

LORD PEARSON—I agree. I think this a clear case for awarding the expenses as your Lordship proposes.

The Court pronounced this interlocutor—

“The Lords . . . assoilzie the said defender William Martin Murphy from the conclusions of the action, and decern: Find the said defenders Waters & Company liable to the said defender William Martin Murphy in the expenses incurred by him in the cause, and remit the account thereof,” &c.

Counsel for Pursuer—T. B. Morison—Gillon. Agents—Kirk Mackie & Elliot, S.S.C.

Counsel for Defenders Waters & Company—Guthrie, K.C.—Hunter—Mitchell. Agents—Lister Shand & Lindsay, S.S.C.

Counsel for Defender Murphy—Cooper, K.C.—Hon. W. Watson. Agents—Webster, Will, & Company, S.S.C.

Monday, August 28, 1905.

OUTER HOUSE.

[Lord Ardwall, Ordinary
on the Bills.]

YOUNGS, PETITIONERS.

Judicial Factor—Special Powers—Power to Sell Heritable Subject—Report by Accountant of Court against Power Craved—Power Granted by Court.

Circumstances in which a petition for the appointment of a judicial factor on an intestate estate, with special power to sell a heritable property included in the said estate, having been presented, the Court granted the special power craved, although the Accountant of Court, to whom a remit had been made, had reported against the special power being granted.

This was a petition presented by Mrs Jeanie Cunninghame M'Bride or Young, residing at Garail, Dunoon, and Alexander Young, residing at Cessford, Troon, for the appointment of a judicial factor on the estate of the deceased John Reid Young, who had died intestate. The petitioners were the widow and the eldest son and heir-at-law of the deceased.

The petition, *inter alia*, sought power for the factor to complete a title to and to sell a villa known as Garail, situated at Dunoon.

It was stated in the petition that the widow was desirous of leaving Dunoon in order to provide suitable education for her children, that it would probably be difficult, and certainly not remunerative, to let Garail for a term of years unfurnished, that the property was only suitable for residential purposes during the summer months, and that it would be impossible to let for a summer tenancy unless the furniture were to remain in the house, and that even if a satisfactory rent were received for the summer months a considerable amount

would be involved in the upkeep. It was also stated that it was the intention of the deceased prior to his death to sell Garail during 1905.

The Lord Ordinary having remitted to the Accountant of Court to consider and report with reference to the power of sale craved, the Accountant *inter alia* reported as follows—“The gross annual income of the estate may be stated at from £750 to £850, divisible one-third to the widow, and two-thirds to children. That as stated the present assessed rent of Garail is £85, but the valued rent is £110, from which deduct a liberal estimate to meet feu-duty, taxes, and repairs, &c., £59, leaving £51, which is 4½ per cent. on £1200, the proposed upset price, a higher rate than can be obtained from investment in trust securities. In these circumstances the Accountant cannot report in favour of a sale as craved, there being neither necessity nor high expediency. See case of *Gilligan*, May 14, 1898, 25 R. 876, 35 S.L.R. 690.”

LORD ARDWALL—“It is with hesitation that I consider myself bound in this case in the interests of the estate to take a different view from the Accountant of Court. The case of *Gilligan's Factor*, 25 R. 876, is an authority for my doing so. On the merits that case differs most materially from the present. There the value of the property consisted in the site, which was in an improving and central locality in Glasgow, and the site was practically certain to rise largely in value and it would have been folly to sell it. Further, the petition was opposed by the pupil's grandmother. In the present case the subjects belong to a class of property which it is notorious has enormously decreased and will probably decrease still more in value. This is owing to the opinion that has gained ground amongst the well-to-do inhabitants of Glasgow that a more beneficial change of air can be got by going to the central and eastern portions of Scotland than by going “down the water” as it is called. There are also greater railway facilities than formerly, and persons from Glasgow can reach such places as Stirling, Dunblane, Callender, Crieff, Comrie, St Fillans, Crawford, Biggar, and other places in the upper ward of Lanarkshire, and even watering-places on the Fife Coast, with comparative ease. Building of villas and cottages has greatly increased recently in all those localities, and the new erections are greatly taken advantage of by people from Glasgow. There is therefore no future in such a property as that in question. Further, it is a most undesirable class of property to keep as a letting subject. There is always the initial difficulty of getting a tenant, rendering the obtaining of any income uncertain. If in any year a tenant is not obtained the garden and greenhouses must be kept up at an expense probably of not less than £60 to £100 a-year without a return. There is, further, the difficulty about wear and tear of furniture if it is let furnished. I have had experience myself both personally and among my friends of

the letting of country houses, and there cannot be a more unsatisfactory kind of business, nor could an investment more troublesome in its character or more uncertain and unreliable in its returns be imagined. The Accountant in his report proceeds solely on the assumption that a steady return of £110 a-year will be got from the property. This assumption is, in my opinion, wholly unwarranted, and almost certain to turn out fallacious. I am of opinion that in the interests of the estate the property should be sold as soon as possible. I proceed both on the report of Messrs Binnie, who are very skilled valuers, and on my own knowledge and experience. In my opinion it is highly expedient that leave to sell the subjects in question should be granted."

The following interlocutor was accordingly pronounced:—"The Lord Ordinary officiating on the Bills having resumed consideration of the petition and proceedings with the report by the Accountant of Court and heard counsel for the petitioner thereon, authorises and empowers the judicial factor, James Watson Stewart, to sell the property of Garail, Dunoon, described in the first place in the prayer of the petition, by public roup, after due advertisement, at the upset price of £1200, and if not sold at or above said upset price to re-expose the same at such reduced upset price as may be fixed by the Accountant, and on a sale and payment of the price to grant a disposition thereof, containing the usual and necessary clauses, and to grant all other deeds requisite and necessary for rendering such sale effectual, and decerns: Finds the petitioners entitled to the expenses of this application and all procedure following thereon; allows an account of said expenses to be given into process."

Counsel for the Petitioners—J. G. Jameson. Agent—T. J. Martin, W.S.

Tuesday, December 5.

OUTER HOUSE.

[EXCHEQUER CAUSE.]

[Lord Pearson, Ordinary.]

INLAND REVENUE v. IRVINE AND DISTRICT WATER BOARD.

Revenue—Stamp Duty—"Conveyance or Transfer on Sale"—*Water Undertaking—Compulsory Statutory Transfer of Undertaking—Stamp Act 1891 (54 and 55 Vict. cap. 39), secs. 1, 57, and First Sched.—Finance Act 1895 (58 Vict. cap. 16), sec. 12.*

The Corporation of a burgh constructed water-works for the supply of their own area, and also entered into agreements with neighbouring outlying districts by which they undertook to supply them with water for a money payment fixed on the basis of the assess-

able rental of the different districts. It was not entitled to make a profit. Subsequently the Corporation promoted a Provisional Order for powers to bring in additional water. This was opposed by the outlying districts, and eventually a new Provisional Order was promoted and passed providing for the transference of the water undertaking from the Corporation to a new joint Board representing both burgh and districts on certain terms, which included (1) a cash payment to the burgh; (2) relief from all expenses incurred by the burgh in connection with the Parliamentary proceedings; and (3) a transference of the whole debts and liabilities of the undertaking. The Inland Revenue claimed payment of conveyance on sale duty in respect of this transference to the Board. *Held* (1) that the transaction was a conveyance on sale upon which duty was payable, and (2) that the cash payment, the relief from Parliamentary expenses, and the amount of the debts and liabilities taken over were parts of the consideration for the transfer and together formed the *cumulo* sum upon which the duty fell to be calculated, without any deduction being made on the ground of the interest which the Corporation had in the Board.

The Stamp Act 1891 (54 and 55 Vict. cap. 39) enacts—section 1—"From and after the commencement of this Act the stamp duties to be charged for the use of Her Majesty upon the several instruments specified in the first schedule to this Act shall be the several duties in said schedule specified, which duties shall be in substitution for the duties theretofore chargeable under the enactments repealed by this Act, and shall be subject to the exceptions contained in this Act and in any other Act for the time being in force."

Under the heading "Conveyance or Transfer on Sale" in the first schedule, duty is imposed according to the amount or value of the consideration for the sale.

Section 57—"Where any property is conveyed to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, the debt, money, or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the conveyance is chargeable with *ad valorem* duty."

The Finance Act 1895 (58 Vict. cap. 16), sec. 12, enacts—"Where, after the passing of this Act, by virtue of any Act, whether passed before or after this Act, . . . (a) any property is vested by way of sale in any person, . . . such person shall, within three months after the passing of the Act, or the date of vesting, whichever is later . . . produce to the Commissioners of Inland Revenue a copy of the Act printed by the Queen's printer of Acts of Parliament or some instrument relating to