

they were allowed to do so on repaying half the expenses incurred in resisting the claims of parties alleging propinquity to the deceased nearer than that alleged by the new claimants."

Now, it is to be observed that this judgment differs very materially from that which the Lord Ordinary has pronounced. There was in that case a good and sufficient reason why the claimants who sought late in the day to enter the process should be made to pay a half of the expense incurred. They were living on the spot, and were well aware of the dependence of the action, and they were accordingly in fault in not appearing at an earlier stage of the proceedings and making their claim.

In the present case, however, the circumstances are materially different from what they were in *Morris v. Geikie*. The claimant here was entirely ignorant of the dependence of this action, and no steps seem to have been taken in any way to communicate its existence to him, and accordingly in the circumstances I am prepared to admit his claim without imposing any condition as to expenses, all the more as it does not appear that his delay in making his claim has occasioned any additional expense. It may be that the claimant may derive some benefit from the proof which has been already led, and from the procedure which has already taken place in the case—that is his good fortune if it be so—but I am not disposed as a condition of his taking any such benefit to make him liable for any part of the expenses which have hitherto been incurred.

LORD SHAND—A party who seeks to enter a process of multiplepointing at a late stage of his being allowed to claim, have to pay all or a proportion of the expenses incurred if it can be shown, 1st, that his late appearance was occasioned by his own fault, and has been the means of causing additional expense; and 2nd, if he has stood aside while other parties were fighting his battle, and then seeks to derive benefit from their labours. As to the first of these points, the claimant here says that he was quite in ignorance of the existence of this action of multiplepointing, and that being resident in Australia, and not being called as a party to the action he was quite unaware of what was going on. Nor does it appear to me that his failure to appear at an earlier stage of the proceedings has been the means of causing any additional expense. That being so, the question comes to be, whether he is now deriving from the proceedings such a benefit that he is bound to pay a proportion of the outlay? I do not think that the parties opposing the admission of this claim have in any way satisfied us upon this matter. At all events in no circumstances should this claimant be made to pay all the expenses which have been incurred as the Lord Ordinary has determined.

There are here various claimants, and it appears to me that it would be hard to charge one who claims a liferent with the expenses incurred in a competition between

two parties each claiming the fee. No doubt the circumstances of the present case are very special, but I am prepared to concur with your Lordship that as regards this claimant he is entitled to have his claim received without any payment of expenses as a condition thereof.

LORD ADAM concurred.

The Court allowed the claim of Robert Gordon Sawers to be received without any payment of expenses.

Counsel for R. G. Sawers—Martin. Agent—F. J. Martin, W.S.

Counsel for James Sawers—Gunn. Agents—Simpson & Lawson, W.S.

Counsel for John Sawers—Rhind. Agents—E. A. & F. Hunter & Co., W.S.

Saturday, February 23.

SECOND DIVISION.

[Lord Wellwood, Ordinary.]

DICKSON AND OTHERS (DICKSON'S TRUSTEES), PETITIONERS.

Trust—Investment—Consigned Money—Lands Clauses Consolidation Act 1845 (8 and 9 Vict. cap. 19), secs. 67, 68, and 79.

Lands held by testamentary trustees under a declaration that they should have no power to sell them during the lifetime of testator's children were taken by a railway company under compulsory powers, and the price consigned in bank, "subject to the control and disposition of the Court of Session, to the intent that the same shall be applied, under the authority of the said Court, to some one or more of the purposes specified in the Lands Clauses Consolidation (Scotland) Act 1845 relative to parties under disability."

The Court, on the petition of the trustees, while the truster's children were alive, *authorised* the bank to pay over the consigned money to the trustees, to be invested by them in accordance with their powers under their trust-deed, without requiring them to apply it to some one or more of the purposes specified in the Act.

Peter Dickson, Isa Villa, Bridge of Allan, died on 31st January 1875, leaving a trust-disposition and settlement, under which he, *inter alia*, expressly declared that his trustees should not have the power during the lifetime of his children to sell any part of his heritable estate.

On 10th August 1888 the North British Railway, under compulsory powers, took a portion of the heritable property belonging to the trust, situated in the Gallowgate of Glasgow, the price thereof being fixed by valuation at £2700.

The trustees being unable, in consequence of the declaration above quoted, to give an

effectual conveyance to the subjects sold (two of the truster's children being alive), the North British Railway Company consigned the price in the British Linen Company Bank, the consignment bearing that the sum had been consigned "subject to the control and disposition of the Court of Session, to the intent that the same shall be applied, under the authority of the said Court, to some one or more of the purposes specified in the Lands Clauses Consolidation (Scotland) Act 1845 relative to parties under disability."

The trustees being desirous of uplifting the consigned money and investing it in Glasgow Corporation stock, presented a petition, bearing to be in terms of the 67th and 79th sections of the Lands Clauses Consolidation Act of 1845, in which they prayed the Court "to grant warrant to authorise and ordain the said British Linen Company to make payment to the petitioners of the said sum of £2700, with all interest accrued thereon, and to authorise and empower the petitioners to invest the said principal sum in the purchase of stock of the Corporation of Glasgow, or otherwise as your Lordships may direct; and further, to find the said North British Railway Company liable in the expenses of this application and of carrying through the investment of the said money."

On 8th February 1889 the Lord Ordinary (WELLWOOD) pronounced this interlocutor:—"Allows the petition to be amended at the bar to the effect of bringing it under the 68th section of the Lands Clauses Consolidation (Scotland) Act 1845, and of section 3 of the Trusts (Scotland) Act 1884, and by inserting in the prayer of the petition, after the word 'Glasgow,' the words 'either as a permanent or as an interim investment;' and the petition having been so amended, on the motion of the petitioner, in respect of the importance of the question raised, reports the matter to the Second Division of the Court.

"*Note.*—In this petition, as originally presented, the petitioners, who are testamentary trustees of the late Peter Dickson, crave the authority of the Court to invest in the purchase of stock of the Corporation of Glasgow a sum of about £2700 which has been received by them as the price of part of the heritable estate belonging to the trust, which was taken compulsorily by the North British Railway Company. The said sum was consigned in the British Linen Company's Bank on 10th November 1888, 'subject to the control and disposition of the Court of Session, to the intent that the same shall be applied, under the authority of the said Court, to some one or more of the purposes specified in the Lands Clauses Consolidation (Scotland) Act 1845 relating to parties under disability.'

"The said purposes as contained in the 67th section of the Act 8 and 9 Vict. cap. 19 (the only section besides the 79th founded on by the petitioners), are as follows:—"Such moneys shall be applied, under the authority of the Court of Session, to some one or more of the following

purposes (that is to say)—In the purchase or redemption of the land tax, or the discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid, or affecting other lands settled therewith on the same heirs, or for the same trusts or purposes, or affecting succeeding heirs of entail in any such lands, whether imposed and constituted by the entailer, or in virtue of powers given by the entail, or in virtue of powers conferred by any Act of Parliament: In the purchase of other lands to be conveyed, limited, and settled upon the same heirs and the like trusts and purposes, and in the same manner as the lands in respect of which such money shall have been paid stood settled; or if such moneys shall be paid in respect of any buildings taken under the authority of this or the special Act, or injured by the proximity of the works, or in removing or replacing such buildings, or substituting others in their stead, in such manner as the said Court shall direct; or in payment to any party becoming absolutely entitled to such money.'

"On its being pointed out to the petitioners by the man of business to whom the petition was remitted that the section above quoted does not authorise the investment of consigned money in the purchase of stocks issued by municipal corporations, they explained that they relied upon the Trusts (Scotland) Amendment Act 1884 as extending the purposes to which such trust moneys might be applied. In particular, they referred to section 3 of that Act (47 and 48 Vict. cap. 63), which provides that 'trustees under any trust may, unless specially prohibited by the constitution or terms of the trust, invest the trust funds (a) in the purchase of, *inter alia* (sub-section 6), stocks or annuities issued by any municipal corporation in Great Britain, which annuities, or the interest or dividend upon which stock, are secured upon rates or taxes levied by such municipal corporation under the authority of any Act of Parliament.'

"The petitioners have now amended their petition to the effect of founding upon the Trusts Act of 1884, and also—alternatively to the 67th section—upon section 68 of the Lands Clauses Act, which provides for the interim investment of consigned money, in the following terms—"Sec. 68. Until the money can be so applied"—that is, in terms of sec. 67—"it shall be retained in bank at interest, or shall be laid out and invested in the public funds or in heritable securities.'

"It will be seen from the provisions of sections 67 and 68 of the Lands Clauses Act above quoted, that neither of these sections authorises the investment now desired by the petitioners, and the question now raised is whether the Trusts Act of 1884 can be read into the 67th and 68th sections of the Lands Clauses Act to the effect of extending the purposes to which consigned money may be applied under both or either of these sections. It appears to me that the Trusts Act of 1884 does not affect sec.

tion 67 of the Lands Clauses Act, because the specific object of that section is to secure the application of the purchase price of land sold compulsorily to the disburdening, purchase, or improvement of lands and heritages, for the benefit of the heirs in heritage, who would have been entitled to the lands taken.

"As regards section 68, however, it may be argued with some force that the object of that clause was simply to secure the safe interim investment of consigned money in one of the ways then recognised as legal for trust funds—that the interim investments therein specified were, at the date of the Act, practically the only trust investments sanctioned, and that as the selection of trust investments has been extended by the Act of 1884, it is reasonable that the provisions of the latter Act should be held to apply to the interim investment of consigned money under the Lands Clauses Act.

"As the question is one of general importance, and as I think it is probable that such applications will become numerous if this application is granted, I report the matter for the consideration and decision of the Court."

The Court delivered no opinions, and pronounced the following interlocutor:—

"On the report by the Honourable Lord Wellwood, remit to his Lordship with instructions to grant warrant to authorise and ordain the British Linen Company Bank to make payment to the petitioners of the sum of £2700 mentioned in the petition, with all interest accrued thereon, the said sum to be invested by the petitioners in accordance with their powers under the trust-deed: And further, to find the North British Railway Company liable in the expenses of this application, and of carrying through the investment of the said money."

Counsel for the Petitioners—D. F. Balfour, Q.C.—A. Mitchell. Agent—F. J. Martin, W.S.

Thursday, October 24.

SECOND DIVISION.

[Lord Fraser, Ordinary.]

ANDERSON AND OTHERS (M'KECHNIE'S TRUSTEES) v. SCOTTISH ACCIDENT INSURANCE COMPANY (LIMITED).

Insurance—Accident Policy—Cause of Death—Disease Accelerated by Accident—Construction of Policy.

A person insured his life for £1000 with an accident insurance company. The policy bore, that to recover under it an accident must be the direct cause of death and that within three months, and provided that the company would

not be liable for death arising from natural disease although accelerated by accident. The injured was thrown out of a Whitechapel cart and died within three months. After a proof, from which it appeared that the insured had for years suffered from attacks of kidney disease, that he was free from any active symptoms of that disease when he met with the accident, and that the disease had again shown itself five weeks after the accident held (by Lord Fraser) that death was caused by kidney disease accelerated by the accident, and that whether the company would have been liable for such acceleration of death if there had been no special clause in the policy or not, they were entitled to be absolved in consequence of said clause.

The Second Division upon a reclaiming-note adhered to the Lord Ordinary's interlocutor, but found that it had not been proved that the accident had caused the death at all, and reserved their opinions upon the clause as to acceleration.

John M'Kechnie, carting contractor, 128 Stobcross Street, Glasgow, effected an insurance upon his own life with the Scottish Accident Insurance Company, Limited, 115 George Street, Edinburgh.

The policy, which was dated 24th January 1887, bore that "if during the continuance of this policy the insured sustains any bodily injury caused by violent, accidental, external, and visible means, then in case such injury shall, within three calendar months from the occurrence thereof, directly cause the death of the insured . . . the company shall pay to . . . his legal representatives the full sum of £1000 . . . provided always that this policy shall not extend to nor cover the death of the insured . . . arising from natural disease or weakness or exhaustion consequent upon disease or any surgical operation rendered necessary thereby, or arising from such disease, weakness, exhaustion, or surgical operation, although accelerated by accident."

The said John M'Kechnie had suffered from kidney disease in 1883, 1884, 1886, and in the early part of 1887, but he was free from any active symptoms of that disease in October 1887. On Saturday 29th October 1887 he was thrown out of a Whitechapel cart in Glasgow and met with somewhat severe injuries, which confined him to his bed until the following Monday, when he was allowed by his doctor to go to a business meeting although told to rest as much as possible. He was laid aside from active work for several weeks in consequence of the accident, and upon 7th December 1887 kidney disease again manifested itself. He died upon 12th January 1888. The cause of death was certified as "Hæmaturia (Albuminuria)."

James Anderson and others, as M'Kechnie's trustees, brought an action against the said Scottish Accident Insurance Company to recover the sum of £1000 under the policy in consequence of the death, and pleaded—