

royal and parliamentary burghs. I agree, therefore, with the main ground of judgment upon which your Lordships proceed; and I agree also with the second ground that the county council being authorised to levy a consolidated rate, is not entitled to break up the rate for the purpose of levying an assessment for one particular purpose upon a parliamentary burgh which for the purpose of all other assessments is beyond the assessable area. I think the statute authorises a county council to levy a consolidated rate within a definite area, and no other rate.

The Court adhered.

Counsel for the Pursuers—Balfour, Q.C.—W. Campbell. Agent—Richard Lees, Solicitor.

Counsel for the Defenders—Asher, Q.C.—J. Reid. Agents—Myline & Campbell, W.S.

HOUSE OF LORDS.

Friday, May 15.

(Before the Lord Chancellor (Halsbury), Lord Watson, Lord Herschell, Lord Shand, and Lord Davey.)

LADY CONSTANCE MACKENZIE *v.*
DUKE OF SUTHERLAND'S TRUSTEES AND OTHERS.

(*Ante*, vol. xxxii. p. 641, and 22 R. p. 839.)

Succession—Trust-Disposition—Construction—Heirs-Female.

It is a settled principle of law that the operative words of a deed which are expressed in clear and unambiguous language, are not to be controlled or qualified by a recital or narrative of intention.

A granted a trust-disposition, whereby, "in order to make and secure additional provision for" his second son, "and the other heirs of entail succeeding to him in the lands and estate of Cromartie, to enable them to support the dignity and title of Earl of Cromartie," he conveyed a number of securities to trustees, and directed them after his death to pay the free annual proceeds of the trust funds to his second son and the heirs-male of his body, whom failing to certain substitutes, "whom failing to the heirs-female of the body" of the said second son.

The truster's second son was survived by two daughters, of whom the elder succeeded to the earldom of Cromartie.

Held (*rev.* the judgment of the Second Division) that the expression "heirs-female," not being ambiguous, could not be controlled or qualified by the narrative of intention, and that the two daughters were entitled, equally between them, to the income of the trust fund.

The case is reported *ante*, vol. xxxii., p. 641, and 22 R. p. 839.

Lady Constance Mackenzie appealed to the House of Lords.

At delivering judgment—

LORD CHANCELLOR—My Lords, it appears to me that this case is susceptible of a very short solution. I simply look at the deed itself, and I find that the provisions for the beneficiaries intended by this deed are satisfied by the persons claiming now as heirs-female. I really have great difficulty in saying more than that, because if the language of the instrument itself is sufficiently clear as to the beneficiaries pointed to, as I think it is, and if the trust purposes are set forth in the paragraph of the deed which is appropriate to such purposes, it seems to me to be absolutely unarguable that the true meaning of those words, and the purposes of the trust so set forth, can be in any way controlled, qualified, or modified by the initial statement of what the motive of the author of the deed was. It would, to my mind, be disastrous to introduce such a system of construing a deed. One has known the language of a will somewhat perverted to perform the function which it was assumed the testator intended to be performed, but I never in my life heard of the language of a deed which contained a perfectly unambiguous provision being twisted from the natural ordinary meaning of the words by a preliminary statement of what the maker of the deed intended should be the effect and purpose of the whole deed when made. I should say that even if there were some contradiction between what was done and the supposed purpose. But here it is very obvious to remark that the purpose or the motive which the maker of the deed prescribes to himself is to some extent satisfied by what he does, and I can only say, speaking with the utmost respect to the learned Judges who expressed a different view, that I am unable to comprehend how that purpose could alter the natural and ordinary effect of the words used in the instrument.

My Lords, for these reasons I move your Lordships that the judgment of the Court below be reversed, and that the appeal be allowed.

LORD WATSON—My Lords, I have come without any difficulty to the same conclusion.

These ladies are heirs-female, and they are also heirs-portioners. Heirs-portioners who are heirs-female take, according to the law of Scotland, as a class. The destination or gift to them contained in this trust-deed, if it were a destination or a gift of land, would be quite effectual to give them a *pro indiviso* right in the land, each taking an equal share, and I have heard nothing suggested to the effect that when there is a gift of property to the same class in plain unambiguous terms it should have the least different effect. There can be no reason for its receiving a different effect in such a case unless it be upon a principle which I have never yet heard suggested in the law

of Scotland, that in dealing with money you require more precision than when you are dealing with a land right.

But the ground upon which the judgment of the Court below proceeds really comes to this, that to read the words in the sense in which I think they ought to be read would be at variance with the main purpose of the deed as declared in the outset of it.

My Lords, I think that is carrying the principle of construction by intention too far. I can quite understand that where words are capable of being modified or qualified in the context in which they occur, it may be legitimate to ascertain how far one reading or another would best promote the intention of the maker of the deed, but I fail to see that the words at the commencement of the deed which have been referred to as imperative, and as requiring the construction which has been put upon them by their Lordships of the Second Division, come to more than a statement that the deed is made because the trustor entertains certain intentions towards certain persons who are included in the deed, and who are benefited by it. But it does not bring about any contradiction between his intention and the words of the deed if you find there that besides the persons whom he intended to benefit, and whom he has benefited, some benefit is given to others. I think that it is a very dangerous canon of construction to admit what may be a partial statement of intention quite consistent with other objects to control the whole of the other language of the deed with the effect of striking out beneficiaries whom the trustor may have intended to benefit. The words come to no more than this—"My intention is to do" so and so, and no doubt you may add this, "and I have accomplished that purpose by the provisions which follow." In such a case the safer course always is to look to the provisions which follow, and to read them according to their natural and just construction.

LORD HERSCHELL—My Lords, I am of the same opinion.

LORD SHAND—My Lords, I concur. The trustor in this case, it may very well be supposed, if he had contemplated the case that has actually occurred, would have made a provision to the effect that has been contended for on the part of the respondents here, giving effect to the view which the Court below has taken. While saying at the outset of this deed that his purpose was to enable the beneficiaries "to support the dignity and title of the Earl of Cromartie," he might have thought it would better effectuate that purpose if heirs-portioners did succeed as males, that the eldest heir-portioner should have the income; but I can only say that if he had any such intention it is not expressed. The deed in its operative provision contains very distinct directions to the trustees. The trustees are expressly directed to give this income to the heirs-female, and it is conceded by the learned Judges in their opinions that the ordinary meaning of those words is

that there shall be a distribution of the fund amongst all the heirs-female. I fail to see any room for the suggestion that there is ambiguity in that provision. The Court think there is not practically any ambiguity, and although it might appear and did appear that there was a failure to fulfil the intention of the trustor, I should still give effect to the operative words of the deed because his directions are given in distinct terms, which however fail to carry out his intention. But, as has been observed by the Lord Chancellor and by my noble and learned friend who has already spoken (Lord Watson), he does not fail to carry out that intention, for in any view that may be taken of this deed the eldest heir-female succeeding to the estate of Cromartie does get material benefits under this deed.

Under these circumstances, my Lords, I am of opinion with your Lordships that the decision of the Court below in this case must be reversed.

LORD DAVEY—My Lords, I take it to be a settled principle of law that the operative words of a deed which are expressed in clear and unambiguous language are not to be controlled, cut down, or qualified, by a recital or narrative of intention. Now, in this case, we are told by Lord Trayner (and it is a statement with which I entirely agree) in his judgment that "if these words are to be construed literally, then the destination must be read as conveying the proceeds of the trust funds to the second and third parties equally, who are heirs-female of Lord Tarbat." In that I entirely agree, and that being so I concur in the judgment proposed.

Counsel for the appellant moved that expenses should be allowed out of the trust funds. The trustees consented to this being done.

Their Lordships ordered that the judgment appealed from be reversed, and the case remitted, expenses being allowed out of the trust funds.

Counsel for the Appellant Lady Constance Mackenzie—Balfour, Q.C.—Dundas—Craigie. Agents—Robins, Hay, Waters, & Lucas, for J. C. Couper, W.S.

Counsel for the Countess of Cromartie—Lord Advocate, Graham Murray, Q.C.—Macphail. Agents—Gadsten & Treherne, for Mackenzie & Black, W.S.

Counsel for the Duke of Sutherland's Trustees—Blackburn. Agents—Gadsten & Treherne, for Mackenzie & Black, W.S.