

The Court adhered.

Counsel for Petitioner—The Lord Advocate—Sol.-Gen. Graham Murray, Q.C.—Don Wauchope. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for Respondent, Marquess of Stafford—Asher, Q.C.—Dundas. Agents—Macpherson & Mackay, W.S.

Counsel for Respondent, Duke of Fife—D.-F. Balfour, Q.C.—Ure. Agents—Mackenzie & Black, W.S.

Counsel for Respondent, Duke of Westminster—D.-F. Balfour, Q.C.—Blackburn. Agents—Mackenzie & Black, W.S.

Friday, February 26.

### FIRST DIVISION.

ROSS (FRASER'S JUDICIAL FACTOR).

*Judicial Factor—Cautioner—Woman.*

*Held* that an unmarried woman might be accepted as cautioner for a judicial factor's intromissions.

This was a note presented by Hugh Houstoun Ross, judicial factor on the trust-estate created by the antenuptial contract of marriage of Mr and Mrs Edward Fraser.

Mr Ross stated that he had been appointed judicial factor in 1884, and had acted as such ever since, "his cautioners having been (first) his father Hugh Ross, W.S., now deceased, and (second) his mother, Mrs Ross, also now deceased. . . . New caution having again to be found, Mary Charlotte Ross, spinster, residing at No. 16 Northumberland Street, Edinburgh, aged 44, has been offered as cautioner, but the Clerk of Court having expressed doubts as to accepting her as such, it is necessary to have the proposal sustained by the Court. The estate under the factor's charge consists of £3156, 5s. 11d. 2½ per cent. consols, and £41 of same consols, and £15, 14s. 4d. in bank. . . . The cautioner offered has means and estate to the value at least of £5000."

The judicial factor craved the Lord President to move the Court "to authorise the Clerk of Court to accept of the said Mary Charlotte Ross as cautioner for the said Hugh Houstoun Ross, as judicial factor foresaid." . . .

At advising—

LORD PRESIDENT—That no disqualification attaches to a woman as cautioner is pretty clearly shown by what has been done in this factory, in which a woman has already been accepted in that capacity, and we are told that that was done with the approval of the late head of the Court. There might be difficulties perhaps if this lady were to marry, but until that event occurs we are not called upon to decide in regard to them.

LORDS ADAM, M'LAREN, and KINNEAR concurred.

The Court granted the authority craved

Counsel for the Judicial Factor—Dudley Stuart. Agents—Macrae, Flett, & Rennie, W.S.

Saturday, February 27.

### FIRST DIVISION.

MARQUESS OF STAFFORD v. DUKE OF SUTHERLAND.

(*Ante*, p. 422)

*Appeal to the House of Lords—Leave to Appeal—Entail.*

Circumstances in which the Court, in a petition for authority to disentail, *refused* an application for leave to appeal to the House of Lords against an interlocutor repelling objections to the competency of the petition.

On 26th February 1892 the Marquess of Stafford presented a petition for leave to appeal to the House of Lords against the interlocutor pronounced by the Lord Ordinary on 15th December 1891, and the interlocutor of the First Division adhering to the same.

He argued—It was the practice of the Court to allow an appeal where there was a separable case for appeal, and where the result of the appeal might save litigation by putting an end to the whole proceedings—*The Lord Advocate v. The Duke of Hamilton*, December 17, 1891, 29 S.L.R. 272.

The Duke of Sutherland opposed the application, and argued—The Court was always disinclined to grant an application of this kind where that might lead to there being two appeals instead of one. Especially was this the case in proceedings of the present kind where the death of one of the parties would render the whole proceedings abortive. The case of *The Duke of Hamilton* was quite different. There the reversal of the decision of the Court of Session would render a long and intricate inquiry unnecessary, but here there was no reason why the inquiry should be long or difficult.

At advising—

LORD ADAM—This is an application by the Duke of Sutherland for authority to disentail, and we have decided that he has a title to insist in it, and to have the part of the estate disentailed which he desires to have disentailed. It appears to me that in such a matter the Duke has a pre-eminent interest to have the case decided with as little delay as possible, for the reason which has been suggested, namely, that if any mischance occurs the whole proceedings may prove abortive, and by allowing the delay which an appeal occasions we are increasing the chance of such an occurrence. That, I think, is a very material consideration for refusing leave to appeal at this stage.

When we look at the interest of the other side, no doubt we find that they have