

cessary, since nothing short of an independent application by all the parties interested could justify buildings being erected on the feu. The feu-charter would be sufficient for the purpose.

LORD ARDMILLAN was of the same opinion.

LORD JUSTICE-CLERK was also of the same opinion. The statute contemplated the ground of the glebe being acquired for any purpose. Near a large town a person might well be desirous to acquire the area of a feu, without any intention of building on it. As to the Blair-Athole glebe, the Duke of Athole would probably, in course of time, make more of the ground he had acquired than the feuing price; but the benefit to the glebe was so great, the application ought to be granted in terms of the Lord Ordinary's interlocutor.

Agents for Minister—Tods, Murray & Jamieson, W.S.

Agents for Mr M'Inroy—Gibson-Craig, Dalziel & Brodies, W.S.

Friday, July 8.

FIRST DIVISION.

PEEBLES & WATSON v. SCOTTS.

Executors—Revocation—Deed of Settlement. B appointed C and others his sole disponees and legatees under his deed of settlement, and, by an after clause, his sole executors and universal legatees. Trustees were not named. By subsequent codicils he altered the disposition of his property, and made C his universal legatee and disponee; but declared his deed of settlement in so far as not altered to be ratified and confirmed. *Held* the nomination of executors was not revoked.

By a probative deed of settlement, dated 12th March 1856, the late Peter Peebles assigned and disposed his heritable and moveable estate as follows—"to and in favour of my brother James Peebles, residing in Linlithgow, in liferent, for his liferent use alienarily, and to my nephew James Peebles, merchant in Glasgow, son of the now deceased John Peebles, my brother, and his heirs and assignees, one fourth share *pro indiviso*; Helen Peebles or Dunlop, widow of the now deceased John Dunlop, sometime residing in Glasgow, and her heirs and assignees, one-fourth share *pro indiviso*; Mary Peebles or Scott, wife of John Scott, joiner in Glasgow, and her heirs and assignees, one-fourth share *pro indiviso*; and to Peter Peebles and Isabella Peebles, children of my now deceased nephew John Peebles, warper in Manchester, jointly, and their respective heirs and assignees, the remaining one-fourth share *pro indiviso*." He also appointed these parties, viz.—the two James Peebles, Helen Peebles or Dunlop, Mary Peebles or Scott, Peter Peebles, and Isabella Peebles, to be his sole executors and universal legatees, with the usual powers. The deed was probative, revoked all previous settlements, and reserved power of revocation.

By probative codicil dated 19th December 1866 Mr Peebles recalled the disposition of one-fourth of his estate to the pursuers; and, on the narrative of the death of his brother and nephew James, altered the conveyance by giving to each of his nieces Helen Peebles or Dunlop and Mary Peebles or Scott one-fourth more of his estate. To this extent he declared his deed of settlement altered,

but he ratified and confirmed it in all other respects.

By probative codicil dated 13th February 1867 Mr Peebles, on the narrative of Mrs Dunlop's death, made Mrs Scott, whom failing her husband, universal legatee. To this extent he declared his deed of settlement and foregoing codicil altered, but so far as the deed of settlement was not altered by the two codicils he ratified and confirmed it.

On 7th December 1869 Peter Peebles and Isabella Peebles or Watson presented a petition to the Commissary of Lanarkshire, in which they asked that they should be conjoined with Mrs Scott in any confirmation of executors at her instance, or, if she declined to act with them, that they alone should be confirmed executors.

The Sheriff-Substitute (GALBRAITH), and on appeal the Sheriff (GLASSFORD BELL), authorised confirmation to go forth in names of the whole executors nominated in the deed of settlement.

Mr and Mrs Scott appealed.

WATSON for them.

M'LAREN, in answer, at the close of the debate offered to insist only on the nomination of one of the petitioners.

The Court adhered to the principle of the Sheriff's interlocutor.

LORD PRESIDENT observed it was very unusual to have a competition for the office of executor-nominate, as it was generally quite plain who were named executors; though testators were very often successful in obscuring what was their intention as to who were to be beneficiaries. The only question in this case was, who were the executors-nominate? No one claimed on any other ground than nomination. Mrs Scott, as universal legatee and disponee would, in the absence of a nomination of executors, be entitled to the office. That was not the rule formerly, but it had been so settled ever since the well-known case of the *Earl of Crawford*. Still, however, an executor-nominate was always entitled to the office in preference to any one else. The one party maintained there was only one executor-nominate; the other party said there were three. The question was, whether the nomination of executors in the settlement was recalled? The first codicil proceeded on the narrative of the death of the testator's nephew and brother, and his determination that the pursuers should not receive the fourth of his property assigned to them; and made certain alterations in the disposition of his property. The second codicil proceeded on the narrative of the death of Mrs Dunlop, and made Mrs Scott universal legatee. But neither codicil dealt with the clause of nomination of executors, and only dealt with the disposition of the property. And by both codicils the deed of settlement was expressly ratified and confirmed in so far as not altered. There was no room, therefore, for any question as to what was the intention of the testator; the nomination of executors as in the deed of settlement must be held to subsist. As Mr M'Laren, however, had expressed the satisfaction of his clients if only one was appointed executor, that would be given effect to.

The other Judges concurred.

Agents for Pursuers—J. & R. D. Ross, W.S.

Agents for Defenders—J. & A. Peddie, W.S.