

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-

missioners who annually went out of office in terms of the Act, and no proceedings were taken at any time to supply the deficiency caused by the neglect of the householders to elect Commissioners.

In the circumstances above narrated it had become impossible to proceed with the carrying out or execution of the said Police Act within said burgh, owing to the failure or neglect of the householders to elect Commissioners to supply vacancies as above set forth, and the impossibility of supplying the deficiencies so caused in the number of Commissioners.

A large number of householders in said burgh, including the present petitioners, were now desirous that the proceedings for the carrying out or execution of the said Police Act within said burgh should be continued.

The General Police and Improvement (Scotland) Act 1862 Amendment Act 1877, provides (sec. 4)—“Wherever in any burgh, the boundaries of which have been determined in terms of the recited Act, it has either before or after the passing of this Act, from a failure to observe any of the provisions of the recited Act [that is, The General Police and Improvement (Scotland) Act 1862], or from any other cause, become impossible to proceed with the adoption, or with the carrying out or execution, as the case may be, of the said Act within such burgh, the following provisions shall have effect:—1. It shall be lawful for any seven householders within the burgh to present a petition to the Court of Session setting forth the failure which has taken place to observe the provisions of the recited Act, or other cause which has made it impossible to proceed with its adoption, or carrying out or execution, and praying the Court to pronounce an order in terms of this Act as hereinafter mentioned. 2. The petition shall be intimated in the *Edinburgh Gazette*, and in such other manner as the Court shall appoint. 3. Upon resuming consideration of the petition, with or without answers, and after receiving such evidence as they shall require, the Court may pronounce any order which in their judgment will enable the proceedings for their adoption or carrying out or execution of the recited Act within such burgh to be continued as nearly as possible as if the said failure to observe the provisions of the said Act or other cause had not taken place; and such order shall be final, and shall be recorded in the Sheriff-Court books of the county within which such burgh is situate.”

Robert Brander and six other householders in Lossiemouth presented this petition to the Court, in which they set forth the circumstances above narrated, and stated that there were not then and had not been for many years, any Police Commissioners within the burgh, and it had become impossible for any election of Commissioners to take place without the authority of the Court. They further stated that a large number of the householders in the burgh were desirous that the proceedings for the carrying out of the Police Act within the burgh

should be continued. They therefore prayed the Court “to authorise and ordain the Sheriff-Substitute of Elginshire to convene a meeting of the householders in said burgh, duly qualified by law, to meet in the Town Hall at Lossiemouth, or at such other convenient place within said burgh as your Lordships may direct, at such time and after such intimation as your Lordships may appoint, for the election of Commissioners for the purpose of executing said Police Act, and if said election shall not be unanimous, and if a poll shall be demanded in writing by any seven householders present at said meeting, to ordain that an election of Commissioners shall take place on such date as your Lordships may appoint in manner provided by the General Police and Improvement (Scotland) Act 1862, the Ballot Act 1872, and other Acts regulating municipal elections in Scotland, and to pronounce an order enabling the proceedings for the carrying out of said Act within said burgh to be continued as nearly as possible as if the failure mentioned in the petition to observe the provisions of the General Police and Improvement (Scotland) Act 1862 (25 and 26 Vict. c. 101) had not taken place, and to ordain such order to be recorded in the Sheriff Court books of the county of Elgin.” Before granting the petition, which was unopposed, the Court remitted to the Sheriff-Substitute at Elgin to inquire into the circumstances set forth in the petition and to report.

The Sheriff-Substitute (RAMPINI) having reported that the statements in the petition were correct, the Court pronounced this order:—“The Lords having resumed consideration of the petition, and having also considered the report thereon by the Sheriff-Substitute of Elginshire, authorise and ordain the said Sheriff-Substitute to convene a meeting of the householders of the burgh of Lossiemouth and Branderburgh, duly qualified by law, to meet in the Town Hall at Lossiemouth at such time and after such intimation as the Sheriff-Substitute may direct, for the purpose of electing Commissioners to carry out the provisions of the Act 25 and 26 Vict. c. 101, in manner provided by sections 46 and 47 thereof, and if a poll shall be demanded as provided for by said Act, to proceed with such poll in terms of the Act 35 and 36 Vict. c. 33; and the Lords ordain and direct that the proceedings for the carrying out and execution of the General Police and Improvement (Scotland) Act 1862 within said burgh shall be continued to the same effect as if there had been no failure to observe the provisions of the said Act, and the Lords ordain this order to be recorded in the Sheriff Court books of the county of Elgin; and find and declare the petitioners entitled to the expenses of this petition and of the proceedings to follow thereon out of the first assessments for police purposes which may be levied by the Commissioners to be elected in said burgh, and decern.”

Counsel for the Petitioners—Orr. Agent—John Rhind, S.S.C.