter Clark, William Clark, and Robert Clark and others, who were among the next-of-kin of the deceased, all sons of Mrs Jessie Purvis or Clark, who was a sister of the testatrix.

All the pursuers sought to reduce the alleged settlement of Mrs Taylor. Walter Clark and Robert Clark also sought to reduce assignations in favour of the defenders whereby (pursuers) bore to assign to the defenders their right in Mrs Taylor's succession.

The pursuers averred that at the time when Mrs Taylor was alleged to have executed the deed she was quite incapable of managing or of giving directions for the management of her affairs, or at all events was in such a state as to be liable to circumvention, and had in fact been circumvented; that it was not her deed, but had been fraudulently obtained from her. It was also averred that the assignations sought to be reduced had been fraudulently obtained.

At the closing of the records the Lord Ordinary refused a motion by the pursuers for an order for the adjustment of issues, with a view to the causes being tried by jury, and appointed a proof in the cause to proceed on a day to be fixed.

The pursuers reclaimed, and asked the Court to appoint the parties to lodge issues, on the ground that this was the ordinary mode of trying cases of reduction on the ground of facility and circumvention.

Authorities—*Munro v. Paterson and Strain*, February 14, 1874, 1 R. 522; *Crichton v. Crichton*, March 3, 1874, 1 R. 688; *M'Laurin v. Stafford*, December 17, 1875, 3 R. 265.

At advising—

LORD PRESIDENT—There can be no doubt as to the ordinary rule applicable in cases of reduction of settlements on the ground of facility and cir-

cumvention, namely, that such cases are sent to a jury. The only additional element that we have here is the reduction of this assignation, and the question comes to be, whether that introduces any new element sufficient to warrant us in departing from the ordinary rule. I cannot see any specialty in the circumstances here, and though the Lord Ordinary has appointed the case to be tried before himself without a jury, he has not given us any reason for following this course. Although I do not dispute that the Court may in special circumstances sometimes see fit to act otherwise, yet I can see nothing in the present case to warrant our departing from the ordinary rule.

LORD MURE concurred.

LORD SHAND—I am very unwilling to interfere with the discretion of the Lord Ordinary in any question of procedure, but what is asked here by the reclaimer is that the ordinary rule in such cases should be followed, and the question determined by a jury and issues in the usual way. Had I been sitting in the Outer House, I should certainly have ordered issues in such a case, and I therefore quite concur in the course now proposed by your Lordship.

LORD ADAM—I am of the same opinion.

The Court recalled the Lord Ordinary's interlocutor, remitted to him to adjust issues, and appointed the three cases to be tried before one jury.

Counsel for Pursuers—M'Kechnie—Shaw. Agents—Cairns, M'Intosh, & Morton, W.S.

Counsel for Defenders—Jameson. Agents—Cumming & Duff, S.S.C.

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FIRST DIVISION.

[Lord Fraser, Ordinary.

MILNE v. MILNE, *et e contra*.

*Husband and Wife—Married Women's Property Act 1881 (44 and 45 Vict. cap. 21).*

*Held* that the daily wages earned by a married woman during a portion of the year in her trade of fishcuring did not constitute separate "estate" in the sense of the Act.

*Husband and Wife—Interim Award of Expenses—Married Women's Property Acts 1877 and 1881.*

*Held* that the Married Women's Property Acts have not made any alteration on the ordinary rule that when a married woman has no separate estate she is entitled in a litigation with her husband to an interim award of expenses. Therefore where a husband sought to divorce his wife, who had no means except what she earned as daily wages, *held* that she was entitled to a sum to enable her to defend herself before the Lord Ordinary.

Section 3, sub-section 2, of the Married Women's Property Act 1881 provides that in the case of