

so clear that Sir Victor could give a good title to a purchaser that we ought to ordain the trustees to make immediate payment of his share.

I have only further to add that the one-half of the fund which is unappointed is divisible equally among the four children.

The result of my opinion is that question 1 (a) and question 2 (a) and (b) fall to be answered in the affirmative; the answer to the third and fourth questions is that the unappointed capital and income is divisible equally between the four children of Sir Allan; 6 (a) and 7 (a) will be answered in the negative.

LORD KINNEAR — I agree with Lord M'Laren.

LORD PEARSON — I also agree.

LORD PRESIDENT—I also agree, and have nothing to add upon the first matter, namely, whether this was a good execution of the power.

As regards the second question, I confess I have had considerable difficulty, and I confess also that I do not think that the law is in a very satisfactory state, because I should have thought that the effect of the case of *Paterson* in 20 R. 484, is to make it fairly clear that Sir Victor here could bind himself by a contract to execute a testamentary power in favour of a named individual. It is quite clear also that Sir Victor could assign his life-ent, because the life-ent is not alimentary, and accordingly it seems to me that if he executed this contract, which I have suggested, and an assignment of his life-ent, in favour of one individual, that one individual would have everything. And it is almost a travesty of trust law to think that a trust has to be kept up merely to postpone that other individual entering into possession of the money. That seems to me entirely inconsistent with the general law which has been laid down in the case of *Sir William Miller's Trustees—Miller's Trustees v. Miller*, December 12, 1890, 18 R. 301.

But I have come to be satisfied that as the law stands at present upon authority, it is as Lord M'Laren has put it—that is to say, that the Court will not declare a fee unless there is both an unlimited life-ent and an absolute power of disposal, as opposed to a mere testamentary power of disposal. The remedy for what I think is an anomalous state of circumstances caused by two currents of decisions must be given elsewhere, and not in this Court. Accordingly I agree in the opinion that Lord M'Laren has delivered.

The Court answered questions 1 (a), 2 (a), and 2 (b) in the affirmative; to questions 3 and 4 the answer was returned that the unappointed capital was divisible equally among the four children of Sir Allan; questions 6 (a) and 7 (a) were answered in the negative.

Counsel for the First Parties—Graham Stewart, K.C.—J. H. Millar. Agents—W. & J. Cook, W.S.

Counsel for the Second and Third Parties—Blackburn, K.C.—Chree. Agent—Alex. Ross, S.S.C.

Counsel for the Fourth Party—Hunter, K.C.—David Anderson. Agents—Bruce, Kerr, & Burns, W.S.

Counsel for the Fifth Parties—Dean of Faculty (Dickson, K.C.)—Cowan. Agents—Mackenzie & Black, W.S.

Counsel for the Sixth Party—Fleming, K.C.—Hon. W. Watson. Agents—Tods, Murray, & Jamieson, W.S.

Saturday, December 5.

SECOND DIVISION.

[Sheriff Court at Glasgow.]

MANCHESTER AND COUNTY BANK,
LIMITED v. MOORE.

Process—Appeal—Appeal from Sheriff-Substitute to Sheriff not Insisted in—Competency of Appeal to Court of Session.

Held incompetent to appeal to the Court of Session against an interlocutor of a Sheriff whereby he dismisses an appeal from the Sheriff-Substitute “in respect the appeal was not insisted in at the Bar.”

In an action raised in the Sheriff Court at Glasgow by the Manchester and County Bank, Limited, against Edmund Cranston Moore, the Sheriff-Substitute (GLEGG) sustained a plea that the defences were irrelevant, and granted decree as craved.

The defender appealed to the Sheriff (GARDNER MILLAR), who on 9th November 1908 pronounced this interlocutor:—“The Sheriff, in respect the appeal was not insisted in at the Bar, dismisses the appeal . . .”

The defender appealed to the Court of Session.

In the Single Bills the respondents objected to the competency of the appeal, and argued—It was incompetent to appeal against an interlocutor proceeding on a consent express or implied—*Sutherland v. Thomson*, December 4, 1905, 8 F. (H.L.) 1, 43 S.L.R. 115: *Aird v. School Board of Tarbet*, 1907 S.C. 22, 44 S.L.R. 26; *Watson v. Russell*, January 30, 1894, 21 R. 433, 31 S.L.R. 352. The appellant by his failure to insist in his appeal before the Sheriff had consented to the interlocutor against which he now presented this appeal.

Argued for the appellant—The mere fact that the appellant had not chosen to present an argument to the Sheriff was not equivalent to consent to the dismissal, or to statutory abandonment, of the appeal. As the interlocutor of the Sheriff was a final one, the appeal was competent, and the failure to argue his case before the Sheriff, though it might affect the question of expenses, could not bar the appeal.

LORD JUSTICE-CLERK—It seems to me quite clear that this appeal is incompetent.

When a party says that he does not insist in an appeal, that simply means he cannot maintain his case.

LORD LOW—I am of the same opinion. If a party appeals, and then tells the Court that he does not insist in his appeal, that is equivalent to a consent that the appeal be dismissed.

LORD ARDWALL and LORD DUNDAS concurred.

The Court dismissed the appeal as incompetent.

Counsel for the Pursuers (Respondents)—Paton. Agents—Graham, Miller, & Brodie, W.S.

Counsel for the Defender (Appellant)—Jameson. Agent—S. F. Sutherland; S.S.C.

REGISTRATION APPEAL COURT.

Saturday, December 5.

(Before Lord Pearson, Lord Ardwall, and Lord Johnston.)

CAIRNEY v. WRIGHT.

Election Law—County Occupation Franchise—Joint-Tenant—Value—Representation of the People (Scotland) Act 1868 (31 and 32 Vict. c. 48), secs. 6 and 14—Representation of the People Act 1884 (48 and 49 Vict. c. 3), secs. 5 and 7 (6) and (8)—Statute Law Revision Act 1893 (56 Vict. c. 14).

Held (diss. Lord Pearson), upon a construction of the Registration Statutes, together with the Statute Law Revision Act 1893, which repeals sec. 14 of the Representation of the People (Scotland) Act 1868, that in order to entitle joint tenants and occupants to be registered as voters in a county in respect of lands and heritages held by them jointly, it is necessary that the value of the subjects should be sufficient when divided amongst them to give to each, only a sum of not less than £10.

Wainwright v. Aitken, November 27, 1893, 21 R. 162, 31 S.L.R. 126, considered and overruled.

The Representation of the People (Scotland) Act 1868 (31 and 32 Vict. c. 48) enacts—Sec. 6—“Every man shall be entitled to be registered as a voter, and when registered, to vote at elections for a member to serve in Parliament for a county who . . . is qualified as follows: That is to say . . . (2) is and has been during the twelve calendar months immediately preceding the last day of July in the actual personal occupancy as tenant of lands and heritages within the county of the annual value of £14 or upwards as appearing on the valuation roll of such county. . . .” Sec. 14—“ . . . Where any such lands and heritages shall be owned,

held, or occupied by more persons than one . . . as joint-tenants and joint-occupants of the same . . . each of such joint-tenants and joint-occupants shall . . . be entitled to be registered and to vote provided the annual value of the said lands and heritages, as appearing on the valuation roll, held and occupied by them shall be sufficient when divided by the number of such joint-tenants and joint-occupants to give to each of them a sum of not less than £14, but not otherwise.”

The Representation of the People Act 1884 (48 Vict. c. 3) enacts—Sec. 5—“Every man occupying any land or tenement in the United Kingdom of a clear yearly value of not less than £10 shall be entitled to be registered as a voter, and when registered, to vote at an election for such county or borough in respect of such occupation, subject to the like conditions respectively as a man is at the passing of this Act entitled to be registered as a voter and to vote at an election for such county in respect of the county occupation franchise, and at an election for such borough in respect of the borough occupation franchise.” Sec. 7—“ . . . (6) The expression ‘county occupation franchise’ means, as respects England, the franchise enacted by the sixth section of the Representation of the People Act 1868; and as respects Scotland, the franchise enacted by the sixth section of the Representation of the People (Scotland) Act 1868. . . . (8) Any enactments amending or relating to the county occupation franchise or borough occupation franchise other than the sections in this Act in that behalf mentioned shall be deemed to be referred to in the definition of the county occupation franchise and the borough occupation franchise in this Act mentioned.”

The Statute Law Revision Act 1893 (56 Vict. cap. 14), which proceeds upon the preamble, “Whereas it is expedient that certain enactments, which may be regarded as spent, or have ceased to be in force otherwise than by express specific repeal by Parliament, or have by lapse of time or otherwise become unnecessary, should be expressly and specifically repealed, . . .” enacts—Sec. 1—“The enactments described in the Schedule to this Act are hereby repealed, subject to the provisions of this Act and subject to the exceptions and qualifications in the schedule mentioned, . . . Provided as follows: the repeal by this Act of any enactment or schedule shall not affect any enactment in which such enactment or schedule has been applied, incorporated, or referred to. . . . nor shall this Act affect any . . . existing usage, franchise, liberty, custom, privilege, restriction, . . . notwithstanding that the same . . . may have been in any manner affirmed, recognised, or derived by, in, or from any enactment hereby repealed. . . .” Schedule “. . . 31 and 32 Vict. cap. 48—The Representation of the People (Scotland) Act 1868—In part, namely, . . . Section 14, from ‘and where any’ to the end of the section, except so far as the words so repealed relate to the rights of