

CASES

DECIDED IN THE HOUSE OF LORDS,

ON APPEAL FROM THE

COURTS OF SCOTLAND.

1847.

[23rd February, 1847.]

MRS. JESSY STEWART D. FORDYCE, *Appellant*.

SIR HENRY BRIDGES, of Beddington, KNIGHT, *Respondent*.

Statute.—*Apportionment Act, 4 and 5 Will. IV., cap. 22, construction of.*

Ibid.—A statute in terms declared to be applicable to all payments within the United Kingdom construed to be applicable to Scotland, though, from its matter and the terms of its preamble and certain of its sections, it was apparently confined to England.

JOHN D. DINGWALL, an heir in possession of entailed lands, died on the 26th October, 1840. The husband of the Appellant, the next heir of entail, forthwith entered to possession of the lands, and drew the rents which accrued for the period subsequent to Whitsunday, 1840. The Respondent, as executor of J. D. Dingwall, brought an action, founded on the Act of 4 and 5 Will. IV., cap. 22, against the Appellant's husband, which, upon his death, was insisted in against her as his executrix, concluding for payment of a proportion of the rents for the period between Whitsunday and Martinmas, 1840,

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 FORDYOE v. BRIDGES.—23rd February, 1847.
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corresponding to the period which J. D. Dingwall had lived beyond Whitsunday, 1840.

The Act of the 11th of George II. is entitled “An Act for the more effectually securing the payment of rents, and preventing frauds by tenants.” And its preamble is thus expressed:—
 “Whereas where any lessor or landlord, having only an estate for life in the lands, tenements, or hereditaments demised, happens to die before or on the day any rent is reserved, or made payable, such rent, or any part thereof, is not by law recoverable by the executors or administrators of such lessor or landlord, nor is the person in reversion entitled thereto, any other than for the use and occupation of such lands, tenements, or hereditaments, from the death of the tenant for life, of which advantage had been often taken by the under-tenants, who thereby avoid paying anything for the same.”

Its enactment is, “that from and after the 24th day of June, 1738, where any tenant for life shall happen to die before or on the day on which any rent was reserved, or made payable, upon any demise or lease of any lands, tenements, or hereditaments, which determined on the death of such tenant for life, that the executors or administrators of such tenant for life shall and may, in an action on the case, recover of and from such under-tenant or under-tenants of such lands, tenements, or hereditaments, if such tenant for life die on the day on which the same was made payable, the whole, or if before such day, then a proportion of such rent, according to the time such tenant for life lived, of the last year, or quarter of a year, or other time in which the said rent was growing due as aforesaid, making all just allowances or a proportional part thereof respectively.”

The application of this Statute is, in express terms, confined “to that part of Great Britain called England, dominion of Wales, and the town of Berwick-upon-Tweed.”

The Statute of 4 and 5 Will. IV., upon which the action

FORDYCE *v.* BRIDGES.—23rd February, 1847.

against the Appellant was founded, bears, in its title, that it is
“ An Act to amend an Act of the 11th year of King George
“ the Second, respecting the apportionment of rents, annuities,
“ and other periodical payments.” And its preamble is in
these terms:—“ Whereas doubts have been entertained whether
“ the provisions of the said Act apply to any case in which the
“ interests of tenants determine on the death of the person by
“ whom such interests have been created, and on the death of
“ any life or lives for which each person was entitled to the
“ lands demised, although every such case is within the mischief
“ intended to have been remedied and prevented by the said
“ Act, and it is therefore desirable that such doubts should
“ be remedied by a declaratory law.”

The second section, being that upon which the action was
laid, was thus expressed:—“ Be it enacted, That from and after
“ the passing of this Act all rent-service reserved on any lease
“ by a tenant in fee, or for any life interest, or by any lease
“ granted under any power, (and which leases shall have been
“ granted after the passing of this Act,) and all rents-charge and
“ other rents, annuities, pensions, dividends, moduses, composi-
“ tions, and all other payments of every description in the United
“ Kingdom of Great Britain and Ireland, made payable or
“ coming due at fixed periods under any instrument that shall
“ be executed after the passing of this Act, or (being a will or
“ testamentary instrument) that shall come into operation after
“ the passing of this Act, shall be apportioned so, and in such
“ manner, that on the death of any person interested in any
“ such rents, annuities, pensions, dividends, moduses, compo-
“ sitions, or other payments as aforesaid, or in the estate, fund,
“ office, or benefice, from or in respect of which the same shall
“ be issuing or derived, or on the determination, by any other
“ means whatsoever, of the interest of any such person, he or
“ she, and his or her executors, administrators, or assigns, shall
“ be entitled to a proportion of such rents, annuities, pensions,

FORDYCE *v.* BRIDGES.—23rd February, 1847.

“dividends, moduses, compositions, and other payments, according to the time which shall have elapsed from the commencement or last period of payment thereof respectively, (as the case may be,) including the day of the death of such person, or of the determination of his or her interest, all just allowances and deductions in respect of charges on such rents, annuities, pensions, dividends, moduses, compositions, and other payments, being made.”

The Appellant pleaded in defence to the Respondent's action that, according to the common law of Scotland, the executor of an heir dying between terms was not entitled to the rents falling due at the term succeeding the death, and that the Act 4 and 5 Will. IV. did not extend to Scotland.

The Court, upon advising printed cases for the parties, being divided in opinion, directed them to be laid before the other Judges for their opinion, and thereafter, in conformity with the opinion of a majority of the Judges, found that the Statute in question did apply to Scotland.

The appeal was against this finding.

Mr. J. Anderson for the Appellant.—The 4 and 5 Will. IV. is, in terms, an Act to amend the 11th Geo. II., but the evil intended to be remedied by the latter Statute never existed at any time in Scotland. It never was the case there that, where a liferenter of lands happened to die before the term at which the rent of the lands was payable, the rent payable at that time was not recoverable from the tenant; accordingly, the 11 Geo. II. is, by express terms, not extended to Scotland. The 4 and 5 Will. IV., then, was passed for the amendment of an Act not applicable to Scotland, but an English Act. Its preamble states, that doubts had been entertained of the application of that English Act to particular cases enumerated, “although every such case is within the mischief intended to have been remedied and prevented *by the said Act.*”

FORDYCE *v.* BRIDGES.—23rd February, 1847.

Such being the object of the 4 and 5 Will. IV. it provides for a variety of payments whose names, for the greater part, are known only in the law of England; and in regard to such of them as are known in the law of Scotland, no inconvenience has ever been felt as to their apportionment between heir and executor; the rules in regard to this are clearly established, and no intention is apparent, on the face of the Act, to disturb these rules, or to provide any precaution for the preservation of rights which might be injured by its operation if extended to Scotland. If a proprietor of land survive the term of Whitsunday his executor is entitled to the half-year's rent, though it may not be payable till Martinmas, and if he survive Martinmas the executor will be entitled to the whole year's rent, though not payable, by the tenant, till a subsequent term. There is no appearance of any intention in the Act to alter this, or to provide for rights which may be injuriously affected by such an alteration. If its operation shall be extended to Scotland, such a consequence will follow in this as in a variety of other instances which might be suggested.

Although the payments spoken of in the Act are all payments "in the United Kingdom of Great Britain and Ireland," these words were intended to embrace all payments, whether within Scotland or England, but were not intended to extend the operation of the Act to the former country. The rent or payment might be due by a party in Scotland to another resident in England. In such case the Act was to operate between the heir, and executor of the latter party; but this description of the locality of the payments will not, against the other expressions of the Act, extend its operation to Scotland.

Mr. Russell for the Respondent was not called on to address the House.

LORD BROUGHAM.—My Lords, there is no difficulty in this case. I do not think it worth calling upon the other side

FORDYCE *v.* BRIDGES.—23rd February, 1847.

to argue it. Whatever the legislature may have intended, they have not done that which is contended for, for they have expressly done the contrary. The first part of the Act is declaratory no doubt, and it applies to England alone. The second part of the Act is general, and the legislature there totally changes the phraseology; they enact instead of declaring, and they say it is a remedy for an evil and not a declaration which is wanted, as they do in the first part, and then they use the words, for the first time, "Great Britain and Ireland."

LORD CHANCELLOR.—My Lords, with respect to any doubt as to the notions of the law of Scotland, and as to the intention of the legislature not being defined as it ought to have been in this Act of Parliament, whatever may have been intended, and whatever was in the mind of those who framed the Act, they have, in terms, said, that all payments arising from lands in Great Britain and Ireland shall be subject to this apportionment. Here is a payment arising out of lands in Scotland. Why is not that within the Act? It is within the very words.

LORD BROUGHAM.—It is provided for in terms pretty much as if the Act had said, this rent of Mr. Dingwall's shall be apportioned.

Ordered and adjudged, That the petition and appeal be dismissed this House, and that the interlocutor therein complained of be affirmed with costs.

JOHNSTON, FARQUHAR, and LEECH—H. U. and N. COULT-
HURST, Agents.