Saturday, October 25.

SECOND DIVISION.

THOMSON'S TRUSTEES *v* HENDERSON AND ANOTHER.

Trust—Powers of Trustees under Trust-Deed—Investment of Trust Funds.

A truster directed his trustees to hold a third part of the residue of his estate for behoof of his daughter in liferent and her children in fee, and empowered his trustees to sell the whole or any part of his estate, and "to continue the investments in any public companies in which I may have my capital invested at the time of my death, and to invest . . . the funds which shall devolve upon my said daughter in heritage and in preference stocks of railways in Scotland or England, and in stock of Scotch banks, with power to renew and alter said investments at pleasure." The testator died survived by his daughter and her children.

Held that it was competent for the trustees to continue to hold the shares in public companies which were held by the testator at the time of his death, but that they must exercise their own discretion as to the desirability in the interests of the estate of their continuing to hold such investments.

On 28th March 1889 William Thomson died leaving a trust-disposition and settlement dated 20th April 1875. By this deed he disponed his whole means and estate to trustees, and directed them, after fulfilment of certain purposes, to divide the residue of the estate into three equal portions, to pay one share to each of his two sons, and to hold and apply the remaining third part to and for behoof of his daughter Mrs Sarah Thomson or Henderson for her liferent use only, and to her children in fee, which provision to his daughter was declared to be alimentary and exclusive of the *jus mariti* and right of administration of any husband she might marry, and not affectable by her debts or deeds or the diligence of his creditors.

The truster empowered his trustees "to sell the whole or any part of the said estate, heritable or moveable, hereby conveyed by public roup or private bargain, with power to continue the investments in any public companies in which I may have my capital invested at the time of my death, and power to invest . . . the funds which shall devolve upon my said daughter in heritage and in preference stocks of railways in Scotland or England, and in the stock of Scotch banks, with power to renew and alter said investments at pleasure."

At his death in 1889 the truster was survived by his two sons, his daughter Mrs Sarah Thomson or Henderson, and five children of Mrs Henderson by her marriage with John Henderson.

The estate left by the truster included (*a*) 80 A shares of £100 each and 90 B shares of £25 each of the North British Rubber Company, Limited, a company registered under the Companies Acts 1862 to 1886; (*b*) 113 A shares of £100 each and 113 B shares of £20 each of the Scottish Vulcanite Company; and (*c*) 3000 shares of £5 each of the Assets Company, Limited, both of which latter companies were registered under the Companies Acts 1862 and 1867.

In the course of dividing the residue of the estate in terms of the trust-deed the trustees allocated 21 A shares and 26 B shares of the North British Rubber Company, and 16 A shares and 11 B shares of the Scottish Vulcanite Company, and 1000 shares of the Assets Company to the one-third of the residue which they were required by the trust-deed to continue to hold for behoof of Mrs Henderson in liferent and her children in fee, and on a final division of the estate a further number of shares of the Scottish Vulcanite Company fell to be set aside for the same purpose.

In these circumstances a question arose with regard to the competency of the trustees holding these shares as a proper investment of the trust funds. The trustees were advised that it was doubtful whether they were entitled under the powers conferred on them by the trust-deed to hold any of these shares without incurring responsibility to the beneficiaries in the event of loss being occasioned to the trust-estate by reason of their doing so. They accordingly intimated their intention of realising at the earliest possible time, and to the best possible advantage, the shares falling to be appropriated to the one-third part of the residue to be held for behoof of Mrs Henderson in liferent and her children in fee. Mrs Henderson, however, required the trustees to retain these shares as a proper investment of the trust funds specially approved by the testator, and which could be competently continued by the trustees without their incurring any responsibility therefor.

This special case was presented for the determination of these questions by (1) Mrs Thomson's trustees, (2) Mrs Henderson, and (3) Mr Henderson, as tutor-at-law to his children.

It was admitted that the shares in question were of a more or less speculative character. All parties were also agreed that in the event of the said shares being realised, and the proceeds invested in ordinary trust investments, the present annual income to be derived from the trust-estate paid to the second party would be considerably diminished.

The questions at law were these—"(1) Are the parties of the first part bound to sell the shares in the said companies, and to invest the proceeds 'in heritage and in preference stocks of railways in Scotland or England, and in the stock of Scotch banks,' or in securities authorised by Act of Parliament for the investment of funds held by gratuitous trustees? or (2) Are they entitled in the circumstances stated to retain the said shares as a proper investment of the trust funds?"

Argued for the first parties—While they were quite willing to continue to hold these

shares if the Court decided that this was a competent course, the distinction apparently drawn in the clause between the investments in general and the investment of the funds devolving on the second party entitled them to refuse to incur liability without such authority.

Argued for the second party—Unrestricted power to continue the truster's investments in public companies was conferred by the deed. Under such a clause trustees could continue these investments as long as they thought it advantageous for the trust—*Brown* v. *Gellatly*, August 5, 1867, L.R., 2 Ch. App. 751.

At advising—

LORD JUSTICE-CLERK—It seems quite reasonable that the trustees should desire to be sure of their position under the trust-settlement. I am of opinion that the terms of the deed are on the whole quite clear, that the intention of the testator was to give the trustees power to continue to hold after his death all investments in public companies which he held at the time of his death. The power thus conferred does not in any way affect the duty of the trustees to look after these investments, and see that they remain reasonably secure and safe. All that the deed does is to relieve the trustees of the responsibility of continuing to hold investments of that character. In regard to their competency to hold these, as I read the deed there can be no doubt. As I read the deed the testator simply means to say—"I have certain investments in public companies. After my death my trustees may continue to hold such as long as they do their duty in inquiring about their safety and judging them to be secure." We must make it plain in our findings that our judgment does not relieve the trustees from exercising their discretion as to the desirability of holding such investments.

LORD YOUNG and LORD RUTHERFURD CLARK concurred.

The Court pronounced this interlocutor:—

"Find that under the terms of the trust-deed it is competent for the parties of the first part to continue to hold the shares in public companies which were held by the testator at the time of his death, but declaring that the trustees must exercise their own discretion as to the desirability in the interests of the estate of their continuing to hold such investments."

Counsel for the First and Third Parties—Jameson—Salvesen. Agents—Boyd, Jameson, & Kelly, W.S.

Counsel for the Second Party—Asher, Q.C.—A. S. D. Thomson. Agents—Davidson & Syme, W.S.

Tuesday, October 28.

SECOND DIVISION.

REID (INSPECTOR OF POOR OF THE PARISH OF KILMARNOCK) *v.* EDMISTON (INSPECTOR OF POOR OF THE PARISH OF RUTHERGLEN).

Poor — Settlement — Husband and Wife — Settlement of Wife Deserted by Husband who had no Settlement in Scotland.

An Irishman residing in Scotland, where he had no settlement, married a Scotswoman, and lived with her in one parish for about eighteen months. He deserted his wife, who became chargeable to the parish where they had lived. Previous to her marriage the wife had acquired a settlement by residence. In a question between the parishes of her birth settlement and of her residential settlement, *held* that the latter was liable for her relief.

This was a special case presented by (1) John Reid, and (2) Allan A. Edmiston, Inspectors of Poor, and representing the Parochial Boards of the parishes of Kilmarnock and Rutherglen respectively, under the following circumstances:—Mrs Theresa Convery or Lawrie was born in the year 1856 in the parish of Kilmarnock, where her father and mother resided. In the year 1874 she became a teacher in the Roman Catholic School at Rutherglen, and resided in the parish for ten years thereafter, and up to the date of her marriage after mentioned supporting herself by teaching in said school. By said residence she acquired for herself a residential settlement in the parish of Rutherglen. In February 1884 she married at Kilmarnock John Lawrie, a native of Ireland, whose birth settlement in that country was capable of being ascertained, but who did not then possess, nor did he afterwards acquire, any settlement in Scotland. After the marriage Lawrie and his wife resided for ten months in Glasgow, after which they removed to Kilmarnock. In August 1886 Lawrie deserted his wife, and in April 1887, being burdened with two children, aged at that date, the elder—a boy—one year and four months, and the younger—a girl—two weeks, she became chargeable in the parish of Kilmarnock on 1st April 1887, and has since then continued to receive relief. On 15th July 1887 Lawrie was apprehended and charged with deserting his wife and children. He was convicted of said charge, and sentenced by the Sheriff at Kilmarnock to thirty days' imprisonment. On the expiry of the sentence he left the district and had not since been heard of.

The question for the consideration of the Court was as follows:—"Does the burden of supporting the pauper fall upon the parish of her birth, or upon the parish in which at the date of her said marriage she possessed a residential settlement?"