appeared on the record, and who was thus the *ex facie* owner of the subjects. Fraser was the real owner, but if the disposition by him in favour of Stark & Hogg was an absolute disposition, then Fraser, whenever that disposition was recorded, would of course have ceased to be the real owner, and intimation to Stark & Hogg of the intended sale would have been necessary. But this apparently absolute disposition now turns out to be nothing more at its best than a deed in security, and that is made abundantly clear by the documents recovered under the diligence granted to the pursuer.

The first agreement laid before us under it brings out the character of this deed, showing it, as I have said, to be at its very highest a right in security only (if indeed it was that) of a debt of a very questionable character incurred between parties occupying to one another the relations of agent and client.

In the second agreement an attempt is made to convert a right in security into an absolute right by the debtor renouncing all his rights of redemption and retrocession. This certainly does not improve the position of the disponees, inasmuch as they sought by this means to make effectual against a client a claim which they could never in this or in any other way have enforced. It is clear therefore, I think, that Stark & Hogg were not disponees to whom any notice was necessary, and that being so, we have sufficient to remove all difficulties and to make the title of the purchaser a perfectly good one. Looking to the fact that Stark & Hogg were perfectly aware of all that was going on in connection with the sale of these subjects, I am of opinion that they were not proprietors of the estate in such a sense as to make any notice necessary.

As regards the question of interest, I do not think that any should be charged, and therefore I am against the Lord Ordinary upon that part of his interlocutor.

Lord Mure—It is quite clear that the agents here were quite aware that this property was to be put up for sale. They were therefore in very much the same position as the parties in the case of *Stewart*, to which we were referred. Upon that account, as well as on the grounds stated by your Lordship, I think we should adhere to the Lord Ordinary's interlocutor except upon the matter of interest, as regards which I concur with your Lordship.

Lord Shand—I think that the purchaser was quite entitled to raise this question looking to the circumstances of this disposition and relative infeftment standing on the record. I also hold that Stark & Hogg were not proprietors of these subjects, and further, that they are effectually barred from maintaining any right of proprietorship in the future. The disposition is in many respects a rather peculiar deed. It is written on a 10s. stamp, and contains a power to the disponees to sell the subjects publicly or privately, and to borrow money on the security thereof. At or about the same date we have the two agreements referred to by your Lordship, from which it appears that Stark & Hogg got this property for nothing from Fraser at a time when they were acting as his agents. While that agency lasts the agreement is on the very face of it null. When it is kept in mind that Stark & Hogg were acting for Fraser in the sale of these subjects, that a decree in absence was taken against them in the present process, that they were also examined as havers at the commission, then I think it is clear not only that they have no rights of proprietorship in these subjects at present, but that they are barred from founding upon any such rights in the future.

In that state of matters I agree with your Lordships in thinking that the title to these subjects is such as a purchaser is bound to accept.

Lord Adam—The title is now of a kind such as a purchaser may safely take, for it has been incontestably shown by deeds what the true relation of Stark & Hogg to this property was. The agreement was one entered into between an agent and client; while that relation still subsisted its terms were therefore valueless. Upon that ground I am prepared to concur with your Lordships.

The Court pronounced this interlocutor:—

"Recal the interlocutor of the Lord Ordinary of date 16th March 1886 in so far as it decerns for interest on the price since the term of entry under the articles of roup, and in so far as it finds no expenses due: *Quoad ultra* adhere to the said interlocutor, and find the defender Robert Johnstone entitled to expenses," &c.

Counsel for Pursuer— Pearson — Kennedy. Agents—Macpherson & Mackay, W.S.

Counsel for Defenders—D.-F. Mackintosh, Q.C. —Rhind. Agents—W. & F. C. M'Ivor, S.S.C.

Wednesday, September 29, 1886.

OUTER HOUSE.

[Lord Ordinary on the Bills, Lord Kinnear.

CALEDONIAN CANAL COMMISSIONERS *v.* ASSESSOR OF RAILWAYS AND CANALS.

Valuation Cases—Principle of Valuation—Statutory Disabilily to Make Profit.

The Commissioners of the Caledonian Canal were under their Acts forbidden to make profit out of the revenue from tolls, dues, &c., levied thereon. *Held*, in a question as to the valuation of the canal, that in fixing the annual value, deduction should be allowed from the gross revenue of all necessary outlays for management, maintenance, and repairs properly chargeable against revenue, and *quoad ultra* that no deduction should be made.

The Assessor of Railways and Canals fixed the valuation of the Caledonian Canal for the year ending Whitsunday 1887 at the sum of £1537, 6s. 3d.

The Commissioners of the Caledonian Canal appealed to the Lord Ordinary on the Bills, maintaining that the valuation should be *nil*.

They stated that the Assessor, whose duty was to ascertain the yearly value or rent of the canal, being the rent at which, one year with another,

it might be reasonably expected to let from year to year, had based his valuation upon the revenue drawn by them, deducting nothing for maintenance and repairs, but proceeding upon the footing that the canal would fetch that revenue as rent, provided the appellants as proprietors upheld the undertaking by themselves, disbursing all the expenses for maintenance and repairs; further, that the Assessor had allowed as deductions only three-fourths of the cost of management, three-fourths of the charges for lock and bridge-keepers, and one-half of the secretary's salary and of the allowance to the cashier and of the agent's account.

They maintained that this valuation was wrong; that as the canal could not possibly be let no rent could be got for it, and the valuation should be *nil;* or even if the canal were liable to valuation, yet as they had made no profit—according to their Act—and their revenue from tolls did not even meet their annual outlay for maintenance, repair, and working charges, there was thus a deficit. They claimed to have right to deduct from their revenue (1) the whole cost of maintenance and repairs, £2299, 12s. 8d.; (2) the whole cost of management; (3) the whole cost of lock-keepers' and bridge-keepers' charges, instead of three-fourths; (4) the whole secretary's salary, cashier's allowance, and agent's account.

After hearing counsel the Lord Ordinary (Lord Kinnear) pronounced the following interlocutor:—"Finds that the appeal, in so far as the items of secretary's salary and disbursements, Mr Hope's allowance as cashier, and the business account are concerned, is not now insisted in: *Quoad ultra* finds that in fixing the annual rent or value of the lands and heritages belonging to the appellants, a deduction should be allowed from the gross revenue of all necessary outlays for management, maintenance, and repairs, which are properly chargeable against revenue, and not merely of a proportion of such charges: To this extent and effect sustains the appeal, and remits to the assessor to amend the valuation in accordance with this interlocutor.

"*Note.*—It is not disputed that the heritable subjects in question must be entered in the valuation roll, notwithstanding that they are maintained under the provisions of an Act of Parliament which precludes the Commissioners or their tenants from making any profit by their occupation of the canal. The principle on which the annual value of property in this position should be ascertained has been considered in a variety of cases both in England and Scotland, and the rule which appears to have been generally approved is, that the actual revenue must be taken, under deduction of the cost of management, working charges, cost of maintenance, and repairs necessary in order to command that revenue.

"This was the course followed in the cases of the *Glasgow Corporation* v. *Dodds*, 2 Poor Law Magazine, 589; *The Local Authority of Dalbeattie*, 10 R. 23; *The Mersey Docks Company*, L.R., 9 Q.B. 84; and *Peterborough*, 31 Weekly Reporter 949.

"The rule appears to me to be just and reasonable, and I think it should be followed in the present case.

"It is said that no allowance should be made for the cost of maintenance or for the landlord's share of the cost of management, because according to the settled rules of valuation these items are not to be taken into account in estimating the rent which a tenant may reasonably be expected to give. But the ordinary rule for the allocation of burdens as between landlord and tenant appears to me inapplicable to a case where in consequence of statutory restrictions neither tenant or landlord can make a profit of his occupation.

"The considerations which, in the case of an ordinary trading company, an intending tenant would take into account in estimating the rent he could afford to give are necessarily excluded by the provisions of the statute.

"The Valuation Act, however, requires that the yearly value of the subjects shall be taken to be the rent at which they might be reasonably expected to let from year to year. The rule presupposes a lease upon ordinary conditions for the beneficial enjoyment of the heritable subject. It cannot be strictly applied where a lease would mean nothing in practical effect but a transference in their entirety of the rights and duties of a statutory commission to other administrators. But if it be necessary to suppose a lease it does not appear to me that the supposed tenant could be reasonably expected to give more by way of rent than the entire revenue derivable from his occupation, under deduction of the entire cost of earning and collecting such revenue. I think that if the entire revenue be taken as the rent, the appellants are entitled to such deductions as are necessary for maintaining their works in a condition that will enable them to earn the rent.

"It does not affect the argument that the appellants are authorised by their statute to lease the canal, for the lessee would be subject to the same restriction both as to the amounts and the application of the rates as the present Commissioners. It is to be observed that the Commissioners are authorised to lease 'with or without any annual return.' If it be the case that one year with another the rates are not more than sufficient to meet the cost of management and maintenance it does not appear to me that any annual return could be expected."

Counsel for Appellants—D. Robertson. Agent—James Hope, W.S.

REGISTRATION APPEAL COURT.

Friday, November 26.

(Before Lord Mure, Lord Craighill, and Lord Kinnear.)

[Sheriff of Perthshire.

BALLINGAL *v.* MENZIES.

Election Law—County Franchise—Representation of the People (Scotland) Act 1884 (48 *and* 49 *Vict. c.* 3), *sec.* 3—*Service Qualification—Clerk.*

A separate room in an institution was allotted to a clerk as part of his remuneration, and was occupied by him as his bedroom.