

Therefore nothing which I have said can be founded upon as affecting, one way or other, the rights of a parochial board, or a parish council in future in dealing with their inspectors of poor. I have no occasion to enter into the consideration of whether those officers hold office *ad vitam aut culpam*. The result is that the decision of the Sheriff should be affirmed.

LORD ADAM concurred.

LORD M'LAREN—I am of the same opinion. I see no reason to doubt that the order of the Secretary for Scotland is entirely in terms of and within the powers devolved upon that high officer by Parliament. Standing the order, it seems perfectly clear that the inspectors of poor of the pre-existing separate parishes were transferred, *i.e.*, their contract of service was transferred—to the united parish. It may be that it is within the power of the united parishes to effect some distribution of the services and duties of these officers. That may yet be arranged. I agree with your Lordship that there has been no attempt on the part of the new parish council to dismiss their officer. They do not claim to have dismissed him. In the record they express the opinion that his office had come to an end by force of the Act of Parliament in consequence of the union of the two parishes, and there could be no better proof that this was the view on which the parish council acted than this, that they made the pursuer an offer of £250 as compensation for the loss of his office. Such an offer would of course be an illegal application of the funds of the parish in the case of a person who had been lawfully dismissed. The case is really one of misapprehension of the true state of relations between the authorities of the new united parish and the officers of the pre-existing separate parishes.

LORD KINNEAR concurred.

The Court affirmed the interlocutor of the Sheriff-Substitute.

Counsel for Pursuer—W. Campbell—A. Orr Deas. Agents—Duncan Smith & Maclaren, S.S.C.

Counsel for Defenders—Sol.-Gen. Dickson—Clyde. Agents—Webster, Will, & Ritchie, S.S.C.

Friday, May 29.

FIRST DIVISION.

WELCH'S EXECUTORS, PETITIONER.

Right in Security—Transmission of Personal Obligation against Universal Legatee not being Heir-at-Law—Conveyancing Act 1874 (37 & 38 Vict. c. 94), secs. 12 and 47.

The 47th section of the Conveyancing Act 1874 provides that "subject to the limitation hereinbefore provided as to the liability of an heir for the debts of his ancestor, an heritable security for money, duly constituted upon an estate in land, shall, together with any personal obligation to pay principal, interest, and penalty contained in the deed or instrument whereby the security is constituted, transmit against any person taking such estate by succession gift, or bequest, or by conveyance, when an agreement to that effect appears *in gremio* of the conveyance, and shall be a burden upon his title in the same manner as it was upon that of his ancestor or author, without the necessity of a bond of corroboration or other deed or procedure."

By section 12 it is provided that "an heir shall not be liable for the debts of his ancestor beyond the value of the estate of such ancestor to which he succeeds."

Held that the personal obligation in a bond and disposition in security transmits against a universal disponee, but that, although not heir-at-law, he is entitled to the benefit of the limitation of liability provided by section 12.

In an action raised in the Court of Chancery of the County of Lancaster by the Edinburgh Life Assurance Company and others against the executors of the late Ralph Dalryell Welch, the Court, upon the motion of the defendants, ordered a case to be prepared and remitted to the Court of Session, in terms of 22 and 23 Vict. c. 63, for the opinion of the Court upon certain questions of Scotch law.

The facts as appearing from the case were as follows:—In 1870 Miss Robina Thoms was possessed of certain lands at Rungally, Fifeshire. In that year she granted a bond and disposition in security for £10,000 over the estate of Rungally, in favour of the trustees of Mr William Rutherford; and in the same year she granted another bond over the estate for the same amount in favour of the trustees of Mr James Richardson.

The two bonds were subsequently assigned to the Edinburgh Life Assurance Company. On the death of Miss Thoms in 1871, Charles Welch succeeded to the estate of Rungally, and he executed a bond of corroboration and disposition in security in favour of the holders of the two bonds, in which he narrated that "it had been agreed between the company and himself that the said sums of money should be and remain a debt and burden

upon him and his heirs and successors, and that the personal obligations contained in the said bonds and dispositions in security should subsist and be effectual."

Charles Welch died in 1894, leaving a disposition and settlement in the following terms:—"I, Charles Welch Tennent, of Rungally and Pool, dispoise and assign to my brother, Ralph Dalyell Welch, merchant in Liverpool, my whole estate, real and personal, wheresoever situated, and I appoint him my sole executor and universal legatee. . . . I recall all former wills and settlements, and declare this to be my last will and testament."

Ralph Dalyell Welch gave up an inventory of the moveable estate of his brother, and completed titles to the heritable estate by expediting notarial instruments in his favour in terms of the Titles to Land Consolidation Act 1868. He continued to pay the interest due to the company in respect of the two bonds on Rungally.

Ralph Dalyell Welch died in 1895, leaving a will in English form.

An action was then raised against his executors by the company for payment of the bonds.

The plaintiffs in the said action contended that, under the circumstances stated, the said Ralph Dalyell Welch came under a personal obligation to pay to them the said sums of £10,000 and £10,000, and interest thereon, and that the defendants in the said action, as executors of the said Ralph Dalyell Welch, were liable to pay the said sums out of the estate of the said Ralph Dalyell Welch. The defendants in the said action, on the other hand, contended that the said Ralph Dalyell Welch did not come under any personal obligation to pay to the plaintiffs the said sums of £10,000 and £10,000, or any part thereof.

The question submitted for the Court of Session's opinion was:—"Whether, in the events which have happened, as hereinbefore stated, the said Ralph Dalyell Welch, became subject to the personal obligation to pay the principal moneys and interest secured by the said two bonds and dispositions in security, each for the sum of £10,000, or either of them, or any part thereof.

The executors presented a petition to the First Division craving their opinion upon this question.

Argued for petitioners—(1) The disposition to their author was a "conveyance" in the sense of the statute. Where a donee did not require to make up his title derivatively through trustees, but did so directly from the testator, the bequest to him was a conveyance, and accordingly any personal obligation of his author, in accordance with the terms of the 47th section, transmitted only to a limited degree, *i.e.*, if there was an agreement to that effect *in gremio* of the conveyance. The statute embraced not only onerous conveyances but a conveyance such as this. Accordingly, the personal obligation did not transmit. (2) The limitation in the first part of the section covered all the cases of "succession,

gift, or bequest," and was not confined to the case of an heir of line. Accordingly, under the 12th section the petitioners were not liable beyond the value of the estate to which they had succeeded.

Argued for respondent—(1) The petitioners were liable beyond the value of the succession for the full amount of the bonds. The bequest was of the whole estate, and was taken by their author on a lucrative title. If they considered the estate would not fulfil this call, their remedy was to refuse to take up the succession. The case was ruled absolutely by the decision in *Wright's Trustees v. M'Laren*, May 23, 1891, 18 R. 841. The limitation in sec. 12 applied strictly to "heirs," and the use of the word was in its most technical sense, and it could not be held to include persons taking a universal gift under a gratuitous disposition—Bell's Prins. sec. 1695. Accordingly, a person taking such a bequest must know that he does so subject to the whole burdens of his author. (2) In any event the petitioners were liable for the whole benefit of the estate to which they had succeeded, heritable and moveable.

The Court returned the following answer—"By the law of Scotland, under the provisions of 37 and 38 Vict. cap. 94, secs. 12 and 47, the said Ralph Dalyell Welch became subject to the personal obligation to pay the principal moneys and interest secured by the said two bonds and dispositions in security each for the sum of £10,000, subject always to this limitation, that the said Ralph Dalyell Welch could not be made liable for the debts of the deceased Charles Welch Tennent (including the sums secured by the said bonds and dispositions in security) beyond the value of the estate to which he succeeded by virtue of the disposition and settlement of the said Charles Welch Tennent."

Counsel for the Petitioners—H. Johnston—Cullen. Agents—Kinnmont & Maxwell, W.S.

Counsel for the Respondent—C. S. Dickson—Macfarlane. Agents—Mackenzie & Kermack, W.S.

Friday, May 29.

FIRST DIVISION.

[Sheriff Court of Linlithgow.]

M'KILLOP v. NORTH BRITISH RAILWAY COMPANY.

Reparation—Master and Servant—Defective Plant—Liability of Railway Company Employing Competent Managers.

The employment of a competent staff of workmen and managers to whom the necessary authority is delegated, does not, *ipso facto*, relieve a railway company from all common law liability to its servants for injuries received by reason of defects in its system of working or in its plant.

In an action at common law for damages by the representatives of a