

Thursday, July 17.

## SECOND DIVISION.

## CAMPBELL AND OTHERS (LAWSON'S TRUSTEES).

*Succession—Disposal of Fee—Vesting—Discretion of Trustees.*

A testator directed his trustees to realise his whole estate, to invest two-thirds of the same, and to pay the proceeds thereof to his two sisters equally share and share alike, or, if the trustees should think it more advisable, to purchase with the said two-thirds an annuity payable to the said sisters equally during their joint lives, and to the survivor upon the death of the predeceaser. He directed the remaining third of the estate to be invested for other purposes.

*Held* that the truster had conferred the fee of the two-thirds of his estate upon his sisters, and that vesting took place a *morte testatoris*.

The late Henry Lawson, carriage-hirer, Glasgow, died upon 1st September 1867, leaving a trust-disposition and settlement, dated 25th July 1861, by which he conveyed his whole estate heritable and moveable to trustees.

The purposes of the trust were, *inter alia*, as follows—"In the second place, I ordain my said trustees or trustee to realise my whole estate, and convert the same into money, and that in such manner and at such time or times, either by public roup or private sale, as they may deem most prudent; and . . . thirdly, after my said trustees or trustee have so converted my estate into cash, I appoint and ordain them or him to divide the proceeds thereof . . . into three parts, and with two-thirds of the whole . . . they or he shall either lay out and invest the same on heritable security or in Government stock, and pay the proceeds thereof to my sisters (Margaret Lawson and Jane Lawson) equally share and share alike; or if my said trustees should think it more advisable I authorise them or him to purchase with the said two-thirds of my said estate, from some respectable insurance company or society, an annuity payable to my said two sisters equally during all the days and years of their lives, but payable to them exclusive of the *jus mariti* and right of administration of any husbands which they may marry, as I intend the same to be a provision for their own more comfortable support, and it shall not be assignable by them, and in the event of the death of any of them then the said annuity shall be payable in the same manner to the survivor."

The trustees were directed to invest the remaining third for another purpose. The truster was survived by his two sisters, and by a brother William Lawson.

The trustees having realised the estate paid the revenue of two-thirds thereof to the said Margaret and Jane Lawson until Margaret's death on 21st April 1872. They

thereafter paid the whole revenue to Jane. By general disposition and settlement dated 18th April 1872, Margaret conveyed her whole estate to Jane. A special case was presented by the said Henry Lawson's trustees of the first part, the said Jane Lawson of the second part, and the representatives of the said William Lawson, who died intestate on 12th July 1872, of the third, fourth, and fifth part, to have it determined "(1) whether the fee of the first mentioned two-thirds of the residue of the estate is conveyed by the trust-disposition and settlement of the said Henry Lawson? (2) In the event of the first question being answered in the affirmative, is the second party entitled to receive payment of said two-thirds either in her own right under the said trust-disposition and settlement of the said Henry Lawson, as the survivor of Margaret Lawson, or one-third in her own right and one-third as donee of Margaret Lawson? Or are the first parties bound to retain the capital of the said two-thirds during the lifetime of the second party, so as to effectually secure her liferent?"

Argued for the first parties—They had no interest in the succession, but they thought vesting would not take place until the death of the liferentrix Jane Lawson.

Argued for the second party—The fee of the two-thirds of the estate was conveyed by the trust-disposition and settlement of Henry Lawson, and she was entitled to present payment thereof. The testator evidently intended to dispose of his whole estate; where there were indications of such an intention words conferring the liferent might be read as including the fee—*M'Laren on Wills*, i. 334; *Sanderson's Executors v. Kerr*, December 21, 1860, 23 D. 227. The trustees were empowered to expend the whole two-thirds upon an annuity. If that had been done the annuitants could have realised their annuities. They were not declared to be alimentary. There was no machinery here for keeping up a trust—*Tod v. Tod's Trustees*, March 18, 1871, 9 Macph. 728; *White's Trustees v. Whyte*, June 1, 1877, 4 R. 786; *Jamieson v. Leslie's Trustees*, May 28, 1889, 16 R. 807; *Clouston's Trustees v. Bulloch*, July 5, 1889, 16 R. 937.

Argued for the third, fourth, and fifth parties—The fee of the two-thirds was not conveyed by the settlement, but fell to be retained by the first parties, and the proceeds paid annually to the second party till her death, in which event the capital would be divisible among the deceased's heirs *ab intestato* as at the date of his death or their representatives. The whole intention of the deed was to give an alimentary provision to the sisters, and no fee—*Sprot v. Pennycook*, June 12, 1855, 17 D. 840; *Alves, &c. v. Alves, &c.*, March 8, 1861, 23 D. 712; *Duthie's Trustee v. Kinloch, &c.*, June 5, 1878, 5 R. 858. Further, it was in the trustee's discretion to limit the second party's right to a liferent—*Burnside v. Smith, &c.*, June 10, 1829, 7 Sh. 735. This they had done. The only time when the trustees

could have exercised their option of purchasing an annuity was at the trustor's death.

At advising—

LORD JUSTICE-CLERK—The testator directed his trustees after converting his estate into cash to divide it into three parts, and to invest two of these parts on heritable security or Government stock, and to pay the proceeds to his two sisters, share and share alike, or if the trustees thought it more advisable, to purchase an annuity payable to his sisters and the survivor exclusive of the *jus mariti* and right of administration of their husbands should they marry. The remaining third he directed to be invested in name of the trustees for another purpose.

The question upon the two-thirds bequest is, whether the sisters of the testator took a vested interest in their shares notwithstanding the fact that the testator desired his trustees under one alternative of his directions to hold these shares and to pay the proceeds of them to the beneficiaries.

I have come to be of opinion that the shares did vest. The brother's intention was to make a provision for his sisters, and although he also desired to protect it for them if he could, the provisions by which he endeavoured to do so do not detract from the gift he intended. The fact that he gave the trustees power to use the bequest in purchasing an annuity indicates plainly that he contemplated the application of the capital, and not of the annual proceeds only, for their benefit. His wish was to give them this share of his estate, and to protect them in the enjoyment of it. How far his directions would be effectual to protect them is another matter. I hold, without doubt, that the first question must be answered in the affirmative, and the first alternative of the second question also in the affirmative.

LORD RUTHERFURD CLARK and LORD LEE concurred.

LORD YOUNG was absent.

The Court answered the first question in the affirmative, and the first alternative of the second question also in the affirmative.

Counsel for the First and Second Parties—H. Johnston—C. N. Johnston. Agents—Smith & Mason, S.S.C.

Counsel for the Third, Fourth, and Fifth Parties—G. W. Burnet—Deas. Agents—Fodd, Simpson, & Marwick, W.S.

Thursday, July 17.

FIRST DIVISION.  
BRANDER AND OTHERS,  
PETITIONERS.

*The General Police and Improvement (Scotland) Act 1862 (25 and 26 Vict. c. 101)—Failure to Elect Commissioners to Supply Vacancies—The General Police and Improvement (Scotland) Act 1862 Amendment Act 1877 (40 and 41 Vict. c. 22), sec. 4.*

After a burgh had adopted the Police Act of 1862 and commissioners had been duly appointed for its execution, it became impossible to proceed with the execution of the Act in consequence of neglect on the part of the householders to elect commissioners to supply the places of those who annually went out of office in terms of the Act. A petition having been presented by seven householders under section 4 of the Amendment Act of 1877, the Court, after a remit to the Sheriff, pronounced an order to enable the proceedings for the execution of the Act of 1862 in the burgh to be continued.

On 5th November 1863 the boundaries of Lossiemouth and Branderburgh as a populous place were fixed by the Sheriff in terms of the General Police and Improvement (Scotland) Act 1862, and on 17th May 1864 a meeting of householders was convened and held at which the whole of the provisions of the said Act were declared to be adopted, and it was resolved that the number of commissioners to be elected by the householders to carry the said Act into operation should be nine, and that there should be no division into wards. On 18th May 1864 the Sheriff-Substitute declared that the whole of the powers and provisions of the said Act had been adopted in the burgh, and that the whole of the said Act applied to the said burgh. On 21st June nine persons were duly elected for the purpose of carrying out the Act, and the first meeting of the Commissioners was held on 27th June, at which the whole of the Commissioners who had been elected accepted office.

The main purpose for which the Act was adopted in the burgh was to obtain for the burgh, if possible, a proper supply of water. This however turned out to be impracticable, as the Commissioners found that the cost of providing and maintaining such a supply would exceed the amount of the assessment which they were authorised to levy under the Act. They accordingly resolved not to proceed with the introduction of a water supply. The main purpose for which the Act had been adopted having thus been found to be impracticable, no Commissioners were elected to supply the places of the one-third of the Commissioners who went out of office in terms of sec. 51 of the said Police Act at the expiration of the first year after the first election, and no subsequent election of Commissioners took place to supply the places of the Com-